

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

In re: Lowen<sup>1</sup>

BSEA #1910123

**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 c. 71B), the state Administrative Procedure Act (MGL c. 30A), and the regulations promulgated under these statutes.

A hearing was held on October 2, 3, and 16, 2019 before Hearing Officer Amy Reichbach. Those present for all or part of the proceedings were:

Parent

Margaret Belsito	Assistant Superintendent of Student Services, Shrewsbury Public Schools (SPS)
Meghan Bartlett	Assistant Director of Special Education and Pupil Personnel Services, SPS
Linda Derosier	Educational Learning Center (ELC) Coordinator, Shrewsbury High School (SHS)
Alicia Harrigan	Team Chair, SHS
Kristin Herrick	Director of Specialized Programs, SPS
Pamela Johnson	Nurse, SPS
Lauren McGourty	Occupational Therapist, SPS
Robert Parry-Cruwys	Clinical Coordinator, SPS
Deborah Quinn	Speech Language Pathologist, SPS
Meghan Wallace	ELC Special Education Teacher, SPS
Alisia St. Florian, Esq.	Attorney for SPS
Brenda Ginisi	Court Reporter

The official record of the hearing consists of documents submitted by the Parents and marked as Exhibits P-1 to P-9; documents submitted by Shrewsbury Public Schools and marked as Exhibits S-1 to S-34; approximately three, five-hour days of recorded oral testimony and argument; and a three-volume transcript produced by a court reporter. At the request of the parties the case was continued to November 8, 2019 and the record held open for submission of closing arguments. Shrewsbury's closing argument was received and the record closed on that date.<sup>2</sup>

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<sup>1</sup> "Lowen" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

<sup>2</sup> Parents did not submit a closing argument.

## INTRODUCTION

On April 29, 2019, Parents filed a *Hearing Request* against Shrewsbury Public Schools (Shrewsbury, SPS, or the District) contending that the District has denied Lowen a free, appropriate public education (FAPE) by failing to align his school work with his Individualized Education Program (IEP) and by failing to provide direct instruction and speech/language services in accordance with his IEP. Parents also asserted that they had been deprived of the opportunity to participate fully in Lowen's education due to Shrewsbury's failure to inform them accurately of the content of his instruction. They requested compensation for loss of education and services; a 1:1 student-to-teacher ratio for math, English, science, history, and technical exploration classes; measurable goals aligned with the Massachusetts Comprehensive Assessment System alternate portfolio for math, English, and science; 90 minutes (three, 30-minute blocks) of direct speech therapy per week; and ten hours of home services per week to assist with generalization of learning. The hearing was scheduled for June 3, 2019.

After requesting and obtaining an extension, Shrewsbury filed its *Response* to the *Hearing Request* on May 14, 2019. According to the District, Lowen's IEP, including placement in a substantially separate program with a 1:1 applied behavioral analysis (ABA) technician, is reasonably calculated to provide Lowen with a FAPE. Shrewsbury also noted that Lowen's three-year reevaluation would be due in the spring of 2020, but that the District wanted to advance the testing in order to make a Chapter 688 referral to the Department of Developmental Services, and to provide additional information for Parents in the event they would seek guardianship of Lowen when he reached the age of majority. Shrewsbury offered to have the evaluation conducted by an outside agency, given the mistrust of the District expressed by Parents, but Parents refused consent.

On May 6, 2019, the District requested postponement of the hearing due to the unavailability of counsel. Parent assented to a four-month postponement during a Conference Call that took place on May 20, 2019. A Pre-Hearing Conference (PHC) was scheduled for September 16, 2019, and the Hearing for partial days on October 2, 3, and 4, 2019. The District subsequently requested advancement of the PHC and rescheduling or cancellation of the third day of hearing; during a Conference Call on June 13, 2019 to discuss the matter, Lowen's father requested cancellation of the PHC altogether. The matter was continued to October 2, 2019 for Hearing. Following the second day of hearing on October 3, 2019, the matter was continued, at the request of the parties, to October 16, 2019 for a third day.

The issues for hearing were delineated as follows:

- (1) Whether any IEPs proposed by Shrewsbury and not fully accepted by Parents between April 29, 2017 and the present, including the most recent IEP dated 12/20/18 to 12/19/19, were and/or are reasonably calculated to provide Lowen with a FAPE;

(2) Whether any accepted, expired IEPs between April 29, 2017 and December 20, 2018 (specifically, IEPs dated 4/12/17-4/11/18; 6/6/17-6/5/18; and 9/7/17-9/6/18) were implemented fully;

(3) Whether Shrewsbury has committed procedural errors that amount to a deprivation of a FAPE because they impeded Lowen's right to a FAPE; significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of FAPE to Lowen; or caused a deprivation of educational benefits.

For the reasons below, I find that I need more information to determine whether the most recent IEP proposed by Shrewsbury for Lowen is reasonably calculated to provide him with a FAPE. I further find that Parents failed to prove that Shrewsbury committed procedural errors that amounted to a deprivation of FAPE, significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of FAPE to Lowen, or caused a deprivation of educational benefits. They have, however, established that the last accepted IEP was not and has not been implemented fully as to speech and language services.

### **FINDINGS OF FACT**

1. Lowen is a seventeen year-old resident of Shrewsbury. He participated in Shrewsbury's early learning services, beginning in or about 2006. After several years his family moved from Shrewsbury, then returned to the area in or before October 2016. (S-4; Belsito, II: 144-45; Herrick, III: 124)
2. Lowen was the product of a normal pregnancy, with uncomplicated birth and delivery. He met developmental milestones until the age of two and was diagnosed with autism spectrum disorder (ASD) at the age of three. (S-28, S-30)
3. Reviews of school records by Shrewsbury personnel indicate that until he began attending Shrewsbury High School (SHS) in January 2017, Lowen's last consistent period of school attendance was in May 2013, when he was a fifth grader in Redmond, Washington. (P-5; S-26, S-27, S-30; Wallace, I: 113-14; Belsito, II: 110) Redmond records describe him as a student with global intellectual, social, communication, and motor deficits consistent with ASD and Profound Intellectual Disability. (S-27)
4. Lowen currently presents with significant impairments in cognition, expressive and receptive language, behavioral regulation, and social interaction. His language deficits impact his ability to understand and access grade level vocabulary, concepts, and content and demonstrate comprehension of material. Lowen appreciates structure and visual cues. He learns vocabulary and concepts through repeated exposure and functional activities. His maladaptive behaviors impact his ability to function independently and attend to school-related tasks and activities across his day. Lowen has minimal awareness of dangerous situations which, paired with his language impairment, make it necessary for him to have an adult with him at all times. He displays many sensory-seeking behaviors, as he has

difficulties modulating and processing sensory input. He needs frequent movement/sensory breaks throughout his day. Moreover, although he does not have food sensitivities or allergies, Lowen is a selective eater, which impacts his diet. Due to chronic constipation, toileting is closely monitored at school. (S-5; Quinn, III: 50)

5. In or about October 2016, the SPS registrar's office sent information to Assistant Superintendent of Student Services Margaret Belsito regarding a family's partial registration of a student who was not attending school. Following some communication between the District and the family, the Department of Children and Families (DCF) assumed custody of Lowen in or about December 2016. He was placed out of the home, and had supervised visits with his father twice a month. (P-5; S-26, S-27, S-30; Belsito, II: 107-09, 149)
6. On or about December 5, 2016, Shrewsbury requested consent for an evaluation of Lowen. ELC classroom teacher Linda Derosier observed him at the Key Program in Worcester, a group home in which he had been placed by DCF. Ms. Derosier has a master's degree in severe special needs and has been teaching for 38 years. Ms. Derosier observed that Lowen was in a dysregulated state. He was picking things up and mouthing them, then spitting them out, and he engaged in a lot of self-injurious behavior (SIB). (S-31; Derosier, I: 187-89; Belsito, II: 146-47)
7. Lowen began attending SHS's Educational Learning Center (ELC) on January 13, 2017. (S-30) The ELC is a substantially separate educational program designed to provide individualized instruction focusing on life skills and functional academics. (S-26)
8. Clinical Coordinator and Board-Certified Behavior Analyst (BCBA) Robert Parry-Cruwys has been working with Lowen since January 2017. Mr. Parry-Cruwys has a master's degree in severe special needs and is licensed in Massachusetts as both a special education teacher and a behavior analyst. As a clinical coordinator, Mr. Parry-Cruwys works on complex cases involving behavioral needs and on cases where behavior is paired with either academic or other communication or social/emotional needs. He generally helps Teams determine what resources are needed, including internal training and out-of-district resources. (Parry-Cruwys, III: 88-89)
9. Ms. Derosier wrote Lowen's initial IEP and taught him in the ELC during the 2016-2017 school year. At that time, then-ELC Coordinator Todd Foster, M.Ed. also worked with Lowen, and Mr. Parry-Cruwys was often in the classroom as well. (Derosier, I: 192) Ms. Derosier presently works with Lowen on English Language Arts when he is able to attend groups, utilizing a functional approach that pairs pictures with word icons. (Derosier, I: 145-48, 150, 152, 186-87, 193, 199-200)
10. Lowen's current ELC classroom teacher for all other subjects is Meghan Wallace, who has her master's degree in severe disabilities, kindergarten through twelfth grade. She has worked in Shrewsbury's ELC for three years, before which she spent three years at the New England Center for Children. Ms. Wallace began working with Lowen in August 2017. (Wallace, I: 109-11, 113)

11. There are currently seven students in the ELC, all of whom are autistic and severely disabled, most nonverbal. Ms. Wallace works with them on ABA, functional academics, and daily living skills. She writes programs for her students and supervises the ABA technicians who work 1:1 with them on those programs. The ABA technicians have been specially trained in conducting discrete trials and monitoring behavior. Mr. Parry-Cruwys currently consults with Ms. Wallace regarding programming. When Lowen first began in the ELC, Mr. Parry-Cruwys was more involved directly with both Lowen's teachers and his ABA technician as they determined what behavioral modifications could be made to his environment and programming, and what academic assessments would be helpful in identifying his skills and abilities. (Wallace, I: 109-111, 119, 122, 133-34; Derosier, I: 154; Belsito, II: 6; Parry-Cruwys, III: 89-90, 96-97)
12. Upon Lowen's arrival at SHS, he was "largely non-verbal, extremely distracted and distractible, and without any discernable degree of frustration tolerance." He punched himself and staff members without provocation and grabbed items within reach impulsively, without regard for safety. He was unable to attend to a task or even remain seated for any length of time, and due to his loud vocalizations and aggressive, unpredictable, and self-injurious behavior, which escalated when other students came into the room, he was educated in a classroom by himself. In fact, he required consistent support by two staff members throughout his day during all academic activities, transitions, and movement breaks. When escalated, he required up to three staff members to transition outside the classroom and to ensure the safety of others. This behavior, in addition to the gap in his education, made it difficult for Lowen's teachers to plan an appropriate course of study for him. (P-5; S-26, S-27; Wallace, I: 128; Derosiers, I: 189-92; Belsito, II: 110-11; Parry-Cruwys, III: 89-90)
13. The District immediately proposed and began conducting a 45-day assessment in order to collect baseline data, particularly with respect to the skills that had been assessed when Lowen was in fifth grade to see whether he had maintained them. On several dates between January 13 and March 10, 2017, Mr. Foster conducted a Core Skill Assessment (CSA) to assess Lowen within the areas of Discrimination, Communication, Social Skills, Self-Help, Health and Safety, Recreation and Physical Education, and Community. According to Mr. Foster's report, the CSA should be administered annually as part of IEP planning, but it appears that no CSA was administered, or proposed, in the spring of 2018. (S-30; Derosier, I: 156, 168-69; Bartlett, III: 134-35)
14. At the time of this assessment, Lowen required two staff members throughout the day due to his SIB, bolting, inappropriate touching, and aggressions. He was working in one isolated classroom with minimal distractions and limited social interactions with peers. Lowen was, however, able to demonstrate appropriate attending behavior after it was modeled for him and, despite his limited expressive vocabulary, exhibited a desire to communicate with his examiner and other familiar adults throughout the testing period. Lowen displayed competency within the communication domain by following directions with visual supports; indicating or naming body parts, objects, and pictures; and accepting and rejecting preferred or non-preferred items. The examiner noted that these targeted behaviors were assessed within programmed, structured opportunities with a consistent tester and that maladaptive behaviors were absent during the sessions. Lowen displayed challenging behaviors in these

skill areas throughout the day outside of the sessions and needed continued work to generalize his communication skills across staff members and settings. (S-30)

Mr. Foster recommended that Lowen be placed in a structured, individualized academic, behavioral, and life skills program that can be implemented with consistency and generalization across school and residential settings. He also recommended that Lowen receive a behavior program, under the supervision of a BCBA, that focuses on consistent use of functional communication and learning and understanding behavioral expectations, including appropriate social distance; a picture activity schedule or visual “to do” list to build independent living and leisure skills; and programmed opportunities to access more settings and unfamiliar adults within the high school environment. (S-30)

15. Deborah Quinn, M.S. CCC-SLP conducted a Speech and Language Evaluation of Lowen between January 25 and February 14, 2017. Ms. Quinn has a master’s degree from Gallaudet University, is a certified, registered speech pathologist, and has been with SPS for 22 years in this capacity. At the time she evaluated Lowen, his means of communication was “simply screaming,” and he was running around, unable to tolerate other people in the room with him. It took three separate sessions before Ms. Quinn felt she had meaningful data. She utilized the Expressive One-Word Picture Vocabulary Test (EOWPVT) to measure Lowen’s ability to name actions, objects, and concepts in picture form. Because the EOWPVT is normed on students without communication challenges, Ms. Quinn used it with Lowen for informational purposes only. She used the Goldman-Fristoe Test of Articulation to determine his current level of skill with articulation of English speech sounds at the single word level. Ms. Quinn concluded that Lowen demonstrated receptive and expressive knowledge of basic functional objects in picture form, presented with mild sound omissions in spontaneous words, and could be taught to verbalize words and phrases to request and comment. (P-5; S-29; Quinn, II: 157-58, 160, 164, III: 11, 13, 17-18, 46-48)
16. On several dates between January 13 and March 15, 2017, Beth Neiman, Ph.D. conducted a Psychological Evaluation of Lowen. Dr. Neiman attempted to conduct formal cognitive testing on one occasion, but discontinued the assessment when Lowen was unable to demonstrate sufficient attention and behavioral control to meet standardized testing requirements. She based her findings and recommendations on classroom observation, teacher consultation, a records review, and an interview, presumably of Lowen. Dr. Neiman noted that during the assessment period, Lowen made some behavioral gains and observable skill development, such that he could express his need to use the bathroom appropriately and toilet independently, demonstrate rote-counting skills for numbers one through ten, recite the alphabet and place letter symbols in correct alphabetical order, write his name with prompting using structured paper, and focus his attention for as long as fifteen minutes when engaged in a preferred activity. She recommended that Lowen continue to receive intensive individualized instruction in the ELC in order to make progress. (S-27)
17. During the same time period, Linda Derosier, M.S.Ed., completed a Functional Skills Assessment of Lowen. Over the course of the assessment, Lowen’s ability to use functional communication to make known his wants and needs increased in frequency and appropriateness. He was assessed, using both teacher-made and standardized materials, on a

variety of prerequisite skills related to reading, math, and other functional academic skills. Ms. Derosiers did not administer other academic measures because Lowen could not sit to tolerate them, and she could not use manipulatives at the beginning because he would use them to self-stimulate. His struggles with visual attention affected his performance on all tasks. Ms. Derosier concluded that Lowen presents with the global, intellectual, social, and communication deficits associated with ASD, and that he has severe expressive, receptive, and social language deficits. He engaged in frequent sensory seeking behaviors, which impacted his ability to engage in activities across his day. Although he demonstrated some basic functional academic skills, he struggled greatly with visual attention. He was unable to work as part of a small group and could only tolerate two to three other people working in proximity to, but not with, him. Due to his unpredictable behavior and clustered episodes of significant self-injurious behavior and aggressions toward staff, Lowen required the support of two staff members (one trained in ABA) at all times. Ms. Derosier recommended that Lowen participate in a highly structured, individualized program focusing on life skills, functional academics, behavior and social skills, and a behavior program that focuses on the consistent use of functional communication. She also recommended that all instructional and behavioral programs implemented in school be carried over in Lowen's living environment to promote consistency and generalization of skills. (P-5; S-26; Wallace, I: 122-23; Derosiers, I: 168-71, 174-77)

18. In or around March or April 2017, Mr. Parry-Cruwys conducted a functional behavioral assessment of Lowen. By that point, the intensity of Lowen's challenging behavior had decreased. In consultation with the Team, Mr. Parry-Cruwys proposed a more structured assessment: an interview-informed synthesized contingency analysis, or ISCA. (Parry-Cruwys III: 92-95)
19. Lowen's Team, including his father and his educational surrogate parent (guardian *ad litem* for education, or GAL), convened on or about April 12, 2017 to make an eligibility determination for Lowen. The Team also discussed his evaluations, placement, and transition services as they developed an IEP based on the behavioral and observational data, baseline assessments, and consultations with other professionals. (S-23, S-24; Belsito, II: 112)
20. On May 11, 2017, Lowen's GAL signed the proposed IEP, which was dated 4/12/2017 to 4/11/2018. It included goals in Adaptive Behavior, Functional Communication, Activities of Daily Living (ADLs), Social/Leisure, Community/Safety, Vocational, Adaptive Physical Education (APE), and Functional Academics. The IEP placed Lowen in the ELC, with 7 x 360 minutes per 7-day cycle of services to be provided by the special education teacher; 7 x 360 minutes per 7-day cycle of services to be provided by the ABA technician; 7 x 360 minutes of services by a 1:1 aide to be modified as needed, including the summer program; 2 x 30 minutes per cycle of speech/language services to be provided by a speech/language pathologist; APE 3 x 50 minutes per 7-day cycle; and Extended School Year services (4 x 360 minutes each) provided by the ESY special education teacher and the ESY ABA technician. Despite recommendations by Mr. Foster and Ms. Derosier that Lowen receive instructional and behavioral programming that carries into his residential environment, the Team proposed no home services. (S-23)

21. Father subsequently requested an Occupational Therapy (OT) evaluation. (Derosier, I: 196-97) On or about May 10, 2017, Shrewsbury proposed an Extended Evaluation for Lowen in the areas of Occupational Therapy (OT) and Assistive Technology. (S-22) The OT evaluation noted that Lowen had some skills for familiar tasks, delayed visual motor skills, and difficulties modulating and processing sensory input. He presented with primarily sensory seeking behaviors. (S-20, S-21)
22. By early June 2017, Lowen had made progress in his ability to tolerate the school environment. He was receiving 1:1 support during direct, targeted instruction in the classroom. Two to one support was necessary for safety only during transitions to locations throughout the building (nurse, gym, indoor walks, outside access). His reinforcement/reward program had been modified to a token system. He was working, by that point, in a designated “work station” in the classroom with natural barriers from distractions, which allowed for small groups to complete work elsewhere in the room for short periods during the day. (S-21; Wallace, I: 114; Derosiers, I: 195; Belsito, II: 7-9, 140-43)
23. Following the Extended Evaluation, the Team met and proposed an IEP dated 6/6/2017 to 6/5/2018, which contained updated data regarding Lowen’s progress, notably in the areas of Adaptive Behavior, ADLs, Community/Safety, and Functional Academics. Consults with an occupational therapist (1 x 60 minutes per month), a speech/language pathologist (1 x 30 minutes per cycle), and an assistive technology specialist (1 x 15 minutes per cycle) were added. Services of a 1:1 aide were included, 7 x 360 minutes per cycle, as needed. The IEP notes that a meeting was held on June 6, 2017 to discuss the Extended Evaluation. (S-21; Belsito, II: 114)
24. Lowen attended Shrewsbury’s ESY program in the summer of 2017. (Belsito, II: 126)
25. On or about July 11, 2017 Lowen’s GAL accepted the proposed placement and partially accepted the IEP, rejecting the omission of direct OT services. (S-19, S-21, S-35)
26. Lowen’s Team subsequently proposed an IEP dated 9/7/2017 to 9/6/2018 (2017-2018 IEP). This IEP moved occupational therapy from the A-Grid to the C-grid, such that the Team proposed one 30-minute block of OT per 7-day cycle (1 x 30 minutes per cycle). Other than this change and the removal of the OT consult, the Service Delivery Grid remained the same as the IEPs proposed for the periods from April 2017 to April 2018 and June 2017 to June 2018.<sup>3</sup> (S-18, S-21)
27. The “Additional Information” section of the 2017-2018 IEP explained that all of Lowen’s direct services in the ELC would be provided by an ABA technician under the direct supervision of a special education teacher, and the special education teacher would monitor his daily progress and maintain communication with Parents. The IEP also provided for Lowen’s participation in school group instructional activities led by the special education teacher with the ongoing support of his 1:1 ABA technician. (S-18; Wallace, I: 118, 121)

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<sup>3</sup> Although Lowen no longer required a 1:1 aide during classroom activities, the service was included on the IEP, 7 x 360 minutes per cycle, to be provided as needed. (S-18)

28. Lowen's GAL fully accepted this IEP on or about September 8, 2017. (S-18, S-34)
29. In the meantime, DCF placed Lowen at home with his father on or about August 7, 2017, though he remained in the Department's care and custody, and sent a letter to the District requesting that Father be permitted to "make all necessary referrals on behalf of [Lowen], as well as provide emergency medical, dental, or educational decisions." DCF was still to be notified promptly of such decisions. (S-14, S-32, S-33)
30. On or about September 19, 2017, Father requested Progress Reports for Lowen from the previous year. Although he did not receive them,<sup>4</sup> the information that would have been contained in the Progress Report dated June 20, 2017 was discussed at the June 6, 2017 Team meeting and appeared in the IEP drafted in June for the 2017-2018 school year. (P-6; S-34, S-35, S-18; Belsito, II: 121-25; Herrick, III: 126-28; Bartlett, III: 137-38) Around the same time, Father requested information regarding Lowen's assessments, including the Massachusetts Comprehensive Assessment System Alternate Assessment (MCAS-Alt). (P-6)
31. On November 7, 2017, Lowen was returned to the care and custody of his father, who at that point resumed all educational decision-making for him. (S-13, S-32, S-33)
32. Shrewsbury generated progress reports for the 2017-2018 IEP on or about November 8, 2017; February 9, 2018; May 4, 2018; and June 21, 2018. (S-9, S-10, S-11, S-12) During this school year, Lowen was able to increase his on-task behavior, pre-vocational skills (i.e. stocking milk coolers and sorting bottles), and ADL skills. (S-5)
33. On the Spring 2018 administration of the MCAS-Alt, Lowen scored "Incomplete" in English Language Arts; "Progressing" in Mathematics; and "Incomplete" in Science and Technology/Engineering. (S-25)
34. In May 2018, Father emailed then-Director of Special Education Catherine LaRoche with questions about Lowen's grades for the 2016-2017 school year. Ms. LaRoche explained that Father's inquiry had prompted the District to recognize that it had erred in not reporting Lowen's grades at the end of the school year, nearly a year earlier. (P-6)
35. Lowen attended Shrewsbury's ESY program in the summer of 2018. (Belsito, II: 126)
36. An IEP meeting was scheduled to take place on September 6, 2018. On September 4, 2018, Father sent an email to Lowen's teacher requesting that Shrewsbury "redo the three-year evaluation" because the functional skills assessment conducted in early 2017 did not assess Lowen in "critical and major areas of his academics [, including] Math, Science, History, Reading comprehension (*sic*) and Tech exploration (*sic*)." (S-17)

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<sup>4</sup> During the Hearing, a lengthy discussion occurred regarding the absence of a Progress Report for the quarter ending June 20, 2017. The District located and produced a Progress Report with this date, though it appears Father (who did not have custody of Lowen in June 2017, but resumed custody of him that fall) never received it despite his request. (S-34; Belsito, II: 68-74, 82, 121-25, 134-36)

37. Ms. LaRoche responded via email, explaining that because Lowen's IEP was due to expire the following day, the Team needed to "rewrite his plan immediately," and emphasized the importance of Parents' input. Father, in turn, asked how the Team could develop an IEP without evaluating Lowen in the specified academic areas, and requested that the school complete a "three-year eval a.s.a.p. before calling for an iep (*sic*) meeting." (S-17)
38. Parents did not appear for the scheduled Team meeting on September 6, 2018. The District responded by sending a consent form the same day for additional evaluations – specifically cognitive and achievement assessments and subtests of the assessment of functional living skills. (S-17)
39. On or about September 25, 2018, Shrewsbury also sent Parents a copy of a proposed IEP dated 9/6/2018 to 12/6/2018 (proposed short-term IEP), developed for the purpose of "extending IEP dates." As explained on the N-1, the District proposed an extension of Lowen's IEP "to bridge the gap between [his] IEP expiring and a new one being able to be written (following updated testing that you requested)." Shrewsbury noted that it had been unable to convene the Team with Parents present prior to the expiration of the IEP, and that Parents had not returned the consent forms. The proposed short-term IEP contained some updates and the same Service Delivery Grid that had been accepted in the previous IEP, with the exception of the elimination of the 1:1 aide, which Lowen no longer needed. Specifically, this IEP proposed continuation of twice weekly 30 minutes blocks of direct speech/language services. (S-7, S-8, S-16, S-17; Wallace, I: 122)
40. Discussion between Father and Ms. LaRoche regarding Lowen's March 2017 evaluation continued, with Parent challenging an Education Assessment that did not include assessments in math, science, history, reading comprehension, and technical exploration. The District explained that Father may have confused portions of the evaluation with actual course titles; that Lowen had been assessed in areas of functional communication, expressive language skills including reading, computer skills (technical exploration), writing, math (money, coins, bills, time telling, calendar, calculator skills), and science (computer skills and ADLs); and that he continued to work on prerequisite skills related to functional academics. The District explained that Parent could either sign the consent forms that had been sent to him, in order to complete additional evaluations, or move forward to develop an IEP without them. (S-16, S-17)
41. For the next month, Father sent several additional emails, asking how the Team had developed the goals on Lowen's IEP and how they were connected to his assessments. Ms. LaRoche continued to offer an IEP meeting and/or record review of Lowen's folder as effective ways to address Father's questions. (S-17)
42. On or about October 26, 2018, Father consented to Lowen's placement in the ELC but rejected the IEP in full, indicating that it was "in no way related to what the school claims [Lowen] is working on according to his report cards and MCAS portfolio." (S-16, S-17; Wallace, I: 117-18)

43. Shrewsbury generated Progress Reports on November 20, 2018. Because Parents had not accepted a new IEP, these Progress Reports reference the 2017-2018 IEP. (S-6) Although Ms. Wallace testified that she collaborates with Ms. Quinn on functional communication, including expressive communication, Lowen's Functional Communication Progress Report is neither signed nor attributed to a particular staff member. (S-6; Wallace, I: 116-17; Belsito, II: 100-05) According to this Progress Report, Lowen "demonstrates the following challenges: omission of sounds in spontaneous speech, spontaneous language is at the word/short phrase level, does not indicate to staff when he has completed a task or that he needs more materials/supplies or a new task, does not spontaneously request a break, does not seek out a peer, and indicates frustration with elopement or SIBs rather than words." The first benchmark/objective in this area is requesting items, with a staff model, using full sentences, on eight of ten opportunities. According to the report, Lowen can independently produce full sentence requests for familiar/preferred items and produces several trained sentences independently on a regular basis, such as "I need help." There is no data showing how often this occurs, or whether he has met the benchmark. The second benchmark/objective is as follows, "With a staff model, [Lowen] will repeat words when requested, to include omitted sounds and clarify his message, on eight of ten opportunities as measured quarterly." The Progress Report notes that he "can repeat target words, with improved clarity, with a single staff model. Targets this quarter continued to focus on staff/peer names and safety vocabulary, based on their photos." Again, there is no indication as to how often Lowen is able to do this, or whether he has met the 80% benchmark. The next benchmark/objective is for Lowen to be able to identify and use at least five new functional vocabulary words/phrases (safety, health, classroom, etc.) with 80% accuracy across three consecutive days with the same targets. According to the progress report, he reviewed three safety icons and three staff faces from last quarter, with varying accuracy during desktop activities. The report indicated that the focus next quarter would be on motion activities with trained staff, using photo cues for support. Finally, the fourth benchmark/objective in this area reads, "Using Total Communication (verbal, gestural head nod/shakes, pictures), [Lowen] will respond accurately to wh questions related to his preferences, academic/vocation tasks, and physical needs, with staff support as needed, on eight of ten opportunities measured quarterly." The report notes that he continues to focus on "wh" questions based on his daily schedule, routines, and familiar environment, and that he benefits from consistency and visual/picture cues. There is no indication as to how close he is to meeting this benchmark. (S-6)
44. Lowen's Team met on December 20, 2018 for his Annual Review. Following the meeting, on January 2, 2019, Shrewsbury proposed an IEP for the period from 12/20/18 to 12/19/19 (2018-2019 IEP). This proposed IEP continues Lowen's placement in the ELC program, "where content and pace of instruction is modified to match his instructional level, and where he is provided with frequent review of previously learned skills and opportunities to build on mastered skills by generalizing them across settings." The IEP provides direct services from the ABA technician and participation, as appropriate, in small group instructional activities led by the special education teacher with the ongoing support of the ABA technician. Although there is no indication that Lowen has met any of his functional communication goals, the proposed IEP eliminates direct speech/language services, instead calling for consultation (2 x 30 minutes per 7-day cycle). The IEP also proposes consultation by the AT

Specialist (1 x 15 minutes per cycle); direct OT services (1 x 30 minutes per cycle); APE (3 x 50 minutes per cycle); and direct services provided by the special education teacher and ABA technician (7 x 360 minutes per cycle during the school year and 4 x 360 for the ESY program). (S-4, S-5; Belsito, II: 16)

45. The recommendation that direct speech/language services be removed from Lowen's IEP is based, at least in part, on the fact that he is expected to transition out of the high school at the end of June to a transitional program where speech is provided in a consultation model to job coaches, rather than through direct services. Ms. Quinn believes that a technician sitting next to Lowen, consulting with the speech/language pathologist regarding the need for updated materials, would be the appropriate level of service. (Quinn, III: 51, 61-63)
46. The District reported in December 2018 that Lowen had made "great progress throughout the past year in functional academics." Nevertheless he continues to have difficulty acquiring complex math skills and has been working on the concept of one-to-one correspondence and on short, simple equations for over two years. His last proposed IEP notes that he "has worked on 1:1 number correspondence activities and is 44% independent on numbers 13, 14 and 15 at this time"; that he will continue to work on 1:1 number correspondence throughout the next IEP; that, given a sign word curriculum, he "has been practicing on identifying 'no food or drinks, out of order and first aid' with 80% accuracy and 70% independence"; that he has maintained the sight words 'poison, fire, danger, do not enter, stop, exit, entrance, boys bathroom, fire extinguisher, nurse' with 100% accuracy and 100% independence"; and that he is able to write his first name with correct upper and lowercase letter independently." (P-1; S-5; Wallace, I: 63, 74-76, 86-88, 131) Moreover, despite Shrewsbury's assertion in December 2018 that Lowen was able to write his name as described, the Functional Academics Progress Report dated June 14, 2019 states that he is still working on consistently writing his name using an initial uppercase letter and lowercase letters for the remainder. (P-2)
47. Although his behaviors can be variable, Lowen has made progress since January 2017 in his ability to remain in class safely. He no longer requires the support of a 1:1 aide in addition to his ABA technician. He is now able to stay on task, sit to receive instruction for longer periods of time, focus attention on leisure activities, and engage in vocational tasks. His self-injurious behavior has decreased, and as of October 2019, Lowen is able to tolerate group instruction for a period of 45 minutes and share a bingo board with a peer during functional math activities. He has also become able to accept denial of access, show some sense of flexibility, and take part in activities both in and out of the classroom. (Wallace, I: 46, 114-16; Derosier, I: 194; Quinn, III: 52-53, 57, Parry-Cruwys, III: 91; Herrick, III: 128-29)
48. On or about January 10, 2019, Parents accepted placement in a substantially separate class at SHS, but fully rejected the proposed 2018-2019 IEP. (S-3; Wallace, I: 117-18; Belsito, II: 120)
49. On or about February 11, 2019, Shrewsbury posted grades for Lowen, including the following midterm examination grades: B+ (88) in ELC English and Math; and B (85) in ELC Science, Tech Explorations, Vocational Exploration, and World of Work. No grade

appeared for APE or ELC History. When Father contacted the District to inquire as to what kind of tests he took and the topics for each subject, Ms. Wallace informed him that a clerical error had been made, as ELC students are exempt from midterm exams. Yet Lowen's grade report for the 2018-2019 school year still contains these midterm grades, as well as midterm grades from the second semester. (P-3, P-6; Wallace, I; 104-06)

50. Shrewsbury generated Progress Reports on February 14, 2019. Although there is no indication in the record that Parents accepted the proposed short-term IEP, these Progress Reports reference an IEP dated 9/6/2018 to 12/6/2018. According to Mr. Parry-Cruwys, Lowen had made progress toward his Adaptive Behavior goals over the past two months. With the introduction of a token reward system and stabilization of gastrointestinal discomfort, incidents of SIB and aggressions toward staff had decreased dramatically, and Lowen was able to work for longer periods of time, remaining focused on task. He had met two out of three of his objectives, and made progress toward the third.<sup>5</sup> According to Progress Reports submitted by Ms. Wallace and Laurie McGourty, OT, he appeared to have met his ADL objectives and was making progress toward his Functional Academics goal, which was to "learn functional academics related to reading, using money to make a purchase, 1:1 number correspondence, solving simple math equations, and writing and typing personal information." As of February 14, 2019, Lowen was also making progress toward his Social/Leisure, Community/Safety, and Vocational, goals according to the Progress Reports submitted by Ms. Wallace. Lowen's APE Progress Report, submitted by APE teacher Cathy Burke, consists of a narrative that does not address the established benchmarks/objectives. (S-2)
51. Lowen's February 14, April 29, and June 14, 2019 Functional Communication Progress Reports were all unsigned, without attribution to a particular reporter. (P-2)
52. The Functional Academics Progress Report generated on June 14, 2019 indicates, among other things, that Lowen "does not demonstrate an understanding of letter sound correspondence with the exception of some initial consonants in familiar sight words," that he continues to work on consistently writing his name using an upper case initial letter and other lowercase letters, that he has "greatly improved his ability to make 1-1 correspondence when counting which has enabled him to begin to solve simple math addition equations." This same language regarding one-to-one correspondence and math equations appears in the IEP proposed in June 2017. Moreover as of the first day of the hearing in October 2019, Lowen was still working on one-to-one correspondence and "making progress toward understanding" the concept of simple addition. (P-1, P-2; Wallace, I: 63, 69-70, 72-74)
53. According to Ms. Quinn, although Lowen's proposed speech/language goals appear similar from one year to the next, she works with him on tasks of increasing complexity in different environments. For example, he mastered asking for help from his ABA technician in his cubby, and can now ask for help from a cashier in a store with verbal prompting. (Quinn, III: 56-57)

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<sup>5</sup> Exhibit S-1 documents a decrease in Lowen's SIB from the time he began attending Shrewsbury High School in January 2017, through mid-March 2019.

54. As of October 2019, Lowen’s speech/language services focused on expanding his expressive communication to the sentence level, as he still required sentence starters, and increasing his vocabulary, with an emphasis on safety. His providers were using sequence boards with him, which is “incredible improvement” from the individual vocabulary pictures they had used previously, and continuing to work on answering “wh” questions. Ms. Quinn described him, at this time, as “functionally nonverbal, meaning, if he’s separated from a familiar caregiver in the community, he would not be able to convey personal information to get back to that caregiver. But he can understand language.” (Quinn, III: 21-22, 24-25, 32)
55. Lowen did not attend Shrewsbury’s ESY program in the summer of 2019. (Belsito, II: 126)
56. Because the 2017-2018 IEP is the last one accepted for Lowen, Shrewsbury has continued to implement that IEP. According to his teacher, all of the services on this IEP have been delivered to Lowen consistently. (Wallace, I: 120-23; Derosier, I: 193; Belsito, II: 130-31)
57. Under the 2017-2018 IEP, Lowen was scheduled to receive direct services from the speech/language pathologist (SLP) two times per cycle for half an hour (2 x 30 minutes per 7-day cycle), and the SLP was also scheduled to provide consultation to the Team once per cycle for half an hour (1 x 30 minutes per 7-day cycle), for a total of 90 minutes per cycle (30 minutes of consultation and 60 minutes of direct services). (S-18)
58. Ms. Quinn testified that she would see Lowen twice per cycle for 30 minutes when he was in a group. When he was not in a group, she would see him once a cycle for a full period at his job site, or approximately 55 minutes, and sit with him and his technician for another period, such that she would spend more than 60 minutes with him during those cycles. She described her meetings with the technician (tech), as “consultation,” but noted that because the technician was always with Lowen, this also constituted direct services, as they were working together.<sup>6</sup> (S-18; Quinn, III: 34- 37) According to Ms. Quinn, when she modeled something for the technician, or talked with him about materials needed while Lowen was sitting next to him, she was providing both consult and direct services, which “for a student like [Lowen] can be very similar.” It is unclear whether Ms. Quinn believed she could double count these sessions as providing both 30 minutes of direct services and 30 minutes of consultation. (P-9(a); Quinn, III: 40-43, 60-63)
59. Ms. Quinn documented the services she provided for Lowen in a “running tally” taken from the “data tic sheets” she generates after every session. Although they are her personal notes, she shared the document with Father at his request. Ms. Quinn also shared with father pictures of words she was targeting with Lowen. (P(a); Quinn, III: 54-55)
60. According to the logs Ms. Quinn maintained, she did not provide Lowen with 60 minutes per cycle of speech and language services on a regular basis, nor did she provide 30 minutes of consultation consistently. (P-9(a), P-9(b); S-18; Quinn, III: 33-34. 37, 43-45)

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<sup>6</sup> Ms. Quinn also testified that sometimes where her running tally states “consult,” it may mean that the student was not available for services at that time. (Quinn, III: 55)

61. During the 2017-2018 school year, the first day of school was August 29, 2017, but Ms. Quinn did not meet with Lowen until September 19, 2017. (P-9(a), P-9(b))
62. August and September 2017 consisted of 22 school days, according to Shrewsbury's Final Approved Calendar. This is three, 7-day cycles. Based on Lowen's IEP, he should have received at least six, 30-minute blocks of direct speech/language services, and Ms. Quinn should have provided three, 30-minute blocks of consultation. Yet Ms. Quinn's log lists one session on 9/19/2017, presumably direct services provided to Lowen, and one session labeled "ELC consult with tech" on 9/25/2017. Whether this second session should be considered direct services or consultation, Ms. Quinn appears to have provided a total of two sessions in September, rather than eight. For this period alone, Lowen is owed at least four, if not five, 30-minute blocks of direct speech/language services, and two consultations to the Team. (S-18; P-9(a), P-9(b))
63. October 2017 consisted of 20 school days, constituting almost three cycles. Ms. Quinn's log for October 2017 includes an ELC consult with the tech on 10/3/2017, a session with Lowen on 10/11/2017, an ELC consult on 10/16/2017, and a session with Lowen during an ELC group lesson on 10/17/2017. The log states that Ms. Quinn was at IEP meetings on 10/25 and 10/31/2017. Even giving the District the benefit of the doubt and assuming that Lowen would have received speech on cycle day 21, and Ms. Quinn would have consulted to the Team on the same day, during these 20 days, he should have received at least five, 30-minute blocks of direct speech/language services, and the Team should have received two consultations. As such, for October 2017 Lowen is owed at least three, if not four, 30-minute blocks of direct speech/language services and possibly one block of consultation. (S-18; P-9(a), P-9(b))
64. November 2017 consisted of 17 school days, equalling two and a half cycles. Lowen should have received at least five, 30-minute direct speech blocks and two, 30-minute consultations. Ms. Quinn's log includes sessions on 10/3, 11/13, and 11/27/2017, an ELC consult on 11/16/2017, and an ELC consult with tech regarding progress on 11/29/2017. The log lists "DQ out" for 11/7/2017. It appears that for November 2017, Lowen is owed two, 30-minute blocks of direct speech/language services. (S-18; P-9(a), P-9(b))
65. December 2017 consisted of 16 school days, which is more than two cycles. Lowen should have received at least four, 30-minute speech sessions and two, 30-minute consultations. Ms. Quinn's log lists ELC consults on 12/5 and 12/15/2017. On 12/8/2017, Ms. Quinn worked with Lowen on benchmark goals during ELC group. On 12/14/2017, Lowen was out. According to the log, on 12/20/2017, Ms. Quinn was at a parent meeting and on 12/21/2017, she was at an IEP meeting. As such, for December 2017, Lowen is owed two, 30-minute blocks of direct speech/language services, which does not include the day services were missed due to his absence. (S-18; P-9(a), P-9(b))
66. January 2018 consisted of 21 school days, or three cycles. Lowen should have received six, 30-minute sessions of direct services and three, 30-minute consultations. According to Ms. Quinn's log, she met with Lowen to work on benchmark goals on 1/3/2018<sup>7</sup> and 1/18/2018 and provided consultation to the ELC on 1/18 and 1/30/2018. As such, for January 2018,

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<sup>7</sup> The log lists 1/3/2017, which is presumably a typographical error. (P-9(a))

Lowen is owed four, 30-minute blocks of direct speech/language services and one, 30-minute block of consultation. (S-18; P-9(a), P-9(b))

67. February 2018 consisted of 15 school days, just over two cycles. Lowen should have received at least four, 30-minute blocks of direct services and two, 30-minute consultations. According to Ms. Quinn's log, she was out on 2/1/2018, consulted with the ELC tech on 2/2/2019, and worked with Lowen on 2/5/2018 in group, then on 2/14 and 2/16/2018 on benchmark goals. Lowen was out on 2/26 and 2/28/2018. As such, not counting the dates on which Lowen was absent, in February 2018, Ms. Quinn failed to provide only one, 30-minute consultation. (S-18; P-9(a), P-9(b))
68. March 2018 consisted of 22 school days, or just over three cycles. Lowen should have received at least six, 30-minute sessions of direct speech/language services and three, 30-minute consultations. According to Ms. Quinn's log, Lowen was out on 3/2/2018. She did not meet with him until 3/12/2018, and met with him again on 3/22/2018. She provided ELC consults on 3/9, 3/16, 3/27, and 3/29/2018, the last of which involved taking photos with Lowen. This appears to be a total of three blocks of direct services and three consultations. As such, for March 2018 (not including the day he was absent), Lowen is owed two, 30-minute blocks of direct speech/language services. (S-18; P-9(a), P-9(b))
69. April 2018 consisted of 16 school days, or over two cycles. Lowen should have received at least four, 30-minute sessions of direct speech/language services and two, 30-minute consultations. According to Ms. Quinn's log, Lowen was "out at CBL" on 4/5/2019; she worked with him on benchmark goals on 4/11/2018 and provided an ELC consult on 4/25/2019. As such, not including the date on which Lowen was absent, for April 2018, Lowen is owed at least two, 30-minute blocks of direct speech/language services and one, 30-minute consultation. (S-18; P-9(a), P-9(b))
70. May 2018 consisted of 22 school days, or just over three cycles. Lowen should have received at least six, 30-minute sessions of direct services and three, 30-minute consultations. According to Ms. Quinn's log, she worked with him directly on 5/4, 5/22, and 5/29/2018, and provided ELC consults on 5/2, 5/11, 5/11, 5/25, and 5/29/2018. It appears that she provided extra consultations during this month, but Lowen is owed three, 30-minute blocks of direct speech/language services for May 2018. (S-18; P-9(a), P-9(b))
71. June 2018 consisted of nine school days, or over one cycle. Lowen should have received at least two, 30-minute sessions of direct services and one, 30-minute consultation. Ms. Quinn met with him on 6/7/2018 and provided an ELC consult on 6/5/2018. Lowen is owed at least one, 30-minute block of direct speech/language services for June 2018. (S-18; P-9(a), P-9(b))
72. The 2018-2019 school year began on August 28, 2018. August and September consisted of 22 school days, or just over three cycles. Lowen should have received at least six, 30-minute blocks of direct speech/language services and three, 30-minute consultations. According to Ms. Quinn's log, she did not meet with him until 9/13/2018, and met with him again on 9/19/2018. She provided an ELC consult on 9/25/2018. As such, for August/September 2018,

Lowen is owed four, 30-minute blocks of direct speech/language services and two, 30-minute consultations. (S-18; P-9(a), P-9(b))

73. October 2018 consisted of 21 school days, or three cycles. Lowen should have received six, 30-minute blocks of direct speech/language services and three, 30-minute consultations. According to Ms. Quinn's log, she met with Lowen on his job site on 10/3/2018 and worked with him on benchmark goals on 10/16/2018. "CBL" is listed for 10/10/2018. She provided an ELC consult on 10/22/2018 and an ELC consult with the ABA tech on 10/24/2018. As such, for October 2018, even if the job site visit accounts for 55 minutes of direct services (or almost two, 30-minute blocks), Lowen is owed at least three, 30-minute blocks of direct speech/language services and one, 30-minute block of consultation. (S-18; P-9(a), P-9(b); Quinn, III: 34-37)
74. November 2018 consisted of 17 school days, or approximately two and a half cycles. Lowen should have received at least five, 30-minute direct speech/language blocks and two, 30-minute consultations. Ms. Quinn's log includes sessions on 11/19, 11/26, and 11/30/2018, and a consult with the ABA tech and lead teacher on 11/13/2018. As such, for November 2018, Lowen is owed two, 30-minute blocks of direct speech/language services and one, 30-minute consultation. (S-18; P-9(a), P-9(b))
75. December 2018 consisted of 15 school days, just over two cycles. Lowen should have received four, 30-minute sessions of direct speech/language services and two, 30-minute consultations. According to Ms. Quinn's log, she worked with Lowen on benchmark goals on 12/11 and 12/20/2018. No consults are listed, but there is an indication that midterms occurred. Lowen does not participate in midterms. As such, for December 2018, Lowen is owed at least two, 30-minute blocks of direct speech/language services and two, 30-minute consultations. (S-18; P-9(a), P-9(b); Wallace, I:104-06)
76. January 2019 consisted of 21 school days, or three cycles. Lowen should have received six, 30-minute sessions of direct speech/language services and three, 30-minute consultations. According to Ms. Quinn's log, she provided a consult on 1/24/2019, and there was a snow delay on 1/30/2019. Lowen was out on 1/31/2019. As such, not counting the day he was absent, for January 2019, Lowen is owed five, 30-minute blocks of direct speech/language services and two, 30-minute consultations. (S-18; P-9(a), P-9(b))
77. According to Ms. Quinn's log, Lowen was out from 2/1 through 2/10/2019, leaving nine school days in February 2019, or just over one cycle. Lowen should have received at least two, 30-minute sessions of direct services and one, 30-minute consultation. According to Ms. Quinn's log, he received direct speech/language services on 2/11, 2/13, 2/26 and 2/28/2019, but she provided no consultation. (S-18; P-9(a), P-9(b))
78. March 2019 consisted of 21 school days, or three cycles. Lowen should have received six, 30-minute sessions of direct speech services and three, 30-minute consultations. According to Ms. Quinn's log, she worked on benchmark goals with Lowen on 3/7, 3/15, and 3/22/2019; provided a consultation on 3/26/2019; took photos of Lowen completing his morning routine on 3/27; and created a new board on 3/28/2019. As such, for March 2019,

Lowen is owed three, 30-minute blocks of direct speech/language services. (S-18; P-9(a), P-9(b))

79. April 2019 consisted of 17 school days, or approximately two and a half cycles. Lowen should have received at least five, 30-minute direct speech/language sessions and two, 30-minute consultations. He worked with Ms. Quinn on 4/4, 4/5, 4/11, and 4/25/2019, and was absent on 4/22/2019. Ms. Quinn provided consultation on 4/26/2019 and noted that mediation took place on 4/9/2019. (S-18; P-9(a), P-9(b))
80. May 2019 consisted of 22 school days, or just over three cycles. Lowen should have received six, 30-minute sessions of direct speech/language services and three, 30-minute consultations. He worked with Ms. Quinn on 5/2, 5/10, 5/14, 5/15, 5/17, 5/22, and 5/30/2019. Ms. Quinn's log states that she was in transition meetings "at Oak" on 5/23/2019. No consultations are listed. As such, for May 2019, Lowen is owed one, 30-minute consultation. (S-18; P-9(a), P-9(b))
81. June 2019 consisted of nine school days, or over one cycle. Lowen should have received two, 30-minute sessions of direct services and one, 30-minute consultation. According to Ms. Quinn's log, she provided direct services on 6/3 and 6/4/19, but provided no consultation in June. As such, for June 2019, Lowen is owed one, 30-minute consultation. (S-18; P-9(a), P-9(b))
82. Ms. Quinn believes that because Lowen's functional communication goals are "covered by everybody all day," if she missed a session because Lowen was absent, or because she had a meeting or was proctoring examinations for other students, his "goals were still provided to him by his teacher, by his technician by anyone else who was working with him." (Quinn, III: 80)
83. Currently, Lowen's discrete trial programming is driven by his special education teacher, based on the Autism Curriculum Encyclopedia, and modified in accordance with data collected. Lowen has made significant strides in terms of decreasing his challenging behavior, but his rate of acquisition is very slow. Educating Lowen requires a lot of individualization as to how stimuli and tasks are presented, and a high rate of repetition. (Parry-Cruwys, III: 98-100)
84. Father is dissatisfied with certain aspects of the ELC program. Specifically, he disagrees with the model wherein the special education teacher designs and models Lowen's discrete trials and other instructional programs, which are implemented 1:1 by his ABA technician under the teacher's supervision.<sup>8</sup> (Wallace, I: 14-16, 19, 32) He questions the absence of goals in technical exploration on Lowen's IEP; according to his teacher, Lowen was unable to participate in the technical explorations elective because, at that time, due to his behavior he was in a smaller classroom working on his IEP goals. These goals included tolerating small group instruction with peers and answering "wh" questions on a computer application. (Wallace, I: 44-46, 49) Father also appears to be confused by the home logs he receives, as

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<sup>8</sup> Lowen also participates in group lessons, when appropriate, which are delivered by the special education teacher. (Wallace, I: 16)

he expects them to contain details about every activity Lowen participates in and, as a result, assumes that something did not happen if it does not appear in the log. The home logs, by design, are not meant to be comprehensive; they represent highlights and general summaries of Lowen's days. (P-7, P-8; Wallace, I: 25-26, 54, 61; Derosier, I: 155; Belsito, II: 86-89) Father's concern about the difference in content between MCAS-Alt assessments and Lowen's IEP goals persists. (Wallace, I: 34-35, 54-55, 57-58) Finally, he questions how his son could receive grades that earned him a place on the high school honor roll. (P-3, P-4, P-6; Wallace, I: 88-92, 101, 130-31; Desrosiers, I: 184-86; Belsito, II: 95-96)

85. In addition to District personnel's responses to Father's emails about his concerns, Lowen's teacher reached out to Father through email to get information about how Lowen was spending his weekends, in order to incorporate this information into classroom activities. Father did not respond. The District also invited Father to come to school to review Lowen's MCAS Portfolio, but he did not do so, and the Team has had difficulty arranging for meetings with the family since DCF ended its involvement. Father has been responsive, however, whenever Lowen has been sick or needed extra snacks, and he has attended established IEP meetings consistently, including those that occurred when Lowen was in DCF custody. (Wallace, I: 124-227; Derosier, I: 161, 197-98; Belsito, II: 55-56, 113-16; Parry-Cruwys, III: 102)
86. Shrewsbury has requested Parents' consent to reevaluate Lowen. The proposed reevaluation would include psychological and speech and language testing, but not further behavioral assessments. Lowen's Team believes testing would permit Shrewsbury to document Lowen's progress, get a better picture of his current skills and how independent he can be at a job site, and plan for services after he turns 18. Parents, however, have been unwilling to give consent. As such, the District measures and reports progress based on data collection and informal observation. (Wallace, I: 125-26, 128; Derosiers, I: 181; Belsito, II: 118-19; Quinn, III: 26, 51-52, 69, 72-73; Parry-Cruwys, III: 103-04; Bartlett, III: 138-39)
87. Based on the information the Team does have, Mr. Parry-Cruswys believes future programming for Lowen should include the use of chaining procedures; task and data analysis; general case analysis to help Lowen generalize the components of skills he learns; and community exploration. (Parry-Cruwys, III: 104-06) Although he believes it is important for Lowen to practice skills in other settings, Mr. Parry-Cruwys testified that he does not "know if [he has] enough information to speak specific to [Lowen]'s case." Yet he did not recommend a home assessment to give the Team information about Lowen's abilities outside of the school setting. (Parry-Cruwys, III: 103-04, 107-08)

## DISCUSSION

It is not disputed that Lowen is a student with a disability who is entitled to special education services under state and federal law. In order to determine whether Parents are entitled to a decision in their favor, I must consider substantive and procedural legal standards governing special education. As the moving party in this matter, Parents bear the burden of proof.<sup>9</sup> To

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<sup>9</sup> See *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2008).

prevail, they must prove – by a preponderance of the evidence – that the District failed to propose IEPs reasonably calculated to provide Lowen with a FAPE; failed to implement accepted IEPs; and/or committed one or more procedural violations that amount to a violation of Lowen’s right to a FAPE.<sup>10</sup>

I address the delineated issues below.

I. Shrewsbury Failed to Implement One Aspect of Lowen’s Accepted IEPs

Lowen’s last fully accepted IEP, signed by his GAL on September 8, 2017, was dated 9/7/17 to 9/6/18. Among other things, this IEP provided for a total of 90 minutes of speech/language services per 7-day cycle, comprised of 60 minutes (2 x 30) of direct services and 30 minutes of consultation. Because Parents did not accept any IEPs proposed after the 2017-2018 IEP expired, Lowen was entitled to continue receiving these services. Although Shrewsbury acknowledges its obligation, the District failed to provide these services consistently.

As detailed above, Parents have established that for the period from September 2017 through June 2019, the beginning and end dates of Ms. Quinn’s logs that are in evidence, Shrewsbury failed to provide the required 90 minutes per cycle of speech/language services on multiple occasions. At the very least, based on these logs, Shrewsbury failed to provide 42, 30-minute blocks of direct speech/language services, and 15, 30-minute blocks of consultation. Lowen is owed a total of at least 28.5 hours (1710 minutes) of speech/language services. I will defer to the Team as to how best to account for this time as it develops a compensatory services plan.

II. More Evaluations Are Required to Determine Whether Shrewsbury’s Proposed IEPs Are Reasonably Calculated to Provide FAPE

A. *Legal Standard for Free Appropriate Public Education*

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education.”<sup>11</sup> FAPE is delivered primarily through a child’s IEP, which must be tailored to meet a child’s unique needs after careful consideration of the child’s present levels of achievement, disability, and potential for growth.<sup>12</sup> “To meet its substantive obligation under the IDEA, a [district] must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”<sup>13</sup> Similarly, Massachusetts FAPE standards require that an IEP be “reasonably calculated to confer a meaningful educational

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<sup>10</sup> See *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990) (Districts are liable for procedural violations if parents prove both that a violation occurred and that the “procedural inadequacies compromised the pupil’s right to an appropriate education, seriously hampered the parents’ opportunity to participate in the formulation process, or caused a deprivation of educational benefits.”)

<sup>11</sup> 20 U.S.C. § 1400 (d)(1)(A).

<sup>12</sup> *Andrew F. v. Douglas Cty. Reg’l Sch. Dist.*, 137 S. Ct. 988, 999 (2017); *D.B. ex rel. Elizabeth B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012).

<sup>13</sup> *Andrew F.*, 137 S. Ct. at 999.

benefit in light of the child’s circumstances,”<sup>14</sup> and designed to permit the student to make “effective progress.”<sup>15</sup> Evaluating an IEP requires viewing it as a “a snapshot, not a retrospective. In striving for ‘appropriateness, an IEP must take into account what was . . . objectively reasonable . . . at the time the IEP was promulgated.”<sup>16</sup>

Under state and federal special education law, a school district has an obligation to provide the services that comprise FAPE in the least restrictive environment that will “accommodate the child’s legitimate needs.”<sup>17</sup> For most children, a FAPE “will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade.”<sup>18</sup> However, “the benefits to be gained from mainstreaming must be weighed against the educational improvements that could be attained in a more restrictive (that is, non-mainstream) environment.”<sup>19</sup>

*B. Parents Have Not Proven that Lowen Requires a 1:1 Student-to-Teacher Ratio or Measureable Goals Aligned with the MCAS Alternate Portfolio to Receive a FAPE*

Parents seek a finding that FAPE for Lowen requires that he be taught 1:1 by a special education teacher in all academic subjects, rather than by a trained ABA technician supervised by the special education teacher. The latter model, which was accepted by Lowen’s GAL, permits Lowen to participate in groups with his peers facilitated by the special education teacher, where appropriate, and to otherwise share classroom space with other students. Other than establishing the slow pace of Lowen’s acquisition of skills, Parents produced no evidence to support their position. Neither documentary nor testimonial evidence suggests that Lowen would learn more quickly or efficiently under the model Parents propose. Moreover, there is no evidence in support of Parents’ proposition that FAPE for Lowen requires further alignment between his IEP goals and the content of his MCAS-Alt Portfolio.

*C. FAPE for Lowen Does Not Require a 1:1 Aide*

The short-term IEP proposed for 9/6/2018 to 12/6/2018 retained the Service Delivery Grid of the last accepted IEP, with one exception: it eliminated the 1:1 aide. Through the credible testimony of Ms. Wallace and Mr. Parry-Cruwys, Shrewsbury established that due to Lowen’s present ability to focus and remain on task for longer periods of time, and the significant decrease in his aggressive and self-injurious behavior, he no longer requires this staffing level. No contrary evidence was adduced by Parents. As such, a 1:1 aide is not required for Lowen to receive a FAPE.

*D. Additional Information is Necessary for Me to Determine Whether Lowen Requires Direct Speech and Language Services to Receive a FAPE*

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<sup>14</sup> *C.D. v. Natick Pub. Sch. Dist.*, 924 F.3d 621, 624-25 (1st Cir. 2019).

<sup>15</sup> 603 CMR 28.05(4)(b) (IEP must be “designed to enable the student to progress effectively in the content areas of the general curriculum”).

<sup>16</sup> *Roland M.*, 910 F.2d at 992 (internal quotations and citations omitted).

<sup>17</sup> *C.G. ex rel. A.S. v. Five Town Comty. Sch. Dist.*, 513 F.3d 279, 285 (1st Cir. 2008); see 20 USC § 1412(a)(5)(A); 34 CFR 300.114(a)(2)(i); MGL c 71 B, §§ 2, 3; 603 CMR 28.06(2)(c).

<sup>18</sup> *Andrew F.*, 137 S. Ct. at 1000.

<sup>19</sup> *C.D.*, 924 F.3d at 631 (quoting *Roland M.*, 920 F.2d at 993).

Parents assert that Lowen requires 90 minutes (3 x 30) of direct speech/language services per 7-day cycle to receive a FAPE, whereas the IEP proposed by Shrewsbury for the period from 12/20/18 to 12/19/19 omits direct services in this area altogether. As I concluded in Section I above, Shrewsbury failed to deliver a significant portion of Lowen's speech/language services during the 2017-2018 and 2018-2019 school years. Moreover, many of the District's Functional Communication Progress Reports are largely inadequate, lacking the name of the author and failing to indicate with specificity Lowen's progress toward his benchmarks. This is true of the most recent progress report in evidence, generated June 14, 2019. Without this data, and without any recent formal assessment, the basis of the District's proposed reduction in services is unclear. In fact, the elimination of direct speech/language services appears to be based, at least in part, on conjecture regarding the structure of Lowen's next proposed placement, rather than on his present needs. I cannot determine, at this time, whether direct speech/language services are required for Lowen to receive a FAPE. Although Parents bear the burden to prove that a proposed IEP is not reasonably calculated to provide a student with a FAPE, in the circumstances of this case – specifically, the District's failure to provide consistent speech/language services and meaningful data – I conclude that Shrewsbury shall not eliminate this service without additional information regarding Lowen's current performance.

E. *Additional Information is Necessary for Me to Determine Whether Lowen Requires Home Services to Assist in Generalization*

The only Functional Skills Assessment Shrewsbury conducted, in early 2017, included a recommendation that all instructional and behavioral programs implemented in school be carried over in Lowen's living environment to promote consistency and generalization. According to both testamentary and documentary evidence, generalization across environments is key for Lowen. There is no indication, however, that home services to assist with generalization were offered to the family. It is unclear, at this point, whether Lowen can receive a FAPE in the absence of home services.

F. *The BSEA Has the Authority to Order Evaluations and, if Necessary, Substitute Consent*

Both federal and state special education regulations permit reevaluation of a student (though not initial evaluation), in certain circumstances, without a parent's consent. Specifically, if a school district determines that a parent's failure or refusal to consent to reevaluation will result in denial of a FAPE to a student, it may file a hearing request with the BSEA to seek substitute consent.<sup>20</sup> In this case, the District has not filed its own claim against Parents seeking substitute consent, though multiple witnesses testified that additional evaluations – specifically, psychological, speech and language, and functional academic assessments – would be helpful to determine next steps for Lowen.

As a Hearing Officer, I am responsible under IDEA to determine whether Lowen has been receiving, and is likely to receive, a FAPE.<sup>21</sup> Massachusetts special education regulations provide me with general authority “to order additional evaluations by a school district or

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<sup>20</sup> 34 CFR 300.300(c); 603 CMR 28.07 (1)(b).

<sup>21</sup> 20 U.S.C. §1415(f)(3)(E).

independent education evaluations at public expense when necessary in order to determine the appropriate special education for the student.”<sup>22</sup>

G. *Lowen Must Be Evaluated As Soon As Practicable, at Public Expense, With or Without Parents’ Consent*

For the reasons described above, I have an incomplete picture of Lowen’s needs, without which I cannot determine whether the IEP most recently proposed for him is reasonably calculated to provide him with a FAPE. It is not clear, from the record, whether Parents are presently willing to consent to psychological, functional academic, speech and language, and/or home assessments. As such, because Lowen is 17 years old and time is of the essence, and because I have already concluded that additional evaluations are necessary in order to determine the appropriate special education for Lowen, in the event Parents do not provide consent within ten days of the receipt of this Decision, I hereby grant substitute consent to Shrewsbury as delineated in the Order below.

III. Parents Failed to Prove that Shrewsbury Committed Procedural Errors

The IDEA contains both substantive and procedural protections for children with disabilities. Procedural protections serve a dual purpose; they ensure that each eligible child receives a FAPE, and they provide for meaningful parental participation.<sup>23</sup> They are so important that the IDEA recognizes that even if no substantive irregularities have occurred, procedural errors may amount to a deprivation of a FAPE if “the procedural inadequacies – (I) impeded the child’s right to a free appropriate public education; (II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or (III) caused a deprivation of educational benefits.”<sup>24</sup> In *Endrew F. v. Douglas County School District RE-1*, the United States Supreme Court reaffirmed its earlier declaration that collaboration between parents and educators is a key component of the IDEA.<sup>25</sup> In determining whether procedural violations amount to a deprivation of FAPE, courts focus on the degree to which school districts offered parents the opportunity to play an important participatory role.<sup>26</sup>

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<sup>22</sup> 603 CMR 28.08(5)(c).

<sup>23</sup> See *Honig v. Doe*, 484 U.S. 305, 311 (1998) (“Congress repeatedly emphasized throughout the [IDEA] the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness).

<sup>24</sup> 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); see *Roland M.*, 910 F.2d at 994.

<sup>25</sup> 137 S. Ct. 988, 994 (2017) (“These procedures [set forth in 20 U.S.C. § 1414] emphasize collaboration among parents and educators”); see *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982) (“Congress placed every bit as much emphasis on compliance with procedures giving parents and guardians a large measure of participation in every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard”); see also *C.G. v. Five Town Cmty. Sch. Dist.*, 513 F. 3d 279, 285 (1st Cir. 2008) (“development of an IEP is meant to be a collaborative project”).

<sup>26</sup> See, e.g., *Roland M.*, 910 F.2d at 995 (where parents did not cooperate with attempts to create IEP and there was no “indication of procedural bad faith” on school’s part, school district had “fulfilled the essence of its procedural responsibility”); *A.M. v. Monrovia Unified Sch. Dist.*, 627 F.3d 773, 780 (9th Cir 2010) (no procedural violation of parental right to participate meaningfully where parents did not participate in Team meeting but district had taken steps to obtain their presence); *Ms. S. ex rel. G v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1132-33 (9th Cir. 2003)

Parents have alleged, specifically, that by failing to inform them accurately of the content of Lowen's instruction, Shrewsbury committed procedural errors that deprived them of the opportunity to participate fully in his education. Although Father did not receive Progress Reports for the 2016-2017 school year, he was unable to establish that the GAL, who had decision-making authority at the time, did not receive them. To the extent Shrewsbury failed to provide a timely June 2017 Progress Report to either Father or the GAL, the information that would have appeared in that report was conveyed to both Parents and the GAL at the Team meeting and in the IEP proposed around the same time. Furthermore, although some irregularities occurred with respect to Lowen's grades on the school's system, with the possible exception of June 2017 Shrewsbury provided regular Progress Reports for Lowen. APE and Functional Communication Progress Reports lacked specific data in some instances, but Father has been in frequent communication with District personnel regarding Lowen's progress and had the opportunity to ask questions at Team meetings and through email. In fact, Father received logs, including pictures of Lowen's targets, when he requested additional information about Lowen's speech/language programming. In addition, he was invited to review Lowen's MCAS-Alt Portfolio, but he declined. In fact, Shrewsbury's attempts to schedule meetings with Parents have been difficult since DCF involvement ended. As such, the record is replete with examples of Shrewsbury's recognition of Parents' important participatory role and the District's ongoing outreach to them.

## CONCLUSION

After reviewing the testimony and documents in the record, I conclude that, in part because Parents have not consented to a reevaluation, I do not have sufficient information before me to determine whether an IEP that lacks direct speech/language services and/or home services is reasonably calculated to provide Lowen with a FAPE; that Parents have met their burden to prove that Shrewsbury failed to implement the 2017-2018 IEP as to speech/language services during the 2017-2018 and 2018-2019 school year; and that Parents failed to meet their burden to prove that Shrewsbury committed procedural errors in violation of the IDEA.

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(superseded by statute on other grounds) (where parent disagreed with receiving district's temporary placement of her son, upon transfer, pending completion of a "proper evaluation" and alleged that District's "take it or leave it" position did not allow for meaningful parental participation, court found that where school district attempted to schedule several assessments and other IEP meetings, notifying her in advance, "school district ha[d] repeatedly provided the parent with the opportunity to participate meaningfully in the IEP process" and as such, "ha[d] not violated its obligations under 34 CFR §300.345").

## ORDER

- 1) Shrewsbury shall begin to reevaluate Lowen within ten school working days of this Order, whether or not Parents have consented to the evaluation. Within 55 school days, the District shall convene a Team meeting to review psychological, speech/language, and functional academic assessments. SPS may elect to conduct its own assessments or to engage independent evaluators.
- 2) To the extent Parents seek home services, they must consent to a home assessment. That assessment must be conducted in accordance with the prescribed timelines. Should Parents decline a home assessment, Shrewsbury shall not be obligated to propose home services.
- 3) Lowen's Team shall convene within 10 days of the issuance of this decision to develop a plan for delivery of speech/language services to compensate for 28.5 hours of missed services.

*So ordered.*

By the Hearing Officer:

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Amy M. Reichbach  
Dated: December 9, 2019