

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

**Student v. Framingham Public Schools**

**BSEA # 2009177**

**DECISION**

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

**PROCEDURAL HISTORY**

Framingham Public Schools (hereinafter, Framingham) requested a hearing on May 1, 2020 which was scheduled for June 5, 2020. Framingham assented to Parents' request to postpone the Hearing for good cause, and it was rescheduled on September 22, 23, and 24, 2020. Framingham assented to Parents' September 4, 2020, request to postpone the Hearing. The postponement request was allowed and the Hearing was scheduled for December 8, 10, and 11, 2020. There was a Pre-Hearing Conference on November 20, 2020, and conference calls on November 23 and 25, 2020. The hearing was held on December 8, 10, 11, and 15, 2020. The Parties requested an extension so that the record could remain open for submission of closing arguments by January 22, 2021. Framingham submitted its closing argument on January 22, 2021. Parents filed an initial closing argument on January 22, 2021 and a corrected version of the closing argument on January 25, 2021. Framingham did not object to Parents' late submission of the closing argument and the record closed on January 25, 2021.

Those present for all or part of the hearing were:

Mother

Father

Rebecca Tubbs

Kari Anne Dunlop

Jacob Strout

Nicole Heidenheim

Jennifer Bremer

Kate Buck

Kathleen DeLisi

Laura Spear

Natalia Kierul

Natalya Mains

Nurit Lieberman

Parents' Neuropsychologist

Educational administrator, Darnell School

Head classroom teacher, Darnell School

Clinical director, Darnell School

Special education teacher, Framingham Public Schools

Learning Center coordinator, Framingham Public Schools

Team evaluation coordinator, Framingham Public Schools

Special Education Director, Framingham Public Schools

Team evaluation coordinator, Framingham Public Schools

Special education teacher, Framingham Public Schools

Speech language pathologist, Framingham Public Schools

Robyn Therrien	Board Certified Behavioral Analyst, Framingham Public Schools
Virginia Johnson	Behavior specialist, Framingham Public Schools
Marie Mercier	Attorney, Parents
Nathan Sullivan	Attorney, Parents
Philip Benjamin	Attorney, Framingham Public Schools
Anne Bohan	Court Reporter
Catherine Putney-Yaceshyn	Hearing Officer

The official record of this hearing consists of: Parents’ exhibits marked P-1 through P-36; Framingham Public Schools’ exhibits marked S-1 through S-37; and approximately 24 hours of recorded oral testimony.

**ISSUES**

1. Whether the IEPs proposed for the period from 2018-2019 were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.
2. Whether the IEP proposed for the period from 2019-2020 was reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. If not, whether the Parents are entitled to reimbursement for the unilateral placement of Student at Darnell beginning in September of 2019.
3. Whether the IEP proposed for the period from 2020-2021 was reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. If not, whether the Parents are entitled to reimbursement for the unilateral placement of Student at Darnell.

**SUMMARY OF THE EVIDENCE**

1. The student (hereinafter, “Student”) is a 16-year-old tenth grade student within the Framingham Public Schools (hereinafter, Framingham). He has been diagnosed with Autism Spectrum Disorder (ASD). Areas of vulnerability include communication skills, social skills, and behavioral atypicalities. “Regulatory issues and significantly decreased attention impacts all areas of [his] functioning.” (S-1) He is described as being friendly and social with other students and adults and as a hard worker who strives to do his best in his classes. While he has strong math computational skills, solving multi-step math problems or word problems is more challenging for him. Student has relatively strong decoding skills and can read words in isolation at the third grade independent level, however his comprehension level is more compromised, as he is independently able to comprehend text at the first grade level. Writing is challenging for Student, as he has limited ability to produce sentences. Outside of school he participates in swimming, Special Olympic soccer and basketball, taekwondo, painting, tennis and gym. (S-5)

2. Rafael Castro, Ph.D. and Leash Murphy, Psy.D., conducted a neuropsychological evaluation of Student when he was entering grade 6 and living and attending school in Shrewsbury, Massachusetts. They recommended that Student receive a minimum of thirty hours of full-time year-round programming in a program guided by the behavioral principles following an ABA instructional approach as well as other traditional techniques of special education. Further, they recommended that the majority of his instruction take place in a small, highly structured inclusionary setting with 1:1 support, with some structured group lessons to support social skills and generalization. The evaluators indicated that his program requires the guidance of a BCBA and special educator who are “consistently available to his programming”, and recommended a new behavioral goal to address imitation. They further noted that Student’s language and communication difficulties remain a primary concern, endorsing his then-current speech language objectives, and made suggestions for math and English language arts (P-1)
3. Student’s family moved from Shrewsbury to Framingham in May 2018. (S-2, Mother, Kierul) When the family moved to Framingham, they moved to an apartment with a much smaller living space than where they previously lived. (They lived in the apartment until October 2019, when they moved into a house.) (Mother) Mother provided Framingham with enrollment paperwork on May 14, 2018, and an IEP for the period from January 24, 2018 to January 23, 2019, which had been drafted pursuant to a Team meeting on January 24, 2018 and signed by a Shrewsbury representative on February 19, 2018. The IEP had been rejected in full on May 14, 2018. She also provided a 2016 report from Dr. Castro. (S-2, Mother, Kierul)
4. At some point Mother informed Robyn Therrien, Framingham’s BCBA, that Student had been receiving private home ABA services when they lived in Shrewsbury, which stopped upon the move to Framingham. Student was on a wait list with some service providers and Ms. Therrien provided mother with a contact who was the director of another program that provided such services.<sup>1</sup> (Therrien)
5. Natalia Kierul<sup>2</sup>, Team Evaluation Coordinator, Framingham, contacted Shrewsbury Public Schools and requested a copy of Student’s most recently accepted IEP after receiving Student’s rejected IEP on May 15, 2018. Some time in June 2018 she received a partially rejected Shrewsbury IEP for the period from May 22, 2017 – February 2, 2018. (Kierul, S-1) The IEP had goals in speech and language; self-regulation; social skills, ELA, mathematics, academics, and independence. Student’s current performance level in self-regulation stated that his behaviors included noncompliance, non-contextual comments, perseverative comments and questions and imitating others. It noted Student has a history of aggression and bolting. (S-1) The A grid contained a consult with the Team 1 x 15 minutes per week; the B grid provided for inclusion with an ABA technician<sup>3</sup> 6 x 90 minutes per cycle (1:1 tech); the C grid included speech and language with a speech

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<sup>1</sup> As of the Team meeting in December 2018 Student was not yet receiving home ABA services. At some point in February Mother informed Ms. Therrien that the home services had resumed. (Therrien)

<sup>2</sup> Ms. Kierul was a certified special education teacher for K-8 mild-moderate until 2019. (Kierul)

<sup>3</sup> Robyn Therrien testified that there is no certification designated as ABA tech. That person could have been an ABA specialist or a paraprofessional. There is no way to tell from the designation ABA tech what the person’s training level was. (Therrien)

language pathologist 2 x 30 minutes per cycle; ABA tech with an ABA technician 6 x 300 minutes per cycle; ELC program with a special education teacher 6 x 390 per cycle; social skills with a speech language pathologist 1 x 30 minutes per cycle. It also included ESY services. (S-1)

6. Mother testified that Student, who was almost non-verbal until the end of fourth grade, had received services from a 1:1 ABA technician. She further testified that she knows Student did not have a 1:1 ABA technician in Framingham for the remainder of his seventh grade because when he came home from school and she asked him who he worked with he only ever mentioned Ms. Bremer (his eighth lead grade teacher).
7. Framingham's Assistant Director of Special Education spoke to Parents about placing Student in the Fuller Middle School substantially separate program for students with autism. The program was a multi-grade program that utilized ABA methodology, Discrete Trial Training, incidental learning, and parallel teaching. The program focused on developing social skills. Students were included for lunch and integrated specials and there was a pre-vocational component. Student was in fact then placed in that classroom on or around September 22, 2018. (Kierul)
8. Virginia Johnson, Framingham's behavioral specialist, first met Student on his first day of school in Framingham. Ms. Johnson noted that Student had a pretty good day, eating lunch in the cafeteria with the other students and attending specials. A few days later Ms. Johnson was at school observing another Student's transition to school and observed Student and his mother in front of their vehicle. Student was talking loudly and hit Mother in the face. Ms. Johnson intervened and told Student he had to have safe hands, a calm body, and a quiet voice. He was able to regulate himself and walk into school with an aide. Ms. Johnson approached Mother and introduced herself. She told Mother that Student had a visual reminder in his binder to remind him not to hit and she could review it with him before leaving for school. (Johnson)
9. Framingham scheduled a transfer review Team meeting on June 22, 2018.<sup>4</sup> (S-3) The IEP noted that Student "requires specialized instruction in the substantially separate program for students with Autism across the school day in order to acquire new skills in the ABA based classroom." It noted Student's attention, weak receptive and expressive language skills, pragmatics, fine motor and behavioral skill deficits greatly interfere with his ability to access the curriculum. Thus, "he requires a small group instruction in the speech and language and occupational therapy. The instruction is provided using modified curriculum, using Discreet Trials, with repetition and modeling of skills." The IEP contained goals in the areas of speech/language; social skills/pragmatics; adaptive behavior; reading comprehension; written language; and mathematics. The A grid included a team consult with the special education teacher 1x 30 minutes per month with the team and parent; ABA consult with the ABA specialist 1 x 60 minutes per month; and ABA consult with the BCBA 1 x 60 minutes per month. There were no B grid services

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<sup>4</sup> On the date of the Team meeting the special educator who was Student's teacher was sick. Ms. Kierul informed Parent and parent determined that they could continue with the meeting. (Kierul)

proposed. The C grid contained the following: speech/language with the SLP/SLPA<sup>5</sup> 3 x 45 minutes per cycle; reading with the special educator and assistant teacher and aide 6 x 45 minutes per cycle; written language with the special educator and assistant teacher and aide 5 x 30 minutes per cycle; math with the special educator and assistant teacher and aide; and extended school year with the summer special education staff 5 x 330 minutes during the period of July 2, 2018 to August 3, 2018. (S-3)

10. Framingham issued progress reports dated June 22, 2018. (S-4) Framingham had a fully rejected IEP that identified the areas staff should be working on with Student, and thus Ms. Kierul explained that Framingham did not yet have an IEP with accepted goals. She explained that Student's service provision was complicated because Framingham was operating on limited information. Student was new to the District and they were trying to determine his needs based on the limited information they had received. (Kierul) Thus, while the progress report listed goals in speech/language; adaptive behavior; social skills; ELA; mathematics; and science, the reports did not contain benchmarks or describe Student's progress. Each note indicates "[Student] transitioned nicely to the substantially separate program for students with Autism at Fuller Middle School." It further noted, "The Shrewsbury district proposed an updated IEP for the Student on 1/24/2018. The proposed updated IEP has been fully rejected. The IEP dated 5/22/2017-2/22/18 has expired. The Framingham district held a transfer review meeting and proposed a new IEP on 6/21/2018." (S-4)
11. Via a letter, dated July 26, 2018, Parents indicated they were accepting the IEP in part and rejecting it in part. Attached to the letter was a copy of the neuropsychological report by Rebecca Tubbs, Psy.D., from testing she conducted on March 19, 2018 and April 25, 2018 Parent stated that they were accepting the goals and services so that Framingham could start to work with Student. Further she stated that parents rejected the omission of the recommendations from Dr. Tubbs' neuropsychological report (which was provided simultaneously) and rejecting the omission of the science goal. Parents stated they were invoking "stay put from his last IEP goal and objectives in #6." (S-3)
12. Rebecca Tubbs holds a Psy.D. in clinical psychology. (P-26) She estimated that she conducts approximately fifty evaluations per year and one third of them are with children diagnosed with Autism. (Tubbs) She has worked with students with an autism diagnosis for approximately thirteen years and spent one year as a Lovaaas behavior therapist from 1996-1997. (Tubbs)

Dr. Tubbs conducted a neurological evaluation of Student on March 19, 2018, while he was still in Shrewsbury<sup>6</sup>. She conducted an observation of Student in Shrewsbury Public Schools, but did not write a report of that observation. Dr. Tubbs reported that she conducted all of the testing and engaged in a clinical interview with Parents and Student

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<sup>5</sup> Framingham does not employ any speech language pathology assistants. Any time that an IEP references SLPA, the services are provided by a speech language pathologist. (Spears)

<sup>6</sup> Dr. Tubbs' report indicates that Student was at Fuller Middle School in Framingham when she did her evaluation. (P-2, pg. 13)

on the first date listed on her report<sup>7</sup> (March 19, 2018) and met with Parents to provide feedback on the second date<sup>8</sup> (April 25, 2018). (P-2, Tubbs) The report was not dated and Dr. Tubbs did not know when she wrote the report. (Tubbs, Tr. I, pg. 176) While in the midst of the WISC V assessment, Dr. Tubbs reviewed her paperwork and realized that Student had been administered the WISC within that year, “so that really sort of invalidated the efficacy of this measure,” she testified. (Tubbs) She continued with the evaluation and administered the Leiter-3 additionally. She noted she would have utilized the Leiter anyway because it is an excellent battery for parsing out the effects of language and does not require verbal responses. (Tubbs)

During the evaluation, Dr. Tubbs observed Student engaging in scripting and self-talk and he had some tendency to try to touch her arm (which was easily redirected). (Tubbs) Dr. Tubbs noted that Student was an enthusiastic and inquisitive boy who was outgoing and intrinsically motivated to interact with others. She concluded that Student’s evaluation results demonstrated significantly better developed nonverbal cognitive capacities, and found that he performs best when language demands are minimized and he is provided with a model from which to work. She identified the following areas as vulnerabilities : language skills; cognitive dexterity/efficiency; integration of organization of information; academics; and socioemotional functioning. (P-2)

Dr. Tubbs testified that with respect to behavioral, emotional, and cognitive regulation, Mother reported a “clinically significant level of difficulty exceeding anywhere from 93 to 99 percent of his same-aged peers.” Student’s Shrewsbury teacher reported a very high level of behavioral regulation difficulty, at the 95<sup>th</sup> percentile, and clinically significant levels of hyperactivity, atypical behaviors, and inattention. (Tubbs)

Dr. Tubbs diagnosed Student with Autism Spectrum Disorder – Level 2 with language impairment; specific learning disorder with impairment in reading (reading comprehension); specific learning disorder with impairment in written expression (spelling, grammar, and clarity of organization); and specific learning disorder with impairment in mathematics (accurate math reasoning)

With respect to educational instruction Dr. Tubbs recommended that Student be placed in “highly specialized, substantially separate setting that is specifically designed for children with complex cognitive, language, developmental, learning, and regulatory challenges.” She further recommended that his “programming be comprised of no less than 30 hours a week of 1:1 instruction that is driven by the principles of Applied Behavioral Analysis (ABA) including, but not limited to, Discrete Trial Training (DTT).” She specified that Student’s teachers must have a high level of expertise in the use of ABA/DTT methodology and teaching techniques and use the errorless learning technique. She recommended the use of instructional methodology that would accommodate Student’s language-based deficits, teaching Student in a sequential manner, and expanding his IEP

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<sup>7</sup> For a listing of tests administered and scores obtained see P-2, pgs. 24-28.

<sup>8</sup> Dr. Tubbs also stated that she conducted a home observation, but she was unable to say when it was and she did not write a report. (Tubbs, Tr. I, pgs. 101, 201-202)

goals to target speech and language, executive functioning, social and academic skills. (P-2)

With respect to school-based therapeutic supports she recommended that an on-site BCBA with “at least a Master’s degree in ABA” should oversee Student’s programming at home and school. She noted that the BCBA should participate in data collection and analysis, share the data with parents and the team, and modify Student’s program accordingly. She stated that the BCBA should provide weekly supervision of Student’s service providers and create a behavior plan for Student. She recommended Student receive speech language services 3 x 30 minutes per week and that the speech language pathologist work closely with the BCBA to develop appropriate goals. She made a number of recommendations specific to Student’s math instruction, 1:1 written expression instruction and recommended that reading comprehension skills be aggressively targeted with a special educator in a 1:1 context daily. She further suggested the addition of objectives to his IEP directed at improving his social and leisure skills. Year-round programming was further recommended. (Tubbs)

13. The Team reconvened on September 6, 2018, to review Dr. Tubbs’ outside evaluation. Framingham proposed some amendments to the IEP: information summarizing the findings of the evaluation was added; recommended accommodations were added; the speech and language goal was separated into two goals in receptive and expressive language. Parents requested and Framingham agreed that Student would take the standard MCAS with accommodations rather than the MCAS-ALT. The Team rejected Student participating in inclusion for academic subjects based on a review of the previous formal testing and the rejected IEP dated 1/24/18-1/23/19. Student was to have inclusion opportunities during specials, lunch, recess, and all school events. (S-5)
14. Jennifer Bremer has a Master’s degree in special Education, and is working toward her BCBA license. She has a graduate certificate from a math special education program, and a graduate certificate in applied behavior analysis. She is certified in all levels of intensive special needs, and is also certified in Wilson level I and Orton-Gillingham. (S-18) Her Master’s in special education was earned through a joint program with Simmons University and the New England Center<sup>9</sup> (the latter a private school that is designed for students on the autism spectrum and students with other developmental disabilities). She worked at New England Center for four years, partly in the residential program and partly as a teacher in the day school program. (Bremer)

Ms. Bremer was the lead teacher in Student’s eighth grade classroom. (She was not his teacher in seventh grade.) There were seven students, including Student, in the class, two paraprofessionals, an assistant teacher, and a classroom aide. The paraprofessionals were well-trained, had prior experience working with the students in the program, and could take data. Ms. Bremer also worked with the ABA specialist and the BCBA. The BCBA, Robyn Terrien, had also previously worked at the New England Center, so she and Ms.

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<sup>9</sup> The school was previously called the New England Center for Autism and the New England Center for Children. (Bremer)

Bremer had similarities in their training. Each student in the program had a book containing all his/her programs, and the staff took data every day as the programs were run. The staff carry clipboards with data sheets on which they record data all day long. Staff accompany the students throughout the day, including lunch. (Bremer)

Part of the classroom was set up with desks facing forward and there were three separate cubbies to reduce distractions as necessary. There was a large schedule that students and staff reviewed every morning, and many visuals in the classroom with reminders for things such as “whole body listening.” Students’ desks had individual visual reminders as well. Ms. Bremer reviewed behavioral expectations before each lesson. The principles of ABA were used all day long. A whole classroom behavior program was implemented through which students could earn “Falcon tickets” and there were also individualized behavior plans for students. A social program (PEERS) was utilized. OT materials were available for use during breaks. The classroom used Discrete Trials when introducing new skills. Staff also used task analysis checklists and incidental learning. Some of the instruction (e.g. in content areas) was 1:1. When addressing a new content skill Ms. Bremer addressed it first on a 1:1 basis until levels of independence increased, and then it could be addressed with two or three students. She taught some whole group lessons in science and social studies using entry points for the Common Core. (Bremer)

Student successfully participated in whole group instruction. His hand was always up. He liked content areas and was engaged. He always had something to offer, was a good speller, and liked vocabulary. The other students in the class were quieter than Student and his engagement with them had to be “brokered” by staff. Ms. Bremer noted that there was one student who was more socially motivated than Student and one who was equally socially motivated. They played turn taking games where Student had to respect personal space and engage appropriately with peers. They also practiced making phone calls utilizing a phone in the classroom. (Bremer)

Ms. Bremer collaborated with other providers, such as the speech and language pathologist and the occupational therapist. She was constantly collaborating with the BCBA, Ms. Therrien, and the RBT<sup>10</sup>, Ginny Johnson. She also worked with some of the department heads, when, for example, she needed materials for math or science. Ms. Therrien came to the classroom at least twice per week and stayed for most of the day. She provided guidance regarding behavior. She checked data and observed how it was being taken and made corrections as needed. Ms. Therrien was always readily accessible to Ms. Bremer as needed. Ms. Johnson was in Ms. Bremer’s classroom two to three days per week. She came in the morning and helped at lunch time, worked individually with students and helped with behaviors that required additional attention. Ms. Johnson and Ms. Therrien provided Ms. Bremer with visuals and social stories and scripts to use with Student. (Bremer)

Ms Johnson worked with students on Discrete Trials and other methodologies. She accompanied students to specials and lunch, where she facilitated social and functional

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<sup>10</sup> An RBT is a registered behavior technician who is certified in behavior analysis and practices under supervision of a BCBA. (Johnson)

communication. In the classroom she created student-specific program books and collaborated with Ms. Bremer and Ms. Therrien. She attended biweekly staff meetings and the parent consultation with Mother. (Johnson)

Ms. Johnson prepared extensive visuals for Student. Many of them were kept in a binder that he brought to school that he and parents could use at home. She created a visual reminder of the rules for bus behavior after the van driver told her that Student had been loud and tried to slam the door. She prepared a gym pass for him that hung at the front of the room so he could access the gym for motor breaks. She prepared double back cards that reminded him of appropriate and inappropriate questions to ask others. There was a volume meter on his desk and in his binder and she provided Mother with one for home use. On his desk, she provided Student with a visual reminder of good listening and classroom behavior. She also provided visual reminders of behavior in the hallway that was reviewed before he left the classroom. When he began to show some dysregulation in the classroom she provided him with a visual that showed how to regulate himself using his breathing and keeping his hands on the desk. A number of social stories to specifically illustrate different situations and how people deal with them were also furnished. Ms. Therrien worked on a program for “cool” and “not cool” conversation to which he responded well. (Johnson, S-22)

Ms. Bremer attended monthly meetings with Mother, Ms. Johnson, and sometimes the speech language pathologist and occupational therapist. Mother never told Ms. Bremer that Student did not like coming to school. She said that he really liked coming to school, woke up independently at 4:00 a.m., did exercises, said prayers, used flash cards and would eagerly wait to come to school. His attendance was good. (Bremer)

Ms. Bremer assessed Student’s progress throughout the year. At the beginning of the year she assessed his reading skills using the Benchmark Assessment System (BAS). Student had good decoding abilities, but his comprehension was very limited. He could read text at the second grade level, but his comprehension level was lower. She started working with him at the H (first grade) level and by the end of the year he was at level K, approximately the starting second grade level. He had a good visual memory and could learn words quickly and spell well. He struggled with inferential thinking and responded well to “WH” questions. He made great growth in math and had very good rote skills. His ability to understand math as a building block to other math skills was not as well developed.

Student used the iReady program to practice skills and Ms. Bremer used that to assess progress throughout the year. (Bremer) All students in the district are assessed using iReady and the district determines the dates on which the assessments are given. (Spears) In reading, Student was assessed at the first grade level on September 12, 2018; and at both the kindergarten level and the first grade level on June 3, 2019. Ms. Bremer noted Student’s tendency to rush through reading, a non-preferred activity. She noted that Student’s performance was flagged for rushing on the September 12 assessment and one of the June assessments. On the math assessment Student scored at the second grade level on September 12, 2018; the second grade level on January 9, 2019, and the fourth grade level on May 29, 2019. (S-23, Bremer) Ms. Bremer stated that the iReady scores

indicated that Student made progress during the school year. She further noted that he made progress with respect to his IEP benchmarks. (Bremer)

At the beginning of the school year Student was relatively calm in general (with the exception of the day he was observed by Dr. Stephens and a few isolated times during the year). He was however loud all year, engaging in a great deal of loud laughing and vocal stimulation, which they addressed using interruption and redirection, and ABA strategies. Staff also used vigorous exercise as a strategy to decrease self-stimulatory behaviors to allow a wider window of learning time for Student. He was taken to the gym or could ask to go, and he would run laps. Ms. Bremer never saw Student behave aggressively toward others. (Bremer)

Student took the regular MCAS in eighth grade at Parents' insistence. Ms. Bremer told Parents that Student did not have the reading comprehension abilities to understand what the test would be asking him and that it would probably be a very unpleasant experience for him. However, they still wanted him to take the test. Ms. Bremer did her best to prepare Student and give him some strategies to use. She was with Student when he took the MCAS. He was instructed to read it quietly, but read it very loudly and needed to be reminded with his volume meter. He was not able to respond to most of the questions and became very agitated. Every half hour Ms. Bremer gave him breaks with a bouncy ball, the gym, or a drink of water. She found it very frustrating watching him being unsuccessful. (Bremer)

Ms. Bremer is aware from her prior experience working with middle school age students that when puberty begins it can impact a student's affect, demeanor and behavior quite a bit. She noted the impact of these hormonal changes on students with disabilities. Ms. Therrien concurred, noting that in her experience students' behaviors change as they become adolescents. (Therrien)

15. On September 26, 2018, Diane Stephens, Ph.D., conducted an observation of Student at Parents' behest. In addition to the nearly four hours she spent observing Student in school, she spent an hour and a half observing him in the home setting, but did not write a report of that observation. She noted that during her nearly four-hour observation Student consistently followed functional instructions and classroom routines, but demonstrated variable levels of attention and engagement in instructional activities, depending on the environment and demands of the task. She made a number of recommendations including the use of ABA principles, a behavior intervention plan, and a language-based approach to instruction. Given Student's entrenched challenges, she did not recommend participation in the inclusion setting. She stated that having a highly skilled speech and language pathologist as part of Student's team was essential. Finally, she recommended participation in a structured social skills program. (P-3)
16. When Framingham noticed an increase in Student's behaviors in October 2018, Ms. Kierul contacted a staff member at Shrewsbury Public Schools who is in a similar role to hers. She asked whether Student had engaged in similar behaviors in Shrewsbury and how Shrewsbury had addressed them. The Shrewsbury staff person informed her that while in

Shrewsbury Student had engaged in similar behaviors, namely, imitating others, laughing, vocalizations, increased scripting, and issues with self-regulation. (Kierul)

17. The Team reconvened on October 19, 2018 to discuss concerns with Student's recent displays of emotional behavior. At the meeting, the Team discussed adding a goal focused on science and social studies vocabulary (at Parent's request) (Kierul); a goal for self-regulation; and incorporating a social thinking curriculum. The self-regulation goal was to be implemented by the occupational therapist. Framingham proposed conducting a functional behavior assessment (FBA) and provided Parent with a consent form. (Kierul, Tr. III, pgs. 72-74, S-6) Parents continued to reject Framingham's proposal that Student take the MCAS-ALT despite the teacher's concerns regarding Student's ability to access the regular MCAS. The updated IEP was mailed to Parents on October 31, 2018. (S-6)
18. Both Parents discussed Student's aspiration to attend a four-year college. Parents do not want to discourage him. They stated that they insisted on his taking the regular MCAS because it would be necessary for him to pass it in order to receive a regular diploma. They noted that they did not mind if he failed the test because he would "learn by failing." (Mother) Father stated that Parents knew Student could not pass the MCAS, but wanted him to realize it on his own. (Father)
19. Framingham sent a consent to do an FBA on October 23, 2018. It was completed by Robyn Therrien, and Virginia Johnson on November 1, 7, 15, and 14, 2018. They utilized teacher interviews, direct observations in school, partial interval recording, frequency recording, antecedent Behavior Consequence (ABC) data collection, Functional Analysis Screening tool (FAST), and Motivational Assessment Scale (MAS). The targeted behaviors were selected by Student's Team (including his Parents) after the October 19, 2018 meeting. The following behaviors were identified and defined by the FBA: off task; laughing episodes; emotional episodes; and scripting. The FBA concluded that Student's behaviors were multiply maintained, that is, Student engages in target behaviors to gain attention or escape a task or demand. Further Student's engaging in laughing episodes and scripting behaviors may be a means of intrinsic reinforcement. The report included a number of recommendations (See S-8, pg. 7.)
20. Ms. Therrien prepared a behavioral support plan for Student upon completion of the FBA. The plan listed the following behaviors to decrease: noncompliance; personal questions directed to adults; personal space; imitation; volume regulation; laughing episodes, emotional episodes; scripting<sup>11</sup>; and self-injurious behaviors. It listed the following behaviors to increase: classroom participation/task completion; raising hand with quiet voice; and functional communication responses. It listed positive behavior supports and behavior guidelines which defined each behavior and instructed staff as to how to respond to each behavior. (S-9) Ms. Therrien noted that although the emotional episodes were not directly observed during the FBA, they seemed to occur when unexpected events or disruptions to routines happened. (Therrien)

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<sup>11</sup> An example provided of scripting was if Student was working on a math paper and utters "Shrewsbury" five times. (S-9)

21. After Framingham conducted its FBA Mother testified that she told staff that Student was exhibiting behaviors at home. Parents were struggling with him. He was shouting, yelling, throwing tantrums and kicking and hitting his parents. He also began hitting himself and taking a very long time to get ready in the morning. Mother tried to get home ABA services and make an appointment with a psychologist, but was on wait lists for the services. In or around September or October 2019<sup>12</sup> Student began receiving services from psychologist, Dr. Shoshana Fagen at Franciscan Children's Hospital, who provided Student with social stories and worked on addressing his aggressive behaviors. (Mother)
22. On November 13, 2018, Dr. Tubbs conducted an observation<sup>13</sup> at the Fuller Middle School during which Ms. Kierul was present. Ms. Kierul informed Dr. Tubbs that the two paraprofessionals and the BCBA were at a professional development training at the time and there were two substitutes covering for them, so it was not a typical day. Student appeared more agitated and dysregulated than usual. He noticed Dr. Tubbs and asked her personal questions and stated that he knew her birthday and where she lived. He also made repetitive comments about Shrewsbury. (Kierul) In a report of her observations and recommendations (which also includes observations and recommendations based on her January 14 2019 observation of Framingham High School's Learning Center program) Dr. Tubbs noted that Student's behavior declined significantly in contrast to her observation in Shrewsbury (of which there is no report and there was no testimony) and in contrast to the behavior reported by Dr. Stephens. She opined that none of his classmates were good role models nor did they show interest in interacting with Student. She stated that Student was functioning at a higher academic level than his peers which resulted in him spending time waiting. She continued to advocate for the recommendations in her neuropsychological report, but noted that "due to improvements in his language and learning, [Student] should have some targeted small group learning experience with two to three students." (P-4)
23. The Team convened on December 20, 2018, to review the FBA and proposed behavioral support plan. The Team proposed a revision to the IEP to include additional recommendations to decrease Student's inappropriate social behaviors. (Kierul, Tr. III, pg. 83) The Team rejected providing additional special education services since those proposed on October 19, 2018 were not implemented yet due to parental rejection of that IEP. (S-10)
24. The Team reconvened on January 8, 2019 to review a report (P-3) from Dr. Stephens' September 26, 2018 observation. (S-10) A revision was made to Student's behavioral goal. The Team declined to include additional special education services, since those proposed on October 19, 2018 were not yet implemented due to the rejection. (S-10)
25. On January 30, 2019, Mother sent an email to Ms. Kierul accepting the goals and services from the IEP mailed to Parents on October 31, 2018, but rejecting the IEP and placement. She explained that she did not respond to the IEP proposed on October 10, 2018

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<sup>12</sup> Initially Mother testified that Student began services with Dr. Fagen in August 2019, on re-direct examination she stated he began in September or October 2019. She also testified that the services with Dr. Fagen began in December 2019. (Mother)

<sup>13</sup> The report does not indicate the length of the observation. (P-4)

immediately because she had to travel to India when a family member was diagnosed with cancer. She remained in India for more than a month and returned in the first week of December. (Mother, S-6) She requested additional time, until March 1, to review the IEP mailed on January 8, 2019. (S-6) She did not provide a response to the December or January proposed IEP revisions at that time. (Mother)

26. Framingham received a partial rejection of the IEP proposed after the December 20, 2018 Team meeting on February 7, 2019. (Kierul)
27. On March 8, 2019, the Team reconvened for a transition meeting to discuss services at Framingham High School. The Framingham based members of the Team believed that the ASD program at Framingham High School, known as the Learning Center program, would meet Student's needs. (S-11, Kierul) They discussed the availability of extra-curricular opportunities at the high school, because Student plays sports. Parent stated she would be rejecting the high school proposal. (S-11)
28. On April 1, 2019, the Team reconvened to review the report of Dr. Tubbs' November 13, 2019 observation. (See ¶ 19.) The Team rejected Parents' request for a different program. Mother stated that she was rejecting the IEP in full because the goals were not appropriate, but was not able to state what she would like to have changed. She further stated that she wanted Student to be with neurotypical students; be independent; and wanted him to help in achieving his goal of going to college. The Team also discussed inaccuracies in Dr. Tubbs' report and Parent reported that Student's outside home BCBA services had just begun. (S-13, Kierul)
29. Parent sent an email to the TEC (Ms. Kierul) on May 10, 2019, requesting one of the "following out of district placements: Hopeful Journey, Crossroads, and Milestones." At Parents' request, the Team reconvened on May 13, 2019. (S-13) The Team discussed the need to align Student's home services with those at school for consistency. Graphs of Student's behaviors at school were shared and a copy was provided to Mother. (S-13) Mother noted a number of concerns. She stated that Student was scripting and copying people a lot; hitting his parents; laughing extensively; getting fixated on things; touching people to gain attention; flexing his tongue in a weird way; and tearing his clothes (twice in the van). (Mother, S-13) Mother testified that she was particularly concerned about Student's behavior because the family was living in an apartment and a neighbor left notes on the door saying Student was too loud and threatening to call the police. (Mother) The Team reviewed Student's current performance at school and determined Student's placement was appropriate and constituted the least restrictive environment. (S-13)
30. Student's annual review Team meeting took place on June 3, 2019. The Team proposed that Student remain in the program at Fuller Middle School until the end of the school year and be placed in the substantially separate classroom for students with Autism at Framingham High School for the 2019-2020 school year. (S-14) Parent wanted Student to have access to physics and biology classes. The Team did not agree that those classes would be appropriate for Student. (Kierul, S-14) The A grid for the Framingham High School program included Team consult with related service providers 1 x 30 minutes

per month; ABA consult with the ABA specialist 1 x 60 minutes per month; ABA consult with the BCBA 1 x 60 minutes per month; occupational therapy with an OT/COTA 1x 15 minutes per month. There are no B grid services. The C grid includes speech/language with a SLP/SLPA 3 x 45 minutes per cycle; reading with the special educator and assistant teacher and aide 6 x 45 minutes per cycle; written language with the special educator and assistant teacher and aide 5 x 30 minute per cycle; math with the special educator and assistant teacher and aide 6 x 45 minutes per cycle; reading with the special educator 5 x 67.6 minutes per cycle; academics with the special educator and assistant teacher and aide 20 x 67.6 minutes per cycle, and extended school year services with the summer special education staff 5 x 330 minutes from July 2, 2019 through August 3, 2019. The IEP was mailed to the Parents on June 13, 2019. (S-14)

31. Student stopped attending school after June 7, 2019 because the family went on a trip to India. Student did not attend the Framingham summer program. (Therrien)
32. Ms. Therrien prepared charts to reflect the data recorded relative to Student's classroom behaviors during the eighth grade. She testified that the chart recording frequency of asking personal questions shows initially a low number followed by an increase and a spike on the day that Dr Tubbs observed. There was a decrease in the behavior throughout the next months. She noted a decreasing trend in frequency of imitation and copying others. Student's voice volume regulation was variable throughout the year. The frequency of emotional episodes chart showed that the behavior did not occur very often. At the highest point, it occurred eight times in one day. The majority of the time it occurred one or less times per day. The chart of self-injurious behavior shows that other than a few spikes it was not a behavior in which Student frequently engaged. (S-19)
33. On July 11, 2019, Parents rejected the IEP and the placement in full. Additionally, they sent a letter dated July 11, 2019 requesting that Framingham make referrals for Student to League School, Crossroads, and Milestones. (S-14)
34. On August 20, 2019, Parents sent a letter to Framingham stating that they would be enrolling their son at the Darnell School in Hudson, MA, and requesting that the district fund the placement. (S-16)
35. On August 21, 2019, Laura Spear, Director of Special Education, Framingham, sent Parents a letter acknowledging receipt of Parents' request. She stated that Framingham continued to believe its proposed IEP provides Student with FAPE in the least restrictive environment, did not agree that Student requires an out of district placement and did not agree to fund Student's placement at Darnell. (S-16)
36. Natalya Mains has a Master's degree in special education and has worked at the New England Center for Children as a teacher in the residential program. Since 2013, she has been the special education teacher in the Learning Center program proposed for Student at Framingham High School. She is certified in severe disabilities, all levels. (S-18) Last year there were eight students, two assistant teachers, and two aides in her classroom. There were also additional specialists throughout the school who came into the classroom.

Currently there are nine students and four paraprofessionals. The BCBA was in her classroom once per week for three to four hours and the behavior specialist three times per week for five hours. Her students participated in two general education electives per year and were accompanied by paraprofessionals from the classroom. Ms. Mains modified the curriculum and assignments in the electives as needed and communicated and collaborated with the paraprofessionals constantly. Six of her nine students had behavior support plans and daily data was taken for them. Her students had moderate behaviors including perseverative behavior and vocal and motor stereotypy. Some had targeted goals for remaining on task. There was a range of intellectual ability and Student would neither have been the highest nor the lowest. (Mains)

Students in Ms. Mains' class have the opportunity to participate in extracurricular activities including Unified Sports, a Special Olympics program. It pairs students in the Learning Center with general education peers on a team. There is a Unified basketball team and a Unified track and field team. There are two practices per week and a game once weekly. Ms. Mains is a coach for both teams. She described Unified sports as a great opportunity for her students to form relationships with peers with whom they might not typically form relationships. She described another opportunity her students have to spend time with students outside of their classroom (every day after lunch her class spent about thirty minutes doing social activities with another one of the Learning Center classrooms). (Mains) The program also provides instruction in daily living skills and life skills. Students participate in cooking activities and learn safety words. They learn concepts and vocabulary that will help them to be more independent after high school. (DeLisi)

37. Ms. Mains described the vocational opportunities available for her students. They have a coffee shop called Flyer Fuel, and her students read orders, make coffee and deliver coffee to staff. They are in charge of creating bills and collecting money. They also run a school store in the cafeteria. Her students greet customers, track inventory, use cash registers and make change. They do mail delivery in the main office and practice skills such as filing, collating and sorting in the classroom setting. (Mains)
38. Student arrived at Framingham High School on the first day of school, August 28, 2019. (DeLisi, Mains, Johnson) When Ms. Johnson arrived at the high school she could hear Student as she entered the lobby. She saw Mother speaking to one of the vice principals and walked over to them. The vice-principal asked if she knew where Student should be and Ms. Johnson said she would bring him to Ms. Mains' room. Ms. Johnson was able to print out some data sheets and within a day was able to retrieve his program book from Fuller Middle School. (Johnson) Ms. Mains first learned that Student would be coming to Framingham High School and attending her class on the first day of school when he arrived. (Mains) Ms. DeLisi, the high school team evaluation coordinator, called Mother because she had been expecting Student to be attending Darnell. Mother informed her that Darnell would not let Student start yet and he would attend Framingham High School in the meantime. Mother was not yet sure when Student would begin at Darnell. Ms. DeLisi sent Mother an email asking her to provide her with the date on which Student would begin attending Darnell and offering to set up transportation for him to the high school.

(DeLlisi, P-29)) Since Framingham had no advance notice of Student arriving, the staff did not have his behavior support plan or data sheets. Ms. Johnson was able to get those things quickly and the staff was able to implement the plan and start taking data.

During the three weeks that he attended the Framingham High School program, Student was able to access the program with his peers. He exhibited near-zero levels of the targeted behaviors on his behavior support plan. He ate lunch in the cafeteria with his class and participated in an inclusion elective and vocational activities. He joined the other students in the break area during breaks, had conversations and was beginning to establish relationships. He attended the program until September 23, 2019. (Mains)

39. Nurit Lieberman has a Master's degree in communication disorders and has been a speech language pathologist in Framingham for fourteen years. She worked with Student during the period that he attended Framingham High School. She stated that communication skills are Student's most significant issue because communication skills underlie his learning across the curriculum. She further noted that communication is critical for social interaction and impacts Student's ability to make progress in any educational environment. She explained that autism can be viewed as a primary disorder of pragmatics that has to do with knowledge of what the purpose of communication really is, thus communication is at the heart of any potential progress. (Lieberman)
40. The Darnell School is 766 approved and serves students between the ages of nine and twenty-two. There are currently 24 students ranging in age from ten or eleven to twenty-two. (During the 2019-2020 school year there were approximately twenty-two students ranging in age from ten or eleven through twenty-two. ) There were six students in Student's class, ranging in age from eleven to fifteen. Students primarily present with intellectual or developmental disabilities; they do not all have Autism. Staff consists of head classroom teachers who generally have a Master's degree in special education and most are either BCBAs or becoming BCBAs. Working under the lead head classroom teachers are lead classroom assistants who are case managers for two students. There are also classroom assistants and 1:1 staff who receive training in ABA. They use an ABA approach throughout the day, have a community focus (which has been impacted by COVID), and a vocational focus when students turn fourteen. (Heidenheim)
41. Nicole Heidenheim is an educational administrator at the Darnell School. She has a Master's degree in counseling psychology, a Master's degree in special education, severe disabilities, an ED.S. in Special Education Administration, and a certificate in behavioral analysis. (P-26) She has been a lead classroom assistant, which is like a case manager; the Director of professional development; and a head classroom teacher at Darnell. (Heidenheim, Tr.2, pg. 8-10)
42. When a new student arrives at Darnell, the staff conducts a comprehensive assessment. Each student has an IEP and an individual schedule. Students receive academic instruction that follow Massachusetts Curriculum Frameworks; independent living skills and daily living skills are addressed; there are vocational opportunities throughout the day; and students participate in social skills groups. There is a behavioral specialist for each classroom and a speech language pathologist who consults with the head teacher. Five or

six BCBA's are on staff, one of whom is always on site. (Note that some of the BCBA's have other titles and duties.) (Heidenheim, Tr. 2, pg. 13-18, 49)

43. Darnell developed an IEP for Student for the time period from November 19, 2019 through November 18, 2020. It included goals in behavior; academics; community/vocational; and social skills/motor. The A grid services included a speech therapy consult with a speech language pathologist and Darnell staff 1 x 10 minutes weekly; a consult with an occupational therapist and the Darnell staff 1 x 10 minutes weekly; and a home parent training with Darnell staff 120 minutes weekly. The C grid included: behavior, communication, academics, independent living skills, community/vocational, self-management, and social/motor with a special education teacher and paraprofessional 5 x 360 minutes per week. (P-12) Parents accepted the IEP in full on December 10, 2019. They provided a letter to Ms. Heidenheim indicating that they would like to address a number of goals, services, and recommendations made by Dr. Tubbs. They included a list of eight items they wished for Darnell to consider, including providing Student with goals in science, vocabulary, reading, and writing and helping Student to increase his work duration, self-regulation skills, and independent leisure skills. (S-27)
44. Student's classroom teacher at Darnell during the 2019-2020 school year, Kelly O'Leary, was certified in special education and was a BCBA. No other special education certified staff worked with Student at that time. (Heidenheim, Tr. 2, pgs 62-63, 83) The other staff who worked with him included Kate Vincent, who had completed a Master's program, but not yet taken the BCBA exam; Akin Roto, who was enrolled in a BCBA program; and a paraprofessional who did not have any certification. (Heidenheim, Tr. 2, pgs. 83-84)

Within Student's classroom were four fully enclosed smaller rooms, the size of an office, with a door. Student received most of his 1:1 instruction in one of the smaller rooms. (Dunlop, Tr. 2, pg. 137)

45. Ms. Heidenheim was unable to say how many hours of ABA services Student was receiving before the Covid school closure, because they use ABA throughout the day. (Heidenheim) She explained that Student receives 1:1 services for about three hours per day and 1:2 services for three hours per day. acknowledging that Student does not receive 30 hours of 1:1 ABA as recommended by Drs. Castro and Tubbs. (Heidenheim) The staff tracks behavioral data all day every day using a Kindle.

Student has been receiving services remotely since March 13, 2020, and during the remote learning period has not been receiving the full complement of services on the Darnell IEP. (Heidenheim) When Student's program became remote, his initial schedule began at 10:00 and included gym or art until 10:30; social group from 11:00 until 11:30 and reading club from 2:30-3:00. His schedule indicated he would receive 1:1 sessions from 1-1:30 and 2:00-2:45, but did not provide details. (S-30) Darnell's student contact log shows that Student began receiving services on April 2, 2020. The amount of time that he received services began at around one hour and increased soon thereafter to two hours or more. By the end of May, his services averaged about two hours per day and by June they increased

to about two and a half hours per day. The services logged increased in July to over three hours and decreased in August to around two and a half hours per day. In September the number of hours varied from as few as one and a half to as many as two and a half. (S-37) A schedule provided to Mother from Jacob Strout, dated November 2, 2020, showed Student receiving art or gym at 10:00, social skills at 10:30, social group at 11:00 and 1:1 instruction at 1:00 and 2:00. (P-28) Ms. Dunlop noted that he was receiving fewer than three hours of services and was not receiving services from any licensed providers. (Dunlop, Strout)

46. Kari Anne Dunlop, Ph.D., has a bachelor's degree; a Master's degree in special education, and a Master's degree and a doctorate in applied behavior analysis. (P-26) She has been the clinical director at Darnell since 2013 and was previously a head teacher there from 2009 until 2014. When Student first came to Darnell, on September 23, 2019, he was not exhibiting self-injurious behavior. Staff began collecting data on the behavior on November 8, which indicates that it had probably been observed the prior week. (Dunlop, P-11) Student's self-injurious behavior generally involves him hitting himself or anything else with his hands. He sometimes hits the desk forcefully or slaps himself on the side of the leg or cheek or head. As of March, Student's incidence of self-injurious behavior was in the range of 100 per day. (Dunlop, S-19) During remote learning it is not possible to accurately track incidents of self-injurious behavior, because service providers cannot see what Student is doing off the screen. After the implementation of Student's behavior support plan, there was some reduction in Student's "loud vocalizations", but he still exhibited a significant frequency that would need to be monitored. Instances of "perseverative talking" increased after the implementation of the behavior plan and decreased a bit prior to school closure. (Dunlop.) Incidents of self-injurious behavior zeroed out, but Dr. Dunlop noted the level of demand at home is different that it would be in a full school day and did not anticipate it would remain that low when Student returned to school. (Dunlop, S-31)

With respect to Student's peers at Darnell, Dr. Dunlop noted that one student has a diagnosis of autism, ADHD, and disruptive mood dysregulation disorder. That student's behaviors include aggression to others, noncompliance, tantrums, inappropriate verbalizations, self-injurious behavior, whining, crying, and bolting. A second student is diagnosed with autism and intellectual disability. That student engages in maladaptive behaviors and shows aggression toward others. A third peer has a diagnosis of autism and behaviors that include physical and environmental aggression, self-injurious behavior and yelling. A fourth peer has a diagnosis of global developmental delay and a hearing impairment. That student has self-injurious behaviors, bolting, physical aggressions, pushing, flopping, and noncompliance. A final peer has diagnoses of autism, oppositional defiance disorder, PTSD, and bipolar disorder. That student's behaviors include aggression to the environment, aggression to others, noncompliance, and arguing. Dr. Dunlop stated that there are a number of students in Student's classroom who are highly verbal, as Student is. Those students are appropriate peers for Student because they are able to interact socially and practice appropriate social interactions. There are also some students who are at a similar academic level, with whom Student can do some joint

academic activities. Some students are appropriate peers with whom Student can play games and practice turn-taking, small-talk, and appropriate losing. (Dunlop)

47. Jacob Strout, has a bachelor's degree in history, is enrolled in a Master's degree program in special education: severe disabilities<sup>14</sup>, and has finished his course requirements for his BCBA and hopes to take his exam by January 2021. He has experience as an Orton-Gillingham tutor, is a registered behavioral technician, and has been an ABA tutor. He began working at Darnell as a lead classroom assistant in February 2020 and became a head classroom teacher in October 2020. He spent a considerable amount of time consulting with the behavioral specialist who was in his classroom daily. (P-26, Strout) Mr.Strout has been working with Student in the remote learning setting. He works one to one with Student daily, usually from 1:00 to 2:00. (Strout) He noted that since he first met Student in February 2020 he has seen both academic and behavioral progress. When Student behaves 'appropriately, Mr. Strout allows him to joke with him and talk about preferred topics. When he is not behaving Mr.Strout works more on target behaviors. Mr. Strout indicated that Darnell is not currently addressing Student's vocational goals, as they are not able to do so remotely.
  
48. Dr. Tubbs observed Student at Darnell on January 21, 2020, when he had been there for approximately four months. She noted that Student approached her from behind and addressed her in a loud voice. His articulation was notably garbled, as if talking with his mouth full of rocks. His teacher stated that they were ignoring it, as staff thought it was an attention seeking behavior. She observed him playing a game with a peer and Student did not seem to understand the game. He became angry and yelled when reminded of the rules. He became frustrated, yelled, grabbed and pulled his hair, stomped his feet, squeezed his head forcefully, hit his head, and engaged in high-pitched vocalizations. He eventually caught on to the game and his self-injurious behavior stopped, but he continued to engage in a high level of vocalizations and yelled out answers. During lunch with three peers, Student made loud vocalizations while the others were quiet. His response to peers' questions were off target and very brief. He engaged in loud scripting, rather than functional conversation, engaged in hand flapping, and inappropriate laughter. He engaged in chest beating and yelling at the end of lunch and after going to his locker and finding it jammed. He scripted loudly on the way back to his classroom. He asked the observer some appropriate questions while watching the movie, *Toy Story*, as his scheduled break. He engaged appropriately in a group lesson for most of a group lesson, but appeared to get tired and engaged in some scripting and flicking his fingers on the side of his face. His articulation clarity decreased and his volume increased. Student chose to use an iPad and to watch *Toy Story* again for later breaks. While working 1:1 in his "private work room" Dr. Tubbs observed Student read with an appropriate voice before engaging in very loud, silly scripting. He transitioned back to the classroom, but continued to engage in loud vocals and inappropriate laughter. He continued to laugh and screech loudly.

Dr. Tubbs concluded that Student continued to experience substantial language, attention, and behavioral deficits that significantly hinder his educational progress. He continues to

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<sup>14</sup> He has completed approximately 80% of the degree requirements and expects to graduate in spring 2021. (Strout)

have limited abilities to engage in meaningful interactions, secondary to his communication and developmental challenges. He is self-directed and uses maladaptive behavior to control his environment. In assessing the Darnell program she noted that Parents reported that his aggression at home had significantly improved, and that “the emergence of new maladaptive behaviors is not overly concerning or unusual, when children are presented with programmatic solidarity and consistency amongst providers, they often amp up their escape behaviors as they have learned that if persistent and dysregulated enough, their negative behaviors will pay off.” She continued to make the recommendations she had made in her neurological assessment. (P-15)

49. Ms. Therrien reviewed the data taken by Darnell and noted it used a rather large scale which can lead to misinterpretation because the data points plotted look lower than they actually are. Darnell staff used a different method of data collection than Framingham. Framingham tracked the frequency of behaviors and Darnell tracked the percentage of intervals during which a behavior occurred.

In reviewing Darnell’s data charts (P-19) Ms. Therrien noted that Student’s loud vocalizations remained variable. The perseverative talking chart shows that the behavior started to increase in January after the behavior plan was implemented, based upon interval occurrence, not frequency. The minor self-injurious behavior chart shows very high levels of the behavior. There were a few spikes, one quite large, and the behavior continued at a high level through March. Ms. Therrien further reviewed the data taken by Darnell during remote learning. She noted that the validity of any data taken during remote learning had to be viewed with caution because the setting was virtual and variables off screen and unseen could impact behavior. The charts show that perseverative talking continued at a pace similar to prior to school closure as did loud vocalizations. Minor self-injurious behavior was at zero, but the ability of the person taking data is limited because he or she can only see what is on the screen. Ms. Therrien was able to compare the behavior plan from Framingham with the plan prepared by Darnell. The plans were targeting a lot of the same behaviors and using some of the same methodologies. (Therrien)

50. Mother testified that Student’s behaviors slowly started to change after he started attending Darnell. It took until almost February for his aggressions to diminish. He looked forward to going to school, talked about friends, and got ready on time. He learned new leisure skills, such as playing Wii. (Mother)

51. The Team reconvened for an annual review meeting on May 21, 2020. The meeting was held virtually due to Covid-19 restrictions. The N1 issued on that date stated that “IEPs that were in effect prior to the start of extended school closures in Framingham on March 12, 2020 will remain in effect, even if the IEP expires, until a new IEP is signed and accepted and Framingham schools are back in regular session.” It noted, “Any amendment or revision to the IEP resulting from today’s meeting will not be implemented until it is signed and accepted and Framingham schools are back in regular session.” The Team continued to propose the substantially separate classroom for students with Autism at Framingham High School and rejected Parents’ request for an out of district placement. The proposed grid A included team consultation with related service providers 1 x 30

minutes per month; ABA consult with the ABA specialist 1 x 60 minutes per cycle; ABA consult with the BCBA 1 x 60 minutes per month, and occupational therapy with the OT/COTA 1 x 15 minutes per cycle. The C grid included speech/language with the speech language pathologist 3 x 45 minutes per cycle (may occur during functional academics); reading with the special educator 5 x 67.7 minutes per cycle; functional academics with the special educator and assistant teacher and aide 10 x 67.6 minutes English per cycle; academics with the special educator and assistant teacher and aide 5 x 67.6 minutes per cycle; math with the special educator and assistant teacher and aide 5 x 67.6 minutes per cycle; academics with the special educator and assistant teacher and aide 5 x 67.6 life skills per cycle; and extended school year with the summer special education staff 5 x 330 minutes per cycle from July 6, 2020 through August 7, 2020. The IEP was signed and mailed to Parents on June 4, 2020. On July 1, 2020, Parents rejected the IEP in full and stated in a letter that they rejected the IEP's failure to place Student in an appropriately specialized placement such as the Darnell School (S-17)

52. Framingham's 2020-2021 school year started on September 16, 2020, with all students learning remotely. Beginning on October 5, 2020, students from the autism program returned to the classroom. In early December, the entire school returned to fully remote learning and was scheduled to return to in-person learning on January 4, 2021. When the classroom was meeting in-person, five students attended in person, and four attended remotely, by family choice. (Mains)
53. At the time of the Hearing Student had not returned to in person-instruction at Darnell. Other students in his class began returning to in person instruction in July 2020 and Student was the only student who was still receiving remote instruction. He was not receiving remote services at parental request, but because of factors at Darnell, such as insufficient staff. The staff planned to bring him back in person on December 15, 2020<sup>15</sup>. (Heidenheim)
54. Mother described the progress she has observed in Student's behaviors since February 2020. She noted that he still has vocalizations, but they have decreased overall. He gets up on his own and is eager to learn. He has become less self-directed and listens to her now. He helps with chores such as laundry and putting groceries away. She is able to bring Student shopping with her. He wears his mask and gloves, maintains social distance and waits in line appropriately for the cashier. Student currently has speech and occupational therapy at home, does Kumon and takes a culture class that teaches him about his family's culture. (Mother)
55. Father testified about the many things Student has been able to accomplish that Parents never thought he would be able to do, such as becoming verbal. He noted that while in Framingham Student began twisting his tongue while speaking and he continues to do so currently. He described student as very social and loving and having aspirations. He described how Student makes him coffee in the morning. He stated that his goals for Student are for him to be happy and healthy. (Father)

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<sup>15</sup> There is nothing in the record to indicate whether or when Student returned to in-person instruction.

## **FINDINGS AND CONCLUSION:**

Student is an individual with a disability, falling within the purview of the Individuals with Disabilities Education Act (IDEA)<sup>16</sup> and the state special education statute.<sup>17</sup> As such, he is entitled to a free appropriate public education (FAPE). Neither his status nor his entitlement is in dispute.

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education, employment and independent living.”<sup>18</sup> FAPE must be provided in the least restrictive environment. Least restrictive environment means that, “to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”<sup>19</sup>

Student’s right to a FAPE is assured through the development and implementation of an individualized education program (“IEP”).<sup>20</sup> An IEP must be custom-tailored to address a student’s “unique” educational needs in a way reasonably calculated to enable him to receive educational benefits.<sup>21</sup> For an IEP to provide a FAPE, it must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”<sup>22</sup> A student is not entitled to the maximum educational benefit possible.<sup>23</sup> Similarly, the educational services need not be, “the only appropriate choice, or the choice of certain selected experts, or the child’s parents’ first choice, or even the best choice.”<sup>24</sup> The IDEA further requires that special education and related services be designed to result in progress that is “effective.”<sup>25</sup> Further, a student’s level of progress must be judged with respect to the educational potential of the child.<sup>26</sup>

Massachusetts special education regulations provide that specially designed instruction and related services described within the IEP must be sufficient to “enable the student to progress

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<sup>16</sup> 20 USC 1400 *et seq.*

<sup>17</sup> MGL c. 71B.

<sup>18</sup> 20 USC 1400(d)(1)(A). See also 20 USC 1412(a)(1)(A); *Mr. I ex. Rel. L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1 (1st Cir. 2007)

<sup>19</sup> 20 USC 1412(a)(5). See also 20 USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c)

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

<sup>21</sup> *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir.1993)

<sup>22</sup> *Andrew F. v. Douglas County. Sch. Dist.*, 580 U.S. \_\_\_ (2017)

<sup>23</sup> *Rowley*, 458 U.S. at 197

<sup>24</sup> *G.D. Westmoreland Sch. Dist.*, 930 F.2d 942 (1st Cir. 1991)

<sup>25</sup> 20 USC 1400(d)(4); *North Reading School Committee v. Bureau of Special Education Appeals*, 480 F. Supp.2d 479 (D. Mass. 2007)(the educational program must be reasonably calculated to provide effective results and demonstrable improvement in the various educational and personal skills identified as "special needs")

<sup>26</sup> *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F.3d 18 (1st Cir. 2008)

effectively in the content areas of the general curriculum.”<sup>27</sup> Massachusetts also requires that the special education services be designed to develop a student’s educational potential.<sup>28</sup>

An IEP is a snapshot; therefore, the IEP must take into account what was, and was not objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.<sup>29</sup> An IEP is not judged in hindsight; its reasonableness is evaluated in light of the information available at the time it was promulgated.<sup>30</sup> The critical inquiry is whether a proposed IEP is adequate and appropriate for a particular child at a given point in time.<sup>31</sup>

The IDEA requires that “to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. See 20 USC 1412(a)(5); 20 USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c)

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

*With the foregoing legal framework in mind, I turn to the issues before me.*

Whether the IEPs proposed for the period from 2018-2019 were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

There is no significant dispute with respect to Student’s profile and areas of need. The primary area of disagreement is whether Framingham’s program is the least restrictive environment in which Student’s needs can be met or whether he requires an out of district placement at the Darnell School.

During the 2018-2019 school year, Student attended the Fuller Middle School program which is based on the principles of ABA for students with Autism. He was taught by Ms. Bremer, whose credentials and experience were well-tailored to Student’s profile. Ms. Bremer is trained in ABA and is working toward obtaining her BCBA license. Ms. Bremer’s classroom was supported by a BCBA and behavior specialist who had substantial experience, who spent significant time in her classroom and were “constantly” available to her. Ms. Johnson and Ms. Therrier provided Student with tailored interventions such as visuals on his desk or in his binder for use at school and home. Ms. Johnson credibly testified to the many strategies implemented

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<sup>27</sup> 603 CMR 28.05(4)(b)

<sup>28</sup> MGL c.71B; 603 CMR 28.01(3)

<sup>29</sup> *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983 (1st Cir. 1990)

<sup>30</sup> *Id.*

<sup>31</sup> *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir. 1993)

in direct response to observations of Student's behavior. Her knowledge of Student's needs and ability to provide explanations of the strategies she used effectively with Student were notable.

Student received both 1:1 and small group instruction in academic areas. He also had opportunities to attend specials and lunch with neurotypical peers with the support of a paraprofessional or Ms. Johnson and Ms. Bremer, and Ms. Johnson provided Student support at lunch.

Student was also provided with services by the speech language pathologist, with whom Ms. Bremer, and Ms. Johnson collaborated, 3x 45 minutes per cycle. In addition to receiving speech and language therapy to directly address his individual goals, Student had the benefit of a teacher who was certified in reading programs used for teaching students with language-based learning disabilities. Thus, speech and language programming offered by Framingham was responsive to the recommendations of experts with respect to Student's needs in the communication domain. Student's communication needs were identified as critical to his program by both Drs. Castro and Tubbs, Dr. Tubbs recommended that he receive both direct speech language services and language-based instruction, and Ms. Lieberman explained that communication is Student's most significant issue, at the heart of any potential progress.

There was conflicting testimony regarding the appropriateness of the peers in the Framingham program. Ms. Bremer testified that the peers in her classroom were appropriate for Student, despite noting that they were quieter than Student. She stated that there was one student who was more socially motivated than Student and one who was equally socially motivated. She also described how Student was successfully able to practice social skills by playing games with the peers in his class and practice daily living skills by practicing making phone calls with them. I credited Ms. Bremer's opinion that the classroom peers were appropriate over Dr. Tubbs' opinion that they were not. Dr. Tubbs' opinion was made after observing Student for a portion of one day in Framingham. In contrast, Ms. Bremer's opinion was premised upon her experience teaching Student and his peers during an entire school year.

When Student's behaviors arose, the Team convened and sought consent to conduct an FBA. Dr. Tubbs agreed that was appropriate. After the FBA was reviewed by the Team, Ms. Therrien developed a behavior support plan for Student. Dr. Tubbs agreed that drafting the behavior support plan was also appropriate.

The Team's efforts to provide Student with additional behavioral support was initially hampered by Parents' late responses to IEPs and rejection of IEPs which included behavior interventions. Mother testified that she did not respond to the IEP proposed after the September 6, 2018 Team meeting. She was later recalled and testified that she hand-delivered a response to the IEP to Ms. Kierul on October 17, 2018. (P-35) Ms. Kierul was then recalled and testified that she had no recollection of receiving the document and it did not exist in Student's record. She did not authenticate the signature on the document purporting to be hers. (Kierul) Parents did not provide a response to the IEP mailed on October 31, 2018 until January 30, 2019, when they rejected it, but provided permission to provide the proposed services. In Mother's response she requested permission to respond to the January 8 proposal by March 1. (S-6) Thus, even after

the Team identified behavioral supports and objectives that could improve Student's behavioral functioning, they were not permitted to provide them for extended periods of time.

Despite the limitations on what Framingham could provide at various times, Student made behavioral progress while at the Fuller Middle School, as reported by Ms. Therrien. She noted that other than a few spikes, including one on the day of Dr. Tubbs' evaluation, the frequency of emotional episodes was low and self-injurious behaviors did not occur frequently. She also noted that Student's instances of asking personal questions decreased throughout the year.

Parents' case was premised in large part on Dr. Tubbs' opinion that Framingham provided an inappropriate program for Student which, led to an increase in Student's interfering behaviors. In addition to not demonstrating that Student's interfering behaviors were different from those he had displayed while in Shrewsbury, this opinion does not take into account the many changes which occurred in Student's life and their likely impact on his behaviors. Just prior to eighth grade, Student's family moved from a house in Shrewsbury to a much smaller apartment in Framingham. Student left his friends in Shrewsbury and entered a new school system. His mother was away in India for a significant amount of time. His home services ceased as did his sessions with a psychologist. In addition to all these multiple changes, he was going through puberty. Given Ms. Therrien's conclusion (in the FBA) that Student's emotional episodes seemed to occur when unexpected events or disruptions to routines happened, there are many factors which could have led to Student's emotional dysregulation during the eighth grade, factors that had nothing to do with the appropriateness of Framingham's program.

Ms. Bremer noted that Student made academic progress in her classroom and was able to participate appropriately in both small group and larger group lessons. Ms. Therrien's behavioral charts, based on data collected by Ms. Johnson and classroom staff, showed that Student made progress with respect to his interfering behaviors.

It should also be noted that the Team was very responsive to Student's changing needs and Parents' concerns. The Team convened eight times between June 22, 2018 and June 3, 2019. They made proposals to address behavioral issues, reviewed reports from outside evaluators/observers and addressed parental concerns.

Based on the totality of the credible evidence before me, I find that Framingham provided Student with a program that was reasonably calculated to provide him a free appropriate public education in the least restrictive environment during the 2018-2019 school year.

Whether the IEPs proposed for the period of the 2019-2020 school year were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

Framingham proposed a placement for Student in the Framingham High School Learning Center Program for the 2019-2020 school year. Although Parents had provided Framingham with notice that they were unilaterally placing Student at Darnell for the 2019-2020 school year, Student arrived at Framingham High School on the first day of school in September and Framingham staff were able to appropriately transition Student into Ms. Mains' Learning Center

classroom. Because Ms. Johnson works with students in both the Fuller Middle School program and the Learning Center autism classroom, she was familiar with Student and was able to immediately gather materials to enable the staff to work on Student's goal areas. The credible evidence shows that Student had a successful transition to the high school program and was able to participate appropriately academically and socially during the three weeks that he attended.

The Learning Center Program autism classroom is similar to the program at Fuller Middle School. It was taught by Ms. Mains, whose credentials were extremely well tailored to addressing Student's needs. The classroom is supported by the same behavioral staff as the Fuller Middle School program, Ms. Johnson and Ms. Therrien. Data is taken throughout the day for students with behavioral plans. The program addresses academics using both 1:1 and small group instruction and utilizes Discrete Trial Training. It offers access to direct services from the speech language pathologist, which, as noted above, has been deemed crucial to Student's programming and progress by Framingham staff, Dr. Tubbs, and Dr. Castro.

The Learning Center Program provides opportunities for students to practice vocational skills and activities of daily living, such as cooking. It offers a daily opportunity to participate in social activities with another Learning Center class, which expands the pool of peers with whom students interact each day. Additionally, there are opportunities for students to participate in extra-curriculars with the support of a paraprofessional. The program also provides access to Unified Sports, which would appear to be highly appropriate for Student given his participation in multiple sports and fitness activities outside of school. Ms. Mains described the peers who participated in her program last year as having moderate behaviors, including perseverative behavior, vocal and motor stereotypy, and goals for remaining on task. She noted that her students have a range of intellectual ability and Student would not have had the highest or the lowest cognitive ability level.

The Framingham program would have addressed all of Student's identified areas of need. His services would have been provided by licensed professionals with extensive experience in providing services to students with needs similar to Student's. Student would have had the opportunity to interact with peers within his classroom, withing another Learning Center program and with neurotypical peers, with support from trained staff. He would have had vocational opportunities and opportunities to practice life skills. Further, Student would have had the opportunity to participate in the Unified Sports program.

I was not persuaded by Dr. Tubbs' opinions as to the inappropriateness of Framingham's program for Student for various reasons. First, she only worked directly with Student on one occasion, when she administered her assessment on March 19, 2018. Additionally, there were a number of inconsistencies in the facts she reported in her written reports. For example, she stated that Student had the same teacher for seventh and eighth grade. He did not. Also, in her report of the Framingham High School observation, she indicated that she had been accompanied by "Kate Gleason", whom she identified as the Director of Special Education. In actuality, she had been accompanied by Kate DeLisi, the team evaluation coordinator at Framingham High School. Additionally, her neuropsychological report was undated and she did not know when she had written the report. Further, she testified to behaviors that she had observed in Student's home, but did not know when she had conducted the home observation and did not write a report

of her findings. When she observed Student in the Framingham program in November 2018, she was alarmed and dismayed by his behaviors. When she observed Student engaging in similar behaviors at Darnell after his having attended that program for approximately four months, she was not concerned at all. She found the Darnell program to be appropriate for Student despite the continuation of the same interfering behaviors she had noted with concern in Framingham. Finally, in both her neuropsychological and Framingham High School observation reports she recommended that Student receive direct speech and language services. However, when Student was attending Darnell, which did not provide speech and language services, she omitted her recommendation that Student receive said services.

For the foregoing reasons, I find that the program proposed for Student for the 2019-2020 school year was reasonably calculated to provide him with a free appropriate public education in the least restrictive environment.

Whether the IEPs proposed for the period of the 2020-2021 school year were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

The program proposed for Student for the 2020-2021 school year is virtually identical to the program proposed for the 2019-2020 school year, which I have found to have been reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. Therefore, for the reasons cited above, I find that the IEP proposed for the 2020-2021 was reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

Having found the programs provided by Framingham to be reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment, it is not necessary to analyze the appropriateness of Darnell. However, it should be noted that the remote program offered to Student during the Covid-related school shut down was particularly restrictive to Student. All the other Darnell students returned to in-school instruction in or around July 2020. As of the date of Hearing, Student was the only student who continued to be educated remotely, an unfortunate situation for such a socially motivated student with such significant needs in the social and communication realms.

In their closing argument, Parents raised the issue of whether Framingham failed to implement the Shrewsbury IEP in effect at the time that Student enrolled in Framingham. This issue was not raised in Parents' Hearing request. Further, the 2017-2018 school year was not among the issues read into the record and confirmed by the parties. Therefore, this issue is not properly before me in the instant matter and as such I decline to address it.

## **ORDER**

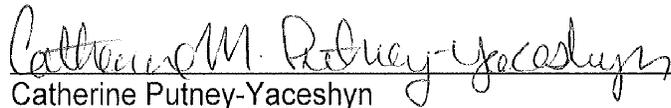
Based upon the foregoing, I find that Framingham's proposed IEPs covering the 2018-2019 period were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

Further, I find that the IEP proposed by Framingham for the 2019-2020 period was reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

Finally, I find that the IEP proposed by Framingham for the 2020-2021 period was reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

Parents are not entitled to reimbursement for the costs associated with their unilateral placement of Student at the Darnell School.

So ordered by the Hearing Officer,

A handwritten signature in cursive script that reads "Catherine M. Putney-Yaceshyn". The signature is written in black ink and is positioned above the printed name.

Catherine Putney-Yaceshyn

Dated: March 4, 2021