

Commonwealth of Massachusetts
Division of Administrative Law Appeals
Bureau of Special Education Appeals

In re: Don¹

BSEA #1907864

DECISION

This decision is rendered pursuant to M.G.L. Chapters 30A and 71B; 20 U.S.C. §1400 et seq.; 29 U.S.C. §794; and the regulations promulgated under these statutes.

A Hearing in the above entitled matter was held on November 13 and 15, 2019; January 24, 2020; and February 14, 2020. The record remained open for receipt of written transcripts and written final arguments until March 27, 2020.

Those in attendance for all or part of the Hearing were:

Parent

Dr. Marilyn Engelman	Parent's Independent Evaluator
Paula Donahue	Director of Special Education, Summit Academy
Kathleen Buchanan	Summit Academy
Joshua Krell	Attorney for Summit Academy
Constance Hilton	Attorney for Parent
Dr. Mary Anne Morris	Director of Special Education, Springfield Public Schools (SPS)
Patricia Burns	Assistant Director of Special Education Services, SPS
Luciano Valles	Director of Speech-Language Dept. and LLD Programs, SPS
Laura La Mothe	Evaluation Team Leader, SPS
Aileen Sullivan Pacella	School Psychologist, SPS
Mary Ellen Pope	Speech-Language Pathologist, SPS
Melanie Alabre	LLD Teacher, SPS
Alisia St. Florian	Attorney, SPS
Vineesha Sow	Attorney, SPS
Kristen Edwards	Court Reporter

Raymond Oliver Hearing Officer, Bureau of Special Education Appeals

The evidence consisted of Parent's Exhibits labeled P-1 through P-65; SPS Exhibits labeled S-1 through S-45; and approximately 24 hours of oral testimony.

STATEMENT OF THE CASE

Don is a 12½ year old 7th grade student who currently attends Summit Academy via a unilateral placement by Mother. Don has attended Summit Academy since late February 2019. Don and his family reside in Springfield, MA. The Springfield Public Schools (SPS) is the public local education authority responsible for providing education to Don.

¹ Don is a pseudonym assigned by the hearing officer to protect the privacy of the student in publicly available documents.

Don attended the Boston Public Schools for pre-kindergarten, kindergarten and part of 1st grade from April 2011 to February 2014 where he received special education services based upon an Autism Spectrum Disability diagnosis. In March 2014, Mother and Don moved to Springfield where Don attended SPS' Summer Avenue public school for the remainder of the 1st grade, all of 2nd grade, all of 3rd grade and the beginning of 4th grade, from March 2014 to October 2016. In October 2016 Mother withdrew Don from SPS and placed him at Heritage Academy, a private school in Longmeadow, MA, where he remained for the 2016-2017 school year. He would have continued there but Heritage Academy closed in August 2017. (Testimony, Mother; Burns; P-3, 4, 64)

In September 2017 Mother placed Don at Veritas Prep Charter School (Veritas) for 5th grade. In the fall of 2017 Veritas performed a 3-year re-evolution of Don consisting of a psychological evaluation, speech-language evaluation and occupational therapy evaluation. (Testimony, Mother; P-7, 8, 9) In March 2018 Mother rejected Veritas' proposed individual education program (IEP) for Don (P-11). In April 2018 Mother withdrew Don from Veritas and he was home schooled for the remainder of the 2017-2018 school year. (Testimony, Mother; P-14) Mother contacted SPS that Don would return to SPS in September 2018. (Testimony, Mother; Burns; P-15, 16.) Over 3 days in April-May 2018 Dr. Marilyn Engelman performed a psychological evaluation of Don and wrote a preliminary report which was provided to SPS (testimony, Engelman; P-17). In June 2018 SPS convened a team meeting to review Dr. Engelman's report and a private speech-language evaluation (P-15). SPS proposed an extended evaluation to take place at a Language Learning Disability (LLD) program in SPS. Mother consented to this extended evaluation (P-18; S-32).

Don was placed in the LLD program at the Chestnut TAG Middle School in September 2018 for the extended evaluation. Team meetings were held at the midpoint (September 27) and end (October 26) of the extended evaluation. Various evaluations and observations were performed by SPS during this time period (P-20, 21, 22, 23, 24; S-24, 25, 26). On October 26, 2018 the team met to consider the results of the extended evaluation. Dr. Engelman (whose full psychoeducational evaluation had been provided to SPS prior to the September 27 midpoint meeting) observed Don in his LLD placement for 1½ hours on October 26, 2018, prior to attending the final team meeting. (See testimony, Engelman; Mother; Burns; P-17.) Don was found eligible for continued special education services based upon a primary disability of autism and a secondary disability in communication (S-21). SPS proposed Don's continued placement in the LLD program at Chestnut TAG Middle School with the same special education supports and related services that Don received during the extended evaluation. Mother and Dr. Engelman disagreed with the LLD placement for Don. In November 2018 SPS formally sent Mother the proposed 10/18 - 10/19 IEP for Don in this LLD program. On December 5, 2018 Mother accepted the IEP services but rejected the LLD placement. (See P-27; S-21; testimony, Mother; Engelman; La Mothe; Burns.)

In December 2018 neurodevelopmental pediatrician Lawrence Kaplan, MD performed an evaluation of Dan at Shriners Hospital (P-32). Mother sent this evaluation to SPS (Ms. Burns and Ms. La Mothe). Neither responded. Mother was referred to Dr. Morris who had returned to SPS as special education director, and Mother and Dr. Morris spoke by phone. No follow up meeting to discuss Dr. Kaplan's evaluation ever took place. (See testimony, Mother; Morris; Burns; La Mothe; P-59.) Mother then investigated private special education schools. On January 29, 2019 Mother fully rejected SPS' 10/26/18 to 10/25/19 IEP; notified SPS of her intention to place Don at Summit Academy on February 25, 2019; and requested SPS to fully fund Summit

Academy and provide transportation. This request was denied by SPS on February 5, 2019. (See P-28; testimony, Mother; Morris.)

On February 28, 2019 Parent and SPS participated in a BSEA mediation but were unable to reach agreement (testimony, Mother; Morris; La Mothe; P-27; S-18). However on March 1, 2019 SPS sent Mother a revised IEP for 10/26/18 to 10/25/19 as well as a new evaluation consent form (P-30, 31). No team meeting took place prior to this revised IEP being sent to Mother. Two changes were made to the original IEP but the placement remained at the LLD program. On March 5, 2019 Mother rejected the revised IEP. (See testimony, Mother; La Mothe; Morris; P-30, 31.) Also on March 5, 2019 Parent's attorney filed for a hearing before the BSEA. At a BSEA pre-hearing conference on May 23, 2019 Mother consented to additional SPS evaluations and observations (S-19) which were performed in June-July 2019. (See P-33, 36, 37, 38, 39, 40, 41; S-6, 7, 8, 9, 10, 11, 12.)

On September 26, 2019 another team meeting took place for Don's annual review and to review the recently updated evaluations and observations. SPS proposed continuation of the same LLD placement Don had attended prior to his unilateral placement at Summit Academy (P-42). On October 22, 2019 SPS mailed Mother the new proposed IEP for the period 9/26/19 to 9/25/20. On October 25, 2019 Mother rejected this new IEP and again requested that SPS fund Don's placement at Summit, along with transportation costs. (See P-43; S-1; testimony, Mother.) On October 29, 2019 Parent's attorney filed an Amended Hearing Request with the BSEA to encompass Mother's rejection of the 10/19 to 10/20 IEP proposed by SPS (P-1). This case then proceeded to a 4 day hearing, as specified above

ISSUES IN DISPUTE

- I. Was the 10/25/18 to 10/24/19 IEP proposed by SPS for Don appropriate to address his special education needs so as to provide him with a free and appropriate public education (FAPE) in the least restrictive educational environment (LRE)?
- II. Was the revised IEP proposed by SPS on March 1, 2019 appropriate to address Don's special education needs so as to provide him with FAPE in the LRE?
- III. Is the 9/26/19 to 9/25/20 IEP proposed by SPS for Don appropriate to address his special education needs so as to provide him with FAPE in the LRE?
- IV. If any or all of the above IEPs were/are inappropriate to address Don's special education needs so as to provide him with FAPE in the LRE, did/does Don's unilateral placement at Summit Academy provide him with FAPE in the LRE?
- V. Is Parent entitled to retroactive reimbursement and/or prospective funding from SPS for her unilateral placement of Don at Summit Academy and accompanying transportation costs?

STATEMENT OF POSITIONS

Parent's position is that the three SPS' IEPs specified above did/do not provide Don with FAPE in the LRE. Parent contends that her unilateral placement of Don at Summit Academy from February 25, 2019 to the present time, and continuing prospectively, does provide Don with FAPE in the LRE. Parent requests retroactive reimbursement for her unilateral placement of

Don at Summit Academy from February 25, 2019 to the present, along with retroactive reimbursement for transportation costs transporting Don to/from Summit Academy each school day. Parent also requests that SPS prospectively fund Don's placement at Summit Academy and prospectively provide Don's daily transportation to/from Summit Academy.

SPS's position is that its IEPs for Don provided/provide Don with FAPE in the LRE. SPS contends that Don's unilateral placement at Summit Academy is inappropriate and too restrictive to provide him FAPE in the LRE. Therefore, SPS contends that it should not bear any financial responsibility for Mother's unilateral placement of Don at Summit Academy.

PROFILE OF STUDENT

Don has been extensively evaluated by both Parent and SPS.

In September 2017 Veritas referred Don for a psychoeducational evaluation which was performed by Christopher Rose, Psy D. (P-7). On tests of cognitive ability, Dr. Rose found Don's verbal comprehension and processing speed to be in the low average range but visual-spatial skills, fluid memory and working memory to be in the very low range. Deficits in executive functioning skills were observed throughout the evaluation. Don exhibited social and behavioral issues typical for a child on the autism spectrum, and, additionally, fairly high levels of emotional stress with clinically significant scores (on the Behavior Assessment for Children - 3rd edition or BASC-3) in the areas of attitude to school, anxiety, depression, sense of inadequacy, self-esteem, and self-reliance. Dr. Rose's recommendations included that Don required a fairly high level of structure and predictability built into his school day, additional repetition and review in instruction, access to school counseling and explicit instruction and support in social skills. (See P-7 for complete evaluation.)

The Veritas speech-language evaluation took place on October 12, 2017. The speech-language pathologist reported that Don presented a complicated profile. She found that he showed difficulties with supralinguistics and pragmatics, areas of language functioning that are critical for classroom performance and school success. (See P-8 for full evaluations.) The Veritas occupational therapy evaluation (P-9) found Don to have deficits in the areas of sensory processing, visual motor-integration and fine motor skills. (See P-9 for complete evaluation.)

On a speech assessment done at Baystate Health in April 2018 (P-15) the speech therapist, based upon the results from the Test of Auditory Processing Skills (TAPS), found that Don presented with moderate cognitive-linguistic deficits and moderate auditory processing deficits. She noted that Don's combined deficits,

...could have a significant impact on his ability to attend to class lessons, interact appropriately in school situations with peers and adults and complete school assignments. (See P-15 for complete evaluation.)

On April 23, May 7, and May 18, 2018, Marilyn Engelman, Ph.D., performed a comprehensive psychoeducational evaluation of Don. In her summary (P-17, 21) Dr. Engelman wrote:

[Don] is a young man with multiple disabilities that affect him in all areas of his life. [Don] presents with an Autism Spectrum Disorder (ASD) Level I (DSM-5, Code 299.0) [and] a Generalized Anxiety Disorder (DSM-5, Code 300.02). In addition [Don] presents with

language-based learning disabilities including a severe Impairment in Reading (DSM-5, Code 315.00) a severe Impairment in Mathematics (DSM-5, Code 315.1) and a moderate Impairment in Written Language DSM-5 Code 315.2). He also presents with a Speech and Language Mixed Expressive Language (DSM-5, Code 315.31) pragmatic language deficits as well as sensory and fine motor deficits. [Don's] disabilities hinder his progress within a school setting and require a placement in a specialized educational setting.

Dr. Engelman's recommendations included the following:

1. Placement in a highly structured language-based program that can provide a very comprehensive approach to remediate his academic skill deficits and address his complex disabilities. Such specialized program should be in small classes (no more than six students) with a low student to staff ratio and peers with similar abilities and disabilities.
2. Direct teaching that is consistently reinforced throughout the entire school day, consistency between classes, and a predictable daily schedule, with breaks and a safe place to go where he can de-escalate if stressed due to his generalized anxiety.
3. Applied Behavior Analysis (ABA) should be integrated into Don's daily school setting to increase on task behaviors and teach him new skills with systematic instruction and reinforcement. ABA methods and skills will help him to generalize behaviors from one setting to another.
4. A social skills curriculum should be directly taught and embedded throughout Don's school. A speech-language therapist needs to be an integral part of the team and be in the classroom for on-going speech and language, social skills and social language pragmatics. Don also requires participation in an on-going social skills group.
5. Individual speech-language therapy once per week, group social pragmatics several times per week, occupational therapy for instruction in daily living skills (learning how to button shirts, button/zip pants, tie shoes, and basic bathroom skills), and counseling.

(See P-17 for complete testing, summary, and recommendations; testimony, Engelman.)

On October 18, 2018, during Don's extended evaluation, SPS speech-language pathologist Mary Ellen Pope performed a speech-language evaluation (P-21; S-26). Overall, Ms. Pope found that Don demonstrated average receptive, expressive and written language skills but demonstrated weaknesses in the areas of oral narratives and social communication. His social communications were in the below average range with a social language development index which placed him at 18% compared to same age peers. Among Ms. Pope's recommendations were continuation of direct speech and language therapy to address social pragmatics and oral narratives, direct instruction in social skills with peers and provision of structured play with peers. (See P-21; S-26 for complete evaluation; testimony, Pope.)

On December 4, 2018 Lawrence Kaplan, M.D., performed a neurodevelopmental pediatric evaluation of Don (P-32). Dr. Kaplan confirmed Don's diagnosis of high functioning Autism Spectrum Disorder; that Don presents with definite impairments, and that the quality of his impairment is distinct in both verbal and non-verbal communication. Dr. Kaplan

recommended that Don be placed in a small classroom with a small number of children. Dr. Kaplan noted that Don,

...has comorbidities. Comorbidities represent behavioral and psychiatric consequences of stresses on an already atypical behavioral profile and possibly neurologic function. They can include anxiety, anxious depression, oppositional defiant behavior, obsessive-compulsive behavior, school aversion, attention problems, etc., and they often surface where there is a disconnect between the child's developmental capacity and the environment he is in..... He needs an educational setting that will individualize his needs in a smaller classroom setting where the major environmental adjustment is to minimize sensory input. I failed to mention that sensory processing disorder is part and parcel of autism spectrum disorder in this clinician's opinion, and I certainly see the triggers that set off his anxiety being in the area of sensory overloading (P-32, p.9; and see P-32 for complete evaluation).

On July 15 and 20, 2019, SPS School Psychologist Aileen Sullivan Parcella performed a psychological evaluation of Don (P-33; S-7). Her testing found no significant weaknesses in reading, spelling, or basic math. Overall, his executive functioning demonstrated weak cognitive processing and flexibility. In social/emotional functioning areas of concern included Anxiety (clinical), Depression (clinical), Somatization (at-risk), and Functional Communication (at-risk). His Internalizing score was in the clinical range. Areas of concern include anxiety, withdrawal behavior, depressed behavior, problems in social relationships, and thought problems. Don's performance on the Autism Diagnostic Observation Scale (ADOS) was consistent with a diagnostic of Autism Spectrum Disorder. Ms. Sullivan-Parcella found that:

[Don] lacks the social communication skills needed to initiate and maintain age appropriate conversations with others and doesn't always understand the nonverbal language of others. He tends to be anxious and can easily be upset and frustrated with tasks he doesn't understand but cannot process immediately. (P-33; S-7, P9).

In her recommendations, School Psychologist Sullivan-Parcella stated in boldface print:

[Don] will require direct social skills instruction as well as help navigating his everyday social environment. Overall communication skills aimed at improving pragmatic language is critical as he moves through school. Consistency and regular routines should be provided programmatically as well as the use of social stories to help him understand the what/where/why of social norms and practices. He will require supports to help him with his executive functioning weaknesses and develop coping skills. Counseling support aimed at identifying stressful triggers and strategies to reduce anxiety in school would be helpful. (P-33; S-7 p.9)

(See P-33; S-7 for complete psychological evaluation.)

In June-July 2019 SPS performed both occupational therapy (OT) and physical therapy (PT) evaluations (P-36, 37; S-42) of Don. Neither OT nor PT services was recommended.

On September 26, 2019 Don was re-evaluated by Dr. Engelman for an updated academic evaluation (P-46). Such updated testing demonstrated that Don had shown both social-pragmatic and academic growth since Dr. Engelman's initial evaluation in April-May 2018

(P-17). She noted academic growth in all areas - reading comprehension, oral reading mathematical problem solving and written language. (See P-46 for complete evaluation.)

PARENT'S PROPOSED PLACEMENT

Parent proposed that Don be educated at Summit Academy (Summit). Summit is a private special education day school which is approved by the Massachusetts Department of Elementary and Secondary Education (MDESE) and has been so approved since 2008. Summit serves students in grades 5-12 (ranging in age from 11-19) with high functioning autism and related disabilities such as anxiety, pragmatic language deficits and Attention Deficit Hyperactivity Disorder (ADHD). There are currently 29 students at Summit, 25 of who are publicly funded by their LEAs. Eleven of the 29 students are in middle school (3 in 5th grade, 2 in 6th grade and 6, including Don, in 7th grade). They are all boys. Ten of the 11 students in middle school are diagnosed with ASD. All middle school students have pragmatic language difficulties, communication difficulties, anxiety and executive functioning difficulties. Most have language/learning disabilities.

At Summit Don participates in a multi-grade middle school self-contained therapeutic classroom. There are eleven students, two teachers, one instructional aide and a 1:1 ABA assistant who is a Board Certified Behavior Analyst (BCBA) assistant. The principles of ABA are utilized throughout the school day and students receive reinforcement through a universal behavior plan. Social skills and executive functioning skills are taught throughout the school day and students have access to coping and sensory strategies in the immediate classroom environment. Within the therapeutic classroom Don participates in small group instruction for English-Language Arts (ELA) and math: ELA for 90 minutes per day and math for 60 minutes per day. Don receives whole group instruction daily in social skills (45 minutes) and science/social studies (30 minutes.) He receives art or martial arts (Tae Kwon Do) outside of the classroom with his peers for 45 minutes daily. Recess/lunch is 60 minutes daily. There is also a daily morning meeting for 15 minutes each day before the start of classes. This daily schedule remains exactly the same every day since all of the students require structure and predictability throughout their school day. Don receives speech-language therapy twice per week for 30 minutes each session, OT once per week for 30 minutes and counseling once weekly for 30 minutes. These speech-language therapy, occupational therapy, and counseling sessions are always on the same day and at the same time each week. Student's school year is 198 days or 3-4 weeks longer than the normal academic school year. Summit's school year began in early August.

(See testimony, Donahue; P-49, 50, 51, 55, 58.)

SCHOOL'S PROPOSED PROGRAM

SPS proposes that Don be educated in the LLD program in the Chestnut Middle School in Springfield. This LLD program is the same program where Don received his extended evaluation and then placement from September 2018 until Mother removed him from SPS and enrolled him at Summit on February 25, 2019.

Don's 10/18 to 10/19 IEP (P-27; S-22) proposed that he receive the following direct services within the LLD program: ELA for 120 minutes five times per week; math for 60 minutes five times per week; social studies five times per two week cycle for 45 minutes; and science five times per two week cycle for 45 minutes. Related services included speech-language

therapy twice per week for 30 minutes each session; occupational therapy once per week for 30 minutes; and physical therapy once per week for 30 minutes. Extended year services were offered for 5 hours per day, 4 days per week.

The revised 10/18-10/19 IEP (P-31) sent to Parent on March 1, 2019 (after the unsuccessful 2/28/19 mediation) continued the same services specified above with two additions: a 15 minute Autism Consultation once per week and the addition of a paraprofessional for 450 minutes, “to help remediate...concerns around social structures as well as safety concerns brought up by Parent.”

The 9/19 to 9/20 IEP (P-43; S-1) proposed the same services provided by the original 10/18 to 10/19 IEP and the revised IEP submitted on March 1, 2019, except that the 1:1 aide, occupational therapy services, and physical therapy services were deleted.

The LLD program is housed in two adjacent classrooms within the Chestnut Middle School. It is staffed by a special education teacher in each classroom and a full time paraprofessional. A speech-language assistant (SLA) is also assigned to the LLD. Students rotate between the two classrooms for different subjects and are grouped by grade level for ELA, math, science and social studies, and by ability level for interventions. One of the special education teachers provides a social skills group for all of the students. The SLA provides instruction, and support, and small group intervention in both classrooms. The SLA provides Don with his direct speech-language therapy. For physical education and lunch students are mainstreamed into the regular educational environment. During the 2018-2019 school year while Don was in attendance there were 25 students in the LLD program. During the 2019-2020 school year there were 22 students.

The Chestnut Middle School houses three separate schools within the same building. Each school has approximately 300 students, so within the Chestnut Middle School there are approximately 900 total students.

(See testimony, LaMothe; Morris; Valles; Alabre; Burns; P-27, 30, 43; S-1, 2, 22.)

FINDINGS AND CONCLUSIONS

It is undisputed by the parties and confirmed by the evidence that Don is a student with special education needs as defined under federal and state statutes and regulations. The fundamental issues presented in this matter are listed under **ISSUES IN DISPUTE**, above.

Pursuant to *Schaffer v. Weast* 126 S. Ct. 520 (2005), the United States Supreme Court has placed the burden of proof in special education administrative hearings upon the party seeking relief. Therefore, in the instant case, Parent bears the burden of proof in demonstrating that: 1) SPS' IEPs did not and/or do not provide Don with FAPE; and 2) placement at Summit since February 25, 2019 to date has provided Don with FAPE in the LRE.

Based upon four days of oral testimony, 110 exhibits, and a review of the applicable law, I conclude that SPS' IEPs do not provide Don with FAPE in the LRE and that Don's unilateral placement at Summit has provided him with FAPE in the LRE. I conclude that Parent is entitled to retroactive reimbursement from SPS for Don's placement at Summit; prospective funding by SPS for Don's Summit placement; reimbursement for Parent's transportation costs to/from Summit to the present; and prospective transportation for Don by SPS to/from Summit.

My analysis follows.

Based upon the evaluations of Dr. Rose (P-7), Dr. Engelman (P-17), Dr. Kaplan (P-32) and School Psychologist Sullivan-Pacella (P-33; S-7), it is abundantly clear that Don carries a diagnosis of Autism Spectrum Disorder and that his primary special education needs lie in this domain, including pragmatic language/communication deficits, social skills deficits and sensory issues. He also presents with generalized anxiety/depression. The various speech-language evaluations (P-9, 15, 21; S-6) conducted all detailed his deficits in supralinguistics, pragmatics, oral narratives, and functional/social communication skills. While Don also had language-based learning disabilities, I find that the ASD and attendant pragmatic language/executive functioning skill disabilities and communication/social skill disabilities, as well as his emotional disabilities were the primary special education disabilities to be addressed by his program.

I have carefully considered the testimony and exhibits describing SPS' LLD program. I find it to be a comprehensive program for students with primary language-based learning disabilities. I understand SPS' position that it does not teach to the diagnosis but to the disabilities. (See testimony, Morris; Valles; Burns.) However, a review of the redacted IEPs of the students attending SPS' LLD program (P-44) reveals that all of the other students have moderate to severe language/learning disabilities, with some students requiring speech-language therapy to address receptive and/or expressive language issues. None of the other students in SPS' LLD program is diagnosed with ASD. Therefore, none of the other LLD students present with the issues related to/flowing from their autism that Don presents. None of the redacted IEPs specifies speech-language therapy to primarily address language pragmatics/social communication skills. I conclude that in the LLD program lacked an appropriate peer group for Don..

Further, SPS' 10/18-10/19 IEP did not provide ABA services to Don to support him in the LLD program. The March 1, 2019 IEP added a 15 minute per week autism consultation and essentially a 1:1 aide for Don, which was continued into the 9/19-9/20 IEP. None of the redacted IEPs of other students in the LLD program called for any specific ABA services. Indeed, Ms. Alabre, one of the two teachers in the LLD program, testified that during the 10/18-10/19 and 9/19-9/20 IEP periods here under review, no other students in the LLD class were diagnosed with ASD and that she did not provide ABA services. (See testimony, Alabre.)

SPS witnesses testified that in the LLD program Don would receive the benefit of some inclusion (lunch, physical education) and this would provide a less restrictive environment with exposure to typical peers. I find, however, that given Don's anxiety, communication/social disabilities and sensory issues, inclusion in a physical education class in the gym or lunch in a cafeteria in a large school such as Chestnut Middle School would provide him minimal, if any benefits. I note Mother's testimony that when Don was attending SPS' LLD program he did not want to go to the cafeteria; and when he did so he often came home with his lunch not eaten because he could not eat in the cafeteria. (See also testimony, Engelman.) I further note that on several occasions Mother was called by the nurse's office to come and get Don because he had vomited in gym class or in the cafeteria. (See testimony, Mother; Alabre.) Mother also testified that Don's after school program at the Jewish Community Center (JCC) reported to her on a number of occasions that he arrived at the JCC with wet pants. Mother stated that Don told her that he would not use the bathroom at school and that this was reported to SPS. (See testimony, Mother; Alabre.)

State and federal special education law requires public schools to provide students FAPE in the LRE. However, the provision of FAPE cannot be compromised in the interests of LRE. See *Roland M. v Concord School Committee*, 910 F. 2d 983 (1st Cir. 1990). Thus, even assuming, *arguendo*, that SPS' proposed inclusion opportunities for Don would have been of some benefit, that would not in and of itself rehabilitate an otherwise inappropriate program.

Several SPS witnesses testified that Don made progress in the LLD program. (See testimony Alabre; Dunbar.) The only written evidence regarding Don's progress was two progress reports issued in November 2018 (S-23) and February 2019 (S-42) and Ms. Dunbar's notes (S-44). Such evidence was anecdotal, and I further find such progress to be minimal. After 5 months in the LLD program, Don continued to be essentially non-verbal in class activities and peer interactions, simply nodding, pointing, or gesturing. He did speak, given verbal prompting in his 1:1 speech-language and occasionally with an adult but was unable to interact or share stories/experiences with peers. (See also testimony Engelman; P-46, Engelman 10/26/18 observation of Dan in the LLD program.)

Based on foregoing, I conclude that SPS' LLD program did not and does not provide Don with FAPE in the LRE. I find that Don requires a comprehensive special education program to address the totality of his complex needs (including ASD, communication/pragmatic language deficits, social skill disabilities, as well as his anxiety/emotional disabilities) in a holistic and integrated manner.

I place substantial weight upon the testimony, evaluations and observations of Dr. Engelman. School districts not infrequently criticize the recommendations of independent evaluators as they are based on information gleaned via a single evaluation in a clinical (as opposed to a classroom) setting. The record reflects that such is not the situation in the instant case. Dr. Engelman has worked with Don since she evaluated him over the course of 3 days in April-May 2018. She then observed him in the LLD program for 1½ hours on October 26, 2018, following his extended evaluation in the LLD prior to his team meeting which she attended. She observed Don for several hours at Summit in April 2019. She re-evaluated him in September 2019. She then observed both SPS' LLD program and Summit for a second time in November 2019. Since her October 26, 2019 observation of Don in the LLD program she has reiterated her professional opinion that the LLD program is not appropriate for Don. I also place weight upon the evaluations and programmatic recommendations of Dr. Kaplan (P-32) and School Psychologist Sullivan-Porcella (P-33; S-7).

I conclude that Don's unilateral placement at Summit does provide him with FAPE. Summit is a MADESE approved private day school which focuses on students with high functioning autism and disabilities related to the autism including anxiety, pragmatic language/social communication disabilities and executive functioning disabilities. Principles of ABA are employed throughout the school day. Don is educated in a small, self-contained therapeutic classroom with a small number of students, two teachers and an ABA assistant who is a certified BCBA assistant who collects data on each student. (See **PARENT PROPOSED PROGRAM**, above; testimony, Donahue; Engelman.)

I find that Don has made both academic and social progress since his enrollment at Summit in February 2019. The July 2019 evaluation by School Psychologist Sullivan-Pacella (P-33; S-7) and the updated academic evaluation by Dr. Engelman (P-46) both demonstrate significant academic progress since Dr. Engelman's initial evaluation (P-17) in April May 2018. (See also testimony Engelman; Sullivan-Parcella.) Further, the testimony of Ms. Donahue,

special education director at Summit; the testimony and observation of Dr. Engelman at Summit (P-45); and the testimony of Mother all indicate social/communicative progress. At Summit bathroom issues were addressed and Don now uses the bathroom in school. He now speaks not only to an adult in a 1:1 setting but generally. He now speaks to other students, interacts and plays with other students, raises his hand and participates in class, and can read aloud. He has friends, goes on playdates, has attended peer birthday parties, and has invited peers to his birthday party. Mother testified that Don is a new boy eager to go to school and proud of his accomplishments (P-52, 54).

I conclude that Don's Summit placement provides him with FAPE. At Summit Don's autism, anxiety, communication/pragmatic language and social skill disabilities are addressed in a comprehensive manner, which has reduced his anxiety and emotional issues so that he is able to make progress academically, communicatively, and socially.

ORDER

1. SPS shall reimburse Parent for her tuition and transportation costs for Don's Summit placement for February 25, 2019 to the present.
2. SPS shall prospectively fund Don's Summit placement and prospectively provide Don's transportation to/from Summit.

By the Hearing Officer,

Raymond Oliver

Dated: April 15, 2020