

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

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In Re: Ilya<sup>1</sup>

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BSEA #1902332

Somerset Public Schools

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DECISION

This Decision issued pursuant to MGL c.71B and 30B, 20 U.S.C. 1400 *et seq.*, 29 U.S.C. 794 and the regulations promulgated under those statues. A Hearing was held on October 30, 2018 at the BSEA in Boston, MA. The Parents were represented by advocate Craig Haller. The School district was represented by attorney Alisia St. Florian.

The official record of the Hearing consists of exhibits submitted by the Parents labelled P-1 and P-2; exhibits submitted by the School labelled S-1 through S-29; and approximately 4 hours of recorded testimony and argument. The Parties presented oral closing arguments on November 13, 2018 and the record closed on that day.

ISSUES

The issues for resolution at Hearing are:

1. Whether Somerset's proposed placement in an inclusion 5<sup>th</sup> grade class as proffered in the 2018-2018 Individualized Education Program developed at a Team meeting held June 15, 2018 is reasonably calculated to provide Ilya with a free appropriate public education?
2. If not, does Ilya require placement in a substantially separate, therapeutic, special education day school in order to receive a free, appropriate public education?

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<sup>1</sup>"Ilya" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public. A derivative initial "I" is used when necessary to refer to family members.

## FINDINGS OF FACT

There was little dispute about the pertinent facts and, therefore, they may be briefly summarized.<sup>2</sup>

1. Ilya is a 10 year old 5<sup>th</sup> grade Student. He is uniformly described as bright, charming, eager to learn, sociable and caring. Ilya has a history of severe neglect and abuse as an infant and toddler. After placement with his current family Ilya entered the kindergarten in the Somerset Public Schools in 2013. As the family sought to understand Ilya's needs and behaviors they obtained several comprehensive evaluations. As a result Ilya received various clinical diagnoses: Attentional Deficit Hyperactivity Disorder-Combined Type (ADHD); Post-Traumatic Stress Disorder (PTSD); Disinhibited Social Engagement Disorder/ Reactive Attachment Disorder (RAD); Specific Learning Disability in Reading/Dylsexia.<sup>3</sup> For these he takes appropriate medication and participates in counseling outside of school. (S-25; P-1)
2. Ilya attended kindergarten and first grade without special education support. In November 2015, the first semester of his 2<sup>nd</sup> grade year, Somerset found him eligible for special education on the basis of outside testing and evaluations secured by the Parents. The IEP noted that Ilya's academic skills were largely consistent with second grade expectations. Due to parental reports of significant emotional and behavioral challenges at home and during unstructured times at school, Somerset developed an IEP calling for Ilya's placement in an inclusion 2<sup>nd</sup> grade class with a one-to-one paraprofessional to guide behavior, motivation, transitions and social appropriateness. The proposed IEP provided for special education assistance in the classroom for written language and counseling in and out of the classroom. The IEP provided for one hour daily of vocabulary/reading instruction outside the classroom and extended year services twice per week from a special education teacher. (S-13)
3. The family and School could not agree on school-based evaluations for a prolonged period. (S-17; S-18; S-28) The family requested an out-of-district placement for Ilya's 3<sup>rd</sup> grade year. (Martesian) Somerset conducted school based evaluations during the 1<sup>st</sup> semester of the 2016-2017 school year when Ilya was attending 3<sup>rd</sup> grade in Somerset. Results from the speech-language and psychoeducational evaluations indicated that Ilya's intellectual potential as measured on standardized testing ranged from average to extremely high. His problem-solving, reasoning, social communication, working memory, processing speed, and visual-spatial abilities all fell solidly in the average to above average range. In academic testing Ilya achieved scores in the average to superior range in reading decoding, fluency and comprehension, mathematical skills and written language. His one-to-one paraprofessional and his mother noted significant anxiety-related behaviors. His teachers did not report any social-emotional concerns. (S-24; S-25)
4. On November 6, 2015 the Team met to consider the results of the school-based evaluations. Somerset proposed an IEP eliminating specialized academic instruction and extended year academic services while increasing in-school counseling and retaining the 1:1

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<sup>2</sup> Ms. I attended the Hearing but declined to testify.

<sup>3</sup>The original diagnostic evaluations were not included in the Hearing Record. None is challenged.

emotional support paraprofessional. The IEP described Ilya's primary disability: RAD, and appropriate school-based approaches to handling the challenges it presented. (S-12)

5. Ilya's third grade teacher, Elizabeth Hedly, testified that Ilya made effective academic and social progress throughout the 2016-2017 school year. Ilya was fully included with the class of 21 students where he was one of the brightest students. He participated in a small group focused on written language. His one-to-one paraprofessional provided prompting and support during classroom and scheduled school day transitions. She did not provide any academic support. Ms. Hedly emphasized that Ilya's behavior in school was similar to any other 3<sup>rd</sup> grade student. She did not observe any unusual or concerning behavior. Ms. Hedly and Ms. I maintained daily email communication. Even when the Parent reported significant behavioral difficulties at home Ms. Hedly never saw a related or similar behavior in the school setting. She never received a negative report about Ilya from any other teacher in the building. Ms. Hedly participated in all Team meetings concerning Ilya. She stated that the Parent was uncomfortable with the School and Ilya's placement and sought an out-of-district placement for him. (Hedly S-22; S-11; S-14)

6. The family removed Ilya from the Somerset Public Schools after the third grade. They enrolled him in the Mastery School of Independent Learning for the 2017-2018 school year. The Mastery School is a small, private school serving 65 students in grades PK-8. It is not licensed as a special education school. The Mastery School has no certified special education teachers, no school adjustment or other licensed counselors, no school psychologist, no occupational, physical or speech-language therapists on staff. It does not conduct special education evaluations, nor develop or follow IEPs. It does not have a separate sensory, time-out, de-escalating or therapeutic space apart from the general academic/activity facilities.

Renee Avilla, Director of the Mastery School and Ilya's reading teacher, described Ilya's 4<sup>th</sup> grade year. Ilya was grouped in a mixed age/grade class of 11 students: Intermediate II. The group of 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> grade students traveled to 45 minute long classes in Science, Social Studies, Mathematics, English Language Arts and center based learning activities. Ilya was one of the most capable academic learners and made progress in all academic areas throughout the 2017-2018 school year. He was one of the least socially/behaviorally competent students in his class, regularly exhibiting anxiety-based behaviors such as refusals and argumentation.

The students' daily schedule is predictable and tight. All class instruction is highly structured. The instructional school day runs from 8:10 a.m. to 3:10 p.m. The school is open from 7:30 a.m. until 5:00 p.m. The after school portion offers fun classes and socialization activities. Ilya regularly stayed through the extended day during the 2017-2018 school year.

Toward the end of the 2017-2018 school year, Ilya's attention-seeking behaviors became sufficiently concerning that the Mastery School developed a "Safety Plan". The Plan provided that Ilya would be given 3 warnings for disruptive behavior and offered an alternative activity (a talk, a walk, self-removal to another space) each time. After three "strikes" in a day a parent would be required to pick Ilya up from school. By the close of the school year Ilya was being picked up early twice a week. (Avilla).

7. An independent Neuropsychological Evaluation was conducted in October 2017 and January 2018 by Ann Mane Lasoski. (P-1; S-15)

Dr. Lasoski reviewed some earlier psychological evaluations but, apparently, not the one conducted by Somerset the previous year. There is no indication in the record that Dr. Lasoski communicated with the Somerset Public Schools or with the Mastery School, observed Ilya in a non-evaluative setting, or attended any Team meetings concerning Ilya. Dr. Lasoski did not testify at the Hearing.

Dr. Lasoski found that standardized measures of intellectual functioning placed Ilya in the average range, a drop from testing conducted by the Children's Hospital in 2015 that concerned her. Academic testing placed Ilya in the average to above-average range in all subjects. Based on her clinical interviews of the Parent and Ilya, her own testing, and her review of some of the previous psychological and speech/language evaluations, Dr. Lasoski agreed with the prior diagnosis of Disinhibited Social Engagement Disorder/RAD and PTSD. She noted, without confirming, earlier diagnoses of ADHD and Specific Learning Disorder. She made the following recommendations: a specialized educational intervention and placement to manage externalizing behavior resulting from anxiety/depression due to disrupted attachment and early trauma; coordination of interventions between home and school; school staff trained/experienced in providing supports and interventions appropriate for RAD; assistance with transitions and developing appropriate emotional regulation skills to independently manage transitions; availability of strategies to manage feelings and behaviors when overwhelmed such as talking to a "safe person", taking a break, use of neutral language and tone, validation and identification, etc.; attention to deficits in written language including the physical process of writing, organizational strategies, and writing process; assistance in developing age appropriate executive functioning skills. (P-1).

8. On January 25, 2018 the Somerset Team met to discuss the results of Dr. Lasoski's evaluation (S-9; S-8) As a result, Somerset proposed an inclusion IEP calling for direct special education English Language Arts instruction and support in the classroom three times a week as well as pull out counseling every other day. Counseling staff would also consult to the classroom. A 1:1 paraprofessional would be available to support Ilya during transitions and unstructured times but would not provide academic instruction. The 1:1 would have specialized RAD training. A functional behavior assessment would be conducted on Ilya's return to Somerset and an updated Behavioral Intervention Plan "(BIP)" would be developed. Ilya would have access to the school counselor as needed, in addition to the 3 direct service times noted on the service delivery grid section of the proposed IEP. (S-7)

The IEP notes the significant areas of agreement with Dr. Lasoski's findings and recommendations and the changes to the last accepted IEP Somerset made in response. In particular the IEP provides accommodations in staff approach and intervention to address Ilya's anxiety and attachment challenges such as: "safe place" for breaks; "safe people" for talking out social/behavioral issues, support for self-regulation strategies; use of neutral language and tone; reward system for appropriate behaviors; consistent understanding/implementation of BIP across all school settings; as well accommodations to address his challenges with written language. There is no Parental response to the proposed IEP in the record. (S-7)

9. The Team reconvened on May 24, 2018 and June 15, 2018. Ms. I requested that Ilya be placed in an out-of-district therapeutic day school. (Smith-Barnes) Somerset added a self-advocacy goal and additional benchmarks for reading and writing but otherwise re-proposed the IEP it had originally developed in January 2018. The Parent rejected the proposed 2018-2019 IEP on August 23, 2018. (S-7; S-5)

10. Ilya returned to the Mastery School in September 2018. He attends for one half the school day due to concerns about his learning and behavior when in school for longer than three hours. Ms. Avilla testified that Ilya attends math, science, social studies and center based learning during his shortened day. He misses the social skills group with his peers as well as English Language Arts. According to Ms. Avilla, the shortened school day plan contemplated that Ilya would do the English Language Arts assignments independently at home and participate in the discussion portion with the small group of five students via Skype in the afternoon. He has not been able to participate in the English Language group, reportedly due to dysregulation at home. (Avilla)

Ms. Avilla reported that Ilya is making effective academic and social/emotional progress in the classes he attends, and could make more progress were he able to attend a full day. His behavior is fine until about 20 minutes before his scheduled early pick up time. He becomes argumentative and defiant because he does not want to leave. Mastery would consider returning him to full day status only if he had a 1:1 paraprofessional with him. (Avilla)

11. After a prehearing conference held on September 27, 2018 the Parties met on October 10, 2018 to develop a transition plan to ease Ilya's return to the Somerset 5<sup>th</sup> grade classroom. Ms. I participated as did some members of her in-home therapeutic support team. Christine Burke, Team Facilitator for Somerset, chaired the meeting which included the School Adjustment Counselor, the School Psychologist and the one-to-one aide assigned to Ilya, as well as the 5<sup>th</sup> grade general and special education teachers.

The participants discussed Ilya's transitional and long term support needs. They also discussed the availability of key personnel in the building including the School Adjustment Counselor, Heidi Pontes, who would act as Ilya's "safe" person, counselor and point person for the IEP, the transition plan, the BIP, and modified discipline. (Pontes; Burke) Other relevant in-building staff include the 1:1 who is a licensed school adjustment counselor and has experience with RAD, a school psychologist and an occupational therapist and assistant. The School also added a new, substantially separate, therapeutic classroom called TLC. The TLC is a full or part-time resource for students with social-emotional and self-regulatory difficulties. It is staffed by a full-time special educator and 2 full time paraprofessionals. The school building has additional space available for calming and decompression activities including a sensory room and separate special education classrooms. (Burke; Pontes)

The participants developed a plan, based on the proposed IEP, to bolster support for Ilya's successful transition. The proposed supports include:

direct staff training and ongoing consultation by Adoption Journeys about RAD and appropriate interventions for students with attachment issues;  
full coverage by one-to-one staff at all times in school from drop off to pick up;  
special door to door transportation;  
daily google doc communication with home;  
daily mindfulness exercises with the School Adjustment counselor and/or 1:1 paraprofessional (1:1);  
identification of behavioral manifestations of anxiety so management strategies can be implemented before they become overwhelming;  
advance preparation for any transition, (1:1);  
a silent signal system, (1-1);  
access to “safe” person (1-1, SAC, school psychologist, special education teacher);  
support for attention, organization, executive function skills (1:1);  
reading fluency support (1:1 and special educational teacher)  
FBA within first week of school attendance.  
(S-1; Burke)

The participants also discussed a plan to assist school staff to become familiar with Ilya by observing him in current environments at the Mastery School and in his home and by communicating directly with his current service providers. Ms. I left the meeting with a written transition proposal. To date, there has been no response from the Parents to Somerset’s proposed transition plan. (Burke; S-2; S-29)

12. Brittany Francis works for Adoption Journeys, a private social welfare organization that provides post-adoption services to individuals, families, schools and care teams. Ms. Francis testified that in the fall 2018 she conducted an in-service training on Reactive Attachment Disorder with Somerset staff, including the Vice-Principal, the 1:1 paraprofessional assigned to Ilya, the school psychologist, the school adjustment counselor and three teachers. Adoption Journeys is available and willing to provide further staff training and school-based consultation. (Francis)

13. Heidi Pontes, the school adjustment counselor for Somerset, is a licensed mental health counselor certified in trauma and mindfulness with significant experience counseling individuals and families experiencing challenges associated with Reactive Attachment Disorder. She would provide 1:1 counseling to Ilya on his return. She would also be the point person for all aspects of his transition and educational programming including developing appropriate behavioral strategies, assisting with any incidents, modifying potential disciplinary responses and interfacing with the family. She testified that she is confident that the School has the necessary staff, training, space, and flexibility to meet Ilya’s education needs. (Pontes; see also Burke)

14. On October 15, 2018 Trevor Calculator, a licensed mental health counselor who provides family counseling to Ilya and his mother wrote:

Ilya] could benefit from a structured school and setting...[with] small classroom sizes, availability to an OT or sensory room, multiple 1:1 ratio staff to oversee him, somebody he could go to when feeling off track that he identifies as his “safe person”, a more hands-on/outside learning curriculum, and de-escalation room where appointed staff could help him organize his thoughts and complete his work when stabilized.

(P-2)

### LEGAL STANDARDS

Once determined to be eligible for special education, a school age child with a disability is entitled to an educational program and related services that is tailored to her/his unique needs and potential and is designed to produce “meaningful educational benefit” and “demonstrable improvement” in the educational, behavioral and personal skills identified as special needs. 34 C.F.R. 300.300 (3) (iii); *North Reading School Committee v. BSEA*, 480 F. Supp. 2<sup>nd</sup> 489 (D. Mass.2007), citing *Lenn v. Portland School Committee*, 998 F.2<sup>nd</sup> 1083 (1<sup>st</sup> Cir. 1993). Whether an educational benefit is meaningful” must be determined in the context of the individual student’s “circumstances’ and potential to learn. *Andrew F. v. Douglas County*, 137 S. Ct. 988 (2017); *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982); *Lessard v. Wilton-Lyndeborough Cooperative School District*, 518 F.3<sup>rd</sup> 18 (1<sup>st</sup> Cir. 2008). A student’s goals should be appropriately ambitious....just as advancement from grade to grade is appropriately ambitious for most students in a typical classroom. *Andrew F.*, *supra*, and be reasonably likely to measurably advance the student toward the goal of increased learning and independence. *D.B. v. Esposito*, 675 F.2d 26 (1<sup>st</sup> Cir. 2012)

IDEA eligible students are entitled to be educated in the “least restrictive environment”, one which offers the greatest amount of integration in and/or exposure to the mainstream of typical school life that is feasible while maintaining appropriate special education services. Students should be placed in segregated educational settings, such as private day schools, only when the nature or severity of the disability is such that the student cannot receive a free appropriate public education in a less restrictive setting. *School Committee of the Town of Burlington v. Dept. of Education Mass.*, 471 U.S. 359 (1985)

In a typical due process proceeding to determine whether a school district has offered or provided a free appropriate public education to an IDEA-eligible student the burden of proof is on the party seeking to change the *status quo*. *Schaffer v. Weast*, 546 U.S. 49 (2005).

In this matter, the Parents are seeking a change in the *status quo* to a more restrictive placement for the Student. Therefore, they must prove, by a preponderance of the evidence, first that the IEP developed by Somerset was not reasonably calculated to assure a free appropriate public education to Ilya, second that Ilya’s special learning needs and characteristics are so unique and/or serious that they cannot be addressed in anything other than a fully

segregated educational environment; and third that the alternate school chosen by the Parent can appropriately address the student's unique learning needs. *Florence County School District Four v. Carter*, 510 U.S. 7 (1993); *Burlington, supra*; *Matthew J. v. Mass. Department of Education*, 989 F. Supp. 387 (D. Mass. 1998).

## FINDINGS AND CONCLUSIONS

There is no dispute that Ilya is a Student with special learning needs and is therefore entitled to receive a free, appropriate, public education. The issue presented here is whether the responsible school district, Somerset, considered all the evaluative evidence and crafted an educational plan for Ilya for the 2018-2019 school year that would appropriately address all his learning needs and strengths in the least restrictive setting. After careful consideration of the evidence adduced at hearing and the thoughtful arguments of both Parties' representatives it is my determination that it did. I further find that the Parents did not carry their burden of proving otherwise by a preponderance of the evidence. *Schaffer v. Weast*, 546 U.S. 49; 126 S. Ct. 528 (2005). My reasoning follows:

First I note that there are no evidentiary conflicts. The available evaluations provide a consistent portrait of Ilya's learning strengths and weaknesses. Ilya is bright. His academic achievement and progress is commensurate with his measured intellectual potential. His teachers, past and present, confirm that his academic functioning in the classroom reflects his above-average cognitive functioning. The relative weakness in written language is capable of remediation with specialized techniques in a classroom. Ilya's special education needs derive from his social-emotional functioning. The evaluators consistently identify the source of his anxiety related behaviors as RAD and PTSD due to early childhood trauma, and the expression as refusal to follow directions/transitions, stubbornness, avoidance and misreading social cues and language. (¶ 1, 2, 3, 5, 6, 8)

To address these learning characteristics evaluators and teachers have uniformly recommended: a highly structured learning environment with small class sizes; a challenging academic curriculum; specific attention to the written language process; full time therapeutic intervention and supervision with the ability for scheduled and as needed access to counseling and a "safe person"; staff trained and experienced with challenges presented by students with attachment issues; and coordination of interventions between home and school. (¶ 8, 15) There are no recommendations for placement in a substantially separate or out of district therapeutic program.

The 2018-2019 IEP proposed by Somerset for Ilya incorporates the findings and recommendations of Dr. Lasoski and previous evaluators. It offers the therapeutic services and specialized academic interventions Dr. Lasoski and previous evaluators recommended: A challenging grade level academic curriculum in a relatively small class of typically developing peer models with the opportunity for smaller group academic work when appropriate; staff trained in RAD and in appropriate interventions for student with attachment challenges; full time therapeutic support for developing age appropriate social-emotional functioning and managing transitions, and increasing the level of executive functioning skill;



targeted special education service to improve written language; and flexibility to increase or decrease therapeutic responses as warranted. (Burke; Pontes; P-1; S-7; ¶ 8, 15)

The IEP proposed by Somerset for 2018-2019 was augmented and explained during the October 10, 2018 transition planning meeting in which the participants directly addressed the Parents' concerns about the availability of appropriately trained staff, the use of RAD specific interventions, and the consistent, structured, therapeutic approach to be used with Ilya. Somerset proposed a written transition plan based on that discussion which further detailed the staff, the evaluations and the schedule that the Somerset service providers believed would meet the recommendations of teachers, parents, evaluators and staff experienced with RAD, and would provide the services and structures for success. (S-1; Burke; Smith-Barnes)

The proposed 2017-2018 IEP and the October 2018 transition plan individually addressed the recommendations of all Ilya's evaluators, teachers and therapists. Together they provide a seamless, sympathetic, framework responsive to Ilya's individual learning needs. (¶ 6, 8, 15) There are no contrary or supplemental recommendations in the record.

The Parent argued that Somerset staff was inadequately trained and experienced in handling the complex challenges presented by students with attachment issues, and therefore, could not appropriately educate Ilya. I reject this argument for several reasons. First, the Parent did not present any evidence of the kind or level of staff training and/or experience in RAD and associated issues that would constitute acceptable expertise for working with students with RAD in general or with Ilya in particular. Nor did any evaluator, teacher or counselor identify a minimum level of training or experience for working with Ilya. Second, I find that, contrary to Parental assertion, the staff assigned to work with Ilya during the 2018-2019 school year have significant expertise in precisely the therapeutic and behavioral challenges identified as school-based concerns for Ilya. Furthermore I found each of the Somerset staff witnesses to be professional, knowledgeable, candid and sympathetic to Ilya and his family. I therefore credit their testimony in full. (Burke, Pontes; See ¶ 8, 15)

Third, the School convincingly demonstrated that Ilya was able to achieve academic and social-emotional progress in the 3<sup>rd</sup> grade setting with fewer therapeutic supports and less RAD specific expertise than it has in place for the proposed 5<sup>th</sup> grade. The Parents did not offer any persuasive evidence to the contrary. Nor did they show that Ilya's special education needs are significantly different now than they were in the 2016-2017 school year. Therefore, I find that the Parents' argument has no reasonable support in the record.

On the contrary, I am persuaded that Somerset has crafted an IEP for Ilya that addresses the learning needs identified by evaluators and teachers and parents. The School consistently demonstrated a willingness to listen to parental concerns and to incorporate new information through multiple Team meetings, requests for consent to evaluate and to communicate with outside providers, and the development of additional responsive services. The School has available to Ilya a continuum of appropriate therapeutic services, from full mainstreaming with observation to full time placement in a substantially separate therapeutic classroom. By offering a mid-range placement option, consistent with evaluators' recommendations, the

School also demonstrated a capacity for flexibility and timely response to Ilya's individual circumstances that is commendable.

Therefore, I find that the 2018-2019 Individualized Education Program developed by Somerset is reasonably calculated to assure that Ilya receives special education services tailored to his unique needs and circumstances, and designed to permit him to acquire the academic, social and behavioral skills necessary for meaningful and effective progress toward achievement of his IEP goals and participation in the mainstream of the School and community, *Endrew F. v. Douglas County School District, U.S.*, 137 S. Ct. 988 (2017); *Johnson v. Boston Public Schools*, No. 16-2122 (1<sup>st</sup> Cir. 2018)

### ORDER

The 2018-2019 IEP developed by Somerset Public Schools is reasonably calculated to provide Ilya with a free appropriate public education.

By the Hearing Officer

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Lindsay Byrne  
Dated: November 26, 2018