

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

In Re: Sunil¹

&

BSEA # 1608619

Ludlow Public Schools

DECISION

This Decision is issued pursuant to M.G.L. c. 71B and 30A, 20 U.S.C. §1400 *et. seq.*; 29 U.S.C. §794 and the regulations promulgated under those statutes. A Hearing was held in the above-entitled matter on July 28, August 3 and September 7, 2016 at the Administrative Offices of the Ludlow Public Schools in Ludlow, MA. Those present for all or part of the proceedings were:

Ms. S. ²	Parent
Mary Ellen Pope	Speech-Language Pathologist, Center School
Melinda Duff	School Psychologist, Center School
Megan Trapasso	School Social Worker, Ludlow Public Schools
Marcy Bousquet	Speech-Language Pathologist, Ludlow Public Schools
Kristen Buntin, RN	Health Care Coordinator, Ludlow Public Schools
Hannah Wingate	Special Education Teacher, Center School
Arlene Desforges	Special Education Teacher, Ludlow Public Schools
Matthew Thornton	Behavioral Technician, Center School
Christopher Duff	Director of Operations, Center School
Simon Edwards	Special Education Teacher, Ludlow Public Schools
Traci Savard	Therapeutic Mentor

¹ “Sunil” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

² “Ms. S.” is a pseudonym chosen by the Hearing Officer to protect the privacy of the family in documents available to the public.

Sandra Sherry-Pitzer
Katherine Martin
Rebecca Bouchard
Lindsay Byrne

Therapist
Attorney for the Parent
Attorney for the School
Hearing Officer

The official record of the Hearing includes documents submitted by the School labelled S-1 through S-12, documents submitted by the Parents labelled P-1 through P-42, and approximately 14 hours of recorded oral testimony and argument. Both Parties submitted written closing arguments on October 3, 2016 and the record closed on that date.

ISSUE

Whether the September 2015 to September 2016 Individualized Education Program developed by Ludlow is reasonably calculated to ensure delivery of a free appropriate public education to Sunil?

SUMMARY OF THE EVIDENCE

1. Sunil is an 11 year old student who carries diagnoses of Pervasive Developmental Disorder/Autism (“PDD/ASD”)³ and Attention Deficit Hyperactivity Disorder (“ADHD”)⁴. Sunil moved to Ludlow in March 2014. At the time he was attending the elementary age program at the Center School in Holyoke. The Center School is a private, state-approved, special education school enrolling students with significant learning and behavioral challenges. After a Team meeting in June 2014 Ludlow proposed continuing Sunil’s placement at the Center School for the 2014-2015 school year. (Tillotson; S-2, P-2; S-11)
2. In September 2014, the Center School reported that Sunil had progressed to the point of readiness to move to a less restrictive educational program. The Center School, on behalf of Ludlow, conducted a three year re-evaluation consisting of occupational therapy, speech-language therapy and psychological evaluations by personnel familiar to Sunil. Ludlow added an “Ecological Evaluation” and a Functional Behavioral Assessment by a BCBA. Ludlow and Center School staff exchanged program observations. (S-10; S-9; P-22; P-27; P-28; See also S-3; P-20; P-21)
3. The Team met on February 27, 2015 to consider the results of the three year re-evaluation. Ms. Stoddard, the BCBA who had evaluated Sunil in his Center School classroom in January 2015, recommended that: he receive direct support from a one-to-one paraprofessional in a setting less restrictive than the Center School; he receive direct instruction in social skills and emotional regulation; he follow a behavior plan developed by a BCBA; and he have access

³ Diagnostic categories and nomenclature have changed during the pertinent educational history. For clarity both labels are used in this Decision.

⁴ The Parent asserted that the “ADHD” reference in the proposed IEP at issue here was an error, indicating the School’s lack of attention to her son. On the contrary the “ADHD” label is found for the first, and only, time in the report of Ms. Timmel, the evaluator selected by the Parent. See P-24, S-8. The IEP included “ADHD” as part of its recitation of key evaluation findings. To ignore it would be improper. Ms. Timmel did not testify and thus could not explain her diagnosis.

to a quiet room. (S-9; P-22; P-23) The Occupational Therapist, Ms. Honeyman, recommended discontinuing direct occupational therapy but continuing sensory accommodations. (S-10, P-27) Ms. Cooper-Cox, the Speech-Language Pathologist, recommended that Sunil continue to participate in group language therapy aimed at developing pragmatic social language skills. (S-10) Melinda Duff, who administered the psychological evaluation, found Sunil to have general cognitive capabilities within the average range and both learning and behavioral performance consistent with those findings. Her results indicted continuing difficulties in the areas of attention, self-control, and atypical behaviors. Ms. Duff made several practical recommendations applicable to academic performance such as repetition of material to be learned and encouragement to study for a test for a few days in advance. (S-10; P-27)

Ludlow developed an IEP, a Behavior Intervention Plan (“BIP”) and a Transition Plan calling for Sunil’s gradual integration into the elementary age Structured Individualized Program (“SIP”) after the spring 2015 break. (S-7; P-12) As part of the plan Ludlow proposed conducting an extended evaluation of Sunil’s transitional and environmental needs so that a targeted IEP could be developed by the end of the 2014-2015 school year. (S-7) The Parents rejected the proposed transitional IEP. (S-9; P-11; P-12; P-13; P-14; P-15)

4. At the Parents’ request Gretchen Timmel of the Lurie Center conducted an educational evaluation of Sunil on May 15, 2015. Ms. Timmel’s results are generally consistent with those obtained by Ms. Duff in December 2014. Ms. Timmel found that on most measures of academic and learning performance Sunil achieved scores in the average range in conformance with his intellectual potential. Sunil demonstrated weaknesses in visually mediated executive function skills, receptive language that is complex and/or has a social function, and inferential reasoning. These weaknesses are consistent with her diagnostic formulation: ASD and ADHD.

Ms. Timmel recommended both that Sunil “continue in his current placement” due to his need for a high degree of therapeutic support and that he participate in structured, supported inclusion activities such as lunch, recess or project-based activities. She also recommended that he receive academic instruction through a multisensory, sequential curriculum. (S-8; P-24; P-25)

5. In March 2015, Sunil was diagnosed with a colonic neuropathy and began a new treatment regime. Ms. S. testified that, as a result of his medical condition, Sunil requires close monitoring, a private bathroom, and scheduling/attendance accommodations. (Ms. S.; P-38; P-40; S-6)

6. A Team meeting was held on September 10, 2015 to review the Lurie Center’s evaluation, to discuss the rejected February 2015 IEP, and to develop an IEP for the 2015-2016 school year.

As a result of that meeting Ludlow proposed an IEP that was substantially similar to the last accepted IEP then being implemented at the Center School. The proposed IEP provided for: Full time specialized academic instruction in a segregated therapeutically based setting; a one-to-one paraprofessional at all times; direct speech-language and counseling services one time per

week for thirty minutes each; additional consultation time from an occupational therapist, LICSW and speech-language pathologist. (S-1)⁵

The proposed IEP discontinued direct occupational therapy services in accordance with the recommendation of the most recent occupational therapy evaluation. (S-10; P-27) The proposed IEP designated the placement as a substantially separate (“SIP”) classroom within a Ludlow elementary school. The IEP included an Individual Health Care Plan and a Behavior Intervention Plan. (S-6; S-35)

7. The Parents did not respond to the 2015-2016 IEP proposed by Ludlow. It is considered rejected. (S-1) Sunil continues to attend the Center School pursuant to his last agreed upon IEP.

8. Hannah Wingate has been Sunil’s teacher at the Center School since he first enrolled. She described her classroom as highly organized and regimented. There are seven students in the class; two are non-verbal; five have autism or a related syndrome. Four paraprofessionals also work with the students. Ms. Wingate testified that when Sunil first entered the classroom he had significant difficulty with change, even after a snow day. Sunil would become loud and agitated and require prolonged therapeutic intervention and time apart from the class. During his time at the Center School Sunil has developed better coping skills. He has not left a group activity or required an escort for more than a year. He uses the quiet room appropriately and independently when he senses his behavior is escalating. Almost all behavioral dyscontrol is precipitated by a negative peer interaction in a larger or unstructured setting such as gym class. Ms. Wingate noted that the Center School does not afford Sunil the peer models in behavior, language or academics that he needs either to maintain behavioral control, to learn new social skills and pragmatic language or to develop his academic capabilities. She stated that Sunil is engaged in grade level academic work and that there are no classmates with whom he can be grouped for instruction. Ms. Wingate testified that Sunil is academically and behaviorally ready for a new setting, and that he needs a new setting to make progress. (Wingate; See also S-3; P-20; P-21; S-4; See also Pope)

9. Melinda Duff, school psychologist, has been Sunil’s school-based therapeutic clinician since he first enrolled at the Center School. She provides most clinical services in groups based on the 2nd Step curriculum. She also sees Sunil during his visits to the quiet room and when there is a request. She stated that Sunil has a strong fight/flight response. When he arrived his response was primarily “fight” and he could become physical with staff. After working together Sunil’s initial response has been transitioned to “flight” as he prefers to be alone. At this time Sunil does not run away, but purposefully leaves a group or activity to seek a quiet space for a private tirade. Staff waits for him to process and to regain calm. Sunil is able to signal when he is ready to return to the group. Ms. Duff testified that Sunil is likely to have initial difficulty with a new setting and his strong fight/flight response will likely recur. With appropriate management and use of quiet space, and perhaps the continued services of his familiar

⁵ The last accepted IEP provided for: full time specialized academic instruction in a therapeutically based setting with a half time one-to-one paraprofessional; direct speech-language and counseling services one time per week for 30 minutes each; direct occupational therapy twice a week for 30 minutes each; direct occupational therapy twice a week for 30 minutes each session; and monthly consultations with a clinician, an autism specialist, and occupational and speech-language therapists. The IEP designated a separate day school as the service delivery setting. (S-2)

paraprofessional in the new setting, Sunil will benefit from the transition. Ms. Duff stated that Sunil will not develop appropriate social-emotional skills if he remains at the Center School. (Duff; S-10; P-28)

10. Mary Ellen Pope is currently the Special Education Administrator at the Center School. She is a licensed speech-language pathologist and certified teacher. She provided direct speech-language services and one-to-one MCAS testing to Sunil when he first enrolled at Center School. She testified that Sunil has made steady progress in social pragmatic language and self-regulation skills. The goals set out in the proposed 2015-2016 IEP were developed by Center School staff but could be addressed in another setting. Ms. Pope noted that Sunil has continuously had significantly better social pragmatic language skills than his peers at Center School, and that he has no appropriate communication or social peers at his level at the Center School. (Pope)

11. Matthew Thornton is the Behavioral Technician/Interventionist⁶ assigned as Sunil's one-to-one paraprofessional at the Center School. He has worked with Sunil for approximately 4 months. Mr. Thornton accompanied Sunil to summer camp in 2016 to provide cueing, support and instruction in social/behavioral skills. Mr. Thornton testified that Sunil's behavior at camp was similar to his behavior in the classroom. Mr. Thornton said that Sunil is smart, capable of handling most of the demands of school and camp, and doesn't need one-to-one help except for transitions. While Sunil's initial contact with other campers was socially inappropriate (eg. waving a hand in front of a peer's face) most of his interactions were "surprisingly positive". Sunil did have some difficulty keeping up with the pace of activity and clothing changes. He also showed poor frustration tolerance when not meeting his internal performance standards in sports. Nevertheless Sunil did not have access to, and did not need to use, a quiet place to "blow off steam" while at camp. Mr. Thornton noted that Sunil did not require any assistance using toilet facilities at school or at camp. Mr. Thornton testified that Sunil is likely to be frustrated when transitioned to a public school environment and will need immediate access to a quiet private space. With that, according to Mr. Thornton, he should be fine. (Thornton)

12. Simon Edwards is the teacher in the middle school "SIP" classroom proposed for Sunil. There are four students currently enrolled in the SIP program: one has autism, one has an anger management disorder, one is sensitive and quiet, and one has a profile similar to Sunil's. Most are 7th grade students working at a 6th grade level. There are two adults fulltime in the classroom: Mr. Edwards and a paraprofessional. Two other paraprofessionals and the school social worker are in the classroom for substantial periods of time. Were Sunil to enroll in the class there would be an additional paraprofessional. Mr. Edwards is responsible for meeting all the behavioral, therapeutic and academic needs of his students. Aside from a Masters in Education Mr. Edwards has additional experience and training in instructing students with complex, intensive emotional and behavioral needs and with autism spectrum disorders.

The classroom follows a set schedule which includes direct group academic instruction, independent academic work, and group social skills and pragmatic language instruction. The classroom uses a point/award behavioral system. If a student is accustomed to a different

⁶ Mr. Thornton meets the requirements for the position of "Behavioral Technician" but that title requires supervision by a BCBA. Currently the Center School does not have a BCBA on staff or consult.

behavioral system it can be incorporated into the classroom program. Conflicts among students are seen as opportunities for learning and are addressed by teachers, speech-language pathologists and counselors.

Some students leave the group with a paraprofessional to attend inclusion classes or activities. Students have lunch in the school cafeteria, in a lunch bunch or in an alternate setting depending on their individual needs and abilities. Similarly, physical education is delivered in the mainstream, in a sheltered class or individually according to each student's need. There is an adjacent "SIP" classroom designed for students who spend most of their time in mainstream classes. The nurse's office, with a private bathroom, is on the same floor. Another private bathroom is available on the 2nd floor. There are five "quiet spaces" immediately available to students when necessary.

Mr. Edwards visited the Center School, spoke to staff there, observed Sunil and reviewed the 2014-2015 IEP being followed. He testified that the SIP program is appropriate for Sunil. Before Sunil enters the program there would be a transition planning Team to ensure that all Sunil's academic, therapeutic, health, safety, physical and environmental needs are addressed. The Team includes Mr. Edwards, the SIP clinical staff, the school nurse, the principal, the ETL and any others with relevant knowledge of Sunil, including representatives of the sending school. (Edwards; See also Trapasso)

13. Megan Trapasso is a LICSW assigned full time to the SIP programs in the middle school. Ms. Trapasso oversees the therapeutic component of the educational programs for the 10 students in the two SIP classrooms. She also provides counseling services to a few students in the middle school ASD program. In this capacity she works closely with other clinical staff in the middle school: the school psychologist, school adjustment counselor and three guidance counselors, who at times may provide consultative or direct service to the SIP classrooms and students.

In the "trauma informed/trauma sensitive" classroom proposed for Sunil Ms. Trapasso provides direct group counseling once a week, direct individual counseling to each student once a week, crisis counseling as needed, daily "check ins", and processing with students who use quiet space, using a collaborative problem solving approach. Safety, responsibility and respect are the overriding classroom goals in accordance with the schoolwide PBIS program. The SIP classroom uses a structured positive behavioral reinforcement system including a periodic point plan which provides each student with immediate teacher feedback. There are daily behavior logs, completed by the teaching staff, self-monitoring sheets for the students and counseling data on all out of classroom time. All data can be incorporated into an individualized incentive plan if warranted. Ms. Trapasso's office is a few doors down the hall from the SIP classroom and can be used as quiet space at times. There are at least four other options for quiet space.

Ms. Trapasso observed Sunil at the Center School, reviewed his IEPs and evaluations, and met with the Parent as she observed the SIP program. Ms. Trapasso testified that while "bumps" were to be expected in any transition, all of the behaviors identified as problematic for Sunil can be managed at the middle school. Ms. Trapasso noted that Sunil's current behavioral intervention plan could be implemented at the middle school and that a new safety plan would be

developed for Sunil before he entered the SIP program. (S-5) Ms. Trapasso testified that both the 2015-2016 IEP and the SIP placement are appropriate for Sunil. (Trapasso)

14. Kristin Bunten, R.N. is Ludlow's district health coordinator. She supervises the school nurses, develops medically based Section 504 plans and Individual Student Health Care Plans, and oversees all student safety initiatives. Her office is in the middle school along with 1 full time and 1 part time R.N. In the spring 2015 Ms. Bunten reviewed the Individual Health Care Plan ("IHCP") developed for Sunil by the Center School, discussed Sunil's medical needs with his physician, and checked on implementation of the IHCP with Center School staff. The Center School reported that the IHCP was never invoked and that Sunil never expressed a need for health related accommodations in school.

Ms. Bunten testified that Ludlow has experience with students with autism and chronic dysmotility disease. The school district health and teaching staff also have experience in handling this type of condition when a student is unable to express needs verbally. Sunil's condition warrants unlimited access to a private, "relaxing" restroom, which can be provided in the middle school. (Bunten; P-40; S-6)

15. Tracy Savard has been Sunil's therapeutic mentor for 9 months. She works with him individually and creatively in community settings to develop safety awareness, emotional regulation and appropriate social behavior. When they started working together Sunil struggled with peer interactions, conversation topic maintenance, and appropriate voice tone. He has never acted in an unsafe manner or bolted in a community setting. Ms. Savard testified that since she began working with him Sunil has made good, noticeable progress in social conformity though he still needs 1-1 support in community settings to maintain appropriate language, voice and expression. (Savard; P-29)

16. Sandra Sherry-Pitzer has been Sunil's community-based therapist for 18 months. She testified that Sunil has significant difficulty managing anxiety, trauma-triggers, and change. She works with him individually in an office setting to develop appropriate de-escalation techniques and self advocacy/self-regulatory skills. Ms. Sherry-Pitzer has not worked with Sunil in a community setting nor has she observed him in a school setting. Ms. Sherry-Pitzer has seen slow, consistent progress with significant reminders, supports and modeling in a comfortable 1-1 setting. Sunil remains unable to self-regulate independently.

Ms. Sherry-Pitzer outlined her recommendations for an appropriately therapeutic educational environment in a note dated May 18, 2016. (P-30) The requisite characteristics include: an individualized behavior management plan, a therapeutic component which permits in the moment processing of emotions and behavior, and staff trained in the needs of students with autism. Ms. Sherry-Pitzer testified that the therapeutic component should include individual, group and as needed counselling as well as direct instruction in social thinking skills. She noted that the supports Sunil found helpful in the Center School would continue to be appropriate for him in any setting. (Sherry-Pitzer; P-30; P-31; S-6)

17. Ms. S., Sunil's mother, stated that Sunil was not ready to leave the Center School. She testified that he continues to have significant behavioral difficulties at home, that his medical

condition needed more attention than the public school could provide, that he had not met any of the current IEP goals, that he lacks safety awareness and that he needs substantial assistance with all activities of daily living. Since Sunil had a difficult experience in his last public school placement, during the 2012-2013 school year in a different school district, Ms. S. believes that Sunil would not feel safe and would not be able to learn if he returned to a public school. (Ms. S.)

FINDINGS AND CONCLUSIONS

There is no dispute that Sunil is a student with special learning needs and is therefore entitled to receive a free appropriate public education pursuant to M.G.L. c.71B and 20 U.S.C. §1401 et seq. The issue presented here for decision is whether Ludlow has met its obligation to offer a free, appropriate public education to Sunil. After careful consideration of the evidence adduced at hearing, and the arguments of counsel for both parties, it is my determination that it has. Ludlow has proven by more than a preponderance of the credible evidence that Sunil has been properly evaluated, that the proposed IEP reflects the findings and recommendations of those evaluations and that both the special education services and the setting outlined in the 2015-2016 IEP are reasonably calculated to ensure that Sunil makes effective educational progress in all areas of special need in the least restrictive setting compatible with that goal. My reasoning follows:

First, all evaluators recommend the same type of educational service and setting:

- 1) a self contained, staff intensive, classroom with a small number of students;
- 2) therapeutic orientation that includes staff trained in autism and behavioral support techniques; classwide behavioral support strategies; an individualized behavior support plan; direct one-to-one and group counseling; availability of crisis and prn counseling; access to quiet “safe” space;
- 3) group speech language therapy focused on the development of pragmatic language and social skills;
- 4) specialized instruction in academics designed to improve attention, organization written language;
- 5) one-to-one academic, behavioral/therapeutic and environmental support;
- 6) access to a private bathroom.

See ¶ 3, 4, 5, 16. There are no additional or contrary recommendations. I note in particular that, while the Parents rely on the May 2015 Lurie Center Evaluation Report to support their request for continued placement at the Center School, the discrete educational, behavioral and therapeutic recommendations set out there by Ms. Timmel can be implemented appropriately within the SIP placement. Furthermore, her recommendation for “scaffolded” language assistance and supported opportunities for generalization of skills and socialization in an

“inclusion” setting cannot be implemented at the Center School. (S-8; P-24; P-25). The 2015-2016 IEP proposed by Ludlow contains all of the services recommended by the evaluators. (See ¶ 3, 4, 5, 16). Indeed, the special education services set out in the proposed IEP mirror those in the last accepted IEP being implemented with the Parents’ approval at the Center School. (¶ 6)

Furthermore, I am persuaded by the thoughtful testimony of Mr. Edwards, Ms. Trapasso and Ms. Bunten that the Ludlow staff have the expertise, experience and commitment to actually deliver the special education supports and services outlined in the rejected 2015-2016 IEP to Sunil in accordance with the consistent recommendations of expert evaluators.

Second, Sunil’s Center School teacher and clinician, both of whom have worked with Sunil for more than three years, testified that not only is he “ready” to leave the Center School but that Sunil must transition to a less restrictive placement with more appropriate social and language peer models in order to progress commensurate with his potential. Ms. Wingate testified convincingly that the Center School lacks the peer models Sunil needs to learn new social, academic, language and behavioral skills. Ms. Duff echoed that sentiment. (See ¶ 7, 8) I found them both to be highly sympathetic to and knowledgeable about Sunil and, therefore, convincing. There is no testimony, nor any written recommendation, from anyone who has observed Sunil at the Center School that supports his continued placement there or opposes his transition to a less restrictive special education program.

Third, the testimony of Ms. Savard and Mr. Thornton detailing Sunil’s community skills and behaviors, highlighted Sunil’s capacity to learn from more socially adept peers while supported in community settings. (See ¶ 10, 14) Their testimony added weight to the chorus of educators from the Center School and Ludlow endorsing the 2015-2016 IEP and SIP placement proposed by Ludlow.

Fourth, there are no evaluations or testimony by anyone with a direct educational and/or behavioral support role and knowledge of the Center School classroom recommending that Sunil continue to attend the Center School. There are no evaluations or testimony by anyone with a direct educational and/or behavioral support role and knowledge of the SIP program recommending against Sunil’s placement there. In short, there is no credible professional evidence in this record that would support a conclusion other than that the 2015-2016 IEP proposed by Ludlow properly takes into account the uniform recommendations of Sunil’s evaluators and service providers and offers a program and placement that incorporates those recommendations.

Fifth, the setting proposed by Ludlow – a substantially separate therapeutic classroom within an age appropriate mainstream middle school – allows Sunil to benefit from contact with, and connections to, typical peers and regular education resources, activities and expectations in a way not possible during placement in a private day school. As there is no evidence that placement in a substantially separate class within a mainstream environment is contraindicated for Sunil for any educational reason and there is convincing evidence that movement out of a segregated environment is likely to provide significant educational, social and behavioral benefits, I find that Ludlow’s proposal to educate Sunil in a less restrictive environment than the private day school he currently attends is appropriate.

Sixth, the 2015-2016 IEP at issue here is supplemented by an Individualized Behavior Intervention Plan and an Individual Health Care Plan. Both of these documents are critical to the successful implementation of Sunil's IEP and his transition to a new education setting. At this point both are also stale. The Ludlow staff indicated that a transition team would meet in advance of Sunil's actual placement in the SIP program to devise a gradual integration schedule, put appropriate staffing in place, design a relevant BIP, and ensure that all Sunil's healthcare needs are addressed. (Testimony of Tillotson, Edwards, Bunten) I note also that the proposed 2015-2016 IEP, while still offering the setting and services appropriate for Sunil at this time, has "expired". Therefore all three documents must be renewed to address Sunil's current academic and behavioral functioning as well as his current health care needs, and to reflect the actual resources, staff and schedules available at the Middle School.

Finally, the Parent's testimony in opposition to the proposed SIP placement, while heartfelt and genuine, is not sufficiently weighty or convincing to outweigh the consistent recommendations of experienced educators.

ORDER

The 2015-2016 IEP proposed by Ludlow is reasonably calculated to ensure that Sunil receives a free appropriate public education in the least restrictive setting. Ludlow shall reconvene the Team within 30 days of this decision to develop a current IEP, BIP and IHCP consistent with this Decision.

By the Hearing Officer

Lindsay Byrne
Dated: October 24, 2016