

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

Student v. Newton Public Schools

BSEA # 1905577

DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC § 1400 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 USC § 794), the state special education law (MGL ch. 71B), the state Administrative Procedure Act (MGL ch. 30A), and the regulations promulgated under these statutes.

PROCEDURAL HISTORY

Parents filed a request for hearing on January 3, 2019. The hearing was scheduled for February 7, 2019. The Parties' joint request to postpone the Hearing until May 20, 21, and 22, 2019 was allowed on February 4, 2019. A Pre-Hearing Conference was held on March 27, 2019. The Hearing was held on May 20 and 21, 2019 at the Bureau of Special Education Appeals. The Parties' request to postpone the closing of the record in order to submit written closing arguments by June 28, 2019 was allowed. On June 28, 2019 the Parties submitted a joint request to postpone the deadline for the submission of their closing argument until July 5, 2019. The request was allowed. The Parties submitted their closing arguments on July 5, 2019 and the record closed on that date.

Those present for all or part of the hearing were:

Mother	
Father	
Terry Sauro	Parents' educational consultant/advocate
Barbara Hughes	Student's therapist
Jason McCormick	Parents' evaluator
Shannon Cove	Academic Dean, Franklin Academy
James Turner	Learning Specialist, Franklin Academy
Allison Boscarine	Parents' attorney (observer)
Lillian Wong	Parents' attorney
Katherine McCarthy ¹	Department Head, Special Education, Newton Public Schools
Betsy Rusnick Watsman	Speech language pathologist, Newton Public Schools
Karen Shmukler	Assistant Superintendent of Student Services, Newton Public Schools
Christine Potter	School counselor, Newton Public Schools
Kathryn Stahl	Assistant Department Head of Special Education, Newton Public Schools

¹ Ms. McCarthy testified via speaker phone.

Scott Heslin	Dean of Students, Newton Public Schools
Colleen Meigher	Psychologist, Newton Public Schools
Jill Murray	Attorney, Newton Public Schools
Megan Resnik	Legal intern, Bureau of Special Education Appeals
Melanie Howland	Legal intern, Bureau of Special Education Appeals
Shannon Robichaud	Director of Out of District, Newton Public Schools
Jane Williamson	Court Reporter
Carol Kusnitz	Court Reporter
Catherine Putney-Yaceshyn	Hearing Officer

The official record of this hearing consists of Parents’ exhibits marked P-1 through P-84 and P-86-87 and Newton’s exhibits marked S-1 through S-13 and approximately 15 hours of recorded oral testimony.

ISSUES

1. Whether the proposed IEPs offered by the Newton Public Schools during the time period from March 2017 through April 2018 were reasonably calculated to provide the student with a free appropriate public education in the least restrictive placement.
2. If not, whether Parents are entitled to reimbursement for their unilateral placement of the student at Franklin Academy.
3. Whether the IEPs and proposals made from the time period of April 2018 through June 2019 were reasonably calculated to provide the student with a free appropriate public education in the least restrictive environment.
4. If not, whether Parents are entitled to reimbursement for their unilateral placement at Franklin Academy during that time period.

SUMMARY OF THE EVIDENCE

1. The student (hereinafter, “Student”) is eighteen years old² and resides within the Newton Public School district. His last accepted IEP lists his primary disability as autism and his secondary disability as emotional. (P-12) A neuropsychological evaluation report dated April 17, 2018 diagnosed him with Autism Spectrum Disorder-Level 1 (Asperger’s Type), major depression, and an anxiety disorder. (P-61) He has extremely high verbal conceptual and high average visual spatial reasoning skills. His working memory falls in the average range and his overall processing speed falls in the low average to very low range. From a functional level at school, Student’s learning style reflects some discrepancy between considerable strengths in verbal reasoning and weaker output/production rate. (P-12)
2. Student had a successful school year during his ninth grade (2015-2016). His classes were at the ACP (Advanced College Prep) level. He was not enrolled in any Honors level

² Student delegated educational decision making authority to his Parents. (P-74, Father)

classes. He participated in cross county, model U.N., and took tennis lessons. (Father, Potter)

3. Student's last accepted IEP was produced after a meeting on March 29, 2016, covering the period from March 29, 2016 – March 28, 2017 (Student's ninth through tenth grades). It provided for consultation by the speech language pathologist in social pragmatics 1 x 30 minutes per month and direct services from the speech language pathologist in social pragmatics 1 x 15 minutes per five day cycle. There were a number of accommodations including: providing an environment with minimal distractions for test taking; providing access to a keyboard for note taking and assignments; extended time for in-class assignments and tests; provision of extensions for long term writing assignments as needed; classroom instructions, assignments, due dates clearly stated; encouragement for self-advocacy; and supporting Student in understanding directions, unfamiliar tasks, etc. No extended year services were proposed. (P-12) Parents accepted the IEP in full. (Father)
4. In tenth grade Student enrolled in an Honors³ math class. He was not recommended for an Honors class by his ninth grade math teacher. She recommended him for an ACP (Advanced College Preparatory (S-10)) level math class. Student wanted to be in the higher level Honors class and was thus required to take an entrance test to be allowed to take the higher level class. He took the entrance test and his score was considerably lower than what most students in Honors level math receive. His teacher agreed to allow him to enroll on a "trial basis." Parents hired a private tutor to assist Student in math. (Father, P-14)
5. Student's mid-term comment report for tenth grade, dated October 6, 2016, includes a comment from his Honors math teacher stating that, "Despite good effort, student struggles with mastery of class material and has performed poorly on one or more tests/quizzes." (P-15)
6. Student's October 2016 progress report completed by speech language pathologist, Alex Lelchook, states that Student attends his weekly social pragmatics session regularly, yet begrudgingly. Student contends that no growth is needed on his part communicatively or pragmatically. He feels stigmatized by being involved in an IEP program. He actively listens and responds to comments and questions, but negates aspects about character building that have been introduced as relevant for high school interactions or connections. He presents with a controlled, sober demeanor and a quiet vocal quality, but can manage light conversation and expressions of amusement. Mr. Lelchook concluded that if Student developed an openness and desire to undertake new ideas about character competence he could continue to build his social communication competence. (P-16) His January 2017 progress report stated that Student feels that he is successful within both the verbal and non-verbal domains and has the competency to manage academic and civic competencies within his classes. (P-18)

³ Father explained Honors courses are more fast-paced and complex than ACP classes. (Father) Student's math teacher, Nicole Conway, noted that the Honors track moves much faster and requires a lot more independence from its students. (P-14)

7. Student's Latin teacher, Daniel Orazio, wrote a letter to Christine Potter, Student's guidance counselor, on or around January 24, 2017 and forwarded it to Parents at Ms. Potter's suggestion on February 1. Student had told Mr. Orazio that he was "drowning" as a result of his two Honors classes. He told Mr. Orazio he was getting little sleep and is often sick. Mr. Orazio suggested to Student that he change his schedule and Student said he could not drop Honors math because no good college would accept a student who had not taken Honors math. Mr. Orazio suggested to Student that peace and happiness are more important than going to a good college, but Student would not listen to him. (P-19) Father responded to Mr. Orazio's note stating that he was "preaching to the choir." He further stated that Parents had tried to persuade Student not to enroll in Honors math and have sought to convince Student to meet with an outside psychologist and bring an open mind to his meetings to Mr. Lelchook. Father reported that Student had refused all of his suggestions. He noted his view that Student's struggles are caused by his rigidity and his failure to see the need for or accept offers of others who want to help him. (S-19)
8. In late February 2017 Parents sent an email to Mr. Lelchook and Ms. Potter questioning whether holding the upcoming IEP Annual review meeting would be productive. They stated that Student has received excellent services from Newton, but is highly resistant to dealing with his issues. They stated that they have reluctantly terminated the services of other professionals they had employed because Student chose not to follow their advice. Parents were also considering using parental vetoes to ensure Student did not enroll in Honors courses for his junior year. They stated that they wanted Student to continue to have accommodations for test taking and using the computer as needed. (P-19) Mr. Lelchook responded by stating that he agreed that during his sessions, Student did not believe he had to work on issues involving social pragmatics or peer issues. Student believed he was managing adequately. Mr. Lelchook explained the purpose for the annual Team meeting and stated his belief that if Student had a choice he would discontinue all services. (P-19)
9. In or around March 2017, Parents emailed Ms. Potter indicating their belief that Student will not benefit from the help he needs to become more aware of his needs. They requested that Student's teachers deny him the opportunity to register for "too high-level classes." They anticipated that Student would be unhappy about not participating in higher level classes, but thought it would be better for his physical and mental health. They stated that they would like to see the Team address both appropriate course levels for the following year and dropping support services other than testing accommodations, as Student had not been receptive to the services. (P-19) Ms. Potter stated that she would be willing to bring up the subject of maintaining balance in Student's schedule. She noted that Student may see the need for continued work on his social skills from the Team discussion of his struggles in classes. She also offered to meet with Student after the meeting to address any concerns or questions he had. (P-19)
10. The Team convened for its annual review on March 8, 2017. (P-21) Before Student arrived Parents were informed that Student would not be recommended for any Honors classes the following year (as they had requested) and Parents were pleased. When

Student arrived at the meeting and was informed of this he became very upset.⁴ He bowed his head and said, “Don’t do this to me.” He was crying so hard that somebody suggested that they end the meeting. (Father)

11. Pursuant to that meeting the Team proposed an IEP which added a goal in the area of planning, organizing, and strategizing. The grid contained a consultation with the speech language pathologist for 30 minutes per month and direct services in social pragmatics 1 x 15 minutes per 5-day cycle. It was sent to Parents on or after March 22, 2017. (P-22) Ms. Potter testified that she believed Student needed more services than just fifteen minute per week, but it was pretty clear that Student “would have none of that.” She also got the sense that Parents did not want to push the issue of more services with Student. It was clear that Parents believed Student would be resistant to the proposal of any additional services. (Potter)
12. On the evening of March 21, 2017 Student told his parents he wanted to kill himself by jumping out the fourth floor window at Newton North High School. His mother informed him that the windows do not open. Parents were alarmed and sent an email to Ms. Potter seeking an emergency meeting the next day. They did not call a doctor or 9-1-1 or bring Student to an emergency room. (P-23, Father)
13. Ms. Potter met with Parents on March 22, 2017. Parents were very concerned and informed her that Student had talked about hurting himself the previous night and were looking for advice. Ms. Potter suggested that they contact Riverside Emergency Services to do a safety evaluation and gave them the phone number and also a phone number for a crisis hotline that provides emergency around-the-clock services and will come to the home. She also reminded them of the option of calling 9-1-1.
14. The same day Student stopped by Ms. Potter’s office on his own accord. He was not aware that his parents had met with her that morning. He was tearful and told her he had been depressed since the Team meeting. She talked to him about having some outside counseling or a place to talk to somebody who is not his family and not from his school, but his own place. He was resistant. Ms. Potter emailed Parents to let them know Student came to her office and encouraged them to pursue the counseling they had discussed with Riverside staff. (P-23, Potter)
15. Parents sent a March 22 email to Mr. Lelchook (and copied to Ms. Potter) requesting that Student’s social pragmatics services with Mr. Lelchook be cancelled. (P-23)
16. Parents brought Student to Riverside on March 23, 2019. Student denied suicidal intent and reported that he would not act on any suicidal ideation. Student reported that the previous week his teachers had recommended that he not enroll in any Honors classes the next school year. He reported social isolation and stated “the only thing I have going for me is that I am in some Honors classes.” Student stated that he intended to work diligently for the next quarter to improve his grades in the hopes that Newton would reconsider his

⁴ Parents knew before the meeting that the Team would discuss Student’s placement for the following year and that Student would be upset. (Father)

class placement determinations. The Riverside staff did not think Student was in immediate danger of harming himself. He was able to contract for safety and was sent home. (P-24, Father)

17. Parents found a therapist for Student, Dr. Albert Cotugno, with whom he began therapy on March 30, 2017 and weekly thereafter. He noted Student's areas of difficulty as rigidity and inflexibility related to autism and having few social relationships of poor quality. (P-25)
18. Upon receiving an F for his third term English class Student was enrolled in a focused study block and he and Parents received an email notice of the schedule change. Mother emailed Ms. Potter and Mr. Heslin and asked them to delete the focused study blocks from Student's schedule. She stated that Student had become very upset when he learned he had been assigned to the focused study and Parents have been working hard to keep his emotional state stable. Student was concerned about what other students would think of him being in a focused study and had planned to use his free blocks to meet with Ms. Potter and his teachers about making up tests and quizzes. Mr. Heslin responded stating that they would drop the focused studies from Student's schedule and make sure Student could catch up in his classes and be supported for the rest of the year. (P-26) Mr. Heslin thought the focused studies could have provided some additional support for Student. (Heslin)
19. Ms. Potter and Mr. Heslin met with Parents to discuss Student's work production issues and possible supports to be provided to him in school on March 27, 2017. After that meeting Ms. Potter met with him pretty regularly to help him organize his make-up work and plan and organize how he would complete it. Initially Student was somewhat resistant to coming to meet with her. He started to realize that she could be helpful after a few meetings. Ms. Potter met with Student a couple of times per week for about fifty-five minutes per session and communicated extensively with his teachers regarding his assignments while keeping Parents in the loop. She ensured that Student received his requisite accommodations on his final exams by communicating with all of his teachers. Student's ability to complete his work improved over time and he became more willing to meet with Ms. Potter. (Potter) Mr. Heslin also met with Student a number of times in the spring of 2017. He talked to Student about receiving academic support and brought him to some academic support classes so that he could observe them and see what the class was like. Mr. Heslin emailed Parents about the possibility of persuading Student to accept academic support services by allowing him to take an Honors science class during his junior year if he agreed to accept academic support services. (P-39) He talked to Student about his school work and how having an academic support teacher would help him learn the skills to manage a heavy workload on his own. (Heslin)
20. On the evening of May 2, 2017, Father emailed Ms. Potter and informed her that Student had just learned that he was not elected as one of the officers in the Model UN club. Student was extremely upset and talked about accusations of voting being fixed and stated his belief that he was not good at anything. Father wanted Ms. Potter to be aware, as he was concerned this could add to Students "problems." (P-27)

21. Between March and June 2017 Parents were having discussions with Mr. Lelchhook and Ms. Potter about whether Student should remain on an IEP or whether he should be on a section 504 plan, given his resistance to receiving services. (P-26, P-29) In a March 13, 2017 to Parents Mr. Lelchhook reminded Mother she had told him she intended to send an email to the special education office indicating she would be discontinuing Student's IEP in favor of a 504 Plan. Mother responded by saying that she had intended to send the email, but delayed making a decision regarding an IEP v. a 504 plan because Student's anger and depression about his recommended class levels for the next school year had increased. (P-26, pg. 3) On or around May 17, 2017, Father stated in an email, "We believe that experience has proven, albeit unfortunately, that [Student] will (choose to) not benefit from the offer for additional Social Pragmatics assistance... Accordingly, we believe that a Section 504 plan, rather than an IEP is what should be proposed." (P-29, pg. 21) Also on May 17, 2017, Father emailed Mr. Lelchhook, Ms. Potter, and Scott Heslin and stated that if Student's teachers are not going to recommend that Student be assigned to any Honors classes, they would choose a 504 plan. However, if Student's science teacher were to recommend placement in an Honors class and the Team believed that Student could only succeed in the class with additional support that would require an IEP, Parents would be in agreement. (P-29) On June 20, 2017, Mr. Heslin responded to Father's email asking what Parents had to do with respect to the determination of whether an IEP or Section 504 would be proposed for the following school year. Mr. Heslin advised Father that Parents could accept or reject the last proposed IEP. (P-31, pg. 67)
22. While studying for his chemistry final exam, Student participated in a chat room with other students preparing for the exam. One student posted a photo of the chemistry exam he had obtained improperly. Student emailed the chemistry teacher and reported that the other student had posted it. The student who posted the final exam begged Student to email the teacher and say that he was only joking, but Student would not. That student posted, "u better be joking or I'm coming to your house. I'm getting in the car now...lock ur doors." The other student said he would kill himself. He later posted, "I hate [Student] everyone does." At about midnight that night, the student who had posted the exam came to Student's house and was tearful. Student was asleep and Parents let him in. The student expressed suicidal thoughts and Parents called his mother who picked up her son and apologized to Parents. Parents later confirmed the story with Student and emailed Mr. Heslin. (Father, P-31, Heslin) Mr. Heslin responded promptly and informed Parents he would be speaking to the other students' parents. He agreed with Parents' decision to keep Student home the following day to allow Mr. Heslin to speak to the other students involved in the chat room and ensure that other students would not retaliate against Student. He helped Student arrange to take his chemistry final on a different day, so he would not have to see any of the peers involved in the chat room. Student did not report any bullying from any of the other students involved after the incident. He never said he felt unsafe returning to Newton North to take his finals, and did return to take his finals. (Father, Heslin, P-30, P-31)
23. The Team reconvened on June 21, 2017, to review Student's March IEP which had yet to be either accepted or rejected by Parents. The Team proposed adding academic support 4

x 60 minutes per five day cycle (with a special education teacher) to provide Student with additional support in completing assignments. It also proposed continuing social pragmatics with the speech language pathologist 1 x 15 minutes per cycle. There was discussion about entering a contract with Student whereby he would agree to accept the assistance provided by the academic support and he would be permitted to enroll in Honors biology. (This was proposed as a way of encouraging Student to “buy in” to utilizing the academic support services by allowing him to enroll in an Honor level class, which was important to him.) (P-32, S-1, Father, Heslin) Mr. Heslin recalls thinking Student would have benefitted from counseling. He recalls the Team did not include counseling in the IEP because Student was so resistant to services and he did not think Student would avail himself of counseling with a new person at that time. (Heslin) Ms. Potter agreed with the Team’s recommendation to provide Student with academic support and continued services in social pragmatics. (Potter) The IEP was mailed to Parents on or around June 23, 2017.

24. During the summer after tenth grade Parents found a large bottle of Tylenol in Student’s room. He told them it was there because he was thinking of committing suicide. Parents brought him to see a psychiatrist, Michelle Palumbo, M.D at the Lurie Center at Massachusetts General Hospital. Dr. Palumbo concluded Student needed to be immediately hospitalized. Her notes state that Student presented with “symptoms of major depressive disorder, severe, with active suicidal ideation and a history of suicidality ideation with plan.” Further, she noted that Student was very resistant to treatment and the severity of his symptoms was too severe to start medication treatment as an outpatient. (P-33) He was admitted to North Shore Medical Center in Lynn where he remained in a locked pediatric ward for twelve days. (P-35, Father) He was discharged to McLean Hospital ART on July 26, 2017, where he remained in a full hospital setting until August 9, 2017. (Father) Student was prescribed a number of medications upon discharge including: Risperidone, Mirtazapine, and Betztropine. His discharge summary notes that Student was generally resistant to engaging in group therapy, feeling that it was not applicable to him. He showed some improvement in his depressive symptoms. He also became more open to the possibility of attending a therapeutic school and accepting the fact that he would not be taking Honors classes when he returned to school. (P-38)
25. On or around July 19, 2017, Parents sent an email to Mr. Heslin and Ms. Potter (who were not working during summer break (Potter, Heslin.) Parents reported that Student was currently hospitalized and that Student had reported to them and the hospital’s clinical staff that he had been bullied at Newton North. Parents reported their belief that there was a link between Student’s Model UN experience, his class placement and his perception of bullying. They noted that Student was adamantly opposed to returning to Newton North in the fall and stated, “whether [Student] tries to enroll instead at [Newton South], or at some specialized school, are matters to be decided later.” (P-36)
26. Mr. Heslin responded on August 3, 2017 and stated that Newton North wanted to do whatever it could to support Student’s needs. He stated he was unclear about the bullying Student perceived, as Student had not reported specific incidents involving specific students to him. He offered to meet with Parents and Student to address the reported

bullying and offered to advise Parents of the process of transferring to Newton South. Parents replied on August 3, 2017, stating that a meeting with Student would not be possible or helpful to his recovery. They noted that Student was at McLean and had made little progress, but that medications had made his reactions less virulent. They noted the unlikelihood of Student returning to Newton North and stated that transferring to Newton South was one, but not the only alternative Parents were considering. (P-36)

27. Parents were referred to an educational advocate, Teresa Sauro, by a caseworker at McLean while he was hospitalized. They hired Ms. Sauro, and together they began to research potential schools for Student to attend in the fall. They decided to look at residential schools because while Student was at Newton North he spent most of his time outside of school in his room studying. He did not have any friends and did not spend time with other students. Parents believed he required a residential school where he would be required to participate in social activities and where Parents hoped he would learn about friendship and practice social pragmatics. They believed he could only learn this at a residential school where there were peers and skilled staff available to assist with social pragmatics. (Father)
28. As early as August 7, 2017, Parents were communicating with both private day and private residential schools regarding Student's potential placement for the 2017-2018 school year. (P-39, S-11) In an August 12, 2017 email Father sent to David Zimmer of Beacon High School, he stated that Parents intended to seek funding from Newton for Student's out of district placement. He stated, "We have not yet commenced that petition, as we are directing our immediate efforts –with the help of Terry[Sauro]—toward finding [Student] an appropriate private school for classes beginning this fall, expecting to be a "private pay" client for the school." (P-39) In an August 15, 2017 email from Father to Terry Sauro, Father stated that Gifford does not accept private pay, "even when private pay is expected to be followed by an attempt to convert to an out-of-district placement approval." (P-39)
29. At the behest of their advocate, on August 18, 2017, Parents rejected the March IEP, as amended by the IEP proposed at the June 21, 2017 Team meeting. Parents indicated that they believed Student required an appropriate therapeutic placement. (S-1, Sauro)
30. On August 29, 2017, the Director of Admissions at Franklin Academy (hereinafter, "Franklin") sent letters to both Student and Parents stating that Student had been accepted by Franklin. (P-43)
31. On August 30, 2017, Parents emailed some of the private schools with whom they had previously communicated and informed them that Student had accepted an offer to enroll at Franklin. (P-, S-11)
32. Katie Stahl, Assistant Department Head of Special Education for Newton North, sent Parents an email offering to convene the Team on August 31, 2017. The email noted that the goal of the meeting was to share new information regarding Student's progress and to discuss supports for him. Ms. Stahl stated that Newton welcomed participation in person

or by phone of Student's clinician(s) and requested consent for Newton to speak to Student's clinician(s) regarding his progress. On August 25, 2017, Parents accepted the invitation to meet and stated that their advocate would accompany them. They attached a copy of an August 9, 2019 letter from McLean Hospital. (P-41) The letter, written by Catherine Lopes, LCSW and Peter Adams, MD, was addressed "To Whom it May Concern. The letter noted that during Student's treatment he was diagnosed with major depressive disorder, recurrent episode, severe with anxious distress; generalized anxiety disorder; and mixed obsessional thoughts and acts. It noted that Student had used Dialectical Behavioral Therapy to manage and articulate his emotions. Little progress was made due to Student's serious emotional difficulties and thought rigidity. The letter stated that due to Student's autism, he would require extensive therapeutic support in order to access the academic curriculum. Ms. Lopes and Dr. Adams recommended that Student would benefit from an educational program with experience working with teens with high functioning autism and ongoing mood crises. They stated Student would need daily mental health check-ins and therapy support. They recommended that Student receive services at a therapeutic school given his ongoing emotional difficulties, coupled with suicidal thinking, which "will continue to require intensive interventions." (P-37, P-41)

33. The Team convened on August 31, 2017. (S-2) None of the clinicians who had recently worked with Student participated in the meeting either in person or by telephone. (Father) Newton proposed placement in the LINKs program at Newton North, increased speech and language services, and academic support. Student would have access to a social worker for counseling on a daily as needed basis as well as two set counseling sessions per week. The Team thought it was important that Student remain in classes at his level. Mr. Heslin, a previous Co-Director of the LINKs program, explained that the program is therapeutic and provides both individual and group counseling. Students can use the therapeutic milieu of the program as a home base during the school day if they need a break from classes. (Heslin) He testified the Team reviewed the August 9, 2017, McLean letter that Parents sent to Newton on August 25, along with prior testing and input from Parents and their advocate. At the conclusion of the meeting Parents' advocate informed the Team that Parents would be unilaterally placing Student at Franklin as a residential student. The Newton based Team members informed the Parents that they believed appropriate services could be provided at Newton North. (S-2, P-45)
34. Colleen Meigher, Ph.D., school psychologist, Newton Public Schools, did not attend the August 31, 2017 Team meeting, but assessed Student when he was in the ninth grade⁵. She has been a school psychologist in Newton since 2001. Dr. Meigher has co-authored a chapter in an academic text about suicide prevention and is an adjunct instructor of practicum students in the area of social emotional functioning in middle and high school students. She has partaken in professional development in the areas of executive functioning, trauma, suicide prevention, suicide response and crisis response. Dr. Meigher consults with the LINKs staff weekly and has lead therapeutic groups in the program for many years. Individual counseling is available to LINKs students and most students attend at least one group. Students generally move their homeroom to LINKs and there are team building activities and field trips throughout the year. The LINKs program offers

⁵ Dr. Meigher also later assessed Student during his twelfth grade. (Meigher)

a therapeutic milieu. There is an academic support classroom. The program offers a home base for students. They can stop by there for a few minutes between classes or spend a longer time there if they are having a difficult time. Students can drop in and meet with one of the counselors and they can problem-solve if they are having difficulty in another class. Dr. Meigher believes the recommendation of the LINKs program for Student was appropriate for several reasons. Prior to that summer, Student had done relatively well for a year and a half. He had been making effective progress with very minimal supports. His emotional issues increased in the spring and he was hospitalized in the summer. When the Team met to consider the information that he had been hospitalized and to determine how to allow Student to access classes he was interested in and provide him with a significantly increased level of support, the LINKs program made sense. Student did not require substantially separate classes in the academic content areas, but providing him with therapeutic support and a home base as well as individual and group counseling seemed like a logical first step to her. (Meigher)

35. Dr. Meigher explained that Newton has a lot of experience addressing the needs of students returning to school following hospitalization for mental health needs. She noted that in addition to its regular guidance counseling staff Newton North has 10-15 psychologists and counselors working at any given time offering a broad range of services. They can provide students with varying levels of service ranging from a weekly drop-in, to an as needed intervention for a short-term issue, to ongoing work with a student around skill development, mindfulness, or problem solving. They can also provide regular counseling services built into a student's schedule. Dr. Meigher runs counseling groups at Newton North; she co-leads a weekly Dialectical Behavior therapy group with four to six students. She works with many students regarding executive functioning issues; writing or work production issues; and ADHD. She works with a number of students on the spectrum and many students with emotional disabilities, primarily anxiety and depression.

Dr. Meigher noted that Student's profile is not atypical. It is common for students on the spectrum to have social emotional needs by the time they reach high school. It is also common for such students to have difficulty related to work production and processing speed. She and her colleagues have worked with students who have expressed thoughts of self-harm. Newton offers a program for suicide prevention in which ninth and eleventh grade students can participate. (Meigher)

36. On or after September 11, 2017, Newton sent Parents a letter dated September 7, 2017. (McCarthy, P-49, S-3) The letter stated that Newton would not support Parents' request for reimbursement/funding for Student's unilateral placement at Franklin. It reiterated Newton's position that its proposed IEP would provide Student with a free appropriate public education in the least restrictive environment. The letter summarized the most recent Team meetings, proposals, and Parents' responses and stated, "as a result of these recent changes in [Student]'s presentation, and in an effort to gain further information regarding [Student]'s current educational profile and needs the district is also proposing to conduct an extended evaluation of [Student] in a 45-day assessment day program." Newton enclosed a release that would allow it to send out referral packets to potential 45-

day assessment programs. (S-3) Parents did not provide consent for Newton to conduct a 45-day assessment of Student. (McCarthy)

37. Student enrolled in Franklin in the fall of 2017, Student's eleventh grade. (P-61) According to Shannon Cove, Learning Specialist on Student's eleventh grade team at Franklin, Franklin is a private boarding school for students from eighth grade through post graduate age. Students at Franklin are typically diagnosed with high functioning autism, non-verbal learning disabilities and some have comorbid diagnoses of anxiety, depression, and ADHD. They often come from a school where they have struggled or felt as though they had been bullied. The students tend to struggle significantly with social nuances, emotional regulation and executive function. Franklin utilizes a team based model. Student was on a Team, with mostly eleventh graders and some "two-year senior⁶" boys. Student's team consisted of 2 humanities teachers, one science teacher and one math teacher; three "leadership members": a counselor (who oversees mental health aspects of the program), a residential dean (who oversees the social life the program and the residents in the evening/residential lessons) and a learning specialist (who oversees the academic program.) The leadership members serve as parent contacts or liaisons to families. They meet with the teaching staff to discuss students' needs and make sure the same interventions are happening across the classrooms and residence. (There is a speech language pathologist in the program, but Student does not see her.) Each staff member works the day shift from 9-4:30 and once per week each staff person is there until 11:00 p.m. On his or her late day, daytime staff is in the residences where he or she conduct hall meetings in the morning. They teach the residential lesson in the evening, observe study hall and work with the students. They ensure that students complete their activities of daily living and go to bed. There is a staff person from each team present on weekends as well. (Cove)

Franklin staff is not required to have a specific educational background. The learning specialists are required to have a special education degree. Counselors range from school counselors to licensed counselors to "LPC"s. They are overseen by a clinical director who is available at all times. Academic classes meet for 50 minute blocks and have six to eight students. All students take Individual and Community class, which is focused on social, emotional and self-care. They talk about their emotions. They discuss perspective taking and staff introduces "blueprints" where a student talks about an incident that happened and they talk about the perspective of the other student involved. (Cove)

Franklin works on four core competencies: executive functioning, emotional regulation, social skills, and self-care. Staff spend the first quint (five weeks) getting to know students, making sure each student begins to build rapport with at least one staff member and ensure they are making friends. During quint 2 there are team meetings during which staff talks about each student's 4 core competencies. They determine which are impacting each student the most and what interventions are required.

Ms. Cove has a Master's degree in special education and a Connecticut teaching certification for English grades 7-12. She described Student as very rigid, bright and

⁶ Students are required to attend Franklin for two years to get a Franklin diploma. (Cove)

eloquent, but resistant to being there. He thought if he studied enough he would “be normal.” Student kept asking about Honors classes and saying he would not get into college if he was not smart enough. Ms. Cove spent a lot of time trying to get Student out of his bedroom on her duty night. He did not care about forming friendships and said, “I’m not going to do anything if it doesn’t have a purpose to get me to college.” Student often spent time with Ms. Cove on her duty night. She often required him to be out of his room during the evening to support his social functioning. She had “mandatory fun night” with him where she would play games with him. Gradually he started interacting with other students. Ms. Cove spoke to Student frequently about his distorted thinking about academics. He came to her office once or twice per week to talk about things. (Cove)

Franklin students are required to participate in weekend trips, such as trips to the theater, movies, dinner, or stores. Student was required to participate in one on-campus and one off-campus activity each weekend during eleventh grade. (Cove)

Since about December of his eleventh grade year Student has had a fairly consistent social group consisting of males and females who ate lunch together and socialized during free time. Ms. Cove believes Student made gains socially. He created and fostered friendships. She noted that the milieu intervention was very effective for Student. She stated that he does not have much affect and she sometimes overheard him saying things that could be perceived as rude to a peer. She was able to pull him aside in the moment to discuss it with him which helped his ability to maintain friendships. She believes Student benefitted from the residential aspect of the program. She noted that he was extremely rigid and still struggled at the end of his first year. She therefore would have been concerned if he had left Franklin after the first year. Student never required any emergency or clinical care during the evenings or weekends while at Franklin and Ms. Cove is not aware of any time that he was at risk for self-harm while there. (Cove)

38. Student saw a private therapist, Barbara Hughes, while at Franklin. Dr. Hughes has a doctorate in counseling and previously worked at Franklin for three years. She now has a private practice and sees some Franklin students when their parents hire her privately. She specializes in young adults with autism spectrum disorder, non-verbal learning disability, anxiety, and depression. She began meeting with Student in mid-October 2017 and saw him for a 45-minute weekly session when Franklin was in session. She did not consult with Student’s team at Franklin. Dr. Hughes noted that Student had a difficult transition to Franklin. He was angry and focused a lot on his experience at Newton North. He stated that he did not like the attitude of the other students at Newton and he was angry that he was not recommended for Honors level classes. He reported that he would have been bullied if he was not in Honors classes and he was fearful that he would be pulled out for special education support. Student was initially resistant to therapy. She tried to explain how his flat affect is perceived by others and he became angry and annoyed. She talked to him about the value of a growth mindset versus a fixed mindset. She tried to make him aware of his facial expressions and reading those of others. She worked on coping strategies. (Hughes)

39. Dr. Hughes noted that Student made progress at Franklin which she saw when he began to engage in the program, such as when he organized a Model UN club. He continues to have challenges with perspective. His thinking processes are rigid, he has an egocentric point of view and it is difficult for him to consider how others see the world. He is unaware of how he comes across to others and does not read facial expressions. Even during his second year working with Dr. Hughes, Student continued to struggle to accept what his challengers were. (Hughes)
40. Parents' attorney sent a letter to Newton dated October 16, 2017. The letter rejected Newton's proposed placement at Newton North High School and its proposal to conduct a 45-day assessment of Student; summarized Parents' reasons for unilaterally placing Student at Franklin; and renewed Parents' request that Newton agree to place Student at Franklin. Attached to Parents' attorney's letter was a letter dated September 8, 2017, from Michelle Palumbo; a letter dated August 30, 2017, from Albert Cotugno, Ph.D.; and the August 9, 2017 letter previously provided to the Team from Catherine Lopes, LCSW and Peter Adams, MD from McLean Hospital. (P-52)
41. Dr. Palumbo's September 8, 2017 letter, addressed "To Whom it May Concern" states that she evaluated Student in July and had a follow up appointment with him in August 2017. She opined that Student required a "comprehensive, highly therapeutic milieu that will offer him specialized, systematic and consistent services in the social-emotional arena as well as in the areas of academic learning and independent living." Dr. Palumbo's letter was not provided to Newton until it was attached to Parents' attorney's October 16, 2017 letter. (P-52)
42. Albert Cotugno, Ph.D., wrote a summary of his work with Student from March 30, 2017 through August 29, 2017. When Dr. Cotugno began seeing Student, he was overly stressed by his academic workload and by self-induced performance pressure. He began seeing Student weekly with a primary goal of Student's rigidity/inflexibility across emotional, social, behavioral, and academic issues. During his treatment, Student remained rigidly and obsessively focused on social issues such as feeling overlooked, bullied, and betrayed; on academic expectations (worrying that his life would be terrible if he did not get into a good college), and he felt intense anger directed at people he thought were responsible for his not being recommended for Honors level classes. Dr. Cotugno noted that when he returned to therapy after his hospitalization he was markedly calmer and somewhat less rigid "with the knowledge that he would not be returning to Newton North High School to confront these issues." Upon termination of his services, Student was noted to be calmer and less rigid and inflexible. He recommended an educational and therapeutic program that provides a high degree of structure, monitoring, and continuity. Dr. Cotugno's letter was not provided to Newton at the August 31, 2017 Team meeting or any other time until it was attached to Parents' attorney's October 16, 2017 letter. (P-52)
43. Dr. Palumbo saw Student for a medication follow up on August 17, 2017. She noted no acute safety concerns. Student's major depressive disorder with anxious distress was reported to be improving as was his generalized anxiety disorder. She recommended continuing his medications at current doses. With respect to considering new schools, she

recommended that if the selected school does not have therapy that Parents look into finding a provider that is local so that Student can attend weekly therapy. (P-58)

44. Dr. Palumbo saw Student for another medication follow up on December 21, 2017. She noted that Student's major depressive disorder was significantly improved since intake, however, she noted that Student continues to have very negative thinking and ruminated and perseverated on negatives. She increased his dose of Risperdal. His generalized anxiety disorder was noted to be improving, but still a concern. Student reported that he had made a few friends at school, was seeing a therapist, and remained fixated on his current school not being rigorous enough academically for him to get accepted at a good college. (P-62)
45. Jason McCormick, Psy.D., conducted a neuropsychological evaluation of Student on February 13, 15, 20, 2018 at Parents' request. He had previously met with Parents on October 17, 2017 to conduct an intake and Parents completed a developmental, educational, social and academic history/questionnaire. (McCormick, P-61) Dr. McCormick did not speak to anyone from McLean or Union Hospital. He did not speak to Dr. Cotugno, Dr. Palumbo, or anybody from Newton Public Schools. He did not observe Student at Franklin or Newton Public Schools. He diagnosed Student with Autism Spectrum Disorder, Level 1, an emotional disability characterized by generalized anxiety disorder and major depression. (McCormick, P-61)

Dr. McCormick recommended that Student receive an educational program that focuses on working with students with mild autism spectrum disorders, who present with both social and executive challenges, along with emotional disabilities. He recommended small class sizes (no more than 8 students); placement with peers with similar profiles; and teachers trained in working with students with executive function, and social emotional vulnerabilities. He noted that trained teachers were necessary to provide the opportunity to stop a lesson and reinforce the use of coping skills or perspective taking. He recommended that Student receive social and emotional supports and executive function skills "woven throughout the day." Further, he noted Student requires intensive work on development of metacognition, as he has limited understanding of his learning challenges. Dr. McCormick noted that Student's highly atypical cognitive profile is likely to complicate his ability to navigate the classroom. His verbal reasoning skills are in the top 2% for his peer group, but his processing speed is slow and his working memory is limited. Thus, it is necessary to balance Student's ability and desire to learn high level content with limitations caused by his slow processing speed and working memory issues. (McCormick)

Dr. McCormick indicated that Student continues to require regular, consistent individual therapy to increase his self-awareness and help him hone his coping skills. Additionally, his educational setting should include a cohort of supportive peers, as he has reported previous bullying in school. Dr. McCormick recommended that Student's program include instruction in social skills, given Student's limited interpersonal insight and reduced appreciation of social consequences for his actions. He noted that Student craves social connection, but resists the same due to fear of rejection. Thus, he concluded

Student requires social programming both during and after traditional school hours. He stated, "It is unrealistic to believe that [Student] would-even if extended day services were to be offered- participate in unstructured social activities." He concluded that Student's need for social instruction throughout the day along with the "near certainty" that he would not participate in unstructured social activities in a day placement, necessitates his placement in a residential setting that teaches and reinforces social thinking/social pragmatic skills during school hours and after school hours, with the help of trained residential staff. (P-61)

Dr. McCormick stated that he would be highly concerned if Student returned to Newton North given his prior statement that he would kill himself if he had to go back. He concluded, without explanation, that the risk of Student harming himself would also be significant if he were to transition to any other traditional public high school, such as Newton South High School, because his needs "far outstrip what can be accommodated within the context of a mainstream setting." Finally, Dr. McCormick recommended that Student receive a number of accommodations at the present and while in college. He recommended provision of additional time to complete exams due to his slow processing speed. He further recommended that Student be allowed to take exams in a distraction reduced setting, and the he be provided with a set of notes to supplement his own in class notes. (P-61)

46. Dr. Meigher agreed with much of Dr. McCormick's report, including his description of Student's profile, however, she was surprised by his recommendation for a residential placement and his prediction that Student was guaranteed to fail without a residential placement. She found that to be an overly strong statement. Prior to that time Student had not received much counseling or executive functioning support. It seemed like a very big leap to go from receiving very minimal supports to a very restrictive residential program. She did not understand Dr. McCormick's statement that a day placement would not be enough because Student would not engage in extracurricular activities, given that he had previously participated in Model UN and other activities in Newton. Further, there are lots of structured opportunities to practice social skills in day placements. Residential placement is not required to work on social skills. (Meigher)
47. Ms. Potter was aware that Student had expressed not wanting to return to Newton North, however, she still believed that the LINKs program would have been appropriate for him. She has successfully worked with students who have not wanted to return to school after hospitalizations. She would have continued to be Student's counselor and LINKs staff could have also worked with him. She noted that Newton South also has a program similar to the LINKs program. (Potter)
48. Student's Team convened April 25, 2018 to conduct Student's Annual Review and review Dr. McCormick's neuropsychological testing. Dr. McCormick attended the meeting and presented his report and recommendations. (S-2, McCormick) The Newton Team members did not agree with Dr. McCormick's recommendations that Student required a residential placement. The Team proposed an increase in the level of supports and services offered to Student and proposed a therapeutic out of district public or private day

program based on the new information shared at the meeting. The IEP included goals in the areas of self-advocacy and social/emotional/pragmatic. The A grid proposed consultation with special education staff 1 x 15 minutes per cycle and consultation with the speech language pathologist 1 x 30 minutes per cycle. (S-4) The C grid provided for academic support 5 x 60 minutes per cycle; English, science, history, mathematics each 5 x 60 minutes per cycle; specialized instruction with a special education teacher 5 x 420 minutes per cycle, counseling (individual) with a school adjustment counselor 1 x 45 minutes per cycle, social pragmatics with a speech language pathologist 2 x 60 minutes per cycle, and counseling (group) with a school adjustment counselor 1 x 45 minutes per cycle. Parents rejected the IEP on June 26, 2018. Parents' rejection noted that they agree with Dr. McCormick's recommendation that Student requires a residential placement. They rejected the statement that Student is vulnerable to bullying and stated that he was a victim of bullying at Newton North. (P-64, S-4)

49. Student remained at Franklin for his senior year (2018-2019.) During Student's twelfth grade he participated in the Franklin Learning Institute (FLI) program. The FLI program is for seniors and post-graduate students and replicates a college-like experience. Students live in satellite housing and take classes appropriate to their cognitive ability. Student in FLI are not required to participate in weekend activities because many of them study on weekends. They have study hall during the day because their classes do not meet as frequently. There are weekly dorm meetings for FLI to discuss conflict resolution and make sure everybody is doing their chores. (Cove)
50. On February 12, 2019, Dr. Meigher conducted a psychological evaluation of Student as part of his three-year evaluation. The focus of the evaluation was Student's current social emotional functioning, in preparation for his post high school transition. Dr. Meigher noted strengths including willingness to engage in the evaluation, persistence, and ability to self-advocate when uncomfortable. Student reported some concerns related to his social emotional functioning and some self-doubt and lack of self-confidence. Parents endorsed weaknesses in Student's social skills and functional communication. Student declined to speak about topics related to his experiences at Newton North, stating he was "not comfortable." He discussed his plans to attend a four year college next fall. Dr. Meigher stated that Student may benefit from working with a cognitive behavioral therapist to support him in the development of mindfulness and effective problem solving. She also noted that dialectical behavioral therapy may also be useful in helping him to recognize and accept when he needs help and asking for support. (P-75, S-7)
51. Rebecca Comiskey, M.Ed., CAGS, completed an achievement evaluation of Student on February 12, 2019. She noted Student presented as an articulate, guarded, and serious student. She reported that he demonstrated strong basic reading skill, above average math problem solving skills, and average math fluency skills. His reading comprehension skills fell in the high end of the average range. His writing utilized strong sentences and sophisticated supporting details, but he did not fully answer the prompt he was given. Overall, his academic skills were in the average to above average range. Ms. Comiskey made recommendations such as metacognitive modeling strategies to broaden Student's writing skills and providing structured models for him to follow in the writing process.

She further recommended encouraging explicit self-monitoring strategies to check for understanding of implied meaning in text. (P-76, S-5)

52. Betsy Posnick Waksman, M.S., CCC, conducted a pragmatic language re-evaluation on February 14, 2019. She noted that Student presented as pleasant and cooperative. He responded to all formal test questions, however, when asked questions about his current academic or social status he stated, "I can't answer that." His overall performance on formal testing fell within the average range, indicating age-appropriate competency on higher-level language tasks. However a significant discrepancy existed between his above average meta-semantic abilities and his average meta-pragmatics abilities. He had continued to make progress with interpreting and using social pragmatic skills and strategies and had shown significant growth in providing logical solutions to social problem scenarios. Ms. Waksman noted that when given structure and parameters, Student showed evidence of his ability to use well-developed conversational strategies. Without guidance, however, Student focused on his own interests and preferences, with little attention to those of his speaking partner. (P-77, S-6)
53. The Team reconvened to review Student's three year re-evaluation on March 25, 2019. There continued to be a disagreement between Newton and Parents regarding Student's need for a residential placement. The Team continued to propose a therapeutic day placement. Goals were proposed in the areas of self-advocacy and communication/social skills. The A grid proposed consultation in communication with the speech language pathologist 1 x 15 minutes per cycle and with a special education teacher 1 x 15 minutes per cycle. Direct services were proposed in counseling with a counseling provider 1 x 30 (individual) per cycle and group 1 x 30 minutes per cycle; social pragmatics with a speech language pathologist 2 x 55 minutes per cycle, and specialized instruction with a special education teacher 20 x 60 per cycle. (P-80, S-8)
54. Parents rejected the IEP on April 15, 2019. They stated that they were rejecting it for the reasons stated in their BSEA Hearing Request and responses to interrogatories. (P-80)
55. Student was accepted at a four-year college and will be attending in the fall of 2019. (Father)

FINDINGS AND CONCLUSION:

Student is an individual with a disability, falling within the purview of the Individuals with Disabilities Education Act (IDEA)⁷ and the state special education statute.⁸ As such, he is entitled to a free appropriate public education (FAPE). Neither his status nor his entitlement is in dispute.

The IDEA was enacted "to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education, employment and

⁷ 20 USC 1400 *et seq.*

⁸ MGL c. 71B.

independent living.”⁹ FAPE must be provided in the least restrictive environment. Least restrictive environment means that, “to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”¹⁰

Student’s right to a FAPE is assured through the development and implementation of an individualized education program (“IEP”).¹¹ An IEP must be custom-tailored to address a student’s “unique” educational needs in a way reasonably calculated to enable him to receive educational benefits.¹² For an IEP to provide a FAPE, it must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”¹³ A student is not entitled to the maximum educational benefit possible.¹⁴ Similarly, the educational services need not be, “the only appropriate choice, or the choice of certain selected experts, or the child’s parents’ first choice, or even the best choice.”¹⁵ The IDEA further requires that special education and related services be designed to result in progress that is “effective.”¹⁶ Further, a student’s level of progress must be judged with respect to the educational potential of the child.¹⁷

Massachusetts special education regulations provide that specially designed instruction and related services described within the IEP must be sufficient to “enable the student to progress effectively in the content areas of the general curriculum.”¹⁸ Massachusetts also requires that the special education services be designed to develop a student’s educational potential.¹⁹

The burden of persuasion in an administrative hearing challenging an IEP is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 534, 537 (2005) In this case, Parents are the party seeking relief, and as such has the burden of persuading the Hearing Officer of its position.

With the foregoing legal framework in mind, I turn to the issues before me. The first issue is whether IEPs proposed by Newton Public Schools during the time period from March 2017 through April 2018 were reasonably calculated to provide Student with a free appropriate public

⁹ 20 USC 1400(d)(1)(A). See also 20 USC 1412(a)(1)(A); *Mr. I ex. Rel. L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1 (1st Cir. 2007)

¹⁰ 20 USC 1412(a)(5). See also 20 USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c)

¹¹ 20 USC 1414(d)(1)(A)(i)(I)-(III); *Honig v. Doe*, 484 U.S. 305 (1988); *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982)

¹² *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir.1993)

¹³ *Andrew F. v. Douglas County. Sch. Dist.*, 580 U.S. ___ (2017)

¹⁴ *Rowley*, 458 U.S. at 197

¹⁵ *G.D. Westmoreland Sch. Dist.*, 930 F.2d 942 (1st Cir. 1991)

¹⁶ 20 USC 1400(d)(4); *North Reading School Committee v. Bureau of Special Education Appeals*, 480 F. Supp.2d 479 (D. Mass. 2007)(the educational program must be reasonably calculated to provide effective results and demonstrable improvement in the various educational and personal skills identified as "special needs")

¹⁷ *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F.3d 18 (1st Cir. 2008)

¹⁸ 603 CMR 28.05(4)(b)

¹⁹ MGL c.71B; 603 CMR 28.01(3)

education in the least restrictive placement. To make this determination I will review each of the IEPs proposed during this time in turn.

An IEP is a snapshot; therefore, the IEP must take into account what was, and was not objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.²⁰ An IEP is not judged in hindsight; its reasonableness is evaluated in light of the information available at the time it was promulgated.²¹ The critical inquiry is whether a proposed IEP is adequate and appropriate for a particular child at a given point in time.²²

March 2017 – April 2018

Although the Team proposed IEPs in March, June, and August for the IEP period running from March 2017 through April 2018, it is only necessary to consider the August 2017 IEP, for purposes of determining whether Parents are entitled to reimbursement; as that was the proposal in effect at the time the unilateral placement was made. A review of the information the Team had available to it is necessary to determine whether this IEP was reasonably calculated to provide Student with FAPE in the LRE.

The August 31, 2017 IEP

At the August 31 Team meeting, the Team was aware of some new information. They were aware that Student had been hospitalized initially from July 12 through July 26 at Union Hospital in Lynn and then at McLean Hospital ART from July 26 through August 9, 2017. (Father) Newton had received the rejected IEP from March 2017 as amended in June 2017 on August 18, 2017 along with Parents' statement that they believed Student required a therapeutic placement. Mr. Heslin had received Parents' July 19 email stating Student was adamantly opposed to returning to Newton North, but may try to enroll in Newton South or a "specialized school" on or around August 3, but the Team had not yet received that information. The Team had the August 9 McLean letter written by Ms. Lopes and Dr. Adams that had been provided to Newton on August 25. The letter stated Student would require extensive therapeutic support and recommended that he receive daily mental health check-ins, "therapy support," and attend a therapeutic school with experience working with teens with high functioning autism and ongoing mood crises. (P-37, P-41) None of the clinicians who had recently worked with Student attended the Team or participated by phone. There were no recommendations from any source that Student required a residential placement. Based upon all of that information, the Team discussed and proposed the LINKs program at Newton North.

Dr. Meigher, a Newton school psychologist with extensive familiarity with the LINKs program, credibly testified that the LINKs program could meet Student's therapeutic needs. She noted that Student could participate in both individual and group therapy and the amount could be adjusted to suit Student's needs. She also noted that Student would be able to leave the LINKs classroom to receive academics at a higher level, which was important to him, and still return to the LINKs classroom at any time during the day to receive any needed therapeutic supports.

²⁰ *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983 (1st Cir. 1990)

²¹ *Id.*

²² *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir. 1993)

Although Student had expressed his unwillingness to return to Newton North, the Team was not advised of that until the August 31 meeting. Newton also could provide similar therapeutic supports via a similar program at Newton South. (Potter) It is unclear whether Parents were specifically informed of the existence of a program with similar therapeutic supports at Newton South, but Father and Mr. Heslin had email communications regarding the possibility of Student transferring to Newton South on or around August 3, 2017. Further, Ms. Potter and Dr. Meigher testified that they had successfully worked with students who had been hospitalized and were reluctant to return to Newton North afterward. (Potter, Meigher) There were not any recommendations by anybody that Student required a residential placement.

The IDEA requires that “to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. See 20 USC 1412(a)(5); 20 USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c). The proposal for the LINKs program would provide Student the opportunity to attend academic classes and electives with non-disabled peers while providing him with access to the therapeutic supports he required.

Based upon the foregoing, I find that, based upon the information then available to the Team, the August 2017 IEP was reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

Parents’ Request for Reimbursement for 2017-2018

Under 34 CFR §300.148(c), if the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the State educational agency and local educational agencies. See *Florence County School Dist. Four v. Carter*, 510 U. S. 7 (1993). In the instant case I have determined that the August 2017 IEP did offer Student a FAPE. Therefore, Parents claim for reimbursement must fail. It is thus unnecessary to make any determinations relative to the proposal for a 45-day placement that Newton sent to Parents after the August 31, 2017 Team meeting.²³

²³ After the August 2017 Team meeting, Newton sent Parents a proposal for a 45-day extended evaluation of Student in a therapeutic day school. Newton made its proposal, outside of the Team process, due to the Team’s learning that Student was having strong feelings about returning to Newton North and because the Parties were so far apart in their opinions as to what constituted FAPE. (McCarthy) Because the proposal was made outside of the Team process, it would not be appropriate to consider it as part of this Hearing. Although it is not outcome determinative, as I have found that the IEP proposing the LINKs program was reasonably calculated to provide Student with a FAPE in the LRE, it bears noting. Teams are required to follow the procedures set forth in the IDEA to make

I turn now to the proposed IEPs covering the period April 2018 through June 2019. Student continued with his enrollment at Franklin. The Team convened on April 25, 2018 to conduct Student's annual review and to review the private neuropsychological evaluation conducted by Dr. McCormick at Parents' request. The Team reviewed and considered Dr. McCormick's evaluation as well as some information provided by Franklin. The Team rejected Dr. McCormick's recommendation that Student required a residential placement, but increased the level of supports they were proposing based upon information shared at the meeting. Although Dr. McCormick provided support for Parents' decision to place Student residentially, I did not find his reasoning regarding the need for a residential placement to be persuasive. His reason for recommending a residential placement was the "near certainty" that Student would not participate in unstructured social activities in a day placement. This conclusion was speculative and not supported by the evidence that showed that Student had participated in activities such as cross-country and Model U.N. while a student in Newton. Dr. McCormick's opinion in this regard was not shared by any of the Newton teachers who worked with Student nor with any of his clinicians. Dr. McCormick did not speak to any of Student's Newton teachers or any of his clinicians and never observed Student in any setting other than his office. He did not provide any credible rationale for his opinion that Student required residential services to receive a free and appropriate public education.

Newton's April 25, 2018 IEP increased the level of supports previously offered and proposed a therapeutic out of district public or private day school. I find that the IEP was reasonably calculated to provide Student with a free and appropriate public education in the least restrictive environment. Therefore, it is not necessary to assess the appropriateness of Franklin's program for this IEP period. Further, there is no basis for awarding reimbursement to the Parents during this time period.

The Team convened for the last time on March 25, 2019 to review Student's three-year evaluation and propose an updated IEP. The Team continued to propose a therapeutic day placement. There was not any new significant information presented at this time. Student was to graduate in June and had plans to attend a four year college. This IEP, like its predecessor, addressed Student's areas of need and was reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

Although I have found no legal basis for awarding Parents reimbursement for their unilateral placement, it is clear that they believed they were acting in the best interests of their son. They believed that Student required specific services and they diligently contacted and visited placements and made many inquiries. However, in this case, the decisions they made based upon their beliefs as parents did not provide them a legal entitlement to reimbursement. For that reason, despite having acted as they deemed necessary, they are not entitled to reimbursement for Student's residential placement.

proposals to Parents, even after a unilateral placement is made. Newton should have reconvened the Team if it sought to propose a 45-day placement.

ORDER

Based upon the foregoing, I find that the IEPs proposed by Newton Public Schools for the time periods from March 2017 through April 2018 and April 2018 through June 2019 were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. As such, Parents are not entitled to reimbursement for the costs associated with their unilateral placement of Student at Franklin Academy for the 2017-2018 and 2018-2019 school years.

By the Hearing Officer,

Catherine M. Putney-Yaceshyn

Dated: August 9, 2019