

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT
Case No. 217-2020-CV-00026

DAVID MEEHAN

See margin order on page 6
of motion

v.

STATE OF NEW HAMPSHIRE, et al.

(IN RE YDC and YDSU CONSOLIDATED LITIGATION)

*** this motion pertains to more than five cases ***
*** this motion pertains to Contractor Defendants ***

**12 PLAINTIFFS' MOTION TO EXTEND RECONSIDERATION DEADLINE IN
CONNECTION WITH COURT'S RULINGS ON CONTRACTOR DEFENDANTS'
MOTIONS TO DISMISS**

NOW COMES the 12 Plaintiffs¹, by and through undersigned counsel, and move for a six-month extension of the deadlines for these 12 Plaintiffs to file motions to reconsider with respect to the Court's recent orders on the motions to dismiss filed by various Contractor Defendants in the YDC/YDSU Consolidated Litigation, and related relief. In further support hereof, Plaintiffs state as follows:

1. On February 27 and 28, 2025, the Court issued 14 orders in the 12 Plaintiffs' cases.² Of these, 11 orders granted a Contractor Defendant's motion to dismiss all of the claims filed by the plaintiff against that particular Contractor Defendant. In one order—entered in *John Doe #269*—the Court partially denied Mount Prospect Academy, Inc.'s motion to dismiss because the Court agreed that facts establishing equitable tolling of the statute of limitations were alleged in

¹ The 12 Plaintiffs who join in this Motion are listed in **Exhibit A**.

² The Court also issued an order with respect to Orion House's motion to dismiss in *John Doe #64 v. State*, No. 217-2021-cv-00614. Because the Court decided that case on a failure to state a claim standard and granted Plaintiff 30 days to amend, John Doe #64 will proceed apiece and does not join in this motion.

the Complaint (though the Court declined to extend such tolling to John Doe #269’s claims against another Contractor Defendant for abuse suffered in that facility). In two other cases—*John Doe #24* and *John Doe #146*—the Court declined to apply the discovery rule to the plaintiffs’ claims arising from sexual and physical assault, but found that the claims arising from sexual assault against Contractor Defendants NFI North, Inc. and Mount Prospect Academy, Inc. were otherwise timely pursuant to RSA 508:4-g. A copy of these orders is attached as **Exhibit B**.

2. In each of the 12 Plaintiffs’ cases, claims filed by plaintiffs against the State Defendants remain live. State Defendants have neither answered nor filed a motion to dismiss. In some cases, plaintiff has opted to file a claim in the Youth Development Center Claims Administration and Settlement Fund and, as a result, there is a partial stay of claims against the State that are compensable under the Fund. *See generally* RSA 21-M:11-a, VII(e). In *John Doe #24*, *John Doe #146*, and *John Doe #269*, claims against Contractor Defendants NFI North, Inc. and Mount Prospect Academy, Inc. remain live because the Contractor Defendants’ motion has been denied, at least in part.

3. None of these orders qualify as “final” orders subject to Civil Rule 46(c)—because they only “resolve[] the case[s] as to one or more, but fewer than all, claims or parties” and the orders do not explicitly reference Civil Rule 46(c). As a result, none of the orders entered in these 12 Plaintiffs’ cases are subject to a mandatory appeal and the cases will otherwise proceed apiece against the remaining defendants.

4. Moreover, it is unclear to undersigned counsel whether the cases filed by these 12 Plaintiffs remain subject to the stay ordered by the Court in connection with the November 15, 2024, status conference (*See* Index #789). If these cases are now not subject to the stay, the clock

for these 12 Plaintiffs to file motions to reconsider is ticking and such motions are due on March 10, 2025. *See* N.H. Super. Ct. Civil R. 12(e).

5. The sum of these 13 orders is that, globally speaking: (a) the Court has determined that, to the extent these Plaintiffs’ claims are untimely, their claims arising from sexual and physical abuse cannot be tolled by operation of the discovery rule, as a matter of law and despite the New Hampshire Supreme Court’s order in *Troy v. Bishop Guertin High Sch.*, 176 N.H. 131 (2023); (b) in many cases, the strip searches described in Plaintiffs’ complaints do not constitute “sexual assault” under RSA chapter; and (c) setting aside the discovery rule, the version of RSA 508:4-g that applies to a civil action is the one in effect at the time of the tort (not the time the lawsuit was filed) and, once the statute of limitations vests, the 2020 amendment to RSA 508:4-g cannot be applied retroactively against the Contractor Defendants with respect to claims arising from sexual assault.

6. Assuming the motion-to-reconsider-deadline is March 10, 2025, justice and matters of judicial economy call for an extension of that deadline by at least six months—to September 10, 2025. This is because two of the three issues triangulated in the Court’s orders are currently on appeal at the New Hampshire Supreme Court and all parties would be aided in seeking reconsideration and/or interlocutory appeal of these cases with applicable appellate opinions in-hand.

7. With regard to the discovery rule, the New Hampshire Supreme Court just recently accepted a mandatory appeal filed by another member of the YDC and YDSU Consolidated Litigation—John Doe #533. *See John Doe #533 v. State*, No. 2025-0092 (N.H.), *accepted* Feb. 28, 2025) (a copy of which is attached as **Exhibit C**). That case concerns application of the discovery rule to claims against Contractor Defendant Mount Prospect Academy Inc. for physical abuse. The

Supreme Court’s resolution of that appeal that will provide insight from the State’s highest court as to how the discovery rule applies to physical abuse claims, as well as sexual abuse claims that are not otherwise timely by operation of RSA 508:4-g.

8. With regard to retrospective application of the 2020 amendment to RSA 508:4-g, that issue is subject to another mandatory appeal currently pending before the New Hampshire Supreme Court—*Ball v. Roman Catholic Bishop of Manchester*, No. 2024-0606 (N.H.), *accepted* Nov. 14, 2024 (a copy of which is attached as **Exhibit D**). *Ball* concerns whether an institutional defendant, defending against claims emanating from sexual assault, is entitled to protection under Part I, Article 23 of the New Hampshire Constitution against retrospective application of the 2020 amendment to RSA 508:4-g. Again, the Supreme Court’s resolution of that appeal that will provide insight as to how RSA 508:4-g applies to the claims filed by these 12 Plaintiffs and other, similarly-situated plaintiffs.

9. With regard to the remaining global issue—strip searches as sexual assaults—that issue requires a case-by-case analysis depending on the facts alleged in each respective complaint. That issue can be most efficiently resolved on reconsideration if it is briefed at the same time as the above-mentioned issues.

10. Because none of the subject orders in these 12 Plaintiffs’ cases are “final” and none of these cases have yet been scheduled for trial, the proposed extension of the reconsideration deadline will not affect any other court-ordered deadline, prejudice any party, or substantially delay the administration of justice.

11. The 12 Plaintiffs have not sought the assent of any defendant prior to the filing of this Motion because the issue as to whether the stay applies to these 12 Plaintiffs’ cases has just

come to the undersigned counsel's attention and, upon information and belief, undersigned counsel does not reasonable expect that any defendant would assent to the relief requested.

WHEREFORE, Plaintiffs respectfully request that the Honorable Court:

- A. GRANT this Motion;
- B. CLARIFY that the Court's recent orders in these 12 Plaintiffs' cases are not "final" for the purpose of Civil Rule 46(c);
- C. to the extent necessary, EXTEND the reconsideration deadline under Civil Rule 12(e) in each of the 12 Plaintiffs' case for a period of six months, to September 10, 2025; and
- D. GRANT such further relief as justice and equity require.

Respectfully submitted,

THE 12 PLAINTIFFS

Dated: March 10, 2025

By and through counsel,

RILEE & ASSOCIATES, P.L.L.C.

NIXON PEABODY LLP

/s/ Cyrus F. Rilee, III

Cyrus F. Rilee, III, Esq. (Bar No. 15881)

Laurie B. Rilee, Esq. (Bar No. 15373)

264 South River Road

Bedford, NH 03110

T: 603.232.8234

crilee@rileelaw.com

lrilee@rileelaw.com

/s/ Nathan P. Warecki

David A. Vicinanzo, Esq. (Bar No. 9403)

W. Daniel Deane, Esq. (Bar No. 18700)

Mark Tyler Knights, Esq. (Bar No. 264904)

Nathan Warecki, Esq. (Bar No. 20503)

Erin S. Bucksbaum, Esq. (Bar No. 270151)

Allison K. Regan, Esq. (Bar No. 272296)

Jonathan O'Neil, Esq. (Bar No. 276336)

900 Elm Street, 14th Floor

Manchester, NH 03101

T: 603-628-4000

dvicinanzo@nixonpeabody.com

ddeane@nixonpeabody.com

mknights@nixonpeabody.com

nwarecki@nixonpeabody.com

ebucksbaum@nixonpeabody.com

aregan@nixonpeabody.com

joneil@nixonpeabody.com

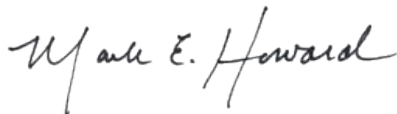
CERTIFICATE OF SERVICE

I certify that on March 10, 2025, I am sending a copy of this document as required by the rules of the court. I am electronically sending this document through the court's e-filing system to all attorneys and to all other parties who have entered electronic service contacts (email addresses) in this case.

/s/ Nathan P. Warecki

Nathan P. Warecki, Esq.

Order: Upon review of the motion, the objection, and the reply, the motion is granted in part and denied in part. Given the complexity of these cases, an extension of time to file motions to reconsider is warranted. The plaintiffs shall have 20 days from the date on the Clerk's Notice of Decision of this order within which to file motions to reconsider. The defendants shall have 20 days from the date of service of the motion to reconsider within which to file an objection or reply. The plaintiffs' request for an extension of 6 months is denied. The court exercises its discretion to increase the page limit on motions to reconsider and objections to 15 pages. So Ordered.



Honorable Mark E. Howard

April 2, 2025

Clerk's Notice of Decision
Document Sent to Parties
on 04/02/2025

EXHIBIT A

Plaintiff ID	Case Number
John Doe #24	217-2021-CV-00559
John Doe #146	217-2022-CV-00076
John Doe #269	217-2022-CV-00176
John Doe #480	217-2022-CV-00797
Jane Doe #535	217-2023-CV-00833
John Doe #603	217-2023-CV-00026
John Doe #607	217-2023-CV-00040
John Doe #644	217-2023-CV-00130
John Doe #656	217-2023-CV-00254
John Doe #675	217-2023-CV-00293
John Doe #714	217-2023-CV-00377
John Doe #748	217-2023-CV-00435

EXHIBIT B

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

JOHN DOE #24

v.

STATE OF NEW HAMPSHIRE, et al.
217-2021-CV-00559

DAVID MEEHAN v. STATE OF NEW HAMPSHIRE, et al.
(Consolidated YDC/YDSU Cases)
217-2020-CV-26

ORDER

The matter before the court is Defendant Mount Prospect Academy's ("Mount Prospect's") Motion to Dismiss plaintiff John Doe #24's claims against it. (Court Index # 13). For the reasons set forth below the motion is GRANTED in part and DENIED in part. Specifically, the motion is GRANTED with respect to Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy), which are DISMISSED for failure to state a claim upon which relief may be granted. The motion is GRANTED in part and DENIED in part, for the reasons stated below, with respect to Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention), and XII (negligence).¹

DEFINING THE COMPLAINT

The Complaint in this case comprises the following three documents:

A. A 50-page "Amended Master Complaint," filed in Meehan v. State, 217-2020-CV-26 on July 8, 2022. (Meehan Court Index # 70). The Amended Master Complaint does not

¹ The remaining counts do not allege any claims against Mount Prospect. Counts I through VII (set forth in the Master Complaint) and Counts IX and XIII (set forth in the Short Form Complaint) assert claims against the State Defendants only.

mention John Doe #24 or any of the facts about his life. Likewise, it does not contain any reference to Mount Prospect or any other contractor defendant.

B. A 30-page “Amended Short Form Complaint” filed in John Doe #24 v. State, 217-2021-CV-00559. (Court Index # 9). The Short Form Complaint contains allegations specific to the plaintiff and Mount Prospect. The Short Form Complaint contains an Addendum, as well as a separately filed, sealed Supplement that contains John Doe #24’s true name and date of birth.

C. A 10-page Declaration, signed by the plaintiff, filed as Exhibit A to the Objection to the Motion to Dismiss in John Doe #24 v. State, 217-2021-CV-00559 (Court Index # 16 (Redacted); see Court Index # 17 (Unredacted)) (cited hereinafter as “Declaration”). The Declaration contains the plaintiff’s factual responses to Mount Prospect’s affirmative limitations defense.

These 90 pages will be referred to collectively as “the Complaint.”

PROCEDURAL HISTORY AND RELEVANT DATES

The plaintiff was born in July 1995.² He turned 20 in July 2015. The Complaint in this case was filed on October 18, 2021, when the plaintiff was 26 years old.

As relevant to the instant motion, the plaintiff claims that he was subjected to physical, psychological, and sexual abuse at a residential juvenile facility operated by Mount Prospect. The plaintiff alleges that the abuse occurred during a period of roughly seven months between September 2009 and June 2010, when he was 14.³ Also, the State sent the plaintiff to Campton

² The plaintiff’s precise date of birth is provided in the Sealed Supplement to the Short Form Complaint (Court Index # 2). The Court recites only the month and year of birth to protect the plaintiff’s identity. The day of the month is not material to any determination in this Order.

³ Specifically, the plaintiff alleges that when he was placed at Mount Prospect’s facility between September 2009 and June 2010 and Campton House from September 2010 to February 2011. (Declaration ¶ 8). The Court infers that the defendant was 14 and 15 during this time.

House, which Mount Prospect owns and operates, from September 2010 to February 2011 when the plaintiff was 15 years old. The plaintiff does not allege that Mount Prospect engaged in any tortious behavior after that time.

Thus, the plaintiff initially filed suit approximately 10 years after the last possible date of abuse, and roughly 6 years after he turned 20.

FACTUAL BACKGROUND

The following facts are taken from the Complaint.

A. Events That Occurred Prior to Placement at Mount Prospect

The plaintiff lived with his parents until they divorced when the plaintiff was 6 or 7. Thereafter, the plaintiff rarely saw his father until he was 8 or 9. The plaintiff was diagnosed with attention deficit hyperactivity disorder (“ADHD”) when he was 7 or 8. Because of his ADHD, the plaintiff had trouble focusing in school, which caused him to skip classes as he got older. When the plaintiff was 14, his mother—who suffered from multiple sclerosis and bi-polar depression—attempted to send the plaintiff to live with his father because she could no longer handle caring for the plaintiff. The plaintiff refused to live with his father because he felt unwelcomed by his father’s extended family.

After the plaintiff refused to go live with his father, the State took custody of him and placed him at Midway Shelter in July or August 2009 for one month. A female staff member named Heidi flashed her naked breasts at the plaintiff on multiple occasion. She also groped the plaintiff’s penis over his clothes on about 6 different occasions. He felt that he “chickened out” by not having sex with Heidi.

B. Events at Mount Prospect's Facility

The State sent the plaintiff to Mount Prospect in September 2009, where he resided until June 2010. A Mount Prospect staff member named John Ketner violently restrained the plaintiff at least 3 to 4 times. Ketner outweighed the plaintiff by nearly 160 pounds, causing the restraints to be so painful that it was hard for the plaintiff to get out of bed the next morning. The pain in his back also lasted for months after each restraint. Ketner restrained the plaintiff in full view of other Mount Prospect staff members. These staff members never intervened and did not provide the plaintiff with medical attention despite the plaintiff's complaints of back pain.

The plaintiff also alleges that a Mount Prospect mental health counselor named Anna Lee Brown touched the plaintiff's penis over his clothing. He never saw her again after this incident; he was unsure whether she quit, got transferred, or was fired.

The plaintiff was also routinely locked in a crisis intervention room for minor infractions. The room was 6 by 8 feet in size, had concrete walls, and had no windows or bathroom facilities. The longest he was ever locked in the crisis intervention room was for 5 hours.

In September 2010, the State sent the plaintiff to Mount Prospect's facility in Campton, where he resided until February 2011. Over a period of approximately six to eight weeks, the plaintiff was sexually abused by a staff member known to him as LB. LB was responsible for accompanying the plaintiff and other residents between Campton House and a forestry vocational program in East Haverhill. On one occasion, LB performed oral sex on the plaintiff in his bathroom. He also alleges that she made him masturbate on her a dozen times, both in his room and on a bus. At the time, the plaintiff thought that he was in love with LB.

C. Events Occurring after the Plaintiff Left Mount Prospect

Between the plaintiff's stints at the Mount Prospect facilities, the plaintiff was placed at the Jefferson Shelter for one month in August 2010. While there, two residents jumped the plaintiff and beat him. Staff members saw the assault but did nothing in response and offered the plaintiff no help or protection.

Next, the plaintiff lived with his father for about 6 months in 2011. The plaintiff's father was very strict, only allowing him to leave the house to attend his job at Market Basket. His father made him live in a small storage closet and took all of the money he earned from his job. The plaintiff eventually tried to run away from his father's house but was caught by the Nashua Police Department.

Thereafter, the State sent the plaintiff to live at the Sununu Youth Services Center ("SYSC") from September 2011 to July 2012. While there, the plaintiff was routinely beaten and restrained by various staff members. He suffered physical injuries from some of the more severe restraints. The plaintiff was also sexually assaulted by his art teacher and was strip-searched about 6 times. SYSC staff also routinely locked the plaintiff in solitary confinement without justification. The plaintiff aged out of SYSC when he turned 17.

D. Damages and Lack of Discovery

The plaintiff continues to experience pain in his back and hip from John Ketner's physical assaults. As a result of his lower body pain, the plaintiff's upper body is lopsided and leans to the left. His hips, back, and shoulder hurt every morning when he wakes up. He also alleges that he has "no template" for what an appropriate sexual relationship should look like and that he is distrustful of authority figures. (Declaration ¶ 28). The plaintiff also suffers from post-traumatic stress disorder, anxiety, and depression as result of what he experienced as a child.

While the plaintiff now realizes that the State and Mount Prospect had an obligation to keep him safe, as a child he did not understand what was happening to him and could not appreciate that the State and Mount Prospect were responsible for it. He asserts that his mental health conditions have made it harder for him to identify that Mount Prospect was responsible for the abuse he suffered as a child. In or around March or April 2021, the plaintiff learned about a lawsuit against the State from others who were abused while at SYSC. He alleges that it was only at that point that he realized that Mount Prospect was responsible for the harm he suffered as a child.

ANALYSIS

Mount Prospect moves to dismiss on two broad grounds: that the plaintiff's claims are barred as untimely by operation of the statute of limitations and the failure of all available tolling provisions; and that the plaintiff fails to state a claim for which relief may be granted. The Court will address each of these issues separately.

I. Limitations Analysis

The defendant argues, inter alia, that the plaintiff's claims are time-barred. The statute of limitations is an affirmative defense. Perez v. Pike Indus., Inc., 153 N.H. 158, 160 (2005); Glines v. Bruk, 140 N.H. 180, 181 (1995). A defendant has the obligation to allege and prove that the complaint was brought after the limitations period expired. Perez, 153 N.H. at 160. If the defendant meets this burden, then the plaintiff has the burden to prove that the claim is timely by virtue of the discovery rule, fraudulent concealment, equitable tolling, or some other doctrine. The plaintiff here alleges instances of physical, psychological and sexual abuse spanning several years, all occurring prior to his reaching the age of 18. By their nature, these claims separately implicate three statutes pertaining to limitations: the general statute of limitations for personal

actions (RSA 508:4); the special tolling provision provided in the “disabilities statute” (RSA 508:8); and the special tolling provision applicable to sexual assault and related offenses (RSA 508:4-g). The court will consider the application of each of these statutes separately.

A. The Disabilities Statute: RSA 508:8

The court first considers RSA 508:8, the so-called “disabilities statute.” This statute provides that “an infant or mentally incompetent person may bring a personal action within 2 years after such disability is removed.” RSA 508:8. In Norton v. Patten, 125 N.H. 413 (1984), the New Hampshire Supreme Court construed the term “infant” to mean a person who has not yet reached the statutory age of majority, as defined in RSA 21-B:1. The age of majority is eighteen. Thus, as construed by Norton, RSA 508:8 extends the limitations period for minors until their twentieth birthday.

As noted above, the plaintiff turned twenty in July 2015, approximately 6 years before he filed the instant case. Accordingly, the instant case was not filed within the limitations period established by RSA 508:8. RSA 508:8 does not contain its own discovery rule.

B. The General Statute of Limitations for Personal Actions: RSA 508:4

RSA 508:4 provides the statute of limitations for all personal actions. Under this statute:

[A]ll personal actions . . . may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

The last “act or omission complained of” occurred no later than February of 2011, the year that the plaintiff left Campton House. The instant case was thus brought more than 10 years

after the last “act or omission complained of.” Mount Prospect has therefore met its burden of showing that the instant case was filed more than three years after the conduct at issue.

This shifts the burden to the plaintiff to demonstrate grounds for the application of: (a) the discovery rule; (b) equitable tolling; (c) the doctrine of fraudulent concealment; or (d) some other doctrine extending the limitations period. Perez, 153 N.H. at 160. Consistent with the standard of review for motions to dismiss, the court accepts all of the plaintiff’s well-pled facts, and makes all rational inferences in the plaintiff’s favor.

The court’s task is to determine only whether the plaintiff has alleged facts which, if proven, might lengthen the limitations period to make this case timely. To be clear, if the plaintiff alleges sufficient facts to show that discovery is necessary to make this determination, the motion to dismiss on limitations grounds must be denied and the issue preserved for summary judgment on a more complete record. However, if discovery would be futile because the Complaint itself fails even to allege grounds to apply the discovery rule or another tolling doctrine, the motion to dismiss will be granted.

(i) The Discovery Rule

It is well-settled that the “purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party.” Petition of N.H. Div. For Children, Youth & Families, 173 N.H. 613, 618 (2020). The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run:

(1) a plaintiff must know or reasonably should have known that she has been injured; and (2) a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the defendant.

Lamprey v. Britton Constr., Inc., 163 N.H. 252, 257 (2012); see also Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 713 (2010); Perez, 153 N.H. at 160; Big League Entm't, Inc. v. Brox Indus., Inc., 149 N.H. 480, 485 (2003).

The discovery rule does not reward ignorance of the law. The statute of limitations is not tolled due to a plaintiff's failure to acknowledge or otherwise understand their potential claims. See Sullyville, LLC v. Town of Carroll, Slip Op. No. 2019-0240, 2021 WL 1310832, at *7 (N.H. Apr. 8, 2021) (non-precedential decision stating that "[t]he discovery rule does not toll the statute of limitations until a plaintiff discerns the legal theory by which his or her case will proceed; rather, it tolls the statute of limitations only when the injury and its causal relationship to the defendant's act or omission remain unknown to the plaintiff."); Ouellette v. Beaupre, 977 F.3d 127, 138 (1st Cir. 2020) (applying federal law and holding that "a plaintiff, once armed with the knowledge of his or her injury and its probable cause, cannot plead ignorance of the law to delay accrual."); Maggi v. Grafton Cty. Dep't of Corrs., 633 F. Supp. 3d 508, 516 (D.N.H. 2022) (applying RSA 508:4 and holding that "even if the court were to assume the truth of [plaintiff's] assertions about his lack of access to legal resources, that would not save his claims. His claims accrued on the date he should have reasonably known he was injured, not on the date he first learned he had a legal cause of action.") (vacated and remanded on other grounds by Maggi v. Grafton Cty. Dep't Corrs., No 23-1002 2024 WL 3384813 (1st Cir. July 9, 2024)); Miller v. Pac. Shore Funding, 224 F. Supp. 2d 977, 986–87 (D. Md. 2004) ("Knowledge of facts, however, not actual knowledge of their legal significance, starts the statute of limitations running. . . . The discovery rule, in other words, applies to discovery of facts, not to discovery of law. Knowledge of the law is presumed."); Marcum v. Columbia Gas Transmission, LLC, 549 F. Supp. 3d 408, 421, (E.D. Pa. 2021) ("Plaintiffs' ignorance of a legal cause of action does not, in itself, require

application of the discovery rule.”). In this case, the plaintiff proffers several reasons why he may have not discovered the law governing his claims. However, the plaintiff’s failure to bring his claims within the applicable time period due to his unawareness of the law is not grounds to apply the discovery rule.

For discovery rule purposes, a plaintiff becomes aware of an injury as soon as he can reasonably discern that he has suffered “some harm” caused by a defendant’s conduct. Beane, 160 N.H. at 713; see also Balzotti Glob. Grp., LLC v. Shepherds Hill Proponents, LLC, 173 N.H. 314, 321 (2020); Furbush v. McKittrick, 149 N.H. 426, 431 (2003) (“The [discovery] rule is not intended to toll the statute of limitations until the full extent of the plaintiff’s injury has manifested itself.”). Thus, a latent injury will toll the limitations period, while a patent injury will not, even if the long-term consequences of the patent injury cannot be known. See Furbush, 149 N.H. at 431; see generally Clay v. Kuhl, 727 N.E.2d 217, 222 (Ill. 2000) (applying Illinois law): (“The plaintiff contends, however, that her injuries were latent to some extent and did not fully manifest themselves until years after the abuse occurred. We do not believe that the plaintiff’s alleged failure to fully discover the nature of her injuries is sufficient to delay the running of the limitations period. There is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations.”); see also Stephens v. Clash, 796 F.3d 281, 288 (3d Cir. 2015) (“A plaintiff’s ignorance regarding the full extent of his injury is irrelevant to the discovery rule’s application, so long as the plaintiff discovers or should have discovered that he was injured.”).

In Rowe v. John Deere, 130 N.H.18 (1987), the plaintiff was injured when he struck his head while using machinery manufactured by the defendant. Immediately after the accident, the plaintiff was diagnosed with a depressed skull fracture. The plaintiff recovered quickly. Six

years later he began to suffer grand mal seizures, purportedly as a result of the accident. The supreme court held that the plaintiff had discovered his injury at the time of the accident, even though the initial measure of damages was “nominal” compared with the potential damages for the later occurring harm. *Id.* at 21. Thus, a plaintiff is likely to immediately discover an injury caused by a sudden, traumatic, violent event, and an injury which may later arise from the initial injury will not toll the statute of limitations. *See, e.g., Hollander v. Brown*, 457 F.3d 688, 692 (7th Cir. 2006) (applying Illinois law):

[C]ourts distinguish between injuries caused by sudden, traumatic events and those that have a late or insidious onset. For limitations purposes, a sudden, traumatic event is one that, because of its force or violence, permits the law to presume that the event immediately placed the plaintiff on notice of her injury and a right of action. When a plaintiff suffers this type of injury, her cause of action accrues on the date of the traumatic event, and the limitations period does not begin anew simply because a latent condition later may arise from the same occurrence. The rationale is that the nature and circumstances surrounding the traumatic event are such that the injured party is thereby put on notice that actionable conduct might be involved.

(internal citations and quotation marks omitted).

Here, the plaintiff claims that he was injured as a result of Mount Prospect’s failure to adequately oversee its staff with respect to hiring, training, supervision, and promulgation of policies. Thus, the “act or omission complained of,” RSA 508:4, is the breach of duty by Mount Prospect itself. According to the Complaint, that breach led to multiple physical and sexual assaults, as well as painful restraints, including multiple instances where the plaintiff was sexually assaulted by Anna Lee Brown and LB. Additionally, the alleged breach also led to other instances of physical and psychological abuse by Mount Prospect staff—the plaintiff recounts, for example, John Ketner kneeling on the plaintiff’s back on at least 3 or 4 occasions. Indeed, the plaintiff asserts that he had trouble getting out of bed the mornings after Ketner’s assaults and that the back pain would last for months afterwards, further demonstrating that the

plaintiff understood that he was harmed at the time these physical assaults occurred. The incidents of sexual, physical and psychological abuse the plaintiff describes constitute injuries that are sudden, traumatic, violent, painful, or extremely unpleasant. There is nothing subtle or latent about these alleged events. The plaintiff necessarily knew of these assaults at the time they happened.

The plaintiff may have been unaware of the long-term psychological and emotional effects of the treatment he says he endured. But those harms were nonetheless caused by the same “act or omission complained of,” RSA 508:4, e.g., Mount Prospect’s alleged lack of care in hiring, training and supervising staff, and promulgating policies. Thus, under settled New Hampshire law, accepting all the well-pled facts in the Complaint, the court must find that the plaintiff was aware that he had been injured as a result of Mount Prospect’s failure to control its staff because the plaintiff knew that he had been assaulted, sexually assaulted, and physically restrained on multiple occasions.

Under the discovery rule, the limitations period in this case did not begin to run until the plaintiff either (a) discovered, or (b) should have discovered through the exercise of reasonable diligence, that Mount Prospect’s breach of duty was a proximate cause of his injury. See Troy v. Bishop Guertin High Sch., 176 N.H. 131, 134 (2023) (citing RSA 508:4). Knowledge of Mount Prospect’s causal role cannot be automatically inferred from the fact that the plaintiff knew that his injury was caused by Mount Prospect’s employees, acting overtly under color of their authority, on Mount Prospect’s premises. See id. at 138 (“We decline to establish a per se rule that the plaintiff’s knowledge of the abuser’s employer is alone sufficient to trigger the application of the discovery rule. This inquiry presents a question of fact.”). However, “[a] plaintiff need not be certain of this causal connection; the possibility that it existed will suffice to

obviate the protections of the discovery rule.” Id. at 137 (quoting Beane, 160 N.H. at 713); see also Balzotti, 173 N.H. at 321; Lamprey, 163 N.H. at 257; Pichowicz v. Watson Ins. Agency, Inc., 146 N.H. 166, 168 (2001). “[T]he discovery rule employs an objective standard” to determine whether, through the exercise of reasonable diligence, a plaintiff should have discovered sufficient evidence of the defendant’s role in causing his injury.” Troy, 176 N.H. at 137.

In this case, the same alleged facts that establish the plaintiff’s knowledge of harm also demonstrate that the plaintiff knew or should have known Mount Prospect’s breach of duty was a proximate cause of his alleged injury. With respect to the physical assaults, the plaintiff does not complain of isolated incidents, committed in secret, by rogue staff members. Rather, the plaintiff claims frequent assaults, involving multiple staff members, committed openly and in view of both other residents and other staff members: in one instance, John Ketner restrained and kneeled on the plaintiff in full view of other Mount Prospect staff members but none of them intervened or offered the plaintiff medical assistance. If the allegations in the Complaint are credited, as they must be at this juncture, then at the very least Mount Prospect failed to supervise its staff and monitor its facility and thereby breached both its fiduciary obligations to the plaintiff and the common law duty of reasonable care.

Mount Prospect’s role in causing the plaintiff’s injury is not inferred from the mere fact that the plaintiff’s assailants received paychecks and a W2 from Mount Prospect. Compare the facts of this case to those in Troy, which involved two acts of sexual assault, committed in private, by a high school teacher against a female student. Troy, 176 N.H. at 133-35. Unbeknownst to the plaintiff in Troy, the school had hired the teacher despite knowing of his previous conviction for unlawful sexual contact with a different female high school student at a

different school that was owned and operated by the same religious order. Id. at 133-34. The school did not alert students or parents to the teacher's status as a sex offender who preyed on a similar victim. Id. It took no action to limit or monitor the teacher's contact with students. Id. It would be hard to imagine how the plaintiff in Troy could have known from the abuse she endured that the school (and its owner) shouldered any of the blame for the covert criminal acts of a lone employee.

Conversely, in this case, if all the facts in the Complaint—including both the allegation of sexual assault and that of the day-to-day physical and psychological abuse the plaintiff suffered—are credited, it is difficult to imagine how the plaintiff could not see a problem with the conduct and training of Mount Prospect's staff members. Ultimately, however, the plaintiff here —unlike the plaintiff in Troy, who became aware of the offending teacher's history with the school only as a result of later public disclosures by the school itself—does not allege a single new fact that he learned about Mount Prospect since leaving its facility in or around 2011. He does not point to the discovery of any fact relating, for example, to Mount Prospect's hiring process, its knowledge of staff misconduct, or its promulgation of policies. He points to no news articles or publicity relating to Mount Prospect. Rather, he states only that in March or April 2021, he began to realize that he became aware of a lawsuit against the State about abuse others suffered at SYSC. (Declaration ¶ 26). Neither of these assertions constitutes the discovery of a fact pertinent to Mount Prospect's causal relationship to the plaintiff's injury of a kind that, if unknown to the plaintiff, would toll the statute of limitations. Cf. Miller, 224 F. Supp. 2d at 986–87.

The plaintiff's remaining arguments are unpersuasive. First, the plaintiff contends that his fiduciary duty claim is tolled until he had actual knowledge of Mount Prospect's breach. The

court disagrees. New Hampshire law is clear that tolling the statute of limitations period is not dependent or otherwise reliant upon the fiduciary disclosing its wrongdoing. See Beane, 160 N.H. at 714-15 (“[T]here is no support in our case law for the proposition that a limitations period is tolled in fiduciary cases until the fiduciary discloses his or her misconduct.”). Second, no amount of additional discovery the plaintiff may engage in regarding Mount Prospect’s policies and procedures could reveal information that would make it more likely that the plaintiff could avail himself of the discovery rule. As explained above, the plaintiff’s Complaint shows that he already had all the information he needed to determine that Mount Prospect was the proximate cause of his injuries by the time he turned twenty.

Ultimately, the plaintiff had sufficient information about Mount Prospect’s institutional failures prior to the expiration of any applicable limitations period. The plaintiff has not alleged in his Complaint that he learned any new facts about Mount Prospect’s role in his alleged abuse after he turned twenty. For these reasons, the court concludes that the discovery rule does not toll the statute of limitations.

ii. Fraudulent Concealment and Equitable Tolling

The court has found that (a) the discovery rule did not toll the start of the limitations period in RSA 508:4 beyond the plaintiff’s twentieth birthday and, therefore, (b) the applicable limitations period is that established by RSA 508:8, which gave the plaintiff until age 20 to file this action.

The plaintiff argues, however, that two equitable doctrines apply here: fraudulent concealment and equitable tolling. The New Hampshire Supreme Court views both these doctrines as implied exceptions to all statutes of limitations. See Lakeman v. La France, 102 N.H. 300, 303 (1959) (adopting the majority rule that “fraudulent concealment of a cause of

action from the one in whom it resides by the one against whom it lies constitutes an implied exception to the statute of limitations,” and rejecting the “contrary view that fraudulent concealment does not toll the operation of the statute unless the Legislature has expressly so stated in the statute itself”). With respect to equitable tolling, the supreme court has only applied the doctrine and explained its elements. See Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 623–24 (2005).

The doctrine of fraudulent concealment tolls the limitations period when a defendant, by concealment or other action, intentionally prevents the plaintiff from acquiring material information. Lamprey, 163 N.H. at 259–60; See also Lakeman, 102 N.H. at 303-304. Thus, fraudulent concealment

. . . requires something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to a cause of action—some actual artifice to prevent knowledge of the facts or some representation intended to exclude suspicion and prevent inquiry.

Lamprey, 163 N.H. at 259–60 (internal quotation marks and bracketing omitted); see also Maggi, 633 F. Supp. 3d at 516 (“The burden is on the plaintiff invoking the fraudulent concealment doctrine to present some evidence of an affirmative act on the part of the defendant to conceal or cover up the underlying wrongful conduct that gave rise to the plaintiff’s asserted injury.” (internal citations omitted)); Sykes v. RBS Citizens, N.A., 2 F. Supp. 3d 128, 143 (D.N.H. 2014).

Even when there is fraudulent concealment, the doctrine provides little, if anything, in the way of relief that the discovery rule does not also provide. See Beane, 160 N.H. at 714 (“The fraudulent concealment rule states that when facts essential to the cause of action are fraudulently concealed, the statute of limitations is tolled until the plaintiff has discovered such facts or could have done so in the exercise of reasonable diligence.” (quoting Bricker v. Putnam,

128 N.H. 162, 165 (1986)); see also Lakeman, 102 N.H. at 303; Furbush, 149 N.H. at 431; Sykes, 2 F. Supp. 3d at 143.

In this case, the plaintiff has not pointed to any affirmative act on the part of Mount Prospect to conceal or cover up any fact. Indeed, as noted above, the plaintiff has not pointed to any fact he learned after leaving Mount Prospect's facility in 2006. Therefore, the doctrine of fraudulent concealment does not apply to the plaintiff's claims against Mount Prospect.

The New Hampshire Supreme Court has not developed a substantial body of case law relating to the doctrine of equitable tolling. The Court recognized the doctrine in Portsmouth Country Club, explaining that it allows a plaintiff to initiate an action beyond the statutory limitations period when that plaintiff had been "prevented in some extraordinary way from exercising his or her rights." 152 N.H. at 623 (emphasis added). The doctrine "applies principally if the plaintiff is actively misled by the defendant about the cause of action." Kierstead v. State Farm Fire & Cas. Co., 160 N.H. 681, 688 (2010).

To be eligible for equitable tolling, a plaintiff's access to the justice system must be frustrated despite the plaintiff's diligence. See, e.g., Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96 (1990)(applying federal law and holding that:

Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.

(internal footnotes omitted)); Maggi, 633 F. Supp. 3d at 518 (applying federal law and noting that, "in unusual cases, certain limitations of imprisonment may rise to the level of 'extraordinary circumstance'" [but] "the usual problems inherent in being incarcerated, such as a prisoner's lack

of prior legal training or limited access to legal resources in a prison's library, do not, by themselves, justify equitable tolling” (internal ellipses and citation omitted)).

In this case, the plaintiff was not prevented from discovering either necessary facts or necessary law. He was not actively misled by Mount Prospect as to his ability to access the courts. He was not threatened with retaliation for accessing the courts. He was not deprived of the ability to seek counsel or advice from third parties.

To this end, the plaintiff alleges that he did not bring suit because of his ongoing emotional distress and substance misuse disorder. However, diminished mental capacity is not grounds for equitable tolling. See Sykes, 2 F. Supp. 3d at 144, n. 18 (ruling that, “RSA 508:8, and not the doctrine of equitable tolling, governs the statute of limitations for New Hampshire state law claims when a plaintiff is mentally incompetent.”). Furthermore, even under federal law, where a plaintiff’s mental condition might allow for equitable tolling, the plaintiff would have to prove that he was unable to engage in rational thought to the point where he could not cooperate with any counsel, and/or pursue his claim on his own during the limitations period.” Id. The plaintiff does not allege this. Thus, the doctrine of equitable tolling does not apply.

C. Actions Based on Sexual Assault and Related Offenses: RSA 508:4-g

The plaintiff specifically alleges that he was sexually assaulted by Mount Prospect staff while he was in Mount Prospect’s care. These claims implicate the special tolling provisions of RSA 508:4-g, which states:

[a] person, alleging to have been subjected to any offense under RSA 632-A or an offense under RSA 639-2 may commence a personal action at any time.

The parties dispute the application of RSA 508:4-g to the plaintiff’s sexual assault claims. Mount Prospect argues that, to the extent the statute does apply to the plaintiff’s claims, only that version of the statute in effect at the time the cause of action arose may be applicable, and the

statute cannot be applied retroactively to claims that arose prior to the first effective date of the statute. (See Court Index # 13 at 5–6).

Relevant to Mount Prospect’s argument is the history of RSA 508:4-g. The legislature first enacted RSA 508:4-g on July 22, 2005, and at that time it applied only to persons “alleging to have been subjected to a [sexual offense] who [were] under 18 years of age when the alleged offense occurred,” and it allowed such claims to be brought within the later of seven years after the plaintiff’s 18th birthday or three years after the plaintiff knew or should have known of their injury and its causal relationship to a defendant. 2005 New Hampshire Laws Ch. 283 (S.B. 75). On January 1, 2009, the legislature amended the statute in relevant part to allow claims to be brought within twelve years after the plaintiff’s eighteenth birthday. 2008 New Hampshire Laws Ch. 193 (S.B. 311). On September 18, 2020, the legislature amended the statute again, eliminating the restriction of the statute to plaintiffs under 18 years of age at the time of the alleged offense, and replacing the temporal limitations provisions with the clause “may commence a personal action at any time.” 2020 New Hampshire Laws Ch. 24 (H.B. 705).

Mount Prospect argues that RSA 508:4-g as it is currently framed cannot be extended to apply retroactively to conduct that occurred prior to its enactment, and claims arising from conduct occurring after its enactment must be subject only to the limitations period in effect at the time of the conduct. (See Court Index # 13 at 5–6 (citing Gould v. Concord Hosp., 126 N.H. 405, 408 (1985))). Therefore, Mount Prospect contends, any claim arising from conduct that occurred before July 22, 2005, does not fall under the statute’s protection, and any claim arising from conduct occurring after July 22, 2005, but before September 18, 2020, is protected only to the extent provided by the statute as it existed at the time of the conduct. (See id.).

Part 1, Article 23 of the New Hampshire Constitution prohibits the retrospective application of laws. “Every statute, which takes away or impairs vested rights, acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past must be deemed a retrospective law.” Tyler Road Dev. Corp. v. Town of Londonderry, 145 N.H. 615, 616-15 (2000) (quotation omitted). “When engaging in Article 23 analysis, we distinguish new laws that affect substantive rights and liabilities from those that solely affect procedures or remedies enforcing those rights.” Maplevale Builders, LLC & a. v. Town of Danville, 165 N.H. 99, 108 (2013) (citation omitted). A “vested right” may relate to the grounds of the action or to the grounds of a defense. Id. (citing Gould, 126 N.H. at 408). Statutory provisions that reduce or enlarge the time within which an action may be prosecuted have to do only with a remedy for existing rights. Id. (citing Bourque v. Adams, 93 N.H. 257, 259 (1945)). “The right to rely upon a statute of limitations as a defense vests, and therefore becomes a substantive right, only after the limitations period has run.” Id. (emphasis added); see also Gould, 126 N.H. at 408.

Here, the plaintiff has alleged conduct which occurred between September 2009 and February 2011, including, as relevant here, conduct by Mount Prospect staff members Anna Lee Brown and LB, which included LB’s performing oral sex on him, Anna Lee Brown’s putting her hands on his genitals through his clothes, and LB’s requesting that the plaintiff masturbate on her. (Doc. 17 ¶ 9, 13). This conduct facially meets the definition of sexual assault in RSA 632-A:4,⁴ and is therefore among the offenses covered under RSA 508:4-g. Solely at issue in

⁴ For example, RSA 632-A:4, I(b) makes it an offense to subject a person between the ages of 13 and 16 “to sexual contact where the age difference between the actor and the other person is 5 years or more.” RSA 632-A:4, I(c) makes it an offense to engage in sexual penetration with a person between 13 and 16 years of age where the actor is more than 4 years older than the victim. RSA 632-A:4, III makes it an offense to engage in “sexual contact or sexual penetration” of another person when the “actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile

determining whether RSA 508:4-g applies, then, is whether and when Mount Prospect's right to rely upon the limitations defense vested, and thus became a substantive right.

To the extent that the conduct alleged by the plaintiff occurred after January 1, 2009, there is no question that it falls within the application of RSA 508:4-g, at least as the statute was framed in 2009, so that the plaintiff could raise a claim anytime up to 12 years after his 18th birthday, or July 2025. Therefore, the court determines that by any method of calculation, Mount Prospect's right to rely upon the limitations defense could not have vested before RSA 508:4-g became law. The limitations period established in that statute therefore applies to plaintiff's claims for sexual assault.

As to the question of which limitations period applies—the seven-year period established in 2005, the twelve-year period established in 2009, or the unlimited period established in 2020—the court finds the New Hampshire Supreme Court's holding in Maplevale Builders instructive. In that case, the supreme court considered a circumstance where a trial court declined to apply an amended version of a statute—extending a statutory limitations period from twelve months to eighteen months—to conduct that occurred prior to the amendment, on grounds that to do so would be an unconstitutional retrospective application of law. See Maplevale Builders, 165 N.H. at 107-08. The supreme court rejected the trial court's reasoning, noting that, as of the effective date of the amendment to the law in question, the existing 12-month limitation period had not yet expired, and thus the defendant's right to rely upon that limitation period had not yet vested. Id. at 108. The supreme court therefore concluded that the application of the limitations period, as amended, to the defendant's conduct was not unconstitutionally retroactive. Id.

detention facility where the actor is employed.” In the case's current posture, the court's analysis of the various ways RSA 632-A applies to the conduct alleged by the plaintiff need not be, and is not, exhaustive.

A similar circumstance arises here. As noted, the earliest date upon which Mount Prospect could have relied on a limitations defense not arising from RSA 508:4-g was February 2011, but on that date RSA 508:4-g provided a limitations period lasting until 12 years after the plaintiff's 18th birthday, or July 2025. Before that extended period had expired, however, in September of 2020, the legislature amended the limitations period to "at any time." Therefore, at no time relevant to this analysis had Mount Prospect's right to rely upon a limitations defense as to the plaintiff's sexual assault claims vested. Put another way, at no point during the relevant time frame did the plaintiff's sexual assault claims become untimely under RSA 508:4-g. The court thus concludes that the unlimited limitations period provided in the 2020 amendment to RSA 508:4-g applies to all the sexual assault claims in the instant case, and this application is not unconstitutionally retroactive. See Maplevale Builders, 165 N.H. at 108.

E. Conclusion as to Limitations

In sum, then, the court rules as follows as respects limitations: the plaintiff's claims against Mount Prospect that do not involve conduct constituting an offense under RSA 632-A are untimely pursuant to RSA 508:4 and RSA 508:8; the plaintiff's claims involving conduct constituting an offense under RSA 632-A are timely filed pursuant to RSA 508:4-g.

II. Claims Analysis

A. The Complaint Does Not State Claims for Aiding and Abetting a Breach of Fiduciary Duty or Civil Conspiracy

In Counts X and XIV, the plaintiff accuses Mount Prospect of: (a) aiding and abetting a breach of fiduciary duty; and (b) civil conspiracy. Both of these claims require proof that Mount Prospect was engaged in deliberate, concerted action with another party to violate the plaintiff's rights. See Invest Almaz v. Temple-Inland Forest Prods. Corp., 243 F.3d 57, 82-83 (1st Cir. 2001)(stating standard for aiding and abetting a breach of fiduciary duty); Jay Edwards, Inc. v.

Baker, 130 N.H. 41, 47 (1987) (describing standard for civil conspiracy). Because the Complaint alleges no material facts from which such concerted action can be inferred, these two counts are DISMISSED for failure to state a claim.

i. Aiding and Abetting a Breach of Fiduciary Duty

The New Hampshire Supreme Court has not yet had occasion to recognize the tort of aiding and abetting a breach of fiduciary duty. Nonetheless, the tort is established and well-defined, as, for example, in the Restatement (Second) of Torts, § 876(b):

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . [1] knows that the other's conduct constitutes a breach of duty and [2] gives substantial assistance or encouragement to the other so to conduct himself[.]

Courts that apply New Hampshire law predict that the New Hampshire Supreme Court will recognize this cause of action. See Invest Almaz, 243 F.3d at 82-83; Legacy Glob. Sports, LP v. St. Pierre, Slip Op. No. 218-2019-CV-198, 2020 WL 2027401, at *2 (Merrimack County Superior Court, Apr. 27, 2020); Clare v. Bank of New England, Slip. Op. No. 218-2013-CV-00687, 2013 N.H. Super LEXIS 22, at *3-4, 9 (Merrimack Count Superior Court, Nov. 26, 2013); HayJo S.A. de CV v. Sponge-Jet, Inc., No. 14-cv-196-JD, 2015 WL 9459918, at *4 (D.N.H. Dec. 23, 2015); Tamposi v. Denby, 974 F. Supp. 2d 51, 61 (D. Mass. 2013); In Re Felt Mfg. Co., Inc., 371 B.R. 589, 615 (Bankr. D.N.H. 2007); But see Gill v. Devine, Millimet & Branch, P.A., Slip Op. No 218-2012-CV-00660 (Rockingham County Superior Court, Oct. 12, 2012) (ruling that the tort of aiding and abetting a breach of fiduciary duty had not been recognized).

Assuming a claim for aiding and abetting a breach of fiduciary duty may be pursued in New Hampshire, the Complaint does not contain facts to support this cause of action. To prevail, the plaintiff would need to prove that Mount Prospect had helped another party breach

its fiduciary duty. The Complaint does not allege that Mount Prospect did anything to encourage or facilitate the plaintiff's alleged abuse at YDC or at any other placement.

Moreover, Mount Prospect cannot be found liable for aiding its own employees and agents in a breach of fiduciary duty. The cause of action for aiding and abetting a breach of fiduciary duty only exists to cover circumstances in which the defendant has no direct liability to the plaintiff as a fiduciary. That is not the case here. See, e.g., Mann v. GTCR Golder Rauner, L.L.C., 483 F. Supp. 2d 884, 916 (D. Ariz. 2007) (Under Delaware law, "a person who himself owes a fiduciary duty with respect to a transaction or course of conduct cannot be liable for aiding and abetting a breach of that same fiduciary duty by another because the same facts that would otherwise constitute aiding and abetting would constitute a primary breach of fiduciary duty."); In Re Amcast Indus. Corp., 365 B.R. 91, 112–13 (Bankr. S.D. Ohio 2007) (Under Ohio law "the action by its nature, . . . requires participation by a non-fiduciary defendant); In re Verestar, Inc., 343 B.R. 444, 482 (Bankr. S.D.N.Y. 2006) ("[A] claim for aiding and abetting breach of fiduciary duty can only be sustained against a non-fiduciary.").

Accordingly, for the foregoing reasons, the Complaint does not state a claim against Mount Prospect for aiding and abetting a breach of fiduciary duty. The claim is thus DISMISSED.

ii. Civil Conspiracy

To prevail on a claim of civil conspiracy, a plaintiff must prove that:

(A) Two or more persons and/or entities agreed to either:

(1) pursue an unlawful objective or, alternatively,

(2) use unlawful means to accomplish a lawful or unlawful objective; and

(B) At least one of the conspirators committed an overt act in furtherance of this agreement; and

(C) The plaintiff was harmed as a proximate result of the agreement.

Jay Edwards, Inc., 130 N.H. at 47; see Univ. Sys. of N.H. v. U.S. Gypsum Co., 756 F. Supp. 640, 652 (D.N.H. 1991); Censabella v. Town of Weare, No. 16-cv-490-AJ, 2017 WL 3996173, at *3 (D.N.H. Sept. 8, 2017). “For a civil conspiracy to exist, there must be an underlying tort which the alleged conspirators agreed to commit.” Univ. Sys., 756 F. Supp. at 652. Thus, the cause of action serves to impose liability on “all who commonly plan, take part in, further by cooperation, lend aid to, or encourage the wrongdoers' acts.” Id.

The Complaint does not contain facts to support a claim for civil conspiracy. There are no material facts from which the court may infer that Mount Prospect and the State or any other entity entered into an agreement to engage in concerted action by abusing the plaintiff. No facts suggest that Mount Prospect ever had any conversation, let alone any agreement, with any other defendant.

Further, Mount Prospect cannot be liable for civil conspiracy with its own employees, because, under the intracorporate conspiracy doctrine, Mount Prospect and its employees are considered to be the same “person.” See, e.g., Hoefer v. Fluor Daniel, Inc., 92 F. Supp. 2d 1055,1057 (C.D. Cal. 2000):

The intracorporate conspiracy doctrine provides that, as a matter of law, a corporation cannot conspire with its own employees or agents. [citation and footnote omitted]. The logic for the doctrine comes directly from the definition of a conspiracy. A conspiracy requires a meeting of minds. [citation omitted]. It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

see also Grider v. City of Auburn, Ala., 618 F.3d 1240, 1261 (11th Cir. 2010)(“[T]he intracorporate conspiracy doctrine holds that acts of corporate agents are attributed to the

corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy.”); Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505, 509 (6th Cir. 1991) (“It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.”); Tabb v. District of Columbia, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (“[A] corporation cannot conspire with its employees[.]”); HRCC, Ltd. v. Hard Rock Cafe Int’l (USA), Inc., 302 F. Supp. 3d 1319, 1325 (M.D. Fla. 2016)(“According to the intracorporate conspiracy doctrine, however, a civil conspiracy claim will not succeed where the only members of the alleged conspiracy are a corporation and/or its officers.”).

For these reasons, the claim of civil conspiracy against Mount Prospect is DISMISSED.

B. To the Extent Such Claims are Based on Sexual Misconduct, the Complaint States Claims for Negligence and Breach of Fiduciary Duty

In Counts VIII, XI and XII, the plaintiff seeks monetary damages for breach of fiduciary duty and negligence. These claims require proof of (a) a duty of care, (b) breach, and (c) resulting damages. See W. Prosser, The Law of Torts, § 30 (5th ed. 1985). The plaintiff does not rely on the doctrine of respondeat superior. Therefore, he must prove not only tortious behavior by individual staff members, but also legal fault (e.g., breach of fiduciary duty and/or negligence) on the part of Mount Prospect itself.

An institutional defendant’s breach of a standard of care can result from omission as well as commission. It can take the form of an express policy, or an informal practice. Alternatively, it may stem from an inexcusable lapse in hiring qualified personnel, or training and/or supervising staff. It may be the result of insufficient monitoring of the workplace. In short, a breach may occur in myriad ways.

i. Negligence

There is no question that Mount Prospect had a common law duty to use reasonable care to safeguard its residents from, as relevant here, (a) unlawful sexual or physical abuse by staff, and (b) the negligent infliction of extreme emotional distress by sexual or other abuse. In general, an institution that takes custody of children, in a manner that deprives the children of their normal opportunities for protection, has a common law duty to use reasonable care to safeguard the children from harm while they are within the institution's care. See, e.g., Marquay v. Eno, 139 N.H. 708, 717 (1995); Tveter v. Derry Coop. Sch. Dist., SAU # 10, Slip Op. 16-CV-329, 2018 WL 3520827, at *9 (D.N.H. July 20, 2018); Restatement (Second) of Torts § 314A.

The Complaint alleges facts which, if proven, would support a finding that Mount Prospect breached this standard of care with respect to the plaintiff's sexual assault claims. Specifically, the plaintiff alleges that Mount Prospect staff member Anna Lee Brown touched his penis over his clothes. A second staff member, LB, performed oral sex on the plaintiff in his room and asked him to masturbate on her both in his room and on a bus en route to a forestry vocational program.

At this juncture the plaintiff is entitled to the reasonable inference that if the abuse occurred as alleged, then supervisory staff (a) knew of the abuse, or (b) were willfully blind to the abuse, or (c) failed to reasonably monitor the facility and hire, train, and supervise staff. Any of these possibilities is enough to prove a negligent breach of the common law duty to use reasonable care. In fairness, the Complaint alleges negligence in broad strokes. But broad strokes are sufficient in this posture. A plaintiff may file a lawsuit without knowing every fact that will eventually be introduced at trial to prove negligence.

The plaintiff has also alleged the third element of a negligence claim, e.g., resulting damages. Thus, the Complaint adequately alleges negligence and negligent hiring, retention, supervision and training.

ii. Breach of Fiduciary Duty

The Complaint alleges facts which, if proven, could support a finding of a fiduciary relationship between Mount Prospect and the plaintiff. Under New Hampshire law, the existence of a fiduciary relationship is determined by substance rather than formality. See, e.g., Schneider v. Plymouth State College, 144 N.H. 458, 462 (1999):

A fiduciary relation does not depend on some technical relation created by, or defined in, law. It may exist under a variety of circumstances, and does exist in cases where there has been a special confidence reposed in one who, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence.

(quoting Lash v. Cheshire County Sav. Bank, Inc., 124 N.H. 435, 439 (1984).

Thus, for example in Schneider, the New Hampshire Supreme court held that a college has a fiduciary duty to its students to protect them against sexual harassment by professors. The supreme court reasoned that an enrolled student becomes dependent on the college for their education and the college assumes a duty to act in good faith, and with due regard to the student's interest, with respect to prevention of sexual assaults by faculty. 144 N.H. at 462-64; see also Roe v. Hotchkiss Sch., 385 F. Supp. 3d 165, 173 (D. Conn. 2019) (under Connecticut law a boarding school may have a fiduciary duty to prevent the sexual abuse of its students); Wartluft v. Milton Hershey Sch. & Sch. Trust, 400 F. Supp. 3d 91, 112 (M.D. Pa. 2019) (under Pennsylvania law a therapeutic residential school had a fiduciary obligation to its students).⁵

⁵ But see Brodeur v. Claremont Sch. Dist., 626 F. Supp. 2d 195, 219 n 24 (D.N.H. 2009) ("New Hampshire does not appear to treat the relationship between a public secondary school and its students as fiduciary in nature, characterizing it instead as a 'special relationship' that gives rise to a duty enforceable in negligence (and treating the school as an ordinary employer subject to theories of negligent hiring or retention)." (citation omitted); Doe # 2 v.

In this case, the plaintiff was made utterly dependent on Mount Prospect to provide him with a stable and wholesome home. The plaintiff was an underprivileged, at-risk child who was unable to care for himself and who was deprived of parental supervision and made wholly dependent on Mount Prospect for shelter, nutrition, moral guidance, education, and personal safety. The plaintiff thus reposed his trust in Mount Prospect to prevent the abuses he alleges staff inflicted against him. A jury could thus find that Mount Prospect had a fiduciary obligation to act in good faith and with due regard for the plaintiff's interests as to these harms.

It is not clear to the Court how this fiduciary standard differs from the common law duty of care in this context. Regardless, the fiduciary standard of care certainly requires at least the same degree of prudence and care as the common law standard. Therefore, just as the court has found that the Complaint states a claim for negligence (i.e., alleges duty, breach, and resulting damages), the Court also finds that the Complaint states a claim for breach of fiduciary duty by Mount Prospect.

CONCLUSION

Consistent with the foregoing, Mount Prospect's motion to dismiss is GRANTED in part and DENIED in part. Specifically:

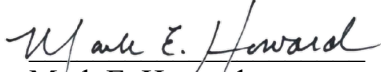
- Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy) are DISMISSED for failure to state a claim;
- Consistent with this order, Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention) and XII (negligence) are DISMISSED as to all claims not alleging sexual misconduct for lack of timeliness. Mount Prospect's motion is

Legion of Christ, Inc., 588 F. Supp. 3d 240, 246 (D. Conn. 2022) (“[T]he Court agrees with other courts that have concluded that given the opportunity the New Hampshire Supreme Court would not allow a breach of fiduciary duty claim against a secondary school.”); Franchi v. New Hampton School, 656 F. Supp. 2d 252, 261-64 (D.N.H. 2009) (noting that the New Hampshire Supreme Court has held that a secondary school owes fiduciary duties to its students); Tveter, 2018 WL 3520827, at *10.

DENIED as to the plaintiff's claims arising from sexual misconduct, and Counts VIII, XI and XII may proceed as to those claims.

So Ordered.

Date: February 27, 2025


Mark E. Howard
Chief Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/27/2025

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

JOHN DOE #24

v.

STATE OF NEW HAMPSHIRE, et al.
217-2021-CV-00559

DAVID MEEHAN v. STATE OF NEW HAMPSHIRE, et al.
(Consolidated YDC/YDSU Cases)
217-2020-CV-26

ORDER

The matter before the court is Defendant NFI North's ("NFIs") Motion to Dismiss plaintiff John Doe #24's claims against it. (Court Index ## 19 (Mot. Dismiss); 20 (Mem. Law)). For the reasons set forth below the motion is GRANTED in part and DENIED in part. Specifically, the motion is GRANTED with respect to Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy), which are DISMISSED for failure to state a claim upon which relief may be granted. The motion is GRANTED in part and DENIED in part, for the reasons stated below, with respect to Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention), and XII (negligence).¹

DEFINING THE COMPLAINT

The Complaint in this case comprises the following three documents:

A. A 50-page "Amended Master Complaint," filed in Meehan v. State, 217-2020-CV-26 on July 8, 2022. (Meehan Court Index # 70). The Amended Master Complaint does not

¹ The remaining counts do not allege any claims against NFI. Counts I through VII (set forth in the Master Complaint) and Counts IX and XIII (set forth in the Short Form Complaint) assert claims against the State Defendants only.

mention John Doe #24 or any of the facts about his life. Likewise, it does not contain any reference to NFI or any other contractor defendant.

B. A 30-page “Amended Short Form Complaint” filed in John Doe #24 v. State, 217-2021-CV-00559. (Court Index # 9). The Short Form Complaint contains allegations specific to the plaintiff and NFI. The Short Form Complaint contains an Addendum, as well as a separately filed, sealed Supplement that contains John Doe #24’s true name and date of birth.

C. A 10-page Declaration, signed by the plaintiff, filed as Exhibit A to the Objection to the Motion to Dismiss in John Doe #24 v. State, 217-2021-CV-00559 (Court Index # 16 (Redacted); see Court Index # 17 (Unredacted)) (cited hereinafter as “Declaration”). The Declaration contains the plaintiff’s factual responses to NFI’s affirmative limitations defense.

These 90 pages will be referred to collectively as “the Complaint.”

PROCEDURAL HISTORY AND RELEVANT DATES

The plaintiff was born in July 1995.² He turned 20 in July 2015. The Complaint in this case was filed on October 28, 2021, when the plaintiff was 26 years old.

As relevant to the instant motion, the plaintiff claims that he was subjected to physical, psychological, and sexual abuse at Midway Shelter, a residential juvenile facility operated by NFI. The plaintiff alleges that the abuse occurred during a month-long period between July and August 2009 and again in August 2010 when he was between the ages of 14 and 15. The plaintiff does not allege that NFI engaged in any tortious behavior after that time.

Thus, the plaintiff initially filed suit approximately 11 years after the last possible date of abuse, and roughly 6 years after he turned 20.

² The plaintiff’s precise date of birth is provided in the Sealed Supplement to the Short Form Complaint (Court Index # 2). The court recites only the month and year of birth to protect the plaintiff’s identity. The day of the month is not material to any determination in this Order.

FACTUAL BACKGROUND

The following facts are taken from the Complaint.

A. Events That Occurred Prior to Placement at NFI

The plaintiff lived with his parents until they divorced when the plaintiff was 6 or 7. Thereafter, the plaintiff rarely saw his father until he was 8 or 9. The plaintiff was diagnosed with attention deficit hyperactivity disorder (“ADHD”) when he was 7 or 8. Because of his ADHD, the plaintiff had trouble focusing at school and began skipping classes as he got older. When the plaintiff was 14, his mother—who suffered from multiple sclerosis and bi-polar depression—attempted to send the plaintiff to live with his father because she could no longer handle caring for him. The plaintiff refused to live with his father because he felt unwelcomed by his father’s extended family.

B. Events at NFI’s Facilities

After the plaintiff refused to go live with his father, the State took custody of him and placed him at Midway Shelter in July or August 2009 for one month. A female staff member named Heidi flashed her naked breasts at the plaintiff on multiple occasions. She also groped the plaintiff’s penis over his clothes on about 6 different occasions. He felt that he “chickened out” by not having sex with Heidi.

Later, the plaintiff was placed at the Jefferson Shelter, also operated by NFI, for one month in August 2010. While there, two residents jumped the plaintiff and beat him. Staff members saw the assault but did nothing in response and offered the plaintiff no help or protection.

C. Events Occurring after the Plaintiff Left NFI

The State sent the plaintiff to Mount Prospect in September 2009, where he resided until June 2010. A Mount Prospect staff member named John Ketner violently restrained the plaintiff at least 3 to 4 times. The plaintiff also alleges that a Mount Prospect mental health counselor named Anna Lee Brown touched the plaintiff's penis over his clothing. The plaintiff was also routinely locked in a crisis intervention room for minor infractions, which was a 6 by 8 feet concrete room with no windows or bathroom facilities. In September 2010, the State sent the plaintiff to Mount Prospect's facility in Campton, where he resided until February 2011. Over a 6 to 8 week period, the plaintiff was sexually abused by a staff member known to him as LB.

Next, the plaintiff lived with his father for about 6 months in 2011. The plaintiff's father was very strict, only allowing him to leave the house to attend his job at Market Basket. His father made him live in a small storage closet and took all the money he earned from his job. The plaintiff eventually tried to run away from his father's house but was caught by the Nashua Police Department.

Thereafter, the State sent the plaintiff to live at the Youth Development Center ("YDC") from September 2011 to July 2012. While there, the plaintiff was routinely beaten and restrained by various staff members. He suffered physical injuries from some of the more severe restraints. The plaintiff was also sexually assaulted by his art teacher and was strip searched about 6 times. YDC staff also routinely locked the plaintiff in solitary confinement without justification. The plaintiff aged out of the facility when he turned 17.

D. Damages and Lack of Discovery

The plaintiff continues to experience pain in his back and hip from John Ketner's physical assaults. As a result of his lower body pain, the plaintiff's upper body is lopsided and

leans to the left. His hips, back, and shoulder hurt every morning when he wakes up. He also alleges that he has “no template” for what an appropriate sexual relationship should look like and that he is distrustful of authority figures. (Declaration ¶ 28). The plaintiff also suffers from post-traumatic stress disorder, anxiety, and depression and as result of what he experienced as a child.

While the plaintiff now realizes that the State and NFI had an obligation to keep him safe, as a child he did not understand what was happening to him and could not appreciate that the State and NFI were responsible for it. He asserts that his mental health conditions have made it harder for him to identify that NFI was responsible for the abuse he suffered as a child. In or around March or April 2021, the plaintiff learned about a lawsuit against the State from others who were abused while at the Sununu Youth Services Center. He alleges that it was only at that point that he realized that NFI was responsible for the harm he suffered as a child.

ANALYSIS

NFI moves to dismiss on two broad grounds: that the plaintiff’s claims are barred as untimely by operation of the statute of limitations and the failure of all available tolling provisions; and that the plaintiff fails to state a claim for which relief may be granted. The court will address each of these issues separately.

I. Limitations Analysis

The defendant first argues that the plaintiff’s claims are time-barred. The statute of limitations is an affirmative defense. Perez v. Pike Indus., Inc., 153 N.H. 158, 160 (2005); Glines v. Bruk, 140 N.H. 180, 181 (1995). A defendant has the obligation to allege and prove that the complaint was brought after the limitations period expired. Perez, 153 N.H. at 160. If the defendant meets this burden, then the plaintiff has the burden to prove that the claim is timely by virtue of the discovery rule, fraudulent concealment, equitable tolling, or some other doctrine.

The plaintiff here alleges instances of physical, psychological, and sexual abuse spanning several years, all occurring prior to his reaching the age of 18. By their nature, these claims separately implicate three statutes pertaining to limitations: the general statute of limitations for personal actions (RSA 508:4); the special tolling provision provided in the “disabilities statute” (RSA 508:8); and the special tolling provision applicable to sexual assault and related offenses (RSA 508:4-g). The court will consider the application of each of these statutes in turn.

A. The Disabilities Statute: RSA 508:8

The court first considers RSA 508:8, the so-called “disabilities statute.” This statute provides that “an infant or mentally incompetent person may bring a personal action within 2 years after such disability is removed.” RSA 508:8. In Norton v. Patten, 125 N.H. 413 (1984), the New Hampshire Supreme Court construed the term “infant” to mean a person who has not yet reached the statutory age of majority, as defined in RSA 21-B:1. The age of majority is eighteen. Thus, as construed by Norton, RSA 508:8 extends the limitations period for minors until their twentieth birthday.

As noted above, the plaintiff turned twenty in July 2015, approximately 6 years before he filed the instant case. Accordingly, the instant case was not filed within the limitations period established by RSA 508:8. RSA 508:8 does not contain its own discovery rule.

B. The General Statute of Limitations for Personal Actions: RSA 508:4

RSA 508:4 provides the statute of limitations for all personal actions. Under this statute:

[A]ll personal actions . . . may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

The last “act or omission complained of” occurred no later than August of 2010, the year that the plaintiff left Jefferson Shelter. The instant case was thus brought more than 11 years after the last “act or omission complained of.” NFI has therefore met its burden of showing that the instant case was filed more than three years after the conduct at issue.

This shifts the burden to the plaintiff to demonstrate grounds for the application of: (a) the discovery rule; (b) equitable tolling; (c) the doctrine of fraudulent concealment; or (d) some other doctrine extending the limitations period. Perez, 153 N.H. at 160. Consistent with the standard of review for motions to dismiss, the court accepts all of the plaintiff’s well-pled facts and makes all rational inferences in the plaintiff’s favor.

The court’s task is to determine only whether the plaintiff has alleged facts which, if proven, might lengthen the limitations period to make this case timely. To be clear, if the plaintiff alleges sufficient facts to show that discovery is necessary to make this determination, the motion to dismiss on limitations grounds must be denied and the issue preserved for summary judgment on a more complete record. However, if discovery would be futile because the Complaint itself fails even to allege grounds to apply the discovery rule or another tolling doctrine, the motion to dismiss will be granted.

(i) The Discovery Rule

It is well-settled that the “purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party.” Petition of N.H. Div. For Children, Youth & Families, 173 N.H. 613, 618 (2020). The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run:

(1) a plaintiff must know or reasonably should have known that she has been injured; and (2) a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the defendant.

Lamprey v. Britton Constr., Inc., 163 N.H. 252, 257 (2012); see also Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 713 (2010); Perez, 153 N.H. at 160; Big League Entm't, Inc. v. Brox Indus., Inc., 149 N.H. 480, 485 (2003).

The discovery rule does not reward ignorance of the law. The statute of limitations is not tolled due to a plaintiff's failure to acknowledge or otherwise understand their potential claims. See Sullyville, LLC v. Town of Carroll, Slip Op. No. 2019-0240, 2021 WL 1310832, at *7 (N.H. Apr. 8, 2021) (non-precedential decision stating that "[t]he discovery rule does not toll the statute of limitations until a plaintiff discerns the legal theory by which his or her case will proceed; rather, it tolls the statute of limitations only when the injury and its causal relationship to the defendant's act or omission remain unknown to the plaintiff."); Ouellette v. Beaupre, 977 F.3d 127, 138 (1st Cir. 2020) (applying federal law and holding that "a plaintiff, once armed with the knowledge of his or her injury and its probable cause, cannot plead ignorance of the law to delay accrual."); Maggi v. Grafton Cty. Dep't of Corrs., 633 F. Supp. 3d 508, 516 (D.N.H. 2022) (applying RSA 508:4 and holding that "even if the court were to assume the truth of [plaintiff's] assertions about his lack of access to legal resources, that would not save his claims. His claims accrued on the date he should have reasonably known he was injured, not on the date he first learned he had a legal cause of action.") (vacated and remanded on other grounds by Maggi v. Grafton Cty. Dep't Corrs., No 23-1002 2024 WL 3384813 (1st Cir. July 9, 2024)); Miller v. Pac. Shore Funding, 224 F. Supp. 2d 977, 986–87 (D. Md. 2004) ("Knowledge of facts, however, not actual knowledge of their legal significance, starts the statute of limitations running. . . . The discovery rule, in other words, applies to discovery of facts, not to discovery of law. Knowledge

of the law is presumed.”); Marcum v. Columbia Gas Transmission, LLC, 549 F. Supp. 3d 408, 421, (E.D. Pa. 2021) (“Plaintiffs’ ignorance of a legal cause of action does not, in itself, require application of the discovery rule.”). In this case, the plaintiff proffers several reasons why he may have not discovered the law governing his claims. However, the plaintiff’s failure to bring his claims within the applicable time period due to his unawareness of the law is not grounds to apply the discovery rule.

For discovery rule purposes, a plaintiff becomes aware of an injury as soon as he can reasonably discern that he has suffered “some harm” caused by a defendant’s conduct. Beane, 160 N.H. at 713; see also Balzotti Glob. Grp., LLC v. Shepherds Hill Proponents, LLC, 173 N.H. 314, 321 (2020); Furbush v. McKittrick, 149 N.H. 426, 431 (2003) (“The [discovery] rule is not intended to toll the statute of limitations until the full extent of the plaintiff’s injury has manifested itself.”). Thus, a latent injury will toll the limitations period, while a patent injury will not, even if the long-term consequences of the patent injury cannot be known. See Furbush, 149 N.H. at 431; see generally Clay v. Kuhl, 727 N.E.2d 217, 222 (Ill. 2000) (applying Illinois law): (“The plaintiff contends, however, that her injuries were latent to some extent and did not fully manifest themselves until years after the abuse occurred. We do not believe that the plaintiff’s alleged failure to fully discover the nature of her injuries is sufficient to delay the running of the limitations period. There is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations.”); see also Stephens v. Clash, 796 F.3d 281, 288 (3d Cir. 2015) (“A plaintiff’s ignorance regarding the full extent of his injury is irrelevant to the discovery rule’s application, so long as the plaintiff discovers or should have discovered that he was injured.”).

In Rowe v. John Deere, 130 N.H.18 (1987), the plaintiff was injured when he struck his head while using machinery manufactured by the defendant. Immediately after the accident, the plaintiff was diagnosed with a depressed skull fracture. The plaintiff recovered quickly. Six years later he began to suffer grand mal seizures, purportedly as a result of the accident. The supreme court held that the plaintiff had discovered his injury at the time of the accident, even though the initial measure of damages was “nominal” compared with the potential damages for the later occurring harm. Id. at 21. Thus, a plaintiff is likely to immediately discover an injury caused by a sudden, traumatic, violent event, and an injury which may later arise from the initial injury will not toll the statute of limitations. See, e.g., Hollander v. Brown, 457 F.3d 688, 692 (7th Cir. 2006) (applying Illinois law):

[C]ourts distinguish between injuries caused by sudden, traumatic events and those that have a late or insidious onset. For limitations purposes, a sudden, traumatic event is one that, because of its force or violence, permits the law to presume that the event immediately placed the plaintiff on notice of her injury and a right of action. When a plaintiff suffers this type of injury, her cause of action accrues on the date of the traumatic event, and the limitations period does not begin anew simply because a latent condition later may arise from the same occurrence. The rationale is that the nature and circumstances surrounding the traumatic event are such that the injured party is thereby put on notice that actionable conduct might be involved.

(internal citations and quotation marks omitted).

Here, the plaintiff claims that he was injured as a result of NFI’s failure to adequately oversee its staff with respect to hiring, training, supervision, and promulgation of policies. Thus, the “act or omission complained of,” RSA 508:4, is the breach of duty by NFI itself. According to the Complaint, that breach led to the plaintiff’s being physically assaulted by other residents while staff members watched and did nothing to safeguard the plaintiff. Additionally, the alleged breach also led to a sexual assault by an NFI staff member who repeatedly groped the plaintiff’s penis. These incidents of sexual, physical, and psychological abuse the plaintiff

describes constitute injuries that are sudden, traumatic, violent, painful, or extremely unpleasant. There is nothing subtle or latent about these alleged events. The plaintiff necessarily knew of these assaults at the time they happened.

The plaintiff may have been unaware of the long-term psychological and emotional effects of the treatment he says he endured. But those harms were nonetheless caused by the same “act or omission complained of,” RSA 508:4, e.g., NFI’s alleged lack of care in hiring, training and supervising staff, and promulgating policies. Thus, under settled New Hampshire law, accepting all the well-pled facts in the Complaint, the court must find that the plaintiff was aware that he had been injured as a result of NFI’s failure to control its staff because the plaintiff knew that he had been physically and sexually assaulted on multiple occasions.

Under the discovery rule, the limitations period in this case did not begin to run until the plaintiff either (a) discovered, or (b) should have discovered through the exercise of reasonable diligence, that NFI’s breach of duty was a proximate cause of his injury. See Troy v. Bishop Guertin High Sch., 176 N.H. 131, 134 (2023) (citing RSA 508:4). Knowledge of NFI’s causal role cannot be automatically inferred from the fact that the plaintiff knew that his injury was caused by NFI’s employees, acting overtly under color of their authority, on NFI’s premises. See id. at 138 (“We decline to establish a per se rule that the plaintiff’s knowledge of the abuser’s employer is alone sufficient to trigger the application of the discovery rule. This inquiry presents a question of fact.”). However, “[a] plaintiff need not be certain of this causal connection; the possibility that it existed will suffice to obviate the protections of the discovery rule.” Id. at 137 (quoting Beane, 160 N.H. at 713); see also Balzotti, 173 N.H. at 321; Lamprey, 163 N.H. at 257; Pichowicz v. Watson Ins. Agency, Inc., 146 N.H. 166, 168 (2001). “[T]he discovery rule employs an objective standard” to determine whether, through the exercise of reasonable

diligence, a plaintiff should have discovered sufficient evidence of the defendant's role in causing his injury." Troy, 176 N.H. at 137.

In this case, the same alleged facts that establish the plaintiff's knowledge of harm also demonstrate that the plaintiff knew or should have known NFI's breach of duty was a proximate cause of his alleged injury. With respect to the physical assaults, and leaving aside the sexual assaults,³ the plaintiff does not complain of an incident of which NFI staff members were unaware. Rather, the plaintiff claims that he was physically assaulted by two residents in the presence of NFI staff members who were necessarily aware of the assault. The plaintiff's Declaration reflects that he knew that NFI staff members should have helped protect him against physical violence but failed to do so. If the allegations in the Complaint are credited, as they must be at this juncture, then at the very least NFI failed to supervise its staff and monitor its facility and thereby breached both its fiduciary obligations to the plaintiff and the common law duty of reasonable care.

NFI's role in causing the plaintiff's injury from these alleged physical assaults is not inferred from the mere fact that the plaintiff's assailants received paychecks and a W2 from NFI. Compare the facts of this case to those in Troy, which involved two acts of sexual assault, committed in private, by a high school teacher against a female student. Troy, 176 N.H. at 133-35. Unbeknownst to the plaintiff in Troy, the school had hired the teacher despite knowing of his previous conviction for unlawful sexual contact with a different female high school student at a different school that was owned and operated by the same religious order. Id. at 133-34. The school did not alert students or parents to the teacher's status as a sex offender who preyed on a similar victim. Id. It took no action to limit or monitor the teacher's contact with students. Id.

³ Because the court determines that the allegations of sexual assault are subject to the tolling provisions of RSA 508:4-g, the court will address those allegations separately supra.

It would be hard to imagine how the plaintiff in Troy could have known from the abuse she endured that the school (and its owner) shouldered any of the blame for the covert criminal acts of a lone employee.

Conversely, in this case, if all the facts in the Complaint—including both the allegation of sexual assault and the physical abuse that the plaintiff suffered—are credited, it is difficult to imagine how the plaintiff could not see a problem with the conduct and training of NFI’s staff members. Ultimately, however, the plaintiff here —unlike the plaintiff in Troy, who became aware of the offending teacher’s history with the school only as a result of later public disclosures by the school itself—does not allege a single new fact that he learned about NFI since leaving its facility in or around 2010. He does not point to the discovery of any fact relating, for example, to NFI’s hiring process, its knowledge of staff misconduct, or its promulgation of policies. He points to no news articles or publicity relating to NFI. Rather, he states only that in March or April 2021, he learned of a lawsuit against the State about what happened at YDC. (Declaration ¶ 26). The plaintiff does not allege how he learned this or that he learned anything specifically about NFI. Neither of these assertions constitutes the discovery of a fact pertinent to NFI’s causal relationship to the plaintiff’s injury of a kind that, if unknown to the plaintiff, would toll the statute of limitations. Cf. Miller, 224 F. Supp. 2d at 986–87.

The plaintiff’s remaining arguments are unpersuasive. First, the plaintiff contends that his fiduciary duty claim is tolled until he had actual knowledge of NFI’s breach. The Court disagrees. New Hampshire law is clear that tolling statute of limitations period is not dependent or otherwise reliant upon the fiduciary disclosing its wrongdoing. See Beane, 160 N.H. at 714-15 (“[T]here is no support in our case law for the proposition that a limitations period is tolled in fiduciary cases until the fiduciary discloses his or her misconduct.”). Second, no amount of

additional discovery the plaintiff may engage in regarding NFI's policies and procedures could reveal information that would make it more likely that the plaintiff could avail himself of the discovery rule. As explained above, the plaintiff's Complaint shows that he already had all the information he needed to determine that NFI was the proximate cause of his injuries by the time he turned twenty.

Ultimately, the plaintiff had sufficient information about NFI's institutional failures prior to the expiration of any applicable limitations period. Nor did the plaintiff allege anywhere in his Complaint that he learned any new facts about NFI's role in his alleged abuse after he turned twenty. For these reasons, the Court concludes that the discovery rule does not toll the statute of limitations.

ii. Fraudulent Concealment and Equitable Tolling

The court has found that (a) the discovery rule did not toll the start of the limitations period in RSA 508:4 beyond the plaintiff's twentieth birthday and, therefore, (b) the applicable limitations period is that established by RSA 508:8, which gave the plaintiff until age 20 to file this action.

The plaintiff argues, however, that two equitable doctrines apply here: fraudulent concealment and equitable tolling. The New Hampshire Supreme Court views both these doctrines as implied exceptions to all statutes of limitations. See Lakeman v. La France, 102 N.H. 300, 303 (1959) (adopting the majority rule that "fraudulent concealment of a cause of action from the one in whom it resides by the one against whom it lies constitutes an implied exception to the statute of limitations," and rejecting the "contrary view that fraudulent concealment does not toll the operation of the statute unless the Legislature has expressly so stated in the statute itself"). With respect to equitable tolling, the supreme court has only applied

the doctrine and explained its elements. See Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 623–24 (2005).

The doctrine of fraudulent concealment tolls the limitations period when a defendant, by concealment or other action, intentionally prevents the plaintiff from acquiring material information. Lamprey, 163 N.H. at 259–60; See also Lakeman, 102 N.H. at 303–304. Thus, fraudulent concealment

. . . requires something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to a cause of action—some actual artifice to prevent knowledge of the facts or some representation intended to exclude suspicion and prevent inquiry.

Lamprey, 163 N.H. at 259–60 (internal quotation marks and bracketing omitted); see also Maggi, 633 F. Supp. 3d at 516 (“The burden is on the plaintiff invoking the fraudulent concealment doctrine to present some evidence of an affirmative act on the part of the defendant to conceal or cover up the underlying wrongful conduct that gave rise to the plaintiff’s asserted injury.” (internal citations omitted)); Sykes v. RBS Citizens, N.A., 2 F. Supp. 3d 128, 143 (D.N.H. 2014).

Even when there is fraudulent concealment, the doctrine provides little, if anything, in the way of relief that the discovery rule does not also provide. See Beane, 160 N.H. at 714 (“The fraudulent concealment rule states that when facts essential to the cause of action are fraudulently concealed, the statute of limitations is tolled until the plaintiff has discovered such facts or could have done so in the exercise of reasonable diligence.” (quoting Bricker v. Putnam, 128 N.H. 162, 165 (1986))); see also Lakeman, 102 N.H. at 303; Furbush, 149 N.H. at 431; Sykes, 2 F. Supp. 3d at 143.

In this case, the plaintiff has not pointed to any affirmative act on the part of NFI to conceal or cover up any fact. Indeed, as noted above, the plaintiff has not pointed to any fact he

learned after leaving NFI's facility in 2006. Therefore, the doctrine of fraudulent concealment does not apply to the plaintiff's claims against NFI.

The New Hampshire Supreme Court has not developed a substantial body of case law relating to the doctrine of equitable tolling. The Court recognized the doctrine in Portsmouth Country Club, explaining that it allows a plaintiff to initiate an action beyond the statutory limitations period when that plaintiff had been "prevented in some extraordinary way from exercising his or her rights." 152 N.H. at 623 (emphasis added). The doctrine "applies principally if the plaintiff is actively misled by the defendant about the cause of action." Kierstead v. State Farm Fire & Cas. Co., 160 N.H. 681, 688 (2010).

To be eligible for equitable tolling, a plaintiff's access to the justice system must be frustrated despite the plaintiff's diligence. See, e.g., Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96 (1990)(applying federal law and holding that:

Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.

(internal footnotes omitted)); Maggi, 633 F. Supp. 3d at 518 (applying federal law and noting that, "in unusual cases, certain limitations of imprisonment may rise to the level of 'extraordinary circumstance'" [but] "the usual problems inherent in being incarcerated, such as a prisoner's lack of prior legal training or limited access to legal resources in a prison's library, do not, by themselves, justify equitable tolling" (internal ellipses and citation omitted)).

In this case, the plaintiff was not prevented from discovering either necessary facts or necessary law. He was not actively misled by NFI as to his ability to access the courts. He was

not threatened with retaliation for accessing the courts. He was not deprived of the ability to seek counsel or advice from third parties.

To this end, the plaintiff alleges that he did not bring suit because of his ongoing emotional distress and substance misuse disorder. However, diminished mental capacity is not grounds for equitable tolling. See Sykes, 2 F. Supp. 3d at 144, n. 18 (ruling that, “RSA 508:8, and not the doctrine of equitable tolling, governs the statute of limitations for New Hampshire state law claims when a plaintiff is mentally incompetent.”). Furthermore, even under federal law, where a plaintiff’s mental condition might allow for equitable tolling, the plaintiff would have to prove that he was unable to engage in rational thought to the point where he could not cooperate with any counsel, and/or pursue his claim on his own during the limitations period.” Id. The plaintiff does not allege this. Thus, the doctrine of equitable tolling does not apply.

C. Actions Based on Sexual Assault and Related Offenses: RSA 508:4-g

The plaintiff specifically alleges that he was sexually assaulted by NFI staff while he was in NFI’s care. These claims implicate the special tolling provisions of RSA 508:4-g, which provides that

[a] person, alleging to have been subjected to any offense under RSA 632-A or an offense under RSA 639-2 may commence a personal action at any time.

The parties dispute the application of RSA 508:4-g to the plaintiff’s sexual assault claims. NFI argues that, to the extent the statute does apply to the plaintiff’s claims, only that version of the statute in effect at the time the cause of action arose may be applicable, and the statute cannot be applied retroactively to claims that arose prior to the first effective date of the statute. (See Court Index # 20 (Meehan # 330) at 8-10).

Relevant to NFI’s argument is the history of RSA 508:4-g. The legislature first enacted RSA 508:4-g on July 22, 2005, and at that time it applied only to persons “alleging to have been

subjected to a [sexual offense] who [were] under 18 years of age when the alleged offense occurred,” and it allowed such claims to be brought within the later of seven years after the plaintiff’s 18th birthday or three years after the plaintiff knew or should have known of their injury and its causal relationship to a defendant. 2005 New Hampshire Laws Ch. 283 (S.B. 75). On January 1, 2009, the legislature amended the statute in relevant part to allow claims to be brought within twelve years after the plaintiff’s eighteenth birthday. 2008 New Hampshire Laws Ch. 193 (S.B. 311). On September 18, 2020, the legislature amended the statute again, eliminating the restriction of the statute to plaintiffs under 18 years of age at the time of the alleged offense, and replacing the temporal limitations provisions with the clause “may commence a personal action at any time.” 2020 New Hampshire Laws Ch. 24 (H.B. 705).

NFI argues that RSA 508:4-g as it is currently framed cannot be extended to apply retroactively to conduct that occurred prior to its enactment, and claims arising from conduct occurring after its enactment must be subject only to the limitations period in effect at the time of the conduct. (See Court Index # 20 (Meehan # 330) at 8-10). (citing Gould v. Concord Hosp., 126 N.H. 405, 408 (1985)). Therefore, NFI contends, any claim arising from conduct that occurred before July 22, 2005, does not fall under the statute’s protection, and any claim arising from conduct occurring after July 22, 2005, but before September 18, 2020, is protected only to the extent provided by the statute as it existed at the time of the conduct. (See id.). Additionally, NFI argues that RSA 508:4-g does not apply to the plaintiff’s claims against NFI, because the statute only extends the limitations period for claims against the person who perpetrated the alleged sexual assault. (See id. at 10-11).

Part 1, Article 23 of the New Hampshire Constitution prohibits the retrospective application of laws. “Every statute, which takes away or impairs vested rights, acquired under

existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past must be deemed a retrospective law.” Tyler Road Dev. Corp. v. Town of Londonderry, 145 N.H. 615, 616-15 (2000) (quotation omitted).

“When engaging in Article 23 analysis, we distinguish new laws that affect substantive rights and liabilities from those that solely affect procedures or remedies enforcing those rights.”

Maplevale Builders, LLC & a. v. Town of Danville, 165 N.H. 99, 108 (2013) (citation omitted).

A “vested right” may relate to the grounds of the action or to the grounds of a defense. Id.

(citing Gould, 126 N.H. at 408). Statutory provisions that reduce or enlarge the time within which an action may be prosecuted have to do only with a remedy for existing rights. Id. (citing Bourque v. Adams, 93 N.H. 257, 259 (1945)). “The right to rely upon a statute of limitations as a defense vests, and therefore becomes a substantive right, only after the limitations period has run.” Id. (emphasis added); see also Gould, 126 N.H. at 408.

Here, the plaintiff has alleged conduct which occurred in or about July or August 2009, specifically conduct by NFI staff member Heidi, which included putting her hands on his genitals through his clothes at least six times, flashing her breasts at him, and making inappropriate sexual comments. (Doc. 17 ¶ 7). This conduct facially meets the definition of sexual assault in RSA 632-A:4,⁴ and is therefore among the offenses covered under RSA 508:4-g. Solely at issue in determining whether RSA 508:4-g applies, then, is whether and when NFI’s right to rely upon the limitations defense vested, and thus became a substantive right.

⁴ For example, RSA 632-A:4, I(b) makes it an offense to subject a person between the ages of 13 and 16 “to sexual contact where the age difference between the actor and the other person is 5 years or more.” RSA 632-A:4, I(c) makes proscribes engaging in sexual penetration with a person between 13 and 16 years of age where the actor is more than 4 years older than the victim. RSA 632-A:4, III makes it a crime to engage in “sexual contact or sexual penetration” of another person when the “actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed.” In the case’s current posture, the court’s analysis of the various ways RSA 632-A applies to the conduct alleged by the plaintiff need not be, and is not, exhaustive.

To the extent that the conduct alleged by the plaintiff occurred after January 1, 2009, there is no question that it falls within the application of RSA 508:4-g, at least as the statute was framed in 2009, so that the plaintiff could raise a claim anytime up to 12 years after his 18th birthday, or July 2025. Therefore, the court determines that by any method of calculation NFI's right to rely upon the limitations defense could not have vested before RSA 508:4-g became law. The limitations period established in that statute therefore applies to plaintiff's claims for sexual assault.

As to the question of which limitations period applies—the seven-year period established in 2005, the twelve-year period established in 2009, or the unlimited period established in 2020—the court finds the New Hampshire Supreme Court's holding in Maplevale Builders instructive. In that case, the supreme court considered a circumstance where a trial court declined to apply an amended version of a statute—extending a statutory limitations period from twelve months to eighteen months—to conduct that occurred prior to the amendment, on grounds that to do so would be an unconstitutional retrospective application of law. See Maplevale Builders, 165 N.H. at 107-08. The supreme court rejected the trial court's reasoning, noting that, as of the effective date of the amendment to the law in question, the existing 12-month limitation period had not yet expired, and thus the defendant's right to rely upon that limitation period had not yet vested. Id. at 108. The supreme court therefore concluded that the application of the limitations period, as amended, to the defendant's conduct was not unconstitutionally retroactive. Id.

A similar circumstance arises here. As noted, the earliest date upon which NFI could have relied on a limitations defense not arising from RSA 508:4-g was August 2009, but on that date RSA 508:4-g provided a limitations period lasting until 12 years after the plaintiff's 18th

birthday, or July 2025. Before that extended period had expired, however, in September of 2020, the legislature had extended the limitations period to “at any time.” Therefore, at no time relevant to this analysis had NFI’s right to rely upon a limitations defense as to the plaintiff’s sexual assault claims vested. Put another way, at no point during the relevant time frame did the plaintiff’s sexual assault claims become untimely under RSA 508:4-g. The court thus concludes that the unlimited limitations period provided in the 2020 amendment to RSA 508:4-g applies to all the sexual assault claims in the instant case, and this application is not unconstitutionally retroactive. See Maplevale Builders, 165 N.H. at 108.

Turning briefly to NFI’s alternative argument, that the limitations period provided in RSA 508:4-g applies only to claims against the perpetrator of the alleged assault, NFI offers no New Hampshire law, nor is the court aware of any, in support of such a proposition. (See Court Index #20 (Meehan at #330) at 10-11). NFI cites to case law from Colorado and Rhode Island in support of the general principle that the legislatures in those states intended their analogous statutes to apply only to perpetrators. (See id. (citing Sandoval v. Archdiocese of Denver, 8 P.3d 598, 601-02 (Colo. App. 2000) and Kelly v. Marcantonio, 678 A.2d 873, 876 (R.I. 1996)). The court is not persuaded, however, that the New Hampshire statute is similarly limited in its application.

As with the interpretation of any statute, the court here “first look[s] to the language of the statute itself, and, if possible, construe[s] that language according to its plain and ordinary meaning.” Petition of Carrier, 165 N.H. 719, 721 (2013). The court interprets legislative intent “from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” Petition of Willeke, 169 N.H. 802, 804 (2017). The court “must give effect to all words in a statute, and presume[s] that the legislature

did not enact superfluous or redundant words.” State v. Thiel, 160 N.H. 462, 465 (2010). The court also “do[es] not consider words and phrases in isolation, but rather within the context of the statute as a whole.” Carrier, 165 N.H. at 721. Moreover, the court “construe[s] all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result.” Id. The court also “interpret[s] statutory language in light of the policy or purpose sought to be advanced by the statutory scheme.” Id. If the statutory language is ambiguous, the court can consider legislative history in conducting its analysis. See Laramie v. Stone, 160 N.H. 419, 436 (2010).

Here, the court need not look beyond the plain language of the statute, which is clear and unambiguous. By its plain terms, the statute grants a cause of action to a person “alleging to have been subjected to any offense under RSA 632-A,” and such a person “may commence a personal action at any time.” RSA 508:4-g (emphasis added). Nothing in the language chosen by the legislature specifies any particular actor or limits the scope of the term “personal action” only to actions against brought against perpetrators.⁵ See State v. Lake Winnepesaukee Resort, LLC, 159 N.H. 42, 48 (2009) (“Personal actions, which are not defined by statute, include those to recover for personal injury, legal malpractice, and contract.” (internal citations and quotations omitted)). The legislature’s choice of the broad term “[a] person, alleging to have been subjected to any offense” anticipates both cases in which a defendant has perpetrated a sexual assault and those in which a defendant has in some other way contributed to or condoned a sexual assault.⁶ RSA 508:4-g (emphasis added.) In short—by contrast to the Colorado and Rhode Island laws NFI proffers as analogues—the New Hampshire statute plainly provides for a

⁵ Contrast 9 R.I. Gen. Laws. Ann. § 9-1-51(a)(1), the law at issue in Kelly v. Marcantonio, which concerns “all claims or causes of action brought against a perpetrator defendant by any person[.]” (Emphasis added).

⁶ Contrast the version of Colo. Rev. Stat. Ann. § 13-80-103.7 in effect at the time the Colorado Supreme Court decided Sandoval v. Archdiocese of Denver. See 1993 Colo. Legis. Serv. H.B. 93-1259. That statute limited its application to “any civil action based on sexual misconduct,” which the Colorado Supreme Court interpreted to restrict the application of the law solely to claims raised against perpetrators. 8 P.3d at 601 (emphasis added). At the time the court considered it, the Colorado statute further specified that “[n]othing in this section shall be construed to extend the statutory period with respect to vicarious liability.” 1993 Colo. Legis. Serv. H.B. 93-1259.

broad application to any personal action raised at any time, and the court can construe it as limiting its application to particular defendants only by adding words to the statute the legislature did not see fit to include. This the court declines to do. See Petition of Willeke, 169 N.H. at 804. Accordingly, the court finds that the instant action falls within the statute's limitations protections.

E. Conclusion as to Limitations

In sum, then, the court rules as follows as respects limitations: the plaintiff's claims against NFI that do not involve conduct constituting an offense under RSA 632-A are untimely pursuant to RSA 508:4 and RSA 508:8; the plaintiff's claims involving conduct constituting an offense under RSA 632-A are timely filed pursuant to RSA 508:4-g.

II. Claims Analysis

A. The Complaint Does Not State Claims for Aiding and Abetting a Breach of Fiduciary Duty or Civil Conspiracy

In Counts X and XIV, the plaintiff accuses NFI of: (a) aiding and abetting a breach of fiduciary duty; and (b) civil conspiracy. Both of these claims require proof that NFI was engaged in deliberate, concerted action with another party to violate the plaintiff's rights. See Invest Almaz v. Temple-Inland Forest Prods. Corp., 243 F.3d 57, 82-83 (1st Cir. 2001)(stating standard for aiding and abetting a breach of fiduciary duty); Jay Edwards, Inc. v. Baker, 130 N.H. 41, 47 (1987) (describing standard for civil conspiracy). Because the Complaint alleges no material facts from which such concerted action can be inferred, these two counts are DISMISSED for failure to state a claim.

i. Aiding and Abetting a Breach of Fiduciary Duty

The New Hampshire Supreme Court has not yet had occasion to recognize the tort of aiding and abetting a breach of fiduciary duty. Nonetheless, the tort is established and well-defined, as, for example, in the Restatement (Second) of Torts, § 876(b):

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . [1] knows that the other's conduct constitutes a breach of duty and [2] gives substantial assistance or encouragement to the other so to conduct himself[.]

Courts that apply New Hampshire law predict that the New Hampshire Supreme Court will recognize this cause of action. See Invest Almaz, 243 F.3d at 82-83; Legacy Glob. Sports, LP v. St. Pierre, Slip Op. No. 218-2019-CV-198, 2020 WL 2027401, at *2 (Merrimack County Superior Court, Apr. 27, 2020); Clare v. Bank of New England, Slip. Op. No. 218-2013-CV-00687, 2013 N.H. Super LEXIS 22, at *3-4, 9 (Merrimack Count Superior Court, Nov. 26, 2013); HayJo S.A. de CV v. Sponge-Jet, Inc., No. 14-cv-196-JD, 2015 WL 9459918, at *4 (D.N.H. Dec. 23, 2015); Tamposi v. Denby, 974 F. Supp. 2d 51, 61 (D. Mass. 2013); In Re Felt Mfg. Co., Inc., 371 B.R. 589, 615 (Bankr. D.N.H. 2007); But see Gill v. Devine, Millimet & Branch, P.A., Slip Op. No 218-2012-CV-00660 (Rockingham County Superior Court, Oct. 12, 2012) (ruling that the tort of aiding and abetting a breach of fiduciary duty had not been recognized).

Assuming a claim for aiding and abetting a breach of fiduciary duty may be pursued in New Hampshire, the Complaint does not contain facts to support this cause of action. To prevail, the plaintiff would need to prove that NFI had helped another party breach its fiduciary duty. The Complaint does not allege that NFI did anything to encourage or facilitate the plaintiff's alleged abuse at YDC or at any other placement.

Moreover, NFI cannot be found liable for aiding its own employees and agents in a breach of fiduciary duty. The cause of action for aiding and abetting a breach of fiduciary duty only exists to cover circumstances in which the defendant has no direct liability to the plaintiff as a fiduciary. That is not the case here. See, e.g., Mann v. GTCR Golder Rauner, L.L.C., 483 F. Supp. 2d 884, 916 (D. Ariz. 2007) (Under Delaware law, “a person who himself owes a fiduciary duty with respect to a transaction or course of conduct cannot be liable for aiding and abetting a breach of that same fiduciary duty by another because the same facts that would otherwise constitute aiding and abetting would constitute a primary breach of fiduciary duty.”); In Re Amcast Indus. Corp., 365 B.R. 91, 112–13 (Bankr. S.D. Ohio 2007) (Under Ohio law “the action by its nature, . . . requires participation by a non-fiduciary defendant); In re Verestar, Inc., 343 B.R. 444, 482 (Bankr. S.D.N.Y. 2006) (“[A] claim for aiding and abetting breach of fiduciary duty can only be sustained against a non-fiduciary.”).

Accordingly, for the foregoing reasons, the Complaint does not state a claim against NFI for aiding and abetting a breach of fiduciary duty. The claim is thus DISMISSED.

ii. Civil Conspiracy

To prevail on a claim of civil conspiracy, a plaintiff must prove that:

(A) Two or more persons and/or entities agreed to either:

(1) pursue an unlawful objective or, alternatively,

(2) use unlawful means to accomplish a lawful or unlawful objective; and

(B) At least one of the conspirators committed an overt act in furtherance of this agreement; and

(C) The plaintiff was harmed as a proximate result of the agreement.

Jay Edwards, Inc., 130 N.H. at 47; see Univ. Sys. of N.H. v. U.S. Gypsum Co., 756 F. Supp. 640, 652 (D.N.H. 1991); Censabella v. Town of Weare, No. 16-cv-490-AJ, 2017 WL 3996173, at *3

(D.N.H. Sept. 8, 2017). “For a civil conspiracy to exist, there must be an underlying tort which the alleged conspirators agreed to commit.” Univ. Sys., 756 F. Supp. at 652. Thus, the cause of action serves to impose liability on “all who commonly plan, take part in, further by cooperation, lend aid to, or encourage the wrongdoers' acts.” Id.

The Complaint does not contain facts to support a claim for civil conspiracy. There are no material facts from which the court may infer that NFI and the State or any other entity entered into an agreement to engage in concerted action by abusing the plaintiff. No facts suggest that NFI ever had any conversation, let alone any agreement, with any other defendant.

Further, NFI cannot be liable for civil conspiracy with its own employees, because, under the intracorporate conspiracy doctrine, NFI and its employees are considered to be the same “person.” See, e.g., Hoefer v. Fluor Daniel, Inc., 92 F. Supp. 2d 1055, 1057 (C.D. Cal. 2000):

The intracorporate conspiracy doctrine provides that, as a matter of law, a corporation cannot conspire with its own employees or agents. [citation and footnote omitted]. The logic for the doctrine comes directly from the definition of a conspiracy. A conspiracy requires a meeting of minds. [citation omitted]. It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

see also Grider v. City of Auburn, Ala., 618 F.3d 1240, 1261 (11th Cir. 2010) (“[T]he intracorporate conspiracy doctrine holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy.”); Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505, 509 (6th Cir. 1991) (“It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.”); Tabb v. District of Columbia, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (“[A]

corporation cannot conspire with its employees[.]”); HRCC, Ltd. v. Hard Rock Cafe Int’l (USA), Inc., 302 F. Supp. 3d 1319, 1325 (M.D. Fla. 2016) (“According to the intracorporate conspiracy doctrine, however, a civil conspiracy claim will not succeed where the only members of the alleged conspiracy are a corporation and/or its officers.”).

For these reasons, the claim of civil conspiracy against NFI is DISMISSED.

B. To the Extent Such Claims are Based on Sexual Misconduct, the Complaint States Claims for Negligence and Breach of Fiduciary Duty

In Counts VIII, XI and XII, the plaintiff seeks monetary damages for breach of fiduciary duty and negligence. These claims require proof of (a) a duty of care, (b) breach, and (c) resulting damages. See W. Prosser, The Law of Torts, § 30 (5th ed. 1985). The plaintiff does not rely on the doctrine of respondeat superior. Therefore, he must prove not only tortious behavior by individual staff members, but also legal fault (e.g., breach of fiduciary duty and/or negligence) on the part of NFI itself.

An institutional defendant’s breach of a standard of care can result from omission as well as commission. It can take the form of an express policy, or an informal practice. Alternatively, it may stem from an inexcusable lapse in hiring qualified personnel, or training or supervising staff. It may be the result of insufficient monitoring of the workplace. In short, a breach may occur in myriad ways.

i. Negligence

There is no question that NFI had a common law duty to use reasonable care to safeguard its residents from, as relevant here, (a) unlawful sexual or physical abuse by staff, and (b) the negligent infliction of extreme emotional distress by sexual or other abuse. In general, an institution that takes custody of children, in a manner that deprives the children of their normal opportunities for protection, has a common law duty to use reasonable care to safeguard the

children from harm while they are within the institution's care. See, e.g., Marquay v. Eno, 139 N.H. 708, 717 (1995); Tveter v. Derry Coop. Sch. Dist., SAU # 10, Slip Op. 16-CV-329, 2018 WL 3520827, at *9 (D.N.H. July 20, 2018); Restatement (Second) of Torts § 314A.

The Complaint alleges facts which, if proven, would support a finding that NFI breached this standard of care with respect to the plaintiff's sexual assault claims. Specifically, the plaintiff alleges that Heidi, a staff member at the Midway Shelter facility, groped the plaintiff's penis through his clothes at least six times and flashed her breasts at him, all while on the premises of Midway Shelter—which NFI owned and operated.

At this juncture the plaintiff is entitled to the reasonable inference that if the abuse occurred as alleged, then supervisory staff (a) knew of the abuse, or (b) were willfully blind to the abuse, or (c) failed to reasonably monitor the facility and hire, train, and supervise staff. Any of these possibilities is enough to prove a negligent breach of the common law duty to use reasonable care. In fairness, the Complaint alleges negligence in broad strokes. But broad strokes are sufficient in this posture. A plaintiff may file a lawsuit without knowing every fact that will eventually be introduced at trial to prove negligence.

The plaintiff has also alleged the third element of a negligence claim, e.g., resulting damages. Thus, the Complaint adequately alleges negligence and negligent hiring, retention, supervision and training.

ii. Breach of Fiduciary Duty

The Complaint alleges facts which, if proven, could support a finding of a fiduciary relationship between NFI and the plaintiff. Under New Hampshire law, the existence of a fiduciary relationship is determined by substance rather than formality. See, e.g., Schneider v. Plymouth State College, 144 N.H. 458, 462 (1999):

A fiduciary relation does not depend on some technical relation created by, or defined in, law. It may exist under a variety of circumstances, and does exist in cases where there has been a special confidence reposed in one who, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence.

(quoting Lash v. Cheshire County Sav. Bank, Inc., 124 N.H. 435, 439 (1984).

Thus, for example in Schneider, the New Hampshire Supreme court held that a college has a fiduciary duty to its students to protect them against sexual harassment by professors. The supreme court reasoned that an enrolled student becomes dependent on the college for their education and the college assumes a duty to act in good faith, and with due regard to the student's interest, with respect to prevention of sexual assaults by faculty. 144 N.H. at 462-64; see also Roe v. Hotchkiss Sch., 385 F. Supp. 3d 165, 173 (D. Conn. 2019) (under Connecticut law a boarding school may have a fiduciary duty to prevent the sexual abuse of its students); Wartluft v. Milton Hershey Sch. & Sch. Trust, 400 F. Supp. 3d 91, 112 (M.D. Pa. 2019) (under Pennsylvania law a therapeutic residential school had a fiduciary obligation to its students).⁷

In this case, the plaintiff was made utterly dependent on NFI to provide him with a stable and wholesome home. The plaintiff was an underprivileged, at-risk child who was unable to care for himself and who was deprived of parental supervision and made wholly dependent on NFI for shelter, nutrition, moral guidance, education and personal safety. The plaintiff thus reposed his trust in NFI to prevent the abuses he alleges staff inflicted against him. A jury could

⁷ But see Brodeur v. Claremont Sch. Dist., 626 F. Supp. 2d 195, 219 n 24 (D.N.H. 2009) ("New Hampshire does not appear to treat the relationship between a public secondary school and its students as fiduciary in nature, characterizing it instead as a 'special relationship' that gives rise to a duty enforceable in negligence (and treating the school as an ordinary employer subject to theories of negligent hiring or retention).") (citation omitted); Doe # 2 v. Legion of Christ, Inc., 588 F. Supp. 3d 240, 246 (D. Conn. 2022) ("[T]he Court agrees with other courts that have concluded that given the opportunity the New Hampshire Supreme Court would not allow a breach of fiduciary duty claim against a secondary school."); Franchi v. New Hampton School, 656 F. Supp. 2d 252, 261-64 (D.N.H. 2009) (noting that the New Hampshire Supreme Court has held that a secondary school owes fiduciary duties to its students); Tveter, 2018 WL 3520827, at *10.

thus find that NFI had a fiduciary obligation to act in good faith and with due regard for the plaintiff's interests as to these harms.

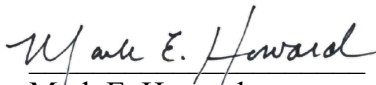
It is not entirely clear how this fiduciary standard differs from the common law duty of care in this context. Regardless, the fiduciary standard of care certainly requires at least the same degree of prudence and care as the common law standard. Therefore, just as the court has found that the Complaint states a claim for negligence (i.e., alleges duty, breach, and resulting damages), the court also finds that the Complaint states a claim for breach of fiduciary duty by NFI.

CONCLUSION

Consistent with the foregoing, NFI's motion to dismiss is GRANTED in part and DENIED in part. Specifically:

- Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy) are DISMISSED for failure to state a claim;
- Consistent with this order, Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention) and XII (negligence) are DISMISSED as to all claims not alleging sexual misconduct for lack of timeliness. NFI's motion is DENIED as to the plaintiff's claims arising from sexual misconduct, and Counts VIII, XI and XII may proceed as to those claims.

Date: February 27, 2025


Mark E. Howard
Chief Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/27/2025

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

JOHN DOE #146

v.

STATE OF NEW HAMPSHIRE, et al.
217-2022-CV-76

DAVID MEEHAN v. STATE OF NEW HAMPSHIRE, et al.
(Consolidated YDC/YDSU Cases)
217-2020-CV-26

ORDER

The matter before the court is Defendant Eckerd Youth Alternatives' ("Eckerd's") Motion to Dismiss plaintiff John Doe #146's claims against it. (Court Index ## 11 (Mot. Dismiss); 12 (Mem. Law)). For the reasons set forth below the motion is GRANTED in part and DENIED in part. Specifically, the motion is GRANTED with respect to Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy), which are DISMISSED for failure to state a claim upon which relief may be granted. The motion is GRANTED in part and DENIED in part, for the reasons stated below, with respect to Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention), and XII (negligence).¹

DEFINING THE COMPLAINT

The Complaint in this case comprises the following three documents:

¹ The remaining counts do not allege any claims against Eckerd. Counts I through VII (set forth in the Master Complaint) and Counts IX and XIII (set forth in the Short Form Complaint) assert claims against the State Defendants only.

A. A 50-page “Amended Master Complaint,” filed in Meehan v. State, 217-2020-CV-26 on July 8, 2022. (Meehan Court Index # 70). The Amended Master Complaint does not mention John Doe #146 or any of the facts about his life. Likewise, it does not contain any reference to Eckerd or any other contractor defendant.

B. A 38-page “Amended Short Form Complaint” filed in John Doe 146 v. State, 217-2022-CV-76. (Court Index # 7). The Short Form Complaint contains allegations specific to the plaintiff and Eckerd. The Short Form Complaint contains an Addendum, as well as a separately filed Sealed Supplement that contains John Doe #146’s true name and date of birth.

C. A 6-page Declaration, signed by the plaintiff, filed as Exhibit A to the Objection to the Motion to Dismiss in John Doe #146 v. State, 217-2022-CV-76 (Court Index # 14 (Redacted); see Court Index # 15 (Unredacted)) (cited hereinafter as “Declaration”). The Declaration contains the plaintiff’s factual responses to Eckerd’s affirmative limitations defense.

These 94 pages will be referred to collectively as “the Complaint.”

PROCEDURAL HISTORY AND RELEVANT DATES

The plaintiff was born in May of 1991.² He turned 20 in May 2011. The Complaint in this case was filed on January 14, 2022, when the plaintiff was 31 years old.

As relevant to the instant motion, the plaintiff claims that he was subjected to physical, psychological and sexual abuse at a residential juvenile facility operated by Eckerd. As relevant here, the plaintiff alleges that the abuse occurred during a period of roughly a year between 2003 and 2007, when he was between the ages of 12 and 17.³ The plaintiff does not allege that Eckerd

² The plaintiff’s precise date of birth is provided in the Sealed Supplement to the Short Form Complaint (Court Index # 3). The court recites only the month and year of birth to protect the plaintiff’s identity. The day of the month is not material to any determination in this Order.

³ Specifically, the plaintiff alleges that when he was placed at an Eckerd facility for “about a year” between 2003 and 2007. (Declaration ¶ 11). The Court infers that he was placed in Eckerd no earlier than 2004 and left no later than 2006. (See id. ¶ 5).

engaged in any tortious behavior after that time.

Thus, the plaintiff initially filed suit approximately 15 years after the last possible date of abuse, and roughly 11 years after he turned 20.

FACTUAL BACKGROUND

The following facts are taken from the Complaint.

A. Events That Occurred Prior to Placement at Eckerd

According to the Declaration, the plaintiff's parents split up when he was a baby, and he grew up moving back and forth between them. He initially did well at school, but at some point he began to get in trouble, and was eventually put on probation for committing a burglary and selling narcotics at school. In 2003, when the plaintiff was 11 or 12, he was taken into State custody, and between 2003 and 2007 he lived at various juvenile facilities.

For a few months in 2003, and again in 2005 and 2006, the plaintiff was placed at YDSU, where he experienced a range of abuse at the hands of residents and staff. He was abused several times by a staff member called "J.B.," who in one instance got angry with the plaintiff, grabbed him by the buttocks and threw him into a room, where he hit his head on the wall and felt dizzy and nauseous, believing he had a concussion. The plaintiff was not given medical attention. He was also violently restrained by staff on several occasions, and he describes having his arms twisted behind his back, being forced to the ground violently, and having his face pushed into the ground. Staff members witnessed at least one incident where the plaintiff was physically assaulted by other residents, but staff did not intervene. The plaintiff was also locked in solitary confinement on several occasions, sometimes for up to a week at a time. At these times the staff would remove everything from his room, including his bed, so he had to sleep on the floor, and they denied him access to the bathroom. On one occasion he urinated under the door, and when

the staff discovered it they entered his room, put his arms behind his back and forced his head to the floor. They then made him clean up his urine with a towel.

The plaintiff alleges he was sexually abused by staff at YDSU. Specifically, during a strip search upon intake, a staff member lifted his genitals and digitally penetrated the plaintiff's anus. The plaintiff also witnessed a female resident being raped by a staff member named "Mike D." The resident in question was on "suicide watch" and was therefore kept in a room with no clothes on. While on his way to the bathroom in the middle of the night, the plaintiff looked through her open door and saw Mike D. between her legs on the bed. Another staff member, "Bill," discovered the plaintiff watching and told him to mind his own business and go back to his room.

B. Events at Eckerd's Facility

The plaintiff was placed at Eckerd's Camp E-Toh-Anee for a period of roughly a year, where he alleges he was physically and sexually abused. Specifically, a staff member called "Chief Ben" was initially friendly with the plaintiff, giving him cigarettes and alcohol, but at one point when the two were drinking in a car in the parking lot, Chief Ben unbuttoned the plaintiff's pants and performed oral sex on him. The plaintiff asked him to stop and pushed him away. Chief Ben stopped, but asked the plaintiff not to tell anybody because he could lose his job. Chief Ben also threatened to stop providing cigarettes and alcohol. On another occasion, coming back from a medical appointment, Chief Ben put his hands on the plaintiff's lap and called him a "good-looking boy." When the plaintiff rebuffed his advances, Chief Ben stopped providing alcohol and cigarettes, and the plaintiff began to get in trouble with Chief Ben thereafter.

The plaintiff alleges that Chief Ben also physically abused him almost daily, in front of both staff and other residents: he pulled his hair, pulled him out of bed, hit him on the head with

a broom, and sometimes “tried wrestling moves” on the plaintiff, twisting his arm behind his back and forcing his head to the ground. Other staff—including but not limited to “Chief Rhett”—also violently restrained the plaintiff frequently, sometimes placing him in a full nelson and pushing him to the ground with their full body weight. At one time he was restrained near a fire and sustained burns on his arms, from which he still bears scars. The staff blamed the plaintiff for the burns, saying if he had not resisted he would not have had to have been restrained. They told him he would lose his home visits if he told anyone. He told his family he was mutilating himself. On another occasion, a staff member placed him in a chokehold and dragged him away from another resident. After this incident, the plaintiff coughed up blood and had to be taken to a doctor.

The staff sometimes withheld meals from the residents at Eckerd, and when fights broke out among residents as a result, the staff called those fights a “natural consequence” of resident misbehavior. The staff also taunted and degraded the plaintiff and other residents, picking on him because of his weight and calling him “stupid.” A resident was once attacked by a staff member’s dog, and the plaintiff also saw another resident attempt suicide by hanging himself with a belt. The attempt was unsuccessful, and when the resident regained consciousness the staff yelled at him and asked him “if he got the attention he wanted” before dragging him away.

The plaintiff at one point tried to tell his juvenile probation officer about the abuse he faced at Eckerd. He spoke to her on the phone, but the phones at Eckerd were monitored by staff who would hang up the call if they thought a resident was “saying the wrong things”—as a result, the plaintiff could tell his probation officer very little. His probation officer did not believe him.

C. Events Occurring after the Plaintiff Left Eckerd

Since leaving his placements with Eckerd and the State, the plaintiff developed PTSD, anxiety and depression. Raised voices and physical contact trigger his PTSD, and he suffers from episodes where he cannot leave the house. He has issues with intimacy and does not like to be touched. He lacks meaningful friendships, does not “know how to communicate properly” and cannot maintain a job or a relationship. He has also battled drug addiction.

D. Lack of Discovery

While the plaintiff now realizes that the State and Eckerd had an obligation to keep him safe, as a child he did not understand what was happening to him and could not appreciate that the State and Eckerd were responsible for it. The plaintiff states that he “did not have control over the violence,” and “[a]fter some time, it started to seem normal. However, the sexual abuse never felt normal.” (Declaration ¶ 19). In or around 2019 or 2020, the plaintiff began to realize he had been significantly harmed by his childhood experiences in custody, and during this time a fellow inmate at the Rockingham County Jail told him about a lawsuit that had been filed against the State by someone who had been housed at YDC.

ANALYSIS

Eckerd moves to dismiss on two broad grounds: that the plaintiff’s claims are barred as untimely by operation of the statute of limitations and the failure of all available tolling provisions; and that the plaintiff fails to state a claim for which relief may be granted. The court will address these issues separately.

I. Statute of Limitations Analysis

The defendant argues, inter alia, that the plaintiff’s claims are time-barred. The statute of limitations is an affirmative defense. Perez v. Pike Indus., Inc., 153 N.H. 158, 160 (2005);

Glines v. Bruk, 140 N.H. 180, 181 (1995). A defendant has the obligation to allege and prove that the complaint was brought after the limitations period expired. Perez, 153 N.H. at 160. If the defendant meets this burden, then the plaintiff has the burden to prove that the claim is timely by virtue of the discovery rule, fraudulent concealment, equitable tolling, or some other doctrine. The plaintiff here alleges instances of physical, psychological and sexual abuse spanning several years, all occurring prior to his reaching the age of 18. By their nature, these claims separately implicate three statutes pertaining to limitations: the general statute of limitations for personal actions (RSA 508:4); the special tolling provision provided in the “disabilities statute” (RSA 508:8); and the special tolling provision applicable to sexual assault and related offenses (RSA 508:4-g). The court will consider the application of each of these statutes separately.

A. The Disabilities Statute: RSA 508:8

The court first considers RSA 508:8, the so-called “disabilities statute.” This statute provides that “an infant or mentally incompetent person may bring a personal action within 2 years after such disability is removed.” RSA 508:8. In Norton v. Patten, 125 N.H. 413 (1984), the New Hampshire Supreme Court construed the term “infant” to mean a person who has not yet reached the statutory age of majority, as defined in RSA 21-B:1. The age of majority is eighteen. Thus, as construed by Norton, RSA 508:8 extends the limitations period for minors until their twentieth birthday.

As noted above, the plaintiff turned twenty in May of 2011, approximately 11 years before he filed the instant case. Accordingly, the instant case was not filed within the limitations period established by RSA 508:8. RSA 508:8 does not contain its own discovery rule.

B. The General Statute of Limitations for Personal Actions: RSA 508:4

RSA 508:4 provides the statute of limitations for all personal actions. Under this statute:

[A]ll personal actions . . . may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

The last “act or omission complained of” occurred no later than May of 2006, the year that the plaintiff left Camp E-Toh-Anee. The instant case was thus brought more than fifteen years after the last “act or omission complained of.” Eckerd has therefore met its burden of showing that the instant case was filed more than three years after the conduct at issue.

This shifts the burden to the plaintiff to demonstrate grounds for the application of: (a) the discovery rule; (b) equitable tolling; (c) the doctrine of fraudulent concealment; or (d) some other doctrine extending the limitations period. Perez, 153 N.H. at 160. Consistent with the standard of review for motions to dismiss, the court accepts all of the plaintiff’s well-pled facts, and makes all rational inferences in the plaintiff’s favor.

The court’s task is to determine only whether the plaintiff has alleged facts which, if proven, might lengthen the limitations period to make this case timely. To be clear, if the plaintiff alleges sufficient facts to show that discovery is necessary to make this determination, the motion to dismiss on limitations grounds must be denied and the issue preserved for summary judgment on a more complete record. However, if discovery would be futile because the Complaint itself fails even to allege grounds to apply the discovery rule or another tolling doctrine, the motion to dismiss will be granted.

(i) The Discovery Rule

It is well-settled that the “purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party.” Petition of N.H. Div. For Children, Youth & Families, 173 N.H. 613, 618 (2020). The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run:

(1) a plaintiff must know or reasonably should have known that she has been injured; and (2) a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the defendant.

Lamprey v. Britton Constr., Inc., 163 N.H. 252, 257 (2012); see also Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 713 (2010); Perez, 153 N.H. at 160; Big League Entm’t, Inc. v. Brox Indus., Inc., 149 N.H. 480, 485 (2003).

The discovery rule does not reward ignorance of the law. The statute of limitations is not tolled due to a plaintiff’s failure to acknowledge or otherwise understand their potential claims. See Sullyville, LLC v. Town of Carroll, Slip Op. No. 2019-0240, 2021 WL 1310832, at *7 (N.H. Apr. 8, 2021) (non-precedential decision stating that “[t]he discovery rule does not toll the statute of limitations until a plaintiff discerns the legal theory by which his or her case will proceed; rather, it tolls the statute of limitations only when the injury and its causal relationship to the defendant’s act or omission remain unknown to the plaintiff.”); Ouellette v. Beaupre, 977 F.3d 127, 138 (1st Cir. 2020) (applying federal law and holding that “a plaintiff, once armed with the knowledge of his or her injury and its probable cause, cannot plead ignorance of the law to delay accrual.”); Maggi v. Grafton Cty. Dep’t of Corrs., 633 F. Supp. 3d 508, 516 (D.N.H. 2022) (applying RSA 508:4 and holding that “even if the court were to assume the truth of [plaintiff’s] assertions about his lack of access to legal resources, that would not save his claims. His claims

accrued on the date he should have reasonably known he was injured, not on the date he first learned he had a legal cause of action.”) (vacated and remanded on other grounds by Maggi v. Grafton Cty. Dep’t Corrs., No 23-1002 2024 WL 3384813 (1st Cir. July 9, 2024)); Miller v. Pac. Shore Funding, 224 F. Supp. 2d 977, 986–87 (D. Md. 2004) (“Knowledge of facts, however, not actual knowledge of their legal significance, starts the statute of limitations running. . . . The discovery rule, in other words, applies to discovery of facts, not to discovery of law. Knowledge of the law is presumed.”); Marcum v. Columbia Gas Transmission, LLC, 549 F. Supp. 3d 408, 421, (E.D. Pa. 2021) (“Plaintiffs’ ignorance of a legal cause of action does not, in itself, require application of the discovery rule.”). In this case, the plaintiff proffers several reasons why he may have not discovered the law governing his claims. However, the plaintiff’s failure to bring his claims within the applicable time period due to his unawareness of the law is not grounds to apply the discovery rule.

For discovery rule purposes, a plaintiff becomes aware of an injury as soon as he can reasonably discern that he has suffered “some harm” caused by a defendant’s conduct. Beane, 160 N.H. at 713; see also Balzotti Glob. Grp., LLC v. Shepherds Hill Proponents, LLC, 173 N.H. 314, 321 (2020); Furbush v. McKittrick, 149 N.H. 426, 431 (2003) (“The [discovery] rule is not intended to toll the statute of limitations until the full extent of the plaintiff’s injury has manifested itself.”). Thus, a latent injury will toll the limitations period, while a patent injury will not, even if the long-term consequences of the patent injury cannot be known. See Furbush, 149 N.H. at 431; see generally Clay v. Kuhl, 727 N.E.2d 217, 222 (Ill. 2000) (applying Illinois law): (“The plaintiff contends, however, that her injuries were latent to some extent and did not fully manifest themselves until years after the abuse occurred. We do not believe that the plaintiff’s alleged failure to fully discover the nature of her injuries is sufficient to delay the running of the

limitations period. There is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations.”); see also Stephens v. Clash, 796 F.3d 281, 288 (3d Cir. 2015) (“A plaintiff’s ignorance regarding the full extent of his injury is irrelevant to the discovery rule’s application, so long as the plaintiff discovers or should have discovered that he was injured.”).

In Rowe v. John Deere, 130 N.H.18 (1987), the plaintiff was injured when he struck his head while using machinery manufactured by the defendant. Immediately after the accident, the plaintiff was diagnosed with a depressed skull fracture. The plaintiff recovered quickly. Six years later he began to suffer grand mal seizures, purportedly as a result of the accident. The supreme court held that the plaintiff had discovered his injury at the time of the accident, even though the initial measure of damages was “nominal” compared with the potential damages for the later occurring harm. Id. at 21. Thus, a plaintiff is likely to immediately discover an injury caused by a sudden, traumatic, violent event, and an injury which may later arise from the initial injury will not toll the statute of limitations. See, e.g., Hollander v. Brown, 457 F.3d 688, 692 (7th Cir. 2006) (applying Illinois law):

[C]ourts distinguish between injuries caused by sudden, traumatic events and those that have a late or insidious onset. For limitations purposes, a sudden, traumatic event is one that, because of its force or violence, permits the law to presume that the event immediately placed the plaintiff on notice of her injury and a right of action. When a plaintiff suffers this type of injury, her cause of action accrues on the date of the traumatic event, and the limitations period does not begin anew simply because a latent condition later may arise from the same occurrence. The rationale is that the nature and circumstances surrounding the traumatic event are such that the injured party is thereby put on notice that actionable conduct might be involved.

(internal citations and quotation marks omitted).

Here, the plaintiff claims that he was injured as a result of Eckerd’s failure adequately to oversee its staff with respect to hiring, training, supervision, and promulgation of policies. Thus,

the “act or omission complained of,” RSA 508:4, is the breach of duty by Eckerd itself. According to the Complaint, that breach led to multiple physical and sexual assaults, as well as painful restraints, including at least two instances where the plaintiff was sexually assaulted by “Chief Ben.” Additionally, the alleged breach also led to other instances of physical and psychological abuse by Eckerd staff—the plaintiff recounts, for example, being physically dragged out of bed by the hair, or being hit on the head with a broom—often in the presence of other Eckerd staff. The incidents of sexual, physical and psychological abuse the plaintiff describes constitute injuries that are sudden, traumatic, violent, painful, or extremely unpleasant. There is nothing subtle or latent about these alleged events. The plaintiff necessarily knew of these assaults at the time they happened.

The plaintiff may have been unaware of the long-term psychological and emotional effects of the treatment he says he endured. But those harms were nonetheless caused by the same “act or omission complained of,” RSA 508:4, e.g., Eckerd’s alleged lack of care in hiring, training and supervising staff, and promulgating policies. Thus, under settled New Hampshire law, accepting all the well-pled facts in the Complaint, the court must find that the plaintiff was aware that he had been injured as a result of Eckerd’s failure to control its staff because the plaintiff knew that he had been assaulted, sexually assaulted, and physically restrained on multiple occasions.

Under the discovery rule, the limitations period in this case did not begin to run until the plaintiff either (a) discovered, or (b) should have discovered through the exercise of reasonable diligence, that Eckerd’s breach of duty was a proximate cause of his injury. See Troy v. Bishop Guertin High Sch., 176 N.H. 131, 134 (2023) (citing RSA 508:4). Knowledge of Eckerd’s causal role cannot be automatically inferred from the fact that the plaintiff knew that his injury

was caused by Eckerd’s employees, acting overtly under color of their authority, on Eckerd’s premises. See id. at 138 (“We decline to establish a per se rule that the plaintiff’s knowledge of the abuser’s employer is alone sufficient to trigger the application of the discovery rule. This inquiry presents a question of fact.”). However, “[a] plaintiff need not be certain of this causal connection; the possibility that it existed will suffice to obviate the protections of the discovery rule.” Id. at 137 (quoting Beane, 160 N.H. at 713); see also Balzotti, 173 N.H. at 321; Lamprey, 163 N.H. at 257; Pichowicz v. Watson Ins. Agency, Inc., 146 N.H. 166, 168 (2001). “[T]he discovery rule employs an objective standard” to determine whether, through the exercise of reasonable diligence, a plaintiff should have discovered sufficient evidence of the defendant’s role in causing his injury.” Troy, 176 N.H. at 137.

In this case, the same alleged facts that establish the plaintiff’s knowledge of harm also demonstrate that the plaintiff knew or should have known Eckerd’s breach of duty was a proximate cause of his alleged injury. With respect to the physical assaults, the plaintiff does not complain of isolated incidents, committed in secret, by a rogue staff member of a large institution. Rather, the plaintiff claims frequent assaults, involving multiple staff members, committed openly and in view of both other residents and other staff members: in one instance, the plaintiff was restrained by a fire but multiple staff members who “put their full body weight on” him, as a result of which the plaintiff sustained burns and, ultimately, scars. All of these incidents took place in an atmosphere in which the staff as a whole would deny meals to residents and treated fights between residents—and even a suicide attempt—as a “natural consequence” of resident misbehavior. If the allegations in the Complaint are credited, as they must be at this juncture, then at the very least Eckerd failed to supervise its staff and monitor its

facility and thereby breached both its fiduciary obligations to the plaintiff and the common law duty of reasonable care.

Eckerd's role in causing the plaintiff's injury is not inferred from the mere fact that the plaintiff's assailants received paychecks and a W2 from Eckerd. Compare the facts of this case to those in Troy, which involved two acts of sexual assault, committed in private, by a high school teacher against a female student. Troy, 176 N.H. at 133-35. Unbeknownst to the plaintiff in Troy, the school had hired the teacher despite knowing of his previous conviction for unlawful sexual contact with a different female high school student at a different school that was owned and operated by the same religious order. Id. at 133-34. The school did not alert students or parents to the teacher's status as a sex offender who preyed on a similar victim. Id. It took no action to limit or monitor the teacher's contact with students. Id. It would be hard to imagine how the plaintiff in Troy could have known from the abuse she endured that the school (and its owner) shouldered any of the blame for the covert criminal acts of a lone employee.

Conversely, in this case, if all the facts in the Complaint—including both the allegation of sexual assault and that of the day-to-day abuse the plaintiff suffered—are credited, it is hard to imagine how the plaintiff could not see a problem with the conduct and training of Eckerd's staff members. Indeed, the plaintiff attempted on several occasions to communicate his recognition of this problem to his probation officer, although he alleges these attempts were frustrated by Eckerd's monitoring of his phone calls. Ultimately, however, the plaintiff here —unlike the plaintiff in Troy, who became aware of the offending teacher's history with the school only as a result of later public disclosures by the school itself—does not allege any new fact that he learned about Eckerd since leaving its facility in or around 2006. He does not point to the discovery of any fact relating, for example, to Eckerd's hiring process, its knowledge of staff

misconduct, or its promulgation of policies. He points to no news articles or publicity relating to Eckerd. Rather, he states only that in late 2019 or 2020, he began to realize that he “had been significantly harmed by [his] experiences as a child,” and at some later point a fellow inmate at Rockingham County Jail informed him of a lawsuit against YDC. (Declaration ¶ 24). Neither of these assertions constitutes the discovery of a fact pertinent to Eckerd’s causal relationship to the plaintiff’s injury of a kind that, if unknown to the plaintiff, would toll the statute of limitations. Cf. Miller, 224 F. Supp. 2d at 986–87.

The plaintiff’s remaining arguments are unpersuasive. First, the plaintiff contends that his fiduciary duty claim is tolled until he had actual knowledge of Eckerd’s breach. The court disagrees. New Hampshire law is clear that tolling the statute of limitations period is not dependent or otherwise reliant upon the fiduciary disclosing its wrongdoing. See Beane, 160 N.H. at 714-15 (“[T]here is no support in our case law for the proposition that a limitations period is tolled in fiduciary cases until the fiduciary discloses his or her misconduct.”). Second, no amount of additional discovery the plaintiff may engage in regarding Eckerd’s policies and procedures could reveal information that would make it more likely that the plaintiff could avail himself of the discovery rule. As explained above, the plaintiff’s Complaint shows that he already had all the information he needed to determine that Eckerd was the proximate cause of his injuries by the time he turned twenty.

Ultimately, the plaintiff had sufficient information about Eckerd’s institutional failures prior to the expiration of any applicable limitations period. He does not allege in his Complaint that he learned any new facts about Eckerd’s role in his alleged abuse after he turned twenty. For these reasons, the court concludes that the discovery rule does not toll the statute of limitations.

ii. Fraudulent Concealment and Equitable Tolling

The court has found that (a) the discovery rule did not toll the start of the limitations period in RSA 508:4 beyond the plaintiff's twentieth birthday and, therefore, (b) the applicable limitations period is that established by RSA 508:8, which gave the plaintiff until age 20 to file this action.

The plaintiff argues, however, that two equitable doctrines apply here: fraudulent concealment and equitable tolling. The New Hampshire Supreme Court views both these doctrines as implied exceptions to all statutes of limitations. See Lakeman v. La France, 102 N.H. 300, 303 (1959) (adopting the majority rule that “fraudulent concealment of a cause of action from the one in whom it resides by the one against whom it lies constitutes an implied exception to the statute of limitations,” and rejecting the “contrary view that fraudulent concealment does not toll the operation of the statute unless the Legislature has expressly so stated in the statute itself”). With respect to equitable tolling, the supreme court has only applied the doctrine and explained its elements. See Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 623–24 (2005).

The doctrine of fraudulent concealment tolls the limitations period when a defendant, by concealment or other action, intentionally prevents the plaintiff from acquiring material information. Lamprey, 163 N.H. at 259–60; See also Lakeman, 102 N.H. at 303–304. Thus, fraudulent concealment

... requires something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to a cause of action—some actual artifice to prevent knowledge of the facts or some representation intended to exclude suspicion and prevent inquiry.

Lamprey, 163 N.H. at 259–60 (internal quotation marks and bracketing omitted); see also Maggi, 633 F. Supp. 3d at 516 (“The burden is on the plaintiff invoking the fraudulent concealment

doctrine to present some evidence of an affirmative act on the part of the defendant to conceal or cover up the underlying wrongful conduct that gave rise to the plaintiff's asserted injury.”

(internal citations omitted)); Sykes v. RBS Citizens, N.A., 2 F. Supp. 3d 128, 143 (D.N.H. 2014).

Even when there is fraudulent concealment, the doctrine provides little, if anything, in the way of relief that the discovery rule does not also provide. See Beane, 160 N.H. at 714 (“The fraudulent concealment rule states that when facts essential to the cause of action are fraudulently concealed, the statute of limitations is tolled until the plaintiff has discovered such facts or could have done so in the exercise of reasonable diligence.” (quoting Bricker v. Putnam, 128 N.H. 162, 165 (1986))); see also Lakeman, 102 N.H. at 303; Furbush, 149 N.H. at 431; Sykes, 2 F. Supp. 3d at 143.

In this case, the plaintiff has not pointed to any affirmative act on the part of Eckerd to conceal or cover up any fact. Indeed, as noted above, the plaintiff has not pointed to any fact he learned after leaving Eckerd's facility in 2006. Therefore, the doctrine of fraudulent concealment does not apply to the plaintiff's claims against Eckerd.

The New Hampshire Supreme Court has not developed a substantial body of case law relating to the doctrine of equitable ringing. The Court recognized the doctrine in Portsmouth Country Club, explaining that it allows a plaintiff to initiate an action beyond the statutory limitations period when that plaintiff had been “prevented in some extraordinary way from exercising his or her rights.” 152 N.H. at 623 (emphasis added). The doctrine “applies principally if the plaintiff is actively misled by the defendant about the cause of action.” Kierstead v. State Farm Fire & Cas. Co., 160 N.H. 681, 688 (2010).

To be eligible for equitable tolling, a plaintiff's access to the justice system must be frustrated despite the plaintiff's diligence. See, e.g., Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96 (1990)(applying federal law and holding that:

Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.

(internal footnotes omitted)); Maggi, 633 F. Supp. 3d at 518 (applying federal law and noting that, "in unusual cases, certain limitations of imprisonment may rise to the level of 'extraordinary circumstance'" [but] "the usual problems inherent in being incarcerated, such as a prisoner's lack of prior legal training or limited access to legal resources in a prison's library, do not, by themselves, justify equitable tolling" (internal ellipses and citation omitted)).

In this case, the plaintiff was not prevented from discovering either necessary facts or necessary law. He was not actively misled by Eckerd as to his ability to access the courts. He was not threatened with retaliation for accessing the courts. He was not deprived of the ability to seek counsel or advice from third parties.

To this end, the plaintiff alleges that he did not bring suit because of his ongoing emotional distress and substance misuse disorder. However, diminished mental capacity is not grounds for equitable tolling. See Sykes, 2 F. Supp. 3d at 144, n. 18 (ruling that, "RSA 508:8, and not the doctrine of equitable tolling, governs the statute of limitations for New Hampshire state law claims when a plaintiff is mentally incompetent."). Furthermore, even under federal law, where a plaintiff's mental condition might allow for equitable tolling, the plaintiff would have to prove that he was unable to engage in rational thought to the point where he could not

cooperate with any counsel, and/or pursue his claim on his own during the limitations period.”

Id. The plaintiff does not allege this. Thus, the doctrine of equitable tolling does not apply.

C. Actions Based on Sexual Assault and Related Offenses: RSA 508:4-g

The plaintiff specifically alleges that he was sexually assaulted by Eckerd staff while he was in Eckerd’s care. These claims implicate the special tolling provisions of RSA 508:4-g, the current version of which provides that

[a] person, alleging to have been subjected to any offense under RSA 632-A or an offense under RSA 639-2 may commence a personal action at any time.

The parties dispute the application of RSA 508:4-g to the plaintiff’s sexual assault claims. Eckerd argues that, to the extent the statute does apply to the plaintiff’s claims, only that version of the statute in effect at the time the cause of action arose may be applicable, and the current version of the statute cannot be applied retroactively to claims that arose prior to the first effective date of the statute. (See Court Index # 12 (Meehan # 338) at 8-10).

The history of RSA 508:4-g requires exploration. The legislature first enacted RSA 508:4-g on July 22, 2005, and at that time it applied only to persons “alleging to have been subjected to a [sexual offense] who [were] under 18 years of age when the alleged offense occurred,” and it allowed such claims to be brought within the later of seven years after the plaintiff’s 18th birthday or three years after the plaintiff knew or should have known of their injury and its causal relationship to a defendant. 2005 New Hampshire Laws Ch. 283 (S.B. 75). On January 1, 2009, the legislature amended the statute in relevant part to allow claims to be brought within twelve years after the plaintiff’s eighteenth birthday. 2008 New Hampshire Laws Ch. 193 (S.B. 311). On September 18, 2020, the legislature amended the statute again, eliminating the restriction of the statute to plaintiffs under 18 years of age at the time of the

alleged offense, and replacing the temporal limitations provisions with the clause “may commence a personal action at any time.” 2020 New Hampshire Laws Ch. 24 (H.B. 705).

Eckerd argues that RSA 508:4-g as it is currently framed cannot be extended to apply retroactively to conduct that occurred prior to its enactment, and claims arising from conduct occurring after its enactment must be subject only to the limitations period in effect at the time of the conduct. (See Court Index # 12 at 8-10 (citing Gould v. Concord Hosp., 126 N.H. 405, 408 (1985)). Therefore, Eckerd contends, any claim arising from conduct that occurred before July 22, 2005, does not fall under the statute’s protection, and any claim arising from conduct occurring after July 22, 2005, but before September 18, 2020, is protected only to the extent provided by the statute as it existed at the time of the conduct. (See id.). Additionally, Eckerd argues that RSA 508:4-g does not apply to the plaintiff’s claims against Eckerd, because the statute only extends the limitations period for claims against the person who perpetrated the alleged sexual assault. (See id. at 10-11).

Part 1, Article 23 of the New Hampshire Constitution prohibits the retrospective application of laws. “Every statute, which takes away or impairs vested rights, acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past must be deemed a retrospective law.” Tyler Road Dev. Corp. v. Town of Londonderry, 145 N.H. 615, 616-15 (2000) (quotation omitted). “When engaging in Article 23 analysis, we distinguish new laws that affect substantive rights and liabilities from those that solely affect procedures or remedies enforcing those rights.” Maplevale Builders, LLC & a. v. Town of Danville, 165 N.H. 99, 108 (2013) (citation omitted). A “vested right” may relate to the grounds of the action or to the grounds of a defense. Id. (citing Gould, 126 N.H. at 408). Statutory provisions that reduce or enlarge the time within

which an action may be prosecuted have to do only with a remedy for existing rights. *Id.* (citing *Bourque v. Adams*, 93 N.H. 257, 259 (1945)). “The right to rely upon a statute of limitations as a defense vests, and therefore becomes a substantive right, only after the limitations period has run.” *Id.* (emphasis added); *see also Gould*, 126 N.H. at 408.

Here, the plaintiff has alleged conduct which occurred between 2004 and 2006, including, as relevant here, conduct by Eckerd staff member “Chief Ben,” which included pulling down the plaintiff’s pants, performing oral sex on him, and putting his hands on his genitals through his clothes. (Doc. 19 ¶ 12). This conduct facially meets the definition of sexual assault in RSA 632-A:4,⁴ and is therefore among the offenses covered under RSA 508:4-g. Solely at issue in determining whether RSA 508:4-g applies, then, is whether and when Eckerd’s right to rely upon the limitations defense vested, and thus became a substantive right.

To the extent that the conduct alleged by the plaintiff occurred after July 22, 2005, there is no question that it falls within the application of RSA 508:4-g, at least as the statute was framed in 2005, so that the plaintiff could raise a claim anytime up to seven years after his 18th birthday, or May of 2016. With respect to conduct alleged to have occurred before July 22, 2005, as noted above, the plaintiff had the benefit of the disabilities statute, and therefore the defendant’s right to rely upon a limitations defense could not have vested before the plaintiff’s twentieth birthday, or May of 2011. Therefore, the court determines that by any method of calculation Eckerd’s right to rely upon the limitations defense could not have vested before RSA

⁴ For example, under RSA 632-A:4, I(b) it is an offense to subject a person between the ages of 13 and 16 “to sexual contact where the age difference between the actor and the other person is 5 years or more.” Also, under RSA 632-A:4, I(c) it is an offense to engage in sexual penetration with a person between 13 and 16 years of age where the actor is more than 4 years older than the victim. Further, under RSA 632-A:4, III it is an offense to engage in “sexual contact or sexual penetration” of another person when the “actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed.” In the case’s current posture, the Court’s analysis of the various ways RSA 632-A applies to the conduct alleged by the plaintiff need not be, and is not, exhaustive.

508:4-g became law. The limitations period established in that statute therefore applies to plaintiff's claims for sexual assault.

As to the question of which limitations period applies—the seven-year period established in 2005, the twelve-year period established in 2009, or the unlimited period established in 2020—the court finds the New Hampshire Supreme Court's holding in Maplevale Builders instructive. In that case, the supreme court considered a circumstance where a trial court declined to apply an amended version of a statute—extending a statutory limitations period from twelve months to eighteen months—to conduct that occurred prior to the amendment, on grounds that to do so would be an unconstitutional retrospective application of law. See Maplevale Builders, 165 N.H. at 107-08. The supreme court rejected the trial court's reasoning, noting that, as of the effective date of the amendment to the law in question, the existing 12-month limitation period had not yet expired, and thus the defendant's right to rely upon that limitation period had not yet vested. Id. at 108. The supreme court therefore concluded that the application of the limitations period, as amended, to the defendant's conduct was not unconstitutionally retroactive. Id.

A similar circumstance exists here. As noted, the earliest date upon which Eckerd could have relied on a limitations defense not arising from RSA 508:4-g was May of 2011, but on that date RSA 508:4-g provided a limitations period lasting until 12 years after the plaintiff's 18th birthday, or May of 2021. By May of 2021, however, via the amendment to RSA 508:4-g, the legislature had extended the limitations period to “at any time.” Therefore, at no time relevant to this analysis had Eckerd's right to rely upon a limitations defense as to the plaintiff's sexual assault claims vested. Put another way, at no point during the relevant time frame did the plaintiff's sexual assault claims become untimely under RSA 508:4-g. The court thus concludes

that the unlimited limitations period provided in the 2020 amendment to RSA 508:4-g applies to all the sexual assault claims in the instant case, and this application is not unconstitutionally retroactive. See Maplevale Builders, 165 N.H. at 108.

Turning briefly to Eckerd's alternative argument, that the limitations period provided in RSA 508:4-g applies only to claims against the perpetrator of the alleged assault, Eckerd offers no New Hampshire law, nor is the Court aware of any, in support of such a proposition. (See Doc. 12 at 10-11). Instead, Eckerd cites to case law in Colorado and Rhode Island in support of the general principle that the legislatures in those states, at least, intended their analogous statutes to apply only to perpetrators. (See id. (citing Sandoval v. Archdiocese of Denver, 8 P.3d 598, 601-02 (Colo. App. 2000) and Kelly v. Marcantonio, 678 A.2d 873, 876 (R.I. 1996)). This court is not persuaded.

As with the interpretation of any statute, the court here “first look[s] to the language of the statute itself, and, if possible, construe[s] that language according to its plain and ordinary meaning.” Petition of Carrier, 165 N.H. 719, 721 (2013). The court interprets legislative intent “from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” Petition of Willeke, 169 N.H. 802, 804 (2017). The court “must give effect to all words in a statute, and presume[s] that the legislature did not enact superfluous or redundant words.” State v. Thiel, 160 N.H. 462, 465 (2010). The court also “do[es] not consider words and phrases in isolation, but rather within the context of the statute as a whole.” Carrier, 165 N.H. at 721. Moreover, the court “construe[s] all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result.” Id. The court also “interpret[s] statutory language in light of the policy or purpose sought to be advanced

by the statutory scheme.” Id. If the statutory language is ambiguous, the court can consider legislative history in conducting its analysis. See Laramie v. Stone, 160 N.H. 419, 436 (2010).

Here, the court need not look beyond the plain language of the statute, which is clear and unambiguous. By its plain terms, the statute grants a cause of action to a person “alleging to have been subjected to any offense under RSA 632-A,” and such a person “may commence a personal action at any time.” RSA 508:4-g (emphasis added). Nothing in the language chosen by the legislature specifies any particular actor or limits the scope of the term “personal action” only to actions against brought against perpetrators.⁵ See State v. Lake Winnepesaukee Resort, LLC, 159 N.H. 42, 48 (2009) (“Personal actions, which are not defined by statute, include those to recover for personal injury, legal malpractice, and contract.” (Internal citations and quotations omitted)). The legislature’s choice of the broad term “[a] person, alleging to have been subjected to any offense” anticipates both cases in which a defendant has perpetrated a sexual assault and those in which a defendant has in in some other way contributed to or condoned a sexual assault.⁶ RSA 508:4-g (emphasis added.) In short—by contrast to the Colorado and Rhode Island laws Eckerd proffers as analogues—the New Hampshire statute plainly provides for a broad application to any personal action raised at any time, and the court can construe it as limiting its application to particular defendants only by adding words to the statute the legislature did not see fit to include. This the court declines to do. See Petition of Willeke, 169 N.H. at

⁵ Contrast 9 R.I. Gen. Laws. Ann. § 9-1-51(a)(1), the law at issue in Kelly v. Marcantonio, which concerns “all claims or causes of action brought against a perpetrator defendant by any person[.]” (Emphasis added).

⁶ Contrast the version of Colo. Rev. Stat. Ann. § 13-80-103.7 in effect at the time the Colorado Supreme Court decided Sandoval v. Archdiocese of Denver. See 1993 Colo. Legis. Serv. H.B. 93-1259. That statute limited its application to “any civil action based on sexual misconduct,” which the Colorado Supreme Court interpreted to restrict the application of the law solely to claims raised against perpetrators. 8 P.3d at 601 (emphasis added). At the time the court considered it, the Colorado statute further specified that “[n]othing in this section shall be construed to extend the statutory period with respect to vicarious liability.” 1993 Colo. Legis. Serv. H.B. 93-1259.

804. Accordingly, the court finds that the instant action is not barred by the statute of limitations in RSA 508:4-g.

E. Conclusion as to Limitations

In sum, then, the Court rules as follows as respects limitations: the plaintiff's claims against Eckerd that do not involve conduct constituting an offense under RSA 632-A are untimely pursuant to RSA 508:4 and RSA 508:8; the plaintiff's claims involving conduct constituting an offense under RSA 632-A are timely filed pursuant to RSA 508:4-g.

II. Claims Analysis

A. The Complaint Does Not State Claims for Aiding and Abetting a Breach of Fiduciary Duty Or Civil Conspiracy

In Counts X and XIV, the plaintiff accuses Eckerd of: (a) aiding and abetting a breach of fiduciary duty; and (b) civil conspiracy. Both of these claims require proof that Eckerd was engaged in deliberate, concerted action with another party to violate the plaintiff's rights. See Invest Almaz v. Temple-Inland Forest Prods. Corp., 243 F.3d 57, 82-83 (1st Cir. 2001)(stating standard for aiding and abetting a breach of fiduciary duty); Jay Edwards, Inc. v. Baker, 130 N.H. 41, 47 (1987) (describing standard for civil conspiracy). Because the Complaint alleges no material facts from which such concerted action can be inferred, these two counts are DISMISSED for failure to state a claim.

i. Aiding and Abetting a Breach of Fiduciary Duty

The New Hampshire Supreme Court has not yet had occasion to recognize the tort of aiding and abetting a breach of fiduciary duty. Nonetheless, the tort is established and well-defined, as, for example, in the Restatement (Second) of Torts, § 876(b):

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . [1] knows that the other's conduct constitutes a breach

of duty and [2] gives substantial assistance or encouragement to the other so to conduct himself[.]

Courts that apply New Hampshire law predict that the New Hampshire Supreme Court will recognize this cause of action. See Invest Almaz, 243 F.3d at 82-83; Legacy Glob. Sports, LP v. St. Pierre, Slip Op. No. 218-2019-CV-198, 2020 WL 2027401, at *2 (Merrimack County Superior Court, Apr. 27, 2020); Clare v. Bank of New England, Slip. Op. No. 218-2013-CV-00687, 2013 N.H. Super LEXIS 22, at *3-4, 9 (Merrimack Count Superior Court, Nov. 26, 2013); HayJo S.A. de CV v. Sponge-Jet, Inc., No. 14-cv-196-JD, 2015 WL 9459918, at *4 (D.N.H. Dec. 23, 2015); Tamposi v. Denby, 974 F. Supp. 2d 51, 61 (D. Mass. 2013); In Re Felt Mfg. Co., Inc., 371 B.R. 589, 615 (Bankr. D.N.H. 2007); But see Gill v. Devine, Millimet & Branch, P.A., Slip Op. No 218-2012-CV-00660 (Rockingham County Superior Court, Oct. 12, 2012) (ruling that the tort of aiding and abetting a breach of fiduciary duty had not been recognized).

Assuming a claim for aiding and abetting a breach of fiduciary duty may be pursued in New Hampshire, the Complaint does not contain facts to support this cause of action. To prevail, the plaintiff would need to prove that Eckerd helped another party breach its fiduciary duty. The Complaint does not allege that Eckerd did anything to encourage or facilitate the plaintiff's alleged abuse at YDC or at any other placement.

Moreover, Eckerd cannot be found liable for aiding its own employees and agents in a breach of fiduciary duty. The cause of action for aiding and abetting a breach of fiduciary duty only exists to cover circumstances in which the defendant has no direct liability to the plaintiff as a fiduciary. That is not the case here. See, e.g., Mann v. GTCR Golder Rauner, L.L.C., 483 F. Supp. 2d 884, 916 (D. Ariz. 2007) (Under Delaware law, "a person who himself owes a fiduciary duty with respect to a transaction or course of conduct cannot be liable for aiding and abetting a

breach of that same fiduciary duty by another because the same facts that would otherwise constitute aiding and abetting would constitute a primary breach of fiduciary duty.”); In Re Amcast Indus. Corp., 365 B.R. 91, 112–13 (Bankr. S.D. Ohio 2007) (Under Ohio law “the action by its nature, . . . requires participation by a non-fiduciary defendant); In re Verestar, Inc., 343 B.R. 444, 482 (Bankr. S.D.N.Y. 2006) (“[A] claim for aiding and abetting breach of fiduciary duty can only be sustained against a non-fiduciary.”).

Accordingly, for the foregoing reasons, the Complaint does not state a claim against Eckerd for aiding and abetting a breach of fiduciary duty. The claim is thus DISMISSED.

ii. Civil Conspiracy

To prevail on a claim of civil conspiracy, a plaintiff must prove that:

(A) Two or more persons and/or entities agreed to either:

(1) pursue an unlawful objective or, alternatively,

(2) use unlawful means to accomplish a lawful or unlawful objective; and

(B) At least one of the conspirators committed an overt act in furtherance of this agreement; and

(C) The plaintiff was harmed as a proximate result of the agreement.

Jay Edwards, Inc., 130 N.H. at 47; see Univ. Sys. of N.H. v. U.S. Gypsum Co., 756 F. Supp. 640, 652 (D.N.H. 1991); Censabella v. Town of Weare, No. 16-cv-490-AJ, 2017 WL 3996173, at *3 (D.N.H. Sept. 8, 2017). “For a civil conspiracy to exist, there must be an underlying tort which the alleged conspirators agreed to commit.” Univ. Sys., 756 F. Supp. at 652. Thus, the cause of action serves to impose liability on “all who commonly plan, take part in, further by cooperation, lend aid to, or encourage the wrongdoers' acts.” Id.

The Complaint does not contain facts to support a claim for civil conspiracy. There are no material facts from which the Court may infer that Eckerd and the State or any other entity

entered into an agreement to engage in concerted action by abusing the plaintiff. No facts suggest that Eckerd ever had any conversation, let alone any agreement, with any other defendant.

Further, Eckerd cannot be liable for civil conspiracy with its own employees, because, under the intracorporate conspiracy doctrine, Eckerd and its employees are considered to be the same “person.” See, e.g., Hoefer v. Fluor Daniel, Inc., 92 F. Supp. 2d 1055, 1057 (C.D. Cal. 2000):

The intracorporate conspiracy doctrine provides that, as a matter of law, a corporation cannot conspire with its own employees or agents. [citation and footnote omitted]. The logic for the doctrine comes directly from the definition of a conspiracy. A conspiracy requires a meeting of minds. [citation omitted]. It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

see also Grider v. City of Auburn, Ala., 618 F.3d 1240, 1261 (11th Cir. 2010)(“[T]he intracorporate conspiracy doctrine holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy.”); Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505, 509 (6th Cir. 1991) (“It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.”); Tabb v. District of Columbia, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (“[A] corporation cannot conspire with its employees[.]”); HRCC, Ltd. v. Hard Rock Cafe Int’l (USA), Inc., 302 F. Supp. 3d 1319, 1325 (M.D. Fla. 2016)(“According to the intracorporate conspiracy doctrine, however, a civil conspiracy claim will not succeed where the only members of the alleged conspiracy are a corporation and/or its officers.”).

For these reasons, the claim of civil conspiracy against Eckerd is DISMISSED.

B. To the Extent Such Claims are Based on Sexual Misconduct, the Complaint States Claims for Negligence and Breach of Fiduciary Duty

In Counts VIII, XI and XII, the plaintiff seeks monetary damages for breach of fiduciary duty and negligence. These claims require proof of (a) a duty of care, (b) breach, and (c) resulting damages. See W. Prosser, The Law of Torts, § 30 (5th ed. 1985). The plaintiff does not rely on the doctrine of respondeat superior. Therefore, he must prove not only tortious behavior by individual staff members, but also legal fault (e.g., breach of fiduciary duty and/or negligence) on the part of Eckerd itself.

An institutional defendant's breach of a standard of care can result from omission as well as commission. It can take the form of an express policy, or an informal practice. Alternatively, it may stem from an inexcusable lapse in hiring qualified personnel, or training or supervising staff. It may be the result of insufficient monitoring of the workplace. In short, a breach may occur in myriad ways.

i. Negligence

There is no question that Eckerd had a common law duty to use reasonable care to safeguard its residents from, as relevant here, (a) unlawful sexual or physical abuse by staff, and (b) the negligent infliction of extreme emotional distress by sexual or other abuse. In general, an institution that takes custody of children, in a manner that deprives the children of their normal opportunities for protection, has a common law duty to use reasonable care to safeguard the children from harm while they are within the institution's care. See, e.g., Marquay v. Eno, 139 N.H. 708, 717 (1995); Tveter v. Derry Coop. Sch. Dist., SAU # 10, Slip Op. 16-CV-329, 2018 WL 3520827, at *9 (D.N.H. July 20, 2018); Restatement (Second) of Torts § 314A.

The Complaint alleges facts which, if proven, would support a finding that Eckerd breached this standard of care with respect to the plaintiff's sexual assault claims. Specifically, the plaintiff alleges that "Chief Ben," a staff member at the E-Toh-Anee facility, groomed him with alcohol and cigarettes, and at least once pulled down the plaintiff's pants and performed oral sex on him, while on the premises of the Eckerd facility. In a second incident, the same "Chief Ben" assaulted the plaintiff while he was performing his official function, bringing the plaintiff back from a medical appointment.

At this juncture the plaintiff is entitled to the reasonable inference that if the abuse occurred as alleged, then supervisory staff (a) knew of the abuse, or (b) were willfully blind to the abuse, or (c) failed to reasonably monitor the facility and hire, train, and supervise staff. Any of these possibilities is enough to prove a negligent breach of the common law duty to use reasonable care. In fairness, the Complaint alleges negligence in broad strokes. But broad strokes are sufficient in this posture. A plaintiff may file a lawsuit without knowing every fact that will eventually be introduced at trial to prove negligence.

The plaintiff has also alleged the third element of a negligence claim, e.g., resulting damages. Thus, the Complaint adequately alleges negligence and negligent hiring, retention, supervision and training.

ii. Breach of Fiduciary Duty

The Complaint alleges facts which, if proven, could support a finding of a fiduciary relationship between Eckerd and the plaintiff. Under New Hampshire law, the existence of a fiduciary relationship is determined by substance rather than formality. See, e.g., Schneider v. Plymouth State College, 144 N.H. 458, 462 (1999):

A fiduciary relation does not depend on some technical relation created by, or defined in, law. It may exist under a variety of circumstances, and does exist in

cases where there has been a special confidence reposed in one who, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence.

(quoting Lash v. Cheshire County Sav. Bank, Inc., 124 N.H. 435, 439 (1984).

Thus, for example in Schneider, the New Hampshire Supreme court held that a college has a fiduciary duty to its students to protect them against sexual harassment by professors. The supreme court reasoned that an enrolled student becomes dependent on the college for their education and the college assumes a duty to act in good faith, and with due regard to the student's interest, with respect to prevention of sexual assaults by faculty. 144 N.H. at 462-64; see also Roe v. Hotchkiss Sch., 385 F. Supp. 3d 165, 173 (D. Conn. 2019) (under Connecticut law a boarding school may have a fiduciary duty to prevent the sexual abuse of its students); Wartluft v. Milton Hershey Sch. & Sch. Trust, 400 F. Supp. 3d 91, 112 (M.D. Pa. 2019) (under Pennsylvania law a therapeutic residential school had a fiduciary obligation to its students).⁷

In this case, the plaintiff was made utterly dependent on Eckerd to provide him with a stable and wholesome home. The plaintiff was an underprivileged, at-risk child who was unable to care for himself and who was deprived of parental supervision and made wholly dependent on Eckerd for shelter, nutrition, moral guidance, education and personal safety. The plaintiff thus reposed his trust in Eckerd to prevent the abuses he alleges staff inflicted against him. A jury could thus find that Eckerd had a fiduciary obligation to act in good faith and with due regard for the plaintiff's interests as to these harms.

⁷ But see Brodeur v. Claremont Sch. Dist., 626 F. Supp. 2d 195, 219 n 24 (D.N.H. 2009) ("New Hampshire does not appear to treat the relationship between a public secondary school and its students as fiduciary in nature, characterizing it instead as a 'special relationship' that gives rise to a duty enforceable in negligence (and treating the school as an ordinary employer subject to theories of negligent hiring or retention).") (citation omitted); Doe # 2 v. Legion of Christ, Inc., 588 F. Supp. 3d 240, 246 (D. Conn. 2022) ("[T]he Court agrees with other courts that have concluded that given the opportunity the New Hampshire Supreme Court would not allow a breach of fiduciary duty claim against a secondary school."); Franchi v. New Hampton School, 656 F. Supp. 2d 252, 261-64 (D.N.H. 2009) (noting that the New Hampshire Supreme Court has not held that a secondary school owes fiduciary duties to its students); Tveter, 2018 WL 3520827, at *10.

It is not clear to the court how this fiduciary standard differs from the common law duty of care in this context. Regardless, the fiduciary standard of care certainly requires at least the same degree of prudence and care as the common law standard. Therefore, just as the court has found that the Complaint states a claim for negligence (i.e., alleges duty, breach, and resulting damages), the court also finds that the Complaint states a claim for breach of fiduciary duty by Eckerd.

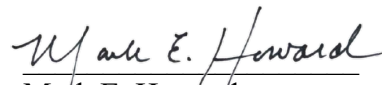
CONCLUSION

Consistent with the foregoing, Eckerd's motion to dismiss is GRANTED in part and DENIED in part. Specifically:

- Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy) are DISMISSED for failure to state a claim;
- Consistent with this order, Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention) and XII (negligence) are DISMISSED as to all claims not alleging sexual misconduct for lack of timeliness. Eckerd's motion is DENIED as to the plaintiff's claims arising from sexual misconduct, and Counts VIII, XI and XII may proceed as to those claims.

Date: February 27, 2025

So Ordered.


Mark E. Howard
Chief Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/27/2025

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

JOHN DOE #269

v.

STATE OF NEW HAMPSHIRE, et al.
217-2022-CV-176

DAVID MEEHAN v. STATE OF NEW HAMPSHIRE, et al.
(Consolidated YDC/YDSU Cases)
217-2020-CV-26

ORDER

The matter before the court is Defendant Mount Prospect Academy's ("Mount Prospect") Motion to Dismiss plaintiff John Doe #269's claims against it. (Court Index ## 15 (Mot. Dismiss); 17 (Mem. Law)). For the reasons set forth below the motion is GRANTED in part and DENIED in part. Specifically, the motion is GRANTED with respect to Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy), which are DISMISSED for failure to state a claim upon which relief may be granted. The motion is DENIED for the reasons stated below, with respect to Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention), and XII (negligence).¹

DEFINING THE COMPLAINT

The Complaint in this case comprises the following three documents:

¹ The remaining counts do not allege any claims against Mount Prospect. Counts I through VII (set forth in the Master Complaint) and Counts IX and XIII (set forth in the Short Form Complaint) assert claims against the State Defendants only.

A. A 50-page “Amended Master Complaint,” filed in Meehan v. State, 217-2020-CV-26 on July 8, 2022. (Meehan Court Index # 70). The Amended Master Complaint does not mention John Doe #269 or any of the facts about his life. Likewise, it does not contain any reference to Mount Prospect or any other contractor defendant.

B. A 39-page “Amended Short Form Complaint” filed in John Doe #269 v. State, 217-2022-CV-176. (Court Index # 7).² The Short Form Complaint contains allegations specific to the plaintiff and Mount Prospect. The Short Form Complaint contains an Addendum, as well as a separately filed Sealed Supplement that contains John Doe #269’s true name and date of birth.

C. A 12-page Declaration, signed by the plaintiff, filed as Exhibit A to the Objection to the Motion to Dismiss in John Doe #269 v. State, 217-2022-CV-176 (Court Index # 17 Ex. A (Redacted); see Court Index # 18 (Unredacted)) (cited hereinafter as “Declaration”). The Declaration contains the plaintiff’s factual responses to Mount Prospect’s affirmative limitations defense.

These 101 pages will be referred to collectively as “the Complaint.”

PROCEDURAL HISTORY AND RELEVANT DATES

The plaintiff was born in May 1993.³ He turned 20 in May 2013. The Complaint in this case was filed on January 17, 2022, when the plaintiff was 29 years old. As relevant to the instant motion, the plaintiff claims that he was subjected to physical, psychological and sexual abuse at a residential juvenile facility operated by Mount Prospect. The plaintiff alleges that the abuse

² To the extent that Mount Prospect argues that the plaintiff’s “responding Objection spins a whole new and respectfully dubious claim of ‘sexual assault,’” (see Court Index # 14 ¶ at 3), the court notes that ¶ 10 of the plaintiff’s Short Form Complaint (Court Index # 7), filed nine months prior to Mount Prospect’s motion to dismiss, alleges multiple instances of sexual assault by a Mount Prospect staff member named Patsy.

³ The plaintiff’s precise date of birth is provided in the Sealed Supplement to the Short Form Complaint (Court Index # 3). The court recites only the month and year of birth to protect the plaintiff’s identity. The day of the month is not material to any determination in this Order.

occurred from approximately 2007 to 2008, when he was 14.⁴ The plaintiff does not allege that Mount Prospect engaged in any tortious behavior after that time.

Thus, the plaintiff initially filed suit approximately 14 years after the last possible date of abuse, and roughly nine years after he turned 20.

FACTUAL BACKGROUND

The following facts are taken from the Complaint.

A. Events That Occurred Prior to Placement at Mount Prospect

According to the Declaration, the plaintiff immigrated to the United States in 2004 when he was ten or eleven years old. He and his family were fleeing political violence in Liberia, where his father had opposed the Liberian government and was a target for assassination. His family relocated to Manchester, where he began an ESL program at Hillside Middle School. Because he could not speak, read, or write in English, the plaintiff felt uncomfortable and embarrassed when called on by teachers. He was bullied by other children because he was African and could not speak English proficiently, and because he did not understand to wear deodorant. As a result of this bullying, he began fighting with other students and skipping school. The State of New Hampshire became involved, giving him a counselor who was also from Africa. This relationship did not work, however, and the State thereafter placed the plaintiff at Orion House (“Orion”) when he was 14 years old. The plaintiff was at Orion for approximately three to four weeks, where he was physically and verbally abused and denied access to education. Because of this abuse, the plaintiff ran away from Orion. He was soon caught, taken into police custody, and eventually sent to Mount Prospect and then to Sununu Youth Services Center (“SYSC”).

⁴ Specifically, the plaintiff alleges that he was placed at Mount Prospect’s facility when he was 14 and placed at Sununu Youth Services Center from approximately 2008 to 2011 (Declaration ¶¶ 9, 24; Amended Complaint ¶ 8). The court infers that he was placed in Mount Prospect no earlier than 2007 and left no later than 2008. (See Declaration ¶ 9, 24; Amended Complaint ¶ 8).

B. Events at Mount Prospect's Facility

The plaintiff alleges he was physically and sexually abused at Mount Prospect. Specifically, on four or five separate occasions when the plaintiff refused to participate in programs or activities, the staff would call a “response team” to restrain the plaintiff. (Declaration ¶ 10). The response team would escalate the situation, jumping on the plaintiff, painfully bending or twisting his arms and hands into painful positions, and kneeling on his head, neck, or back to pin him to the ground. After pinning the plaintiff to the ground, the response team would forcibly take him to a windowless room with only a restraint chair for furniture. The response team would make the plaintiff remove all of his clothing; however, if he refused, they would strip him down themselves. Once the plaintiff was naked, the response team would strap him into the restraint chair and leave him for hours until he had “calmed down.” (Id. ¶ 11).

If an incident occurred that resulted in the plaintiff's being taken into the restraint room, the following day he was not permitted to attend school, but instead was put back into the restraint room with his schoolwork. Because he still could not read or write well in English, he was unable to complete his assignments. He was therefore required to stay in the windowless room until the staff felt he could comply with the rules of the facility. He would sometimes be left in the room for weeks at a time.

Within weeks of the plaintiff's arrival at Mount Prospect, a staff member named Patsy began sexually assaulting him. Patsy was in her thirties to forties and had a burn on her arm from a fire. Patsy was assigned to the unit where the plaintiff was housed. After school (when the plaintiff was allowed to attend), she performed activities with him, including playing card games like Magic the Gathering and Dungeons & Dragons. Patsy began flirting with the plaintiff, which progressed to

kissing him, which further escalated to her grabbing and touching his private parts. He remembers this happening on the couch in his unit.

Patsy offered to “teach” the plaintiff how to do “manly” things. (Declaration ¶ 15). On one occasion, Patsy removed her shirt and gave the plaintiff instructions on what to do to her. Patsy performed oral sex on the plaintiff, and they would have intercourse. He remembers this happening on the roof adjoining two buildings, accessed through the bathroom in his unit, where they could not be seen.

Patsy told the plaintiff not to tell anyone what was going on, and said that even if he did tell someone, no one would believe him. The plaintiff did eventually tell a counselor or coordinator named John or Jim. When the plaintiff told this counselor/coordinator, he did not believe the plaintiff and thought the plaintiff was lying. He told the plaintiff that he would “check into it,” but the plaintiff was not moved from his unit, and Patsy continued to sexually assault him. (*Id.* ¶ 16).

On a weekend trip home, the plaintiff told his mother that Patsy was touching him inappropriately and making him do sexual things. His mother called the Manchester police who came to their home to take a statement from him. The officer told the plaintiff that he would put the plaintiff’s report in his notes, but claimed he could not do anything because Mount Prospect was outside of his jurisdiction. When the weekend was over, the plaintiff’s mother also told the Mount Prospect staff member who picked him up to drive him back to the facility. The plaintiff believed this staff member’s name was Ashley and that she was in her mid-thirties. Ashley told the plaintiff’s mother that she would look into what the plaintiff had reported.

On the ride back to the facility, Ashley asked the plaintiff, “did that really happen, what your mom said?” (*Id.* ¶ 19). The plaintiff said that it had and that he no longer wanted to be at Mount Prospect. Ashley told the plaintiff that he would be deported back to Liberia if he kept “bringing

this up.” (Id. ¶ 19). Although the plaintiff’s mother wanted to report it to the Plymouth authorities where Mount Prospect was located, the plaintiff told his mother that he did not want to talk about the incident anymore because he was afraid of being deported.

As far as the plaintiff understood, Ashley did not report Patsy. The plaintiff stayed assigned to the same unit and Patsy continued to work there. Patsy confronted the plaintiff for being distant when he returned from the weekend at home which made him very uncomfortable. The plaintiff then ran away from Mount Prospect and tried to return home. He was soon caught by police and returned to Mount Prospect. He was again put into the same unit with Patsy.

Patsy had sex with the plaintiff three or four more times after he tried to run away. She assaulted him in the shower, giving him chewing tobacco afterwards to “make [him] feel comfortable.” (Declaration ¶ 22).

The plaintiff—after reporting to the counselor/coordinator, who did not believe him, to his mother, and to the Manchester police officer who could allegedly not help him despite taking a police report—did not feel that reporting to anyone else would be useful. Also, after Ashley’s threat, the plaintiff was afraid he would be deported if he reported it to the police. The plaintiff therefore decided to run away from Mount Prospect again. He was soon found by police near the Plymouth State campus. After he was found, he was placed at SYSC.

C. Events Occurring After the Plaintiff Left Mount Prospect

The plaintiff was at SYSC for approximately 2-½ years, where he was also physically and psychologically abused by multiple staff members, and sexually assaulted by one staff member who gave the plaintiff a sexually transmitted disease. Since leaving his placements at Orion, Mount Prospect and the SYSC, the plaintiff developed PTSD, panic attacks, and anxiety. He prefers to be alone instead of around other people and is socially awkward. He has trust issues with women and

cannot seem “to have a successful relationship with a woman.” (Decl. ¶ 37). He is unable to connect with women and is emotionally detached.

D. Lack of Discovery

While the plaintiff now realizes that the State and Mount Prospect had an obligation to keep him safe, as a child he did not understand that physical abuse and confinement were not allowed or permissible and could not appreciate that the State and Mount Prospect were responsible for it. Corporal punishment was normal in his home, where his mother would slap him or hit him with a belt. It was not until the plaintiff went to prison, where he was exposed to fellow inmates who had been convicted and incarcerated for having sexual relations with children who were under 18, that he understood that the sexual acts against him at Mount Prospect and SYSC was criminal behavior. Further, the plaintiff did not come forward with any of the abuse because, after the threats made by Ashley, he feared deportation if the police were to become involved in an investigation. In or around 2019 or 2020, the plaintiff’s mother told him that he could not be deported because she had become a U.S. citizen prior to the plaintiff’s 18th birthday. This made him feel safe to come forward. When the plaintiff spoke with an attorney, he began to understand that the State of New Hampshire and its contracting companies, including Mount Prospect, bore responsibility for the acts of their individual employees.

ANALYSIS

Mount Prospect moves to dismiss on two broad grounds: that the plaintiff’s claims are barred as untimely by operation of the statute of limitations and the failure of all available tolling provisions; and that the plaintiff fails to state a claim for which relief may be granted. The Court will address each of these issues separately.

I. Limitations Analysis

The defendant argues, inter alia, that the plaintiff's claims are time-barred. The statute of limitations is an affirmative defense. Perez v. Pike Indus., Inc., 153 N.H. 158, 160 (2005); Glines v. Bruk, 140 N.H. 180, 181 (1995). A defendant has the obligation to allege and prove that the complaint was brought after the limitations period expired. Perez, 153 N.H. at 160. If the defendant meets this burden, then the plaintiff has the burden to prove that the claim is timely by virtue of the discovery rule, fraudulent concealment, equitable tolling, or some other doctrine. The plaintiff here alleges against Mount Prospect instances of physical, psychological, and sexual abuse spanning approximately one year, occurring prior to his reaching the age of 18. By their nature, these claims separately implicate three statutes pertaining to limitations: the general statute of limitations for personal actions (RSA 508:4); the special tolling provision provided in the "disabilities statute" (RSA 508:8); and the special tolling provision applicable to sexual assault and related offenses (RSA 508:4-g). The court will consider the application of each of these statutes in turn.

A. Actions Based on Sexual Assault and Related Offenses: RSA 508:4-g

Because the Complaint raises specific claims of sexual assault, and because RSA 508:4-g has specific application only to those claims, the court will address those claims first. The plaintiff specifically alleges that he was sexually assaulted by Mount Prospect's staff member, Patsy, while he was in Mount Prospect's care. These claims implicate the special tolling provisions of RSA 508:4-g, which currently provides that

[a] person, alleging to have been subjected to any offense under RSA 632-A or an offense under RSA 639-2 may commence a personal action at any time.

RSA 508:4-g (eff. 9/18/2020).

In its response to the plaintiff's objection, (see Court Index # 14 at 3), Mount Prospect argues that, to the extent the statute does apply to the plaintiff's claims, only that version of the statute in effect at the time the cause of action arose may be applicable, and the statute cannot be applied retroactively to claims that arose prior to the first effective date of the statute. (See Court Index # 14 at 3.

Relevant to Mount Prospect's argument is the history of RSA 508:4-g. The legislature first enacted RSA 508:4-g, effective July 22, 2005, and at that time it applied only to persons "alleging to have been subjected to a [sexual offense] who [were] under 18 years of age when the alleged offense occurred," and it allowed such claims to be brought within the later of seven years after the plaintiff's 18th birthday or three years after the plaintiff knew or should have known of their injury and its causal relationship to a defendant. 2005 New Hampshire Laws Ch. 283 (S.B. 75). Four years later, effective January 1, 2009, the legislature amended the statute in relevant part to allow claims to be brought within twelve years after the plaintiff's eighteenth birthday. 2008 New Hampshire Laws Ch. 193 (S.B. 311). More than a decade later, effective September 18, 2020, the legislature amended the statute again, eliminating the restriction of the statute to plaintiffs under 18 years of age at the time of the alleged offense, and replacing the temporal limitations provisions with the clause "may commence a personal action at any time." 2020 New Hampshire Laws Ch. 24 (H.B. 705).

Mount Prospect argues that RSA 508:4-g as it is currently framed cannot be extended to apply retroactively to conduct that occurred prior to its enactment, and claims arising from conduct occurring after its enactment must be subject only to the limitations period in effect at the time of the conduct. (See Court Index # 14 at 3 (citing Gould v. Concord Hosp., 126 N.H. 405, 408 (1985)). Therefore, Mount Prospect contends, any claim arising from conduct that occurred before

July 22, 2005, does not fall under the statute’s protection, and any claim arising from conduct occurring after July 22, 2005, but before September 18, 2020, is protected only to the extent provided by the statute as it existed at the time of the conduct. (See id.).

Part 1, Article 23 of the New Hampshire Constitution prohibits the retrospective application of laws. “Every statute, which takes away or impairs vested rights, acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past must be deemed a retrospective law.” Tyler Road Dev. Corp. v. Town of Londonderry, 145 N.H. 615, 616-15 (2000) (quotation omitted). “When engaging in Article 23 analysis, we distinguish new laws that affect substantive rights and liabilities from those that solely affect procedures or remedies enforcing those rights.” Maplevale Builders, LLC & a. v. Town of Danville, 165 N.H. 99, 108 (2013) (citation omitted). A “vested right” may relate to the grounds of the action or to the grounds of a defense. Id. (citing Gould, 126 N.H. at 408). Statutory provisions that reduce or enlarge the time within which an action may be prosecuted have to do only with a remedy for existing rights. Id. (citing Bourque v. Adams, 93 N.H. 257, 259 (1945)). “The right to rely upon a statute of limitations as a defense vests, and therefore becomes a substantive right, only after the limitations period has run.” Id. (emphasis added); see also Gould, 126 N.H. at 408.

Here, the plaintiff has alleged conduct which occurred in approximately 2008, including, as relevant here, conduct by Patsy which involved her touching the plaintiff’s private parts, performing oral sex on him, and having intercourse with him. (Doc. 19 ¶ 12). This conduct facially meets the definition of sexual assault in RSA 632-A:4,⁵ and is therefore among the offenses covered under

⁵ For example, RSA 632-A:4, I(b) makes it a crime to subject a person between the ages of 13 and 16 “to sexual contact where the age difference between the actor and the other person is 5 years or more.” RSA 632-A:4, I(c) makes it a crime to engage in sexual penetration with a person between 13 and 16 years of age where the actor is more than 4 years older than the victim. RSA 632-A:4, III criminalizes engaging in “sexual contact or sexual penetration” of another

RSA 508:4-g. Solely at issue in determining whether RSA 508:4-g applies, then, is whether and when Mount Prospect’s right to rely upon the limitations defense vested, and thus became a substantive right.

To the extent that the conduct alleged by the plaintiff occurred after July 22, 2005, there is no question that it falls within the application of RSA 508:4-g, at least as the statute was framed in 2005, so that the plaintiff could raise a claim anytime up to seven years after his 18th birthday, or May 2018. The 2009 amendment, occurring prior to May 2018 when the limitations defense could have vested under the 2005 amendment, further extended the statute of limitations until 12 years after the plaintiff’s 18th birthday, or until May 2023. Therefore, the court determines Mount Prospect’s right to rely upon the limitations defense could not have vested before RSA 508:4-g became law. The limitations period established in that statute therefore applies to plaintiff’s claims for sexual assault.

As to the question of which limitations period applies—the seven-year period established in 2005, the twelve-year period established in 2009, or the unlimited period established in 2020—the court finds the New Hampshire Supreme Court’s holding in Maplevale Builders instructive. In that case, the supreme court considered a circumstance where a trial court declined to apply an amended version of a statute—extending a statutory limitations period from twelve months to eighteen months—to conduct that occurred prior to the amendment, on grounds that to do so would be an unconstitutional retrospective application of law. See Maplevale Builders, 165 N.H. at 107-08. The supreme court rejected the trial court’s reasoning, noting that, as of the effective date of the amendment to the law in question, the existing 12-month limitation period had not yet expired, and

person when the “actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed.” In the case’s current posture, the court’s analysis of the various ways RSA 632-A applies to the conduct alleged by the plaintiff need not be, and is not, exhaustive.

thus the defendant's right to rely upon that limitation period had not yet vested. Id. at 108. The supreme court therefore concluded that the application of the limitations period, as amended, to the defendant's conduct was not unconstitutionally retroactive. Id.

A similar circumstance exists here. As noted, the earliest date upon which Mount Prospect could have relied on a limitations defense not arising from the current version of RSA 508:4-g was May 2018, but on that date, RSA 508:4-g provided a limitations period lasting until 12 years after the plaintiff's 18th birthday, or May 2023. When the plaintiff filed this action in January 2022, by the amended terms of RSA 508:4-g, the legislature had extended the limitations period to "at any time." Therefore, at no time relevant to this analysis had Mount Prospect's right to rely upon a limitations defense as to the plaintiff's sexual assault claims vested. Put another way, at no point during the relevant time frame did the plaintiff's sexual assault claims become untimely under RSA 508:4-g. The court thus concludes that the unlimited limitations period provided in the 2020 amendment to RSA 508:4-g applies to all the sexual assault claims in the instant case, and this application is not unconstitutionally retroactive. See Maplevale Builders, 165 N.H. at 108. Accordingly, the sexual assault claims are not time-barred.

The plaintiff's remaining claims are all subject to the ordinary limitations period that applies to all personal actions, and the court therefore now turns to the operation of RSA chapter 508.

B. The Disabilities Statute: RSA 508:8

The court first considers RSA 508:8, the so-called "disabilities statute." This statute provides that "an infant or mentally incompetent person may bring a personal action within 2 years after such disability is removed." RSA 508:8. In Norton v. Patten, 125 N.H. 413 (1984), the New Hampshire Supreme Court construed the term "infant" to mean a person who has not yet reached the statutory age of majority, as defined in RSA 21-B:1. The age of majority is eighteen. Thus, as

construed by Norton, RSA 508:8 extends the limitations period for minors until their twentieth birthday.

As noted above, the plaintiff turned twenty in 2013, approximately nine years before he filed the instant case. Accordingly, the instant case was not filed within the limitations period established by RSA 508:8. RSA 508:8 does not contain its own discovery rule.

C. The General Statute of Limitations for Personal Actions: RSA 508:4

RSA 508:4 provides the statute of limitations for all personal actions. Under this statute:

[A]ll personal actions . . . may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

The last “act or omission complained of” occurred no later than December 2008, the year that the plaintiff left Mount Prospect. The instant case was thus brought more than 14 years after the last “act or omission complained of.” Mount Prospect has therefore met its burden of showing that the instant case was filed more than three years after the conduct at issue.

This shifts the burden to the plaintiff to demonstrate grounds for the application of: (a) the discovery rule; (b) equitable tolling; (c) the doctrine of fraudulent concealment; or (d) some other doctrine extending the limitations period. Perez, 153 N.H. at 160. Consistent with the standard of review for motions to dismiss, the court accepts all of the plaintiff’s well-pled facts and makes all rational inferences in the plaintiff’s favor.

The court’s task is to determine only whether the plaintiff has alleged facts which, if proven, might lengthen the limitations period to make this case timely. To be clear, if the plaintiff alleges sufficient facts to show that discovery is necessary to make this determination, the motion to

dismiss on limitations grounds must be denied and the issue preserved for summary judgment on a more complete record. However, if discovery would be futile because the Complaint itself fails even to allege grounds to apply the discovery rule or another tolling doctrine, the motion to dismiss will be granted.

(i) The Discovery Rule

It is well-settled that the “purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party.” Petition of N.H. Div. For Children, Youth & Families, 173 N.H. 613, 618 (2020). The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run:

(1) a plaintiff must know or reasonably should have known that she has been injured; and (2) a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the defendant.

Lamprey v. Britton Constr., Inc., 163 N.H. 252, 257 (2012); see also Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 713 (2010); Perez, 153 N.H. at 160; Big League Entm’t, Inc. v. Brox Indus., Inc., 149 N.H. 480, 485 (2003).

The discovery rule does not reward ignorance of the law. The statute of limitations is not tolled due to a plaintiff’s failure to acknowledge or otherwise understand their potential claims. See Sullyville, LLC v. Town of Carroll, Slip Op. No. 2019-0240, 2021 WL 1310832, at *7 (N.H. Apr. 8, 2021) (non-precedential decision stating that “[t]he discovery rule does not toll the statute of limitations until a plaintiff discerns the legal theory by which his or her case will proceed; rather, it tolls the statute of limitations only when the injury and its causal relationship to the defendant’s act or omission remain unknown to the plaintiff.”); Ouellette v. Beaupre, 977 F.3d 127, 138 (1st Cir. 2020) (applying federal law and holding that “a plaintiff, once armed with the knowledge of his or

her injury and its probable cause, cannot plead ignorance of the law to delay accrual.”); Maggi v. Grafton Cty. Dep’t of Corrs., 633 F. Supp. 3d 508, 516 (D.N.H. 2022) (applying RSA 508:4 and holding that “even if the court were to assume the truth of [plaintiff’s] assertions about his lack of access to legal resources, that would not save his claims. His claims accrued on the date he should have reasonably known he was injured, not on the date he first learned he had a legal cause of action.”) (vacated and remanded on other grounds by Maggi v. Grafton Cty. Dep’t Corrs., No 23-1002 2024 WL 3384813 (1st Cir. July 9, 2024)); Miller v. Pac. Shore Funding, 224 F. Supp. 2d 977, 986–87 (D. Md. 2004) (“Knowledge of facts, however, not actual knowledge of their legal significance, starts the statute of limitations running. . . .The discovery rule, in other words, applies to discovery of facts, not to discovery of law. Knowledge of the law is presumed.”); Marcum v. Columbia Gas Transmission, LLC, 549 F. Supp. 3d 408, 421, (E.D. Pa. 2021) (“Plaintiffs’ ignorance of a legal cause of action does not, in itself, require application of the discovery rule.”). In this case, the plaintiff proffers why he may have not discovered the law governing his claims concerning the physical and psychological abuse at Mount Prospect, specifically that corporal punishment was not out of the ordinary in his home. However, the plaintiff’s failure to bring his claims within the applicable time period due to his unawareness of the law is not grounds to apply the discovery rule.

For discovery rule purposes, a plaintiff becomes aware of an injury as soon as he can reasonably discern that he has suffered “some harm” caused by a defendant’s conduct. Beane, 160 N.H. at 713; see also Balzotti Glob. Grp., LLC v. Shepherds Hill Proponents, LLC, 173 N.H. 314, 321 (2020); Furbush v. McKittrick, 149 N.H. 426, 431 (2003) (“The [discovery] rule is not intended to toll the statute of limitations until the full extent of the plaintiff’s injury has manifested itself.”). Thus, a latent injury will toll the limitations period, while a patent injury will not, even if the long-

term consequences of the patent injury cannot be known. See Furbush, 149 N.H. at 431; see generally Clay v. Kuhl, 727 N.E.2d 217, 222 (Ill. 2000) (applying Illinois law): (“The plaintiff contends, however, that her injuries were latent to some extent and did not fully manifest themselves until years after the abuse occurred. We do not believe that the plaintiff’s alleged failure to fully discover the nature of her injuries is sufficient to delay the running of the limitations period. There is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations.”); see also Stephens v. Clash, 796 F.3d 281, 288 (3d Cir. 2015) (“A plaintiff’s ignorance regarding the full extent of his injury is irrelevant to the discovery rule’s application, so long as the plaintiff discovers or should have discovered that he was injured.”).

In Rowe v. John Deere, 130 N.H.18 (1987), the plaintiff was injured when he struck his head while using machinery manufactured by the defendant. Immediately after the accident, the plaintiff was diagnosed with a depressed skull fracture. The plaintiff recovered quickly. Six years later he began to suffer grand mal seizures, purportedly as a result of the accident. The supreme court held that the plaintiff had discovered his injury at the time of the accident, even though the initial measure of damages was “nominal” compared with the potential damages for the later occurring harm. Id. at 21. Thus, a plaintiff is likely to immediately discover an injury caused by a sudden, traumatic, violent event, and an injury which may later arise from the initial injury will not toll the statute of limitations. See, e.g., Hollander v. Brown, 457 F.3d 688, 692 (7th Cir. 2006) (applying Illinois law):

[C]ourts distinguish between injuries caused by sudden, traumatic events and those that have a late or insidious onset. For limitations purposes, a sudden, traumatic event is one that, because of its force or violence, permits the law to presume that the event immediately placed the plaintiff on notice of her injury and a right of action. When a plaintiff suffers this type of injury, her cause of action accrues on the date of the traumatic event, and the limitations period does not begin anew simply because a

latent condition later may arise from the same occurrence. The rationale is that the nature and circumstances surrounding the traumatic event are such that the injured party is thereby put on notice that actionable conduct might be involved.

(internal citations and quotation marks omitted).

Here, the plaintiff claims that he was injured as a result of Mount Prospect's failure to adequately oversee its staff with respect to hiring, training, supervision, and promulgation of policies. Thus, the "act or omission complained of," RSA 508:4, is the breach of duty by Mount Prospect itself. According to the Complaint, that breach led to multiple physical assaults by staff members, being detained in the restraint room, and multiple sexual assaults by Patsy. The incidents of sexual, physical, and psychological abuse the plaintiff describes constitute injuries that are sudden, traumatic, violent, painful, or extremely unpleasant. There is nothing subtle or latent about these alleged events. The plaintiff acknowledges the physical pain he experienced at the hands of the response team. The plaintiff also told multiple staff members at Mount Prospect, his mother, and the Manchester Police about Patsy's actions. That he also tried to run away multiple times to escape the conditions at Mount Prospect further demonstrates his knowledge of his injuries. The plaintiff therefore necessarily knew of these assaults at the time they happened.

The plaintiff may have been unaware of the long-term psychological and emotional effects of the treatment he says he endured. But those harms were nonetheless caused by the same "act or omission complained of," RSA 508:4, i.e., Mount Prospect's alleged lack of care in hiring, training and supervising staff, and promulgating policies. Thus, under settled New Hampshire law, accepting all the well-pled facts in the Complaint, the court must find that the plaintiff was aware that he had been injured as a result of Mount Prospect's failure to control its staff because the plaintiff knew that he had been assaulted, sexually assaulted, and physically restrained on multiple occasions.

Under the discovery rule, the limitations period in this case did not begin to run until the plaintiff either (a) discovered, or (b) should have discovered through the exercise of reasonable diligence, that Mount Prospect's breach of duty was a proximate cause of his injury. See Troy v. Bishop Guertin High Sch., 176 N.H. 131, 134 (2023) (citing RSA 508:4). Knowledge of Mount Prospect's causal role cannot be automatically inferred from the fact that the plaintiff knew that his injury was caused by Mount Prospect's employees, acting overtly under color of their authority, on Mount Prospect's premises. See id. at 138 ("We decline to establish a per se rule that the plaintiff's knowledge of the abuser's employer is alone sufficient to trigger the application of the discovery rule. This inquiry presents a question of fact."). However, "[a] plaintiff need not be certain of this causal connection; the possibility that it existed will suffice to obviate the protections of the discovery rule." Id. at 137 (quoting Beane, 160 N.H. at 713); see also Balzotti, 173 N.H. at 321; Lamprey, 163 N.H. at 257; Pichowicz v. Watson Ins. Agency, Inc., 146 N.H. 166, 168 (2001). "[T]he discovery rule employs an objective standard" to determine whether, through the exercise of reasonable diligence, a plaintiff should have discovered sufficient evidence of the defendant's role in causing his injury." Troy, 176 N.H. at 137.

In this case, the same alleged facts that establish the plaintiff's knowledge of harm also demonstrate that the plaintiff knew or should have known Mount Prospect's breach of duty was a proximate cause of his alleged injury. With respect to the physical assaults, the plaintiff does not complain of isolated incidents, committed in secret, by a rogue staff member of a large institution. Rather, the plaintiff claims frequent assaults, involving multiple staff members of the response team, committed openly and in view of both other residents and other staff members. Some of these incidents took place in an atmosphere in which the staff as a whole would witness the plaintiff being forced into the restraint room. If the allegations in the Complaint are credited, as they must be at

this juncture, then at the very least Mount Prospect failed to supervise its staff and monitor its facility and thereby breached both its fiduciary obligations to the plaintiff and the common law duty of reasonable care.

Mount Prospect's role in causing the plaintiff's injury is not inferred from the mere fact that the plaintiff's assailants received paychecks and a W2 from Mount Prospect. Compare the facts of this case to those in Troy, which involved two acts of sexual assault, committed in private, by a high school teacher against a female student. Troy, 176 N.H. at 133-35. Unbeknownst to the plaintiff in Troy, the school had hired the teacher despite knowing of his previous conviction for unlawful sexual contact with a different female high school student at a different school that was owned and operated by the same religious order. Id. at 133-34. The school did not alert students or parents to the teacher's status as a sex offender who preyed on a similar victim. Id. It took no action to limit or monitor the teacher's contact with students. Id. It would be hard to imagine how the plaintiff in Troy could have known from the abuse she endured that the school (and its owner) shouldered any of the blame for the covert criminal acts of a lone employee.

Conversely, in this case, if all the facts in the Complaint—including both the allegation of sexual assault and that of the day-to-day abuse the plaintiff suffered—are credited, it is hard to imagine how the plaintiff could not see a problem with the conduct and training of Mount Prospect's staff members. Indeed, the plaintiff attempted on several occasions to communicate his recognition of this problem to a Mount Prospect counselor/coordinator, to his mother, to the Manchester Police, and to Ashley. Ultimately, however, the plaintiff here—unlike the plaintiff in Troy, who became aware of the offending teacher's history with the school only as a result of later public disclosures by the school itself—does not allege a single new fact that he learned about Mount Prospect since leaving its facility in or around 2006. He does not point to the discovery of

any fact relating to Mount Prospect's hiring process, its knowledge of staff misconduct, its promulgation of policies, etc. He points to no news articles or publicity relating to Mount Prospect. Rather, he states only that in 2019 or 2020, he learned from his mother that he could not be deported. (Declaration ¶ 35). This does not constitute the discovery of a fact pertinent to Mount Prospect's causal relationship to the plaintiff's injury of a kind that, if unknown to the plaintiff, would toll the statute of limitations. Cf. Miller, 224 F. Supp. 2d at 986–87.

The plaintiff's remaining arguments regarding the discovery rule are unpersuasive. First, the plaintiff contends that his fiduciary duty claim is tolled until he had actual knowledge of Mount Prospect's breach. The court disagrees. New Hampshire law is clear that tolling statute of limitations period is not dependent or otherwise reliant upon the fiduciary disclosing its wrongdoing. See Beane, 160 N.H. at 714-15 (“[T]here is no support in our case law for the proposition that a limitations period is tolled in fiduciary cases until the fiduciary discloses his or her misconduct.”). Second, no amount of additional discovery the plaintiff may engage in regarding Mount Prospect's policies and procedures could reveal information that would make it more likely that the plaintiff could avail himself of the discovery rule. As explained above, the plaintiff's Complaint shows that he already had all the information he needed to determine that Mount Prospect was the proximate cause of his injuries by the time he turned twenty.

Ultimately, the plaintiff had sufficient information about Mount Prospect's institutional failures prior to the expiration of any applicable limitations period. He has not alleged in his Complaint that he learned any new facts about Mount Prospect's role in his alleged abuse after he turned twenty. For these reasons, the court concludes that the discovery rule does not toll the statute of limitations.

ii. Fraudulent Concealment and Equitable Tolling

The court has found that (a) the discovery rule did not toll the start of the limitations period in RSA 508:4 beyond the plaintiff's twentieth birthday and, therefore, (b) the applicable limitations period is that established by RSA 508:8, which gave the plaintiff until age 20 to file this action.

The plaintiff argues, however, that two equitable doctrines apply here: fraudulent concealment and equitable tolling. The New Hampshire Supreme Court views both these doctrines as implied exceptions to all statutes of limitations. See Lakeman v. La France, 102 N.H. 300, 303 (1959) (adopting the majority rule that “fraudulent concealment of a cause of action from the one in whom it resides by the one against whom it lies constitutes an implied exception to the statute of limitations,” and rejecting the “contrary view that fraudulent concealment does not toll the operation of the statute unless the Legislature has expressly so stated in the statute itself”). With respect to equitable tolling, the supreme court has only applied the doctrine and explained its elements. See Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 623–24 (2005).

The doctrine of fraudulent concealment tolls the limitations period when a defendant, by concealment or other action, intentionally prevents the plaintiff from acquiring material information. Lamprey, 163 N.H. at 259–60; See also Lakeman, 102 N.H. at 303–304. Thus, fraudulent concealment

... requires something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to a cause of action—some actual artifice to prevent knowledge of the facts or some representation intended to exclude suspicion and prevent inquiry.

Lamprey, 163 N.H. at 259–60 (internal quotation marks and bracketing omitted); see also Maggi, 633 F. Supp. 3d at 516 (“The burden is on the plaintiff invoking the fraudulent concealment doctrine to present some evidence of an affirmative act on the part of the defendant to conceal or

cover up the underlying wrongful conduct that gave rise to the plaintiff's asserted injury.” (internal citations omitted)); Sykes v. RBS Citizens, N.A., 2 F. Supp. 3d 128, 143 (D.N.H. 2014).

Even when there is fraudulent concealment, the doctrine provides little, if anything, in the way of relief that the discovery rule does not also provide. See Beane, 160 N.H. at 714 (“The fraudulent concealment rule states that when facts essential to the cause of action are fraudulently concealed, the statute of limitations is tolled until the plaintiff has discovered such facts or could have done so in the exercise of reasonable diligence.” (quoting Bricker v. Putnam, 128 N.H. 162, 165 (1986)); see also Lakeman, 102 N.H. at 303; Furbush, 149 N.H. at 431; Sykes, 2 F. Supp. 3d at 143.

In this case, the plaintiff has not pointed to any affirmative act on the part of Mount Prospect to conceal or cover up any fact. Indeed, as noted above, the plaintiff has not pointed to any fact he learned after leaving Mount Prospect’s facility in 2008. Therefore, the doctrine of fraudulent concealment does not apply to the plaintiff’s claims against Mount Prospect.

The doctrine of equitable tolling, however, yields a different result. The New Hampshire Supreme Court has not developed a substantial body of case law relating to the doctrine of equitable tolling. The Court recognized the doctrine in Portsmouth Country Club, explaining that it allows a plaintiff to initiate an action beyond the statutory limitations period when that plaintiff had been “prevented in some extraordinary way from exercising his or her rights.” 152 N.H. at 623 (emphasis added). The doctrine “applies principally if the plaintiff is actively misled by the defendant about the cause of action.” Kierstead v. State Farm Fire & Cas. Co., 160 N.H. 681, 688 (2010).

To be eligible for equitable tolling, a plaintiff’s access to the justice system must be frustrated despite the plaintiff’s diligence. See, e.g., Irwin v. Dep’t of Veterans Affairs, 498 U.S. 89, 96 (1990) (applying federal law and holding that:

Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.

(internal footnotes omitted)); Maggi, 633 F. Supp. 3d at 518 (applying federal law and noting that, “in unusual cases, certain limitations of imprisonment may rise to the level of ‘extraordinary circumstance’” [but] “the usual problems inherent in being incarcerated, such as a prisoner's lack of prior legal training or limited access to legal resources in a prison's library, do not, by themselves, justify equitable tolling” (internal ellipses and citation omitted)).

In this case, the plaintiff argues that he is entitled to the benefit of equitable tolling based on the Mount Prospect employee's threat that the plaintiff would be subject to deportation if he continued to report Patsy's abuse. (Court Index # 17 at 21). This fear of deportation directly influenced the plaintiff not to report any of the Mount Prospect employees' conduct to the Plymouth police. (Court Index # 18 ¶ 19). The court is persuaded by the plaintiff's argument. The plaintiff took an affirmative step towards a judicial remedy when he reported to the Manchester police. A Mount Prospect employee then learned of his action and threatened the plaintiff with a consequence that, as a member of a family seeking political refuge, directly influenced his pursuing a judicial remedy. Cf. Irwin, 498 U.S. at 96. Although Ashley's threat specifically concerned his reporting the sexual abuse he was enduring from Patsy, that threat ultimately resulted in the plaintiff's unwillingness to report *any* of the abuse he experienced at Mount Prospect to the Plymouth Police Department. The facts in this case therefore demonstrate an extraordinary circumstance where justice requires the equitable tolling of the statute of limitations. See Irwin, 498 U.S. at 96; Maggi, 633 F. Supp. 3d at 518.

II. Claims Analysis

A. The Complaint Does Not State Claims for Aiding and Abetting a Breach of Fiduciary Duty or Civil Conspiracy

In Counts X and XIV, the plaintiff accuses Mount Prospect of: (a) aiding and abetting a breach of fiduciary duty; and (b) civil conspiracy. Both of these claims require proof that Mount Prospect was engaged in deliberate, concerted action with another party to violate the plaintiff's rights. See Invest Almaz v. Temple-Inland Forest Prods. Corp., 243 F.3d 57, 82-83 (1st Cir. 2001) (stating standard for aiding and abetting a breach of fiduciary duty); Jay Edwards, Inc. v. Baker, 130 N.H. 41, 47 (1987) (describing standard for civil conspiracy). Because the Complaint alleges no material facts from which such concerted action can be inferred, these two counts are DISMISSED for failure to state a claim.

i. Aiding and Abetting a Breach of Fiduciary Duty

The New Hampshire Supreme Court has not yet had occasion to recognize the tort of aiding and abetting a breach of fiduciary duty. Nonetheless, the tort is established and well-defined, as, for example, in the Restatement (Second) of Torts, § 876(b):

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . [1] knows that the other's conduct constitutes a breach of duty and [2] gives substantial assistance or encouragement to the other so to conduct himself[.]

Courts that apply New Hampshire law predict that the New Hampshire Supreme Court will recognize this cause of action. See Invest Almaz, 243 F.3d at 82-83; Legacy Glob. Sports, LP v. St. Pierre, Slip Op. No. 218-2019-CV-198, 2020 WL 2027401, at *2 (Merrimack County Superior Court, Apr. 27, 2020); Clare v. Bank of New England, Slip. Op. No. 218-2013-CV-00687, 2013 N.H. Super LEXIS 22, at *3-4, 9 (Merrimack Count Superior Court, Nov. 26, 2013); HayJo S.A. de CV v. Sponge-Jet, Inc., No. 14-cv-196-JD, 2015 WL 9459918, at *4 (D.N.H. Dec. 23, 2015);

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Assuming a claim for aiding and abetting a breach of fiduciary duty may be pursued in New Hampshire, the Complaint does not contain facts to support this cause of action. To prevail, the plaintiff would need to prove that Mount Prospect had helped another party breach its fiduciary duty. The Complaint does not allege that Mount Prospect did anything to encourage or facilitate the plaintiff's alleged abuse at YDC or at any other placement.

Moreover, Mount Prospect cannot be found liable for aiding its own employees and agents in a breach of fiduciary duty. The cause of action for aiding and abetting a breach of fiduciary duty only exists to cover circumstances in which the defendant has no direct liability to the plaintiff as a fiduciary. That is not the case here. See, e.g., Mann v. GTCR Golder Rauner, L.L.C., 483 F. Supp. 2d 884, 916 (D. Ariz. 2007) (Under Delaware law, "a person who himself owes a fiduciary duty with respect to a transaction or course of conduct cannot be liable for aiding and abetting a breach of that same fiduciary duty by another because the same facts that would otherwise constitute aiding and abetting would constitute a primary breach of fiduciary duty."); In Re Amcast Indus. Corp., 365 B.R. 91, 112–13 (Bankr. S.D. Ohio 2007) (Under Ohio law "the action by its nature, . . . requires participation by a non-fiduciary defendant); In re Verestar, Inc., 343 B.R. 444, 482 (Bankr. S.D.N.Y. 2006) ("[A] claim for aiding and abetting breach of fiduciary duty can only be sustained against a non-fiduciary.").

Accordingly, for the foregoing reasons, the Complaint does not state a claim against Mount Prospect for aiding and abetting a breach of fiduciary duty. The claim is thus DISMISSED.

ii. Civil Conspiracy

To prevail on a claim of civil conspiracy, a plaintiff must prove that:

(A) Two or more persons and/or entities agreed to either:

(1) pursue an unlawful objective or, alternatively,

(2) use unlawful means to accomplish a lawful or unlawful objective; and

(B) At least one of the conspirators committed an overt act in furtherance of this agreement; and

(C) The plaintiff was harmed as a proximate result of the agreement.

Jay Edwards, Inc., 130 N.H. at 47; see Univ. Sys. of N.H. v. U.S. Gypsum Co., 756 F. Supp. 640, 652 (D.N.H. 1991); Censabella v. Town of Weare, No. 16-cv-490-AJ, 2017 WL 3996173, at *3 (D.N.H. Sept. 8, 2017). “For a civil conspiracy to exist, there must be an underlying tort which the alleged conspirators agreed to commit.” Univ. Sys., 756 F. Supp. at 652. Thus, the cause of action serves to impose liability on “all who commonly plan, take part in, further by cooperation, lend aid to, or encourage the wrongdoers' acts.” Id.

The Complaint does not contain facts to support a claim for civil conspiracy. There are no material facts from which the Court may infer that Mount Prospect and the State or any other entity entered into an agreement to engage in concerted action by abusing the plaintiff. No facts suggest that Mount Prospect ever had any conversation, let alone any agreement, with any other defendant.

Further, Mount Prospect cannot be liable for civil conspiracy with its own employees, because, under the intracorporate conspiracy doctrine, Mount Prospect and its employees are considered to be the same “person.” See, e.g., Hoefer v. Fluor Daniel, Inc., 92 F. Supp. 2d 1055, 1057 (C.D. Cal. 2000):

The intracorporate conspiracy doctrine provides that, as a matter of law, a corporation cannot conspire with its own employees or agents. [citation and footnote omitted]. The logic for the doctrine comes directly from the definition of a

conspiracy. A conspiracy requires a meeting of minds. [citation omitted]. It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

see also Grider v. City of Auburn, Ala., 618 F.3d 1240, 1261 (11th Cir. 2010) (“[T]he intracorporate conspiracy doctrine holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy.”); Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505, 509 (6th Cir. 1991) (“It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.”); Tabb v. District of Columbia, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (“[A] corporation cannot conspire with its employees[.]”); HRCC, Ltd. v. Hard Rock Cafe Int’l (USA), Inc., 302 F. Supp. 3d 1319, 1325 (M.D. Fla. 2016) (“According to the intracorporate conspiracy doctrine, however, a civil conspiracy claim will not succeed where the only members of the alleged conspiracy are a corporation and/or its officers.”).

For these reasons, the claim of civil conspiracy against Mount Prospect is DISMISSED.

B. Claims for Negligence and Breach of Fiduciary Duty

In Counts VIII, XI and XII, the plaintiff seeks monetary damages for breach of fiduciary duty and negligence. These claims require proof of (a) a duty of care, (b) breach, and (c) resulting damages. See W. Prosser, The Law of Torts, § 30 (5th ed. 1985). The plaintiff does not rely on the doctrine of respondeat superior. Therefore, he must prove not only tortious behavior by individual staff members, but also legal fault (e.g., breach of fiduciary duty and/or negligence) on the part of Mount Prospect itself.

An institutional defendant's breach of a standard of care can result from omission as well as commission. It can take the form of an express policy, or an informal practice. Alternatively, it may stem from an inexcusable lapse in hiring qualified personnel, or training and/or supervising staff. It may be the result of insufficient monitoring of the workplace. In short, a breach may occur in myriad ways.

i. Negligence

There is no question that Mount Prospect had a common law duty to use reasonable care to safeguard its residents from, as relevant here, (a) unlawful sexual or physical abuse by staff, and (b) the negligent infliction of extreme emotional distress by sexual or other abuse. In general, an institution that takes custody of children, in a manner that deprives the children of their normal opportunities for protection, has a common law duty to use reasonable care to safeguard the children from harm while they are within the institution's care. See, e.g., Marquay v. Eno, 139 N.H. 708, 717 (1995); Tveter v. Derry Coop. Sch. Dist., SAU # 10, Slip Op. 16-CV-329, 2018 WL 3520827, at *9 (D.N.H. July 20, 2018); Restatement (Second) of Torts § 314A.

The Complaint alleges facts which, if proven, would support a finding that Mount Prospect breached this standard of care with respect to the plaintiff's sexual assault claims and his claims concerning the response team. Specifically concerning the sexual assault claims, the plaintiff alleges that Patsy, a staff member at Mount Prospect, inappropriately touched the plaintiff, performed oral sex on the plaintiff, and had sex with the plaintiff on multiple occasions. The plaintiff alleges that these instances occurred on the sofa in the plaintiff's living quarters, on the roof adjacent to the plaintiff's living quarters, and in the facility's showers. Further, the plaintiff reported this abuse to two of Mount Prospect's staff members.

At this juncture the plaintiff is entitled to the reasonable inference that if the abuse occurred as alleged, then supervisory staff (a) knew of the abuse, or (b) were willfully blind to the abuse, or (c) failed to reasonably monitor the facility and hire, train, and supervise staff. Any of these possibilities is enough to prove a negligent breach of the common law duty to use reasonable care. In fairness, the Complaint alleges negligence in broad strokes. But broad strokes are sufficient in this posture. A plaintiff may file a lawsuit without knowing every fact that will eventually be introduced at trial to prove negligence.

The plaintiff has also alleged the third element of a negligence claim, e.g., resulting damages. Thus, the Complaint adequately alleges negligence and negligent hiring, retention, supervision and training.

ii. Breach of Fiduciary Duty

The Complaint alleges facts which, if proven, could support a finding of a fiduciary relationship between Mount Prospect and the plaintiff. Under New Hampshire law, the existence of a fiduciary relationship is determined by substance rather than formality. See, e.g., Schneider v. Plymouth State College, 144 N.H. 458, 462 (1999):

A fiduciary relation does not depend on some technical relation created by, or defined in, law. It may exist under a variety of circumstances, and does exist in cases where there has been a special confidence reposed in one who, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence.

(quoting Lash v. Cheshire County Sav. Bank, Inc., 124 N.H. 435, 439 (1984).

Thus, for example in Schneider, the New Hampshire Supreme court held that a college has a fiduciary duty to its students to protect them against sexual harassment by professors. The supreme court reasoned that an enrolled student becomes dependent on the college for their education and the college assumes a duty to act in good faith, and with due regard to the student's interest, with

respect to prevention of sexual assaults by faculty. 144 N.H. at 462-64; see also Roe v. Hotchkiss Sch., 385 F. Supp. 3d 165, 173 (D. Conn. 2019) (under Connecticut law a boarding school may have a fiduciary duty to prevent the sexual abuse of its students); Wartluft v. Milton Hershey Sch. & Sch. Trust, 400 F. Supp. 3d 91, 112 (M.D. Pa. 2019) (under Pennsylvania law a therapeutic residential school had a fiduciary obligation to its students).⁶

In this case, the plaintiff was made utterly dependent on Mount Prospect to provide him with a stable and wholesome home. The plaintiff was an underprivileged, at-risk child, from a family seeking political refuge, who was unable to care for himself and who was deprived of his parental supervision and made wholly dependent on Mount Prospect for shelter, nutrition, moral guidance, education and personal safety. The plaintiff thus reposed his trust in Mount Prospect to prevent the abuses he alleges staff inflicted against him. A jury could thus find that Mount Prospect had a fiduciary obligation to act in good faith and with due regard for the plaintiff's interests as to these harms.

It is not clear to the court how this fiduciary standard differs from the common law duty of care in this context. Regardless, the fiduciary standard of care certainly requires at least the same degree of prudence and care as the common law standard. Therefore, just as the court has found that the Complaint states a claim for negligence (i.e., alleges duty, breach, and resulting damages), the court also finds that the Complaint states a claim for breach of fiduciary duty by Mount Prospect.

⁶ But see Brodeur v. Claremont Sch. Dist., 626 F. Supp. 2d 195, 219 n 24 (D.N.H. 2009) ("New Hampshire does not appear to treat the relationship between a public secondary school and its students as fiduciary in nature, characterizing it instead as a 'special relationship' that gives rise to a duty enforceable in negligence (and treating the school as n ordinary employer subject to theories of negligent hiring or retention).") (citation omitted); Doe # 2 v. Legion of Christ, Inc., 588 F. Supp. 3d 240, 246 (D. Conn. 2022) ("[T]he Court agrees with other courts that have concluded that given the opportunity the New Hampshire Supreme Court would not allow a breach of fiduciary duty claim against a secondary school."); Franchi v. New Hampton School, 656 F. Supp. 2d 252, 261-64 (D.N.H. 2009) (noting that the New Hampshire Supreme Court has held that a secondary school owes fiduciary duties to its students); Tveter, 2018 WL 3520827, at *10.

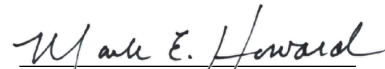
CONCLUSION

Consistent with the foregoing, Mount Prospect's motion to dismiss is GRANTED in part and DENIED in part. Specifically:

- Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy) are DISMISSED for failure to state a claim;
- Mount Prospect's motion is DENIED as to Counts VIII, XI and XII may proceed as to those claims.

So Ordered.

Date: February 27, 2025


Mark E. Howard
Chief Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/27/2025

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

JOHN DOE #269

v.

STATE OF NEW HAMPSHIRE, et al.
217-2022-CV-176

DAVID MEEHAN v. STATE OF NEW HAMPSHIRE, et al.
(Consolidated YDC/YDSU Cases)
217-2020-CV-26

ORDER

The matter before the court is Defendant Orion House Incorporated's ("Orion") Motion to Dismiss plaintiff John Doe #269's claims against it. (Court Index ## 20 (Mot. Dismiss); 21 (Mem. Law)). For the reasons set forth below the motion is GRANTED. All claims against Orion in this case are DISMISSED WITH PREJUDICE. Specifically:

- (A) Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy) are DISMISSED for failure to state a claim upon which relief may be granted; and
- (B) Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention), and XII (negligence) are DISMISSED because they were filed after the expiration of the statute of limitations.

This resolves all counts against Orion.¹

¹ The remaining counts do not allege any claims against Orion. Counts I through VII (set forth in the Master Complaint) and Counts IX and XIII (set forth in the Short Form Complaint) assert claims against the State Defendants only.

DEFINING THE COMPLAINT

The Complaint in this case comprises the following three documents:

A. A 50-page “Amended Master Complaint,” filed in Meehan v. State, 217-2020-CV-26 on July 8, 2022. (Meehan Court Index # 70). The Amended Master Complaint does not mention John Doe 269 or any of the facts about his life. Likewise, it does not contain any reference to John Doe 269 or any other contractor defendant.

B. A 39-page “Amended Short Form Complaint” filed in John Doe #269 v. State, 217-2022-CV-176. (Court Index # 7). (The Short Form Complaint contains allegations specific to the plaintiff and Orion. The Short Form Complaint contains an Addendum, as well as a separately filed Sealed Supplement that contains John Doe #269’s true name and date of birth).

C. A 12-page Declaration, signed by the plaintiff, filed as Exhibit A to the Objection to the Motion to Dismiss in John Doe #269 v. State, 217-2022-CV-176 (Court Index # 22 (Redacted); see Court Index #26 (Unredacted)) (cited hereinafter as “Declaration”). The Declaration contains the plaintiff’s factual response to Orion’s affirmative limitations defense.

These 101 pages will be referred to collectively as “the Complaint.”

PROCEDURAL HISTORY AND RELEVANT DATES

The plaintiff was born in May 1993.² He turned 20 in May 2013. The Complaint in this case was filed on January 17, 2022, when the plaintiff was 28 years old. As relevant to the instant motion, the plaintiff claims that he was subjected to physical and psychological abuse at a residential juvenile facility operated by Orion. The plaintiff alleges that the abuse occurred from

² The plaintiff’s precise date of birth is provided in the Sealed Supplement to the Short Form Complaint (217-2022-CV-176 Court Index # 3). The court recites only the month and year of birth to protect the plaintiff’s identity. The day of the month is not material to any determination in this Order.

approximately 2007 to 2008, when he was approximately fourteen years old.³ The plaintiff does not allege that Orion engaged in any tortious behavior after that time.

Thus, the plaintiff initially filed suit approximately 14 years after the last possible date of abuse, and roughly 9 years after he turned 20.

FACTUAL BACKGROUND

The following facts are taken from the Complaint.

A. Events That Occurred Prior to Placement at Orion

According to the Declaration, the plaintiff immigrated to the United States in 2004 when he was ten or eleven years old. He and his family were fleeing political violence in Liberia, where his father had opposed the Liberian government and was a target for assassination. His family relocated to Manchester, where he began an ESL program at Hillside Middle School. Because he could not speak, read, or write in English, he felt uncomfortable and embarrassed when called on by teachers. He was bullied by other children because he was African and could not speak English proficiently, and because he did not understand to wear deodorant. As a result of this bullying, he began fighting with other students and skipping school. The State of New Hampshire became involved, giving him a counselor who was also from Africa. This relationship did not work, however, and the State thereafter sent the plaintiff to Orion when he was 14 years old.

B. Events at Orion's Facility

The plaintiff was placed at Orion for approximately three to four weeks, where he was physically and verbally abused and denied access to education. Specifically, when the plaintiff

³ Specifically, the plaintiff alleges that when he was 14, he was placed at Orion for "3-4 weeks at most." (Declaration ¶ 6). The Court infers that he was placed in Orion no later than 2008. More precise dates are immaterial for the resolution of the instant motion.

was playing basketball, he got into a fight with another resident. The other resident elbowed the plaintiff in his jaw; when the plaintiff reacted by pushing the other resident, the resident punched the plaintiff in the face. Before the plaintiff could react, a staff member called “Matt” violently restrained the plaintiff, kicking his legs out from under him. The plaintiff fell to the ground, hitting his head. Other staff members then aided Matt, kneeling on the plaintiff’s neck, pinning him to the ground, and bending his wrists back. Although the plaintiff screamed in pain, the staff members continued their actions while Matt used racial slurs and spit in the plaintiff’s face. The other resident, who started the fight and was white, was not restrained.

Following this altercation, the plaintiff was confined to his room and was not permitted to socialize with other residents. He remained alone in the house with Matt, who did not provide the plaintiff with schoolwork or books. If the plaintiff needed to use the bathroom, he had to ask for permission. When Matt was the only staff member present, he would respond to these requests with “you have to wait, shitbag” or other responses of that nature. Matt also psychologically abused the plaintiff, telling him that his mother should never have had him and that he could not wait for the plaintiff to leave, which the plaintiff understood to be a reference to his being the only Black youth at Orion. Eventually, the plaintiff ran away from Orion, but he was soon caught and taken into police custody and eventually sent to Mount Prospect Academy (“Mount Prospect”) and then to Sununu Youth Services Center (“SYSC”).

C. Events Occurring after the Plaintiff Left Orion

The plaintiff experienced physical and sexual abuse at Mount Prospect and SYSC. The plaintiff reported to a counselor or coordinator at Mount Prospect named John or Jim, that a Mount Prospect staff member named Patsy was sexually abusing him. John/Jim did not believe the plaintiff and told the plaintiff that he believed he was lying. While he was at his parent’s

house on a weekend visit, the plaintiff also reported Patsy's abuse to his mother, who called the Manchester police. The plaintiff then made a statement to the Manchester police; however, the officer told the plaintiff that he could not act on the information because Mount Prospect was outside of his jurisdiction. The plaintiff's mother then reported the sexual abuse to another Mount Prospect staff member, Ashley, who was picking up the plaintiff from the home visit and driving the plaintiff back to Mount Prospect. On this drive, Ashley asked the plaintiff if these allegations against Patsy were true. He confirmed that they were and said that he did not want to return to Mount Prospect. Ashley then told the plaintiff that if he continued to make these allegations, he could be deported back to Liberia. After Ashley's threat, the plaintiff was afraid to report the abuse he experienced at Orion, Mount Prospect, and also abuse that occurred later at SYSC. Despite his mother's insisting, the plaintiff told his mother not to contact the Plymouth police department where Mount Prospect was located.

Since leaving his placements at these facilities, the plaintiff developed PTSD, panic attacks, and anxiety. He prefers to be alone instead of around other people and is socially awkward. He has trust issues with women and cannot seem "to have a successful relationship with a woman." (Decl. ¶ 37). He is unable to connect with women and is emotionally detached.

D. Lack of Discovery

While the plaintiff now realizes that the State and Orion had an obligation to keep him safe, as a child he did not understand that physical abuse and confinement were not allowed or permissible and could not appreciate that the State and Orion were responsible for it. Corporal punishment was normal in his home, where his mother would slap him or hit him with a belt. The plaintiff states that it was not until he went to prison, where he was exposed to fellow inmates who had been convicted and incarcerated for having sexual relations with children who

were under 18, that he understood that what was done to him at Mount Prospect and SYSC was criminal behavior. Further, the plaintiff did not come forward with any of the abuse because, after the threat made by Ashley at Mount Prospect, he feared deportation if the police were to become involved in an investigation. In or around 2019 or 2020, the plaintiff's mother told him that he could not be deported because she had become a U.S. citizen prior to the plaintiff's 18th birthday. This made him feel safe to come forward. When the plaintiff spoke with an attorney, he began to understand that the State of New Hampshire and its contracting companies, including Orion, bore responsibility for the acts of their individual employees.

ANALYSIS

I. The Complaint Does Not State Claims for Aiding and Abetting a Breach of Fiduciary Duty or Civil Conspiracy

In Counts X and XIV, the plaintiff accuses Orion of: (a) aiding and abetting a breach of fiduciary duty; and (b) civil conspiracy. Both of these claims require proof that Orion was engaged in deliberate, concerted action with another party to violate the plaintiff's rights. See Invest Almaz v. Temple-Inland Forest Prods. Corp., 243 F.3d 57, 82-83 (1st Cir. 2001) (stating standard for aiding and abetting a breach of fiduciary duty); Jay Edwards, Inc. v. Baker, 130 N.H. 41, 47 (1987) (describing standard for civil conspiracy). Because the Complaint alleges no material facts from which such concerted action can be inferred, these two counts are DISMISSED for failure to state a claim.

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Further, Orion cannot be liable for civil conspiracy with its own employees, because, under the intracorporate conspiracy doctrine, Orion and its employees are considered to be the same “person.” See, e.g., Hoefer v. Fluor Daniel, Inc., 92 F. Supp. 2d 1055, 1057 (C.D. Cal. 2000):

The intracorporate conspiracy doctrine provides that, as a matter of law, a corporation cannot conspire with its own employees or agents. [citation and footnote omitted]. The logic for the doctrine comes directly from the definition of a conspiracy. A conspiracy requires a meeting of minds. [citation omitted]. It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

see also Grider v. City of Auburn, Ala., 618 F.3d 1240, 1261 (11th Cir. 2010) (“[T]he intracorporate conspiracy doctrine holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy.”); Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505, 509 (6th Cir. 1991) (“It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.”); Tabb v. District of Columbia, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (“[A] corporation cannot conspire with its employees[.]”); HRCC, Ltd. v. Hard Rock Cafe Int’l (USA), Inc., 302 F. Supp. 3d 1319, 1325 (M.D. Fla. 2016) (“According to the intracorporate conspiracy

doctrine, however, a civil conspiracy claim will not succeed where the only members of the alleged conspiracy are a corporation and/or its officers.”).

For these reasons, the claim of civil conspiracy against Orion is DISMISSED.

II. The Plaintiff’s Negligence and Breach of Fiduciary Duty Claims Are Barred by the Applicable Statutes of Limitations

The statute of limitations is an affirmative defense. Perez v. Pike Indus., Inc., 153 N.H. 158, 160 (2005); Glines v. Bruk, 140 N.H. 180, 181 (1995). A defendant has the obligation to allege and prove that the complaint was brought after the limitations period expired. Perez, 153 N.H. at 160. If the defendant meets this burden, then the plaintiff has the burden to prove that the claim is timely by virtue of the discovery rule, fraudulent concealment, equitable tolling, or some other doctrine. Two statutes are applicable to the plaintiff’s claim: the general statute of limitations for personal actions (RSA 508:4); and the tolling provisions of the “disabilities statute” (RSA 508:8).

A. The Disabilities Statute: RSA 508:8

The court first considers RSA 508:8, the so-called “disabilities statute.” This statute provides that “an infant or mentally incompetent person may bring a personal action within 2 years after such disability is removed.” In Norton v. Patten, 125 N.H. 413 (1984), the New Hampshire Supreme Court construed the term “infant” to mean a person who has not yet reached the statutory age of majority, as defined in RSA 21-B:1. The age of majority is eighteen. Thus, as construed by Norton, RSA 508:8 extends the limitations period for minors until their twentieth birthday.

As noted above, the plaintiff turned twenty in May 2013, approximately nine years before he filed the instant case. Accordingly, the instant case was not filed within the limitations period established by RSA 508:8. RSA 508:8 does not contain its own discovery rule.

C. The General Statute of Limitations for Personal Actions: RSA 508:4

RSA 508:4 provides the statute of limitations for all personal actions. Under this statute:

[A]ll personal actions . . . may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

The last “act or omission complained of” occurred no later than December 2008, the year that the plaintiff left Orion. The instant case was thus brought more than fourteen years after the last “act or omission complained of.” Orion has therefore met its burden of showing that the instant case was filed more than three years after the conduct at issue.

This shifts the burden to the plaintiff to demonstrate grounds for the application of: (a) the discovery rule; (b) equitable tolling; (c) the doctrine of fraudulent concealment; or (d) some other doctrine extending the limitations period. Perez, 153 N.H. at 160. Consistent with the standard of review for motions to dismiss, the court accepts all of the plaintiff’s well-pled facts and makes all rational inferences in the plaintiff’s favor.

The court’s task is to determine only whether the plaintiff has alleged facts which, if proven, might lengthen the limitations period to make this case timely. To be clear, if the plaintiff alleges sufficient facts to show that discovery is necessary to make this determination, the motion to dismiss on limitations grounds must be denied and the issue preserved for summary judgment on a more complete record. However, if discovery would be futile because the Complaint itself fails even to allege grounds to apply the discovery rule or another tolling doctrine, the motion to dismiss will be granted.

(i) The Discovery Rule

It is well-settled that the “purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party.” Petition of N.H. Div. For Children, Youth & Families, 173 N.H. 613, 618 (2020). The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run:

(1) a plaintiff must know or reasonably should have known that she has been injured; and (2) a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the defendant.

Lamprey v. Britton Constr., Inc., 163 N.H. 252, 257 (2012); see also Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 713 (2010); Perez, 153 N.H. at 160; Big League Entm’t, Inc. v. Brox Indus., Inc., 149 N.H. 480, 485 (2003).

The discovery rule does not reward ignorance of the law. The statute of limitations is not tolled due to a plaintiff’s failure to acknowledge or otherwise understand their potential claims. See Sullyville, LLC v. Town of Carroll, Slip Op. No. 2019-0240, 2021 WL 1310832, at *7 (N.H. Apr. 8, 2021) (non-precedential decision stating that “[t]he discovery rule does not toll the statute of limitations until a plaintiff discerns the legal theory by which his or her case will proceed; rather, it tolls the statute of limitations only when the injury and its causal relationship to the defendant’s act or omission remain unknown to the plaintiff.”); Ouellette v. Beaupre, 977 F.3d 127, 138 (1st Cir. 2020) (applying federal law and holding that “a plaintiff, once armed with the knowledge of his or her injury and its probable cause, cannot plead ignorance of the law to delay accrual.”); Maggi v. Grafton Cty. Dep’t of Corrs., 633 F. Supp. 3d 508, 516 (D.N.H. 2022) (applying RSA 508:4 and holding that “even if the court were to assume the truth of [plaintiff’s] assertions about his lack of access to legal resources, that would not save his claims. His claims

accrued on the date he should have reasonably known he was injured, not on the date he first learned he had a legal cause of action.”) (vacated and remanded on other grounds by Maggi v. Grafton Cty. Dep’t Corrs., No 23-1002 2024 WL 3384813 (1st Cir. July 9, 2024)); Miller v. Pac. Shore Funding, 224 F. Supp. 2d 977, 986–87 (D. Md. 2004) (“Knowledge of facts, however, not actual knowledge of their legal significance, starts the statute of limitations running. . . . The discovery rule, in other words, applies to discovery of facts, not to discovery of law. Knowledge of the law is presumed.”); Marcum v. Columbia Gas Transmission, LLC, 549 F. Supp. 3d 408, 421 (E.D. Pa. 2021) (“Plaintiffs’ ignorance of a legal cause of action does not, in itself, require application of the discovery rule.”). In this case, the plaintiff proffers several reasons why he may have not discovered the law governing his claims. However, the plaintiff’s failure to bring his claims within the applicable time period due to his unawareness of the law is not grounds to apply the discovery rule.

For discovery rule purposes, a plaintiff becomes aware of an injury as soon as he can reasonably discern that he has suffered “some harm” caused by a defendant’s conduct. Beane, 160 N.H. at 713; see also Balzotti Glob. Grp., LLC v. Shepherds Hill Proponents, LLC, 173 N.H. 314, 321 (2020); Furbush v. McKittrick, 149 N.H. 426, 431 (2003) (“The [discovery] rule is not intended to toll the statute of limitations until the full extent of the plaintiff’s injury has manifested itself.”). Thus, a latent injury will toll the limitations period, while a patent injury will not, even if the long-term consequences of the patent injury cannot be known. See Furbush, 149 N.H. at 431; see generally Clay v. Kuhl, 727 N.E.2d 217, 222 (Ill. 2000) (applying Illinois law): (“The plaintiff contends, however, that her injuries were latent to some extent and did not fully manifest themselves until years after the abuse occurred. We do not believe that the plaintiff’s alleged failure to fully discover the nature of her injuries is sufficient to delay the running of the

limitations period. There is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations.”); see also Stephens v. Clash, 796 F.3d 281, 288 (3d Cir. 2015) (“A plaintiff’s ignorance regarding the full extent of his injury is irrelevant to the discovery rule’s application, so long as the plaintiff discovers or should have discovered that he was injured.”).

In Rowe v. John Deere, 130 N.H.18 (1987), the plaintiff was injured when he struck his head while using machinery manufactured by the defendant. Immediately after the accident, the plaintiff was diagnosed with a depressed skull fracture. The plaintiff recovered quickly. Six years later he began to suffer grand mal seizures, purportedly as a result of the accident. The supreme court held that the plaintiff had discovered his injury at the time of the accident, even though the initial measure of damages was “nominal” compared with the potential damages for the later occurring harm. Id. at 21. Thus, a plaintiff is likely to immediately discover an injury caused by a sudden, traumatic, violent event, and an injury which may later arise from the initial injury will not toll the statute of limitations. See, e.g., Hollander v. Brown, 457 F.3d 688, 692 (7th Cir. 2006) (applying Illinois law):

courts distinguish between injuries caused by sudden, traumatic events and those that have a late or insidious onset. For limitations purposes, a sudden, traumatic event is one that, because of its force or violence, permits the law to presume that the event immediately placed the plaintiff on notice of her injury and a right of action. When a plaintiff suffers this type of injury, her cause of action accrues on the date of the traumatic event, and the limitations period does not begin anew simply because a latent condition later may arise from the same occurrence. The rationale is that the nature and circumstances surrounding the traumatic event are such that the injured party is thereby put on notice that actionable conduct might be involved.

(internal citations and quotation marks omitted).

Here, the plaintiff claims that he was injured as a result of Orion’s failure to adequately oversee its staff with respect to hiring, training, supervision, and promulgation of policies. Thus,

the “act or omission complained of,” RSA 508:4, is the breach of duty by Orion itself. According to the Complaint, that breach led to the physical assault and painful restraints, including at least one incident where the plaintiff was physically pinned down by multiple Orion staff members. Additionally, the alleged breach also led to other instances of physical and psychological abuse by the staff member, Matt. The incidents of physical and psychological abuse the plaintiff describes constitute injuries that are sudden, traumatic, violent, painful, or extremely unpleasant. There is nothing subtle or latent about these alleged events. The plaintiff necessarily knew of the assaults at the time they happened, which is demonstrated both by his crying out in pain at the time of the assaults and his running away from Orion within a matter of weeks as a result of his treatment.

With respect to the alleged psychological abuse, the plaintiff may have been unaware of the long-term psychological and emotional effects of the treatment he says he endured. But those harms were nonetheless caused by the same “act or omission complained of,” RSA 508:4, e.g., Orion’s alleged lack of care in hiring, training and supervising staff, and promulgating policies. Thus, under settled New Hampshire law, accepting all the well-pled facts in the Complaint, the court must find that the plaintiff was aware that he had been injured as a result of Orion’s failure to control its staff because the plaintiff knew that he had been assaulted and physically restrained by Orion’s staff members.

Under the discovery rule, the limitations period in this case did not begin to run until the plaintiff either (a) discovered, or (b) should have discovered through the exercise of reasonable diligence, that Orion’s breach of duty was a proximate cause of his injury. See Troy v. Bishop Guertin High Sch., 176 N.H. 131, 134 (2023) (citing RSA 508:4). Knowledge of Orion’s causal role cannot be automatically inferred from the fact that the plaintiff knew that his injury was

caused by Orion's employees, acting overtly under color of their authority, on Orion's premises. See id. at 138 ("We decline to establish a per se rule that the plaintiff's knowledge of the abuser's employer is alone sufficient to trigger the application of the discovery rule. This inquiry presents a question of fact."). However, "[a] plaintiff need not be certain of this causal connection; the possibility that it existed will suffice to obviate the protections of the discovery rule." Id. at 137 (quoting Beane, 160 N.H. at 713); see also Balzotti, 173 N.H. at 321; Lamprey, 163 N.H. at 257; Pichowicz v. Watson Ins. Agency, Inc., 146 N.H. 166, 168 (2001). "[T]he discovery rule employs an objective standard" to determine whether, through the exercise of reasonable diligence, a plaintiff should have discovered sufficient evidence of the defendant's role in causing his injury." Troy, 176 N.H. at 137.

In this case, the same alleged facts that establish the plaintiff's knowledge of harm also demonstrate the plaintiff knew or should have known Orion's breach of duty was a proximate cause of his alleged injury. Here the plaintiff does not complain of isolated incidents, committed in secret, by a rogue staff member of a large institution. Rather, the plaintiff describes assaults involving multiple staff members, committed openly and in view of both other residents and other staff members. Although the plaintiff alleges that Matt psychologically abused him when other staff members were not present, the other staff members nonetheless witnessed Matt using racial slurs and spitting on the plaintiff in the instance where the staff members pinned down the plaintiff. Other staff members also knew of the plaintiff's being kept in isolation without books or schooling. If these allegations in the Complaint are credited, as they must be at this juncture, then at the very least Orion failed to supervise its staff and monitor its facility and thereby breached both its fiduciary obligations to the plaintiff and the common law duty of reasonable care.

Orion's role in causing the plaintiff's injury is not inferred from the mere fact that the plaintiff's assailants received paychecks and a W2 from Orion. Compare the facts of this case to those in Troy, which involved two acts of sexual assault, committed in private, by a high school teacher against a female student. Troy, 176 N.H. at 133-35. Unbeknownst to the plaintiff in Troy, the school had hired the teacher despite knowing of his previous conviction for unlawful sexual contact with a different female high school student at a different school that was owned and operated by the same religious order. Id. at 133-34. The school did not alert students or parents to the teacher's status as a sex offender who preyed on a similar victim. Id. It took no action to limit or monitor the teacher's contact with students. Id. It would be hard to imagine how the plaintiff in Troy could have known from the abuse she endured that the school (and its owner) shouldered any of the blame for the covert criminal acts of a lone employee.

Conversely, in this case, if the facts in the Complaint are credited, it is hard to imagine how the plaintiff could not see a problem with the conduct of Orion's staff members. Indeed, the plaintiff—unlike the plaintiff in Troy, who became aware of the offending teacher's history with the school only as a result of later public disclosures by the school itself—does not allege a single fact that he learned about Orion since leaving its facility in or around 2008. He does not point to the discovery of any fact, for example, relating to Orion's hiring process, its knowledge of staff misconduct, or its promulgation of policies. He points to no news articles or publicity relating to Orion. Rather, he states only that he was afraid to come forward because of his fear of deportation. This assertion does not constitute the discovery of a fact pertinent to Orion's causal relationship to the plaintiff's injury of a kind that, if unknown to the plaintiff, would toll the statute of limitations. Cf. Miller, 224 F. Supp. 2d at 986–87. On the Contrary, this implies that he was aware of a possibility of a causal connection between his harm and Orion.

The plaintiff's remaining arguments are unpersuasive. First, the plaintiff contends that his fiduciary duty claim is tolled until he had actual knowledge of Orion's breach. The court disagrees. New Hampshire law is clear that tolling statute of limitations period is not dependent or otherwise reliant upon the fiduciary disclosing its wrongdoing. See Beane, 160 N.H. at 714-15 ("[T]here is no support in our case law for the proposition that a limitations period is tolled in fiduciary cases until the fiduciary discloses his or her misconduct."). Second, no amount of additional discovery the plaintiff may engage in regarding Orion's policies and procedures could reveal information that would make it more likely that the plaintiff could avail himself of the discovery rule. As explained above, the plaintiff's Complaint shows that he already had all the information he needed to determine that Orion was the proximate cause of his injuries by the time he turned twenty.

Ultimately, the plaintiff had sufficient information about Orion's institutional failures prior to the expiration of any applicable limitations period. Nor did the plaintiff allege anywhere in his Complaint that he learned any new facts about Orion's role in his alleged abuse after he turned twenty. For these reasons, the Court concludes that the discovery rule does not toll the statute of limitations.

ii. Fraudulent Concealment and Equitable Tolling

The Court has found that (a) the discovery rule did not toll the start of the limitations period in RSA 508:4 beyond the plaintiff's twentieth birthday and, therefore, (b) the applicable limitations period is that established by RSA 508:8, which gave the plaintiff until age 20 to file this action.

The plaintiff argues, however, that two equitable doctrines apply here: fraudulent concealment and equitable tolling. The New Hampshire Supreme Court views both these

doctrines as implied exceptions to all statutes of limitations. See Lakeman v. La France, 102 N.H. 300, 303 (1959) (adopting the majority rule that “fraudulent concealment of a cause of action from the one in whom it resides by the one against whom it lies constitutes an implied exception to the statute of limitations,” and rejecting the “contrary view that fraudulent concealment does not toll the operation of the statute unless the Legislature has expressly so stated in the statute itself”). With respect to equitable tolling, the supreme court has only applied the doctrine and explained its elements. See Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 623–24 (2005).

The doctrine of fraudulent concealment tolls the limitations period when a defendant, by concealment or other action, intentionally prevents the plaintiff from acquiring material information. Lamprey, 163 N.H. at 259–60; see also Lakeman, 102 N.H. at 303–304. Thus, fraudulent concealment

. . . requires something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to a cause of action—some actual artifice to prevent knowledge of the facts or some representation intended to exclude suspicion and prevent inquiry.

Lamprey, 163 N.H. at 259–60 (internal quotation marks and bracketing omitted); see also Maggi, 633 F. Supp. 3d at 516 (“The burden is on the plaintiff invoking the fraudulent concealment doctrine to present some evidence of an affirmative act on the part of the defendant to conceal or cover up the underlying wrongful conduct that gave rise to the plaintiff’s asserted injury.” (internal citations omitted)); Sykes v. RBS Citizens, N.A., 2 F. Supp. 3d 128, 143 (D.N.H. 2014).

Even when there is fraudulent concealment, the doctrine provides little, if anything, in the way of relief that the discovery rule does not also provide. See Beane, 160 N.H. at 714 (“The fraudulent concealment rule states that when facts essential to the cause of action are fraudulently concealed, the statute of limitations is tolled until the plaintiff has discovered such

facts or could have done so in the exercise of reasonable diligence.” (quoting Bricker v. Putnam, 128 N.H. 162, 165 (1986)); see also Lakeman, 102 N.H. at 303; Furbush, 149 N.H. at 431; Sykes, 2 F. Supp. 3d at 143.

In this case, the plaintiff has not pointed to any affirmative act on the part of Orion to conceal or cover up any fact. Indeed, as noted above, the plaintiff has not pointed to any fact he learned after leaving Orion’s facility in 2008. Therefore, the doctrine of fraudulent concealment does not apply to the plaintiff’s claims against Orion.

The New Hampshire Supreme Court has not developed a substantial body of case law relating to the doctrine of equitable tolling. The Court recognized the doctrine in Portsmouth Country Club, explaining that it allows a plaintiff to initiate an action beyond the statutory limitations period when that plaintiff had been “prevented in some extraordinary way from exercising his or her rights.” 152 N.H. at 623 (emphasis added). The doctrine “applies principally if the plaintiff is actively misled by the defendant about the cause of action.” Kierstead v. State Farm Fire & Cas. Co., 160 N.H. 681, 688 (2010).

To be eligible for equitable tolling, a plaintiff’s access to the justice system must be frustrated despite the plaintiff’s diligence. See, e.g., Irwin v. Dep’t of Veterans Affairs, 498 U.S. 89, 96 (1990) (applying federal law and holding that:

Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary’s misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.

(internal footnotes omitted)); Maggi, 633 F. Supp. 3d at 518 (applying federal law and noting that, “in unusual cases, certain limitations of imprisonment may rise to the level of ‘extraordinary

circumstance” [but] “the usual problems inherent in being incarcerated, such as a prisoner's lack of prior legal training or limited access to legal resources in a prison's library, do not, by themselves, justify equitable tolling” (internal ellipses and citation omitted)).

In this case, the plaintiff was not prevented by Orion from discovering either necessary facts or necessary law. He was not actively misled by Orion as to his ability to access the courts. He was not threatened with retaliation by Orion for accessing the courts. He was not deprived by any action of Orion of the ability to seek counsel or advice from third parties.

Although the plaintiff alleges that he did not bring suit because he was afraid of deportation, this fear did not arise until threats were made by the Mount Prospect staff member. While the threat of deportation made by a Mount Prospect staff member may have dissuaded him from pursuing a claim against Orion, the actions of a Mount Prospect staff member cannot be held against Orion. Thus, the doctrine of equitable tolling does not apply in regard to Orion.

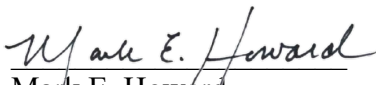
CONCLUSION

Pursuant to RSA 508:4 and 508:8, the instant action against Orion is not timely, as the plaintiff filed this case well after his twentieth birthday. The plaintiff attained twenty years of age in May 2013. He filed this case in January 2022, some nine years after the expiration of the statute of limitations, and no other tolling provisions apply.

Accordingly, all of the plaintiff's claims against Orion are DISMISSED WITH PREJUDICE.

Date: February 27, 2025

So Ordered.


Mark E. Howard
Chief Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/27/2025

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

JOHN DOE 480

v.

STATE OF NEW HAMPSHIRE, et al.
217-2022-CV-00797

DAVID MEEHAN v. STATE OF NEW HAMPSHIRE, et al.
(Consolidated YDC/YDSU Cases)
217-2020-CV-26

ORDER

The matter before the court is Defendant Orion House, Incorporated's ("Orion House's") Motion to Dismiss plaintiff John Doe 480's claims against it. (Court Index ## 12 (Mot. Dismiss Sealed); 13 (Redacted)). For the reasons set forth below the motion is GRANTED. All claims against Orion House in this case are DISMISSED WITH PREJUDICE. Specifically:

- (A) Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy) are DISMISSED for failure to state a claim upon which relief may be granted; and
- (B) Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention), and XII (negligence) are DISMISSED because they were filed after the expiration of the statute of limitations.

This resolves all counts against Orion House.¹

¹ The remaining counts do not allege any claims against Orion House. Counts I through VII (set forth in the Master Complaint) and Counts IX and XIII (set forth in the Short Form Complaint) assert claims against the State Defendants only.

DEFINING THE COMPLAINT

The Complaint in this case comprises the following three documents:

A. A 50-page “Amended Master Complaint,” filed in Meehan v. State, 217-2020-CV-26 on July 8, 2022. (Meehan Court Index # 70). (The Amended Master Complaint does not mention John Doe 480 or any of the facts about his life. Likewise, it does not contain any reference to Orion House or any other contractor defendant.)

B. A 29-page “Amended Short Form Complaint” filed in John Doe 480 v. State, 217-2020-CV-00797. (Court Index # 1). (The Short Form Complaint contains allegations specific to the plaintiff and Orion House. The Short Form Complaint contains an Addendum, as well as a separately filed Sealed Supplement that contains John Doe 480’s true name and date of birth).

C. An 8-page Declaration, signed by the plaintiff, filed as Exhibit A to the Objection to the Motion to Dismiss in John Doe 480 v. State, 217-2020-CV-00797. (Court Index # 16 (Redacted); see Court Index # 18 (Unredacted)) (cited hereinafter as “Declaration”). The Declaration contains the plaintiff’s factual response to Orion House’s affirmative limitations defense.

These 87 pages will be referred to collectively as “the Complaint.”

PROCEDURAL HISTORY AND RELEVANT DATES

The plaintiff was born in July 1984.² He turned 20 in July 2004. The Complaint in this case was filed on July 18, 2022, when the plaintiff was 38 years old.

As relevant to the instant motion, the plaintiff claims that he was subjected to psychological abuse at a residential juvenile facility operated by Orion House. The plaintiff

² The plaintiff’s precise date of birth is provided in the Sealed Supplement to the Short Form Complaint (Court Index # 3). The court recites only the month and year of birth to protect the plaintiff’s identity. The day of the month is not material to any determination in this Order.

alleges that the abuse occurred for 3 to 6 months between 1999 and 2001 when he was approximately 15 to 16 years old.³ The plaintiff does not allege that Orion House engaged in any tortious behavior after that time.

Thus, the plaintiff initially filed suit approximately 21 years after the last possible date of abuse, and roughly 18 years after he turned 20.

FACTUAL BACKGROUND

The following facts are taken from the Complaint.

A. Events That Occurred Prior to Placement at Orion House

According to the Declaration, the plaintiff and his siblings were removed from his father's custody when he was seven because of his father's substance abuse. The plaintiff never felt unsafe with his father despite his substance abuse. The plaintiff and his siblings were placed in separate foster homes. While at his foster placement, the plaintiff's foster parents' biological son raped him repeatedly. The plaintiff never told anyone about the rapes because the son threatened that if the plaintiff disclosed the rape, he would make sure the plaintiff would never see his family again. Sometime thereafter, the plaintiff's grandfather gained temporary custody of plaintiff and his siblings. The plaintiff experienced routine physical abuse and excessive force in discipline from his grandfather and uncle, in part because he was the oldest child.

B. Events at Orion House's Facility

Later, when the plaintiff was 15 or 16, the State sent him to live at Orion House for approximately 3 to 6 months. On one occasion, Orion House staff members accused the plaintiff of being high and tripping on drugs. Staff members strip-searched him but never offered him

³ Specifically, the plaintiff alleges that the State sent him to live at Orion House "for approximately 3 to 6 months" when he was "approximately 15-16 years of age." (Declaration ¶ 8). The Court infers that he was placed in Orion House sometime between July of 1999 and December of 2000, and he left Orion House no later than July of 2001. More precise dates are immaterial for resolution of the instant motion.

medical attention. Afterwards, staff members gave plaintiff his boxer shorts back and sent him to stay in the basement for the next two weeks. While he was kept in the basement, various staff members provided plaintiff with food and access to a bathroom but did not allow him to bathe, go outside, or talk to anyone else. The plaintiff would complain to staff members about being kept in the basement, to which the staff members replied that the plaintiff was “lucky” that they did not involve the police. The plaintiff believed this was a normal punishment, and he never reported his confinement because many staff members already knew about his confinement.

C. Events Occurring after the Plaintiff Left Orion House

After the plaintiff left Orion House, he was placed at the State’s Youth Detention Services Unit (“YDSU”) for approximately two to three months. The plaintiff does not allege how much time, if any, elapsed between the date he left Orion House and the date he arrived at YDSU.

The plaintiff alleges that, while he was at YDSU, he was physically abused, locked in solitary confinement, and deprived of education. In particular, the plaintiff alleges that staff members came into his room, in which he was confined, and would beat and physically restrain him. The plaintiff was often denied access to bathrooms and was not provided any schooling while at YDSU. The plaintiff never reported any of the abuse he suffered because things often got worse for him when he complained about the treatment he received.

Sometime around 2000 or 2001, the State sent plaintiff to the Youth Detention Center (“YDC”) for approximately one year, where the plaintiff alleges that physical abuse and solitary confinement continued. Staff members known to the plaintiff as Dick Brown, Tim Brown, Joe Peters, and Keith physically restrained him on a weekly basis. The plaintiff often observed the staff members physically assault and restrain other residents in a similar manner. The plaintiff

was locked in his room for days at a time. The plaintiff further alleges that there was a culture of violence and silence at YDC, as he would often observe physical marks on other residents, which reinforced his belief that it was dangerous to report the abuse he suffered. The plaintiff aged out of YDC when he turned seventeen.

D. Damages

According to the Declaration, the plaintiff has severe mental health issues—including PTSD, anxiety, and addiction disorder—stemming from the abuse he allegedly suffered throughout his childhood. The plaintiff alleges that he has used and abused drugs since he was 17, which has resulted in the plaintiff's being recently diagnosed with acute endocarditis. Despite this diagnosis, the plaintiff still struggles with his addictions. The plaintiff further alleges that, since aging out of YDC, he has spent much of his adult life incarcerated, largely because of his drug use.

E. Lack of Discovery

The plaintiff alleges that he believed that the abuse was “permissible and normal” because this was the way that adult staff members behaved at all of the facilities he attended. In his Declaration, the plaintiff states that he did not believe that Orion House's physical restraints and solitary confinement practices were abusive. The plaintiff had a feeling that physical violence was not allowed but was too scared to report it. The plaintiff further explains that he believed these facilities had the power to do whatever they wanted to the children entrusted to their care in large part because staff members never faced any accountability for the alleged abuse perpetrated on the plaintiff. Additionally, the plaintiff alleges that he did not understand the institutional nature of the abuse he allegedly suffered, and he assumed that only the individual staff members were responsible. The plaintiff asserts that his constant incarceration,

drug use, and severe mental health conditions prevented him from understanding or discovering Orion House's role in the abuse he alleges he suffered.

In March or April of 2022, the plaintiff first learned that the people in charge of the facilities he was in were responsible for his care from talking with his friends who were at YDC around the same time as the plaintiff and had had similar experiences. The plaintiff alleges that it was only after this conversation that he realized what he suffered while at Orion House and his other placements was wrong and abusive and that YDC and the non-state placements had a duty of care towards him.

ANALYSIS

I. The Complaint Does Not State Claims for Aiding and Abetting a Breach of Fiduciary Duty or Civil Conspiracy

In Counts X and XIV, the plaintiff accuses Orion House of: (a) aiding and abetting a breach of fiduciary duty; and (b) civil conspiracy. Both of these claims require proof that Orion House was engaged in deliberate, concerted action with another party to violate the plaintiff's rights. See Invest Almaz v. Temple-Inland Forest Prods. Corp., 243 F.3d 57, 82-83 (1st Cir. 2001)(stating standard for aiding and abetting a breach of fiduciary duty); Jay Edwards, Inc. v. Baker, 130 N.H. 41, 47 (1987) (describing standard for civil conspiracy). Because the Complaint alleges no material facts from which such concerted action can be inferred, these two counts are DISMISSED for failure to state a claim.

A. Aiding and Abetting a Breach of Fiduciary Duty

The New Hampshire Supreme Court has not yet had occasion to recognize the tort of aiding and abetting a breach of fiduciary duty. Nonetheless, the tort is established and well-defined, as, for example, in the Restatement (Second) of Torts, § 876(b):

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . [1] knows that the other's conduct constitutes a breach of duty and [2] gives substantial assistance or encouragement to the other so to conduct himself[.]

Courts that apply New Hampshire law predict that the New Hampshire Supreme Court will recognize this cause of action. See Invest Almaz, 243 F.3d at 82-83; Legacy Glob. Sports, LP v. St. Pierre, Slip Op. No. 218-2019-CV-198, 2020 WL 2027401, at *2 (Merrimack County Superior Court, Apr. 27, 2020); Clare v. Bank of New England, Slip. Op. No. 218-2013-CV-00687, 2013 N.H. Super LEXIS 22, at *3-4, 9 (Merrimack Count Superior Court, Nov. 26, 2013); HayJo S.A. de CV v. Sponge-Jet, Inc., No. 14-cv-196-JD, 2015 WL 9459918, at *4 (D.N.H. Dec. 23, 2015); Tamposi v. Denby, 974 F. Supp. 2d 51, 61 (D. Mass. 2013); In Re Felt Mfg. Co., Inc., 371 B.R. 589, 615 (Bankr. D.N.H. 2007); But see Gill v. Devine, Millimet & Branch, P.A., Slip Op. No 218-2012-CV-00660 (Rockingham County Superior Court, Oct. 12, 2012) (ruling that the tort of aiding and abetting a breach of fiduciary duty had not been recognized).

Regardless, even assuming a claim for aiding and abetting a breach of fiduciary duty may be pursued in New Hampshire, the Complaint does not contain facts to support this cause of action. To prevail, the plaintiff would need to prove that Orion House had helped another party breach its fiduciary duty. The Complaint does not allege that Orion House did anything to encourage or facilitate the plaintiff's alleged abuse at YDC or at any other placement.

Moreover, Orion House cannot be found liable for aiding its own employees and agents in a breach of fiduciary duty. The cause of action for aiding and abetting a breach of fiduciary duty only exists to cover circumstances in which the defendant has no direct liability to the plaintiff as a fiduciary. That is not the case here. See, e.g., Mann v. GTCR Golder Rauner, L.L.C., 483 F. Supp. 2d 884, 916 (D. Ariz. 2007) (Under Delaware law, "a person who himself

owes a fiduciary duty with respect to a transaction or course of conduct cannot be liable for aiding and abetting a breach of that same fiduciary duty by another because the same facts that would otherwise constitute aiding and abetting would constitute a primary breach of fiduciary duty.”); In Re Amcast Indus. Corp., 365 B.R. 91, 112–13 (Bankr. S.D. Ohio 2007) (Under Ohio law “the action by its nature, . . . requires participation by a non-fiduciary defendant); In re Verestar, Inc., 343 B.R. 444, 482 (Bankr. S.D.N.Y. 2006) (“[A] claim for aiding and abetting breach of fiduciary duty can only be sustained against a non-fiduciary.”).

Accordingly, for the foregoing reasons, the Complaint does not state a claim against Orion House for aiding and abetting a breach of fiduciary duty. The claim is thus DISMISSED.

B. Civil Conspiracy

To prevail on a claim of civil conspiracy, a plaintiff must prove that:

(A) Two or more persons and/or entities agreed to either:

(1) pursue an unlawful objective or, alternatively,

(2) use unlawful means to accomplish a lawful or unlawful objective; and

(B) At least one of the conspirators committed an overt act in furtherance of this agreement; and

(C) The plaintiff was harmed as a proximate result of the agreement.

Jay Edwards, Inc., 130 N.H. at 47; see Univ. Sys. of N.H. v. U.S. Gypsum Co., 756 F. Supp. 640, 652 (D.N.H. 1991); Censabella v. Town of Weare, No. 16-cv-490-AJ, 2017 WL 3996173, at *3 (D.N.H. Sept. 8, 2017). “For a civil conspiracy to exist, there must be an underlying tort which the alleged conspirators agreed to commit.” Univ. Sys., 756 F. Supp. at 652. Thus, the cause of action serves to impose liability on “all who commonly plan, take part in, further by cooperation, lend aid to, or encourage the wrongdoers' acts.” Id.

The Complaint does not contain facts to support a claim for civil conspiracy. There are no material facts from which the court may infer that Orion House and the State or any other entity entered into an agreement to engage in concerted action by abusing the plaintiff. No facts suggest that Orion House ever had any conversation, let alone any agreement, with any other defendant.

Further, Orion House cannot be liable for civil conspiracy with its own employees, because, under the intracorporate conspiracy doctrine, Orion House and its employees are considered to be the same “person.” See, e.g., Hoefler v. Fluor Daniel, Inc., 92 F. Supp. 2d 1055, 1057 (C.D. Cal. 2000):

The intracorporate conspiracy doctrine provides that, as a matter of law, a corporation cannot conspire with its own employees or agents. [citation and footnote omitted]. The logic for the doctrine comes directly from the definition of a conspiracy. A conspiracy requires a meeting of minds. [citation omitted]. It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

see also Grider v. City of Auburn, Ala., 618 F.3d 1240, 1261 (11th Cir. 2010)(“[T]he intracorporate conspiracy doctrine holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy.”); Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505, 509 (6th Cir. 1991) (“It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.”); Tabb v. District of Columbia, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (“[A] corporation cannot conspire with its employees[.]”); HRCC, Ltd. v. Hard Rock Cafe Int’l (USA), Inc., 302 F. Supp. 3d 1319, 1325 (M.D. Fla. 2016)(“According to the intracorporate conspiracy

doctrine, however, a civil conspiracy claim will not succeed where the only members of the alleged conspiracy are a corporation and/or its officers.”).

For these reasons, the claim of civil conspiracy against Orion House is DISMISSED.

II. The Plaintiff’s Negligence and Breach of Fiduciary Duty Claims Are Barred by the Applicable Statutes of Limitations

The statute of limitations is an affirmative defense. Perez v. Pike Indus., Inc., 153 N.H. 158, 160 (2005); Glines v. Bruk, 140 N.H. 180, 181 (1995). A defendant has the obligation to allege and prove that the complaint was brought after the limitations period expired. Perez, 153 N.H. at 160. If the defendant meets this burden, then the plaintiff has the burden to prove that the claim is timely by virtue of the discovery rule, fraudulent concealment, equitable tolling, or some other doctrine. Two statutes are applicable to the plaintiff’s claim: the general statute of limitations for personal actions (RSA 508:4); and the tolling provisions of the “disabilities statute” (RSA 508:8).

A. The Disabilities Statute: RSA 508:8

The court first considers RSA 508:8, the so-called “disabilities statute.” This statute provides that “an infant or mentally incompetent person may bring a personal action within 2 years after such disability is removed.” In Norton v. Patten, 125 N.H. 413 (1984), the New Hampshire Supreme Court construed the term “infant” to mean a person who has not yet reached the statutory age of majority, as defined in RSA 21-B:1. The age of majority is eighteen. Thus, as construed by Norton, RSA 508:8 extends the limitations period for minors until their twentieth birthday.

As noted above, the plaintiff turned twenty in July 2004, approximately 18 years before he filed the instant case. Accordingly, the instant case was not filed within the limitations period established by RSA 508:8. RSA 508:8 does not contain its own discovery rule.

C. The General Statute of Limitations for Personal Actions: RSA 508:4

RSA 508:4 provides the statute of limitations for all personal actions. Under this statute:

[A]ll personal actions . . . may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

The last “act or omission complained of” occurred no later than July 2001, the year that the plaintiff left Orion House. The instant case was thus brought more than 21 years after the last “act or omission complained of.” Orion House has therefore met its burden of showing that the instant case was filed more than three years after the conduct at issue.

This shifts the burden to the plaintiff to demonstrate grounds for the application of: (a) the discovery rule; (b) equitable tolling; (c) the doctrine of fraudulent concealment; or (d) some other doctrine extending the limitations period. Perez, 153 N.H. at 160. Consistent with the standard of review for motions to dismiss, the court accepts all of the plaintiff’s well-pled facts, and makes all rational inferences in the plaintiff’s favor.

The court’s task is to determine only whether the plaintiff has alleged facts which, if proven, might lengthen the limitations period to make this case timely. To be clear, if the plaintiff alleges sufficient facts to show that further discovery is necessary to make this determination, the motion to dismiss on limitations grounds must be denied and the issue preserved for summary judgment on a more complete record. However, if discovery would be futile because the Complaint itself fails even to allege grounds to apply the discovery rule or another tolling doctrine, the motion to dismiss will be granted.

(i) The Discovery Rule

It is well-settled that the “purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party.” Petition of N.H. Div. For Children, Youth & Families, 173 N.H. 613, 618 (2020). The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run:

(1) a plaintiff must know or reasonably should have known that she has been injured; and (2) a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the defendant.

Lamprey v. Britton Constr., Inc., 163 N.H. 252, 257 (2012); see also Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 713 (2010); Perez, 153 N.H. at 160; Big League Entm’t, Inc. v. Brox Indus., Inc., 149 N.H. 480, 485 (2003).

The discovery rule does not reward ignorance of the law. The statute of limitations is not tolled due to a plaintiff’s failure to acknowledge or otherwise understand their potential claims. See Sullyville, LLC v. Town of Carroll, Slip Op. No. 2019-0240, 2021 WL 1310832, at *7 (N.H. Apr. 8, 2021) (non-precedential decision stating that “[t]he discovery rule does not toll the statute of limitations until a plaintiff discerns the legal theory by which his or her case will proceed; rather, it tolls the statute of limitations only when the injury and its causal relationship to the defendant’s act or omission remain unknown to the plaintiff.”); Ouellette v. Beaupre, 977 F.3d 127, 138 (1st Cir. 2020) (applying federal law and holding that “a plaintiff, once armed with the knowledge of his or her injury and its probable cause, cannot plead ignorance of the law to delay accrual.”); Maggi v. Grafton Cty. Dep’t of Corrs., 633 F. Supp. 3d 508, 516 (D.N.H. 2022) (applying RSA 508:4 and holding that “even if the court were to assume the truth of [plaintiff’s] assertions about his lack of access to legal resources, that would not save his claims. His claims

accrued on the date he should have reasonably known he was injured, not on the date he first learned he had a legal cause of action.”) (vacated and remanded on other grounds by Maggi v. Grafton Cty. Dep’t Corrs., No 23-1002 2024 WL 3384813 (1st Cir. July 9, 2024)); Miller v. Pac. Shore Funding, 224 F. Supp. 2d 977, 986–87 (D. Md. 2004) (“Knowledge of facts, however, not actual knowledge of their legal significance, starts the statute of limitations running. . . . The discovery rule, in other words, applies to discovery of facts, not to discovery of law. Knowledge of the law is presumed.”); Marcum v. Columbia Gas Transmission, LLC, 549 F. Supp. 3d 408, 421, (E.D. Pa. 2021) (“Plaintiffs’ ignorance of a legal cause of action does not, in itself, require application of the discovery rule.”). In this case, the plaintiff proffers several reasons why he may have not discovered the law governing his claims. However, the plaintiff’s failure to bring his claims within the applicable time period due to his unawareness of the law is not grounds to apply the discovery rule.

For discovery rule purposes, a plaintiff becomes aware of an injury as soon as he can reasonably discern that he has suffered “some harm” caused by a defendant’s conduct. Beane, 160 N.H. at 713; see also Balzotti Glob. Grp., LLC v. Shepherds Hill Proponents, LLC, 173 N.H. 314, 321 (2020); Furbush v. McKittrick, 149 N.H. 426, 431 (2003) (“The [discovery] rule is not intended to toll the statute of limitations until the full extent of the plaintiff’s injury has manifested itself.”). Thus, a latent injury will toll the limitations period, while a patent injury will not, even if the long-term consequences of the patent injury cannot be known. See Furbush, 149 N.H. at 431; see generally Clay v. Kuhl, 727 N.E.2d 217, 222 (Ill. 2000) (applying Illinois law): (“The plaintiff contends, however, that her injuries were latent to some extent and did not fully manifest themselves until years after the abuse occurred. We do not believe that the plaintiff’s alleged failure to fully discover the nature of her injuries is sufficient to delay the running of the

limitations period. There is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations.”); see also Stephens v. Clash, 796 F.3d 281, 288 (3d Cir. 2015) (“A plaintiff’s ignorance regarding the full extent of his injury is irrelevant to the discovery rule’s application, so long as the plaintiff discovers or should have discovered that he was injured.”).

In Rowe v. John Deere, 130 N.H.18 (1987), the plaintiff was injured when he struck his head while using machinery manufactured by the defendant. Immediately after the accident, the plaintiff was diagnosed with a depressed skull fracture. The plaintiff recovered quickly. Six years later he began to suffer grand mal seizures, purportedly as a result of the accident. The supreme court held that the plaintiff had discovered his injury at the time of the accident, even though the initial measure of damages was “nominal” compared with the potential damages for the later occurring harm. Id. at 21. Thus, a plaintiff is likely to immediately discover an injury caused by a sudden, traumatic, violent event, and an injury which may later arise from the initial injury will not toll the statute of limitations. See, e.g., Hollander v. Brown, 457 F.3d 688, 692 (7th Cir. 2006) (applying Illinois law):

courts distinguish between injuries caused by sudden, traumatic events and those that have a late or insidious onset. For limitations purposes, a sudden, traumatic event is one that, because of its force or violence, permits the law to presume that the event immediately placed the plaintiff on notice of her injury and a right of action. When a plaintiff suffers this type of injury, her cause of action accrues on the date of the traumatic event, and the limitations period does not begin anew simply because a latent condition later may arise from the same occurrence. The rationale is that the nature and circumstances surrounding the traumatic event are such that the injured party is thereby put on notice that actionable conduct might be involved.

(internal citations and quotation marks omitted).

Here, the plaintiff claims that he was injured as a result of Orion House’s failure to adequately oversee its staff with respect to hiring, training, supervision, and promulgation of

policies. Thus, the “act or omission complained of,” RSA 508:4, is the breach of duty by Orion House itself. According to the Complaint, that breach led to prolonged solitary confinement where the plaintiff was isolated and unable to bathe, speak to others, or go outside for two weeks. Additionally, the alleged breach involved many staff members, who taunted the plaintiff that he was lucky that he was not being treated even worse. The incidents of physical and psychological abuse the plaintiff describes constitute injuries that are sudden, traumatic, and/or extremely unpleasant. This is evidenced by the plaintiff’s continued pleas to be let out of his confinement. There is nothing subtle or latent about these alleged events. The plaintiff necessarily knew of the Orion House staff members’ abusive conduct at the time they happened.

With respect to this abuse, the plaintiff may have been unaware of the long-term psychological and emotional effects of the treatment he says he endured. But those harms were nonetheless caused by the same “act or omission complained of,” RSA 508:4, e.g., Orion House’s alleged lack of care in hiring, training and supervising staff, and promulgating policies. Thus, under settled New Hampshire law, accepting all the well-pled facts in the Complaint, the court must find that the plaintiff was aware that he had been injured as a result of Orion House’s failure to control its staff because the plaintiff knew that he had been subjected to a lengthy solitary confinement while being subjected to the taunts of Orion staff.

Under the discovery rule, the limitations period in this case did not begin to run until the plaintiff either (a) discovered, or (b) should have discovered through the exercise of reasonable diligence, that Orion House’s breach of duty was a proximate cause of his injury. See Troy v. Bishop Guertin High Sch., 176 N.H. 131, 134 (2023) (citing RSA 508:4). Knowledge of Orion House’s causal role cannot be automatically inferred from the fact that the plaintiff knew that his injury was caused by Orion House’s employees, acting overtly under color of their authority, on

Orion House's premises. See id. at 138 ("We decline to establish a per se rule that the plaintiff's knowledge of the abuser's employer is alone sufficient to trigger the application of the discovery rule. This inquiry presents a question of fact."). However, "[a] plaintiff need not be certain of this causal connection; the possibility that it existed will suffice to obviate the protections of the discovery rule." Id. at 137 (quoting Beane, 160 N.H. at 713); see also Balzotti, 173 N.H. at 321; Lamprey, 163 N.H. at 257; Pichowicz v. Watson Ins. Agency, Inc., 146 N.H. 166, 168 (2001). "[T]he discovery rule employs an objective standard" to determine whether, through the exercise of reasonable diligence, a plaintiff should have discovered sufficient evidence of the defendant's role in causing his injury." Troy, 176 N.H. at 137.

In this case, the same alleged facts that establish the plaintiff's knowledge of harm also demonstrate the plaintiff knew or should have known Orion House's breach of duty was a proximate cause of his alleged injury. Here the plaintiff does not complain of an isolated incident, committed in secret, by a rogue staff member of a large institution. Rather, the plaintiff claims a prolonged solitary confinement in which many staff members allegedly participated. The plaintiff's allegations suggest that his prolonged confinement was an institutional response and punishment for the plaintiff's suspected drug use. Such allegations indicate an awareness that the institution itself—and not just a handful of rogue employees—injured the plaintiff because it demonstrates that the plaintiff linked his abuse with an institutional response. Such allegations belie the plaintiff's argument that he could not have known that Orion House itself was responsible for his alleged abuse. If these allegations in the Complaint are credited, as they must be at this juncture, then at the very least Orion House failed to supervise its staff and monitor its facility and thereby breached both its fiduciary obligations to the plaintiff and the common law duty of reasonable care.

Orion House's role in causing the plaintiff's injury is not inferred from the mere fact that the plaintiff's assailants received paychecks and a W2 from Orion House. Compare the facts of this case to those in Troy, which involved two acts of sexual assault, committed in private, by a high school teacher against a female student. Troy, 176 N.H. at 133-35. Unbeknownst to the plaintiff in Troy, the school had hired the teacher despite knowing of his previous conviction for unlawful sexual contact with a different female high school student at a different school that was owned and operated by the same religious order. Id. at 133-34. The school did not alert students or parents to the teacher's status as a sex offender who preyed on a similar victim. Id. It took no action to limit or monitor the teacher's contact with students. Id. It would be hard to imagine how the plaintiff in Troy could have known from the abuse she endured that the school (and its owner) shouldered any of the blame for the covert criminal acts of a lone employee.

Conversely, in this case, if the facts in the Complaint are credited, it is difficult to imagine how the plaintiff could not see a problem with the conduct of Orion House's staff members. Indeed, the plaintiff—unlike the plaintiff in Troy, who became aware of the offending teacher's history with the school only as a result of later public disclosures by the school itself—does not allege a single fact that he learned about Orion House since leaving its facility in or around 2001. He does not point to the discovery of any fact, for example, relating to Orion House's hiring process, its knowledge of staff misconduct, or its promulgation of policies. He points to no news articles or publicity relating to Orion House. Rather, he states only that he first realized in March or April 2022 that other people had experiences similar to his own while they were in YDC around the same time as the plaintiff. (Declaration ¶ 29). Neither of these assertions constitutes the discovery of a fact pertinent to Orion House's causal relationship to the

plaintiff's injury of a kind that, if unknown to the plaintiff, would toll the statute of limitations. Cf. Miller, 224 F. Supp. 2d at 986–87.

The plaintiff's remaining arguments are unpersuasive. First, the plaintiff contends that his fiduciary duty claim is tolled until he had actual knowledge of Orion House's breach. However, New Hampshire law is clear that tolling a statute of limitations period is not dependent or otherwise reliant upon the fiduciary disclosing its wrongdoing. See Beane, 160 N.H. at 714-15 (“[T]here is no support in our case law for the proposition that a limitations period is tolled in fiduciary cases until the fiduciary discloses his or her misconduct.”). Second, no amount of additional discovery the plaintiff may engage in regarding Orion House's policies and procedures would potentially reveal information that would make it more likely that the plaintiff could avail himself of the discovery rule. As explained above, the plaintiff's Complaint shows that he already had all the information he needed to determine that Orion House was the proximate cause of his injuries by the time he turned twenty.

Ultimately, the plaintiff had sufficient information about Orion House's institutional failures prior to the expiration of any applicable limitations period. The plaintiff has not alleged anywhere in his Complaint that he learned any new facts about Orion House's role in his alleged abuse after he turned twenty. For these reasons, the court concludes that the discovery rule does not toll the statute of limitations.

ii. Fraudulent Concealment and Equitable Tolling

The court has found that (a) the discovery rule did not toll the start of the limitations period in RSA 508:4 beyond the plaintiff's twentieth birthday and, therefore, (b) the applicable limitations period is that established by RSA 508:8, which gave the plaintiff until age 20 to file this action.

The plaintiff argues, however, that two equitable doctrines apply here: fraudulent concealment and equitable tolling. The New Hampshire Supreme Court views both these doctrines as implied exceptions to all statutes of limitations. See Lakeman v. La France, 102 N.H. 300, 303 (1959) (adopting the majority rule that “fraudulent concealment of a cause of action from the one in whom it resides by the one against whom it lies constitutes an implied exception to the statute of limitations,” and rejecting the “contrary view that fraudulent concealment does not toll the operation of the statute unless the Legislature has expressly so stated in the statute itself”). With respect to equitable tolling, the supreme court has only applied the doctrine and explained its elements. See Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 623–24 (2005).

The doctrine of fraudulent concealment tolls the limitations period when a defendant, by concealment or other action, intentionally prevents the plaintiff from acquiring material information. Lamprey, 163 N.H. at 259–60; See also Lakeman, 102 N.H. at 303–304. Thus, fraudulent concealment

. . . requires something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to a cause of action—some actual artifice to prevent knowledge of the facts or some representation intended to exclude suspicion and prevent inquiry.

Lamprey, 163 N.H. at 259–60 (internal quotation marks and bracketing omitted); see also Maggi, 633 F. Supp. 3d at 516 (“The burden is on the plaintiff invoking the fraudulent concealment doctrine to present some evidence of an affirmative act on the part of the defendant to conceal or cover up the underlying wrongful conduct that gave rise to the plaintiff’s asserted injury.” (internal citations omitted)); Sykes v. RBS Citizens, N.A., 2 F. Supp. 3d 128, 143 (D.N.H. 2014).

Even when there is fraudulent concealment, the doctrine provides little, if anything, in the way of relief that the discovery rule does not also provide. See Beane, 160 N.H. at 714 (“The

fraudulent concealment rule states that when facts essential to the cause of action are fraudulently concealed, the statute of limitations is tolled until the plaintiff has discovered such facts or could have done so in the exercise of reasonable diligence.” (quoting Bricker v. Putnam, 128 N.H. 162, 165 (1986)); see also Lakeman, 102 N.H. at 303; Furbush, 149 N.H. at 431; Sykes, 2 F. Supp. 3d at 143.

In this case, the plaintiff has not pointed to any affirmative act on the part of Orion House to conceal or cover up any fact. Indeed, as noted above, the plaintiff has not pointed to any fact he learned after leaving Orion House’s facility in 2000. Therefore, the doctrine of fraudulent concealment does not apply to the plaintiff’s claims against Orion House.

The New Hampshire Supreme Court has not developed a substantial body of case law relating to the doctrine of equitable tolling. The Court recognized the doctrine in Portsmouth Country Club, explaining that it allows a plaintiff to initiate an action beyond the statutory limitations period when that plaintiff had been “prevented in some extraordinary way from exercising his or her rights.” 152 N.H. at 623 (emphasis added). The doctrine “applies principally if the plaintiff is actively misled by the defendant about the cause of action.” Kierstead v. State Farm Fire & Cas. Co., 160 N.H. 681, 688 (2010).

To be eligible for equitable tolling, a plaintiff’s access to the justice system must be frustrated despite the plaintiff’s diligence. See, e.g., Irwin v. Dep’t of Veterans Affairs, 498 U.S. 89, 96 (1990)(applying federal law and holding that:

Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.

(internal footnotes omitted)); Maggi, 633 F. Supp. 3d at 518 (applying federal law and noting that, “in unusual cases, certain limitations of imprisonment may rise to the level of ‘extraordinary circumstance’” [but] “the usual problems inherent in being incarcerated, such as a prisoner's lack of prior legal training or limited access to legal resources in a prison's library, do not, by themselves, justify equitable tolling” (internal ellipses and citation omitted)).

In this case, the plaintiff was not prevented from discovering either necessary facts or necessary law. He was not actively misled by Orion House as to his ability to access the courts. He was not threatened with retaliation for accessing the courts. He was not deprived of the ability to seek counsel or advice from third parties.

To this end, the plaintiff alleges that he did not bring suit because of his ongoing emotional distress and substance misuse disorder. However, diminished mental capacity is not grounds for equitable tolling. See Sykes, 2 F. Supp. 3d at 144, fn 18 (ruling that, “RSA 508:8, and not the doctrine of equitable tolling, governs the statute of limitations for New Hampshire state law claims when a plaintiff is mentally incompetent.”). Furthermore, even under federal law, where a plaintiff’s mental condition might allow for equitable tolling, the plaintiff would have to prove that he was unable to engage in rational thought to the point where he could not cooperate with any counsel, and/or pursue his claim on his own during the limitations period.”

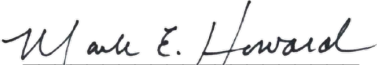
Id. The plaintiff does not allege this. Thus, the doctrine of equitable tolling does not apply.

CONCLUSION

Pursuant to RSA 508:4 and 508:8, this action is not timely, as the plaintiff filed this case well after his 20th birthday. The plaintiff attained 20 years of age in July 2004. He filed this case in July 2022, some 18 years after the expiration of the statute of limitations, and no other tolling provisions apply.

Accordingly, all of the plaintiff's claims against Orion House are DISMISSED WITH PREJUDICE.

Date: February 27, 2025


Mark E. Howard
Chief Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/27/2025

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

JOHN DOE #535

v.

STATE OF NEW HAMPSHIRE, et al.
217-2022-CV-00833

DAVID MEEHAN v. STATE OF NEW HAMPSHIRE, et al.
(Consolidated YDC/YDSU Cases)
217-2020-CV-26

ORDER

The matter before the Court is Defendant Mount Prospect Academy's ("Mount Prospect's") and Defendant NFI North's ("NFI's") (collectively the "Contractor Defendants") Motions to Dismiss plaintiff John Doe #535's claims against them. (Court Index # 11 (Mount Prospect Mot. Dismiss); Court Index ## 21 (NFI's Mot. Dismiss); 22 (NFI's Mem. of Law)) . For the reasons set forth below the motions are GRANTED. Specifically, both motions are GRANTED with respect to Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy), which are DISMISSED for failure to state a claim upon which relief may be granted. Both motions are GRANTED, for the reasons stated below, with respect to Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention), and XII (negligence), which are DISMISSED for not being timely filed.¹

DEFINING THE COMPLAINT

The Complaint in this case comprises the following three documents:

¹ The remaining counts do not allege any claims against the Contractor Defendants. Counts I through VII (set forth in the Master Complaint) and Counts IX and XIII (set forth in the Short Form Complaint) assert claims against the State Defendants only.

A. A 50-page “Amended Master Complaint,” filed in Meehan v. State, 217-2020-CV-26 on July 8, 2022. (Meehan Court Index # 70). The Amended Master Complaint does not mention John Doe 535 or any of the facts about his life. Likewise, it does not contain any reference to the Contractor Defendants or any other contractor defendant.

B. A 29-page “Amended Short Form Complaint” filed in John Doe #525 v. State, 217-2022-CV-00833. (Court Index # 7). The Short Form Complaint contains allegations specific to the plaintiff and the Contractor Defendants. The Short Form Complaint contains an Addendum, as well as a separately filed Sealed Supplement that contains John Doe #535’s true name and date of birth.

C. An 8-page Declaration, signed by the plaintiff, filed as Exhibit A to the Objection to the Motion to Dismiss in John Doe #535 v. State, 217-2022-CV-00833 (Court Index ## 13, 17) (Redacted); see Court Index ## 15, 19 (Unredacted)) (cited hereinafter as “Declaration”). The Declaration contains the plaintiff’s factual responses to the Contractor Defendants’ affirmative limitations defense.

These 87 pages will be referred to collectively as “the Complaint.”

PROCEDURAL HISTORY AND RELEVANT DATES

The plaintiff was born in August 1988.² He turned 20 in August 2008. The Complaint in this case was filed on July 21, 2022, when the plaintiff was 33 years old.

As relevant to the instant motion, the plaintiff claims that he was subjected to physical, psychological, and sexual abuse at a residential juvenile facility operated by Mount Prospect, and physical and psychological abuse at a residential juvenile facility operated by NFI. The plaintiff alleges that the abuse at NFI occurred during a period of roughly two months in 2004, when he

² The plaintiff’s precise date of birth is provided in the Sealed Supplement to the Short Form Complaint (Court Index # 3). The court recites only the month and year of birth to protect the plaintiff’s identity. The day of the month is not material to any determination in this Order.

was approximately 15 years old. The plaintiff also alleges that the abuse at Mount Prospect occurred sometime in 2005, when he was approximately 15 or 16 years old.³ The plaintiff does not allege that either Contractor Defendant engaged in any tortious behavior after that time.

Thus, the plaintiff initially filed suit approximately 17 years after the last possible date of abuse, and roughly 14 years after he turned 20.

FACTUAL BACKGROUND

The following facts are taken from the Complaint.

A. Events That Occurred Prior to Placement at Mount Prospect and NFI

Growing up, the plaintiff lived with his mother and his two older brothers. Starting around when the plaintiff was 8 years old, his mother began dating and living with a series of boyfriends who routinely abused the plaintiff and his brothers. His mother's boyfriends often spanked the plaintiff with a belt. One time in particular, the plaintiff was spanked with a vacuum cleaner attachment. The boyfriends also routinely locked the plaintiff and his brothers in their rooms for days at a time. According to the plaintiff, his mother would direct her boyfriends to abuse him. At the time, the plaintiff thought this was punishment rather than abuse.

When the plaintiff was 15, a CHINS petition was filed on his behalf because of his truancy. The State took custody of the plaintiff and sent him to YDSU where he stayed for one to two months. During that time, the plaintiff suffered routine physical abuse, solitary confinement, and unnecessary strip searches. He also alleges that YDSU staff members intimidated the plaintiff and other residents into keeping quiet about the abuse they suffered.

B. Events at NFI's and Mount Prospect's Facility

³ Specifically, the plaintiff alleges that when he was placed at NFI's facility for 2 months in 2004. (Declaration ¶ 16). The plaintiff also alleges that he was placed at Mount Prospect's facility for an unspecified amount of time in 2005. (*Id.* ¶ 20). The Court therefore infers that the last possible date of abuse at NFI was 2004 and at Mount Prospect was 2005.

Thereafter, the State sent the plaintiff to Midway Shelter—operated by NFI—for approximately two months in 2004 when the plaintiff was 15 years old. The plaintiff alleges that after he got into a fight with another resident on a basketball court, staff members violently restrained the plaintiff and threw him in his room for three days. The plaintiff was locked in his room in this manner on multiple occasions. The plaintiff never knew how long a specific isolation would last, making the isolations even more difficult on the plaintiff. The plaintiff believed this was permissible punishment. The plaintiff never complained about his isolations because the only people he could complain to were actively keeping the plaintiff in solitary confinement.

Next, the plaintiff was sent to Mount Prospect in 2005. It is unclear if any time elapsed between his placement at Midway Shelter and Mount Prospect or for how long the plaintiff was at Mount Prospect. He alleges that the physical abuse and solitary confinements continued. He resided at the Becket School and was bused to and from Mount Prospect for school. While at Mount Prospect, a staff member named Ernie routinely wrestled with the plaintiff and other residents. When Ernie started to lose, he would grab the plaintiff's testicles and twist them to inflict pain. He did this to the plaintiff on at least two occasions. Ernie would also slam the plaintiff's head hard into the ground. The plaintiff thought wrestling with Ernie was fun until Ernie started slamming him around and grabbing his testicles. The plaintiff thought it was weird that Ernie would grab his testicles.

The plaintiff also alleges that Mount Prospect staff members routinely placed the plaintiff into solitary confinement and would also deprive the plaintiff of his home visit privileges. He would be locked in his room for lengthy periods. The plaintiff never told anyone about this

abuse because he believed it was permissible and that anyone he could have told was actively involved in abusing him. The plaintiff aged out of Mount Prospect at 16.

C. Events Occurring after the Plaintiff Left NFI and Mount Prospect

After leaving Mount Prospect, the plaintiff lived with his mother again, where her boyfriends continued to abuse him. As a result of his childhood abuse and his experiences in YDSU, NFI, and Mount Prospect, the plaintiff developed and continues to suffer from PTSD and anxiety.

D. Lack of Discovery

While the plaintiff now realizes that the State and the Contractor Defendants had an obligation to keep him safe, as a child he did not understand what was happening to him and could not appreciate that the State and the Contractor Defendants were responsible for it. He also alleges that he did not appreciate the legal relationship between the State and the Contractor Defendants. The plaintiff explains that he still has trouble recognizing what he suffered was abuse because it was so normalized in his childhood. In or around June 2022, the plaintiff first heard from fellow inmates about a lawsuit against the State for abuse suffered in the State's custody. At first, the plaintiff did not realize that he suffered abuse and did not believe he would be eligible to join in the lawsuit. It was only after talking with fellow inmates that he began to realize what he suffered as a child was abuse.

ANALYSIS

The Contractor Defendants move to dismiss on two broad grounds: that the plaintiff's claims are barred as untimely by operation of the statute of limitations and the failure of all available tolling provisions; and that the plaintiff fails to state a claim for which relief may be granted. The court will address each of these issues separately.

I. Limitations Analysis

The defendant argues, inter alia, that the plaintiff's claims are time-barred. The statute of limitations is an affirmative defense. Perez v. Pike Indus., Inc., 153 N.H. 158, 160 (2005); Glines v. Bruk, 140 N.H. 180, 181 (1995). A defendant has the obligation to allege and prove that the complaint was brought after the limitations period expired. Perez, 153 N.H. at 160. If the defendant meets this burden, then the burden shifts to the plaintiff to prove that the claim is timely by virtue of the discovery rule, fraudulent concealment, equitable tolling, or some other doctrine. The plaintiff here alleges instances of physical, psychological, and sexual abuse spanning several years, all occurring prior to him reaching the age of 18. By their nature, these claims separately implicate three statutes pertaining to limitations: the general statute of limitations for personal actions (RSA 508:4); the special tolling provision provided in the "disabilities statute" (RSA 508:8); and the special tolling provision applicable to sexual assault and related offenses (RSA 508:4-g). The court will consider the application of each of these statutes in turn.

A. The Disabilities Statute: RSA 508:8

The court first considers RSA 508:8, the so-called "disabilities statute." This statute provides that "an infant or mentally incompetent person may bring a personal action within 2 years after such disability is removed." RSA 508:8. In Norton v. Patten, 125 N.H. 413 (1984), the New Hampshire Supreme Court construed the term "infant" to mean a person who has not yet reached the statutory age of majority, as defined in RSA 21-B:1. The age of majority is eighteen. Thus, as construed by Norton, RSA 508:8 extends the limitations period for minors until their twentieth birthday.

As noted above, the plaintiff turned twenty in August 2008, approximately 14 years before he filed the instant case. Accordingly, the instant case was not filed within the limitations period established by RSA 508:8. RSA 508:8 does not contain its own discovery rule.

B. The General Statute of Limitations for Personal Actions: RSA 508:4

RSA 508:4 provides the statute of limitations for all personal actions. Under this statute:

[A]ll personal actions . . . may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

The last “act or omission complained of” as to NFI occurred in 2004 and as to Mount Prospect in 2005. The instant case was thus brought approximately 18 and 17 years, respectively, after the last “act or omission complained of” with respect to either Contractor Defendant. The Contractor Defendants have therefore met their burden of showing that the instant case was filed more than three years after the conduct at issue.

This shifts the burden to the plaintiff to demonstrate grounds for the application of: (a) the discovery rule; (b) equitable tolling; (c) the doctrine of fraudulent concealment; or (d) some other doctrine extending the limitations period. Perez, 153 N.H. at 160. Consistent with the standard of review for motions to dismiss, the court accepts all of the plaintiff’s well-pled facts and makes all rational inferences in the plaintiff’s favor.

The court’s task is to determine only whether the plaintiff has alleged facts which, if proven, might lengthen the limitations period to make this case timely. To be clear, if the plaintiff alleges sufficient facts to show that further discovery is necessary to make this determination, the motion to dismiss on limitations grounds must be denied and the issue

preserved for summary judgment on a more complete record. However, if discovery would be futile because the Complaint itself fails even to allege grounds to apply the discovery rule or another tolling doctrine, the motion to dismiss will be granted.

(i) The Discovery Rule

It is well-settled that the “purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party.” Petition of N.H. Div. For Children, Youth & Families, 173 N.H. 613, 618 (2020). The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run:

(1) a plaintiff must know or reasonably should have known that she has been injured; and (2) a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the defendant.

Lamprey v. Britton Constr., Inc., 163 N.H. 252, 257 (2012); see also Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 713 (2010); Perez, 153 N.H. at 160; Big League Entm’t, Inc. v. Brox Indus., Inc., 149 N.H. 480, 485 (2003).

The discovery rule does not reward ignorance of the law. The statute of limitations is not tolled due to a plaintiff’s failure to acknowledge or otherwise understand their potential claims. See Sullyville, LLC v. Town of Carroll, Slip Op. No. 2019-0240, 2021 WL 1310832, at *7 (N.H. Apr. 8, 2021) (non-precedential decision stating that “[t]he discovery rule does not toll the statute of limitations until a plaintiff discerns the legal theory by which his or her case will proceed; rather, it tolls the statute of limitations only when the injury and its causal relationship to the defendant’s act or omission remain unknown to the plaintiff.”); Ouellette v. Beaupre, 977 F.3d 127, 138 (1st Cir. 2020) (applying federal law and holding that “a plaintiff, once armed with the knowledge of his or her injury and its probable cause, cannot plead ignorance of the law to delay

accrual.”); Maggi v. Grafton Cty. Dep’t of Corrs., 633 F. Supp. 3d 508, 516 (D.N.H. 2022) (applying RSA 508:4 and holding that “even if the court were to assume the truth of [plaintiff’s] assertions about his lack of access to legal resources, that would not save his claims. His claims accrued on the date he should have reasonably known he was injured, not on the date he first learned he had a legal cause of action.”) (vacated and remanded on other grounds by Maggi v. Grafton Cty. Dep’t Corrs., No 23-1002 2024 WL 3384813 (1st Cir. July 9, 2024)); Miller v. Pac. Shore Funding, 224 F. Supp. 2d 977, 986–87 (D. Md. 2004) (“Knowledge of facts, however, not actual knowledge of their legal significance, starts the statute of limitations running. . . . The discovery rule, in other words, applies to discovery of facts, not to discovery of law. Knowledge of the law is presumed.”); Marcum v. Columbia Gas Transmission, LLC, 549 F. Supp. 3d 408, 421, (E.D. Pa. 2021) (“Plaintiffs’ ignorance of a legal cause of action does not, in itself, require application of the discovery rule.”). In this case, the plaintiff proffers several reasons why he may have not discovered the law governing his claims. However, the plaintiff’s failure to bring his claims within the applicable time period due to his unawareness of the law is not grounds to apply the discovery rule.

For discovery rule purposes, a plaintiff becomes aware of an injury as soon as he can reasonably discern that he has suffered “some harm” caused by a defendant’s conduct. Beane, 160 N.H. at 713; see also Balzotti Glob. Grp., LLC v. Shepherds Hill Proponents, LLC, 173 N.H. 314, 321 (2020); Furbush v. McKittrick, 149 N.H. 426, 431 (2003) (“The [discovery] rule is not intended to toll the statute of limitations until the full extent of the plaintiff’s injury has manifested itself.”). Thus, a latent injury will toll the limitations period, while a patent injury will not, even if the long-term consequences of the patent injury cannot be known. See Furbush, 149 N.H. at 431; see generally Clay v. Kuhl, 727 N.E.2d 217, 222 (Ill. 2000) (applying Illinois

law): (“The plaintiff contends, however, that her injuries were latent to some extent and did not fully manifest themselves until years after the abuse occurred. We do not believe that the plaintiff’s alleged failure to fully discover the nature of her injuries is sufficient to delay the running of the limitations period. There is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations.”); see also Stephens v. Clash, 796 F.3d 281, 288 (3d Cir. 2015) (“A plaintiff’s ignorance regarding the full extent of his injury is irrelevant to the discovery rule’s application, so long as the plaintiff discovers or should have discovered that he was injured.”).

In Rowe v. John Deere, 130 N.H.18 (1987), the plaintiff was injured when he struck his head while using machinery manufactured by the defendant. Immediately after the accident, the plaintiff was diagnosed with a depressed skull fracture. The plaintiff recovered quickly. Six years later he began to suffer grand mal seizures, purportedly as a result of the accident. The supreme court held that the plaintiff had discovered his injury at the time of the accident, even though the initial measure of damages was “nominal” compared with the potential damages for the later occurring harm. Id. at 21. Thus, a plaintiff is likely to immediately discover an injury caused by a sudden, traumatic, violent event, and harm which may later arise from the initial injury will not toll the statute of limitations. See, e.g., Hollander v. Brown, 457 F.3d 688, 692 (7th Cir. 2006) (applying Illinois law):

[C]ourts distinguish between injuries caused by sudden, traumatic events and those that have a late or insidious onset. For limitations purposes, a sudden, traumatic event is one that, because of its force or violence, permits the law to presume that the event immediately placed the plaintiff on notice of her injury and a right of action. When a plaintiff suffers this type of injury, her cause of action accrues on the date of the traumatic event, and the limitations period does not begin anew simply because a latent condition later may arise from the same occurrence. The rationale is that the nature and circumstances surrounding the traumatic event are such that the injured party is thereby put on notice that actionable conduct might be involved.

(internal citations and quotation marks omitted).

Here, the plaintiff claims that he was injured as a result of NFI's and Mount Prospect's failure to adequately oversee their staff with respect to hiring, training, supervision, and promulgation of policies. Thus, the "act or omission complained of," RSA 508:4, is the breach of duty by the Contractor Defendants themselves. As to NFI, according to the Complaint, that breach led to the plaintiff's being physically restrained and thrown into his room for prolonged isolation on multiple occasions. Additionally, as to Mount Prospect, that breach led to multiple physical and sexual assaults, as well as prolonged solitary confinement, including at least two instances where the plaintiff was sexually and physically assaulted while wrestling with Ernie. Indeed, the plaintiff's reflection that Ernie's grabbing and twisting of the plaintiff's testicles was "weird" demonstrates his awareness that Ernie's actions harmed him. The incidents of sexual, physical, and psychological abuse the plaintiff describes constitute injuries that are sudden, traumatic, violent, painful, and/or extremely unpleasant. There is nothing subtle or latent about these alleged events. The plaintiff necessarily knew of these assaults at the time they happened.

The plaintiff may have been unaware of the long-term psychological and emotional effects of the treatment he says he endured. But those harms were nonetheless caused by the same "act or omission complained of," RSA 508:4, e.g., the Contractor Defendants' alleged lack of care in hiring, training and supervising staff, and promulgating policies. Thus, under settled New Hampshire law, accepting all the well-pled facts in the Complaint, the court must find that the plaintiff was aware that he had been injured as a result of the Contractor Defendants' failure to control their staff because the plaintiff knew that he had been physically assaulted, sexually assaulted, and placed into solitary confinement on multiple occasions.

Under the discovery rule, the limitations period in this case did not begin to run until the plaintiff either (a) discovered, or (b) should have discovered through the exercise of reasonable diligence, that the Contractor Defendants' breach of duty was a proximate cause of his injury.

See Troy v. Bishop Guertin High Sch., 176 N.H. 131, 134 (2023) (citing RSA 508:4).

Knowledge of the Contractor Defendants' causal role cannot be automatically inferred from the fact that the plaintiff knew that his injury was caused by their employees, acting overtly under color of their authority, on their premises. See id. at 138 ("We decline to establish a per se rule that the plaintiff's knowledge of the abuser's employer is alone sufficient to trigger the application of the discovery rule. This inquiry presents a question of fact."). However, "[a] plaintiff need not be certain of this causal connection; the possibility that it existed will suffice to obviate the protections of the discovery rule." Id. at 137 (quoting Beane, 160 N.H. at 713); see also Balzotti, 173 N.H. at 321; Lamprey, 163 N.H. at 257; Pichowicz v. Watson Ins. Agency, Inc., 146 N.H. 166, 168 (2001). "[T]he discovery rule employs an objective standard" to determine whether, through the exercise of reasonable diligence, a plaintiff should have discovered sufficient evidence of the defendant's role in causing his injury." Troy, 176 N.H. at 137.

In this case, the same alleged facts that establish the plaintiff's knowledge of harm also demonstrate that the plaintiff knew or should have known the Contractor Defendants' breach of duty was a proximate cause of his alleged injury. With respect to the repeated solitary confinements, the plaintiff does not complain of isolated incidents, committed in secret, by rogue staff members. Rather, the plaintiff claims frequent solitary confinements as a routine form of "punishment." Indeed, the plaintiff's allegations illustrate that he was aware of the institutional nature of this abuse. He explained that he did not complain about his solitary confinement at

either Midway Shelter or Mount Prospect because all of the staff members to which he could complain were involved in his confinement. Such a reflection indicates that the plaintiff was aware of the institutional nature of both NFI's and Mount Prospect's conduct. If the allegations in the Complaint are credited, as they must be at this juncture, then at the very least the Contractor Defendants failed to supervise their staff and monitor their facilities and thereby breached both their fiduciary obligations to the plaintiff and the common law duty of reasonable care.

The Contractor Defendants' role in causing the plaintiff's injury is not inferred from the mere fact that the plaintiff's assailants received paychecks and W2s from them. Compare the facts of this case to those in Troy, which involved two acts of sexual assault, committed in private, by a high school teacher against a female student. Troy, 176 N.H. at 133-35. Unbeknownst to the plaintiff in Troy, the school had hired the teacher despite knowing of his previous conviction for unlawful sexual contact with a different female high school student at a different school that was owned and operated by the same religious order. Id. at 133-34. The school did not alert students or parents to the teacher's status as a sex offender who preyed on a similar victim. Id. It took no action to limit or monitor the teacher's contact with students. Id. It would be hard to imagine how the plaintiff in Troy could have known from the abuse she endured that the school (and its owner) shouldered any of the blame for the covert criminal acts of a lone employee.

Conversely, in this case, if all the facts in the Complaint—including both the allegation of sexual assault and that of the day-to-day abuse the plaintiff suffered—are credited, it is difficult to imagine how the plaintiff could not see a problem with the conduct and training of the Contractor Defendants' staff members. Ultimately, however, the plaintiff here —unlike the

plaintiff in Troy, who became aware of the offending teacher’s history with the school only as a result of later public disclosures by the school itself—does not allege a single new fact that he learned about NFI or Mount Prospect since leaving their facilities in or around 2004 and 2005. He does not point to the discovery of any fact relating, for example, to NFI or Mount Prospect’s hiring processes, their knowledge of staff misconduct, or their promulgation of policies. He points to no news articles or publicity relating to NFI or Mount Prospect. Rather, he states only that in 2022, after talking with fellow inmates, he learned that there was a lawsuit against the State for abuse children suffered while in the State’s custody and that what he experienced was in fact abuse. (Declaration ¶ 31). Neither of these assertions constitutes the discovery of a fact pertinent to NFI or Mount Prospect’s causal relationship to the plaintiff’s injury of a kind that, if unknown to the plaintiff, would toll the statute of limitations. Cf. Miller, 224 F. Supp. 2d at 986–87.

The plaintiff’s remaining arguments are unpersuasive. First, the plaintiff contends that his fiduciary duty claim is tolled until he had actual knowledge of the Contractor Defendants’ breach. The court disagrees. New Hampshire law is clear that tolling the statute of limitations period is not dependent or otherwise reliant upon the fiduciary disclosing its wrongdoing. See Beane, 160 N.H. at 714-15 (“[T]here is no support in our case law for the proposition that a limitations period is tolled in fiduciary cases until the fiduciary discloses his or her misconduct.”). Second, no amount of additional discovery the plaintiff may engage in regarding NFI or Mount Prospects policies and procedures could reveal information that would make it more likely that the plaintiff could avail himself of the discovery rule. As explained above, the plaintiff’s Complaint shows that he already had all the information he needed to determine that the Contractor Defendants were the proximate cause of his injuries by the time he turned twenty.

Ultimately, the plaintiff had sufficient information about the Contractor Defendants' institutional failures prior to the expiration of any applicable limitations period. He has not alleged in his Complaint that he learned any new facts about the Contractor Defendants' role in his alleged abuse after he turned twenty. For these reasons, the court concludes that the discovery rule does not toll the statute of limitations.

ii. Fraudulent Concealment and Equitable Tolling

The court has found that (a) the discovery rule did not toll the start of the limitations period in RSA 508:4 beyond the plaintiff's twentieth birthday and, therefore, (b) the applicable limitations period is that established by RSA 508:8, which gave the plaintiff until age 20 to file this action.

The plaintiff argues, however, that two equitable doctrines apply here: fraudulent concealment and equitable tolling. The New Hampshire Supreme Court views both these doctrines as implied exceptions to all statutes of limitations. See Lakeman v. La France, 102 N.H. 300, 303 (1959) (adopting the majority rule that "fraudulent concealment of a cause of action from the one in whom it resides by the one against whom it lies constitutes an implied exception to the statute of limitations," and rejecting the "contrary view that fraudulent concealment does not toll the operation of the statute unless the Legislature has expressly so stated in the statute itself"). With respect to equitable tolling, the supreme court has applied the doctrine and explained its elements. See Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 623–24 (2005).

The doctrine of fraudulent concealment tolls the limitations period when a defendant, by concealment or other action, intentionally prevents the plaintiff from acquiring material

information. Lamprey, 163 N.H. at 259–60; See also Lakeman, 102 N.H. at 303-304. Thus, fraudulent concealment

. . . requires something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to a cause of action—some actual artifice to prevent knowledge of the facts or some representation intended to exclude suspicion and prevent inquiry.

Lamprey, 163 N.H. at 259–60 (internal quotation marks and bracketing omitted); see also Maggi, 633 F. Supp. 3d at 516 (“The burden is on the plaintiff invoking the fraudulent concealment doctrine to present some evidence of an affirmative act on the part of the defendant to conceal or cover up the underlying wrongful conduct that gave rise to the plaintiff’s asserted injury.” (internal citations omitted)); Sykes v. RBS Citizens, N.A., 2 F. Supp. 3d 128, 143 (D.N.H. 2014).

Even when there is fraudulent concealment, the doctrine provides little, if anything, in the way of relief that the discovery rule does not also provide. See Beane, 160 N.H. at 714 (“The fraudulent concealment rule states that when facts essential to the cause of action are fraudulently concealed, the statute of limitations is tolled until the plaintiff has discovered such facts or could have done so in the exercise of reasonable diligence.” (quoting Bricker v. Putnam, 128 N.H. 162, 165 (1986))); see also Lakeman, 102 N.H. at 303; Furbush, 149 N.H. at 431; Sykes, 2 F. Supp. 3d at 143.

In this case, the plaintiff has not pointed to any affirmative act on the part of the Contractor Defendants to conceal or cover up any fact. Indeed, as noted above, the plaintiff has not pointed to any fact he learned after leaving the Contractor Defendants’ facilities in 2004 or 2005. Therefore, the doctrine of fraudulent concealment does not apply to the plaintiff’s claims against the Contractor Defendants.

The New Hampshire Supreme Court has not developed a substantial body of case law relating to the doctrine of equitable tolling. The Court recognized the doctrine in Portsmouth

Country Club, explaining that it allows a plaintiff to initiate an action beyond the statutory limitations period when that plaintiff had been “prevented in some extraordinary way from exercising his or her rights.” 152 N.H. at 623 (emphasis added). The doctrine “applies principally if the plaintiff is actively misled by the defendant about the cause of action.” Kierstead v. State Farm Fire & Cas. Co., 160 N.H. 681, 688 (2010).

To be eligible for equitable tolling, a plaintiff’s access to the justice system must be frustrated despite the plaintiff’s diligence. See, e.g., Irwin v. Dep’t of Veterans Affairs, 498 U.S. 89, 96 (1990)(applying federal law and holding that:

Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.

(internal footnotes omitted)); Maggi, 633 F. Supp. 3d at 518 (applying federal law and noting that, “in unusual cases, certain limitations of imprisonment may rise to the level of ‘extraordinary circumstance’” [but] “the usual problems inherent in being incarcerated, such as a prisoner's lack of prior legal training or limited access to legal resources in a prison's library, do not, by themselves, justify equitable tolling” (internal ellipses and citation omitted)).

In this case, the plaintiff was not prevented from discovering either necessary facts or necessary law. He was not actively misled by the Contractor Defendants as to his ability to access the courts. He was not threatened with retaliation for accessing the courts. He was not deprived of the ability to seek counsel or advice from third parties.

To this end, the plaintiff alleges that he did not bring suit because of his ongoing emotional distress and substance misuse disorder. However, diminished mental capacity is not

grounds for equitable tolling. See Sykes, 2 F. Supp. 3d at 144, n. 18 (ruling that “RSA 508:8, and not the doctrine of equitable tolling, governs the statute of limitations for New Hampshire state law claims when a plaintiff is mentally incompetent”). Furthermore, even under federal law, where a plaintiff’s mental condition might allow for equitable tolling, the plaintiff would have to prove that he was unable to engage in rational thought to the point where he could not cooperate with any counsel, and/or pursue his claim on his own during the limitations period.” Id. The plaintiff does not allege this. Thus, the doctrine of equitable tolling does not apply.

C. Actions Based on Sexual Assault and Related Offenses: RSA 508:4-g

The plaintiff specifically alleges that he was sexually assaulted by Mount Prospect staff while he was in Mount Prospect’s care. These claims implicate the special tolling provision of RSA 508:4-g, which provides that

[a] person, alleging to have been subjected to any offense under RSA 632-A or an offense under RSA 639-2 may commence a personal action at any time.

The parties dispute the application of RSA 508:4-g to the plaintiff’s sexual assault claims. Mount Prospect argues that, to the extent the statute does apply to the plaintiff’s claims, only that version of the statute in effect at the time the cause of action arose may be applicable, and the statute cannot be applied retroactively to claims that arose prior to the first effective date of the statute. According to Mount Prospect, even if RSA 508:4-g applied to the plaintiff’s claims, the plaintiff’s claim was untimely because he did not file suit before December 31, 2018.

Relevant to Mount Prospect’s argument is the history of RSA 508:4-g. The legislature first enacted RSA 508:4-g on July 22, 2005, and at that time it applied only to persons “alleging to have been subjected to a [sexual offense] who [were] under 18 years of age when the alleged offense occurred,” and it allowed such claims to be brought within the later of seven years after the plaintiff’s 18th birthday or three years after the plaintiff knew or should have known of their

injury and its causal relationship to a defendant. 2005 New Hampshire Laws Ch. 283 (S.B. 75). On January 1, 2009, the legislature amended the statute in relevant part to allow claims to be brought within twelve years after the plaintiff's eighteenth birthday. 2008 New Hampshire Laws Ch. 193 (S.B. 311). On September 18, 2020, the legislature amended the statute again, eliminating the restriction of the statute to plaintiffs under 18 years of age at the time of the alleged offense, and replacing the temporal limitations provisions with the clause "may commence a personal action at any time." 2020 New Hampshire Laws Ch. 24 (H.B. 705).

Mount Prospect argues that RSA 508:4-g as it is currently framed cannot be extended to apply retroactively to conduct that occurred prior to its enactment, and claims arising from conduct occurring after its enactment must be subject only to the limitations period in effect at the time of the conduct. See Gould v. Concord Hosp., 126 N.H. 405, 408 (1985). Therefore, Mount Prospect contends, any claim arising from conduct that occurred before July 22, 2005, does not fall under the statute's protection, and any claim arising from conduct occurring after July 22, 2005, but before September 18, 2020, is protected only to the extent provided by the statute as it existed at the time of the conduct. (See id.).

Part 1, Article 23 of the New Hampshire Constitution prohibits the retrospective application of laws. "Every statute, which takes away or impairs vested rights, acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past must be deemed a retrospective law." Tyler Road Dev. Corp. v. Town of Londonderry, 145 N.H. 615, 616-15 (2000) (quotation omitted). "When engaging in Article 23 analysis, we distinguish new laws that affect substantive rights and liabilities from those that solely affect procedures or remedies enforcing those rights." Mapleval Builders, LLC & a. v. Town of Danville, 165 N.H. 99, 108 (2013) (citation omitted).

A “vested right” may relate to the grounds of the action or to the grounds of a defense. Id. (citing Gould, 126 N.H. at 408). Statutory provisions that reduce or enlarge the time within which an action may be prosecuted have to do only with a remedy for existing rights. Id. (citing Bourque v. Adams, 93 N.H. 257, 259 (1945)). “The right to rely upon a statute of limitations as a defense vests, and therefore becomes a substantive right, only after the limitations period has run.” Id. (emphasis added); see also Gould, 126 N.H. at 408.

Here, the plaintiff has alleged conduct which occurred in 2005 including, as relevant here, conduct by Mount Prospect staff member Ernie which included Ernie grabbing and twisting the plaintiff’s testicles while wrestling. (Doc. 15 ¶ 20). This conduct facially meets the definition of sexual assault in RSA 632-A:4,⁴ and is therefore among the offenses covered under RSA 508:4-g. Solely at issue in determining whether RSA 508:4-g applies, then, is whether and when Mount Prospect’s right to rely upon the limitations defense vested, and thus became a substantive right.

To the extent that the conduct alleged by the plaintiff occurred after July 22, 2005, there is no question that it falls within the application of RSA 508:4-g, at least as the statute was framed in 2005, so that the plaintiff could raise a claim anytime up to seven years after his 18th birthday, or August 2013. With respect to conduct alleged to have occurred before July 22, 2005, as noted above, the plaintiff had the benefit of the disabilities statute, and therefore the plaintiff’s right to rely upon a limitations defense could not have vested before the plaintiff’s twentieth birthday, or August 2008. Therefore, the court determines that by any method of

⁴ For example, RSA 632-A:4, I(b) makes it a class A misdemeanor to subject a person between the ages of 13 and 16 “to sexual contact where the age difference between the actor and the other person is 5 years or more.” RSA 632-A:4, III makes it a misdemeanor to engage in “sexual contact or sexual penetration” of another person when the “actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed.” In the case’s current posture, the court’s analysis of the various ways RSA 632-A applies to the conduct alleged by the plaintiff need not be, and is not, exhaustive.

calculation Mount Prospect’s right to rely upon the limitations defense could not have vested before RSA 508:4-g became law. The limitations period established in that statute therefore applies to plaintiff’s claims for sexual assault.

As to the question of which limitations period applies—the seven-year period established in 2005, the twelve-year period established in 2009, or the unlimited period established in 2020—the court finds the New Hampshire Supreme Court’s holding in Maplevale Builders instructive. In that case, the supreme court considered a circumstance where a trial court declined to apply an amended version of a statute—extending a statutory limitations period from twelve months to eighteen months—to conduct that occurred prior to the amendment, on grounds that to do so would be an unconstitutional retrospective application of law. See Maplevale Builders, 165 N.H. at 107-08. The supreme court rejected the trial court’s reasoning, noting that, as of the effective date of the amendment to the law in question, the existing 12-month limitation period had not yet expired, and thus the defendant’s right to rely upon that limitation period had not yet vested. Id. at 108. The supreme court therefore concluded that the application of the limitations period, as amended, to the defendant’s conduct was not unconstitutionally retroactive. Id.

Consequently, the court must determine if the limitations period under RSA 508:4-g ever ran on the plaintiff’s claim. As the court noted above, the plaintiff’s claim was still alive at the time the legislature amended the statute on January 1, 2009. Thus, under that version of the statute, the plaintiff had until 12 years after his 18th birthday, or August 2018, to bring suit. The plaintiff, however, did not file suit until July 2022. Because Mount Prospect’s right to rely on the limitations period vested as of August 2018, the plaintiff cannot avail himself of the unlimited limitations period enacted in 2020. See Gould, 126 N.H. at 408 (“Since the limitations

period had run against the plaintiff prior to the enactment of the amendment, application of the amendment would impair the defendants' vested right to assert the limitations defense and would thus operate as an unconstitutional retrospective law.”). Thus, Mount Prospect is correct that application of RSA 508:4-g’s unlimited limitations period as enacted in 2020 does not apply to the plaintiff’s claim because the plaintiff’s claim under RSA 508:4-g’s ran out in August 2018. To the extent that the discovery rule could be tacked onto RSA 508:4-g, the court finds that its above analysis on the plaintiff’s discovery rule argument forecloses its application here. Accordingly, because the plaintiff did not file suit prior to August 2018, the plaintiff’s claim is untimely under RSA 508:4-g.

E. Conclusion as to Limitations

In sum, then, the Court finds that the plaintiff’s claims are untimely under RSA 508:4, RSA 508:8, and RSA 508:4-g.

II. Claims Analysis

A. The Complaint Does Not State Claims for Aiding and Abetting a Breach of Fiduciary Duty or Civil Conspiracy

In Counts X and XIV, the plaintiff accuses the Contractor Defendants of: (a) aiding and abetting a breach of fiduciary duty; and (b) civil conspiracy. Both of these claims require proof that the Contractor Defendants were engaged in deliberate, concerted action with another party to violate the plaintiff’s rights. See Invest Almaz v. Temple-Inland Forest Prods. Corp., 243 F.3d 57, 82-83 (1st Cir. 2001)(stating standard for aiding and abetting a breach of fiduciary duty); Jay Edwards, Inc. v. Baker, 130 N.H. 41, 47 (1987) (describing standard for civil conspiracy). Because the Complaint alleges no material facts from which such concerted action can be inferred, these two counts are DISMISSED for failure to state a claim as to both contractor defendants.

i. Aiding and Abetting a Breach of Fiduciary Duty

The New Hampshire Supreme Court has not yet had occasion to recognize the tort of aiding and abetting a breach of fiduciary duty. Nonetheless, the tort is established and well-defined, as, for example, in the Restatement (Second) of Torts, § 876(b):

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . [1] knows that the other's conduct constitutes a breach of duty and [2] gives substantial assistance or encouragement to the other so to conduct himself[.]

Courts that apply New Hampshire law predict that the New Hampshire Supreme Court will recognize this cause of action. See Invest Almaz, 243 F.3d at 82-83; Legacy Glob. Sports, LP v. St. Pierre, Slip Op. No. 218-2019-CV-198, 2020 WL 2027401, at *2 (Merrimack County Superior Court, Apr. 27, 2020); Clare v. Bank of New England, Slip. Op. No. 218-2013-CV-00687, 2013 N.H. Super LEXIS 22, at *3-4, 9 (Merrimack Count Superior Court, Nov. 26, 2013); HayJo S.A. de CV v. Sponge-Jet, Inc., No. 14-cv-196-JD, 2015 WL 9459918, at *4 (D.N.H. Dec. 23, 2015); Tamposi v. Denby, 974 F. Supp. 2d 51, 61 (D. Mass. 2013); In Re Felt Mfg. Co., Inc., 371 B.R. 589, 615 (Bankr. D.N.H. 2007); But see Gill v. Devine, Millimet & Branch, P.A., Slip Op. No 218-2012-CV-00660 (Rockingham County Superior Court, Oct. 12, 2012) (ruling that the tort of aiding and abetting a breach of fiduciary duty had not been recognized).

Assuming a claim for aiding and abetting a breach of fiduciary duty may be pursued in New Hampshire, the Complaint does not contain facts to support this cause of action. To prevail, the plaintiff would need to prove that the Contractor Defendants had helped another party breach its fiduciary duty. The Complaint does not allege that Contractor Defendants did anything to encourage or facilitate the plaintiff's alleged abuse at YDC or at any other placement.

Moreover, the Contractor Defendants cannot be found liable for aiding their own employees and agents in a breach of fiduciary duty. The cause of action for aiding and abetting a breach of fiduciary duty only exists to cover circumstances in which the defendant has no direct liability to the plaintiff as a fiduciary. That is not the case here. See, e.g., Mann v. GTCR Golder Rauner, L.L.C., 483 F. Supp. 2d 884, 916 (D. Ariz. 2007) (Under Delaware law, “a person who himself owes a fiduciary duty with respect to a transaction or course of conduct cannot be liable for aiding and abetting a breach of that same fiduciary duty by another because the same facts that would otherwise constitute aiding and abetting would constitute a primary breach of fiduciary duty.”); In Re Amcast Indus. Corp., 365 B.R. 91, 112–13 (Bankr. S.D. Ohio 2007) (Under Ohio law “the action by its nature, . . . requires participation by a non-fiduciary defendant); In re Verestar, Inc., 343 B.R. 444, 482 (Bankr. S.D.N.Y. 2006) (“[A] claim for aiding and abetting breach of fiduciary duty can only be sustained against a non-fiduciary.”).

Accordingly, for the foregoing reasons, the Complaint does not state a claim against the Contractor Defendants for aiding and abetting a breach of fiduciary duty. The claim is thus DISMISSED as to both Contractor Defendants.

ii. Civil Conspiracy

To prevail on a claim of civil conspiracy, a plaintiff must prove that:

(A) Two or more persons and/or entities agreed to either:

(1) pursue an unlawful objective or, alternatively,

(2) use unlawful means to accomplish a lawful or unlawful objective; and

(B) At least one of the conspirators committed an overt act in furtherance of this agreement; and

(C) The plaintiff was harmed as a proximate result of the agreement.

Jay Edwards, Inc., 130 N.H. at 47; see Univ. Sys. of N.H. v. U.S. Gypsum Co., 756 F. Supp. 640, 652 (D.N.H. 1991); Censabella v. Town of Weare, No. 16-cv-490-AJ, 2017 WL 3996173, at *3 (D.N.H. Sept. 8, 2017). “For a civil conspiracy to exist, there must be an underlying tort which the alleged conspirators agreed to commit.” Univ. Sys., 756 F. Supp. at 652. Thus, the cause of action serves to impose liability on “all who commonly plan, take part in, further by cooperation, lend aid to, or encourage the wrongdoers' acts.” Id.

The Complaint does not contain facts to support a claim for civil conspiracy. There are no material facts from which the Court may infer that the Contractor Defendants and the State or any other entity entered into an agreement to engage in concerted action by abusing the plaintiff. No facts suggest that the Contractor Defendants ever had any conversation, let alone any agreement, with any other defendant.

Further, the Contractor Defendants cannot be liable for civil conspiracy with their own employees, because, under the intracorporate conspiracy doctrine, the Contractor Defendants and their employees are considered to be the same “person.” See, e.g., Hoefer v. Fluor Daniel, Inc., 92 F. Supp. 2d 1055,1057 (C.D. Cal. 2000):

The intracorporate conspiracy doctrine provides that, as a matter of law, a corporation cannot conspire with its own employees or agents. [citation and footnote omitted]. The logic for the doctrine comes directly from the definition of a conspiracy. A conspiracy requires a meeting of minds. [citation omitted]. It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

see also Grider v. City of Auburn, Ala., 618 F.3d 1240, 1261 (11th Cir. 2010)(“[T]he intracorporate conspiracy doctrine holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy.”); Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505,

509 (6th Cir. 1991) (“It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.”); Tabb v. District of Columbia, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (“[A] corporation cannot conspire with its employees[.]”); HRCC, Ltd. v. Hard Rock Cafe Int’l (USA), Inc., 302 F. Supp. 3d 1319, 1325 (M.D. Fla. 2016)(“According to the intracorporate conspiracy doctrine, however, a civil conspiracy claim will not succeed where the only members of the alleged conspiracy are a corporation and/or its officers.”).

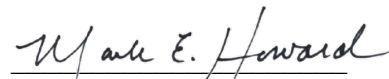
For these reasons, the claim of civil conspiracy against the Contractor Defendants are DISMISSED.

CONCLUSION

Pursuant to RSA 508:4 and 508:8, this action is not timely, as the plaintiff filed this case well after his twentieth birthday. The plaintiff attained twenty years of age in August 2008. He filed this case in August 2022, roughly 14 years after the expiration of the statute of limitations, and no other tolling provisions apply. Additionally, as to claims of sexual misconduct against Mount Prospect, those claims are not timely because the applicable limitations period under RSA 508:4-g expired in August 2018, roughly 4 years before the plaintiff filed suit.

Accordingly, all of the plaintiff’s claims against the Contractor Defendants are DISMISSED WITH PREJUDICE.

Date: February 27, 2025


Mark E. Howard/
Chief Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/28/2025

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

JOHN DOE 603

v.

STATE OF NEW HAMPSHIRE, et al.
218-2023-CV-26

DAVID MEEHAN v. STATE OF NEW HAMPSHIRE, et al.
(Consolidated YDC/YDSU Cases)
217-2020-CV-26

ORDER

The matter before the Court is Defendant Eckerd Youth Alternatives' ("Eckerd's") Motion to Dismiss plaintiff John Doe 603's claims against it. (Court Index ## 16 (Mot. Dismiss); 17 (Mem. Law)). For the reasons set forth below the motion is GRANTED. All claims against Eckerd in this case are DISMISSED WITH PREJUDICE. Specifically:

- (A) Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy) are DISMISSED for failure to state a claim upon which relief may be granted; and
- (B) Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention), and XII (negligence) are DISMISSED because they were filed after the expiration of the statute of limitations.

This resolves all counts against Eckerd.¹

¹ The remaining counts do not allege any claims against Eckerd. Counts I through VII (set forth in the Master Complaint) and Counts IX and XIII (set forth in the Short Form Complaint) assert claims against the State Defendants only.

DEFINING THE COMPLAINT

The Complaint in this case comprises the following three documents:

A. A 50-page “Amended Master Complaint,” filed in Meehan v. State, 217-2020-CV-26 on July 8, 2022. (Meehan Court Index # 70). (The Amended Master Complaint does not mention John Doe 603 or any of the facts about his life. Likewise, it does not contain any reference to Eckerd or any other contractor defendant.)

B. A 39-page “Amended Short Form Complaint” filed in John Doe 603 v. State, 218-2023-CV-26. (Court Index # 6). (The Short Form Complaint contains allegations specific to the plaintiff and Eckerd. The Short Form Complaint contains an Addendum, as well as a separately filed Sealed Supplement that contains John Doe 603’s true name and date of birth).

C. A 5-page Declaration, signed by the plaintiff, filed as Exhibit A to the Objection to the Motion to Dismiss in John Doe 603 v. State, 218-2023-CV-26 (Court Index # 19 (Redacted); see Court Index # 20 (Unredacted)) (cited hereinafter as “Declaration”). The Declaration contains the plaintiff’s factual response to Eckerd’s affirmative limitations defense.

These 94 pages will be referred to collectively as “the Complaint.”

PROCEDURAL HISTORY AND RELEVANT DATES

The plaintiff was born in October of 1985.² He turned 20 in October of 2005. The Complaint in this case was filed on January 6, 2023, when the plaintiff was 37 years old.

As relevant to the instant motion, the plaintiff claims that he was subjected to physical and psychological abuse at a residential juvenile facility operated by Eckerd. The plaintiff alleges that the abuse occurred over an approximately 9-month period in the calendar years

² The plaintiff’s precise date of birth is provided in the Sealed Supplement to the Short Form Complaint (Court Index # 3). The court recites only the month and year of birth to protect the plaintiff’s identity. The day of the month is not material to any determination in this Order.

between 1998 and 2000, when he was approximately 13 years old.³ The plaintiff does not allege that Eckerd engaged in any tortious behavior after that time.

Thus, the plaintiff initially filed suit over approximately 22 years after the last possible date of abuse, and roughly 17 years after he turned 20.

FACTUAL BACKGROUND

The following facts are taken from the Complaint.

A. Events That Occurred Prior to Placement at Eckerd

According to the Declaration, the plaintiff, along with his sister and brother, was raised by his mother as a single parent. When the plaintiff was still quite young, his mother had a boyfriend who subjected the plaintiff to harsh, physical discipline including making him kneel in front of a door for extended periods. The plaintiff's birth father also kidnapped the plaintiff at a young age, and police returned him to his mother's home. The plaintiff, who was diagnosed with ADHD, was rebellious at school, although not so at home. He was placed in foster care for a week at the age of 6 or 7, but was returned to his mother's home.

When the plaintiff was 11, he was sent to the Pace Program⁴ in Rochester for 60 days, where he remembers being physically restrained on one occasion, but cannot remember for what reason. After he returned home, he began getting in trouble again, skipping school and neglecting his responsibilities, and at that time he was placed on probation. At about the age of 13, the plaintiff's mother discovered he had drug paraphernalia and reported it to the authorities. The plaintiff was placed at Eckerd in West Stewartstown for the next approximately 9 ½ months.

³ Specifically, the plaintiff alleges that when he was "about 13" he was placed at Eckerd for "about 9.5 months." (Declaration ¶ 8). The Court infers that he was placed in Eckerd sometime between October of 1998 and October of 1999, and he left Eckerd no later than mid-August of 2000. More precise dates are immaterial for resolution of the instant motion.

⁴ The pleadings do not describe the Pace Program.

B. Events at Eckerd's Facility

While at Eckerd, the plaintiff alleges that he was physically and verbally abused—“manhandled”—by staff members, almost always in view of other staff members. On a group canoeing trip in Florida, an Eckerd staff member, “Chief Jake,” pulled the plaintiff out of the canoe he was in and placed him in his own canoe, where Chief Jake pinned the plaintiff down for 30 to 45 minutes while threatening him with physical assault. When the group arrived at their campsite, another staff member, “Chief Jen,” grabbed the plaintiff, threw him to the ground repeatedly, and then sat on him. Another resident also assaulted him at the campsite by punching him with a chain wrapped around his fist, cutting his face. Eckerd staff did not intervene in this assault, nor did they provide medical assistance for the plaintiff’s injuries. The police were called after this incident, but no charges were filed against the assailant.

When the plaintiff returned to the West Stewartstown campus after this camping trip, staff member Adam Adamkowski restrained him by throwing him over his hip and onto the ground for noncompliance with a verbal order. The plaintiff also observed other Eckerd residents being excessively restrained by staff.

When the plaintiff was released from Eckerd, he remained at home for 4 or 5 months.

C. Events Occurring after the Plaintiff Left Eckerd

When the plaintiff was 14, in or around 2001, as a result of a marijuana possession charge the plaintiff was sent to YDC, where he was initially placed at King Cottage. At King Cottage, a staff member named “Mr. Francis” or “George” strip-searched him without justification in his room. During the search, Mr. Francis degraded and humiliated the plaintiff by forcing him to spin around, squat, and cough while naked.

The plaintiff was later transferred to Spaulding Cottage, where on a regular basis he and the other residents were locked in their rooms and not allowed to go to the bathroom: the plaintiff would bang on his door, but no staff member would let him out to use the bathroom. On a number of occasions the plaintiff had to urinate out the window of his room, and at least three times he had to defecate in the corner. The staff—including Lou Poulette, Joe Peters and Chris Barby, an amateur wrestler—would then punish him for defecating in the room by throwing him to the ground and pinning him to the wall, which caused damage to a disc in his neck and nerve damage to his arm. The staff also excessively restrained him, usually in groups.

The plaintiff was released from YDC after 6 months, but after another 4 or 5 months at home he was returned to the facility, where he was placed at King Cottage, Spaulding House and Stark House. At Spaulding House, Lou Poulette restrained him by grabbing him in a bear hug from behind, with his body against the plaintiff's, which was trapped against the wall. The plaintiff felt uncomfortable with Mr. Poulette's restraints. Joe Peters, who worked in all the cottages, also restrained the plaintiff and assisted other staff in restraining him. Mr. Peters also "manhandled" and "grabbed" the plaintiff while restraining him.

The plaintiff remained at YDC until he aged out at the age of 17, when he was released and sent home.

D. Lack of Discovery

The plaintiff did not tell anyone about the abuse he suffered until he filed the instant Complaint, alleging that he did not think his mother would have believed him, and based on his experiences before placement he believed "harsh physical discipline was normal." In the Declaration, the plaintiff states that he did not come forward because he had "blocked out" his experiences and did not want to relive the trauma. The plaintiff "did not connect [his] abuse with

institutional failures or the responsibility of the State” until in or about March 2021, although he heard about a lawsuit on the news earlier than 2021. In or around March, 2021, however, he began to “explore and understand what [he] suffered at Eckerd and state placements and that the institutions were at fault, in addition to the individual perpetrators.”

ANALYSIS

I. The Complaint Does Not State Claims for Aiding and Abetting a Breach of Fiduciary Duty or Civil Conspiracy

In Counts X and XIV, the plaintiff accuses Eckerd of: (a) aiding and abetting a breach of fiduciary duty; and (b) civil conspiracy. Both of these claims require proof that Eckerd was engaged in deliberate, concerted action with another party to violate the plaintiff’s rights. See Invest Almaz v. Temple-Inland Forest Prods. Corp., 243 F.3d 57, 82-83 (1st Cir. 2001)(stating standard for aiding and abetting a breach of fiduciary duty); Jay Edwards, Inc. v. Baker, 130 N.H. 41, 47 (1987) (describing standard for civil conspiracy). Because the Complaint alleges no material facts from which such concerted action can be inferred, these two counts are DISMISSED for failure to state a claim.

A. Aiding and Abetting a Breach of Fiduciary Duty

The New Hampshire Supreme Court has not yet had occasion to recognize the tort of aiding and abetting a breach of fiduciary duty. Nonetheless, the tort is established and well-defined, as, for example, in the Restatement (Second) of Torts, § 876(b):

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . [1] knows that the other's conduct constitutes a breach of duty and [2] gives substantial assistance or encouragement to the other so to conduct himself[.]

Courts that apply New Hampshire law predict that the New Hampshire Supreme Court will recognize this cause of action. See Invest Almaz, 243 F.3d at 82-83; Legacy Glob. Sports,

LP v. St. Pierre, Slip Op. No. 218-2019-CV-198, 2020 WL 2027401, at *2 (Merrimack County Superior Court, Apr. 27, 2020); Clare v. Bank of New England, Slip. Op. No. 218-2013-CV-00687, 2013 N.H. Super LEXIS 22, at *3-4, 9 (Merrimack Count Superior Court, Nov. 26, 2013); HayJo S.A. de CV v. Sponge-Jet, Inc., No. 14-cv-196-JD, 2015 WL 9459918, at *4 (D.N.H. Dec. 23, 2015); Tamposi v. Denby, 974 F. Supp. 2d 51, 61 (D. Mass. 2013); In Re Felt Mfg. Co., Inc., 371 B.R. 589, 615 (Bankr. D.N.H. 2007); But see Gill v. Devine, Millimet & Branch, P.A., Slip Op. No 218-2012-CV-00660 (Rockingham County Superior Court, Oct. 12, 2012) (ruling that the tort of aiding and abetting a breach of fiduciary duty had not been recognized).

Regardless, even assuming a claim for aiding and abetting a breach of fiduciary duty may be pursued in New Hampshire, the Complaint does not contain facts to support this cause of action. To prevail, the plaintiff would need to prove that Eckerd had helped another party breach its fiduciary duty. The Complaint does not allege that Eckerd did anything to encourage or facilitate the plaintiff's alleged abuse at YDC or at any other placement.

Moreover, Eckerd cannot be found liable for aiding its own employees and agents in a breach of fiduciary duty. The cause of action for aiding and abetting a breach of fiduciary duty only exists to cover circumstances in which the defendant has no direct liability to the plaintiff as a fiduciary. That is not the case here. See, e.g., Mann v. GTCR Golder Rauner, L.L.C., 483 F. Supp. 2d 884, 916 (D. Ariz. 2007) (Under Delaware law, "a person who himself owes a fiduciary duty with respect to a transaction or course of conduct cannot be liable for aiding and abetting a breach of that same fiduciary duty by another because the same facts that would otherwise constitute aiding and abetting would constitute a primary breach of fiduciary duty."); In Re Amcast Indus. Corp., 365 B.R. 91, 112–13 (Bankr. S.D. Ohio 2007) (Under Ohio law "the action

by its nature, . . . requires participation by a non-fiduciary defendant); In re Verestar, Inc., 343 B.R. 444, 482 (Bankr. S.D.N.Y. 2006) (“[A] claim for aiding and abetting breach of fiduciary duty can only be sustained against a non-fiduciary.”).

Accordingly, for the foregoing reasons, the Complaint does not state a claim against Eckerd for aiding and abetting a breach of fiduciary duty. The claim is thus DISMISSED.

B. Civil Conspiracy

To prevail on a claim of civil conspiracy, a plaintiff must prove that:

(A) Two or more persons and/or entities agreed to either:

(1) pursue an unlawful objective or, alternatively,

(2) use unlawful means to accomplish a lawful or unlawful objective; and

(B) At least one of the conspirators committed an overt act in furtherance of this agreement; and

(C) The plaintiff was harmed as a proximate result of the agreement.

Jay Edwards, Inc., 130 N.H. at 47; see Univ. Sys. of N.H. v. U.S. Gypsum Co., 756 F. Supp. 640, 652 (D.N.H. 1991); Censabella v. Town of Weare, No. 16-cv-490-AJ, 2017 WL 3996173, at *3 (D.N.H. Sept. 8, 2017). “For a civil conspiracy to exist, there must be an underlying tort which the alleged conspirators agreed to commit.” Univ. Sys., 756 F. Supp. at 652. Thus, the cause of action serves to impose liability on “all who commonly plan, take part in, further by cooperation, lend aid to, or encourage the wrongdoers' acts.” Id.

The Complaint does not contain facts to support a claim for civil conspiracy. There are no material facts from which the Court may infer that Eckerd and the State or any other entity entered into an agreement to engage in concerted action by abusing the plaintiff. No facts suggest that Eckerd ever had any conversation, let alone any agreement, with any other defendant.

Further, Eckerd cannot be liable for civil conspiracy with its own employees, because, under the intracorporate conspiracy doctrine, Eckerd and its employees are considered to be the same “person.” See, e.g., Hoefer v. Fluor Daniel, Inc., 92 F. Supp. 2d 1055, 1057 (C.D. Cal. 2000):

The intracorporate conspiracy doctrine provides that, as a matter of law, a corporation cannot conspire with its own employees or agents. [citation and footnote omitted]. The logic for the doctrine comes directly from the definition of a conspiracy. A conspiracy requires a meeting of minds. [citation omitted]. It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

see also Grider v. City of Auburn, Ala., 618 F.3d 1240, 1261 (11th Cir. 2010)(“[T]he intracorporate conspiracy doctrine holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy.”); Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505, 509 (6th Cir. 1991) (“It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.”); Tabb v. District of Columbia, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (“[A] corporation cannot conspire with its employees[.]”); HRCC, Ltd. v. Hard Rock Cafe Int’l (USA), Inc., 302 F. Supp. 3d 1319, 1325 (M.D. Fla. 2016)(“According to the intracorporate conspiracy doctrine, however, a civil conspiracy claim will not succeed where the only members of the alleged conspiracy are a corporation and/or its officers.”).

For these reasons, the claim of civil conspiracy against Eckerd is DISMISSED.

II. The Plaintiff's Negligence and Breach of Fiduciary Duty Claims Are Barred by the Applicable Statutes of Limitations

The statute of limitations is an affirmative defense. Perez v. Pike Indus., Inc., 153 N.H. 158, 160 (2005); Glines v. Bruk, 140 N.H. 180, 181 (1995). A defendant has the obligation to allege and prove that the complaint was brought after the limitations period expired. Perez, 153 N.H. at 160. If the defendant meets this burden, then the plaintiff has the burden to prove that the claim is timely by virtue of the discovery rule, fraudulent concealment, equitable tolling, or some other doctrine. Two statutes are applicable to the plaintiff's claim: the general statute of limitations for personal actions (RSA 508:4); and the tolling provisions of the "disabilities statute" (RSA 508:8). The Court will consider the latter statute first.

A. The Disabilities Statute: RSA 508:8

Under RSA 508:8, "an infant or mentally incompetent person may bring a personal action within 2 years after such disability is removed." In Norton v. Patten, 125 N.H. 413 (1984), the New Hampshire Supreme Court construed the term "infant" to mean a person who has not yet reached the statutory age of majority, as defined in RSA 21-B:1. The age of majority is eighteen. Thus, as construed by Norton, RSA 508:8 extends the limitations period for minors until their twentieth birthday.

As noted above, the plaintiff turned twenty in October 2005, approximately seventeen years before he filed the instant case. Accordingly, the instant case was not filed within the limitations period established by RSA 508:8. RSA 508:8 does not contain its own discovery rule.

C. The General Statute of Limitations for Personal Actions: RSA 508:4

RSA 508:4 provides the statute of limitations for all personal actions. Under this statute:

[A]ll personal actions . . . may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

The last “act or omission complained of” occurred no later than October 2000, the year that the plaintiff left Eckerd. The instant case was thus brought more than twenty-two years after the last “act or omission complained of.” Eckerd has therefore met its burden of showing that the instant case was filed more than three years after the conduct at issue.

This shifts the burden to the plaintiff to demonstrate grounds for the application of: (a) the discovery rule; (b) equitable tolling; (c) the doctrine of fraudulent concealment; or (d) some other doctrine extending the limitations period. Perez, 153 N.H. at 160. Consistent with the standard of review for motions to dismiss, the court accepts all of the plaintiff’s well-pled facts and makes all rational inferences in the plaintiff’s favor.

The court’s task is to determine only whether the plaintiff has alleged facts which, if proven, might lengthen the limitations period to make this case timely. To be clear, if the plaintiff alleges sufficient facts to show that discovery is necessary to make this determination, the motion to dismiss on limitations grounds must be denied and the issue preserved for summary judgment on a more complete record. However, if discovery would be futile because the Complaint itself fails even to allege grounds to apply the discovery rule or another tolling doctrine, the motion to dismiss will be granted.

(i) The Discovery Rule

It is well-settled that the “purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party.” Petition of N.H. Div. For Children, Youth & Families, 173 N.H. 613, 618 (2020). The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run:

(1) a plaintiff must know or reasonably should have known that she has been injured; and (2) a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the defendant.

Lamprey v. Britton Constr., Inc., 163 N.H. 252, 257 (2012); see also Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 713 (2010); Perez, 153 N.H. at 160; Big League Entm’t, Inc. v. Brox Indus., Inc., 149 N.H. 480, 485 (2003).

The discovery rule does not reward ignorance of the law. The statute of limitations is not tolled due to a plaintiff’s failure to acknowledge or otherwise understand their potential claims. See Sullyville, LLC v. Town of Carroll, Slip Op. No. 2019-0240, 2021 WL 1310832, at *7 (N.H. Apr. 8, 2021) (non-precedential decision stating that “[t]he discovery rule does not toll the statute of limitations until a plaintiff discerns the legal theory by which his or her case will proceed; rather, it tolls the statute of limitations only when the injury and its causal relationship to the defendant’s act or omission remain unknown to the plaintiff.”); Ouellette v. Beaupre, 977 F.3d 127, 138 (1st Cir. 2020) (applying federal law and holding that “a plaintiff, once armed with the knowledge of his or her injury and its probable cause, cannot plead ignorance of the law to delay accrual.”); Maggi v. Grafton Cty. Dep’t of Corrs., 633 F. Supp. 3d 508, 516 (D.N.H. 2022) (applying RSA 508:4 and holding that “even if the court were to assume the truth of [plaintiff’s] assertions about his lack of access to legal resources, that would not save his claims. His claims

accrued on the date he should have reasonably known he was injured, not on the date he first learned he had a legal cause of action.”) (vacated and remanded on other grounds by Maggi v. Grafton Cty. Dep’t Corrs., No 23-1002 2024 WL 3384813 (1st Cir. July 9, 2024)); Miller v. Pac. Shore Funding, 224 F. Supp. 2d 977, 986–87 (D. Md. 2004) (“Knowledge of facts, however, not actual knowledge of their legal significance, starts the statute of limitations running. . . . The discovery rule, in other words, applies to discovery of facts, not to discovery of law. Knowledge of the law is presumed.”); Marcum v. Columbia Gas Transmission, LLC, 549 F. Supp. 3d 408, 421, (E.D. Pa. 2021) (“Plaintiffs’ ignorance of a legal cause of action does not, in itself, require application of the discovery rule.”). In this case, the plaintiff proffers several reasons why he may have not discovered the law governing his claims. However, the plaintiff’s failure to bring his claims within the applicable time period due to his unawareness of the law is not grounds to apply the discovery rule.

For discovery rule purposes, a plaintiff becomes aware of an injury as soon as he can reasonably discern that he has suffered “some harm” caused by a defendant’s conduct. Beane, 160 N.H. at 713; see also Balzotti Glob. Grp., LLC v. Shepherds Hill Proponents, LLC, 173 N.H. 314, 321 (2020); Furbush v. McKittrick, 149 N.H. 426, 431 (2003) (“The [discovery] rule is not intended to toll the statute of limitations until the full extent of the plaintiff’s injury has manifested itself.”). Thus, a latent injury will toll the limitations period, while a patent injury will not, even if the long-term consequences of the patent injury cannot be known. See Furbush, 149 N.H. at 431; see generally Clay v. Kuhl, 727 N.E.2d 217, 222 (Ill. 2000) (applying Illinois law): (“The plaintiff contends, however, that her injuries were latent to some extent and did not fully manifest themselves until years after the abuse occurred. We do not believe that the plaintiff’s alleged failure to fully discover the nature of her injuries is sufficient to delay the running of the

limitations period. There is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations.”); see also Stephens v. Clash, 796 F.3d 281, 288 (3d Cir. 2015) (“A plaintiff’s ignorance regarding the full extent of his injury is irrelevant to the discovery rule’s application, so long as the plaintiff discovers or should have discovered that he was injured.”).

In Rowe v. John Deere, 130 N.H.18 (1987), the plaintiff was injured when he struck his head while using machinery manufactured by the defendant. Immediately after the accident, the plaintiff was diagnosed with a depressed skull fracture. The plaintiff recovered quickly. Six years later he began to suffer grand mal seizures, purportedly as a result of the accident. The supreme court held that the plaintiff had discovered his injury at the time of the accident, even though the initial measure of damages was “nominal” compared with the potential damages for the later occurring harm. Id. at 21. Thus, a plaintiff is likely to immediately discover an injury caused by a sudden, traumatic, violent event, and an injury which may later arise from the initial injury will not toll the statute of limitations. See, e.g., Hollander v. Brown, 457 F.3d 688, 692 (7th Cir. 2006) (applying Illinois law):

courts distinguish between injuries caused by sudden, traumatic events and those that have a late or insidious onset. For limitations purposes, a sudden, traumatic event is one that, because of its force or violence, permits the law to presume that the event immediately placed the plaintiff on notice of her injury and a right of action. When a plaintiff suffers this type of injury, her cause of action accrues on the date of the traumatic event, and the limitations period does not begin anew simply because a latent condition later may arise from the same occurrence. The rationale is that the nature and circumstances surrounding the traumatic event are such that the injured party is thereby put on notice that actionable conduct might be involved.

(internal citations and quotation marks omitted).

Here, the plaintiff claims that he was injured as a result of Eckerd’s failure to adequately oversee its staff with respect to hiring, training, supervision, and promulgation of policies. Thus,

the “act or omission complained of,” RSA 508:4, is the breach of duty by Eckerd itself.

According to the Complaint, that breach led to multiple physical assaults and painful restraints, including at least one incident where the plaintiff was physically pinned down by an Eckerd staff member for 30 to 45 minutes in the bottom of a canoe. Additionally, the alleged breach also led to other instances of physical and psychological abuse by Eckerd staff, often in the presence of other Eckerd staff. The incidents of physical and psychological abuse the plaintiff describes constitute injuries that are sudden, traumatic, violent, painful, and/or extremely unpleasant. There is nothing subtle or latent about these alleged events. The plaintiff necessarily knew of the assaults at the time they happened.

With respect to psychological abuse, the plaintiff may have been unaware of the long-term psychological and emotional effects of the treatment he says he endured. But those harms were nonetheless caused by the same “act or omission complained of,” RSA 508:4, e.g., Eckerd’s alleged lack of care in hiring, training and supervising staff, and promulgating policies. Thus, under settled New Hampshire law, accepting all the well-pled facts in the Complaint, the court must find that the plaintiff was aware that he had been injured as a result of Eckerd’s failure to control its staff because the plaintiff knew that he had been assaulted and physically restrained on multiple occasions.

Under the discovery rule, the limitations period in this case did not begin to run until the plaintiff either (a) discovered, or (b) should have discovered through the exercise of reasonable diligence, that Eckerd’s breach of duty was a proximate cause of his injury. See Troy v. Bishop Guertin High Sch., 176 N.H. 131, 134 (2023) (citing RSA 508:4). Knowledge of Eckerd’s causal role cannot be automatically inferred from the fact that the plaintiff knew that his injury was caused by Eckerd’s employees, acting overtly under color of their authority, on Eckerd’s

premises. See id. at 138 (“We decline to establish a per se rule that the plaintiff’s knowledge of the abuser’s employer is alone sufficient to trigger the application of the discovery rule. This inquiry presents a question of fact.”). However, “[a] plaintiff need not be certain of this causal connection; the possibility that it existed will suffice to obviate the protections of the discovery rule.” Id. at 137 (quoting Beane, 160 N.H. at 713); see also Balzotti, 173 N.H. at 321; Lamprey, 163 N.H. at 257; Pichowicz v. Watson Ins. Agency, Inc., 146 N.H. 166, 168 (2001). “[T]he discovery rule employs an objective standard” to determine whether, through the exercise of reasonable diligence, a plaintiff should have discovered sufficient evidence of the defendant’s role in causing his injury.” Troy, 176 N.H. at 137.

In this case, the same alleged facts that establish the plaintiff’s knowledge of harm also demonstrate the plaintiff knew or should have known Eckerd’s breach of duty was a proximate cause of his alleged injury. Here the plaintiff does not complain of isolated incidents, committed in secret, by a rogue staff member of a large institution. Rather, the plaintiff claims frequent assaults, involving multiple staff members, committed openly and in view of both other residents and other staff members. Additionally, the plaintiff alleges he was beaten by another resident in front of staff, who did nothing to stop the assault and provided no medical assistance afterward. If these allegations in the Complaint are credited, as they must be at this juncture, then at the very least Eckerd failed to supervise its staff and monitor its facility and thereby breached both its fiduciary obligations to the plaintiff and the common law duty of reasonable care.

Eckerd’s role in causing the plaintiff’s injury is not inferred from the mere fact that the plaintiff’s assailants received paychecks and a W2 from Eckerd. Compare the facts of this case to those in Troy, which involved two acts of sexual assault, committed in private, by a high school teacher against a female student. Troy, 176 N.H. at 133-35. Unbeknownst to the plaintiff

in Troy, the school had hired the teacher despite knowing of his previous conviction for unlawful sexual contact with a different female high school student at a different school that was owned and operated by the same religious order. Id. at 133-34. The school did not alert students or parents to the teacher's status as a sex offender who preyed on a similar victim. Id. It took no action to limit or monitor the teacher's contact with students. Id. It would be hard to imagine how the plaintiff in Troy could have known from the abuse she endured that the school (and its owner) shouldered any of the blame for the covert criminal acts of a lone employee.

Conversely, in this case, if the facts in the Complaint are credited, it is hard to imagine how the plaintiff could not see a problem with the conduct of Eckerd's staff members. Indeed, the plaintiff—unlike the plaintiff in Troy, who became aware of the offending teacher's history with the school only as a result of later public disclosures by the school itself—does not allege a single fact that he learned about Eckerd since leaving its facility in or around 2000. He does not point to the discovery of any fact relating, for example, to Eckerd's hiring process, its knowledge of staff misconduct, or its promulgation of policies. He points to no news articles or publicity relating to Eckerd. Rather, he states only that he first heard about a lawsuit on the news at some time prior to 2021 and he was unable to come forward prior to that because he had “blocked it out for not wanting to re-live that trauma.” (Declaration ¶ 24). Neither of these assertions constitutes the discovery of a fact pertinent to Eckerd's causal relationship to the plaintiff's injury of a kind that, if unknown to the plaintiff, would toll the statute of limitations. Cf. Miller, 224 F. Supp. 2d at 986–87.

The plaintiff's remaining arguments are unpersuasive. First, the plaintiff contends that his fiduciary duty claim is tolled until he had actual knowledge of Eckerd's breach. The court disagrees. New Hampshire law is clear that tolling statute of limitations period is not dependent

or otherwise reliant upon the fiduciary disclosing its wrongdoing. See Beane, 160 N.H. at 714-15 (“[T]here is no support in our case law for the proposition that a limitations period is tolled in fiduciary cases until the fiduciary discloses his or her misconduct.”). Second, no amount of additional discovery the plaintiff may engage in regarding Eckerd’s policies and procedures could reveal information that would make it more likely that the plaintiff could avail himself of the discovery rule. As explained above, the plaintiff’s Complaint shows that he already had all the information he needed to determine that Eckerd was the proximate cause of his injuries by the time he turned twenty.

Ultimately, the plaintiff had sufficient information about Eckerd’s institutional failures prior to the expiration of any applicable limitations period. He has not alleged that he learned any new facts about Eckerd’s role in his alleged abuse after he turned twenty. For these reasons, the court concludes that the discovery rule does not toll the statute of limitations.

ii. Fraudulent Concealment and Equitable Tolling

The court has found that (a) the discovery rule did not toll the start of the limitations period in RSA 508:4 beyond the plaintiff’s twentieth birthday and, therefore, (b) the applicable limitations period is that established by RSA 508:8, which gave the plaintiff until age 20 to file this action.

The plaintiff argues, however, that two equitable doctrines apply here: fraudulent concealment and equitable tolling. The New Hampshire Supreme Court views both these doctrines as implied exceptions to all statutes of limitations. See Lakeman v. La France, 102 N.H. 300, 303 (1959) (adopting the majority rule that “fraudulent concealment of a cause of action from the one in whom it resides by the one against whom it lies constitutes an implied exception to the statute of limitations,” and rejecting the “contrary view that fraudulent

concealment does not toll the operation of the statute unless the Legislature has expressly so stated in the statute itself”). With respect to equitable tolling, the supreme court has only applied the doctrine and explained its elements. See Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 623–24 (2005).

The doctrine of fraudulent concealment tolls the limitations period when a defendant, by concealment or other action, intentionally prevents the plaintiff from acquiring material information. Lamprey, 163 N.H. at 259–60; See also Lakeman, 102 N.H. at 303–304. Thus, fraudulent concealment

. . . requires something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to a cause of action—some actual artifice to prevent knowledge of the facts or some representation intended to exclude suspicion and prevent inquiry.

Lamprey, 163 N.H. at 259–60 (internal quotation marks and bracketing omitted); see also Maggi, 633 F. Supp. 3d at 516 (“The burden is on the plaintiff invoking the fraudulent concealment doctrine to present some evidence of an affirmative act on the part of the defendant to conceal or cover up the underlying wrongful conduct that gave rise to the plaintiff’s asserted injury.” (internal citations omitted)); Sykes v. RBS Citizens, N.A., 2 F. Supp. 3d 128, 143 (D.N.H. 2014).

Even when there is fraudulent concealment, the doctrine provides little, if anything, in the way of relief that the discovery rule does not also provide. See Beane, 160 N.H. at 714 (“The fraudulent concealment rule states that when facts essential to the cause of action are fraudulently concealed, the statute of limitations is tolled until the plaintiff has discovered such facts or could have done so in the exercise of reasonable diligence.” (quoting Bricker v. Putnam, 128 N.H. 162, 165 (1986))); see also Lakeman, 102 N.H. at 303; Furbush, 149 N.H. at 431; Sykes, 2 F. Supp. 3d at 143.

In this case, the plaintiff has not pointed to any affirmative act on the part of Eckerd to conceal or cover up any fact. Indeed, as noted above, the plaintiff has not pointed to any fact he learned after leaving Eckerd's facility in 2000. Therefore, the doctrine of fraudulent concealment does not apply to the plaintiff's claims against Eckerd.

The New Hampshire Supreme Court has not developed a substantial body of case law relating to the doctrine of equitable tolling. The Court recognized the doctrine in Portsmouth Country Club, explaining that it allows a plaintiff to initiate an action beyond the statutory limitations period when that plaintiff had been "prevented in some extraordinary way from exercising his or her rights." 152 N.H. at 623 (emphasis added). The doctrine "applies principally if the plaintiff is actively misled by the defendant about the cause of action." Kierstead v. State Farm Fire & Cas. Co., 160 N.H. 681, 688 (2010).

To be eligible for equitable tolling, a plaintiff's access to the justice system must be frustrated despite the plaintiff's diligence. See, e.g., Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96 (1990)(applying federal law and holding that:

Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.

(internal footnotes omitted)); Maggi, 633 F. Supp. 3d at 518 (applying federal law and noting that, "in unusual cases, certain limitations of imprisonment may rise to the level of 'extraordinary circumstance'" [but] "the usual problems inherent in being incarcerated, such as a prisoner's lack of prior legal training or limited access to legal resources in a prison's library, do not, by themselves, justify equitable tolling" (internal ellipses and citation omitted)).

In this case, the plaintiff was not prevented from discovering either necessary facts or necessary law. He was not actively misled by Eckerd as to his ability to access the courts. He was not threatened with retaliation for accessing the courts. He was not deprived of the ability to seek counsel or advice from third parties.

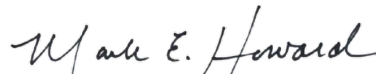
To this end, the plaintiff alleges that he did not bring suit because of his ongoing emotional distress and substance misuse disorder. However, diminished mental capacity is not grounds for equitable tolling. See Sykes, 2 F. Supp. 3d at 144, fn 18 (ruling that, “RSA 508:8, and not the doctrine of equitable tolling, governs the statute of limitations for New Hampshire state law claims when a plaintiff is mentally incompetent.”). Furthermore, even under federal law, where a plaintiff’s mental condition might allow for equitable tolling, the plaintiff would have to prove that he was unable to engage in rational thought to the point where he could not cooperate with any counsel, or pursue his claim on his own during the limitations period. Id. The plaintiff does not allege this. Thus, the doctrine of equitable tolling does not apply.

CONCLUSION

Pursuant to RSA 508:4 and 508:8, this action is not timely, as the plaintiff filed this case well after his twentieth birthday. The plaintiff attained twenty years of age in October 2005. He filed this case in January 2023, some seventeen years after the expiration of the statute of limitations, and no other tolling provisions apply.

Accordingly, all of the plaintiff’s claims against Eckerd are DISMISSED.

Date: February 27, 2025


Mark E. Howard
Chief Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/27/2025

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

JOHN DOE #607

v.

STATE OF NEW HAMPSHIRE, et al.
218-2023-CV-00040

DAVID MEEHAN v. STATE OF NEW HAMPSHIRE, et al.
(Consolidated YDC/YDSU Cases)
217-2020-CV-26

ORDER ON MOTIONS TO DISMISS

The matter before the court are motions by defendants Orion House, Incorporated (“Orion” or “Orion House”) and NFI North, Inc. (“NFI”) (together, the “Contractor Defendants”) to dismiss plaintiff John Doe #607’s claims against them. (See Court Index ## 9 (Orion’s Mot. Dismiss); 22 (NFI’s Mot. Dismiss); 23 (NFI’s Mem. Law)). For the reasons set forth below both defendants’ motions are GRANTED. All claims against Orion House and NFI in this case are DISMISSED WITH PREJUDICE. Specifically:

- (A) Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy) are DISMISSED for failure to state a claim upon which relief may be granted; and
- (B) Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention), and XII (negligence) are DISMISSED because they were filed after the expiration of the statute of limitations.

This resolves all counts against the Contractor Defendants.¹

¹ The remaining counts do not allege any claims against the Contractor Defendants. Counts I through VII (set forth in the Master Complaint) and Counts IX and XIII (set forth in the Short Form Complaint) assert claims against the State Defendants only.

DEFINING THE COMPLAINT

The Complaint in this case comprises the following three documents:

A. A 50-page “Amended Master Complaint,” filed in Meehan v. State, 217-2020-CV-26 on July 8, 2022. (Meehan Court Index # 70). The Amended Master Complaint does not mention John Doe #607 or any of the facts about his life. Likewise, it does not contain any reference to these or any other Contractor Defendants.

B. A 39-page “Short Form Complaint” filed in John Doe #607 v. State, Docket No. 218-2023-CV-00040. (Court Index # 1). The Short Form Complaint contains allegations specific to the plaintiff and the Contractor Defendants. The Short Form Complaint contains an Addendum, as well as a separately filed, Sealed Supplement that contains John Doe #607’s true name and date of birth.

C. A 9-page Declaration, signed by the plaintiff, filed as Exhibit A to the Objections to the Motions to Dismiss in John Doe #607 v. State, Docket No. 218-2023-CV-00040 (Court Index ## 15 & 13 (Redacted); see Court Index ## 19 & 17 (Redacted)) (cited hereinafter as “Declaration”). The Declaration contains the plaintiff’s factual response to the Contractor Defendants’ affirmative limitations defenses.

These 98 pages will be referred to collectively as “the Complaint.”

PROCEDURAL HISTORY AND RELEVANT DATES

The plaintiff was born in December 1995.² He turned 20 in December 2015. The Complaint in this case was filed on January 6, 2023, when the plaintiff was 27 years old.

² The plaintiff’s precise date of birth is provided in the Sealed Supplement to the Short Form Complaint (Court Index # 3). The Court recites only the month and year of birth to protect the plaintiff’s identity. The day of the month is not material to any determination in this Order.

As relevant to the instant motion, the plaintiff claims that he was subjected to physical and psychological abuse at residential juvenile facilities operated by the Contractor Defendants. The plaintiff alleges that the abuse occurred at some unspecified time between 2006 and 2007, when he was approximately between the ages of 11 and 13.³ The plaintiff does not allege that either Contractor Defendant engaged in any tortious behavior after that time.

Thus, the plaintiff initially filed suit approximately 16 years after the last possible date of abuse, and roughly 7 years after he turned 20.

FACTUAL BACKGROUND

The following facts are taken from the Complaint.

A. Events Prior to Plaintiff's Placements with the Contractor Defendants

According to the Declaration, the plaintiff's mother's husband physically abused the plaintiff on a weekly basis. The plaintiff's mother would attempt to fight with her husband about his treatment of the plaintiff, but it was unsuccessful because her husband beat her as well. One of the plaintiff's mother's friends, known to the plaintiff as "Uncle Bruce," also physically assaulted the plaintiff. Uncle Bruce would force the plaintiff and his sister to drop their pants and would hit their buttocks. The plaintiff's mother could not stop Uncle Bruce either.

B. Events at NFI

In 2006 or 2007, the State took custody of the plaintiff and placed him at the Midway Shelter, which NFI owned and operated, for 3 months when he was approximately 11 or 12 years old. The plaintiff alleges that he was locked in prolonged solitary confinement for no reason on at least four occasions. These isolations lasted for at least a week at a time. Staff members did

³Specifically, the plaintiff alleges that in or around 2006 or 2007, when he was approximately 11 to 12 years old, he was placed at Midway Shelter for "approximately 3 months." (Declaration ¶ 6). In the same year, the plaintiff was moved to Orion House, where he stayed for approximately eight months. (Declaration ¶ 9).

not let the plaintiff out when he complained. The plaintiff complained about his solitary confinement to a supervisor known as “Rick” to no avail. The plaintiff alleges that he and another resident eventually ran away from Midway Shelter to escape the abuse. The plaintiff also alleges that he was painfully, physically restrained by multiple staff members on at least two occasions. He further alleged that the staff members knew that the restraints caused the plaintiff pain.

C. Events at Orion House

After his stay at the Midway Shelter, the plaintiff was transferred to Orion House, where he stayed for roughly 8 months. The plaintiff alleges that during his stay at Orion House, various staff members used excessive force to restrain the plaintiff on multiple occasions. The staff members would often laugh while the residents were in pain. Similarly, the plaintiff alleges that staff members stated that they would do it again and make it worse next time. In particular, the plaintiff alleges that a staff member named Tom restrained him by throwing him against a wall and holding him there by his neck. As a result of this incident, the plaintiff went to the nurse for an icepack to help with his sore neck. Although the nurse was aware that the plaintiff was injured because of a restraint, she did not ask any follow up questions. The plaintiff attempted to report the physical restraints he experienced to a supervisor named Laura. Laura always sided with the staff and did not take the plaintiff’s complaints seriously.

D. Events after the Plaintiff’s Placement with the Contractor Defendants

After the plaintiff left Orion House, he was placed at the State’s Youth Detention Services Unit (“YDSU”) for five to six weeks. He does not allege how much time, if any, elapsed between the date he left Orion House and the date he arrived at YDSU. The plaintiff alleges that while he was at YDSU, he was subjected to at least one painful physical restraint and

about fifty strip searches. He claims that the strip searches occurred almost daily. The plaintiff further elaborates that the strip searches performed by a staff member named Sean Howlett were “weird.” The plaintiff alleges that Howlett routinely fondled his genitals during strip searches.

Sometime thereafter when the plaintiff was approximately 13 years old, the State sent him to the State Youth Detention Center (“YDC”). The plaintiff stayed at YDC intermittently for the next 3 years. The plaintiff does not allege how much time, if any, elapsed between the date he left YDSU and the date he arrived at YDC. The plaintiff alleges that while he was at YDC, he was routinely subjected to excessive physical restraints, strip searches, and solitary confinement. The plaintiff was subjected to approximately 50 to 60 strip searches, during which Howlett continued to fondle the plaintiff’s genitals. Staff members gave the plaintiff heavy doses of medication for his anxiety, suspected ADHD, and sleeping problems, which often left the plaintiff feeling foggy.

On at least 10 to 15 occasions, the plaintiff was subjected to physical restraints and beatings. One violent restraint by staff members Tony Paquette and “Will” resulted in a shoulder injury that the plaintiff still suffers from today. The plaintiff further alleges that Paquette once beat the plaintiff after he attempted to report Paquette for his abuse and threatened the plaintiff that if he ever threatened Paquette’s job again, Paquette “would kill [him].” The plaintiff also alleges a normalized culture of violence and that staff members purposefully sought out the facility’s blind spots to perpetuate their abuse on the residents. The plaintiff was also locked in solitary confinement without justification for extended periods of time as staff members would help cover for one another.

The plaintiff got out of juvenile placement at the age of 17.

E. Alleged Damages

According to the Declaration, the plaintiff has severe mental health issues—including PTSD, anxiety, and depression—stemming from the abuse he allegedly suffered throughout his childhood, including from the events at the Contractor Defendants’ facilities.

F. Lack of Discovery

The plaintiff alleges that he believed that the abuse was “permissible” because this was the way that adult staff members behaved at all of the facilities he attended. In his Declaration, the plaintiff states that he did not believe at the time that Orion’s or NFI’s actions—or those of any other facility he was placed in—were abusive or wrongful. The plaintiff further explains that he believed these facilities had the power to do whatever they wanted to the children entrusted to their care in large part because staff members never faced any accountability for the alleged abuse perpetrated on the plaintiff. Additionally, the plaintiff alleges that he did not understand the institutional nature of the abuse he allegedly suffered and assumed that only the individual staff members were responsible.

In September 2022, the plaintiff first learned that the people in charge of the facilities he was in were responsible for his care. In particular, around that time, plaintiff read a news article about individuals suing the State for abuse they allegedly suffered at YDC. The plaintiff realized that the abuse these individuals reported suffering was similar to his own experiences. The plaintiff alleges that it was only after reading this article that he realized his treatment at Orion House and NFI and his other placements was wrong and abusive. He also realized that YDC and the non-state placements owed him a duty of care.

ANALYSIS

The Contractor Defendants move separately to dismiss the plaintiff's claims against them on multiple grounds. Because the grounds asserted by each defendant are essentially identical, and resolution of their motions depends largely on the same determinations of fact, the court analyzes their motions together except where noted.

I. The Complaint Does Not State Claims for Aiding and Abetting a Breach of Fiduciary Duty or Civil Conspiracy against Either Contractor Defendant

In Counts X and XIV, the plaintiff accuses the Contractor Defendants of: (a) aiding and abetting a breach of fiduciary duty; and (b) civil conspiracy. Both of these claims require proof that the respective Contractor Defendants were engaged in deliberate, concerted action with another party to violate the plaintiff's rights. See Invest Almaz v. Temple-Inland Forest Prods. Corp., 243 F.3d 57, 82-83 (1st Cir. 2001)(stating standard for aiding and abetting a breach of fiduciary duty); Jay Edwards, Inc. v. Baker, 130 N.H. 41, 47 (1987) (describing standard for civil conspiracy). Because the Complaint alleges no material facts from which such concerted action can be inferred as to either Contractor Defendant, these two counts are DISMISSED for failure to state a claim.

A. Aiding and Abetting a Breach of Fiduciary Duty

The New Hampshire Supreme Court has not yet had occasion to recognize the tort of aiding and abetting a breach of fiduciary duty. Nonetheless, the tort is established and well-defined, as, for example, in the Restatement (Second) of Torts, § 876(b):

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . [1] knows that the other's conduct constitutes a breach of duty and [2] gives substantial assistance or encouragement to the other so to conduct himself[.]

Courts that apply New Hampshire law predict that the New Hampshire Supreme Court will recognize this cause of action. See Invest Almaz, 243 F.3d at 82-83; Legacy Glob. Sports, LP v. St. Pierre, Slip Op. No. 218-2019-CV-198, 2020 WL 2027401, at *2 (Merrimack County Superior Court, Apr. 27, 2020); Clare v. Bank of New England, Slip. Op. No. 218-2013-CV-00687, 2013 N.H. Super LEXIS 22, at *3-4, 9 (Merrimack Count Superior Court, Nov. 26, 2013); HayJo S.A. de CV v. Sponge-Jet, Inc., No. 14-cv-196-JD, 2015 WL 9459918, at *4 (D.N.H. Dec. 23, 2015); Tamposi v. Denby, 974 F. Supp. 2d 51, 61 (D. Mass. 2013); In Re Felt Mfg. Co., Inc., 371 B.R. 589, 615 (Bankr. D.N.H. 2007); But see Gill v. Devine, Millimet & Branch, P.A., Slip Op. No 218-2012-CV-00660 (Rockingham County Superior Court, Oct. 12, 2012) (ruling that the tort of aiding and abetting a breach of fiduciary duty had not been recognized).

Assuming a claim for aiding and abetting a breach of fiduciary duty may be pursued in New Hampshire, the Complaint does not contain facts to support this cause of action. To prevail, the plaintiff would need to allege and prove that the Contractor Defendants helped another party breach its fiduciary duty. The Complaint does not allege that either Contractor Defendant did anything to encourage or facilitate the plaintiff's alleged abuse at any placement, including with respect to each other.

Moreover, the Contractor Defendants cannot be found liable for aiding its own employees and agents in a breach of fiduciary duty. The cause of action for aiding and abetting a breach of fiduciary duty only exists to cover circumstances in which the defendant has no direct liability to the plaintiff as a fiduciary. That is not the case here. See, e.g., Mann v. GTCR Golder Rauner, L.L.C., 483 F. Supp. 2d 884, 916 (D. Ariz. 2007) (Under Delaware law, "a person who himself owes a fiduciary duty with respect to a transaction or course of conduct

cannot be liable for aiding and abetting a breach of that same fiduciary duty by another because the same facts that would otherwise constitute aiding and abetting would constitute a primary breach of fiduciary duty.”); In Re Amcast Indus. Corp., 365 B.R. 91, 112–13 (Bankr. S.D. Ohio 2007) (Under Ohio law “the action by its nature, . . . requires participation by a non-fiduciary defendant); In re Verestar, Inc., 343 B.R. 444, 482 (Bankr. S.D.N.Y. 2006) (“[A] claim for aiding and abetting breach of fiduciary duty can only be sustained against a non-fiduciary.”).

Accordingly, for the foregoing reasons, the Complaint does not state a claim against either Contractor Defendant for aiding and abetting a breach of fiduciary duty. The claim is thus DISMISSED as to both Orion and NFI.

B. Civil Conspiracy

To prevail on a claim of civil conspiracy, a plaintiff must prove that:

- (A) Two or more persons and/or entities agreed to either:
 - (1) pursue an unlawful objective or, alternatively,
 - (2) use unlawful means to accomplish a lawful or unlawful objective; and
- (B) At least one of the conspirators committed an overt act in furtherance of this agreement; and
- (C) The plaintiff was harmed as a proximate result of the agreement.

Jay Edwards, Inc., 130 N.H. at 47; see Univ. Sys. of N.H. v. U.S. Gypsum Co., 756 F. Supp. 640, 652 (D.N.H. 1991); Censabella v. Town of Weare, No. 16-cv-490-AJ, 2017 WL 3996173, at *3 (D.N.H. Sept. 8, 2017). “For a civil conspiracy to exist, there must be an underlying tort which the alleged conspirators agreed to commit.” Univ. Sys., 756 F. Supp. at 652. Thus, the cause of action serves to impose liability on “all who commonly plan, take part in, further by cooperation, lend aid to, or encourage the wrongdoers' acts.” Id.

The Complaint does not contain facts to support a claim for civil conspiracy. There are no material facts from which the court may infer that either Contractor Defendant and the State or any other entity entered into an agreement to engage in concerted action by abusing the plaintiff. No facts suggest that either Orion House or NFI ever had any conversation, let alone any agreement, with any other defendant or with each other.

Further, the Contractor Defendants cannot be liable for civil conspiracy with its own employees, because, under the intracorporate conspiracy doctrine, each Contractor Defendant and its respective employees are considered to be the same “person.” See, e.g., Hoefer v. Fluor Daniel, Inc., 92 F. Supp. 2d 1055, 1057 (C.D. Cal. 2000):

The intracorporate conspiracy doctrine provides that, as a matter of law, a corporation cannot conspire with its own employees or agents. [citation and footnote omitted]. The logic for the doctrine comes directly from the definition of a conspiracy. A conspiracy requires a meeting of minds. [citation omitted]. It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

see also Grider v. City of Auburn, Ala., 618 F.3d 1240, 1261 (11th Cir. 2010) (“[T]he intracorporate conspiracy doctrine holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy.”); Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505, 509 (6th Cir. 1991) (“It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.”); Tabb v. District of Columbia, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (“[A] corporation cannot conspire with its employees[.]”); HRCC, Ltd. v. Hard Rock Cafe Int’l (USA), Inc., 302 F. Supp. 3d 1319, 1325 (M.D. Fla. 2016)(“According to the intracorporate conspiracy

doctrine, however, a civil conspiracy claim will not succeed where the only members of the alleged conspiracy are a corporation and/or its officers.”).

Accordingly, the claims of civil conspiracy against Orion House and NFI are DISMISSED.

II. The Plaintiff’s Negligence and Breach of Fiduciary Duty Claims Are Barred as to the Contractor Defendants by the Applicable Statutes of Limitations

The statute of limitations is an affirmative defense. Perez v. Pike Indus., Inc., 153 N.H. 158, 160 (2005); Glines v. Bruk, 140 N.H. 180, 181 (1995). A defendant has the obligation to allege and prove that the complaint was brought after the limitations period expired. Perez, 153 N.H. at 160. If the defendant meets this burden, then the plaintiff has the burden to prove that the claim is timely by virtue of the discovery rule, fraudulent concealment, equitable tolling, or some other doctrine. Two statutes are applicable to the plaintiff’s claim: the general statute of limitations for personal actions (RSA 508:4); and the tolling provisions of the “disabilities statute” (RSA 508:8).

A. The Disabilities Statute: RSA 508:8

The court first considers RSA 508:8, the so-called “disabilities statute.” This statute provides that “an infant or mentally incompetent person may bring a personal action within 2 years after such disability is removed.” In Norton v. Patten, 125 N.H. 413 (1984), the New Hampshire Supreme Court construed the term “infant” to mean a person who has not yet reached the statutory age of majority, as defined in RSA 21-B:1. The age of majority is eighteen. Thus, as construed by Norton, RSA 508:8 extends the limitations period for minors until their twentieth birthday.

As noted above, the plaintiff turned twenty in December 2015, roughly 7 years before he filed the instant case. Accordingly, the instant case was not filed within the limitations period established by RSA 508:8. RSA 508:8 does not contain its own discovery rule.

C. The General Statute of Limitations for Personal Actions: RSA 508:4

RSA 508:4 provides the statute of limitations for all personal actions. Under this statute:

[A]ll personal actions . . . may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

The last “act or omission complained of” as to both Orion House and NFI could have occurred no later than 2007, the last date it may be construed the plaintiff may have been at either facility. The instant case was thus brought roughly 16 years after the last “act or omission complained of.” The Contractor Defendants have therefore met their burden of showing that the instant case was filed more than three years after the conduct at issue, regardless of which Contractor Defendant is at issue.

This shifts the burden to the plaintiff to demonstrate grounds for the application of: (a) the discovery rule; (b) equitable tolling; (c) the doctrine of fraudulent concealment; or (d) some other doctrine extending the limitations period. Perez, 153 N.H. at 160. Consistent with the standard of review for motions to dismiss, the court accepts all the plaintiff’s well-pled facts, and makes all rational inferences in the plaintiff’s favor.

The court’s task is to determine only whether the plaintiff has alleged facts which, if proven, might lengthen the limitations period to make this case timely. To be clear, if the plaintiff alleges sufficient facts to show that discovery is necessary to make this determination,

the motion to dismiss on limitations grounds must be denied and the issue preserved for summary judgment on a more complete record. However, if discovery would be futile because the Complaint itself fails even to allege grounds to apply the discovery rule or another tolling doctrine, the motion to dismiss will be granted.

(i) The Discovery Rule

It is well-settled that the “purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party.” Petition of N.H. Div. For Children, Youth & Families, 173 N.H. 613, 618 (2020). The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run:

(1) a plaintiff must know or reasonably should have known that she has been injured; and (2) a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the defendant.

Lamprey v. Britton Constr., Inc., 163 N.H. 252, 257 (2012); see also Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 713 (2010); Perez, 153 N.H. at 160; Big League Entm’t, Inc. v. Brox Indus., Inc., 149 N.H. 480, 485 (2003).

The discovery rule does not reward ignorance of the law. The statute of limitations is not tolled due to a plaintiff’s failure to acknowledge or otherwise understand their potential claims. See Sullyville, LLC v. Town of Carroll, Slip Op. No. 2019-0240, 2021 WL 1310832, at *7 (N.H. Apr. 8, 2021) (non-precedential decision stating that “[t]he discovery rule does not toll the statute of limitations until a plaintiff discerns the legal theory by which his or her case will proceed; rather, it tolls the statute of limitations only when the injury and its causal relationship to the defendant’s act or omission remain unknown to the plaintiff.”); Ouellette v. Beaupre, 977 F.3d 127, 138 (1st Cir. 2020) (applying federal law and holding that “a plaintiff, once armed with the

knowledge of his or her injury and its probable cause, cannot plead ignorance of the law to delay accrual.”); Maggi v. Grafton Cty. Dep’t of Corrs., 633 F. Supp. 3d 508, 516 (D.N.H. 2022) (applying RSA 508:4 and holding that “even if the court were to assume the truth of [plaintiff’s] assertions about his lack of access to legal resources, that would not save his claims. His claims accrued on the date he should have reasonably known he was injured, not on the date he first learned he had a legal cause of action.”) (vacated and remanded on other grounds by Maggi v. Grafton Cty. Dep’t Corrs., No 23-1002 2024 WL 3384813 (1st Cir. July 9, 2024)); Miller v. Pac. Shore Funding, 224 F. Supp. 2d 977, 986–87 (D. Md. 2004) (“Knowledge of facts, however, not actual knowledge of their legal significance, starts the statute of limitations running. . . . The discovery rule, in other words, applies to discovery of facts, not to discovery of law. Knowledge of the law is presumed.”); Marcum v. Columbia Gas Transmission, LLC, 549 F. Supp. 3d 408, 421, (E.D. Pa. 2021) (“Plaintiffs’ ignorance of a legal cause of action does not, in itself, require application of the discovery rule.”). In this case, the plaintiff proffers several reasons why he may have not discovered the law governing his claims. However, the plaintiff’s failure to bring his claims within the applicable time period due to his unawareness of the law is not grounds to apply the discovery rule.

For discovery rule purposes, a plaintiff becomes aware of an injury as soon as he can reasonably discern that he has suffered “some harm” caused by a defendant’s conduct. Beane, 160 N.H. at 713; see also Balzotti Glob. Grp., LLC v. Shepherds Hill Proponents, LLC, 173 N.H. 314, 321 (2020); Furbush v. McKittrick, 149 N.H. 426, 431 (2003) (“The [discovery] rule is not intended to toll the statute of limitations until the full extent of the plaintiff’s injury has manifested itself.”). Thus, a latent injury will toll the limitations period, while a patent injury will not, even if the long-term consequences of the patent injury cannot be known. See Furbush,

149 N.H. at 431; see generally Clay v. Kuhl, 727 N.E.2d 217, 222 (Ill. 2000) (applying Illinois law): (“The plaintiff contends, however, that her injuries were latent to some extent and did not fully manifest themselves until years after the abuse occurred. We do not believe that the plaintiff’s alleged failure to fully discover the nature of her injuries is sufficient to delay the running of the limitations period. There is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations.”); see also Stephens v. Clash, 796 F.3d 281, 288 (3d Cir. 2015) (“A plaintiff’s ignorance regarding the full extent of his injury is irrelevant to the discovery rule’s application, so long as the plaintiff discovers or should have discovered that he was injured.”).

In Rowe v. John Deere, 130 N.H.18 (1987), the plaintiff was injured when he struck his head while using machinery manufactured by the defendant. Immediately after the accident, the plaintiff was diagnosed with a depressed skull fracture. The plaintiff recovered quickly. Six years later he began to suffer grand mal seizures, purportedly as a result of the accident. The supreme court held that the plaintiff had discovered his injury at the time of the accident, even though the initial measure of damages was “nominal” compared with the potential damages for the later occurring harm. Id. at 21. Thus, a plaintiff is likely to immediately discover an injury caused by a sudden, traumatic, violent event, and an injury which may later arise from the initial injury will not toll the statute of limitations. See, e.g., Hollander v. Brown, 457 F.3d 688, 692 (7th Cir. 2006) (applying Illinois law):

courts distinguish between injuries caused by sudden, traumatic events and those that have a late or insidious onset. For limitations purposes, a sudden, traumatic event is one that, because of its force or violence, permits the law to presume that the event immediately placed the plaintiff on notice of her injury and a right of action. When a plaintiff suffers this type of injury, her cause of action accrues on the date of the traumatic event, and the limitations period does not begin anew simply because a latent condition later may arise from the same occurrence. The rationale is that the nature and circumstances surrounding the traumatic event are

such that the injured party is thereby put on notice that actionable conduct might be involved.

(internal citations and quotation marks omitted).

Here, the plaintiff claims that he was injured as a result of the Contractor Defendants' failure adequately to oversee their staff with respect to hiring, training, supervision, and promulgation of policies. Thus, the "act or omission complained of," RSA 508:4, is each Contractor Defendants' breach of duty. According to the Complaint, those breaches led to multiple physical assaults, largely in the form of painful restraints. In his relatively brief stay at Midway Shelter, this included multiple instances where staff members physically restrained the plaintiff in such a manner that they knew caused the plaintiff pain. Further, the plaintiff also alleges routine solitary confinement while at Midway Shelter, culminating in his decision to run away to escape the violence and isolation he experienced. Such actions are consistent with an awareness that the plaintiff was injured while at Midway Shelter.

At Orion House, the plaintiff was regularly beaten and violently restrained by multiple staff members—including at least one incident where he was thrown against a wall and held there by his neck—to a degree that he required medical attention. The plaintiff's awareness of his injury is further reflected by the plaintiff's knowledge that his neck was sore and required an ice pack from the nurse. The incidents of physical and psychological abuse the plaintiff describes constitute injuries that are sudden, traumatic, violent, painful, or extremely unpleasant. There is nothing subtle or latent about the events alleged to have occurred at the facilities run by either Contractor Defendant. The plaintiff necessarily knew of these assaults at the time they happened.

As a child, the plaintiff may have been unaware of the long-term psychological and emotional effects of the treatment he says he endured. But those harms were nonetheless caused

by the same “act or omission complained of,” RSA 508:4, e.g., the Contractor Defendants’ alleged lack of care in hiring, training and supervising staff, and promulgating policies. Thus, under settled New Hampshire law, accepting all the well-pled facts in the Complaint, the court must find that the plaintiff was aware that he had been injured as a result of the Contractor Defendants’ failure to control their respective staffs because the plaintiff knew that he had been assaulted, physically restrained by staff, and locked in solitary confinement at both facilities on multiple occasions by multiple staff members.

Under the discovery rule, the limitations period in this case did not begin to run until the plaintiff either (a) discovered, or (b) should have discovered through the exercise of reasonable diligence, that the Contractor Defendants’ breach of duty was a proximate cause of his injury.

See Troy v. Bishop Guertin High Sch., 176 N.H. 131, 134 (2023) (citing RSA 508:4).

Knowledge of the Contractor Defendants’ causal role cannot be automatically inferred from the fact that the plaintiff knew that his injury was caused by their employees, acting overtly under color of their authority, on their respective premises. See id. at 138 (“We decline to establish a per se rule that the plaintiff’s knowledge of the abuser’s employer is alone sufficient to trigger the application of the discovery rule. This inquiry presents a question of fact.”). However, “[a] plaintiff need not be certain of this causal connection; the possibility that it existed will suffice to obviate the protections of the discovery rule.” Id. at 137 (quoting Beane, 160 N.H. at 713); see also Balzotti, 173 N.H. at 321; Lamprey, 163 N.H. at 257; Pichowicz v. Watson Ins. Agency, Inc., 146 N.H. 166, 168 (2001). “[T]he discovery rule employs an objective standard” to determine whether, through the exercise of reasonable diligence, a plaintiff should have discovered sufficient evidence of the defendant’s role in causing his injury.” Troy, 176 N.H. at 137.

In this case, the same alleged facts that establish the plaintiff's knowledge of harm also demonstrate the plaintiff knew or should have known that the Contractor Defendants' breach of duty was a proximate cause of his alleged injury. Here the plaintiff does not complain of isolated incidents, committed in secret, by a rogue staff member of a large institution. Rather, as noted, the plaintiff claims frequent assaults upon himself and others, involving multiple staff members. Additionally, the plaintiff asserts that, even as a child, he stopped reporting the alleged abuse because he knew senior staff members would always take the institution's side rather than the children's side. This assertion reflects the plaintiff's knowledge that the institutions had a responsibility to supervise and control the staff members and was failing to fulfill that obligation. If these allegations in the Complaint are credited, as they must be at this juncture, then at the very least the Contractor Defendants failed to supervise their staff and monitor their respective facilities, and thereby breached both their fiduciary obligations to the plaintiff and their common law duty of reasonable care.

The Contractor Defendants' role in causing the plaintiff's injury is not inferred from the mere fact that the plaintiff's assailants received paychecks and W2s from Orion House and NFI. Compare the facts of this case to those in Troy, which involved two acts of sexual assault, committed in private, by a high school teacher against a female student. Troy, 176 N.H. at 133-35. Unbeknownst to the plaintiff in Troy, the school had hired the teacher despite knowing of his previous conviction for unlawful sexual contact with a different female high school student at a different school that was owned and operated by the same religious order. Id. at 133-34. The school did not alert students or parents to the teacher's status as a sex offender who preyed on a similar victim. Id. It took no action to limit or monitor the teacher's contact with students. Id. It would be hard to imagine how the plaintiff in Troy could have known from the abuse she

endured that the school (and its owner) shouldered any of the blame for the covert criminal acts of a lone employee.

Conversely, in this case, if the facts in the Complaint are credited, it is hard to imagine how the plaintiff could not see a problem with the conduct of Orion House's and NFI's staff members. Indeed, the plaintiff—unlike the plaintiff in Troy, who became aware of the offending teacher's history with the school only as a result of later public disclosures by the school itself—does not allege a single fact that he learned about Orion House or NFI since leaving their facilities in or around 2007. He does not point to the discovery of any fact relating, for example, to Orion's or NFI's hiring process, their knowledge of staff misconduct, or their promulgation of policies. He points to no news articles or publicity relating to Orion House or NFI. Rather, he states only that he first heard about a lawsuit, from an unspecified news article in 2023 about YDC only, but prior to that failed to realize that “the State and the companies that it paid to watch over me had any duty to care for or protect me, because that was the exact opposite of my experience in custody, where I was never protected or cared for.” (Declaration ¶¶ 30). None of these conclusory assertions, even taken as true, constitutes the discovery of a fact pertinent to Orion House's or NFI's causal relationship to the plaintiff's injury of a kind that would have tolled the statute of limitations. Cf. Miller, 224 F. Supp. 2d at 986–87.

The plaintiff's remaining arguments are unpersuasive. First, the plaintiff contends that his fiduciary duty claim against each Contractor Defendant is tolled until he had actual knowledge of a breach by that defendant. The court disagrees. New Hampshire law is clear that tolling a statute of limitations period is not dependent or otherwise reliant upon the fiduciary disclosing its wrongdoing. See Beane, 160 N.H. at 714-15 (“[T]here is no support in our case law for the proposition that a limitations period is tolled in fiduciary cases until the fiduciary

discloses his or her misconduct.”). Second, no amount of additional discovery the plaintiff may engage in regarding Orion House’s or NFI’s policies and procedures could reveal information that would make it more likely that the plaintiff could avail himself of the discovery rule. As explained above, the plaintiff’s Complaint shows that he already had all the information he needed to determine that the Contractor Defendants were the proximate cause of his injuries by the time he turned twenty.

Ultimately, the plaintiff had sufficient information about both Orion’s and NFI’s institutional failures prior to the expiration of any applicable limitations period. He has not alleged that he learned any new facts about Orion’s or NFI’s role in his alleged abuse after he turned twenty. For these reasons, the court concludes that the discovery rule does not toll the statute of limitations.

ii. Fraudulent Concealment and Equitable Tolling

The court has found that (a) the discovery rule did not toll the start of the limitations period in RSA 508:4 beyond the plaintiff’s twentieth birthday and, therefore, (b) the applicable limitations period is that established by RSA 508:8, which gave the plaintiff until age 20 to file this action. The plaintiff argues, however, that two equitable doctrines apply here: fraudulent concealment and equitable tolling. The New Hampshire Supreme Court views both these doctrines as implied exceptions to all statutes of limitations. See Lakeman v. La France, 102 N.H. 300, 303 (1959) (adopting the majority rule that “fraudulent concealment of a cause of action from the one in whom it resides by the one against whom it lies constitutes an implied exception to the statute of limitations,” and rejecting the “contrary view that fraudulent concealment does not toll the operation of the statute unless the Legislature has expressly so stated in the statute itself”). With respect to equitable tolling, the supreme court has only applied

the doctrine and explained its elements. See Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 623–24 (2005).

The doctrine of fraudulent concealment tolls the limitations period when a defendant, by concealment or other action, intentionally prevents the plaintiff from acquiring material information. Lamprey, 163 N.H. at 259–60; See also Lakeman, 102 N.H. at 303–304. Thus, fraudulent concealment

. . . requires something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to a cause of action—some actual artifice to prevent knowledge of the facts or some representation intended to exclude suspicion and prevent inquiry.

Lamprey, 163 N.H. at 259–60 (internal quotation marks and bracketing omitted); see also Maggi, 633 F. Supp. 3d at 516 (“The burden is on the plaintiff invoking the fraudulent concealment doctrine to present some evidence of an affirmative act on the part of the defendant to conceal or cover up the underlying wrongful conduct that gave rise to the plaintiff’s asserted injury.” (internal citations omitted)); Sykes v. RBS Citizens, N.A., 2 F. Supp. 3d 128, 143 (D.N.H. 2014).

Even when there is fraudulent concealment, the doctrine provides little, if anything, in the way of relief that the discovery rule does not also provide. See Beane, 160 N.H. at 714 (“The fraudulent concealment rule states that when facts essential to the cause of action are fraudulently concealed, the statute of limitations is tolled until the plaintiff has discovered such facts or could have done so in the exercise of reasonable diligence.” (quoting Bricker v. Putnam, 128 N.H. 162, 165 (1986))); see also Lakeman, 102 N.H. at 303; Furbush, 149 N.H. at 431; Sykes, 2 F. Supp. 3d at 143.

In this case, the plaintiff has not pointed to any affirmative act on the part of Orion House or NFI to conceal or cover up any fact. Indeed, as noted above, the plaintiff has not pointed to

any fact he learned after leaving the facilities run by the Contractor Defendants in 2008.

Therefore, the doctrine of fraudulent concealment does not apply to the plaintiff's claims.

The New Hampshire Supreme Court has not developed a substantial body of case law relating to the doctrine of equitable tolling. The Court recognized the doctrine in Portsmouth Country Club, explaining that it allows a plaintiff to initiate an action beyond the statutory limitations period when that plaintiff had been “prevented in some extraordinary way from exercising his or her rights.” 152 N.H. at 623 (emphasis added). The doctrine “applies principally if the plaintiff is actively misled by the defendant about the cause of action.” Kierstead v. State Farm Fire & Cas. Co., 160 N.H. 681, 688 (2010).

To be eligible for equitable tolling, a plaintiff's access to the justice system must be frustrated despite the plaintiff's diligence. See, e.g., Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96 (1990)(applying federal law and holding that:

Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.

(internal footnotes omitted)); Maggi, 633 F. Supp. 3d at 518 (applying federal law and noting that, “in unusual cases, certain limitations of imprisonment may rise to the level of ‘extraordinary circumstance’” [but] “the usual problems inherent in being incarcerated, such as a prisoner's lack of prior legal training or limited access to legal resources in a prison's library, do not, by themselves, justify equitable tolling” (internal ellipses and citation omitted)).

In this case, the plaintiff was not prevented from discovering either necessary facts or necessary law. He was not actively misled by Orion House or NFI as to his ability to access the

courts. He was not threatened with retaliation for accessing the courts. He was not deprived of the ability to seek counsel or advice from third parties.

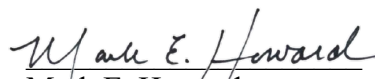
To this end, the plaintiff alleges that he did not bring suit because of his ongoing emotional distress. However, diminished mental capacity is not grounds for equitable tolling. See Sykes, 2 F. Supp. 3d at 144, n. 18 (ruling that, “RSA 508:8, and not the doctrine of equitable tolling, governs the statute of limitations for New Hampshire state law claims when a plaintiff is mentally incompetent.”). Furthermore, even under federal law, where a plaintiff’s mental condition might allow for equitable tolling, the plaintiff would have to prove that he was unable to engage in rational thought to the point where he could not cooperate with any counsel, or pursue his claim on his own during the limitations period. Id. Since the plaintiff does not allege this, the doctrine of equitable tolling does not apply.

CONCLUSION

Pursuant to RSA 508:4 and 508:8, this action is not timely, as the plaintiff filed this case well after his twentieth birthday. The plaintiff attained twenty years of age in December 2015. He filed this case in January 2023, roughly 7 years after the expiration of the statute of limitations, and no other tolling provisions apply.

Accordingly, all of the plaintiff’s claims against the Contractor Defendants are DISMISSED WITH PREJUDICE.

Date: February 27, 2025


Mark E. Howard
Chief Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/28/2025

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

JOHN DOE #644

v.

STATE OF NEW HAMPSHIRE, et al.
218-2023-CV-00130

DAVID MEEHAN v. STATE OF NEW HAMPSHIRE, et al.
(Consolidated YDC/YDSU Cases)
217-2020-CV-26

ORDER ON MOTIONS TO DISMISS

Before the court are motions by defendants NFI North (“NFI”) and Mount Prospect Academy (“MPA”) (together, the “Contractor Defendants”) to dismiss plaintiff John Doe #644’s claims against them. (See Court Index ## 8 (MPA Mot. Dismiss); 18 (NFI Mot. Dismiss); 19 (NFI Mem. Law)). For the reasons set forth below, both defendants’ motions are GRANTED. All claims against NFI and MPA in this case are DISMISSED WITH PREJUDICE.

Specifically:

- (A) Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy) are DISMISSED for failure to state a claim upon which relief may be granted; and
- (B) Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention), and XII (negligence) are DISMISSED because they were filed after the expiration of the statute of limitations.

This resolves all counts against the Contractor Defendants.¹

¹ The remaining counts do not allege any claims against the Contractor Defendants. Counts I through VII (set forth in the Master Complaint) and Counts IX and XIII (set forth in the Short Form Complaint) assert claims against the State Defendants only.

DEFINING THE COMPLAINT

The Complaint in this case comprises the following three documents:

A. A 50-page “Amended Master Complaint,” filed in Meehan v. State, 217-2020-CV-26 on July 8, 2022. (Meehan Court Index # 70). The Amended Master Complaint does not mention John Doe #644 or any of the facts about his life. Likewise, it does not contain any reference to these or any other Contractor Defendants.

B. A 39-page “Short Form Complaint” filed in John Doe #644 v. State, 218-2023-CV-130. (Court Index # 1). The Short Form Complaint contains allegations specific to the plaintiff and the Contractor Defendants. The Short Form Complaint contains an Addendum, as well as a separately filed Sealed Supplement that contains John Doe #644’s true name and date of birth.

C. A 7-page Declaration, signed by the plaintiff, filed as Exhibit A to the Objections to the Motions to Dismiss in John Doe #644 v. State, 218-2023-CV-130 (Court Index ## 10 & 14 (Redacted); see Court Index ## 12 & 16 (Unredacted)) (cited hereinafter as “Declaration”). The Declaration contains the plaintiff’s factual response to the Contractor Defendants’ affirmative limitations defenses.

These 96 pages will be referred to collectively as “the Complaint.”

PROCEDURAL HISTORY AND RELEVANT DATES

The plaintiff was born in September of 1992.² He turned twenty in September of 2012. The Complaint in this case was filed on January 26, 2023, when the plaintiff was thirty years old. As relevant to the instant motion, the plaintiff claims that he was subjected to physical and psychological abuse at residential juvenile facilities operated by the Contractor Defendants. The

² The plaintiff’s precise date of birth is provided in the Sealed Supplement to the Short Form Complaint (Court Index # 3). The Court recites only the month and year of birth to protect the plaintiff’s identity. The day of the month is not material to any determination in this Order.

plaintiff alleges that the abuse occurred at some unspecified time between 2004 and 2005, when he was somewhere between the ages of twelve and thirteen.³ The plaintiff does not allege that either Contractor Defendant engaged in any tortious behavior after that time.

Thus, the plaintiff initially filed suit approximately 18 years after the last possible date of abuse, and roughly 10 years after he turned 20.

FACTUAL BACKGROUND

The following facts are taken from the Complaint. According to the Declaration, the plaintiff was put on probation for drug possession when he was approximately 12 to 13 years old. The State took custody of him after he violated his probation by getting into fights at school. The State placed him at NFI's Midway Shelter in Bradford sometime between 2004 and 2005.

A. Events at NFI North Facilities

The Midway Shelter is one of several NFI facilities that provides residential treatment services to at-risk children. The plaintiff lived at Midway for approximately three weeks. During that time, he alleges that he was violently restrained and beaten by Midway staff members. This included at least one instance where two staff members restrained the plaintiff by "pulling [his] arm behind [his] back in a painful position" while another staff member beat him. (Declaration ¶ 4). Midway staff members also subjected him to unjustified solitary confinement on at least ten occasions, each of which lasted 1–2 days. He did not attend school during the three weeks he stayed at Midway.

³ Specifically, the plaintiff alleges that in or around 2005, when he was approximately 12 or 13 years old, he was placed at NFI facilities in Bradford and Jefferson for about 5–6 weeks in total. (Declaration ¶¶ 4, 9). In the same year, the plaintiff was moved to MPA, where he stayed for approximately 4 months. (Declaration ¶ 10).

Sometime in 2005, the State moved the plaintiff to a different facility in Warner, New Hampshire, for approximately 3 weeks.⁴ He does not remember the name of this facility; however, he recalls being beaten and restrained by staff members there. As a result of these beatings, he suffered shoulder and collar bone injuries that still cause him pain to this day. He eventually ran away from the facility in Warner. He was later caught, and the State placed him at NFI Jefferson. He does not specify how much time elapsed between the date he left Warner to the date he arrived at NFI Jefferson. The plaintiff stayed at NFI Jefferson for about 2–3 weeks. On arrival, NFI staff members subjected him to an unjustified strip search. He does not report any other incidents that occurred during this stay at NFI Jefferson.⁵

B. Events at MPA

Later in 2005, the State transferred the plaintiff from NFI Jefferson to MPA. He stayed at MPA for approximately four months, during which he was subjected to more physical abuse by staff members. He was restrained and beaten by MPA staff on 4 or 5 occasions, which exacerbated his pre-existing shoulder injury. These incidents always involved more than one staff member, and he was never offered medical attention afterward. He reported the violent restraints to other staff members, but no action was taken. MPA staff also gave alcohol and other contraband to the plaintiff and other youth residents in secret.

C. Events after the Plaintiff's Placement with the Contractor Defendants

Again in 2005, after his four-month stay at MPA, the State transferred the plaintiff to the State's Youth Detention Center ("YDC"). He remained at YDC for about three years in total

⁴ The plaintiff does not allege that the facility in Warner was affiliated with either of the Contractor defendants. The Court includes facts about this facility for continuity.

⁵ The plaintiff claims to have been taken back to NFI Jefferson twice more over the years, between other placements. He does not specify when he returned, but each time he was subjected to unnecessary strip searches.

over intermittent periods. He was approximately 13–14 years old at the time of his initial placement. During his time at YDC, he was subjected to repeated physical abuse, sexual abuse, and unjustified periods of solitary confinement. On at least two occasions, the plaintiff was locked in his cell for a period of 5–6 days each. He also spent months at a time during which he was only allowed to leave his cell for mealtime. He did not attempt to report the physical abuses at YDC, as he came to believe the staff members were authorized to act as they did.

The plaintiff was released from the State’s custody when he reached the age of majority.

D. Alleged Damages

As a result of the abuse to which he was subjected as a child, the plaintiff has suffered and continues to suffer from anxiety. His lack of education at these facilities also degraded his quality of life as an adult, as he has struggled to obtain and maintain employment. Additionally, he continues to suffer from the shoulder injuries caused by violent restraints.

E. Lack of Discovery

The plaintiff asserts that, prior to the summer of 2022, he did not understand that his experiences as a child at NFI and MPA were abusive or wrongful. After suffering years of restraints, beatings, and other abusive experiences, he came to believe that the staff members at these facilities were empowered to treat him and other children however they wanted. It had never occurred to him that these facilities had any duty to care for or protect him, because he had never experienced care or protection while in custody. In or around June or July of 2022, the plaintiff saw a news story about a lawsuit against YDC for childhood abuses similar to what he experienced. He also spoke with individuals in prison who had been in State custody as a child. Only then did he come to realize that he had been abused, and that the State and the Contractor Defendants were responsible.

ANALYSIS

The Contractor Defendants move separately to dismiss the plaintiff's claims against them on multiple grounds. Because the grounds asserted by each defendant are essentially identical, and resolution of their motions depends largely on the same determinations of fact, except where noted below the Court analyzes their motions together.

I. The Complaint Does Not State Claims for Aiding and Abetting a Breach of Fiduciary Duty or Civil Conspiracy against Either Contractor Defendant

In Counts X and XIV, the plaintiff accuses the Contractor Defendants of: (a) aiding and abetting a breach of fiduciary duty; and (b) civil conspiracy. Both of these claims require proof that the respective Contractor Defendants were engaged in deliberate, concerted action with another party to violate the plaintiff's rights. See Invest Almaz v. Temple-Inland Forest Prods. Corp., 243 F.3d 57, 82-83 (1st Cir. 2001) (stating standard for aiding and abetting a breach of fiduciary duty); Jay Edwards, Inc. v. Baker, 130 N.H. 41, 47 (1987) (describing standard for civil conspiracy). Because the Complaint alleges no material facts from which such concerted action can be inferred as to either Contractor Defendant, these two counts are DISMISSED for failure to state a claim.

A. Aiding and Abetting a Breach of Fiduciary Duty

The New Hampshire Supreme Court has not yet had occasion to recognize the tort of aiding and abetting a breach of fiduciary duty. Nonetheless, the tort is established and well-defined, as, for example, in the Restatement (Second) of Torts, § 876(b):

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . [1] knows that the other's conduct constitutes a breach of duty and [2] gives substantial assistance or encouragement to the other so to conduct himself[.]

Courts that apply New Hampshire law predict that the New Hampshire Supreme Court will recognize this cause of action. See Invest Almaz, 243 F.3d at 82-83; Legacy Glob. Sports, LP v. St. Pierre, Slip Op. No. 218-2019-CV-198, 2020 WL 2027401, at *2 (Merrimack County Superior Court, Apr. 27, 2020); Clare v. Bank of New England, Slip. Op. No. 218-2013-CV-00687, 2013 N.H. Super LEXIS 22, at *3-4, 9 (Merrimack Count Superior Court, Nov. 26, 2013); HayJo S.A. de CV v. Sponge-Jet, Inc., No. 14-cv-196-JD, 2015 WL 9459918, at *4 (D.N.H. Dec. 23, 2015); Tamposi v. Denby, 974 F. Supp. 2d 51, 61 (D. Mass. 2013); In Re Felt Mfg. Co., Inc., 371 B.R. 589, 615 (Bankr. D.N.H. 2007); But see Gill v. Devine, Millimet & Branch, P.A., Slip Op. No 218-2012-CV-00660 (Rockingham County Superior Court, Oct. 12, 2012) (ruling that the tort of aiding and abetting a breach of fiduciary duty had not been recognized).

Assuming a claim for aiding and abetting a breach of fiduciary duty may be pursued in New Hampshire, the Complaint does not contain facts to support this cause of action. To prevail, the plaintiff must prove that the Contractor Defendants had helped another party breach its fiduciary duty. The Complaint does not allege that either Contractor Defendant did anything to encourage or facilitate the plaintiff's alleged abuse at YDC or at any other placement, including with respect to each other.

Moreover, a Contractor Defendant cannot be found liable for aiding its own employees and agents in a breach of fiduciary duty. The cause of action for aiding and abetting a breach of fiduciary duty only exists to cover circumstances in which the defendant has no direct liability to the plaintiff as a fiduciary. That is not the case here. See, e.g., Mann v. GTCR Golder Rauner, L.L.C., 483 F. Supp. 2d 884, 916 (D. Ariz. 2007) (Under Delaware law, "a person who himself owes a fiduciary duty with respect to a transaction or course of conduct cannot be liable for

aiding and abetting a breach of that same fiduciary duty by another because the same facts that would otherwise constitute aiding and abetting would constitute a primary breach of fiduciary duty.”); In Re Amcast Indus. Corp., 365 B.R. 91, 112–13 (Bankr. S.D. Ohio 2007) (Under Ohio law “the action by its nature, . . . requires participation by a non-fiduciary defendant); In re Verestar, Inc., 343 B.R. 444, 482 (Bankr. S.D.N.Y. 2006) (“[A] claim for aiding and abetting breach of fiduciary duty can only be sustained against a non-fiduciary.”).

Accordingly, for the foregoing reasons, the Complaint does not state a claim against either Contractor Defendant for aiding and abetting a breach of fiduciary duty. The claim is thus DISMISSED as to both NFI and MPA.

B. Civil Conspiracy

To prevail on a claim of civil conspiracy, a plaintiff must prove that:

(A) Two or more persons and/or entities agreed to either:

- (1) pursue an unlawful objective or, alternatively,
- (2) use unlawful means to accomplish a lawful or unlawful objective; and

(B) At least one of the conspirators committed an overt act in furtherance of this agreement; and

(C) The plaintiff was harmed as a proximate result of the agreement.

Jay Edwards, Inc., 130 N.H. at 47; see Univ. Sys. of N.H. v. U.S. Gypsum Co., 756 F. Supp. 640, 652 (D.N.H. 1991); Censabella v. Town of Weare, No. 16-cv-490-AJ, 2017 WL 3996173, at *3 (D.N.H. Sept. 8, 2017). “For a civil conspiracy to exist, there must be an underlying tort which the alleged conspirators agreed to commit.” Univ. Sys., 756 F. Supp. at 652. Thus, the cause of action serves to impose liability on “all who commonly plan, take part in, further by cooperation, lend aid to, or encourage the wrongdoers' acts.” Id.

The Complaint does not contain facts to support a claim for civil conspiracy. There are no material facts from which the court may infer that either Contractor Defendant and the State or any other entity entered into an agreement to engage in concerted action by abusing the plaintiff. No facts suggest that either NFI or MPA ever had any conversation, let alone any agreement, with any other defendant or with each other.

Further, a Contractor Defendant cannot be liable for civil conspiracy with its own employees, because, under the intracorporate conspiracy doctrine, each Contractor Defendant and its respective employees are considered to be the same “person.” See, e.g., Hoefer v. Fluor Daniel, Inc., 92 F. Supp. 2d 1055, 1057 (C.D. Cal. 2000):

The intracorporate conspiracy doctrine provides that, as a matter of law, a corporation cannot conspire with its own employees or agents. [citation and footnote omitted]. The logic for the doctrine comes directly from the definition of a conspiracy. A conspiracy requires a meeting of minds. [citation omitted]. It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

see also Grider v. City of Auburn, Ala., 618 F.3d 1240, 1261 (11th Cir. 2010)(“[T]he intracorporate conspiracy doctrine holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy.”); Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505, 509 (6th Cir. 1991) (“It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.”); Tabb v. District of Columbia, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (“[A] corporation cannot conspire with its employees[.]”); HRCC, Ltd. v. Hard Rock Cafe Int’l (USA), Inc., 302 F. Supp. 3d 1319, 1325 (M.D. Fla. 2016)(“According to the intracorporate conspiracy

doctrine, however, a civil conspiracy claim will not succeed where the only members of the alleged conspiracy are a corporation and/or its officers.”). Accordingly, the claims of civil conspiracy against NFI and MPA are DISMISSED.

II. The Plaintiff’s Negligence and Breach of Fiduciary Duty Claims Are Barred as to the Contractor Defendants by the Applicable Statutes of Limitations

The statute of limitations is an affirmative defense. Perez v. Pike Indus., Inc., 153 N.H. 158, 160 (2005); Glines v. Bruk, 140 N.H. 180, 181 (1995). A defendant has the obligation to allege and prove that the complaint was brought after the limitations period expired. Perez, 153 N.H. at 160. If the defendant meets this burden, then the plaintiff has the burden to prove that the claim is timely by virtue of the discovery rule, fraudulent concealment, equitable tolling, or some other doctrine. Two statutes are applicable to the plaintiff’s claim: the general statute of limitations for personal actions (RSA 508:4); and the tolling provisions of the “disabilities statute” (RSA 508:8). The court will consider each statute.

A. The Disabilities Statute: RSA 508:8

The court first considers RSA 508:8, the so-called “disabilities statute.” This statute provides that “an infant or mentally incompetent person may bring a personal action within 2 years after such disability is removed.” In Norton v. Patten, 125 N.H. 413 (1984), the New Hampshire Supreme Court construed the term “infant” to mean a person who has not yet reached the statutory age of majority, as defined in RSA 21-B:1. The age of majority is eighteen. Thus, as construed by Norton, RSA 508:8 extends the limitations period for minors until their twentieth birthday.

As noted above, the plaintiff turned twenty in 2012, roughly ten years before he filed the instant case. Accordingly, the instant case was not filed within the limitations period established by RSA 508:8. RSA 508:8 does not contain its own discovery rule.

B. The General Statute of Limitations for Personal Actions: RSA 508:4

RSA 508:4 provides the statute of limitations for all personal actions. Under this statute:

[A]ll personal actions . . . may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

The last “act or omission complained of” as regards MPA could have occurred no later than 2005, the last date on which it may be construed the plaintiff was at an MPA facility. As regards NFI, such date is somewhat unclear. The plaintiff claims to have been at NFI Jefferson for 2–3 weeks in 2005, and “two other times between other placements over the years.” (Declaration ¶ 9). The plaintiff does not specify when he returned to NFI “over the years.” However, it could not have been later than 2010, when he turned 18. Thus, the instant case was brought between 13 and 18 years after the last “act or omission complained of.” The Contractor Defendants have therefore met their burden of showing that the instant case was filed more than three years after the conduct complained of, regardless of which Contractor Defendant is at issue.

This shifts the burden to the plaintiff to demonstrate grounds for the application of: (a) the discovery rule; (b) equitable tolling; (c) the doctrine of fraudulent concealment; or (d) some other doctrine extending the limitations period. Perez, 153 N.H. at 160. Consistent with the standard of review for motions to dismiss, the court accepts as true all the plaintiff’s well-pled facts and makes all rational inferences in the plaintiff’s favor.

The court’s task is to determine only whether the plaintiff has alleged facts which, if proven, might lengthen the limitations period to make this case timely. To be clear, if the plaintiff alleges sufficient facts to show that discovery is necessary to make this determination,

the motion to dismiss on limitations grounds must be denied and the issue preserved for summary judgment on a more complete record. However, if discovery would be futile because the Complaint itself fails even to allege grounds to apply the discovery rule or another tolling doctrine, the motion to dismiss will be granted.

(i) The Discovery Rule

It is well-settled that the “purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party.” Petition of N.H. Div. For Children, Youth & Families, 173 N.H. 613, 618 (2020). The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run:

(1) a plaintiff must know or reasonably should have known that she has been injured; and (2) a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the defendant.

Lamprey v. Britton Constr., Inc., 163 N.H. 252, 257 (2012); see also Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 713 (2010); Perez, 153 N.H. at 160; Big League Entm’t, Inc. v. Brox Indus., Inc., 149 N.H. 480, 485 (2003).

The discovery rule does not reward ignorance of the law. The statute of limitations is not tolled due to a plaintiff’s failure to acknowledge or otherwise understand their potential claims. See Sullyville, LLC v. Town of Carroll, Slip Op. No. 2019-0240, 2021 WL 1310832, at *7 (N.H. Apr. 8, 2021) (non-precedential decision stating that “[t]he discovery rule does not toll the statute of limitations until a plaintiff discerns the legal theory by which his or her case will proceed; rather, it tolls the statute of limitations only when the injury and its causal relationship to the defendant’s act or omission remain unknown to the plaintiff.”); Ouellette v. Beaupre, 977 F.3d 127, 138 (1st Cir. 2020) (applying federal law and holding that “a plaintiff, once armed with the

knowledge of his or her injury and its probable cause, cannot plead ignorance of the law to delay accrual.”); Maggi v. Grafton Cty. Dep’t of Corrs., 633 F. Supp. 3d 508, 516 (D.N.H. 2022) (applying RSA 508:4 and holding that “even if the court were to assume the truth of [plaintiff’s] assertions about his lack of access to legal resources, that would not save his claims. His claims accrued on the date he should have reasonably known he was injured, not on the date he first learned he had a legal cause of action.”) (vacated and remanded on other grounds by Maggi v. Grafton Cty. Dep’t Corrs., No 23-1002 2024 WL 3384813 (1st Cir. July 9, 2024)); Miller v. Pac. Shore Funding, 224 F. Supp. 2d 977, 986–87 (D. Md. 2004) (“Knowledge of facts, however, not actual knowledge of their legal significance, starts the statute of limitations running. . . . The discovery rule, in other words, applies to discovery of facts, not to discovery of law. Knowledge of the law is presumed.”); Marcum v. Columbia Gas Transmission, LLC, 549 F. Supp. 3d 408, 421, (E.D. Pa. 2021) (“Plaintiffs’ ignorance of a legal cause of action does not, in itself, require application of the discovery rule.”). In this case, the plaintiff proffers several reasons why he may have not discovered the law governing his claims. However, the plaintiff’s failure to bring his claims within the applicable time period due to his unawareness of the law is not grounds to apply the discovery rule.

For discovery rule purposes, a plaintiff becomes aware of an injury as soon as he can reasonably discern that he has suffered “some harm” caused by a defendant’s conduct. Beane, 160 N.H. at 713; see also Balzotti Glob. Grp., LLC v. Shepherds Hill Proponents, LLC, 173 N.H. 314, 321 (2020); Furbush v. McKittrick, 149 N.H. 426, 431 (2003) (“The [discovery] rule is not intended to toll the statute of limitations until the full extent of the plaintiff’s injury has manifested itself.”). Thus, a latent injury will toll the limitations period, while a patent injury will not, even if the long-term consequences of the patent injury cannot be known. See Furbush,

149 N.H. at 431; see generally Clay v. Kuhl, 727 N.E.2d 217, 222 (Ill. 2000) (applying Illinois law): (“The plaintiff contends, however, that her injuries were latent to some extent and did not fully manifest themselves until years after the abuse occurred. We do not believe that the plaintiff’s alleged failure to fully discover the nature of her injuries is sufficient to delay the running of the limitations period. There is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations.”); see also Stephens v. Clash, 796 F.3d 281, 288 (3d Cir. 2015) (“A plaintiff’s ignorance regarding the full extent of his injury is irrelevant to the discovery rule’s application, so long as the plaintiff discovers or should have discovered that he was injured.”).

In Rowe v. John Deere, 130 N.H.18 (1987), the plaintiff was injured when he struck his head while using machinery manufactured by the defendant. Immediately after the accident, the plaintiff was diagnosed with a depressed skull fracture. The plaintiff recovered quickly. Six years later he began to suffer grand mal seizures, purportedly as a result of the accident. The supreme court held that the plaintiff had discovered his injury at the time of the accident, even though the initial measure of damages was “nominal” compared with the potential damages for the later occurring harm. Id. at 21. Thus, a plaintiff is likely to immediately discover an injury caused by a sudden, traumatic, violent event, and an injury which may later arise from the initial injury will not toll the statute of limitations. See, e.g., Hollander v. Brown, 457 F.3d 688, 692 (7th Cir. 2006) (applying Illinois law):

courts distinguish between injuries caused by sudden, traumatic events and those that have a late or insidious onset. For limitations purposes, a sudden, traumatic event is one that, because of its force or violence, permits the law to presume that the event immediately placed the plaintiff on notice of her injury and a right of action. When a plaintiff suffers this type of injury, her cause of action accrues on the date of the traumatic event, and the limitations period does not begin anew simply because a latent condition later may arise from the same occurrence. The rationale is that the nature and circumstances surrounding the traumatic event are

such that the injured party is thereby put on notice that actionable conduct might be involved.

(internal citations and quotation marks omitted).

Here, the plaintiff claims that he was injured as a result of the Contractor Defendants' failure adequately to oversee their staff with respect to hiring, training, supervision, and promulgation of policies. (See Court Index #1, Addendum ¶¶ 9, 38). Thus, the "act or omission complained of," RSA 508:4, is each Contractor Defendant's breach of duty. According to the Complaint, those breaches led to multiple physical assaults, largely in the form of painful restraints and beatings. In his relatively brief stay at Midway Shelter, this included at least one instance where two staff members restrained the plaintiff by "pulling [his] arm behind [his] back in a painful position" while another staff member beat him. (Declaration ¶ 4). These staff members held the plaintiff restrained until the police arrived. At MPA, the plaintiff was restrained and beaten by staff members on 4 or 5 occasions, and each time multiple staff members were involved. (Declaration ¶ 10). The incidents of physical and psychological abuse the plaintiff describes constitute injuries that are sudden, traumatic, violent, painful, and/or extremely unpleasant. There is nothing subtle or latent about the events alleged to have occurred at the facilities run by either Contractor Defendant. The plaintiff necessarily knew of these assaults at the time they happened.

As a child, the plaintiff may have been unaware of the long-term psychological and emotional effects of the treatment he says he endured. But those harms were nonetheless caused by the same "act or omission complained of," RSA 508:4, i.e., the Contractor Defendants' alleged lack of care in hiring, training and supervising staff, and promulgating policies. Thus, under settled New Hampshire law, accepting all the well-pled facts in the Complaint, the Court must find that the plaintiff was aware that he had been injured as a result of the Contractor

Defendants' failure to control their respective staffs because the plaintiff knew that he had been assaulted and physically restrained by staff, alone and in groups, at both facilities on multiple occasions.

Under the discovery rule, the limitations period in this case did not begin to run until the plaintiff either (a) discovered, or (b) should have discovered through the exercise of reasonable diligence, that the Contractor Defendants' breach of duty was a proximate cause of his injury.

See Troy v. Bishop Guertin High Sch., 176 N.H. 131, 134 (2023) (citing RSA 508:4).

Knowledge of the Contractor Defendants' causal role cannot be automatically inferred from the fact that the plaintiff knew that his injury was caused by their employees, acting overtly under color of their authority, on their respective premises. See id. at 138 ("We decline to establish a per se rule that the plaintiff's knowledge of the abuser's employer is alone sufficient to trigger the application of the discovery rule. This inquiry presents a question of fact."). However, "[a] plaintiff need not be certain of this causal connection; the possibility that it existed will suffice to obviate the protections of the discovery rule." Id. at 137 (quoting Beane, 160 N.H. at 713); see also Balzotti, 173 N.H. at 321; Lamprey, 163 N.H. at 257; Pichowicz v. Watson Ins. Agency, Inc., 146 N.H. 166, 168 (2001). "[T]he discovery rule employs an objective standard" to determine whether, through the exercise of reasonable diligence, a plaintiff should have discovered sufficient evidence of the defendant's role in causing his injury." Troy, 176 N.H. at 137.

In this case, the same alleged facts that establish the plaintiff's knowledge of harm also demonstrate the plaintiff knew or should have known that the Contractor Defendants' breach of duty was a proximate cause of his alleged injury. Here, the plaintiff does not complain of covert incidents committed by a rogue staff member. Rather, as noted, the plaintiff claims multiple

assaults, each involving multiple staff members, in environments where physical abuse was normalized. The plaintiff asserts that staff members did not report misconduct and instead “actively covered for each other.” (Declaration ¶ 20). Moreover, he claims that staff members at all of the facilities “threatened [him] with consequences to [his] physical well-being and privileges” should he report their conduct. (*Id.* ¶ 22). These assertions reflect the plaintiff’s knowledge that the institutions had a responsibility to supervise and control the staff members and was failing to fulfill it. If these allegations in the Complaint are credited, as they must be at this juncture, then at the very least the Contractor Defendants failed to supervise their staff and monitor their respective facilities, and thereby breached both their fiduciary obligations to the plaintiff and their common law duty of reasonable care.

The Contractor Defendants’ role in causing the plaintiff’s injury is not inferred from the mere fact that the plaintiff’s assailants received paychecks and W2s from NFI and MPA. Compare the facts of this case to those in Troy, which involved two acts of sexual assault, committed in private, by a high school teacher against a female student. Troy, 176 N.H. at 133-35. Unbeknownst to the plaintiff in Troy, the school had hired the teacher despite knowing of his previous conviction for unlawful sexual contact with a different female high school student at a different school that was owned and operated by the same religious order. *Id.* at 133-34. The school did not alert students or parents to the teacher’s status as a sex offender who preyed on a similar victim. *Id.* It took no action to limit or monitor the teacher’s contact with students. *Id.* It would be hard to imagine how the plaintiff in Troy could have known from the abuse she endured that the school (and its owner) shouldered any of the blame for the covert criminal acts of a lone employee.

Conversely, in this case, if the facts in the Complaint are credited, it is hard to imagine how the plaintiff could not see a problem with the conduct of NFI's and MPA's staff members. Indeed, the plaintiff—unlike the plaintiff in Troy, who became aware of the offending teacher's history with the school only as a result of later public disclosures by the school itself—does not allege a single fact that he learned about NFI or MPA since leaving their facilities. He does not point to the discovery of any fact, for example, relating to NFI's or MPA's hiring process, their knowledge of staff misconduct, or their promulgation of policies. Rather, he states that he only came to realize that he had been abused after he saw a news story in 2022 about a lawsuit against YDC. Even still, he did not realize that the Contractor Defendants were responsible for their staff members' abuses until he spoke with prison inmates who had similar experiences as children in the State's custody. None of these assertions, even taken as true, constitute the discovery of a fact pertinent to NFI's or MPA's causal relationship to the plaintiff's injury of a kind that would have tolled the statute of limitations. Cf. Miller, 224 F. Supp. 2d at 986–87.

The plaintiff's remaining arguments are unpersuasive. First, the plaintiff contends that his fiduciary duty claim against each Contractor Defendant is tolled until he had actual knowledge of a breach by that defendant. The court disagrees. New Hampshire law is clear that tolling a statute of limitations period is not dependent or otherwise reliant upon the fiduciary disclosing its wrongdoing. See Beane, 160 N.H. at 714-15 (“[T]here is no support in our case law for the proposition that a limitations period is tolled in fiduciary cases until the fiduciary discloses his or her misconduct.”). Second, no amount of additional discovery the plaintiff may engage in regarding NFI's or MPA's policies and procedures could reveal information that would make it more likely that the plaintiff could avail himself of the discovery rule. As explained above, the plaintiff's Complaint shows that he already had all the information he

needed to determine that the Contractor Defendants were the proximate cause of his injuries by the time he turned twenty.

Ultimately, the plaintiff had sufficient information about both NFI's and MPA's institutional failures prior to the expiration of any applicable limitations period. Nor did the plaintiff allege anywhere in his Complaint that he learned any new facts about NFI's or MPA's role in his alleged abuse after he turned twenty. For these reasons, the Court concludes that the discovery rule does not toll the statute of limitations.

ii. Fraudulent Concealment and Equitable Tolling

The court has found that (a) the discovery rule did not toll the start of the limitations period in RSA 508:4 beyond the plaintiff's twentieth birthday and, therefore, (b) the applicable limitations period is that established by RSA 508:8, which gave the plaintiff until age 20 to file this action.

The plaintiff argues, however, that two equitable doctrines apply here: fraudulent concealment and equitable tolling. The New Hampshire Supreme Court views both these doctrines as implied exceptions to all statutes of limitations. See Lakeman v. La France, 102 N.H. 300, 303 (1959) (adopting the majority rule that "fraudulent concealment of a cause of action from the one in whom it resides by the one against whom it lies constitutes an implied exception to the statute of limitations," and rejecting the "contrary view that fraudulent concealment does not toll the operation of the statute unless the Legislature has expressly so stated in the statute itself"). With respect to equitable tolling, the supreme court has only applied the doctrine and explained its elements. See Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 623–24 (2005).

The doctrine of fraudulent concealment tolls the limitations period when a defendant, by concealment or other action, intentionally prevents the plaintiff from acquiring material information. Lamprey, 163 N.H. at 259–60; See also Lakeman, 102 N.H. at 303-304. Thus, fraudulent concealment

. . . requires something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to a cause of action—some actual artifice to prevent knowledge of the facts or some representation intended to exclude suspicion and prevent inquiry.

Lamprey, 163 N.H. at 259–60 (internal quotation marks and bracketing omitted); see also Maggi, 633 F. Supp. 3d at 516 (“The burden is on the plaintiff invoking the fraudulent concealment doctrine to present some evidence of an affirmative act on the part of the defendant to conceal or cover up the underlying wrongful conduct that gave rise to the plaintiff’s asserted injury.” (internal citations omitted)); Sykes v. RBS Citizens, N.A., 2 F. Supp. 3d 128, 143 (D.N.H. 2014).

Even when there is fraudulent concealment, the doctrine provides little, if anything, in the way of relief that the discovery rule does not also provide. See Beane, 160 N.H. at 714 (“The fraudulent concealment rule states that when facts essential to the cause of action are fraudulently concealed, the statute of limitations is tolled until the plaintiff has discovered such facts or could have done so in the exercise of reasonable diligence.” (quoting Bricker v. Putnam, 128 N.H. 162, 165 (1986))); see also Lakeman, 102 N.H. at 303; Furbush, 149 N.H. at 431; Sykes, 2 F. Supp. 3d at 143.

In this case, the plaintiff has not pointed to any affirmative act on the part of NFI or MPA to conceal or cover up any fact. Indeed, as noted above, the plaintiff has not pointed to any fact he learned after leaving the facilities run by the Contractor Defendants in 2008. Therefore, the doctrine of fraudulent concealment does not apply to the plaintiff’s claims.

The New Hampshire Supreme Court has not developed a substantial body of case law relating to the doctrine of equitable tolling. The Court recognized the doctrine in Portsmouth Country Club, explaining that it allows a plaintiff to initiate an action beyond the statutory limitations period when that plaintiff had been “prevented in some extraordinary way from exercising his or her rights.” 152 N.H. at 623 (emphasis added). The doctrine “applies principally if the plaintiff is actively misled by the defendant about the cause of action.” Kierstead v. State Farm Fire & Cas. Co., 160 N.H. 681, 688 (2010).

To be eligible for equitable tolling, a plaintiff’s access to the justice system must be frustrated despite the plaintiff’s diligence. See, e.g., Irwin v. Dep’t of Veterans Affairs, 498 U.S. 89, 96 (1990) (applying federal law and holding that:

Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.

(internal footnotes omitted)); Maggi, 633 F. Supp. 3d at 518 (applying federal law and noting that, “in unusual cases, certain limitations of imprisonment may rise to the level of ‘extraordinary circumstance’” [but] “the usual problems inherent in being incarcerated, such as a prisoner's lack of prior legal training or limited access to legal resources in a prison's library, do not, by themselves, justify equitable tolling” (internal ellipses and citation omitted)).

In this case, the plaintiff was not prevented from discovering either necessary facts or necessary law. He was not actively misled by NFI or MPA as to his ability to access the courts. He was not specifically threatened with retaliation for accessing the courts. He was not deprived

of the ability to seek counsel or advice from third parties. Thus, the doctrine of equitable tolling does not apply.

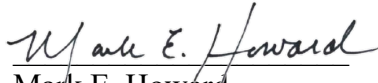
CONCLUSION

Pursuant to RSA 508:4 and 508:8, this action is not timely, as the plaintiff filed this case well after his twentieth birthday. The plaintiff attained twenty years of age in September of 2012. He filed this case in January of 2023, almost eleven years after the expiration of the statute of limitations, and no other tolling provisions apply.

Accordingly, all of the plaintiff's claims against the Contractor Defendants are
DISMISSED WITH PREJUDICE.

Date: February 27, 2025

So Ordered.


Mark E. Howard
Chief Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/27/2025

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

JOHN DOE #656

v.

STATE OF NEW HAMPSHIRE, et al.
218-2023-CV-00254

DAVID MEEHAN v. STATE OF NEW HAMPSHIRE, et al.
(Consolidated YDC/YDSU Cases)
217-2020-CV-26

ORDER

The matter before the Court is Defendant Orion House, Incorporated's ("Orion House's") Motion to Dismiss plaintiff John Doe 656's claims against it. (Court Index ## 12 (Mot. Dismiss); 13 (Mem. Law)). For the reasons set forth below the motion is GRANTED. All claims against Orion House in this case are DISMISSED WITH PREJUDICE. Specifically:

- (A) Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy) are DISMISSED for failure to state a claim upon which relief may be granted; and
- (B) Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention), and XII (negligence) are DISMISSED because they were filed after the expiration of the statute of limitations.

This resolves all counts against Orion House.¹

¹ The remaining counts do not allege any claims against Orion House. Counts I through VII (set forth in the Master Complaint) and Counts IX and XIII (set forth in the Short Form Complaint) assert claims against the State Defendants only.

DEFINING THE COMPLAINT

The Complaint in this case comprises the following three documents:

A. A 50-page “Amended Master Complaint,” filed in Meehan v. State, 217-2020-CV-26 on July 8, 2022. (Meehan Court Index # 70). (The Amended Master Complaint does not mention John Doe 656 or any of the facts about his life. Likewise, it does not contain any reference to Orion House or any other contractor defendant.)

B. A 38-page “Amended Short Form Complaint” filed in John Doe 656 v. State, 218-2023-CV-00254. (Court Index # 1). (The Short Form Complaint contains allegations specific to the plaintiff and Orion House. The Short Form Complaint contains an Addendum, as well as a separately filed, sealed Supplement that contains John Doe 656’s true name and date of birth).

C. A 5-page Declaration, signed by the plaintiff, filed as Exhibit A to the Objection to the Motion to Dismiss in John Doe 656 v. State, 218-2023-CV-00254 (Court Index # 14 (Redacted); see Court Index # 18 (Unredacted)) (cited hereinafter as “Declaration”). The Declaration contains the plaintiff’s factual response to Orion House’s affirmative limitations defense.

These 93 pages will be referred to collectively as “the Complaint.”

PROCEDURAL HISTORY AND RELEVANT DATES

The plaintiff was born in April 2001.² He turned 20 in 2021. The Complaint in this case was filed on February 27, 2023, when the plaintiff was 21 years old.

As relevant to the instant motion, the plaintiff claims that he was subjected to physical and psychological abuse at a residential juvenile facility operated by Orion House. The plaintiff

² The plaintiff’s precise date of birth is provided in the Sealed Supplement to the Short Form Complaint (Court Index # 3). The court recites only the month and year of birth to protect the plaintiff’s identity. The day of the month is not material to any determination in this Order.

alleges that the abuse occurred over a period of 9 months in the calendar years between 2016 and 2017, when he was approximately 15-16 years old.³ The plaintiff does not allege that Orion House engaged in any tortious behavior after that time.

Thus, the plaintiff initially filed suit approximately 6 years after the last possible date of abuse, and roughly 2 years after he turned 20.

FACTUAL BACKGROUND

The following facts are taken from the Complaint.

A. Events That Occurred Prior to Placement at Orion House

The plaintiff's father left him and his mother when the plaintiff was 4 years old. Thereafter, the plaintiff's mother was in a series of unstable relationships, often resulting in her being a victim of domestic violence. The plaintiff alleges that he was physically abused at home, as his mother would often hit him with her hands, a belt, or a spoon. The plaintiff struggled with school but was still promoted from grade to grade. When the plaintiff was 15, he committed a robbery and ran away. He was later adjudicated as a delinquent and placed at the Youth Development Center ("YDC").

The plaintiff was sent to YDC in 2015 or 2016. The plaintiff alleges that while at YDC, he experienced physical, psychological, verbal, and sexual abuse. He alleges that he was strip-searched randomly about 2 to 3 times per month. If the plaintiff disobeyed any commands during strip searches, he would be handcuffed and sent to solitary confinement. On his first day at YDC, he witnessed a staff member beat another resident until that resident was bloody. The

³ Specifically, the plaintiff alleges that when he was 15, he was placed at YDC for a month, then Orion House for 9 months. (Declaration ¶ 5). The Court infers that he was placed at Orion House sometime in 2016 and he left Orion House no later than mid-2017. More precise dates are immaterial for resolution of the instant motion.

plaintiff also alleges that he was violently restrained on multiple occasions, resulting in soreness and bruises. He would often be beaten on his sides after he was restrained.

B. Events at Orion House's Facility

After his time at YDC, the plaintiff was sent to Orion House when he was approximately 15 or 16 years old. Orion House staff members began physically abusing the plaintiff within his first month at Orion House. He alleges that the beatings got more severe over time, often resulting in bruises, aches, and pains. He alleges that the staff members were careful not to break any of the plaintiff's bones, although the plaintiff recalls that one staff member was fired for their conduct. In particular, the plaintiff alleges that he once got into a fight with another resident while they were playing basketball. As a result, staff members took the plaintiff to his room and beat him. The plaintiff claims that the staff members "had clearly been trained in their techniques." Declaration ¶ 14. Staff members would pull the plaintiff's arms behind his back while another staff member pulled on the plaintiff's crossed legs. Beatings and restraints like this occurred a couple times a month.

Beyond beatings, the plaintiff further alleges that Orion House staff members routinely used choke holds. Staff members would pin the plaintiff to the floor and press on his neck, resulting in the plaintiff being lightheaded for 20 to 30 minutes and having problems breathing. The plaintiff never sought medical treatment because staff members threatened that they would beat him if he did. A staff member named Robert encouraged the plaintiff to fight other residents, incentivizing him with snacks. The plaintiff was also punished by being placed in solitary confinement for upwards of a week at a time.

The plaintiff was released from Orion House when he was 16. The plaintiff does not allege any further placements after that time.

C. Lack of Discovery and Damages

The plaintiff alleges that his placement at Orion House and YDC left him unable to cope with life. He has been diagnosed with impulsive anger because of his childhood experiences. The plaintiff drinks heavily and uses marijuana and other drugs to help cope. He has also been incarcerated as an adult.

The plaintiff alleges that he believed the abuse was “permissible” because he thought it was allowed since these were court-approved placements. The abuse was so normalized that he did not question whether it was allowed or not. The plaintiff asserts that he did not realize that what he suffered was abuse until mid-2021 when a fellow inmate informed him about the lawsuit against YDC. This was also the first time that the plaintiff realized that Orion House could be responsible for the injuries he suffered while there.

ANALYSIS

I. The Complaint Does Not State Claims for Aiding and Abetting a Breach of Fiduciary Duty or Civil Conspiracy

In Counts X and XIV, the plaintiff accuses Orion House of: (a) aiding and abetting a breach of fiduciary duty; and (b) civil conspiracy. Both of these claims require proof that Orion House was engaged in deliberate, concerted action with another party to violate the plaintiff’s rights. See Invest Almaz v. Temple-Inland Forest Prods. Corp., 243 F.3d 57, 82-83 (1st Cir. 2001)(stating standard for aiding and abetting a breach of fiduciary duty); Jay Edwards, Inc. v. Baker, 130 N.H. 41, 47 (1987) (describing standard for civil conspiracy). Because the Complaint alleges no material facts from which such concerted action can be inferred, these two counts are DISMISSED for failure to state a claim.

A. Aiding and Abetting a Breach of Fiduciary Duty

The New Hampshire Supreme Court has not yet had occasion to recognize the tort of aiding and abetting a breach of fiduciary duty. Nonetheless, the tort is established and well-defined, as, for example, in the Restatement (Second) of Torts, § 876(b):

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . [1] knows that the other's conduct constitutes a breach of duty and [2] gives substantial assistance or encouragement to the other so to conduct himself[.]

Courts that apply New Hampshire law predict that the New Hampshire Supreme Court will recognize this cause of action. See Invest Almaz, 243 F.3d at 82-83; Legacy Glob. Sports, LP v. St. Pierre, Slip Op. No. 218-2019-CV-198, 2020 WL 2027401, at *2 (Merrimack County Superior Court, Apr. 27, 2020); Clare v. Bank of New England, Slip. Op. No. 218-2013-CV-00687, 2013 N.H. Super LEXIS 22, at *3-4, 9 (Merrimack Count Superior Court, Nov. 26, 2013); HayJo S.A. de CV v. Sponge-Jet, Inc., No. 14-cv-196-JD, 2015 WL 9459918, at *4 (D.N.H. Dec. 23, 2015); Tamposi v. Denby, 974 F. Supp. 2d 51, 61 (D. Mass. 2013); In Re Felt Mfg. Co., Inc., 371 B.R. 589, 615 (Bankr. D.N.H. 2007); But see Gill v. Devine, Millimet & Branch, P.A., Slip Op. No 218-2012-CV-00660 (Rockingham County Superior Court, Oct. 12, 2012) (ruling that the tort of aiding and abetting a breach of fiduciary duty had not been recognized).

Regardless, even assuming a claim for aiding and abetting a breach of fiduciary duty may be pursued in New Hampshire, the Complaint does not contain facts to support this cause of action. To prevail, the plaintiff would need to prove that Orion House had helped another party breach its fiduciary duty. The Complaint does not allege that Orion House did anything to encourage or facilitate the plaintiff's alleged abuse at YDC or at any other placement.

Moreover, Orion House cannot be found liable for aiding its own employees and agents in a breach of fiduciary duty. The cause of action for aiding and abetting a breach of fiduciary duty only exists to cover circumstances in which the defendant has no direct liability to the plaintiff as a fiduciary. That is not the case here. See, e.g., Mann v. GTCR Golder Rauner, L.L.C., 483 F. Supp. 2d 884, 916 (D. Ariz. 2007) (Under Delaware law, “a person who himself owes a fiduciary duty with respect to a transaction or course of conduct cannot be liable for aiding and abetting a breach of that same fiduciary duty by another because the same facts that would otherwise constitute aiding and abetting would constitute a primary breach of fiduciary duty.”); In Re Amcast Indus. Corp., 365 B.R. 91, 112–13 (Bankr. S.D. Ohio 2007) (Under Ohio law “the action by its nature, . . . requires participation by a non-fiduciary defendant); In re Verestar, Inc., 343 B.R. 444, 482 (Bankr. S.D.N.Y. 2006) (“[A] claim for aiding and abetting breach of fiduciary duty can only be sustained against a non-fiduciary.”).

Accordingly, for the foregoing reasons, the Complaint does not state a claim against Orion House for aiding and abetting a breach of fiduciary duty. The claim is thus DISMISSED.

B. Civil Conspiracy

To prevail on a claim of civil conspiracy, a plaintiff must prove that:

- (A) Two or more persons and/or entities agreed to either:
 - (1) pursue an unlawful objective or, alternatively,
 - (2) use unlawful means to accomplish a lawful or unlawful objective; and
- (B) At least one of the conspirators committed an overt act in furtherance of this agreement; and
- (C) The plaintiff was harmed as a proximate result of the agreement.

Jay Edwards, Inc., 130 N.H. at 47; see Univ. Sys. of N.H. v. U.S. Gypsum Co., 756 F. Supp. 640, 652 (D.N.H. 1991); Censabella v. Town of Weare, No. 16-cv-490-AJ, 2017 WL 3996173, at *3

(D.N.H. Sept. 8, 2017). “For a civil conspiracy to exist, there must be an underlying tort which the alleged conspirators agreed to commit.” Univ. Sys., 756 F. Supp. at 652. Thus, the cause of action serves to impose liability on “all who commonly plan, take part in, further by cooperation, lend aid to, or encourage the wrongdoers' acts.” Id.

The Complaint does not contain facts to support a claim for civil conspiracy. There are no material facts from which the court may infer that Orion House and the State or any other entity entered into an agreement to engage in concerted action by abusing the plaintiff. No facts suggest that Orion House ever had any conversation, let alone any agreement, with any other defendant.

Further, Orion House cannot be liable for civil conspiracy with its own employees, because, under the intracorporate conspiracy doctrine, Orion House and its employees are considered to be the same “person.” See, e.g., Hoefer v. Fluor Daniel, Inc., 92 F. Supp. 2d 1055, 1057 (C.D. Cal. 2000):

The intracorporate conspiracy doctrine provides that, as a matter of law, a corporation cannot conspire with its own employees or agents. [citation and footnote omitted]. The logic for the doctrine comes directly from the definition of a conspiracy. A conspiracy requires a meeting of minds. [citation omitted]. It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

see also Grider v. City of Auburn, Ala., 618 F.3d 1240, 1261 (11th Cir. 2010) (“[T]he intracorporate conspiracy doctrine holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy.”); Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505, 509 (6th Cir. 1991) (“It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private

individual can, and it is the general rule that the acts of the agent are the acts of the corporation.”); Tabb v. District of Columbia, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (“[A] corporation cannot conspire with its employees[.]”); HRCC, Ltd. v. Hard Rock Cafe Int’l (USA), Inc., 302 F. Supp. 3d 1319, 1325 (M.D. Fla. 2016)(“According to the intracorporate conspiracy doctrine, however, a civil conspiracy claim will not succeed where the only members of the alleged conspiracy are a corporation and/or its officers.”).

For these reasons, the claim of civil conspiracy against Orion House is DISMISSED.

II. The Plaintiff’s Negligence and Breach of Fiduciary Duty Claims Are Barred by the Applicable Statutes of Limitations

The statute of limitations is an affirmative defense. Perez v. Pike Indus., Inc., 153 N.H. 158, 160 (2005); Glines v. Bruk, 140 N.H. 180, 181 (1995). A defendant has the obligation to allege and prove that the complaint was brought after the limitations period expired. Perez, 153 N.H. at 160. If the defendant meets this burden, then the plaintiff has the burden to prove that the claim is timely by virtue of the discovery rule, fraudulent concealment, equitable tolling, or some other doctrine. Two statutes are applicable to the plaintiff’s claim: the general statute of limitations for personal actions (RSA 508:4); and the tolling provisions of the “disabilities statute” (RSA 508:8).

A. The Disabilities Statute: RSA 508:8

The court first considers RSA 508:8, the so-called “disabilities statute.” This statute provides that “an infant or mentally incompetent person may bring a personal action within 2 years after such disability is removed.” In Norton v. Patten, 125 N.H. 413 (1984), the New Hampshire Supreme Court construed the term “infant” to mean a person who has not yet reached the statutory age of majority, as defined in RSA 21-B:1. The age of majority is eighteen. Thus,

as construed by Norton, RSA 508:8 extends the limitations period for minors until their twentieth birthday.

As noted above, the plaintiff turned twenty April 2021 approximately 2 years before he filed the instant case. Accordingly, the instant case was not filed within the limitations period established by RSA 508:8. RSA 508:8 does not contain its own discovery rule.

C. The General Statute of Limitations for Personal Actions: RSA 508:4

RSA 508:4 provides the statute of limitations for all personal actions. Under this statute:

[A]ll personal actions . . . may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

The last “act or omission complained of” occurred no later than 2016 or 2017, the year that the plaintiff left Orion House. The instant case was thus brought more than 6 years after the last “act or omission complained of.” Orion House has therefore met its burden of showing that the instant case was filed more than three years after the conduct at issue.

This shifts the burden to the plaintiff to demonstrate grounds for the application of: (a) the discovery rule; (b) equitable tolling; (c) the doctrine of fraudulent concealment; or (d) some other doctrine extending the limitations period. Perez, 153 N.H. at 160. Consistent with the standard of review for motions to dismiss, the Court accepts all of the plaintiff’s well-pled facts, and makes all rational inferences in the plaintiff’s favor.

The court’s task is to determine only whether the plaintiff has alleged facts which, if proven, might lengthen the limitations period to make this case timely. To be clear, if the plaintiff alleges sufficient facts to show that discovery is necessary to make this determination,

the motion to dismiss on limitations grounds must be denied and the issue preserved for summary judgment on a more complete record. However, if discovery would be futile because the Complaint itself fails even to allege grounds to apply the discovery rule or another tolling doctrine, the motion to dismiss will be granted.

(i) The Discovery Rule

It is well-settled that the “purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party.” Petition of N.H. Div. For Children, Youth & Families, 173 N.H. 613, 618 (2020). The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run:

(1) a plaintiff must know or reasonably should have known that she has been injured; and (2) a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the defendant.

Lamprey v. Britton Constr., Inc., 163 N.H. 252, 257 (2012); see also Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 713 (2010); Perez, 153 N.H. at 160; Big League Entm’t, Inc. v. Brox Indus., Inc., 149 N.H. 480, 485 (2003).

The discovery rule does not reward ignorance of the law. The statute of limitations is not tolled due to a plaintiff’s failure to acknowledge or otherwise understand their potential claims. See Sullyville, LLC v. Town of Carroll, Slip Op. No. 2019-0240, 2021 WL 1310832, at *7 (N.H. Apr. 8, 2021) (non-precedential decision stating that “[t]he discovery rule does not toll the statute of limitations until a plaintiff discerns the legal theory by which his or her case will proceed; rather, it tolls the statute of limitations only when the injury and its causal relationship to the defendant’s act or omission remain unknown to the plaintiff.”); Ouellette v. Beaupre, 977 F.3d 127, 138 (1st Cir. 2020) (applying federal law and holding that “a plaintiff, once armed with the

knowledge of his or her injury and its probable cause, cannot plead ignorance of the law to delay accrual.”); Maggi v. Grafton Cty. Dep’t of Corrs., 633 F. Supp. 3d 508, 516 (D.N.H. 2022) (applying RSA 508:4 and holding that “even if the court were to assume the truth of [plaintiff’s] assertions about his lack of access to legal resources, that would not save his claims. His claims accrued on the date he should have reasonably known he was injured, not on the date he first learned he had a legal cause of action.”) (vacated and remanded on other grounds by Maggi v. Grafton Cty. Dep’t Corrs., No 23-1002 2024 WL 3384813 (1st Cir. July 9, 2024)); Miller v. Pac. Shore Funding, 224 F. Supp. 2d 977, 986–87 (D. Md. 2004) (“Knowledge of facts, however, not actual knowledge of their legal significance, starts the statute of limitations running. . . . The discovery rule, in other words, applies to discovery of facts, not to discovery of law. Knowledge of the law is presumed.”); Marcum v. Columbia Gas Transmission, LLC, 549 F. Supp. 3d 408, 421, (E.D. Pa. 2021) (“Plaintiffs’ ignorance of a legal cause of action does not, in itself, require application of the discovery rule.”). In this case, the plaintiff proffers several reasons why he may have not discovered the law governing his claims. However, the plaintiff’s failure to bring his claims within the applicable time period due to his unawareness of the law is not grounds to apply the discovery rule.

For discovery rule purposes, a plaintiff becomes aware of an injury as soon as he can reasonably discern that he has suffered “some harm” caused by a defendant’s conduct. Beane, 160 N.H. at 713; see also Balzotti Glob. Grp., LLC v. Shepherds Hill Proponents, LLC, 173 N.H. 314, 321 (2020); Furbush v. McKittrick, 149 N.H. 426, 431 (2003) (“The [discovery] rule is not intended to toll the statute of limitations until the full extent of the plaintiff’s injury has manifested itself.”). Thus, a latent injury will toll the limitations period, while a patent injury will not, even if the long-term consequences of the patent injury cannot be known. See Furbush, 149

N.H. at 431; see generally Clay v. Kuhl, 727 N.E.2d 217, 222 (Ill. 2000) (applying Illinois law): (“The plaintiff contends, however, that her injuries were latent to some extent and did not fully manifest themselves until years after the abuse occurred. We do not believe that the plaintiff’s alleged failure to fully discover the nature of her injuries is sufficient to delay the running of the limitations period. There is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations.”); see also Stephens v. Clash, 796 F.3d 281, 288 (3d Cir. 2015) (“A plaintiff’s ignorance regarding the full extent of his injury is irrelevant to the discovery rule’s application, so long as the plaintiff discovers or should have discovered that he was injured.”).

In Rowe v. John Deere, 130 N.H.18 (1987), the plaintiff was injured when he struck his head while using machinery manufactured by the defendant. Immediately after the accident, the plaintiff was diagnosed with a depressed skull fracture. The plaintiff recovered quickly. Six years later he began to suffer grand mal seizures, purportedly as a result of the accident. The supreme court held that the plaintiff had discovered his injury at the time of the accident, even though the initial measure of damages was “nominal” compared with the potential damages for the later occurring harm. Id. at 21. Thus, a plaintiff is likely to immediately discover an injury caused by a sudden, traumatic, violent event, and an injury which may later arise from the initial injury will not toll the statute of limitations. See, e.g., Hollander v. Brown, 457 F.3d 688, 692 (7th Cir. 2006) (applying Illinois law):

courts distinguish between injuries caused by sudden, traumatic events and those that have a late or insidious onset. For limitations purposes, a sudden, traumatic event is one that, because of its force or violence, permits the law to presume that the event immediately placed the plaintiff on notice of her injury and a right of action. When a plaintiff suffers this type of injury, her cause of action accrues on the date of the traumatic event, and the limitations period does not begin anew simply because a latent condition later may arise from the same occurrence. The rationale is that the nature and circumstances surrounding the traumatic event are

such that the injured party is thereby put on notice that actionable conduct might be involved.

(internal citations and quotation marks omitted).

Here, the plaintiff claims that he was injured as a result of Orion House's failure to adequately oversee its staff with respect to hiring, training, supervision, and promulgation of policies. Thus, the "act or omission complained of," RSA 508:4, is the breach of duty by Orion House itself. According to the Complaint, that breach led to multiple physical assaults, painful restraints, and solitary confinement including incidents where the plaintiff was put in a choke hold and felt lightheaded for 20 to 30 minutes afterwards. Additionally, the alleged breach also led to other instances of physical and psychological abuse by Orion House staff, often in the presence of other Orion House staff and residents. Indeed, one staff member encouraged him to fight other residents and staff members worked together to restrain him. The incidents of physical and psychological abuse the plaintiff describes constitute injuries that are sudden, traumatic, violent, painful, or extremely unpleasant. There is nothing subtle or latent about these alleged events. The plaintiff necessarily knew of the assaults at the time they happened. This is evidenced by the plaintiff's allegations that the beatings and restraints left him bruised, out of breath, and sometimes unable to swallow.

With respect to psychological abuse and solitary confinement, the plaintiff may have been unaware of the long-term psychological and emotional effects of the treatment he says he endured. But those harms were nonetheless caused by the same "act or omission complained of," RSA 508:4, e.g., Orion House's alleged lack of care in hiring, training and supervising staff, and promulgating policies. Thus, under settled New Hampshire law, accepting all the well-pled facts in the Complaint, the court must find that the plaintiff was aware that he had been injured

as a result of Orion House’s failure to control its staff because the plaintiff knew that he had been assaulted, physically restrained, and solitarily confined on multiple occasions.

Under the discovery rule, the limitations period in this case did not begin to run until the plaintiff either (a) discovered, or (b) should have discovered through the exercise of reasonable diligence, that Orion House’s breach of duty was a proximate cause of his injury. See Troy v. Bishop Guertin High Sch., 176 N.H. 131, 134 (2023) (citing RSA 508:4). Knowledge of Orion House’s causal role cannot be automatically inferred from the fact that the plaintiff knew that his injury was caused by Orion House’s employees, acting overtly under color of their authority, on Orion House’s premises. See id. at 138 (“We decline to establish a per se rule that the plaintiff’s knowledge of the abuser’s employer is alone sufficient to trigger the application of the discovery rule. This inquiry presents a question of fact.”). However, “[a] plaintiff need not be certain of this causal connection; the possibility that it existed will suffice to obviate the protections of the discovery rule.” Id. at 137 (quoting Beane, 160 N.H. at 713); see also Balzotti, 173 N.H. at 321; Lamprey, 163 N.H. at 257; Pichowicz v. Watson Ins. Agency, Inc., 146 N.H. 166, 168 (2001). “[T]he discovery rule employs an objective standard” to determine whether, through the exercise of reasonable diligence, a plaintiff should have discovered sufficient evidence of the defendant’s role in causing his injury.” Troy, 176 N.H. at 137.

In this case, the same alleged facts that establish the plaintiff’s knowledge of harm also demonstrate the plaintiff knew or should have known Orion House’s breach of duty was a proximate cause of his alleged injury. Here the plaintiff does not complain of isolated incidents, committed in secret, by a rogue staff member of a large institution. Rather, the plaintiff claims frequent assaults, involving multiple staff members, committed openly and in view of both other residents and other staff members. The plaintiff’s own allegations depict a culture of normalized

violence in the following ways: (1) staff members were specifically trained on how to restrain the residents in painful ways; (2) staff members worked together to restrain, abuse, and injure residents; and (3) staff members incentivized residents to fight one another. Indeed, the plaintiff sums up the above points by alleging that the abuse was normalized at Orion House. If the allegations in the Complaint are credited, as they must be at this juncture, then at the very least Orion House failed to supervise its staff and monitor its facility and thereby breached both its fiduciary obligations to the plaintiff and the common law duty of reasonable care.

Orion House's role in causing the plaintiff's injury is not inferred from the mere fact that the plaintiff's assailants received paychecks and a W2 from Orion House. Compare the facts of this case to those in Troy, which involved two acts of sexual assault, committed in private, by a high school teacher against a female student. Troy, 176 N.H. at 133-35. Unbeknownst to the plaintiff in Troy, the school had hired the teacher despite knowing of his previous conviction for unlawful sexual contact with a different female high school student at a different school that was owned and operated by the same religious order. Id. at 133-34. The school did not alert students or parents to the teacher's status as a sex offender who preyed on a similar victim. Id. It took no action to limit or monitor the teacher's contact with students. Id. It would be hard to imagine how the plaintiff in Troy could have known from the abuse she endured that the school (and its owner) shouldered any of the blame for the covert criminal acts of a lone employee.

Conversely, in this case, if the facts in the Complaint are credited, it is hard to imagine how the plaintiff could not see a problem with the conduct of Orion House's staff members. Indeed, the plaintiff—unlike the plaintiff in Troy, who became aware of the offending teacher's history with the school only as a result of later public disclosures by the school itself—does not allege a single fact that he learned about Orion House since leaving its facility in or around 2017.

He does not point to the discovery of any fact relating, for example, to Orion House's hiring process, its knowledge of staff misconduct, its promulgation of policies, etc. The only potential knowledge of misconduct he points to is the fact that a staff member was fired. However, that does not save the plaintiff's argument because he fails to allege for what misconduct the staff member was fired. He points to no news articles or publicity relating to Orion House. Rather, he states only that he first heard about a lawsuit against the State from a fellow inmate in mid-2021 and he was unable to come forward prior to that because he had not realized that what he endured previously was abuse. Neither of these assertions constitutes the discovery of a fact pertinent to Orion House's causal relationship to the plaintiff's injury of a kind that, if unknown to the plaintiff, would toll the statute of limitations. Cf. Miller, 224 F. Supp. 2d at 986–87.

The plaintiff's remaining arguments are unpersuasive. First, the plaintiff contends that his fiduciary duty claim is tolled until he had actual knowledge of Orion House's breach. The court disagrees. New Hampshire law is clear that tolling statute of limitations period is not dependent or otherwise reliant upon the fiduciary disclosing its wrongdoing. See Beane, 160 N.H. at 714-15 (“[T]here is no support in our case law for the proposition that a limitations period is tolled in fiduciary cases until the fiduciary discloses his or her misconduct.”). Second, no amount of additional discovery the plaintiff may engage in regarding Orion House's policies and procedures would reveal information that would make it more likely that the plaintiff could avail himself of the discovery rule. As explained above, the plaintiff's Complaint shows that he already had all the information he needed to determine that Orion House was the proximate cause of his injuries by the time he turned twenty.

Ultimately, the plaintiff had sufficient information about Orion House's institutional failures prior to the expiration of any applicable limitations period. Similarly, he has not alleged

in his Complaint that he learned of any new facts about Orion House's role in his alleged abuse after he turned twenty. For these reasons, the Court concludes that the discovery rule does not toll the statute of limitations.

ii. Fraudulent Concealment and Equitable Tolling

The Court has found that (a) the discovery rule did not toll the start of the limitations period in RSA 508:4 beyond the plaintiff's twentieth birthday and, therefore, (b) the applicable limitations period is that established by RSA 508:8, which gave the plaintiff until age 20 to file this action.

The plaintiff argues, however, that two equitable doctrines apply here: fraudulent concealment and equitable tolling. The New Hampshire Supreme Court views both these doctrines as implied exceptions to all statutes of limitations. See Lakeman v. La France, 102 N.H. 300, 303 (1959) (adopting the majority rule that "fraudulent concealment of a cause of action from the one in whom it resides by the one against whom it lies constitutes an implied exception to the statute of limitations," and rejecting the "contrary view that fraudulent concealment does not toll the operation of the statute unless the Legislature has expressly so stated in the statute itself"). With respect to equitable tolling, the supreme court has only applied the doctrine and explained its elements. See Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 623–24 (2005).

The doctrine of fraudulent concealment tolls the limitations period when a defendant, by concealment or other action, intentionally prevents the plaintiff from acquiring material information. Lamprey, 163 N.H. at 259–60; See also Lakeman, 102 N.H. at 303–304. Thus, fraudulent concealment

. . . requires something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to a cause of action—some

actual artifice to prevent knowledge of the facts or some representation intended to exclude suspicion and prevent inquiry.

Lamprey, 163 N.H. at 259–60 (internal quotation marks and bracketing omitted); see also Maggi, 633 F. Supp. 3d at 516 (“The burden is on the plaintiff invoking the fraudulent concealment doctrine to present some evidence of an affirmative act on the part of the defendant to conceal or cover up the underlying wrongful conduct that gave rise to the plaintiff’s asserted injury.” (internal citations omitted)); Sykes v. RBS Citizens, N.A., 2 F. Supp. 3d 128, 143 (D.N.H. 2014).

Even when there is fraudulent concealment, the doctrine provides little, if anything, in the way of relief that the discovery rule does not also provide. See Beane, 160 N.H. at 714 (“The fraudulent concealment rule states that when facts essential to the cause of action are fraudulently concealed, the statute of limitations is tolled until the plaintiff has discovered such facts or could have done so in the exercise of reasonable diligence.” (quoting Bricker v. Putnam, 128 N.H. 162, 165 (1986)); see also Lakeman, 102 N.H. at 303; Furbush, 149 N.H. at 431; Sykes, 2 F. Supp. 3d at 143.

In this case, the plaintiff has not pointed to any affirmative act on the part of Orion House to conceal or cover up any fact. Indeed, as noted above, the plaintiff has not pointed to any fact he learned after leaving Orion House’s facility in 2017. Therefore, the doctrine of fraudulent concealment does not apply to the plaintiff’s claims against Orion House.

The New Hampshire Supreme Court has not developed a substantial body of case law relating to the doctrine of equitable tolling. The Court recognized the doctrine in Portsmouth Country Club, explaining that it allows a plaintiff to initiate an action beyond the statutory limitations period when that plaintiff had been “prevented in some extraordinary way from exercising his or her rights.” 152 N.H. at 623 (emphasis added). The doctrine “applies

principally if the plaintiff is actively misled by the defendant about the cause of action.”

Kierstead v. State Farm Fire & Cas. Co., 160 N.H. 681, 688 (2010).

To be eligible for equitable tolling, a plaintiff’s access to the justice system must be frustrated despite the plaintiff’s diligence. See, e.g., Irwin v. Dep’t of Veterans Affairs, 498 U.S. 89, 96 (1990)(applying federal law and holding that:

Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.

(internal footnotes omitted)); Maggi, 633 F. Supp. 3d at 518 (applying federal law and noting that, “in unusual cases, certain limitations of imprisonment may rise to the level of ‘extraordinary circumstance’” [but] “the usual problems inherent in being incarcerated, such as a prisoner's lack of prior legal training or limited access to legal resources in a prison's library, do not, by themselves, justify equitable tolling” (internal ellipses and citation omitted)).

In this case, the plaintiff was not prevented from discovering either necessary facts or necessary law. He was not actively misled by Orion House as to his ability to access the courts. He was not threatened with retaliation for accessing the courts. He was not deprived of the ability to seek counsel or advice from third parties.

To this end, the plaintiff alleges that he did not bring suit because of his ongoing emotional distress and substance misuse disorder. However, diminished mental capacity is not grounds for equitable tolling. See Sykes, 2 F. Supp. 3d at 144, fn. 18 (ruling that, “RSA 508:8, and not the doctrine of equitable tolling, governs the statute of limitations for New Hampshire state law claims when a plaintiff is mentally incompetent.”). Furthermore, even under federal

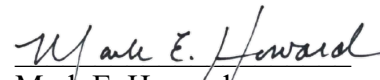
law, where a plaintiff's mental condition might allow for equitable tolling, the plaintiff would have to prove that he was unable to engage in rational thought to the point where he could not cooperate with any counsel, or pursue his claim on his own during the limitations period. Id. The plaintiff does not allege this. Thus, the doctrine of equitable tolling does not apply.

CONCLUSION

Pursuant to RSA 508:4 and 508:8, this action is not timely, as the plaintiff filed this case after his twentieth birthday. The plaintiff attained twenty years of age in April 2021. He filed this case in February 2023, roughly 2 years after the expiration of the statute of limitations, and no other tolling provisions apply.

Accordingly, all of the plaintiff's claims against Orion House are DISMISSED WITH PREJUDICE.

Date: February 27, 2025


Mark E. Howard
Chief Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/27/2025

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

JOHN DOE #675

v.

STATE OF NEW HAMPSHIRE, et al.
218-2023-CV-00293

DAVID MEEHAN v. STATE OF NEW HAMPSHIRE, et al.
(Consolidated YDC/YDSU Cases)
217-2020-CV-26

ORDER ON MOTIONS TO DISMISS

Before the court are motions by defendants Mount Prospect Academy (“MPA”) and NFI North, Inc. (“NFI”) (together, the “Contractor Defendants”) to dismiss plaintiff John Doe #675’s claims against them. (See Court Index ## 12 (MPA’s Mot. Dismiss); 17 (NFI’s Mot. Dismiss); 18 (NFI’s Mem. Law)). For the reasons set forth below, both defendants’ motions are GRANTED. All claims against MPA and NFI in this case are DISMISSED WITH PREJUDICE. Specifically:

- (A) Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy) are DISMISSED for failure to state a claim upon which relief may be granted; and
- (B) Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention), and XII (negligence) are DISMISSED because they were filed after the expiration of the statute of limitations.

This resolves all counts against the Contractor Defendants.¹

¹ The remaining counts do not allege any claims against the Contractor Defendants. Counts I through VII (set forth in the Master Complaint) and Counts IX and XIII (set forth in the Short Form Complaint) assert claims against the State Defendants only.

DEFINING THE COMPLAINT

The Complaint in this case comprises the following three documents:

A. A 50-page “Amended Master Complaint,” filed in Meehan v. State, 217-2020-CV-26 on July 8, 2022. (Meehan Court Index # 70). The Amended Master Complaint does not mention John Doe #675 or any of the facts about his life. Likewise, it does not contain any reference to these or any other Contractor Defendants.

B. A 40-page “Short Form Complaint” filed in John Doe #675 v. State, 218-2023-CV-00293. (Court Index # 1). The Short Form Complaint contains allegations specific to the plaintiff and the Contractor Defendants. The Short Form Complaint contains an Addendum, as well as a separately filed Sealed Supplement that contains John Doe #675’s true name and date of birth).

C. A 11-page Declaration, signed by the plaintiff, filed as Exhibit A to the Objections to the Motions to Dismiss in John Doe #675 v. State, 218-2023-CV-00293 (Court Index ## 14 & 21 (Redacted); see Court Index ## 15 & 22 (Unredacted)) (cited hereinafter as “Declaration”). The Declaration contains the plaintiff’s factual response to the Contractor Defendants’ affirmative limitations defenses.

These 101 pages will be referred to collectively as “the Complaint.”

PROCEDURAL HISTORY AND RELEVANT DATES

The plaintiff was born in November 1997.² He turned 20 in November 2017. The Complaint in this case was filed on March 1, 2023, when the plaintiff was 25 years old.

² The plaintiff’s precise date of birth is provided in the Sealed Supplement to the Short Form Complaint (Court Index # 3). The Court recites only the month and year of birth to protect the plaintiff’s identity. The day of the month is not material to any determination in this Order.

As relevant to the instant motion, the plaintiff claims that he was subjected to physical and psychological abuse at residential juvenile facilities operated by the Contractor Defendants. The plaintiff alleges that the abuse occurred at some unspecified time between 2010 and 2012, when he was between the ages of 13 and 14, and again between 2012 and 2013 when he was between the ages of 15 and 16.³ The plaintiff does not allege that either Contractor Defendant engaged in any tortious behavior after that time.

Thus, the plaintiff initially filed suit approximately 10 years after the last possible date of abuse, and roughly 5 years after he turned 20.

FACTUAL BACKGROUND

The following facts are taken from the Complaint.

A. Events Prior to Plaintiff's Placements with the Contractor Defendants

The plaintiff was born in Tanzania and moved to Manchester, New Hampshire, with his parents when he was 8 years old. He did not speak English and, as a result, had some behavioral problems as a child. The plaintiff was picked on in school and would get in fights. He also would skip school and was caught stealing. His conduct led to his placement on juvenile probation. The State took him into custody when he was around 13 or 14 years old, and he was placed in the Midway Shelter. NFI ran the Midway Shelter.

B. Events at Midway Shelter

The plaintiff stayed at Midway Shelter between 3 or 4 times, but it is not clear how long each placement lasted. During one of those stays, when the plaintiff was around 14 years old, he

³ Specifically, the plaintiff alleges that in or around 2010 and 2011, when he was approximately 13 or 14 years old, he was taken into custody by the State and placed in Midway Shelter (and NFI facility) and an MPA facility roughly 3 or 4 times each, bouncing between the two facilities. (Declaration ¶¶ 6-8). He spent roughly a year in the two facilities before transferring to the Sununu Youth Services Center ("SYSC") in or around 2012 when he was 15 years old. (*Id.*). Sometime later, the plaintiff went back to Midway Shelter and an MPA facility, before eventually transferring back to SYSC when he was around 16 years old. (Declaration ¶ 16).

became involved in a fight with another resident because the resident was making fun of him. A staff member saw the fight and violently grabbed the plaintiff by the chest and shoved him to the floor. The staff member then drove his elbow into the plaintiff's chest causing pain and making it difficult to breathe. The plaintiff has asthma and the pressure on his chest made him feel like he could not breathe. The staff member also grabbed and twisted the plaintiff's arm, which he had broken as a child, causing great pain. The staff member also punched the plaintiff in the body. Despite the plaintiff's screaming in pain for the staff member to stop and informing him of his asthma and previously broken arm, the staff member did not stop. The entire episode lasted roughly 5 minutes.

C. Events at the MPA Facility

During same period in which the plaintiff stayed at Midway Shelter, he was also placed at an MPA facility roughly 3 or 4 times. The plaintiff does not name which MPA facility or give specific times for when he stayed at the facility. However, he does indicate that he stayed at the MPA facility for roughly seven months total. During one of his stays at the MPA facility the plaintiff got into a fight with another resident and a staff member intervened. According to the plaintiff, he was 14 years old at the time. The staff member roughly grabbed the plaintiff and placed him in a chokehold. The plaintiff had difficulty getting air and felt himself starting to faint. He states that he believes he passed out from the chokehold.

Following two intervening stays at the Sununu Youth Services Center ("SYSC") the plaintiff was transferred back to the MPA facility at some time after he turned 15.⁴ He had been placed at Midway for violating parole. While at the MPA facility, staff told him that they were

⁴ The plaintiff was briefly placed at Midway Shelter for violating his parole prior to transferring to the MPA facility, but he does not allege any misdeeds by NFI during that brief stay.

taking him home. The staff, though, tricked him and took him back to SYSC. He was approximately 16 years old when this happened.

D. Events after the Plaintiff's Placement with the Contractor Defendants

The State sent the plaintiff to SYSC in 2012 for the first time when he was approximately 15 years old. He lived at SYSC for roughly 3 or 4 months. During his first two stays at SYSC, the plaintiff was a target of ridicule by staff and residents because he struggled with English. The plaintiff had a bad temper and “would freak out.” (Declaration ¶ 10). On one “freak out” in his cell, staff members were excessively violent in restraining him. One staff member twisted his broken arm, causing great pain. The staff member ignored the plaintiff's cries of pain. The staff then took the plaintiff to the Crisis Services Unit (“CSU”) and locked him in isolation for 13 days. During his isolation in the CSU, staff members ignored the plaintiff's requests to use the bathroom—forcing him to urinate and defecate in his room—and gave him “unusually small portions of food.” (*Id.*). The plaintiff believes staff also spit in his food. Staff members also unnecessarily strip searched the plaintiff a couple of times during his first stay. During the searches, staff tried to touch him, and the plaintiff said “no.” (*Id.* ¶ 12).

An SYSC staff member known by the name “JJ” liked to mock and insult the plaintiff. On one occasion, JJ grabbed the plaintiff violently by the neck and threw him down. Another staff member named “Larry” liked threatening to beat up the plaintiff. According to the plaintiff, he could not talk back or do anything about this because he would get a beating. He also states that if he reported this abuse, he would get in worse trouble, and no one would believe him. Further, he was afraid that staff would punish him by not letting him see his family.

After the first stay, the plaintiff was released but it is not clear for how long. He returned to SYSC for a second time and stayed for roughly 2 months. During his second stay, he

remembers the gym teacher watching him and the other residents take showers. On one occasion, he tried to break up a fight between two residents. Staff blamed him for the fight and, after roughly restraining him, locked him in isolation in the CSU for 2 or 3 days. He was left alone the entire time and staff did not feed him.

The plaintiff stayed at SYSC a third time after being transferred from the MPA facility around the age of 16. This third stint lasted until he aged out. During his third stay, the plaintiff was physically and sexually assaulted by staff. A short, bald staff member with a goatee who went by the name “Mr. Norm” was one of the individuals who sexually assaulted the plaintiff. On 4 or 5 occasions “Mr. Norm” brought the plaintiff into his office and pulled out the plaintiff’s penis and masturbated him. “Mr. Norm” tried to coerce the plaintiff’s consent by telling him that if he did what he was told, “Mr. Norm” would help him get home. “Mr. Norm” also tried to coerce the plaintiff into performing oral sex, threatening that he would have the plaintiff sent to jail. The plaintiff became very scared during this time and was afraid to tell anyone. Medical staff at SYSC placed the plaintiff on anti-anxiety medication.

During one period when the plaintiff was locked in isolation in the CSU, staff took him off his anxiety medication. As a result, the plaintiff became suicidal and threatened to kill himself. A staff member who worked in the CSU named “Shaun” would taunt and chide the plaintiff during his stay in the CSU. Shaun told the plaintiff that he was a bad person and that he would spend his life in jail. Shaun also threatened the plaintiff—taking away “points” so he could never see his family—and threatened to harm the plaintiff’s family.

After one threat to kill himself, the plaintiff was restrained with handcuffs and cuffs around his ankles. He was also strapped down to a plastic bed while naked. Because of the restraints and not being taken to a restroom, the plaintiff urinated on himself. Staff then moved

the plaintiff to a “blue room” for 13 hours. While he was there, Shaun came in and threatened the plaintiff, saying “shut the fuck up, watch what I’m gonna do to you.” (Declaration ¶ 20). Shaun then grabbed and squeezed the plaintiff’s genitals hard, causing great pain. Shaun also digitally penetrated the plaintiff’s anus.

The plaintiff was placed in the CSU at least 5 or 6 times. Often, he was restrained without clothing and staff would feed him sporadically. He would also have to relieve himself inside his room because staff would not take him to the bathroom. Some of the stays lasted 3 or 4 days, but others went for close to a month. His stays in isolation added to his anxiety and depression. Further, whenever the plaintiff was in the CSU, he would not be taken to school. Staff would give him homework packets, but because of the language barrier he struggled to understand the schoolwork. Staff would not provide a teacher or tutor during these times. According to the plaintiff he did not learn anything during his time at SYSC.

A female staff member also attempted to sexually assault the plaintiff in the room used for folding laundry. She offered to show the plaintiff her underwear and sometimes played pornography on her phone. The staff member would touch the plaintiff on his shoulder and chest during some of these interactions, but it never progressed beyond that touching.

The plaintiff aged out of his juvenile placement at 17.

D. Alleged Damages

Since leaving his placements with the Contractor Defendants and SYSC, the plaintiff turned to drugs and self-destructive activities. He often had feelings of wanting to hurt himself or not wanting to live anymore. The plaintiff started by smoking marijuana, but then turned to Xanax and opioids. His drug usage worsened over time, and he lost friends as a result. He continues to struggle with drug addiction. The plaintiff is not in counselling or therapy, but

instead relies on drugs to deal with the pain from his past trauma. When he left SYSC he had not earned a high school diploma, and to this day he does not have a GED.

E. Lack of Discovery

During his stay at SYSC, the plaintiff received some therapy or counseling. However, he did not trust his counselor because she was paid by the State. The plaintiff did not tell her what was happening to him because he believed she would not believe him, or he would suffer retribution for telling her. He was also afraid that if he complained, staff would keep him away from his family. As a result, he did not talk about his abuse. After leaving SYSC, he used drugs to help him run away from his problems and avoid confronting his past.

In or around the fall of 2022, the plaintiff watched a news report about other people coming forward with claims against SYSC for abuse. Seeing that report and realizing that there were other people like him made him feel stronger. He conducted his “own inquiry and investigation and for the first time realized that the adults who worked at SYSC, and Midway, and Mount Prospect were child abusers.” (Declaration ¶ 28). The plaintiff decided to tell his story, despite still being scared. Previously, he did not think people would believe him and would hold his past against him. Further, because of his language barrier and poor education, the plaintiff did not fully understand what had happened or how to do anything about the abuse. He “had no concept that [he] had any rights or that anybody cared about the abuse [he] had suffered.” (*Id.* ¶ 27). After seeing the televised report in 2022, the plaintiff began to understand that the entities who ran the facilities he was placed in could be held liable for their actions.

ANALYSIS

The Contractor Defendants move separately to dismiss the plaintiff’s claims against them on multiple grounds. Because the grounds asserted by each defendant are essentially identical,

and resolution of their motions depends largely on the same determinations of fact, except where noted below the Court analyzes their motions together.

I. The Complaint Does Not State Claims for Aiding and Abetting a Breach of Fiduciary Duty or Civil Conspiracy against Either Contractor Defendant

In Counts X and XIV, the plaintiff accuses the Contractor Defendants of: (a) aiding and abetting a breach of fiduciary duty; and (b) civil conspiracy. Both of these claims require proof that the respective Contractor Defendants were engaged in deliberate, concerted action with another party to violate the plaintiff's rights. See Invest Almaz v. Temple-Inland Forest Prods. Corp., 243 F.3d 57, 82-83 (1st Cir. 2001) (stating standard for aiding and abetting a breach of fiduciary duty); Jay Edwards, Inc. v. Baker, 130 N.H. 41, 47 (1987) (describing standard for civil conspiracy). Because the Complaint alleges no material facts from which such concerted action can be inferred as to either Contractor Defendant, these two counts are DISMISSED for failure to state a claim.

A. Aiding and Abetting a Breach of Fiduciary Duty

The New Hampshire Supreme Court has not yet had occasion to recognize the tort of aiding and abetting a breach of fiduciary duty. Nonetheless, the tort is established and well-defined, as, for example, in the Restatement (Second) of Torts, § 876(b):

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . [1] knows that the other's conduct constitutes a breach of duty and [2] gives substantial assistance or encouragement to the other so to conduct himself[.]

Courts that apply New Hampshire law predict that the New Hampshire Supreme Court will recognize this cause of action. See Invest Almaz, 243 F.3d at 82-83; Legacy Glob. Sports, LP v. St. Pierre, Slip Op. No. 218-2019-CV-198, 2020 WL 2027401, at *2 (Merrimack County Superior Court, Apr. 27, 2020); Clare v. Bank of New England, Slip. Op. No. 218-2013-CV-

00687, 2013 N.H. Super LEXIS 22, at *3-4, 9 (Merrimack County Superior Court, Nov. 26, 2013); HayJo S.A. de CV v. Sponge-Jet, Inc., No. 14-cv-196-JD, 2015 WL 9459918, at *4 (D.N.H. Dec. 23, 2015); Tamposi v. Denby, 974 F. Supp. 2d 51, 61 (D. Mass. 2013); In Re Felt Mfg. Co., Inc., 371 B.R. 589, 615 (Bankr. D.N.H. 2007); But see Gill v. Devine, Millimet & Branch, P.A., Slip Op. No 218-2012-CV-00660 (Rockingham County Superior Court, Oct. 12, 2012) (ruling that the tort of aiding and abetting a breach of fiduciary duty had not been recognized).

Regardless, even assuming a claim for aiding and abetting a breach of fiduciary duty may be pursued in New Hampshire, the Complaint does not contain facts to support this cause of action. To prevail, the plaintiff would need to prove that the Contractor Defendants had helped another party breach its fiduciary duty. The Complaint does not allege that either Contractor Defendant did anything to encourage or facilitate the plaintiff's alleged abuse at SYSC or at any other placement, including with respect to each other.

Moreover, a Contractor Defendant cannot be found liable for aiding its own employees and agents in a breach of fiduciary duty. The cause of action for aiding and abetting a breach of fiduciary duty only exists to cover circumstances in which the defendant has no direct liability to the plaintiff as a fiduciary. That is not the case here. See, e.g., Mann v. GTCR Golder Rauner, L.L.C., 483 F. Supp. 2d 884, 916 (D. Ariz. 2007) (Under Delaware law, "a person who himself owes a fiduciary duty with respect to a transaction or course of conduct cannot be liable for aiding and abetting a breach of that same fiduciary duty by another because the same facts that would otherwise constitute aiding and abetting would constitute a primary breach of fiduciary duty."); In Re Amcast Indus. Corp., 365 B.R. 91, 112–13 (Bankr. S.D. Ohio 2007) (Under Ohio law "the action by its nature, . . . requires participation by a non-fiduciary defendant); In re

Verestar, Inc., 343 B.R. 444, 482 (Bankr. S.D.N.Y. 2006) (“[A] claim for aiding and abetting breach of fiduciary duty can only be sustained against a non-fiduciary.”).

Accordingly, for the foregoing reasons, the Complaint does not state a claim against either Contractor Defendant for aiding and abetting a breach of fiduciary duty. The claim is thus DISMISSED as to both NFI and MPA.

B. Civil Conspiracy

To prevail on a claim of civil conspiracy, a plaintiff must prove that:

(A) Two or more persons and/or entities agreed to either:

- (1) pursue an unlawful objective or, alternatively,
- (2) use unlawful means to accomplish a lawful or unlawful objective; and

(B) At least one of the conspirators committed an overt act in furtherance of this agreement; and

(C) The plaintiff was harmed as a proximate result of the agreement.

Jay Edwards, Inc., 130 N.H. at 47; see Univ. Sys. of N.H. v. U.S. Gypsum Co., 756 F. Supp. 640, 652 (D.N.H. 1991); Censabella v. Town of Weare, No. 16-cv-490-AJ, 2017 WL 3996173, at *3 (D.N.H. Sept. 8, 2017). “For a civil conspiracy to exist, there must be an underlying tort which the alleged conspirators agreed to commit.” Univ. Sys., 756 F. Supp. at 652. Thus, the cause of action serves to impose liability on “all who commonly plan, take part in, further by cooperation, lend aid to, or encourage the wrongdoers' acts.” Id.

The Complaint does not contain facts to support a claim for civil conspiracy. There are no material facts from which the Court may infer that either Contractor Defendant and the State or any other entity entered into an agreement to engage in concerted action by abusing the plaintiff. No facts suggest that either NFI or MPA ever had any conversation, let alone any agreement, with any other defendant or with each other.

Further, a Contractor Defendant cannot be liable for civil conspiracy with its own employees, because, under the intracorporate conspiracy doctrine, each Contractor Defendant and its respective employees are considered to be the same “person.” See, e.g., Hoefer v. Fluor Daniel, Inc., 92 F. Supp. 2d 1055,1057 (C.D. Cal. 2000):

The intracorporate conspiracy doctrine provides that, as a matter of law, a corporation cannot conspire with its own employees or agents. [citation and footnote omitted]. The logic for the doctrine comes directly from the definition of a conspiracy. A conspiracy requires a meeting of minds. [citation omitted]. It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

see also Grider v. City of Auburn, Ala., 618 F.3d 1240, 1261 (11th Cir. 2010) (“[T]he intracorporate conspiracy doctrine holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy.”); Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505, 509 (6th Cir. 1991) (“It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.”); Tabb v. District of Columbia, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (“[A] corporation cannot conspire with its employees[.]”); HRCC, Ltd. v. Hard Rock Cafe Int’l (USA), Inc., 302 F. Supp. 3d 1319, 1325 (M.D. Fla. 2016) (“According to the intracorporate conspiracy doctrine, however, a civil conspiracy claim will not succeed where the only members of the alleged conspiracy are a corporation and/or its officers.”).

Accordingly, the claims of civil conspiracy against NFI and MPA are DISMISSED.

II. The Plaintiff's Negligence and Breach of Fiduciary Duty Claims Are Barred as to the Contractor Defendants by the Applicable Statutes of Limitations

The statute of limitations is an affirmative defense. Perez v. Pike Indus., Inc., 153 N.H. 158, 160 (2005); Glines v. Bruk, 140 N.H. 180, 181 (1995). A defendant has the obligation to allege and prove that the complaint was brought after the limitations period expired. Perez, 153 N.H. at 160. If the defendant meets this burden, then the plaintiff has the burden to prove that the claim is timely by virtue of the discovery rule, fraudulent concealment, equitable tolling, or some other doctrine. Two statutes are applicable to the plaintiff's claim: the general statute of limitations for personal actions (RSA 508:4); and the tolling provisions of the "disabilities statute" (RSA 508:8). The Court will consider each statute in turn.

A. The Disabilities Statute: RSA 508:8

The Court first considers RSA 508:8, the so-called "disabilities statute." This statute provides that "an infant or mentally incompetent person may bring a personal action within 2 years after such disability is removed." In Norton v. Patten, 125 N.H. 413 (1984), the New Hampshire Supreme Court construed the term "infant" to mean a person who has not yet reached the statutory age of majority, as defined in RSA 21-B:1. The age of majority is eighteen. Thus, as construed by Norton, RSA 508:8 extends the limitations period for minors until their twentieth birthday.

As noted above, the plaintiff turned twenty in 2017, roughly 6 years before he filed the instant case. Accordingly, the instant case was not filed within the limitations period established by RSA 508:8. RSA 508:8 does not contain its own discovery rule.

C. The General Statute of Limitations for Personal Actions: RSA 508:4

RSA 508:4 provides the statute of limitations for all personal actions. Under this statute:

[A]ll personal actions . . . may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

The last “act or omission complained of” as to NFI could have occurred no later than 2012, the last date it may be construed the plaintiff may have been at Midway Shelter when he was abused. He does not allege any potential abuse in the Declaration during his brief return stint that may have occurred as late as 2013. As to MPA, the last such date is 2013 when MPA staff tricked the plaintiff during the transfer to SYSC. The instant case was thus brought a minimum of 10 years after the last “act or omission complained of.” The Contractor Defendants have therefore met their burden of showing that the instant case was filed more than three years after the conduct complained of, regardless of which Contractor Defendant is at issue or whether the last “act or omission complained of” occurred in 2012 or 2013.

This shifts the burden to the plaintiff to demonstrate grounds for the application of: (a) the discovery rule; (b) equitable tolling; (c) the doctrine of fraudulent concealment; or (d) some other doctrine extending the limitations period. Perez, 153 N.H. at 160. Consistent with the standard of review for motions to dismiss, the Court accepts all the plaintiff’s well-pled facts, and makes all rational inferences in the plaintiff’s favor.

The Court’s task is to determine only whether the plaintiff has alleged facts which, if proven, might lengthen the limitations period to make this case timely. To be clear, if the plaintiff alleges sufficient facts to show that discovery is necessary to make this determination,

the motion to dismiss on limitations grounds must be denied and the issue preserved for summary judgment on a more complete record. However, if discovery would be futile because the Complaint itself fails even to allege grounds to apply the discovery rule or another tolling doctrine, the motion to dismiss will be granted.

(i) The Discovery Rule

It is well-settled that the “purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party.” Petition of N.H. Div. For Children, Youth & Families, 173 N.H. 613, 618 (2020). The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run:

(1) a plaintiff must know or reasonably should have known that she has been injured; and (2) a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the defendant.

Lamprey v. Britton Constr., Inc., 163 N.H. 252, 257 (2012); see also Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 713 (2010); Perez, 153 N.H. at 160; Big League Entm’t, Inc. v. Brox Indus., Inc., 149 N.H. 480, 485 (2003).

The discovery rule does not reward ignorance of the law. The statute of limitations is not tolled due to a plaintiff’s failure to acknowledge or otherwise understand their potential claims. See Sullyville, LLC v. Town of Carroll, Slip Op. No. 2019-0240, 2021 WL 1310832, at *7 (N.H. Apr. 8, 2021) (non-precedential decision stating that “[t]he discovery rule does not toll the statute of limitations until a plaintiff discerns the legal theory by which his or her case will proceed; rather, it tolls the statute of limitations only when the injury and its causal relationship to the defendant’s act or omission remain unknown to the plaintiff.”); Ouellette v. Beaupre, 977 F.3d 127, 138 (1st Cir. 2020) (applying federal law and holding that “a plaintiff, once armed with the

knowledge of his or her injury and its probable cause, cannot plead ignorance of the law to delay accrual.”); Maggi v. Grafton Cty. Dep’t of Corrs., 633 F. Supp. 3d 508, 516 (D.N.H. 2022) (applying RSA 508:4 and holding that “even if the court were to assume the truth of [plaintiff’s] assertions about his lack of access to legal resources, that would not save his claims. His claims accrued on the date he should have reasonably known he was injured, not on the date he first learned he had a legal cause of action.”) (vacated and remanded on other grounds by Maggi v. Grafton Cty. Dep’t Corrs., No 23-1002 2024 WL 3384813 (1st Cir. July 9, 2024)); Miller v. Pac. Shore Funding, 224 F. Supp. 2d 977, 986–87 (D. Md. 2004) (“Knowledge of facts, however, not actual knowledge of their legal significance, starts the statute of limitations running. . . . The discovery rule, in other words, applies to discovery of facts, not to discovery of law. Knowledge of the law is presumed.”); Marcum v. Columbia Gas Transmission, LLC, 549 F. Supp. 3d 408, 421, (E.D. Pa. 2021) (“Plaintiffs’ ignorance of a legal cause of action does not, in itself, require application of the discovery rule.”). In this case, the plaintiff proffers several reasons why he may have not discovered the law governing his claims. However, the plaintiff’s failure to bring his claims within the applicable time period due to his unawareness of the law is not grounds to apply the discovery rule.

For discovery rule purposes, a plaintiff becomes aware of an injury as soon as he can reasonably discern that he has suffered “some harm” caused by a defendant’s conduct. Beane, 160 N.H. at 713; see also Balzotti Glob. Grp., LLC v. Shepherds Hill Proponents, LLC, 173 N.H. 314, 321 (2020); Furbush v. McKittrick, 149 N.H. 426, 431 (2003) (“The [discovery] rule is not intended to toll the statute of limitations until the full extent of the plaintiff’s injury has manifested itself.”). Thus, a latent injury will toll the limitations period, while a patent injury will not, even if the long-term consequences of the patent injury cannot be known. See Furbush, 149

N.H. at 431; see generally Clay v. Kuhl, 727 N.E.2d 217, 222 (Ill. 2000) (applying Illinois law): (“The plaintiff contends, however, that her injuries were latent to some extent and did not fully manifest themselves until years after the abuse occurred. We do not believe that the plaintiff’s alleged failure to fully discover the nature of her injuries is sufficient to delay the running of the limitations period. There is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations.”); see also Stephens v. Clash, 796 F.3d 281, 288 (3d Cir. 2015) (“A plaintiff’s ignorance regarding the full extent of his injury is irrelevant to the discovery rule’s application, so long as the plaintiff discovers or should have discovered that he was injured.”).

In Rowe v. John Deere, 130 N.H.18 (1987), the plaintiff was injured when he struck his head while using machinery manufactured by the defendant. Immediately after the accident, the plaintiff was diagnosed with a depressed skull fracture. The plaintiff recovered quickly. Six years later he began to suffer grand mal seizures, purportedly as a result of the accident. The supreme court held that the plaintiff had discovered his injury at the time of the accident, even though the initial measure of damages was “nominal” compared with the potential damages for the later occurring harm. Id. at 21. Thus, a plaintiff is likely to immediately discover an injury caused by a sudden, traumatic, violent event, and an injury which may later arise from the initial injury will not toll the statute of limitations. See, e.g., Hollander v. Brown, 457 F.3d 688, 692 (7th Cir. 2006) (applying Illinois law):

courts distinguish between injuries caused by sudden, traumatic events and those that have a late or insidious onset. For limitations purposes, a sudden, traumatic event is one that, because of its force or violence, permits the law to presume that the event immediately placed the plaintiff on notice of her injury and a right of action. When a plaintiff suffers this type of injury, her cause of action accrues on the date of the traumatic event, and the limitations period does not begin anew simply because a latent condition later may arise from the same occurrence. The rationale is that the nature and circumstances surrounding the traumatic event are

such that the injured party is thereby put on notice that actionable conduct might be involved.

(internal citations and quotation marks omitted).

Here, the plaintiff claims that he was injured as a result of the Contractor Defendants' failure to adequately oversee their staff with respect to hiring, training, supervision, and promulgation of policies. Thus, the "act or omission complained of," RSA 508:4, is each Contractor Defendants' breach of duty. According to the Complaint, those breaches led to at least one physical assault at each location managed by the Contractor Defendants. In his relatively brief stay at Midway Shelter, this included at least one instance where the plaintiff was violently thrown to the floor, elbowed in his chest, had his arm twisted, and was then punched multiple times over a 5-minute period. At the MPA facility, the plaintiff was violently assaulted on at least one occasion where a staff member choked him out to the point that he likely passed out. The plaintiff was aware of his injuries. He states in the Declaration that the NFI staff member's actions caused him great pain when twisting his arm and punching him. He then states that the MPA staff member's actions caused him difficulty breathing, and eventually resulted in his passing out. Further, although he does not offer specifics, the Court can reasonably infer that he was aware of the psychological manipulation caused by the MPA staff members during his final stay. Indeed, the plaintiff articulates in the Declaration that the staff "tricked" him when they brought him back to SYSC. (Declaration ¶ 16). The incidents of physical and psychological abuse the plaintiff describes constitute injuries that are sudden, traumatic, violent, painful, and/or extremely unpleasant. Indeed, the plaintiff describes them as being traumatic and very painful. There is nothing subtle or latent about the events alleged to have occurred at the facilities run by either Contractor Defendant. The plaintiff necessarily knew of these assaults and psychological manipulation at the time they happened.

As a child, the plaintiff may have been unaware of the long-term psychological and emotional effects of the treatment he says he endured. But those harms were nonetheless caused by the same “act or omission complained of,” RSA 508:4, e.g., the Contractor Defendants’ alleged lack of care in hiring, training and supervising staff, and promulgating policies. Further, although he may have had difficulty understanding people because of his limited English, the plaintiff was aware of both the physical violence and the psychological manipulation he suffered at the hands of the Contractor Defendants’ staff. Thus, under settled New Hampshire law, accepting all the well-pled facts in the Complaint, the Court must find that the plaintiff was aware that he had been injured as a result of the Contractor Defendants’ failure to control their respective staffs because the plaintiff knew that he had been assaulted by staff at both facilities.

Under the discovery rule, the limitations period in this case did not begin to run until the plaintiff either (a) discovered, or (b) should have discovered through the exercise of reasonable diligence, that the Contractor Defendants’ breach of duty was a proximate cause of his injury.

See Troy v. Bishop Guertin High Sch., 176 N.H. 131, 134 (2023) (citing RSA 508:4).

Knowledge of the Contractor Defendants’ causal role cannot be automatically inferred from the fact that the plaintiff knew that his injury was caused by their employees, acting overtly under color of their authority, on their respective premises. See id. at 138 (“We decline to establish a per se rule that the plaintiff’s knowledge of the abuser’s employer is alone sufficient to trigger the application of the discovery rule. This inquiry presents a question of fact.”). However, “[a] plaintiff need not be certain of this causal connection; the possibility that it existed will suffice to obviate the protections of the discovery rule.” Id. at 137 (quoting Beane, 160 N.H. at 713); see also Balzotti, 173 N.H. at 321; Lamprey, 163 N.H. at 257; Pichowicz v. Watson Ins. Agency, Inc., 146 N.H. 166, 168 (2001). “[T]he discovery rule employs an objective standard” to

determine whether, through the exercise of reasonable diligence, a plaintiff should have discovered sufficient evidence of the defendant's role in causing his injury." Troy, 176 N.H. at 137.

In this case, the same alleged facts that establish the plaintiff's knowledge of harm also demonstrate the plaintiff knew or should have known that the Contractor Defendants' breach of duty was a proximate cause of his alleged injury. Here the plaintiff does not complain of incidents committed in secret, by a rogue staff member of a sizable institution spread across multiple states. Rather, as noted, the plaintiff claims distinct assaults at each facility following his involvement in fights with other residents. Although the plaintiff asserts an isolated event at each facility, these assaults were violent. Further, the Court can reasonably infer, based on the fact that he was involved in a fight with another resident during each incident, that the assaults were committed openly in view of other residents. If these allegations in the Complaint are credited, as they must be at this juncture, then at the very least the Contractor Defendants failed to supervise their staff and monitor their respective facilities, and thereby breached both their fiduciary obligations to the plaintiff and their common law duty of reasonable care.

The Contractor Defendants' role in causing the plaintiff's injury is not inferred from the mere fact that the plaintiff's assailants received paychecks and W2s from NFI and MPA. Compare the facts of this case to those in Troy, which involved two acts of sexual assault, committed in private, by a high school teacher against a female student. Troy, 176 N.H. at 133-35. Unbeknownst to the plaintiff in Troy, the school had hired the teacher despite knowing of his previous conviction for unlawful sexual contact with a different female high school student at a different school that was owned and operated by the same religious order. Id. at 133-34. The school did not alert students or parents to the teacher's status as a sex offender who preyed on a

similar victim. Id. It took no action to limit or monitor the teacher's contact with students. Id. It would be hard to imagine how the plaintiff in Troy could have known from the abuse she endured that the school (and its owner) shouldered any of the blame for the covert criminal acts of a lone employee.

Conversely, in this case, if the facts in the Complaint are credited, it is hard to imagine how the plaintiff could not see a problem with the conduct of NFI's and MPA's staff members. Indeed, the plaintiff—unlike the plaintiff in Troy, who became aware of the offending teacher's history with the school only as a result of later public disclosures by the school itself—does not allege a single fact that he learned about NFI or MPA since leaving their facilities in or around 2013. He does not point to the discovery of any fact relating to NFI's or MPA's hiring process, their knowledge of staff misconduct, their promulgation of policies, etc. Although he points to a news report in 2022, that report only referenced the suits being filed by others and not disclosures about NFI's or MPA's conduct in managing its staff. Further, he states that only after he heard about the lawsuits and conducted his “own inquiry and investigation” did he realize that MPA and NFI were child abusers and “could be liable for failing to protect me.” (Declaration ¶ 28) (emphasis added). The plaintiff stated that prior to that news story, he felt “it was better not to talk about the past,” and that “people would hold it against me if [he] told [his] story.” (Id. ¶ 27). None of these conclusory assertions, even taken as true, constitutes the discovery of a fact pertinent to NFI's or MPA's causal relationship to the plaintiff's injury of a kind that would have tolled the statute of limitations. Cf. Miller, 224 F. Supp. 2d at 986–87.

The plaintiff's remaining arguments are unpersuasive. First, the plaintiff contends that his fiduciary duty claim against each Contractor Defendant is tolled until he had actual knowledge of a breach by that defendant. The Court disagrees. New Hampshire law is clear that

tolling a statute of limitations period is not dependent or otherwise reliant upon the fiduciary disclosing its wrongdoing. See Beane, 160 N.H. at 714-15 (“[T]here is no support in our case law for the proposition that a limitations period is tolled in fiduciary cases until the fiduciary discloses his or her misconduct.”). Second, no amount of additional discovery the plaintiff may engage in regarding NFI’s or MPA’s policies and procedures could reveal information that would make it more likely that the plaintiff could avail himself of the discovery rule. As explained above, the plaintiff’s Complaint shows that he already had all the information he needed to determine that the Contractor Defendants were the proximate cause of his injuries by the time he turned twenty.

Ultimately, the plaintiff had sufficient information about both NFI’s and MPA’s institutional failures prior to the expiration of any applicable limitations period. Nor did the plaintiff allege anywhere in his Complaint that he learned any new facts about NFI’s or MPA’s role in his alleged abuse after he turned twenty. For these reasons, the Court concludes that the discovery rule does not toll the statute of limitations.

ii. Fraudulent Concealment and Equitable Tolling

The Court has found that (a) the discovery rule did not toll the start of the limitations period in RSA 508:4 beyond the plaintiff’s twentieth birthday and, therefore, (b) the applicable limitations period is that established by RSA 508:8, which gave the plaintiff until age 20 to file this action.

The plaintiff argues, however, that two equitable doctrines apply here: fraudulent concealment and equitable tolling. The New Hampshire Supreme Court views both these doctrines as implied exceptions to all statutes of limitations. See Lakeman v. La France, 102 N.H. 300, 303 (1959) (adopting the majority rule that “fraudulent concealment of a cause of

action from the one in whom it resides by the one against whom it lies constitutes an implied exception to the statute of limitations,” and rejecting the “contrary view that fraudulent concealment does not toll the operation of the statute unless the Legislature has expressly so stated in the statute itself”). With respect to equitable tolling, the supreme court has only applied the doctrine and explained its elements. See Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 623–24 (2005).

The doctrine of fraudulent concealment tolls the limitations period when a defendant, by concealment or other action, intentionally prevents the plaintiff from acquiring material information. Lamprey, 163 N.H. at 259–60; See also Lakeman, 102 N.H. at 303-304. Thus, fraudulent concealment

. . . requires something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to a cause of action—some actual artifice to prevent knowledge of the facts or some representation intended to exclude suspicion and prevent inquiry.

Lamprey, 163 N.H. at 259–60 (internal quotation marks and bracketing omitted); see also Maggi, 633 F. Supp. 3d at 516 (“The burden is on the plaintiff invoking the fraudulent concealment doctrine to present some evidence of an affirmative act on the part of the defendant to conceal or cover up the underlying wrongful conduct that gave rise to the plaintiff’s asserted injury.” (internal citations omitted)); Sykes v. RBS Citizens, N.A., 2 F. Supp. 3d 128, 143 (D.N.H. 2014).

Even when there is fraudulent concealment, the doctrine provides little, if anything, in the way of relief that the discovery rule does not also provide. See Beane, 160 N.H. at 714 (“The fraudulent concealment rule states that when facts essential to the cause of action are fraudulently concealed, the statute of limitations is tolled until the plaintiff has discovered such facts or could have done so in the exercise of reasonable diligence.” (quoting Bricker v. Putnam,

128 N.H. 162, 165 (1986)); see also Lakeman, 102 N.H. at 303; Furbush, 149 N.H. at 431; Sykes, 2 F. Supp. 3d at 143.

In this case, the plaintiff has not pointed to any affirmative act on the part of NFI or MPA to conceal or cover up any fact. Indeed, as noted above, the plaintiff has not pointed to any fact he learned after leaving the facilities run by the Contractor Defendants in 2013. Therefore, the doctrine of fraudulent concealment does not apply to the plaintiff's claims.

The New Hampshire Supreme Court has not developed a substantial body of case law relating to the doctrine of equitable tolling. The Court recognized the doctrine in Portsmouth Country Club, explaining that it allows a plaintiff to initiate an action beyond the statutory limitations period when that plaintiff had been “prevented in some extraordinary way from exercising his or her rights.” 152 N.H. at 623 (emphasis added). The doctrine “applies principally if the plaintiff is actively misled by the defendant about the cause of action.” Kierstead v. State Farm Fire & Cas. Co., 160 N.H. 681, 688 (2010).

To be eligible for equitable tolling, a plaintiff's access to the justice system must be frustrated despite the plaintiff's diligence. See, e.g., Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96 (1990)(applying federal law and holding that:

Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.

(internal footnotes omitted)); Maggi, 633 F. Supp. 3d at 518 (applying federal law and noting that, “in unusual cases, certain limitations of imprisonment may rise to the level of ‘extraordinary circumstance’” [but] “the usual problems inherent in being incarcerated, such as a prisoner's lack

of prior legal training or limited access to legal resources in a prison's library, do not, by themselves, justify equitable tolling” (internal ellipses and citation omitted)).

In this case, the plaintiff was not prevented from discovering either necessary facts or necessary law. He was not actively misled by NFI or MPA as to his ability to access the courts. He was not threatened with retaliation for accessing the courts. He was not deprived of the ability to seek counsel or advice from third parties.

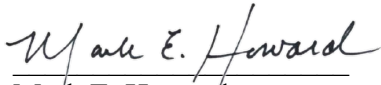
To this end, the plaintiff alleges that he did not bring suit because of his ongoing emotional distress, lack of understanding due to limited education and being a non-native English speaker, and substance misuse. However, diminished mental capacity is not grounds for equitable tolling. See Sykes, 2 F. Supp. 3d at 144, n. 18 (ruling that, “RSA 508:8, and not the doctrine of equitable tolling, governs the statute of limitations for New Hampshire state law claims when a plaintiff is mentally incompetent.”). Furthermore, even under federal law, where a plaintiff’s mental condition might allow for equitable tolling, the plaintiff would have to prove that he was unable to engage in rational thought to the point where he could not cooperate with any counsel, and/or pursue his claim on his own during the limitations period.” Id. The plaintiff does not allege this. Thus, the doctrine of equitable tolling does not apply.

CONCLUSION

Pursuant to RSA 508:4 and 508:8, this action is not timely, as the plaintiff filed this case well after his twentieth birthday. The plaintiff attained twenty years of age in November of 2017. He filed this case in March of 2023, roughly 5 years after the expiration of the statute of limitations, and no other tolling provisions apply.

Accordingly, all of the plaintiff’s claims against the Contractor Defendants are DISMISSED WITH PREJUDICE.

February 27, 2025


Mark E. Howard
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/27/2025

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

JOHN DOE #714

v.

STATE OF NEW HAMPSHIRE, et al.
218-2023-CV-00377

DAVID MEEHAN v. STATE OF NEW HAMPSHIRE, et al.
(Consolidated YDC/YDSU Cases)
217-2020-CV-00026

ORDER ON MOTIONS TO DISMISS

Before the court are motions by defendants Mount Prospect Academy, Inc. (“Mount Prospect”) and NFI North, Inc. (“NFI”) (together, the “Contractor Defendants”) to dismiss plaintiff John Doe #714’s claims against them. (See Court Index ## 8 (Mount Prospect Mot. Dismiss), 13 (NFI Mot. Dismiss), 14 (NFI Mem. Law)). For the reasons set forth below, both defendants’ motions are GRANTED. All claims against Mount Prospect and NFI in this case are DISMISSED WITH PREJUDICE. Specifically:

- (A) Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy) are DISMISSED for failure to state a claim upon which relief may be granted; and
- (B) Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention), and XII (negligence) are DISMISSED because they were filed after the expiration of the statute of limitations.

This resolves all counts against the Contractor Defendants.¹

¹ The remaining counts do not allege any claims against the Contractor Defendants. Counts I through VII (set forth in the Master Complaint) and Counts IX and XIII (set forth in the Short Form Complaint) assert claims against the State Defendants only.

DEFINING THE COMPLAINT

The Complaint in this case comprises the following three documents:

A. A 50-page “Amended Master Complaint,” filed in Meehan v. State, 217-2020-CV-00026 on July 8, 2022. (Meehan Court Index # 70). The Amended Master Complaint does not mention John Doe #714 or any of the facts about his life. Likewise, it does not contain any reference to these or any other Contractor Defendants.

B. A 39-page “Short Form Complaint” filed in John Doe 714 v. State, Docket No. 218-2023-CV-00377. (Court Index # 1). The Short Form Complaint contains allegations specific to the plaintiff and the Contractor Defendants. The Short Form Complaint contains an Addendum, as well as a separately filed Sealed Supplement that contains John Doe 714’s true name and date of birth. (Court Index # 3).

C. A 6-page Declaration, signed by the plaintiff, filed as Exhibit A to the Objections to the Motions to Dismiss in John Doe 714 v. State, Docket No. 218-2023-CV-00377. (Court Index # 11 (Redacted); see Court Index # 12 (Unredacted) (cited hereinafter as “Declaration”)). The Declaration contains the plaintiff’s factual response to the Contractor Defendants’ affirmative limitations defenses.

These 95 pages will be referred to collectively as “the Complaint.”

READING THE COMPLAINT

“New Hampshire is a notice pleading jurisdiction, and, as such, [courts] take a liberal approach to the technical requirements of pleadings.” Toy v. City of Rochester, 172 N.H. 443, 448 (2019) (quotations omitted). Thus, the Court assumes the truth of all well pled facts and takes all reasonable inferences from these facts in the plaintiff’s favor. Cole v. Town of Conway, 2024 N.H. 21, ¶ 10. Further, the Court considers documents adequately referenced in

the pleadings whose authenticity is not challenged. See Ojo v. Lorenzo, 164 N.H. 717, 721 (2013). The Court, however, will not assume the truth or accuracy of statements that amount to conclusions of fact and principles of law. ERG, Inc. v. Barnes, 137 N.H. 186, 190 (1993). The Court likewise will not consider argumentative invective, diatribes, blind appeals to passion and sympathy, and statements of expert opinion that are not grounded in the material facts alleged in the complaint. Cf. Aulson v. Blanchard, 83 F.3d 1, 3 (1st Cir. 1996) (explaining that on a motion to dismiss, a court need not accept any “invective . . . bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like” that are included in a complaint).

PROCEDURAL HISTORY AND RELEVANT DATES

The plaintiff was born in June of 1992.² He turned 20 in June of 2012. The Complaint in this case was filed on March 20, 2023, when the plaintiff was 30 years old.

As relevant to the instant motion, the plaintiff claims that he was subjected to physical and psychological abuse at residential juvenile facilities operated by the Contractor Defendants. The plaintiff alleges that the abuse occurred at some unspecified time between 2006 and 2009, when he was somewhere between the ages of 14 and 17.³ The plaintiff does not allege that either Contractor Defendant engaged in any tortious behavior after that time.

Thus, the plaintiff initially filed suit approximately 14 years after the last possible date of abuse, and roughly ten years and eight months after he turned 20.

FACTUAL BACKGROUND

The following facts are taken from the Complaint.

² The plaintiff’s precise date of birth is provided in the Sealed Supplement to the Short Form Complaint (Court Index # 3). The Court recites only the month and year of birth to protect the plaintiff’s identity. The day of the month is not material to any determination in this Order.

³ Specifically, the plaintiff alleges that in or around 2006, when he was approximately 14 years old, he was placed at NFI facility in Jackson for approximately 45 days. (Court Index # 1 ¶¶ 8, 10). In the same year, the plaintiff was moved to a Mount Prospect facility, where he stayed for approximately one year. (Id.).

A. Events Prior to Plaintiff's Placements with the Contractor Defendants

The plaintiff was born in the United States. When he was two years old, he was sent to the Dominican Republic to live with his extended family, where he remained for seven years. There, he “always felt like [he] did not receive the same kind of love and attention as those around [him] because [he] did not have [his] parents.” (Declaration ¶ 4). His first language was Spanish, and he only began speaking English when he returned to the United States around the age of nine.

When the plaintiff returned to the United States, he lived with his biological mother, who struggled with drug use and physically and mentally abused the plaintiff. She punished the plaintiff with belts, she did not allow him to speak, and she “lashed out at [him] and yelled at [him] if [he] tried to speak.” (Id. ¶ 5). The plaintiff had older siblings and did not get along with his mother's boyfriends.

When he was around 11 years old, the plaintiff began to hang out with children older than himself. He wanted to impress them “because [he] enjoyed the positive attention;” for instance, one time he stole a BB gun “in order to impress them.” (Id. ¶ 6). Although the plaintiff could speak some English, he was still learning the language, which created difficulties for him at school. Further, the plaintiff “was often triggered by teachers in positions of authority,” and he “lashed out when teachers tried to tell [him] what to do.” (Id. ¶ 7). The plaintiff believes that his relationship with his mother was the cause of his difficulties at school.

At some point around 2006, because the plaintiff was “rude to a teacher,” the State took custody of him and placed him at a NFI facility in Jefferson.

B. Events at NFI

At the NFI facility, the plaintiff was subjected to strip searches. He was asked to strip completely naked. A male guard performed the strip searches. The guards did not touch the plaintiff, but they “may have asked [the plaintiff] to lift [his] genitals.” (*Id.* ¶ 8). During his time at the facility, if the plaintiff acted out, he was sent to his room and remained “there, alone, for long periods of time.” (*Id.*). On at least two occasions, “two to three staff members beat [the plaintiff] while physically restraining him.” (Court Index # 1 ¶ 10).

The plaintiff remained at NFI for approximately 45 days. (*Id.*). After leaving NFI, the plaintiff returned home and went back to school. He again experienced issues at school, and one time he “walked out of the classroom and swore at the teacher.” (Declaration ¶ 9). Following this incident, the plaintiff was sent to a Mount Prospect facility.

C. Events at Mount Prospect

At Mount Prospect, the plaintiff was frequently strip-searched. He recalls that the staff members performed the strip searches primarily when there were allegations of contraband or after the residents returned from home, but at times residents were also strip-searched randomly. During the searches, he was asked to get fully naked, but he does not recall being touched by staff members.

At this facility, the plaintiff also experienced physical abuse. On one occasion, the plaintiff had an argument with his teacher. The teacher called the Mount Prospect’s guards. One of the guards arrived in the classroom, grabbed the plaintiff and pulled his arm back. The plaintiff felt like the guard “ripped [his] arm off and/or like he broke [his] arm.” (*Id.* ¶ 11). The plaintiff was “pinned to the ground” while screaming; at that point, another guard arrived and told the first guard to stop. (*Id.*). A couple of days later, the plaintiff was still in extreme pain,

so he was taken to the clinic/hospital in Plymouth. Six months after this incident, the plaintiff was still not able to lift his arm. To this day, he has issues with his shoulder, his “bones click[,] and [he] feel[s] pain in [his] shoulder when [he] throw[s] a ball.” (Id.).

During his time at Mount Prospect, the plaintiff was assigned to “levels” corresponding to his good behavior. Residents “dropped” levels if “the staff felt [the residents] acted out.” (Id. ¶ 12). When a resident dropped a level, the staff brought them to an empty room. “It was normal practice for staff to come and grab [the plaintiff], throw [him] to the ground, and drag [him] to this room.” (Id.). The plaintiff felt like the “staff received enjoyment from hurting [him].” (Id.). When he was in the empty room, the plaintiff was asked to strip down to his boxers, and the staff left the plaintiff there for 8–10 hours. While in the room, the plaintiff was often not given food, and because there was no toilet, he sometimes had to relieve himself on the floor. He was placed in this room “dozens of times by numerous staff members, sometimes by multiple at a time, including by staff known . . . as ‘Steven’ and ‘Ed.’” (Id.). The plaintiff suffered head injuries from “being slammed into the floor” when taken to this empty room. (Id.).

On one occasion, a female staff member instituted a new policy. When the plaintiff disagreed with this policy, the female staff called a guard, known to the plaintiff as “Steven.” Steven “pushed” the plaintiff, grabbed him by his neck, and “flung” him around. (Id. ¶ 13). The plaintiff and Steven got into a fist fight when Steven punched the plaintiff. Then, “multiple staff members came over and tried to slam [the plaintiff] on the ground.” (Id.). The plaintiff ran out of the building and was chased around; he recalls being scared. Another female staff member arrived and protected the plaintiff from the other staff members. According to the plaintiff, “[t]his kind of physical abuse happened all the time. [He] was regularly pushed, smacked, and

slammed. [He] had a lot of rug burns on [his] face as well as other bruises. If [he] complained about the pain, [he] was told to ‘shut up.’” (Id.).

On few occasions. the plaintiff was locked in his room for a couple of days, and he was not allowed out to get his meal. He was generally allowed to attend school, but sometimes he was not allowed to attend classes as “punishment.” (Id. ¶ 14). Staff employees “verbally abused [him] and called [him] things like ‘bitch’ and ‘pussy.’” (Id.).

The plaintiff spent one year at Mount Prospect, after which he returned home. The plaintiff felt like he “came out of Mount Prospect Academy worse than [he] was when [he] went in.” (Id. ¶ 10). The plaintiff was eventually sent to the Sununu Youth Services Center (SYSC) while waiting to “get certified as an adult.” (Id. ¶ 15).

D. Events after the Plaintiff’s Placement with the Contractor Defendants

Beginning in 2008, the plaintiff was at SYSC for approximately nine months (from July to April). While there, he was frequently strip-searched. He was stripped “naked, asked to lift up [his] genitals, told to pull [his] foreskin back, and forced to bend over and cough.” (Id. ¶ 16). Staff members did not touch the plaintiff during the strip searches. The searches were conducted after the residents returned to the facility, but also randomly.

SYSC staff members often threatened the plaintiff. One time, a staff member grabbed the plaintiff and shoved him down on his face while the plaintiff was walking away from the staff member. Another time, the plaintiff saw a staff member kick a resident in the genitals; that resident was brought to the hospital afterwards. Another staff member who witnessed this incident told the plaintiff “not to say anything or the other guard would be fired.” (Id. ¶ 17). The same staff member also told the plaintiff, “don’t say anything or you know what is going to happen to you.” (Id.). While he was at SYSC, the plaintiff felt like he had to act aggressively

for his own self-preservation. However, when “[o]ther guards asked [him] to beat up on other residents, . . . [he] refused to comply.” (Id. ¶ 18).

While at SYSC, the plaintiff was often locked in his room and was not allowed to go to school during these periods of isolation. The staff members would remove the mattress and all the plaintiff’s possessions from the room, and he was not allowed to lie down. The plaintiff was at times forced to urinate in his room because the staff members would not let him go to the bathroom.

After leaving SYSC, the plaintiff was sent to the House of Corrections. He pled guilty to certain charges as an adult and first spent two and a half years in the New Hampshire State Prison. As of today, the plaintiff has been out of prison for about two years. He earned a certificate equivalent to a GED. He continues to struggle with his trauma, and he always feels anxious.

E. Lack of Discovery

Concerning his experiences at the Contractors’ facilities and SYSC, the plaintiff believed that the staff members could do whatever they wanted and that complaining would not make things better because the staff would ignore his complaints. Also, he knew “from experience that staff would cover for each other.” (Id. ¶ 23). He further alleges that he “felt like staff were trained to not care, felt like there was no training on how to treat kids, [and] felt like staff enjoyed hurting residents[.]” (Id. ¶ 22).

The plaintiff first started understanding that the State and people running the facilities were responsible for his injuries while he was in prison. There, he first learned about a lawsuit from other inmates who had learned about it from the news. However, “[i]t was not until [the

plaintiff] spoke to a lawyer that [the plaintiff] began to understand that some of the treatment [the residents] received was not part of the permissible discipline.” (Id. ¶ 24).

ANALYSIS

The Contractor Defendants move separately to dismiss the plaintiff’s claims against them on multiple grounds. In support of their motions, the Contractor Defendants argue that the court should dismiss the plaintiff’s Complaint for the following reasons: 1) the plaintiff’s claims are time-barred pursuant to RSA 508:4, I, and RSA 508:8 and RSA 508:4-g; and 2) the plaintiff fails to state a claim upon which relief can be granted. (See generally Court Index ## 8, 14). The plaintiff objects, maintaining that his claims are not untimely under the discovery rule, equitable tolling and fraudulent concealment doctrines and that, under New Hampshire’s liberal pleading standard, his complaint alleges sufficient facts to survive the motion to dismiss stage. (See generally Court Index ## 11, 16). Because the grounds asserted by each defendant are essentially identical, and resolution of their motions depends largely on the same determinations of fact, except where noted below, the court analyzes their motions together.

I. The Complaint Does Not State Claims for Aiding and Abetting a Breach of Fiduciary Duty or Civil Conspiracy against Either Contractor Defendant

In Counts X and XIV, the plaintiff accuses the Contractor Defendants of: (a) aiding and abetting a breach of fiduciary duty; and (b) civil conspiracy. Both of these claims require proof that the respective Contractor Defendants engaged in deliberate, concerted action with another party to violate the plaintiff’s rights. See Invest Almaz v. Temple-Inland Forest Prods. Corp., 243 F.3d 57, 82–83 (1st Cir. 2001) (stating standard for aiding and abetting a breach of fiduciary duty); Jay Edwards, Inc. v. Baker, 130 N.H. 41, 47 (1987) (describing standard for civil conspiracy). Because the Complaint alleges no material facts from which such concerted action

can be inferred as to either Contract Defendant, these two counts are DISMISSED for failure to state a claim.

A. Aiding and Abetting a Breach of Fiduciary Duty

The New Hampshire Supreme Court has not yet had occasion to recognize the tort of aiding and abetting a breach of fiduciary duty. Nonetheless, the tort is established and well-defined, as, for example, in the Restatement (Second) of Torts, § 876(b):

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . [1] knows that the other's conduct constitutes a breach of duty and [2] gives substantial assistance or encouragement to the other so to conduct himself[.]

Courts that apply New Hampshire law predict that the New Hampshire Supreme Court will recognize this cause of action. See Invest Almaz, 243 F.3d at 82–83; Legacy Glob. Sports, LP v. St. Pierre, Slip Op. No. 218-2019-CV-198, 2020 WL 2027401, at *2 (Merrimack Cnty. Super. Ct., Apr. 27, 2020); Clare v. Bank of New England, Slip. Op. No. 218-2013-CV-00687, 2013 N.H. Super LEXIS 22, at *3–4, 9 (Merrimack Cnty. Super. Ct., Nov. 26, 2013); HayJo S.A. de CV v. Sponge-Jet, Inc., No. 14-cv-196-JD, 2015 WL 9459918, at *4 (D.N.H. Dec. 23, 2015); Tamposi v. Denby, 974 F. Supp. 2d 51, 61 (D. Mass. 2013); In Re Felt Mfg. Co., Inc., 371 B.R. 589, 615 (Bankr. D.N.H. 2007); But see Gill v. Devine, Millimet & Branch, P.A., Slip Op. No. 218-2012-CV-00660 (Rockingham Cnty. Super. Ct., Oct. 12, 2012) (ruling that the tort of aiding and abetting a breach of fiduciary duty had not been recognized).

Assuming a claim for aiding and abetting a breach of fiduciary duty may be pursued in New Hampshire, the Complaint does not contain facts to support this cause of action. To prevail, the plaintiff would need to prove that the Contractor Defendants had helped another party breach their fiduciary duty. The Complaint does not allege that either Contractor

Defendant did anything to encourage or facilitate the plaintiff's alleged abuse at SYSC or at any other placement, including with respect to each other.

Moreover, a Contractor Defendant cannot be found liable for aiding its own employees and agents in a breach of fiduciary duty. The cause of action for aiding and abetting a breach of fiduciary duty only exists to cover circumstances in which the defendant has no direct liability to the plaintiff as a fiduciary. That is not the case here. See, e.g., Mann v. GTCR Golder Rauner, L.L.C., 483 F. Supp. 2d 884, 916 (D. Ariz. 2007) (Under Delaware law, "a person who himself owes a fiduciary duty with respect to a transaction or course of conduct cannot be liable for aiding and abetting a breach of that same fiduciary duty by another because the same facts that would otherwise constitute aiding and abetting would constitute a primary breach of fiduciary duty."); In Re Amcast Indus. Corp., 365 B.R. 91, 112–13 (Bankr. S.D. Ohio 2007) (Under Ohio law "the action by its nature . . . requires participation by a non-fiduciary defendant); In re Verestar, Inc., 343 B.R. 444, 482 (Bankr. S.D.N.Y. 2006) ("[A] claim for aiding and abetting breach of fiduciary duty can only be sustained against a non-fiduciary.").

Accordingly, for the foregoing reasons, the Complaint does not state a claim against either Contractor Defendant for aiding and abetting a breach of fiduciary duty. The claim is thus DISMISSED as to both NFI and Mount Prospect.

B. Civil Conspiracy

To prevail on a claim of civil conspiracy, a plaintiff must prove that:

(A) Two or more persons and/or entities agreed to either:

- (1) pursue an unlawful objective or, alternatively,
- (2) use unlawful means to accomplish a lawful or unlawful objective; and

(B) At least one of the conspirators committed an overt act in furtherance of this agreement; and

(C) The plaintiff was harmed as a proximate result of the agreement.

Jay Edwards, Inc., 130 N.H. at 47; see Univ. Sys. of N.H. v. U.S. Gypsum Co., 756 F. Supp. 640, 652 (D.N.H. 1991); Censabella v. Town of Weare, No. 16-cv-490-AJ, 2017 WL 3996173, at *3 (D.N.H. Sept. 8, 2017). “For a civil conspiracy to exist, there must be an underlying tort which the alleged conspirators agreed to commit.” Univ. Sys., 756 F. Supp. at 652. Thus, the cause of action serves to impose liability on “all who commonly plan, take part in, further by cooperation, lend aid to, or encourage the wrongdoers’ acts.” Id.

The Complaint does not contain facts to support a claim for civil conspiracy. There are no material facts from which the court may infer that either Contractor Defendant and the State or any other entity entered into an agreement to engage in concerted action by abusing the plaintiff. No facts suggest that either NFI or Mount Prospect ever had any conversation, let alone any agreement, with any other defendant or with each other.

Further, a Contractor Defendant cannot be liable for civil conspiracy with its own employees, because, under the intracorporate conspiracy doctrine, each Contractor Defendant and its respective employees are considered to be the same “person.” See, e.g., Hoefer v. Fluor Daniel, Inc., 92 F. Supp. 2d 1055, 1057 (C.D. Cal. 2000):

The intracorporate conspiracy doctrine provides that, as a matter of law, a corporation cannot conspire with its own employees or agents. [citation and footnote omitted]. The logic for the doctrine comes directly from the definition of a conspiracy. A conspiracy requires a meeting of minds. [citation omitted]. It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

see also Grider v. City of Auburn, Ala., 618 F.3d 1240, 1261 (11th Cir. 2010) (“[T]he intracorporate conspiracy doctrine holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a

conspiracy.”); Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505, 509 (6th Cir. 1991) (“It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.”); Tabb v. District of Columbia, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (“[A] corporation cannot conspire with its employees[.]”); HRCC, Ltd. v. Hard Rock Cafe Int’l (USA), Inc., 302 F. Supp. 3d 1319, 1325 (M.D. Fla. 2016) (“According to the intracorporate conspiracy doctrine, however, a civil conspiracy claim will not succeed where the only members of the alleged conspiracy are a corporation and/or its officers.”).

Accordingly, the claims of civil conspiracy against NFI and Mount Prospect are DISMISSED.

II. The Plaintiff’s Negligence and Breach of Fiduciary Duty Claims Are Barred as to the Contractor Defendants by the Applicable Statutes of Limitations

The statute of limitations is an affirmative defense. Perez v. Pike Indus., Inc., 153 N.H. 158, 160 (2005); Glines v. Bruk, 140 N.H. 180, 181 (1995). A defendant has the obligation to allege and prove that the complaint was brought after the limitations period expired. Perez, 153 N.H. at 160. If the defendant meets this burden, then the plaintiff has the burden to prove that the claim is timely by virtue of the discovery rule, fraudulent concealment, equitable tolling or some other doctrine. Two statutes are applicable to the plaintiff’s claim: the general statute of limitations for personal actions (RSA 508:4), and the tolling provisions of the “disabilities statute” (RSA 508:8). The Court will consider each statute in turn.

A. The Disabilities Statute: RSA 508:8

The Court first considers RSA 508:8, the so-called “disabilities statute.” This statute provides that “[a]n infant or mentally incompetent person may bring a personal action within 2

years after such disability is removed.” In Norton v. Patten, 125 N.H. 413 (1984), the New Hampshire Supreme Court construed the term “infant” to mean a person who has not yet reached the statutory age of majority, as defined in RSA 21-B:1. The age of majority is 18. Thus, as construed by Norton, RSA 508:8 extends the limitations period for minors until their twentieth birthday.

As noted above, the plaintiff turned 20 in June of 2012, almost 11 years before he filed the instant case in March of 2023. Accordingly, the instant case was not filed within the limitations period established by RSA 508:8. RSA 508:8 does not contain its own discovery rule.

B. The General Statute of Limitations for Personal Actions: RSA 508:4

RSA 508:4 provides the statute of limitations for all personal actions. Under this statute:

[A]ll personal actions . . . may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

Here, the last “act or omission complained of” regarding NFI could have occurred no later than 2006, the last date it may be construed the plaintiff may have been at an NFI facility. With respect to Mount Prospect, such date is 2007. The instant case was thus brought no earlier than 16 years after the last “act or omission complained of.” The Contractor Defendants have therefore met their burden of showing that the instant case was filed more than three years after the conduct complained of, regardless of which Contractor Defendant is at issue.

This conclusion shifts the burden to the plaintiff to demonstrate grounds for the application of: (a) the discovery rule; (b) equitable tolling; (c) the doctrine of fraudulent

concealment; or (d) some other doctrine extending the limitations period. Perez, 153 N.H. at 160. Consistent with the standard of review for motions to dismiss, the court accepts all the plaintiff's well-pled facts and makes all rational inferences in the plaintiff's favor.

The court's task is to determine only whether the plaintiff has alleged facts which, if proven, might lengthen the limitations period to make this case timely. To be clear, if the plaintiff alleges sufficient facts to show that further discovery is necessary to make this determination, the motions to dismiss on limitations grounds must be denied and the issue preserved for summary judgment on a more complete record. However, if discovery would be futile because the Complaint itself fails even to allege grounds to apply the discovery rule or another tolling doctrine, the motions to dismiss will be granted.

(i) The Discovery Rule

It is well-settled that the "purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party." Petition of N.H. Div. For Children, Youth & Families, 173 N.H. 613, 618 (2020). The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run:

(1) a plaintiff must know or reasonably should have known that she has been injured; and (2) a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the defendant.

Lamprey v. Britton Constr., Inc., 163 N.H. 252, 257 (2012); see also Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 713 (2010); Perez, 153 N.H. at 160; Big League Ent., Inc. v. Brox Indus., Inc., 149 N.H. 480, 485 (2003).

The discovery rule does not reward ignorance of the law. The statute of limitations is not tolled due to a plaintiff's failure to acknowledge or otherwise understand their potential claims.

See Sullyville, LLC v. Town of Carroll, Slip Op. No. 2019-0240, 2021 WL 1310832, at *7 (N.H. Apr. 8, 2021) (non-precedential decision stating that “[t]he discovery rule does not toll the statute of limitations until a plaintiff discerns the legal theory by which his or her case will proceed; rather, it tolls the statute of limitations only when the injury and its causal relationship to the defendant’s act or omission remain unknown to the plaintiff.”); Ouellette v. Beaupre, 977 F.3d 127, 138 (1st Cir. 2020) (applying federal law and holding that “a plaintiff, once armed with the knowledge of his or her injury and its probable cause, cannot plead ignorance of the law to delay accrual.” (emphasis removed)); Maggi v. Grafton Ctny. Dep’t of Corrs., 633 F. Supp. 3d 508, 516 (D.N.H. 2022) (applying RSA 508:4 and holding that “even if the court were to assume the truth of [plaintiff’s] assertions about his lack of access to legal resources, that would not save his claims. His claims accrued on the date he should have reasonably known he was injured, not on the date he first learned he had a legal cause of action.”) (vacated and remanded on other grounds by Maggi v. Grafton Ctny. Dep’t Corrs., No 23-1002 2024 WL 3384813 (1st Cir. July 9, 2024)); Miller v. Pac. Shore Funding, 224 F. Supp. 2d 977, 986–87 (D. Md. 2004) (“Knowledge of facts, however, not actual knowledge of their legal significance, starts the statute of limitations running. . . .The discovery rule, in other words, applies to discovery of facts, not to discovery of law. Knowledge of the law is presumed.” (internal citations omitted)); Marcum v. Columbia Gas Transmission, LLC, 549 F. Supp. 3d 408, 421, (E.D. Pa. 2021) (“Plaintiffs’ ignorance of a legal cause of action does not, in itself, require application of the discovery rule.”). In this case, the plaintiff proffers several reasons why he may have not discovered the law governing his claims. However, the plaintiff’s failure to bring his claims within the applicable time period due to his unawareness of the law is not grounds to apply the discovery rule.

For discovery rule purposes, a plaintiff becomes aware of an injury as soon as he can reasonably discern that he has suffered “some harm” caused by a defendant’s conduct. Beane, 160 N.H. at 713; see also Balzotti Glob. Grp., LLC v. Shepherds Hill Proponents, LLC, 173 N.H. 314, 321 (2020); Furbush v. McKittrick, 149 N.H. 426, 431 (2003) (“[T]he discovery rule is not intended to toll the statute of limitations until the full extent of the plaintiff’s injury has manifested itself.”). Thus, a latent injury will toll the limitations period, while a patent injury will not, even if the long-term consequences of the patent injury cannot be known. See Furbush, 149 N.H. at 431; see generally Clay v. Kuhl, 727 N.E.2d 217, 222 (Ill. 2000) (applying Illinois law) (“The plaintiff contends, however, that her injuries were latent to some extent and did not fully manifest themselves until years after the abuse occurred. We do not believe that the plaintiff’s alleged failure to fully discover the nature of her injuries is sufficient to delay the running of the limitations period. There is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations.”); see also Stephens v. Clash, 796 F.3d 281, 288 (3d Cir. 2015) (“A plaintiff’s ignorance regarding the full extent of his injury is irrelevant to the discovery rule’s application, so long as the plaintiff discovers or should have discovered that he was injured.”).

In Rowe v. John Deere, 130 N.H. 18 (1987), the plaintiff was injured when he struck his head while using machinery manufactured by the defendant. Immediately after the accident, the plaintiff was diagnosed with a depressed skull fracture. The plaintiff recovered quickly. Six years later he began to suffer grand mal seizures, purportedly as a result of the accident. The supreme court held that the plaintiff had discovered his injury at the time of the accident, even though the initial measure of damages was “nominal” compared with the potential damages for the later occurring harm. Id. at 21. Thus, a plaintiff is likely to immediately discover an injury

caused by a sudden, traumatic, violent event, and an injury which may later arise from the initial injury will not toll the statute of limitations. See, e.g., Hollander v. Brown, 457 F.3d 688, 692 (7th Cir. 2006) (applying Illinois law):

courts distinguish between injuries caused by sudden, traumatic events and those that have a late or insidious onset. For limitations purposes, a sudden, traumatic event is one that, because of its force or violence, permits the law to presume that the event immediately placed the plaintiff on notice of her injury and a right of action. When a plaintiff suffers this type of injury, her cause of action accrues on the date of the traumatic event, and the limitations period does not begin anew simply because a latent condition later may arise from the same occurrence. The rationale is that the nature and circumstances surrounding the traumatic event are such that the injured party is thereby put on notice that actionable conduct might be involved.

(internal citations and quotation marks omitted).

Here, the plaintiff claims that he was injured as a result of the Contractor Defendants' failure to adequately oversee their staff with respect to hiring, training, supervision and promulgation of policies. Thus, the "act or omission complained of" is each Contractor Defendants' breach of duty. See RSA 508:4. According to the Complaint, those breaches led to multiple physical assaults, unjustified strip searches, and solitary confinements. In his relatively brief stay at NFI, on at least two instances, two to three staff members beat the plaintiff while physically restraining him, and on at least two other occasions, the staff subjected the plaintiff to excessive strip searches without any justification. At Mount Prospect, the plaintiff was physically abused by the staff members on multiple occasions, including being grabbed by his arm and pinned to the ground, being slammed on the floor causing head injuries, and being punched. Some of these assaults required the plaintiff to seek medical attention, as well as causing long-term injuries. The incidents of physical and psychological abuse the plaintiff describes constitute injuries that are sudden, traumatic, violent, painful, or extremely unpleasant. There is nothing subtle or latent about the events alleged to have occurred at the facilities run by

either Contractor Defendant. The plaintiff necessarily knew of these assaults at the time they happened.

As a child, the plaintiff may have been unaware of the long-term psychological and emotional effects of the treatment he says he endured. However, those harms were caused by the same “act or omission complained of,” specifically, the Contractor Defendants’ alleged lack of care in hiring, training and supervising staff, and promulgating policies. See RSA 508:4. Thus, under settled New Hampshire law, accepting all the well-pled facts in the Complaint, the court must find that the plaintiff was aware that he had been injured as a result of the Contractor Defendants’ failure to control their staff members because the plaintiff knew that he had been assaulted and physically restrained by staff members, individually and in groups, at both facilities on multiple occasions.

Under the discovery rule, the limitations period in this case did not begin to run until the plaintiff either (a) discovered, or (b) should have discovered through the exercise of reasonable diligence, that the Contractor Defendants’ breach of duty was a proximate cause of his injury.

See Troy v. Bishop Guertin High Sch., 176 N.H. 131, 134 (2023) (citing RSA 508:4).

Knowledge of the Contractor Defendants’ causal role cannot be automatically inferred from the fact that the plaintiff knew that his injury was caused by their employees, acting overtly under color of their authority, on their respective premises. See id. at 138 (“We decline to establish a per se rule that the plaintiff’s knowledge of the abuser’s employer is alone sufficient to trigger the application of the discovery rule. This inquiry presents a question of fact.”). However, “[a] plaintiff need not be certain of this causal connection; the possibility that it existed will suffice to obviate the protections of the discovery rule.” Id. at 137 (citing Beane, 160 N.H. at 713); see also Balzotti, 173 N.H. at 321; Lamprey, 163 N.H. at 257; Pichowicz v. Watson Ins. Agency,

Inc., 146 N.H. 166, 168 (2001). “[T]he discovery rule employs an objective standard” to determine whether, through the “exercise of reasonable diligence,” a plaintiff should have discovered sufficient evidence of the defendant’s role in causing his injury. Troy, 176 N.H. at 137.

Here, the same alleged facts establishing the plaintiff’s knowledge of harm also demonstrate that the plaintiff knew or should have known that the Contractor Defendants’ breach of duty was a proximate cause of his alleged injury. In fact, the plaintiff does not allege isolated incidents, committed in secret, by a rogue staff member of a large institution. Rather, the plaintiff claims frequent assaults upon himself and others, involving multiple staff members, committed openly and in view of both other residents and other staff members. Additionally, the plaintiff claims that he believed that the staff members at the Contractors’ facilities “could do whatever they wanted,” that there “was no point in complaining because staff would ignore [his] complaints” and that he knew “the staff would cover for each other.” (Declaration ¶ 23). He further alleges that he “felt like staff were trained to not care, felt like there was no training on how to treat kids, [and] felt like staff enjoyed hurting residents[.]” (Id. ¶ 22). These assertions reflect the plaintiff’s knowledge that the institutions had a responsibility to supervise and control the staff members and were failing to fulfill it. Assuming the truth of the plaintiff’s allegations, then at the very least, the Contractor Defendants failed to supervise their staff and monitor their respective facilities and thereby breached both their fiduciary obligations to the plaintiff and their common law duty of reasonable care.

Moreover, the Contractor Defendants’ role in causing the plaintiff’s injury is not inferred from the mere fact that the plaintiff’s assailants received paychecks and W2s from NFI and Mount Prospect. The plaintiff’s case is distinguishable from Troy. In Troy the plaintiff, a

female high school student, alleged two acts of sexual assault, committed in private, by a high school teacher. Troy, 176 N.H. at 133–35. Unbeknownst to the plaintiff, the school had hired the teacher despite knowing of his previous conviction for unlawful sexual contact with a different female high school student at a different school, which was owned and operated by the same religious order. Id. at 133–34. However, the school did not alert students or parents concerning the teacher’s status as a sex offender who preyed on a similar victim. Id. The school took no action to limit or monitor the teacher’s contact with students. Id. It would be hard to imagine how the plaintiff in Troy could have known from the abuse she endured that the school (and its owner) shouldered any of the blame for the covert criminal acts of a lone employee.

Conversely, in this case, taking the allegations as true, it is difficult to imagine how the plaintiff could not see a problem with the conduct of NFI’s and Mount Prospect’s staff members. Indeed, the plaintiff—unlike the plaintiff in Troy who became aware of the offending teacher’s history with the school only as a result of later public disclosures by the school itself—does not allege a single fact that he learned about NFI or Mount Prospect since leaving their facilities in or around 2011. He does not point to the discovery of any fact relating to NFI’s or Mount Prospect’s hiring processes, their knowledge of staff members’ misconduct or their promulgation of policies. He points to no news articles or publicity relating to NFI or Mount Prospect. Rather, he states only that he first heard about a lawsuit while in prison, after other inmates “spoke about [the lawsuit] after seeing it on the news.” (Declaration ¶ 24). And he further states that he only began understanding that “some of the treatment [the residents at the facilities] received was not part of the permissible discipline” after he spoke to a lawyer. (Id.). None of these conclusory assertions, even taken as true, constitutes the discovery of a fact pertinent to NFI’s or Mount

Prospect's causal relationship to the plaintiff's injury of a kind that would have tolled the statute of limitations. Cf. Miller, 224 F. Supp. 2d at 986–87.

The plaintiff's remaining arguments are unpersuasive. First, the plaintiff contends that his breach of fiduciary duty claim against each Contractor Defendant is tolled until he had actual knowledge of a breach by that defendant. The court disagrees. New Hampshire law is clear that tolling a statute of limitations period is not dependent or otherwise reliant upon the fiduciary disclosing its wrongdoing. See Beane, 160 N.H. at 714–15 (“[T]here is no support in our case law for the proposition that a limitations period is tolled in fiduciary cases until the fiduciary discloses his or her misconduct.”). Second, no amount of additional discovery the plaintiff may engage in regarding NFI's or Mount Prospect's policies and procedures could reveal information that would make it more likely that the plaintiff could avail himself of the discovery rule. As explained above, the plaintiff's Complaint shows that he already had all the information he needed to determine that the Contractor Defendants were the proximate cause of his injuries by the time he turned 20.

Ultimately, the plaintiff had sufficient information about both NFI's and Mount Prospect's institutional failures prior to the expiration of any applicable limitations period. Nor did the plaintiff allege anywhere in his Complaint that he learned any new facts about NFI's or Mount Prospect's role in his alleged abuse after he turned 20. For these reasons, the Court concludes that the discovery rule does not toll the statute of limitations.

ii. Fraudulent Concealment and Equitable Tolling

The Court has found that (a) the discovery rule did not toll the start of the limitations period in RSA 508:4 beyond the plaintiff's twentieth birthday, and, therefore, (b) the applicable

limitations period is that established by RSA 508:8, which gave the plaintiff until age 20 to file this action.

The plaintiff argues, however, that two equitable doctrines apply here: fraudulent concealment and equitable tolling. The New Hampshire Supreme Court views both these doctrines as implied exceptions to all statutes of limitations. See Lakeman v. La France, 102 N.H. 300, 303 (1959) (adopting the majority rule that “fraudulent concealment of a cause of action from the one in whom it resides by the one against whom it lies constitutes an implied exception to the statute of limitations” and rejecting the “contrary view that fraudulent concealment does not toll the operation of the statute unless the Legislature has expressly so stated in the statute itself”); Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 623–24 (2005).

The doctrine of fraudulent concealment tolls the limitations period when a defendant, by concealment or other action, intentionally prevents the plaintiff from acquiring material information. Lamprey, 163 N.H. at 259–60; See also Lakeman, 102 N.H. at 303–304. Thus, fraudulent concealment

. . . requires something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to a cause of action—some actual artifice to prevent knowledge of the facts or some representation intended to exclude suspicion and prevent inquiry.

Lamprey, 163 N.H. at 259–60 (internal quotation marks and brackets omitted); see also Maggi, 633 F. Supp. 3d at 516 (“The burden is on the plaintiff invoking the fraudulent concealment doctrine to present some evidence of an affirmative act on the part of the defendant to conceal or cover up the underlying wrongful conduct that gave rise to the plaintiff’s asserted injury.” (internal citations omitted)); Sykes v. RBS Citizens, N.A., 2 F. Supp. 3d 128, 143 (D.N.H. 2014).

Even when there is fraudulent concealment, the doctrine provides little, if anything, in the way of relief that the discovery rule does not also provide. See Beane, 160 N.H. at 714 (“The fraudulent concealment rule states that when facts essential to the cause of action are fraudulently concealed, the statute of limitations is tolled until the plaintiff has discovered such facts or could have done so in the exercise of reasonable diligence.”) (quoting Bricker v. Putnam, 128 N.H. 162, 165 (1986) (brackets omitted)); see also Lakeman, 102 N.H. at 303; Furbush, 149 N.H. at 431; Sykes, 2 F. Supp. 3d at 143.

In this case, the plaintiff has not pointed to any affirmative act on the part of NFI or Mount Prospect to conceal or cover up any fact. Indeed, as noted above, the plaintiff has not pointed to any fact he learned after leaving the facilities run by the Contractor Defendants in 2007. Therefore, the doctrine of fraudulent concealment does not apply to the plaintiff’s claims.

The New Hampshire Supreme Court has not developed a substantial body of case law concerning the doctrine of equitable tolling. The Court recognized the doctrine in Portsmouth Country Club, explaining that it allows a plaintiff to initiate an action beyond the statutory limitations period when that plaintiff had been “prevented in some extraordinary way from exercising his or her rights.” 152 N.H. at 623 (emphasis added and quotations marks omitted). The doctrine “applies principally if the plaintiff is actively misled by the defendant about the cause of action.” Kierstead v. State Farm Fire & Cas. Co., 160 N.H. 681, 688 (2010) (quotations marks omitted).

To be eligible for equitable tolling, a plaintiff’s access to the justice system must be frustrated despite the plaintiff’s diligence. See, e.g., Irwin v. Dep’t of Veterans Affairs, 498 U.S. 89, 96 (1990) (applying federal law and holding that:

Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his

judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.

(internal footnotes omitted)); Maggi, 633 F. Supp. 3d at 518 (applying federal law and noting that, “in unusual cases, certain limitations of imprisonment may rise to the level of ‘extraordinary circumstance’” but “the usual problems inherent in being incarcerated, such as a prisoner’s lack of prior legal training or limited access to legal resources in a prison’s library, do not, by themselves, justify equitable tolling” (internal ellipses and citation omitted)).

Here, the plaintiff was not prevented from discovering either necessary facts or necessary law. He was not actively misled by NFI or Mount Prospect as to his ability to access the courts. He was not threatened with retaliation for accessing the courts. He was not deprived of the ability to seek counsel or advice from third parties.

To this end, the plaintiff alleges that he did not raise any issues with the abuses he experienced because he believed that his complaints would be ignored, as well as suggesting that he did not bring a lawsuit because of his emotional distress and inability to understand that the State and Contractors Defendants had responsibility for his injuries. However, these facts cannot reasonably support a conclusion that the plaintiff was “prevented in some extraordinary way from exercising his or her rights.” See Portsmouth Country Club, 152 N.H. at 623. Thus, the doctrine of equitable tolling does not apply to the plaintiff’s claims.

CONCLUSION

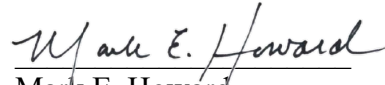
Pursuant to RSA 508:4 and 508:8, this action is not timely as the plaintiff filed this case well after his twentieth birthday. The plaintiff attained 20 years of age in June of 2012. He filed

this case in March of 2023, almost 11 years after the expiration of the statute of limitations, and no other tolling provisions apply.

Accordingly, all of the plaintiff's claims against the Contractor Defendants are
DISMISSED WITH PREJUDICE.

So Ordered.

Date: February 27, 2025


Mark E. Howard
Chief Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/27/2025

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

JOHN DOE #748

v.

STATE OF NEW HAMPSHIRE,
DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.
218-2023-CV-00435

DAVID MEEHAN v. STATE OF NEW HAMPSHIRE, et al.
(Consolidated YDC/YDSU Cases)
217-2020-CV-26

ORDER

The matter before the court is Defendant Orion House Incorporated's ("Orion's") Motion to Dismiss plaintiff John Doe 748's claims against it. (218-2023-CV-00435 ("00435"), Court Index # 6 (Mot. Dismiss)). For the reasons set forth below the motion is GRANTED. All claims against Orion in this case are DISMISSED WITH PREJUDICE. Specifically:

- (A) Counts X (aiding and abetting a breach of fiduciary duty) and XIV (civil conspiracy) are DISMISSED for failure to state a claim upon which relief may be granted; and
- (B) Counts VIII (breach of fiduciary duty), XI (negligent hiring, training, supervision and retention), and XII (negligence) are DISMISSED because they were filed after the expiration of the statute of limitations.

This resolves all counts against Orion.¹

¹ The remaining counts do not allege any claims against Orion. Counts I through VII (set forth in the Master Complaint) and Counts IX and XIII (set forth in the Short Form Complaint) assert claims against the State Defendants only.

DEFINING THE COMPLAINT

The Complaint in this case comprises the following three documents:

A. A 50-page “Amended Master Complaint,” filed in Meehan v. State, 217-2020-CV-26 on July 8, 2022. (Meehan Court Index # 70). (The Amended Master Complaint does not mention John Doe 748 or any of the facts about his life. Likewise, it does not contain any reference to Orion or any other contractor defendant.)

B. A 38-page “Amended Short Form Complaint” filed in John Doe #748 v. State, 00435. (Court Index # 1). (The Short Form Complaint contains allegations specific to the plaintiff and Orion. The Short Form Complaint contains an Addendum, as well as a separately filed, sealed Supplement that contains John Doe 748’s true name and date of birth).

C. A 4-page Declaration, signed by the plaintiff, filed as Exhibit A to the Objection to the Motion to Dismiss in John Doe #748, 00435 (Court Index # 11 (cited hereinafter as “Declaration”)). The Declaration contains the plaintiff’s factual response to Orion’s affirmative limitations defense.

These 92 pages will be referred to collectively as “the Complaint.”

PROCEDURAL HISTORY AND RELEVANT DATES

The plaintiff was born in April 1988.² He turned 20 in April 2008. The Complaint in this case was filed on March 28, 2023, when the plaintiff was 34 years old.

As relevant to the instant motion, the plaintiff claims that he was subjected to physical and psychological abuse at a residential juvenile facility operated by Orion. The plaintiff alleges that the abuse occurred during roughly five to six months in the calendar years between

² The plaintiff’s precise date of birth is provided in the Sealed Supplement to the Short Form Complaint. (00435, Court Index # 3). The court recites only the month and year of birth to protect the plaintiff’s identity. The day of the month is not material to any determination in this Order.

November 2003 and April or May of 2004, when he was approximately 15 to 16 years old.³ The plaintiff does not allege that Orion engaged in any tortious behavior after that time.

Thus, the plaintiff initially filed suit approximately 18 years after the last possible date of abuse, and roughly 14 years after he turned 20.

FACTUAL BACKGROUND

The following facts are taken from the Complaint.

A. Events That Occurred Prior to Placement at Orion House

According to the Declaration, the plaintiff lived with his mother and father until the age of 13, when his mother left the family. He states that after she left, he “started getting in trouble.” (00435, Declaration ¶ 4). The plaintiff was placed in a foster home when he was 14. He was the youngest of five children living in the home. The plaintiff stayed in the foster home for roughly four months. While at the home, the plaintiff learned to cook methamphetamine, started using marijuana and methamphetamine with his foster brothers, and occasionally used marijuana with his foster parents.

On occasion, the foster parents would lock the plaintiff in his room for days, and in one instance they locked him in a closet for four days. Upon his biological father’s learning about the conditions at the foster home and informing the State, the plaintiff left the foster home and briefly lived with his father. The State then removed the plaintiff to Orion House. He was 15 years old at the time.

³ The plaintiff states that he was approximately 15 years old when he went to Orion House. (00435, Declaration ¶ 6). He states in the Short Form Complaint that he was in Orion House for a few months from 2004 to 2005 when he was 15 or 16 years old. (00435, Court Index #1 ¶¶ 6, 8). The plaintiff further states in the Declaration that he transferred from Orion House to the Youth Development Center (“YDC”) and stayed at the YDC for a little less than a year before aging out. (See 00435, Declaration ¶ 11). He aged out of YDC in April of 2005. (00435, Court Index #1 ¶ 8). Finally, the plaintiff explains in his Declaration that staff from Orion took him to his father’s house for Thanksgiving but does not provide the year. (Id. ¶ 10). Therefore, the Court infers from the totality of the statements in the Declaration that the plaintiff was placed in Orion House around November 2003, and he left Orion House around April or May of 2004. More precise dates are immaterial for resolution of the instant motion.

B. Events at Orion's Facility

While at Orion House, the plaintiff alleges that he was physically and verbally abused by staff members and residents. On multiple occasions, staff members forced him to sit in a corner and then hand-cuffed him and dragged him down flights of stairs. Staff members, when asked what happened, would state the plaintiff had fallen down the stairs and injured himself. On one occasion, four residents attacked the plaintiff in his room and broke his jaw. Orion staff members denied the plaintiff any medical treatment for the broken jaw.

A female and male staff member fed the plaintiff cocaine, heroin, and marijuana, on multiple occasions, often bringing the drugs into his room. The male staff member would take drug tests for the plaintiff. The female staff member transported the plaintiff to his father's house on Thanksgiving, and he and the staff member did lines of cocaine during the entire drive. This conduct worsened his drug habit that had begun prior to his arrival at Orion.

A male staff member strip-searched the plaintiff multiple times, including every time he left the facility. This male staffer would make comments about the plaintiff's appearance, including the size of his genitalia and that he wore glasses. Staff told the plaintiff that his mother left because she hated him, that his father did not want to talk to him, and that he was at Orion House because his family did not want him. These comments affected the plaintiff's relationship with his father. Staff members also called the plaintiff a retard, fat, slow, and stupid. Further, staff members would encourage other residents to make fun of the plaintiff.

The plaintiff's father became concerned during the Thanksgiving visit after seeing that his son was high and covered in bruises. When asked, the plaintiff told his father that the drugs came from Orion staff members. At this point, the plaintiff "knew [that he] needed to get out of Orion House, so [he] acted up in order to get a different placement." (00435, Declaration ¶ 10).

The plaintiff was transferred to the Youth Development Center (“YDC”) around the time he turned 16.

C. Events Occurring after the Plaintiff Left Orion House

The plaintiff states that the worst abuse occurred while he stayed at the YDC. When he first arrived, he was stripped naked and forced to sit in a shower for 4.5 hours. After the 4.5 hours, a male staff member had him get dressed and escorted him to another room upstairs. Once in the room, the staff member ripped off the plaintiff’s boxers and strapped him to a chair naked. The plaintiff remained there all night and was told it was for “observation” to see how he reacted. He was stripped and locked in the chair again on numerous occasions. Staff members told him this was punishment for refusing to attend school, but the plaintiff never voiced such refusals. When stripped, staff told the plaintiff he would get his clothes back when it was convenient for them.

Staff would lock the plaintiff in his room on numerous occasions and placed him in isolation at least 2 to 3 times. This included transferring him to “max,” a building believed to be called King Cottage. When in isolation or locked in his room, staff took all bedding and sheets out of the room and would not allow the plaintiff out for meals. Further, staff would turn up the heat in the room to make it uncomfortably hot and refuse to let the plaintiff leave to use the bathroom. As a result, he would urinate in a hole in the floor near a wall in his room. On one occasion, he was locked in his room for over two days. The plaintiff also recalls that staff members denied him use of the shower for over a month.

The plaintiff was subjected to additional physical abuse by staff and residents. He was pepper sprayed numerous times during his transfers to King Cottage. He also recalls one instance where physical abuse was precipitated by a fight with another resident. The staff

member physically pulled him back to his room. Staff members would also handcuff the plaintiff and drag him back to his room by the handcuffs, which were unreasonably tight and painful. Staff would push him to the floor when handcuffing him. Further, one staff member carried a light stick and would use it to hit the plaintiff in the legs.

Staff members would make fun of the plaintiff's appearance and weight, including the fact that he wore glasses, and ask other residents to point at the plaintiff while he was strapped to the chair. Staff would also tell the plaintiff that his parents did not care about him. Furthermore, during his time at the YDC, the plaintiff was also strip searched at least 15 times. Staff members would make the plaintiff lift his penis and spread his butt cheeks and cough during the searches. The staff member who transferred the plaintiff to King College informed the plaintiff that he "got this car by beating on little punks like you." (00435, Declaration ¶ 13).

During his time in placement, the plaintiff received minimal schooling. Even when allowed to attend class, staff would not provide him any educational material. He did not earn his high school diploma until 2012 while incarcerated. The plaintiff further states that he dealt with mental health issues following his entry into foster care but was routinely denied any help. He was diagnosed with anxiety and depression while at the Concord State Prison. The plaintiff believes that other mental health issues exist for which he has not received treatment.

D. Lack of Discovery

In the Declaration, the plaintiff states that he really tried to forget about his experiences in placement at Orion House and the YDC. He turned to drugs to help him forget and has been unable to get over his drug problem since going into placement. He further states that, while incarcerated, he saw a notice on the wall at the Concord State Prison in 2022 that stated individuals in the facilities he stayed in might have a claim. The plaintiff articulates that "[t]his

was the first time I realized that there might be other people responsible for the physical and psychological abuse I suffered.” (00435, Declaration ¶ 20).

ANALYSIS

I. The Complaint Does Not State Claims for Aiding and Abetting a Breach of Fiduciary Duty or Civil Conspiracy

In Counts X and XIV, the plaintiff accuses Orion of: (a) aiding and abetting a breach of fiduciary duty; and (b) civil conspiracy. Both of these claims require proof that Orion was engaged in deliberate, concerted action with another party to violate the plaintiff’s rights. See Invest Almaz v. Temple-Inland Forest Prods. Corp., 243 F.3d 57, 82-83 (1st Cir. 2001)(stating standard for aiding and abetting a breach of fiduciary duty); Jay Edwards, Inc. v. Baker, 130 N.H. 41, 47 (1987) (describing standard for civil conspiracy). Because the Complaint alleges no material facts from which such concerted action can be inferred, these two counts are DISMISSED for failure to state a claim.

A. Aiding and Abetting a Breach of Fiduciary Duty

The New Hampshire Supreme Court has not yet had occasion to recognize the tort of aiding and abetting a breach of fiduciary duty. Nonetheless, the tort is established and well-defined, as, for example, in the Restatement (Second) of Torts, § 876(b):

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . [1] knows that the other's conduct constitutes a breach of duty and [2] gives substantial assistance or encouragement to the other so to conduct himself[.]

Courts that apply New Hampshire law predict that the New Hampshire Supreme Court will recognize this cause of action. See Invest Almaz, 243 F.3d at 82–83; Legacy Glob. Sports, LP v. St. Pierre, Slip Op. No. 218-2019-CV-198, 2020 WL 2027401, at *2 (Merrimack County Superior Court, Apr. 27, 2020); Clare v. Bank of New England, Slip. Op. No. 218-2013-CV-

00687, 2013 N.H. Super LEXIS 22, at *3-4, 9 (Merrimack County Superior Court, Nov. 26, 2013); HayJo S.A. de CV v. Sponge-Jet, Inc., No. 14-cv-196-JD, 2015 WL 9459918, at *4 (D.N.H. Dec. 23, 2015); Tamposi v. Denby, 974 F. Supp. 2d 51, 61 (D. Mass. 2013); In Re Felt Mfg. Co., Inc., 371 B.R. 589, 615 (Bankr. D.N.H. 2007); but see Gill v. Devine, Millimet & Branch, P.A., Slip Op. No 218-2012-CV-00660 (Rockingham County Superior Court, Oct. 12, 2012) (ruling that the tort of aiding and abetting a breach of fiduciary duty had not been recognized).

Regardless, even assuming a claim for aiding and abetting a breach of fiduciary duty may be pursued in New Hampshire, the Complaint does not contain facts to support this cause of action. To prevail, the plaintiff would need to prove that Orion had helped another party breach its fiduciary duty. The Complaint does not allege that Orion did anything to encourage or facilitate the plaintiff's alleged abuse at YDC or at any other placement.

Moreover, Orion cannot be found liable for aiding its own employees and agents in a breach of fiduciary duty. The cause of action for aiding and abetting a breach of fiduciary duty only exists to cover circumstances in which the defendant has no direct liability to the plaintiff as a fiduciary. That is not the case here. See, e.g., Mann v. GTCR Golder Rauner, L.L.C., 483 F. Supp. 2d 884, 916 (D. Ariz. 2007) (Under Delaware law, "a person who himself owes a fiduciary duty with respect to a transaction or course of conduct cannot be liable for aiding and abetting a breach of that same fiduciary duty by another because the same facts that would otherwise constitute aiding and abetting would constitute a primary breach of fiduciary duty."); In Re Amcast Indus. Corp., 365 B.R. 91, 112–13 (Bankr. S.D. Ohio 2007) (Under Ohio law "the action by its nature, . . . requires participation by a non-fiduciary defendant); In re Verestar, Inc., 343

B.R. 444, 482 (Bankr. S.D.N.Y. 2006) (“[A] claim for aiding and abetting breach of fiduciary duty can only be sustained against a non-fiduciary.”).

Accordingly, for the foregoing reasons, the Complaint does not state a claim against Orion for aiding and abetting a breach of fiduciary duty. The claim is thus DISMISSED.

B. Civil Conspiracy

To prevail on a claim of civil conspiracy, a plaintiff must prove that:

(A) Two or more persons and/or entities agreed to either:

(1) pursue an unlawful objective or, alternatively,

(2) use unlawful means to accomplish a lawful or unlawful objective; and

(B) At least one of the conspirators committed an overt act in furtherance of this agreement; and

(C) The plaintiff was harmed as a proximate result of the agreement.

Jay Edwards, Inc., 130 N.H. at 47; see Univ. Sys. of N.H. v. U.S. Gypsum Co., 756 F. Supp. 640, 652 (D.N.H. 1991); Censabella v. Town of Weare, No. 16-cv-490-AJ, 2017 WL 3996173, at *3 (D.N.H. Sept. 8, 2017). “For a civil conspiracy to exist, there must be an underlying tort which the alleged conspirators agreed to commit.” Univ. Sys., 756 F. Supp. at 652. Thus, the cause of action serves to impose liability on “all who commonly plan, take part in, further by cooperation, lend aid to, or encourage the wrongdoers' acts.” Id.

The Complaint does not contain facts to support a claim for civil conspiracy. There are no material facts from which the Court may infer that Orion and the State, or any other entity entered into an agreement to engage in concerted action by abusing the plaintiff. No facts suggest that Orion ever had any conversation, let alone any agreement, with any other defendant.

Further, Orion cannot be liable for civil conspiracy with its own employees, because, under the intracorporate conspiracy doctrine, Orion and its employees are considered to be the

same “person.” See, e.g., Hoefer v. Fluor Daniel, Inc., 92 F. Supp. 2d 1055, 1057 (C.D. Cal. 2000):

The intracorporate conspiracy doctrine provides that, as a matter of law, a corporation cannot conspire with its own employees or agents. [citation and footnote omitted]. The logic for the doctrine comes directly from the definition of a conspiracy. A conspiracy requires a meeting of minds. [citation omitted]. It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

see also Grider v. City of Auburn, Ala., 618 F.3d 1240, 1261 (11th Cir. 2010) (“[T]he intracorporate conspiracy doctrine holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy.”); Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505, 509 (6th Cir. 1991) (“It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.”); Tabb v. District of Columbia, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (“[A] corporation cannot conspire with its employees[.]”); HRCC, Ltd. v. Hard Rock Cafe Int’l (USA), Inc., 302 F. Supp. 3d 1319, 1325 (M.D. Fla. 2016) (“According to the intracorporate conspiracy doctrine, however, a civil conspiracy claim will not succeed where the only members of the alleged conspiracy are a corporation and/or its officers.”).

For these reasons, the claim of civil conspiracy against Orion is DISMISSED.

II. The Plaintiff’s Negligence and Breach of Fiduciary Duty Claims Are Barred by the Applicable Statutes of Limitations

The statute of limitations is an affirmative defense. Perez v. Pike Indus., Inc., 153 N.H. 158, 160 (2005); Glines v. Bruk, 140 N.H. 180, 181 (1995). A defendant has the obligation to

allege and prove that the complaint was brought after the limitations period expired. Perez, 153 N.H. at 160. If the defendant meets this burden, then the plaintiff has the burden to prove that the claim is timely by virtue of the discovery rule, fraudulent concealment, equitable tolling, or some other doctrine. Two statutes are applicable to the plaintiff's claim: the general statute of limitations for personal actions (RSA 508:4); and the tolling provisions of the "disabilities statute" (RSA 508:8). The Court will consider each statute in turn.

A. The Disabilities Statute: RSA 508:8

The Court first considers RSA 508:8, the so-called "disabilities statute." This statute provides that "an infant or mentally incompetent person may bring a personal action within 2 years after such disability is removed." In Norton v. Patten, 125 N.H. 413 (1984), the New Hampshire Supreme Court construed the term "infant" to mean a person who has not yet reached the statutory age of majority, as defined in RSA 21-B:1. The age of majority is eighteen. RSA 21-B:1. Thus, as construed by Norton, RSA 508:8 extends the limitations period for minors until their twentieth birthday.

As noted above, the plaintiff turned twenty in April 2008, approximately 14 years before he filed the instant case. Accordingly, the instant case was not filed within the limitations period established by RSA 508:8. RSA 508:8 does not contain its own discovery rule.

C. The General Statute of Limitations for Personal Actions: RSA 508:4

RSA 508:4 provides the statute of limitations for all personal actions. Under this statute:

[A]ll personal actions . . . may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

The last “act or omission complained of” occurred no later than April 2004, the year that the plaintiff left Orion. The instant case was thus brought more than 18 years after the last “act or omission complained of.”⁴ Orion has therefore met its burden of showing that the instant case was filed more than three years after the conduct at issue.

This shifts the burden to the plaintiff to demonstrate grounds for the application of: (a) the discovery rule; (b) equitable tolling; (c) the doctrine of fraudulent concealment; or (d) some other doctrine extending the limitations period. Perez, 153 N.H. at 160. Consistent with the standard of review for motions to dismiss, the Court accepts all of the plaintiff’s well-pled facts, and makes all rational inferences in the plaintiff’s favor.

The Court’s task is to determine only whether the plaintiff has alleged facts which, if proven, might lengthen the limitations period to make this case timely. To be clear, if the plaintiff alleges sufficient facts to show that discovery is necessary to make this determination, the motion to dismiss on limitations grounds must be denied and the issue preserved for summary judgment on a more complete record. However, if discovery would be futile because the Complaint itself fails even to allege grounds to apply the discovery rule or another tolling doctrine, the motion to dismiss will be granted.

(i) The Discovery Rule

It is well-settled that the “purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party.” Petition of N.H. Div. For Children, Youth &

⁴ The Court notes that if it were to adopt the dates the plaintiff gives in the Complaint for his placement at Orion House rather than the dates the Court infers based on the Declaration, the instant cause would be brought more than 17 years after the last act or omission complained of that occurred at Orion House. Thus, either timeline falls well outside the 3-year limitation.

Families, 173 N.H. 613, 618 (2020). The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run:

(1) a plaintiff must know or reasonably should have known that she has been injured; and (2) a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the defendant.

Lamprey v. Britton Constr., Inc., 163 N.H. 252, 257 (2012); see also Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 713 (2010); Perez, 153 N.H. at 160; Big League Entm't, Inc. v. Brox Indus., Inc., 149 N.H. 480, 485 (2003).

The discovery rule does not reward ignorance of the law. The statute of limitations is not tolled due to a plaintiff's failure to acknowledge or otherwise understand their potential claims. See Sullyville, LLC v. Town of Carroll, Slip Op. No. 2019-0240, 2021 WL 1310832, at *7 (N.H. Apr. 8, 2021) (non-precedential decision stating that “[t]he discovery rule does not toll the statute of limitations until a plaintiff discerns the legal theory by which his or her case will proceed; rather, it tolls the statute of limitations only when the injury and its causal relationship to the defendant's act or omission remain unknown to the plaintiff.”); Ouellette v. Beaupre, 977 F.3d 127, 138 (1st Cir. 2020) (applying federal law and holding that “a plaintiff, once armed with the knowledge of his or her injury and its probable cause, cannot plead ignorance of the law to delay accrual.”); Maggi v. Grafton Cty. Dep’t of Corrs., 633 F. Supp. 3d 508, 516 (D.N.H. 2022) (applying RSA 508:4 and holding that “even if the court were to assume the truth of [plaintiff’s] assertions about his lack of access to legal resources, that would not save his claims. His claims accrued on the date he should have reasonably known he was injured, not on the date he first learned he had a legal cause of action.”) (vacated and remanded on other grounds by Maggi v. Grafton Cty. Dep’t Corrs., No 23-1002 2024 WL 3384813 (1st Cir. July 9, 2024)); Miller v. Pac. Shore Funding, 224 F. Supp. 2d 977, 986–87 (D. Md. 2004) (“Knowledge of facts, however, not

actual knowledge of their legal significance, starts the statute of limitations running. . . .The discovery rule, in other words, applies to discovery of facts, not to discovery of law. Knowledge of the law is presumed.”); Marcum v. Columbia Gas Transmission, LLC, 549 F. Supp. 3d 408, 421, (E.D. Pa. 2021) (“Plaintiffs’ ignorance of a legal cause of action does not, in itself, require application of the discovery rule.”). In this case, the plaintiff proffers several reasons why he may have not discovered the law governing his claims. However, the plaintiff’s failure to bring his claims within the applicable time period due to his unawareness of the law is not grounds to apply the discovery rule.

For discovery rule purposes, a plaintiff becomes aware of an injury as soon as he can reasonably discern that he has suffered “some harm” caused by a defendant’s conduct. Beane, 160 N.H. at 713; see also Balzotti Glob. Grp., LLC v. Shepherds Hill Proponents, LLC, 173 N.H. 314, 321 (2020); Furbush v. McKittrick, 149 N.H. 426, 431 (2003) (“The [discovery] rule is not intended to toll the statute of limitations until the full extent of the plaintiff’s injury has manifested itself.”). Thus, a latent injury will toll the limitations period, while a patent injury will not, even if the long-term consequences of the patent injury cannot be known. See Furbush, 149 N.H. at 431; see generally Clay v. Kuhl, 727 N.E.2d 217, 222 (Ill. 2000) (applying Illinois law): (“The plaintiff contends, however, that her injuries were latent to some extent and did not fully manifest themselves until years after the abuse occurred. We do not believe that the plaintiff’s alleged failure to fully discover the nature of her injuries is sufficient to delay the running of the limitations period. There is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations.”); see also Stephens v. Clash, 796 F.3d 281, 288 (3d Cir. 2015) (“A plaintiff’s

ignorance regarding the full extent of his injury is irrelevant to the discovery rule's application, so long as the plaintiff discovers or should have discovered that he was injured.”).

In Rowe v. John Deere, 130 N.H.18 (1987), the plaintiff was injured when he struck his head while using machinery manufactured by the defendant. Immediately after the accident, the plaintiff was diagnosed with a depressed skull fracture. The plaintiff recovered quickly. Six years later he began to suffer grand mal seizures, purportedly as a result of the accident. The supreme court held that the plaintiff had discovered his injury at the time of the accident, even though the initial measure of damages was “nominal” compared with the potential damages for the later occurring harm. Id. at 21. Thus, a plaintiff is likely to immediately discover an injury caused by a sudden, traumatic, violent event, and an injury which may later arise from the initial injury will not toll the statute of limitations. See, e.g., Hollander v. Brown, 457 F.3d 688, 692 (7th Cir. 2006) (applying Illinois law):

courts distinguish between injuries caused by sudden, traumatic events and those that have a late or insidious onset. For limitations purposes, a sudden, traumatic event is one that, because of its force or violence, permits the law to presume that the event immediately placed the plaintiff on notice of her injury and a right of action. When a plaintiff suffers this type of injury, her cause of action accrues on the date of the traumatic event, and the limitations period does not begin anew simply because a latent condition later may arise from the same occurrence. The rationale is that the nature and circumstances surrounding the traumatic event are such that the injured party is thereby put on notice that actionable conduct might be involved.

(internal citations and quotation marks omitted).

Here, the plaintiff claims that he was injured as a result of Orion’s failure to adequately oversee its staff with respect to hiring, training, supervision, and promulgation of policies. Thus, the “act or omission complained of,” RSA 508:4, is the breach of duty by Orion itself. According to the Complaint, that breach led to physical assaults and painful restraints, verbal abuse, and fostering of harmful drug use. The plaintiff claims that Orion staff physically and

psychologically abused him and offers as examples that members handcuffed him and dragged him down stairs, stripped him and restrained him in a chair, and fed him drugs. The plaintiff states that staff members told him that some of these abuses were conducted in retaliation for a supposed refusal to attend school. He further states that staff members verbally abused him by stating that his family did not love him, calling him fat and retarded, and making comments about his physical appearance. These staff members also encouraged other residents to make fun of the plaintiff. Additionally, the alleged breach also led to instances of physical abuse from residents, including an attack by four members that resulted in a broken jaw, for which staff members did not offer treatment. Taken together, the incidents of physical and psychological abuse the plaintiff describes constitute injuries that are sudden, traumatic, violent, painful, and/or extremely unpleasant. There is nothing subtle or latent about these alleged events. The plaintiff necessarily knew of the assaults at the time they happened.

With respect to psychological abuse, the plaintiff may have been unaware of the long-term psychological and emotional effects of the treatment he says he endured. But those harms were nonetheless caused by the same “act or omission complained of,” RSA 508:4, e.g., Orion’s alleged lack of care in hiring, training and supervising staff, and promulgating policies. Thus, under settled New Hampshire law, accepting all the well-pled facts in the Complaint, the Court must find that the plaintiff was aware that he had been injured as a result of Orion’s failure to control its staff because the plaintiff knew that he had been assaulted and physically restrained on multiple occasions. Indeed, the plaintiff recites that he was dragged down stairs, physically restrained while naked, and verbally insulted on multiple occasions. Furthermore, he states in the Declaration that after the trip to his father’s on Thanksgiving, he “knew [that he] needed to

get out of Orion House.” Moreover, he states that he disclosed some of Orion’s conduct to his father during that Thanksgiving trip.

Under the discovery rule, the limitations period in this case did not begin to run until the plaintiff either (a) discovered, or (b) should have discovered through the exercise of reasonable diligence, that Orion’s breach of duty was a proximate cause of his injury. See Troy v. Bishop Guertin High Sch., 176 N.H. 131, 134 (2023) (citing RSA 508:4). Knowledge of Orion’s causal role cannot be automatically inferred from the fact that the plaintiff knew that his injury was caused by Orion’s employees, acting overtly under color of their authority, on Orion’s premises. See id. at 138 (“We decline to establish a per se rule that the plaintiff’s knowledge of the abuser’s employer is alone sufficient to trigger the application of the discovery rule. This inquiry presents a question of fact.”). However, “[a] plaintiff need not be certain of this causal connection; the possibility that it existed will suffice to obviate the protections of the discovery rule.” Id. at 137 (quoting Beane, 160 N.H. at 713); see also Balzotti, 173 N.H. at 321; Lamprey, 163 N.H. at 257; Pichowicz v. Watson Ins. Agency, Inc., 146 N.H. 166, 168 (2001). “[T]he discovery rule employs an objective standard” to determine whether, through the exercise of reasonable diligence, a plaintiff should have discovered sufficient evidence of the defendant’s role in causing his injury.” Troy, 176 N.H. at 137.

In this case, the same alleged facts that establish the plaintiff’s knowledge of harm also demonstrate the plaintiff knew or should have known Orion’s breach of duty was a proximate cause of his alleged injury. Here, the plaintiff states that specifically because of staff conduct against himself, he knew he had to leave Orion House and acted out to be placed somewhere else. Further, the plaintiff does not complain of isolated incidents, committed in secret, by a rogue staff member of a large institution. Rather, the plaintiff claims frequent inappropriate

behavior, to include assaults and verbal abuse, involving multiple staff members, committed openly and in view of both other residents and other staff members. Indeed, the plaintiff claims that staff members encouraged the residents to partake in the verbal abuse and that some staff members worked together in perpetuating, and even hiding, his drug use. Additionally, the plaintiff alleges that four residents attacked him in his room, broke his jaw, and that staff declined to provide medical assistance afterward for the injury. If these allegations in the Complaint are credited, as they must be at this juncture, then at the very least Orion failed to supervise its staff and monitor its facility and thereby breached both its fiduciary obligations to the plaintiff and the common law duty of reasonable care.

Orion's role in causing the plaintiff's injury is not inferred from the mere fact that the plaintiff's assailants received paychecks and a W2 from Orion. Compare the facts of this case to those in Troy, which involved two acts of sexual assault, committed in private, by a high school teacher against a female student. Troy, 176 N.H. at 133-35. Unbeknownst to the plaintiff in Troy, the school had hired the teacher despite knowing of his previous conviction for unlawful sexual contact with a different female high school student at a different school that was owned and operated by the same religious order. Id. at 133-34. The school did not alert students or parents to the teacher's status as a sex offender who preyed on a similar victim. Id. It took no action to limit or monitor the teacher's contact with students. Id. It would be hard to imagine how the plaintiff in Troy could have known from the abuse she endured that the school (and its owner) shouldered any of the blame for the covert criminal acts of a lone employee.

On the other hand, in this case, if the facts in the Complaint and Declaration are credited, it is hard to imagine how the plaintiff could not see a problem with the conduct of Orion's staff members. Indeed, the plaintiff—unlike the plaintiff in Troy, who became aware of the offending

teacher's history with the school only because of later public disclosures by the school itself—does not allege a single fact that he learned about Orion since leaving its facility in or around April 2004. He does not point to the discovery of any fact relating to Orion's hiring process, its knowledge of staff misconduct, its promulgation of policies, etc. The plaintiff points to no news articles or publicity relating to Orion. Rather, he states only that he first learned about the potential to bring a claim against Orion when reviewing a notice on the wall in 2022 while incarcerated in the Concord State Prison. He also fails to allege any fact to show that he did not come forward because he was unaware of the nature of Orion's conduct or the relationship between his injuries and Orion. None of the assertions in the Complaint constitute the discovery of a fact pertinent to Orion's causal relationship to the plaintiff's injury of a kind that, if unknown to the plaintiff, would toll the statute of limitations. Cf. Miller, 224 F. Supp. 2d at 986–87.

Moreover, the plaintiff stated in his Declaration that he knew he needed to leave Orion House because of how staff had treated him. Thus, he was at least aware of the injuries he claims to have suffered. He further stated that he resorted to drug use to try and forget the injuries that he suffered while in placement and has trouble remembering what happened because of his attempts to forget about his experiences at both facilities. (00435, Declaration ¶ 17). These statements are more indicative of a failure to act by his own volition and not because of any action or omission by Orion.

The plaintiff's remaining arguments are unpersuasive. First, the plaintiff contends that his fiduciary duty claim is tolled until he had actual knowledge of Orion's breach. The Court disagrees. New Hampshire law is clear that tolling of the statute of limitations period is not dependent or otherwise reliant upon the fiduciary disclosing its wrongdoing. See Beane, 160

N.H. at 714-15 (“[T]here is no support in our case law for the proposition that a limitations period is tolled in fiduciary cases until the fiduciary discloses his or her misconduct.”). Second, no amount of additional discovery the plaintiff may engage in regarding Orion’s policies and procedures could reveal information that would make it more likely that the plaintiff could avail himself of the discovery rule. As explained above, the plaintiff’s Complaint shows that he already had all the information he needed to determine that Orion was the proximate cause of his injuries by the time he turned twenty.

Ultimately, the plaintiff had sufficient information about Orion’s institutional failures prior to the expiration of any applicable limitations period. Nor did the plaintiff allege anywhere in his Complaint that he learned any new facts about Orion’s role in his alleged abuse after he turned twenty. For these reasons, the Court concludes that the discovery rule does not toll the statute of limitations.

ii. Fraudulent Concealment and Equitable Tolling

The Court has found that (a) the discovery rule did not toll the start of the limitations period in RSA 508:4 beyond the plaintiff’s twentieth birthday and, therefore, (b) the applicable limitations period is that established by RSA 508:8, which gave the plaintiff until age 20 to file this action.

The plaintiff argues, however, that two equitable doctrines apply here: fraudulent concealment and equitable tolling. The New Hampshire Supreme Court views both these doctrines as implied exceptions to all statutes of limitations. See Lakeman v. La France, 102 N.H. 300, 303 (1959) (adopting the majority rule that “fraudulent concealment of a cause of action from the one in whom it resides by the one against whom it lies constitutes an implied exception to the statute of limitations,” and rejecting the “contrary view that fraudulent

concealment does not toll the operation of the statute unless the Legislature has expressly so stated in the statute itself”). With respect to equitable tolling, the supreme court has only applied the doctrine and explained its elements. See Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 623–24 (2005).

The doctrine of fraudulent concealment tolls the limitations period when a defendant by concealment or other action, intentionally prevents the plaintiff from acquiring material information. Lamprey, 163 N.H. at 259–60; See also Lakeman, 102 N.H. at 303–304. Thus, fraudulent concealment

. . . requires something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to a cause of action—some actual artifice to prevent knowledge of the facts or some representation intended to exclude suspicion and prevent inquiry.

Lamprey, 163 N.H. at 259–60 (internal quotation marks and bracketing omitted); see also Maggi, 633 F. Supp. 3d at 516 (“The burden is on the plaintiff invoking the fraudulent concealment doctrine to present some evidence of an affirmative act on the part of the defendant to conceal or cover up the underlying wrongful conduct that gave rise to the plaintiff’s asserted injury.” (internal citations omitted)); Sykes v. RBS Citizens, N.A., 2 F. Supp. 3d 128, 143 (D.N.H. 2014).

Even when there is fraudulent concealment, the doctrine provides little, if anything, in the way of relief that the discovery rule does not also provide. See Beane, 160 N.H. at 714 (“The fraudulent concealment rule states that when facts essential to the cause of action are fraudulently concealed, the statute of limitations is tolled until the plaintiff has discovered such facts or could have done so in the exercise of reasonable diligence.” (quoting Bricker v. Putnam, 128 N.H. 162, 165 (1986)); see also Lakeman, 102 N.H. at 303; Furbush, 149 N.H. at 431; Sykes, 2 F. Supp. 3d at 143.

In this case, the plaintiff has not pointed to any affirmative act on the part of Orion to conceal or cover up any fact. Indeed, as noted above, the plaintiff has not pointed to any fact he learned after leaving Orion's facility in 2004. Although he states in the Declaration that staff members would say he fell down the stairs when asked what happened, that is not an affirmative act on the part of Orion to cover up the abuse. Those are the actions of individual employees. The plaintiff does not point to any facts to show that Orion encouraged staff to cover up the abuse, denied the plaintiff from getting access to information about his placement at Orion House after leaving, or actively concealed information from the plaintiff. Therefore, the doctrine of fraudulent concealment does not apply to the plaintiff's claims against Orion.

The New Hampshire Supreme Court has not developed a substantial body of case law relating to the doctrine of equitable tolling. The Court recognized the doctrine in Portsmouth Country Club, explaining that it allows a plaintiff to initiate an action beyond the statutory limitations period when that plaintiff had been "prevented in some extraordinary way from exercising his or her rights." 152 N.H. at 623 (emphasis added). The doctrine "applies principally if the plaintiff is actively misled by the defendant about the cause of action." Kierstead v. State Farm Fire & Cas. Co., 160 N.H. 681, 688 (2010).

To be eligible for equitable tolling, a plaintiff's access to the justice system must be frustrated despite the plaintiff's diligence. See, e.g., Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96 (1990)(applying federal law and holding that:

Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.

(internal footnotes omitted)); Maggi, 633 F. Supp. 3d at 518 (applying federal law and noting that, “in unusual cases, certain limitations of imprisonment may rise to the level of ‘extraordinary circumstance’” [but] “the usual problems inherent in being incarcerated, such as a prisoner's lack of prior legal training or limited access to legal resources in a prison's library, do not, by themselves, justify equitable tolling” (internal ellipses and citation omitted)).

In this case, the plaintiff was not prevented from discovering either necessary facts or necessary law. He was not actively misled by Orion as to his ability to access the courts. He was not threatened with retaliation for accessing the courts. He was not deprived of the ability to seek counsel or advice from third parties.

To this end, the plaintiff alleges that he did not bring suit because of his ongoing emotional distress and substance misuse disorder. However, diminished mental capacity is not grounds for equitable tolling. See Sykes, 2 F. Supp. 3d at 144, fn 18 (ruling that, “RSA 508:8, and not the doctrine of equitable tolling, governs the statute of limitations for New Hampshire state law claims when a plaintiff is mentally incompetent.”). Furthermore, even under federal law, where a plaintiff’s mental condition might allow for equitable tolling, the plaintiff would have to prove that he was unable to engage in rational thought to the point where he could not cooperate with any counsel, and/or pursue his claim on his own during the limitations period.”

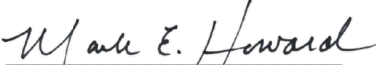
Id. The plaintiff does not allege this. Thus, the doctrine of equitable tolling does not apply.

CONCLUSION

Pursuant to RSA 508:4 and 508:8, this action is not timely, as the plaintiff filed this case well after his twentieth birthday. The plaintiff attained twenty years of age in April 2008. He filed this case in March 2023, some eighteen years after the expiration of the statute of limitations, and no other tolling provisions apply.

Accordingly, all of the plaintiff's claims against Orion are DISMISSED WITH
PREJUDICE.

Date: February 27, 2025


Mark E. Howard
Chief Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/27/2025

EXHIBIT C

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 2025-0092, John Doe #533 v. New Hampshire Department of Health and Human Services & a., the clerk of court on February 28, 2025, issued the following order:

Case is accepted. On or before March 10, 2025, the plaintiff shall file, under seal, written notification of his actual name.

In response to Question 12 of the notice of appeal form, which asks whether a transcript of trial court proceedings is necessary for this appeal, the plaintiff indicated “yes.” However, the plaintiff did not complete a transcript order form identifying the proceedings sought to be transcribed or any proceedings previously transcribed. Accordingly, if the plaintiff believes that a transcript is necessary for this appeal, he shall file a completed transcript order form on or before March 10, 2025.

This case appears to be eligible for mediation pursuant to Rule 12-A. Under Rule 12-A, the agreement of all parties is required for appellate mediation and a non-refundable fee of \$225 per party will be imposed. If all parties in this case agree to participate in mediation, the plaintiff shall submit the completed Appellate Mediation Agreement form to the court on or before March 17, 2025. The Appellate Mediation Agreement form (NHJB-2614-SUP) is available at <https://www.courts.nh.gov/our-courts/supreme-court/forms>. If an Appellate Mediation Agreement form is not filed, an order will be issued regarding further proceedings.

This order is entered pursuant to Rule 21(8).

Timothy A. Gudas,
Clerk

Distribution:

Rockingham County Superior Court, 217-2022-CV-00831

Erin S. Bucksbaum, Esq.

W. Daniel Deane, Esq.

Seth Horvath, Esq.

Mark Tyler Knights, Esq.

Jonathan D. O'Neil, Esq.

Allison Regan, Esq.

Laurie B. Rilee, Esq.

Cyrus F. Rilee, III, Esq.

David A. Vicinanzo, Esq.

Nathan P. Warecki, Esq..

Frank L. DePasquale, Esq.

Brandon F. Chase, Esq.

Attorney General

Mary A. Triick, Esq.

File

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

<https://www.courts.nh.gov>

RULE 7 NOTICE OF MANDATORY APPEAL

This form should be used for an appeal from a final decision on the merits issued by a superior court or circuit court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving a collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; (6) a probation revocation proceeding; (7) a landlord/tenant action or a possessory action filed under RSA chapter 540; (8) an order denying a motion to intervene; or (9) a domestic relations matter filed under RSA chapters 457 to 461-A other than an appeal from the first final order. (An appeal from the first final order issued in a domestic relations matter filed under RSA chapters 457 to 461-A should be filed on this form.)

1. COMPLETE CASE TITLE AND CASE NUMBERS IN TRIAL COURT

John Doe #533 v. State of New Hampshire, et al., No. 217-2022-cv-00831 (N.H. Super.)

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

Rockingham County Superior Court, The Honorable James W. Kennedy

3A. APPEALING PARTY: NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

John Doe #533

(by order dated 10/18/2022 in the YDC/YDSU Consolidated Litigation, Meehan v. State, No. 217-2020-cv-00026, information relating to John Doe #533's identity is sealed and will be provided in a confidential filing)

E-Mail address: _____

Telephone number: _____

3B. APPEALING PARTY'S COUNSEL: NAME, BAR ID NUMBER, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

Nathan P. Warecki (NH Bar No. 20503)

Nixon Peabody LLP

900 Elm Street, 14th Floor

Manchester, NH 03301

(additional counsel of record are listed in the attached continuation sheet)

E-Mail address: **nwarecki@nixonpeabody.com**

Telephone number: **(603) 628-4000 ext**

4A. OPPOSING PARTY: NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

Mount Prospect Academy, Inc.

350 Main Street

Plymouth, NH 03264

E-Mail address: **lara.saffo@mpa.us**

Telephone number: **(603) 616-1644 ext**

4B. OPPOSING PARTY'S COUNSEL: NAME, BAR ID NUMBER, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

Frank L. DePasquale (N.H. Bar No. 271761)

Murphy & Riley, P.C.

99 Rosewood Drive, Suite 280

Danvers, MA 01923

E-Mail address: **fdepasquale@murphyriley.com**

Telephone number: **(617) 423-3700 ext**

RULE 7 NOTICE OF MANDATORY APPEAL

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

State of New Hampshire, New Hampshire Department of Health and Human Services; Department of Youth Development Services; Division of Children, Youth, and Families; Division of Juvenile Justice Services; and Sununu Youth Services Center, a/k/a Youth Development Center and Youth Developmental Services Unit, f/k/a State Industrial School and Adolescent Detention Center (counsel of record are listed in the attached continuation sheet)

6. DATE OF CLERK'S NOTICE OF DECISION OR SENTENCING. ATTACH OR INCLUDE COPY OF NOTICE AND DECISION.

01/16/2025

DATE OF CLERK'S NOTICE OF DECISION ON POST-TRIAL MOTION, IF ANY. ATTACH OR INCLUDE COPY OF NOTICE AND DECISION.

7. CRIMINAL CASES: DEFENDANT'S SENTENCE AND BAIL STATUS

8. APPELLATE DEFENDER REQUESTED?

YES or NO: ☒

IF YOUR ANSWER IS YES, YOU MUST CITE STATUTE OR OTHER LEGAL AUTHORITY UPON WHICH CRIMINAL LIABILITY WAS BASED AND SUBMIT A CURRENT REQUEST FOR A LAWYER FORM (FINANCIAL STATEMENT). SEE SUPREME COURT RULE 32(4).

9. IS ANY PART OF CASE CONFIDENTIAL?

YES or NO: **Yes** ☒

IF SO, IDENTIFY WHICH PART AND CITE AUTHORITY FOR CONFIDENTIALITY. SEE SUPREME COURT RULE 12.

(please see attached continuation sheet)

10. IF ANY PARTY IS A CORPORATION, LIST THE NAMES OF PARENTS, SUBSIDIARIES AND AFFILIATES.

(please see attached continuation sheet)

11. DO YOU KNOW OF ANY REASON WHY ONE OR MORE OF THE SUPREME COURT JUSTICES WOULD BE DISQUALIFIED FROM THIS CASE?

YES or NO: **No** ☒

IF YOUR ANSWER IS YES, YOU MUST FILE A MOTION FOR RECUSAL IN ACCORDANCE WITH SUPREME COURT RULE 21A.

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY FOR THIS APPEAL? SEE SUPREME COURT RULE 15, COMMENT.

YES or NO: **Yes** ☒

IF YOUR ANSWER IS YES, YOU MUST COMPLETE THE TRANSCRIPT ORDER FORM ON PAGE 4 OF THIS FORM.

RULE 7 NOTICE OF MANDATORY APPEAL

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH.

(please see attached continuation sheet)

14. CERTIFICATIONS

I hereby certify that every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading. To the extent that an unpreserved issue is raised as plain error, I hereby certify that I have specifically identified that issue as plain error in section 13.

/s/ Nathan P. Warecki

Appealing Party or Counsel

I hereby certify that on or before the date below, copies of this notice of appeal were served on all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Supreme Court Rules 5(1) and 26(2) and with Rule 18 of the Supplemental Rules of the Supreme Court.

02/14/2025

Date

/s/ Nathan P. Warecki

Appealing Party or Counsel

RULE 7 NOTICE OF MANDATORY APPEAL**TRANSCRIPT ORDER FORM****INSTRUCTIONS:**

1. If a transcript is necessary for your appeal, you must complete this form.
2. List each portion of the proceedings that must be transcribed for appeal, e.g., entire trial (see Supreme Court Rule 15(3)), motion to suppress hearing, jury charge, etc., and provide information requested.
3. Determine the amount of deposit required for each portion of the proceedings and the total deposit required for all portions listed. Do not send the deposit to the Supreme Court. You will receive an order from the Supreme Court notifying you of the deadline for paying the deposit amount to the court transcriber. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.
4. The transcriber will produce a digitally-signed electronic version of the transcript for the Supreme Court, which will be the official record of the transcribed proceedings. Parties will be provided with an electronic copy of the transcript in PDF-A format. A paper copy of the transcript may also be prepared for the court.

PROCEEDINGS TO BE TRANSCRIBED (Please confirm dates with Trial Court)					
PROCEEDING DATE (List each day separately, e.g. 5/1/11; 5/2/11; 6/30/11)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	LENGTH OF PROCEEDING (in .5 hour segments, e.g., 1.5 hours, 8 hours)	RATE (standard rate unless ordered by Supreme Court)	DEPOSIT
				X \$170.00	\$
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				X \$170.00	\$
				TOTAL DEPOSIT	\$

PROCEEDINGS PREVIOUSLY TRANSCRIBED					
PROCEEDING DATE (List date of each transcript volume)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	NAME OF TRANSCRIBER	DO ALL PARTIES HAVE COPY (YES OR NO)	DEPOSIT FOR ADDITIONAL COPIES
					TBD
					TBD
					TBD

NOTE: The deposit is an estimate of the transcript cost. After the transcript has been completed, you will be required to pay an additional amount if the final cost of the transcript exceeds the deposit. Any amount paid as a deposit in excess of the final cost will be refunded. The transcript will not be released to the parties until the final cost of the transcript is paid in full.

Continuation of Rule 7 Notice of Mandatory Appeal form
John Doe #533 v. State of New Hampshire et al.

3B. APPEALING PARTY'S COUNSEL: NAME, BAR ID NUMBER, FIRM
NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE
NUMBER (continued):

Counsel for Plaintiff John Doe #533

David A. Vicinanzo, Esq. (Bar No. 9403)
W. Daniel Deane, Esq. (Bar No. 18700)
Mark Tyler Knights, Esq. (Bar No. 264904)
Nathan Warecki, Esq. (Bar No. 20503)
Erin S. Bucksbaum, Esq. (Bar No. 270151)
Allison K. Regan, Esq. (Bar No. 272296)
Jonathan O'Neil, Esq. (Bar No. 276336)
NIXON PEABODY LLP
900 Elm Street, 14th Floor
Manchester, NH 03101
T: 603-628-4000
dvicinanzo@nixonpeabody.com
ddeane@nixonpeabody.com
mknights@nixonpeabody.com
nwarecki@nixonpeabody.com
ebucksbaum@nixonpeabody.com
aregan@nixonpeabody.com
joneil@nixonpeabody.com

Seth Horvath (*pro hac vice* forthcoming)
NIXON PEABODY LLP
70 West Madison, Suite 5200
Chicago, IL 60602-4378
T: 312-977-4443
sahorvath@nixonpeabody.com

Cyrus F. Rilee, III, Esq. (Bar No. 15881)
RILEE & ASSOCIATES, P.L.L.C.
264 South River Road
Bedford, NH 03110

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T: 603.232.8234
crilee@rileelaw.com
lrilee@rileelaw.com

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT
(continued)

Counsel for State of New Hampshire, Department of Health and Human
Services et al.

Brandon Francis Chase
NH Attorney General's Office - DOJ
1 Granite Place South
Concord, NH 03301-6397
T: 603-271-2069
brandon.f.chase@doj.nh.gov

9. IS ANY PART OF CASE CONFIDENTIAL?

Information relating to John Doe #533's identity is confidential by court order dated October 18, 2022 in the YDC/YDSU Consolidated Litigation, *Meehan v. State*, No. 217-2020-cv-00026 (N.H. Super.) (Index #102), and by court order in this particular case (Index #3). *See* N.H. Sup. Ct. R. 12(2)(a).

10. IF ANY PARTY IS A CORPORATION, LIST THE NAMES OF THE
PARENTS, SUBSIDIARIES AND AFFILIATES.

Upon information and belief, Mount Prospect Academy, Inc. is or has been affiliated with Becket Academy, Inc., a Maine corporation registered to do business in New Hampshire, Vermont Permanency Initiative, Inc., a Vermont corporation registered to do business in New Hampshire, and The Oliverian School, Inc. (f/k/a The Pike School, Inc. and Becket Institute of Experiential Learning, Inc.) (a/k/a Pike School, Becket School, Becket Family of Services, and Oliverian Valley Farms), a New Hampshire corporation.

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL.

1. At the pleadings stage of a case involving claims of breach of fiduciary duty, negligence, and negligent supervision against an institutional defendant based on allegations of physical child abuse, does crediting a plaintiff's allegations for purposes of the discovery rule and its common-law exceptions require a court to inquire whether a reasonably diligent child-abuse survivor would have identified a link between the abuse, the institutional defendant's ability, obligation, and failure to control its staff, and the plaintiff's injuries?
2. At the pleadings stage of a case involving claims of breach of fiduciary duty, negligence, and negligent supervision against an institutional defendant based on allegations of physical child abuse, does a plaintiff's contemporaneous awareness of being beaten mean, as a matter of law, that a plaintiff understands or reasonably should understand that the beating was wrongful and that the abuse and resulting injuries were proximately caused by the institutional defendant's acts or omissions?
 - a. In this case, did the court err when it determined that Plaintiff knew or reasonably should have known, as a matter of law, more than three years before he filed his lawsuit, that the physical assaults and solitary confinement he endured at Mount Prospect were abusive and wrongful?
 - b. In this case, did the court err when it determined that Plaintiff knew or reasonably should have known, as a matter of law, more than three years before he filed his lawsuit, that Mount Prospect failed to create a safe environment at its facility, failed to protect plaintiff from abuse, and failed to adequately supervise its employees?

- c. In this case, did the court err when it determined that, as a matter of law, Plaintiff's allegations did not support applying the doctrines of fraudulent concealment and equitable tolling?
3. At the pleadings stage of a case involving a breach-of-fiduciary-duty claim against an institutional defendant based on allegations of physical child abuse, does the accrual of the claim depend on the plaintiff's actual knowledge of the institutional defendant's breaches of fiduciary duty?
4. Did the court err in failing to consider official public records at the pleadings stage—i.e., two reports authored and published by the New Hampshire Department of Education on its website—when ruling on Plaintiff's motion for reconsideration of the order dismissing Plaintiff's claims on timeliness grounds?

(all questions preserved, John Doe #553 v. State, No. 217-2022-cv-00831 (N.H. Super.), Pl.'s Obj. to Def. Mount Prospect Academy's Mot. Dismiss, Apr. 24, 2023 (Index ##10-12); Order, Aug. 9, 2024 (Index #14) (granting Mount Prospect Academy's motion to dismiss); Pl. Mot. Recons. Order Granting Def. Mount Prospect Academy's Mot. Dismiss, Sept. 5, 2024 (Index #16); Pl.'s Mot. Judicial Notice, Nov. 20, 2024 (Index #20); Order, Nov. 21, 2024 (Index #21) (denying Plaintiff's motion for reconsideration); Order, Dec. 5, 2024 (Index #20) (denying Plaintiff's motion for judicial notice); Pl.'s Mot. Interlocutory Appeal, Dec. 23, 2024 (Index ## 22-25); Order, Jan. 15, 2025 (Index #28) (denying Plaintiff's motion for interlocutory appeal but directing that the Court's orders relating to Mount Prospect Academy's motion to dismiss, Plaintiff's motion for reconsideration, and Plaintiff's motion for judicial notice shall be final decisions on the merits that can be immediately appealed to the Supreme Court, in accordance with N.H. Super. Ct. Civil R. 46(c); see also YDC/YDSU Consolidated Litigation, Meehan v. State, No. 217-2020-cv-00026 (N.H. Super.), Order, Feb. 10, 2023 (Index #241) (indicating that motions to dismiss based on

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the expiration of the applicable statute of limitations would be analyzed under the summary judgment standard); Order, Nov. 14, 2023 (Index #557) (revising the Court’s procedure for analyzing motions to dismiss and clarifying that “the court will apply the traditional ‘motion to dismiss’ standard to each Complaint as buttressed by the Declaration”).

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY SUPERIOR COURT

JOHN DOE 533

v.

STATE OF NEW HAMPSHIRE, et al.
217-2022-CV-831

DAVID MEEHAN v. STATE OF NEW HAMPSHIRE, et al.
(Consolidated YDC/YDSU Cases)
217-2020-CV-46

ORDER

The matter before the Court is Defendant Mount Prospect Academy Inc.'s ("Mount Prospect") Motion to Dismiss John Doe 533's ("Plaintiff") claims against it. (Docket Document 8). For the reasons set forth below the motion is GRANTED. Plaintiff's claims for negligence, negligent hiring, training, supervision and retention, and negligence are DISMISSED WITH PREJUDICE and Plaintiff's claims for aiding and abetting a breach of fiduciary duty and civil conspiracy is DISMISSED WITHOUT PREJUDICE.

Plaintiff's claims:

(A) Plaintiff's following claims against Mount Prospect, Count VIII (breach of fiduciary duty), Count XI (negligent hiring, training, supervision and retention), and Count XII (negligence) are DISMISSED WITH PREJUDICE¹ because they were filed after the expiration of the statute of limitations; and

¹ For the purposes of the present order, the Court will assume without deciding that Plaintiff's complaint states a claim for its Counts VIII, XI, and XII.

(B) Count X (aiding and abetting a breach of fiduciary duty) and Count XIV (civil conspiracy) are DISMISSED WITHOUT PREJUDICE for failure to state a claim upon which relief may be granted.

This Order resolves all of Plaintiff's claims against Mount Prospect.²

I. Defining The Complaint

The Complaint in this case consists of the following three documents:

A. A 50-page "Amended Master Complaint," filed in Meehan v. State, 217-2020-CV-46 on July 8, 2022 (Meehan Docket Document 70). (The Amended Master Complaint does not mention John Doe 533 or any of the facts about his life. Likewise, it does not contain any reference to Mount Prospect or any other contractor defendant.)

B. A 29-page "Short Form Complaint" filed in John Doe 533 v. State, 217-2022-CV-831 (Docket Document 1). (The Short Form Complaint contains allegations specific to Plaintiff and Mount Prospect. The Short Form Complaint contains two Addenda, as well as a separately filed, sealed Supplement that contains John Doe 533's true name and date of birth).

C. A 12-page Declaration, signed by Plaintiff, filed as Exhibit A to the Objection to the Motion to Dismiss in John Doe 533 v. State, 217-2022-CV-833 (Docket Document 12). The Declaration contains Plaintiff's factual response to Mount Prospect's affirmative limitations defense.

The Amended Master Complaint, the Short Form Complaint, and the Declaration, are referred to collectively as "the Complaint."

² The remaining counts do not allege any claims against Mount Prospect. Counts I through VII (set forth in the Master Complaint) and Counts IX and XIII (set forth in the Short Form Complaint) assert claims against the State Defendants only.

II. Procedural History and Relevant Dates

Plaintiff was born in November 1993.³ He turned 20 in November 2013. The Complaint in this case was filed on July 21, 2022, when Plaintiff was 28 years old.

In this case, Plaintiff claims that he was subjected to physical and psychological abuse at a residential juvenile facility operated by Mount Prospect. Plaintiff alleges that the abuse occurred during the calendar years 2006 through 2008, when he was approximately 13 to 15 years old. Plaintiff does not allege that Mount Prospect engaged in any tortious behavior after that time.

Thus, Plaintiff initially filed suit approximately 14 years after the last date of abuse, and after he had turned 20.

III. Factual Background

The following facts are taken from the Complaint.

A. Events That Occurred Prior to Placement At Mount Prospect

According to the Declaration, Plaintiff's mother's boyfriend began physically and emotionally abusing Plaintiff and his biological sister when he was between 9 to 10 years in age. The mother's boyfriend would routinely throw Plaintiff around and punch him in the stomach. Plaintiff complained to his mother, but she was unable and unwilling to stop her boyfriend's actions.

Around the time Plaintiff was 11 or 12, he began acting out in school. Plaintiff went to counseling at Genesis, where the counselors believed Plaintiff's mother, when

³ Plaintiff's precise date of birth is provided in the Sealed Supplement to the Short Form Complaint (Docket Document 3). The court recites only the month and year of birth to protect Plaintiff's identity. The day of the month is not material to this order.

she told the counselors that Plaintiff made up the allegations against her boyfriend. Genesis believed Plaintiff was potentially suffering from ADHD, anxiety, bipolar disorder, or manic-depressive disorder. As a result, Plaintiff was prescribed very heavy medications that often left him groggy. Also, around this time, Plaintiff's mother's boyfriend's son, Kyle, began routinely sexually abusing both Plaintiff and his sister. The mother's boyfriend beat Plaintiff up after Plaintiff told other kids that Kyle molested Plaintiff and his sister.

Sometime thereafter, Plaintiff was removed from his mother's custody under a CHINS petition. Plaintiff was sent to the Youth Detention Services Unit ("YDSU") for approximately 2 to 3 months. Plaintiff alleges that YDSU staff members locked him up the entire time and he was refused any schooling.

B. Events at Defendant Mount Prospect's Facility

In 2006 through 2008, Plaintiff was placed at Mount Prospect's facility for 14 months while he was between the ages of 13 to 15. The Complaint does not clarify whether any time elapsed between Plaintiff's discharge from YDSU to his admission to Mount Prospect.

Plaintiff alleges that during his stay at Mount Prospect he was subject to violent restraints and unjustified solitary confinement. He also alleges that while at Mount Prospect, he was removed from classes and placed in a tiny room with no windows or doors at least forty times and on a nearly weekly basis. He claims a staff member would stand outside the door at all times and often denied Plaintiff's requests to use the bathroom. Additionally, Plaintiff alleges that he was beaten while restrained at least 12 times, including by a staff member known to him as Dave M. Staff members would

knee Plaintiff in the back and push him to the ground. On one occasion, Plaintiff states Dave M restrained Plaintiff by pulling his arms out at a ninety-degree angle to his side and then pulling Plaintiff's arms backwards, causing Plaintiff a shoulder injury that persists to this day.

Plaintiff also alleges that multiple staff members would bait residents into fighting so staff members could restrain and hurt the residents. Plaintiff often cried as he was restrained because of how violent and painful the restraints were. Staff members also routinely threatened Plaintiff that "things will get worse" for him if he told anyone about their actions. According to Plaintiff, staff members would cover for each other and would work together to prevent Plaintiff from telling his mother or others about the abuse he allegedly suffered. Plaintiff ran away from Mount Prospect on four occasions. After the last time Plaintiff ran away to his aunt's house, he was removed from Mount Prospect.

C. Events Occurring After Plaintiff Left Mount Prospect

After Plaintiff left Mount Prospect, he was placed at the State's Youth Detention Center ("YDC") intermittently between 2005 and 2010. Plaintiff does not allege how much time, if any, elapsed between the date he left Mount Prospect and the date he arrived at YDC.

Plaintiff alleges that while he was at YDC, he suffered even more severe physical, psychological, and sexual abuse. Plaintiff alleges that he was frequently locked away in solitary confinement. On at least ten occasions, a YDC staff member named Tony Paquette would force Plaintiff to strip naked while he was locked away in solitary confinement. In particular, Plaintiff alleges that Tony and another staff member

named Dave Wiggin would force Plaintiff to masturbate to get his clothes back. Dave would also routinely physically beat and restrain Plaintiff. Other staff members—including Joe Gardner, John Spooner, and “Bob”—also restrained and beat Plaintiff. Plaintiff aged out of YDC when he turned seventeen.

D. Plaintiff’s Understanding of His Treatment at Mount Prospect

Plaintiff alleges that he believed that the abuse was “permissible and normal” because this was the way that adult staff members behaved at all of the facilities he attended. In his declaration, Plaintiff states that he did not believe that Mount Prospect’s actions—or those of any other facility he was placed in—were abusive or wrongful. Plaintiff further explains that he believed these facilities had the power to do whatever they wanted to the children entrusted to their care in large part because staff members never faced any accountability for the alleged abuse perpetrated on Plaintiff. Additionally, Plaintiff alleges that he did not understand the institutional nature of the abuse he allegedly suffered and assumed that only the individual staff members were responsible.

In June 2022, Plaintiff first learned that the people in charge of the facilities he was in were responsible for his care. While Plaintiff was incarcerated, he began speaking with Pastor Scott who helped him understand that what he experienced was abuse. Around that same time, Plaintiff learned from fellow inmates that there was a lawsuit going on against the State and that others had similar experiences to Plaintiff’s. Plaintiff alleges that it was only after these conversations that he realized what he suffered while at Mount Prospect and his other placements was wrong and abusive and that YDC and the non-state placements had a duty of care towards him.

According to the Declaration, Plaintiff has severe mental health issues—including PTSD, anxiety, and depression—stemming from the abuse he allegedly suffered throughout his childhood. Plaintiff began using drugs while he was 17 to “help numb the pain,” eventually leading to Plaintiff’s incarceration as an adult. Plaintiff further alleges that when he aged out of YDC, he did not have the necessary resources to discover the State’s and the contractor defendants’ roles in his alleged abuse, in large part because he was in and out of jail.

IV. Plaintiff’s Negligence, Negligent Hiring, Training, Supervision and Retention, and Breach of Fiduciary Duty Claims Against Mount Prospect Are Barred By The Applicable Statutes of Limitations

A. In General

The statute of limitations is an affirmative defense. Perez v. Pike Indus., Inc., 153 N.H. 158, 160 (2005); Glines v. Bruk, 140 N.H. 180, 181 (1995). A defendant has the obligation to allege and prove that the complaint was brought after the limitations period expired. Perez, 153 N.H. at 160. If defendant meets this burden, then plaintiff has the burden to prove that the claim is timely by virtue of the discovery rule, fraudulent concealment, equitable tolling, or some other doctrine. Id.

RSA 508:8, the so-called disabilities statute, and RSA 508:4 are the two statute of limitations applicable to Plaintiff’s claims. The Court will address each in turn.

B. The Disabilities Statute

RSA 508:8 provides that “an infant or mentally incompetent person may bring a personal action within 2 years after such disability is removed.” In Norton v. Patten, 125 N.H. 413 (1984), the New Hampshire Supreme Court construed the term “infant” to refer to a person who has not yet reached the statutory age of majority, as defined in RSA

21-B:1. The age of majority is eighteen. Thus, as construed by Norton, RSA 508:8 extends the limitations period for minors until their twentieth birthday.

As noted above, Plaintiff turned twenty in November 2013, approximately nine years before he filed the instant case. RSA 508:8 does not contain any extension or discovery rule. Accordingly, the instant case was not filed within the limitations period established by RSA 508:8.

C. The General Statute of Limitations for Personal Actions

(i) In General

RSA 508:4 provides the statute of limitations for all personal actions. Under this statute:

[A]ll personal actions . . . may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

The last “act or omission complained of” occurred in 2008, the year that Plaintiff left Mount Prospect. The instant case was brought more than fourteen years after the last “act or omission complained of.” Thus, Mount Prospect has met its burden of showing that the instant case was filed more than three years after the conduct at issue.

This shifts the burden to Plaintiff to demonstrate grounds for the application of: (a) the discovery rule, (b) equitable tolling, (c) the doctrine of fraudulent concealment; or (d) some other doctrine extending the limitations period. Perez, 153 N.H. at 160. At this stage of the litigation, *i.e.*, the motion to dismiss stage, the Court accepts all of Plaintiff’s well-pled facts, and takes all rational inferences in Plaintiff’s favor.

The Court's task is to determine only whether Plaintiff has *alleged* facts which, if proven, might lengthen the limitations period to make this case timely. To be clear, if Plaintiff alleges sufficient facts to show that discovery is necessary to make this determination, the motion to dismiss on limitations grounds must be denied and the issue preserved for summary judgment on a more complete record. However, if discovery would be futile because the Complaint itself fails to even allege grounds to apply the discovery rule or other tolling doctrine, the motion to dismiss will be granted.

(ii) The Discovery Rule

As set forth above, “[o]nce the defendant has established that the statute of limitations would bar the action, the plaintiff has the burden of proving that the discovery rule applies.” Troy v. Bishop Guertin High Sch., 176 N.H. 131, 136 (2023). It is well-settled that the “purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party.” Petition of N.H. Div. For Children, Youth & Families, 173 N.H. 613, 618 (2020). The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run:

(1) a plaintiff must know or reasonably should have known that she has been injured; and (2) a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the defendant.

Troy, 176 N.H. at 136; Lamprey v. Britton Constr., Inc., 163 N.H. 252, 257 (2012); see also Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 713 (2010); Perez, 153 N.H. at 160; Big League Entm’t, Inc. v. Brox Indus., Inc., 149 N.H. 480, 485 (2003). “Thus, the discovery rule exception does not apply unless the plaintiff did not discover, and

could not reasonably have discovered, either the alleged injury or its causal connection to the alleged negligent act.” Troy, 176 N.H. at 136 (cleaned up).

The statute of limitations is not tolled due to a plaintiff’s failure to acknowledge or otherwise understand their potential claims. See Sullyville, LLC v. Town of Carroll, Slip Op. No. 2019-0240, 2021 WL 1310832, at *7 (N.H. Apr. 8, 2021) (non-precedential decision stating that, “The discovery rule does not toll the statute of limitations until a plaintiff discerns the legal theory by which his or her case will proceed; rather, it tolls the statute of limitations only when the injury and its causal relationship to the defendant’s act or omission remain unknown to the plaintiff.”); Quellette v. Beaupre, 977 F.3d 127, 138 (1st Cir. 2020) (applying federal law and holding that, “a plaintiff, once armed with the knowledge of his or her injury and its probable cause, cannot plead ignorance of the law to delay accrual.”); Maggi v. Grafton Cty. Dep’t of Corrs., 633 F. Supp. 3d 508, 516 (D.N.H. 2022) (applying RSA 508:4 and holding that “even if the court were to assume the truth of [plaintiff’s] assertions about his lack of access to legal resources, that would not save his claims. His claims accrued on the date he should have reasonably known he was injured, not on the date he first learned he had a legal cause of action.”); Miller v. Pac. Shore Funding, 224 F. Supp. 2d 977, 986–87 (D. Md. 2004) (“Knowledge of *facts*, however, not actual knowledge of their legal significance, starts the statute of limitations running. . . . The discovery rule, in other words, applies to discovery of *facts*, not to discovery of *law*. Knowledge of the law is presumed.”); Marcum v. Columbia Gas Transmission, LLC, 549 F. Supp. 3d 408, 421, (E.D. Pa. 2021)(“Plaintiffs’ ignorance of a legal cause of action does not, in itself, require application of the discovery rule.”). This means that the discovery rule does not reward ignorance of the law.

In this case, Plaintiff proffers many reasons why he may have not discovered the law governing his claims. However, Plaintiff's failure to bring his claims within the applicable time period due to being unaware of the law, is not a basis to apply the discovery rule.

In attempting to invoke the discovery rule, a plaintiff is "held to a duty of reasonable inquiry." Troy, 176 N.H. at 137 (citing Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 624 (2005)). For discovery rule purposes, a plaintiff becomes aware of an injury as soon as he can reasonably discern that he has suffered "some harm" caused by a defendant's conduct. Beane, 160 N.H. at 713; see also Balzotti Glob. Grp., LLC v. Shepherds Hill Proponents, LLC, 173 N.H. 314, 321 (2020). The discovery rule "is not intended to toll the statute of limitations until the full extent of the plaintiff's injury has manifested itself." Troy, 176 N.H. at 136-37 (quoting Furbush v. McKittrick, 149 N.H. 426, 431 (2003)). The discovery rule is inapplicable if the plaintiff can "reasonably discern that they suffered some harm caused by the defendant's conduct." Id. at 137. Moreover, it is not necessary for a plaintiff to be "certain of this causal connection; the possibility that it existed will suffice to obviate the protections of the discovery rule." Troy, 176 N.H. at 137 (citing Beane, 160 N.H. at 713).

Moreover, while a latent injury will toll the limitations period, a patent injury will not, even if the long-term consequences of the patent injury cannot be known. See Furbush, 149 N.H. at 431; see generally Clay v. Kuhl, 727 N.E.2d 217, 222 (Ill. 2000) (applying Illinois law):

The plaintiff contends, however, that her injuries were latent to some extent and did not fully manifest themselves until years after the abuse occurred. We do not believe that the plaintiff's alleged failure to fully discover the nature of her injuries is sufficient to delay the running of the

limitations period. There is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations.

see also Stephens v. Clash, 796 F.3d 281, 288 (3d Cir. 2015) (“A plaintiff’s ignorance regarding the full extent of his injury is irrelevant to the discovery rule’s application, so long as the plaintiff discovers or should have discovered that he was injured.”)

To be sure, in Rowe v. John Deere, 130 N.H.18 (1987), the plaintiff was injured when he struck his head while using machinery manufactured by the defendant. Immediately after the accident, the plaintiff was diagnosed with a depressed skull fracture. The plaintiff recovered quickly. Six years later he began to suffer grand mal seizures, purportedly as a result of the accident. The Supreme Court held that the plaintiff discovered his injury at the time of the accident, even though the measure of damages was “nominal” when compared with the potential damages for the subsequent harm. Id. at 21. Thus, a plaintiff is likely to immediately discover an injury caused by a sudden, traumatic, violent event, and an injury which may later arise from the initial injury will not toll the statute of limitations. See, e.g., Hollander v. Brown, 457 F.3d 688, 692 (7th Cir. 2006) (applying Illinois law):

courts distinguish between injuries caused by sudden, traumatic events and those that have a late or insidious onset. For limitations purposes, a sudden, traumatic event is one that, because of its force or violence, permits the law to presume that the event immediately placed the plaintiff on notice of her injury and a right of action. When a plaintiff suffers this type of injury, her cause of action accrues on the date of the traumatic event, and the limitations period does not begin anew simply because a latent condition later may arise from the same occurrence. The rationale is that the nature and circumstances surrounding the traumatic event are such that the injured party is thereby put on notice that actionable conduct might be involved.

(internal citations and quotation marks omitted).

In this case, Plaintiff claims that he was injured as a result of Mount Prospect's failure to adequately oversee its staff with respect to hiring, training, supervision, and promulgation of policies. Thus, the "act or omission complained of" under RSA 508:4, is the breach of duty by Mount Prospect itself. According to the Complaint, that breach led to multiple beatings and painful restraints, including restraints that caused Plaintiff to cry because of the pain it produced. Additionally, the alleged breach also led to other instances of physical abuse and purported psychological abuse, including Plaintiff being locked in isolation in a tiny room at least forty times.

The physical and psychological abuse Plaintiff describes constitute injuries that are sudden, traumatic, violent, painful, and/or extremely unpleasant. There is nothing subtle or latent about these alleged events. Plaintiff knew of the assaults at the time they happened, and his own declaration demonstrates his knowledge of the physical injuries he suffered, as Plaintiff stated in his declaration that the painful restraints made him cry. Additionally, Plaintiff also recognizes that the restraints caused him a shoulder injury that he still suffers from, further demonstrating Plaintiff's awareness that he in fact suffered an injury.

Plaintiff may have been unaware of the alleged psychological and emotional long-term effects of the repeated beatings he says he endured. He may not have appreciated the long-lasting harm of the repeated isolations. But those harms were caused by the same "act or omission complained of" under RSA 508:4, which was Mount Prospect's alleged lack of care in hiring, training and supervising staff, and promulgating policies.

Under New Hampshire law, in accepting the well-pled facts in the Complaint as true, Plaintiff knew that he had been beaten and physically restrained on multiple occasions, the latest occurring in 2008. Therefore, the Court must find that Plaintiff was aware that he had been injured as a result of Mount Prospect's failure to control its staff.

Under the discovery rule, the limitations period in this case did not begin to run until Plaintiff either: (a) discovered, or (b) should have discovered through the exercise of reasonable diligence, that Mount Prospect's breach of duty was a proximate cause of his injury. Troy, 176 N.H. at 136. Knowledge of Mount Prospect's causal role cannot be automatically inferred from the fact that Plaintiff knew that his injury was caused by Mount Prospect's employees, acting overtly under color of their authority, on Mount Prospect's premises. Id. at 138. ("We decline to establish a per se rule that the plaintiff's knowledge of the abuser's employer is alone sufficient to trigger the application of the discovery rule. This inquiry presents a question of fact.").

However, "[a] plaintiff need not be certain of this causal connection; the possibility that it existed will suffice to obviate the protections of the discovery rule." Troy, 176 N.H. at 137 (quoting Beane, 160 N.H. at 713); see also Balzotti, 173 N.H. at 321; Lamprey, 163 N.H. at 257; Pichowicz v. Watson Ins. Agency, Inc., 146 N.H. 166, 168 (2001). "[T]he discovery rule employs an objective standard" to determine whether, through the exercise of reasonable diligence, a plaintiff should have discovered sufficient evidence of the defendant's role in causing his injury. Troy, 176 N.H. at 137.

In this case, the same alleged facts that state claims against Mount Prospect also demonstrate that Plaintiff knew that Mount Prospect's breach of duty was a

proximate cause of his alleged injury. Plaintiff does not complain of isolated incidents, committed in secret, by rogue staff members of a large agency.

Rather, Plaintiff claims frequent beatings, involving multiple staff members, committed openly, as well as frequent, if not constant, verbal and psychological abuse, all occurring in a single group home. In fact, Plaintiff also alleges employees often covered for one another, further highlighting what appears to be routine staff conduct at Mount Prospect. Additionally, Plaintiff alleges that staff members would often act in concert with one another to bait residents into fights to justify more violent physical restraints, suggesting an institutional prevalence and tolerance of violence. If the allegations in the Complaint are credited, as they must be at this juncture, then at the very least Mount Prospect failed to supervise its staff and monitor its facility and thereby breached both its fiduciary obligations to Plaintiff and the common law duty of reasonable care.

Plaintiff does not allege any fact that he learned about Mount Prospect since leaving its facility in 2008. He says only that: (1) he learned from fellow inmates in June 2022 that there was a lawsuit pending against the State; and (2) he only learned about the institutional responsibility of Mount Prospect after talking with a pastor sometime thereafter.

Plaintiff's remaining arguments are unpersuasive. First, Plaintiff contends that his fiduciary duty claim is tolled until he had actual knowledge of Mount Prospect's breach. The Court disagrees. New Hampshire law is clear that tolling statute of limitations period is not dependent or otherwise reliant upon the fiduciary disclosing its wrongdoing. See Beane, 160 N.H. at 714-15 ("[T]here is no support in our case law for

the proposition that a limitations period is tolled in fiduciary cases until the fiduciary discloses his or her misconduct.”). As explained above, Plaintiff’s Complaint shows that he already had all the information he needed to determine that Mount Prospect was the proximate cause of his injuries by the time he turned twenty in November 2013.

Ultimately, Plaintiff had sufficient information about Mount Prospect’s institutional failures prior to the expiration of the statute of limitations period. Again, Plaintiff did not allege anywhere in his Complaint that he learned any new facts about Mount Prospect’s role in his alleged abuse after he turned twenty. For these reasons, the Court concludes that the discovery rule did not toll the statute of limitations after the Plaintiff turned twenty in November 2013 for Plaintiff’s negligence, negligent hiring, training, supervision and retention, and breach of fiduciary duty claim.

D. Fraudulent Concealment and Equitable Tolling

The Court has found: (a) the discovery rule did not toll the start of the limitations period in RSA 508:4 (the general statute of limitations for personal actions) beyond Plaintiff’s twentieth birthday and, therefore, (b) the applicable limitations period is that established by RSA 508:8 (the disabilities statute) which gave Plaintiff until age 20 to file this action.

Plaintiff argues, however, that the doctrines of fraudulent concealment and equitable tolling apply here. The New Hampshire Supreme Court views the doctrines of fraudulent concealment and equitable tolling as implied exceptions to all statutes of limitation. Lakeman v. La France, 102 N.H. 300, 303 (1959) (adopting the majority rule that “fraudulent concealment of a cause of action from the one in whom it resides by the one against whom it lies constitutes an implied exception to the statute of limitations,”

and rejecting the “contrary view that fraudulent concealment does not toll the operation of the statute unless the Legislature has expressly so stated in the statute itself.”). With respect to equitable tolling, the Supreme Court has explained its elements. See Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 623–24 (2005).

The doctrine of fraudulent concealment tolls the limitations period when a defendant by concealment or other action intentionally prevents the plaintiff from acquiring material information. Lamprey, 163 N.H. at 259–60; See also, Lakeman, 102 N.H. at 303-304. Thus:

[Fraudulent concealment] requires something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to a cause of action—some actual artifice to prevent knowledge of the facts or some representation intended to exclude suspicion and prevent inquiry.

Lamprey, 163 N.H. at 259–60 (internal quotation marks and bracketing omitted); see also Maggi, 633 F. Supp. 3d at 516 (“The burden is on the plaintiff invoking the fraudulent concealment doctrine to present some evidence of an affirmative act on the part of the defendant to conceal or cover up the underlying wrongful conduct that gave rise to the plaintiff’s asserted injury.”); Sykes v. RBS Citizens, N.A., 2 F. Supp. 3d 128, 143 (D.N.H. 2014).

Even when there is fraudulent concealment, the doctrine provides little, if anything, in the way of relief that the discovery rule does not also provide. See Beane, 160 N.H. at 714 (“The fraudulent concealment rule states that when facts essential to the cause of action are fraudulently concealed, the statute of limitations is tolled until the plaintiff has discovered such facts or could have done so in the exercise of reasonable

diligence.” (quoting Bricker v. Putnam, 128 N.H. 162, 165 (1986)); see also Lakeman, 102 N.H. at 303; Furbush, 149 N.H. at 431; Sykes, 2 F. Supp. 3d at 143.

In this case, Plaintiff has not pointed to any affirmative act on the part of Mount Prospect to conceal or cover up any fact. As noted above, Plaintiff has not pointed to any fact he learned after leaving Mount Prospect’s facility in 2008. He only states that, after speaking with a pastor and fellow inmates, he realized that Mount Prospect as an institution was to blame for his abuse. Therefore, the doctrine of fraudulent concealment does not apply to Plaintiff’s claims against Mount Prospect.

The New Hampshire Supreme Court recognized the doctrine of equitable tolling in Portsmouth Country Club, explaining that it allows a plaintiff to initiate an action beyond the statutory limitations period when that plaintiff had been “prevented in some extraordinary way from exercising his or her rights.” 152 N.H. at 623 (emphasis added). The doctrine “applies principally if the plaintiff is actively misled by the defendant about the cause of action.” Kierstead v. State Farm Fire & Cas. Co., 160 N.H. 681, 688 (2010).

To be eligible for equitable tolling, a plaintiff’s access to the justice system must be frustrated despite the plaintiff’s diligence. See, e.g., Irwin v. Dep’t of Veterans Affairs, 498 U.S. 89, 96 (1990)(applying federal law and holding that:

Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary’s misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.

(internal footnotes omitted)); Maggi, 633 F. Supp. 3d at 518 (applying federal law and noting that, “[I]n unusual cases, certain limitations of imprisonment may rise to the level of ‘extraordinary circumstance’” [but] “the usual problems inherent in being incarcerated, such as a prisoner’s lack of prior legal training or limited access to legal resources in a prison’s library, do not, by themselves, justify equitable tolling.” (internal ellipses and citation omitted)).

In this case, Plaintiff was not prevented from discovering either necessary facts or necessary law. He was not actively misled by Mount Prospect as to his ability to access the courts. He was not threatened with retaliation for accessing the courts. He was not deprived of the ability to seek counsel or advice from third parties.

To this end, Plaintiff alleges that he did not bring suit because of his ongoing emotional distress and substance misuse disorder. However, diminished mental capacity is not grounds for equitable tolling. See Sykes, 2 F. Supp. 3d at 144, fn 18 (ruling that, “RSA 508:8 [the disabilities statute], and not the doctrine of equitable tolling, governs the statute of limitations for New Hampshire state law claims when a plaintiff is mentally incompetent.”). Furthermore, even under federal law, where a plaintiff’s mental condition might allow for equitable tolling, the plaintiff would have to prove that he was unable to engage in rational thought to the point where he could not cooperate with any counsel, and/or pursue his claim on his own during the limitations period.” Id. Plaintiff does not allege this. Thus, the doctrine of equitable tolling does not apply.

Accordingly, Plaintiff’s claims for negligence, negligent hiring, training, supervision and retention, and breach of fiduciary duty are DISMISSED WITH PREJUDICE because they are untimely.

V. The Complaint Does Not State Claims For Aiding And Abetting a Breach of Fiduciary Duty Or Civil Conspiracy

Counts X and XIV fail to state a claim upon which relief can be granted. Both of these claims require proof that Mount Prospect was engaged in deliberate, concerted action with another party to violate Plaintiff's rights. See Invest Almaz v. Temple-Inland Forest Prods. Corp., 243 F.3d 57, 82-83 (1st Cir. 2001) (stating standard for aiding and abetting a breach of fiduciary duty); Jay Edwards, Inc. v. Baker, 130 N.H. 41, 47 (1987) (describing standard for civil conspiracy). Because the Complaint alleges no material facts from which such concerted action can be inferred, as set forth below, these two counts are DISMISSED WITHOUT PREJUDICE for failure to state a claim.

A. Aiding and Abetting a Breach of Fiduciary Duty

The New Hampshire Supreme Court has not yet had occasion to recognize the tort of aiding and abetting a breach of fiduciary duty. Nonetheless, the tort is well established and defined. See, Restatement (Second) of Torts, §876(b):

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . [1] knows that the other's conduct constitutes a breach of duty and [2] gives substantial assistance or encouragement to the other so to conduct himself[.]

Courts that apply New Hampshire law predict that the New Hampshire Supreme Court will recognize this cause of action. See Invest Almaz, 243 F.3d at 82-83; Legacy Glob. Sports, LP v. St. Pierre, No. 218-2019-CV-198, 2020 WL 2027401, at *2 (Merrimack County Superior Court, Apr. 27, 2020); Clare v. Bank of New England, Slip. Op. No. 218-2013-CV-00687, 2013 N.H. Super LEXIS 22, at *3-4, 9 (Merrimack County Superior Court, Nov. 26, 2013); HayJo S.A. de CV v. Sponge-Jet, Inc., No. 14-cv-196-JD, 2015 WL 9459918, at *4 (D.N.H. Dec. 23, 2015); Tamposi v. Denby, 974 F. Supp.

2d 51, 61 (D. Mass. 2013); In Re Felt Mfg. Co., Inc., 371 B.R. 589, 615 (Bankr. D.N.H. 2007); But see Gill v. Devine, Millimet & Branch, P.A., No 218-2012-CV-00660 (Rockingham County Superior Court, Oct. 12, 2012) (ruling that the tort of aiding and abetting a breach of fiduciary duty had not been recognized).

Assuming the recognition of aiding and abetting a breach of fiduciary duty as a viable cause of action, the Complaint does not contain facts to support it. To prevail, Plaintiff would need to prove that Mount Prospect helped another party breach its fiduciary duty. The Complaint does not allege that Mount Prospect did anything to encourage or facilitate Plaintiff's alleged abuse at YDSU or YDC.

Moreover, Mount Prospect cannot be found liable for aiding its own employees and agents in a breach of fiduciary duty. The cause of action for aiding and abetting a breach of fiduciary duty only exists to cover circumstances in which the defendant has no direct liability to the plaintiff as a fiduciary. That is not the case here. See, e.g., Mann v. GTCR Golder Rauner, L.L.C., 483 F. Supp. 2d 884, 916 (D. Ariz. 2007) (Under Delaware law, "a person who himself owes a fiduciary duty with respect to a transaction or course of conduct cannot be liable for aiding and abetting a breach of that same fiduciary duty by another because the same facts that would otherwise constitute aiding and abetting would constitute a primary breach of fiduciary duty."); In Re Amcast Indus. Corp., 365 B.R. 91, 112–13 (Bankr. S.D. Ohio 2007) (Under Ohio law "the action by its nature, . . . requires participation by a non-fiduciary defendant); In re Verestar, Inc., 343 B.R. 444, 482 (Bankr. S.D.N.Y. 2006) ("[A] claim for aiding and abetting breach of fiduciary duty can only be sustained against a non-fiduciary.").

Accordingly, for the foregoing reasons, the Complaint does not state a claim for aiding and abetting a breach of fiduciary duty, and, therefore, this Claim is DISMISSED WITHOUT PREJUDICE.

B. Civil Conspiracy

To prevail on a claim of civil conspiracy, a plaintiff must prove that:

(A) Two or more persons and/or entities agreed to either:

(1) pursue an unlawful objective or, alternatively,

(2) use unlawful means to accomplish a lawful or unlawful objective;
and

(B) At least one of the conspirators committed an overt act in furtherance of this agreement; and

(C) The plaintiff was harmed as a proximate result of the agreement.

Jay Edwards, Inc., 130 N.H. at 47; see Univ. Sys. of N.H. v. U.S. Gypsum Co., 756 F. Supp. 640, 652 (D.N.H. 1991); Censabella v. Town of Weare, No. 16-cv-490-AJ, 2017 WL 3996173, at *3 (D.N.H. Sept. 8, 2017). “For a civil conspiracy to exist, there must be an underlying tort which the alleged conspirators agreed to commit.” Univ. Sys., 756 F. Supp. at 652. Thus, the cause of action serves to impose liability on “all who commonly plan, take part in, further by cooperation, lend aid to, or encourage the wrongdoers’ acts.” Id.

The Complaint does not contain facts to support a claim for civil conspiracy. There are no facts from which the Court may infer that Mount Prospect and the State entered into an agreement to engage in concerted action by beating Plaintiff and otherwise abusing him. There are no facts suggesting that Mount Prospect ever had any conversation, let alone any agreement, with the other Defendants.

Further, Mount Prospect cannot be liable for civil conspiracy with its own employees. This is so because under the intracorporate conspiracy doctrine, Mount Prospect and its employees are considered to be the same “person.” See, e.g., Hoefer v. Fluor Daniel, Inc., 92 F. Supp. 2d 1055, 1057 (C.D. Cal. 2000):

The intracorporate conspiracy doctrine provides that, as a matter of law, a corporation cannot conspire with its own employees or agents. [citation and footnote omitted]. The logic for the doctrine comes directly from the definition of a conspiracy. A conspiracy requires a meeting of minds. [citation omitted]. It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself anymore than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

see also Grider v. City of Auburn, Ala., 618 F.3d 1240, 1261 (11th Cir. 2010) (“[T]he intracorporate conspiracy doctrine holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy.”); Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505, 509 (6th Cir. 1991) (“It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.”); Tabb v. District of Columbia, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (“[A] corporation cannot conspire with its employees[.]”); HRCC, Ltd. v. Hard Rock Cafe Int’l (USA), Inc., 302 F. Supp. 3d 1319, 1325 (M.D. Fla. 2016) (“According to the intracorporate conspiracy doctrine, however, a civil conspiracy claim will not succeed where the only members of the alleged conspiracy are a corporation and/or its officers.”).

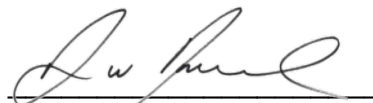
For these reasons, the claim of civil conspiracy against Mount Prospect is
DISMISSED WITHOUT PREJUDICE.

VI. Conclusion

In accordance with RSA 508:4 and 508:8, Plaintiff's negligence, negligent hiring, training, supervision and retention, and breach of fiduciary duty claims against Mount Prospect are not timely, as Plaintiff filed this case well after his twentieth birthday and almost nine years after the expiration of the statute of limitations. Accordingly, these claims are DISMISSED WITH PREJUDICE.

In addition, the Complaint does not state a claim for aiding and abetting a breach of fiduciary duty or civil conspiracy. Accordingly, these claims against Mount Prospect are DISMISSED WITHOUT PREJUDICE. The Court grants Plaintiff leave to amend its complaint to correct the deficiencies outlined above only as to Plaintiff's aiding and abetting a breach of fiduciary duty and civil conspiracy claims. See ERG, Inc. v. Barnes, 137 N.H. 186, 189 (1993) ("[T]he plaintiff must be given leave to amend the writ to correct perceived deficiencies before an adverse judgment has preclusive effect."). The Plaintiff shall submit an amended complaint to the Court within thirty (30) days of the Notice of Decision on this order. Should the Plaintiff fail to amend within the timeframe allowed, dismissal as to the above counts shall become final.

August 9, 2024


James W. Kennedy
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 08/09/2024

Denied. New Hampshire Rule of Evidence 201(a) allows the Court to take judicial notice of facts that are either generally known within a jurisdiction or the accuracy of which cannot be questioned.

ROCKINGHAM, ss.

Here, the plaintiff's motion asks the Court to make inferences based upon facts contained in two reports authored by the New Hampshire Department of Education. Taking judicial knowledge of such inferences is beyond the scope of Rule 201(a). The Court's exercise of judicial

STATE OF NEW HAMPSHIRE

CASE NO. 217-2022-CV-00831

JOHN DOE #533

v.

STATE OF NEW HAMPSHIRE, et al.

notice "does not include the introduction of documentary evidence such as court records which would be required to meet

SUPERIOR COURT evidentiary requirements for admissibility including authentication [sic]." State v. Cox, 133, N.H. 261, 266 (1990) (citing N.H. Rule Ev. 901, 902). So Ordered.



Honorable James W. Kennedy

December 5, 2024

PLAINTIFF JOHN DOE #533'S MOTION FOR JUDICIAL NOTICE IN SUPPORT OF HIS MOTION FOR RECONSIDERATION

Plaintiff John Doe #533 ("Plaintiff"), by and through counsel Rilee & Associates, P.L.L.C. and Nixon Peabody LLP, and pursuant to Rule 201 of the New Hampshire Rules of Evidence moves the Honorable Court to take judicial notice of an official document relevant to Plaintiff's Motion for Reconsideration of the Court's order with respect to the motion to dismiss filed by Mount Prospect Academy ("MPA"), stating in further support thereof as follows:

1. In deciding to grant, in part, MPA's motion to dismiss on the timeliness issue, the Court determined that MPA was materially different than a "large agency" where "rogue staff members" abused children in secret. Instead, the Court found that the abuse Plaintiff suffered "involved multiple staff members, committed openly... all occurring in a single group home." (Order at 15.) From that inference, the Court determined as a matter of law that Plaintiff should have known he was injured when MPA's staff members subjected him to physical abuse *and* that such abuse was the "result of [MPA]'s failure to control its staff." (Order at 14.)¹

¹ Plaintiff alleges that he *did not* know of a causal connection between his injuries and MPA's negligence and breach of fiduciary duty until June 2022, when disclosed his experiences to a pastor, spoke to other child abuse survivors, and learned about a separate lawsuit. (Pl. Decl. ¶¶ 40-41, 45 (Index #11) (filed under seal).)

2. In contrast, Judge Schulman denied the State’s Motion for Summary Judgment in *Meehan*, because there was a “gap of proof . . . as to whether the State itself, acting through its higher-ups, was the cause of that abuse.” *Meehan v. State*, No. 217-2020-cv-00026, slip op. (N.H. Super. Jan. 12, 2024) (Index #592). Judge Schulman elaborated that “YDC was not a small group home” and that “[i]ts campus included multiple residences” forming “a total institution in the sense that it provided not merely several residential group homes . . . but also education, programming, recreation, etc.” *Id.* Judge Schulman concluded that “[w]hat Mr. Meehan should have known of the higher ups’ involvement has not been established to the point of cavil.” *Id.*

3. For the reasons set forth in Plaintiff’s Motion for Reconsideration, and in light of the information presented herein, the Court erred in granting, in part, MPA’s motion to dismiss on the issue of timeliness.

4. The Court’s order granting, in part, MPA’s motion to dismiss also incorporates several inferences related to the size and layout of MPA. Those inferences are not supported by any fact in the pleadings or by any fact properly before the Court at the motion to dismiss stage. For example, there are no allegations supporting the Court’s conclusion that MPA was a “single group home” where it can be assumed that the “higher ups” knew or should have known what was occurring within any given MPA facility.

5. There are also no allegations in the record reflective of MPA’s policies at each facility or describing how MPA managed each facility. Indeed, Plaintiff alleged that he was placed by the State of New Hampshire at one of MPA’s facilities between 2006 and 2008. (Short Form Compl. ¶ 6 (Index #1); Pl.’s Decl. ¶ 14.) While placed by the State at MPA’s facility, MPA staff members abused Plaintiff in various ways, then gaslit, threatened into silence, retaliated against, and ignored him when he complained to MPA staff members and counselors, police, and his own

aunt. (Short Form Compl. ¶¶ 4, 10; Pl.’s Decl. ¶¶ 14-22, 37.) Plaintiff alleges that he “came to believe that the way [he] was treated... was permissible” because no one ever punished or disciplined the MPA staff members for what they did and because Plaintiff did not then understand that MPA itself bore responsibility for preventing its staff’s actions. (Pl.’s Decl. ¶¶ 35-36, 38-39.) There is no allegation supporting the conclusion that Plaintiff should have known about MPA’s oversight, or lack thereof, nor any allegation as to whether MPA condoned, prohibited, or simply did not address the types of conduct MPA staff members inflicted on Plaintiff as a matter of policy or practice. These allegations, in and of themselves, precludes dismissal as a matter of law.

6. The allegations do reflect that MPA was a large, complex organization which provided secure residential placement and related services—i.e. a “total institution.” (Short Form Compl. ¶ 4.) Plaintiff alleged that MPA has a principal place of business in Plymouth, New Hampshire and “operated several facilities providing services to children under various trade names, including Becket Family of Services, Becket House, Vermont School for Girls, Solid Foundations, Project Connect, Ashuelot Valley Academy, Squamscott River Academy, MPA at Pike, and MPA at Campton, among others.” (*Id.* at 4) The allegation that MPA had multiple facilities is confirmed by MPA’s website, which currently indicates that MPA operates eight residential facilities, including facilities in Campton, Plymouth, Rumney, Warren, Hampton, and Pike, New Hampshire. *See* Mount Prospect Academy: About Us (last visited Nov. 19, 2024), <https://www.mountprospectacademy.org/about-us/>.

7. At the motion to dismiss stage, the Court had to draw all reasonable inferences in Plaintiff’s favor. Thus, any allegation that *could* support application of the discovery rule should have precluded dismissal. In fact, by drawing the inference against Plaintiff, the Court reached a faulty conclusion. The fault of that inference is further demonstrated in a number of reports

published by the New Hampshire Department of Education (“NHDOE”), including a February 1, 2007 report (the “2007 Report”) and an April 30, 2018 report (the “2018 Report”) each related to Mount Prospect Academy’s special education programs², copies of which are attached as **Exhibit A** and **Exhibit B**.

8. In the 2007 Report, NHDOE noted several “issues of significance,” defined by NHDOE as “systemic deficiencies that impact the effective delivery of services to all students” or “system wide issues related to curriculum, instruction, and assessment.” (2007 Report at 14.) These systematic deficiencies included the following:

...there needs to be clarification on who is responsible for meaningful supervision and evaluation of staff. This includes professional development goals for staff and administration that are connected to a professional development master plan, mentoring of new staff, and the design of professional development opportunities system wide for both sites.

(*Id.*) NHDOE concluded that, “as in the past, it is strongly suggested that [MPA] utilize a consistent approach to the development and implementation of IEPs,” “there appears to be a very strong need for a formalized, consistent approach to literacy and basic reading instruction,” and “[MPA] would benefit from a Director of Facilities, who would follow an articulate[d] protocol and improvement plan that recognizes the importance of *safe*, flexible, and contained learning environments.” (*Id.* at 16 (emphasis added).) In other words, in 2007, the NHDOE observed “systematic deficiencies” related to MPA’s oversight of its facilities, including an apparent lack of focus on “safe” learning environments.

9. The 2018 Report indicates more of the same. At that time, NHDOE noted several “areas in need of refinement...significant enough to be addressed,” including:

² N.H. Dep’t of Education, “Approved Private and Other Non-district Special Education Program Reports” Mount Prospect Academy, Inc. (last accessed Nov. 19, 2024), <https://www.education.nh.gov/who-we-are/division-of-learner-support/bureau-of-student-support/special-education/private-non-district-reports>.

- Confusion as to the location of certain MPA “off-site classrooms,” including the Campton facility which neither MPA’s Director of Academics nor its Executive Director could confirm the correct address for. (2018 Report at 3.)
- Discrepancies in the names of various educational classrooms and residences and the resulting recommendation that “Mount Prospect Academy, in conjunction with their parent companies, should consider developing one consistent document which includes accurate names, exact addresses (in accordance with the 911 system) and consistent descriptions of each ‘off-site classroom’... ensur[ing] that all staff across all companies are made aware of these updates, and are using the information accurately and consistently.” (*Id.* at 3-4.)

Perhaps most relevant, NHDOE observed that the person in charge of “organizing, administering, supervising, and evaluating the effective delivery of special education services,” “oversee[ing] all facets of the special education department” and “ensur[ing] that all special services programs and activities conform to federal, state, and district guidelines,” and “provid[ing] direct supervision and overs[ight] [for] the academic case managers”—MPA’s Director of Academic—could not do that job for MPA’s multiple “off-site classrooms.” (*Id.* at 4-5.) In short summation, NHDOE concluded that “it would be *impossible* for one person to oversee and implement all of the aforementioned essential duties” across seven sites located 62.5 miles apart. (*Id.* at 5 (emphasis added).)

10. The 2007 Report and 2018 Report are both relevant to the assumptions made by the Court with respect to MPA and the knowledge imputed by the Court to Plaintiff regarding MPA’s internal machinations. If MPA could not form a “consistent approach” and articulate a “protocol and improvement plan” related to learning environments, nor adequately supervise its academic staff, the Court’s inference in this case that Plaintiff—as an abused child—should have understood MPA’s knowledge and culpability differently was inherently unreasonable.

11. “[T]he ‘underlying theory [of judicial notice] is that there is no need to prove what everyone already knows.’” *State v. Gagnon*, 155 N.H. 418, 419–20 (2007). Plaintiff requests this

Court take judicial notice of the NHDOE reports relating to MPA’s operations. These conclusions were made by the State and are published in reports promulgated by a State agency. They are “capable of accurate and ready determination” and they are undeniably authentic. N.H. R. Evid. 201(d) (directing the Court “*must* take judicial notice” of a fact that is not subject to reasonable dispute “if a party requests it and the [C]ourt is supplied with the necessary information.”) (emphasis added); *Gagnon*, 155 N.H. at 422 (“Where . . . a court takes discretionary³ judicial notice of a fact because it considers the fact to be capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, [t]he judge's choice of sources of information [is] unlimited.” *Id.* at 421 (cleaned up)).

12. The published findings of NHDOE are amenable to mandatory judicial notice. *See* N.H. R. Evid. 201(b), (d); *New England Tel. & Tel. Co. v. State*, 95 N.H. 515, 517 (1949) (published findings of an arm of state government constituted facts not subject to reasonable dispute and were permissibly judicially noticed); *Guardado v. United States*, 76 F.4th 17, 23 (1st Cir. 2023) (recognizing that certain “state court records [may be] susceptible to judicial notice”); *see also Medtronic Med. CR SRL v. Feliciano-Soto*, 59 F.4th 51, 54 (1st Cir. 2023) (taking judicial notice of a defendant’s indictment issued after the district court’s order on dismissal).

13. For the foregoing reasons, this Court should take judicial notice of the 2007 Report and 2018 Report when ruling on Plaintiff’s Motion for Reconsideration.

³ New Hampshire Rule of Evidence 201 allows a court to take judicial notice of a fact “not subject to reasonable dispute that is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.” The former category is considered a fact for mandatory judicial notice, while the latter is discretionary. *See Gagnon*, 155 N.H. at 422.

14. MPA has moved to dismiss Plaintiff's claims and opposed Plaintiff's Motion for Reconsideration. Based upon the foregoing, it is reasonably assumed that MPA will not assent to the relief requested herein and, therefore, Plaintiff did not seek MPA's assent.

WHEREFORE, Plaintiff respectfully requests this Court:

- A. TAKE judicial notice of the statements and facts outlined herein; and
- B. GRANT any other relief as the Court deems just.

Respectfully submitted,

JOHN DOE #533

Dated: November 20, 2024

RILEE & ASSOCIATES, P.L.L.C.

/s/ Cyrus F. Rilee, III

Cyrus F. Rilee, III, Esq. (Bar No. 15881)

Laurie B. Rilee, Esq. (Bar No. 15373)

264 South River Road

Bedford, NH 03110

T: 603.232.8234

crilee@rileelaw.com

lrilee@rileelaw.com

By and through counsel,

NIXON PEABODY LLP

/s/ Nathan P. Warecki

David A. Vicinanzo, Esq. (Bar No. 9403)

W. Daniel Deane, Esq. (Bar No. 18700)

Mark Tyler Knights, Esq. (Bar No. 264904)

Nathan Warecki, Esq. (Bar No. 20503)

S. Amy Spencer, Esq. (Bar No. 266617)

Erin S. Bucksbaum, Esq. (Bar No. 270151)

Allison K. Regan, Esq. (Bar No. 272296)

Jonathan O'Neil, esq. (Bar No. 276336)

900 Elm Street, 14th Floor

Manchester, NH 03101

T: 603-628-4000

dvicinanzo@nixonpeabody.com

ddeane@nixonpeabody.com

mknights@nixonpeabody.com

nwarecki@nixonpeabody.com

aspencer@nixonpeabody.com

ebucksbaum@nixonpeabody.com

aregan@nixonpeabody.com

joneil@nixonpeabody.com

CERTIFICATE OF SERVICE

I certify that on this date, November 20, 2024, I am serving a copy of this document by electronically sending it through the court's e-filing system to all attorneys and to all other parties who have entered electronic service contacts (email addresses) in this case.

/s/ Nathan P. Warecki

EXHIBIT A

**NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
SPECIAL EDUCATION
PROGRAM APPROVAL VISITATION
CASE STUDY COMPLIANCE REVIEW
SUMMARY REPORT**

Becket Family Of Services
A Holistic Treatment Program For High Risk Youth

**Mount Prospect Academy (MPA)
Life Centered Learning Institute (LCLI)**

**Jay Marshall, Executive Director, MPA
Jeff Caron, Executive Director, LCLI
Karen Money, Director of Special Education**

Chairpersons, Visiting Team:
Jane Bergeron-Beaulieu, M.Ed
Dr. Richard Ayers, Ed.D
Education Consultants

Site Visit Conducted on November 15-16, 2006
Report Date, February 1, 2007

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 - Citations of Noncompliance
 - Suggestions for Program Improvement
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 - Life Centered Learning Institute
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Innovative Practice Descriptions

I. TEAM MEMBERS

Visiting Team Members:

NAME	PROFESSIONAL ROLE
Chairpersons: Jane Bergeron-Beaulieu	Education Consultant
Dr. Richard Ayers	Education Consultant
Stacy Buckley	Assistant Superintendent
John Dawson	Sr. Psychiatric Social Worker
Thomas Donahue	Special Educator/Team Leader
Sue Ellis	Director of Education
Leslie Higgins	Education Consultant, NHDOE
Karen Langley	Education Administrator
Gregory Magoon	Education Coordinator
Marie Morgan	Education Consultant, NHDOE
David Parker	Director
Rick Sharp	Director of Special Education

Building Level Team Members:

NAME	PROFESSIONAL ROLE	LOCATION
Kelly Mask	Special Educator	Mount Prospect Academy
Nicole Canning	Special Educator	Mount Prospect Academy
Karen Money	Special Education Director	Mount Prospect Academy
Jay Marshall	Executive Director / Principal	Mount Prospect Academy
Jim Leavitt	Teacher	Mount Prospect Academy
Andrew Vaughn	Teacher	Mount Prospect Academy
Shaun Bean	Teacher	Mount Prospect Academy
Ken Bolia	Teacher	Mount Prospect Academy
Tim Curtis	Teacher	Mount Prospect Academy
Dawn Korade	Teacher	Mount Prospect Academy
Mike Poulin	Physical Education Director	Mount Prospect Academy
Tara MacKenzie	Teacher	Mount Prospect Academy
David Morrill	Teacher	Mount Prospect Academy
Steve Lussier	Special Educator	Life Centered Learning Institute
Jeff Caron	Principal, Director of Admissions	Life Centered Learning Institute
Karl Barconier	Teacher	Life Centered Learning Institute
Pat Mitchell	Teacher	Life Centered Learning Institute
Sean McLaughlin	Teacher	Life Centered Learning Institute
John Fulp	Assistant Principal	Life Centered Learning Institute
Brian Beck	Teacher	Life Centered Learning Institute
Laurie Brothers	Teacher	Life Centered Learning Institute
Jerry Greer	Teacher	Life Centered Learning Institute
Loran Smith	Teacher	Life Centered Learning Institute
John Stanley	Teacher	Life Centered Learning Institute
Mary Gibbs	Teacher	Life Centered Learning Institute
Ray Sleeper	Teacher	Life Centered Learning Institute

II. INTRODUCTION

Becket Family of Services: A Holistic Treatment Program for High Risk Youth

“Our mission is to inspire our students to achieve, in their own unique and personal way, meaningful success. We do not define success for our students; they must do this themselves, with our guidance, and the guidance of others whom they love and respect. For this reason we encourage the involvement of others in this process of guidance and support.”
(Becket mission statement)

Becket Family of Services has been dedicated to educating students with unique needs since 1964. The program is presented as holistic and comprehensive, encompassing services intended to address all dimensions of the students’ lives, not exclusive to intellectual and emotional needs, but inclusive of physical and vocational needs. Becket Family of Services includes two special education programs: Mount Prospect Academy (MPA), located in Plymouth NH, and Life Centered Learning Institute (LCLI), located in Tilton NH. An integral aspect of the Becket Family of Services program is the residential component, with New Hampshire facilities in Campton, East Haverhill, Plymouth, and Rumney, as well as three comparable campuses in central Maine. The East Haverhill setting includes a majority of the vocational programs for students attending MPA.

At the time of the November 2006 NHDOE Special Education Case Study Compliance Review, MPA was approved by the New Hampshire Department of Education (NHDOE) to serve a student population of 100 males, ages 12-21, grades 6-12, in the day/residential education program. As part of the November 2006 NHDOE Special Education Program Approval Visit, MPA requested an increase in enrollment to 115 students. MPA offers intensive residential and day treatment, including treatment for behaviors such as fire setting, sexual offenses, assault, mental illness, and other difficulties associated with anger management. In addition, many of the students enrolled have significant learning challenges, including learning disabilities and/or other health impairments, to include attention deficit hyperactivity disorder and attention deficit disorder. As with all Becket programs, MPA takes pride in their reputation for and responsibility addressing the most difficult to treat and hard to place adolescents.

LCLI is an alternative middle/high school program approved by the NHDOE as a co-educational special education day program providing services to 28 male and female students in grades 7-12. At the time of the November 2006 NHDOE Special Education Program Approval Visit, LCLI requested an increase in the capacity of the program to 36 students. Students attending LCLI have an opportunity to take advantage of both academic and vocational courses, all offered on site. Vocational options include culinary arts, building trades, automotive mechanics and computer and media technology. Similar to MPA, many of the students enrolled have significant emotional and behavioral challenges; many are court involved.

Currently, Becket Family of Services provides programming to youth from 6 states: New Hampshire, Maine, Vermont, Rhode Island, New York and Massachusetts. A significant portion of the student population served within the Becket Family of Services are court involved and have been court ordered to the facility, while others have been placed by the Local Education Agency (LEA). The residential programs provide a secure environment, including onsite overnight supervision. All staff receive training in Crisis Prevention and de-escalation techniques. Within the education programs, the staff/student ratio is maintained at 4:1.

Becket Family of Services takes pride in the various pre-vocational and vocational opportunities provided to students at the East Haverhill facility. Youth who are attending MPA participate in offerings at East Haverhill that include a working farm with over 2000 acres with multiple organic gardens, a maple sugar operation and a livestock and forestry program. The goal of these programs is to teach ethics of the workplace, provide vocational training, and to assist students to understand the value of “work ethic”. In addition to the academic and vocational programs, MPA provides intramural sports to students, including soccer, basketball, softball, and bowling. Both LCLI and MPA offer experiential education opportunities, such as rock climbing, ropes courses, Florida Everglades Adventure, skiing, mountain biking, and canoeing.

Mount Prospect Academy

SCHOOL DEMOGRAPHICS	2004-05	2005-06	2006-07
Student Enrollment as of December 1	82	87	88
Do you accept out-of-state students? If so, list number from each state in 06-07	Yes – 3 NY, 12 VT, 1 RI, 2 MA		
# and Names of Sending New Hampshire LEAs (as of October 1)	See below		
DOE Approved Rate	208.79	208.79	211.40
Actual Expenditure per Pupil (Budget Divided by # of Students as of Oct 1)	213.88*	201.59*	235.42*
# Identified Students Suspended One or More Times	N/A	N/A	N/A
Average Length of Stay for Students	14 months	13 months	13 months
<u>STAFF DEMOGRAPHICS</u>			
Student/Teacher Ratio (as of Oct. 1)	4:1	5:1	5:1
# of Certified Administrators	3	4	4
# of Certified Teachers	5	12	10
# of Teachers with Intern Licenses	8	2	7
# of Uncertified Teachers (with applications in progress)	0	3	2
# of Related Service Providers	2	2	2
# of Paraprofessionals	10	10	13
# of Professional Days Made Available to Staff	12	7	11

* Expenditure per student using the formula varies day to day based on occupancy

SPECIAL EDUCATION PROGRAM DATA	2004-05	2005-06	2006-07
<u>Primary Disability Types:</u>			
Emotional Disturbance	41	30	40
Other Health Impairment	10	21	15
Specific Learning Disabilities	9	10	13

LIST OF SENDING LEAS, MPA:

▪ Conway: SAU 9 ▪ Gorham/Milan: SAU 20 ▪ Sanborn Reg: SAU 17 ▪ Lebanon: SAU 88 ▪ Fall Mt: SAU 60 ▪ Manchester: SAU 37 ▪ Laconia: SAU 30 ▪ Keene: SAU 29 ▪ Franklin: SAU 18 ▪ Mascoma: SAU 62 ▪ ConVal: SAU 1 ▪ Oyster River: SAU 5 ▪ Somersworth: SAU 56 ▪ Merrimack: SAU 26 ▪ Winnacunnet: SAU 2	▪ Nashua: SAU 42 ▪ Groveton: SAU 58 ▪ Hillsboro-Deering: SAU 34 ▪ Claremont: SAU 6 ▪ Dover: SAU 11 ▪ Pelham School District: SAU28 ▪ Newport: SAU 43 ▪ Haverhill: SAU 23 ▪ Rochester: SAU 54 ▪ Pembroke: SAU 53 ▪ Shaker Reg: SAU 80 ▪ Timberlane: SAU 55 ▪ Berlin: SAU 3 ▪ Farmington: SAU 61 ▪ Monadnock: SAU 38

SUMMARY REPORT OF SENDING LEAs

Private Special Education Schools are required to survey their sending LEAs as part of the Special Education Program Approval Process.

Mount Prospect Academy LEA Survey Results

Total number of surveys sent: 30	Total # of completed surveys received: 12	Percent of response: 40%
Number of students placed by: LEA: 12	Court: 67	Parent: 0

Scale 4 Strongly Agree 3 Agree 2 Disagree 1 Strongly Disagree

	4	3	2	1	No Answer
1. The private school team has positive expectations for students.	6	6	0	0	0
2. I am satisfied with the educational program at the above school.	4	8	0	0	0
3. The school consistently follows special education rules and regulations.	6	6	0	0	0
4. The school has an effective behavioral program (if applicable).	5	5	2	0	0
5. I am satisfied with the related services provided by the school.	3	8	0	0	1
6. The school implements all parts of students' IEPs.	6	6	0	0	0
7. I feel the school provides the necessary skills to allow the student to make progress on the IEP goals.	4	7	1	0	0
8. The school program measures academic growth.	3	9	0	0	0
9. The school program measures behavioral growth (if applicable).	4	7	0	0	1
10. The school completes a minimum of 3 comprehensive reports per year on each child with a disability enrolled.	6	6	0	0	0
11. The progress reports describe the child's progress toward meeting the IEP goals, include a record of attendance, and are written in terminology understandable to the parent.	6	6	0	0	0
12. Progress reports are provided to the LEA and to the parent of the child.	8	4	0	0	0
13. I am satisfied with the way the school communicates students' progress.	7	5	1	0	0
14. The school communicates effectively with parents.	6	5	1	0	0
15. The school communicates effectively with the LEA.	4	7	1	0	0
16. The school involves parents in decision-making.	5	6	1	0	0
17. The school actively plans for future transition to a less restrictive placement.	4	8	0	0	0
18. If the school finds it necessary to change or terminate placement, they notify the LEA by convening the IEP team to: review the concerns, review/revise the IEP, discuss the placement and determine if the facility can fully implement the IEP and provide FAPE.	4	6	1	0	1
19. The school team sets meeting times that are convenient for both parents and the LEA.	6	6	0	0	0
20. The school has met my expectations.	7	3	2	0	0
21. I have a good relationship with the school.	9	3	0	0	0
22. I would enroll other students at the school.	8	4	0	0	0

Interpretation of Results of LEA Surveys:

The surveys from LEAs indicate overall satisfaction with Becket Family of Services programs at Mount Prospect Academy. The responses indicate ninety-five (95) percent agreement with the school's program, communication and planning. An area which may deserve attention by MPA administration and faculty is defining increments of academic growth and transition planning.

Life Centered Learning Institute

SCHOOL DEMOGRAPHICS	2004-05	2005-06	2006-07
Student Enrollment <u>as of December 1</u>	20	17	26
Do you accept out-of-state students?	N/A		
# and Names of Sending New Hampshire LEAs (as of October 1)	See below		
DOE Approved Rate	146.82	146.82	148.69
Actual Expenditure per Pupil (Budget Divided by # of Students as of Oct 1)	155.71*	158.88*	145.41*
# Identified Students Suspended One or More Times	5	11	12
Average Length of Stay for Students	2 years	2 years	2 years
<u>STAFF DEMOGRAPHICS</u>			
Student/Teacher Ratio (as of Oct. 1)	3.5:1	3:1	4:1
# of Certified Administrators	2	2	2
# of Certified Teachers	5 reg/4 voc	5 reg/2 voc	5 reg/2 voc
# of Teachers with Intern Licenses	0	0	0
# of Uncertified Teachers (with applications in progress)	0	2	2
# of Related Service Providers	0	1	1
# of Paraprofessionals	5	5	2
# of Professional Days Made Available to Staff	12	7	11

* Expenditure per student using the formula varies day to day based on occupancy

SPECIAL EDUCATION PROGRAM DATA	2004-05	2005-06	2006-07
<u>Primary Disability Types:</u>			
Emotional Disturbance	6	7	12
Other Health Impairment	10	5	6
Specific Learning Disabilities	4	5	8

LIST OF SENDING LEAS, LCLI:

Winnisquam School District – SAU 59
 Franklin School District – SAU 18
 Plymouth Regional School District – SAU 48
 Hopkinton School District – SAU 66
 Henniker School District – SAU 24
 Pembroke School District – SAU 53
 Manchester School District – SAU 37
 Shaker Regional School District – SAU 80
 Inter-Lakes School District – SAU 2
 Newfound School District – SAU 4
 Laconia School District – SAU 30
 Moultonborough School District – SAU 45
 Mascoma School District – SAU 62
 Pittsfield School District – SAU 51
 Alton School District – SAU 72
 Governor Wentworth School District – SAU 49
 Gilmanton School District – SAU 79

Life Centered Learning Institute LEA Survey Results

Total number of surveys sent: 17	Total # of completed surveys received: 4	Percent of response: 24
Number of students placed by: LEA: 17	Court: 0	Parent: 0

Scale **4** Strongly Agree **3** Agree **2** Disagree **1** Strongly Disagree

	4	3	2	1	No Answer
1. The private school team has positive expectations for students.	2	2	0	0	0
2. I am satisfied with the educational program at the above school.	0	4	0	0	0
3. The school consistently follows special education rules and regulations.	0	3	1	0	0
4. The school has an effective behavioral program (if applicable).	1	2	1	0	0
5. I am satisfied with the related services provided by the school.	3	0	1	0	0
6. The school implements all parts of students' IEPs.	3	1	0	0	0
7. I feel the school provides the necessary skills to allow the student to make progress on the IEP goals.	3	0	0	0	1
8. The school program measures academic growth.	0	3	0	0	1
9. The school program measures behavioral growth (if applicable).	2	1	0	0	1
10. The school completes a minimum of 3 comprehensive reports per year on each child with a disability enrolled.	1	3	0	0	0
11. The progress reports describe the child's progress toward meeting the IEP goals, include a record of attendance, and are written in terminology understandable to the parent.	1	3	0	0	0
12. Progress reports are provided to the LEA and to the parent of the child.	2	2	0	0	0
13. I am satisfied with the way the school communicates students' progress.	1	2	1	0	0
14. The school communicates effectively with parents.	2	1	1	0	0
15. The school communicates effectively with the LEA.	1	2	1	0	0
16. The school involves parents in decision-making.	1	3	0	0	0
17. The school actively plans for future transition to a less restrictive placement.	0	3	1	0	0
18. If the school finds it necessary to change or terminate placement, they notify the LEA by convening the IEP team to: review the concerns, review/revise the IEP, discuss the placement and determine if the facility can fully implement the IEP and provide FAPE.	0	3	1	0	0
19. The school team sets meeting times that are convenient for both parents and the LEA.	1	1	1	0	1
20. The school has met my expectations.	1	2	1	0	0
21. I have a good relationship with the school.	1	3	0	0	0
22. I would enroll other students at the school.	1	3	0	0	0

Interpretation of Results of LEA Surveys:

The surveys from LEAs indicated overall satisfaction with Becket Family of Services programs at Mount Prospect Academy and Life Centered Learning Institute. Eighty-four (84) percent of the LEA responses indicate favorable opinion of the schools' programs, procedures, communication and planning.

III. PURPOSE AND DESIGN OF THE CASE STUDY COMPLIANCE REVIEW PROCESS

The New Hampshire Department of Education (NHDOE) conducted a Special Education Program Approval Visit to The Becket Family of Services on November 15-16, 2006 for the purpose of reviewing the present status of programs and

services made available to children and youth with educational disabilities. As part of the NHDOE Special Education Program Approval Visit, Case Study Compliance Reviews were conducted at both of these programs:

Mount Prospect Academy, Plymouth NH
Life Centered Learning Institute, Tilton NH

The New Hampshire Department of Education, Bureau of Special Education, conducts program approval visits using a case study model, which is a focused review. This focused review permits the NHDOE to leverage its impact for change and improvement within school districts and private special education schools statewide, by focusing the attention of all educators on the following three areas of critical importance in the provision of FAPE for students with disabilities.

- Access to the General Curriculum
- Transition
- Behavior Strategies and Discipline

As part of this compliance review, case studies were randomly selected by the NHDOE prior to the visit, and staff was asked to present these case studies to determine compliance with state and federal special education rules and regulations. Other activities related to this NHDOE Case Study Compliance Review included the review of:

- ♦ All application materials submitted
- ♦ Status of corrective actions since the last NHDOE Special Education Program Approval Visit
- ♦ Personnel credentials for special education staff (verified by NHDOE)
- ♦ Program descriptions and SPEDIS verification reports
- ♦ All data collected during the visit

The New Hampshire Department of Education provided a visiting team of professional educators to work collaboratively with staff in each of the schools in conducting the Case Study Compliance Review and the varied data collection activities. Throughout the entire review process, the visiting team worked in collaboration with the staff of Becket Family of Services. Their professionalism, active involvement in the process and cooperation were greatly appreciated and well recognized.

Evidence of the work conducted within the programs and results related to student outcomes was gathered throughout the process, guided by the materials and templates provided by the NHDOE, Bureau of Special Education. Examples of evidence included student individual education plans (IEPs), progress reports, samples of student work, grades, extracurricular involvement, permanent records, curriculum, etc. Input was gathered from key constituents, including interviews with professional staff, parents, administrators, and in some cases the students. In addition, classroom observations were conducted for each of the case studies being reviewed. The collective data were summarized by the visiting and building level teams. The summaries, included in the report that follows, outline identified areas of strength and areas needing improvement for each school reviewed.

IV. STATUS OF PREVIOUS NHDOE SPECIAL EDUCATION PROGRAM APPROVAL REPORT AND CORRECTIVE ACTIONS

Based on review of the February 2004 NHDOE Special Education Program Approval Report for the Becket Family of Services, the follow up visit conducted in May 2005, and information collected at the current visit, the following citations of compliance have not yet been met:

Citation	Status, May 2005	Status, November 2006
ED 1119.03 Access To the General Curriculum CRF 300.26 ED 1133.05	Partially Met at LCLI and MPA	Partially Met at LCLI and MPA
ED 1133.08 Qualified Personnel CFR 300.23 CFR 33.136	Partially Met at LCLI Met at MPA	Partially Met at LCLI Met at MPA

V. NOVEMBER 15-16, 2006 CASE STUDY COMPLIANCE REVIEW RESULTS

Data collection is an important part of the NHDOE Special Education Case Study Compliance Review Process. At the Becket Family of Services, the NHDOE randomly selected five case studies prior to the visit, to ensure that there was a representative sampling of data collected from the two special education programs located within the Becket Family of Services. In order to monitor whether or not special education programs are in compliance in the three focus areas, and determine any root causes of problems that may be identified through the case study process, it is essential that each case study team dig deeply into the data, and not just take a surface look. This process takes time, and the entire team working with the child being studied must be involved in collecting and analyzing the data, as well as presenting and summarizing the data with the visiting team. As such, the NHDOE works with educational communities to determine the number and types of case studies to be prepared and presented, to ensure that building teams are not inundated with much more data than they can possibly analyze, allowing them to reflect upon and generalize their newly found knowledge of their programs, practices, policies and procedures.

PARENT PARTICIPATION

One of the defining features of effective schools is strong parent/community relations and open communication. Having parents as an active stakeholder in the NHDOE Special Education Program Approval Process ensures broader perspectives and brings forth new ideas. In addition, including the parent perspective enhances and strengthens the teams' case study presentations, and makes for stronger school/parent relationships. As such, parent participation and input is a required part of the NHDOE Special Education Program Approval Process. In order to ensure parent participation and feedback, the NHDOE Bureau of Special Education involves parents in a variety of aspects of the Special Education Program Approval Process. First, parents are encouraged to be active participants in the case study presentations; second, parents of the children presented in the case study process are formally interviewed; and third, the school is required to send all parents of students with disabilities a written survey with a request to respond. Following is a summary of the results of the Becket parent survey, along with a summary of the comments/feedback provided to the visiting team during the November 2006 Case Study Compliance Review at the Becket Family of Services

Summary Of Mount Prospect Academy Parent Survey Data

Total number of surveys sent: 101	Total # of completed surveys received: 19	Percent of response: 18

Scale **3** = Completely **2** = Partially **1** = Not At All

Access To The General Curriculum:	3	2	1	No Answer
I am satisfied with my child's program and the supports that he/she receives.	15	3	1	1
My child has opportunities to interact with non-disabled peers on a regular basis.	11	3	1	3
I am adequately informed about my child's progress.	11	5	3	0
My child is informed about and encouraged to participate in school activities outside of the school day, and is offered necessary supports.	15	3	1	2
My child feels safe and secure in school and welcomed by staff and students.	9	6	3	1
A variety of information (observations, test scores, school work, parent input) was used in developing my child's IEP.	14	2	1	2
I am satisfied with the progress my child is making toward his/her IEP goals.	10	4	2	3
FOR PARENTS OF HIGH SCHOOL STUDENTS:	12	1	0	6
My child earns credits toward a regular high school diploma in all of his/her classes.				
Transition:				
I am satisfied with the planning and support provided for the moves my child has made from grade to grade and school to school.	10	3	2	4
All of the people who are important to my child's transition were part of the planning.	12	3	2	2
FOR PARENTS OF STUDENTS AGE 16 OR OLDER:	10	0	1	8
I am satisfied with the written secondary transition plan that is in my child's IEP.				

Behavior Strategies And Discipline:				
My child's classroom behaviors affect his/her ability to learn. <i>If yes, please answer the next two questions. If no, skip to OTHER.</i>	YES 13		NO 2	
I have been involved in the development of behavior interventions, strategies and supports for my child.	12	4	1	1
I am satisfied with the way the school is supporting my child's behavioral, social and developmental needs.	12	3	2	1
Other:				
I fully participate in special education decisions regarding my child.	13	3	2	1
I have been provided with a copy of the procedural safeguards (parental rights) at least once a year	13	0	1	5

Interpretation of Results of MPA Parent Surveys

A total of 101 parent surveys were distributed to parents of MPA students, of which 19 were returned, representing 18% of the parent population. The results are exclusive to MPA and, as such, do not allow for comparative information on the programs and procedures at LCLI and MPA. The following patterns were identified.

Strengths:

- 66% of parents indicated satisfaction with their involvement in the development of the interventions, strategies and supports included in the IEP and they participated in the decision making process
- 70% of parents reported the behavioral needs of their child are being met
- 79% of parents reported satisfactory academic progress for their child

Areas in Need of Improvement:

- 42% of parents reported there is a need for improvement in communication regarding student progress
- 50% of parents reported that their child does not always feel safe
- 50% of parents reported that transition planning could be improved
- 42% of parents did not answer a number of questions. This is indicative of respondents who may not feel fully informed of issues and programs central to their child's educational or developmental well being.

Summary Of Life Centered Learning Institute Parent Survey Data

Subsequent to the November 2006 NHDOE Program Approval visit to LCLI, it became apparent that LCLI had not distributed the parent surveys that were included in the application packet, therefore the results are not available for reporting within this document. The NHDOE, Bureau of Special Education, will work with LCLI gathering parent feedback and the administration of the NHDOE Special Education Program Approval parent survey, and will review the results when received.

SUMMARY OF FINDINGS FROM THE THREE FOCUS AREAS OF THE CASE STUDY COMPLIANCE REVIEW

Access To The General Curriculum

Implementation of IEPs

Provision of Non-Academic Services

Full Access to the District's Curriculum

Equal Education Opportunity

The visiting team observed that the implementation of the Plymouth Cooperative School District (SAU#48) curriculum was marginal. Based on the case studies presented in both programs, combined with interviews involving staff and students, LEA surveys, and review of policy and procedures, it became evident that instruction for students is highly individualized. All students are afforded the opportunity to progress at their own rates of learning and this individualized approach is not always linked to a curriculum.

This was especially evident at LCLI, where it was not clear who was responsible for the supervision of curriculum, instruction and assessment. The design and definition of learning standards was not clear. This directly references what students should know and be able to do within each course offering. At LCLI, no clear delineation between middle and high school programming or critical learning standards was evident. While personalized approaches to learning are to be encouraged, it is critical that the individualized approaches be connected to a curriculum and courses with a scope and sequence that include clear expectations for learning outcomes and a continuum of instruction to reach and assess the outcomes.

At MPA the school has evolved a number of intentional and very effective ways of placing students in charge of their own learning, and ensuring that they are provided access to both required coursework and requirements from the school district from which the child originated. In addition, the staff was able to clearly articulate course offerings and demonstrate how middle and high school course offerings were being implemented. There was varying evidence of connections with the Plymouth Cooperative School District curriculum. In addition, it was clear that special education was aligned with the general education course offerings, the role of the special education teachers was clearly defined and IEPs were written in meaningful ways that clearly demonstrated access to the courses offered at MPA.

Related to access to the general curriculum, both programs lack a full compliment of certified consultants, in order to meet the requirements outlined in the NH State Curriculum Standards. The following required content areas for high school credits are not met:

LCLI High School

- Arts Education
- Business Education
- Communication Technologies
- World Languages
- Technology Education

LCLI Middle School

- Arts Education
- Family and Consumer Science
- Communication Technologies and Technology Education

MPA High School

- Business Education
- World Languages
- Communication Technologies

MPA Middle School

- Communication Technologies

Transition

Transition Planning

Process: Provision of FAPE

Transition planning is a critical area for students placed in private special education facilities outside of their school district, and in particular for many of the students who are court placed, who may move from school to school with little to no preparation. The visiting team recognized the significant efforts that staff at Becket Family of Services makes in the area of writing transition plans, as well as the emphasis that is placed on transition planning at key points in a child's education. Overall, transition planning for students at Becket Family of Services was well documented, especially at MPA, where plans included transition plans and strategies that were presented as a coordinated set of activities related to the student's course of studies, with full student involvement.

At LCLI, the visiting team determined that written transition plans in student IEPs could be strengthened. Specifically, plans reviewed did not contain activities that focused on the student's course of studies, and did contain goals that were not measurable and outcomes that were general in nature. Transition plans should demonstrate full student participation and include the involvement of supportive agencies outside the school setting.

Behavior Strategies and Discipline

As a result of the NHDOE Special Education Case Study Compliance Review, the visiting team concluded that there were very distinct differences between MPA and LCLI when it came to management of student behaviors. At MPA it was clear that staff and administration have been provided with specialized training on intervention strategies to address the

individual needs of students who exhibit significant behavioral and mental health issues. All staff members at MPA appeared to be well trained to address challenging student behaviors, and MPA insures the necessary supports and professional development are provided. Behavior plans were comprehensive and behavioral data was collected and reviewed on an ongoing basis. Interventions used are positive and actively involve both the student and the family, whenever possible. In addition to the clearly outlined day-to-day behavioral expectations within each classroom, individual plans are developed for students as necessary. For those children in need of more specialized behavior programming, plans are written and included in the student's IEP, and data provided demonstrated evidence of how progress was assessed. MPA has developed a school wide advisory program that has also assisted in developing a positive learning culture within the school.

At LCLI, the visiting team observed an educational program where discipline strategies were designed to correct problems after they occurred, with little, if any, attention to informed strategies for preventing discipline problems. Students at LCLI are regularly scanned with monitoring devices to detect metal objects and staff is assigned to patrol the halls with radios, which publicly announce any and all discipline issues. It was not clear that school wide discipline data is being collected and reviewed in a strategic manner, to inform staff and administration regarding the culture and climate of the building and how student behavior may be impacting the learning process. While data is collected on individual students and reviewed regularly, there is no indication of focused discussion or collaborative planning in place to assess the impact that student behaviors have upon the culture, climate and, more importantly, upon student learning.

COMMENDATIONS

Becket Family of Services (MPA and LCLI)

1. The Becket Family of Services mission statement and beliefs are alive and being implemented within the programs.
2. The administration and the board are commended for the provision of necessary supplies, materials, resources, professional development and facilities to meet the needs of a very complex student population.
3. Staff within both programs were consistently described as skilled, caring and dedicated to working with a very challenging and complex student population.
4. Within each program there is a sense of pride, teamwork and spirit of enthusiasm.
5. There is strong collaboration between clinical staff, residential staff, parents and teachers.
6. The adventure based programming is a strong component at both sites.
7. The vocational opportunities for students are quite impressive.
8. Staff/student ratio is appropriate for working with students who demonstrate such significant emotional, behavioral and mental health needs.
9. Efforts to engage the greater community in the school are evident at both MPA and LCLI.
10. Since the last NHDOE Special Education Program Approval visit, Becket Family of Services has added the position of Curriculum and Professional Development Coordinator.
11. The respect and positive relationship between students and staff is evident and impressive.
12. The Becket education programs continue to grow and evolve, and suggestions for improvement provided by the NHDOE are viewed as important in guiding future decisions related to special education programming.
13. LEAs working with The Becket Family of Services report satisfaction with programs, services, quality of staff and positive student outcomes.
14. Professional development opportunities for educators within Becket are ongoing and encouraged by the administration. Administration continues to work toward a more formalized mentoring program for new hires.
15. Both MPA and LCLI are recognized for the hospitality extended to the visiting team and for the time and effort put forth in preparing for the visit.

Mount Prospect Academy

1. Staff at MPA were well prepared for the Case Study Compliance Review, and the general education staff who took the lead in the presentations did an outstanding job in gathering and providing the evidence to demonstrate compliance in the three focus areas.
2. The Special Education Director for MPA is commended for her vision, leadership and ability to engage LEAs, parents, students and staff in the special education process.

ISSUES OF SIGNIFICANCE

Issues of significance are defined as systemic deficiencies that impact the effective delivery of services to all students, including those with educational disabilities. Examples of such may include system wide issues related to curriculum, instruction and assessment. Other examples might be concerns related to inadequate facilities, ineffective communication systems within the educational community, leadership, shared mission, vision and goals, deficiencies in policies and procedures, staff recruitment and retention, professional development or other important factors related to the learning organization.

While there were many praiseworthy strategies and interventions identified during the November 2006 NHDOE Special Education Case Study Compliance Review at the Becket Family of Services, the visiting team identified several issues of significance, some of which are newly identified, while others are issues that were identified in the NHDOE Special Education Program Approval visit in November 2003. It is important to note that many of the issues of significance are not the result of a lack of effort to address; they are systemic issues that will take a significant amount of time and resources to fully resolve.

Specifically, these issues are listed below:

- **Full Access to the General Curriculum:** Students at the middle and high school level, in both programs, need to have full access to the “required” course work that is outlined in the NH State Curriculum Standards. In addition, Becket Family of Services must have a viable curriculum in place that teachers are using on a daily basis; one that is directly connected to the course offerings outlined in the application material submitted. The emphasis must be matched with an assessment model that allows for indicators of incremental growth.
- **Individual Education Plans:** IEPs for students enrolled at LCLI need to include IEP goals that are measurable, and transition plans (within both programs) that meet compliance.
- **Assessment Data:** Consistent with the citation to follow (on page 14), a process needs to be established at each site which insures consistency in the application of the data from academic assessments to inform the application of curriculum, instructional strategies and IEP development. This should include baseline assessments as administered upon admittance and periodic assessments of student achievement for the purpose of determining academic growth.
- **Qualifications of Staff:** Becket Family of Services must ensure that all staff has appropriate certification for the position they hold. In addition, there must be certified consultants for those content areas where certified Becket teachers are providing instruction yet do not hold the content certification.
- **Supervision and Evaluation of Staff:** At both programs there needs to be clarification on who is responsible for meaningful supervision and evaluation of staff. This includes professional development goals for staff and administration that are connected to a professional development master plan, mentoring of new staff, and the design of professional development opportunities system wide for both sites
- **Curriculum Development and Description:** Programs at MPA and LCLI need to have a clear reference to the Plymouth Cooperative School District (SAU 48) curriculum.

CITATIONS OF NONCOMPLIANCE IDENTIFIED AS A RESULT OF THE NOVEMBER 2006 CASE STUDY COMPLIANCE REVIEW

Citations of noncompliance are defined as deficiencies that have been identified through the Case Study Compliance Review Process that are in violation of state and federal special education rules and regulations. Citations may result from review of policies and procedures and related application materials, case study presentations, review of student records or any program approval activity related to the visit. **It is important to note that all citations of noncompliance included in this section of the report will need to be addressed in a corrective action plan.**

As a result of the Case Study Compliance Review, the following citations of non-compliance were identified. Each citation listed below must be addressed in a corrective action plan and resolved within one year of this report. A template and instructions for such planning will be provided.

**Citations of Non-Compliance Identified at Both Mount Prospect Academy and
Life Centered Learning Institute:**

1.) ED 1109.03 (a) Full Access To The General Curriculum

ED 1133.05 (h) Program Requirements

All students enrolled at the Becket Family of Services (LCLI and MPA) must have access to equal educational opportunities within their programs and the ability to progress in the general curriculum as under state and federal special education rules and regulations.

2.) ED 1133.05 (I) Assessment

Becket Family of Services (LCLI and MPA) needs to develop a system of ongoing, consistent formalized assessment to measure student progress, writing of IEPs and assess the effectiveness of curriculum and instruction provided to students enrolled.

3.) ED 1133.05 (K) Program Requirements

ED 1133.08 (A) Qualifications and Requirements for Instructional, Administrative and Support Personnel

All staff providing services to students with disabilities within the Becket Family of Services must hold appropriate certification. This includes teachers at both facilities who are not certified and vocational instructors who are not certified. In addition, for those teachers who are providing instruction in content areas for which they are not certified, there must be a certified individual who is providing consultation on a regular basis. The individual listed as a special education director at LCLI must hold certification as an administrator.

4.) ED 1133.05(H) Program Requirements

Both MPA and LCLI must have a written curriculum utilized by staff to guide instruction and assessment of student progress. Additionally, IEPs should be aligned with the curriculum.

5.) CFR 300.347(c) Transfer of Rights

For students at MPA and LCLI, there must be documentation that students are informed of their rights under IDEA prior to age 17. At the least, MPA and LCLI need to have on file confirmations from the LEA that students are informed of their rights.

6.) CFR 300.305(e)(2)(3) Summary of Performance

For students preparing to graduate, MPA and LCLI need to ensure that student records have a “summary of performance” document, which is forwarded to the LEA.

7.) ED 1119.01 Individual Education Plans

At LCLI, all IEPs must meet compliance with state and federal special education rules and regulations. This includes measurable annual goals, and transition plans that have all required components. At MPA staff need to ensure the transition plans in IEPs meet all requirements.

Citation of Non-Compliance Identified at Life Centered Learning Institute Only:

8.) ED 1133.13 (B) Physical Facilities

At LCLI there needs to be a written schedule of maintenance and housekeeping activities to ensure that the grounds are safe and promote the health of the children enrolled in the program. The administration, staff and/or students should not be responsible for the daily maintenance of the building. The administration and staff need to direct all of their attention toward instruction, curriculum, assessment and the implementation of student IEPs.

9.) ED 1102.28 IEP Meetings

LCLI needs to ensure that students are invited to their IEP meeting “if a purpose of the meeting will be consideration of the student’s transition services needs”.

SUGGESTIONS FOR PROGRAM-WIDE IMPROVEMENT

Suggestions for improvement, simply stated, are recommendations provided by the visiting team that are intended to strengthen and enhance programs, services, instruction and professional development, and the NHDOE strongly encourages that serious consideration be given to the suggestions. However, discretion may be used in this area; suggestions for improvement are not considered to be required corrective actions and you may determine which suggestions most warrant follow up and address those in your corrective action plan. **System wide suggestions for improvement are listed below. Suggestions for individual programs are included in the Building Level Case Study Data Summary Reports, pp.17-30.** It should be noted that in the Building Level Data Summary Reports, any suggestion made by a visiting team member that is actually a citation of noncompliance, has an asterisk (*) before it, and it is also listed above with the citations of noncompliance.

1. As in the past, it is strongly suggested that both facilities utilize a consistent approach to the development and implementation of IEPs.
2. Becket Family of Services may want to consider the development of a professional library for staff that could be directed toward supporting professional development goals for both facilities, and avail the resources at NHDOE.
3. The Becket Family of Services should give serious consideration to having some expertise and consultation from an individual who has expertise in specialized reading instruction. Many of the students enrolled in the programs are challenged by their lack of reading skills, and currently there is no effective remedial reading methodology available. There appears to be a very strong need for a formalized, consistent approach to literacy and basic reading instruction for many of the students. As the facility begins to examine and develop curriculum, consultation from a reading specialist might be highly beneficial.
4. The Becket Family of Services may want to consider the formation of a “Stakeholder Advisory” group that could assist in improving connections with LEAs and parents.
5. While having a position of Professional Development Coordinator is a strength, it is strongly suggested that staff be afforded the opportunity to contribute to the design of professional development planning, including the Professional Development Master Plan. Professional development at the Becket Family of Services is encouraged, however it appears to be highly individualized rather than connected to system wide goals that would strengthen student outcomes. System wide goals relate to consistency between programs and facilities.
6. Staff would benefit from professional development in the area of measures of assessment based on authentic tasks, activities, or problems; specifically, learning how to require students to “demonstrate the application of their learning”.
7. The administration at LCLI would benefit from the expanse of training that is apparent at MPA. This should include strategies in positive behavioral intervention and curriculum development and implementation. This could lead to consistency in expectations, intervention strategies and follow through with staff, parents and responsible LEAs.
8. Behavior management strategies that consider the importance of privacy issues and consistency in application are suggested as an important element in strengthening the culture and climate of LCLI. This should include policies and procedures that outline rationale for routine student “services”, etc.
9. The Becket Family of Services would benefit from a Director of Facilities, who would follow an articulate protocol and improvement plan that recognizes the importance of safe, flexible and contained learning environments.
10. MPA and particularly LCLI would benefit from an annual survey of parents that focuses upon the programs and interventions particular to each facility.

VI. BUILDING LEVEL SUMMARY REPORTS

USING COMPLIANCE DATA FOR CONTINUOUS IMPROVEMENT

BUILDING LEVEL CASE STUDY DATA SUMMARY

NEW HAMPSHIRE DEPARTMENT OF EDUCATION SPECIAL EDUCATION PROGRAM APPROVAL AND IMPROVEMENT PROCESS

School: **Becket / Mount Prospect Academy**

Date: 11/16/06

Programs:

Number of Cases Reviewed: 3

Recorder/Summarizer:

Collaborative Team Members:

Name: Stacy Buckley	Building Level or <u>Visiting</u>
Name: Kelly Mask	<u>Building Level</u> or Visiting
Name: Nicole Canning	<u>Building Level</u> or Visiting
Name: Thomas Donahue	Building Level or <u>Visiting</u>
Name: Susan Ellis	Building Level or <u>Visiting</u>
Name: John Dawson	Building Level or <u>Visiting</u>
Name: Karen Langley	Building Level or <u>Visiting</u>

Based on data collected from the Data Collection Forms, Interview Forms, Classroom Observations, etc. the following summary is intended to provide a “snapshot” of the quality of services and programs in the school/private facility in the areas of:
Access to the General Curriculum, Transition and Behavior Strategies and Discipline.

SUMMARY OF BUILDING LEVEL DATA

Filled in with the number of times a statement was marked from all Data Collection Forms:

ACCESS TO THE GENERAL CURRICULUM STATEMENTS							
Ed. 1109.01 Elements of an IEP CFR 300.347 Content of IEP Ed. 1109.05, Implementation of IEP 20 U.S.C. 1414 (d) Ed. 1115.07, Ed 1119.01(f) Provision of Non-Academic Services/Settings CFR 300.553 Ed. 1119.03, Full Access to District's Curricula CFR 300.24, CFR 300.347 Ed. 1119.08, Diplomas Ed. 1107.04 (d) Qualified Examiner Ed. 1133.05 (c)(h)(k) CFR 300.347 Program Requirements, Content of IEP Ed. 1133.20 Protections Afforded to Children with Disabilities CFR 300.347(a) (1) (i) " . . . general curriculum (i.e. ,the same curriculum as for nondisabled children)" CFR 300.347 (a) (3) (iii) "To be educated and participate with other children with disabilities and non disabled children"					YES	NO	N/A
Team uses multiple measures to design, implement and monitor the student's program.					3		
IEP goals are written in measurable terms.					3		
Student has made progress over the past three years in IEP goals. Goal 1							3
Student has made progress over the past three years in IEP goals. Goal 2							3
Student <u>has access to</u> the general curriculum (as outlined by the district, sending district or NH frameworks.)					3		
Student <u>participates in</u> the general curriculum in a regular education setting with non-disabled peers, as appropriate, with necessary supports.					3		
When participating in a regular education setting with non-disabled peers with necessary supports, student <u>has made progress in</u> the general curriculum.					3		
Student participates appropriately in state, district and school-wide assessments.					1		2
Student <u>shows progress</u> in state, district and school-wide assessments.							
Student <u>has opportunities</u> to participate in general extracurricular and other non-academic activities with necessary supports.					3		
Student <u>does participate</u> in general extracurricular and other non-academic activities with necessary supports.					3		
Was the student's most recent individual evaluation (initial or reevaluation), including a written summary report and meeting, held within 45 days of parental permission to test? If not, was it due to: (check all that apply)					3		
Extension in Place	Lack of Qualified Personnel Psychologist Educator Related Services Other	Evaluation Not Completed in Time	Summary Report Not Written in Time	Meeting Not Held in Time	Other		
For High School Students:					YES	NO	NA
Student is earning credits toward a regular high school diploma.					2		
IF YES: within 4 years?					1	1	
Student will earn an IEP diploma or a certificate of competency.					2		
IF YES: within 4 years?					1	1	
Does this school / district have a clear policy for earning a high school diploma?					2		

Access to the General Curriculum	
Strengths	Suggestions for Improvement
1. Participation of MPA students with nondisabled peers in residential / community setting is impressive. 2. Students are actively involved in IEP and Individual Treatment Plan meetings and establishing goals / measuring progress. 3. Staff works hard to match students' interests to vocational programming. 4. Vocational options, both in Haverhill and in community settings, are a strength of the overall programming.	1. Staff is encouraged to continue to look at varied ways to measure IEP goals and work toward more specific quantitative data. 2. *Administration needs to continue to develop curriculum to meet state standards and requirements. 3. Expand opportunities for hands-on activities, especially in the content area of science (i.e. labs, software, inquiry science kits, etc.)

* This is a citation

SUMMARY OF BUILDING LEVEL DATA

Filled in with the number of times a statement was marked from all Data Collection Forms:

<u>TRANSITION STATEMENTS</u>	YES	NO
Ed .1102.53, Transition Services CFR 300.29 Ed. 1107.02 CFR 300.132 Part C Transition Ed. 1109.01, Elements of an IEP (Transition Services) CFR 300.347 (b) (1) (2) 20 U.S.C. 1401 (34) 20 U.S.C. 1414 (d)(1)(A)(i)(VIII)(aa)(bb)(cc) Ed. 1109.03, IEP Team CFR 300.344 (b) (1) Ed. 1133.05 CFR 300.347 (b)(1)(2) Program Requirements This includes movement from (a) Early Supports and Services (ESS) to preschool, b) preschool to elementary school, (c) age 14 or younger, or (d) age 16 or older, as well as from grade to grade and school to school.		
For all students, respond to the following 3 statements:		
Transition planning from grade to grade takes place.	3	
Transition planning from school to school takes place.	3	
Collaboration has occurred between general and special education staff in IEP development and in transition planning.	3	
For middle or high school students, <u>also</u> respond to the following 4 statements:		
Transition planning is designed as a results oriented process that promotes movement from school to the student's desired post-school goals.	3	
IEP team includes parent as part of transition planning.	3	
IEP team and process includes student as part of transition planning.	3	
IEP includes current level of performance related to transition services.	3	
If the student is age 14 or older during the course of the IEP, <u>also</u> respond to the following 3 statements:		
There is documentation that the student has been invited to attend IEP meetings.	3	
A statement of the transition service needs is included in the IEP.	3	
The statement of transition focuses on the student's course of study (e.g. vocational programming, advanced placement).	3	
If the student is age 16 or older during course of the IEP, <u>also</u> respond to the following 11 statements:	YES	NO
Transition plan includes coordinated, <u>measurable</u> , annual IEP goals and includes transition services that will reasonably enable the student to meet the post-secondary goals.		2
There is documentation that representatives of other agencies have been invited to IEP meetings.	2	
Statement of needed transition services is presented as a coordinated set of activities.	2	
The statement of transition focuses on the student's course of study (e.g. vocational programming, advanced placement).	2	
The IEP includes a statement of needed transition services and considers instruction.	2	
The IEP includes a statement of needed transition services and considers related services.	2	
The IEP includes a statement of needed transition services and considers community experiences.	2	
The IEP includes a statement of needed transition services and considers development of employment skills.	2	
The IEP includes a statement of needed transition services and considers development of daily living skills.	2	
Student is informed prior to age 17 of his/her rights under IDEA.	1	1
If the student is preparing to graduate this year, there is a summary of the student's academic achievement and functional performance , which includes recommendations on how to assist the student in meeting his or her post-secondary goals.	1	2

Transition	
Strengths	Suggestions for Improvement
1. Transition planning and spreadsheet of documentation is very impressive, comprehensive and informative. 2. IEP team works exceptionally hard to meet each child's individual needs and to be sure that they are aware of all required services available to students. Team also assists students in understanding and organizing materials to be prepared for transition meetings and related activities. 3. Respect of individual student preferences and desires is a part of transition planning and fosters independent thought. 4. Mount Prospect Academy does a great job of working with LEAs on student transitions. Staff are willing and available to go to schools and work with staff and students throughout the transition process.	* Goals in transition plans need to be measurable.

* This is a Citation

SUMMARY OF BUILDING LEVEL DATA

Filled in with the number of times a statement was marked from all Data Collection Forms:

<u>BEHAVIOR STRATEGIES AND DISCIPLINE</u>				
<u>Ed. 1109.02 Program</u> <u>CFR 300.346</u> <u>Ed. 1119.11 Disciplinary Procedures</u> <u>CFR 300.519-300.529</u> <u>Ed. 1133.07 (a) (b) (c) (d) (e)</u> <u>CFR 300.510-300.529</u> <u>20 U.S.C. 1415 (K)</u> <u>Child Management – Private Schools</u> <u>RSA 169-C Child Protection Act</u>		YES	NO	N/A
Data are used to determine impact of student behavior on his/her learning.		3		
Has this student ever been suspended from school?				3
If yes, for how many days?				
If appropriate, a functional behavior assessment has been conducted.				3
IEP team has addressed behaviors that are impacting student learning.		3		
A behavior intervention plan has been written to address behaviors.		3		
All individuals working with the student have been involved in developing behavior intervention strategies.		3		
Specialized training for implementing interventions, strategies and supports has been provided to parents, providers and others as appropriate.		3		
Results of behavior intervention strategies are evaluated and monitored.		3		
A school-wide behavior intervention model exists.		3		
Strengths	Suggestions for Improvement			
1. Individual behavior strategies /goals are outlined in IEPs and data is collected. This happens for individual students as well as school-wide. 2. The MPA level system is effective and holds students accountable and responsible for their own behavior. 3. Staff is well trained in behavioral initiatives and data collection.				

SUMMARY OF BUILDING LEVEL STRENGTHS AND SUGGESTIONS FOR IMPROVEMENT

Strengths	Suggestions for Improvement
1. Transition planning at all levels is a strength. 2. New teacher orientation assists staff in better understanding the school. 3. There are diverse opportunities for academic engagement and multiple ways for implementation in varied settings. 4. The Becket Family Services vision and mission are clear and demonstrated throughout all aspects of the program.	1. Continue to expand curriculum development. 2. Continue to explore opportunities for engagement with nondisabled peers. 3. Explore opportunities to include teacher assistants in professional development and team building. 4. While student advisory groups can be very useful and productive, it is strongly suggested that expectations / outcomes from each class be the same.

USING COMPLIANCE DATA FOR CONTINUOUS IMPROVEMENT

BUILDING LEVEL CASE STUDY DATA SUMMARY

NEW HAMPSHIRE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION PROGRAM APPROVAL AND IMPROVEMENT PROCESS

School: **Becket – Life Centered Learning Institute**

Date: 11/16/06

Programs:

Number of Cases Reviewed: 2

Recorder/Summarizer: Rick Sharp

Collaborative Team Members:

Name: Rick Sharp	Building Level or <u>Visiting</u>
Name: Steve Lussier	<u>Building Level</u> or Visiting
Name: Jeff Caron	<u>Building Level</u> or Visiting
Name: David Parker	Building Level or <u>Visiting</u>
Name: Greg Magoon	Building Level or <u>Visiting</u>

Based on data collected from the Data Collection Forms, Interview Forms, Classroom Observations, etc. the following summary is intended to provide a “snapshot” of the quality of services and programs in the school/private facility in the areas of:
Access to the General Curriculum, Transition and Behavior Strategies and Discipline.

SUMMARY OF BUILDING LEVEL DATA

Filled in with the number of times a statement was marked from all Data Collection Forms:

<u>ACCESS TO THE GENERAL CURRICULUM STATEMENTS</u>							
Ed. 1109.01 Elements of an IEP CFR 300.347 Content of IEP Ed. 1109.05, Implementation of IEP 20 U.S.C. 1414 (d) Ed. 1115.07, Ed 1119.01(f) Provision of Non-Academic Services/Settings CFR 300.553 Ed. 1119.03, Full Access to District's Curricula CFR 300.24, CFR 300.347 Ed. 1119.08, Diplomas Ed. 1107.04 (d) Qualified Examiner Ed. 1133.05 (c)(h)(k) CFR 300.347 Program Requirements, Content of IEP Ed. 1133.20 Protections Afforded to Children with Disabilities CFR 300.347(a) (1) (i) " . . . general curriculum (i.e. ,the same curriculum as for nondisabled children)" CFR 300.347 (a) (3) (iii) "To be educated and participate with other children with disabilities and non disabled children"					YES	NO	N/A
Team uses multiple measures to design, implement and monitor the student's program.					2		
IEP goals are written in measurable terms.						2	
Student has made progress over the past three years in IEP goals. Goal 1					2		
Student has made progress over the past three years in IEP goals. Goal 2					2		
Student <u>has access to</u> the general curriculum (as outlined by the district, sending district or NH frameworks.)						2	
Student <u>participates in</u> the general curriculum in a regular education setting with non-disabled peers, as appropriate, with necessary supports.							2
When participating in a regular education setting with non-disabled peers with necessary supports, student <u>has made progress in</u> the general curriculum.							2
Student participates appropriately in state, district and school-wide assessments.							
Student <u>shows progress</u> in state, district and school-wide assessments.							
Student <u>has opportunities</u> to participate in general extracurricular and other non-academic activities with necessary supports.							2
Student <u>does participate</u> in general extracurricular and other non-academic activities with necessary supports.							2
Was the student's most recent individual evaluation (initial or reevaluation), including a written summary report and meeting, held within 45 days of parental permission to test? If not, was it due to: (check all that apply)					2		
Extension in Place	Lack of Qualified Personnel Psychologist Educator Related Services Other	Evaluation Not Completed in Time	Summary Report Not Written in Time	Meeting Not Held in Time	Other		
<i>For High School Students:</i>					YES	NO	NA
Student is earning credits toward a regular high school diploma.					2		
<i>IF YES:</i> within 4 years?					2		
Student will earn an IEP diploma or a certificate of competency.						2	
<i>IF YES:</i> within 4 years?							
Does this school / district have a clear policy for earning a high school diploma?					2		

Access to the General Curriculum	
Strengths	Suggestions for Improvement
1. Staff continues to work toward consistent behavioral programming and this helps students stay focused and access the curriculum. 2. Staff is working hard to focus curriculum upon employment, which assists students in connecting classroom learning with the real world of work. 3. Staff individualizes instruction to meet kids at varying academic levels. 4. The position of curriculum coordinator / professional development coordinator has great potential in assisting staff and administration in curriculum development, curriculum mapping, and connecting professional development to goals developed by staff and administration.	1. Through case study presentations, it was evident that LCLI focuses on behavioral issues. Academic programming and curriculum needs to be strengthened. 2. * LCLI needs to demonstrate that students have full access to middle and high school offerings as required by the NH Minimum Standards. 3. Staff needs additional support in aligning lessons to a curriculum, as well as measuring the success of students in lessons presented. 4. Staff would benefit from professional development in the implementation of accommodations and modifications outlined in IEPs. 5. If LCLI is going to continue to use the SAU#48 curriculum, it will be essential that they connect with district administration to explore competency-based curriculum assessments.

* This is a citation

SUMMARY OF BUILDING LEVEL DATA

Filled in with the number of times a statement was marked from all Data Collection Forms:

<u>TRANSITION STATEMENTS</u>	YES	NO
Ed .1102.53, Transition Services CFR 300.29 Ed. 1107.02 CFR 300.132 Part C Transition Ed. 1109.01, Elements of an IEP (Transition Services) CFR 300.347 (b) (1) (2) 20 U.S.C. 1401 (34) 20 U.S.C. 1414 (d)(1)(A)(i)(VIII)(aa)(bb)(cc) Ed. 1109.03, IEP Team CFR 300.344 (b) (1) Ed. 1133.05 CFR 300.347 (b)(1)(2) Program Requirements This includes movement from (a) Early Supports and Services (ESS) to preschool, b) preschool to elementary school, (c) age 14 or younger, or (d) age 16 or older, as well as from grade to grade and school to school.		
For all students, respond to the following 3 statements:		
Transition planning from grade to grade takes place.	2	
Transition planning from school to school takes place.	2	
Collaboration has occurred between general and special education staff in IEP development and in transition planning.	2	
For middle or high school students, <u>also</u> respond to the following 4 statements:		
Transition planning is designed as a results oriented process that promotes movement from school to the student's desired post-school goals.	2	
IEP team includes parent as part of transition planning.	2	
IEP team and process includes student as part of transition planning.	2	
IEP includes current level of performance related to transition services.	2	
If the student is age 14 or older during the course of the IEP, <u>also</u> respond to the following 3 statements:		
There is documentation that the student has been invited to attend IEP meetings.		2
A statement of the transition service needs is included in the IEP.	2	
The statement of transition focuses on the student's course of study (e.g. vocational programming, advanced placement).	2	
If the student is age 16 or older during course of the IEP, <u>also</u> respond to the following 11 statements:	YES	NO
Transition plan includes coordinated, <u>measurable</u> , annual IEP goals and includes transition services that will reasonably enable the student to meet the post-secondary goals.		2
There is documentation that representatives of other agencies have been invited to IEP meetings.	2	
Statement of needed transition services is presented as a coordinated set of activities.	2	
The statement of transition focuses on the student's course of study (e.g. vocational programming, advanced placement).		2
The IEP includes a statement of needed transition services and considers instruction.	2	
The IEP includes a statement of needed transition services and considers related services.		2
The IEP includes a statement of needed transition services and considers community experiences.	2	
The IEP includes a statement of needed transition services and considers development of employment skills.	2	
The IEP includes a statement of needed transition services and considers development of daily living skills.		2
Student is informed prior to age 17 of his/her rights under IDEA.		2
If the student is preparing to graduate this year, there is a summary of the student's academic achievement and functional performance , which includes recommendations on how to assist the student in meeting his or her post-secondary goals.		2

Transition	
Strengths	Suggestions for Improvement
1. LCLI has a strong focus on vocational exploration, which assists students as they think about career planning. 2. There are many pre-vocational connections within the community. 3. Staff assists students in arranging for possible employment opportunities.	1. Staff would benefit from professional development in the writing of transition plans that are part of student IEPs. 2. * For students preparing to graduate, staff need to work with the LEA to ensure that a written summary of performance is developed. 3. * Student files need to have documentation that prior to age 17 students are informed of their rights. 4. * LCLI should ensure that students are invited to their IEP meeting.

* This is a citation

SUMMARY OF BUILDING LEVEL DATA

Filled in with the number of times a statement was marked from all Data Collection Forms:

<u>BEHAVIOR STRATEGIES AND DISCIPLINE</u>				
<u>Ed. 1109.02 Program</u> <u>CFR 300.346</u> <u>Ed. 1119.11 Disciplinary Procedures</u> <u>CFR 300.519-300.529</u> <u>Ed. 1133.07 (a) (b) (c) (d) (e)</u> <u>CFR 300.510-300.529</u> <u>20 U.S.C. 1415 (K)</u> <u>Child Management – Private Schools</u> <u>RSA 169-C Child Protection Act</u>		YES	NO	N/A
Data are used to determine impact of student behavior on his/her learning.		2		
Has this student ever been suspended from school?		2		
If yes, for how many days?				
If appropriate, a functional behavior assessment has been conducted.				2
IEP team has addressed behaviors that are impacting student learning.		2		
A behavior intervention plan has been written to address behaviors.		2		
All individuals working with the student have been involved in developing behavior intervention strategies.		2		
Specialized training for implementing interventions, strategies and supports has been provided to parents, providers and others as appropriate.		2		
Results of behavior intervention strategies are evaluated and monitored.		2		
A school-wide behavior intervention model exists.		2		
Strengths	Suggestions for Improvement			
1. The staff has a genuine interest in addressing the complex behaviors of the students. 2. Professional development is made available to staff in the area of behavior management. 3. Staff / student relations are appropriate for the complex students served in the program.	1. Consider parental involvement and training connected to school behavior expectations. 2. Staff needs to explore ways to begin to collect school wide behavioral data that can be reviewed on a regular basis. 3. Staff and administration may want to utilize some of the positive intervention strategies in use at MPA.			

SUMMARY OF BUILDING LEVEL STRENGTHS AND SUGGESTIONS FOR IMPROVEMENT

Strengths	Suggestions for Improvement
1. There is an abundance of day to day behavioral information maintained on students. 2. The staff is student centered and takes a genuine interest in the well being of all students.	1. Staff and administration need to explore development of curriculum competencies and competency evaluations. 2. Staff would benefit from professional development in IEP development, specifically writing measurable annual goals, measuring student progress and writing transition plans.

**VI. ADDENDUM: JAMES O SUMMARIES
DESCRIPTIONS OF INNOVATIVE PRACTICES**

ADDENDUM JAMES O. MONITORING PROGRAM

Becket Family of Services: Mount Prospect Academy

Date: November 2006

Reviewer: Jane Bergeron-Beaulieu

Number of files reviewed: 2

COMMENDATIONS:

- Staff at MPA have worked hard to ensure full compliance with all requirements in the James O Consent Decree
- It is evident that staff at MPA have a strong working relationship with LEAs and the court system
- Student records were well organized and contained all required documentation
- IEPs were well written, and student progress well documented

CITATIONS OF NONCOMPLIANCE:

Based on the two student records reviewed, no citations were identified.

INNOVATIVE PRACTICES

Definition of Innovative Practice: Educational practices that are infused with respect and rigor, provoke discussion, hold possibilities for growth and change, and improve student performance.

Components of Innovative Practices: (Indicate one of these three categories for each innovative practice identified)

1. **Classroom/School Environment** (behavior management strategies, culture, communication, celebrations and recognitions, etc.)
2. **Curriculum, Instruction and Assessment** (e.g. engaging all students in learning, integration of technology, diversified instruction, use of data to inform instruction, involving all staff in curriculum decisions, etc.)
3. **Professional Responsibilities** (e.g. professional development, communicating with families, reflecting upon teaching, mentoring, collaboration between general and special education, etc.)

Description of an Innovative Practice in Your Educational Community:

Classroom/School Environment: Team Advisory and Pillars of Character

During the 2006 –07 School Year we decided to focus on building student character and school community. It was determined that we would work on this through a two- pronged approach: Team Advisory and the Pillars of Character.

Daily, in the morning and afternoon, teachers meet with an assigned Advisory group of 8 – 10 students. During the morning meetings, behaviors from the evening and morning are reviewed and processed if needed. Students are asked to make a goal for the day to work on. In the afternoon meetings the students review their “school day” and discuss whether or not they met their goal and why. The students will also talk about how they are going to behave during the evening.

Once a week, therapists will join a group to co- facilitate activities aimed at improving social skills, communication skills and self- management skills. These activities are related to the current Pillar of Character.

Pillars of Character were developed to focus on during the school year. Each month there is a different trait that the entire school is focusing on and the activities are related to. These pillars are related to a school –wide incentive plan, every time a student is observed demonstrating the current characteristic it is noted and when the tally reaches a pre-set amount the entire school will earn a pre-determined reward. For example, the reward the students are currently working towards is a “make your own sundae” buffet with an afternoon of activities (e.g., basketball, board games, movie). The Pillars of Character for the 2006-07 school year are as follows: Respect (September), Responsibility, Compassion, Family, Courage, Tolerance, Trustworthiness, Balance, Diligence, and Integrity (June).

Please provide a brief commentary on data collection that has identified this practice as having a positive impact upon student performance.

This practice began at the start of our 2006 –07school year. The original plan was to collect data every three months and compare; therefore, to date no data has been collected.

Please describe how this innovative practice is evaluated.

The plan is to collect data every three months. We will be comparing the overall number of level ones (major behavioral infractions) that have occurred during the time frame. Once collected, a graph will be created to visually depict what progress was made, the graph will then be displayed and added onto as the school year progresses so that everyone will be able to note the progress being made.

EXHIBIT B

**New Hampshire
Department of Education
Bureau of Special Education
Monitoring Review for Approval of
Private Provider Special Education
Programs**

**Mount Prospect Academy
Summary Report
2017-2018**

Karen Langley, Director of Academics

Coordinating NHDOE Education Consultants;
Helene Anzalone
Lori Noordergraaf

Monitoring Visit Conducted on January 16 & 18, 2018
Report Date: April 30, 2018

Overview of the Mount Prospect Academy Program

Mount Prospect Academy, located at 354 Main Street in Plymouth, New Hampshire, is a special education approved program for boys in grades six through twelve. Mount Prospect Academy offers services to students who have a primary disability in any of the following categories:

Autism, Emotional Disturbance, Hearing Impairments, Intellectual Disability, Multiple Disabilities, Other Health Impairments, Specific Learning Disabilities, Speech-Language Impairments, and Visual impairments.

The goal of Mount Prospect Academy's program is to "provide students with the success-oriented experiences to increase their self-esteem and self-confidence while providing engaging learning opportunities." Their mission is "To Prepare Students for the Business of Life".

According to schedules submitted by Mount Prospect Academy students residing in the Plymouth, Campton, and Rumney residences are assigned to classrooms based upon their residential placement. Thus, students from each of the three residences work together in the same classrooms throughout the day.

The school year calendar is based upon a two-day rotation, in which one day students attend their assigned academic classroom at Mount Prospect Academy, and the other day, they are assigned to a "Vocational Classroom/Career and Technical Education".

Noteworthy Practices and Areas in Need of Refinement

Noteworthy Practices

During the monitoring visit, it was revealed that Mount Prospect Academy includes practices in their instruction and student expectations which are noteworthy. Such practices include:

- Mount Prospect Academy has discontinued the use of time-out rooms and has replaced those with a classroom in which students can self-select when they need some quiet time to work, process an incident with an adult, regroup, deescalate and reflect.
- A monthly school-wide theme that both the middle and high school students participate in for which there are corresponding units of study called "Pillars of Character". Photographs of famous role models throughout history are displayed with their accomplishments relative to character, resilience and/or leadership. Students' adherence to the "Pillars of Character" is highlighted throughout the school as individuals and groups.

- A student is chosen to be highlighted as “Student of the Week/Month” for exemplary behavior and participation.
- Mount Prospect Academy utilizes the “Why Try Program” which provides hands-on solutions and posters for dropout prevention, truancy reduction, violence prevention and increased academic success. This program develops resiliency skills and teaches social and emotional principles in a way that students can understand and remember.
- Utilization of a school-wide token program where students can earn “Mount Prospect Academy Bucks” to redeem at the school store is utilized. Students can earn these Mount Prospect Academy Bucks through adhering to the “Pillars of Character”, completing assignments, and complying with school and classroom expectations.

Areas in Need of Refinement

During the monitoring visit, it was revealed that Mount Prospect Academy had a number of areas in need of refinement. The NHDOE identified these areas, and potential remedies. Although these practices do not rise to the level of noncompliance, and therefore require no corrective actions, the NHDOE believes that the areas in need of refinement are significant enough to be addressed.

- While visiting Mount Prospect Academy’s “off-site classrooms”, it was revealed that there were multiple addresses that were referred to and used to describe the same location. For example, while visiting the “auto repair class”, the NHDOE was provided information that the address for this location was 1018 US Route 3, Campton. However, while on-site, it was noted that there were two other numbers on the building; one on the front of the building and a different one on the side of the building. Neither the Director of Academics nor the Executive Director could confirm the correct address for this location. According to the automotive teacher, it was revealed that the official 911 system address was 1024 Route 3, Plymouth. Mount Prospect Academy should consider checking with the local authorities (i.e.: 911) as to the legal address for each “off-site” location, and using that information, update all literature and references to locations to reflect this updated information, as well as to ensure that all staff is aware of the changes.
- Documentation provided by Mount Prospect Academy included many discrepancies in the names of the various education classrooms. An example of this is the auto repair class which had different names associated with this class. Mount Prospect Academy called it an “auto repair class at the auto shop” which is also referred to as “Livermore Auto” (a state inspection station) and is also referred to as “Becket Automotive School” when customers write checks for services provided at this business.

- Additionally, Mount Prospect Academy refers to the “auto repair class” as a course that is offered for 1 credit; however, no curriculum was submitted. In other materials, it was deemed a “vocational program” or a “vocational education component”, in other literature; it was also referred to as a “Career and Technical Education” opportunity. Mount Prospect Academy, in conjunction with their parent companies, should consider developing one consistent document which includes accurate names, exact addresses (in accordance with the 911 system) and consistent descriptions of each “off-site classroom”. The program should ensure that all staff across all companies are made aware of these updates, and are using the information accurately and consistently.
- Documentation provided by Mount Prospect Academy included many discrepancies in the names of the various residences. An example of this is “East Haverhill Academy” in Pike, NH. Other names provided included “East Haverhill Academy/Becket School” which is listed on the program approval letter from Department of Health and Human Services as being at 2056 Mt. Moosilauke Highway, Pike; also referred to as “Hall Farm Treatment Center” which is located at a different address – 1977 Mt. Moosilauke Highway, Pike; other literature uses the name “Connecticut River Academy” at 1977 Mt. Moosilauke Highway, Pike; and this location is also referred to as the “Red School House”. Mount Prospect Academy, in conjunction with their parent companies, should develop one consistent document which includes only one name for each location, exact addresses (per the 911 system), and consistent descriptions of each residential location that is utilized by Mount Prospect Academy. The program should ensure that all staff across all companies are made aware of these updates, and are using the information accurately and consistently.
- While on-site and in reviewing Mount Prospect Academy’s curriculum, class schedules, and program of studies, it was noted that there were inconsistencies as well as inter-changeable use of different class/course names for the same class/course. Mount Prospect Academy, in conjunction with their parent companies, should cross-reference and revise all curriculum materials to ensure that there is only one name for each class/course that is included in the curriculum, on the class schedules, within the program of studies, and in any of their associated company’s literature.
- The written job description for the position of “Director of Academics” includes performing 16 essential duties and responsibilities outlined in the written job description submitted. Some of the essential duties and responsibilities include:
 - Provide professional leadership in organizing, administering, supervising and evaluating the effective delivery of special education services;
 - Oversee all facets of the special education department including programs, services, personnel and budget;

- Ensures that all special services programs and activities conform to federal , state and district guidelines;
- Provides direct supervision and oversee the essential functions and general responsibilities of the academic case managers;
- Ensure that instructional objectives for a given subject and/or classroom are developed, and involve the faculty and others in the development of specific curricular objectives to meet the needs of students and the school program;
- Evaluate student progress in the instructional program by means that include the maintain of up-to -date student data;
- Take an active role in decision-making and assist in facilitation of positive outcomes for student with special needs;
- Provide activities which facilitate the professional growth of the academic faculty and enhance the quality of the instructional program while appraising performance.

Whereas Mount Prospect Academy is located at 354 Main Street in Plymouth, and there are multiple “off-site classrooms” in which students attend at any given time, it would be impossible for one person to oversee and implement all of the aforementioned essential duties. In order to visit each of the following “off-site classrooms”:

- 354 Main Street, Plymouth, (MPA approved location)
- 350 Main Street, Plymouth, (Residence with a ‘Culinary classroom’)
- 1024 Rt. 3, Campton (Local business-auto repair shop-“vocational classroom”)
- 19 Owl Street, Campton (Residence with a “classroom on-site” and “Culinary classroom”)
- 23 Depot Street, Campton (Residence with a “classroom on-site”)
- 254 Rt. 25, Warren (Residence with a “classroom on-site”)
- 1977 Mount Moosilauke Hwy, Pike (Residence with a “classroom on-site” and “vocational classrooms”).

The round trip drive from Mount Prospect Academy in Plymouth would be 62.5 miles of driving, and on a good day, without weather or traffic, and only inclusive of driving time, it would be an hour and 25 minutes in the car. The above list is not inclusive of visiting and overseeing any of the “community classrooms” which ranged in location from Plymouth to Ashland to Lincoln NH, nor did it include any of the other “off-site classrooms” mentioned in literature submitted, such as:

- Personal Fitness – The NHDOE was not provided this address;
- Outdoor Adventure – The NHDOE was not provided this address;
- Building Maintenance – The NHDOE was not provided this address;
- Carpentry – The NHDOE was not provided this address;
- Animal Husbandry – The NHDOE was not provided this address;
- Landscaping/Horticulture – The NHDOE was not provided this address;
- Building Trades – The NHDOE was not provided this address;
- School-to-Work – The NHDOE was not provided these addresses;
- Farm Management – The NHDOE was not provided this address; and
- Equine Assisted Therapy – The NHDOE was not provided this address

Mount Prospect Academy in conjunction with their associated companies may need to consider investing in the hiring of additional educational administrators in order to share the essential duties of the Director of Academics.

Overview of the Monitoring Review for Approval of Special Education Programs Process

The Special Education Monitoring Review for Approval of Private Provider Special Education Programs process ensures that students with educational disabilities have access to; can participate in; and can demonstrate progress within the general education curriculum, thereby improving student learning. The primary focus of the monitoring review is to improve educational results and functional outcomes for all children with disabilities.

Monitoring is done on a cyclical basis. During the year prior to monitoring, the New Hampshire Department of Education (NHDOE), Bureau of Special Education (Bureau) offers training to each private provider who is involved in the monitoring process. Training encompasses writing Measurable Annual Goals, Written Prior Notice, Self-Assessment, and a topic selected by the private provider based on current need. During this time, the private provider will be given the option to include a director from outside of their Local Education Agency (LEA) area to participate in the on-site file review, as well as at least one special education administrator from another private school who has been trained in the process by the Bureau. At the beginning of the school year in which the private provider is being monitored, the private provider will send the Bureau their completed application for renewal of Bureau special education approval/nonpublic school approval in addition to the program's policy and procedure manual and any special education forms that are used by the private program. Following a review of these documents, the monitoring team will conduct an on-site review in which student files are examined for evidence of implementation of the policies and procedures through the special education process. The Bureau will also conduct a follow-up review to verify the implementation of corrective actions as identified in the summary report.

The New Hampshire Department of Education, Bureau of Special Education review members for this monitoring review included Helene Anzalone, Lori Noordergraaf, Santina Thibedeau, Administrator of the Bureau of Special Education, and Patrice Chandler, Special Education Administrator from Seacoast Learning Collaborative

Procedures and Effective Implementation

Each private provider must have special education procedures, and effective implementation of practices that are aligned and support the implementation of IDEA and the *New Hampshire Standards for the Education of Children with Disabilities*.

The monitoring team reviewed the following special education procedures for compliance with State and Federal regulations regarding administration, confidentiality of information, program requirements, responsibilities of private providers of special education implementation of IEPs, behavioral interventions, RSA 126-U Limiting the use of child restraint practices in schools and treatment centers, qualifications and requirements for instructional, administrative and support personnel, change in placement or termination of enrollment, physical facilities, health and medical care, photography and audio-visual recording, and emergency planning and preparedness.

Based on the review of Mount Prospect Academy's special education procedures the monitoring team determined there were **13 findings of noncompliance**.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
1. Ed 1100; NH State Statutes; IDEA 2004	New Hampshire Standards for the Education of Children with Disabilities adopted March 23, 2017, NH State Statutes & IDEA 2004
Finding of Noncompliance: Mount Prospect Academy provided no evidence that the procedures manual had been updated to reflect current Standards, as it refers to the "New Hampshire Rules amended as of May 15, 2014", which is not the most current version.	
Corrective Action Regarding the Implementation of the Regulations: Mount Prospect Academy must utilize current New Hampshire Standards for the Education of Children with Disabilities adopted March 23, 2017. Provide the revised procedures and a description of the method used to inform staff of the revision to the NHDoe as soon as possible but no later than 3 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
2. Ed 1114.04(e)	Administration
Finding of Noncompliance: In reviewing Mount Prospect Academy's special education procedures the monitoring team found evidence of Mount Prospect Academy's philosophy, purposes, program orientation, types of services, characteristics of children to be served by the program, and the availability of the statement of purpose to the public upon request. However, there was no evidence provided to the monitoring team regarding short term aims. Mount Prospect Academy's Special Education Procedure plan referred to their "five overarching goals with short-term benchmarks"; however, evidence provided included only four goals and no benchmarks (short-term aims).	
Corrective Action Regarding the Implementation of the Regulations: Mount Prospect Academy must include a description of short term aims. Provide the revised procedures and a description of the method used to inform staff of the revision to the NHDoe as soon as possible but no later than 3 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
3. Ed 1114.04(c)(2); Ed 1119.01(b)(2)	Administration; Confidentiality Requirements
Finding of Noncompliance: Mount Prospect Academy provided no evidence of their written procedures for confidentiality requirements per Ed 1119.01(b)(2).	
Corrective Action Regarding the Implementation of the Regulations: Mount Prospect Academy must include written procedures for confidentiality requirements per Ed 1119.01(b)(2). Provide the revised procedures and a description of the method used to inform staff of the revision to the NHDOE as soon as possible but no later than 3 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
4. 34 CFR 300.622(b)(2)	Consent
Finding of Noncompliance: Mount Prospect Academy provided no evidence of a procedure regarding obtaining parental consent, or the consent of an eligible child who has reached the age of majority under State law, which must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with §300.321(b)(3)	
Corrective Action Regarding the Implementation of the Regulations: Mount Prospect Academy must include procedures for obtaining parental consent, or the consent of an eligible child who has reached the age of majority under State law, before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with §300.321(b)(3). Provide the revised procedures and a description of the method used to inform staff of the revision to the NHDOE as soon as possible but no later than 3 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
5. 34 CFR 300.623(b)	Safeguards
Finding of Noncompliance: Mount Prospect Academy provided no evidence of the name of the one official at each participating agency who assumes responsibility for ensuring the confidentiality of any personally identifiable information.	
Corrective Action Regarding the Implementation of the Regulations: Mount Prospect Academy must identify the official who assumes responsibility for ensuring the confidentiality of any personally identifiable information. Provide the revised procedures and a description of the method used to inform staff of the revision to the NHDOE as soon as possible but no later than 3 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
6. Ed 1114.05(a); Ed 1114.05(b)(1)	Program Requirements
Finding of Noncompliance: Mount Prospect Academy provided no evidence of written admission policies and procedures related to intake or a written description of admissions policies and criteria which it shall provide to all placing agencies and shall make available to the parent of any child referred for placement for students who attend the education program.	
Corrective Action Regarding the Implementation of the Regulations: Mount Prospect Academy must include written admission policies and procedures related to intake or a written description of admissions policies and criteria which it shall provide to all placing agencies and shall make available to the parent of any child referred for placement for students who attends the education program. Provide the revised procedures and a description of the method used to inform staff of the revision to the NHDOE as soon as possible but no later than 3 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
7. 34 CFR 300.102(a)(1);RSA 186-C:2(I); Ed 1114.04(b)(2)	Limitation—Exception to FAPE for Certain Ages; Definitions; Program Requirements
Finding of Noncompliance: In reviewing Mount Prospect Academy's special education procedures the monitoring team was unable to determine the age of children in care, as the special education procedures stated males 11-21 whereas other documents state males ages 11-20. Corrective Action Regarding the Implementation of the Regulations: Whereas IDEA and the New Hampshire Statutes state that a child with a disability and eligible for special education from 3 years of age or older but less than 21 years of age, it would appear that Mount Prospect Academy may have students attending the school who are not special education eligible. When referring to the approved special education program, only students up to age 21 may be placed there. Mount Prospect Academy must revise the its special education procedures as well as all other documents referring to special education approval to reflect Federal and State regulations. Provide the revised procedures and a description of the method used to inform staff of the revision to the NHDOE as soon as possible but no later than 3 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
8. Ed 1114.05(b)(5)	Program Requirements
Finding of Noncompliance: Mount Prospect Academy provided no evidence of the program's criteria for discharge. Corrective Action Regarding the Implementation of the Regulations: Mount Prospect Academy must include criteria for discharge. Provide the revised procedures and a description of the method used to inform staff of the revision to the NHDOE as soon as possible but no later than 3 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
9. Ed 1114.12(c)	Change in Placement or Termination of Enrollment
Finding of Noncompliance: The Monitoring Team found evidence of a statement in Mount Prospect Academy's special education procedures plan which states that if the IEP team determines that the current placement cannot implement the IEP and provide FAPE, the "Program" shall immediately place the child in an approved facility or program which can implement the IEP and provide FAPE. The evidence presented implies that Mount Prospect Academy has the responsibility/authority to place a child in another placement; This is not the responsibility of a private provider, but rather the LEA and/or DCYF if applicable. Corrective Action Regarding the Implementation of the Regulations: Mount Prospect Academy must revise its special education procedures to reflect that if the IEP team determines that the current placement cannot implement the IEP and provide FAPE, the LEA and/or DCYF, if applicable, will be notified immediately for purposes of placing the child in an approved facility or program which can implement the IEP and provide FAPE. Provide the revised procedures and a description of the method used to inform staff of the revision to the NHDOE as soon as possible but no later than 3 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
10. Ed 1114.16(d)(1)(2)	Physical Facilities
Finding of Noncompliance: Mount Prospect Academy provided no evidence that the facilities at 354 Main Street, and classrooms utilized at other locations, are free from asbestos and lead paint.	
Corrective Action Regarding the Implementation of the Regulations: Mount Prospect Academy must provide written procedures to protect children from hazards such as the presence of asbestos and lead paint. Provide evidence that all classroom locations utilized by Mount Prospect Academy are free of lead and asbestos. Provide the revised procedures and a description of the method used to inform staff of the revision to the NHDOE as soon as possible but no later than 3 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
11. Ed 1114.18(a)	Health and Medical Care
Finding of Noncompliance: Mount Prospect Academy provided no evidence of written procedures to ensure that children with disabilities receive prompt and competent medical attention in the event of injury or illness while at the program or while participating in any program or activity while in the custody of the program.	
Corrective Action Regarding the Implementation of the Regulations: Mount Prospect Academy must include written procedures to ensure that children with disabilities receive prompt and competent medical attention in the event of injury or illness while at the program or while participating in any program or activity while in the custody of the program. Provide the revised procedures and a description of the method used to inform staff of the revision to the NHDOE as soon as possible but no later than 3 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
12. RSA 189:64; Ed 1114.21	Emergency Response Plans; Emergency Planning and Preparedness
Finding of Noncompliance: Mount Prospect Academy provided no evidence of written procedures for staff and children to follow in case of emergency, and no evidence of provisions for the evacuations of buildings and the assignment of staff during emergencies. According to the Mount Prospect Academy's special education procedures self-assessment, submitted to the NHDOE on October 13, 2017, these written procedures are "still being developed".	
Corrective Action Regarding the Implementation of the Regulations: Mount Prospect Academy must have written procedures for staff and children to follow in case of emergency, including provisions for the evacuation of buildings and assignment of staff during emergencies. Provide the revised procedures and a description of the method used to inform staff of the new processes to the NHDOE as soon as possible, but no later than 3 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
13. Ed 1126.02(b)(3)(e)	Criteria for Approval of Public and Non-Public Programs
Finding of Noncompliance: Mount Prospect Academy provided no evidence of procedures regarding non-discriminatory testing practices.	
Corrective Action Regarding the Implementation of the Regulations: Mount Prospect Academy must include non-discriminatory testing practices in their special education procedures. Provide the revised procedures and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 3 months from the date of this report.	

Private Provider Curriculum and Effective Implementation

As part of the review, the monitoring team looked for evidence that the Mount Prospect Academy is providing students with access to the general curriculum. The program is approved for grades 6-12, Middle and High School. The monitoring team reviewed the curriculum based upon the courses outlined in the Program of Studies provided by Mount Prospect Academy pursuant to Ed 306.261 & Ed 306.27.

Based on the review of the Mount Prospect Academy's curriculum, the monitoring team determined that there were **251 findings of noncompliance** in 34 areas.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
1. Ed 306.02(b); Ed 306.20; Ed 1402.01	Definitions; Career and Technical Education Programs; Regions
Finding of Noncompliance: Mount Prospect Academy is not approved for the operation of Career and Technical Education Programs. Contained within the materials submitted for the Monitoring Review of Private Provider Special Education Programs, as well as the information gathered and shared during the on-site visits on January 16 and 18, 2018, was information regarding Career and Technical Education Programs for the following: • Automotive 1 credit • Carpentry/Building Trades 1 credit • Woodworking 1 credit • Culinary Arts 1 credit • Horticulture and Landscape design 1 credit • Outdoor recreation 1 credit Information was provided within a Career and Technical Education folder for the following courses (no credit amounts were noted): • Animal Science • Farm Management • Forestry and Wildlife Resulting in 1 finding of noncompliance.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must either cease the use of the terms "Career and Technical Education Programs" in their literature, or adhere to the approval processes outlined in Ed 1400 Career and Technical Education. Provide the updated materials or processes and a description of the method used to inform staff of these changes to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
2. Ed 306.27(b)(4)&(5)	Extended Learning Opportunities (ELO)
Finding of Noncompliance: Mount Prospect Academy submitted a policy regarding the program's process for complying with Ed 306.27(b)(4)&(5), which outlines the program's policy and procedures for creating, maintaining, and monitoring extended learning opportunities for their students. Also included in this policy were sections entitled "Purpose"; "Roles and Responsibilities"; "Extended Learning Opportunities Initiated by the District"; "Application Evaluation Criteria"; "Appeal Process"; and "Program Integrity"; whereas the policy submitted includes responsibilities outlined for both Principals and ELO Coordinators, Mount Prospect Academy submitted no evidence of job descriptions for these positions, nor these specific staff members listed on their personnel roster. Additionally, it would appear that this policy was taken directly from the NHDOE website, as it was not personalized for the Mount Prospect Academy program, since "<i>the District</i>" was referred to throughout the document, resulting in 1 finding of noncompliance. There was no evidence that Mount Prospect Academy was following their ELO policy, nor was there evidence of the ELOs outlining how certified school personnel will oversee or coordinate an individual student's program; how the ELO is being aligned with graduation competencies, including but not limited to independent study, private instruction, team sports, performing groups, internships, community service and work study; and approved prior to the start of the ELO; nor evidence of the acknowledgment of achievement be based on a student's demonstration of graduation competencies as approved by a certified educator. Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must adopt a policy and procedure document specifically for Mount Prospect Academy in accordance with the requirements outlined in Ed 306.27(b)(4)&(5), and implement the ELO policy and procedures with fidelity. Provide evidence that Mount Prospect Academy has an revised ELO Policy and Procedures document which is specific to Mount Prospect Academy and is in compliance with Ed 306.27(b)(4)&(5), as well as a description of the method used to inform staff of these changes to the NHDOE as soon as possible but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
3. Ed 306.37	English Language Arts and Reading Program
Finding of Noncompliance: Mount Prospect Academy submitted curriculum materials for "English Language Arts" for grades 5 through 12. The NHDOE is unsure why Mount Prospect submitted curriculum for grade 5, as they are not approved for grade 5, resulting in 1 finding of noncompliance. Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must provide the NHDOE with evidence of removal of "English Language Arts" curriculum for grade 5. Provide updated Mount Prospects Academy's Middle School English curriculum that includes the removal of this component to the NHDOE within 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
4. Ed 306.43	Mathematics Program
Finding of Noncompliance: Mount Prospect Academy submitted curriculum materials for "Mathematics" for grades 5 through 12. The NHDOE is unsure why Mount Prospect submitted curriculum for grade 5, as they are not approved for grade 5, resulting in 1 finding of noncompliance. Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must provide the NHDOE with evidence of removal of "Mathematics" curriculum for grade 5. Provide updated Mount Prospects Academy's Middle School Mathematics curriculum that includes the removal of this component to the NHDOE within 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
5. Ed 306.27(c)	High School Curriculum, Credits, Graduation Requirements, and Co-curricular Program
Finding of Noncompliance: In reviewing Mount Prospects Academy's curriculum materials submitted, it was revealed that a total of 10 courses listed in the Program of Studies do not have a corresponding curriculum inclusive of: Physical Education titled "Personal Health and Fitness;" Information Communication and Technologies titled "Integrated Learning Lab;" English titled "Leadership & Literacy" grades 9-12; Math titled "Basic Skills" and "Special Math Topics;" Science titled "Robotics Engineering;" Social Studies titled "United States and New Hampshire Government" and "Global Studies;" and High School Technology/Engineering titled "Woodworking" and "Outdoor Recreation." Resulting in 10 findings of noncompliance.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must include curriculum for all required areas for high school graduation. Provide the curriculum for the areas listed and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
6. Ed 306.27	High School Curriculum, Credits, Graduation Requirements, and Cocurricular Program
Finding of Noncompliance: In reviewing Mount Prospect Academy's curriculum materials submitted, it was revealed that curriculum for 90 courses were not listed in the Program of Studies consisting of: "PLATO Introduction to Visual Arts;" "PLATO Professional Photography A & B;" "PLATO Health Science 1A, 1B, 2A, 2B;" "PLATO Principles of Health Science;" "PLATO Getting Active;" "PLATO Improving Performance;" "PLATO Lifestyle;" "PLATO Computer Programming 1A & 1B;" "PLATO Computer Science 1A & 1B;" "PLATO Computing for College and Careers Semesters A & B;" "PLATO Electronic Communication Skills;" "PLATO Principles of Arts, Audio/Video Technology, and Communications;" "PLATO Principles of Information Technology 1A & 1B;" "PLATO Principles of Information Technology Semesters A & B;" "PLATO Introduction to Social Media;" "PLATO Academic Success;" "PLATO Electronic Communication Skills;" "PLATO Introduction to Business Administration;" "PLATO Principles of Finance;" "PLATO Principles of Business, Marketing, & Finance;" "PLATO Principles of Marketing, Advertising, & Sales Promotion;" "PLATO Electronic Communication Skills;" "PLATO Introduction to Accounting;" "PLATO Introduction to Marketing;" "PLATO Introduction to Fashion Design;" "Adult Living;" "Consumer Math;" "PLATO Foundational Math;" "PLATO Integrated Math A & B;" "Grade 12 Math-Pre-calculus;" "PLATO Pre-calculus A & B;" "PLATO Advanced Calculus A & B;" "PLATO Integrated Learning Math A & B" for Math;" "PLATO Advanced Biology A & B;" "PLATO Chemistry A & B;" "PLATO Physics A & B;" "PLATO Integrated Physics and Chemistry A & B;" "PLATO Earth and Space Semester A & B;" "PLATO Life Science A & B;" "American Government;" "PLATO Psychology A & B;" "PLATO Social Issues;" "PLATO Sociology;" "PLATO Principles of Law, Public Safety, Corrections, and Security;" "PLATO Civics A & B;" "PLATO German 1A & 1B" "PLATO German 2A & 2B;" "PLATO Spanish 3A & 3B;" "PLATO Introduction to Veterinary Science;" "PLATO Principles of Architecture and Construction;" "PLATO Principles of Agriculture, Food, and Natural Resources;" "PLATO Medical Terminology;" "PLATO Principles of Engineering and Technology;" "PLATO Principles of Hospitality and Tourism;" "PLATO Principles of Manufacturing;" and "PLATO Principles of Transportation, Distribution, and Logistics." Resulting in 90 findings of noncompliance.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must include all courses offered for High School in the Program of Studies. Provide the updated program of studies for the areas listed and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
7. Ed 306.27(c)(2); Ed 306.33	Program of Studies - Business Education (9-12)
Finding of Noncompliance: Mount Prospect Academy provided no evidence of courses offered in Business Technology, resulting in 1 finding of noncompliance .	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its Program of Studies to include a High School Business course in Business Technology.	
Provide the updated High School Program of Studies and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
8. Ed 306.27(c)(12); Ed 306.45	Program of Studies - Science Education (9-12)
Finding of Noncompliance: Mount Prospect Academy provided no evidence of courses offered in Chemistry, Physics, and Earth Space Sciences, resulting in 3 findings of noncompliance .	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its Program of Studies to include a Chemistry, Physics, and Earth Space Sciences.	
Provide the updated High School Program of Studies and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
9. Ed 306. 27(c)(13); Ed 306.46	Program of Studies - Social Studies Program (9-12)
Finding of Noncompliance: Mount Prospect Academy provided no evidence of courses offered in Sociology, Anthropology, Psychology, and 1 credit in Geography (only ½ credit of Geography is currently offered), resulting in 3 findings of noncompliance .	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its Program of Studies to include Sociology, Anthropology, Psychology, and one credit in Geography.	
Provide the updated High School Program of Studies and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
10. Ed 306. 27(c)(14); Ed 306.47	High School Program of Studies – Technology/Pre-Engineering Program (9-12)
Finding of Noncompliance: Mount Prospect Academy provided no evidence of courses offered in Energy and Power Technologies, Transportation, Alternative Energy, and Energy Conservation resulting in 4 findings of noncompliance .	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its Program of Studies to include Energy and Power Technologies, Transportation, Alternative Energy, and Energy Conservation.	
Provide the updated High School Program of Studies and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
11. Ed 306.27(c)(15); Ed 306.48	Program of Studies - World Languages Program (9-12)
Finding of Noncompliance: Mount Prospect Academy provided no evidence of a 3rd year sequence in one World Language, resulting in 1 finding of noncompliance .	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its Program of Studies to include a third year sequence in one World Language.	
Provide the updated High School Program of Studies and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
12. Ed 306.261(b)(2)(a)	Middle School Arts Education (6-8)
Finding of Noncompliance: Mount Prospect Academy provided no evidence of classes offered in Middle School Arts Education, resulting in 1 finding of noncompliance .	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must offer Middle School Arts Education.	
Provide a description of the Middle School Arts Education classes along with the corresponding Middle School Arts Education curriculum, and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
13. Ed 306.261(b)(2)(e)	Middle School Family and Consumer Science Education (6-8)
Finding of Noncompliance: Mount Prospect Academy provided no evidence of classes offered in Middle School Family and Consumer Science Education, resulting in 1 finding of noncompliance .	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must offer Middle School Family and Consumer Science Education class.	
Provide a description of the Middle School Family and Consumer Science Education class along with the corresponding Middle School Family and Consumer Science Curriculum and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
14. Ed 306.261(b)(2)(c)	Middle School Health Education Program (6-8)
Finding of Noncompliance: Mount Prospect Academy provided no evidence of classes offered in Middle School Health Education, resulting in 1 finding of noncompliance .	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must offer Middle School Health Education class.	
Provide a description of the Middle School Health Education class along with the corresponding Middle School Health Education Curriculum and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
15. Ed 306.261(b)(2)(d)	Middle School Physical Education Program (6-8)
Finding of Noncompliance: Mount Prospect Academy provided no evidence of classes offered in Middle School Physical Education Programs, resulting in 1 finding of noncompliance .	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must offer Middle School Physical Education classes.	
Provide a description of the Middle School Physical Education classes along with the corresponding Middle School Physical Education Curriculum and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
16. Ed 306.261(b)(2)(f); Ed 306.42	Middle School Information and Communication Technologies Program (6-8)
Finding of Noncompliance: Mount Prospect Academy provided no evidence of classes offered in Middle School Information and Communication Technologies Program, resulting in 1 finding of noncompliance .	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must offer Middle School Information and Communication Technologies classes.	
Provide a description of the Middle School Information and Communication Technologies classes along with the corresponding Middle School Information and Communication Technology Curriculum and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
17. Ed 306.261(b)(2)(j); Ed 306.47	Middle School Technology/Pre-Engineering Education (6-8)
Finding of Noncompliance: Mount Prospect Academy provided no evidence of classes offered in Middle School Technology/Pre-Engineering Education, resulting in 1 finding of noncompliance .	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must offer Middle School Technology/Pre-Engineering classes.	
Provide a description of the Middle School Technology/Pre-Engineering classes and along with the corresponding Middle school Technology/Pre-Engineering Curriculum and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
18. Ed 306.31	Arts Education Program (9-12)
Finding of Noncompliance: In reviewing Mount Prospect Academy's High School Art curriculum submitted, consisting only of High School PLATO courses, there are 4 findings of noncompliance . The curriculum did not include required standards for safety and health issues associated with materials, tools, equipment, supplies and procedures; guidance in selecting and applying subject matter to express meaning in artwork; development of artistic skill over time; and critical thinking skills and artistic choices in the creation and evaluation of artworks.	

Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its Arts curriculum to include missing required standards mentioned above.

Provide the updated High School Arts curriculum that includes the required components and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
19. Ed 306.33	Business Education Program (9-12)
Finding of Noncompliance: In reviewing Mount Prospect Academy's High School Business curriculum submitted, which consisted only of a PLATO course, there are 8 findings of noncompliance. The curriculum for "Career Explorations" did not include safe and secure environmental controls. The curriculum for "Business Technology" did not include word processing applications; spreadsheet development; database management; electronic communications and internet services; graphics; desktop publishing including basic web design; and interactive media.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its Business curriculum to include missing required standards mentioned above.	
Provide the updated High School Business curriculum that includes the required components and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
20. Ed 306.38	Middle School Family and Consumer Science Education(6-8)
Finding of Noncompliance: In reviewing Mount Prospect Academy's Middle School curriculum submitted, there is no evidence of a curriculum for "Family and Consumer Science" resulting in 17 findings of noncompliance. The curriculum did not include 7 required standards to prepare students for college, career and citizenship; promote optimal nutrition; use critical and creative thinking skills to promote problem solving in diverse family, community and work environments; demonstrate creative thinking skills; construct knowledge research, manage projects, and develop innovative products and processes using technology; solve problems; make informed decisions in regarding math, language arts and science; and manage the challenges of living and working in a diverse global society. The curriculum did not include 5 required standards that support 21st century learning skills. The curriculum did not include 5 required standards relating to a variety of assessments.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its Middle School Family and Consumer Science curriculum to include missing required standards mentioned above.	
Provide the updated Middle School Family and Consumer Science curriculum that includes the required components and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
21. Ed 306.38	High School Family and Consumer Science Education (9-12)
Finding of Noncompliance: In reviewing Mount Prospect Academy's High School "Family and Consumer Science" curriculum submitted, there are 2 findings of noncompliance. The curriculum did not include the required standards for consumer and resource management and textiles and design.	

Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its High School Family and Consumer Science curriculum to include missing required standards mentioned above.

Provide the updated High School Family and Consumer Science curriculum that includes the required components and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
22. Ed 306.40	Health Education Program (9-12)
Finding of Noncompliance: In reviewing Mount Prospect Academy's "Health" curriculum submitted, consisting only of a High School PLATO course, there are 8 findings of noncompliance. The curriculum did not include the ability to access valid health information, health-promoting products and services; analyze the effect of culture, media, technology, and other influences on health; interpersonal communications; goal-setting and decision making skills; advocate for personal, family, and community; tobacco use prevention; mental health; and community and environmental health.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its Health Education curriculum to include missing required standards mentioned above.	
Provide the updated Health Education curriculum that includes the required components and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
23. Ed 306.41	Physical Education (9-12)
Finding of Noncompliance: In reviewing Mount Prospect Academy's "Physical Education" curriculum submitted, consisting only of a High School PLATO course, there are 6 findings of noncompliance. The curriculum did not include the ability to exhibit responsible personal and social behavior in physical activity settings; use a variety of motor skills to enhance physical, mental, social, and emotional development; improve social and cooperative skills; gain a multicultural perspective; use technology; and assessments that emphasize knowledge and skills in problem contexts.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its Physical Education curriculum to include missing required standards mentioned above.	
Provide the updated Physical Education curriculum that includes the required components and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
24. Ed 306.42	Information & Communication Technologies Program (9-12)
Finding of Noncompliance: In reviewing Mount Prospect Academy's "Information and Communication Technology" curriculum submitted, consisting only of PLATO courses, there were 11 findings of noncompliance. There was no evidence of the 11 required standards for digital portfolios.	

Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its Information and Communication Technologies curriculum to include missing required standards mentioned above.

Provide the updated Information and Communication Technologies curriculum that includes the required components and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
25. Ed 306.42	Middle School Information & Communication Technology (6-8)
Finding of Noncompliance: In reviewing Mount Prospect Academy's "Information and Communication Technology" curriculum submitted, consisting only of High School PLATO courses, there are 5 findings of noncompliance. The curriculum did not include integrating Science; integrating World Languages; demonstrating use common productivity and web-based software; configuring computers and basic networks; and opportunities for students who demonstrate ICT competencies through digital portfolios by the end of 8th grade to take a higher level computer course at the High School to meet the ½ credit requirement.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its Middle School Information and Communication Technology curriculum to include missing required standards mentioned above. Provide the updated Middle School Information and Communication Technology curriculum that includes the required components and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
26. Ed 306.37	Middle School English/Language Arts and Reading Program (6-8)
Finding of Noncompliance: In reviewing Mount Prospect Academy's Middle School "English" curriculum submitted, consisting only of the Expeditionary Learning Program and PLATO courses, there is 1 finding of noncompliance. The curriculum did not include the required standard for acquiring new reading skills and fluency through remedial, developmental, and enrichment programs.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its Middle School English curriculum to include missing required standards mentioned above. Provide the updated Middle School English curriculum that includes the required components and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
27. Ed 306.43	Middle School Mathematics (6-8)
Finding of Noncompliance: In reviewing Mount Prospect Academy's Middle School "Mathematics" curriculum submitted, whereby only PLATO courses were able to be reviewed since other evidence did not constitute a curriculum, there are 6 findings of noncompliance. The curriculum did not include communication of mathematical ideas through speaking and writing; connections of mathematical ideas across disciplines; mathematical concepts that include concrete experiences to the abstract level using manipulatives, technology, and the environment; historical and cultural development of mathematics; positive attitudes toward mathematics; and incorporate multiple mathematical ideas, research, technology.	

Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its Middle School Mathematics curriculum to include missing required standards mentioned above.

Provide the updated Middle School Mathematics curriculum that includes the required components and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
28. Ed 306.43	High School Mathematics Program (9-12)
Finding of Noncompliance: In reviewing Mount Prospect Academy's High School "Mathematics" curriculum submitted, whereby only PLATO courses were able to be reviewed since other evidence did not constitute a curriculum, there are 10 findings of noncompliance. The curriculum did not include communication of ideas through speaking and writing; mathematical ideas and across disciplines; build and construct knowledge and understanding of mathematical concepts using concrete experiences and interactions with manipulatives, technology, and the environment; explore the historical and cultural development of mathematics; various careers and research of math requirements in college majors; solve mathematical problems in real-life situations; mathematical patterns; making predictions; mathematical ideas, research, and technology; and mathematical communication.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its High School Mathematics curriculum to include missing required standards mentioned above.	
Provide the updated High School Mathematics curriculum that includes the required components and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
29. Ed 306.45	Middle School Science Education (6-8)
Finding of Noncompliance: In reviewing Mount Prospect Academy's Middle School "Science" curriculum submitted, whereby only PLATO courses were able to be reviewed since other evidence did not constitute a curriculum, there are 5 findings of noncompliance. The curriculum did not include process skills of inferring; science and technology related careers; using controlled variables; and developing spreadsheets and creative representations; and designing computer images and representations.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its Middle School Science curriculum to include missing required standards mentioned above.	
Provide the updated Middle School Science curriculum that includes the required components and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
30. Ed 306.45	High School Science Education (9-12)
Finding of Noncompliance: In reviewing Mount Prospect Academy's High School "Science" curriculum submitted for Science, whereby only High School PLATO courses were reviewed since other evidence did not constitute a curriculum, there are 11 findings of noncompliance. The curriculum for "Physical Science" did not include conservation of energy in nuclear phenomena. The curriculum for "Chemistry" did not include reactions of matter such as acids, bases, oxidation-reduction, electrochemistry, equilibrium, and kinetics. The curriculum for "Physics" did not include atomic and nuclear physics. The curriculum for Earth Space Science did not include concepts that the earth is a unique member of our solar system located in a galaxy, within the universe; and is a complex planet with 5 interacting systems.	

Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its High School Science curriculum to include missing required standards mentioned above.

Provide the updated High School Science curriculum that includes the required components and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
31. Ed 306.46	Middle School Social Studies Program (6-8)
Finding of Noncompliance: In reviewing Mount Prospect Academy's Middle School "Social Studies" curriculum submitted, evidence did not constitute as curriculum, resulting in 7 findings of noncompliance. The curriculum did not include civics, economics, geography, government, and history; citizenship in the school and community; the constitutions of the United States and New Hampshire; use information to clarify issues and seek solutions to societal problems; apply critical thinking, interpersonal relations, and decision-making skills in problem-solving; the well-being of the home, school, communities state, nation, and world; careers in history, the humanities, and the social sciences.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its Middle School Social Studies curriculum to include missing required standards mentioned above.	
Provide the updated Middle School Social Studies curriculum that includes the required components and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
32. Ed 306.46	High School Social Studies Program (9-12)
Finding of Noncompliance: In reviewing Mount Prospect Academy's High School "Social Studies" curriculum submitted, whereby only PLATO courses were able to be reviewed since other evidence did not constitute a curriculum, there are 3 findings of noncompliance. The curriculum did not include civics, New Hampshire history, and related areas of Sociology, Anthropology, and Psychology; participation and citizenship in the life of the community, the state, the nation, and the world; critical thinking, effective decision making, and human relations skills.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its High School Social Studies curriculum to include missing required standards mentioned above.	
Provide the updated High School Social Studies curriculum that includes the required components and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
33. Ed 306.47	Middle School Technology/Pre-Engineering Education (6-8)
Finding of Noncompliance: Mount Prospect Academy did not submit evidence of a curriculum for Middle School "Technology/Pre-Engineering Education" resulting in 19 findings of noncompliance.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must have a Middle School Technology/Pre-Engineering curriculum.	
Provide the Middle School Technology/Pre-Engineering curriculum that includes all of the required components and a description of the method used to inform staff to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
34. Ed 306.48	High School World Languages Program (9-12)
Finding of Noncompliance: In reviewing Mount Prospect Academy's World Language curriculum submitted, consisting only of PLATO courses, there are 6 findings of noncompliance . The curriculum did not include contributions of other cultures and within American culture; other societies' contributions to the human experience; global interdependence; elements of classical and/or modern languages; and developing career with the study of world languages.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update its High School World Languages curriculum to include missing required standards mentioned above.	
Provide the updated High School World Languages curriculum that includes the required components and a description of the method used to inform staff of the revision to the NHDOE as soon as possible, but no later than 6 months from the date of this report.	

Personnel

The Bureau of Special Education has reviewed the Mount Prospect Academy personnel certifications using the New Hampshire Educator Information System. The review process was for educators employed during 2017-2018 school year.

The personnel roster that was provided by the Mount Prospect Academy was compared to the data in the New Hampshire Educator Information System. Each personnel member's endorsement was matched to the subject/assignment. This process was used for personnel that hold Beginning Educator Certification (BEC) and Experienced Educator Certification (EEC). If the endorsement was appropriate to the subject/ assignment then the renewal date of the endorsement was verified to ensure that the endorsement was current.

If there was a discrepancy between endorsement and the subject/assignment, the private provider was given an opportunity to verify the data. If the discrepancy could not be resolved a finding of noncompliance was made based on Personnel Standards pursuant to Ed 1114.10(a), 34 CFR 300.18, and 34 CFR 300.156.

Based on the review of the Mount Prospect Academy's personnel certifications, the monitoring team determined there were **90 findings of noncompliance** in 6 areas.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
1. Ed 1114.10(e)	Qualifications and Requirements for Instructional, Administrative, and Support Personnel
Finding of Noncompliance: Mount Prospect Academy provided a personnel roster and job descriptions. The personnel roster identified 45 staff members, 4 consultants, and 21 different job titles, but only 6 job descriptions were provided: • Vocational Director (this job title was not included as a position on the personnel roster) • Teacher Assistant	

- Special Education Teacher
- Director of Academics
- Dean of Students and
- Classroom Teacher

No job description was provided for the following positions:

- 1:1 Behavior Support,
- Academic Case Manager,
- Adult Living Teacher,
- English,
- Food Service Director,
- Guidance,
- Health and PE,
- Library and Tech Ed,
- Library Media,
- Music Teacher,
- School to Work Coordinator,
- Title 1 Instructor,
- Transition Specialist,
- Vocational Coordinator,
- Vocational Teacher Assistant, and
- Vocational Instructor, resulting in **16 findings of noncompliance**.

The following job descriptions had no certification requirements, class assignment, corresponding grade levels, or curriculum:

- "Academic Case Manager",
- "Food Service Director",
- "Guidance",
- "School to Work Coordinator",
- "Title 1 Instructor",
- "Transition Specialist",
- "Vocational Coordinator",
- "Vocational Teacher",
- "Assistant Vocational Instructor", and
- "Adult Living Teacher", resulting in **10 findings of noncompliance**.

Mount Prospect Academy cannot create teaching positions which have no associated certifications, class assignment or corresponding curriculum. Individuals can only be employed as teachers when there is an associated certification, class assignment and corresponding curriculum.

Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must provide a revised personnel roster which includes a class assignment and grade level for each staff member.

Mount Prospect Academy must provide written job descriptions covering all staff positions while using job titles that have a direct connection to a teaching certification area as well as an associated class including specific grade level(s), and corresponding curriculum. Provide a description of the method used to inform staff to the NHDOE as soon as possible but no later than 3 months from the date of this report.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
2. Ed 1114.10(e)	Qualifications and Requirements for Instructional, Administrative, and Support Personnel
Finding of Noncompliance: Mount Prospect Academy provided a personnel roster which, out of a total of 49 people listed on the roster, (4 of whom were consultants), 26 of the 45 staff members listed had no course(s) taught or assignment listed, resulting in 26 findings of noncompliance .	

Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must provide an updated personnel roster which includes specific course(s) taught, each staff member or contracted personnel's full legal names, (as they appear on the person's credentials and endorsements), the grade levels to which they are assigned, and any additional job descriptions as related to new positions as well as a description of the method used to inform staff to the NHDOE as soon as possible but no later than 3 months from the date of this report.

Send to the NHDOE as soon as possible but no later than 3 months from the date of this report.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
3. 34 CFR 300.156; Ed 1114.10(a)	Personnel Qualifications; Qualifications and Requirements for Instructional, Administrative, and Support Personnel
Finding of Noncompliance: In reviewing Mount Prospect Academy's personnel, there were 21 staff members identified with teaching roles, however they do not have any teaching credentials resulting in 21 findings of noncompliance: • 1 staff member with no teaching credentials was listed as "Academic Case Manager" • 3 staff members with no teaching credentials were listed as "Adult Living Teachers" • 2 staff members with no teaching credentials were listed as "Classroom Teacher" • 1 staff member with no teaching credentials was listed as "Dean of Students" • 1 staff member with no teaching credentials was listed as "Food Service Director" • 1 staff member with no teaching credentials was listed as "School to Work Coordinator" • 1 staff member with no teaching credentials was listed as "Special Education Teacher" • 1 staff member with no teaching credentials was listed as "Title 1 Instructor" • 1 staff member with no teaching credentials was listed as "Transition Specialist" • 1 staff member with no teaching credentials was listed as "Vocational Coordinator", and • 8 staff members with no teaching credentials were listed as "Vocational Instructor" Corrective Action regarding the Implementation of the Regulations: Each non-credentialed individual must be immediately removed from their teaching assignment. Mount Prospect Academy must hire or contract with teachers that currently hold appropriate credentials. Provide the updated personnel roster which includes each staff member or contracted personnel's full legal names, as they appear on the person's credentials and endorsements, the job title for each, the specific class being taught by each person, the grade levels to which they are assigned, and any additional job descriptions as related to new positions, as well as a description of the method used to inform staff of the changes. Send to the NHDOE as soon as possible but no later than 3 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
4. 34 CFR 300.156; Ed 1114.10(a)	Personnel Qualifications; Qualifications and Requirements for Instructional, Administrative, and Support Personnel
Finding of Noncompliance: Mount Prospect Academy did not provide any evidence that they have certified teachers or consultants in the following content areas, resulting in 7 findings of noncompliance: • Business Education • World Language, • Reading/Writing Specialist or Teacher, • Health Education; • Comprehensive Technology Education Teacher; • Family and Consumer Science Teacher; • Physical Science Teacher	

Corrective Action regarding the Implementation of the Regulations:

Mount Prospect Academy must hire or contract with teachers that currently hold appropriate credentials in each area listed above.

Provide the full legal names as they appear on their credentials and endorsements of each certified staff or contracted teacher for each of the content areas above, as well as their individual assignment and grade levels taught as well as a description of the method used to inform staff to the NHDOE as soon as possible but no later than 3 months from the date of this report.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
5. 34 CFR 300.156; Ed 1114.10(a)	Personnel Qualifications; Qualifications and Requirements for Instructional, Administrative, and Support Personnel
Finding of Noncompliance: In reviewing Mount Prospect Academy's personnel there was • 1 staff member with a subject/assignment in World Language; however is not credentialed in World Language, resulting in 1 finding of noncompliance.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must provide the NHDOE with evidence that resolves this discrepancy as well as a description of the method used to inform staff to the NHDOE as soon as possible but no later than 3 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
6. 34 CFR 300.156; Ed 1114.10(a)	Personnel Qualifications; Qualifications and Requirements for Instructional, Administrative, and Support Personnel
Finding of Noncompliance: In reviewing Mount Prospect Academy's personnel of the 9 staff members listed with a job title of a "Classroom Teacher" for grades 6 through 12, each with a subject/assignment in English Language Arts, Math, Science and Social Studies there were: • 2 staff members with no certifications (each non-credentialed individual must be immediately removed from their teaching assignment) 1 staff member was certified in Elementary K-6 only; • 1 staff member was certified in Art only; • 1 staff member was certified in Social Studies for grades 5-12; • 1 staff member was certified in Math for grades 7-12; • 1 staff member was certified in Elementary K-8; • 1 staff member had an assignment in Science grades 6-12, and although they are credentialed in Middle School Science grades 5-9 and Life Science in grades 7-12, the staff member is not credentialed to teach Physical Science; and • 1 staff member had a job title of "Classroom Teacher"; however has no specific course taught/assigned for any grade levels, resulting in 9 findings of noncompliance.	
Corrective Action regarding the Implementation of the Regulations: Teachers need to be appropriately credentialed for the roles in which they serve. Mount Prospect Academy must provide the NHDOE with evidence that resolves these discrepancies as well as a description of the method used to inform staff to the NHDOE as soon as possible but no later than 3 months from the date of this report.	

Mount Prospect Academy was notified of the concerns listed above via email on January 11, 2018 and at the on-site on January 16, 2018.

Approval Requirements

Each private provider must meet the requirements for special education program approval pursuant to The Individuals with Disabilities Education Improvement Act (IDEA) (2004), The New Hampshire Standards for the Education of Children with Disabilities, and New Hampshire State Statutes (RSA 186-C:5, RSA 189:64). If seeking nonpublic school approval each private provider must meet the requirements of The New Hampshire Rules for the Approval of Nonpublic Schools (Ed 400, 2005).

The monitoring review for the approval of private provider special education programs includes an application with specified materials that must be submitted to the Bureau by October 15 in the year they are monitored.

Based on the review of the Mount Prospect Academy's application materials, the monitoring team determined there were **19 findings of noncompliance**.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
1. RSA 189:24; Ed 1114.16(c); Ed 306.07; Ed 403.02(a)(2); Chapter Saf-C 6000	Standard School; Physical Facilities; School Facilities; Application for Continued Approval Status for Attendance Purposes; State Fire Code
Finding of Noncompliance: In reviewing Mount Prospect Academy's application materials submitted the Monitoring Review for Approval of Private Provider Special Education Programs, Mount Prospect Academy did not provide any <u>School Fire and Life Safety inspections</u> for the following locations: • Automotive 1024 US Rt. 3, Plymouth, NH; • Woodshop 1024 US Rt. 3 Plymouth, NH; • Culinary(4 different instructors- two different locations) 350 Main St. Plymouth, NH & 19 Owl Street, Campton, NH; • Personal Fitness--The NHDOE was not provided this address; • Outdoor Adventure--The NHDOE was not provided this address; • Building Maintenance--The NHDOE was not provided this address; • Carpentry--The NHDOE was not provided this address; • Animal Husbandry--The NHDOE was not provided this address; • Landscaping/Horticulture--The NHDOE was not provided this address; • Building Trades--The NHDOE was not provided this address; • School-to-Work--The NHDOE was not provided these addresses; • Farm Management--The NHDOE was not provided this address; and • Equine Assisted Therapy The NHDOE was not provided this address The Director of Academics informed the monitoring team during the visit that Becket House at Warren located at 254 NH Rt. 25 in Warren was not used for educational purposes. There was no evidence of School Fire and Life Safety inspections for any of the above. Pursuant to Ed 1114.16(c), All physical facilities in each private provider of special education or other non-LEA program used for any purpose for the education of children with disabilities shall be in compliance with New Hampshire health and fire regulations for non-public schools as established by public health statute RSA 200:11, Ed 306.07(a)-(b), Safe-C 6000, and New Hampshire school building standards as required under Ed 403.01(c) to ensure the comfort and health of children enrolled in the facility or program.	

Corrective Action regarding the Implementation of the Regulations: There was no evidence of School Fire and Life Safety inspections for any of the above.

Pursuant to Ed 1125.02(e)(7), Mount Prospect Academy must immediately cease operating the above off-site vocational classrooms/career and technical education (CTE) programs until all current Health, Fire and Life Safety Inspections have been completed. Students currently participating in these off-site vocational classrooms/CTE programs must be immediately transitioned to classes with certified individuals, established curriculum, current health inspections, and current fire/life safety inspections.

Provide the current Health and Fire and Life Safety inspections that are completed by an authorized inspector, and include all the inspection checklist components, the date of inspection and inspector's signatures for all identified buildings that Mount Prospect Academy has indicated are used for education as soon as possible, but no later than **2 weeks** from the date of this report.

Provide a list of SASID numbers to show which students were attending each of the off-site vocational /CTE classes as well as the approved program name and exact address of the program that students are being transitioned to. Send this information to the NHDOE as soon as possible but no later than **2 weeks** from the date of this report.

Send to the NHDOE a description of the method used to inform staff of these revisions as soon as possible but no later than **2 weeks** from the date of the report.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
2. RSA 189:24; Ed 1114.16(c); Ed 306.07; Ed 403.02(a)(2)	Standard School; Physical Facilities; School Facilities; Application for Continued Approval Status for Attendance Purposes
Finding of Noncompliance: In reviewing Mount Prospect Academy's application materials submitted the Monitoring Review for Approval of Private Provider Special Education Programs, Mount Prospect Academy did not provide any current Health Inspections for the following locations: • Automotive 1024 US Rt. 3, Plymouth, NH; • Woodshop 1024 US Rt. 3 Plymouth, NH; • Culinary(4 different instructors- two different locations) 350 Main St. Plymouth, NH & 19 Owl Street, Campton, NH; • Personal Fitness --The NHDOE was not provided this address; • Outdoor Adventure--The NHDOE was not provided this address; • Building Maintenance--The NHDOE was not provided this address; • Carpentry--The NHDOE was not provided this address; • Animal Husbandry--The NHDOE was not provided this address; • Landscaping/Horticulture--The NHDOE was not provided this address; • Building Trades--The NHDOE was not provided this address; • School-to-Work--The NHDOE was not provided these addresses; • Farm Management--The NHDOE was not provided this address; and • Equine Assisted Therapy--The NHDOE was not provided this address The Director of Academics informed the monitoring team during the visit that Becket House at Warren located at 254 NH Rt. 25 in Warren was not used for educational purposes. There was no evidence of Health inspections for any of the above. Pursuant to Ed 1114.16(c), All physical facilities in each private provider of special education or other non-LEA program used for any purpose for the education of children with disabilities shall be in compliance with New Hampshire health and fire regulations for non-public schools as established by public health statute RSA	

200:11, Ed 306.07(a)-(b), Safe-C 6000, and New Hampshire school building standards as required under Ed 403.01(c) to ensure the comfort and health of children enrolled in the facility or program.

Corrective Action regarding the Implementation of the Regulations: There was no evidence of Health inspections for any of the above.

Pursuant to Ed 1125.02(e)(7), Mount Prospect Academy must immediately cease operating the above off-site vocational classrooms/career and technical education (CTE) programs until all current Health, Fire and Life Safety Inspections have been completed. Students currently participating in these off-site vocational classrooms/CTE programs must be immediately transitioned to classes with certified individuals, established curriculum, current health inspections, and current fire/life safety inspections.

Provide the current Health and Fire and Life Safety inspections that are completed by an authorized inspector, and include all the inspection checklist components, the date of inspection and inspector's signatures for all identified buildings that Mount Prospect Academy has indicated are used for education as soon as possible, but no later than **2 weeks** from the date of this report.

Provide a list of SASID numbers to show which students were attending each of the off-site vocational /CTE classes as well as the approved program name and exact address of the program that students are being transitioned to. Send this information to the NHDOL as soon as possible but no later than **2 weeks** from the date of this report.

Send to the NHDOL a description of the method used to inform staff of these revisions as soon as possible but no later than **2 weeks** from the date of the report.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
3.34 CFR 300.39(b)(3)(ii); Ed 1114.05(g)	Special Education; Program Requirements
Finding of Noncompliance: In reviewing Mount Prospect Academy's <u>Curriculum</u> submitted as a part of their application materials submitted for the Monitoring Review for Approval of Private Provider Special Education Programs, Mount Prospect Academy did not provide curriculum for the following: • Automotive; • Woodshop; • Culinary(4 different instructors- two different locations); • Personal Fitness; • Outdoor Adventure; • Building Maintenance; • Carpentry; • Animal Husbandry; • Landscaping/Horticulture; • Building Trades; • School-to-Work; • Farm Management; and • Equine Assisted Therapy There was no evidence a curriculum for any of the above. Mount Prospect Academy is operating additional programs which are referred to by Mount Prospect Academy as "off-site vocational classrooms", "school-to-work sites", and/or "Career and Technical Education (CTE)" that are not approved by the NHDOL, Bureau of Special Education (Bureau), nor are they approved by the New Hampshire Department of Labor (NHDOL) as a School-to-Work site, nor are they approved by Career and Technical Education (CTE). This matter will be referred to the NHDOL and to CTE for further review.	

Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must provide the curriculum for all of the above “off-site vocational classrooms”/ “career and technical education (CTE) programs” **as soon as possible, but no later than 6 months** from the date of this report. Students currently working in these businesses must be immediately removed.

Provide the NHDOE with SASID Numbers and updated Daily Schedules indicating the new course(s) for each student who was attending these “off-site vocational classrooms”, “school-to-work sites”, and/or “Career and Technical Education (CTE) as soon as possible, but no later than **2 weeks** from the date of this report as well as a description of the method used to inform staff.

Mount Prospect Academy must provide the Bureau with **monthly and ongoing updates** for all NHDOL and CTE findings of noncompliance, including consistent, on-going updates on progress or changes made to these programs, any corrective actions, as well as evidence of verification of corrections regarding all of the above programs until all areas are verified as corrected and in compliance with the regulations governing NHDOL and CTE as well as a description of the method used to inform staff.

Send to the NHDOE a description of the method used to inform staff of these revisions as soon as possible but no later than **6 months** from the date of the report as well as the method used to inform staff.

The Bureau will review evidence of the corrective action at a subsequent on-site visit.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
4. Title XXIII Labor Sect 279:22-aa I&II	New Hampshire Department of Labor (NHDOL)
Finding of Noncompliance: In reviewing Mount Prospect Academy’s materials submitted as a part of their application for the Monitoring Review for Approval of Private Provider Special Education Programs, several businesses were listed as either a “vocational classroom”, a “school to work site”, or a “community classroom”. None of these businesses are currently approved by the NHDOL as they are not listed on their “approved site list”. Mount Prospect Academy has failed to comply with Labor Sect 279:22-aa I & II, as they have not followed the special provisions established to apply for and receive NHDOL approval for students participating in state-sponsored Work Experience and Career Exploration /Work Study Programs in accordance with 29 CFR 570.36-37 Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must immediately stop the practice of sending students to local businesses, and follow the guidelines provided in Section 279:22-aa I & II to apply for all Work Experience and Career Exploration /Work Study Programs /vocational placements to be considered for Department of Labor approval to ensure compliance with all state and federal labor laws and so that the Labor Commissioner may determine whether or not to establish a practical experience/training program at a sub-minimum wage or no wage rate for high school students and students with disabilities to work for practical experience. Students currently working in these businesses must be immediately removed. Provide the NHDOE with SASID Numbers and updated Daily Schedules indicating the new course(s) for each student who had been placed at local businesses during the school day. Provide the evidence that students are no longer placed at local businesses during the school day as soon as possible but no later than 2 weeks from the date of this report, as well as a description of the method used to inform staff of these revisions. Provide the evidence of compliance with NHDOL Title XXIII Labor Sect 279:22-aa I&II as soon as possible, but no later than 3 months of the date of this report, as well as a description of the method used to inform staff of these revisions. The NHDOE will refer this matter to the NHDOL for further review.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
5. Title XXIII Labor Chap 276-A	Youth Employment Law
Finding of Noncompliance: During NHDOE compliance on-site visits, an eleven-year old was observed working in the kitchen at Mount Prospect Academy's Plymouth residential location (350 Main St. Plymouth, NH). Mount Prospect Academy is in violation of the Youth Employment Law (276-A:4V) which states that "No youth under 12 years of age may be employed or permitted to work except for his parents, grandparents or guardians or at work defined in this chapter as casual (employment of no more than 3 calendar days for any one employer)." Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must immediately stop the practice of allowing youth under the age of 12 to work in the kitchen at any location. Students under the age of 12, who are currently working in kitchens, must be immediately removed. Provide the SASID numbers and updated Daily Schedule indicating the new course(s) for each student under the age of 12 who had been working in kitchens. Provide evidence that youth under the age of 12 are no longer placed in the kitchen during the school day. Send to the NHDOE soon as possible, but no later than 2 weeks from the date of the report, as well as a description of the method used to inform staff of these revisions. The NHDOE will refer this matter to the NHDOL for further review.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
6. Title XXIII Labor Chap 276-A	Youth Employment Law
Finding of Noncompliance: Mount Prospect academy is in violation of Federal Child Labor Provisions detailed in 29 CFR 570 Subpart C (Child Labor Regulation No. 3) regarding the following: 14 and 15 year-olds may not be employed: - during school hours except as provided in Work Experience and Career Exploration Programs and Work Study Programs - more than 3 hours a day on a school day, including Fridays - more than 18 hours a week during a school week Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must immediately stop the practice of allowing 14 and 15 year-olds to work in businesses for which the NHDOL has not provided approval, and must follow the guidelines provided by the NHDOL to apply for and receive approval for students to be placed at businesses for Work Experience and Career Exploration Programs and Work Study Programs. Students currently working in these businesses must be immediately removed. Provide the NHDOE with SASID Numbers and updated Daily Schedules indicating the new course(s) for each 14 and 15 year old student who had been placed at local businesses during the school day. Provide the evidence that students are no longer placed at local businesses during the school day as soon as possible but no later than 2 weeks from the date of this report, as well as a description of the method used to inform staff of these revisions. Provide the evidence of compliance with NHDOL Title XXIII Labor Chap 276-A as soon as possible, but no later than 3 months of the date of this report, as well as a description of the method used to inform staff of these revisions. The NHDOE will refer this matter to the NHDOL for further review.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
7. Title XXIII Labor Chap 276-A	Youth Employment Law
Finding of Noncompliance: Mount Prospect academy is in violation of Child Labor Laws with regard to 14 and 15 year-olds who may be working in occupations declared by the Secretary of Labor as being hazardous, including the operation or assisting in the operation of power-driven woodworking machines, work requiring use of ladders or scaffolds, all baking and most cooking activities, construction or work in connection with cars and trucks that involve the use of pits, racks or lifting apparatus or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring. The Bureau was informed by the Carpentry instructor that the classes make all of the furniture for the school and various residences as a part of their coursework.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must immediately stop the practice of allowing 14 and 15 year olds to work in occupations declared by the Secretary of Labor as being hazardous. Students currently working in these businesses must be immediately removed. Provide the NHDOE with SASID Numbers and updated Daily Schedules indicating the new course(s) for each 14 and 15 year old student who had been working in occupations declared by the Secretary of Labor as being hazardous. Provide the evidence that students are no longer working in occupations declared by the Secretary of Labor as being hazardous, as soon as possible but no later than 2 weeks from the date of this report, as well as a description of the method used to inform staff of these revisions. The NHDOE will refer this matter to the NHDOL for further review.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
8. 29 CFR 570 Subpart E	Hazardous Occupation Orders (Hos) for Nonagricultural Employment
Finding of Noncompliance: Mount Prospect academy is in violation of the NHDOL Hazardous Occupation Orders Law for 16 and 17 year-old students. Although there are exemptions for apprentices and student learners, these exemptions are contingent upon student-learners being "enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority. These exemptions include working intermittently and for short periods of time, and under the direct and close supervision of a qualified and experienced person (as referenced in the Personnel section, finding #3, and finding #3 in this section), with one exception (automotive), there are no certified staff or curriculum at these locations).	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must immediately stop the practice of allowing 16 and 17 year-olds student learners to work under unqualified and non-certified staff, and must follow the NHDOL Hazardous Occupation orders Law for 16 & 17 year old students. Mount Prospect Academy must immediately remove unqualified and non-certified staff from these positions, and hire or contract with appropriately credentialed staff or contracted personnel. Students currently working in these businesses must be immediately removed. Provide the NHDOE with SASID Numbers and updated Daily Schedules indicating the new course(s) for each 16 and 17 year old student who had been working in occupations declared by the Secretary of Labor as being hazardous. Provide the evidence that students are no longer working in occupations declared by the Secretary of Labor as being hazardous, as soon as possible but no later than 2 weeks from the date of this report, as well as a description of the method used to inform staff of these revisions. Provide the full legal names as they appear on their credentials and endorsements of each certified staff or contracted teacher for each of these positions, as well as their individual assignment and grade levels taught as well as a description of the method used to inform staff to the NHDOE as soon as possible but no later than 3 months from the date of this report.	

Provide the evidence of compliance with 29 CFR 570 Subpart E as soon as possible, but no later **than 3 months** of the date of this report, as well as a description of the method used to inform staff of these revisions.

The NHDOE will refer this matter to the NHDOL for further review.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
9. 29 CFR 570 Subpart E	Hazardous Occupation Orders (Hos) for Nonagricultural Employment
Finding of Noncompliance: Mount Prospect academy is in violation of the NHDOL Hazardous Occupation Orders Law for 16 and 17 year-old students regarding the following Hazardous Occupation Orders: • HO 5–Power-driven woodworking machines • HO 14–Power-driven circular saws, band saws, chain saws, guillotine shears, wood chippers and abrasive cutting discs	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must immediately stop the practice of allowing 16 and 17 year-olds student learners to use Power-driven woodworking machines, power-driven circular saws, band saws, chain saws, guillotine shears, wood chippers and abrasive cutting discs. Students currently working in these businesses must be immediately removed and the program must be in compliance with 29 CFR 570 Subpart E. Provide the NHDOE with SASID Numbers and updated Daily Schedules indicating the new course(s) for each 16 and 17 year old student who had been using Power-driven woodworking machines, power-driven circular saws, band saws, chain saws, guillotine shears, wood chippers and abrasive cutting discs as soon as possible but no later than 2 weeks from the date of this report. Provide the evidence that students are no longer using Power-driven woodworking machines, power-driven circular saws, band saws, chain saws, guillotine shears, wood chippers and abrasive cutting discs, as soon as possible but no later than 2 weeks from the date of this report, as well as a description of the method used to inform staff of these revisions. Provide the evidence of compliance with Labor 29 CFR 570 Subpart E as soon as possible, but no later than 3 months of the date of this report, as well as a description of the method used to inform staff of these revisions. The NHDOE will refer this matter to the NHDOL for further review.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
10. 29 CFR 570.2b	Minimum Age Standards for Agricultural Employment
Finding of Noncompliance: Mount Prospect academy is in violation of the NHDOL Minimum Age Standards for Agricultural Employment. No evidence was presented or provided by Mount Prospect Academy regarding its compliance with all components of 29 CFR 570.2b.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must immediately stop the practice of allowing students to work on a farm during the school day without following the provisions of 29 CFR 570.2b. Students currently working on farms must be immediately removed and the program must be in compliance with 29 CFR 570.2b. Provide the NHDOE with SASID Numbers and updated Daily Schedules indicating the new course(s) for each student who is working on a farm during the school day, as well as a description of the method used to inform staff, as soon as possible but no later than 2 weeks from the date of this report.	

Provide the evidence of compliance with the provisions of 29 CFR 570.2b as well as a description of the method used to inform staff as soon as possible, but no later than **3 months** from the date of this report.

The NHDOE will refer this matter to the NHDOL for further review.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
11. Ed 1126.02(b)(10)	Program Approval of Public and Non-Public Programs
Finding of Noncompliance: In reviewing Mount Prospect Academy's materials submitted as a part of their application for the Monitoring Review for Approval of Private Provider Special Education Programs, Mount Prospect Academy submitted a print out of the business search page dated 3/5/14, for which the annual report filed was 2/15/2011. Mount Prospect Academy did not provide a current Secretary of State Registration document and a Statement of Good Standing with the official seal and signed by Secretary of State. Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must provide the NHDOE with a current Secretary of State Registration document and a Statement of Good Standing with the official seal and signed by Secretary of State. Provide the current Secretary of State Registration document and a Certificate of Good Standing to the NHDOE as soon as possible but no later than 2 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
12. RSA 186-C:9	Education Required
Finding of Noncompliance: During NHDOE compliance on-site visits, it was noted that students who resided in the following residential settings were receiving their education within the residential setting: • VPI/Campton/Becket House at Campton/SubAcute Program/SubAcute Care at 19 Owl Street, Building 1, Campton • VPI/ Campton/Becket House at Campton/ SubAcute Program/SubAcute Care at 32 Depot Street, Building 2, Campton • East Haverhill Academy/Hall Farm/CRA/Red School House 1977 Mount Moosilauke Hwy, Pike • MPA/CAST/Becket House Program/Becket House at Plymouth, 250 Main Street, Plymouth The Director of Academics informed the monitoring team during the visit that Becket House at Warren located at 254 NH Rt. 25 in Warren was not used for educational purposes. Pursuant to RSA 186-C:9, Each child who is determined...as having a disability...and in need of special education or special education and related services shall be entitled to attend an approved program which can implement the child's individualized education program. Mount Prospect Academy is not approved for education at the above residential locations, resulting in 4 findings of noncompliance. Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must immediately cease the practice of educating students at residential locations, and students must attend an approved special education program (Mount Prospect Academy located at 354 Main Street, Plymouth). Provide the evidence that students who were previously being educated at residential locations are now being educated in the Mount Prospect Academy approved location at 354 Main Street in Plymouth, as well as a description of the method used to inform staff of the revision. Send to the NHDOE as soon as possible but no later than 2 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
13. Ed 321.10 (e)-(i)	Standards for Educational Space
Finding of Noncompliance: During NHD OE compliance on-site visits, it was noted that classrooms other than those at 354 Main Street in Plymouth did not meet the minimum standards for educational space of a minimum of 900 square feet, including storage, or 36 square feet per child, whichever is greater for elementary and middle schools; and for high schools, a minimum of 80 square feet, including storage, or 32 square feet per student, whichever is greater. Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must educate students in classrooms that meet the minimum standards for educational space. Provide the evidence that students who were previously being educated in sub minimum sized classrooms are now being educated in classrooms that meet the minimum standards for educational space, as well as a description of the method used to inform staff of the revision as soon as possible, but no later than 2 months from the date of this report. The Bureau will review evidence of the corrective action at a subsequent on-site visit.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
14. Ed 1126.02(b)(5)	Program Approval of Public and Non-Public Programs
Finding of Noncompliance: In reviewing Mount Prospect Academy's materials submitted as a part of their application for the Monitoring Review for Approval of Private Provider Special Education Programs, Mount Prospect Academy did provide copies of current class schedules which included the name of the class, teacher name, and time; however, the schedules provided did not include a complete class schedule representative of, and accounting for all educational activities. While on-site, the monitoring team asked for the number of students in each of the classes. The Director of Academics did not know the number nor was there evidence of which students should be in class. Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must provide a complete school schedule representative of, and accounting for, all educational activities for which students are involved. Provide the complete class schedule representative of, and accounting for, all educational activities for which students are involved, as well as a description of the method used to inform staff of the revision to the NHD OE as soon as possible but no later than 2 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
15. Ed 1114.15; Ed 306.18(2); RSA 189:1	Calendar Requirements; School Year; Days of School
Finding of Noncompliance: In reviewing Mount Prospect Academy's materials submitted as a part of their application for the Monitoring Review for Approval of Private Provider Special Education Programs, Mount Prospect Academy submitted a school calendar which includes a "two-day rotation" whereby one day students attend "more traditional classes" at the approved Mount Prospect Academy, and the other day students participate in a "vocational program". Whereas these programs are not approved by the NHD OE, or the Department of Labor, and there is no curriculum, certified staff, fire/safety or health inspections, students are therefore only receiving 90 days of the required 180 days of school, and are only receiving 495 of the required 990 instructional hours per year.	

Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must immediately stop this practice, and provide the required number of school days and instructional hours for students to receive a Free and Appropriate Public Education (FAPE).

Provide the revised calendar as well as a description of the method used to inform staff of this revision to the NHDOE as soon as possible but no later than 2 months from the date of this report.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
16. Ed 1126.02(b)(4)	Program Approval of Public and Non-Public Programs
Finding of Noncompliance: During the program visit, it was noted that the number of students observed, was different than the number of students reported to be attending that day. Many settings had only one or two students present when there should have been up to four. When asked, no one from Mount Prospect Academy could verify where the missing students were. There was no evidence of a master schedule to show or be able to locate where students should be at any given time during the day. Mount Prospect Academy must immediately establish a formalized attendance process which includes a reporting and communication system that all staff can quickly and easily access to ensure that all students are accounted for at all times while attending the approved day program. Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must create and establish a formalized attendance process which includes a reporting and communication system that all staff can quickly and easily access to ensure that all students are accounted for at all times while attending the approved day program. Provide the procedure that is created and established for the formalized attendance process which includes a reporting and communication system that all staff can quickly and easily access to ensure that all students are accounted for at all times while attending the approved day program as well as a description of the method used to inform staff to the NHDOE as soon as possible but no later than 2 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
17. Ed 1114.19	Insurance Coverage
Finding of Noncompliance: When reviewing evidence submitted for insurance coverage, Mount Prospect submitted a cover page for their insurance which expired on January 1, 2018. Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must update their insurance coverage for 2018. Provide the updated insurance coverage to the NHDOE as soon as possible but no later than 2 months from the date of this report.	

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
18. Ed 1114.03(b)&(g)	Governance
Finding of Noncompliance: There was no evidence provided that Mount Prospect Academy has a clearly identifiable governing body. When reviewing Mount Prospect Academy's materials submitted as a part of their application for the Monitoring Review for Approval of Private Provider Special Education Programs, Mount Prospect Academy submitted an organizational chart for the academic department, rather than a Governing Body.	

Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must have a clearly identifiable governing body which is responsible for ensuring the program's compliance with the program charter, constitution, or other organization document or agreement and with the terms of all leases, contracts, or legal agreements to which the program is party.

Provide a document that identifies the members of the governing body including the names, titles, positions and/or roles of each member and the terms of office for any officers to the NHDOE as soon as possible but no later than 2 months from the date of this report.

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
19. Ed 1114.03(f) &(i)	Governance
Finding of Noncompliance: When reviewing Mount Prospect Academy's materials submitted as a part of their application for the Monitoring Review for Approval of Private Provider Special Education Programs, there was conflicting information regarding clearly identifying the program's ownership and the legal basis for the program's operation.	
Corrective Action regarding the Implementation of the Regulations: Mount Prospect Academy must provide documentation that clearly identifies the program's ownership and legal basis for the program's operation.	
Provide the evidence which resolves this finding to the NHDOE as soon as possible but no later than 2 months from the date of this report.	

Monitoring of the Implementation of Special Education Process

Private providers are responsible for implementing the special education process in accordance with IDEA and the *New Hampshire Standards for the Education of Children with Disabilities*. The self-assessment data collection form highlights the private providers' understanding of the requirements of IDEA and the *New Hampshire Standards for the Education of Children with Disabilities* and was reviewed during the monitoring visit. Each area of compliance on the self-assessment data collection form clearly outlines whether the compliance is either a requirement of both IDEA and the *New Hampshire Standards for the Education of Children with Disabilities* or a requirement of solely the *New Hampshire Standards for the Education of Children with Disabilities*. The private provider cites the evidence of compliance in the self-assessment prior to the monitoring visit. During the monitoring visit, the monitoring team verified the evidence of compliance based on review of the student file, using the private providers' self-assessment as a resource. In the case of student specific finding(s) of noncompliance, the sending District is cited for noncompliance, as well as the private provider.

Based on this review, the Bureau of Special Education identified findings of noncompliance with IDEA and the *New Hampshire Standards for the Education of Children with Disabilities*. The findings include the citation, the area of noncompliance, and the required corrective actions, which include timelines for demonstrating correction of noncompliance. Student specific information will not be included in the report but will be provided to the private provider and, when appropriate, a district's Director of Special Education.

There are two main components to the corrective actions entitled, “*Corrective Action of Individual Instance of Noncompliance*” and “*Corrective Action Regarding the Implementation of the Regulations*”. The first component, “corrective action of individual instance of noncompliance,” is for any noncompliance concerning a child-specific requirement. There must be evidence that the private provider has corrected each individual case of noncompliance, unless the child is no longer placed at the program. These areas must be corrected as soon as possible within stated timelines given in the report for each area. The Bureau will return to the program, typically within 3 months of the date of the report, to verify compliance for each individual instance identified in the report. The second component, “corrective action regarding the implementation of the regulations” would typically involve the private provider’s participating in professional development training to appropriate personnel with regards to areas found to be in noncompliance. The Bureau will review updated data collected after the identification of noncompliance to demonstrate that the program is correctly implementing the specific requirement. This involves a follow-up on-site review of new student files, selected typically within one year of the original on-site compliance & improvement monitoring.

Overview of the Student Specific Findings of Noncompliance

The chart below identifies the area of compliance based on student files that were reviewed by the compliance & improvement monitoring team during the onsite visit. The chart is broken down into the **compliance citations** and **area of compliance**. The compliance citations are based on the *CFR* found in the federal regulations of IDEA and the *Ed* found in the New Hampshire Standards for the Education of Children with Disabilities. The chart aligns the regulatory components to the numbered questions in the self-assessment. Regulatory components and self-assessment numbers are bolded in instances where noncompliance was noted by the compliance & improvement monitoring team.

The **review status** identifies the **number of files reviewed** for the self-assessment question as well as the number of files that were found to be in compliance. For example “5 out of 6 files demonstrated evidence that a copy of the procedural safeguards, available to the parents of a child with a disability, was given to the parent one time in the school year.” This means that 6 files were reviewed and 5 files were found to be in compliance.

In cases where there was a finding of noncompliance for a particular student, the chart identifies the **First Stage Corrective Action of Individual Instance(s) of Noncompliance**. In the case of an individual instance of noncompliance, the corrective action would generally involve the IEP team convening to resolve the finding of noncompliance. Timelines for these corrective actions are also noted. For the First Stage Corrective Actions, the Bureau will return to the private provider program within 3 months following the program receiving written notification of noncompliance (the report) to

review all student files in which there were findings of noncompliance in order to verify compliance with the corrective action stated in the report.

In cases where there was a finding of noncompliance for a particular student, the next section of the chart identifies the **First Stage Corrective Action Regarding the Implementation of the Regulation**. This section informs the private provider program of any practices or procedures which need to be corrected as well as trainings for personnel to inform them of the corrections as a result of the findings of noncompliance. The required corrective action for the program and a timeline for the corrective action is also provided.

In cases where there was a finding of noncompliance for a particular student, the final section of the chart identifies the **Second Stage Corrective Action Regarding the Implementation of the Regulation**. Identified in this section will be the number of new student files that will be selected at the program to demonstrate correct implementation of the regulations for the section of the self-assessment in which noncompliance was found. For the Second Stage Corrective Actions, the Bureau will verify compliance through a subsequent on-site review of the new files within one year from the date of the report. **The total number of student files selected for the Second Stage Corrective Action Regarding the Implementation of the Regulation will not exceed the original number of files reviewed at the private provider program.**

Findings of Noncompliance

When determining compliance, the NHDOE reviews the currently agreed upon/signed IEP at the on-site monitoring visit. During the on-site monitoring visit there were **no files** which could not be reviewed for sections C(#3), E(#12-18), F(#19-24), G(#25), H (#26-29), I(#30), J(#32), K(#33-34), L(#35-44),M(#45), and N(#46-48).

COMPLIANCE CITATIONS		AREA OF COMPLIANCE
Ed 1114.03		A. Governance
Self-Assessment Question Number & Regulatory Component		Review Status
1.	Ed 1114.03(a)	0 out of 0 IEP files demonstrated evidence that the private provider has, for IEPs in which the private provider cannot provide the student with all services detailed in the IEPs, an agreed upon contract with the sending LEA for the provision of those services. <i>(Four student files have all services provided by the private provider)</i>

COMPLIANCE CITATIONS		AREA OF COMPLIANCE
Ed 1114.05		B. Record of Access; Confidentiality Requirements
Self-Assessment Question Number & Regulatory Component		Review Status
2.	34 CFR 300.614 Ed 1119.01(a)	4 out of 4 IEP files demonstrated evidence of a record of parties that have obtained access to the education records collected, maintained or used under Part B of the Act, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

COMPLIANCE CITATIONS		AREA OF COMPLIANCE
34 CFR 300.323 Ed 1109		C. Individualized Education Program
Self-Assessment Question Number & Regulatory Component		Review Status
3.	Ed 1109.04(a)	4 out of 4 IEP files demonstrated evidence that a copy of the IEP has been provided to each teacher and service provider listed as having responsibilities for implementing the IEP.
4.	34 CFR 300.324(b)(1)(i) Ed 1109.03(d)	3 out of 3 IEP files demonstrated evidence that the IEP was reviewed at least annually. <i>(One student file was of a student with an initial IEP or moved from another state or district.)</i>
5.	34 CFR 300.323(a) Ed 1109.03(d)	4 out of 4 IEP files demonstrated evidence that the IEP was in place at the beginning of the school year. <i>(No student files were placed after beginning of school year)</i>

COMPLIANCE CITATIONS		AREA OF COMPLIANCE
34 CFR 300.321 Ed 1103.01		D. IEP Team; Participants in the Special Education Process
Self-Assessment Question Number & Regulatory Component		Review Status
6.	34 CFR 300.321(a)(1) Ed 1103.01(a)	4 out of 4 IEP files demonstrated evidence that the IEP Team included the parents of the child or adult student.
7.	34 CFR 300.321(a)(2) Ed 1103.01(a)	4 out of 4 IEP files demonstrated evidence that at least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment) participated in the meeting. <i>(No student files were students excused per 34 CFR 300.321(e).) (No student files were of students that are not and will not participate in the regular education environment.)</i>
8.	34 CFR 300.321(a)(3) Ed 1103.01(a)	4 out of 4 IEP files demonstrated evidence that at least one special education teacher or, where appropriate, not less than one special education provider of the child participated in the meeting. <i>(No student files were students excused per 34 CFR 300.321(e).)</i>
9.	34 CFR 300.321(a)(4) Ed 1103.01(a)	4 out of 4 IEP files demonstrated evidence that the IEP Team included an LEA representative.
10.	Ed 1103.01(d)	3 out of 3 IEP files demonstrated evidence that, if vocational, career or technical education components are being considered, the IEP team membership included an individual knowledgeable about the vocational education programs and/or career technical education being considered. <i>(One student file was a student for whom vocational education/CTE was not considered.)</i>

11.	Ed 1103.02(a),(c), (d)	0 out of 0 IEP files demonstrated evidence that the parent(s) received a written invitation no fewer than 10 days before an IEP meeting which included the purpose, time, location and identification of the participants or the parent agreed in writing that the LEA could satisfy this requirement via transmittal by electronic mail <u>or</u> demonstrated evidence of written consent of the parent(s) that the notice requirement were waived [Ed 1103.02(b)]. <i>(Four student files were students for whom the written invitation is the responsibility of the LEA.)</i>

COMPLIANCE CITATIONS		AREA OF COMPLIANCE
34 CFR 300.320		E. Individualized Education Program (Present Levels of Academic Achievement and Functional Performance)
Self-Assessment Question Number & Regulatory Component	Review Status	
12.	34 CFR 300.324(a)(1)(i)	4 out of 4 IEP files demonstrated evidence that the team considered the strengths of the child.
13.	34 CFR 300.324(a)(1)(iv)	4 out of 4 IEP files demonstrated evidence that the team considered the academic, developmental, and functional needs of the child.
14.	34 CFR 300.324(a)(1)(ii)	4 out of 4 IEP files demonstrated evidence that the concerns of the parents for enhancing the education of their child were considered.
15.	34 CFR 300.324(a)(1)(iii)	3 out of 4 IEP files demonstrated evidence that the results of the initial or most recent evaluation of the child were considered. For student code A there was insufficient evidence demonstrating compliance with this requirement.
16.	34 CFR 300.320(a)(1)(i)	4 out of 4 IEP files demonstrated evidence of a statement in the IEP that describes how the student's disability affects the student's involvement and progress in the general education curriculum. <i>(No student files were preschool age students.)</i>
17.	34 CFR 300.320(a)(4)(ii)	4 out of 4 IEP files demonstrated evidence of a statement in the IEP that describes how the student's disability affects non-academic areas.
18.	34 CFR 300.320(a)(1)(ii)	For preschool children, 0 out of 0 IEP files demonstrated evidence of a statement in the IEP that describes how the disability affects the child's participation in appropriate activities. <i>(Four student files were not of preschool age students.)</i>
First Stage Corrective Action of Student Specific Instance(s) of Noncompliance: As soon as possible, but no later than 2 months from the date of this report, the district must convene the IEP teams to review the IEPs and provide evidence that the following is included in the IEP: the results of initial or most recent evaluations of the child. The NHDOE will verify this through a subsequent on-site review.		
First Stage Corrective Action Regarding the Implementation of the Regulations: Provide training to appropriate staff to include in student's IEPs the results of initial or most recent evaluations of the child. Provide the dates, names of attendees, and a description of the trainings, which defines the private provider's procedure for complying with this specific rule, to the NHDOE within 3 months from the date of this report.		
Second Stage Corrective Action Regarding the Implementation of the Regulations: The NHDOE will review 2 new student files (2 at the Day Program) for updated data demonstrating compliance with this requirement.		

COMPLIANCE CITATIONS		AREA OF COMPLIANCE
34 CFR 300.324(a)(2)(i) Ed 1109.03(h)		F. Consideration of Special Factors
Self-Assessment Question Number & Regulatory Component		Review Status
19.	34 CFR 300.324(a)(2)(i) Ed 1109.03(h)	When a child's behavior impedes the child's learning or that of others, 3 out of 3 IEP files demonstrated evidence that the team considered the use of positive behavioral interventions and supports, and other strategies, to address that behavior. <i>(One student file was not of a student whose behavior impedes learning.)</i>
20.	34 CFR 300.324(a)(2)(ii) Ed 1109.03(h)	When a child demonstrates limited English proficiency, 0 out of 0 IEP files demonstrated evidence that the team considered the language needs of the child as those needs relate to the child's IEP. <i>(Four student files were not of students who demonstrated limited English proficiency.)</i>
21.	34 CFR 300.324(a)(2)(iii) Ed 1109.03(h)	When a child is blind or visually impaired, 0 out of 0 IEP files demonstrated evidence that the team provided for instruction in Braille and the use of Braille unless the IEP team determined, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille was not appropriate for the child. <i>(Four student files were not of blind or visually impaired students.)</i>
22.	34 CFR 300.324(a)(2)(iv) Ed 1109.03(h)	4 out of 4 IEP files demonstrated evidence that the IEP Team considered the communication needs of the child.
23.	34 CFR 300.324(a)(2)(iv) Ed 1109.03(h)	When a child is deaf or hard of hearing, 0 out of 0 IEP files demonstrated evidence that the team considered the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode. <i>(Four student files were not of deaf or hard of hearing students.)</i>
24.	34 CFR 300.324(a)(2)(v) Ed 1109.03(h)	4 out of 4 IEP files demonstrated evidence that the IEP Team considered whether the child needs assistive technology devices and services.

COMPLIANCE CITATIONS		AREA OF COMPLIANCE
Ed 1109.01(a)(10)		G. Courses of Study
Self-Assessment Question Number & Regulatory Component		Review Status
25.	Ed 1109.01(a)(10)	For each student with a disability beginning at age 14 or younger, if determined appropriate by the IEP team, 3 out of 4 IEP files demonstrated evidence of a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study such as participation in advanced-placement courses or a vocational education. <i>(No student files were students aged 13 or younger who will not be turning 14 during the IEP period and no evidence the IEP team determined this is necessary.)</i> For student code A there was insufficient evidence demonstrating compliance with this requirement.

First Stage Corrective Action of Student Specific Instance(s) of Noncompliance: As soon as possible, but no later than 2 months from the date of this report, the private provider must convene the IEP teams to review the IEPs and provide evidence that for each student with a disability beginning at age 14 or younger, if determined appropriate by the IEP team, the IEP includes a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study such as participation in advanced-placement courses or a vocational education.

The NHDOE will verify this through a subsequent on-site review.

First Stage Corrective Action Regarding the Implementation of the Regulations: Provide training to appropriate staff to ensure that for each student with a disability beginning at age 14 or younger, if determined appropriate by the IEP team, the IEP includes a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study such as participation in advanced-placement courses or a vocational education.

Provide the dates, names of attendees, and a description of the trainings, which defines the private provider's procedure for complying with this specific rule, to the NHDOE within 3 months from the date of this report.

Second Stage Corrective Action Regarding the Implementation of the Regulations: The NHDOE will review 2 new student files (2 at the Day Program) for updated data demonstrating compliance with this requirement.

COMPLIANCE CITATIONS		AREA OF COMPLIANCE
34 CFR 300.320(a)(2)(i) Ed 1109.01(a)		H. Measurable Annual Goals; Short-term Objectives or Benchmarks
Self-Assessment Question Number & Regulatory Component		Review Status
26.	34 CFR 300.320(a)(2)(i) Ed 1109.01(a)(1)	2 out of 4 IEP files demonstrated evidence of a statement of measurable annual goals, including academic and functional goals. For student codes A & B there was insufficient evidence demonstrating compliance with this requirement.
27.	34 CFR 300.320(a)(2)(i)(A) Ed 1109.01(a)(1)	4 out of 4 IEP files demonstrated evidence that the measurable annual goals meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum.
28.	34 CFR 300.320(a)(2)(i)(B) Ed 1109.01(a)(1)	If there are other educational needs that result from the child's disability, 4 out of 4 IEP files demonstrated evidence that the measurable annual goals meet each of the child's other educational needs that result from the child's disability. <i>(No student files were students who do not have other identified educational needs.)</i>
29.	Ed 1109.01(a)(6)	4 out of 4 IEP files demonstrated evidence of short-term objectives or benchmarks for all children unless the parent determines them unnecessary for all or some of the child's annual goals.

First Stage Corrective Action of Student Specific Instance(s) of Noncompliance: As soon as possible, but no later than 2 months of the date of this report, the private provider must amend the IEPs to include measurable annual goals.

The NHDOE will verify this through a subsequent on-site review.

First Stage Corrective Action Regarding the Implementation of the Regulations: Provide training to appropriate staff to address writing measurable annual goals.

Provide the dates, names of attendees, and a description of the trainings, which defines the private provider's procedure for complying with this specific rule, to the NHDOE within 3 months from the date of this report.

Second Stage Corrective Action Regarding the Implementation of the Regulations: The NHDOE will review 2 new student files (2 at the Day Program) for updated data demonstrating compliance with this requirement.

COMPLIANCE CITATIONS		AREA OF COMPLIANCE
Ed 1109.01(a)(8)		I. Review and Revision of IEPs (Measuring Progress)
Self-Assessment Question Number & Regulatory Component		Review Status
30.	Ed 1109.01(a)(8)	4 out of 4 IEP files demonstrated evidence that the IEP includes a statement of how the child's progress toward meeting the annual goals shall be provided to the parents.

COMPLIANCE CITATIONS		AREA OF COMPLIANCE
Ed 1114.06(b)		J. Responsibilities of Private Providers of Special Education or other Non-LEA Programs in the Implementation of IEPs
Self-Assessment Question Number & Regulatory Component		Review Status
31.	34 CFR 300.325(b) Ed 1109.05 Ed 1114.06(a);	For the purpose of initiating the process for all matters concerning possible changes and/or modification in the identification, evaluation, development and/or revision of an IEP or changes in placement of a child with a disability, 4 out of 4 IEP files demonstrated evidence that the private provider contacted the sending school district. <i>(No student files had no changes in the child's identification, evaluation, development or revision of the IEP or placement)</i>
32.	Ed 1114.06(i), (j), (k)	3 out of 4 IEP files demonstrated evidence that a minimum of 3 comprehensive reports per year are completed on each child with a disability enrolled in the program. For student code B there was insufficient evidence demonstrating compliance with this requirement.
First Stage Corrective Action Regarding the Implementation of the Regulations: Provide training to appropriate staff to ensure that a minimum of 3 comprehensive reports per year are completed on each child with a disability enrolled in the program. Provide the dates, names of attendees, and a description of the trainings, which defines the private provider's procedure for complying with this specific rule, to the NHDOE within 3 months from the date of this report. Second Stage Corrective Action Regarding the Implementation of the Regulations: The NHDOE will review 2 new student files (2 at the Day Program) for updated data demonstrating compliance with this requirement.		

COMPLIANCE CITATIONS		AREA OF COMPLIANCE
34 CFR 300.323(d)(2)(ii) Ed 1109.03(a); Ed 1109.03(v); Ed 1102.01(b)		K. Accessibility of Child's IEP to Teachers and Others (General Accommodations and General Modifications)
Self-Assessment Question Number & Regulatory Component		Review Status
33.	Ed 1102.01(b)	If accommodations are included, 4 out of 4 IEP files demonstrated evidence that the accommodations are changes in instruction or evaluation determined necessary by the IEP team that do not impact the rigor, validity, or both of the subject matter being taught or assessed. <i>(No student files were students with no accommodations.)</i>

34.	Ed 1102.03(v)	If modifications are included, 1 out of 1 IEP files demonstrated evidence that the modifications are changes in instruction or evaluation determined necessary by the IEP team that impact the rigor, validity, or both of the subject matter being taught or assessed. <i>(Three student files were students with no modifications.)</i>

COMPLIANCE CITATIONS		AREA OF COMPLIANCE
34 CFR 300.320(a) Ed 1109.01(a)(1); 1109.04(b)		L. Definition of Individualized Education Program (Special Education and Related Services, Supplementary Aids and Services, and Program Modifications or Supports for School Personnel)
Self-Assessment Question Number & Regulatory Component		Review Status
35.	34 CFR 300.320(a)(4) Ed 1109.01(a)(1)	2 out of 4 IEP files demonstrated evidence of a statement of special education. For student codes B & C there was insufficient evidence demonstrating compliance with this requirement.
36.	Ed 1109.04(b)(1)	2 out of 4 IEP files demonstrated written evidence documenting implementation of the IEP with regards to all special education services provided. For student codes B & C there was insufficient evidence demonstrating compliance with this requirement.
37.	34 CFR 300.320(a)(4) Ed 1109.01(a)(1)	1 out of 1 IEP files demonstrated evidence of a statement of related services. <i>(Three student files were students for whom there was no evidence that the IEP team determined this is necessary.)</i>
38.	Ed 1109.04(b)(1)	1 out of 1 IEP files demonstrated written evidence documenting implementation of the IEP with regards to all related services provided. <i>(Three student files were students for whom there were no related services in the IEP.)</i>
39.	34 CFR 300.320(a)(4) Ed 1109.01(a)(1)	0 out of 0 IEP files demonstrated evidence of a statement of supplementary aids and services. <i>(Four student files were students for whom there was no evidence that the IEP team determined this is necessary.)</i>
40.	Ed 1109.04(b)(2)	0 out of 0 IEP files demonstrated written evidence documenting implementation of the IEP with regards to any supplementary aids and services provided. <i>(Four student files were students for whom there were no supplementary aids and services in the IEP.)</i>
41.	34 CFR 300.320(a)(4) Ed 1109.01(a)(1)	0 out of 0 IEP files demonstrated evidence of a statement of the supports for school personnel. <i>(Four student files were students for whom there was no evidence that the IEP team determined this is necessary.)</i>
42.	Ed 1109.04(b)(4)	0 out of 0 IEP files demonstrated written evidence documenting implementation of the IEP with regards to supports for school personnel. <i>(Four student files were students for whom there were no supports for personnel in the IEP.)</i>
43.	34 CFR 300.320(a)(7) Ed 1109.01(a)(1)	3 out of 4 IEP files demonstrated evidence of a projected date for the beginning of the services and modifications described in the supports and services section of the IEP. For student code C there was insufficient evidence demonstrating compliance with this requirement.

44.	34 CFR 300.320(a)(7) Ed 1109.01(a)(1)	3 out of 4 IEP files demonstrated evidence of the anticipated frequency, location, and duration of those services and modifications described in the supports and services section of the IEP. For student code C there was insufficient evidence demonstrating compliance with this requirement.
First Stage Corrective Action of Student Specific Instance(s) of Noncompliance: As soon as possible, but no later than 2 months from the date of this report, the private provider must convene the IEP teams to review the IEPs and provide evidence of a statement of special education As soon as possible, but no later than 2 months from the date of this report, the private provider must convene the IEP teams to review the IEPs and provide evidence of a projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications described in the supports and services section. As soon as possible, but no later than 2 months from the date of this report, the private provider will provide documentation for evidence of the implementation of special education. The NHDOE will verify this through a subsequent on-site review.		
First Stage Corrective Action Regarding the Implementation of the Regulations: Provide training to appropriate staff to ensure that the IEP includes applicable special education services. Additional training needs to include projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications described in the supports and services section. Provide training to appropriate staff for ensuring that there is written evidence documenting implementation of the IEP with regards to all special education services provided. Provide the dates, names of attendees, and a description of the trainings, which defines the private provider's procedure for complying with this specific rule, to the NHDOE within 3 months from the date of this report.		
Second Stage Corrective Action Regarding the Implementation of the Regulations: The NHDOE will review 2 new student files (2 at the Day Program) for updated data demonstrating compliance with this requirement.		

COMPLIANCE CITATIONS		AREA OF COMPLIANCE
34 CFR 300.320(a)(5) Ed 1109.01(a)(1)		M. Definition of Individualized Education Program (Justification for Non-Participation)
Self-Assessment Question Number & Regulatory Component		Review Status
45.	34CFR 300.320(a)(5) Ed 1109.01(a)(1)	4 out of 4 IEP files demonstrated evidence of an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in the supports and services section of the IEP.

COMPLIANCE CITATIONS		AREA OF COMPLIANCE
34 CFR 300.320(a)(6) Ed 1109.01(a)(1)		N. Definition of Individualized Education Program (State and District Wide Assessments)
Self-Assessment Question Number & Regulatory Component		Review Status
46.	34 CFR 300.320(a)(6)(i) Ed 1109.01(a)(1) RSA 193-C Ed 1114.05(k)	2 out of 2 IEP files demonstrated evidence of a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments. <i>(Two student files were of students for whom there were no state or district wide assessments for the student's age/grade level.)</i>
47.	34 CFR 300.320(a)(6)(ii)(A) Ed 1109.01(a)(1) RSA 193-C Ed 1114.05(k)	When the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or district wide assessment of student achievement, 0 out of 0 IEP files demonstrated evidence of a statement of why the child cannot participate in the regular assessment. <i>(Four student files were of students not taking an alternate assessment.)</i>
48.	34 CFR 300.320(a)(6)(ii)(B) Ed 1109.01(a)(1) RSA 193-C Ed 1114.05(k)	When the child is taking an alternate assessment, 0 out of 0 IEP files demonstrated evidence describing why the particular alternate assessment selected is appropriate for the child. <i>(Four student files were of students not taking an alternate assessment.)</i>

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY SUPERIOR COURT

JOHN DOE 533

v.

STATE OF NEW HAMPSHIRE, et al.
217-2022-CV-831

DAVID MEEHAN v. STATE OF NEW HAMPSHIRE, et al.
(Consolidated YDC/YDSU Cases)
217-2020-CV-46

ORDER ON PLAINTIFF’S MOTION FOR RECONSIDERATION

John Doe #533 (“Plaintiff”) brings this suit against Defendants, the State of New Hampshire, Department of Health and Human Services (“DHHS”); Division of Children, Youth, and Families (“DCYF”); and Mount Prospect Academy, Inc. (“Mount Prospect”) arising out of alleged abuse Plaintiff suffered in Defendants’ custody. Mount Prospect moved to dismiss Plaintiff’s complaint, which the Court granted by order dated August 9, 2024, which is incorporated herein. (Doc. 14.) Plaintiff now moves to reconsider the Court’s decision. (Pl. Mot. Recon. (Doc. 16.)) Mount Prospect objects. (Def’s Obj. (Doc. 19.)) For the reasons that follow, Plaintiff’s motion for reconsideration is DENIED.

Background

By way of brief background, Plaintiff’s claim is one of roughly 1,000 cases filed against DHHS, DCYF, and various contractor defendants alleging that the State of New Hampshire and contractor defendants permitted an institutional culture of silence and abuse that allegedly resulted in residents being physically, emotionally, and/or sexually

abused. Here, Plaintiff alleges that while he was in Mount Prospect's custody and care, staff members routinely, and in public, physically restrained him in a violent manner and locked him in solitary confinement. (Doc. 14 at 4.) Mount Prospect moved to dismiss Plaintiff's claims, arguing they were barred by the statute of limitations. The Court agreed with Mount Prospect, finding that Plaintiff's claims were not timely because they were not filed before Plaintiff's twentieth birthday, as required under RSA 508:8. (*Id.* at 7–8.) The Court also found that Plaintiff failed to carry his burden to show that the discovery rule—or other equitable doctrines—tolled the statute of limitations period. (*Id.* at 16.) Accordingly, the Court dismissed Plaintiff's claims for negligence, negligent hiring, training, supervision, and retention and breach of fiduciary duty against Mount Prospect with prejudice.¹

Analysis

“A motion for reconsideration allows a party to present, [with particular clarity,] points of law or fact that a court has overlooked or misapprehended.” Broom v. Cont'l Cas. Co., 152 N.H. 749, 752 (2005); see also Super. Ct. Civ. R. 12(e). A party is not permitted to introduce a new legal argument which could have been raised and argued earlier. See Taylor v. Sch. Admin. Unit #55, 170 N.H. 322, 331 (2017) (holding trial court not required to address an argument raised for the first time in plaintiff's motion to reconsider where plaintiff made no showing of an inability to raise the argument previously). Neither can a party use a motion for reconsideration to re-litigate issues the court has already decided. See Nw. Bypass Grp. v. U.S. Army Corps of Eng'rs., 552 F.

¹ The Court notes that, at this time, Plaintiff is not moving to reconsider the Court's dismissal without prejudice of his civil conspiracy and aiding and abetting a breach of a fiduciary duty claims.

Supp. 2d 137, 144 (D.N.H. 2008) (noting that a motion for reconsideration is not the proper vehicle to revisit an argument a court has already denied).

Plaintiff moves for reconsideration of the Court's August 9 order, arguing: (1) the Court misapplied the discovery rule at the pleading stage; (2) the Court conflated Plaintiff's understanding of his alleged abuser's culpability with his awareness of Mount Prospect's institutional responsibility; and (3) the Court erred by focusing on Plaintiff's understanding of the law rather than his understanding of whether there was a causal connection between the alleged abuse and Mount Prospect's actions. (Doc. 16 at 1–2.) Mount Prospect contends that the Court properly applied the discovery rule and thoroughly demonstrated that Plaintiff failed to plead facts sufficient to invoke the discovery rule. (Doc. 19 at 1–2.)

Generally, most of Plaintiff's arguments on reconsideration are very similar to the arguments that the Court considered and rejected in dismissing Plaintiff's claims, which is inappropriate on a motion for reconsideration. See Nw. Bypass Grp., 552 F. Supp. 2d at 144. For example, Plaintiff relies heavily on the New Hampshire Supreme Court's recent decision in Troy v. Bishop Guertin High Sch., 176 N.H. 131 (2023) to argue that the Court misapplied the discovery rule in the context of a sexual assault claim that happened when a plaintiff was a child. In Troy, the supreme court found that there was a factual dispute over whether the plaintiff had sufficient knowledge to put herself on notice that her religious high school was responsible for an alleged sexual assault by one of her teachers. Id. at 138. The Court carefully considered Troy's applicability to the present situation and found Troy to be distinguishable because, among other

reasons, the abuse perpetrated there was more covert and isolated in nature than the abuse Plaintiff allegedly suffered while at Mount Prospect. (Doc. 14 at 14–15.)

In addition, unlike the trial court in Troy, the Court considered more than the fact that Plaintiff's alleged assailants were employed by Mount Prospect. Indeed, the Court considered Plaintiff's alleged injuries in the context of all the facts in Plaintiff's complaint and concluded that the Plaintiff knew or should have known, within the applicable statute of limitations, of the causal connection between those injuries and the common law claims that Plaintiff brings in the instant action against Mount Prospect. Here, Plaintiff does not point to any facts that the Court overlooked or misapprehended which suggest that Plaintiff's alleged facts were analogous to those in Troy.²

Similarly, the Court did not err in applying the discovery rule at the pleading stage. As required, the Court assumed the truth of all of Plaintiff's well-pled facts.³ Contrary to Plaintiff's arguments, however, crediting Plaintiff's allegations as true does not satisfy Plaintiff's burden to demonstrate the applicability of the discovery rule. As the Court previously explained, taken as true, Plaintiff's allegations depict a widespread culture of violence that is inconsistent with Plaintiff's argument that he reasonably could not have known that he was injured, or that Mount Prospect was responsible for said

² Plaintiff also relies on Raymond v. Eli Lilly & Co., 117 N.H. 164 (1977), where the supreme court applied the discovery rule to a drug-products liability case. While the substance of Eli Lilly & Co. is not factually on point here, this Court employs the formulation of the discovery rule as articulated therein, which states: "A cause of action will not accrue under the discovery rule until the plaintiff discovers or in the exercise of reasonable diligence should have discovered not only that he has been injured but also that his injury may have been caused by the defendant's conduct." Id. at 170-71. Based upon the allegations in Plaintiff's complaint, it is clear that the Plaintiff knew that he was injured, and, in the exercise of reasonable diligence should have discovered Mount Prospect's causal connection to these alleged injuries within the applicable time period.

³ The Court notes that Plaintiff provided a general expert opinion on the effect of childhood trauma and repressed memories. The Court considered this; however, the four corners of Plaintiff's complaint is devoid of any allegations that Mount Prospect's actions—or inactions—caused any specific repressed memories that prevented Plaintiff from understanding that he was injured because of Mount Prospect's actions.

injury. Contrary to Plaintiff's contentions, the Court considered and credited Plaintiff's facts about the abuse he suffered as a child. However, the discovery rule employs an objective standard, see Troy, 176 N.H. at 138, which requires an inquiry into what a reasonable person in Plaintiff's situation would have understood. Importantly, given the context of RSA 508:8 (as discussed more fully below), the "reasonable person in Plaintiff's situation" is not a child, but a reasonable adult between the ages of 18 and 20. Thus, even if Plaintiff, as a child, thought the abuse he faced was normalized, the chronic and widespread culture of violence at Mount Prospect should have put the adult Plaintiff on notice that Mount Prospect contributed to that culture in some manner. Thus, the discovery rule is not available to Plaintiff. See Glines v. Bruk, 140 N.H. 180, 182 (1995) ("The discovery rule is designed to provide relief in situations where the plaintiff is unaware of either his injury or that the injury was caused by a wrongful act or omission.").

To be clear, the Court did not find that simply because Plaintiff was aware of physical assaults caused by Mount Prospect staff, Plaintiff necessarily understood that Mount Prospect was responsible for said abuse. In fact, as the Court acknowledged, that is exactly the kind of analysis that Troy foreclosed. (Doc. 14 at 14.) Rather, Plaintiff's alleged facts depicted a widespread culture of silence and violence that would put any reasonable person in the Plaintiff's position on notice that Mount Prospect was operating its facilities in such a manner that fostered the abuse Plaintiff alleges he suffered. Such facts defeat the application of the discovery rule. See Troy, 176 N.H. at 137. The widespread nature of abuse Plaintiff alleges, provided him with a "reason to suspect that [Mount Prospect's] involvement contributed to the injuries." Id. at 138

(quotations omitted). Thus, the Court is following the rules and standards explained in Troy, but simply reaches a different outcome based on the specific facts alleged in Plaintiff's complaint, which the Court is bound to do based on the facts Plaintiff presented.

Taking Plaintiff's arguments to their logical conclusion, Plaintiff is essentially positing that, by virtue of the discovery rule, any time a victim who was a child at the time of an alleged physical assault brings suit against the alleged abusers, even years later, that victim should have an opportunity to conduct discovery and survive the pleading stage. There is no legal support for such a position. As the Court will more fully detail below, RSA 508:8 explicitly recognizes that a child is not able to identify and appreciate abuse, or the responsibility of institutional actors for that abuse, as fully as an adult. The legislature's answer to this was not to give a child an unlimited time in which to file suit, but rather to toll the ordinary limitations period for a specified period of two years after that child reached adulthood. Further, as explained above, Troy is not that broad and simply clarifies what a party must show to satisfy the causal connection prong of the discovery rule.

Lastly, the Court is not convinced that the concerns and considerations in play in Meehan and other similar cases support finding that Plaintiff met his burden to show that the discovery rule applies to his case. While the Court respects the decisions in the non-precedential cases Plaintiff cites in support of his position, the Court is not persuaded. The facts, as presented here in the complaint, warrant dismissal. Accordingly, Plaintiff fails to point to any points of facts or law that the Court

misapprehended in ruling that the discovery rule did not toll Plaintiff's claim. See Broom, 152 N.H. at 752.

As the Court concluded in its previous order, because the discovery rule is not applicable here, Plaintiff had until his twentieth birthday in which to file suit under RSA 508:8. Building off Plaintiff's previous arguments, RSA 508:8 similarly does not make any distinction or exception for "infants" who were physically abused as children. RSA 508:8's plain language is broad and does not delineate that it applies differently to cases involving "infants" based on the subject matter of said lawsuit. See Dietz v. Town of Tuftonboro, 171 N.H. 614, 619 (2019) (stating that the Court will "look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning.").

Indeed, the legislature included no provision in RSA 508:8—or anywhere else within that chapter—comparable to the legislature's decision to expand the statute of limitations period for claims involving sexual assault. Compare RSA 508:8 ("An infant or mentally incompetent person may bring a personal action within 2 years after such disability is removed.") with RSA 508:4-g ("A person, alleging to have been subjected to any offense under RSA 632-A or an offense under RSA 639:2 may commence a personal action at any time."). Thus, just because Plaintiff alleges that he suffered physical abuse as a child does not alter the fact that RSA 508:8 bars Plaintiff's claim two years after he has reached adulthood. If the legislature wanted to provide "infants" a longer time in which to file suit once reaching adulthood, the legislature would have explicitly provided so in RSA 508:8. See Dietz, 171 N.H. at 619 (explaining that when interpreting statutes, the Court "interpret[s] legislative intent from the statute as written

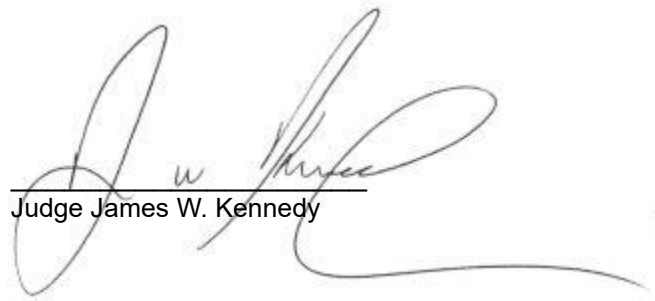
and will not consider what the legislature might have said or add language that the legislature did not see fit to include.”). Plaintiff fails to point to any fact the Court overlooked that tends to show that Plaintiff filed his claim before his twentieth birthday or otherwise learned any additional facts about Mount Prospect’s facilities after turning twenty. See Broom, 152 N.H. at 752.

Conclusion

Accordingly, Plaintiff’s motion for reconsideration is DENIED.

So Ordered.

November 21, 2024
Date



Judge James W. Kennedy

Clerk's Notice of Decision
Document Sent to Parties
on 11/21/2024

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Rockingham County

Rockingham Superior Court

John Doe #533 v State of New Hampshire, Department of Health and Human Services, et al

217-2022-CV-00831

ORDER Denying Plaintiff's Motion for Interlocutory Appeal and Superior Court Rule 46(c) ORDER

John Doe #533 ("Plaintiff") brings this suit against Defendants, the State of New Hampshire, Department of Health and Human Services ("DHHS"); Division of Children, Youth, and Families ("DCYF"); and Mount Prospect Academy, Inc. ("Mount Prospect"), arising out of alleged abuse Plaintiff suffered in Defendants' custody. Mount Prospect moved to dismiss Plaintiff's complaint, which the Court granted by order dated August 9, 2024. (Doc. 14.) Plaintiff moved to reconsider the Court's decision. (Pl. Mot. Recon. (Doc. 16.)) Mount Prospect objected. (Def's Obj. (Doc. 19.)) The Court denied Plaintiff's motion to reconsider. (Doc. 21.) The Court subsequently denied Plaintiff's motion for judicial notice in support of its motion for reconsideration. (Doc. 20.)

On December 23, 2024, Plaintiff moved for interlocutory appeal. (Docs. 22-25.) On January 6, 2025, the Court issued an order allowing Mount Prospect to respond on or before January 17, 2025. (Doc. 26.)

On January 13, 2025, Mount Prospect filed a partial objection to Plaintiff's motion for interlocutory appeal. Specifically, Mount Prospect limited its objection to the inclusion of Plaintiff's underlying motion for judicial notice, on grounds that the "(1) motion was improperly filed by Plaintiff, seeking as it did to improperly supplement, without leave, the motion papers for Plaintiff's then pending Motion for reconsideration after it had been fully briefed and was pending decision with the Court, and in a manner that . . . [Mount Prospect] could not respond to; and (2) . . . [the] Court's

Order denying such is respectfully not one for which an interlocutory appeal would be permitted.”

(Doc. 27 at 1.)

After consideration, the Court finds that Superior Court Rule 46(c), entitled “Judgment on Multiple Claims or Involving Multiple Parties,” applies here. Accordingly, Plaintiff’s motion for interlocutory appeal is DENIED WITHOUT PREJUDICE.¹

Rule 46(c) provides:

(1) When, in a civil action that presents more than one claim for relief – whether as a claim, counterclaim, cross-claim, or third party claim – or where multiple parties are involved, the court enters an order that finally resolves the case as to one or more, but fewer than all, claims or parties, the court may direct that its order, or a portion of its order, be treated as a final decision on the merits as to those claims or parties if the court:

(A) explicitly refers to this rule;

(B) identifies the specific order or part thereof that is to be treated as a final decision on the merits;

(C) articulates the reasons and factors warranting such treatment; and

(D) finds that there is an absence of any just reason for delay as to the party or claim that is to be severed from the remainder of the case.

An order bifurcating or otherwise severing a civil action shall not, by itself, result in any order being treated as an appealable final decision on the merits unless all of the requirements of Rule 46(c)(1) are met.

This rule “authorizes the Superior Court to designate certain orders that do not conclude the proceedings before it as final decisions on the merits that can be immediately appealed to the Supreme Court.” Super. Ct. R. 46 cmt. Upon an appeal of such an order, the Supreme Court “may review the trial court’s reasons and factors warranting treating the order as a final decision on the merits,” and can dismiss the appeal if it finds that the trial court “clearly erred” in classifying its decision as a final one on the merits. Super. Ct. R. 46(c)(2)(B).

Plaintiff’s complaint in this case includes multiple State of New Hampshire defendants and Mount Prospect. The Court’s underlying Orders subject to this Rule 46(c) Order resolve all of the Plaintiff’s claims against Mount Prospect. Thus, for these reasons and the reasons set forth below, all

¹ Plaintiff is given leave to refile its motion for interlocutory appeal, should the New Hampshire Supreme Court not accept this Rule 46(c) appeal.

of the requirements set forth in Rule 46(c) (1)(A) through (D) are satisfied. Therefore, the application of this Rule is appropriate in this case.

By way of brief background, the complaint in this case consists of the following three documents:

A. A 50-page “Amended Master Complaint,” filed in Meehan v. State, 217-2020-CV-46 on July 8, 2022 (Meehan Doc. 70). (The Amended Master Complaint does not mention John Doe 533 or any of the facts about his life. Likewise, it does not contain any reference to Mount Prospect or any other contractor defendant.)

B. A 29-page “Short Form Complaint” filed in John Doe 533 v. State, 217-2022-CV-831 (Doc. 1). (The Short Form Complaint contains allegations specific to Plaintiff and Mount Prospect. The Short Form Complaint contains two Addenda, as well as a separately filed, sealed Supplement that contains John Doe 533’s true name and date of birth).

C. A 12-page Declaration, signed by Plaintiff, filed as Exhibit A to the Objection to the Motion to Dismiss in John Doe 533 v. State, 217-2022-CV-833 (Doc.12). The Declaration contains Plaintiff’s factual response to Mount Prospect’s affirmative limitations defense.

Plaintiff’s complaint is one of roughly 1,000 cases filed against DHHS, DCYF, and various contractor defendants alleging that the State of New Hampshire and contractor defendants permitted an institutional culture of silence and abuse that allegedly resulted in residents being physically, emotionally, and/or sexually abused. Here, Plaintiff alleges that while he was in Mount Prospect’s custody and care, staff members routinely, and in public, physically restrained him in a violent manner and locked him in solitary confinement. (Doc. 14 at 4.) Mount Prospect moved to dismiss Plaintiff’s claims, arguing they were barred by the statute of limitations. The Court agreed with Mount Prospect, finding that Plaintiff’s claims were not timely under RSA 508:4 (within three years of the injury) and that they were not filed before Plaintiff’s twentieth birthday, as required under RSA 508:8. (Id. at 7–8.) The Court also found that Plaintiff failed to carry his burden to show that the discovery rule—or other equitable doctrines—tolled the statute of limitations period. (Id. at 16.) Accordingly, the Court

dismissed Plaintiff's claims for negligence, negligent hiring, training, supervision, and retention and breach of fiduciary duty against Mount Prospect with prejudice.² Following Plaintiff's motion for reconsideration and Mount Prospect's objection thereto, the Court further examined the statute of limitations and the relevant case law and denied Plaintiff's motion. Plaintiff filed a motion for judicial notice a day prior to the Court issuing its Order on the motion to reconsider (Doc. 21). Plaintiff's motion asked the Court to take judicial notice of two Department of Education reports that depict Mount Prospect's size as an institution.³ When that motion became ripe, it was denied. (Doc. 20).

Given the number of cases currently pending in the Superior Court at the initial pleading stage and other stages of litigation, it is appropriate to employ Superior Court Rule 46(c) to enable the supreme court to provide guidance on the application of the statute of limitations and the discovery rule to these cases. In addition, while the Court believes that it properly construed the applicable statute of limitations to this case, the Court recognizes that, at this juncture, there is a divergence of opinion among superior court judges on this statute of limitations issue as applied to contractor defendants. Compare John Doe #402 v. State of New Hampshire, No. 217-2022-CV-00905, Court Doc. 39 (Nov. 27, 2023) (Schulman, J.) (dismissing claims with prejudice for failure to comply with statute of limitations); with John Doe #553 v. State of New Hampshire, No. 217-2022-CV-01081, Court Doc. 37 (Oct. 18, 2023) (Kissinger, J.) (denying dismissal on statute of limitations grounds).⁴

The application of Rule 46(c) is the appropriate way for the parties to squarely present this statute of limitations dispute to the supreme court. This will benefit not only the parties in this case, but all parties in the roughly 1,000 cases pending in the superior court. Resolution of this issue is essential for prompt and efficient adjudication of these cases, which, of course, benefits all parties involved in these cases.

² The Court notes that Plaintiff did not move for the Court to reconsider the Court's dismissal without prejudice of his claims for civil conspiracy and aiding and abetting a breach of a fiduciary duty.

³ The Court notes Mount Prospect's objection to this issue going up on appeal. The Court, however, finds that the issues presented therein are relevant to the Supreme Court's resolution of the parties' arguments.

⁴ Judge Kissinger has since issued additional orders denying motions to dismiss on statute of limitations grounds.

Based on the foregoing, the Court finds no just reason for delay in severing the Court's Orders relative to the dismissal of Plaintiff's claims against Mount Prospect from the remainder of the case. All criteria set forth in Rule 46 (c) (1)(A) through (D) are satisfied. Indeed, resolving this critical issue will allow more prompt resolution of these cases in the future. Accordingly, the following Orders shall be treated as final decisions on the merits pursuant to Rule 46(c):

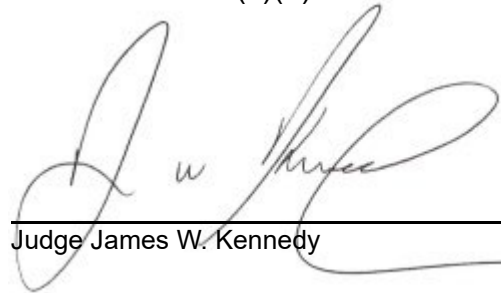
1. Order on Mount Prospect's Motion to Dismiss (Doc. 14).
2. Order of Plaintiff's Motion for Reconsideration (Doc. 21).
3. Order on Plaintiff's Motion for Judicial Notice (Doc. 21).

This Order is now subject to the procedures set forth in Rule 46(c)(2).

So Ordered.

January 15, 2025

Date



Judge James W. Kennedy

Clerk's Notice of Decision
Document Sent to Parties
on 01/16/2025

EXHIBIT D

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 2024-0606, Randy Ball v. Roman Catholic Bishop of Manchester & a., the clerk of court on November 14, 2024, issued the following order:

Case is accepted. This case appears to be eligible for mediation pursuant to Rule 12-A. Under Rule 12-A, the agreement of all parties is required for appellate mediation and a non-refundable fee of \$225 per party will be imposed. If all parties in this case agree to participate in mediation, the plaintiff shall submit the completed Appellate Mediation Agreement form to the court on or before December 2, 2024. The Appellate Mediation Agreement form (NHJB-2614-SUP) is available at <https://www.courts.nh.gov/our-courts/supreme-court/forms>. If an Appellate Mediation Agreement form is not filed, an order will be issued regarding further proceedings.

This order is entered pursuant to Rule 21(8).

Timothy A. Gudas,
Clerk

Distribution:

Clerk, Belknap County Superior Court, 211-2023-CV-00192

Scott H. Harris, Esquire

Beth G. Cole, Esquire

Jesse J. O'Neill, Esquire

Michael L. Rosenberg, Esquire

Stephen A. Weiss, Esquire

Gerald J. Williams, Esquire

James J. Armillay, Jr., Esquire

Olivia F. Bensinger, Esquire

File

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

<https://www.courts.nh.gov>

RULE 7 NOTICE OF MANDATORY APPEAL

This form should be used for an appeal from a final decision on the merits issued by a superior court or circuit court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving a collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; (6) a probation revocation proceeding; (7) a landlord/tenant action or a possessory action filed under RSA chapter 540; (8) an order denying a motion to intervene; or (9) a domestic relations matter filed under RSA chapters 457 to 461-A other than an appeal from the first final order. (An appeal from the first final order issued in a domestic relations matter filed under RSA chapters 457 to 461-A should be filed on this form.)

1. COMPLETE CASE TITLE AND CASE NUMBERS IN TRIAL COURT

**Randy Ball v. Roman Catholic Bishop of Manchester; and Camp Bernadette and Camp Fatima, Inc.
211-2023-CV-00192**

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

Belknap Superior Court (Leonard, J.)

3A. APPEALING PARTY: NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

Randy Ball

**127 Country Road 199
Greenwood, MS 38930**

E-Mail address: _____

Telephone number: _____

3B. APPEALING PARTY'S COUNSEL: NAME, BAR ID NUMBER, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

Scott H. Harris (Bar No. 6840)

Jesse J. O'Neill (Bar No. 20723)

**McLane Middleton, P.A.
900 Elm Street, P.O. Box 326
Manchester, NH 03105-0326
scott.harris@mclane.com**

E-Mail address: **jesse.o'neill@mclane.com**

Telephone number: **(603) 625-6464 ext**

4A. OPPOSING PARTY: NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

Roman Catholic Bishop of Manchester

153 Ash Street, Manchester, NH 03104

**Camp Bernadette and Camp Fatima, Inc.
83 Richards Road, Wolfeboro, NH 03894**

E-Mail address: _____

Telephone number: _____

4B. OPPOSING PARTY'S COUNSEL: NAME, BAR ID NUMBER, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

James J. Armillay (Bar No. 271651)

Olivia F. Bensinger (Bar No. 274145)

**Shaheen & Gordon, P.A.
107 Storrs Street/P.O. Box 2703
Concord, NH 03301
obensinger@shaheengordon.com**

E-Mail address: **jarmillay@shaheengordon.com**

Telephone number: **(603) 225-7262 ext**

RULE 7 NOTICE OF MANDATORY APPEAL

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

Additional counsel for Randy Ball admitted pro hac vice:

Stephen A. Weiss and Michael L. Rosenberg; Seeger Weiss LLP, 55 Challenger Road, 6th FL, Ridgefield Park, NH 07660; sweiss@seegerweiss.com; mrosenberg@seegerweiss.com; (973) 639-9100

Gerald J. Williams and Beth G. Cole; Williams Cedar, LLC; 1515 Market Street, Suite 1300, Philadelphia, PA 19102; gwilliams@williamscedar.com; bcole@williamscedar.com; (215) 557-0099

6. DATE OF CLERK'S NOTICE OF DECISION OR SENTENCING. ATTACH OR INCLUDE COPY OF NOTICE AND DECISION.

10/03/2024

DATE OF CLERK'S NOTICE OF DECISION ON POST-TRIAL MOTION, IF ANY. ATTACH OR INCLUDE COPY OF NOTICE AND DECISION.

7. CRIMINAL CASES: DEFENDANT'S SENTENCE AND BAIL STATUS

8. APPELLATE DEFENDER REQUESTED?

YES or NO: **No**

IF YOUR ANSWER IS YES, YOU **MUST** CITE STATUTE OR OTHER LEGAL AUTHORITY UPON WHICH CRIMINAL LIABILITY WAS BASED AND SUBMIT A CURRENT REQUEST FOR A LAWYER FORM (FINANCIAL STATEMENT). SEE SUPREME COURT RULE 32(4).

9. IS ANY PART OF CASE CONFIDENTIAL?

YES or NO: **No**

IF SO, IDENTIFY WHICH PART AND CITE AUTHORITY FOR CONFIDENTIALITY. SEE SUPREME COURT RULE 12.

10. IF ANY PARTY IS A CORPORATION, LIST THE NAMES OF PARENTS, SUBSIDIARIES AND AFFILIATES.

Parents, subsidiaries, and affiliates of Defendants are unknown to Mr. Ball

11. DO YOU KNOW OF ANY REASON WHY ONE OR MORE OF THE SUPREME COURT JUSTICES WOULD BE DISQUALIFIED FROM THIS CASE?

YES or NO: **No**

IF YOUR ANSWER IS YES, YOU **MUST** FILE A MOTION FOR RECUSAL IN ACCORDANCE WITH SUPREME COURT RULE 21A.

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY FOR THIS APPEAL? SEE SUPREME COURT RULE 15, COMMENT.

YES or NO: **Yes**

IF YOUR ANSWER IS YES, YOU **MUST** COMPLETE THE TRANSCRIPT ORDER FORM ON PAGE 4 OF THIS FORM.

RULE 7 NOTICE OF MANDATORY APPEAL

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH.

1. Whether the trial court erred in concluding that applying RSA 508:4-g to Mr. Ball's claim would be an unconstitutional retrospective application of the law.

2. Whether the trial court erred by incorrectly balancing Mr. Ball's constitutional right to recover for his injuries against Defendants' claimed right to a statute of limitations defense.

3. Whether the trial court erred in concluding that application of RSA 508:4-g to Mr. Ball's claim was not a valid use of the State's police power.

14. CERTIFICATIONS

I hereby certify that every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading. To the extent that an unpreserved issue is raised as plain error, I hereby certify that I have specifically identified that issue as plain error in section 13.

/s/ Scott H. Harris

Appealing Party or Counsel

I hereby certify that on or before the date below, copies of this notice of appeal were served on all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Supreme Court Rules 5(1) and 26(2) and with Rule 18 of the Supplemental Rules of the Supreme Court.

10/31/2024

Date

/s/ Scott H. Harris

Appealing Party or Counsel

RULE 7 NOTICE OF MANDATORY APPEAL**TRANSCRIPT ORDER FORM**

INSTRUCTIONS:

1. If a transcript is necessary for your appeal, you must complete this form.
2. List each portion of the proceedings that must be transcribed for appeal, e.g., entire trial (see Supreme Court Rule 15(3)), motion to suppress hearing, jury charge, etc., and provide information requested.
3. Determine the amount of deposit required for each portion of the proceedings and the total deposit required for all portions listed. Do not send the deposit to the Supreme Court. You will receive an order from the Supreme Court notifying you of the deadline for paying the deposit amount to the court transcriber. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.
4. The transcriber will produce a digitally-signed electronic version of the transcript for the Supreme Court, which will be the official record of the transcribed proceedings. Parties will be provided with an electronic copy of the transcript in PDF-A format. A paper copy of the transcript may also be prepared for the court.

PROCEEDINGS TO BE TRANSCRIBED (Please confirm dates with Trial Court)					
PROCEEDING DATE (List each day separately, e.g. 5/1/11; 5/2/11; 6/30/11)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	LENGTH OF PROCEEDING (in .5 hour segments, e.g., 1.5 hours, 8 hours)	RATE (standard rate unless ordered by Supreme Court)	DEPOSIT
06/04/2024	Motion hearing	Leonard, J.	1.0	X \$170.00	\$ 170.00
				X \$170.00	\$
				X \$170.00	\$
				X \$170.00	\$
				X \$170.00	\$
				X \$170.00	\$
				X \$170.00	\$
				X \$170.00	\$
				X \$170.00	\$
				X \$170.00	\$
				TOTAL DEPOSIT	\$ 170.00

PROCEEDINGS PREVIOUSLY TRANSCRIBED					
PROCEEDING DATE (List date of each transcript volume)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	NAME OF TRANSCRIBER	DO ALL PARTIES HAVE COPY (YES OR NO)	DEPOSIT FOR ADDITIONAL COPIES
					TBD
					TBD
					TBD

NOTE: The deposit is an estimate of the transcript cost. After the transcript has been completed, you will be required to pay an additional amount if the final cost of the transcript exceeds the deposit. Any amount paid as a deposit in excess of the final cost will be refunded. The transcript will not be released to the parties until the final cost of the transcript is paid in full.

STATE OF NEW HAMPSHIRE

BELKNAP, S.S.

SUPERIOR COURT

Randy Ball

v.

Roman Catholic Bishop of Manchester, and
Camp Bernadette and Camp Fatima, Inc.

No. 211-2023-CV-00192

ORDER ON MOTION TO DISMISS

The plaintiff, Randy Ball, brought this action against the defendants, Roman Catholic Bishop of Manchester (“the Diocese of Manchester” or “the Diocese”) and Camp Bernadette and Camp Fatima, Inc. (“the Camp” or “Camp Fatima”). The plaintiff alleges that the defendants were negligent in hiring, retaining and supervising priests in their employ who abused the plaintiff. See Court Index #1 (Compl.). The defendants have filed a motion to dismiss arguing that the action is barred by the statute of limitations. See Court Index ##11 (Bishop Mot. Dismiss); 12 (Camp Mot. Dismiss); 13 (Defs. Consolidated Mem. Law). The plaintiff objects. See Court Index #18 (Obj.). The Court held a hearing on this matter. Based upon the reasons that follow, the defendants’ motion is GRANTED.

BACKGROUND

The following facts are taken from the plaintiff’s complaint, see Court Index #1, and are assumed to be true for purposes of the motion to dismiss. The plaintiff was born in 1966 and lived in Berlin, New Hampshire from approximately 1974 through 1976. Court Index #1 ¶¶ 10–11. During that time, the plaintiff’s mother enrolled the

plaintiff and his brothers in summer camp sessions at Camp Fatima which was operated by the defendants. Id. ¶ 12. The defendants employed priests and other religious members of the Diocese of Manchester to serve as camp counselors and staff at Camp Fatima. Id. ¶ 15.

In 1971, the Diocese promoted Father Karl Dowd to Director of the Camp. Id. ¶ 29. Prior to his promotion, Dowd was the subject of a complaint in St. Bernard's Church, where he was accused of sexually assaulting a 16-year-old boy. Id. Several other boys who attended Camp Fatima alleged that Dowd sexually abused them, including one man who alleged he was abused more than 100 times before 1975. Id. ¶¶ 31–34. The abuse was so pervasive at the Camp that one former camper stated, "it was nothing to see somebody take a little kid, go into a cabin, [and] close all the shutters." Id. ¶ 16.

During the period that the plaintiff attended the Camp, the counselors organized a game for the campers called "strip the campers." Id. ¶ 20. As part of this game, the counselors would attempt to catch the young campers and remove their clothes. Id. To avoid being stripped of his clothes, the plaintiff was instructed to hide in a nearby cabin. Id. ¶ 23. When the plaintiff entered the cabin, there was a bed by a window. Id. ¶ 24. Dowd followed the plaintiff into the cabin and told him to rest on the bed and watch the game from the window. Id. The plaintiff did so, and soon thereafter Dowd joined the plaintiff on the bed. Id. ¶¶ 25. Dowd proceeded to sexually assault the plaintiff while telling him that "God loved him and wanted him there, and so did Dowd." Id. ¶ 26-28. Dowd continued as the Camp's Director until 1990. Id. ¶ 30.

The plaintiff filed the instant action on August 18, 2023, alleging negligence against the defendants. Specifically, he alleges that the defendants owed him a duty while at Camp Fatima as a minor in their care and breached that duty by failing to protect him from Dowd, who was known by them to be a sexual predator, thereby causing him to be sexually abused and suffer damages. Id. ¶ 44-52.

LEGAL STANDARD

“Generally, in ruling upon a motion to dismiss, the trial court must determine whether the allegations contained in the plaintiff’s pleadings sufficiently establish a basis upon which relief may be granted. In making this determination, the [C]ourt would normally accept all facts pleaded by the plaintiff as true and view those facts in the light most favorable to the plaintiff. However, when the motion to dismiss does not challenge the sufficiency of the plaintiff’s legal claim but, instead, raises certain defenses, the trial court must look beyond the plaintiff’s unsubstantiated allegations and determine, based on the facts, whether the plaintiff has sufficiently demonstrated his right to claim relief.” Atwater v. Town of Plainfield, 160 N.H. 503, 507 (2010) (citations and quotations omitted). “[T]he statute of limitations constitutes an affirmative defense.” Glines v. Bruk, 140 N.H. 180, 181 (1995). “[T]he defendant bears the burden of providing that it applies in a given case.” Id.

ANALYSIS

In 2020, the New Hampshire legislature enacted RSA 508:4-g, titled Actions Based on Sexual Assault and Related Offenses, which provides:

A person, alleging to have been subject to any offense under RSA 632-A or an offense under RSA 639:2 may commence a personal action at any time.

The statute currently allows the victim of sexual abuse to bring a civil action for injuries at any time. RSA 508:4-g, however, contains no provision regarding retroactive applicability.

The issue before the Court is whether RSA 508:4-g applies to the plaintiff's claim. The defendants argue that application of RSA 508:4-g would be an unconstitutional retrospective application of the law. See Court Index # 13. They contend that the applicable statute of limitations is RSA 508:8, which would have given the plaintiff until 1986 to commence his action. It is undisputed that the plaintiff was a minor at the time the sexual assault occurred between 1974 through 1976 and therefore would have had until 1986, two years after his 18th birthday, to file his lawsuit. See id. at 8. Given that the plaintiff did not file an action within the limitations period, the Court is asked to determine whether RSA 508:4-g applies retroactively to revive his time-barred claim. The Court notes that the plaintiff does not allege that the discovery rule applies or that he only recently discovered the causal connection between his injuries and the defendants' negligent actions. The defendant argues that retroactive application of the plaintiff's claim violates the defendants' rights under the New Hampshire Constitution. The plaintiff objects to dismissal arguing that his right to recovery should be balanced against the defendants' right to use the statute of limitations defense, and, after engaging in this analysis, the Court should find that RSA 508:4-g applies to his claim. See Court Index #18 ¶¶ 12–16.

The New Hampshire Constitution provides, “[r]etroactive laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offenses.” N.H. CONST. p. 1, art. 23.

“When the legislature is silent as to whether a statute should apply prospectively or retrospectively, [the Court’s] interpretation turns on whether the statute affects the parties' substantive or procedural rights.” State v. Hamel, 138 N.H. 392, 394 (1994).

“The general rule is that where a law affects substantive rights and liabilities, it is presumed to apply only to future causes of action.” Id. (brackets and quotations omitted). “This presumption, however, reverses when the statute is determined to affect only the procedural or remedial rights of a party.” Id.

The New Hampshire Supreme Court recognizes that “statutes of limitations may be changed at the pleasure of the legislative power.” Id. at 395 (quoting Willard v. Harvey, 24 N.H. 344, 355 (1852) (brackets omitted)). The legislature has the power to extend or shorten statutes of limitation so long as it does not impair a vested right. Willard, 24 N.H. at 355. Until the tolling of a statute of limitations, “it is a mere regulation of the remedy and we will presume that an extension of the limitations period applies retrospectively.” Id. “After the limitations period has run, however, it is a vested defense of right that cannot be taken away by legislative enactment.” Id. “[E]very statute which takes away or impairs vested rights, acquired under existing laws . . . must be deemed retrospective.” Norton v. Patten, 125 N.H. 413, 415 (1984) (quoting Woart v. Winnick, 3 N.H. 473, 479 (1826)).

Upon review, the Court concludes that the defendants had a vested statute of limitations defense since 1986 that precludes retrospective application of RSA 508:4-g. The plaintiff was a minor at the time of the alleged assault. For statute of limitations purposes, the plaintiff was “[a]n infant” who “may bring a personal action within 2 years” of reaching the age of majority which in New Hampshire is 18 years of age. RSA 508:8.

The plaintiff was born in 1966, Court Index #1 ¶ 10, and, absent the application of the discovery rule, he therefore had until his 20th birthday in 1986 to file his claim, see RSA 508:8. It is undisputed that the plaintiff did not bring any claim against the defendants prior to 1986. Therefore, based upon the facts before it, the Court concludes that the defendants' statute of limitations defense became a vested right. See Hamel, 138 N.H. at 394. Specifically, the defendants' statute of limitations defense vested in 1986 upon the tolling of the statute of limitations. The Court therefore concludes that the application of RSA 508:4-g to the facts in this case would be an unconstitutional retrospective application of the law under Article 23 of the New Hampshire Constitution. See also, Norton, 125 N.H. at 415.

The plaintiffs cite In re Goldman for the position that the Court must balance the defendants' "right to escape accountability" against the plaintiff's right to a remedy. See Court Index #18 ¶¶ 12–14. However, the plaintiff overlooks the fact that In re Goldman still acknowledges that vested rights are given special protection by Part 1, Article 23, of the New Hampshire Constitution. As the supreme court stated:

In 1826, we interpreted Article 23 to mean that "every statute which takes away or impairs vested rights, acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective."

In re Goldman, 151 N.H. 770, 772 (2005) (quoting Burrage v. N.H. Police Standards Council, 27 N.H. 742, 746, 506 A.2d 342 (1986)).

The plaintiff further argues that RSA 508:4-g should be applied because to do otherwise would impermissibly encroach on the State's police power. See Court Index #18 ¶¶ 20–23. Plaintiff directs the Court's attention to Hayes v. LeBlanc, which

references, in passing, that Article 23 “was not intended to prevent the legislature from amending laws which regulate contracts in the public interest where such laws have proven inadequate to accomplish their task.” 114 N.H. 141, 145 (1974). However, this Court notes that the Hayes court was not dealing with vested rights, and the supreme court has never departed from its position that a vested statute of limitations defense cannot be subject to a subsequent legislative amendment. See Hamel, 138 N.H. at 394; Norton, 125 N.H. at 415.

To the extent that a balancing of the parties’ respective rights is required, the defendants’ rights under Part 1, Article 23 must be given its due weight as a vested right. Norton, 125 N.H. at 415. On balance, the defendants’ vested right to a statute of limitations defense is not outweighed by the plaintiff’s right to recovery where, as here, the weight of legal authority demonstrates “every statute which takes away or impairs vested rights, acquired under existing laws . . . must be deemed retroactive.” Norton, 125 N.H. at 415. The Court is without authority to vindicate the plaintiff’s constitutional rights by violating those of the defendants, and thus finds that the plaintiff’s right to recovery does not justify the retrospective application of RSA 508:4-g. See id.

This case presents the tension between two constitutional rights: the defendant’s right to be free from retrospective laws, and the plaintiff’s right to recovery. The plaintiff “is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person.” N.H. CONST. p. 1, art. 14. But, a statutes of limitations limit this right because “it becomes more difficult and time-consuming both to defend against and try claims as evidence disappears and memories fade with the passage of time.” Keeton v. Hustler Mag., Inc., 131 N.H. 6, 14 (1988). The Court agrees with the plaintiff

that the justification underlying the current statutes of limitations is undercut by the legislative findings of the pernicious effects of child sexual abuse. See Court Index #13, Ex. 4 (Legislative History of RSA 508:4-g). Indeed, the legislative history bears out that RSA 508:8 prevented victims of child sexual abuse from vindicating their rights. The victims and their advocates recognized this problem and brought it to the legislature. The legislature engaged in extensive fact finding, research, and public comment to determine that a new law was needed to resolve this problem. See id. As a direct result, the legislature enacted a law that allows victims of child sexual abuse and related offenses to “commence a personal action at any time.” RSA 508:4-g.

The Court acknowledges that the plaintiff is one of many who was not served by the prior law. However, the fact that the current law allows the plaintiff a path of recovery cannot justify the revival of a time-barred claim through the retrospective application of the law. The prohibition against retrospective application of laws under Article 23 of the New Hampshire Constitution must be respected in this case because “[r]etrospective laws are highly injurious, oppressive, and unjust” in every case. N.H. CONST. p. 1, art. 23. Ultimately, it would be more unjust to allow for a system in which vested rights can be taken away by subsequent legislative amendments.

CONCLUSION

For the foregoing reasons, the defendants’ motion to dismiss is GRANTED. The plaintiff’s complaint is DISMISSED WITHOUT PREJUDICE. To the extent the plaintiff seeks to set forth additional allegations that the discovery rule applies or that he only recently discovered the causal connection between his injuries and the defendants’

negligent actions, he shall have thirty (30) days from this Order to seek to amend his complaint.

SO ORDERED.

September 5, 2024

A handwritten signature in black ink, appearing to read 'Elizabeth M. Leonard', written over a horizontal line.

Elizabeth M. Leonard
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 09/05/2024

STATE OF NEW HAMPSHIRE

BELKNAP, SS.

SUPERIOR COURT
CASE NO. 211-2023-CV-00192

Randy Ball
Plaintiff,

v.

Roman Catholic Bishop of Manchester; and Camp Bernadette and Camp Fatima, Inc.
Defendants.

**PLAINTIFF'S MOTION FOR RECONSIDERATION OF THIS COURT'S ORDER
GRANTING DEFENDANTS' MOTIONS TO DISMISS**

Plaintiff, Randy Ball ("Mr. Ball"), by and through his attorneys, McLane Middleton, Professional Association, hereby moves, pursuant to Superior Court Rule 12(e), that this Honorable Court reconsider its Order of September 5, 2024, granting Defendants' Motion to Dismiss. As reasons therefore, Mr. Ball states as follows:

1. On or about February 23, 2024, Defendants moved to dismiss Mr. Ball's Complaint on statute of limitations grounds. The Defendants' argument is that although the legislature abolished the statute of limitations in cases like this, that abolition can only be applied to cases that were viable at the time of the change in the law.

2. Mr. Ball objected to Defendants' Motions to Dismiss, arguing (1) that a balancing of rights favored his right to recover for personal injuries over Defendants' asserted right to avoid a determination of whether it should be held to account on the merits; and, (2) that dismissing Mr. Ball's Complaint based on Defendants' claimed vested right to assert a statute of limitations defense would wrongly encroach upon the State's reasonable application of its police power to abolish the statute of limitations in cases of the sexual exploitation of minors.

3. By Order dated September 5, 2024, this Court granted Defendants' Motions to Dismiss. Mr. Ball asks the Court to reconsider its Order.

4. A motion to reconsider, “shall state, with particular clarity, points of law or fact that the court has overlooked or misapprehended.” Super. Ct. R. 12(e).

5. Here, the Court has overlooked or misapprehended Mr. Ball’s argument regarding the legislature’s police power, including the weight of the case of *Hayes v. LeBlanc*, 114 N.H. 141 (1974). In its Order, the Court discounted the *Hayes* case, explaining that “the *Hayes* court was not dealing with vested rights, and the supreme court has never departed from its position that a vested statute of limitations defense cannot be subject to a subsequent legislative amendment.” Order at 7 (internal citations omitted).

6. The Defendants’ basis for dismissal is grounded in Part I, Article 23 of the New Hampshire Constitution and its prohibition against retrospective laws. Their argument is that to impair their claimed vested right would constitute a retrospective application of the recent abolition of the applicable statute of limitations. In other words, it is their claim of a vested right that they argue then elevates them to the protections of Part I, Article 23. By this argument, the dismissal sought by Defendants would come not from their claimed vested right itself, but from what they argue are the protections Part I, Article 23 affords to vested rights.

7. *Hayes* does not deal with vested rights in name; however, *Hayes* deals with the ultimate protections of Part I, Article 23—the same protections claimed by Defendants—and the extent to which those protections must yield to the State’s police power. *Hayes* begins by addressing the Contract Clause of the United States Constitution:

Although U.S. Const. art. I, s. 10 prohibits a State from passing laws impairing the obligations of contracts, it is not an absolute bar to governmental regulation. The Supreme Court of the United States has recognized that this limitation must yield where it is reasonable for State government to regulate activities in the exercise of the police power.

114 N.H. at 145. *Hayes* then immediately extends the same principle to Part I, Article 23 of the New Hampshire Constitution: “*This principle* is also applicable to the general prohibition in N.H. Const. pt. I, art. 23 against retrospective laws.” *Id.* (emphasis added).

8. This language from *Hayes* specifies that *all* the protections of Part I, Article 23 “*must yield* where it is reasonable for State government to regulate activities in the exercise of the police power.” *Id.* (emphasis added). This language is not limited solely to vested rights, nor does it exclude vested rights. This language applies to *all* protections of Part I, Article 23, including vested rights and otherwise—all such protections must yield to the State’s reasonable exercise of its police power.

9. For the reasons previously raised by Mr. Ball, including in his Objection to Defendants’ Motions to Dismiss, the Legislature’s abolition of the statute of limitations in cases like this involving the sexual exploitation of a minor was a reasonable exercise of the State’s police power and there are grounds for the Court to reconsider its decision to dismiss Mr. Ball’s Complaint.

10. Mr. Ball appreciates the opportunity the Court has afforded him to amend his Complaint to plead facts that could bring his claim within the scope of the discovery rule to the statute of limitations. Such a pleading would be subject to significant challenge on the facts of this case, foreclosing an amendment of the Complaint as a viable means of preserving the viability of the Plaintiff’s claims.

WHEREFORE, Plaintiff Randy Ball respectfully requests that this Honorable Court,

- A. Reconsider its Order granting Defendants’ Motions to Dismiss;
- B. Deny Defendants’ Motions to Dismiss; and
- C. Grant such other and additional relief as justice may require.

Respectfully submitted,

Randy Ball

By his Attorneys,

Dated: Sept. 16, 2024

By: /s/ Scott H. Harris

Scott H. Harris, NH Bar No. 6840
scott.harris@mclane.com
Jesse J. O'Neill, NH Bar No. 20723
jesse.o'neill@mclane.com
MCLANE MIDDLETON, PROFESSIONAL
ASSOCIATION
900 Elm Street, P.O. Box 326
Manchester, New Hampshire 03105-0326
Telephone: 603.625.6464

Stephen A. Weiss (admitted *pro hac vice*)
sweiss@seegerweiss.com
Michael L. Rosenberg (admitted *pro hac vice*)
mrosenberg@seegerweiss.com
SEEGER WEISS LLP
55 Challenger Rd., 6th FL
Ridgefield Park, New Jersey 07660
Telephone: 973.639.9100

Gerald J. Williams (admitted *pro hac vice*)
gwilliams@williamscedar.com
Beth G. Cole (admitted *pro hac vice*)
bcole@williamscedar.com
WILLIAMS CEDAR, LLC
1515 Market Street, Suite 1300
Philadelphia, Pennsylvania 19102
Telephone: 215.557.0099

CERTIFICATE OF SERVICE

I hereby certify that on today's date I served the foregoing pleading on counsel of record for all parties via NH File & Serve.

/s/ Jesse J. O'Neill
Jesse J. O'Neill

Having considered the arguments made in the Motion to Reconsider and the Objection, the Court determines that it did not overlook or misapprehend any points of law or fact. The Motion to Reconsider is therefore denied.

Clerk's Notice of Decision
Document Sent to Parties

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on 10/03/2024


Honorable Elizabeth M. Leonard
October 3, 2024