

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

In Re: Student v.
Hamilton-Wenham Regional School District

**BSEA# 1707353
& # 18 04291**

DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC s.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.

Parents requested a hearing in the above-referenced matter on March 7, 2017. Thereafter, the Hearing was continued on several occasions at the request of the Parties. This matter was consolidated with another matter previously filed by Hamilton-Wenham Regional School District on February 7, 2017, which case Hamilton-Wenham withdrew on September 13, 2017. Since only Parents' case remained open, the then remaining issues for Hearing were clarified during a telephone conference call held on October 2, 2017, and also during a second Pre-hearing Conference held at Parents' request on October 12, 2017¹.

Following Parents' counsel's filing his withdrawal of appearance, the issues for Hearing were again delineated via a Ruling issued on November 20, 2017, addressing a Partial Motion to Dismiss filed by Hamilton-Wenham.

On November 20, 2017, Hamilton-Wenham filed a Hearing Request (BSEA# 1804291) which matter was consolidated with Parents' pending matter (BSEA # 1707353) and both cases proceeded to Hearing.

The Hearing in these matters was held on November 28 and 29, 2017, at the offices of DALA/BSEA, One Congress St., Boston, Massachusetts, before Hearing Officer Rosa Figueroa. Those present for all or part of the proceedings were:

Parents

Peter Chubinsky, M.D.	Psychiatrist
Beverly Montgomery	Speech and Language Pathologist, Lex Communication
Catherine Mosca	Babysitter, private tutor
Mary Ellen Sowyrda, Esq.	Attorney for Hamilton-Wenham Regional School District
Elizabeth Sherwood	Attorney with Murphy, Hesse, Toomey & Lehane, LLP/ Hamilton-Wenham Regional School District

¹ The Parties had participated in a previous Pre-hearing Conference on March 23, 2017.

Stacey Bucyk	Director of Student Services, Hamilton-Wenham Regional School District
Lindsay McGovern	Secondary Special Education Coordinator, Hamilton-Wenham Regional School District
Maureen Smith	Elementary Special Education Coordinator, Hamilton-Wenham Regional School District
Alexander K. Loos	Doris O. Wong Associates Inc., Court Reporter

The official record of the hearing consists of documents submitted by Parents marked as exhibits PE-A through PE-Z and documents submitted by Hamilton-Wenham Regional School District (HW) marked as exhibits SE-1 through SE-16; recorded oral testimony, and written closing arguments. HW's written closing argument was received on December 7, 2017, and Parents' on December 11, 2017. The record closed on December 11, 2017².

Shortly before the Hearing began, HW filed a Motion for Sanctions due to Parents' failure to provide certain responses which were due on Friday November 17, 2017, consistent with an Order involving the Issues for Hearing. HW argued that Parents had forwarded information to the Hearing Officer (77 pages) which Parents never sent to HW. Parents had been warned not to do so when this had previously occurred. This Ruling was taken under advisement so as to offer Parents an opportunity to show proof of receipt by HW. HW argued that this failure to receive information placed it at a disadvantage in responding to Parents' allegations prior to issuance of a Ruling by the Hearing Officer and in preparing for Hearing. Since a Ruling addressing the issues had already been issued prior to Hearing, HW's Motion for Sanctions is DENIED as moot.

ISSUES FOR HEARING:

1. Whether the IEP proffered by HW in October 2017 is reasonably calculated to offer Student a FAPE;
2. Whether the placement options offered by HW are appropriate to meet Student's needs;
3. Whether HW is responsible to offer accommodations necessary for Student to continue his education and support the placement chosen by Parents;
4. Whether HW is responsible to pay for student to attend a school adept at instructing students with language-based learning disabilities and executive function disorders with like peers; a school that does not contain the same group of students who bullied Student and is in relative proximity to Student's home;

² After the Parties had rested and the record was left open only for submission of written closing arguments, on December 5, 2017, Parents submitted a letter to the Hearing Officer. Because this letter was submitted after the Hearing had concluded it was not taken into consideration.

5. Whether HW is responsible to reimburse Parents for: interim educational programs funded by them; counseling; speech-therapy; testing; tutoring and ongoing treatments with healing.³

POSITIONS OF THE PARTIES:

Parents' Position:

Parents argue that starting in fourth grade Student was bullied by peers and scapegoated by adults, a pattern that plagued Student even after Parents removed him from HW and placed him in two other private schools. As a result, Parents state that Student began displaying severe anxiety and obsessive compulsive symptoms. Parents state that they have provided Student services in the home over the past couple of years and have been searching unsuccessfully for the right program for him. They hold HW responsible for Student's failures and Student not having been accepted to programs of their preference because of "constructed" diagnosis in Student's proposed IEPs.

Parents dispute the appropriateness of the proposed IEPs for Student, seek reimbursement for services provided privately over the past several years, and request that HW provide a placement for Student which is agreeable to them outside HW.

HW's Position:

HW argues that Student's bullying related issues originated outside HW and state that HW investigated same at the time they were alleged to have occurred. HW asserts that it has complied with its responsibilities under the IDEA, has evaluated Student and offered him appropriate IEPs to meet his needs. HW further asserts that it has offered a myriad of placements in public and/or private settings, as well as home-based or virtual schooling all of which Parents have rejected. HW asserts that it has worked collaboratively with Parents over the past year in an effort to place Student, to no avail.

As such, it will seek assistance from the Court in securing an educational placement for this mandatory school-aged student.

FINDINGS OF FACT:

Some of the findings appearing herein were taken from a previous Ruling on a Partial Motion to Dismiss issued earlier in this matter.

1. Student is an IDEA eligible thirteen year old resident of HW. He began receiving special education services through HW in 2007 when he was three years old. He has been described as a kind and polite individual who is very creative, hard-working and smart (PE-H1, PE-H2; PE-H5; PE-H6; Parents).

³ Issues # 3, 4 ad 5 are lifted from Parents' October 30, 2017 submission delineating their understanding of their Issues for Hearing. Parents' previous counsel's issues for Hearing involved bullying allegations, procedural challenges and placement concerns.

2. Throughout his educational career Student has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), a language-based learning disability, Anxiety Disorder and a Social Pragmatic Communication Disorder involving weaknesses in the social use of language, which diagnosis Parents dispute and HW has set aside (SE-10; SE-11; Parents).
3. Parents argued that starting in fourth grade (2014) Student was subjected to a series of bullying incidents by peers, teachers, school administrators, coaches and the parents of peers, during after-school programs, at all schools attended (private and public) and during recreational and summer programs (PE-B2; PE-B3; PE- B4; PE-B5; PE-B6; PE-C1; PE-C2; PE-D1; PE-D2; PE-D3 PE-D5; PE-D6; PE-D7; PE-D-9; PE-D10; PE-D12; Parents). In all the aforementioned settings Student was “set-up”, “abused”, “harassed”, “scapegoated by adults” and prevented from succeeding through intentional interference and through “constructed” IEPs (PE-D8; PE-D9; PE-D-10; Parents).

It appears from the record that at least two or three individuals engaged in inappropriate harassing behavior toward Student during recreational activities (PE-K-1; PE-K2; PE-K3; PE-R).

4. Parents hold HW responsible for Student’s failures and inability to be placed in any of their desired settings including general education private schools (Clark School, St. John’s Prep⁴) and DESE approved special education private schools (Landmark School) (PE-D8; PE-D9; PE-D-10; Parents).
5. On January 29 and February 2, 2015, Janice Schwartz, Ed.D., conducted a neuropsychological evaluation of Student over concerns regarding language, attentional issues and transitions (PE-B6). Dr. Schwartz found Student’s cognitive abilities to fall generally within the average range, noting significant gains in language abilities with continuing struggles with more elaborate responses and with certain verbal information; challenges around social reactivity, impulsivity secondary to ADHD and executive functioning⁵ issues, deficits impacting organization, planning and self-monitoring (PE-B6).
6. On or about May 5, 2015, Parents withdrew Student from his program at HW in what they called an attempt to protect Student from the effects of bullying and stigmatization. HW investigated the incidents. HW offered Student tutoring for the remainder of his fourth grade and promoted him to fifth grade (PE-Q; SE-11; Parents).

⁴ At Hearing the Parties referred to St. John’s Prep as St. John the Evangelist. The two are synonymous for purposes of this Decision.

⁵ Executive functioning skills refer to a “broad class of task management skills (i.e., regulation of attention, arousal, and emotions) that develop throughout childhood and into young adulthood” (SE-11).

7. Student started fifth grade at the Clark School (Clark), a private school in Rowley, Massachusetts. (PE-C2).
8. In the fall of 2015, Parents hired Catherine Mosca as a private tutor to homeschool Student. Ms. Mosca had previously worked as a babysitter with the family and enjoyed a good relationship with Student and Parents (PE-C2; Mosca; Parents). Ms. Mosca, who holds a Bachelors of Arts degree, has offered tutoring to Student intermittently when Parents have withdrawn Student from different private and public schools. (Mosca).
9. On or about September 2015, Student began to receive private counseling with Kathy Mullin, LICSW (a specialist in OCD and behavior therapy) to address Student's OCD symptoms (PE-H3; PE-S; SE-11; Mosca, Parents). To date, Student continues to meet with Ms. Mullin (Parents).
10. During the fall of 2015, while at the Clark School (Clark), additional bullying incidents allegedly exacerbated Student's anxiety and distrust of adults, resulting in Parents withdrawing him in November of 2015 (Parents; SE-11).
11. A letter drafted by Student and dated September 2015 states his opinion regarding Clark, noting his preference for attending Cutler and if not Cutler, the Winthrop School (PE-B2).
12. In February of 2016, Parents filed a complaint with the Office of Civil Rights (OCR) which investigation is ongoing, according to Parents.
13. In March of 2016, Parents enrolled Student at St. Johns's Prep School in Beverly, MA (PE-C2). On or about May 16, 2016, a few months after being placed, Parents withdrew Student because of incidents involving bullying by peers and blaming by teachers and administrators (PE-C2; Parent).
14. On March 20, 2016 HW forwarded a Team meeting invitation to Parents calling for a Team meeting on May 27, 2016. Parents requested that the date be changed but the Team was convened without them and an IEP was issued which IEP Parents rejected in full. Parents however, acquiesced to HW's request to have Student undergo a neuropsychological evaluation.
15. In a letter written by Student in May 2016, Student acknowledged feeling as if he was "not living" and feeling dead, noting his self-diagnosis as a psychopath because he got bored easily and this was one of the symptoms identified in the internet. Student further stated that he was "a stupid idiot who knew nothing about life" (PE-B4).
16. On August 2, 4, 11 and 18, 2016, Nancy Roosa, Psy.D, pediatric neuropsychologist, conducted a neuropsychological evaluation of Student (SE-11).

17. Dr. Roosa administered the Wechsler Intelligence Scale for Children–5th Edition; Wechsler Individual Achievement Scale–3rd edition (WIAT-III; selected subtests); Gray Silent Reading Test (GSRT,) Form A; Test of Written Language (TOWL, selected subtests) ; Comprehensive Assessment of Spoken Language (CASL, selected subtests); Automatized Series; Wide–Range Assessment of Learning and Memory–2nd edition (WRAML-2); Rey Osterrieth Complex Figure Test (RCFT); Delis Kaplan Executive Function System (D-KEFS; selected subtests); Test of Variables of Attention; (TOVA); Social Language Development Test (SLD; selected subtests); Roberts Apperception Test-2nd ed. (Roberts-2); Children’s Sentence Completion; and the Piers Harris Self Report form: How I Feel about Myself (SE-11). Additionally, Dr. Roosa requested that Parents complete a developmental questionnaire, the Achenbach Child Behavior Checklist, the Behavior Rating Inventory of Executive Function (BRIEF), Multidimensional Anxiety Scale for Children,-2nd Edition (MASC-2), and the Conners Rating Scale- 3rd Edition. Catherine Mosca, Student’s tutor, was asked to complete the Achenbach Teacher Report Form and the Behavior Rating Inventory of Executive Function (BRIEF). Dr. Roosa also reviewed previous evaluations conducted privately and by HW staff (SE-11).
18. Dr. Roosa noted that at times during the evaluation, Student struggled to find words to express his reasoning, especially when answering open-ended questions. His scores on the WISC-V, generally fell within the average range with some falling in the low average and at least one (WISC-V Visual Spatial/Visual Puzzles) in the superior range. He performed in the low average and below average range in most subtests of the WIAT-III math and writing subtests and in the TOWL spelling test. Significant improvement since previous testing was noted in the WRAML-2. Significant challenges with mental flexibility and in regulating speed of work was found in in the D-KEFS Trail making section, while his scored solidly within the average range in the Tower subtest. In the TOVA, Dr. Roosa noted that Student’s performance was characterized by impulsive errors and rapid responding suggesting that Student was “sacrificing accuracy for speed” (SE-11). Student’s behavior checklists showed some difficulties with affective and behavior regulation, but no significant levels of metacognitive skills difficulties (SE-11). The Roberts Apperception Test for Children showed that Student possessed strong skills in recognizing social interactions but his ability to verbally discuss and solve social conflict was somewhat underdeveloped (*Id.*)

Student’s WIAT-III results placed his reading abilities solidly within the average range and problem solving abilities in the low average range, but Numerical Operations results (standard score of 79, 8th percentile) were “considerably weaker” (SE-2). In 2014, Parents had noted their concerns regarding Students math difficulties and his poor performance in the third grade math MCAS (PE-U). Essay writing abilities fell solidly within the average range although, his ability to construct complex sentences and combine sentences was found to be in the low average range, and spelling skills scores were in the below average range (16th percentile).

19. Dr. Roosa diagnosed Student with Generalized Anxiety Disorder, ADHD⁶, Combined Type, and opined that he also presented with a Communication Disorder which was less obvious, noting that while Student's language skills were well developed, he presented mild limitations in higher-order language and specifically in his use of appropriate verbal pragmatics (or age appropriate social use of language especially when describing social situations, emotions or to resolve conflict), and in his ability to remember and process large amounts of language. She opined that he had "good social motivation and many good social skills". Dr. Roosa also found Student's reading skills to be well developed but noted weaknesses in math (with skills clustering at around the 4th grade level) and writing skills. She opined that given the hierarchical nature of math skill building, this area had been most impacted by Student's lack of access to an educational situation. Dr. Roosa also found that Student struggled with some executive functioning skills including self-regulation and metacognitive skills (SE-11). Overall, Student was found to be a very intelligent individual who possessed solid ability to reason and to problem solve with visual information (*Id.*).
20. Dr. Roosa that Student's anxiety should be a top priority when programming, and recommended that he participate in an educational environment where he felt safe and supported, and could trust the adults, especially while acclimating to a new environment. She recommended regular meetings with a speech and language therapist individually or in a small group, and that he meet with a school counselor. The program should support language processing and attentional vulnerabilities and be imbued with multi-modal instruction, presentation of language in discrete chunks with repetition, make the development of expressive language skills a priority, offer in-class support by a special education teacher or trained paraprofessional to manage the language and executive function classroom demands, support for improving written expression and consultation between all service providers. Regarding math, she recommended small group instruction because his skills had fallen below grade level expectations and further recommended that the instructor be mindful of Student's language processing weaknesses and ADHD. She further recommended support by an occupational therapist to address self-regulation and monitoring of reading skills to address his understanding of figurative language and other specific language processing weaknesses to be managed proactively (SE-11).
21. In September 2016, HW agreed to offer Student tutoring with Hannah Gasenberg who had been a teacher at Landmark School in Beverly, MA. Ms. Gasenberg met with Student four times per week for two and a half hours each day. Overall, Parents were pleased with her services and opined that Student had benefitted from tutoring, despite having disagreed over a reading choice (to which Parents objected due to Student's specific circumstances) (PE-C2). According to Ms. Mosca, Student related well to Ms. Gasenberg because she was kind. Tutoring ended in December 2016 when Ms. Gasenberg resigned (SE-2; Mosca).

⁶ Dr. Roosa noted that the DSM-V defines ADHD as: "a neurological based disorder which features a persistent and ongoing pattern of inattention, hyperactivity/impulsivity, or both, that causes impairment in daily life or typical development" (SE-11).

22. Parents and Ms. Harris, Director of Student Services, HW, met on or about September 30, 2016, at which time they agreed that Student required language-based instruction in a small group setting. The Parties agreed to have HW forward a referral packet to Landmark School inclusive of Student's 11/26/2013 to 11/25/2014 IEP (Student's last agreed upon IEP), and the report of the upcoming neuropsychological evaluation.
23. Student's Team, convened on November 14, 2016, to draft the IEP covering the period from 11/14/16 to 11/14/17 (SE-2). The meeting, which addressed Student's sixth grade IEP, was facilitated by Marc Sevigny of the BSEA. In addition to Parents, Katherine Harris, Janice Gauthier (HW general education teacher), Leslie Chapdelaine (HW speech and language pathologist), Maureen Smith (HW Elementary Special Education Coordinator), Kristin Flaherty (HW Secondary Special Education Coordinator), Ramon Ruiz (school psychologist), Rebecca Butler (HW special education teacher), Hannah Gasenberg (Tutor) attended the November 14, 2016 Team meeting (SE-2).
24. The November 14, 2016 IEP noted Student's strengths and Key Evaluation Results (SE-2) and summarized the results of the August 2016 evaluation conducted by Nancy Roosa, specifically,

“Consistent with prior assessments, [Student] continues to show well-developed intellectual functioning. According to the results of the WISC-V, [Student] evidenced a Verbal Comprehension score of 100, a Visual Spatial score of 108, a Fluid Reasoning score of 97, a Working Memory score of 88, and a Processing Speed score of 95. All scores were within the average range except for Working Memory which was within the Low Average range. Because of some scatter within this cognitive profile, a Full Scale IQ score was not considered. His General Ability Index was measured to be 97, scoring within the middle of the average range, [Student] has a longstanding diagnosis of Attention Deficit Hyperactivity Disorder (ADHD), and continues to show symptoms. Therefore, [Student] struggles with some Executive Functioning skills such as self-regulation and metacognitive skills. He specifically evidences difficulty with mental flexibility and regulating his processing speed.

In terms of his Social Pragmatic profile, he demonstrated some good fundamental social skills, and is able to use appropriate social language in many given situations; however, when his abilities were measured in the area of Verbal Pragmatics, his scores fell below age expectations (Pragmatic Language, 6th percentile). While he [is] able to take others' perspectives into account, he is relatively concrete in his language processing. Therefore, it has been determined that he meets the criteria for a Social Pragmatic Communication Disorder. [Student] also exhibits a high level of anxiety, including OCD symptoms” (SE-2).

27. In general, the Team found Student to have made good academic progress, and found Student eligible under Health and Communication categories. The Team developed Goals in the areas of Mathematics, Reading, Written Expression, Counseling, Executive Functioning and Social Communication. The Service Delivery Grid offered 1 x 30 minutes per five (5) days cycle Team consultation, and 1 x 15 minutes Speech/ Language consultation per five (5) days cycle. B grid services included 5 x 50 each Academic Support in math, English language arts, science and social studies per five (5) days cycle by the Special Education Teacher/ Teacher Assistant; and the following direct services under the C grid: 5 x 50 academic support, 2 x 50 reading, 1 x 30 counseling and 1 x 30 social skills per five day cycle each (SE-2). This IEP offered Student placement in a partial inclusion program in district (SE-3).
25. Parents disagreed with the results of the neuropsychological evaluation and specifically with the evaluator's conclusion that Student presented with a "social pragmatic communication disorder". The school-based Team disagreed with Parents' opinions and input. Parents assert that HW proposed placement at a school with some of the same students who had previously bullied Student (Parents). Parents rejected the proposed IEP and requested that the Team reconvene (Parents).
26. On page 2 of what appears to be the N1 form, Kristen Spanger Flaherty, HW's Secondary Special Education Coordinator, noted that HW
- ...made clear that the district would certainly support a referral to an outside program which could meet Student's needs. The district maintains that position whether it be another public school program, approved private school or collaborative program. The proposed placement has been identified as the district MS until the Team is able to identify another program or placement agreeable to both the district and the family. (See pages 5 and 6 of Parents Hearing Request).
27. In December 2016, Student's tutor, Ms. Gasenberg, stopped tutoring Student. HW agreed to make arrangements for a replacement tutor to resume tutoring in January 2017, but Parents requested that tutoring start earlier.
28. As a result of the events during the end of fourth grade, Student experienced a great deal of stress and anxiety during fifth grade both in private placements and in the community, and he developed symptoms of Obsessive Compulsive Disorder (OCD) symptoms (Chubinsky, Parents). Parents sought out psychological and medical treatment for Student through psychologists (Cathy Mullin, LICSW, and physicians/ psychiatrists (Dr. Edgar Oppenheimer and Dr. Peter Chubinsky) (SE-11; Chubinsky, Parents).
29. On January 3, 2017, psychiatrist Peter Chubinsky (CV at PE-F5), a conducted a psychiatric evaluation of Student (PE-F1). Dr. Chubinsky found Student to present as

younger than his age, with some symptoms of anxiety and depression. He diagnosed Student with Post Traumatic Stress Disorder (PTSD) secondary to bullying, ADHD and a Communication Disorder (expressive and receptive language disorder). He however disagreed that Student presented with a Social Communication Disorder and found Student's history to be incompatible with this diagnosis (PE-F1; Chubinsky).

30. Dr. Chubinsky recommended that Student not return to HW and that he be tutored until a suitable placement was found. He opined that Student had recovered enough to return to a school that made him feel safe, and recommended that he attend a program with small classes that could address his language/communication disorder, that had a strict anti-bullying atmosphere, and was relatively close to Student's home. Dr. Chubinsky also recommended adjusting Student's medication, which he changed to Concerta (27 mg) to address ADHD and Prozac (20 mg daily) for anxiety (PE-F1; PE-F2; PE-F3).
31. On January 19, 2017, HW received Parents rejection of the IEP and placement along with a letter from Parents to Ms. Harris, dated December 18, 2016. Parents' rejection of the IEP was based on Parents' belief that the IEP would not appropriately address Student's language-based deficits. According to Parents, the IEP was developed "without sufficient information as well as what [Parents] feel to be constructed reports" regarding Student (SE-3). Parents further noted their continued efforts to work on options for securing a school for Student and looked forward to the reconvening of the Team on January 25, 2017 when they expected to reach resolution, purportedly regarding placement (SE-3).
32. The Parties participated in a BSEA mediation on January 25, 2017. Their agreement called for Parents to investigate and apply to TECCA (a virtual school), HW to reimburse Parents for counseling, testing and speech therapy services, and further that "if and when Parents identify a private placement for [Student], the Parents will notify the BSEA to schedule a mediation to develop a plan to facilitate the placement". Parents later decided against TECCA because it would be too isolating for Student and instead requested that HW continue to offer tutoring services (Parent).
33. On March 7, 2017, Parents filed a Hearing Request⁷ with the BSEA seeking that HW
 - 1) Provide whatever accommodations are necessary to allow [Student] to continue with his education while he recovers from his PTSD, including tutoring and extended school-year services, such as participation in the Landmark School's summer camp;
 - 2) Pay for [Student] to attend a school adept at instructing students with language-based learning disabilities and executive-functioning disorders; a school capable of dealing with Student's fragile emotional

⁷ HW had previously filed a Hearing Request on February 7, 2017 on related issues, which request was withdrawn on September 13, 2017. See BSEA # 1705083.

state; a school that does not contain the same group of students who bullied [Student] and a school that is relatively close to [Student's] home, and the parents who have worked so hard to support him during these extremely difficult years, such as the Landmark School;

3) Reimburse [Parents] for:

- a) [Student's] counseling with Cathy Mullin, LICSW;
- b) [Student's] speech-therapy and speech and language testing;
- c) [Student's] counseling with Dr. Michael Tsappis and Jennifer Tsappis;
- d) [Student's] tutoring with Catherine Mosca;
- f) [Student's] testing and treatment with Dr. Chubinsky;
- g) [Parents'] attorney's fees and costs.

4) Award any other relief that is appropriate.

34. Following a Pre-hearing Conference on or about March 29, 2017, Dr. Chubinsky accompanied Parents on a visit to New England Academy on April 7, 2017. (New England) (PE-4). Dr. Chubinsky opined that it was a fine school for students with different diagnoses, but was not appropriate for Student. He further opined that Student required speech and language services which were not offered at New England. Dr. Chubinsky was of the opinion that Student would be able to succeed in a general education curriculum with the right supports to address his language learning disability. He also opined that Student would best be served by receiving psychiatric and counseling services outside school (PE-4).
35. Parents arranged to have Student undergo an Executive Functioning and Social Communication Evaluation with Beverly Montgomery, MS CCC-SLP, (CV at PE-G4) of Lex Communicate (PE-G1; SE-13). The evaluation, which occurred during May and June 2017, included an observation of Student during art class at New Hope Tutorials on May 8, 2017. Ms. Montgomery used the following assessment instruments: the Clinical Evaluation of Language Fundamentals-Fifth Edition Metalinguistics; Behavior Rating Inventory of Executive Function, Second Edition, Executive Functions Test- Elementary, Portions of the Social Thinking Dynamic Assessment, and Prutting & Kirchner Pragmatic Protocol (PE-G1; SE-13).
36. Based on the results of her observation and evaluation of Student, Ms. Montgomery opined that Student might have difficulty remaining attentive and focused in the general education classroom due to his ADHD and would benefit from cues to help him focus and remember what he is doing and take tasks to completion. She noted that despite his age and cognitive abilities Student was lacking in basic personal knowledge and she questioned whether he knew how to use language to elicit help or if stress and anxiety interfered with his ability to seek clarification. Ms. Montgomery concluded that Student presented with mild executive functioning and social communication deficits, noting that concomitant anxiety and PTSD, as well as lack of access to peers contributed to these deficits (PE-G1; SE-13). Ms. Montgomery noted that Student,

...has strong social knowledge and many intact social communication skills and struggles only in highly nuanced advanced interactions during which he can appear awkward. Neither executive functioning nor social communication appear to be primary areas of deficit for [Student], and indeed his challenges in these areas are minimal and dependent in large part on the language demands required. Despite the mild severity of these challenges, [Student] is vulnerable in social interactions because of the continually challenging, rapid pace of input and output required, and the level of integration expected at his age. He presents as someone younger than his peers and sometimes may have difficulty holding social information in his working memory. [Student] is also vulnerable to flight response when presented with situations or tasks that can be anxiety provoking, and emotional regulation is key precursor to cognitive regulation and efficiency (PE-G1; SE-13).

37. Ms. Montgomery recommended that Student return to a classroom environment with consistent access to peers, in a placement where he felt supported and safe. The classroom should be small, structured and nurturing with zero tolerance for bullying. It should offer a college preparatory challenging curriculum delivered in a manner amenable to Student's working memory, attention and language issues. She recommended a multimodal presentation of information to address Student's working memory and word retrieval weaknesses. She noted the importance of paying attention to impulsivity and suggested executive functioning coaching (PE-G1; SE-13).
38. On June 9, 2017, Student underwent a speech and language assessment with Meghan Ridley, M.S., CCC-SLP and Bonnie Singer, PH.D., CCC-SLP (SE-12). Student was administered the Peabody Picture Vocabulary Test, Fourth Edition (PPVT-4), Expressive One Word Picture Vocabulary Test-4 (EOWPVT-4) and Clinical Evaluation of Language Fundamentals-5th Edition (CELF-5). Overall, Student scored within the average and above average ranges on many of the subtests but demonstrated significant weaknesses in the Formulated Sentences, Following Directions and the Oral Narrative subtests. Student's "performance reflected weaknesses with rapidly planning, organizing, retrieving, and formulating language within open-ended discourse tasks" (SE-12). Articulation and phonological substitution errors were noted but while the sounds were atypical they did not interfere with Student's intelligibility. Student was noted to use strategies to assist him such as asking for clarification of directions, repetition, definitions of words, visual anchors, self-correction and self-monitoring (SE-12).

39. Dr. Singer and Ms. Ridley found that while Student continued to present with speech and language deficits which were atypical for a student his age (i.e., vulnerabilities in semantics, syntax, morphology and pragmatics) he did not meet the criteria for a diagnosis of Social Communication Disorder. He however was found to be at risk for making misguided or impulsive social decisions when not provided clear structure, due to his attentional and executive function deficits (SE-12).
40. Dr. Singer and Ms. Ridley diagnosed Student with an Expressive Language Disorder which impacted academic performance and placed him “at risk for difficulties with fast-paced and/or unstructured social interactions” (SE-12). They recommended that Student participate in a program that offered small group classes (with no more than ten students) who presented with similar language disorder profiles and average intellectual functioning. The instruction should be offered by qualified instructors with expertise in teaching children with language disorders who could provide “systematic, strategic and consistent instruction” while maintaining attention to “language heavy” instruction that can overwhelm and confuse Student as the complexity increases. All subjects should be supported with visual anchors (e.g., graphs, charts, pictures and written instructions) and Student should receive extended time for assignments and during test taking. They recommended that Student receive at least once per week individual or small group speech and language instruction outside the classroom with a certified instructor to address his expressive language deficits. Dr. Singer and Ms. Ridley also recommended that Student participate in a weekly social skills group facilitated by a clinician with expertise in social pragmatics outside school, and collaboration between the in-school and outside school speech and language instructors to strengthen language and social skills in both environments. Lastly, they recommended that Parents continue to provide private psychological support, medical support for management of ADHD and that they seek opportunities for Student to engage in structured social activities in Student’s areas of interest and strengths (SE-12).
41. In June of 2017, Parents attempted to enroll Student at the Waring School (Waring) summer camp (PE-P). On June 27, 2017, Shelley Morgan, Director of Admissions, wrote to Parents describing Student’s difficulties at the school during the math placement exam and relating Student’s statement that he did not wish to attend Waring, but rather Shore (where a friend attended) or New England Academy. Ms. Morgan noted that based on her review of New England Academy’s website it appeared to be a good choice for Student during his transition back into a school setting because of its therapeutic approach, and recommended that Parents reconsider it as a placement option. Ms. Morgan shared her concerns that it would be hard for Student to maintain his focus at Waring and worried that he would disrupt the class. She offered to have Parents speak with the Director of Waring Works because it was a smaller program (PE-P).
42. During the summer of 2017, Student participated in ID Tech Camps at Harvard University, Endicott College and MIT. The one week, eight hour daily camps focused

on 3D Game Design: Minecraft and MCEdit, Cryptography and Cyber Security, and C++ Coding respectively (PE-B1, Parent). The C++ instructor noted

...you are undoubtedly a math genius. I am fascinated by the complex equations you write on the black board to show the class. Using your strong reasoning skills, you excelled. I still remember the time everyone gathered around your computer to see your code for one of the hardest modules in Game Plan. You imbued your project with a wonderful sense of humor, engaging players into your game from the start. I cannot wait to hear news of your achievements in the future given your newly acquired C++ programming skills. You are heading for greatness (PE-B1).

43. During the summer of 2017, Student worked with Rachel Kennedy, M.S. Ed. (certified in Moderate Disabilities grade 5 to 12), on reading and writing skills and on verbal/non-verbal expression during the summer of 2017. She described Student as a hard worker who made positive gains and further noted the interventions that best worked with him (PE-H4).
44. On August 24, 2017, Parents signed a release of information for HW to forward a referral packet for Student to Landmark School (SE-6) and on August 29, 2017 requested that HW forward a referral packet to Landmark School that noted Expressive Language Disorder as his main area of disability (SE-5). This was the second time Parents filed an application to Landmark as they had previously done so in August 2016 (PE-I1; PE-I2).
45. On August 24, 2017, Parents also granted consent for HW to communicate with both Dr. Peter Chubinski (Student's psychiatrist) and Cathy Mosca, Student's private tutor (SE-7).
46. On September 1, 2017, Parents received an email from Libby Parker, Director of Admissions at Landmark School, informing them that Student was not a fit for the Landmark program, and noting that she would be happy to discuss the details with Parents over the telephone (PE-I3; PE-I4).
47. On September 5, 2017, the Office of Admissions of Landmark School notified Ms. Bucyk, HW Director of Student Services, that Landmark was not the appropriate placement for Student and therefore, Student would not be admitted for the 2017-2018 school year (SE-4). Christine Ozahowski (Associate Director of Admission) explained that Student was atypical of the students at Landmark in that their students presented with a primary diagnosis of dyslexia or a related reading disability, some with anxiety, executive functioning or expressive language deficits as a secondary diagnoses. Since Student did not have a diagnosis of dyslexia or a related reading disability he did not fit Landmark's profile. Ms. Ozahowski noted that if Student's

future testing revealed changes in his learning profile Landmark would re-open his file (SE-4).

48. On September 11, 2017, Parents signed a consent for release of information by HW to Shore County Day. Parents however, revoked their consent via email the following day (SE-8). A subsequent consent form seeking to forward referral packets to Marblehead Public Schools, New England Academy and Learning Prep School was never signed by Parents (SE-9).
49. A Team meeting was held on September 11, 2017. In addition to Parents, Ms. Bucyk, Lydia Austin (HW general education teacher), Leslie Chapdelaine (HW speech and language pathologist), Lindsey McGovern (HM Secondary Special Education Coordinator), Janet Soares (HW special education teacher) attended the September 11, 2017 Team meeting intended to discuss the result of recent evaluation conducted by HW and Beverly Montgomery the private speech and language evaluator selected by Parents (SE-1).
50. The IEP issued was issued on September 18, 2017 and updated the Student's strengths and Key Evaluation Results Summary and delineated the services proposed for the beginning of 7th grade through 11/14/17 (SE-1). Goals in the areas of Math, Reading, Written Expression, Counseling, Executive Functioning and Expressive Language were drafted. The Service Delivery Grid offered 1 x 30 minutes per five (5) days cycle consultation by the Team, and 1 x 15 minutes Speech/ Language consultation per five (5) days cycle; 5 x 50 each Academic Support in math, English language arts, science and social studies per five (5) days cycle by the Special Education Teacher/ Teacher Assistant within the general education classroom (B grid); and 5 x 50 academic support, 2 x 50 reading, 1 x 30 social skills, 1 x 30 counseling and 1 x 50 speech and language therapy per five ay cycle each (SE-1). Separate placement forms were offered for Student to attend a separate day public or private school (*Id.*).
51. Parents rejected this IEP in full because the Key Evaluation Results Summary continued to state Nancy Roosa's August 2016 opinion that Student met the criteria for a Social Pragmatic Communication Disorder⁸⁸ and consequently, the Team's determination that Student was eligible for special education under the categories of Health and Communication on the basis of ADHD, Social Pragmatic Communication Disorder and Generalized Anxiety Disorder (Parents).
52. A letter written by Ms. Montgomery to Parents on September 25, 2017, notes Ms. Montgomery's concerns regarding the proposed September 2017 IEP and clarifies her

⁸⁸ The IEP noted Dr. Roosa's findings that "In terms of his Social Pragmatic profile... when his abilities were measured in the area of Verbal Pragmatics, his scores fell below age expectations ...[w]hile he [is] able to take others' perspectives into account, he is relatively concrete in his language processing. Therefore, it has been determined that he meets the criteria for a Social Pragmatic Communication Disorder" (SE-1).

position that Student requires small class size, not a substantially separate class, and states that she would support placement in an independent day school that includes typically developing peers. She specifically opined that neither New England Academy nor Learning Skills Academy were appropriate placements for Student (PE-G3). Ms. Montgomery supported Student's placement at Landmark School (PE-G2).

53. On September 27, 2017, HW's attorney wrote to Parents' then attorney, stating the District's willingness to "support, fund and otherwise facilitate any educational program" secured by Parents. HW further explained that Student could attend any in-district placement or out-of-district school that did not exceed one hour commute; a virtual school, home schooling, participate in a school choice program, or attend a charter school (PE-A).
54. Email correspondence between Parents and Ms. Bucyk dated September 29, 2017, lists the documents forwarded as part of HW's referral packets, to wit: the September 2017 proposed IEP (which referenced what Parents termed as "constructed diagnosis of Social Pragmatic Communication Disorder" as per Dr. Roosa's report); Dr. Roosa's Neuropsychological Assessment of August 2016; Dr. Chubinsky's report of January 14, 2017; Ms. Montgomery's May/June 2017 speech and language assessment and her letter dated August 12, 2017; the ID Tech Camp certificates; and, Dr. Singer's and Ms. Ridley's speech and language evaluation report (PE-L). The emails note HW's willingness to further discuss resolution of the pending issues at an upcoming Pre-hearing Conference (PE-L).
55. Sometime in the late summer of 2017, Parents privately applied to Shore Country Day School (Shore), a private general education school in Beverly, MA. An email from Clair Ward to Parents, dated September 29, 2017, notes the school's rejection based primarily on data collected during Student's visit to the school and his failure to meet the "already formed class ...dynamic" (PE-P). The record lacks any information that there was any communication between Shore and HW.
56. Prior to the Pre-Hearing Conference, on October 12, 2017, Parents wrote a list of their conditions for Settlement which included: a referral to and funding of an appropriate school for Student; reimbursement for expenses, disciplinary action against the four students who allegedly bullied Student during afterschool programs and at the private schools; destruction of all reports considered tainted by Parents (e.g., Dr. Roosa's report, IEPs, letters including those to proposed schools that stigmatize Student and other unspecified documents); a copy of the Massachusetts Bullying Law: MGL, Chapter 71 and 370, and information on criminal harassments laws MGL c.265 and c.43 (PE-N).
57. On October 12, 2017 the Parties participated in a Pre-hearing Conference during which several agreements were reached in an attempt to facilitate Student's placement. (See Corrected Post Pre-Hearing Order dated October 19, 2017, Administrative File.) The Understanding of the Parties and Orders were as follows:

UNDERSTANDINGS:

- Beverly Montgomery and Leslie Chapdlaine will meet on Monday October 16, 2017 at 10:00 a.m.
- HW will include the standard referral letter, the IEP to be developed at the upcoming Team meeting and Beverly Montgomery's evaluation report in its referral packet to the private special education schools to which Parents consent. Parents intend to include the new IEP to be developed, Kathy Mosca's report, Beverly Montgomery and if they so choose, Leslie Chapdlaine's report. Parents further agree to complete any other forms required in the admission process to any private, charter or virtual school of their choice.
- Parents will request advancement of Student's Team meeting currently scheduled for November. The Team meeting may occur at any time following the meeting between the two speech and language pathologists stated in #1. The Team meeting may convene on Thursday October 19, 2017 from 10:00 a.m. to 10:00 a.m. The Parties are advised to use the time productively. If the Team convenes on that day, HW will proffer its IEP by the close of business on October 23, 2017.
- Upon completion of the proper forms, HW agrees to reimburse Parents for up to 10 hours a week of tutoring at the library with a licensed teacher. HW's agreement to refund Parents for tutoring is limited and intended for a short period of time through the Hearing in November 2017.

ORDERS:

- The Parties shall submit a list of the schools they are considering for Student by the close of business on October 19, 2017.
- Parents shall, by the close of business on October 30, 2017, submit the list of outstanding issues for Hearing from among those listed and presented at the Pre-hearing Conference.
- The deadline to supplement the exhibits and witness lists relevant to the issues is the close of business on November 21, 2017.
- The Hearing will be held on November 28 and 29, 2017 at 10:00 a.m. at the Offices of DALA/BSEA, One Congress St., 11th floor, Boston, MA. If Parents intend to secure successor counsel, they shall do so well in advance of the aforementioned Hearing dates, as no further postponements of the Hearing will be granted.

58. At Parents' request during the October 2017 Pre-hearing Conference, the Hearing Officer requested that Shore and Landmark submit a statement of their position regarding Student's admission to their programs. On October 16, 2017, Clair Ward of Shore submitted a letter to the Hearing Officer stating that Student had been rejected because his failure "to meet the academic criteria required for admission" (PE-W). Similarly, Landmark also forwarded a letter noting its rejection of Student for the 2017-2018 school year, as Student did not meet their student profile. The letters were immediately forwarded to the Parties (Administrative Record).
59. Parents' counsel withdrew his representation on October 16, 2017 after which, on October 23, 2017, Parents wrote to the BSEA stating their awareness of HW's agreement to fund a placement for Student in September 2017 (including Landmark) or other placement. Parents however believed that "reports and stigma have continued to be the issue" noting that they had been "coaxed into providing said reports, stating we should be 'transparent' and so they were all, previously distributed to Landmark, and others; i.e., IEP dated 11/14/2016,...neuro psych dated 8/2016 as well as SLP dated 7/2017. We have spent over a year undoing this constructed diagnosis that plagued [Student]." Parents' letter further raised concern over the lack of tutoring offered by HW and a desire that Student be educated amongst peers in an educational setting. Parents further acknowledged understanding of all other terms, Orders and deadlines memorialized in a Corrected Post-Pre-hearing Order issued on October 19, 2017.
60. Student's Team reconvened on October 19, 2017 to discuss Ms. Montgomery's evaluation report and to draft a new IEP for Student's seventh grade (SE-10). The resulting IEP, covering the period from October 19, 2017 to October 12, 2018, was developed with a great deal of input from Parents and their experts, all of whom were offered ample opportunity to participate and contribute to the language of the IEP (Parent, Montgomery, Bucyk). The IEP was drafted in a collaborative manner and was projected on a screen for everyone to see while the Team went line by line as they listen to the participants, including Parent and her expert, discuss each aspect and agree to the different portions of the IEP (SE-10; Bucyk). At Hearing Parent conceded that she and her expert had been allowed meaningful participation at the Team meeting (Parent). Moreover, regarding the four goals contained in the IEP (expressive language, executive functioning, reading and written language), Ms. Montgomery provided the language for the expressive language and executive functioning goals, and the reading and written language goals were provided by Mother with input from Ms. Mosca and Ms. Kennedy (Parent, Montgomery, Bucyk).
61. The IEP resulting from the October 19, 2017 Team meeting was based on Parents' input, Ms. Montgomery's input and recommendations consistent with her May/June evaluation of Student regarding expressive language and executive functioning goals; current performance level and reading goals/objectives language prepared by Student's tutor Cathy Mosca; and, current performance level and goals in the area of written expression prepared by Parent and Cathy Mosca. The objectives for a written

expression goal were developed in collaboration with school-based Team members. The school based-participants offered their input at the meeting and following a discussion regarding a math goal determined that one was not necessary at the time (SE-10; Bucyk, Montgomery, Parent). HW's math teacher opined that Student met expectations for grade level math performance, noting that the types of accommodations recommended by Ms. Montgomery could be implemented by the teacher without the need for a math goal (Bucyk).

62. The N1 accompanying the October 2017 IEP further stated the understanding of the parties reached during the Pre-hearing Conference of October 17, 2017 and noted what happened in relation to each one of the Parties' agreements (SE-10). Specifically, it stated that

-Meeting between Leslie Chaplelaine, District SLP, and Beverly Montgomery, M.S., CCC-SLP, as parent requested to be part of this meeting and requested, via email on October 13, 2017, that the meeting be cancelled if the parents could not participate.

-Written report by [P]arents' private tutor, Cathy Mosca, was not provided prior to or during the team meeting. A request was made for this written report to be sent to the Secondary Special Education Coordinator, Lindsey McGovern, after the team meeting.

[Parents] did not provide a written report, rather revised Reading and written Language goals were provided on 10/23/2017 at 12:57 pm. The District did not revise the proposed goals, which were reviewed and agreed upon by the Team, at the Team meeting. The District did not consider these revisions within the proposed IEP developed at the Team meeting on 10/ 23/2017.

63. In addition to numerous accommodations, the October 2017 to October 2018 IEP proposed services to address Student's expressive language, executive functioning, reading comprehension and written language deficits (SE-10). Specifically it offered one fifteen (15) minute speech and language consultation per five day cycle; one (1) fifty (50) minute reading comprehension instruction session per five day cycle and daily fifty (50) minutes of direct written language instruction in the general education setting; one fifty (50) minute speech and language therapy session per five day cycle; and twice (2) per week fifty minute academic support service sessions (SE-10).

64. The IEP contained several placement options, to wit: full or partial inclusion programming at a public school, public or private day school at a location to be determined so as to promote collaboration with and in consideration of Parents' preferences (SE-10; Bucyk). So as to resolve the matter and facilitate Student's placement forthwith, HW also agreed to fund Student's placement at a private school (Bucyk). All of these placement offers had been available to Student and Parents

since the beginning of September 2017 but at the time of the Hearing Student continued to be tutored at home (Parents, Bucyk).

65. In an update to the Hearing Officer written by HW on October 19, 2017, HW noted that it had identified 14 schools which might consider Student for application. HW further noted that Ms. Montgomery and Ms. Chapdlaine had not met on October 16, 2017 as had been recommended by the Hearing Officer during the Pre-hearing Conference because Mother had indicated that she intended on attending the meeting even though no other participant had been contemplated for the meeting (SE-15).
66. HW forwarded a Consent for Release of Information and Open Communication to Parents offering to send referral packets containing the documents agreed to by the Parties during the October 2016 Pre-hearing Conference, to wit: Student's most recent IEP to be proffered on or about October 19, 2017⁹, Ms. Montgomery's report and the standard referral letter (SE-14; SE-15). HW proposed referrals to the following schools: Broccoli Hall Inc. The Corwin-Russell School in Sudbury, MA; Marblehead Public Schools; New England Academy in Beverly, MA; Learning Skills Academy in Rye, NH, Learning Prep in West Newton, MA and Merrimack Heights Academy in Merrimac, MA (SE-14). Parents took issue with language in the Consent form and refused to sign the form (Parents). Additionally, a letter forwarded by HW on October 18, 2017, listed additional schools to which Parents could apply on their own. Those were: Sparhawk School, Salem Charter School, Pioneer Charter School of Science II, Bradford Christian Academy, Covenant Christian Academy, Pike School, Buckingham Browne & Nichols, and Glenn Urquhart. Parents could also access other schools through school choice (SE-15). Citing a variety of reasons, Parents objected to most of the proposed placements, noting their desire that Student attend Landmark or Shore despite both schools having rejected him. (PE-I3; PE-W; Parents).
67. Parents fully rejected the October 19, 2017 to October 18, 2018 IEP on or about October 23, 2017 (SE-16).
68. On October 24, 2017 Ms. Montgomery wrote to Parents noting her concerns and discrepancies regarding the October 19, 2017 Team meeting and the proposed IEP. (PE-X2; PE-Y). Ms. Montgomery raised concerns regarding: a) the use of the phrase "constructed by Parent and private tutor" regarding the goals drafted by Ms. Mosca and Ms. Kennedy as this phrase was misleading in her opinion; b) the fact that both she and HW's speech and language pathologist recommended 3 x 50 expressive language services per week but the IEP offered 1 x 50 weekly; and c) despite the Parties' agreement as to what would be included in packets to prospective schools, the Consent form forwarded to Parents contained schools Parents and their experts found

⁹ The October 19, 2017 letter corrected a typo in the original Post Pre-Hearing Order which incorrectly listed the September 11, 2017 IEP (SE-15).

to be inappropriate and contained discretionary language as to content (“other pertinent information”) to which the Parties had not agreed (PE-X2; PE-Y).

69. Parents wrote again on October 30, 2017, further clarifying their issues for Hearing regarding Student’s bullying and stating their belief that the manner in which HW handled those “set the stage” and “gave permission” for the abuse to continue against Student and the family. Parents allege that HW “constructed reports, and unwarranted diagnosis” prevented Student from attending any educational program, damaged his reputation and isolated Student. As remedies Parents sought for HWSO to:

- 1) Provide whatever accommodations necessary to allow [Student] to continue with his education and support placement, chosen by parent[s].
- 2) Pay for [Student] to attend a school adept at instructing students with language-based learning disabilities and executive function disorders; a school that does not contain the same group of students who bullied [Student], and is relatively close to home. A school that will not further stigmatize and isolate [Student], placing him with like peers.
- 3) Reimbursements, as previously outlined, for: interim educational programs, counseling, speech-therapy, testing, counseling services, tutoring and ongoing treatments with healing.

70. On November 14, 2017, Parents wrote to Ms. Bucyk stating their rejection of the IEP resulting from the October 19, 2017 Team meeting because of concerns with language and information on the N1 which Parents wanted removed; the note stating that Parents and Student’s tutor had constructed the language in the Reading/Writing goal; and HW’s failure to include a Math goal for Student (PE-O). Parents further noted their experts’ statements during the Pre-hearing Conference that Student does not present with a Social Pragmatics Communication Disorder or Generalized Anxiety Disorder, but rather his diagnoses were: ADHD, Executive Functioning deficits and Expressive Language Disorder (PE-O).

71. HW agreed to fund Student’s private tutoring through issuance of the Decision in the instant matter.

72. Parents seek reimbursement for the numerous private services and tutorials provided by them as well as other out of pocket expenses, including attorney’s fees (PE-M1; PE-V).

73. Since September 2017, shortly after Ms. Bucyk had become the Director of Student Services at HW, she met with Parents on four occasions and had numerous telephone calls and email exchanges. She also spoke with Dr. Chubinsky and Ms. Montgomery to better understand their views and opinions regarding Student’s needs (Bucyk).

74. Both Dr. Chubinsky and Ms. Montgomery opined that Student was, and had been for a while, ready to return to an appropriate school setting. Both made similar recommendations for re-entry including class size (10 to 15 students) and an environment that properly addressed Student's language deficits and was safe and supportive. (Chubinsky, Montgomery). Dr. Chubinsky opined that Student was being hurt by being out of school and that Student felt excluded. He noted that Student might need extra support during re-entry but he expected him to do well because he was resilient. Parent testified that when Student sees the school bus go by past his house he questions why he is not on it (Parent). Dr. Chubinsky further noted that while he would expect Student to be reactive to situations that are confusing to him, he did not consider Student to have a behavioral problem and would be surprised if Student were unable to make friends (Chubinsky). According to Dr. Chubinsky, counseling and psychiatric services could continue to be offered outside school (*Id.*).

CONCLUSIONS OF LAW:

The Parties in the instant case do not dispute Student's entitlement to special education under the Individuals with Disabilities Education Act (IDEA)¹⁰ and the state special education statute¹¹. The Parties further agree that Student is not currently receiving a FAPE and has not received a FAPE since he was removed by Parents from his placement at Cutler in May 2015, Student's fourth grade.

Parents assert that starting in fourth grade (2014) Student was subjected to a series of bullying incidents by peers, teachers, school administrators, coaches and the parents of peers, during after-school programs, recreational, summer camps and at all public and private schools attended (PE-C1; PE-C2; PE-D1; PE-D2; PE-D3 PE-D5; PE-D6; PE-D7; PE-D-9; PE-D10; Parents). According to them, in all the aforementioned settings Student was "set-up", "abused", "harassed", "scapegoated by adults" and prevented from succeeding through intentional interference and through "constructed" IEPs by no fault of Student. Parents hold HW responsible for Student's failures at regular private schools (Clark School, St. John the Evangelist/St. John's Prep) and inability to place Student at their desired settings including DESE approved special education private schools and regular private schools (i.e., Landmark School, Shore) (PE-D8; PE-D9; PE-D-10; Parents). As a result of these experiences, Parents fears and concerns for Student have rendered the Parties powerless to move forward with placement of Student and thus now seek BSEA assistance in determining the appropriate program and placement for Student.

As the party challenging the appropriateness of the proposed IEP, 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.¹²

¹⁰ 20 USC 1400 *et seq.*

¹¹ MGL c. 71B.

¹² *Schaffer v. Weast*, 126 S.Ct. 528 (2005) places the burden of proof in an administrative hearing on the party seeking relief.

Upon consideration of the evidence, the applicable legal standards and the arguments offered by the Parties in the instant case, I conclude that any failure to provide Student FAPE has been through no fault of HW and thus, Parents have not met their burden of persuasion pursuant to *Schaffer*. The record demonstrates that over the past two years, HW has made numerous attempts to work with Parents to provide Student with meaningful educational opportunities which Parents have fully rejected. HW Teams have been open and receptive to the available information and input by HW's and Parents' experts and HW has remained flexible, acquiescing to Parents' preferences, views and opinions on multiple occasions.

In rendering this 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. My reasoning follows

As stated above, the difficulties in this matter arose after Student was bullied by peers during after school programming which he attended in HW, and later by other individuals. Over the next couple of years, following Parents' withdrawal of Student from HW and enrollment in private general education schools, the bullying appears to have continued in multiple non-public schools settings. (Clark and St John's Prep.)

Student is a bright, resilient, creative and kind thirteen year old resident of HW who presents with an expressive language disorder, ADHD and PTSD (SE-10; Montgomery, Chubinsky, Mosca, Parents). He also presents with mild executive functioning and social communication deficits, and suffers from anxiety secondary to PTSD (Montgomery, Chubinsky). Student is eager to learn, misses friends and has wanted to be back in school for a while, even if the option was HW (PE-B2; PE-B3). Despite craving and seeking friendships with peers, Student is vulnerable in social situations due to his PTSD and presentation as somewhat younger than his chronological age (Chubinsky). As such, any re-entry to school must include a plan that supports and facilitates his transition (*Id.*).

Student's Team has convened on numerous occasions following Parents' withdrawal of Student from Cutler in 2015. At every meeting, including the ones on November 14, 2016, September 11 and October 19, 2017, the Team has given serious consideration to all available information, and has remained flexible and willing to work with Parents to draft an IEP based on the objective and subjective data as well as Parents' input. HW was even willing to set aside the social pragmatic communication disorder diagnosis given by Dr. Roosa in 2016, when Ms. Montgomery evaluated Student in May/June 2017 and explained that instead, Student's expressive language deficits more accurately accounted for Student's pragmatic communication difficulties; Dr. Chubinsky agreed.

Shortly after beginning her employment at HW, and starting in September 2017, Ms. Bucyk met with Parents on numerous occasions, and she has also communicated with them via email and telephone (Bucyk). Prior to her tenure, Ms. Harris, the former Director of Pupil Services in HW, had numerous communications with Parents (*Id.*). Despite interminable meetings and discussions Parents complain that HW has been unwilling to meet with them. HW has declined to continue to hold meetings that yield no resolution unless HW acquiesces

to all of Parents' demands. Parents' participation in multiple meetings and processes is undeniable but the result has been a stalemate and three years later Student remains at home, one of the most restrictive placements contemplated by the IDEA. The evidence is persuasive that HW has attempted to collaborate with Parents in good faith, has offered appropriate IEPs and a myriad of options in its efforts to appropriately place Student.

Parents insistence on being present during every process, including all telephone conference calls between the Hearing Officer and the attorneys to discuss scheduling and other housekeeping matters, is evidence of their extreme lack of trust, even of individuals chosen by them. Similarly, Parents have insisted on attending every meeting, such as the one suggested by the Hearing Officer at the October 2017 Pre-hearing Conference, which purposefully contemplated *solely* the participation of the private and HW speech and language pathologists to review and discuss their test protocols, something clearly outside the expertise of Parents. Parents' presence at the aforementioned meeting was not only discouraged but a clear disregard for the instructions of the Hearing Officer who had explained that the meeting was to occur between two individuals with the same credentials who spoke the same language. Ms. Montgomery and Ms. Bucyk testified to this effect, having heard the Hearing Officer explain this at the Pre-hearing Conference (Montgomery). The result was that the meeting between speech therapists never took place, and HW cannot be faulted for this decision.

A parent's right to meaningful participation does not equate to micromanagement of a case to the point of stifling every process and impeding determinative decisions by those with the knowledge and experience to make them. At every point since the beginning of this Hearing Parents have second guessed and changed their minds about issues, even when they directly contributed to and were a part of the decision-making. This was clearly the case with the most recent IEP meeting held in October 2017, during which Parents own experts provided most of the language regarding the goals and objectives in the IEP, every proposed service was discussed, and parental input meaningfully considered as were the reasons for the services ultimately proposed. Parent conceded during her testimony that she was offered meaningful participation and the IEP contained many, if not most of the services and language suggested and agreeable to her. The following day Parents discussed the IEP with yet another consultant who was not present at the meeting and, on her advice, opted to reject the IEP in full. This was ill-conceived as Parents' partial acceptance of the IEP would have at least obligated the District to initiate provision of services Student desperately needs, while allowing for ongoing discussion over the disputed portions.

Parents' love, support and concern for their child is unquestionable. I am persuaded that even when Parents made the wrong choices, they made them with good intentions. They have attempted to supplement Student's education in the home but despite their best efforts the fragmented services are insufficient to promote Student's educational potential and without access to peers, the setting is extremely isolating to Student.

It would appear that the experiences of the past three years have impacted not just Student, but Parents as well, to the point where a desire to shield Student from bad experiences, fear for his safety and well-being, and a desire to create the perfect educational conditions have totally paralyzed them. While their search for the perfect program continues, Student loses precious

educational, social and academic development opportunities that can never be recuperated. It is noteworthy that nine pages of Parents' closing argument focuses on the experiences of the past and only one page discusses their position regarding current placement for Student. Clearly, not just Student, but also Parents, have suffered tremendously and are in need of reassurance that everyone will work together to facilitate Student's re-entry and successful experience in school.

Without Parents' support of the program Student's transition may be more difficult. Parents need to take the proverbial "leap of faith" and trust that despite some bumps in the road as Student transitions back into school, he will make it with the support of school personnel in tandem with the support of all of the experts that have been by his side over the past years. While Dr. Chubinsky cautioned that there could be some challenges during re-entry, he believed in Student's resilience and noted his unconditional willingness to assist Student (Chubinsky). I am persuaded by his credible opinion that Student is more than ready to return to school and has been for several months if not a year. Ms. Montgomery also convincingly testified that Student is ready to and indeed needs to return to an appropriate school program. This must happen immediately. This brings me to the type of program appropriate to meet Student's needs.

The most recent IEP developed in October 2017, contains four goals that address expressive language, executive functioning, reading and written language, as drafted by Parents and their experts and/or with their input (SE-10). The IEP offers the following services based on a five day cycle: 1 x 15 minutes speech and language consultation per week by the speech and language pathologist; under the B grid: 1 x 50 minutes reading comprehension services per week by the special education teacher, and 5 x 50 minutes written language instruction by the special education teacher or teacher assistant; under the C grid: 1 x 50 minutes speech and language therapy by the speech language therapist, and 2 x 50 minutes of academic support by the special education teacher (SE-10). This IEP contains several placement options for Parents to consider, reflecting HW's willingness to support and fund an array of placements agreeable to Parents including, but not limited to: full inclusion, partial inclusion or participation in substantially separate programs in public schools or substantially separate day placements; virtual school programming, home schooling; and substantially separate private day school placement. HW also offered to support Charter Schools or other appropriate private schools (SE-10; Bucyk).

On November 21, 2017, Parents rejected this IEP in full. Parents noted that their objections involved some language in the N1 and a reference to "constructed language", failure to include a math goal, and failure to offer speech and language services 3 x 50 minutes per week (Parents).

Regarding the amount of speech and language services in the IEP, Ms. Montgomery recommended an increase in service provision however, the school-based Team rejected this recommendation. It is unclear why they did so, however, it appears that given the array of placement options the amount of services required by Student may vary significantly. As such, it would be prudent to wait until the Student is placed to ascertain if the amount of speech and language services need be increased.

Parents and Ms. Montgomery raised concerns regarding the absence of a math goal in light of Student's language issues. Parents testified about Student's superior abilities in math. Ms. Bucyk noted that at the Team meeting the general education teacher had explained that given

Student's strengths in math as described by Parents, the types of accommodations Student would require were the types of accommodations regularly offered in the context of general education classes taught by properly trained individuals. The evidence thus does not support a finding that at this time Student requires a math goal in order to receive a FAPE. This issue however, shall be revisited following Student's initiating school attendance.

Dr. Chubinsky testified that Student would only require counseling outside school and thus, a counseling goal was unnecessary at this time. (He however did discuss offering Student extra support during the transition back to school period.)

Dr. Chubinsky and Ms. Montgomery (as well as others) have recommended Student's participation in a program that offers small classes (no more than 10 to 15 students) and academic support, especially during the re-acclimation to school period. They also supported Student's participation in a public school setting or general education private school. Both experts supported Student's placement at Landmark or Shore but not at New England Academy (Chubinsky, Montgomery). The program should have strong anti-bullying policies. Dr. Chubinsky testified that Student was somewhat more vulnerable than other students and if he did not feel safe he could be at risk for regression. He however found Student to be resilient and thus, not in need of a therapeutic educational setting. Dr. Chubinsky recommended that the school be in close proximity to Student's home (no more than one hour away).

The record shows that HW has offered numerous placement options and suggested approximately 14 placements, which, at least on paper, appear to meet the experts' recommendations. Nevertheless, Parents have rejected most of them based on geographic undesirability, student population, lack of sufficiently challenging academics, or religious affiliation or strictness. They favored unspecified programs and programs that are not currently available to Student and stated their preference to keep Student at home until one of their preferred programs accepts Student. Parents persist in their desire to have Student attend Landmark or Shore, but both schools have rejected Student. (Even Waring found Student not to be a good match and recommended other alternatives.) HW argued that it has no authority or ability to require the placements favored by Parents to accept Student, and has been unable to facilitate placement given Parents' unwillingness to accept the IEP and/or any of the available placements offered. (The record shows that throughout this period Parents have fluctuated between requesting placements that offer more therapeutic supports, later favoring ones with a focus on language-based instruction.)

The evidence shows that but for the bullying concerns, Student's deficits are the types of deficits commonly addressed in public school programs. Parents have presented no evidence to show that HW, or other Massachusetts public schools could not meet Student's needs. To the contrary, HW would be able to service Student, appropriately address his areas of need and offer the academic and intellectual challenges that Student needs and craves. HW also has trained, certified staff that can meet Student's needs while offering Student the opportunity to develop meaningful friendships with a variety of peers. A small group program at HW, which offers the services and supports delineated above (or a similar public school program in another Massachusetts district), constitutes the least restrictive placement for Student. I note that my determination does not preclude the Parties' agreement to placement of Student at a private

special education school that addresses the needs of students with expressive language issues as long as said placement is readily available to Student.(Given Student’s need for a program that can address his expressive language, executive functioning, writing and reading needs, while offering a safe bullying free environment, I am not persuaded that this can be achieved in a general education private school and thus, reject this option.) As such, HW is ordered to implement its IEP in district or locate a program that meets the characteristics delineated *supra* in this Decision.

Furthermore, because of the amount of time Student has remained out of school and so as to address any issues that may arise in his impending placement, HW is ordered to reconvene Student’s Team no later than eight weeks following Student’s placement to reassess Student’s transition, performance and if needed modify the IEP accordingly. Concerns regarding Math and the amount of speech and language services to be offered shall be revisited at that time.

I note that the Parties have stipulated and indeed prefer to have their IEP meetings facilitated by a BSEA facilitator. While this appears to be a good option, facilitation of a Team meeting shall not delay convening of Team especially now.

Lastly, a peripheral issue must be addressed. Following the Pre-hearing conference HW forwarded a consent form to allow HW to forward referral packets to Massachusetts approved private schools on Student’s behalf. The contents of the packet had been discussed and agreed to by the Parties at the Pre-hearing Conference, to wit: Student’s most recent IEP to be proffered on or about October 19, 2017¹³, Ms. Montgomery’s report and the standard referral letter (SE-14; SE-15). The Consent Form forwarded to Parents contained additional language giving HW discretion to forward “other pertinent information to and/or communicate with” the proposed schools, something clearly not contemplated in the Parties’ agreement. In light of the additional language it is not surprising that Parents would refuse to sign the Consent Form (Parents). Given the fragility of the relationship between the Parties HW should have been more sensitive to the language it included in the Consent Form. Parents however, could have crossed out the objectionable language, initialed it and proceeded to sign the consent. Instead, once again the entire process was unnecessarily delayed.

Stay-Put, Reimbursement and Disciplinary action claims:

Generally, under federal and Massachusetts special education laws and regulations, students have a right to remain in their last agreed upon placement during the pendency of a dispute between the parties.

Here, Parents have invoked stay-put rights but at present Student has no stay put rights. In having withdrawn Student from HW in favor of two other private general education schools and home tutorial, Parents in essence released HW of its responsibilities toward Student except those attaching to students identified as having special needs placed by parents in general education private schools. Once Parents elicited HW’s assistance in locating or creating an appropriate

¹³ The October 19, 2017 letter corrected a typo in the original Post Pre-Hearing Order which incorrectly listed the September 11, 2017 IEP (SE-15).

special education program for Student, following his reevaluation, Parents rejected every IEP and placement offered by HW in 2016 and 2017 in full. Until Parents accept an IEP (in fully or partially), stay-put rights will not arise.

The record contains no evidence of procedural transgressions by HW and as such, those claims are dismissed.

Similarly, Parents failed to meet their burden of persuasion that they are entitled to reimbursement for services, and or educational and recreational activities pursued for Student as part of home services/schooling. HW is further not responsible to reimburse Parents for Dr. Chubinsky's medical services. Similarly, Parents are not entitled to reimbursement of attorneys' fees as they proceeded to Hearing *pro se*.

Parents also sought disciplinary action against students and individuals who bullied Student. As to HW, these claims fall outside the two-year statute of limitations. Furthermore, the BSEA lacks jurisdiction to impose disciplinary action against students who allegedly engaged in bullying behavior against Student.

Lastly, Student has been receiving ten hours of tutoring per week, funded by HW. At present HW reimburses Parents for Student's private tutoring which tutoring concludes with issuance of this Decision.

ORDER:

As Parents have failed to meet their burden of persuasion pursuant to *Schaffer*, in showing that HW has failed to meet its obligations under federal and state laws to offer Student a FAPE.

Therefore, HW shall:

1. forthwith implement its IEP at HW or another appropriate public or a private special education school that is available;
2. reconvene Student's Team no later than eight weeks following Student's placement to reassess Student's transition, performance and if needed modify the IEP accordingly. Concerns regarding math and the amount of speech and language services to be offered shall then be revisited.

By the Hearing Officer,

Rosa I. Figueroa
Dated: January 5, 2018

