

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

BUREAU OF SPECIAL EDUCATION APPEALS

In Re: Student v. Winchester Public Schools

BSEA No. 1804106

DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act or IDEA (20 USC Sec. 1400 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 USC Sec. 794); the Massachusetts special education statute or “Chapter 766” (MGL c. 71B), the Massachusetts Administrative Procedures Act (MGL c. 30A) and the regulations promulgated under these statutes.

The Student in the instant case is a twenty-one-year-old young man with disabilities that impair his skills in the areas of communication, social interaction, executive functioning, self-care, and self-direction so that so that he cannot function at a level of independence that is consistent with his age and intellectual ability. Pursuant to a unilateral placement made by Parent in January 2018, Student currently attends the College Internship Program (CIP) in Lee, MA, which is an unapproved private, post-high school residential program serving young adults with disabilities.

On December 22, 2017 Parent filed a hearing request with the Bureau of Special Education Appeals (BSEA) in which she alleged that Winchester Public Schools’ previous and then-current Individual Education Programs (IEPs) and the corresponding placement at a program operated by proposed by the SEEM Collaborative was not reasonably calculated to provide Student with a free, appropriate public education (FAPE). Parent seeks an order from the BSEA directing Winchester to reimburse her for expenses incurred in placing Student at CIP as well as to fund Student’s CIP placement prospectively.

Upon receipt of Parents’ hearing request, the BSEA scheduled an initial hearing date of January 26, 2018 and assigned this matter to Hearing Officer Lindsay Byrne. At the request of the parties, the hearing was postponed several times for good cause, and was ultimately scheduled for August 13, 22, and 23, 2018. On August 3, 2018, the BSEA Director administratively reassigned this matter to the undersigned Hearing Officer. The evidentiary hearing was held as scheduled on August 13, 21¹, 22, and 23, 2018. The first, second and fourth day of hearing took place at the office of the BSEA in Boston, MA. The third day, August 22, 2018, was held at the office of Catuogno Court Reporting in Worcester, MA for the convenience of a witness. Parent proceeded *pro se* on behalf of herself and Student and Winchester was represented by counsel. Both parties had an opportunity to examine and cross-examine witnesses as well as to submit documentary

¹ This date was added to the hearing schedule to allow additional time for witness testimony.

evidence for consideration by the Hearing Officer. After the testimony was concluded, the parties requested and were granted a postponement until September 7, 2018 to file written closing arguments. The BSEA received the arguments and closed the record on that day.

The record in this case consists of Parents' Exhibits P-1 through P-11, School's Exhibits S-1 through S-38, as well as electronically and stenographically-recorded witness testimony. Those present for all or part of the proceeding were:

Parent

Pamela Ely	Private Speech-Language Pathologist
Kelly Challen	Private Transition Specialist
Maureen Crowley	SEEM Campus Academy, Principal
Jane Hannafin	Program Director, Skills for Life
Brooke Howard	Clinical Director, Skills for Life
Jennifer Callison	Transition Specialist, Winchester Public Schools
Pamela Girouard	Special Education Administrator, Winchester Public Schools
Andrea Bell, Esq.	Attorney for Winchester Public Schools
Colleen Shea, Esq.	Attorney for Winchester Public Schools
Jane Williamson	Court Reporter
Brenda Ginisi	Court Reporter
Anne Bohan	Court Reporter
Sara Berman	BSEA Hearing Officer

ISSUES PRESENTED

By agreement of the parties, the issues for hearing were the following:

1. Whether the Winchester Public Schools (WPS or Winchester) IEPs, and/or amendments to the IEP that originally had covered the period from January 8, 2015 through January 7, 2016, listed below, were reasonably calculated to provide the Student with a free, appropriate public education (FAPE) in the least restrictive environment (LRE).
 - A. The partially rejected amendment to the January 2015-January 2016 IEP, which amendment covered the summer of 2016 and the 2016-2017 school year.
 - B. The partially rejected amendment to the January 2015-2016 IEP, which amendment was issued after a Team meeting held on October 4, 2016.
2. Whether the Team meeting held on November 15, 2016 should have resulted in a new or amended IEP and whether the absence of such deprived the Student of a FAPE.

3. Whether the IEP and placement for the period from January 11, 2017 through January 10, 2018, as amended in June 2017 to cover the period from June 2017 to January 2018, was appropriate for the time period before June 2017 and after June 2017; if not, whether the Parent's proposed services and residential placement at CIP were appropriate when proposed by the Parent in June 2017.
4. Whether the September 2017 revised version of the IEP that covered January 11, 2017 to January 10, 2018, was appropriate from September 2017 forward; or, if not, whether the Parent's requested CIP placement was appropriate.
5. Whether the speech and language services provided by the Winchester Public Schools between October and December 2017 were appropriate; if not, whether the Parent's privately obtained services from the Ely Center were appropriate such that Parent is entitled to reimbursement for same.
6. Whether the IEP and placement covering January 24, 2018 to January 23, 2019 was appropriate; if not, whether Parent's unilateral placement at CIP was appropriate such that Parent is entitled to reimbursement for the period from Student's placement until the date of the decision in this case.
7. Whether the IEP covering January 24, 2018 to January 23, 2019 should have been amended following a Team meeting held in June 2018.
8. Whether the IEP covering January 24, 2018 to January 23, 2019 is appropriate or can be made appropriate for the period from the date of this decision forward to January 23, 2019; if not, whether the CIP placement is appropriate for the Student.
9. Whether Winchester committed procedural violations from June 2016 forward that deprived Student of FAPE such that he is entitled to compensatory services.

POSITION OF PARENT

Student is a highly intelligent and academically capable young man who wants to attend college, work in his chosen field, and live on his own, and he has the potential to do so. At this time, however, he lacks sufficient age-appropriate skills in communication, socialization, executive functioning, and independent living to begin pursuing these goals. The IEPs and corresponding placement that Winchester provided to Student for 2017-2018, and offered for 2018-2019, were and are not calculated to enable him to make effective progress towards post-secondary education and self-sufficiency. The IEPs at issue neither respond to nor incorporate recommendations made in evaluations conducted by the Ely Center and NESCA, both of which recommended residential placement. The IEP goals are not appropriately ambitious in light of Student's potential and personal post-transition wishes; on the other hand, years of inadequate and inappropriate services in the past have caused Student to be unable to meet even these goals. As a result of these inappropriate IEPs and services, Student has failed to make effective progress

commensurate with his potential. Moreover, any progress that he has made is attributable not to the services provided by Winchester, but to those secured and funded by Parent. Finally, Winchester has committed multiple procedural violations, including its failure to conduct a three-year re-evaluation since 2012.

At least in part because of lost opportunities resulting from Winchester's inadequate services in the past, Student now needs a residential setting designed for young adults with challenges similar to his so that he can generalize skills and learn to succeed in college and live independently in the community. Faced with Winchester's refusal to offer Student appropriate residential programming, Parent acted reasonably in unilaterally placing Student residentially at CIP in January 2018. Student has made effective progress at CIP, and should continue there through the 2018-2019 school year, and until Student turns 22 in August 2020, both because the placement is appropriate for Student and to compensate him for past procedural violations that denied him a FAPE.

POSITION OF SCHOOL

At all relevant times, Winchester has offered and provided Student with appropriate services through the Foundations for Life (FFL) program operated by the SEEM Collaborative, which was recommended by Parent's chosen evaluator, as well as through additional services requested by Parent. Winchester has responded to ongoing input from Parent, Student and evaluators, and has adjusted programming to address their evolving concerns. Further, Student has made excellent progress while enrolled in the FFL program, measurably increasing his academic, social, and community skills and would continue to make such progress in the future. Even if Parent were to demonstrate that Winchester's IEPs and services were not calculated to provide Student with FAPE, she is not entitled to reimbursement or prospective funding for the CIP program. CIP is overly restrictive for Student. Additionally, CIP is not approved by DESE to receive public funding, does not implement IEPs, and is not subject to monitoring by school districts or DESE, and it would be inappropriate for the BSEA to order Winchester to fund it prospectively. Finally, any procedural violations, if they occurred, are *de minimis*, and did not deprive Student of educational benefit or Parent and Student of the opportunity for participation in the Team process.

SUMMARY OF THE EVIDENCE

1. Student is a 20 year old young man with disabilities who is a resident of Winchester. Student has met the coursework and MCAS requirements for graduation from Winchester High School, but the parties agree that Student needs and is entitled to post-high school transitional services. The parties do not dispute Student's eligibility for special education and related services in the form of transition services from the Winchester Public Schools pursuant to the IDEA and MGL c. 71B. Student has authorized Parent to represent his interests before the BSEA. (P-1)

2. Since January 2018, Student has been enrolled in the College Internship Program (CIP) in Lee, MA pursuant to a unilateral placement by Parent. CIP is a private, residential, post-high school program designed to prepare young adults with disabilities for post-secondary education training, employment, and independent living. CIP is not approved by the Massachusetts Department of Elementary and Secondary Education (DESE) as a private special education school. (Parent, Knauss)
3. The parties agree that Student is a kind, caring, highly intelligent, academically capable, and athletic young man. Student's personal goals include attending a four-year college (and possibly graduate school) with a major in forensic chemistry or a related field and living independently. (P-1) There is no dispute that Student's many strengths make these goals potentially attainable, but that Student's disabilities, which impair his social communication, executive functioning, and independent living skills, pose a major obstacle to his progress. (Parent, Ely, Challen)
4. Student has a complex profile. He has strong intellectual abilities, consistently scoring in the "superior" range on cognitive testing. He also has generally above-average academic skills as measured by standardized testing. He has numerous interests, including forensic science, chess, video games, and running. (S-16, P-6(d), Challen)
5. On the other hand, Student has significant challenges, including a diagnosis of Schizoid Personality Disorder (SPD), a relatively rare condition which has caused "a pattern of social detachment and restricted range of expression of emotions," which causes a "blunted affect" and interferes with Student's ability to interact and communicate effectively with others. (Challen, P-6(k), S-12) This condition could put Student at risk of more serious psychiatric disabilities in the future. Related in part to the SPD diagnosis, Student has impaired skills in social communication. Although he has made progress in this area, Student's presentation with peers and adults outside of his family has been withdrawn and sometimes atypical (for example, pacing) with limited eye contact or reciprocal conversation. (Challen, S-4, S-12, P-6(d), (k))
6. Student also has deficits in executive functioning, which impede his ability to plan, initiate and complete both academic tasks and basic life activities such as meal planning and preparation, managing his finances, and travel outside of his immediate community. (S-12) The skill deficits caused by Student's disabilities

pose a significant barrier to his pursuing his personal goals and achieving a level of self-sufficiency that is commensurate with his age and cognitive and academic potential.

7. Student first enrolled in the Winchester Public Schools in fourth grade. By approximately fifth grade, Student was showing symptoms which were originally attributed to ADHD. In approximately sixth grade Student began withdrawing from social relationships and activities. In 2010, when student was in seventh grade, Winchester conducted an initial evaluation, found Student eligible for an IEP based on ADHD, and began providing special education services. As Student progressed through middle and high school, his ability to interact with peers and adults deteriorated, and he became increasingly withdrawn, isolated, and unable to produce academic work. (P-6(e))
8. In March 2014, Student underwent a private neuropsychological evaluation by David Dinklage, Ph.D. who first diagnosed Student with SPD. (S-12) Dr. Dinklage stated that to make effective educational progress, Student required “significant social and emotional rehabilitation.” He made multiple recommendations including placement in a therapeutic day school, and provision of interventions and services focused on increasing and improving Student’s interactions with others. Dr. Dinklage stated that while he did not recommend residential placement at that time given Student’s strong connections with family, “without intensive intervention now, this could become necessary.” (S-12)
9. In approximately November 2014, when Student was in twelfth grade, Winchester placed Student in The Victor School (TVS or Victor), a private therapeutic day school for teens with social/emotional disabilities. Student completed twelfth grade at Victor. By June 2015, Student had fulfilled state and WPS coursework and MCAS requirements for high school graduation. (S-15)
10. Winchester’s Team, including Parent, agreed that Student would need post-high school transition services prior to attending college. For the first semester of the 2015-2016 school year, Student continued at Victor for these services, which included group instruction in skills needed for college application and readiness, financial management, job search and interviewing, and self-advocacy. He completed these groups as well an English course at Middlesex Community College (MCC) and approximately two internship placements. Student was discharged from Victor School on January 22, 2016 because he had met all objectives in that setting, but the Team agreed that he needed additional transition services in a dif-

ferent placement. The Victor School discharge summary stated that Student was strong academically, although he needed to improve his homework completion. According to Victor, his performance at MCC showed he was capable of college-level course content as well as interacting with his professor, advisor, and student disability support services. Socially, Student was able to interact with other students in group activities, but generally preferred not to do so except when he participated in sports. (He participated in team sports at Victor as well as continuing prior involvement with sports at Winchester High School) The Victor discharge summary recommended that Student remain connected with disability support resources when enrolled in college and that future providers ensure Student's full participation in his own treatment and planning. The report also note that Student's stated goals and/or desires were not always aligned with those stated by his family, but the report did not elaborate on this point. (S-15)

11. In October and November 2015, while he was still enrolled at Victor, Student underwent an Individualized Community Based Transition Assessment (ICBTA) conducted by Kelley Challen. Ms. Challen holds a Certificate of Advanced Studies (CAGS) in Counseling and holds Massachusetts certification as a School Guidance Counselor K-8 and 5-12. For the past five years, Ms. Challen has been employed by NESCA as its Director of Transition Services. In that role, she oversees and provides transition and assessment services for persons with disabilities, oversees two other transition specialists as well as an occupational therapist, and assists and consults with school districts in developing and implementing transition programming. Ms. Challen's background includes designing and developing programs for transition-aged youth with deficits in social cognition and executive functioning. Ms. Challen has worked with approximately 300 students since beginning at NESCA. Student is the second adolescent with SPD whom Ms. Challen has evaluated. (Challen, P-6(k))

12. Ms. Challen's evaluation consisted of reviews of prior psychological, speech/language, and academic assessments and interviews with Student, Parent, and Student's college instructor. Ms. Challen also administered several standardized questionnaires to Parent and former special education instructors, designed to assess Student's transition-related skills, including the ABAS-3², and several other questionnaires targeting readiness skills for college and independent living. Ms. Challen also conducted two observations of Student, one in a familiar setting and one in a novel situation. (Challen, P-6(k))

² Adaptive Behavior Assessment System, Third Edition, Parent and Teacher forms. The ABAS-3 uses responses to questionnaires given to parents and teachers to assess a total of ten skill sets in three domains: Conceptual (communication, functional academics, self-direction), Social (leisure, social), and Practical (community use, home living, school living, health & safety, and self-care).

13. The ABAS-3 revealed that revealed that Student’s adaptive skills in all domains were seriously deficient, ranging from below the first percentile to the second percentile in virtually all of the 10 areas measured.³ The composite score or GAC ranged from below the first percentile to the third percentile for his age. This represented a very significant discrepancy with his verbal and non-verbal reasoning abilities, which were above the 90th percentile. (Challen, P-6(k))

14. Student’s executive functioning, as measured by the BRIEF questionnaire,⁴ was significantly deficient in most categories, including self-determination, self-advocacy, and college readiness. On another standardized questionnaire, the ARC Self-Determination Scale—Adolescent Version, Student earned a total self-determination score in the 27th percentile for his age. (Challen, P-6(k))

15. During his initial interview with Ms. Challen, which lasted for 4 hours, Student stated that his postsecondary goals included attending a 4-year college to study forensic science, possibly living on campus, obtaining paid employment even before college, living within walking or public transportation distance from college and employment, having 2 or 3 friends, and possibly marrying and having a family. He was able to describe strengths, weaknesses, and interests, with support and prompting. (P-6(k))

16. Ms. Challen observed Student in his class at MCC and noted that he spent most of the class time wrapping and unwrapping a computer power cord having opted out of the assignment which involved working with a peer. He seemed to follow the professor’s instructions, but did not converse with other students. She testified that Student’s behavior in the classroom was “odd.” She conducted a second observation of Student in an unfamiliar setting, during a self-guided tour of another large college campus in the area, and found that Student was skilled at navigating the campus using a map. The evaluator assigned Student several tasks, including finding the campus disability office and asking for information, locating a book in the library, and buying lunch in the cafeteria. Student had some ability to perform these tasks, but was not always able to complete them. For example, he was able to ask for directions from an information center, but when a nearby student offered to accompany him to the destination, Student neither heard nor responded. (Challen, P-6(k))

³ The teachers who completed the ABAS-3 rated Student as in the “average” range for self-care and the sixteenth percentile for functional academics. One teacher rated Student as “average” in the area of health and safety. (P-6(k))

⁴ It is unclear from the record whether Ms. Challen administered the BRIEF during her evaluation or whether she relied on scores from a 2013 neuropsychological evaluation.

17. In sum, Ms. Challen concluded that Student had many strengths, including exceptionally well developed verbal and non-verbal reasoning skills, strong academic aptitude and achievement, basic life skills including meal preparation, shopping, and self-care, community navigation, and using a bank. He had emerging self-advocacy skills, did high quality work at his internships, and was able to articulate long-term goals. On the other hand, he faced “substantial obstacles” to successful transition to college and independent life, including his “emotional functioning and related social presentation.” Specifically, he missed opportunities to interact or respond socially and his presentation could be considered aloof or rude and deprive him of needed practice in social skills. (P-6(k))

18. Additionally, Student lacked the ability to self-advocate in the sense of identifying, accepting and articulating his disability-related needs, and then understanding and requesting appropriate accommodations. This skill deficit would put him at risk for failure in college or employment where accommodations are only available upon self-disclosure and request. Executive functioning weaknesses with planning and completing tasks and inconsistent performance of basic self-care routines were additional barriers to success. (P-6(k))

19. Because of Student’s diagnosis of SPD, Ms. Challen relied heavily on the prior report of Dr. Dinklage and consulted with a NESCA psychologist with a background working with persons with this disorder when she formulated her recommendations. Based on this consultation, Ms. Challen understood that Student was at risk of developing schizophrenia if he had a future psychotic break, and that he “need[ed] a radical amount of transition programming but also is at risk of a psychotic break if we overdo it and don’t support him well.” Based on these considerations, Ms. Challen prioritized Student’s emotional health. To that end, she strongly recommended individual, family and group therapy, psychopharmacological intervention, maintenance of a healthy lifestyle, clinical monitoring of Student’s psychiatric symptoms, and involvement in a running group. She further recommended Student’s involvement in a highly structured, cohesive program with peers who had social-emotional disabilities, “such as the Foundations for Life Program run through SEEM Collaborative,” as well as individualized services because of his SPD and executive dysfunction. (Challen, (P-6(k))

20. Specifically, Ms. Challen recommended “continued comprehensive educational programming and transition services for a minimum of two additional years [from January 2016] and very likely through his 22nd birthday.” Such a program should provide at least 30 hours per week of services focused on social pragmatics/communication, self-determination, independent living skills, college readiness, and career planning/work readiness, via a “high degree of communi-

ty-based skill development and practice.” Some of the detailed recommendations included two to three hours per week of individualized specialized instruction in executive functioning strategies for writing, daily ten-minute check-ins regarding organization, three to four hours per week of home and community based services to work on daily living skills and systems for carrying them out, at least two hours per week of social thinking instruction from a speech-language pathologist or special educator with extensive training in Michelle Garcia Winner’s “social behavior mapping model.” Additional recommendations included engagement in both structured and community based group activities and coordination among all providers, Student, and family. (Challen, P-6(k))

21. On December 23, 2015, Winchester convened a Team meeting to review Ms. Challen’s report. Parent, Student, Ms. Challen, Jennifer Callison (WPS transition coordinator), and Greg Rosenthal (WPS special education specialist) attended the meeting, as did Winchester’s attorney and Parent’s former attorney. There was no opposition voiced to Ms. Challen’s report at the Team meeting. Ms. Challen suggested exploring the Foundations for Life (FFL)/Campus Academy program operated by the SEEM Collaborative and located in Stoneham, MA as a potentially appropriate placement for Student, and Winchester Team members agreed to send packets to FFL. (Callison, S-1)

22. On February 4, 2016, WPS issued an N-1 form proposing a placement at FFL, and further stating that upon acceptance of the placement a start date would be determined and transportation arranged. A Team meeting would be scheduled six weeks after placement. No new IEP or amendment accompanied this N-1 form, which was attached to the expired Victor School IEP covering January 2015 to January 2016. (S-2)

23. The Team convened again on February 24, March 4 and March 18, 2016 to discuss concerns Parent had about whether FFL would be able to provide Student with all recommended services. Upon determining that FFL could not provide social pragmatics instruction as recommended in Ms. Challen’s report, WPS agreed to have a Winchester speech/language therapist, Ms. Dorothy Ball, provide these services to Student during the extended evaluation. Additionally, Parent had requested that Winchester provide 3 hours per week of in-home life skills instruction; however, WPS members of the Team determined that they could not do so until after completion of a home assessment. (Parent, Girouard)

24. On March 21, 2016, Winchester proposed an extended evaluation at the FFL program. The Extended Evaluation Form stated that additional information was needed via a home assessment to identify Student's knowledge and ability to apply self-care and life skills. The home assessment would be conducted by a BCBA employed by SEEM. Additionally, the Team recommended an assistive technology consultation to determine appropriate technological supports for a post-secondary setting. The Team also recommended that Student participate in social skills/pragmatic skills development overseen by a speech/language pathologist, 1x 60 minutes/week. Winchester's transition coordinator, Ms. Jennifer Callison, would oversee the evaluation.⁵
25. Student entered the FFL program on April 8, 2016 pursuant to the extended evaluation. He met with Ms. Maureen Crowley, who was the principal of the FFL program, and discussed that his priorities were organizational skills, planning and prioritizing. Ms. Crowley agreed to focus on these skills and also determined that Student's physical appearance needed attention. Social pragmatics were not prioritized at that time. (Crowley) While Ms. Crowley testified regarding the names and credentials of staff who worked with Student (a Vocational Rehabilitation Counselor and job coach who supported Student in his workplace and provided some on-site help with executive functioning and a mental health counselor), the record does not clearly indicate exactly what services Student received at FFL received during that period, other than meetings with Ms. Ball for social pragmatics instruction, and supported job placements with the Woburn police chief, at a sign company and the Stone Zoo. (Crowley, Parent, S-16)
26. The home assessment was conducted in April and May 2016 by Margery Lerner, BCBA, who was employed by SEEM Collaborative. According to Ms. Lerner's report, issued on May 20, 2016, the assessment consisted of a review of records, two in-home interviews with Student and Parent, a telephone interview with Student's counselor at FFL, Pam Mulvey, and administration of the Executive Skills Questionnaire, Parent and Teen Versions. (S-16)
27. Based on the in-home interviews with Student and Parent, Ms. Lerner reported that Student independently made and completed checklists of daily ADL tasks including hygiene routines and exercise. He was cooking dinner once per week and was able to make tortellini as well as English muffins and fried eggs. He was working on shopping for ingredients. Student did his own laundry independently but did not shop for clothing or get his own haircuts. Student had a bank account and claimed that he balanced his checkbook but Parent disagreed. He

⁵ Parent partially rejected the proposed extended evaluation but the letter indicating the reasons for the partial rejection is not contained in the record. (S-4).

independently walked to the grocery store to shop for groceries in Winchester but was driven to FFL and his job sites at the Woburn Police Department, a sign company, and the Stone Zoo. Student had no opinion on whether he wanted to get his license. He stated that he was satisfied with his job placements. He discussed his interests and his desire to go to college and live in a dorm. He noted that he had conversations with other students at FFL and was satisfied with staying home alone on weekends. Student and Parent seemed to disagree as to whether Student wanted more social interaction with Parent indicating that Student would enjoy social interaction if he felt more comfortable around kids and Student stating he had “no opinion” on that subject. (S-16)

28. On the Executive Skills Questionnaire, Student and Parent that Student had strengths in Response Inhibition, Goal Directed Persistence, and Emotional Control, and weaknesses in Working Memory, Task Initiation, Planning/Prioritizing, and Metacognition. (S-16)
29. Ms. Lerner concluded that Student had made “great strides” and “significant improvement” since Ms. Challen’s 2015 report in his ability to independently perform self-care and daily living skills, but also stated that Student “appears to underestimate the extent of his difficulties.” (S-16)
30. Ms. Lerner’s report recommended “continuation of the coaching model of support and practice of skills leading to success in a college environment... as [Student] has responded positively to the outside help he has been receiving both at home and at the FFL program.” The report noted that Parent attributed Student’s improvement to his work with his home-based therapist, Joshua Sussman, who had been meeting with Student weekly since January 2015. Mr. Sussman’s services were funded by Parent’s insurance. Ms. Lerner’s report made no additional specific recommendations about home-based services. (S-16)
31. Kelley Challen reviewed Ms. Lerner’s report, and summarized her findings based on that report and her “ongoing work” with Student in a letter dated June 7, 2016. Ms. Challen recommended the following: (1) 2 to three hours per week of instruction, at home and in school, in executive functioning skills necessary for managing college, including not only task management but also self-monitoring and adjustment of strategies to fit changed circumstances; (2) social skill remediation in specific conversational skills, environmental scanning/”reading the room,” matching presentation to expected behavior, conflict resolution, and skills

for group work in college or at work; (3) regular communication between home-based therapist and other providers. (Challen, P-6(g))

32. A midpoint progress Team meeting was held on May 18, 2016, and the Team meeting to consider the results of the extended evaluation took place on June 15, 2016. Both meetings were attended by staff from FFL/SEEM (Principal Maureen Crowley, Job Coach Stephanie Conroy, Vocational Coordinator Erin Harrington, Counselor Pamela Mulvey, teacher Cara Luca, BCBA Marge Lerner) as well as representatives from Winchester (Transition Coordinator Jennifer Callison, Speech/language Pathologist Dorothy Ball, Special Education Administrator Pamela Girouard). Also in attendance were Kelley Challen (transition specialist retained by Parent), Joshua Sussman (Student's in-home therapist), Diane Tashjian (representative from Massachusetts Rehabilitation Commission), Student, Parent, and their then-attorney. Student's appearance and presentation at the May and June meetings were different than they had been at prior meetings, because he was more neatly groomed (he had gotten a haircut) and more engaged. (Crowley, S-6, S-7)

33. The Team reviewed the results of Ms. Lerner's home assessment, which reported that Student had made progress in home and community skills and made no recommendations regarding home-based services other than the positive comments about the benefits of the home services Student had received from Mr. Sussman. The Team also discussed Student's performance with Ms. Ball and FFL staff. The Team determined that Student had made progress at FFL and recommended continued placement through the summer of 2016 and for the 2016-2017 school year. (Crowley)

34. On or about June 20, 2016 Winchester issued an amendment to the expired IEP for January 2015-January 2016 which provided for placement in the FFL program for the summer of 2016 and the 2015-2016 school year. (P-4(h))

35. In a letter dated July 25, 2016, Parent and Student accepted the FFL placement but rejected the omission of services recommended by Ms. Challen, *i.e.*, instruction in executive functioning at FFL, in the community, and at home; social skills instruction in the community from an appropriately credentialed individual with expertise in Michelle Garcia Winner's Social Thinking Program; individual private therapy from a therapist to replace Joshua Sussman (whose funding was about to run out); and independent living skills instruction at home and in the community. Parent and Student also rejected the omission of a statement that

Winchester would provide necessary transportation as well as the omission of a service delivery grid. Finally, the letter stated that Parent and Student hoped to resolve these issues at a Team meeting scheduled for September 23, 2016. (P-4(h))

36. Student attended the ESY program at FFL from June 27 to July 26, 2016. According to the IEP amendment, he attended four days per week, from 8:00 AM until 2:00 PM. (P-4(h))

37. The Team convened again on October 4, 2016 for a “progress meeting” and issued another amendment to the expired January 2015 – January 2016 IEP. This amendment added transportation services, added an IEP goal in “Daily Living” which stated that Student would use assistive technology to organize and implement food preparation and management of mail and emails across multiple settings. The amendment also added speech/language services from the SEEM speech/language pathologist 1x60 minutes per week. These services were designed to “support ongoing development of social and pragmatic conversation skills. (P-4(g), (h))

38. On November 23, 2015, after a Team meeting held on November 15, 2016, Winchester proposed a “Draft IEP” to be discussed at a Team meeting scheduled for December 7, 2016.⁶ This Draft IEP covered the period from December 7, 2016 to December 6, 2017. (P-4(f))

39. At the time the draft IEP was written, Student had been attending FFL for approximately six months. The draft IEP reported that Student could respond to greetings but had limited participation in social conversations. His skills with social communication (eye contact, response to non-verbal signals) was improved but variable. When anxious, Student would pace or isolate himself. He had many independent living skills, including grocery shopping, basic cooking, hygiene, making haircut appointments, and commuting to college on the train. He worked independently at two jobs during the school day and had gotten an after school job for himself in the community. He was punctual and appropriate on the job, but became anxious and withdrawn if a problem or change arose. Student had completed a biology course and was enrolled in an English course at Bunker Hill Community College. (P-4(f), Crowley)

⁶ This meeting was rescheduled to January 11, 2017.

40. The Draft IEP contained five goals: “Communication,” (initiating and responding to greetings, speaking with adequate volume), “Social behavior,” (understanding and explaining how non-verbal cues such as body language may impact others; “Social-emotional,” (recognizing anxiety and using coping strategies); “Transition,” (developing routines for independent living skills including meal planning and meal preparation; accessing support for assistance with activities as needed, developing routines for diverse situations scenarios including getting to class or work at various times); “Vocational” (independently using natural supports to advocate for himself in the workforce such as calling in sick, requesting a schedule change or solving a problem). (P-4(f))
41. The service delivery grid contained each of the following services in Grid C: “social/emotional/Transition” delivered by a clinician, 1x42 minutes/week and “prn;” “Academics” with a special education teacher/teaching assistant, 1x169 minutes/week; speech/language with a speech/language pathologist (SLP), 1x30 minutes/week (small group); speech/language with an SLP 1x30 minutes/week (individual). (P-4(f))
42. During the fall of 2016, Parent retained⁷ Jane Hannafin from the Skills for Life program to provide Student with home-based services. Ms. Hannafin has a master’s degree in occupational therapy and is a licensed occupational therapist. Skills for Life is a home and community-based service that provides instruction and services in life skills to adolescents and young adults. Specific services are designed to support client needs, goals and preferences. For young adults, these services may be applicable to post-secondary education and employment in addition to basic life skills. (Hannafin)
43. On or about December 13, 2016, Ms. Hannafin conducted an intake assessment of Student, which consisted of a review of records, interviews Student and Parent, and administration of a battery of standardized questionnaires and inventories designed to determine Student’s wishes, interests, skills and levels of independence. Ms. Hannafin concluded that Student was “lacking the innate ability to initiate purposeful action in an organized manner, with careful attention to detail without significant scaffolding, prompting and supports such as those provided in a therapeutic setting. Additionally, when left to his own devices in a home environment, [Student] ultimately depends upon his mother for such supports, to compensate for him, and to intuitively fill in the gap.” (P-6(e))

⁷ Although Parent had originally hired Ms. Hannafin, Winchester agreed to pay for the evaluation and ultimately for home-based services. (Hannafin)

44. Ms. Hannafin further commented that Student had skills but lacked “stable systems of his own design and implementation” for carrying them out. She recommended OT interventions designed to give Student both strategies and “supportive opportunities within his own home and community to trial graded levels of independence...” To this end, she recommended home and community-based OT services 2 x 1 hour per week to teach compensatory strategies for executive dysfunction, (*i.e.*, organization and planning skills); to improve his understanding of social norms, and to support skill development in his natural environment. (P-6(e)). Ms. Hannafin testified that some of these skills already were being addressed by FFL. (Hannafin)
45. The Team reconvened on January 11, 2017 to consider Ms. Hannafin’s Intake Assessment and develop an IEP. Parent, Student, and their then-attorney attended the meeting, as well as staff from FFL (Principal Maureen Crowley, counselor Pamela Mulvey, job coaches Marc Segan and Stephanie Conroy, job developer Erin Harrington, and speech therapist Kate Kapstad), representatives from Winchester (Transition Coordinator Jennifer Callison and Administrator of Special Education Pamela Girouard), Kelley Challen, and Winchester’s attorney. (S-10)
46. On January 26, 2017 Winchester issued an IEP covering the period from January 11, 2017 to January 10, 2018. The “Student Strengths and Key Evaluation Results Summary” extensively quoted from the evaluations of Dr. Dinklage (2014), Kelley Challen (2015 and 2016), and Margery Lerner (2016). Student’s Vision Statement included a wish to attend a 4-year college and live on campus, become a forensic scientist or chemical engineer, get his driver’s license, improve his independent living skills, and stay at FFL for another year. (S-10)
47. The IEP contained goals in the same five areas as the Draft IEP created in November 2016 except the “Transitions” goal appears to have been renamed “Life Skills” and targets meal planning, cooking, and getting a learners permit. Ms. Hannafin testified that cooking was a good vehicle for teaching executive functioning skills, as was the process of applying for the permit. (Hannafin) The service delivery grid was essentially the same as in the draft IEP, but with the addition of 1x120 minutes/week of occupational therapy. The IEP did not provide for ESY services. (S-10, Callison)
48. On March 8, 2017 Parent and Student accepted the proposed OT services and independent living objectives but rejected the “failure to say the IEP services will be provided in the home and community,” the “failure to include more indepen-

dent living objectives,” and the failure to provide an extended school day for OT services. They postponed their decision on the rest of the IEP. Ultimately, in August 2017, they rejected the remainder of the IEP. (S-10)

49. In October and November 2016, Student underwent a private neuropsychological assessment by Amity Kulis, Psy.D., a licensed psychologist who is employed by NESCA. The report from the evaluation was issued in January 2017. Dr. Kulis, who did not testify at the hearing, reviewed prior records and conducted an extensive battery of standardized tests. She concluded that Student had made significant progress in certain areas (social engagement, improved functional communication, self-direction and home living) since his previous testing at NESCA in 2013, and continued to have very strong cognitive abilities, he continued to have significant challenges and vulnerabilities. In particular, Dr. Kulis reaffirmed the previous diagnosis of SPD, as well as persistent executive functioning deficits which she classified as a neurodevelopmental disorder. (P-6(e))

50. Like previous evaluators, Dr. Kulis emphasized that while Student was currently more emotionally stable than in the past, that his diagnoses affected his functioning across all domains and put him at significant risk for emotional deterioration; therefore, it was “important that his social, emotional, executive functioning, and academic needs be equally addressed...” and that he continue comprehensive educational programming and transitional services until his 22nd birthday. Specifically, Dr. Kulis recommended that Student receive individual therapy, family therapy, and psychiatric assessment to address his mental health needs. She strongly recommended 2 hours per week of social skills intervention including group instruction by a speech/language therapist and psychologist as well as community-based social coaching. (P-6(e))

51. With respect to transitional needs, Dr. Kulis stated that while Student had made “considerable progress” in the FFL program, he was not yet ready for a residential college setting, and that as a next step, he needed an opportunity to live away from home, in a supported residential setting, in order to generalize his life skills while also managing academic tasks. Within such a setting, Dr. Kulis stated that Student should receive continued opportunities for increasingly challenging internships and college classes along with assistance and instruction in finding and using sources of support for his academic life. (P-6(e))

52. On June 1, 2017, Winchester convened a Team meeting to review Dr. Kulis’ report as well as the rejected portions of the IEP issued in March 2017 and services

for summer 2017. Winchester proposed a new IEP on June 13, 2017 which incorporated portions of Dr. Kulis' evaluation, added 15 minutes per week of consultation time by the speech/language therapist in Grid A, as well as extended school year services that included attendance at FFL as well as continued home-based OT services. Winchester explicitly declined to offer residential school placement for Student. (P-4(d))

53. Pamela Ely is a licensed speech/language pathologist⁸ who owns and directs the Ely Center, LLC, which is a private speech and language clinic that concentrates on social cognitive development. Among other services, the Ely Center operates a summer "social cognitive intensive" program that operates for four weeks during the summer. The program was originally designed for late middle school through high school aged students, and in summer 2017 expanded to include some students who, like Student, had completed high school and were taking some college courses. At Parent's request, Winchester funded Student's placement in the Ely Center's summer intensive program. (Ely, Girouard)
54. Student attended the Ely Center program for a total of 15 days,⁹ seven hours per day during June and/or July 2017. He did not attend the FFL summer program during those weeks but continued to receive home and community based OT services from Jane Hannafin. (Girouard, Hannafin) The Ely Center summer program consisted mainly of structured group activities such as group games, role-plays, outings, and life activities such as meal preparation during which staff worked with students on communication skills. Ms. Ely observed that Student attended daily and was pleasant and cooperative, but had many social language skills that had not yet developed. Weaknesses included self-advocacy, monitoring and keeping up with the flow of a conversation, taking others' perspectives in conversation, executive functioning (planning, organizing, initiating and completing tasks), and daily living skills. Student often avoided group interactions by going to the bathroom, and often was quiet during group activities unless asked to participate. Sometimes Student appeared to be anxious, but it was difficult to determine what he was feeling about a situation. Student was able to generalize instructions if explicitly taught a particular task or strategy in a step-by-step manner, and Ms. Ely felt he made progress in the program. (Ely) Ely Center staff emailed Parent and Winchester on an almost daily basis to advise them of Student's activities and progress. (Ely) Parent reported to Jane Hannafin that

⁸ Ms. Ely, who testified at the hearing, has a master's degree in speech/language pathology and over twenty years of experience in providing speech/language services to children and young adults inschool and clinical settings. Ms. Ely has focused her practice on social cognitive language. (Ely, P-6(d)).

⁹ The program only operated for three weeks instead of the usual four weeks in 2017 because too few students enrolled for the fourth week. (Ely).

Student did not like the Ely Center summer program, came home exhausted, and went to bed early. (Hannafin)

55. When the Ely Center summer program had ended, Student attended the FFL extended year program.

56. On July 6 and 7, 2017, at Parent's request, Ms. Ely conducted a social cognitive and language evaluation of Student at Parent's request. (Ely, P-6(d))

57. Ms. Ely's evaluation, which was focused on Student's social pragmatic skills, consisted of a Parent interview, review of records, observation of Student in the camp milieu, and administration of standardized tests. Student generally performed in the "average" range on formal testing and some informal measures. The evaluation revealed areas of challenge consistent with those identified by prior evaluators, including weak language production, social interaction, and executive functioning which have a global impact on his performing in an age-appropriate manner. Ms. Ely recommended a "comprehensive residential social learning program" that includes explicit instruction and reinforcement in skills for language production, executive functioning, and social pragmatics across all settings, during all waking hours. As well such a program should include training for all providers and family members on the social cognitive strategies used. (P-6(c))

58. Ms. Ely testified that residential programming was necessary to enable Student to generalize learned skills by having them reinforced all settings in a consistent manner, since he had a limited period of special education eligibility available and had not yet learned to independently generalize the skills he was being taught. (Ely)

59. In a letter to Pamela Girouard dated August 18, 2017, Parent partially rejected the IEP that was proposed on June 13, 2017, rejected the proposed FFL placement, and requested funding for Student to attend the CIP program in Lee, MA for 2018-2018. Student had already been accepted and wanted to attend. The letter summarized findings of prior evaluations and stated, in essence, that FFL could not provide Student with a cohesive program targeting his areas of need where skills would be reinforced across all settings, using a consistent methodology. On the other hand, Parent believed that CIP could offer such services, as well as a summer program that operated at the same level of intensity as the

school-year program. Parent added that if Student remained at FFL he would continue to live with Parent, unconsciously depend on her to take care of tasks that are difficult for him or that he forgets, so that he does not develop age appropriate independence, and, further remain socially isolated. Attached to the letter was a list of CIP's services along with a breakdown of the comparative costs of FFL and CIP. (P-4(d))

60. The letter also contained an itemized partial rejection of the following aspects of the June 2017 IEP: understatement of Student's needs, insufficient number of objectives/benchmarks, insufficient numbers of hours of direct services, failure to have home-based services during the school day and insufficient hours of service. Finally, the letter contained a list of alleged procedural violations on the part of Winchester. (P-4(d))

61. The Team convened again in September 21, 2017 to consider Ms. Ely's July 2017 evaluation report, and September 29, 2017 issued a revised version of the IEP covering the period from January 2017 to January 2018. The N-1 form accompanying the IEP indicated that the District declined Parent's request to fund residential placement. The revised IEP added a sixth goal in "language skills" to the existing IEP goals. This goal addressed issues identified in Ms. Ely's evaluation, including oral dysfluency and disorganization. Benchmarks focused on improving Student's ability to fluently retell a narrative. The service delivery grid was amended to reflect three speech/language sessions per week; the N-1 form indicated that the intention was for Student to receive 1x30 minutes/week each of individual, small-group, and community based services from the FFL speech/language therapist. (P-4(c))

62. Between October and December 2017, Student attended the Ely Center for eight Social Cognitive Development sessions. The record does not indicate that Winchester had funded these sessions, so it is assumed that they were funded by Parent. Sessions were structured as a one-hour group with a peer and 15 minutes of 1:1 training with a clinician. A report authored by Pamela Ely and a second speech/language therapist, Nicole Hagler, dated January 11, 2018, Pamela Ely, stated that Student had demonstrated progress in "all targeted areas of development" between the time the 2017 summer intensive had ended in August 2017 and the starting point of the Social Cognitive Development Sessions in October 2017. The record does not indicate whether this report was submitted to Winchester. (P-6(a))

63. During October 2017, Pamela Ely observed Student at the FFL program on three different days in several settings, including an informal arrival period, a current

events group, free time, a cooking preview, at the Woburn Police Department (Student's internship placement with the chief), lunch break at FFL, independent living activity at FFL (cooking), a group brainstorming session, shopping trip to supermarket, personal growth class and community service outing. (P-6(b))

64. Ms. Ely concluded that while the FFL staff were well-meaning and caring, their "level of expertise in supporting a student with [Student's] high intellect and low social-emotional capacity is significantly behind [Student's] needs for a transition life skills program." Among the deficiencies cited by Ms. Ely were the absence of staff that was highly trained in social coaching and absence of particular social coaching techniques; lack of staff support at Student's college class at Bunker Hill or on site at his job to both coach Student in the moment or work with professors and employers; missed opportunities for staff to interact with Student because they were attending to peers with very different needs; limited technology access, and peers who did not appear to share Student's abilities or interests. At no time did Ms. Ely observe Student initiate interaction with a peer (as opposed to responding to a peer or staff member) (P-6(b), Ely)

65. On December 22, 2017 Parent submitted Ms. Ely's observation report to Winchester along with her rejection of the revised IEP issued on September 27, 2017. ((P-4(c)). On that day, Parent's then-attorney filed the initial hearing request in this matter on behalf of Parent and Student. (Administrative record).

66. In January 2018, Student was unilaterally placed at CIP. (Parent)

67. Winchester convened a Team meeting on January 24, 2018 to consider the observation reports of Pamela Ely and issued an IEP on February 6, 2018. The proposed IEP was similar to the IEP issued in September 2017, and called for continued placement in the FFL program. The IEP contained some updates to Student's "current performance level" as well as some changes in the "language" and "social behavior" goals to reflect use of a rubric to quantify progress. Grid C of the service delivery grid was adjusted to add 1x408 minutes per week of "Independent living skills" instruction with a special education teacher or teaching assistant. The IEP provided for extended school year services. The Transition Planning Form (TPF) and Action Plan were updated to reflect Student's current placement at CIP. (S-34)

68. In a letter dated March 5, 2018, Parent rejected the most recent IEP in part. Among other things, the rejected portions included statements regarding Student's progress, which Parent felt were inflated, as well as the failure to formulate goals in a manner which Parent felt matched Student's need, and to provide a program with the level of comprehensiveness or staff expertise that she believed Student required to make effective progress. Parent rejected the proposed graduation date of June 3, 2018 in light of the Team's prior agreement to serve Student until he turns 22 years of age. Finally, Parent rejected the FFL placement and reiterated her request for funding for CIP. (S-34)

PROGRAM OFFERED AND PROVIDED BY THE SCHOOL

69. The FFL program, operated by the SEEM Collaborative, is a public day school program that was developed in approximately 2010 to meet the needs of students who had completed or aged out of high school but were not yet ready to transition to college, employment, or adult services. The FFL program generally serves about 8 to 10 students at any one time. According to Maureen Crowley, who is the Principal for FFL, the students' profiles vary, but FFL students generally struggle with executive functioning and social pragmatics skills. (Crowley)

70. The program has an experiential approach, with students spending much of their time in the community to build and practice skills. While each student's specific goals and activities depend on his or her IEP and is client driven, FFL programming is based on four modalities: post-secondary experience (college or technical school), vocational experience (employment), independent living skills and social pragmatics/executive functioning. Specific skills addressed include travel, self-advocacy (*e.g.*, with college instructors), self-care (including taking charge of medical and dental care) and time management. Students engage in meal planning and cooking projects because the planning and organization required for these activities help develop executive functioning skills. They also undertake group community activities such as a can drive to raise funds for hurricane victims in Puerto Rico, and group recreation such as hikes. (Crowley).

71. FFL uses a team approach to work with students. The staff team includes a vocational coordinator who develops job placements and works with employers and organizes vocational field trips, job coaches, an assistant principal, a counselor, and speech/language therapist, among others. Each of these individuals worked with Student on various activities. (Crowley)

72. Student attended FFL from April 2016 (when he began his extended evaluation) until approximately December 2017. When Student entered FFL for the extended evaluation, he met with staff to inform them of his goals and perceived areas of need for instruction. Student was clear, focused and specific that he wanted to go to college, and needed to learn organizational skills to help him complete his college assignments in a timely manner. (Crowley)
73. Student did not initially identify social skills as an area of need, although it was clear to staff that Student needed to develop in this area. To that end, FFL initially focused on Student's physical appearance, supporting him in getting his hair cut and styled. (His hair had been long, frequently hanging over his face). FFL also formulated social/cognition activities and goals for Student. (Crowley)
74. Student's weekly schedule while he attended FFL included sessions with the speech/language therapist (individual, group and community), classes in "personal growth," independent living skills (cooking, money management, travel training), and individual counseling. Some of the skills-based activities took place off-site and some were on-campus. Additionally, Student attended classes at Bunker Hill Community College approximately three half-days per week, and received home-based services from Skills for Life one day per week for two hours. (P-8(a))
75. During Student's tenure at FFL he held three internships: at a zoo, where he had to tell visitors about animals, at a sign company, and at the Woburn Police Department, where he did clerical work in the Chief's office. Student held the Police Department job for nearly his entire tenure at FFL. Feedback from Student's employers was uniformly positive. The internship placements were selected on the basis of Student's interests and areas of need; thus, the Police Department job was selected because of Student's interest in forensics. Student did clerical work at that placement and developed an excellent relationship with the Police Chief, although Ms. Ely, who observed Student at that internship, testified that Student was not provided with adequate coaching for skills such as asking for post-it notes, and that the Chief should have been given guidance in reinforcing Student's conversational skills. (Crowley, Ely)
76. The placement at the zoo was selected because it required Student to gather information about the animals and have conversations with zoo visitors and keep a log of the number of interactions that took place. In addition to the internships,

Student had independently secured a part-time after school job at a supermarket near his home. (Crowley)

77. As referred to above, Student also completed six courses at Bunker Hill Community College: two in Biology, two in English, and one each in Math and Chemistry. Student earned grades of A or A- in five of the six courses and B+ in one of the English courses. Student traveled by train to his classes independently. (S-24)
78. FFL used rubrics to track Student's progress in targeted skill areas relative to multiple school-based organizational skills and their component parts (planning, prioritizing, list-making, etc.) and targeted work-related skills (attendance, work ethic, employer interactions, etc.) kept data, and graphed his progress. The data in the record demonstrates progress in all areas measured. This progress was not always consistent, but there was a general upward trajectory in Student's skills, including in his areas of greatest need, organization and social pragmatics. Staff also noted that while Student's general tendency was to be quiet, his conversational output increased over time from the "three word utterances" to which he confined himself when he entered the program. (Crowley, S-28, 29)
79. As stated above, in addition to his programming at FFL, Student received two hours per week of home-based instruction in independent living skills from occupational therapists employed by Skills for Life (SFL), initially with Jane Hannafin and then with Brooke Howard. (Hannafin, Howard)
80. Ms. Hannafin worked with Student on the self-generated goals of increasing his conversational abilities, improving his executive functioning (organization, task initiation, and sustained attention), and independence. She also worked with Student on activities that would develop his skills in these areas, including cooking and meal preparation, obtaining a learner's permit (including Student learning to obtain the manual, create a study guide, and arrange accommodations for the test), and opening a savings account and maintaining a budget. (Hannafin) Ms. Hannafin worked with Student not only on concrete skills in these areas, but also on his self-awareness about his apparent resistance or inability to initiate or generalize some of these skills. Ms. Hannafin noted that at times, Student seemed unable or unwilling to initiate taking advantage of the strategies that he had been taught, and was apparently content to be in the "passenger seat" of his own life. Parent disagreed with this characterization, feeling that Student's seeming passivity was actually anxiety due to absence of skills. (Hannafin, Parent, S-29, 30)

81. Ms. Hannafin testified that Student made progress in several domains of executive functioning, becoming increasingly willing to accept feedback and implement concrete strategies. His meal planning ability also increased and he became able to plan and cook a variety of meals with minimal prompting. He acquired his learner's permit in March of 2017. (Hannafin, P-7(h))
82. In or about September 2017, Brooke Howard, another Occupational Therapist employed by SFL, took over provision of Student's home-based services. (Howard) Ms. Howard and Student worked primarily on meal preparation and banking/budgeting. In the area of meal preparation, Ms. Howard worked with Student on cooking consistently during the week, preparing dinner for himself and Parent and doing the advance planning, shopping and scheduling needed to accomplish this task. With respect to banking/budgeting, Ms. Howard worked with Student on listing expenses, developing a mock budget, investigating different types of bank accounts, speaking with bank employees, and opening an account. With prior preparation, Student was able to meet and converse with a bank employee and select the type of account he wanted. (Howard)

PROGRAM REQUESTED BY PARENT

83. Student has attended the College Internship Program (CIP) in Lee, MA since January 2018. According to its website, CIP is a residential program which provides "individualized social, academic, career and life skills instruction to students 18-26 with Asperger's and learning differences." (P-10(a)). Students at CIP live in shared apartment settings, may take courses at Berkshire Community College (BCC) and receive individual or group instruction and coaching in social competencies (including social mentoring, social skills sessions, weekend activities, relationship development, theory of mind and student council). Students may receive individual and/or group counseling and coaching and support regarding their college classes, employment and/or independent living skills, depending on their needs and wishes. (Knauss, (P-10))
84. CIP is not approved by DESE to receive public funding as a private special education school, and does not issue or implement IEPs, attend Team meetings, or collaborate with school districts. According to the testimony of Jenna Knauss, who is CIP's Assistant Director, there is no licensed speech/language therapist on staff. Ms. Knauss was unaware of any requirements for licensure, certification, or other qualification staff. CIP does not coordinate with any other adult

service agencies such as Massachusetts Rehabilitation Commission. (S-22, Knauss, Callison)

85. While at CIP, Student has lived with roommates, attended classes at BCC, and participated in an on-campus internship. He has worked on organizational and daily living skills, but has continued to isolate from peers. (Knauss, Ely, P-10(d), (e)) Student enjoys CIP and feels he is benefiting from the experience of living away from home, being responsible for helping manage his own household, and learning how to interact with new people. (P-1)

DISCUSSION

There is no dispute that Student is an individual with a disability who at all relevant times was eligible for special education and related services pursuant to the IDEA, 20 USC Section 1400, *et seq.*, and the Massachusetts special education statute, M.G.L. c. 71B (“Chapter 766”). Student was and is entitled, therefore, to a free appropriate public education (FAPE), that is, to a program and services that is “tailored to his unique needs and potential, and...designed to provide ‘effective results’ and ‘demonstrable improvement’ in the educational and personal skills identified as special needs.” 34 C.F.R. 300.300(3)(ii); *North Reading School Committee v. BSEA*, 480 F. Supp. 2d 489 (D. Mass. 2007); citing *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir. 1993).

While Student is not entitled to an educational program that maximizes his potential, he is entitled to one which is capable of providing not merely trivial benefit, but “meaningful” educational benefit. See *Andrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (March 22, 2017); *Bd. of Education of the Hendrick Hudson Central School District v. Rowley*, 458 US 176, 201 (1982); *Town of Burlington v. Dept. of Education* 736 F.2d 773, 789 (1st Cir. 1984); *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2014). Whether educational benefit is “meaningful” must be determined in the context of a student’s potential to learn. *Rowley, supra*, at 202, *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F3d 18, 29 (1st Cir. 2008); *D.B. v. Esposito, supra*. As the U.S. Supreme Court recently held in *Andrew F.* at 69 IDELR 174, a disabled child’s goals should be “appropriately ambitious in light of [his or her] circumstances.” *Id.* Finally, eligible children must be educated in the least restrictive environment (LRE) consistent with an appropriate program; that is, students should be placed in more restrictive environments, such as private day or residential schools, only when the nature or severity of the child’s disability is such that the child cannot receive FAPE in a less restrictive setting. On the other hand, the opportunity to be educated with non-disabled students does not cure a program that otherwise is inappropriate. *School Committee of Town of Burlington v. Dept. of Education of Mass.*, 471 U.S. 359 (1985).

FAPE entails both a substantive component, as described above, and procedural protections for students with disabilities and their parents. These protections are intended to support the parent-school collaboration envisioned by federal and state special

education statutes by ensuring that parents have full and meaningful opportunities to participate in the Team process. See e.g., *Rowley*, 458 U.S. 405-406 (1982); *Roland M. v. Concord School Committee*, 910 F.2d 983, 994 (1st Cir. 1990); *Maine School Admin. Dist. No. 35 v. Mr. R.*, 32 F.3d 9, 12 (1st Cir. 2003). See also: *In Re Framingham Public Schools and Quin*, 22 MSER 137 at 142 (Reichbach, 2016), and cases cited therein.

Notwithstanding the above, it is well settled that although parents (and adult students) are Team members, entitled to fully participate in the IEP development process and to have their views considered, they are not entitled to dictate the terms of an IEP. On the contrary, a school is not required to negotiate with parents to reach a result with which parents agree if by doing so they propose an IEP that the school believes is not appropriate for the child. Rather, schools are obligated to propose what they believe to be FAPE in the LRE, whether or not the parents are in agreement. *In Re Natick Public Schools*, 17 MSER 55, 66 (Crane, 2011). Moreover, within the basic framework of an IEP, schools have considerable professional discretion and flexibility in how they fulfill their responsibilities. *M. v. Falmouth School District*, 847 F.3d 19 (1st Cir. 2017).

A hearing officer may order compensatory relief to make a student whole in situations where procedural violations by the school district have deprived the student of FAPE or deprived parents of meaningful participation in development of a student's IEP, as discussed, above. On the other hand, procedural violations that are technical or *de minimis* are not compensable. Compensatory relief generally is equitable in nature, and the hearing officer may exercise discretion in order to fashion such relief. See *CG ex rel. AS v. Five Towns Community School District*, 513 F.3d 279, 290 (1st Cir. 2008); *Lenn, supra*, 998 F.2d 1083 (1st Cir. 1993).

The instant case involves the adequacy and appropriateness of post-high school transitional services that were offered and provided to Student, who already had completed high school graduation requirements but who, because of his disability, undisputedly requires additional services. In this context, whether Winchester provided or offered Student a FAPE during the relevant time period depends on whether it followed the process set forth in the pertinent statutory and regulatory provisions for transition services as well as whether those services were calculated meet Student's unique needs. The requirement to provide transition planning and services to eligible students who require them is rooted in the IDEA's requirement to prepare students with disabilities for "further education, employment and independent living." 20 USC 1400(d) (1)(A); *Mr. I v. Maine School Administrative District No. 55*, 480 F.3d 1, 12 (1st Cir. 2007).

The IDEA defines transition services as follows at 20 USC§1401(34):

The term "transition services" means a coordinated set of activities for a child with a disability that—

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate...movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child's needs, taking into account... strengths, preferences and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and...acquisition of daily living skills and functional vocational evaluation.

The corresponding federal regulation, 34 CFR §300.43, tracks much of the statutory language, elaborating that transition services are a “coordinated set of activities” that is “designed to be within a results-oriented process...” 34 CFR §300.43(a). The regulation further states that transition services “may be special education, if provided as specially designed instruction, or a related service...” 34 CFR §300.43(b).¹⁰

The Massachusetts DESE¹¹ has issued several Technical Assistance Advisory memoranda to guide school districts, parents, and the public on implementation of the transition services mandate. The most recent such Advisory, SPED-2017-1: *Characteristics of High Quality Secondary Transition Services*, was issued in July 2016 and expands upon the definitions of transition services contained in the federal statutory and regulatory provisions referred to above. For example, the Advisory states that school districts should “provide a sufficient range and continuum of coordinated transition services to meet the full range of [14 to 22-year-old] students’ needs.” In particular, for students aged 18 to 22, districts should have the capacity to teach skills necessary for the following post-school activities: postsecondary education and/or training, seeking, obtaining and maintaining employment, independent living, accessing community services, and self-managing medical and personal needs.” *Id.*

The Advisory goes on to state that “coordinated” transition services as described in the IDEA and federal regulations are those which proceed “in a well-thought-out-, stepwise, developmental progression,” and that progress be tracked from year to year. Additionally, services should be individualized, encompassing a variety of experiences that reflect an individual student’s unique needs, strengths, preferences, interests, and goals. Districts are encouraged to create and customize programming to adapt to individual needs. Finally, in ensuring that services are “results-oriented,” districts should

¹⁰The Massachusetts special education statute at MGL c. 71B, §1 requires school districts to begin transition planning no later than the age of 14, according to the standards set by the IDEA.

¹¹ “DESE” refers to the Massachusetts Department of Elementary and Secondary Education.

seek to encourage student independence, support generalization of skills, and promote the principle of least restrictive environment (LRE). *Id.*

In a due process proceeding to determine whether a school district has offered or provided FAPE to an eligible student, the burden of proof is on the party seeking to challenge the status quo. *Schaffer v. Weast*, 546 U.S. 49, 44 (2005). In the instant case, as the moving party challenging the pertinent IEPs and placement offered by Winchester for the period at issue, Parent bears this burden. That is, in order to prevail, Parent must prove that the IEP and placement at FFL¹² proffered to Parent for the 2017-2018 school year was inappropriate, such that her unilateral placement of Student at the CIP program in January 2018 was justified. If so, she also must show that the CIP program was appropriate for Student in order to be entitled to reimbursement. *Florence County School District 4 v. Shannon Carter*, 510 U.S. 1 (1993).

Further, since Parent seeks prospective funding for CIP as well as reimbursement, she must demonstrate that Winchester's proposed IEP calling for placement at the FFL program for the 2018-2019 school year is inappropriate and cannot be modified to be made appropriate. If Parent meets this burden, she then must prove that the CIP is appropriate for Student. Finally, since Parent seeks compensatory services for certain discrete time periods, she must prove that Winchester committed procedural violations which deprived Student of FAPE and/or deprived Parent and/or Student of an opportunity to participate in the IEP process. To determine whether Parent is entitled to any of the relief which she seeks, I will examine each claim—for reimbursement, for prospective relief, and for compensatory services---in turn.

Reimbursement for Unilateral Placement

As stated above, there is a two-pronged test for determining whether Parent is entitled to reimbursement for Student's unilateral placement at CIP. The first prong is whether Parent's "self-help" action was justified because the Parent can demonstrate that there was no appropriate IEP or placement available to Student in January 2018, when Student entered CIP. I reach the second prong of the test, *i.e.*, consideration of whether CIP was appropriate, if Parent meets her burden on the first prong.¹³ To decide whether or not an appropriate IEP was in place at the time of placement, I must look at the IEP that was either offered or in effect at the time of Parent's unilateral placement of Student in January 2018, *i.e.*, the IEP issued on September 29, 2017. I find that Parent has not met her burden of proving this IEP to be inappropriate. As was the case with its predecessor IEPs,¹⁴ the IEP of September 29, 2017 contained multiple goals and

¹² All references to Winchester's placement of Student refer to both FFL and the home-based services from SFL.

¹³ *Florence County School District 4 v. Shannon Carter*, *supra*.

¹⁴ The Statement of Issues for Hearing addresses several IEPs, with revisions and amendments. Having examined each of the documents in question and in light of the totality of the evidence, I am considering collectively the IEPs and amendments referred to in Issues No. 1 and 3 and have deemed them appropriate. The IEPs referred to in Issues No. 4, 6 and 8 have been discussed separately and I also have deemed them appropriate.

objectives addressing areas identified as special needs. It incorporated findings and recommendations from Parent's chosen evaluators, Drs. Dinklage and Kulis, Kelley Challen and Pamela Ely, in addition to Ms. Hannafin and Ms. Lerner. It reflected an attempt to refine goals and objectives to address concerns of Parent and evaluators.

Moreover, the IEP and placement conformed with the statutory requirements for transition services, as interpreted by the DESE Advisory referred to above. Throughout the period for which Parent claims relief—from June 2016 to the present—Winchester has offered and provided services that are coordinated, and “results oriented.” Specifically, the FFL placement and SFL home based services are designed to work together to teach Student skills that he needs to move from school to his chosen post-school activities, namely, post-secondary education, independent living, and employment. Student's “strengths, preferences and interests,” *i.e.*, in attending college, preparing to live on his own, and be employed, have been the driving force behind planning for Student. The “needs” that the services have addressed have been the lagging social, organizational, and independent living skills that Student himself has identified as barriers to achieving his goals. Student has participated in a broad range of “instruction, related services, and community experiences.”

During the time that Student participated in Winchester's programming at FFL he made significant, documented progress towards his goals of college attendance and independence. While attending FFL, Student successfully completed six courses at Bunker Hill Community College. He acquired his learner's permit, expanded his cooking repertoire, significantly improved his grooming, hygiene and overall presentation, successfully completed three internships, and found and kept a part-time job in the community. This progress was documented by FFL's and SFL's data and progress reports. It is important to note also that Student's private evaluators, Dr. Kulis, Ms. Challen, and Ms. Ely all commented that Student was making progress despite their belief that FFL was not an appropriate setting for Student. Since the most recently-proposed IEP is a similar, updated, and more refined version of predecessor IEPs under which Student made this progress, there is no reason to believe he would not make progress pursuant to that IEP and corresponding placement.

Parent does not agree that Student has made effective progress in the FFL program. Among other things, she asserts that reports of Student's successes and ability to generalize skills are inflated and that his progress in his greatest areas of vulnerability—social pragmatics and executive functioning—has been inadequate. She states, as do Ms. Ely and Ms. Challen, that FFL staff are not sufficiently trained in social cognition/social pragmatics instruction to provide seamless intervention in Student's communication efforts. I credit the testimony of Parent, Ms. Ely and Ms. Challen that the services and interventions may not be perfect. Winchester is not required to provide Student with perfect services, however, or even services designed to maximize Student's potential. Winchester does have a mandate to provide services that afford Student “meaningful” and “more than trivial” benefit via goals that are “appropriately ambitious light of his or her circumstances.” *Andrew F.* at 69 IDELR 174, *supra*. Winchester has done so, and so has fulfilled its statutory requirement.

Having determined that Parent has not proven the pertinent IEP and placement to be inappropriate, I need not consider whether the CIP program was appropriate. Parent is not entitled to reimbursement for Student's unilateral placement at CIP.

Prospective Placement

The IEP and placement for the 2018-2019 school year are appropriate for the reasons stated above; therefore, Parent and Student are not entitled to funding for prospective placement at CIP, and I do not need to further evaluate the appropriateness of the CIP program for Student.

Claims of Procedural Violations

Parent alleges that Winchester last conducted a full three-year re-evaluation of Student in 2012 and failed to conduct a full three-year re-evaluation or at any time thereafter. The record indicates, however, that in February 2016 Winchester offered to conduct an extended evaluation at the FFL program, and that the evaluation began in April 2016 upon Parent's consent. Winchester also conducted a home assessment in the spring of 2016.

Parent has claimed multiple additional procedural violations on the part of Winchester, mainly related to the District's alleged failure to adopt certain findings of Parent's evaluators, to update certain goals and objectives, or to issue new IEPs rather than amendments or revisions to existing IEPs. Upon review of the record, I find that these alleged violations are *de minimis*, did not interfere with Parent's or Student's ability to participate in the Team process and did not deprive Student of FAPE.

CONCLUSION

Based on the foregoing, I conclude that the services and placement at FFL that Winchester has provided to Student have been reasonably calculated to provide him with a FAPE. Parent is not entitled to reimbursement for Student's unilateral placement at CIP, nor is she entitled to funding for placement at CIP for the 2018-2019 school year.

By the Hearing Officer,

Sara Berman

Dated: October 18, 2018

