

**COMMONWEALTH OF MASSACHUSETTS  
BUREAU OF SPECIAL EDUCATION APPEALS**

**Framingham Public Schools and Student v.  
Guild for Human Services, Inc. and the  
Department of Developmental Services**

**BSEA # 1808824**

**Ruling on The Guild for Human Services, Inc.’s Motion for Compliance**

Relevant Facts<sup>1</sup>

A Decision was issued in this matter on May 7, 2018. (See BSEA Decision # 1808824 for a summation of the underlying facts.) The Decision included the following Order: “The Parties shall immediately convene a Team to determine what safety measures are necessary to maintain Student at the Guild until another placement is identified. Framingham shall be responsible for arranging and funding any additional personnel or service deemed necessary by the Parties.”

The Guild forwarded an invoice, dated May 21, 2018, to Framingham in the amount of \$104,736.00. The invoice included charges for the following items: 1:1 staffing for Student from 4/1/18-5/30/18 (\$34, 560.00); 1:1 staffing for Student 5/31/18 -7/10/18 (\$23,616.00); 1:1 staffing for Peer<sup>2</sup> from 4/1/2018 – 5/30/18 (\$34, 560.00); and alternative accommodations for injured student from 4/1/1018-5/30/2018 (12,000.00). The Team convened on May 22, 2018 to determine what safety measures were necessary to maintain Student at the Guild until another placement could be secured. The Guild presented a safety plan, dated May 17, 2018, which stated that “Staffing will be increased so no staff will be alone with [Student] for any reason.”<sup>3</sup> An IEP Amendment was drafted which Mother accepted on June 4, 2018. The IEP Amendment added a 1:1 aide for Student to support him during all non-school hours in the residence to include “evenings, overnights, all day Saturday and Sunday, holidays and school vacations.”

Counsel for Framingham sent a letter to Amy Sousa, CEO of the Guild for Human Services, on June 11, 2018. He stated that while Framingham acknowledged the BSEA Order and intended to meet its obligation thereunder, it appeared that the invoice was broader than contemplated by the BSEA Order, and lacked detail and supporting documentation which would allow Framingham to verify the services for which payment was being sought. Framingham did not agree that it was financially responsible for staffing and accommodations for any student other than Student. It noted that the BSEA Order did not state that Framingham would be responsible for staffing or accommodations for Peer. Framingham further objected, arguing that the number of one

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<sup>1</sup> The facts are established for purposes of this Ruling only.

<sup>2</sup> Peer is the student referred to in the Decision who was involved in the incidents which lead the Guild to seek a termination of Student’s placement

<sup>3</sup> Further specifics of the safety plan are not relevant to the issues pertinent to this Ruling.

to one staffing hours for Student were excessive. Student had not had 1:1 services during the school day prior to the incidents which lead to the Hearing and testimony at the Hearing did not support the need to add 1:1 services after the Hearing. Framingham requested additional documentation for the invoice charges and expressed its willingness to continue to work toward resolution with the Guild. (See Exhibit 5) The Guild sent a further undated invoice containing charges for April through July 2018. (Exhibit 6)

On June 19, 2018, the Guild for Human Services filed a Request for Clarification of a portion of the decision which was followed by a Motion for Compliance on July 19, 2018<sup>4</sup>. Framingham filed its Opposition to the Guild's Motion for Compliance on August 1, 2018 and a Hearing was held on the Motion on August 29, 2018.

On June 25, 2018, Framingham's counsel wrote to the Guild's counsel and stated that Framingham continued to object to the Guild's invoice insofar as the charges did not seem to accord with BSEA testimony. Specifically, the BSEA Hearing testimony indicated that Student did not require 1:1 support during the educational portion of the program and that the structure and support of the program was adequate to meet Student's needs. Framingham continued to assert that it was not responsible for services provided to any other student, namely, Peer. Finally, Framingham requested documentation to verify delivery of services being billed by the Guild. (Exhibit 7)

On July 16, 2018 Framingham's counsel sent a letter to counsel for the Guild indicating that Framingham had provided payment for the amounts that were not in dispute, specifically, 1:1 services for Student during all non-school hours. (Exhibit 10)

#### The Guild's Position

The BSEA ordered that Student was entitled to "stay put" at the Guild over its strenuous objection. Therefore, Framingham must reimburse the Guild for all of the costs associated with maintaining Student's placement at the Guild. The Guild did what was necessary to maintain the safety of Student, Peer and all other members of the Guild community during the remainder of what it deemed an inappropriate placement for Student. Framingham should be required to reimburse the Guild for all costs associated with maintaining Student's placement.

#### Framingham's Position

Framingham does not dispute that it is responsible for some of the invoice items provided to Framingham by the Guild. However, it argues that it is not responsible for four specific items: 1) the cost of a 1:1 aide for Student during the school day; 2) the cost of a 1:1 aide for Peer during the school day; 3) the cost of a 1:1 aide for Peer during non-school hours; and 4) the cost of the hotel where Peer has been living since the second incident involving Student and Peer. Framingham further argues that the Guild has not

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<sup>4</sup> The Motion for Compliance was filed after the Hearing Officer issued an Order stating that BSEA rules do not allow for Motions to reconsider or re-open a hearing once a decision has been issued. The Hearing Officer suggested that a Motion for Compliance would be an appropriate vehicle to address the issue and allowed the Parties time to submit another Motion.

provided reasonable documentation of the costs it has incurred as a result of maintaining Student's placement. To date, Framingham has only been provided with spreadsheets with dates of service and numbers of units/hours. (See Exhibits 2, 6, 9, 10.)

### Analysis

There are essentially four areas of disagreement between the Parties, which will be addressed in turn. The first area of dispute is whether Framingham is obligated to provide funding for Student's 1:1 aide during the school day. The testimony provided by Amy Sousa during the Hearing indicated that Student struggled both during the educational and residential portions of the program, but less so in the educational program. (See Hearing Transcript, pg. 76.) His IEP did not require 1:1 assistance during the school day. Dr. Sousa testified that the educational portion of Student's program has a "full staff" that includes 13 active classrooms with para-educators, teachers, support staff, behaviorists, mental health clinicians, supervisors, directors and chief officers. (See Hearing Transcript, pg. 76.) In fact, even after the incidents that led to the Hearing, the Guild was open to locating a setting to provide Student's residential services and allowing him to be transported to the Guild's educational program until Student turned twenty-two. (See Hearing Transcript, pg. 100.) There was no testimony that Student would require a 1:1 aide if he were to be transported from another setting. Because I find no evidence in the record that Student required a 1:1 aide during the educational portion of his day, Framingham is not obligated to reimburse the Guild for a 1:1 aide for Student during the educational portion of the day.

The second area of dispute is with respect to funding for a 1:1 aide for Peer during the school day. The Hearing transcript does not support the necessity for a 1:1 aide for Peer during the school day. There was no evidence that Peer required 1:1 assistance throughout the school day prior to the incidents which led to the Hearing and no evidence to support his need for such support after the Hearing. Therefore, Framingham is not obligated to reimburse the Guild for any 1:1 support services provided to Peer during the educational portion of the day.

The third and fourth disputed items are intertwined and therefore analyzed together. Framingham objects to being required to provide the Guild with reimbursement for Peer's hotel accommodations and Peer's 1:1 assistant during non-school hours. It argues that it should not be required to provide services to Peer and that the Guild should bear some responsibility for the precipitating incident and should incur some of the costs occasioned as a result of the BSEA decision.

Typically a school district would not be required to reimburse a private school for costs of services provided to a student who is not a resident of such district. The facts in this case were far from typical, however. In the underlying case, despite the Guild's having followed the requirements of both 603 CMR 28.09(12) and its own emergency termination policy, it was Ordered to allow Student to "stay put" at the Guild. Although the Guild had concerns about its ability to safely maintain Student within its program, the Student did not have any place to go and the Parties were required to determine how he

could be safely maintained until an alternative program could be located or until he turned twenty two. Dr. Sousa testified and the record supported the fact that it was necessary to separate Student from Peer to maintain safety. Dr. Sousa explained that the Guild explored several options for changing Student's residence and concluded it would be difficult if not impossible to provide adequate staffing if Student were to be placed in alternative housing. (See Hearing Transcript pages 104-106.) Therefore, it was necessary to place Peer in a hotel to prevent Student from having any potential further aggressive episodes with Peer. The only way to safely maintain Student was to maintain separate residences for him and Peer. The Guild determined that Student would require staffing of approximately 5:1 to manage any potential aggressive behaviors, while Peer could be safely maintained with 1:1 staffing. The Guild did not have sufficient trained staff to provide Student with five staff members while he lived outside of a Guild residence. The Guild determined that Peer should be housed off campus until Student was no longer living in the Guild residence. Because Peer was required to be housed in a hotel due to the necessity of maintaining Student and Peer separately, and because there was insufficient staffing to maintain Student in a hotel, Framingham is obligated to reimburse the Guild for the cost of Peer's 1:1 assistant during non-school hours and the cost of one hotel room for Peer and his 1:1 assistant<sup>5</sup>.

Finally, Framingham objected to the lack of detail in the invoices provided by the Guild. In order to receive reimbursement from Framingham, the Guild must provide Framingham with the actual hotel invoices showing the charges incurred for the room shared by Peer and his 1:1 aide. Additionally, the Guild must provide a detailed listing of the hours that Peer's 1:1 aide provided services.

#### ORDER

Framingham is not responsible for the costs associated with a 1:1 aide for Student during the school day.

Framingham is not responsible for the costs associated with a 1:1 aide for Peer during the school day.

Framingham is responsible for cost of a 1:1 aide for Peer for all hours that Peer is at the hotel and/or not participating in the Guild educational program.

Framingham is responsible for the cost of one hotel room for Peer and his 1:1 assistant during the relevant time period.

The Guild must provide Framingham with an invoice, not merely a spreadsheet, showing the actual cost of the hotel during the period relevant to the Decision and a detailed listing of the hours that Peer's 1:1 aide provided services.

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<sup>5</sup> Dr. Sousa's Hearing testimony referenced multiple hotel rooms. However, she also testified that Student is unable to live independently and requires a 1:1 assistant. Therefore, the Guild may only seek reimbursement for one hotel room during the relevant period.

So Ordered by the Hearing Officer,

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Catherine M. Putney-Yaceshyn  
Dated: December 26, 2018