

**COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF ADMINISTRATIVE LAW APPEALS  
SPECIAL EDUCATION APPEALS**

**In Re:** Student v.  
Belchertown Public Schools

**BSEA # 1604027**

**DECISION**

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC 1400 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the state special education law (MGL ch. 71B), the state Administrative Procedure Act (MGL ch. 30A), and the regulations promulgated under these statutes.

On December 22, 2015, Parents requested a Hearing in the above-referenced matter. At the request of the Parties the matter was continued for good cause and the case proceed to a Pre-hearing Conference on March 4, 2016. At the request of the Parties the case was scheduled for Hearing in June and July 2016. On June 7, 2016, the matter was administratively reassigned to Hearing Officer Rosa I. Figueroa.

The Hearing was held on June 8, 9,10 and July 18, 2016, at the offices of Catuogno Court Reporting, 446 Main St., Worcester, Massachusetts before Hearing Officer Rosa I. Figueroa. Those present for all or part of the proceedings were:

Student	
Grandmother <sup>1</sup>	
Grandfather	
Father	
Peter L.Smith, Esq.	Attorney for Parents
Rose Bianchi	Wilbraham Monson Academy
Steve Gray	Academic Services, Wilbraham Monson Academy
Maryann Astea-Ferrero	Academic Services, Wilbraham Monson Academy
David Drake	Director/Headmaster, White Oak School
Rachel Crowe	Special Education Teacher, White Oak School
Gerard McGovern	Dean of Students, White Oak School
Kathy Roach	Special Education Teacher, Belchertown Public Schools
Joseph Silverman	School Psychologist, Belchertown Public Schools
Pamela Wentworth	Speech Language Pathologist/Evaluator, Belchertown Public Schools
Christine Vigneux	High School Principal, Belchertown Public Schools

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<sup>1</sup> Grandmother and Grandfather are also referred to in this Decision as Parents as they have guardianship and educational decision-making authority for Student.

Rebecca Kudron	Team Leader, Belchertown Public Schools
Brian Cameron	Director of Special Education, Belchertown Public Schools
Tami L.Fay, Esq.	Attorney for Belchertown Public Schools
Laurie J. Jordan	Court Reporter, Catuogno Court Reporting
Brenda Ginisi	Court Reporter, Catuogno Court Reporting

The official record of the Hearing consists of documents submitted by Parents marked as exhibits PE-1 through PE-43, PE-44 A through PE-44 O,<sup>2</sup> and documents submitted by Belchertown Public Schools (Belchertown) marked as exhibits SE-1 through SE- 40 (first page only, the rest of the Exhibit was excluded), SE-41 to SE-51, SE-53;<sup>3</sup> recorded oral testimony and written closing arguments. At the request of the Parties the Hearing was continued through August 15, 2016 for submission of written closing arguments. The closing arguments were received on August 15, 2016 and the record closed on that date.

### **HEARING ISSUES:**

1. Whether Belchertown offered Student an IEP reasonably calculated to afford Student a free, appropriate public education (FAPE) consistent with state and federal law for the 2014-2015 school year?
2. Whether Belchertown offered Student an IEP reasonably calculated to afford Student a free, appropriate public education (FAPE) consistent with state and federal law for the 2015-2016 school year?
3. Whether Belchertown offered Student an IEP reasonably calculated to afford Student a free, appropriate public education (FAPE) consistent with state and federal law for the 2016-2017 school year?
4. If not, whether Grandparents are entitled to reimbursement for their unilateral placement of Student at the Wilbraham Monson Academy, from October 2014 to June 2016, with related services?
5. Whether Student is entitled to prospective placement at Wilbraham Monson Academy through May 26, 2017, as well as related services?

### **POSITIONS OF THE PARTIES:**

#### **Parents' Position:**

Grandparents contend that Student was appropriately placed for five years, through eighth grade, at Curtis Blake where she made significant progress, especially during the eighth grade. Thereafter, Belchertown violated Student's/Grandparents' procedural due process rights when it ignored Student's programmatic preference, offered a program and placement in Belchertown for ninth grade which had not been discussed or recommended by the Team when it met in April of 2014, and when it failed to consider Transition Planning for Student who was already 14 years old at the time of the meeting.

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<sup>2</sup> PE-45 was excluded.

<sup>3</sup> SE-52 and SE-54 were excluded.

Grandparent, Father and Student observed the program proposed by Belchertown and argue that it was inappropriate to meet Student's needs and would not have allowed her to reach her transitional goal of attending a four year college after graduating from high school. Grandparents assert that only after receiving letters from Student's attorney, did Belchertown agree to place Student at White Oak under stay-put, and later draft an IEP offering Student placement at White Oak through September of 2015. Grandparents state that Student attended White Oak for the beginning of the ninth grade year but had been extremely unhappy with the program which, according to them, would not have allowed her to reach her post-secondary goals. As a result, Grandparents unilaterally placed her at the Wilbraham-Monson Academy where she has continued to receive her education through the present time.

For the 2015-2016 and the 2016-2017 school years, Belchertown has offered Student participation in a partial inclusion program in Belchertown, which program Grandparent, Father and/ or Student observed and argue would not meet Student's needs.

Grandparents argue that Student has made effective progress at Wilbraham-Monson Academy and as such seek reimbursement for their unilateral placement starting in October of 2014, as well as prospective placement through the end of the most recent IEP period, as well as related services.

### **Belchertown's Position:**

Belchertown denies Grandparents' allegations, asserting that at all times it has offered Student a program and placement that offers Student a FAPE in the least restrictive environment.

Belchertown argues that any procedural error, if one existed in 2014, was cured by its offer to place Student at White Oak, which was appropriate to meet Student's needs. The District states that taking into account available data and Student's preference for more inclusion/ exposure to typically developing peers, it subsequently offered partial inclusion programs within Belchertown High School, asserting that these programs and placements would have met Student's needs and allowed her to make effective progress commensurate with her abilities.

Belchertown questions Grandparents' assertions that Student is making effective progress at Wilbraham Monson Academy, state that it is not the least restrictive placement appropriate for Student and as such refuse to reimburse Grandparents for their unilateral placement, or prospectively fund said program.

### **FINDINGS OF FACT:**

1. Student is a sixteen-year-old resident of Belchertown, Massachusetts, who lives with her father and paternal grandparents. Student is special education eligible and she has been

receiving special education services under an IEP since third grade (Grandmother). She is polite, mature, hard-working, and has a great deal of “grit”, which Grandfather described as “purpose”, “determination” and “passion”, all key to overcoming obstacles (Grandfather).

2. Student has been diagnosed with a Specific Learning Disability in reading and written language, as well as Attention Deficit Hyperactivity Disorder (“ADHD”) (PE-1; PE-2; PE-3; SE-15; SE-40). Student finds it difficult to focus when she is uninterested in the content (PE-1; PE-3; SE-15).
3. Student attended Belchertown Public Schools for preschool, kindergarten, first and second grades (PE-31). In third grade, she was found eligible to receive special educational services and Belchertown placed her at Curtis Blake Day School (Curtis Blake), a private, out of district, separate day school that focused on teaching students with learning disabilities. Student remained at Curtis Blake from third to eighth grade (PE-1; PE-3; PE-4, PE-12, PE-31; SE-9; Grandmother; Student; Kudron).
4. Student’s 8<sup>th</sup> grade IEP, covering the period from May 22, 2013 to May 21, 2014, offered her participation in an intensive integrated language based program<sup>4</sup> at Curtis Blake (PE-4; SE-9).
5. Curtis Blake’s November, 2013 progress report notes that Student had made “commendable academic gains over the years,” stating that the individualized and small-group strategies-based instruction had facilitated her academic growth. The report further notes that Student “thrives in an environment which provides consistent structure and allows her extended time to process, retrieve, and organize linguistic information for oral and written expression.” Mathematics remained a challenging area although progress was noted, and Student continued to require “moderate to extensive support in all objectives for written expression” (PE-5). The January 10 and March 21, 2014 progress reports document Student’s continued maintenance of commendable progress in all subjects (PE-6; PE-7).
6. Student’s Curtis Blake eighth grade pre-algebra teacher, Jennifer Morrisino, completed a Mathematics Teacher Recommendation Form on April 14, 2014, as part of Student’s application to Wilbraham Monson Academy (WMA). She noted that Student’s language-based learning disability challenged Student’s acquisition and application of mathematical concepts and procedures. Ms. Morrisino further stated that Student accepted teacher advice and that she often sought clarification (PE-10).

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<sup>4</sup> This IEP covered the period starting in of May 2013 through May 2014; that is, the end of seventh grade and the majority of eighth grade. For the period from August 27, 2013 to May 21, 2014 Student’s IEP provided for the following services: Reading Tutorial, 290 minutes per week; Reinforcement Practice, 290 minutes per week; Self-Advocacy, 58 minutes per week; “CSI, WdRet, SocThink&Prag”, 6 times per week for 58 minutes; “L & L Exp. Comp”, twelve 12 times per week for 58 minutes; Decoding/Spelling, 5 times per week for 58 minutes; Phonemic Awareness & Phonics, three times per week for 58 minutes; Math, 5 times per week for 58 minutes. She also participated in weekly art and music (58 minute session each), and Physical Education, once per week for one hour sixteen minutes (PE-4). This IEP also offered Student 3 hours per day for extended school year services from July 1 to July 25, 2013 (PE-4).

7. Anne E. Moran, Student's eighth grade English Teacher, wrote an English Teacher Recommendation Form on April 17, 2014, stating that Student could be overly critical of her own performance but that she "possessed good academic ability". Ms. Moran further opined that "due to her language-based learning disability, Student is not confident in her abilities and has shown tremendous growth in the years she has attended the [Curtis Blake] Day School." Student's teacher also commented that she was "motivated to succeed and that her potential ha[d] yet to be realized" (PE-10).
8. Student's Team convened on April 30, 2014. At the time, Parents were under the impression that Curtis Blake would offer ninth grade the following year and that Student could remain there if she did not attend WMA (Grandmother). The Team, composed of representatives from Curtis Blake, Ms. Kudron from Belchertown, Student, Grandmother and Andrea MacGovern (Student's advocate), agreed that Student had made great progress at Curtis Blake (SE-8; Bianchi; Kudron, Grandmother). The Team also discussed adding a social-emotional goal to Student's IEP (SE-8).
9. At the Team meeting Student stated her desire to access more challenging academics, typical peers and have access to more extracurricular activities than Curtis Blake offered. Student stated that she wanted to attend high school at WMA (PE-9; SE-8). Student was familiar with WMA because two other family members had attended WMA (Student, Grandmother). Student and Grandparents testified that Student's strong desire to attend this school had motivated her to work extremely hard during eighth grade so that she would be accepted at WMA (PE-7; Student, Grandparents). Student and Father/Grandparents wanted Student to attend WMA, Belchertown and Curtis Blake staff however, expressed concern that it did not offer the special education curriculum that Curtis Blake recommended (Kudron). Belchertown did not support Student's choice (Student, Grandparent).
10. During the five years that Student attended Curtis Blake neither Ms. Kudron, Student's Belchertown Team Leader, nor any other staff from Belchertown observed Student in her program (Kudron).
11. On May 13, 2014, Belchertown offered Student an IEP calling for Student's placement in a substantially-separate program at Belchertown High School for the 2014-2015 school year, similar to the program Student had attended at Curtis Blake. Item 5 of the Narrative Description of School District Proposal noted that "...The changes in the service delivery grid from 2013-2014 to 2014-2015 reflect the change in scheduling but provide commensurate services" (PE-8). Belchertown opined that Student required intensive skill-based instruction in a special education setting. Although the proposed IEP only states that Student is being offered a "substantially separate program", "in-district", without stating exactly which program is being proposed, at Hearing, Belchertown explained that it was referring to the Language Learning Program at Belchertown High School (LLP) which the family observed in May 2014 (PE-9; SE-45; Grandmother; Kudron). Later, on or about May 2014, Ms. Kudron mailed Grandparents a Description of the LLP as the program being proposed for Student (PE-9; Grandparent; Kudron). At Hearing, Ms. Kudron testified that at

Belchertown High School Student could participate in any extracurricular activity of her choice and could later access mainstream classes when the Team recommended it (Roach).

12. The Service Delivery Grid in the May 2014 IEP offered thirty, 45 minute academic instruction sessions per week from the special education teacher/paraprofessional and once per week, thirty-minute counseling service to address social emotional needs (PE-8; SE-7; SE-8). This IEP also offered Student 12 hours per week for 4 weeks of summer tutoring. The proposed IEP states that the Team rejected a placement at WMA (*Id.*).
13. Student and Grandmother testified that no Belchertown in-district program was discussed during the Team meeting (Student; Grandmother). The Team Meeting Notes taken by Ms. Kudron state that the “District is concerned about lack of special education services at WMA.” and then adds “Feels BHS<sup>5</sup> can provide comprehensive services” (SE-8).
14. The LLP was created in Belchertown in 1998 based in part on Kathy Roach’s observations of Curtis-Blake and White Oak School (White Oak). Ms. Roach is the special education teacher in Belchertown’s LLP. The LLP would provide Student with: daily, individualized tutorials; small-group academic instruction; a modified instructional pace; and instruction in communication, social skills, compensatory strategies, and self- advocacy (PE-8; SE-49; Roach).
15. On May 21, 2014, Student, Father and Grandmother observed the LLP classroom and opined that the classroom was too noisy, lacked structure and the curriculum was not challenging enough for Student (Student, Grandmother).<sup>6</sup>
16. On May 22, 2014, Grandmother rejected the proposed IEP and placement, and requested a Team Meeting to discuss the rejection (PE-8; SE-7).<sup>7</sup>
17. Student completed eighth grade in June 2014. This was her last year at Curtis Blake. Her final eighth grade progress report from Curtis-Blake, acknowledges that by the end of eighth grade Student had achieved significant academic gains. Most notably, her reading comprehension progressed from a “non-reader instructional level to an emergent seventh grade reading instructional level”.<sup>8</sup> However, Student continued to require moderate to extensive teacher scaffolding in order to interpret text and view the whole picture. The report states that achievement in ninth grade will depend on an environment that provides assistance to Student in her writing process, and allows Student extended time to compensate

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<sup>5</sup> Belchertown High School.

<sup>6</sup> According to Belchertown, Father made inappropriate comments during the observation which negatively impacted the LLP students and their teacher (Vigneau; Roach).

<sup>7</sup> Contributing to Grandparents’ apprehension regarding Belchertown’s proposed program for Student was Grandparents’ concern that Student’s Father had unsuccessfully participated in a substantially-separate program in Belchertown, and had dropped out of school prior to receiving his high school diploma (Grandmother).

<sup>8</sup> Most of Student’s reading growth occurred during the eighth grade, progressing from a third to an emergent seventh grade equivalence in reading (Student; Grandmother).

for her difficulties with comprehension, working memory and processing issues, as well as her organization of linguistic information (PE-11; SE-26).

18. In a letter sent by Grandparent to the Massachusetts Department of Elementary and Secondary Education (DESE) on June 2, 2014, Grandparent raises several issues of concern regarding Belchertown. She complained about the District's delay in responding to her request for independent educational evaluation, failure to forward the consent for evaluation form for in-district testing and noted that Belchertown unilaterally decided on changes to the IEP and placement without parent participation. According to Grandparent, placement in Belchertown was never discussed at the Team meeting. Grandparent further noted that during the Team Meeting on April 30, 2014, the Team discussed revisions to Student's IEP and when Student's opinion was solicited she stated her desire to attend WMA. Grandparent disagreed with Belchertown's proposal for Student to attend the substantially separate program at Belchertown High School which they had visited and found inappropriate for Student (PE-9).
19. On June 30, 2014, Student's former attorney wrote to Belchertown's attorney disputing the appropriateness of Belchertown's proposed program, and alleging that Belchertown was attempting to make a unilateral change in Student's placement, from a private, separate, day placement to an in-district substantially separate placement, outside the Team process (PE-12).
20. Belchertown disagreed with Student's preferred placement at WMA because of its lack of specialized instruction. After learning that Curtis Blake would not have a 9<sup>th</sup> grade class, Belchertown, through their attorney, proposed that Student attend White Oak as her "stay-put placement", pending resolution of the Parties' dispute. Belchertown asserted that White Oak closely matched Curtis Blake's methodology, and level of service delivery. On August 29, 2014, Belchertown officially made this proposal (PE-14; PE-16; PE-17; SE-34; SE-35; SE-36).
21. On September 2, 2014, Student began attending ninth grade at White Oak School (Student; Grandmother). White Oak is a DESE approved private, special education school that services the needs of children with language-based learning disabilities (Drake). In September 2014, there were sixty four students at the school and approximately nine students in Student's ninth grade class (seven boys and two girls) (McGovern; Drake; Student). Some of the students attending White Oak proceed to post-secondary school after graduation (Drake).<sup>9</sup>
22. In September 2014, White Oak performed the Stanford Achievement Test (Stanford), math testing, the Slosson Oral Reading Test (Slosson) and the Gray Oral Reading Test 5 (Gray 5) as part of the admissions process (SE-14). Student fell in the Intermediate 3 level pursuant to the Stanford, math proficiency fell in the advanced 2 level, she achieved a high school grade

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<sup>9</sup> Mr. Drake testified that 60% of the White Oak graduates attend community colleges and another 15% attend a four year college (Drake).

equivalence on the Slosson. On the Gray 5, comprehension was at a 5.2 grade equivalence and Fluency at a 7.2 (SE-14).<sup>10</sup> According to David Drake, White Oak's Director and Rachel Crowe, special education teacher/ Student's one-to-one tutor at White Oak, Student's reading skills were comparable to other White Oak students (Drake; Crowe). Dr. Joseph Silverman, Ph.D., NCSP, licensed school psychologist in Belchertown, opined that the White Oak scores were depressed, presumably due to changes in testing protocols (SE-21).

23. On September 12, 15 and 16, 2014, Dr. Joseph Silverman conducted a psychological reevaluation of Student (PE-20; SE-13). The evaluation was deemed to be valid as Student was easy to work with, cooperative, and put forth good effort. She displayed some impulsivity, frustration and inattention but she was able to redirect and adjust her attitude during the testing sessions. Student reported having enjoyed playing sports at Belchertown while she was at Curtis Blake and was displeased that the transportation demands in traveling to White Oak prevented her from participating in sports this year (PE-20; SE-13).
24. Dr. Silverman found Student's performance to be consistent with previous testing, falling within the low average range of cognitive abilities. She displayed some weaknesses in some aspects of language processing. Dr. Silverman also found her to present "... mild or borderline attention problems" which he opined were "likely exacerbated by personality factors such as low-frustration tolerance, stubbornness, and an insistence on having things go the way she'd like them to" (PE-20; SE-13). He noted that Student also showed signs of difficulty when faced with unfamiliar tasks, "as she performed with hesitancy, as if she feared making an error" (PE-20; SE-13). Overall, Student was focused and not overly prone to distractions (*Id.*).
25. Ellen Reardon, a speech and language pathologist in Belchertown, evaluated Student on September 17 and 18, 2014 (PE-18; SE-12). At the time of this evaluation Student had been identified with a Communication Disability, Specific Learning Disability in Reading Comprehension, Written Expression, and Mathematics, as well as Borderline ADHD. The report states that, when compared with results from the March 2012 evaluation, Student had made the amount of growth expected in some areas, and had achieved even more significant gains in others. Listening comprehension scores and oral expression scores fell within the average range. She performed well when demonstrating her knowledge and use of grammar and sentence structure and encountered challenges in areas that measured awareness of the appropriateness of language and ability to "modify language in relation to the situations on which it is used". As measured by the Oral and Written Language Scales, Second Edition (OWLS-II), Student's overall language skills fell within the average range (PE-18; PE-19; SE-12).
26. A Team Meeting was held on September 24, 2014, to review the results of the two assessments performed by Belchertown. The following individuals attended this meeting: David Drake, Rachel Crowe, Thomas Philpott, Jody Michalski (Educational Coordinator), Alex Schindel (Biology Teacher), Sarah Karney (Speech and Language Pathologist) and

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<sup>10</sup> The report contains a note that states "Please note updated scoring" (SE-14).



Susan Oulette (Algebra teacher) from White Oak. Also present were Student, Grandparent; Student's advocate; Father; Dr. Silverman; Ms. Reardon, Brian Cameron (Belcherton's Director of Student Support Services), and Rebecca Kudron (Belcherton's Team Leader) were present at the meeting (PE-21; SE-6). The Team recommended that Student continue to receive language-based instruction to address reading comprehension (focusing on encoding and vocabulary), written expression and mathematics. Social pragmatic skills would also be addressed. White Oak staff and Dr. Silverman opined that Student was appropriately placed at White Oak (*Id.*; Silverman, Drake, Crowe).

27. At the September 24, 2014 meeting, Student stated that she was not being academically challenged enough, and wanted a more rigorous curriculum, one which better prepared her for the demands of a four year college (PE-21; SE-6; Student). Student's advocate requested that the ADHD diagnosis be removed from the IEP noting that she would provide a medical note if needed (PE-21; SE-6). Although the Team Meeting Notes only state that "Student was having transition issues", Student was extremely unhappy and she expressed her intense displeasure about White Oak. According to Dr. Silverman, White Oak staff was aware of Student's discontent (Student; Silverman). At Hearing Mr. McGovern, Dean of Students at White Oak, testified that he had not participated in this Team meeting and had little recollection of his minimal interactions with Student during her time at White Oak. He described her as "standoffish" (Mr. McGovern). Mr. McGovern did not recollect behavioral issues involving other students that would have impacted negatively on Student, and was only vaguely aware of an incident involving a physical altercation between two male students near the lockers. He agreed that the student who displayed anger at White Oak had been terminated in 2015 (Student #3). He agreed that the only other female student in Student's class (Student #7) had also left White Oak that year, though he did not know why (PE-44; McGovern). Student testified that she saw Mr. McGovern in the hallways and that he would tell her that she did not look happy and that he would get her to smile by the end of the year (Student).
28. A Transition Planning Form was included in the October 2014 IEP. This form reflected Student's goal to graduate from high school in June 2018, and attend a four-year college to pursue a degree within the medical field. While in college, she wished to hold a part-time job in an area related to the medical field, and also wished to live in a dorm. She ultimately desired full-time employment in a medical-field related job following college graduation (PE-19; SE-5; Student).<sup>11</sup>
29. The Action Plan in Student's October 2014 Transition Planning Form notes the need for instruction in metacognitive strategies, language-based instruction across the curriculum, and modifications which enable Student in accessing the general curriculum. Social pragmatic training would also be offered. The plan notes that upon request, Belchertown would complete paperwork seeking accommodations for Student's SATs/ACTs. Regarding employment, it

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<sup>11</sup> The Vision Statement portion of this IEP notes in pertinent part that "careful planning throughout high school is necessary for [Student] to not limit her choices after high school graduation. Therefore, careful selection of classes and opportunities to explore potential professions is imperative" (PE-19; SE-5).

simply states that Student will pursue a part-time job when she turns 16 and that the school will help her explore her post-secondary options (PE-19; SE-5).

30. On October 7, 2014, Belchertown forwarded an IEP to Grandparents covering the period from September 24, 2014 to September 23, 2015. The IEP offered Student placement at White Oak (PE-19; SE-5). The goals in this IEP focus on reading comprehension, written expression, mathematics and social pragmatics to help her navigate developmentally appropriate, positive peer relationships and not be the subject of teasing or bullying that could impact her ability to access the curriculum. The Service Delivery grid provided: 15 minute, weekly speech/language consultation by the speech/language pathologist; five, 50 minutes reading sessions per week with a special education teacher/paraprofessional; and, five hours daily academic instruction by the special education teacher/paraprofessional (PE-19; PE-21; SE-5).

31. The Additional Information portion of this IEP stated

The Team discussed the possibility of social/emotional (bullying) issues impacting [Student's] ability to access the curriculum at the meeting held on 9/24/2014. The Team considered [Student's] level of social skills development and disability. At this time, the Team concluded that [Student] has difficulties appropriately navigating peer relationships that are positive and developmentally appropriate. The Team also concluded that [Student] is lacking or [has] deficits in the area of social development and a disability is likely to make [Student] more vulnerable to teasing, harassments, and/or bullying as the target or perpetrator. A goal focusing on social pragmatics has been developed to address this concern (PE-19; SE-5).

32. On October 8, 2014, Parent accepted the IEP, but rejected in part the placement noting that while she accepted "the private day school placement", she rejected the location, that is, White Oak as that placement. Grandmother requested a meeting to discuss the location for delivery of the program (PE-19; SE-5).

33. On October 17, 2014, Student left White Oak. While Student did not receive academic credit or grades at White Oak because of the short period of time she was there, she was in good academic standing (passing all classes) at the time of her departure (SE-24). Rachel Crowe, Student's one-to-one tutor, testified that Student had been a hard worker, diligent, organized, very focused during academic time and diligent about her work; always ready to work. She noted that Student did not demonstrate a great deal of affect but appeared sullen and unhappy. Ms. Crowe learned that Student would have preferred to be somewhere else (Crowe). During free/unstructured time and in class, Ms. Crowe observed Student sit with a small group of former Curtis Blake students with whom Student was familiar. Ms. Crowe opined that Student required language-based instruction and had been appropriately placed at White Oak (Crowe).

34. Student testified that she had been unhappy at White Oak and had felt unsafe. She commented on having witnessed inappropriate, disrespectful and/or bizarre behaviors (a student yelling at a wall and talking to his food) from some of the male students, as well as physical altercations, including one near the lockers, which required staff to get involved to separate the students. Student noted that at least one male student was mean to her and another threatened to harm her if Student did not get another female student to go out with him. She testified that upon getting to school she was supposed to report to the cafeteria while waiting for school to start but she and another female friend would go to the bathroom instead to avoid contact with some of the male students. She stated that when she told Ms. Crowe about student #1 and student #3 fighting, about arguments in class, or student #1 having been nasty/mean to her, Ms. Crowe responded that maybe they were having a bad day. According to Student, some days Ms. Crowe would notice that she was not happy, asked her how she felt and student responded that she did not want to be at White Oak. While at White Oak nobody talked to Student regarding her feelings or discussed her appearance of unhappiness at that school (Student).
35. Student testified that although she enjoyed playing sports very much and had previously been involved in Belchertown sports while at Curtis Blake, because of the long commute to White Oak, she was unable to play after-school sports (Student).
36. Work samples included in PE-23 offer a glimpse into Student's day-to-day work at White Oak. According to Student and Grandmother, these samples lack the level of challenge typically expected in ninth grade making it difficult for Student to successfully attend/complete a four year college (PE-23; Student, Grandmother). Also, according to Student, she was not given textbooks or homework at White Oak (Student).
37. On October 10, 2014, Student's then-current attorney informed the District that Grandparents were unilaterally placing Student at WMA, effective October 20, 2014,<sup>12</sup> as they believe it was the most appropriate placement for Student (PE-24).
38. Belchertown responded on October 15, 2014, acknowledging Parent's unilateral placement of Student at WMA, and reasserting the District's opinion that White Oak was the most appropriate placement for Student. Belchertown informed Grandparents that it would not fund Student's placement at WMA (PE-25).
39. WMA is a general education private school that makes reasonable accommodations for students with documented disabilities, such as extended time on testing. Its demanding curriculum is designed to prepare its 400 students coming from 30 different countries for post-graduate education and global citizenship (PE-34; PE-36; SE-42; Bianchi).
40. Rose Bianchi, Director of Academic Services for WMA's middle and upper schools, was a special education teacher at Curtis Blake until 2014 when she joined WMA. She is also a school psychologist. Ms. Bianchi testified that students at WMA are expected to do homework at night and participate in after-school activities. Students attending WMA also receive college

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<sup>12</sup> Student officially enrolled at WMA on October 6, 2014, but did not begin attending classes until October 20, 2014 (PE-24; SE-16).

counseling (Bianchi). According to Ms. Bianchi, the focus of the academic services at WMA is to provide support for academic subjects and teach students strategies to compensate for their different learning styles. Students are encouraged to work on a variety of skills needed in life such as self-advocacy skills. According to Ms. Bianchi, WMA is sensitive to the needs of students who may require accommodations. When needed, the school offers accommodations through Student Learning Plans (Bianchi). Ms. Bianchi testified that due to the increasing number of students with special education needs enrolled at WMA, the school will begin holding team meetings at the start of the 2016-2017 school year (*Id.*).

41. Student started attending WMA on October 20, 2014, and completed her 9<sup>th</sup> grade year there (PE-24; SE-16). In the beginning, she struggled adjusting to the challenging academic work at WMA, but her teachers noted how diligently she worked, while also recognizing that her workload may be more taxing on her when compared to other students, presumably because of her special education needs (PE-37; SE-20). Ms. Bianchi testified that the pace, quantity of reading and homework demands could be daunting and created a stressful situation for Student (Bianchi). Student however, improved greatly during her second trimester (PE-37; SE-20).
42. During Student's third trimester, she began struggling and allowing personal and social conflicts to interfere with her academic progress. She had trouble focusing and turning in assignments on time. In February 2015, a warning letter was sent to Student from the academic review board at WMA. However, her reports indicate that she turned her academic performance around and began improving again by the end of the third trimester (PE-37; SE-20; SE-24; SE-33).
43. Student finished her ninth grade at WMA with a B in Sculpture, C+ in Freshman Foundations, C- in English, C- in Algebra I, D+ in Global Studies and D in STEM9 Physics (PE-40). The Teacher Comments reports note academic demands significantly more challenging than that to which Student had been previously exposed. The Algebra teacher commented that Student had felt defeated in math class. In the beginning Student made statements that "she did not know anything of what they were talking about" in class. Student worked through the challenges but with mixed results despite seeking assistance and changing her attitude to a more positive one (PE-37). Student showed improvements in English and overall appeared highly motivated to do well at WMA. All of the WMA teachers who worked with Student commended her for her efforts, and recognized the remarkable progress she made (PE-37; SE-16; SE-20; SE-21).
44. Towards the end of Student's Freshman year WMA teachers discussed Student's progress, noting the great impact that Student's social-emotional state had on her academic performance. They remarked that Student appeared to have difficulty separating the two and compartmentalizing inter-personal distractions. The teachers commented on Student's fragile academic confidence, noting that this lack of confidence played a huge role in how Student performed academically. Student's teachers and the Dean of Studies expressed concern for Student's academic performance, and urged her to take advantage of the resources WMA had to offer (SE-22; SE-23). Student's academic advisor, Royale

McCormack, communicated this concern to Grandparents explaining that Student had a challenging year socially and academically, noting that Student struggled to “divorc[e] her emotions from her schoolwork” and to maintain high levels of self-confidence (SE-21).

45. On August 14, 2015, Grandparents forwarded a letter to Brian Cameron (Director of Special Education in Belchertown) informing Belchertown that they would continue Student’s unilateral placement at WMA for the 2015-2016 school year, and noting that they would be seeking retroactive reimbursement for the placement. (PE-26). Mr. Cameron responded on August 19, 2015, stating Belchertown’s disagreement with the appropriateness of Student’s placement at WMA, and noting Belchertown’s refusal to fund Grandparents’ unilateral placement for the 2015-2016 school year (PE-27).
46. Student’s Belchertown Team convened on September 22, 2015 to conduct Student’s annual review. Kathy Roach, Rebecca Kudron and Kelly Swiatlowski (teacher) met in Belchertown, and Father, Student, Grandmother, Student’s advocate, Steve Gray (WMA teacher), Lori Chesky (WMA advisor), and Ann Schupack (WMA academic services) participated via conference call from WMA. The Team discussed areas of concern for Student, specifically math, written communication, and reading comprehension (PE-28; SE-4). The Team meeting notes reflect WMA staff’s observations regarding Student’s progress as follows:

Progress in class –[Student’s] advisor –McCormick. Good start to [the] year. Progress in reading, writing, task completion.  
Tutor –info. to provide background information that might be missing.  
Better abstract reasoning. Cooperative, wants to learn. Good class participation. S. Grady –math geometry – does well when knows expectations. Advisory –helpful 1 to1 assistance available and utilized (PE-28; SE-4).

It was further discussed that Student was working on math, active reading strategies, comprehension, and writing (the focus in writing was on organization and literacy analysis) (PE-28; SE-4).

47. As a result of the Team meeting, WMA agreed to provide Student with accommodations through a Student Learning Plan. This accommodation plan offered Student access to assistive technology, 100% extended time, no spelling penalties, frequent breaks and scientific calculator during assessments at teacher discretion. In addition, the plan included numerous recommended teaching strategies to be implemented in reading, writing and math, and noted the two academic strategies teachers assigned to work with Student throughout the year to be Ann Schupack and Steve Gray (PE-35; SE-39).
48. The 2015 IEP notes that Student received the following instruction at WMA: once per week, forty-five minutes English and Global Studies services taught by a certified Orton-Gillingham instructor, and 110 minutes per week of math and science tutoring taught by a

certified special education teacher (PE-29; SE-3). When compared to the previous year, Student's individual services would increase in the 2015-2016 school year.

49. On September 23, 2015, Belchertown forwarded to Grandparents the proposed IEP for the period from September 22, 2015 to September 21, 2016. The proposed IEP offered Student a partial inclusion program in the Language Learning Program at Belchertown High School (PE-29; SE-3). The Service Delivery grid delineated the following services: fifteen minutes weekly consultation by the Speech and Language pathologist; five (5), 45 minute sessions per week of reading with the special education teacher/paraprofessional; and, twenty (20), 45 minutes per week academic instruction with the special education teacher/paraprofessional. This IEP addressed goals for written expression, social pragmatics, mathematics, and reading comprehension. The Transition Planning Action Plan is identical to the previous one (PE-29; SE-3).
50. On October 6, 2015, Father alone rejected the proposed IEP (PE-29; SE-3). Grandparents, Student's guardians, took no action on this IEP.
51. On November 5, 2015, Grandparent and Student visited the proposed placement for the In-district language learning program (LLP) at Belchertown High School (PE-30; Student, Grandmother).
52. The LLP is an intensive program for students with specific learning disabilities, or other disabilities involving perceptual or conceptual deficits impacting auditory, visual or motor functioning, and processing deficits. Students in this program possess average to above-average cognitive abilities. The program, staffed by a certified special education teacher and two paraprofessionals, offers a modified instructional pace and extensive remedial instruction in a small group setting (no more than 12 students grades 9 to 12). Core courses such as science, social studies, English and mathematics follow the Massachusetts Curriculum Frameworks but the material is modified and adapted to meet the students' needs. Students also participate in a general physical education and a wellness class, and may attend general education courses as deemed appropriate by their individual IEPs. Students who successfully complete courses in the LLP receive credits toward graduation. Instruction in social skills, communication, self-advocacy and compensatory strategies is also offered. The LLP students enjoy full access to Belchertown facilities and services, including athletics, clubs and other social activities (SE-49; Roach; Kudron).
53. Based on their observation of the LLP, Student and Grandmother opined that the relaxed set-up and structure of the classroom, the methodology and level of noise and distraction would interfere with Student's learning (PE-30). Student testified that she functioned better in quiet, structured, organized environments where the expectations and demands were clear. She also desired access to a challenging curriculum that prepared her for a four year college experience (Student).
54. On December 22, 2015, Parents filed a Hearing Request with the Bureau of Special Education Appeals (BSEA) (PE-31).

55. Student's WMA's Progress Report dated January 18, 2016 indicates that Student earned the following grades during the first trimester of her tenth grade: : C+ in English 10; A- in Writing Workshop; C- in Geometry; C+ in Global Studies 2; and C in Chemistry (SE-16). Her performance however, suffered during the second trimester, in which grades dropped in all classes: from a C+ to a D in English 10, C to C- in Chemistry, C- to D in Geometry, C+ to C- in Global Studies 2, and from an A- to a B+ in Writing Workshop (SE-17).
56. On February 22, 2016, the Head of WBA sent a letter to Grandparents indicating that the school would be making some program changes, as Rose Bianchi would be taking over as head of Academic Services. Ms. Bianchi holds Massachusetts Special Education certification Pre-K to 12<sup>th</sup> grade (PE-39).
57. On April 27, 2016 and May 4, 2016, Pamela Wentworth (M.S., CCC-SLP in Belchertown) conducted a Speech and Language Evaluation of Student. She administered the Expressive Vocabulary Test – Second edition (EVT-2); the Peabody Picture Vocabulary Test – Fourth edition (PPVT-4); the Clinical Evaluation of Language Fundamentals – Fifth edition (CELF-5); the Test of Problem Solving – Second Edition Adolescent (TOPS-2); and conducted a review of Student's records (PE-33; SE-10). Student achieved scores falling within the average range on the EVT-2 and all subtests of the TOPS-2, and scored in the below average range in the PPVT-4. On the CELF-5, she scored within the average range in eleven of twelve subtests and high average score in the Sentence Assembly subtest. Overall, Student achieved average total scores in four of the five subtest areas of the Social Language Development Test - Adolescents, and a mildly below average score for Interpreting Social Language. Her articulation and intelligibility of speech were deemed to be very good. Ms. Wentworth noted that Student demonstrated appropriate verbal and non-verbal pragmatic language skills, used proper grammar and vocabulary when discussing topics of interest, was thoughtful during the evaluation, and displayed a positive attitude and a good sense of humor. Ms. Wentworth noted that Student expressed concern with respect to her memory skills and was aware of her challenges with vocabulary. Ms. Wentworth recommended that Student “engage in activities to strengthen her vocabulary” and recommended classroom strategies such as the use of word banks (PE-33; SE-10).
58. Dr. Joseph Silverman re-evaluated Student on May 11, 18 and 19, 2016. During the interview portion of their sessions Student stated that she “loves” WMA and felt very positive about her educational experience there even when she found it to be confusing at first. She is involved in track and field and field hockey and has developed a group of friends (SE-11; PE-32; Silverman). Dr. Silverman noted that she had matured since the previous evaluation, and stated that although she did not appear anxious, she seemed sad when she knew that she was not performing well during testing. She engaged effectively in visual abstract thinking and “needed time to think through the problems”. During testing she “was sensitive to, and stressed by, time pressures”. Student demonstrated a solid rate of processing speed when the tasks were straightforward or when she was retrieving things she already knew, and displayed “good executive functioning in recognizing when she needed to think more carefully about a problem before responding” (*Id.*).

59. According to Dr. Silverman, Student made a good effort during the evaluation and maintained focus and attention. She needed considerable time to process problems, as she was determined to “get it right”, but was prone to errors on basic tasks when she felt confident and worked quickly, as for example during timed tests (SE-11; PE-32; Silverman).
60. Dr. Silverman administered the Wechsler Intelligence Scale for Children (WISC-V), the Woodcock-Johnson, Fourth Edition, Test of Achievement (Woodcock), the Gray Oral Reading Test, Fifth Edition (GORT-5), the Wechsler Individual Achievement Test, Third Edition (WIAT-III): *Essay Composition*, the KeyMath3: *selected subtests*; and the Behavior Assessment System for Children (BASC-3): Self-Report. Dr. Silverman noted that on the WISC-V Student

...scored below the average range on indexes of Verbal Comprehension, Visual-Spatial Processing, and Fluid Reasoning. Her scores were in the average range on tests of Working Memory and Processing Speed. The Full Scale IQ was a standard score of 80 ... although, given the discrepant index scores, a clearer picture of her cognitive processing is described by the General Ability [GAI] and Cognitive Proficiency Indexes [CPI]... The significant difference between her GAI and CPI scores suggests that higher-order cognitive abilities may be a weakness compare to her ability to process information on more routine tasks (PE-32; SE-11).

Dr. Silverman noted that Student would “benefit from slower rate in presentation of new information, as well as from opportunities for frequent repetition and review (PE-32; SE-11).

61. Dr. Silverman stated that the lower scores on some tests could be attributable to a lack of exposure to information typically learned in public high schools which prepared students for MCAS testing. Specifically, Student’s essay did not follow the standard five-paragraph essay procedures. He however found Student’s written work to fall within grade level expectations. Also, Student’s scores on tests of acquired knowledge involving humanities, social studies, and science were very low. Dr. Silverman expressed concern that this lack of background knowledge could impact Student’s ability to learn new information in a variety of academic domains. In reading, Student demonstrated well developed decoding skills. He opined that Student’s weaknesses in reading where attributable to her word finding and vocabulary weaknesses rather than difficulties in reading comprehension *per se*. Lastly, he noted that Student’s math scores “were impacted by careless calculations that might be due to visual-processing weaknesses when she was working too quickly.” Math problem solving was also an area of weakness for Student requiring her to take considerable time to process and solve the problem (PE-32; SE-11).
62. In an email dated May 11, 2016 between Christina Aponte (Student Support Services in Belchertown) and Brian Cameron (Belchertown’s Special Education Director), Ms. Aponte



relates Grandparents' notification of their intention to reject Belchertown's evaluations/reports when they were completed (SE-28).

63. In the spring of 2016 Student's academic effort began to decline. Teachers commented that she was not turning work in, was often late for her tutorials, and began making excuses as to why she could not meet with her teachers. Emails in the record document discrepancies between Student's and her tutor's accounts of the length of their sessions (regarding whether Student was late for the sessions or whether she was released early), and over the material covered during the sessions (SE-46; SE-47; SE-48).
64. Belchertown convened Student's Team on May 26, 2016 to discuss eligibility, evaluations and placement for the period from May 27, 2016 to May 21, 2017 (SE-1; SE-2; PE-43). Present at the meeting on behalf of Belchertown were Kathy Roach, Rebecca Kudron, Brian Cameron, Dr. Silverman, Pamela Wentworth, David Monroe (general education teacher) and Belchertown's attorney. Also present were both Grandparents, Father and Student's attorney (SE-2; PE-43).<sup>13</sup>
65. The May 26, 2016 Team discussed the recently performed evaluations, and concluded that Student presented with a specific learning disability impacting math, and a neurological disability, but no longer presented with a specific language disability in communication or reading. The Team agreed to remove the social pragmatic goal and keep the math, reading and writing goals. Regarding Student's progress at WMA, she had obtained Bs, Cs and Ds in the third quarter and was making effective progress with an increase in support services (SE-2; PE-43; Grandparents).
66. On June 1, 2016 Belchertown issued the proposed IEP resulting from the May 2016 Team meeting (SE-1). This IEP offered Student placement in a partial inclusion program in Belchertown High School. The IEP contained goals to address English Language Arts, mathematics, and strategies. The Service Delivery Grid offered Academic Support and Tutoring, each five times per week for 45 minutes from May 27 to June 21, 2016; and Academic Support and Tutoring, each five times per week for 45 minutes from August 30, 2016 to May 26, 2017. In the general education classroom Student would receive Academic Support from the Special Education Teacher/Paraprofessional 20 times per week for 45 minute sessions from May 27 to June 21, 2016, and from August 30, 2016 to May 26, 2017, as well as thirty minutes weekly Academic Consultation for the same time periods (SE-1). The Transition Plan is identical to previous plans (*Id*).
67. Ms. Roach testified that the LLP offered services to students in grades ninth through twelfth, ranging from fifteen to eighteen years of age (Roach).
68. Pursuant to the proposed IEP, Student would participate in college preparatory level courses with support from the LLP staff (Roach). Ms. Roach was very familiar with college

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<sup>13</sup> No representative from WMA participated in the Meeting. The family noted that Student's tutoring had recently increased (SE-1).

preparatory level courses and explained that they focused on core concepts. According to her, the pace of instruction was slower. The amount of information covered, homework assigned, and level of work independence expected of students was less than in honors level courses, but more than in foundation level ones (Roach).

69. Students in the LLP do not cover in one year the amount of course content to which Student was exposed at WMA in one year (Roach).
70. Ms. Roach opined that based on the information available to the Team in May, 2016, Student's needs are similar to the needs of students currently in the LLP. She noted that many of those students were interested in pursuing a four year college education after high school, asserting that some of the LLP students who graduated this year will be attending four year colleges (Roach). Ms. Roach testified that the LLP was appropriate for Student and would allow her to make effective progress (Roach).
71. Dr. Silverman opined that Student would be appropriately placed in Belchertown and noted that the LLP was a good start (Silverman). He raised concern that the WMA staff lacked appreciation for how hard Student was working in that program (*Id.*).
72. Over the course of three days between June 1 and 3, 2016, Student's advocate, Grandmother and on the last day Student, observed portions of the proposed program at Belchertown High School. Student's advocate's behavior/demeanor/comments during the observations led Ms. Kudron and Mr. Douglas Daponde (Assistant Principal, Belchertown High School) to believe that the advocate and Grandmother were not impressed with the classes/programs observed (SE-50; SE-51; SE-53; Kudron).
73. At the time of the Hearing, Grandparents had not responded to the proposed IEP (PE-43; SE-1).

### **CONCLUSIONS OF LAW:**

The Parties in the instant case do not dispute Student's diagnoses or her entitlement to special education under the Individuals with Disabilities Education Act<sup>14</sup> (IDEA) and the state special education statute<sup>15</sup>. The Parties' disagreement involves the appropriateness of the programs proposed by Belchertown for Student for the 2014-2015, 2015-2016 and 2016-2017 school years which, according to Grandparents, failed to offer Student a free, appropriate public education (FAPE)<sup>16</sup>. Grandparents unilaterally placed Student at WMA in late October 2014 and now seek retroactive reimbursement for this placement as well as continued funding through the end of the most recent IEP period.

The IDEA and the Massachusetts special education law, as well as the regulations promulgated under those acts, mandate that school districts offer eligible students a FAPE.

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<sup>14</sup> 20 USC 1400 *et seq.*

<sup>15</sup> MGL c. 71B.

<sup>16</sup> MGL c. 71B, §§1 (definition of FAPE), 2, 3.

A FAPE requires that a student’s individualized education program (IEP) be tailored to address the student’s unique needs<sup>17</sup> in a way “reasonably calculated to confer a meaningful educational benefit”<sup>18</sup> to the student.<sup>19</sup> Additionally, said program and services must be delivered in the least restrictive environment appropriate to meet the student’s needs.<sup>20</sup> Under the aforementioned standards, public schools must offer eligible students a special education program and services specifically designed for each student so as to develop that particular individual’s educational potential.<sup>21</sup> Educational progress is then measured in relation to the potential of the particular student.<sup>22</sup> At the same time, the IDEA does not require the school district to provide what is best for the student.<sup>23</sup>

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<sup>17</sup> E.g., 20 USC 1400(d)(1)(A) (purpose of the federal law is to ensure that children with disabilities have FAPE that “emphasizes special education and related services designed to meet their unique needs . . . .”); 20 USC 1401(29) (“special education” defined to mean “specially designed instruction . . . to meet the unique needs of a child with a disability . . . .”); *Honig v. DOE*, 484 U.S. 305, 311 (1988) (FAPE must be tailored “to each child’s unique needs”).

<sup>18</sup> See *D.B. v. Esposito*, 675 F.3d 26, 34 (1<sup>st</sup> Cir. 2012) where the court explicitly adopted the meaningful benefit standard.

<sup>19</sup> *Sebastian M. v. King Philip Regional School Dist.*, 685 F.3d 79, 84 (1<sup>st</sup> Cir. 2012) (“the IEP must be custom-tailored to suit a particular child”); *Mr. I. ex rel L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1, 4-5, 20 (1<sup>st</sup> Dir. 2007) (stating that FAPE must include “specially designed instruction . . . [t]o address the unique needs of he child that result from the child’s disability”) (quoting 34 C.F.R. 300.39(b)(3)). See also *Lenn v. Portland School Committee*, 998 F.2d 1083 (1<sup>st</sup> Cir. 1993) (program must be “reasonably calculated to provide ‘effective results’ and ‘demonstrable improvement’ in the various ‘educational and personal skills identified as special needs’”); *Roland v. Concord School Committee*, 910 F.2d 983 (1<sup>st</sup> Cir. 1990) (“Congress indubitably desired ‘effective results’ and ‘demonstrable improvement’ for the Act’s beneficiaries”); *Burlington v. Department of Education*, 736 F.2d 773, 788 (1<sup>st</sup> Cir. 1984) (“objective of the federal floor, then, is the achievement of effective results--demonstrable improvement in the educational and personal skills identified as special needs--as a consequence of implementing the proposed IEP”); 603 CMR 28.05(4)(b) (Student’s IEP must be “designed to enable the student to progress effectively in the content areas of the general curriculum”); 603 CMR 28.02(18) (“*Progress effectively in the general education program* shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the child, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district.”).

<sup>20</sup> 20 USC 1412 (a)(5)(A).

<sup>21</sup> MGL c. 69, s. 1 (“paramount goal of the commonwealth to provide a public education system of sufficient quality to extend to all children the opportunity to reach their full potential. . . .”); MGL c. 71B, s. 1 (“special education” defined to mean “. . . educational programs and assignments . . . designed to develop the educational potential of children with disabilities . . . .”); 603 CMR 28.01(3) (identifying the purpose of the state special education regulations as “to ensure that eligible Massachusetts students receive special education services designed to develop the student’s individual educational potential. . . .”). See also Mass. Department of Education’s Administrative Advisory SPED 2002-1: [Guidance on the change in special education standard of service] from “maximum possible development” to “free appropriate public education” (“FAPE”), effective January 1, 2002, 7 MSER Quarterly Reports 1 (2001) (appearing at [www.doe.mass.edu/sped](http://www.doe.mass.edu/sped)) (Massachusetts Education Reform Act “underscores the Commonwealth’s commitment to assist all students to reach their full educational potential”).

<sup>22</sup> *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 199, 202 (court declined to set out a bright-line rule for what satisfies a FAPE, noting that children have different abilities and are therefore capable of different achievements; court adopted an approach that takes into account the potential of the disabled student). See also *Lessard v. Wilton Lyndeborough Cooperative School Dist.*, 518 F.3d 18, 29 (1<sup>st</sup> Cir. 2008), and *D.B. v. Esposito*, 675 F.3d at 36 (“In most cases, an assessment of a child’s potential will be a useful tool for evaluating the adequacy of his or her IEP.”).

<sup>23</sup> E.g. *Lt. T.B. ex rel. N.B. v. Warwick Sch. Com.*, 361 F. 3d 80, 83 (1<sup>st</sup> Cir. 2004) (“IDEA does not require a public school to provide what is best for a special needs child, only that it provide an IEP that is ‘reasonably calculated’ to provide an ‘appropriate’ education as defined in federal and state law.”)

As the party challenging the adequacy of Student's proposed programs and placements, Parents carry the burden of persuasion pursuant to *Schaffer v. Weast*, 126 S.Ct. 528 (2005), and must prove their case by a preponderance of the evidence. Also, pursuant to *Schaffer*, if the evidence is closely balanced, Parents, will lose.<sup>24</sup>

In rendering my decision, I rely on the facts recited in the Facts section of this decision and incorporate them by reference to avoid restating them except where necessary. Upon consideration of the evidence, the applicable legal standards and the arguments offered by the Parties in the instant case, I conclude that Parents have not met their burden of persuasion pursuant to *Schaffer* as the evidence does not support a finding in their favor. My reasoning follows.

In essence, Student's/Grandparents' argument involves allegations of procedural misconduct by Belchertown during the April 2014 Team meeting and in issuing the May 2014 IEP; and a challenge as to the appropriateness of the programs and placements proposed by Belchertown thereafter. As a result, they seek compensatory services by way of reimbursement for their unilateral placement of Student at WMA in 2014, 2015 and prospective placement for 2016 as well as related services.

Belchertown disputes Parents' allegations, asserting that at all times it has offered Student appropriate programs and placements and noting that equitable considerations weigh against awarding reimbursement for the 2014-2015 and 2015-2016 school years. According to Belchertown, Student is also not entitled to prospective placement for the 2016-2017.

#### **I. The 2014-2015 school year:**

The evidence is unrefuted that motivated by a desire to attend WMA for high school, Student worked very hard during her eighth grade at Curtis Blake making significant progress in the course of that one year, most notably in reading where she progressed from a third to an emergent seventh grade level in just one year (PE-11; SE-26). Student felt very positive about her experience at Curtis Blake and enjoyed being able to play sports in Belchertown, through which she developed friendships in the community (Student).

Student's Team convened in April 2014 to plan the following year's program and placement. During the meeting, Student, who was already fourteen years of age, spoke about her desire to attend high school at WMA as some other family members had done before her (Student; Grandmother). Student explained that she wanted exposure to a more challenging curriculum and exposure to general education peers as she was interested in attending a four year college, to pursue a degree in a medical field post-high school (Student; Kudron; Grandmother). Several Team members, raised concern that WMA offered general education and that Student still presented with special education challenges that may require direct

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<sup>24</sup> *Schaffer v. Weast*, 126 S.Ct. 528 (2005) places the burden of proof in an administrative hearing on the party seeking relief.

interventions (Kudron). The Team Meeting Notes showed that Curtis Blake personnel noted Student's progress and recommended adding a social-emotional goal to her IEP (SE-8). According to Ms. Kudron, Curtis Blake staff recommended that Student continue to receive special education programming as did the Ms. Kudron, the representative from Belchertown (SE-8). Ms. Kudron made her lack of support for placement of Student at WMA known at the meeting (Grandmother; Student). At the time of the meeting the Parties did not know that Curtis Blake would not offer a ninth grade class. The Team did not engage in any discussion regarding transition planning for Student (Grandmother). Similarly, there was no discussion regarding potential placements in Belchertown (Id.). Following the meeting, Belchertown issued an IEP calling for Student to attend a substantially separate program in-district (PE-8; SE-7; SE-8). I note that the IEP did not identify which specific program it was recommending for Student (PE-8; SE-7). Belchertown later forwarded a one page description of the LLP (SE-49; Kudron; Grandmother).

Grandparent, Student and Father observed the LLP on May 21, 2014, finding that the program would not meet Student's needs or help her achieve her transition goals (Student; Grandmother). They then rejected the proposed IEP on May 22, 2014 and requested a meeting to discuss placement (SE-7).

Sometime in the summer of 2014, the parties learned that Curtis Blake would not be offering a ninth grade class. Following discussions between Belchertown's and Student's attorneys during the summer of 2014, the Parties agreed to White Oak as the stay-put placement for Student (Kudron). The Parties also agreed to conduct a psychological and a speech and language evaluation of Student to assess her skills (PE-20; SE-13; PE-18; PE-19; SE-12). I note that although Student's IEP calls for participation in an extended school year program, Student did not attend one (SE-7;PE-8). The record is unclear as to why.

Student started ninth grade at White Oak and Dr. Silverman and Ms. Reardon performed the evaluations agreed to by the Parties (SE-11; SE-12; Silverman; Kudron). White Oak also conducted testing of Student (SE-14).

Student /Grandparents are correct that they had been deprived of the opportunity to discuss the program ultimately proposed by Belchertown during the April 2014 Team meeting in violation of federal and state law and regulations.<sup>25</sup> Similarly, the proposed IEP lacked specificity as to the program it was ultimately offering (namely the LLP). Upon receipt of the IEP all the family knew was that Belchertown was offering a substantially separate program in-district. Belchertown is however correct that the procedural issues relating to the April 2014 IEP did not result in substantive educational harm to Student because any procedural transgression was cured when Student was offered placement in a private, special education school comparable to the one she had attended in Curtis Blake, that is, White Oak.

Student testified that she did not like, and did not feel safe, at White Oak. She did not find the curriculum to be challenging, was not given books, and was impacted by the lack of

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<sup>25</sup> 603 CMR 28.05 and 28.06.

structure and negative behavior of some White Oak students (PE-23; Student). She also disliked the long commute which dizzied her and prevented her from participating in sports in Belchertown (Student).

Student's Team reconvened on September 24, 2014, to discuss the result of the evaluations conducted by Dr. Silverman, Ms. Reardon and testing conducted at White Oak, as well as White Oak staff's impressions (SE-14; Kudron). Student also shared her opinion of White Oak (Student). White Oak personnel opined that despite the short period of time Student had been at White Oak, her skills and presentation resembled that of other White Oak students, and further that she had made effective progress in that program. The Belchertown and White Oak Team members agreed that Student continued to require specialized instruction to address her deficits and opined that White Oak was an appropriate placement for Student (SE-6; Crowe; Drake; Silverman). Student/Grandparent agreed that she required private placement but disagreed that White Oak was appropriate. However, they did not offer the Team any expert opinion regarding the appropriateness of White Oak for Student. Grandparents also did not present such opinion at Hearing. This time, Student's transition goals were discussed and the Transition Planning Form was completed.

On October 7, 2014, Belchertown issued an IEP calling for Student's placement at White Oak for the period from September 23, 2014 to September 23, 2015. Grandparents accepted the IEP program and private school placement but rejected the White Oak location on October 8, 2014 (PE-19; SE-5). Having accepted portions of this IEP, including programming at a special education private school, albeit not White Oak, and since White Oak was Student's agreed upon stay-put placement, it continued as such. White Oak and the accepted portions of the October 7, 2014 IEP became Student's stay- put placement going forward.

Within the context of the Massachusetts Special Education Regulations, an approved private special education school or program (which is essentially what Parents accepted), means

...a private day or residential school, within or outside Massachusetts, that has applied to, and received approval from, the Department [of Elementary and Secondary Education] according to the requirements specified in 603 CMR 28.09. 603 CMR 28.02(1).

On October 10, 2014, Grandparents notified Belchertown that they would be unilaterally placing Student at WMA and would seek reimbursement from Belchertown. Student began attending WMA on October 20, 2014. WMA is a general education private school (SE-34). As such, it does not qualify under the Massachusetts Special Education Regulations as the type of private school or program envisioned by the Regulations.

Student's school year at WMA came with mixed results. With support services and enormous motivation and hard work on Student's part, though sometimes misinterpreted by

her teachers<sup>26</sup>, she completed the school year with mixed results (PE-37; SE-16; SE-20; SE-21; SE-24; SE-33). The record shows that two Curtis Blake former teachers were then employed by WMA and at least one of them offered services to Student (Bianchi; Grandmother). Progress reports and emails from WMA note the staff's concern that Student lacked math skills, work completion was irregular, and she did not participate much in class (SE-20; SE-21; SE-22; SE-23).

Grandparents/Student argued that Student had made effective progress while at WMA and that since their preferred school could offer what Student sought in order to achieve her goals, they should be reimbursed.

The evidence does not support Grandparents' position. IEPs must be judged at the time they are formulated based on the information available to the Team. As explained by the First Circuit Court of Appeals in *Roland M. v. Concord School Committee*, 910, F.2d 983, 992 (1<sup>st</sup> Cir. 1990),

The IEP is a snapshot that takes into account what was objectively reasonable in light of what the school district's new or reasonably should have known about the child at the time the IEP was promulgated; not a retrospective.

With this guidance, I turn to the information available to the Team in September 2014. The evidence is overwhelming that despite Student's great efforts and impressive motivation, she still required specialized instruction at the time the Team recommended White Oak. Moreover, Grandparents accepted placement of Student in a private special education school/program. Even if White Oak was not the best placement for Student, they are not entitled to reimbursement for WMA, a private, general education school that could not and did not offer Student the level of specialized education/services which she required and to which she was entitled. I further note that while Student made her unhappiness known at the Team meeting in September 2014, the evidence is inconclusive as to how much of her dissatisfaction was attributable to her desire to attend WMA as other family members had done before her. Also, the record does not support a finding that she actually communicated that she was feeling unsafe at White Oak either to White Oak staff or during the Team meeting in September 2014.

Federal special education law states that Parents are entitled to reimbursement only...

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the

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<sup>26</sup> While at WMA Student's affect has at times being described as "intense impatience," "shutdown" and "defensive" behavior, leading others to believe that she may be disinterested, unhappy or not putting forth enough effort when in reality, according to Dr. Silverman, she was putting forth extreme effort to overcome her challenges; instead, Student may have been expressing frustration and lack of self-confidence (SE-17; Crowe; Silverman).

consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.<sup>27</sup> 20 USC 1412 (a)(10)(C)(ii).

When considering reimbursement, the Supreme Court has established a three-pronged test consistent with the IDEA. Pursuant to this test, the school district will be required to reimburse a parent for unilateral placement only when each of the following three conditions have been met: (1) the IEP and placement offered by the school district must be found to be inadequate or inappropriate. That is, a finding must be entered that the school district's proposed program and placement must have failed to offer the student a FAPE; (2) a finding must be entered that the parents' privately-procured services were appropriate for the student's needs; and, (3) the balance of the equities favors reimbursement.<sup>28</sup>

In order to be reimbursed, Belchertown's proposed program must first be found to be inappropriate, second, Grandparents must show that WMA was appropriate to meet Student's needs and if so, the equities are balanced in favor of reimbursement.

For the reasons stated above, I find that the program offered by Belchertown in the September 2014 IEP, as accepted by Grandparents, was reasonably designed to offer Student a FAPE. Similarly, the evidence supports a finding that White Oak was appropriate to implement Student's IEP.

Assuming arguendo, that White Oak had been inappropriate, WMA did not offer Student the type or level of services she required and as such, Grandparents are not legally entitled to reimbursement for their unilateral placement of Student at WMA for the 2014-2015 school year.

## II. **The 2015-2016 school year:**

On August 14, 2015, Grandparents informed Belchertown that they would continue Student's unilateral placement at WMA for the 2015-2016 school year (PE-26). Belchertown denied support and funding for this placement on August 19, 2015 (PE-27). Student's Team reconvened on September 22, 2015. The Team had only the verbal input of WMA staff and the family regarding Student's performance at WMA (which information

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<sup>27</sup> Limitations on reimbursement may be applicable if Parents fail to inform the school district of their intention to reject the IEP, state their concerns and intent to enroll the student in a private school at public expense, or fail to give written notice of their intention to unilaterally place student, ten business days before removing the student from the public school. There are however, some exceptions to the aforementioned rule. 20 USC 1412 (a)(10)(C)(ii) et seq.. This issue does not warrant further discussion given that Grandparents and Student had made their concerns clear during the Team meeting on September 24, 2014.

<sup>28</sup> See *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 11-13, 16 (1993); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 369-370, 373-374 (1985). See also *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 31 (1<sup>st</sup> Cir. 2006); *Rafferty v. Cranston Public School Committee*, 315 F.3d 21, 26-27 (1<sup>st</sup> Cir. 2002)



was discussed in part in Section I of the Conclusions above). Also, since Student had not undergone additional evaluations since the previous Team meeting in September of 2014, none were available for the Team to consider.

The Team discussed Student's need for assistance on organization, comprehension, active reading strategies and literacy analysis, as well as in all aspects of math (PE-28; SE-4; Kudron).

WMA staff reported that Student had been receiving one, 45 minute session per week of English/Global Studies tutoring and two, 45 minute sessions of math/science tutoring per week (SE-3; SE-4; PE-28).

The evidence supports a finding that Student's performance in WMA, despite the above services, was concerning enough given Student's deficits and performance, for WMA to agree to provide Student accommodations through a Student Learning Plan that offered her not just the three, forty-five minute tutorial sessions per week, but also: access to assistive technology, 100% extended time, no spelling penalties, frequent breaks, and access to a scientific calculator during assessments at teacher discretion (SE-39/PE-35; Bianchi). SE-39/PE-35, also noted additional recommendations on teaching strategies to be implemented in reading, writing and math (*Id.*).

Student's up and down performance at WMA provided additional information to the Belchertown Team in developing its own IEP.

Belchertown opined that the type and intensity of services Student required, as well as language-based instruction, exposure to typically developing peers, access to mainstream classes, activities and sports could be delivered in Belchertown (Kudron; Roach). Furthermore, in light of a last agreed upon IEP calling for Student's program to be delivered in a small-group program with language-based methodologies, Student having spent five years in an approved, private day school, and the results of the evaluations conducted in September 2014, it was reasonable for the Team to offer Student re-entry into Belchertown through the LLP, and gradually ease her participation into inclusion classes as she demonstrated not just her willingness and desire, but also her readiness (Silverman, Kudron, Roache, Crowe). As such, Belchertown appropriately issued an IEP calling for partial inclusion through the LLP at Belchertown High School (PE-29; SE-3).

The evidence is persuasive that the proposed IEP for the 2015-2016 school year was reasonably calculated to offer Student a FAPE in the least restrictive placement appropriate to meet her needs. Furthermore, as discussed *supra* the WMA placement did not meet the U.S. Supreme Court test as delineated in *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 11-13, 16 (1993), as WMA did not offer Student the specialized instruction she required.

Special Education case-law is clear that Parents who unilaterally place students in out of district placements do so at their own risk. *School Comm. of Burlington v. Department of*

*Ed. of Mass.*, 471 U.S. 359, 369 (1985); see also *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 11-13, 16 (1993).

Parents are not entitled to reimbursement for their unilateral placement of Student at WMA for the 2015-2016 school year.

### III. The 2016-2017 school year:

Student's performance at WMA during the 2015-2016 school year was even more riddled with challenges and mixed performance on Student's part. Despite the accommodations, tutorials and increases in support services sought by Grandparents, Student struggled with the ever increasing demands at WMA and made inconsistent effort. Student however, remained committed to the experience and she continued to "love" being at WMA (Student; Silverman).

In April and May 2016, Student was reevaluated by Belchertown. Dr. Silverman performed a psychological evaluation and Ms. Wentworth a speech and language evaluation (PE-32; PE-33; SE-10; SE-11).

Student performed well in her speech and language evaluation, scoring solidly within the average range in most subtests, and demonstrating appropriate verbal and non-verbal pragmatic language skills (PE-33; SE-10). Ms. Wentworth recommended that Student engage in activities to strengthen Student's vocabulary and recommended that classroom strategies such as access to word banks be offered (PE-33; SE-10; Wentworth).

Dr. Silverman's re-evaluation of May 2016, noted that Student loved WMA and was by then feeling more comfortable with the class material. Dr. Silverman remarked on Student's good efforts during the evaluation and noted that because of her determination to "get it right" Student required considerable time to process problems. He stated that when Student felt confident and worked quickly she was prone to errors on basic tasks, making more mistakes on tests that were timed. Similarly, he opined that Student's scores in math were impacted by working too fast and making careless calculations, as well as by her weakness in math problem solving abilities (PE-32; SE-11). When comparing his 2014 and 2016 evaluations, Dr. Silverman found that Student's math calculation and mental computation scores showed significant regression (Silverman). This in turn, would negatively impact Student's ability to access high school level math and science curriculums (*Id.*).

Dr. Silverman was further concerned that some of Student's lower scores may have been due to her lack of exposure to the types of things taught in typical public high schools (i.e., Student's essay did not follow the standard five-paragraph essay format/procedures). He attributed Student's academic challenges to her weaknesses in associative, long-term storage and retrieval of information. Dr. Silverman opined that Student continued to display a specific learning disability in math and recommended math remediation/intervention (Silverman). He also testified that Student required additional support to access mainstream classes including "lots of repetition, review, opportunities to go over material, spiraling

curriculum”, and noted that the teachers should be sensitive to the needs of Student in terms of pace and quantity of information (Silverman).

Student’s Team convened on May 26, 2016 to discuss the result of the evaluations, ascertain Student’s eligibility and discuss program and placement for the 2016-2017 school year (SE-2). Consistent with the evaluations, the Team determined that Student no longer qualified as having a communication disorder or a specific learning disability in reading and written expression. Rather, Student’s difficulties were best explained as a neurological impairment and a math learning disability (SE-2). The Team agreed to remove the social pragmatic goal and keep the math, reading and writing goals.

The Team also considered Student’s performance at WMA over the previous years although it did not have the benefit of hearing directly from Student’s WMA teachers and tutors as it had the previous year. In testimony, Dr. Silverman expressed concern over the seemingly lack of appreciation that WMA teachers had regarding the tremendous effort Student was exerting to do well (Silverman). Despite the Team’s apparent lack of access to WMA’s full perspective on Student’s performance during the 2015-2016 school year, this information was available at Hearing and may be helpful at future Team meetings. As such, it is discussed next.

WMA internal emails for the past two years and Student’s progress reports discuss Student’s inability to demonstrate understanding of text. Some of the WMA teachers expressed concern that the tutors were not being able to address Student’s academic difficulties and noted Student’s lack of confidence if someone was not nearby to push her along (SE-19).

While invested and well-intended, Mr. Gray, Student’s math and science tutor, lacked special education certification (Gray). He testified as to the significant amount of time he and Student spent in in geometry and on test-taking techniques and organization. Mr. Gray opined that Student had done much better this past year and noted that she understood the expectations better and was gaining self-confidence; although she was demonstrating improvement toward the end of the year, this was not showing in her grades (Gray).

Ms. Schupack noted how difficult it was for Student to grasp the amount of reading required in English and Global Studies (SE-17). Also, the discrepancy between Student’s and Ms. Schupack’s accounts of whether Student was arriving late or was being dismissed early appear to indicate that Student was becoming overwhelmed and disengaged; Student however, was not receiving the full length/benefit of her tutorial (SE-46; SE-47; SE-48).

Despite implementation of accommodations through a Student Learning Plan, Student was still experiencing challenges. According to Dr. Silverman, WMA comments demonstrated a lack of understanding and appreciation for Student’s difficulties (Silverman).

The May 2016 Team discussed, and ultimately proposed, an IEP that offered Student participation in a partial inclusion program in Belchertown (SE-1; SE-2). The IEP offered

academic support (20x45) in the inclusion setting, and a separate daily tutorial for math (5x45), as well as academic support period (5x45) (SE-1).

Ms. Roach, the special education teacher in the LLP, testified about the program. She offered credible testimony regarding the services, interventions and methodologies which would be implemented to assist Student learn and access the curriculum in Belchertown (see Fact # 14 and #52; SE-49; Roach).

In reviewing Student's proposed IEP, she explained that Student's supported mainstream classes were at the college preparatory level, noting that she was very familiar with them. She explained that college preparatory courses focused on core concepts. These courses cover less amount of information than honors level courses, the pace of instruction is slower, and the amount of homework assigned is less, as is the level of work independence expected of students (Roach).

Ms. Roach testified that students in her LLP did not cover in one year as much course content as Student had been exposed to at WMA. She opined that Student's needs were similar to the needs of students in the LLP. She noted that many of those students were also interested in continuing on to a four year colleges after high school. According to her, some of the LLP students who graduated this year will be attending four year colleges (Roach).

Ms. Roach wholeheartedly disagreed with Student's and Grandmother's description of the LLP and setting. She attributed some of their comments to the family's lack of knowledge and misunderstanding of the program (Roach). She opined that the LLP was appropriate for Student and noted that in the LLP Student would receive the supports necessary to make effective progress (Roach).

Dr. Silverman, the only expert who conducted two psychological evaluations of Student over the past two years, offered insightful perspective on Student's development and her needs. He presented as a knowledgeable, professional capable of assessing Student's needs and of making reasonable recommendations for her. Moreover, Grandparents presented no expert testimony to counter Dr. Silverman's recommendations. When questioned about Belchertown's proposed IEP he found it to be a reasonable start, noting the need to provide Student with the necessary support so that she could access her mainstream classes. In addition to academic support, he also recommended remediation in math and participation in a separate setting math tutorial (Silverman). Dr. Silverman opined, and was persuasive, that the type of programming Student requires can be provided through Belchertown (Silverman).

The record shows that Dr. Silverman has gained good insight into Student's needs and as such, his input in IEP meetings, especially one that discusses a possible transition to Belchertown would be valuable. Belchertown shall therefore, include Dr. Silverman as a participant in any such future Team meetings. Future Teams should also be sensitive to Student's optimum functioning in environments that are relatively quiet, orderly, structured and which offer predictable routines.

The evidence supports a finding that at this point in her life, in order to achieve her goal of attending a four year college, Student requires specialized instruction and services both of which can be effectively provided in Belchertown. The partial inclusion program proposed by Belchertown would provide her with the challenging education she desires, and will allow for increased mainstreaming as she demonstrates the ability to handle the demands. It is clear that Student very much desires to succeed and with the right interventions and accommodations, can reach her goals.

Having found that Belchertown's program is appropriate, Student is not entitled to public funding for prospective placement at WMA.

#### IV. Transition Planning:

Grandparents argued that Belchertown's proposed IEPs and placements did not address Student's transition planning appropriately, and as discussed below, the evidence supports this finding.

Central to the concept of FAPE is the IDEA's mandate that eligible students be prepared for further education, employment, and independent living. 20 USC 1414(d)(1)(A); see also *Mr. I. v. Maine School Administrative District No. 55*, 480 F.3d 1, 12 (1<sup>st</sup> Cir. 2007). Consistent with this mandate, school districts are required to develop transition plans that detail the transition services to be offered to eligible students.<sup>29</sup> Transition planning discussions must begin when the student turns fourteen years old.<sup>30</sup> Transition plans must be developed at the Team meetings, taking into account the student's needs, his/her preferences, interests and strengths. 20 USC 1401(34). See also, 34CFR 300.43<sup>31</sup>.

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<sup>29</sup> The IDEA defines Transition Services as

- ...a coordinated set of activities for a child with a disability that—
- (A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational educational, integrated employment (including supported employment), continuing and adult education, adult services, independent living, for community participation;
- (B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and
- (C) Includes instruction, and related services, community experiences, the development of employment and all other post-school adult living objectives, and, when appropriate, a acquisition of daily living skills and functional vocational evaluation. 20 USC 1401(34).

<sup>30</sup> In 2008, Massachusetts lowered the age for beginning transition services to 14. Section 2 of M.G.L. c.71B as amended by Chapter 285 of the Acts of 2008.

<sup>31</sup> "(a) Transition services means a coordinated set of activities for a child with a disability that—

- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—
  - (i) Instruction;

The IDEA requires that as part of their transition plans, school districts develop “appropriate measurable post-secondary goals based on age appropriate transition assessments related to training, education, employment, and, where appropriate independent living skills...”. The Plan must provide “transition services (including courses of study) needed to assist the child in reaching those goals”. 20 USC 1414(d)(1)(A)(i)(VIII)(aa) and (bb); CFR 300.320(b). Transition services must be results-oriented, coordinated activities that focus “on improving the academic and functional achievement” of the eligible student so as to facilitate his/her movement to post school activities. 34 CFR 300.43.

In an effort to guide school districts through the Transition Planning process, the Massachusetts Department of Elementary and Secondary Education provided Forms and helpful guidance regarding the development and implementation of Transition Plans. See *Technical Assistance Advisory SPED 2013-1* and *Technical Assistance Advisory SPED 2014-4*.<sup>32</sup>

Turning to the facts in the case at bar, the record shows that when the Team convened in April of 2014 it failed to engage in a substantive discussion regarding transition planning for Student who was already 14 years old. The proposed IEP (SE-7) vaguely mentions Student’s desire to attend a four year college and fails to propose any specific action regarding meeting this goal (SE-7).

Student’s first transition plan appears following the September 2014, Team meeting (PE-19; SE-5). All of the transition plans developed by Belchertown following the September 2014 Team meeting are identical to PE-19/SE-5 (SE-1; SE-3). These plans offer very general information as to Student’s goal, even though she has consistently stated very clearly what her interests and preferences are. The Team has had available to it the 2014 and 2016 evaluation reports which offer helpful insight as to Student’s strengths and weaknesses.

Additionally, all of the Transition Plans since September 2014 fail to delineate specific, pertinent actions that may allow Student to reach her post-secondary goals.

As stated in *In Re: Dracut*, BSEA # 08-5330 (Crane, 3/13/2009),

Appropriate transition services can only be provided pursuant to the development of a transition plan that describes a coordinated set of activities focused on improving Student’s ability to move successfully

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- (ii) A related services;
  - (iii) Community experiences;
  - (iv) The development of employment and all other post school adults living objectives; and
  - (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist the child with a disability to benefit from special education.”  
34 CFR 300.43.

<sup>32</sup> See also MGL c.688.

to post- secondary education, employment, and independent living. The implementation of the plan will need to be monitored and adjustments made over the course of the [years] in response to the parties' changing understanding of Student's needs ... assessment and Student's progress.

The Transition Plan is therefore, a fluid document that must at all times respond to Student's needs, progress, preferences and interests.

Belchertown's Team is ordered to convene, discuss and delineate a specific action plan taking into account Student's specific goals.

Lastly, I note that since Student has not participated in any of the programs offered in Belchertown, the deficiencies in the Transition Plans are insufficient to render the proposed IEPs inappropriate. Belchertown shall however, correct this defect at its next Team meeting.

**ORDER:**

1. Student is not entitled to retroactive reimbursement for her unilateral placement at WMA for the 2014-2015 and 2015-2016 school years.
2. Belchertown's proposed IEP for the 2016-2017 shall be implemented consistent with the modifications delineated in this Decision.
3. Student is not entitled to public funding for prospective placement at WMA.
4. Belchertown shall include Dr. Silverman as a participant in any future Team meeting that discusses Student's transition into Belchertown.
5. Belchertown shall convene Student's Team to discuss and delineate a specific transition planning action plan, taking into account Student's specific goals.

By the Hearing Officer,

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Rosa I. Figueroa

Dated: September 23, 2016

September 23, 2016

**COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF ADMINISTRATIVE LAW APPEALS  
BUREAU OF SPECIAL EDUCATION APPEALS**

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**BELCHERTOWN PUBLIC SCHOOLS**

**BSEA # 1604027**

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**BEFORE**

**ROSA I. FIGUEROA  
HEARING OFFICER**

**PETER L. SMITH, ESQ., ATTORNEY FOR PARENTS  
TAMI L. FAY, ESQ., ATTORNEY FOR  
BELCHERTOWN PUBLIC SCHOOLS**