

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

In Re: Student v.
Shrewsbury Public Schools

**BSEA# 2000185
& BSEA# 2001827**

DECISION

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

The BSEA received Shrewsbury Public Schools' Hearing Request on July 10, 2019. Thereafter, on August 16, 2019, Parents filed a Hearing Request and the matters were consolidated on August 21, 2019. The Hearings were continued at the request of the Parties and ultimately heard in February, September and October of 2020. This matter was administratively reassigned to Hearing Officer Rosa I. Figueroa on January 22, 2020.

The Hearing was held in person on February 4 and 7, 2020 and remotely, via Zoom, on September 28, 29 and 30, and October 7, 8 and 29, 2020, before Hearing Officer Rosa Figueroa. Those present for all or part of the proceedings were:

Mother

Anna Hebert, Ph.D.	Neuropsychologist
Elizabeth Partain-Lison	BCBA, CEO Innovative Autism Connections
Jennifer Nocella	Senior Regional Director Innovative Autism Connections, ABA provider
Cheryl Davis, Ph.D., LABA, BCBA-D	Independent Evaluator
Alisia St. Florian, Esq.	Attorney for Shrewsbury Public Schools
Deborah Quinn	Shrewsbury High School
Meghan Wallace	ELC Coordinator (Special Education Teacher), Shrewsbury High School
Noelle Freeman	Director of Nursing, Shrewsbury Public Schools
Meghan Bartlett	Assistant Director of Special Education and Pupil Personnel Services, Shrewsbury Public Schools
Robert Parry-Cruwys, MEd., BCBA, LABA	Clinical Coordinator, Shrewsbury Public Schools
Margaret Belsito	Assistant Superintendent for Student Services, Shrewsbury Public Schools
Elizabeth Findlay	BCBA, Shapiro Educational and Behavioral Consultants

Colleen Gorman	Former Assistive Technology Specialist, Shrewsbury Public Schools
Carol Kusintz	Stenographer, Doris O. Wong Associates
Ann H. Bohan	Stenographer, Doris O. Wong Associates

The official record of the hearing consists of documents submitted by Parents, marked as exhibits PE-1 to PE-9; the first page of PE-18, PE-19 (up to the Discharge Summary), PE-20 excluding anything predating January 2019, PE-21 through PE-23, PE-24 (first part only), PE-25 through PE-30, PE-32 through PE-34, PE-35 (including PE-35A and PE-35B), PE-36 through PE-38, PE-39, PE-41, PE-42, PE-43, PE-44, PE-48, PE-49, PE-52, PE-54, PE-59 through PE-64; and documents submitted by Shrewsbury Public Schools (Shrewsbury) marked as exhibits SE-1 through SE-36, and SE-37 through SE-40¹; recorded oral testimony, and written closing arguments.

Due to the COVID-19 state emergency school closures, Parents and/ or the Parties jointly requested and were granted continuances of the case through June, September and again through October 2020.² Thereafter, on October 29, 2020, the Parties jointly requested another continuance of the case through November 30, 2020 to submit written closing arguments. This request was granted via Order issued on October 30, 2020. Thus, the record closed on November 30, 2020 upon receipt of the Parties' written closing arguments.

ISSUES FOR HEARING³:

1. Whether Shrewsbury failed to deliver home-based special education and/ or related services to Student between January 2019 and December 2019 in accordance with accepted portions of his then current Individualized Education Program; If so, what is the nature and extent of Shrewsbury's responsibility for provision of compensatory educational services?
2. Whether the accepted portions of the IEPs in effect for Student between August 2017 and December 2019, other than home-based services, were implemented.
3. Whether the IEP proposed by Shrewsbury in January 2019 covering the period though January 2020 was reasonably calculated to provide Student a free and appropriate public education (FAPE) in the least restrictive environment; If not, is Student entitled to compensatory educational services?
4. Whether the IEP proposed by Shrewsbury in March 2019 running to January 2020 was reasonably calculated to provide a free appropriate public education to Student. If not, is the Student entitled to compensatory educational services?

POSITIONS OF THE PARTIES:

¹ These exhibits were submitted on October 8, 2020.

² See Orders issued on March 20, March 30, May 7, September 23 and October 2, 2020 in the Administrative File responding to the Parties' numerous requests for continuances of the Hearing.

³The Issues for Hearing were determined by the previous Hearing Officer, Lindsay Byrne, in a Notice of Pre-hearing issued on January 28, 2020. Parents disputed that these were the only issues for Hearing noting, in their closing argument, their intent to appeal the Decision.

Parents' Position:

Parents asserted that Student presents with a host of educational and medical challenges for which he required very specific services. Prior to re-entering Shrewsbury, Student had been placed residentially until he was un-enrolled from said placement on or about June of 2016. No other residential placement became available and Shrewsbury created an in-district program for him which included home-services. Throughout the relevant periods under review in this Decision, Parents partially accepted the IEPs proposed by Shrewsbury, while continuing to assert Student's stay-put right to residential placement and certain services from one IEP to the next.

Initially Parents argued that since a residential placement was not available, Shrewsbury was responsible for creating an in-home/school program that closely approximated the services Student received in residential placement, including services during the overnight hours largely related to changing/leaking of Student's ostomy bag, his "idiopathic nocturnal enuresis", and later habituation to the C-Pap machine to address his sleep apnea (which, according to Parents, is the result of weight gain since 2016). They asserted that Shrewsbury's refusal to do so, as well as interruptions in services, inappropriate amount of in-home and community services, and inappropriate in-school services resulted in a denial of a FAPE to Student and in his inability to make effective progress.

Parents argued that after returning to Shrewsbury Student's progress was limited because of poor collaboration between the school staff and the home service providers. Parents also argued that instruction was limited and delivered in settings and through objectives that were not meaningful to Student. These factors, in Parents' view, had a negative impact on Student's health and well-being.

Parents also asserted procedural violations which they alleged resulted in a denial of a FAPE.

In the introductory portion of their Closing Argument, Parents stated that for all periods at issue Student required an "appropriate day placement with direct ABA instruction during all waking hours with programming throughout the calendar year as well as related health services." However, in the Relief Requested portion of their Closing Argument they requested a determination that Student required residential placement to receive a FAPE, among a host of other relief including home ABA services, due to his age and the significant nature of his disabilities during

...all waking hours including in the context of his medically related ADL care – a minimum of 58 hours per week outside the classroom—specifying either a nurse who is trained as an ABA technician or an ABA technician who is trained and authorized to provide Student's medically related ADL care, 30 hours of per month for BCBA consultation, supervision, training and the preparation of materials, services provided in settings and locations that are meaningful for him, monthly clinic meetings, parental input into all decisions relative

to the services, direct services and consultation and training from an AT specialist, and such other additions and modifications as recommended....

Parents further sought an individualized transition program that was meaningful to Student.⁴

Parents asserted that Student also requires programming during the overnight hours, noting the need for increased home-based, ABA instructional hours to foster his independence.

Parents further argued that Student's IEP must provide a minimum of one clinical meeting per month inclusive of Parents, all services must be based on one set of goals and objectives using the same techniques, strategies, data collection and materials implemented with procedural fidelity. Relying on the recommendations of one of their outside evaluators, Parents asserted that all classroom staff must have a minimum of 40 hours of documented formal in-service ABA training, or graduate courses in the area, and that BCBA services should be increased to 30 hours per week.

Parents thus seek compensatory services beyond Student's 22nd birthday in the form of 513 hours of ABA technician services, 102 hours of BCBA "missed" services, 1,900 hours of ABA Technician, 160 hours of BCBA services to provide for the additional 38 hours a week of home and community ABA, and ABA Technician hours sufficient for a period of time to teach [Student] self-advocacy and self-care [skills]" delivered during the overnight hours.

Shrewsbury's Position:

Shrewsbury denied Parents' allegations, asserting that after Student was unenrolled from residential placement in 2016 by no fault of Student, and no other residential placement was available, it created a combination of an in-district/ home/ community program designed to offer Student a FAPE. Parents never fully accepted any IEP during Student's tenure at Shrewsbury and according to the District, they were ultimately never satisfied with any of Student's placements.

Shrewsbury asserted that it offered Student services per the accepted portions of Student's IEPs, noting that interruptions in the home and community services that were caused by the providers were made-up, as were many of the services cancelled by Parents. According to Shrewsbury, home and community services were provided at Parents' preferred locations when Student was made available to receive his education.

⁴ "...In the absence of an available appropriate residential school placement, [Student] requires an appropriate day school placement combined with more direct ABA instruction all waking hours/ waking until sleep including in the setting of his medical care. He requires programming throughout the calendar year including after school hours, weekends, vacations, holidays as well as related health services to address his unique needs relative to activities of daily life. The level and intensity of services during the school day must be commensurate with those during all waking hours. He also requires direct ABA instruction to learn self-care and self-advocacy skills when he wakes at night due to his ostomy bag leaking or his idiopathic nocturnal enuresis (PE-3; PE-4).... This level of support is not feasible for a parent to provide in the home setting due to the required skill set and intense supervision of the caregiver (PE-3; PE-4)." Parents' Closing Argument page 8.

Shrewsbury asserted that the program it offered Student at the ELC in 2019 offered Student a FAPE and allowed him to make effective progress commensurate with his abilities, and that Student progressed in all areas including a tremendous amount of social skills progress. Similarly, the program offered at the Evolution Program would have offered student a FAPE, according to Shrewsbury.

In reviewing Student's progress, Shrewsbury asserted that in-district programs which were less restrictive were more appropriate for Student than residential placements. Despite ultimately offering Student private day placement at St. Coletta, Shrewsbury supported the appropriateness of the Evolution Program for Student.

According to Shrewsbury, Parents wanted more aggressive intervention from the service providers and for Student to become more independent relative to medical procedures, which Shrewsbury asserted were neither realistic nor appropriate. Shrewsbury denied that it owed Student any compensatory services for any period of time. The District asserted that Student's educational experience in Shrewsbury was a success story.

FINDINGS OF FACT:

1. Student is a twenty-year-old individual currently residing in a Massachusetts district other than Shrewsbury. During the relevant periods covered by this Decision, Student resided with Parents in Shrewsbury, Massachusetts. Student's entitlement to special education services is not in dispute.
2. Student has been diagnosed with Down Syndrome and moderate intellectual disability and has a complex medical profile including Hirschprung's disease, a condition present at birth that required removal of his colon and placement of an ileostomy bag, and sensitive skin. Parents asserted that Student requires trained staff to "immediately" assist with any leakage from the bag in order to prevent skin irritation/breakdown and to preserve his dignity (PE-22; Parent⁵). In school and at home, Student required and was provided with daily assessment of the skin around his perianal area to assess skin breakdown and/or the development of Candida, a fungal infection caused by yeast which can be painful (Parent, Freeman).
3. Student also has a blind rectal pouch (Duhamel pouch) consisting of a portion of the rectum where the colon was removed. Mucus can lead to a build-up of material inside the pouch requiring regular irrigation. In 2011, prior to the period covered in this Decision, build-up in the pouch pressed against Student's bladder (Parent). Student also has a history of pancreatitis requiring that labs be drawn after vomiting. Since 2016, Student has gained significant weight, and he now requires a statin to treat hyperlipidemia, one hour of daily exercise and a thoughtful diet (PE-22; PE-26).

⁵ Throughout this Decision the term "Parent" refers to Mother.

4. Student is described as happy and sociable and has been an integral member of the Shrewsbury community. He enjoys horseback riding and participates in the Special Olympics. He has earned the reputation of being an endearing young man who is a pleasure to be around (PE-3; PE-4).
5. Throughout Student's educational career, he has experienced a significant number of absences, mostly associated with medical appointments, procedures and surgeries⁶ (PE-21). He has had hundreds of outpatient medical appointments, and 79 admissions to Boston Children's Hospital requiring administration of general anesthesia during 25 of over 70 procedures. He experienced at least seven near fatal events (Parent).
6. On May 10, 2011, Student underwent a renal sonogram, because he was experiencing nocturnal enuresis. The sonogram showed debris within Student's remnant pouch, which Dr. Stephen Voss believed could be the cause of Student's ongoing enuresis (PE-31).
7. After residential placement was terminated by no fault of Student in June of 2016 (and no other residential placement became available despite an exhaustive search on Shrewsbury's part), an in-district program was offered by Shrewsbury (Parry-Cruwys, Belsito). Student began attending the ELC Program at Shrewsbury High School pursuant to an Extended Evaluation for the period from August 30 to October 18, 2016. Initially, Parents accepted the program but rejected the lack of extended day services and failure to provide home/community services. The latter services were added after Shrewsbury requested that Bryan Doyle, Ed.S., Ed.D, BCBA, LABA, of the Center for Applied Behavioral Instruction, conduct a home assessment, which found that Student's significant deficits in the areas of self-care, communication, life-skills and community awareness warranted home and community services (PE-1). According to Ms. Belsito, Shrewsbury's Assistant Superintendent for Student Services, Dr. Doyle's report was very general and lacked the specificity the District desired. Shrewsbury considered multiple data sources in ultimately determining the number of hours of home/ community services to offer Student (Belsito).
8. The ELC in Shrewsbury is a substantially separate program located in Shrewsbury High School that serves between six and nine students with significant disabilities. The program is staffed by a special education teacher and several support staff, as students mostly receive one-to-one services (Parry-Cruwys, Wallace). The program focuses on functional academics, functional communication, pre-vocational skills, and community-based instruction designed to help prepare students become as independent as possible (Wallace, Parry-Cruwys).
9. Student attended the ELC program with a one-to-one aide throughout the day pursuant to partially accepted IEPs during relevant periods covered by this Decision (Bartlett). Ms. Wallace, Student's special education teacher for his last two years at the ELC program, is Massachusetts DESE certified in severe special education K through 12 and in transition

⁶ The documentary evidence in this regard covers the 2016-2017; 2017-2018; 2018-2019; and 2019-2020 periods.

services (Wallace). She testified that Student made effective progress in all areas during his time at the ELC. Indicating that she broke down goal areas to make them meaningful for Student, Ms. Wallace described the types of functional academics he participated in, such as making a smoothie as part of his math instruction (Wallace).

10. Student's Team convened on December 12, 2016 to discuss the result of the extended evaluation which included an Assessment of Basic Language Skills, Speech and Language Assessment, Assistive Technology, Occupational Therapy (OT), Transition Assessment, and the Learning Skills-Revised (ABLRS-R). As a result of this Team meeting a combination of in-district/ home and community-based services were recommended for the period from December 12, 2016 to December 11, 2017 and were embodied in an IEP issued by the District on December 23, 2016. This IEP also offered extended school year (ESY) services including a four day per week ELC summer program and up to 25 hours of home/ community/ parent training/ consultation services and special van transportation with a monitor that sat next to Student (SE-36).
11. The first individual contracted to conduct the home evaluation was Crystal Bello, who raised ethical concerns regarding Student's medical procedures. Parent asked her to leave the house, and although she initially agreed to stay until a new provider was identified, she later decided that she could not work with Parent. The evaluation would later be completed by Shrewsbury's ABA staff. Shrewsbury next contracted with another provider (Shapiro) but as explained later, these services were also terminated because of disagreements with Parent regarding similar issues (Parry-Cruwys).
12. On January 6, 2017, Parents forwarded their response letter to Shrewsbury accepting the extended school day and the home services in Item #17 of the Additional Information section of the IEP, with the understanding that the services to be implemented immediately would be for 25 hours per week, instead of "up to 25 hours a week" as noted in the proposed IEP.⁷ Parents wanted to have the language regarding the 1:1 state that Student would get "direct 1:1 instruction at minimum of 25 hours per week" and wanted to have a provision regarding parental training included in the services. Parents further requested to have nursing services available as part of Student's direct home services and wanted an outside agency to provide these services due to Student's complex needs (PE-36; SE-36).
13. On March 5, 2017, Parents sent a follow up letter to Ms. Belsito, completing the initial response to the December 23, 2016 proposed IEP and accepting the IEP in part, including the home-based services. Parents' numerous rejections included failure to provide goals and objectives related to the home services; that home services, which should be 25 hours per week of direct services to Student as opposed to up to 25 hours, should be placed in the service delivery grid section of the IEP; that home services should also allow additional time for supervision, training and consultation to the direct service providers as

⁷ Initially, Parents sought 58 hours per week of home/ community-based services, but this request was rejected by the Team (Belsito).

well as for the BCBA's preparation of materials. They requested the inclusion of nursing services during all school activities outside the school setting, including after school (by an private provider), services during all waking hours, and services 365 days per year with the Summer Program at the Pappas Rehabilitation Center (Pappas) with staffing by RBT. Parents also requested compensatory services for the period from January 6, 2017, to the date on which home services commenced. They further requested that Student's IEP reflect his need for residential placement because of his extensive medical needs (PE-36).

14. Parents March 5, 2017, partial rejection/acceptance letter also requested that Goal #1, Adaptive Behavior, be wholly rewritten, requested that the language of Goal #2, Functional Mathematics, be changed, and that additional objectives and goals be added to Goal #3, Functional Reading, Goal #4, ADL, Goal #5, Community, Goal #6, Vocational, Goal #7, Communication, Goal #8, Social, Goal #9, APE, Goal #10, Functional Fine Motor Skills, and Goal #11, Assistive Technology (PE-36).
15. At Shrewsbury's request, Dr. Susan E. Gately, an Educational Consultant, conducted an evaluation of Student to provide Student's Team "suggestions for developing his literacy program and to make recommendations" for Student's then current program (PE-39). She performed the evaluation on March 27 and April 3, 2017 and issued her report on April 9, 2017. Dr. Gately later issued an Addendum to her report on April 18, 2017 following a review of the ACC Evaluation dated December 3, 2015 by Alicia Berg of Children's Hospital, which report had not been available to Dr. Gately at the time of her evaluation (PE-39). In the Addendum, Dr. Gately reconciled her report and Ms. Berg's 2015's report, noting that the recommendations from the ACC report should be viewed as consistent with the literacy evaluation. Dr. Gately's report and Addendum were reviewed during a Team meeting held on September 5, 2017 as Parent was not available when Shrewsbury attempted to convene the Team earlier in the year (PE-39).
16. Dr. Gately noted that Student was a compliant and cooperative participant during both testing sessions and results were deemed to be an accurate representation of Student at the time of the evaluation (PE-39). Dr. Gately reviewed previous evaluations/ literacy assessments, interviewed Student's teacher and observed Student in two classes. He worked one-to-one with a special education teacher during part of the day and had a one-to-one aide assigned to him throughout the day. She noted that Student used a simple behavior program that provided warnings and reminders with the use of single words, which Student appeared to understand and responded to them positively. He was observed working one-to-one with his teacher during the literacy hour and was observed to navigate three screens in his augmentative communication device. However, the more functional and dynamic use of his augmentative communication system, recommended years earlier by Karen Waddill, was not observed (PE-39).
17. Dr. Gately noted that at 17 years of age, Student's skills were

...at the beginning of the pre-alphabetic to alphabetic stage of reading and writing. [Student] demonstrates few concepts of print, seeming to

be confused by the meta-language used in these activities (word, page, picture). He was attentive during the reading of a short story, but could not respond to any questions about it. [Student] was able to name both lower and upper case letters, but showed little awareness that letters and sounds are connected, and can be used to figure out words, and that words can carry useful meaning. Occasionally, he used the initial sound of a word to help him (as noted when reading about hurricanes with his teacher), but overall [Student's] phonological skills (sounds) and orthographic (letters/ letter combination) awareness are limited. With the exception of writing his first and last name [Student] is unable to approximate the spelling of words; instead he uses letters unrelated to words or vertical lines to show his understanding of the writing the sounds in a word (it should be noted that this seemed to be a novel activity for him). [Student] knows a handful of sight words automatically. The examiner suspects that given the same list another time, [Student] might read some different words correctly, but achieve a similar number of correctly read words. This would be due likely to attention and focusing. [Student] demonstrates little connection between sound and symbols and was unable to use phonological cueing to help figure out words. His understanding that reading should make sense is limited (PE-39). [Emphasis supplied].

At the time of this evaluation, Student had been back at Shrewsbury approximately seven months, having spent the preceding years in residential placement.

18. Dr. Gately referred to Student as a passive individual who “comple[d] with most requests without problems”. She noted the appropriateness of Student’s then-current staff and how well Student had acclimated to the high school setting, accessing rooms without difficulties. She found his new independence in Shrewsbury to be important to providing him more self-determination while staying attentive to his safety. She recommended giving him choices as to the order of activities to complete using augmentative communication to help him compensate for his significant communication limitations. Her recommendations in this regard were consistent with those made by Karen Waddill in her 2014 evaluation. Dr. Gately noted that giving Student a voice was essential in ensuring that he progressed in all areas of learning and living. She noted that contextual learning was essential to Student’s program, as was developing independence in functional and daily living skills, and she made numerous recommendations for development of Student’s literacy skills. Dr. Gately also recommended transportation to school in a small bus with other students to foster development of friendships, opportunities for reverse inclusion activities and endorsed participation in unified sports. Dr. Gately opined that

...the team of staff working with [Student was] very knowledgeable, passionate, caring and creative. Many resources are available to enable [Student] a safe and productive school day. It is important for staff to

examine closely the activities and programs recommended here and make best choices for [Student] based on their expertise and knowledge of him (PE-39).

19. In the Addendum to her report, Dr. Gately agreed with the ACC report's recommendation that Student have a personal book with information to track his schedule, medical needs/care appointments and the like. She recommended that the book be stored on Student's assistive technology app on his iPad, noting that efforts should be made to update Student's device, and that the staff responsible for communication and academic planning should be trained so they could learn the features of the ACC program, and develop a plan for updating the device on an ongoing basis (PE-39).

20. Between February 20, 2017 and June of 2017, Robert Parry-Cruwys, MEd, BCBA, LABA, Shrewsbury's Clinical Coordinator for the Special Education Department, and Darryl Rynning, MEd, BCBA, LABA, Shrewsbury school-based ABA coordinator, conducted an Assessment of Functional Skills. Mr. Parry-Cruwys was also the supervisor for Student's home and community programming (SE-33; Parry-Cruwys). Student's teacher and Parent were interviewed as part of the evaluation, and while their responses were mostly consistent, some discrepancies were noted, with Student performing better on some subtests, and in school than reported by Parent. The report notes that while Student was progressing, some level of prompting, at varying degrees, was required for him to perform all components of routines at home, in school and in the community and to stay safe. In addition to performing observations of Student in school he was observed at home. At Parent's request, two medical routines (changing the gastrointestinal tube dressing, emptying the colostomy bag and giving him an enema) were observed in the home as Parent wished for Student to become more independent with the routines and self-advocate when he felt pain. The routines took approximately 25 minutes to complete and while Student was able to complete with prompting the simplest steps (e.g., changing his pull-ups) Parent performed the rest of the routines asking Student at various points if he was in pain, to which Student replied no. Parent suggested that Student be taught to indicate if the colostomy bag was full or empty. The observer noted that

...this was a complex routine that had many precise steps and is done completely in the bedroom while [Student] lies on the bed. [Student] remained calm and compliant throughout the entire process (SE-33).

The second procedure was performed with Parent conducting the medical part of the procedure and prompting Student to complete the rest. Mr. Parry-Cruwys testified that it was not appropriate to observe Student perform tasks that compromised his privacy (Parry-Cruwys).

21. Mr. Parry-Cruwys' and Ms. Rynning's evaluation report, dated June 20, 2017, recommended that Student receive twenty hours of direct ABA services with one to two

hours of direct and indirect supervision per ten hours of service by a BCBA, and parent training. The program should focus on acquisition of functional skills and support skills in the home, community and the school, and should be practiced frequently in the setting in which they occur. Objectives related to acquisition of specific skills and to fostering independence including safety skills, routines associated with activities of daily living, independence in new, age appropriate routines related to activities of daily living, communication skills, social skills, leisure activities, functional academics relevant to adult life and skills related to health, human development and sexuality were recommended. (SE-33; Parent). Mr. Parry-Cruwys and Ms. Rynning noted the importance of continually assessing the objectives as Student demonstrated progress, to determine the relevancy of the goal as Student's transition plan evolved.

Following issuance of this report, Parents rejected objectives in all the prospective IEPs issued for failure to include goals and objectives relative to human sexuality and intimacy, and how to protect against potential abuse or exploitation (PE-8; PE-9; PE-36; PE-59; PE-60; PE-61; PE-62; Parent).

22. On June 2, 2017, Student was re-evaluated at the Augmentative Communication Program by Alycia Berg, who reiterated her previous recommendations including provision of direct speech therapy and the use of specific assistive technology to help Student communicate, including provision of direct AAC/AT services to meet Student's medical, learning and social needs (PE-1).
23. On June 23, 2017, Parents wrote to Ms. Belsito responding to Shrewsbury's April 18, 2017 IEP for the period from December 12, 2016 to December 11, 2017. Parents accepted the home services for Goal #17, but once again rejected the language referring to provision of home services for "up to 25 hours a week" and instead requested that the one-to one home instruction be provided for a "minimum of 25 hours per week." Parents requested compensatory services for the period beginning January 6, 2017 and until a satisfactory program could be proposed, and requested that more basic safety training be provided. Parents reiterated their dissatisfaction with the reduction of services following termination of Student's enrollment at his former residential placement and unavailability of any other residential placement for Student. Parents also requested additional services regarding Student's exercise program, noted Student's entitlement to 24 hours of an educational program and requested that the program focus more on transition services. Parents requested that the ABA home care team be present during Student's medical care even if they were not requested to assist in the procedures. |

Parents wanted Goal #1 Adaptive Behavior to be wholly rewritten. Parents wanted language of Goal #2, Functional Mathematics to be changed. Parents requested that objectives and goals be added to Goal #3, Functional Reading, Goal #4, ADL, Goal #5, Community, Goal #6, Vocational, Goal #7, Communication, Goal #8, Social, Goal #9, APE, Goal #10, Functional Fine Motor Skills, and Goal #11, Assistive Technology. They asked that the Service Delivery Grid to reflect 365 days of service per year, and for the Summer Program to be administered by the Pappas Rehabilitation Center with staffing by

RBT. Parents concluded the letter by providing the specific language desired on how Goals #1, #2, #3, #4 and #6 should be worded (PE-36).

24. On September 5, 2017, when Student was 17 years old, Emily Jean Davidson, MD, MPH and Laurie Glader, MD (specialists in complex care/Down Syndrome) of Boston Children's Hospital wrote a letter explaining what Student needed to do to have a healthier lifestyle. They explained Hirschsprung disease, and how it impacted Student in his daily life, noting Student's sensitive skin, a "rectal" pouch, noting his multiple surgeries resulting in abdominal adhesions, and his propensity to dehydration. They noted that Student also presented with mild symptoms of pancreatitis. They raised concerns regarding Student's intense weight gain over the past several years, because of its impact on Student's BMI (greater than the 99th percentile). They further noted that weight gain contributed to sleep apnea, placing Student at risk for multiple additional complications like Type 2 diabetes, liver dysfunction, and orthopedic issues. The clinicians recommended that Student consume a lower fat and a higher fiber diet and exercise one hour per day (e.g., walk on a treadmill) (PE-23).
25. Student's Team reconvened on September 5, 2017, to consider the recent evaluations, ultimately resulting in an amendment to the IEP. Parents provided a memo dated the same date requesting that specific services recommended by Dr. Gately and Alycia Berg be implemented including: daily, one-to-one intensive and comprehensive literacy/reading instruction; an increase in AT/AAC direct and consultation services; and immediate implementation of a home and community program (SE-35).⁸
26. On September 13, 2017, Shrewsbury forwarded Parents a Notice of Proposed School District Evaluation and revised IEP covering the period from September 5, 2017 to December 11, 2017. This IEP included summaries of the evaluation reports, added Home Consultation to Parts A and C of the Service Delivery Grid, changed two of the goals in the previous version and added a Generalization of Skills goal, involving the home and community program. This goal did not address issues relating to health, human development and sexuality. The Additional Information section of this IEP contained a new paragraph calling for a monthly meeting between the BCBA and the staff, but not Parents (SE-35).
27. On September 14, 2017, Student was seen by Dr. Dennis Rosen to address Parent's concerns that Student's sleep apnea had returned. Parent provided Dr. Rosen with snippets of a NEST recording of Student sleeping, depicting restlessness throughout the night. During the examination, Dr. Rosen found no signs of distress, respiratory or otherwise and discussed the possibility of performing an elective dental procedure to assist Student with his breathing (PE-29).
28. On October 2, 2017, Parents wrote to Ms. Belsito responding to the District Action document dated September 13, 2017, and the proposed IEP, responding only to the

⁸ See Parents' Memo dated 9/05/2017.

revised portions of the IEP. Parents accepted the revised IEP in part and noted specific rejections which included Shrewsbury's failure to respond to or include the revised portions of Parents' Memo dated September 5, 2017 addressing Dr. Gately and Ms. Berg's recommendations. Parents rejected the District's failure to develop a behavior plan for Student, and Goal #3, Reading, Goal #12, Generalization of Skills, Service Delivery grid Part A and Part C. Once again Parents rejected the number of hours of the home and community program, lack of a goal addressing health, human development, sexuality and intimacy, including Student's need to learn age-appropriate, socially acceptable "ways to express his feelings and to protect him from potential abuse of exploitation (SE-35; PE-36). Parents also rejected placement but consented to Student attending the ELC program until an appropriate residential placement was identified (SE-35; PE-36).

29. On October 4, 2017, Parents sent a follow up response to their October 2, 2017 letter rejecting the proposed placement but consenting to Student attending the ELC program until an appropriate residential placement was identified. Parents continued to opine that a substantially separate program was inappropriate, and they asserted Student's "stay-put" right to residential placement (SE-35; PE-36).
30. In response to Parents' letters, Shrewsbury forwarded a new Notice of Proposed School District Action on October 13, 2017 and another revised IEP covering the period from October 13, 2017 to December 11, 2017. In response to Parents' request for an objective addressing travel training to the new goal for home and community program, Shrewsbury offered to have Student ride the regular neighborhood bus with a monitor. At the time Student was being transported to school in a special education van with accommodations inclusive of a five-point harness (SE-35).
31. Sometime around April of 2017 Parents and Shrewsbury participated in a mediation and reached an agreement (Parry-Cruwys, Belsito). This agreement was not available for review.⁹ According to Ms. Belsito, over the years, Shrewsbury and Parents participated in several unsuccessful mediations (Belsito).
32. Home Services were initiated on October 31, 2017, with Shapiro Educational and Behavioral Consultants (Shapiro). The next day, November 1, 2017, Elizabeth Findlay, Ed.S., BCBA, LABA, from Shapiro suggested discontinuing the services after disagreeing with Parents regarding Student's medical care and provision of services (PE-1; Parry-Cruwys).
33. On November 7, 2017, Parents responded to the revisions appearing in the October 13, 2017 Notice of Proposed School District Action and proposed IEP. Parents reiterated their previous responses noting the same general rejections contained in the October 4th letter, as well as their rejections under Goal #3, Literacy Skills, Goal #12, Generalization of Skills, Service Delivery grid Part A and Part C. Parents rejected the Transportation

⁹ This event predated the scope of the instant Hearing.

services, Additional Services Item #17, Additional Item #24, and the proposed placement (PE-36; SE-35)

34. On November 17, 2017, Parent emailed Student's service providers regarding a head banging incident that had just been observed via the NEST camera in Student's room. According to Parent, Student banged his head because he was frustrated that he could not communicate what he wanted. Parent used this example to support her position that the communication goal needed to be more of a priority in Student's IEP (PE-41).
35. On November 20, 2017, Shapiro unilaterally suspended home and community services. According to Mr. Parry Cruwys, Shapiro staff had become uncomfortable during an incident occurring on November 18, 2017, involving medical related care provided by Parent during which Student touched his genitals while making eye-contact and faces at Shapiro staff. When Shapiro staff refused to participate in observation of Parent performing the medical procedures, Parent became belligerent and told the staff to leave her house. Mr. Parry-Cruwys and Ms. Belsito notified Parents of the suspension of services by Shapiro and noted that services would be restarted if Parents agreed to some restrictions, including that Shapiro staff would not be present during medical procedures, noting that when goals regarding privacy and sexuality were added to the IEP, those would be addressed (PE-1; Parry-Cruwys). Later in 2018, Ms. Jennifer Rynning observed the medical care procedures in the home (SE-33; Parry-Cruwys).
36. Student underwent a sleep study on November 24, 2017 conducted by the Pulmonary Clinic. The study found that Student had severe obstructive sleep apnea. Dr. Rosen discussed treatment options with Parents, ultimately deciding that Student use a C-Pap machine when sleeping (PE-28).
37. Between December 2017 and December 2018, Student was hospitalized six times¹⁰ for prolonged periods of time because of G-tube related issues or infections; rashes that were related to Student's medication; and/or extreme dehydration (PE-19).
38. On December 5, 2017, Parents sent a letter to Mr. Perry-Cruwys, expressing their concern that Shapiro had suspended home services for Student, and that Parent had been identified as the reason for the suspension of services. Parents opined that issues with the home-based services were a result of the lack of communication between the District and Parents as well as Shapiro's staff's inability to address Student's behaviors during medical procedures "in a professional manner". They noted their disagreement with many of the statements appearing in Ms. Findlay's letter but for Student's sake, agreed to allow Shapiro to implement treatments based on the principles of ABA with integrity and with parental input, while not interfering. Parents also agreed to interact with Shapiro staff in a professional and respectful manner, but disagreed that Shapiro staff not assist Student with issues regarding sexuality and intimacy if they were added to Student's IEP.

¹⁰ December 24 to 27, 2017; February 12 to 16, 2018; February 19 to 26, 2018; March 26 to April 6, 2018; May 19 to 22, 2018; and December 10, 2018 (PE-19).

Parent requested that these matters be on the agenda for the clinical meeting scheduled for December 14, 2017, and the Team meeting scheduled for December 19, 2017 (PE-42). Parents also noted their belief that the suspension of services constituted a denial of FAPE and requested compensatory services for the interruptions in home-based services (PE-42).

39. On December 12, 2017, Student was seen by a physician and was diagnosed with a viral infection around his G-tube (PE-27).
40. On December 14, 2017, Shapiro informed Parents via email that they would reinstate the home-based services. Parents were pleased with this update and wished to communicate further about the specific services. Parents, however, did not agree to the terms set by Shapiro and Shrewsbury (PE-43; Parry-Cruwys, Belsito).
41. On December 15, 2017, Dr. Findlay emailed Parent to schedule a meeting between them and the technician to discuss Student's programming. The meeting was set for December 21, 2017. After the meeting occurred, Parent emailed Dr. Findlay to request that a program for when Student arrived home (i.e., where to put his shoes, coat, etc.) be prepared, stating that Student had regressed in that area. Parent also requested that Dr. Findlay and the technician attend Student's upcoming medical appointment on January 18, 2018 and noted that Student was scheduled to see Dr. Gregory Young the following day (PE-44; PE-48).
42. Shrewsbury convened Student's Annual Review on December 19, 2017, a date agreed to by the Parties, during which Parents reiterated their request for a more robust in-district and home-based program for Student (SE-39; SE-40).
43. On January 10, 2018, Shrewsbury issued a Notice of Proposed School District Action (N1) and a new proposed IEP covering the period from December 19, 2017 to December 18, 2018 (SE-39; SE-40). This IEP offered Student continued placement at the ELC program for functional math, literacy skills, science, history, vocational courses and also offered communication and behavior programming based on principles of ABA. A one-to-one ABA technician was assigned to work with Student throughout the school day. The IEP also offered a home and community program consisting of 20 hours per week direct ABA services and four hours per week consultation services. The Service Delivery Grid Part A lists 30 minutes per month OTR consultation services and one hour per month AT specialist consult, in addition to the four hours weekly home consult by the BCBA. Part B listed an hour support daily by the one-to-one aide to support inclusion during lunch. Part C of the grid offered: one hour per week community services, four and a half hours per day ELC programming, with one period for other services or for inclusion; six hours of one-to-one across all settings; half an hour daily reading services; one, forty-five minute session per week of OT services; one hour weekly of speech therapy services; one hour of assistive technology services per seven day cycle; three, one hour sessions of APE per seven day cycle; and the 20 hours per week of home services (with four weekly hours of consultation) described earlier. Additional information

regarding services and programming appeared on the Schedule Modification section of the IEP (PE-60).

44. The IEP listed goals for adaptive behavior, functional math, literacy skills, life skills, vocational, functional communication, APE, functional sensory/ fine motor skills, and generalization of skills (Goal #9, pertaining only to the home and community program). Goal #9 included a Privacy benchmark/objective: “9.2 Privacy: Across a caregiver and home support staff [Student] will independently demonstrate privacy skills (e.g., public vs. private actions, identify safe and unsafe individuals) increasing by at least one skill per quarter”, in addition to benchmarks addressing commonly occurring routines, requesting needed items and increasing independence in leisure skills (PE-60).
45. On January 16, 2018, Mr. Parry-Cruwys notified Parents via email that the home and community-based services would not be reinstated unless Parents accepted the privacy goal in the recently proposed IEP.
46. On January 19, 2018, Parents wrote to Ms. Belsito requesting that the home and community-based services previously accepted and provided by Shapiro be reinstated immediately without having to accept “the proposed privacy goal” in the most recently proposed IEP, noting their opinion that said goal was not comprehensive and that they did not want to provide a piecemeal response to portions of the IEP (PE-48). Ms. Belsito informed Parents that services could not be reinstated until they accepted the privacy goal. Shapiro services were never reinstated. Student did not receive home/ community-based services between November 20, 2017 and June 5, 2018¹¹ when a different agency, Innovative Autism Connections (IAC) initiated provision of the home and community-based services (Parry-Cruwys, Belsito).
47. On January 31, 2018, Parents forwarded their initial response to the proposed IEP accepting all of the home and community services, including the privacy benchmark, but requesting that the language change to include a home-based staff, to wit “Across a caregiver and/ or home support staff” and rejected the goal’s failure to include a benchmark/objective, direct services “for a comprehensive program with an appropriate curriculum related to sexuality and intimacy”. Parents also consented to a Physical Therapy Evaluation which consent was requested by Shrewsbury on January 10, 2018 (SE-38; SE-39).
48. On February 15, 2018, the Worcester Probate and Family Court granted Parents and Student’s Maternal Aunt guardianship of Student because he was deemed to be an incapacitated person, fully dependent on those around him and Parents had been making decisions for Student his entire life (PE-2).
49. On February 23, 2018, Student underwent surgery involving closure of a gastrocutaneous fistula performed by Dr. Jaksic (PE-26).

¹¹ This period falls outside the scope of this Hearing.

50. On March 2, 2018, Parent forwarded an email to Ms. Belsito noting her dissatisfaction that Student was not getting the curriculum addressing sexual education for students with special needs. Parent stated that per an earlier conversation with Shapiro's personnel, she had verbally accepted the proposed program to be delivered by Shapiro, with the understanding that Student would receive the full curriculum, and insisted that it be implemented.¹² Ms. Belsito responded clarifying Shapiro's and Mr. Parry-Cruwys' roles and responsibilities, the District's eagerness to restart the home/ community services as soon as Parents informed her of when the services could initiate. Ms. Belsito also noted that Mr. Parry-Cruwys had spoken twice with Dr. Young, and the District was amenable to speak with him again after the home services started. Ms. Belsito also noted Shrewsbury's agreement to a two week exercise routine as requested by Parents, as well as private versus public pre-teaching, stating that "due to [Student's] surgery, we understand that physical activity is restricted right now." Instead she suggested that the time could be used for leisure activities and rapport building as a starting point (PE-52).
51. On March 2, 2018, Parents also sent their 10-page detailed response to the December 2017 to December 2018 IEP in a letter to Ms. Belsito. Parents accepted the IEP in part and rejected it in part, and they rejected the placement. They requested updates to Student's IEP Vision Statement and requested that all the goals and objectives be numbered. They also requested inclusion of goals for science and social studies. Parents rejected the goals for Community, Social Studies, and Assistive Technology, and invoked Student's right to stay-put relative to the goals (PE-36; SE-34; SE-37).

Parents' rejections for Goal #1, Adaptive Behavior, Goal #2, Functional Mathematics, Goal #3, Literacy, Goal #4, Life Skills, Goal #5, Vocational, Goal #6, Functional Communication, Goal #7, APE, Goal #, Functional Sensory/Fine Motor Skills, and Goal #9, Generalized Skills were detailed and extensive. For example, Parents requested addition of single words that changed the entire meaning of a goal as in Goal #8 where they wrote: "We reject the inclusion of the word 'mock' before the word 'haircut' in the third Benchmark/Objective." Parents' requests called for increases in the services Shrewsbury's IEP offered and reiterated many of the rejections noted in previous letters. Parents sought consultation services from preferred specialists, requests for monthly clinical meetings, increases in provision of direct services for reading and AT, and noted failures to provide direct and consultation services in the home and the community (PE-36; SE-37). Parents further sought funding for Student's extended school year program at Pappas along with transportation, related services, and a one-to-one aide (PE-36; SE-37).

52. Parents attached copies of three reports to their March 2, 2018 IEP response letter to Shrewsbury: the Psychology Evaluation Report by Amy Young dated December 20, 2017 (diagnosing Student with a Moderate Intellectual Disability with cognitive abilities

¹² "[Student] is allotted 20 hours a week in the proposed IEP, and the lack of a sexuality curriculum for [Student] which includes public versus private was the primary reason that SEBC [Shapiro] discontinued services." (PE-52).

falling within the 2 to 4 years age range); Dr. DeFerranti's cardiology letter of January 25, 2018; and, the Communication Enhancement Evaluation, dated January 25, 2018 by Alycia Berg of Boston Children's Hospital (recommending adjustment to Student's communication device to add vocabulary, provide Student's caregivers training on the use of the device, and train Student on how to use the device to support his functional communication) (PE-36; SE-37).

53. On March 4, 2018, Parent emailed Ms. Belsito to convene a Team meeting and requested that Dr. Young attend. Shrewsbury scheduled a Team meeting for March 16, 2018. Parent again requested that the curriculum about sexual education for students with special needs be included in the agenda (PE-54).
54. On March 8, 2018, Parent forwarded the operative report of Student's February 23, 2018 surgery with Dr. Jaksic. Parents also informed Shrewsbury's staff that if Student's behavior seemed different it was likely due to his new medication (PE-26).
55. On March 15, 2018, Dr. Jaksic and W. Hardy Hendren, Professor of Surgery at Harvard Medical School, issued a clinical note involving successful closure of Student's G-tube. No infections at the site were noted, or complaints of pain from Student and noting that if at all possible, G-tubes should be avoided in the future (PE-25).
56. Following numerous communications and meetings, Parents and Shrewsbury agreed that the home and community services would resume on March 19, 2018, for a reduced amount of time and only to address the "privacy" issue because Student was still recuperating from his surgery of late February 2018.
57. Sometime during the first part of March 2018, Shapiro filed a report incident with the Department of Children and Families (DCF) and the Department of Developmental Services (DDS) alleging abuse relative to the November 2017 incident. Both were screened out. As a result, Parents withdrew their consent to have Shapiro provide the home and community services and requested that a different service provider be identified. Parents again requested compensatory services for the period of time during which Student did not receive the home-community services. Via letter dated March 23, 2018, Ms. Belsito agreed to have a different agency provide the services (PE-1; Belsito).
58. Student's Team reconvened on April 27, 2018 to consider the results of the evaluations and discuss Student's services and programming (SE-32). Parents expressed discontent with Student's communication skills and AT services and requested additional services from Easter Seals. Dr. Young, PhD., BCBA, attended the meeting.
59. On May 21, 2018, Shrewsbury sent Parents a Notice of Proposed School District Action (N1) and a proposed revised 46 page IEP covering the period from April 27, 2018 to December 18, 2018, which added twenty minutes per week of consultation by the speech and language pathologist and slightly modified the goals (SE-31; SE-32).

60. At Parents' request, Student attended extended school year programs at Pappas for the summers of 2017 and 2018 (Belsito).
61. On August 14, 2018, Parents forwarded a detailed, thirteen (13) page letter to Ms. Belsito partially accepting and partially rejecting the proposed IEP and placement for the period through December 18, 2018. Parents detailed their rejections which contained similar objections to those forwarded earlier to the District, detailed issues with Shapiro and reiterated their request for compensatory education for Student (PE-36).
62. On June 5, 2018, IAC initiated provision of home and community services for Student.
63. At Parents' request, Student remained at the ELC program one additional year (his thirteenth school year) (Wallace).
64. On October 11, 2018, Shrewsbury convened Student's Team to discuss the rejected portions of the IEP and discuss new reports. Parents discussed Student's night-time behavioral and medical issues and requested that an observation and services be provided. Via a Notice of Proposed District Action issued on October 17, 2018, Shrewsbury declined Parent's request for night-time services, as well as their request for monthly clinical meetings, increased hours for the home and community program, and compensatory services. Shrewsbury agreed to hold a one-hour consultation meeting in November 2018. No changes were made to Student's services and program (SE-18).
65. Shrewsbury's Narrative Description of the School District's proposal (N1) was issued on October 17, 2018, noting the purpose of the Team convened earlier in October 2018, during which Dr. Alycia Berg's Communication Enhancement assessment was discussed, as were Parents' IEP rejections and Parents' requests that were denied by Shrewsbury. The document further confirms the Parties' agreement to issuing the next IEP following the December 2018 Team meeting (SE-30).
66. On November 14, 2018 and December 13, 2018, Anna R.M. Hebert, Psy.D. conducted a neuropsychological evaluation/ educational consultation. Dr. Hebert noted Student's complex medical needs requiring multiple hospitalizations and surgical procedures over the past years. She specifically mentioned Student's Hirschsprung disease with colonic resection and associated colectomy and ileostomy requiring ongoing care throughout the day and night and related risks for infection (PE-4).
67. Dr. Hebert found the results of her evaluation to be reliable and representative of Student's then true abilities, as he was engaging, focused, attentive, and cooperative throughout the three-hour evaluation session. He also did not struggle to remain in his seat and was able to refocus after each of his several snack breaks and responded well to verbal praise (PE-4).

68. Dr. Hebert administered the Stanford-Binet Intelligence Scales Fifth Edition (SB-5) to measure Student's cognitive abilities, finding that he scored lower than the first percentile (<1%) (PE-4).
69. During the evaluation, Student had trouble counting specific numbers, and while he could identify pictures of nouns and verbs, he could not describe the actions that were occurring in the pictures. He struggled with visual-spatial processing. He did not initiate communication spontaneously, drew out the vowel sounds when speaking, and answered "yes" indiscriminately to questions. When asked open-ended questions, Student repeated the last few words of the examiner's sentence. He was able to understand simple sentences but struggled as their complexity increased. When asked to repeat sentences, he only repeated the last one or two words. He spelled his name almost illegibly and incorrectly and could not write words, letters, or numbers dictated to him. While Student was able to follow simple one-word directions (receptive language skills), at times he required a visual cue. In math, Student was unable to complete single digit addition and subtraction problems (PE-4).
70. Per her assessment, Dr. Hebert found Student's academic development to be consistent with that of a child between preschool and kindergarten (PE-4).
71. Regarding adaptive functioning skills, Dr. Hebert found that Student was able to provide his first and last name and the first name of his parents and sibling, and knew the name of the town where he lived, but did not know his age, street address or telephone number. The Adaptive Behavior Assessment System, Third Edition (ABAS-3) completed by Parent, the home BCBA and his teacher identified social skills as an area of strength for Student (PE-4).
72. Dr. Hebert observed Student at the ELC program in Shrewsbury on December 13, 2018. There were three students in the room, each with an assigned one to one aide, while the special education teacher was overseeing the classroom. Student was observed to require one-to-one support to learn and acquire new skills, to communicate with others, for safety reasons and generalization. Throughout the morning, Student was engaged and focused on the reading lesson being taught by the teacher and was able to participate with support. Interactions with peers also required support. He was observed to follow a five-step recipe while making a smoothie as part of his functional math lesson, successfully completing the steps, cleaning after himself, and appearing to enjoy his treat. Dr. Hebert did not observe Student use the assistive technology on his iPad to help him communicate (PE-4).
73. Dr. Hebert noted that Student's skills and test scores were consistent with his Down Syndrome and a moderate intellectual disability. Dr. Hebert noted that Student required a high level of supervision, increased structure and intensive instruction (including functional academics, OT, ACC instruction) throughout the day to maintain safety and support skill acquisition and generalization. She recommended the use of ABA, Discrete Trial Training, and Task Analysis methodology, with opportunities for skills to be

generalized across environments as they are mastered, noting that Student required a great deal of support around speech and language. She opined that special education services should be provided on a year-round basis until Student's 22nd birthday (PE-4).

74. Dr. Hebert further recommended that Student be provided with one-to-one instruction and a high level of supervision. She recommended additional safety training in basic life skills, noting that a vocational skills assessment should be conducted and that future career paths should be discussed, as well as vocational work opportunities on a regular basis (PE-4; PE-35).
75. In mid-November 2018 Parents contracted with Gretchen Timmel, M.Ed. to offer educational consultation regarding placement for Student. She observed Student at the ELC program, observed the Evolution Program and St. Coletta. Ms. Timmel opined that Student required residential placement (SE-1; Parent).
76. On December 4, 2018, Student had a visit with his pulmonary doctor. The report noted a parental report that there had been occasions where the Student vomited into the C-Pap mask, and had difficulty removing it. Dr. Rosen noted that Student should promptly receive approximately 12 hours of skilled nursing, 7 days a week, to properly address C-Pap issues and other medical needs (PE-24).
77. In 2019, Student was seen at Children's Hospital for 24 different medical appointments (PE-18).
78. Parents also began to record every ABA service provided to Student and tracked the length of each session (PE-20).
79. Student's Team convened on January 10, 2019 to conduct Student's annual review, discuss a proposed program and placement, and Student's transition plan. Dr. Hebert and Gretchen Timmel attended the meeting, and Dr. Hebert presented her evaluation findings. The Parties were represented by attorneys at this meeting which was described as difficult and acrimonious. Ms. Lison (CEO, Innovative Autism Connections) did not attend (PE-1; SE-28).
80. Margarete Belsito testified that many of Student's Team meetings were long (close to two hours), difficult, non-collaborative and that arguments ensued between Parents and the attorneys with agendas rarely finished. They were also difficult to schedule because of the large number of attendees. Ms. Belsito testified that Shrewsbury staff often expressed discomfort, feeling demeaned and disrespected by Parents. The staff, however, loved Student and always kept his best interests at heart (Belsito). Ms. Belsito noted that Parents were always provided with a meaningful opportunity to participate at the Team meetings whether by speaking directly or through their attorney. She testified that Parents were often in disagreement with what Shrewsbury was doing, as, for example, Student's reading program, because they wanted Student to be able to read for pleasure at home. Instead, Shrewsbury opined that reading for pleasure should not be the focus, but

rather, mastering functional academics. According to Ms. Belsito, there was a discrepancy between the hopes of the family and the depth of Student’s disabilities. She also noted that ultimately, Parents decided in what activities Student would or would not participate in school and in the community (Belsito).

81. Shrewsbury Progress Reports dated January 21, 2019, note Student’s slow and steady progress in all areas targeted by the goals and objectives in his IEP (SE-21).

82. On January 22, 2019, Shrewsbury issued a 39 page IEP covering the period January 10, 2019 to January 9, 2020. This IEP offered Student placement at the ELC substantially separate program at Shrewsbury High School through the end of the school year, and then a transition to the Evolution Program at Assabet Valley Collaborative (SE-26; SE-27; PE-8). The Service Delivery Grid contained the following services:

A. Consultation (Indirect Services):

<u>Type of Service</u>	<u>Personnel</u>	<u>Frequency and Duration/ Per Cycle</u>
Assistive Technology Speech/Language	AT Specialist Speech/Language Pathologist	1 x 60 min per month 1 x 20 min Consult to team
Occupational Therapy	OTR	1 x 30 min/month split into smaller times during the month as needed
Home Consultation	Behavior Consultant	4 hours per week

B. Special Education and Related Services in General Education Classroom (Direct Services):

Inclusion	ABA Technician	1 x 30 min/per day (lunch period)
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C. Special Education and Related Services in Other Settings (Direct Services):

Speech Therapy	Speech/Language Pathologist	1 x 60 min split into smaller sessions as needed
Assistive Technology	AT Specialist	1 x 60 min per 7-day cycle (May be split into 2 sessions)
ELC Program	ELC Coordinator	4.5 x 60 min per day (1 period of other)

		services or inclusion)
Community	Special Education	1 x 60 min per week
ABA Tech	ABA Technician	6 x 55 per day (all settings)
Occupational Therapy	OTR	1 x 45 min/weekly,
	Individual	
Adapted Physical Education	APE Staff	3 x 60 per 7-day cycle
Home Consultation	ABA Technician	20 hours per week
Life Skills/Vocational	SpEd/Voc. Personnel	5 x 360 (<i>this last service for the period starting on August 29, 2019 to January 9, 2020</i>) (SE-26; SE-27; PE-8).

83. On January 29, 2019, Shrewsbury’s Department of Nursing issued an Individualized Health Care Plan for the period from January to June 2019. The Plan notes Student’s diagnoses and medical history, medications, procedures to be performed while in school regarding ostomy care for an ileostomy, Duhamel pouch care and skin care (requiring tracking of input and output). The Plan further indicates which supplies are to be provided by Parents and describes Student’s health care action plan while in school (e.g., medications to be administered and considerations during field trips, evacuation plans, etc.) (SE-29). The Plan also notes that in 2016 Parent had demonstrated care of the g-tube and ostomy bag and notes that nurse-to-nurse training will occur as new nurses join the staff (SE-29).
84. On February 8, 2019, Parents accepted the proposed January 10, 2019 to January 9, 2020 IEP in part and rejected portions of the IEP, noting their request for compensatory services back to when Student left his residential placement in 2016. Specifically, Parents accepted placement at the ELC Program despite stating their belief that it was neither adequate nor that it provided Student a FAPE. Parents also requested that Student receive extended school services at Pappas with a one-to-one aide and related services (speech and language, OT, PT) and transportation (SE-25; PE-8). Regarding the September 1, 2019 to January 2020 period, Parents noted,

We agree that a program with an intensive transition component should be considered for [Student] for next school year. However, based on the information provided to us during our visit to the Assabet Valley Collaborative’s Evolution Program, this program does not appear to be adequate or appropriate for [Student]. We reiterate our request that SPS send referrals to the Cotting School and to the ACCEPT Collaborative. In the event that we are not able to agree on a placement for [Student] for next school year, then we intend to exercise his right to “stay-put” in his current program at Shrewsbury High School, with all of the accepted services in this and any prior or subsequent IEPs (SE-25; PE-8).

85. As discussed below, Parents’ February 8, 2019 partial rejection letter noted partial rejection of the following goals: #1, #2, #3, #4, #5, #7, and #8. Parents also rejected

certain parts of the services delineated in sections A, B, and C of the Service Delivery Grid, because they opined that the level of services offered was sufficient. Parents rejected the District's refusal to convene a meeting with only some of the Team members to discuss specific methodologies related to some of the goals and objectives in Student's IEP. Parents rejected the District's refusal to consider additional home and community services for Student, noting disapproval of the District's reasoning (SE-25; PE-8). Parents wanted to update the IEP's Vision Statement but had not finished their version by February 8, 2019.

86. Parents rejected Goal #1, Student's Functional Communication Goal, because it did not focus on correcting Student's inappropriate speech. Goal #2, Adaptive Behavior was rejected because it did not include a generalized safety provision, did not create and develop a school-based Behavior Plan, and did not include sexuality and intimacy, safety, and interpersonal relationships. Parents also rejected the parts of Goal #3 that separated Functional Mathematics and Literacy Skills, disputing that the goal addressed basic math skills. They also rejected the deletion of objectives 3.1, 3.3, and 3.4. Parents disagreed with the omission of any goal for homework, pleasure reading or for independent use of electronic devices. For Goal #4, Life Skills, Parents objected to the lack of goals around sexuality and intimacy, safety, and interpersonal relationships, and because it did not develop skills that would allow Student to be independent in handling his medical needs. Regarding Goal #5, Vocational, Parents rejected placement of Student in janitorial or food service jobs without prior parental consent. Instead, Parents requested that Student be placed in positions where he could work with animals, since this was of interest to him. Regardless of placement, Parents insisted that Student be provided safety training in the settings in which he worked. Parents deferred their response to Goal #7, Home and Community Skills and rejected the deletion of Goal #8, Functional Sensory/Fine Motor Skills.

Parents accepted Student's placement at the ELC program until June 30, 2019 and requested that he then participate in the Pappas Rehabilitation Center extended school year program, with a one-to-one ABA aide, and be provided related services and transportation. Lastly, Parents noted their disagreement that the Evolution Program would be appropriate and requested that referral packets be forwarded to the Cotting School¹³ and ACCEPT Collaborative (SE-25; PE-8; PE-36).

87. Parents sought for Student to become more independent in the use of electronic devices per Goal #3. At one point, they provided Student with an Apple watch which Student was mostly using to try to make phone calls during the day (Freeman). Parents could use his watch to track Student's whereabouts and requested that Student be taught to use it properly as it also tracked his steps per day. Ms. Gorman and Ms. Wallace testified that the use of a smart watch/phone was not a goal in Student's IEP (Gorman, Wallace).

¹³ It is unclear whether Parents meant Cotting School, St. Coletta Day School or both, as later they requested placement at St. Coletta Day School.

88. On March 1, 2019, Parent contacted Student’s school counselor, Lee Diamantopoulos, via email to ascertain whether Student could try-out for a high school sports team that spring. Tryouts were to start March 18, 2019. Parent hoped that this would be an enjoyable experience for Student, even if he lacked the skills to make the team. Mr. Diamantopoulos forwarded the email to Athletic Director, Jay Costa, and informed Parent that Mr. Costa would reply directly. Shrewsbury internal emails showed that together, Mr. Costa and Mr. Diamantopoulos attempted to devise a plan that would allow Student to participate in a manner that was safe for him if he provided the necessary paperwork and had one-to-one support. Mr. Costa explained that tryouts were crowded and chaotic, making it difficult for the coaches to properly supervise Student. He suggested that Student participate later in the season when it were less chaotic, by either attending a practice or a game which would give Student a better opportunity to interact with the players and have a more meaningful experience (PE-32). Parents did not learn of these options until much later, and Student did not participate in the try-outs. As a result, Parents alleged that this constituted discrimination (Parent).
89. On March 13, 2019, Sarah Pitts, MD, Laurie Glader, MD, and Emily Davidson, MD, clinicians from Student’s health care team, issued a letter with recommendations for a healthier lifestyle. The content of this letter was essentially the same as the medical letter issued in 2017. The physicians explained Hirschsprung disease and its day-to-day impact on Student’s life, including sensitive skin, a “rectal” pouch, his multiple surgeries resulting in abdominal adhesions, and his propensity to dehydration. They further noted that Student presented mild symptoms of pancreatitis. Concerns were raised regarding Student’s significant weight gain over the past several years, because of its impact on Student’s BMI (greater than the 99th percentile), sleep apnea, and because it placed Student at risk for other complications, such as Type 2 diabetes, liver dysfunction, and orthopedic issues. The physicians recommended that Student consume a lower fat and a higher fiber diet and walk on a treadmill an hour per day (PE-22).
90. On March 14, 2019, Gretchen Timmel observed the Evolution Program and opined that it was inappropriate for Student (then 19 years old) because:
- a. communication would not be directly taught in all aspects of his life and he will not have discrete teaching of communication using a device;
 - b. the current peers are not appropriate because Student could not model from them;
 - c. Evolution did not offer continued instruction in academics, and academics are not increased (PE-6; PE-35).
91. Dr. Hebert also observed the Evolution Program, concurring with Ms. Timmel’s opinion that it was inappropriate for Student’s transition to post-high school life because it lacked the direct services and related educational services, ABA services, vocational programming and because the peer group was not appropriate (Hebert).

92. Jennifer Nocella, Clinical supervisor, Innovative Autism Communications (IAC), issued a thorough progress report regarding Student's in-home ABA program covering the period from February 12, 2019 through April 2, 2019 (SE-24). The report notes that Student was successfully meeting his skill development objectives in all settings with verbal instruction or varying degrees of physical guidance provided through the tasks (SE-24).
93. Student's Team convened on March 20, 2019 (PE-8; SE-22; SE-23). Dr. Hebert, Ms. Timmel and both Parents were in attendance, but not a representative from IAC or the Assabet Valley Collaborative. Student's Team reviewed outside evaluations pursued by Parents, the rejected portions of the IEP issued at the beginning of 2019 and developed an IEP (SE-22). Parents and their representatives explained the reasons for their misgivings regarding the appropriateness of the Evolution Program for Student (PE-8).
94. Dr. Hebert and Ms. Timmel who had observed the Evolution Program shared their opinion that it was not appropriate for Student because it did not offer him new opportunities to learn (PE-5; PE-6). An email from Meghan Bartlett (Assistant Director of Special Education, Team Chair and Out of District Coordinator for Shrewsbury) to Karen Lasky dated March 20, 2019 documented the private consultants' concerns (PE-34). Ms. Bartlett testified that the observation had occurred while many of the students in the Evolution Program were on an outing in the community, in keeping with the program's mission to prepare students to be more independent.
95. Beginning March 20, 2019, a series of emails were sent concerning Student's upcoming summer placement. Shrewsbury attempted to clarify which program Student would attend: Evolution Program, Pappas or St. Coletta. Parent responded by submitting a lengthy list of questions about the Evolution Program and required a detailed response before deciding (PE-34).
96. On May 1, 2019, Shrewsbury issued an IEP covering the period from March 20, 2019 to January 9, 2020, which IEP revised the IEP issued on January 10, 2019 (SE-20; SE-22). This IEP contained some changes from the prior IEP, including addition of reading services (previously deleted), but did not incorporate all of Parents' requests or the placement recommendations made by Dr. Hebert and Ms. Timmel, instead maintaining the offer to have Student transition to the Evolution Program for the following school year (PE-8). Parents responded to this IEP in mid-June 2019 as discussed later in this section.
97. At Parents' request, Dr. Cheryl Davis, Ph.D., LABA, BCBA-D, conducted observations/assessment of Student's programs on May 13 and 18, 2019 to evaluate the appropriateness of the educational program/ services Student was then currently receiving through Shrewsbury.
98. Dr. Davis observed delivery of Student's home ABA services, noting that Student could not perform all tasks independently, but completed some tasks with 100% accuracy. He

transitioned easily from a leisure activity to his skill acquisition instructional time during which he worked slowly but was engaged during the entire time. He required prompts to complete the bathroom routines and to use dinner utensils and his napkin. Dr. Davis noted that when Parent asked Student about his day at dinner time, he “adeptly navigated his iPad and went to the app that told stories. He talked about asking [another student] to the prom”, an event which had occurred the previous week, thereby demonstrating Student’s difficulty understanding time and space. Even though Student could not be left alone to complete tasks, he responded well to repetitive prompts as he proceeded through each task. In the home he was “successful when the teaching methodology was structured, focusing on isolated skills, with systematic direct instruction that includes some natural environment teaching.” (PE-3). Dr. Davis reviewed three months of the data collected by the home providers noting that Student showed slow and steady progress (Davis).

Dr. Davis observed Student at the gym while he performed his exercise routine. Student initiated his exercise bike routine, but when Parent went to a different part of the gym to do her own exercise, he completed 23% of the time allotted to this exercise and the rest of the time just sat on the bike. When finished, Student wiped down the machine independently and went to use the rowing machine, which he did not use correctly, and engaged in 0% of the exercise on the rowing machine, getting off the rowing machine seven minutes after getting on it. He then gathered his things and went into the lobby of the gym where he waited for Parent to finish her own workout. When Parent finished, she met Student in the lobby and went home (PE-3).

99. Dr. Davis observed the Evolution Program on May 17, 2019. She noted that the program was comprised of sixteen students, two teachers and six paraprofessionals. The facilities were well lit and equipped with a kitchen and two classrooms where students work on daily living skills, social communication and functional academics skills. The staff reported that students spend time performing vocational activities in the community every week, performing volunteer work at a print shop, the YMCA, and other settings. Students also exercise at the YMCA weekly and go grocery shopping bi-weekly (PE-3).

On the day of Dr. Davis’ observation, there were 8 students in the class, seven participating in a social skills class and a tooth brushing routine. Dr. Davis opined that these students functioning level was more advanced than Student’s. During free time none of the students was observed communicating with each other. No data collection was observed and the methodology of the class appeared to be eclectic (PE-3). (Some of the students in the class were out in the community on that day.) Dr. Davis concluded that this program was not sufficiently individualized and would not meet Student’s needs specifically, finding that

...the Evolution Program lacked the structure, rigor and consistency necessary for [Student], a young adult with Down Syndrome and intellectual impairments, who requires intensive individualized instruction with significant supervision.... The Evolution Program does not currently have sufficient

structure and support to meet Student's needs. This is evident by the lack of intensive, individualized programming with rigorous data collection and review, time on task, and length of programming (school days) with consistent year-round staff (PE-3).

100. Dr. Davis opined that Student was functioning below his potential. She recommended an increase in the intensity of services offered to Student in school, including one-to-one instruction (or small group instruction) delivered by a teacher with severe special education training. Dr. Davis also recommended that Student receive more services to improve his spontaneous and functional social conversation skills (PE-3).
101. Dr. Davis noted the high level of care Student required in the home. She recommended that home-based ABA services increase in the areas of communication skills, self-care, safety skills, leisure skills, social skills, community skills, and household skills. She provided an extensive list of functional academic skills to be worked-on in the home inclusive of life skills, daily medical skills, communication skills and daily math skills. Dr. Davis opined that given his profile, Student required the cohesiveness of a comprehensive residential placement. She also recommended an increase in communication skills across settings as Student was struggling with communication, noting the need for consultation among service providers including the speech pathologist, a BCBA/LABA, classroom staff, residential staff and Parents for consistency. Dr. Davis recommended that Student's services continue throughout the calendar year to ensure a smoother transition into adulthood (PE-3; PE-35).
102. Dr. Davis testified that Student did not demonstrate self-advocacy skills such as asking for help when he required it. She noted that Student knew to use the communication device but did not know exactly how to make it work for him, noting that he was very dependent on adults. She recommended that vocational skills and activities of daily living should be the focus of Student's education moving forward. Dr. Davis testified that she did not speak with any of the Shrewsbury staff and that she only spoke with Ms. Timmel, Dr. Hebert, Parents and the home ABA staff (Davis).
103. Dr. Davis further testified that Student was working on 18 objectives at one time, and she noted the importance of parent training for consistency and to maximize generalization of skills across settings. She agreed that Student could be taught during the day those skills he will need to implement at night. Dr. Davis did not observe Parent participate in any parent instruction (Davis).
104. On May 14, 2019, St. Coletta Day School, located in Braintree, Massachusetts, part of Cardinal Cushing Centers, sent Parents a letter communicating Student's acceptance to their program beginning in the summer of 2019. Student's tentative start date would be July 8, 2019. During a meeting between Parent and Linda Magee, St. Coletta agreed that Student's IEP could be implemented, noting however that an IEP would need to be developed for Student by Shrewsbury's Team in conjunction with the team at Braintree

St. Coletta. The rest of the letter outlined the necessary paperwork Parents needed to submit before admission was confirmed (PE-33).

105. On May 21, 2019, the Parties participated in a telephonic progress meeting (PE-1).
106. On May 28, 2019 Ms. Belsito emailed Parents, informing them that Ms. Bartlett had communicated with Easter Seals regarding Student's participation in that program for the summer of 2019 (PE-34). Pappas' 2019 summer program convened five days per week, which was important to Parents. Via email dated June 7, 2019, Ms. Belsito informed Parents that if Student attended the Evolution Program, Student could attend Pappas for his extended school year program (PE-34).
107. On June 10, 2019, Ms. Timmel observed St. Coletta Day School. Student was 19 at the time of this observation. Ms. Timmel found the program to be appropriate for Student the program, citing an appropriate peer group, the fostering of communication skills, the teaching of life skills and provision of vocational training (PE-7; PE-35).
108. On June 14, 2019, Shrewsbury issued Progress Reports, noting that Student continued to make effective progress toward meeting all of the goals and objectives in his IEP, effectively working on the targeted benchmarks and successfully using technology devices (SE-19).
109. On June 17, 2019, Parents responded to the IEP proposed on May 1, 2019 (resulting from the March 20, 2019 Team meeting), partially accepting and partially rejecting the IEP consistent with their previous partial rejection of February 2019 (SE-18). Parents also responded to the progress update meeting in an attached letter, explaining their position and their partial acceptance/ rejection of the revised IEP. They rejected several portions of the Additional Information section and: Goal #4, Life Skills, because there was no goal for travel training; Goal #7, Home Community Skills, because it contained inaccurate statements and reserved their right to respond to this goal further; and requested that the extended school year offered be expanded because they did not approve of the program convening only four days per week. Parents accepted the longer school day but requested additional home/community programming. They also requested a monthly clinical meeting. Parents rejected the use of the word "aggression" to describe Student's behaviors. They also did not want Student to travel on a regular school bus with a monitor and instead requested that he be transported on the special education bus without using a wheelchair and with a one-to-one ABA Technician, as they asserted that "travel time should be part of [Student's] home and community program" (PE-8). Additional rejections included the use of certain medical terms, the lack of adequate assistive technology services and direct services, opining that Student was not receiving proper training on the devices. Parents also requested that Student be provided more access to nursing care.
110. Regarding placement, in their June 18th letter Parents accepted Student's placement at the substantially separate ELC classroom in Shrewsbury, for the period from March 20,

2019 to June 30, 2019, noting disagreement with Shrewsbury that Student did not require residential placement if and when one was available. Parents also requested that Shrewsbury fund an extended school year program at St. Coletta Day School (St. Coletta), and requested that Student be placed at St. Coletta for the period from August 29, 2019 to January 9, 2020. In the event that Shrewsbury rejected either Pappas or private school ESY programming, Parents requested that Student participate in the ELC's extended school program (SE-18; PE-9).

111. Parents argued that the IEPs issued on January 22 and the 53 page long IEP issued on May 1, 2019, included goals with only 27 objectives, representing a decrease from previous IEPs which offered between 32 and 58 objectives (PE-59; PE-60; PE-61; PE-62; PE-63; PE-64). They noted, for example, that the mathematics and reading/ literacy goals were combined into one under Functional Academics, and further the absence of a social or assistive technology goal (PE-61; PE-62; PE-63; PE-64). Parents disagreed with Shrewsbury's moving the twenty hours of home consultation services into section A of the Service Delivery Grid in the May 2019 IEP, and the lack of consultation services for speech and language therapy (PE-61; PE-62; PE-63; PE-64). While Part C of the Service Delivery Grid included speech, assistive technology, OT, classroom one-to-one ABA, and home one-to-one ABA in both IEPs, reading services once again appeared in the May IEP. Parents accepted said reading services but noted that Student should receive individualized, daily reading services (Parent).
112. Parents also requested compensatory services for Student related to home and community-based services. According to Parents, Shrewsbury made determinations as to services and location for provision of same disregarding Parents' input and importance to Student's transition goals. Parents noted lack of effective communication among school personnel, home and community providers, failure to provide assistive technology training to Student, ABA technicians and Parents or to ensure that Student was accessing the device to communicate, including for self-advocacy. Parents also raised failure to provide the agreed upon consultation and direct services and noted that the ABA technician used approximately 15 minutes of the sessions to write her notes (PE-9). Once again, they reiterated previous rejections and requested a Team meeting to discuss each rejected portion (PE-1; PE-9).
113. On June 18, 2019, Parents also provided Shrewsbury with a copy of Dr. Davis' evaluation report and requested a Team meeting to discuss the results of this evaluation. Shrewsbury did not convene a Team meeting to discuss this evaluation. According to Ms. Belsito, the school year had ended when this evaluation was received. She indicate that no meeting was held during the summer, and that it did not make sense to review it when school resumed because Student would be somewhere else (PE-3; Belsito).
114. On July 1, 2019, Dr. Hebert forwarded a letter to Parents, clarifying her position that the Evolution Program was not helpful for Student and recommending that he attend St. Coletta. She opined that Student would require this higher level of instruction through his

22nd birthday to allow for maximum progress towards skills addressing safety and the highest possible level of independence achievable (PE-5; PE- 35).

115. On July 10, 2019, Shrewsbury filed a Hearing Request with the BSEA seeking a determination that the then most recently promulgated IEP and placement at Assabet Valley Collaborative's Evolution Program offered Student a FAPE (BSEA# 2000185).
116. During the summer of 2019, Student attended the ELC extended school year program (Belsito). Ms. Belsito testified that the Parties took a long time to reach an agreement on summer programming. On July 29, 2019, Parents' attorney requested that Student attend the Evolution Program, but by then, the Program was unable to accommodate Student on short notice (Belsito).
117. On August 5, 2019, the District forwarded numerous emails attempting to clarify Student's placement for the fall; that is, whether Student would stay-put at the ELC or whether the Parties would be able to reach a different interim agreement (PE-34).
118. On August 9, 2019, Student's Team met and proposed an extended evaluation at St. Coletta for the period from September 5, 2019 to November 7, 2019 (SE-16). The purpose of the extended evaluation was to assess how best to plan for Student's post high school transition programming and how to best serve Student. The Extended Evaluation Form notes Student's need for programming through his 22nd birthday (SE-17; PE-35A).
119. On August 14, 2019, Parents accepted the proposed extended evaluation at St. Coletta Day School program, noting their understanding that Student would be provided a one-to-one ABA technician (SE-17; PE-34). The one-to-one ABA technician was not assigned (Parent). Ms. Bartlett testified that St. Coletta was not an ABA school and instead provided one-to-one support; there were questions as to whether Student would need an ABA technician to access his education at St. Coletta. Insistence on a one-to-one ABA technician at St. Coletta would have resulted in that program's inability to educate Student and the Student returning to Shrewsbury for his education (Bartlett).
120. On August 16, 2019, Parents filed a Hearing Request with the BSEA, seeking residential placement of Student at St. Coletta for an Extended Evaluation as well as funding/provision of a full-time ABA technician across-settings during the Extended Evaluation. In the alternative, Parents sought an appropriate day school program coordinated with an appropriate home and community program. Parents also sought an indeterminate amount of compensatory education services beyond Student's 22nd birthday (PE-1; PE-35; BSEA# 2001827). At the time of this filing, Parents were represented by an attorney.
121. Student began attending St. Coletta on or about September 4, 2019 pursuant to an Extended Evaluation. St. Coletta is a Massachusetts Department of Elementary and Secondary Education (DESE) approved private special education school. St. Coletta serves students who present with intellectual disabilities and other challenges, as well as

complex medical issues. It offers highly individualized, small-group, high staff to student ratio, comprehensive and intensive special education and transition programming to students ages 18 to 22. Students in this program receive vocational training, ABA, assistive technology instruction, related services including speech and language therapy, functional academics (including communication and language development), occupational therapy and physical therapy. Vocational opportunities are individualized based on the students' interests and in keeping with their needs. School-wide positive behavioral intervention and support is offered across-settings throughout the day and nursing services are also available throughout the day. Parent support and training is offered. The classroom proposed for Student had four male students ages 18 to 22 and two full time special education teachers (PE-1).

122. On August 14, 2019 Shrewsbury's and Parents' attorneys communicated and Shrewsbury's attorney confirmed that a one-to-one aide would be provided for Student during the Extended Evaluation, but the attorney was unsure whether the one-to-one was ABA trained. Shrewsbury's attorney however, noted that the aide would be trained to work with Student (PE-1). Student was not provided a one-to-one ABA technician at St. Coletta (Parent).
123. Parent testified that between January of 2019 and the date that Student was placed at St. Coletta, IAC failed to consistently deliver services to Student, arguing that Student was entitled to compensatory services for the missed services. Ms. Lison and Ms. Nocella testified that Parent often cancelled IAC services less than the 24-hours before the scheduled appointment, which was inconsistent with IAC's cancellation policy. Many cancellations were due to Student's numerous medical appointments. According to IAC, although those services were not required to be made up, IAC made up for lost services when it was able to do so (Lison, Parry-Cruwys). Later, Parent also expressed dissatisfaction when starting in April 2019, the home ABA technician began using the last 15 minutes or so of the sessions for notetaking after running Student's program (Nocella, Parent).
124. IAC Patient/Family Communication Notes for the period April 29, 2019 to July 17, 2019 notes the work done with Student, including running through the 17 available programs at multiple locations, as requested by Parents; IAC's offer to make-up sessions cancelled by Parents or the provider on Saturdays or Sundays, with Parent noting preference for Sundays, and later in July 2019 requesting that the sessions switch to Saturdays; session planning; Parent's disagreement with the last 15 minutes of the session being used to complete session notes and upload data collected during the session; as well as the "writer update[ing] the form to allow [Parent] to add her own start and end time without the 15-minutes at the end of the one-on-one session note form" (SE-8). Additional Treatment Planning Notes, Planning Session Notes and Supervision Notes for the period February 1, 2019 to the end of August 29, 2019 reflect programs run at different locations, the amount of time used for service delivery and note-taking at the end of the session and Student's continued progress toward meeting his goals (SE-9; SE-10; SE-11).

125. Student's Team convened on October 11, 2019, mid-way through his extended evaluation, with Parents, Shrewsbury personnel, St. Coletta staff and counsel for both Parties in attendance, and Dr. Hebert and Ms. Timmel via telephone. Student's performance and data collected were discussed (SE-15). They reflect Student's happiness and Parents' satisfaction with the placement, as well as Parents' desire for Student to remain at St. Coletta beyond the extended evaluation period (SE-13; SE-14). The new evaluation by Dr. Davis was not reviewed at this time (PE-35B; Parent).
126. Student's Team convened again on November 1, 2019, to review the results of the extended evaluation. The meeting agenda consisted of Student's status during his time at St. Coletta's, the transition assessment (SE-7), review of the program and services, and discussion of goals and services.
127. Christine Hitchins, MS OTR/L, reported that Student adjusted well to St. Coletta's program. Ms. Hitchins noted that Student's vocational skills were excellent because he could follow direction with minimal instructions. She suggested that Student choose his vocational placement in the future. Ms. Hitchins indicated that Student needed extra occupational therapy assistance so he could improve his fine motor skills. She also noted that Student improved in his speech goals but needed continued work on expressive and social language skills (SE-6; PE-35).
128. Student's extended evaluation at St. Coletta resulted in Shrewsbury's offering Student day school placement at St. Coletta for the period from November 1, 2019 to January 9, 2020. Shrewsbury's Placement Consent Form offering Student a private day school placement at St. Coletta was signed by Parents on November 5, 2019 (SE-5; SE-12). The School District's Proposal section of the proposed placement notes,
- At this time, [Student] will [be] supported in the classroom by a paraprofessional. If [Student] requires ABA technician to support him, St. [Coletta] will not be able to meet his needs. [Student] is currently accessing his program with a classroom teacher and paraprofessional in the classroom (SE-5).
- Parents accepted placement at St. Coletta, and Shrewsbury funded this placement for the remainder of the school year (PE-35; Bartlett).
129. Team meeting notes from the November 1, 2019 meeting reflect, among many other things, that Student, then 3 months short of his twentieth birthday, would not have a one-to-one when he transitioned to DDS and therefore, a plan for fading of the one-to-one aide would be needed (SE-6).
130. On or about November 4, 2019, Ms. Bartlett was informed that Student would be moving with his Parents to a different district.

131. Progress Reports dated November 25, 2019 generally note that Student was making progress in all areas, specifically identifying functional academics, adaptive behaviors, life skills, vocational, APE, home and community skills (SE-4).
132. Exhibit SE-1 sets out the number of prescribed one-to-one ABA/ BCBA service hours provided and billed to Shrewsbury for the period December 30, 2018 to November 23, 2019, noting 214.58 (direct ABA) and 15.25 (BCBA) total hours not provided, noting 140.75 hours and -8.02 hours owed “if all parent cancelled sessions counted as missed ([without doctor appointment] documentation)” and “September 2019 considered paused by parent and not owed due to staffing switch request” (SE-1). The document further shows that some of the hours missed were due to multiple cancellations not associated with a doctor’s appointments and vacation reported by IAC staff (SE-1; see also SE-2). SE-3 notes the one-to-one ABA service hours provided and BCAS case management and treatment planning offered and for which Shrewsbury was charged for the period from July 2 to November 22, 2019).
133. Mr. Parry-Cruwys, Shrewsbury’s BCBA, began working in the District in January 2017, shortly after Student returned to Shrewsbury following termination at his residential placement funded by Shrewsbury. In January Student was participating in the ELC program and was also entitled to receive 20 hours per week of home services and four hours of consultation services per week. At this time Mr. Parry-Cruwys arranged to have an AFLS performed to develop home-based programming objectives.
134. Mr. Parry-Cruwys spent time in consultation with the providers, working with Student to ensure that objectives were worked on and that the services were delivered in accordance with the IEPs. He noted that he and the providers acquiesced to many of Parents numerous requests regarding preferences for provision of services, and prioritization of goals and objectives. He testified about his concerns regarding Parents’ refusal to participate in the parent-training component of home services and how Parents’ reluctance impacted Student’s progress toward reaching some of the objectives in his IEPs. Regarding Parents’ request that Student be trained in using the Apple watch, Mr. Parry-Cruwys testified that this instruction was not part of Student’s programming (Mr. Parry-Cruwys). Shrewsbury was working with Student on a different AT device programmed by Ms. Gorman.
135. Mr. Parry-Cruwys testified that despite the difficulties and impediments imposed by Parents, Student’s home-based services were delivered with fidelity consistent with the IEPs in place for the period between January 2019 and December 2019. He noted that the service providers had been very accommodating to Parents’ requests that they accompany student to his medical appointments, vacations and the numerous community outings/ activities scheduled by Parents for Student (Parry-Cruwys). Mr. Parry-Cruwys testified that Shrewsbury tried to make-up appointments that were cancelled by the home ABA staff and also made-up some other appointments cancelled by Parent, however, there were numerous home service appointments that were cancelled by Parent because

Student was ill, on vacation with the family, or at doctors' appointments and those were not made-up (Parry-Cruwys).

136. Mr. Parry-Cruwys testified that given the correct combination of school/ home services and parent training, the amount of time spent on ABA services was less important than the overall quality of the program, noting that the 20 hours per week were appropriate but that 15 hours would have been sufficient. He explained that working on more than 12 to 15 skills at a time was difficult because acquisition of each skill required a certain level of repetition so that Student would not lose the skill, especially given his abilities and slow rate of progress. There were many areas that had to be worked on and the activities had to line up with the goals and objectives in Student's IEP. He noted that Parent had a tendency to focus on small details which made it difficult, and he was often under scrutiny by Parents. He also explained that the greater the number of individuals that could implement Student's program with fidelity, the greater the ability to generalize across settings. He stated that one Parent refused to engage in Parent training and the other Parent would rather not be in the house when the IAC services were being provided. Student, however, demonstrated success in acquisition of skills across settings. Mr. Parry-Cruwys opined that Student made effective progress in the areas addressed. He noted that Parent did not consent to Shrewsbury staff communicating with Student's medical staff until the very end.

137. Elizabeth Lison, CEO Treatment Services Innovative Autism Connection (IAC), is a special education teacher and BCBA. She testified that IAC began offering Student services between May/June 2018 through January 2019. Ms. Lison testified that she had observed Student in a variety of settings including home, gym, farms, restaurants, during medical and hospital visits, extracurricular activities and in various stores.

138. Ms. Lison explained that they had too many areas of programming and goals to work on with Student, and therefore, there was a need to prioritize which goals to work on. She explained that all programs had to be repeated three times to ensure fidelity. She testified that,

Sometimes we wouldn't get to quite a few things; for example, bathing. Usually that happened towards – until after the gym. Sometimes we were kind of done by then, so we wouldn't necessarily get to it. That was a major one. Some tabletop, kind of discrete trial program we weren't able to get to, because Student is always in the community. So it was hard to get to it.

139. Ms. Lison noted that when Parent requested to add desensitization to the C-Pap machine to the skills taught in the home, Shrewsbury did not allow it because Student was already working on many other ADL skills that were necessary and to which Student responded well with ABA.

This witness testified that home ABA goals were drafted not by her but by Shrewsbury. She stated that IAC also worked on goals regarding safety around strangers, around animals on the farm (where instruction occurred at Parent's request once per week), in the car and in the community (Lison). She opined that there were many things Student should work on and that 18 goals (requested by Parent) were too many, noting that the standard is one goal per hour and as he masters that goal to move to the next. On any given week Student worked on 10 to 15 goals.

Ms. Lison testified that Student made slow and steady progress toward his goals during the time she/her agency worked with him, noting that Student was very compliant and that he responded well to consistency with procedures. She stated that some of the programs run in the community occurred at Parents' request. In addressing weekly trips to the farm, she explained that all of the programs run during the time involved in going to the farm could have been run in other community settings closer to Student's home, thereby avoiding the lengthy two-hour ride back and forth. She also raised concerns because programs need to be run three times per week for the individual to demonstrate significant progress, but the trip to the farm occurred only once per week. While they tried to work on every program every day, depending on the length of the session, they were not always able to do so (Lison).

140. Ms. Lison testified that during an observation of Student at Pappas during the summer of 2018, Student was very independent on the elliptical exercise machine, noting that he was able to do a much longer routine than he did at the YMCA. She also observed Student at Children's Hospital and during his time with the ABA technician, and noted that the videos provided by Parent were helpful for task analysis purposes (Lison).

141. Addressing changing Student's ostomy bag, Ms. Lison explained that neither she nor her staff were trained on this procedure. She noted that Student's independence in performing this procedure was never one of his goals. Rather, the goal was to work on Student's behavior while an adult performed the procedure and on aspects of the process (like removing his pants) that he could actually do. She explained that there were parts of the process that were appropriate for Student to perform, but not all. She stated,

No, absolutely not. I think there are steps of that, like taking off his pants, for example, like preparing for the routine, like using the restroom before and after. Those would be things that he could do independently but not the routine itself, the actual medical routine, the removing of the bag (Lison).

142. Ms. Lison testified that she had a positive, collaborative working relationship with Shrewsbury and specifically with Mr. Parry-Cruwys, noting that Shrewsbury never placed limitations on the work she and her employees performed. She also had a very collaborative relationship with Parent. Ms. Lison indicated that IAC was very flexible in its schedule with the family so long as they had advanced notice of changes or

cancellations. She noted that by the time she left IAC in January of 2019 there had been only a few hours lost (Lison).

143. In January of 2019, Jennifer Nocella, took over as IAC supervisor and began working with Student (Nocella). She oversaw Student's home ABA technician. In addition to having a masters degree in psychology/ behavioral analysis, she then had fifteen year experience/certification in moderate special education teaching. She did not hold a license as a BCBA in Massachusetts but was eligible to sit for the exam. As her predecessor, Ms. Lison, Ms. Nocella provided services to Student at home and in the community, worked on the same goals and enjoyed a positive relationship with Parents (Nocella). She testified that she offered two to three hours of weekly home services and met with Mr. Parry-Cruwys regarding Student one hour per week (*Id.*).
144. Ms. Nocella offered extensive testimony regarding Parents' request that Student be provided services at the farm. She too opined that the program run at the farm could have been delivered at a location closer to Student's home, and raised concern that the time spent traveling back and forth was not useful to Student once he mastered the programs run in the car (Nocella). She testified that in mid-February 2019 she left early during one of Student's appointments at Children's Hospital because of time constraints and feeling uncomfortable as in her view it was not her role to be at the appointment (see PE-20 for Student medical appointments) (Nocella). Regarding the exercise routine at the YMCA, she noted that at one point Student had mastered his routines and only needed prompting. The IAC program at the YMCA was suspended sometime around April of 2019 when Parent refused to participate in the parent training portion of the program. She explained that any regression in the gym routine as observed by Dr. Davis later in May of 2019 could have been the result of failure to provide prompts (Nocella).
145. Ms. Nocella testified that she attended two Team meetings, one in Shrewsbury and one at St. Coletta, noting that she had failed to sign in. She did not attend the Team meeting in January of 2020 because Student no longer resided in/attended school in Shrewsbury (Nocella).
146. Ms. Nocella testified about the goals that needed to be prioritized, indicating that those were worked on with Student until he mastered them. She noted that Student demonstrated growth during the time she worked with him, becoming more independent, and she testified that based on the data reviewed, he had already made tremendous progress before she started working with him at home and in the community (Nocella).
147. Ms. Nocella described the many difficulties encountered both by her and the behavioral technicians, including an episode when Parent asked her to leave the house. She testified that many sessions were cancelled with less than 24-hour notice, without medical documentation to justify the cancellation. She noted that any issue with delivery of services was not attributable to Shrewsbury's failures but rather IAC issues, explaining that the company made-up services every time it could (for example, by adding hours to a Saturday appointment or during the week) (Nocella). She also noted flexibility in the

location/manner in which they ran the programs to make them meaningful to Student around Parent's preferences, such as teaching him safety while going to a medical appointment (e.g., street crossing, "stop" command, etc.). Ms. Nocella explained that so long as the work was legitimate and there was data to support it, Mr. Parry-Cruwys (who supervised her work) did not restrict the services offered by IAC. She opined that the 20 hours of direct services per week was appropriate for Student, adding that she had never seen any district provide more than 10 hours in her 13 years of experience in the field. (Nocella).

148. Colleen Gorman, Massachusetts DESE certified in early childhood and assistive technology, has worked in Shrewsbury during the past 13 years. She testified that she offered Student 30 minutes up to two hours AT services per his IEP covering the period from March 2019 to January 2020 (her services appeared in the Service Delivery Grid and in the 10 page Additional Information sections of the IEP) (SE-22; Gorman). She testified that while the 30 minutes were offered weekly, she only provided up to two hours when she needed to reset/ redesign the communication system. She conducted the initial training with school personnel (classroom teacher and speech and language pathologist) as training of no other personnel was requested of her. She programmed the communication device to be available in all locations, accompanied Student to his community outings on occasion in 2016-2017 (after that year Student's participation in community outings changed per Parents' request), and made modifications to the device (Gorman).
149. Ms. Gorman testified that her services fell under the Functional Communication goal in SE-32, SE-34 SE-35 and SE-36 covering the 2017-2018 school year, noting that all objectives were communication-based and in some IEPs the AT goals and objectives were consolidated with the Functional Communication goals. She testified that while Student was not expected to use his communication device independently, he knew where the buttons in the device were and could correctly use them with prompting.
150. Ms. Gorman further testified that she did not communicate with Parents except at Team meetings and that Shrewsbury had a rule that a second staff member would need to be present during meetings with Parents. Ms. Gorman also testified that she programmed the Augmentative Assistive Communication device (ACC) for home use and would have been available to train Parent on the use of this device had Parent requested said training (Gorman).
151. Ms. Wallace, Student's ELC teacher, testified that she had a positive relationship with Parents and communicated with them nearly daily via email, sharing what happened during the school day and learning about what was happening in the home (Wallace).
152. Ms. Wallace testified about her efforts to get creative with in school activities for Student, and about finding opportunities for Student to practice vocational skills while respecting Parents' preferences regarding the types of jobs in which they wanted Student to engage (which excluded cafeteria or custodial responsibilities) (Wallace, Belsito). In

keeping with Parents' wishes, Ms. Wallace created a "greeter" position for Student in the nurse's office and collaborated with other school staff to provide other opportunities that were sports related. She noted that in school, Student was willing to use his AAC device although he preferred to use his voice, noting that Parents preferred to have Student use his voice as they wanted to be able to talk at the dinner table.

153. Ms. Wallace offered to be the person to receive the training to assist Student with his ostomy bag during outings so that Student could participate in vocational experiences outside school, but Parents did not give their permission and Student missed out on these opportunities. He however partook in numerous on-site community training opportunities (Wallace). Ms. Wallace testified that Student demonstrated critical thinking skills, mastered new sight words and demonstrated progress in functional academic areas. They also worked on public vs. private personal space. He received Orton-Gillingham training but was not an independent reader. Ms. Wallace described Student's progress relative to the 55 objectives on his IEP and discussed in-school staff collaboration efforts with Ms. Quinn and Mr. Parry-Cruwys. Ms. Wallace further noted that Student developed great relationships in school and was an integral part of the Shrewsbury High School community (Wallace).
154. Deborah S. Quinn was Student's speech and language pathologist in Shrewsbury. Ms. Quinn explained that Student had significant cognitive challenges that impacted language, including motor issues with language production. She testified that she met with Student for the period of time prescribed by his IEP and often for longer periods. Ms. Quinn spent a great deal of time working with students in the ELC and knew the program well. She opined that the ELC was an appropriate program for Student. She also opined that the Evolution Program was an appropriate transition program for Student and would have offered him an opportunity to try different internships so he could get an idea of the type of vocational placement he would enjoy. She also indicated that getting out into the community would have been "ideal" for Student (Quinn).
155. In addition to working with Student in school, Ms. Quinn programmed his iPad which he used for communication in school, and which travelled with him between home and school. She noted that the AAC device was beneficial for Student to communicate in school and testified that Student's ABA technician was trained in its use and that she trained the bus drivers in its use for medical issues, as well as provided them with picture laminates (Quinn). Ms. Quinn testified that she would have liked to shift the focus of Student's pragmatic communication to more functional communication, but Parents wanted the focus to be literacy. She testified that Father had expressed interest in having long conversations with Student, but noted that language is reflective of cognitive abilities and Student was quite limited. Ms. Quinn also noted the missed opportunities/benefits of having Student participate in school outings which Parents restricted (Quinn).
156. Parent testified that Student did not use the iPad for communication in the home, but Ms. Quinn noted that had Parents requested training in the use of the iPad, she would have provided it. According to Ms. Quinn, Parent stated at several Team meetings that

she did not use the iPad at home because Student was verbal in that environment (Parent, Quinn).

157. Noelle Freeman, Director of School Nursing in Shrewsbury, was responsible for Student's individualized health care plan. She attended Student's Team meetings regularly. She testified that Student's medical history was complicated, but she noted that his "medical needs were very manageable" in school. She testified that Student's ostomy bag typically needed to be rinsed and emptied once per day, but at times it would require more, depending on the amount of stool produced and the breakage of the skin around it. For toileting Student accessed the bathroom in the nurse's office which was located directly across from his classroom (Freeman). Ms. Freeman noted that Student was independent using the bathroom and the nurse checked his skin for irritation. At Parent's request the nursing staff informed Parent as to the number of times Student urinated every day. Ms. Freeman noted that there were other protocols in place which were followed without incident to address ear infections, tend to hearing aids, dehydration and vomiting (which occurred once in three years) (Freeman).
158. Ms. Freeman testified that when Student first arrived in Shrewsbury, a nurse was sent with Student on any field trips that were three hours or longer (Freeman). Once Shrewsbury ascertained that a nurse was not needed, the plan changed and Shrewsbury recommended that Student's teacher be trained to provide the service he might need while on field trips, in addition to the one-to-one aide who was always with Student. Prior to leaving the school building, the nurse always assessed Student. Ms. Freeman testified that Parents never agreed with this recommendation during Team meetings and insisted that a nurse accompany Student every time he was away from school; the data did not support Parents' position (Freeman). When Parents and Shrewsbury could not agree, Student was no longer permitted to go with his class on any community-based trips or participate in his preferred unified sport (Freeman).
159. Ms. Freeman testified that Parent never requested that Student participate in any of his medical care, including cleaning while the ostomy bag was changed in school. Parent gave very specific instructions to the nurses at Shrewsbury on how to perform Student's medical care, including how many paper towels to use and noting that Student should place his hands behind his head while the nurses performed the procedure to avoid interference by him (Freeman). Parent insisted on being the one to train the nurses on how to change Student's ostomy bag (Freeman).
160. Margaret Belsito, Shrewsbury Assistant Superintendent, is certified as a special education administrator and a special education teacher in Massachusetts. She has been employed by Shrewsbury for 4 years and prior to that she worked at Milford Public schools for 21 years. She noted that her role differed from Meghan Bartlett's in that Ms. Bartlett oversaw out of district programming for students (Belsito).
161. Ms. Belsito testified that while Parents supported ABA type methodologies, they did not fully agree with any IEP issued by Shrewsbury since 2016, and that parental

responses to IEPs were so long and convoluted that they were difficult for the Team to decipher; some IEPs met with multiple separate rejection letters (PE-36; PE-48; PE-49; Belsito). Ms. Belsito testified that PE-48 and PE-49 reflected Parent's view of the events, not Shrewsbury's. She also testified that in her opinion Student was appropriately served in district and that he did not require residential placement (Belsito).

162. Throughout Student's tenure in Shrewsbury, Parent rejected the lack of more substantial home and community-based programming in the partial acceptance/ rejection letters written in response to the IEPs promulgated by Shrewsbury (January 6, 2017, March 5, 2017, October 2, 2017, November 7, 2017, March 2, 2018, August 14, 2018, February 8, 2019 and June 17, 2019 (PE-8; PE-9; PE-36). Parents also rejected the District's failure to include additional goals and objectives to address self-advocacy skills related to health, sexuality and medical skills in numerous response letters between March 2017 and June of 2019 (PE-9; PE-36).

163. Parent testified that,

There is no one on the planet who is better qualified to advise what is necessary, there is no one more qualified to provide care to [Student], there is no one better qualified to design teaching for [Student], because I have had to do it his whole life across settings. My lack of a degree in medicine or nursing does not disqualify me as an expert in [Student's] medical care; rather, the fact that I am the one constant in his life and have, I would argue—how well he's doing, how well he adapts, how comfortable he is with the hospital, his care in the hospital, but also in our home has been superior. And that's a lot to take on (Parent).

164. Parent agreed during cross examination that her permission for Shrewsbury to speak with outside providers was conditioned on Parent being part of the conversations (Parent).

165. Parent testified that she offered to be available when Student went on school-based community trips. With the one-to-one's assistance, she would figure out where Student would be and would stay in the vicinity in case medical issues rose. Since Parents had gotten an iPad and an Apple watch for Student, she could track where Student was, once following him around a store from a distance and without interfering with the experience (Parent).

166. Parent testified that she wanted Student to be more independent with activities of daily living relative to his medical care.

167. Parent further testified that Shrewsbury had failed to grant her request that Student receive assistance with habituation to his C-Pap machine which Student would have used while he slept at night. She also disagreed with the limitations imposed by Shrewsbury

regarding Student's gym routine and parental training which would have been required once Student learned how to use and clean the machines. Similarly, Parent noted that Student had numerous outpatient appointments and medical procedures and that his lack of communication skills prevented him from expressing discomfort resulting in a "head banging" incident in November of 2017. Parents have learned to observe and listen to Student's "whispers" to help keep him comfortable and safe (Parent).

168. Parent testified that she worked cooperatively with the IAC personnel, including Ms. Lison and the ABA technicians, to meaningfully implement Student's IEP services in the home and the community. She acknowledged that IAC personnel worked on programs including travelling to medical appointments, restaurants, stores, supermarkets, the YMCA and a farm. They ran programs at home and at the aforementioned locations, at Parents' request, because those locations were meaningful to Student and the family and offered Student the ability to acquire useful skills for his post-high school life. IAC personnel was very accommodating and even offered services to Student at his summer home (Parent).

169. Shrewsbury approved the home/ community services at Parents' preferred locations as long as they aligned with the accepted goals and objectives, occurred within the 20 hours of direct services per week and 4 hours consultation services, and allowed data collection to support those goals and objectives (Belsito, Lison, Nocella, Parry-Cruwys). According to Parent, the relationship with Mr. Parry-Cruwys was acrimonious (Parent).

170. Parent testified that Student remained at St. Coletta until the summer of 2020 and that Parents pulled him out after St. Coletta would not allow Student's aide to come to the home. At the time the Hearing concluded Student was being educated in-district, at his new district of residence (Parent).

CONCLUSIONS OF LAW:

Legal Standards:

The Parties in the instant case do not dispute Student's diagnosis or entitlement to special education under the Individuals with Disabilities Education Act¹⁴ (IDEA) and the state special education statute¹⁵. Moreover, while Parents maintained Student's need for residential placement throughout the relevant periods in this Decision, since none was available (despite Shrewsbury's initial exhaustive search) Parents consented to the combination in-district/ home-community program developed by Shrewsbury until the summer of 2019, when, following Parents' disagreement with the program proposed by Shrewsbury (as discussed below), the Parties eventually agreed to Student's day placement at St. Coletta.

¹⁴ 20 USC 1400 *et seq.*

¹⁵ MGL c. 71B.

The instant dispute centers on Parents’ assertion that the programs developed by Shrewsbury denied Student a FAPE, and that some of the agreed upon services were not made-up when they were missed. Parents further allege that Student should have received 58 hours of after-school direct ABA services and 30 hours of consultation by a BCBA, including the overnight hours, during the relevant periods, to bridge the gap for the services he would have received had he been able to attend residential placement. Based on these two claims, Parents seek compensatory services beyond Student’s 22nd birthday in the form of 513 hours of ABA technician services and 102 hours of BCBA “missed” services, and “1,900 hours of ABA Technician and 160 hours of BCBA services to provide for the additional 38 hours a week [given that Shrewsbury offered approximately 24 hours] of home and community ABA, and ABA Technician hours sufficient for a period of time to teach [Student] self-advocacy and self-care [skills]” delivered during the overnight hours.¹⁶

Shrewsbury disputes Parents’ assertions, arguing instead that it offered Student a program that afforded him a FAPE and allowed him to make slow and steady effective progress, in the least restrictive placement, and one in which Student flourished socially. Shrewsbury denies that it owes Student any compensatory services, asserting that any interruption in services was not attributable to the District’s failure, and seeks a determination that the IEP and placements it offered Student were reasonably calculated to offer Student a FAPE.

I begin my analysis by examining the legal parameters that serve as the back-drop for this Decision.

The IDEA and the Massachusetts special education law, as well as the regulations promulgated under those acts, mandate that school districts offer eligible students a FAPE. A FAPE requires that a student’s individualized education program (IEP) be tailored to address the student’s unique needs¹⁷ in a way “reasonably calculated to confer a meaningful

¹⁶ Parents sought a “determination that an appropriate home and community program for [Student] would include ABA services for all waking hours, including in the context of his medically related ADL care – a minimum of 58 hours per week outside of the classroom – specifying either a nurse who is trained as an ABA technical or an ABA technician who is trained and authorized to provide [Student’s] medically related ADL care, 30 hours per month for BCBA consultation, supervision, training and the preparation of materials, services provided in settings and locations that are meaningful for him, monthly clinic meetings, parental input into all decisions relative to the services, direct services and consultation and training from an AT specialist, and such other additions and modifications as recommended by Dr. Hebert, Ms. Timmel and Dr. Davis.” Parents’ Closing Argument pages 14-15.

¹⁷ E.g., 20 USC 1400(d)(1)(A) (purpose of the federal law is to ensure that children with disabilities have FAPE that “emphasizes special education and related services designed to meet their unique needs”); 20 USC 1401(29) (“special education” defined to mean “specially designed instruction . . . to meet the unique needs of a child with a disability”); *Honig v. DOE*, 484 U.S. 305, 311 (1988) (FAPE must be tailored “to each child's unique needs”).

¹⁸ See *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) where the court explicitly adopted the meaningful benefit standard.

educational benefit”¹⁸ to the student.¹⁹

Additionally, the program and services offered to the student must be delivered in the least restrictive environment appropriate to meet the student’s needs.²⁰

The above standard, which has been adopted by courts and hearing officers in Massachusetts, is aligned with the Supreme Court’s decision in *Andrew F. v. Douglas County Sch. Distr.*, 137 S. Ct. 988 (March 22, 2017) requiring that a student’s program and placement be “reasonably calculated to enable [the student] to make progress appropriate in light of the child’s circumstances.” *Andrew F. v. Douglas County Sch. Distr.*, 137 S. Ct. 988 (March 22, 2017); *D.B. ex rel. Elizabeth B.*, 675 F.3d at 34. In *Andrew F.*, the Court rejected the “merely more than *de minimus*” standard adopted by the Tenth Circuit, a standard that afforded students significantly less than the standard adopted in Massachusetts.

Pursuant to the standard embodied in *Andrew F.* and consistent with the standard *supra* used in Massachusetts, public schools must offer eligible students a special education program and services specifically designed for each student so as to develop that particular individual’s educational potential.²¹ Educational progress is then measured in relation to the potential of

¹⁹ *Sebastian M. v. King Philip Regional School Dist.*, 685 F.3d 79, 84 (1st Cir. 2012) (“the IEP must be custom-tailored to suit a particular child”); *Mr. I. ex rel L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1, 4-5, 20 (1st Dir. 2007) (stating that FAPE must include “specially designed instruction ... [t]o address the unique needs of he child that result from the child’s disability”) (quoting 34 C.F.R. 300.39(b)(3)). See also *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir. 1993) (program must be “reasonably calculated to provide ‘effective results’ and ‘demonstrable improvement’ in the various ‘educational and personal skills identified as special needs’”); *Roland v. Concord School Committee*, 910 F.2d 983 (1st Cir. 1990) (“Congress indubitably desired ‘effective results’ and ‘demonstrable improvement’ for the Act’s beneficiaries”); *Burlington v. Department of Education*, 736 F.2d 773, 788 (1st Cir. 1984) (“objective of the federal floor, then, is the achievement of effective results--demonstrable improvement in the educational and personal skills identified as special needs--as a consequence of implementing the proposed IEP”); 603 CMR 28.05(4)(b) (Student’s IEP must be “designed to enable the student to progress effectively in the content areas of the general curriculum”); 603 CMR 28.02(18) (“*Progress effectively in the general education program* shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the child, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district.”).

²⁰ 20 USC 1412 (a)(5)(A).

²¹ MGL c. 69, s. 1 (“paramount goal of the commonwealth to provide a public education system of sufficient quality to extend to all children the opportunity to reach their full potential... ”); MGL c. 71B, s. 1 (“special education” defined to mean “...educational programs and assignments . . . designed to develop the educational potential of children with disabilities . . . ”); 603 CMR 28.01(3) (identifying the purpose of the state special education regulations as “to ensure that eligible Massachusetts students receive special education services designed to develop the student’s individual educational potential...”). See also Mass. Department of Education’s Administrative Advisory SPED 2002-1: [Guidance on the change in special education standard of service] from “maximum possible development” to “free appropriate public education” (“FAPE”), effective January 1, 2002, 7 MSER Quarterly Reports 1 (2001) (appearing at www.doe.mass.edu/sped) (Massachusetts Education Reform Act “underscores the Commonwealth’s commitment to assist all students to reach their full educational potential”).

the particular student.²² At the same time, the IDEA does not require the school district to provide what is best for the student.²³

Regarding compensatory education, while it is not a remedy expressly identified in the IDEA, courts and hearing officers have exercised their authority to "grant such relief as the court determines appropriate." 20 USC 1415 (i)(2)(C)(iii); 34 CFR 300.516 (c)(3). An award of compensatory services is an equitable remedy used by hearing officers to make up for the responsible LEA's failure to provide the student with a FAPE. *See Burlington School Committee v. Mass. Dept. of Ed.*, 471 U.S. 359, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1984) (holding that a student who fails to receive appropriate services during any time in which he is entitled to them may be awarded compensation in the form of additional services at a later time); *see also Pihl v. Mass. Dept. of Ed.*, 9 F.3d 184 (1st Cir. 1993) (finding that "compensatory education is available to remedy past deprivations ... to compensate for what was lost"). Courts have therefore utilized compensatory services to make a student whole by making up for what was lost as a result of not having received the requisite services or placement. *See Pihl v. Mass. Dept. of Education*, 9 F.3d 184 (1st Cir. 1993); *see, e.g., G. by R.G. and A.G. v. Fort Bragg Dependent Schs.*, 343 F.3d 295 (4th Cir. 2003) (finding that "compensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit"); *Lester H. v. Gilhool*, 916 F.2d 865 (3rd Cir. 1990), cert. denied 499 U.S. 923, 111 S.Ct. 317 (1991) (concluding that compensatory education is intended to be "an appropriate remedy to cure the deprivation of a child's right to a free appropriate public education"); *Miener v. State of Missouri*, 800 F.2d 749 (8th Cir. 1986) (stating that compensatory education is intended to cure the deprivation of a handicapped child's statutory rights). In other words, in cases where compensatory claims are asserted, the hearing officer must decide "what services [the student] needs to elevate him to the position he would have occupied absent the school district's failures." *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005); *see also In Re: Sudbury*, BSEA # 05-4726 & # 05-4827, 11 MSER 260 (SEA MA 2005) (finding that the hearing officer must determine what, if anything, the student lost as a result of the school district's actions, and then what is needed to make him whole).

Because compensatory education is an equitable remedy, principles of equity and fairness impact both whether compensatory education is awarded and, if awarded, the amount of the award. As such, compensatory relief will not generally be awarded for merely technical, *de minimis* violations that do not result in a denial of FAPE or preclude parents from meaningful participation in the Team process. *See Murphy v. Timberlane Regional School Dist.*, 22 F.3d 1186 (1st Cir. 1994); *but see In Re: Taunton Public Schools and Adam*,

²² *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 199, 202 (court declined to set out a bright-line rule for what satisfies a FAPE, noting that children have different abilities and are therefore capable of different achievements; court adopted an approach that takes into account the potential of the disabled student). *See also Lessard v. Wilton Lyndeborough Cooperative School Dist.*, 518 F.3d 18, 29 (1st Cir. 2008), and *D.B. v. Esposito*, 675 F.3d at 36 ("In most cases, an assessment of a child's potential will be a useful tool for evaluating the adequacy of his or her IEP.").

²³ *E.g. Lt. T.B. ex rel. N.B. v. Warwick Sch. Com.*, 361 F.3d 80, 83 (1st Cir. 2004) ("IDEA does not require a public school to provide what is best for a special needs child, only that it provide an IEP that is 'reasonably calculated' to provide an 'appropriate' education as defined in federal and state law.")

BSEA #1708888, 23 MSER 67 (2017) (finding that the student was entitled to compensatory services to ameliorate the effects of the district's egregious procedural error). Furthermore, the conduct of the parents may be a relevant factor in determining whether an award of compensatory services is warranted. *See C.G. v. Five Town Community School Dist.*, 513 F.3d 279 (1st Cir. 2008); *see also In Re: Boston Public Schools and Ulani*, BSEA #170647223, MSER 103 (2017) (finding that no compensatory services were appropriate where the parent withdrew her daughter from school after disagreeing with district over her placement, since any educational harm the student experienced was not the result of the district's failure to offer a FAPE but rather the result of parent's action).

Lastly, I note that Parents carry the burden of persuasion at this Hearing and as such, must prove their case by a preponderance of the evidence, consistent with *Schaffer v. Weast*, 126 S.Ct. 528 (2005).

With this guidance I turn to the record in the instant case and note that in rendering my Decision, I rely on the facts recited in the Facts section of this Decision and incorporate them by reference to avoid restating them except where necessary.

Upon consideration of the evidence, the applicable legal standards and the arguments offered by the Parties, I find that Parents have not met their evidentiary burden of persuasion and thus, Student is not entitled to compensatory education. I further find the Shrewsbury's IEPs, the in-district program and home-based services were reasonably calculated to offer Student a FAPE and indeed did so. My reasoning follows.

Discussion:

In the instant case, Parents appear to advance three arguments regarding compensatory services: a) that when residential placement became unavailable to Student, Shrewsbury failed to recreate residential-type services in the home/school and therefore it did not offer appropriate IEPs; b) that the District failed to deliver necessary and/or agreed-upon services; and c) that procedural violations regarding convening of the Team to discuss a report and failing to include Student in varsity level sports denied student a FAPE and constituted discrimination. Because of the foregoing, they assert that Student is owed compensatory education. The evidence however, dictates otherwise.

As discussed in the Legal Standards section, *supra*, compensatory education may be available to a student when a school district has failed to offer the student mandated services pursuant to his/her IEP. It is a form of equitable relief that aims to make the student whole for a district's failure to deliver agreed-upon and/or necessary services. A student entitled to this form of relief must receive sufficient services to help that student overcome lost educational opportunities. However, a district is not obligated to provide a session-for-session replacement for lost time. *Desert Sands Unified Sch. Dist.*, 35 IDELR 114 (SEA CA 2001). When contemplating the award of compensatory education, one must also look at parents' actions, to ascertain if the district's failure to deliver services was due in whole or

part to parental action and/or the unavailability of the student, rather than/or in conjunction with a district's failure.

In the instant case the evidence is convincing that throughout Student's education, Parents' over involvement and micromanagement of every aspect of Student's educational life has resulted in numerous challenges to provision of educational programming through no fault of Shrewsbury's. Parents' unconditional love, support and commitment to their son is undisputed. However, while well intended, their misguided belief that "Parent" knew better than any medical, educational or other service provider, impeded Shrewsbury from facilitating services available to Student and further interfered with their cooperation in the parent training component of Student's program. As discussed below, the evidence supports a finding that Parents, who are highly educated, knowledgeable, savvy individuals, crossed the fine line between zealous advocacy and impeding provision of services to Student, to his detriment.

The record shows that in mid-2016, through no fault of his own, Student's enrollment in his then residential placement came to an end. Shrewsbury engaged in an extensive search for residential placements across most of the northeastern states (Bartlett), but when the District's efforts to secure another residential placement yielded no result, it did what it was mandated to do: create a program. Thus, during the 2016-2017 school year Shrewsbury created a combination in-district and home/ community-based program consistent with the numerous evaluations conducted that year and pursuant to what would be an endless string of partially accepted IEPs (which followed Student until his departure from Shrewsbury the end of 2019) (PE-8; PE-9; PE-59; PE-60; PE-61; PE-62; PE-63; PE-64; SE-22; SE-32).

That program, which Student attended for three and a half years, entailed participation in the Educational Learning Center (ELC) at Shrewsbury High School, which was agreed to by Parents, although they continued to assert Student's right to a residential placement throughout Student's time at Shrewsbury's ELC program.

Ms. Bartlett testified that sometime after Student returned to Shrewsbury, the District arranged for home assessments to ascertain what services would be necessary to be provided in the home in conjunction with the ELC program (Bartlett). Starting in January of 2017, and until December 2019, Shrewsbury contracted with several agencies to offer the home-based services. The first contracted provider raised ethical concerns regarding Student's medical procedures and was asked by Parent to leave the house. Thereafter Shrewsbury contracted with Shapiro Educational and Behavioral Consultation (Shapiro) to provide the home-based services. Shapiro terminated services out of concerns involving the medical interventions in which Parent wanted them to participate, and Parent's behavior toward Shapiro staff (Parry-Cruwys). On or about April/May of 2018 Shrewsbury contracted with IAC and this agency offered Student services through on or about December 2019, after which Parents moved to a different Massachusetts district.

The first issue in this Decision involves provision of home/ community-based services provided by IAC between January and December 2019.

I. Whether Shrewsbury failed to deliver home-based special education and/ or related services to Student between January 2019 and December 2019 in accordance with accepted portions of his then current Individualized Education Program and if so, what is the nature and extent of Shrewsbury’s responsibility for provision of compensatory educational services.

The evidence shows that for the period from January to December 2019, Parents consented to Student’s placement at the ELC program and subsequently to placement at St. Coletta. The accepted portions of Student’s applicable IEPs, combined with the relevant stay-put provisions (SE-27), called for 20 hours per week of home/ community services and four hours per week of home consultation services.

Billing documentation indisputable demonstrates the number of hours of service offered by IAC and the number of hours for which Shrewsbury was billed during the period from December 30, 2018 to November 23, 2019 (SE-1, SE-2 and SE-3). Exhibit SE-1 reveals 214.58 (direct ABA) and 15.25 (BCBA) total hours not provided, explaining that 140.75 hours and -8.02 hours were attributable to Parent cancelled sessions for which no doctor appointment excuse/ documentation was provided, as well as sessions in September 2019 “considered paused by Parent and not owed due to staffing switch request”, or associated with vacation reported by IAC staff (SE-1; SE-2; SE-3). According to IAC and Shrewsbury, staff vacation related missed appointments were made-up at times when the family was available, including weekends (Lison, Nocella, Parry-Cruwys). Based on these documents, it appears that 73.83 direct ABA hours and 7.23 BCBA consultation remain unaccounted. I also note that Parents objected to the last fifteen minutes of direct home-based ABA sessions during the spring of 2019 being used for data collection/note taking.

An award of compensatory education calls for examination of the quality of the services provided, their relevance to the student, whether the services allowed the student to make effective progress commensurate with his abilities, or whether the district’s failure to offer services (assuming they are owed) resulted in a loss of educational opportunity denying student a FAPE, for which Student needs to be made whole. Compensatory services are not calculated on a strict, hour per hour *quid pro quo* basis.

Consideration therefore must be given to the testimony of credible witnesses in this regard, and Ms. Lison, Ms. Nocella, Ms. Belsito and Mr. Parry-Cruwys are found to have offered such credible, logical and reliable testimony.²⁴ Ms. Lison, owner of IAC/ supervisor responsible for Student for part of the time under review, observed Student in numerous settings in and outside the home (Lison). She testified that the twenty hours per week of home services were provided regularly, and that the only interruption in services occurred when Parent requested that the technician then working with Student be removed. At that point Ms. Lison offered Parent the option of having the technician continue to deliver the

²⁴ Ms. Nocella, Ms. Lison and the technicians’ flexibility and commitment to Student is noteworthy, as was Mr. Parry-Cruwys’ involvement with Parents, particularly in light of Parents’ continuous criticism, demands and lack of cooperation with parental training.

services until a different technician could be secured, but Parent chose not to do so, opting instead to wait until a new technician was identified (Lison).

Ms. Nocella also described the many difficulties encountered both by her and the behavioral technicians, including an episode when Parent asked her to leave the house. She testified that many sessions were cancelled with less than 24-hour notice, and without medical documentation to justify the cancellation against agency policy (Nocella). Ms. Nocella, Ms. Lison and Mr. Parry-Cruwys all testified about their efforts to make up sessions for which they were responsible, including offering them during weekends and at Parents' summer home in Cape Cod.

Despite the difficulties and impediments imposed by Parents, Mr. Parry-Cruwys, Ms. Nocella and Ms. Lison credibly testified that, Student's home-based services were delivered with fidelity, consistent with the IEPs in place for the period between January 2019 and the end of December of 2019, after which Parents moved to a different district. As such, Mr. Parry-Cruwys opined that Student was not owed compensatory services for unrendered services during the period in question.

Ms. Lison testified that safety and communication were main areas of concern for Student and noted that programs were run to address both areas. She testified that she had a positive and collaborative working relationship with Shrewsbury and specifically with Mr. Parry-Cruwys, noting that Shrewsbury never placed limitations on the work she and her employees performed. Ms. Nocella offered similar testimony in this regard.

Ms. Lison explained that given the many areas of programming to work on with Student, there was a need to prioritize, as all programs had to be repeated three times to ensure fidelity. Ms. Lison opined that too many goals were being worked on at once. Ms. Nocella also commented on the many goals to be worked on with Student similarly opining that it was not possible and counterproductive to aim to reach so many goals all at once.

Ms. Lison and Ms. Nocella testified that by responding to Parents' preferences, some of the programs that were implemented in the community at Parents' preferred location could have been implemented with more regularity closer to the home. Both Ms. Lison and Ms. Nocella, specifically commented on the two hours weekly spent travelling back and forth to the farm²⁵, noting concern that said time could have been spent differently and stating that this trip prevented the program from being implemented in the preferred manner (run, three times per week) (Lison; Nocella). Ms. Nocella raised concerns that once Student had mastered the program run in the car, the lengthy car ride was not useful to him, but Parent insisted on the program being delivered in this manner/ location because going to the farm was meaningful to Student (Nocella).

²⁵ The term "farm" is used loosely in reference to a location involving animals in deference to Parents' request that 20 terms/individuals not be specifically mentioned in this Decision and that pseudonyms be used instead.

Ms. Lison also testified about Parents' requests for ABA providers to be involved with medical procedures. Regarding the changing of Student's ostomy bag, Ms. Lison explained that she and her staff were not trained in these procedures, further noting that Student's independence in performing this procedure was never one of his goals. Rather, the goal was to work on Student's behavior while an adult performed the procedure (Lison). Ms. Lison noted that there were parts of the procedure such as preparing for the routine, using the bathroom before and after, and taking off his pants which could be worked on using ABA, but not performing the actual routine of changing the ostomy bag (Lison). In school, Parent specifically requested that Student be asked to place his hands behind his head so that he would not interfere with the changing of the bag by the nurse, whom Parent instructed to perform the procedure in a very specific manner (Freeman).

Ms. Lison testified to IAC's flexibility regarding scheduling, acquiescing whenever possible to Parents' requests, including providing summer services to Student at his summer home. IAC also made up sessions when feasible if Parent provided adequate notice of cancellations, and even did so when Parent did not provide adequate notice. She noted that by the time she left in January of 2019 there had been very few hours lost (Lison).

Parents presented no evidence to support their claim that Student had suffered any harm as a result of the technician's using the last fifteen minutes of the direct home-based ABA session for data collection/note taking.

The evidence is convincing that Student's home-based services were delivered with fidelity and in accordance with the accepted portions of Student's IEPs. Moreover, the programs were delivered at the locations and times requested by Parents. Any interruption in service was in fact the result of Parents' last-minute cancellations, requests that certain staff not service Student, disagreement with staff over Parent training, or Student's unavailability, rather than attributable to the District's actions.

It is important to note that while the record supports a finding that consistency in delivery of services is key, an increase in the number of hours, as Parents suggest, may not have necessarily offered Student greater educational advantages; rather, according to the IAC providers it may have been counterproductive. Moreover, Ms. Lison, Ms. Nocella, Dr. Herbert and Dr. Davis all described Student's progress in a similar way: they all agreed that he made slow and steady progress during this period of time. Neither Dr. Davis nor Dr. Hebert testified that interruptions in services, if any, resulted in a denial of FAPE. Parents' charts and opinions in this regard were not reliable. They were convoluted, misleading and unhelpful.

Parents failed to meet their burden of proof that interruptions in services between January and December of 2019 were caused by Shrewsbury and more importantly, that any interruption in services resulted in a significant loss of educational opportunity for Student, thereby depriving him of a FAPE. Student is not entitled to provision of compensatory home/ community-based services resulting from missed hours of services.

II. Whether the accepted portions of the IEPs in effect between August 2017 and December 2019, other than home-based services as discussed in Section I above, were implemented.

For the period between August 2017 and December 2019, Student's in-district services were provided through the ELC Program, in which he was assigned a one-to-one aide throughout the day (pursuant to the partially accepted/ rejected IEPs) (Bartlett).

The ELC program at Shrewsbury High School is a substantially separate special education classroom for students with significant disabilities (Wallace, Bartlett). The program served six to nine students, many accompanied by one-to-one aides, and focused on functional academics, functional communication, pre-vocational skills and community-based instruction (Wallace).

Ms. Wallace, Student's special education teacher during his last two years at the ELC program, testified that despite the numerous goals and benchmarks in Student's IEP, he made effective progress in all areas during his time with her, and described the types of functional academics in which he participated.

Ms. Wallace testified that she had a positive relationship with Parents and communicated with them via email almost daily. She noted her efforts in creating in-school vocational opportunities for Student, which respected Parents' preferences regarding the types of jobs Student should do, and their request that he not participate in janitorial or cafeteria jobs. A "greeter" position in the nurse's office was thus created for him. (Wallace, Belsito). Additional opportunities were also created with sports teams. This witness also noted that there had been numerous missed opportunities for Student to participate in community outings with his class due to Parents' withdrawal of consent for this type of opportunity once Shrewsbury informed Parents that there was no need for a nurse to accompany him on the outings. Ms. Wallace and Ms. Freeman persuasively testified that Ms. Wallace could have been trained by the school nurse to address ostomy bag needs, but Parent, who insisted on providing training herself, never consented to this and instead withdrew her consent for Student to attend outings without a nurse.

Nevertheless, Shrewsbury staff never gave up on being flexible and creative in devising educational opportunities for Student that allowed him to make progress commensurate with his abilities. Progress reports for the years in question show which goals and objectives were implemented as well as Student's performance as he worked on them (SE-19). In the end, Student received and effectively participated in the educational opportunities offered in-district, making slow and steady progress (Wallace).

Ms. Wallace testified that despite participating in the graduation ceremony and attending senior prom in 2018, Student remained at the ELC Program one additional year when Parents rejected his move to the Evolution Program, a program Ms. Wallace knew well and which she found would have been appropriate for Student.

Ms. Quinn, Student's speech and language therapist, testified that in addition to working with Student for periods longer than those allotted in his IEP, she spent a great deal of time working with students in the ELC Program and therefore knew the program well. She opined that ELC was an appropriate program for Student, noting that the Evolution Program would have also been an appropriate transition program for him; one where he would have been able to try different internships to ascertain the type of vocational placement he would enjoy. Ms. Quinn opined that getting out into the community would have been "ideal" for Student (Quinn).

Ms. Quinn was responsible for programming Student's iPad, which he used for communication in school, and which travelled with him between home and school. She noted the benefits of the AAC device in helping Student communicate in school. Ms. Quinn testified that she would have provided Parents training in the use of the iPad had they requested assistance, but Parents did not use it in the home (Quinn, Parent). When Parents later requested that Student be trained to use his Apple watch, the request was denied given that Shrewsbury was already working on an AAC device for communication. Shrewsbury is correct that it was under no obligation to satisfy Parent's request that he also be trained to use his Apple watch, which Student was inappropriately attempting to use in school to make phone calls.

Dr. Gately's 2017 literacy assessment report reviewed by the Team in September 2017 notes Student's ability to use his augmentative communication device navigate through screens noting the need for continued work toward more functional and dynamic uses (PE-39). She noted how well Student had acclimated to Shrewsbury and found his new independence relevant to providing him more self-determination while staying attentive to his safety. Regarding the staff, Dr. Gately stated that,

... the team of staff working with [Student was] very knowledgeable, passionate, caring and creative. Many resources are available to enable [Student] a safe and productive school day.

Dr. Gately encourage the staff to examine the programs and activities recommended and to make the best choices based on the staff's knowledge and expertise (PE-39). The evidence shows that Shrewsbury's staff did just that.

Ms. Freeman and Ms. Belsito testified that Parents did not allow for an open, free, flow of information between Shrewsbury's pertinent personnel and Student's outside medical providers. Parent restricted the communications and insisted on being present during the communications, compounding the struggle. Given Parent's persistent requests that Student's medical needs was something with which Shrewsbury and the home/ community service providers should be more involved, Parent should not have insisted on her participation as a requirement for the communication. In the end, permission came too late.

The record shows that Parents' partial rejections/ acceptances of the proposed IEPs for the period from 2017 through 2019, which involved multi-page, lengthy, detailed rejections created confusion and made it difficult for Shrewsbury to ascertain which portions of the IEPs were to be implemented and which were not. To make matters worse, Team meetings were described as lengthy and contentious, with Parents having counsel present at many. Nonetheless, the evidence supports a finding that that Student received the accepted services in those IEPs despite these impediments.

In IDEA related disputes the deciding forum needs to look not only at the actions of the school district, but also the parents' actions and level of cooperation in the IEP development process. In *Winkelman v. Parma City Sch. Dist. Bd. of Educ.*, [109 LRP 75813](#) (N.D. Ohio 11/30/09) the Court found "it important to emphasize the great pains [the district] went through to comply with the complex laws that govern [IDEA] issues, expending a great deal of time and effort while experiencing continued difficulties with the cooperation of the parents". In considering a case where a parent's partial rejections and partial acceptances of numerous IEPs promulgated over a five year period, combined with the assertions of placement pending appeal status to discrete elements of different past IEPs, was "incredibly confusing and [Student] resulted in uncertainty among the staff as to what it is that they are supposed to be implementing," a BSEA Hearing Officer agreed with the school district "that the maze of five years of Partially Accepted/ Partially Rejected IEPs, compounded by various assertions regarding placement pending appeal rights to discrete elements of prior IEPs [was] a confusing morass." *In Re: Foxborough Public Schools and Rick*, BSEA# 11-6535, 17 MSER 306 (2011). In *In Re: Foxborough*, the Hearing Officer concluded that

[s]uch a situation is unworkable. Further, such minutiae is not required given Rick's progress and current functioning level. An IEP is designed to be a functional blueprint for addressing a student's special education needs, not an encyclopedia. [Emphasis supplied] *In Re: Foxborough Public Schools and Rick*, BSEA# 11-6535, 17 MSER 306 (2011).

The Foxborough matter sparks striking similarities with the case at bar, in which Parents' lengthy partial acceptances/ partial rejections, combined with assertions of stay-put, unnecessarily complicated matters.

In the instant case, every Team meeting and IEP proposal resulted in multi-page partial rejection/ acceptance letters that became an unending and overwhelming, litany of requests for changes, while asserting stay-put with respect to the unaccepted portions of the IEP (PE-36). As in *In Re: Foxborough Public Schools In Re: Foxborough Public Schools*, the result was that the IEPs, along with the partial rejection/acceptance letters, became an unworkable encyclopedia instead of a functional guide. Shrewsbury's persistent efforts to work through the maze of services created by Parents demonstrates its commitment to Student's education. Parents did not present sufficient evidence to demonstrate that the accepted portions of the IEP were not implemented. The evidence supports Shrewsbury's assertion that the services were fully delivered, and that Student made progress commensurate with his abilities.

The evidence is persuasive that Shrewsbury implemented the accepted portions of Student's IEPs in effect between August 2017 and December 2019, except as delineated in Issue I above with respect to home/ community-based services.

Parents did not meet their burden of persuasion that Shrewsbury failed to implement the accepted portions of Student's IEPs relative to school-based programming for the period from August 2017 through December 2019. Thus, Student is not entitled to compensatory services in this regard.

III. Whether the IEP proposed by Shrewsbury in January 2019, covering the period through January 2020, was reasonably calculated to provide Student a free and appropriate public education (FAPE) in the least restrictive environment.

Parents contend that the IEP promulgated in January 2019 (PE-8; SE-26; SE-27) failed to offer Student a FAPE. Parents opined that this IEP, as previous ones, was lacking in meaningful services to address Student's functional education, vocational, medical, home and community needs (including safety), and that the number of hours offered for home and community services fell short of what Student should have received. They expressed concern that Student's IEP required more intensive speech and language services, augmentative communication services and OT, and that it should have included goals regarding the use of AC devices and training on those devices for all those working with Student.

The evidence is undisputed that Student is an endearing individual who became an integral part of the Shrewsbury's High School community, but whose cognitive abilities, falling below the first percentile, will prevent him from reaching the level of independence Parents desire (PE-4). Moreover, while Parents demanded programming designed to maximize Student's potential, legally, Shrewsbury was only required to offer him a FAPE consistent with Federal and state law, as interpreted by the Supreme Court in *Endrew F., Endrew F. v. Douglas County Sch. Distr.*, 137 S. Ct. 988 (March 22, 2017).

The January 2019 IEP offered Student programming through the ELC in conjunction with 20 hours per week of home services and four hours per week of consultation services in the home. Home/community services were delivered at locations preferred by Parents (e.g., farm, gym, restaurants, summer home), utilized ABA/discrete trial methodology and addressed many of the goal areas identified by Parents (life skills, vocational skills, communication skills, adaptive functioning, skills activities of daily living, as well as the need to help Student generalize these skills across settings). The Shrewsbury staff, Ms. Lison and Ms. Noella testified that both the school and the home components of the January 2019 IEP were appropriate for Student. Mr. Parry-Cruwys opined that the number of home/community services hours offered Student a FAPE. IAC providers noted that the number of home/ community service hours was greater for Student than what was typically offered.

IAC ran meaningful programs for Student at home and locations in the community, with Shrewsbury's approval (albeit disagreements by some staff). In order to accommodate Parents, most of the aforementioned locations and types of services were selected by Parents because they were meaningful to Student and the family, and because they offered Student the ability to acquire useful skills for his post-high school life. Ultimately, Shrewsbury's position was to allow the home/ community services at Parents' preferred locations as long as they aligned with the goals and objectives Parents had accepted, occurred within the 20 hours of direct services and allowed for data collection to support the goals and objectives (Belsito, Lison, Nocella).

Dr. Hebert evaluated Student in November of 2018 and later observed him at the ELC program in December of 2018. She also observed the Evolution Program in March of 2019. She did not conduct a home assessment or observe Student in the home or community settings thereby declining to comment on those (PE-4; Hebert).

Dr. Hebert testified that an appropriate IEP for Student should include speech and language services, fine motor skills development, functional academics, activities of daily living and vocational skills. She also noted the importance of working on his interpersonal skills and agreed with Parent that he should receive instruction in understanding stranger danger and appropriate social boundaries, all of which should occur in context to foster generalization. The January 2019 IEP took into consideration these challenges and needs, and also Student's strengths and successes.

The evidence shows that Student made slow but steady academic and social progress, commensurate with his abilities, during the three and a half years he was educated at the ELC program in Shrewsbury. He was an integral part of the Shrewsbury community, attending and/ or participating in several high school activities including senior proms, assisted on sports teams and participating in commencement activities. He had relationships with typically developing peers.

A pivotal piece of the Parents' dispute with Shrewsbury has focused on Student's multiple medical needs. Parents assert that Shrewsbury's program did not manage these needs appropriately in school or at home, where, they argue, services should have extended to the over-night hours. When questioned about services during the overnight hours, Dr. Davis agreed that the areas of deficit identified by Parent, largely related to Student's medical needs, could be worked on during the day (Davis). She further agreed that parental participation/ training in the home was necessary for purposes of consistency and generalization. Dr. Davis further explained that objectives in Student's IEP had to be worked on with fidelity until the desired skill was mastered.

Shrewsbury persuasively argued that services during the overnight hours were not necessary to achieve the goals and objectives in Student's IEP. Ms. Lison and Ms. Nocella testified that they could work on Student's behavior while the ostomy bag was changed during day-time hours, and they were willing to train Parent on the same procedure so that she could

replicate it during the night hours for consistency (an essential component of ABA), but Parent declined.²⁶

Nothing in the IDEA required Shrewsbury to recreate the residential placement in the home; rather, Shrewsbury was required to create an appropriate program that approximated the program/services delivered in Student's previous placement, and it did just that. It would appear that Parents however, sought re-creation of the residential services throughout Student's 24 hour day, including demands for services during the overnight hours to work on Student's behavior when his ostomy bag leaked and later on tolerance to the C-Pack

Dr. Davis indicated, based on her May 2019 observation of Student in the home and community settings, that he had demonstrated progress, albeit slow.

Ms. Freeman, responsible for the oversight of Student's nursing needs, attended Student's Team meetings regularly. She testified that while Student's medical history was complicated his "medical needs were very manageable" in school. Student's ileostomy bag typically needed to be rinsed and emptied once per day, more times on occasion. She testified that Student accessed the bathroom in the nurse's office located directly across his classroom noting that he was independent in its use and that the nurse checked his skin for irritation. Ms. Freeman testified to additional protocols that were in place which were followed without incident (Freeman).

Ms. Freeman further testified that a nurse was assigned to accompany Student on field-trips longer than three hours when he first arrived in Shrewsbury, but once Shrewsbury ascertained that this was not needed, the plan changed to have his teacher and one-to-one aide be trained to provide the service Student might need while on field trips. Additionally, the nurse always assessed Student prior to his leaving the school. Despite the available data showing otherwise, Parents never agreed with this recommendation and insisted that a nurse accompany Student every time he was away from school (Freeman). Parents and Shrewsbury's disagreement resulted in Parents' withdrawing consent for Student to go with his class on any community-based trips or participate in his preferred unified sport (Freeman).

Student's needs are many and are complex and, as Shrewsbury witnesses persuasively argued, it was therefore necessary to prioritize what skills to work on at any given time. Legally, Shrewsbury was not obligated to work on every single aspect of Student's life to maximize his development, it was, rather, only required to offer Student FAPE, and that it did.

²⁶ Perhaps IAC could have worked on tolerance to the C-Pack during day-time hours as it was willing to do with the ostomy bag, and/ or may have offered Parent training, but this never came to fruition and it is doubtful that it could have happened during the time in question given the numerous other goals and objectives being worked on by IAC.

The evidence demonstrates that the 39-page January 2019 to January 2020 IEP proposed by Shrewsbury was reasonably calculated to provide Student a FAPE. The academic, social, vocational, home and community services offered were reasonably designed to enable him to make meaningful, effective progress in the least restrictive environment, an environment where social development opportunities, a priority for Parents, were numerous. Parents have not met their burden of persuasion in showing that the January 2019 to January 2020 IEP was inappropriate or that it denied Student a FAPE. |

IV. Whether the IEP proposed by Shrewsbury in March²⁷ 2019 covering the period though January 2020 was reasonably calculated to provide Student a FAPE.

In the winter and spring of Student's "second" senior year his Team met to discuss transition programming in an 18 to 22-year program. After Student's Team convened on March 20, 2019, Shrewsbury issued an IEP on May 1, 2019 offering Student participation in the Evolution Program for the following school year. (Later, in August of 2019, Shrewsbury offered Student an extended evaluation at St. Coletta, which eventually evolved into Student's placement.)

The May 1, 2019 IEP revised the January 2019 IEP by adding reading services. It did not adopt the findings made by Dr. Hebert and Ms. Timmel recommending a program other than the Evolution Program, which, in their opinion, lacked the level of direct and related educational services Student needed and because they found the peer group to be inappropriate.

On June 17, 2019, Parents partially accepted and partially rejected the proposed IEP, consistent with their previous partial rejection of February 2019. Parents noted their concern regarding the ELC's extended school year program, convening only four days per week and stated their preference that Student attend a private special education school starting in the summer, or that Student attend Pappas for the summer (PE-9).

Parents asked Dr. Davis to observe the Evolution program and advise them. Dr. Davis concluded that the program was not appropriate for Student. At Hearing this witness did not know much about the proposed peer group, their disabilities, the staffing or teacher/student ratio, or the curriculum followed. Moreover, some of the students in the Evolution Program were on an outing in the community on the date of the observation (Bartlett).

In contrast, Ms. Wallace, who taught other students who later transitioned into the Evolution Program offered clearer, more detailed information about the program. Ms. Wallace testified that over the years many of the students she serviced in the ELC Program had transitioned

²⁷ This issue was lifted *verbatim* from the Order issued by the previous Hearing Officer. I note that while the Team convened in March of 2019, the IEP that resulted from that meeting was proposed in May of 2019.

into the Evolution Program and therefore she knew the program well. Having been Student's teacher for two years, she also knew Student well.

Ms. Wallace recommended that Student attend the Evolution Program, opining that the program addressed precisely what an 18 to 22-year old transition program should. She explained that the Evolution Program is designed to prepare students with significant disabilities for post-secondary life; the program focuses on functional academics, community, vocational and the daily living life skills students will need by the time they graduate or reach the age of 22. This is achieved through a combination of on-site job training and community-based instruction (Wallace).

Ms. Bartlett and Ms. Belsito, Shrewsbury Team members since Student first attended the ELC program, opined that Shrewsbury had offered Student a FAPE throughout the time spent in-district noting that he was an integral part of the community and that he had thrived in the program.

While the Evolution Program would have provided Student transition programming in the areas he required, its appropriateness became moot when in September of 2019 Shrewsbury agreed to fund an extended evaluation of Student at St. Coletta, a private day school that met with Parents and Parents' experts' approval.

Parents made additional claims regarding parental denial of participation in the development of Student's program, procedural due process violations and claimed that Student had improperly being discriminated when he was not allowed to participate in varsity level sports try-outs.

Parents are correct that pursuant to the IDEA, parental participation is paramount with respect to determinations involving the special education of eligible students. The overwhelming weight of the evidence shows that Parents actively and meaningfully participated in the development of Student's IEPs and that the District promptly responded to them. I find no merit to Parents' claim in this regard.

Parents further argued that Shrewsbury violated Student's Procedural due process rights when it failed to convene the Team to discuss the results of Dr. Davis' evaluation forwarded to the District on June 18, 2019. Shrewsbury argued that the report was received in the summer after school had closed and that when School reopened, student was undergoing an extended evaluation at St. Coletta, therefore, there was no harm or need to convene the Team for the purpose of discussing Dr. Davis' evaluation.

When examining the consequences that procedural violations may have on a student, the violation must result in a "loss of an educational opportunity" to the student for it to trigger the right to compensatory education. 20 USC 1415(f)(3)(E)(ii); *Maine Sch. Admin. Dist. No.35 v. Mr. R.*, 321 F.3d 9, 19 (1st Cir. 2003); *Roland M. v. Concord Sch. Comm.*, 910 F.2nd 983, 994 (1st Cir. 1990) ("there must be some rational basis to believe that 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.”). Moreover, in *Maine Sch. Admin. Dist. No.35 v. Mr. R.*, 321 F.3d at 19, the First Circuit noted that “compensatory education is not an appropriate remedy for a purely procedural violation of the IDEA.” A parent asserting a student’s right to compensatory education as a result of a procedural violation must show that the student’s denial of FAPE was more than *de minimis*; that is, they must show that the educational deprivation prevented the student from accessing his education and making effective progress.

Parents are correct that once the evaluation was received, Shrewsbury was responsible to convene within 10 school days of receipt of Dr. Davis’ evaluation. 603 CMR28. 04(5)(f).²⁸ The Massachusetts Special Education Regulations provide no excuse for by passing this requirement, especially where Parents did not consent to forgoing discussion of this evaluation. Shrewsbury was responsible to convene the Team within the prescribed time and in failing to do so violated Student’s procedural due process rights. Given the circumstances, that is, Student was already undergoing an extended evaluation at St. Coletta, a placement supported by all of Parents’ experts including Dr. Davis, the violation was *de minimis* and did not result in a deprivation of FAPE to Student. Therefore, Student is not entitled to compensatory education for the District’s failure in this regard.

Parents agreed to the extended evaluation and placement knowing at the outset that such ABA service provider was inconsistent with the St. Coletta program. Parents expressed satisfaction with the St. Coletta program at the mid and end points of the extended evaluation period, but rejected the program’s failure to provide Student a one-to-one ABA technician throughout the day. The record shows that while Student was assigned a one-to-one aide, the individual was not an ABA technician. The information available to the Team, including anecdotal and progress reports, supported the appropriateness of this program for Student and noted how well Student adapted to it (SE-4; SE-6; SSE-13; SE-14; SE-15; PE-35).

DESE’s *Administrative Advisory SPED 2019-2* offers guidance regarding what happens when the Team determines that additional information on Student is needed.²⁹ Information may be obtained through an extended evaluation. The Team drafts a partial IEP and completes the forms for the extended evaluation with the questions to be answered. The Advisory notes that if accepted by the parents, the partial IEP must be implemented immediately, simultaneously with the extended evaluation so that the student is not denied services which the Team previously determined to be necessary. 603 CMR 28.05(2)(b)(1). The parents may accept, reject, or partially reject the extended evaluation or may request another Team meeting. Once the parent accepts the extended evaluation the school district must arrange for the evaluation and the necessary assessments.

²⁸ “Within ten school days from the time the school district receives the report of the independent education evaluation, the Team shall reconvene and consider the independent education evaluation and whether a new or amended IEP is appropriate.”

²⁹ <https://www.doe.mass.edu/sped/advisories/2019-2.html#10>.

Pursuant to the above *Advisory*, Shrewsbury should have provided Student with a one-to-ABA technician during the extended evaluation period as the technician was included in his IEP and accepted by Parents. However, Parents presented no evidence to support a claim that Student was in any way harmed by the District's failure to provide the technician. Not having met their burden of persuasion in this regard Student is not entitled to compensatory education for the District's failure.³⁰

While maintaining that the Evolution Program would have offered Student a FAPE, at the end of the extended evaluation period Shrewsbury offered Student placement at St. Coletta for the rest of the IEP period. Shortly thereafter, Parents informed Shrewsbury that they were moving to a different district. At the time of this Hearing Parents were residing in the new district and Student continued to attend St. Coletta until the summer of 2020 when Parents removed him because St. Coletta would not send its personnel to Parents' home.

Similarly, Parents did not meet their burden to demonstrate that Shrewsbury's failure to allow Student to participate in varsity level sports try-outs, given Student's circumstances and the dangers inherent in the particular sport, was discriminatory action on the school's part especially since he was offered an opportunity to assist that sport's team in other ways thereby achieving Parents' ultimate goal: that is, that Student generalize meaningful vocational skills with the team during the school day with his preferred general education peer group which he would ultimately be able to generalize into community, leisure, social, safety and vocational skills building opportunities.³¹

In conclusion, the Parents did not meet their burden of persuasion with respect to the allegations raised in their Hearing Request, and thus are not entitled to the relief sought. Despite the numerous partially accepted IEPs, long and contentious Team meetings, on-going requests by Parents, difficulty keeping home providers, and disputes regarding service delivery, the evidence shows that Student received the accepted services in his IEP. The record further supports a finding that Student received appropriate functional academics, vocational training and home/community based experiences (to the extent allowed by Parents) while at the ELC, and made slow and steady progress, commensurate with his abilities, in all areas of his education. In addition, while at Shrewsbury Student became an integral part of the high school community enriching his life experiences and those of his peers.

I note that it was never a goal for Student to be fully independent with self-care routines associated with his medical needs, in any setting. The record is convincing that the goals and objectives in Student's IEPs were appropriate, uniquely designed to meet his needs and delivered largely in settings selected by Parents. Student made slow and steady, effective progress commensurate with his abilities in the self-care areas targeted.

³⁰ By November 2019, Parents had been informed that insistence on the one-to-one ABA technician might jeopardize Student's placement at St. Coletta.

³¹ Parents made very specific requests that certain names and details be omitted from this Decision to avoid identification of Student. As such, I decline to discuss the details of the specific sports or circumstances further.

ORDER:

Student is not entitled to compensatory education for the periods at issue in this Decision.

By the Hearing Officer,

Rosa I. Figueroa
Dated: January 8, 2021

