

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

In Re: Student v. Northborough Public Schools

BSEA # 2201162

DECISION

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

A hearing was held on December 16, 2021 before Hearing Officer Alina Kantor Nir. Those present for all or part of the proceeding agreed to participate via a remote videoconferencing platform. The following were in attendance for some or all of the proceeding:

Parent

Mathew MacAvoy	Attorney for Northborough Public Schools
Lois Shaughnessy	Teacher, Northborough Public Schools
Matthew Bertonazzi	Team Chairperson, Northborough Public Schools
Alana Cyr	Principal, Fannie E. Proctor School, Northborough Public Schools
Marie Alan	Director of Student Support Services, Northborough Public Schools
Carol Kusinitz	Court Reporter
Reece Erlichman	Director of the BSEA (observer)
Alina Kantor Nir	Hearing Officer

The official record of the hearing consists of documents submitted by the Parent and marked as Exhibits P-A to P-M and P-O to P-P; documents submitted by the Northborough Public Schools (the District) and marked as Exhibits S-1 to S-12; two rebuttal exhibits submitted by the District and marked as Rebuttal Exhibits RE-1 and RE- 2; approximately 7 hours of recorded oral testimony and argument; and a one-volume transcript produced by a court reporter. Parent and the District made their closing arguments on December 16, 2021, and the record closed on that date.

ISSUES:

The following were at issue in this matter:

- a. Did the District fail to implement Student's IEP between March 2021 and June 2021?
- b. If the answer to (a) is yes, was Student was denied a free and appropriate public education (FAPE) as a result of the District's failure to implement Student's IEP?
- c. If the answer to (b) is yes, what is the appropriate remedy?

FACTS:

1. Student is a resident of Northborough, Massachusetts. (P-G; S-3; Parent) She currently attends the fourth grade at Greenfield Commonwealth Virtual School but was homeschooled by Parent during the 2020-2021 school year.¹ (P-G; S-3; Parent; Bertonazzi) Student is diagnosed with a specific learning disability in reading. (P-G; S-3; Shaughnessy)
2. On February 22, 2021, the District convened an IEP Team and developed an IEP for Student. (Parent; Bertonazzi) In attendance were Parent, Matthew Bertonazzi, and Lois Shaughnessy. (Parent; Shaughnessy; Bertonazzi)
3. Matthew Bertonazzi is a licensed occupational therapist and special education teacher. He has over 15 years of experience in special education. He is currently employed as a team chairperson in the Northborough Public Schools and served as the Team Chairperson for Student during the 2020-2021 school year. (Bertonazzi)
4. Lois Shaughnessy is a special education teacher in the Northborough Public Schools. She has been a special educator for 17 years. She is certified in Orton Gillingham and services students who attend the Fannie E. Proctor School as well as students who are homeschooled. Ms. Shaughnessy was Student's assigned liaison. (Shaughnessy; Bertonazzi)
5. On February 25, 2021², the District proposed and Parent accepted, in part,³ an IEP for the period from 2/21/2021 to 2/21/2022 with goals and services in the areas of reading fluency and mathematics (C Grid: Reading, 2x60/5-days, Math, 2x30/5-days). A full inclusion program at Fannie E. Proctor Elementary School was proposed. However, Parent indicated that she would continue to homeschool Student and requested virtual reading services. (P-G; S-3; Parent; Bertonazzi; Shaughnessy) Parent declined mathematics services because she believed it would be "too overwhelming" for Student. (P-H; Parent; Bertonazzi; Shaughnessy)
6. Mr. Bertonazzi testified that once an IEP is developed and a child is receiving services, most parents communicate with either the service provider or the assigned special education liaison. (P-G; S-3; Bertonazzi)
7. Ms. Shaughnessy testified that she reached out to Parent "immediately" after the meeting to schedule Student's reading sessions. (Shaughnessy) Sessions were regularly scheduled for Mondays at 11AM. (S-3; Parent; Shaughnessy)
8. On February 24, 2021, Parent requested that reading services be limited to once per week. (S-3; Parent).
9. Student's first session took place on March 1, 2021. (S-3; Parent; Shaughnessy) Parent testified that she considered this to be a "delay" in service delivery since they should have begun within 24 to 48 hours of the meeting. (Parent) Subsequent sessions occurred on March 8, 19, and 22, 2021. (Parent; Shaughnessy)

¹ Parent testified that she is a teacher licensed in Massachusetts in secondary education. (Parent) However, when questioned regarding her teaching license, Parent refused to provide additional information.

² The annual review meeting was scheduled for February 1, 2021 but was rescheduled to February 22, 2021 at Parent's request. (P-G)

³ There is no acceptance in the record prior to April 6, 2021. (S-3) Nevertheless, reading services began on March 1, 2021 with Ms. Shaughnessy. (Shaughnessy; Parent)

10. Ms. Shaughnessy and Parent communicated regularly in the beginning of March. Ms. Shaughnessy set up an account for Student on the District's website, as well as a recurring Zoom link (<https://nsboro-k12-ma-us.zoom.us/j/88402870491>) and a Google classroom. Parent struggled to log into the account set up for Student on the District's website, and Ms. Shaughnessy sent her step-by-step pictures of how to access the account. (P-A; S-8; Shaughnessy) Parent testified that "at first" Ms. Shaughnessy "seemed amicable." (Parent)
11. On March 4, 2021 and March 19, 2021, Ms. Shaughnessy emailed Parent with the same Zoom link previously sent to Parent "if [she] need[ed] it again." (S-8)
12. On March 22, 2021, Parent emailed Ms. Shaughnessy indicating that Student struggled to "understan[d] [Ms. Shaughnessy's] mature language." According to Ms. Shaughnessy, Parent was concerned when in session Ms. Shaughnessy asked Student to engage in activities that were difficult for Student. (P-A; S-3; S-8; Parent; Shaughnessy)
13. According to Parent, on March 22, 2021, Ms. Shaughnessy "imploded" during a Zoom session in front of Student. Ms. Shaughnessy "became very unprofessional" when Parent "explain[ed]" that Student "was struggling and her lessons needed to be adapted" and "broken down" because they were "too mature." (P-C; S-3; S-5; Parent) Parent testified that the lessons were impacting Student's self-esteem. (Parent) According to Parent, Ms. Shaughnessy said, "you are not going to tell me how to instruct," and then stated, "Find someone else to teach your daughter how to read." Parent felt that this was stated in a "facetious" and "base" tone that was "racially charged", as if Student was "different" from the other students in the District. Parent testified that this is what a racist person would say.
14. At Hearing, Parent asserted that this was typical of other racist interactions she had with District staff, but, when questioned, she could not provide specific information on said interactions or what made them racist. (Parent)
15. Parent testified that Student was "shocked" and "traumatized" by the March 22, 2021 encounter with Ms. Shaughnessy. (Parent)
16. According to Ms. Shaughnessy, Parent told her that the work was too difficult for Student and that Student was regressing. Parent told Ms. Shaughnessy that she should give Student one book per week and only a few vocabulary words to practice. Ms. Shaughnessy testified that "in a very abrasive way, Parent said, 'what I say about my daughter trumps what you say.'" Parent also told her that if she "couldn't do what [Parent] asked, [then Parent] would find someone else who could." Ms. Shaughnessy responded to Parent, "You don't get to tell me how to teach." Before terminating the session, Parent informed Ms. Shaughnessy that Student would not be joining any more Zoom sessions. (S-3; Shaughnessy)
17. Ms. Shaughnessy testified that she had "never had a parent dictate to [her] how or what to teach" and that "she would not take a parent's input on that ever." She found it "ridiculous" and "offensive" to be accused of racism. Ms. Shaughnessy felt she had acted appropriately during the Zoom session, as she did not raise her voice, and she "said the minimum that she could have said." (Shaughnessy)
18. District staff testified that they had not received any prior or subsequent complaints regarding Ms. Shaughnessy. (Bertonazzi; Cyr; Allen) Ms. Shaughnessy testified that she had never had a parent file a complaint against her. (Shaughnessy) District staff

described Ms. Shaughnessy as kind, professional, appropriate, and highly qualified. (Bertonazzi; Cyr; Alan)

19. On March 22, 2021, Parent emailed Mr. Bertonazzi to inform him of the incident. (P-A; S-5; Parent; Bertonazzi) Upon receiving the email, Mr. Bertonazzi contacted Parent via phone and informed her that he would contact the building principal. During the call, he did not indicate that services would be halted during the investigation. (Bertonazzi; Parent) Mr. Bertonazzi then contacted Alana Cyr, the building principal, to let her know of the complaint as she was responsible for the investigation. (Bertonazzi; Cyr)
20. Alana Cyr is the Principal of Fannie E. Proctor School in Northborough, Massachusetts. She has a master's degree in special education and is a certified principal in Massachusetts. She has worked as a principal/assistant principal for 10 years. After Mr. Bertonazzi informed Principal Cyr of Parent's concerns, Principal Cyr emailed Parent on March 25, 2021 informing her that she was investigating Parent's concerns and wanted to set up a time to interview Parent. (S-3; S-9; Parent; Cyr) As part of her investigation, Principal Cyr interviewed Parent, Ms. Shaughnessy, and another teacher who had been present in the room with Ms. Shaughnessy during the March 22 incident. The teacher did not support Parent's version of events. (P-D; S-7; Cyr)
21. On March 26, 2021, Principal Cyr met with Parent. Also in attendance was Mr. Bertonazzi. (S-7; Cyr; Parent; Bertonazzi). During the meeting, Parent requested that a different teacher be "assigned for" Student and indicated that she would not allow Student to participate in any more sessions with Ms. Shaughnessy. According to Parent, she received "reassurance" from Principal Cyr that she would receive a "follow up regarding the investigation" and "regarding when [her] daughter's services would continue." (Parent) However, on cross examination, Parent confirmed that Principal Cyr did not state that a new teacher would be assigned or that services were terminated. She also testified that services "would need to have been resumed with a new teacher assignment, as [Parent] requested" because she was not "comfortable" with Ms. Shaughnessy any longer. (Parent)
22. Both Mr. Bertonazzi and Principal Cyr testified that neither of them indicated at the March 26 meeting that reading services would be terminated or halted during the investigation process. In addition, neither indicated that a new teacher would be assigned. Both testified that services remained available to Student but Parent indicated that she would not allow Student to participate in any subsequent sessions with Ms. Shaughnessy. According to Mr. Bertonazzi and Principal Cyr, for the remaining 10 weeks of the 2020-2021 school year, Parent chose not to avail herself of the services. (S-12; Bertonazzi; Cyr)
23. On April 6, 2021 Parent received an email from a District staff member regarding signing Student's IEP. According to Parent, the email made no mention of continuing Student's reading services. (P-B; S-3; Parent) Parent described the email as "unprofessional," "hostile," and "frivolous."⁴ (Parent)

⁴ The email dated April 6, 2021 states "2nd request. Please respond[.] [T]hank you." Parent responded, "Yes," and the District responded, "Hello – Please respond with Yes, I accept if that is your intention[.] [T]hank you." Parent responded, "YES! I ACCEPT!" According to Parent, the staff member then continued to "go back and forth again" and Parent had to ask her "not to email her again." She indicated that "this is the nature of her interactions with the District." (P-B; S-3; Parent)

24. On April 14, 2021⁵, Principal Cyr issued her findings regarding the investigation into Parent’s concerns. (P-D; P-C; S-7; Cyr) The investigation failed to substantiate Parent’s allegation that Ms. Shaughnessy acted in an inappropriate or unprofessional manner. Parent’s racial allegations were also unsubstantiated. (P-D; Cyr) Principal Cyr wrote, in part:

“To the extent that parents have concerns with the instruction that a child is receiving, it is appropriate to address those concerns to the teacher outside of the classroom session, as you had done previously, following the initial Zoom sessions. As you know, you did report that when you had done so following those initial sessions, Ms. Shaughnessy was responsive and you felt that the exchange had been productive. Consequently, I would encourage you, as I would with any parent, to schedule a separate meeting with the teacher to address concerns and to receive updates on progress.

This concludes my investigation of your parent concern, To the extent that you are dissatisfied with the investigation of your concern, you do have the right under the applicable policy to contact the Superintendent.”⁶
(P-D; S-7; Cyr)

Principal Cyr testified that she anticipated that services would continue to be provided by Ms. Shaughnessy, who possessed the training, skill-set and expertise to provide them. She did not specify when services would resume because they had never been stopped or terminated. (Cyr)

25. Parent testified that it was her understanding that a new teacher would be assigned to Student regardless of the findings because Parent had expressed to Ms. Cyr that she was “uncomfortable” with Ms. Shaughnessy, rejected services with her, and “wanted” a new teacher. (Parent)
26. Principal Cyr testified that a parent is “not entitled to any staff person they want.” (Cyr) The District assigns staff based on their qualifications and expertise. (Cyr; Alan)
27. Parent testified that she received no communication from the District regarding the investigation. (Parent) However, Ms. Cyr testified that, in accordance with her usual practice, she sent her letter of findings via certified mail to Parent. (P-F; Cyr). According to Principal Cyr, it was returned to the District after attempts were made to deliver it on April 17, April 22, and May 2, 2021. (Cyr) When questioned, Parent testified that she was busy with work and could not pick up the letter. (Parent)
28. Parent was dissatisfied with the results of Principal Cyr’s investigation. She asserted that the District took “no accountability” for Ms. Shaughnessy’s “unprofessionalism” and provided “no guidance regarding continuation of services.” (P-J; Parent) However, Parent did not appeal Principal Cyr’s findings to the Superintendent. (Parent)
29. Via email, on May 4, 2021 Parent contacted Mr. Bertonazzi and asked him to email the findings of the investigation to her. She indicated that she finally emailed Mr. Bertonazzi because of the “silence” from the District. (P-F; Parent) According to Parent, Mr. Bertonazzi “ignored” her email. She felt that “clearly the District did not want to

⁵ The District’s Local Report cites this date as April 12, 2021. (S-3) The discrepancy was not explained at Hearing, but based on the date on the document, I conclude it was issued on April 14, 2021.

⁶ Parent was similarly advised regarding her right to contact the Superintendent by PRS on June 8, 2021. (RE-2)

communicate with [her].” (Parent) However, Mr. Bertonazzi testified that after receiving the email from Parent, he verbally communicated Parent’s request to Principal Cyr. (Cyr; Bertonazzi) It was not his intent to “ignore” Parent but rather he wanted to make sure that he got her the information she was requesting since she was asking that the information be provided to her be “in a different format” than what was typically done. (Bertonazzi) On May 13, 2021, Principal Cyr emailed Parent her letter of findings and offered to print her a copy and leave it at the school for pick-up.⁷ (P-C; Cyr; Parent)

30. Parent’s May 4, 2021 communication did not inquire about the reading services. (P-F; Parent; Bertonazzi) Parent did not attempt any other communications with the District regarding services.⁸
31. Ms. Shaughnessy’s phone is set up to receive a notification whenever a student logs into a scheduled session. Student did not log in following March 22, 2021. (Shaughnessy)
32. According to District staff, Student continued to have access to the recurring Zoom links for each and every reading session after March 22, 2021. (S-3; Bertonazzi; Shaughnessy; Cyr; Alan) Ms. Shaughnessy testified that she even “checked” the account to ensure that the Zoom reading session remained open so that the instruction could occur if and when the Student did join. (Shaughnessy)
33. Ms. Shaughnessy testified that she did not schedule another student for Student’s time slot. It was her understanding that she continued to be the teacher assigned to teach Student. (Shaughnessy) Principal Cyr testified that she did not reassign Ms. Shaughnessy to another student. (Cyr)
34. Ms. Shaughnessy was not surprised that Student did not log in on March 29, 2021, the next scheduled session, because Parent had indicated that she “would find someone else to do the work.” She therefore did not feel it necessary to reach out to Parent to inquire why Student was not attending her sessions. Had the March 22, 2021 incident not occurred, she would have “reached out . . . , but given the situation and what [Parent] said, it was not surprising” that Student did not log in. (Shaughnessy) Principal Cyr also testified that she did not find it surprising that Student did not log in; nor did she find a need to contact Parent. (Cyr)
35. The District does not track attendance or “the daily absences” of homeschooled students. (Shaughnessy; Cyr) Hence, no school staff notified Parent that Student was not participating in services. (Bertonazzi; Cyr)
36. Parent found it “bizarre” that Student’s non-participation in sessions was not reported as an “attendance issue,” and she testified that it should have been “brought to [her] attention” that Student was not attending. (P-M; Parent) Parent testified that she had “no communication” about the Zoom link being active and inquiring about why her daughter was not in class. (Parent)
37. Parent testified that she did not have Student log into any more sessions following the incident. (Parent) However, in her Request for Hearing, Parent alleges that her “daughter was unable to access any course work or school tools that had been accessible to her prior to [the] complaint.” (P-M)

⁷ In her Request for Hearing, Parent asserted that she had not received any communication from the District in a “3.5-month period.” (P-M)

⁸ In her Request for Hearing, Parent asserted that “[d]espite [her] efforts to contact the school to resume services, [she] was ignored. . . . [She] reached out to the school district about resuming [her] daughter’s services and . . . was consequently ignored.” (P-M)

38. Parent also testified that she tried to log into Student’s account and it had been deactivated. (P-M; Parent)
39. District staff testified that the account was never de-activated and that it remained available for student to access. (Shaughnessy; Cyr; Bertonazzi)
40. On May 12, 2021 and again on May 13, 2021, Parent contacted Mathew Flynn, BSEA Mediator, asking for assistance. (P-C; Parent) Parent testified that it was “commonplace” for her to reach out to Mr. Flynn who had mediated between her and the District “for years.” (Parent) Parent reported to Mr. Flynn that the District “abruptly stopped [Student’s] IEP plan after a teacher had an outburst on a [Zoom] meeting.” (P-C; Parent) Parent stated that she did “not want to continue services with Northborough Public schools while this is going on.” (P-E; Parent)
41. Student did not partake in any reading services following March 22, 2021. (P-H; S-9; Parent; Cyr; Bertonazzi; Shaughnessy)
42. On June 1, 2021⁹, Parent filed a complaint with the Department of Elementary and Secondary Education’s (DESE) Problem Resolution System Office (PRS).¹⁰ In it, she alleged that since March 22, 2021, the District had failed to implement Student’s reading services. She noted that “the school [was] taking no accountability ...[b]ut instead [was] giving [Parent] unwarranted [advice] about how to give input on [Student’s] educational development.” Parent requested “restitution of 1.5 million dollars.” Parent testified that “damages” are appropriate in the BSEA matter. (P-K; S-1; Parent)
43. Parent’s PRS Complaint indicated that she had made “multiple” attempts “throughout April-May 2021 by email, phone and Zoom to resolve her concerns with the District. (S-1; Parent) However, when asked to identify her “multiple” attempts, she could only identify her email to Mr. Bertonazzi on May 4, 2021. Parent testified that this was “enough” because it was not her responsibility to reach out to the District. (Parent)
44. On June 8, 2021, PRS informed Parent that DESE “cannot grant monetary compensation.” (RE-2)
45. On June 9, 2021, PRS sent the District a Request for Local Report in PRS Matter 5813. (S-2)
46. On June 18, 2021¹¹, Ms. Shaughnessy sent Parent Student’s Progress Report via email. The email included the language, “I hope you have a great summer.” (P-H; S-9; Parent)

⁹ Parent filed the complaint late at night on May 31, 2021, but it was not processed by DESE until the next day on June 1, 2021. (S-1; Parent)

¹⁰ This was Parent’s second complaint with the Department of Elementary and Secondary Education’s (DESE) Problem Resolution System Office (PRS). On March 27, 2018, Parent filed a complaint with PRS alleging, in part, that “because of rude, aggressive, and condescending comments, as well as non-verbal cues and actions, the District had been engaging in a continuing discriminatory bias against her daughter and her daughter’s educational access. Specifically, ... some of the negative behaviors and bias exhibited by the District are racially motivated and affect the student’s education in this case.” 603 CMR 26.01(1) states that “603 CMR 26.00 is promulgated to insure that the public schools of the Commonwealth do not discriminate against students on the basis of race, color, sex, gender identity, religion, national origin, or sexual orientation, and that all students have equal rights of access and equal enjoyment of the opportunities, advantages, privileges and courses of study at such schools.” DESE was “unable to determine noncompliance pursuant to 603 CMR 26.01(1) as to whether the District took action based on race in this matter.” However, on an unrelated issue, DESE did find (and the District had acknowledged) that the District did not comply with 603 CMR 28.04(1)(a) in that matter. (RE-2; Alan) 603 CMR 28.04(1)(a) states that “[w]hen a student is referred for an evaluation to determine eligibility for special education, the school district shall send written notice to the student's parent(s) within five school days of receipt of the referral.”

¹¹ June 18, 2021 was the last day of school for the District. (S-12; Bertonazzi)

Parent found her comment “facetious.” She also testified that this was “random” as, up to that date, she had not had any communication from the District. Parent opined that she received this Progress Report because she had filed a complaint. It was Parent’s understanding that the “law requires” that the District issue a Progress Report “immediately” following each session. Parent also testified that Ms. Shaughnessy’s email did not mention Student’s continued services or the fact that Student had not had any services since March 22. (Parent)

47. Parent testified that she “did not bother to read” the Progress Report. (Parent)
48. According to Mr. Bertonazzi and Principal Cyr, Progress Reports are not sent following each service session; rather, in the District, Progress Reports are issued twice per year, in January and June, when general education report cards are issued. Because Student did not participate in any services at the beginning of the year, no progress report was issued to her in January 2021. However, since she participated in services in March 2021, a progress report was issued in June 2021. The June Progress Report was sent to Parent as a matter of course, not to annoy or harass her. (Bertonazzi; Cyr)
49. On June 21, 2021, Parent contacted Mr. Flynn, asking him to contact the District on her behalf “to see what information [the District needed] to close out [Student’s] home school year.” Parent noted that she was “not comfortable reaching out to [the District] since [she has] an open complaint with them being investigated.” (P-I) Parent testified it was “typical” of the District not to communicate with her. (Parent) However, on June 30, 2021, Parent received a reminder from the District that Homeschool Assessments were due. When on the same date Parent requested additional guidance, the District responded on July 1 directing her via link to the school committee policy. (P-P)
50. Parent testified that Student’s progress during the last part of the 2020-2021 school year was “okay considering the lack of IEP services and the fact that her services were interrupted in second grade” due to the pandemic. (Parent)
51. On June 21, 2021, the District submitted Local Report 5831 refuting Parent’s allegations. The District asserted that it “continuously offer[ed] the Student her reading services since March 22, 2021” and that it “had been the choice of [Parent and/or Student] to not avail themselves to the reading services offered since March 22, 2021, despite the District’s ongoing efforts to continue to provide these services.” The District indicated that during Parent’s March 22, 2021 interjection in the Zoom class, Parent “even told Ms. Shaughnessy that the Student would not be participating in any more reading sessions.” (P-J; S-3)
52. On June 23, 2021, Parent responded to the District’s Local Report asserting that the District was “dishonest about its communications with [Parent] regarding [Student’s] IEP.” She indicated that although the District asserted that the Zoom links remained active, Student “actually lost access trying to log into the [school’s] online forum immediately following [the complaint].” Parent did not receive any communication indicating when services would resume and which teacher would be responsible for them. She also did not receive any emails with Zoom link reminders. She argued that “there would have been no way for [her] to be aware that classes were being resumed since this had been communicated on a weekly basis prior to filing the complaint.” Parent indicated that during a Zoom meeting with the Principal and Team Chair on March 25, 2021, she asked when sessions would resume and was told that she would receive information about that, but that no such information was ever forwarded to her. She

asserted that the District's failure to acknowledge the teacher's inappropriate behavior was an "indication of the [District's] poor mismanagement of its staff and a clear indication of discriminatory practices." (P-J)

53. On July 29, 2021, PRS completed its investigation finding that the District continued to provide access to the services throughout the remainder of the 2020-2021 school year. It advised Parent that she may pursue mediation or a BSEA hearing on the same issues but that such a hearing is a new proceeding and is not for the purposes of reviewing DESE's decision in this matter. (P-K; S-4)
54. The PRS Closure Letter, authored by Kinga Mierzejewski, was emailed to Parent at 12:51AM on July 30, 2021. (P-K) Parent testified that PRS failed to consider key evidence submitted by Parent. (Parent) At 1:36AM on July 30, 2021, Parent emailed Ms. Mierzejewski, who had investigated the matter and authored PRS's closure letter, claiming she found her "dishonest" and "unprofessional"; and expressing frustration at receiving an email "at this hour in the morning"; and, for taking "this long to make such a disgusting, ill informed, biased non-sensical judgment." She wrote:

"I was instructed during the investigation meeting that a staff member would follow up with ME [r]egarding when my daughter's services would resume. NO NPS staff member followed up with me. I tried to access the school website and my daughter's access had been dis activated. Why then would I just assume that a Zoom link was still active without NO (sic) [c]ommunication from a teacher or staff and her NPS School account shut down! She was unable to access any coursework or school tools that had been accessible to her prior to my complaint." (P-K; Parent)
(emphasis in original)
55. In a subsequent email to Ms. Mierzejewski dated July 30, 2021, Parent asserted that Ms. Mierzejewski "misinterpreted this investigation with an obvious negligence and bias toward the school district for some peculiar reason that will be investigated just as well." She indicated that she had "no additional evidence to submit to [PRS] at this time." She asserted, however, that she was not contacted regarding Student's absences for the remaining sessions and that it was the District's obligation to "coordinate resuming [Student's] classes." She added that the Progress Report was emailed to her "2.5 months after the last session in which the teacher imploded on camera" and that it was sent after her initial complaint was filed. She concluded that "[s]ending emails in the early AM hours regarding such a sensitive matter also again demonstrates [] poor lack of judgment. There is no decision that is final when it comes to my child unless I say so, respectively." (P-K)
56. On August 3, 2021, Parent submitted the June 2021 Progress Report to PRS asserting that it was sent to her "weeks after [Student's] last session in March 2021 and only AFTER a complaint was filed [with PRS] on May 31, 2021." (P-L)
57. On August 9, 2021, Parent filed her Request for Hearing with the BSEA. (P-M; Parent) In it, she alleged that the District "halted" Student's special education services as part of a "pattern of partaking in delay tactics, passive aggressive behavior and interference with [her] daughter's services." (P-M)
58. Marie Alan is the current Director of Student Support Services for Northborough Public Schools. She has worked in education for 17 years. Ms. Alan is licensed in Massachusetts as a special education teacher and an administrator. (Alan) On August 16,

2021, the District issued a meeting invitation for a Resolution Meeting to take place on August 19, 2021 in response to Parent’s Request for Hearing. (S-10; Alan) Parent refused to participate and requested a BSEA facilitator for the meeting. Ms. Alan reached out to the BSEA and asked for a facilitator. Additional dates in September were proposed to Parent, but she “declined” them and indicated that “This is now a matter to be heard in front of the courts.” (Alan; P-O)

59. Parent testified that she was “cooperative” and attempted to coordinate a date with the District. However, she could not attend the dates proposed by the District because of her childcare duties. (Parent)
60. A Resolution Meeting was ultimately held on October 26, 2021.¹² (S-11; Bertonazzi; Alan) It was facilitated by Mr. Flynn and was attended by Parent and Ms. Alan. (S-11; Parent; Bertonazzi; Alan)
61. During the meeting, Parent indicated that the meeting was a “technicality” and that a resolution would not be reached. (S-11; Alan) She requested a written apology from the District. She did not want compensatory services for Student but rather to “state her case in court.” (S-11; Parent; Alan) Ms. Alan testified that at the Resolution Meeting, Parent indicated that the matter was about the District’s racial discrimination against herself and her daughter. (Alan) Although disputing any wrongdoing, the District offered compensatory services in the amount of 5 hours of reading services. The District refused to issue an apology. Parent declined the offer. (S-11; Parent; Bertonazzi; Alan)
62. Ten days prior to Hearing, Parent also declined the District’s offer of settlement. (Parent)
63. Ms. Alan testified that the District attempted to settle the matter because hearings have an impact on the District’s staffing resources which, in turn, have an impact on the learning of students. (Alan)
64. In her Request for Hearing, Parent requested that the District “be held accountable for failing to implement [Student’s] IEP ... [and] be instructed to stop obstructing [Student’s] right to service (*now and in the future*) as defined by Massachusetts law regarding Special Education.” (P-M)
65. At Hearing, Parent could not identify what specific relief she was seeking, but indicated that that “damages should be a conversation in this matter” and that she seeks the “most severe form of retribution” due to of the interruption in services. Parent also testified that the relief she seeks will “depend” on the Hearing Officer’s decision in this matter. (Parent)
66. Ms. Alan testified that Parent has exhibited a “pattern of making false allegations” against District staff. (RE-2; Alan)

LEGAL STANDARDS:

1. Free Appropriate Public Education and the Individualized Education Program

¹² The Hearing Officer issued an order on October 6, 2021 stating, in part, that Parent’s “continued refusal to participate in a resolution session may result in a dismissal of the matter without prejudice for failure to prosecute.” (P-N; Parent) Parent indicated that the Hearing Officer’s assertion that Parent refused to participate in the resolution session was a “false allegation.” (P-N) As grounds thereof, she cited her communications with Mr. Flynn in Exhibit P-O in which she offered September 28 through October 1 but declined the dates proposed by the District. (P-O; Parent)

The Individuals with Disabilities Education Act (IDEA) was enacted “to ensure that all children with disabilities have available to them a free appropriate public education” (FAPE).¹³ To provide a student with a FAPE, a school district must follow identification, evaluation, program design, and implementation practices that ensure that each student with a disability receives an Individualized Education Program (IEP) that is: custom tailored to the student’s unique learning needs; “reasonably calculated to confer a meaningful educational benefit”; and ensures access to and participation in the general education setting and curriculum as appropriate for that student so as “to enable the student to progress effectively in the content areas of the general curriculum.”¹⁴ The development and implementation of the IEP is the IDEA’s most “important mechanism.”¹⁵ The IEP must be individually tailored for the student for whom it is created.¹⁶ When developing the IEP, the Team must consider parental concerns, strengths, disability related needs, recent evaluations, present level of achievement, academic, developmental and functional needs.¹⁷

2. IEP Services and Homeschooled Students

Pursuant to the IDEA, “[n]o parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.”¹⁸ However, state law requires school districts to offer special education and related services to all eligible students who reside in the district, including students who are privately enrolled, regardless of where the student attends school.¹⁹ In Massachusetts, privately enrolled students include students who are home schooled.²⁰

3. Implementation of the IEP

To provide a FAPE, a district must implement a student’s accepted IEP with all required components.²¹ The First Circuit has indicated that noncompliance that affects the provision of an educational benefit amounts to a denial of FAPE.²² In order to prevail in a failure-to-implement case, a parent must demonstrate that the school district has materially failed to implement a

¹³ Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 (d)(1)(A).

¹⁴ See 20 USC §1401 (9), (26), (29); 603 CMR 28.05(4)(b); *Sebastian M. v. King Philip Reg’l Sch. Dist.*, 685 F.3d 84, 84 (1st Cir. 2012); *C.D. v. Natick Public School District, et al.*, No. 18-1794, at 4 (1st Cir. 2019) (quoting *Fry v. Napoleon Comty Schools*, 137 S. Ct. 743, 748-749 (2017)); *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.*, 518 F. 3d 18 (1st Cir. 2008); *C.G. ex rel. A.S. v. Five Town Comty Sch. Dist.*, 513 F. 3d 279 (1st Cir. 2008); *In Re: Chicopee Pub. Sch.*, BSEA # 1307346, 19 MSER 224 (Byrne, 2013).

¹⁵ *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 818 (9th Cir. 2007).

¹⁶ *Andrew F. v. Douglas Cty. Reg’l Sch. Dist.*, 137 S. Ct. 988, 1001 (2017).

¹⁷ 34 CFR 300.324(a)(i-v); *Andrew F.*, 137 S. Ct. at 999; *D.B. ex rel. Elizabeth B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012).

¹⁸ 34 CFR 300.137(a).

¹⁹ M.G.L. c. 71B, § 3.; 603 CMR 28.03(1)(e).

²⁰ 603 CMR 28.03(1)(e); see also *Administrative Advisory SPED 2018-1, Guidance and Workbook for Calculating and Providing Proportionate Share Services for Students with Disabilities Enrolled by Their Parents in Private Schools, July 27, 2017, as revised July 2018* which may be found at <https://www.doe.mass.edu/sped/advisories/2018-1.html>

²¹ See 34 CFR 300.323(c) and 603 CMR 28.05(7)(b).

²² See *Roland M. v. Concord Sch. Comt.*, 910 F.2d 983, 994 (1st Cir. 1993).

child's IEP.²³ To do so, the parent must prove more than a minor or technical gap between the IEP and the district's implementation thereof; *de minimis* shortfalls are not enough.²⁴ A material implementation failure occurs only when a school has failed to implement substantial or significant provisions of a student's IEP.²⁵

4. Changes in IEP Services

The primary purpose of the procedural safeguards embodied in the IDEA is to afford parents a meaningful role in the decision-making process regarding their disabled children's education.²⁶ The IDEA thus obligates school districts to provide parents prior written notice whenever they propose to change or terminate the placement or services of an eligible child.²⁷ The BSEA, too, has held that reduction of a service in a student's IEP constitutes such a change requiring prior written notice.²⁸

5. Compensatory Services

Compensatory services are an equitable remedy.²⁹ As such, when deciding if compensatory services are warranted in a given situation, a hearing officer must "balance the equities" by "considering the reasonableness of both parties' conduct and the resultant impact on the student."³⁰ A hearing officer may deny reimbursement if parents unreasonably obstruct the IEP process or otherwise interfere with the ability of the school district to fulfill its obligations.³¹ Compensatory services may be available to make a student whole if a school district commits procedural violations that result in a denial of FAPE to an eligible student.³² On

²³ *Colón-Vazquez v. Dep't of Educ.*, 46 F. Supp. 3d 132, 144 (D. P.R. 2014) (implementation failure cases require an analysis of whether the deviations from the IEP's stated requirements were "material" in that there was more than a minor discrepancy between the services a school provided to a disabled child and the services required by the child's IEP with a focus on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld) (internal citations omitted).

²⁴ See *Ross v. Framingham Sch. Comm.*, 44 F. Supp. 2d 104, 118 (D. Mass. 1999) ("when presented with a claim that a school district failed to implement a student's IEP, a district court must determine whether the alleged failure to implement the IEP deprived the student of her entitlement to a 'free appropriate public education,' as defined under the applicable federal and state prescriptions").

²⁵ See *id.*

²⁶ See *Smith v. Squillacote*, 800 F. Supp. 993, 989 (D.D.C. 1992) (The purpose of the notice requirement is to ensure that parents may reach an informed conclusion about whether the services and placement proposed will provide an appropriate education).

²⁷ See 20 USC Sec. 1415 (b)(3) and (c); 34 CFR 300.503. Massachusetts has adopted the notice provisions of the IDEA and implementing federal regulations.

²⁸ See *In Re: Medford Pub. Sch.*, # 02-1855, 38 IDELR 24 (2002) (where the size of the instructional grouping is a fundamental part of the program, a change in the size of the grouping is a revision of the IEP, thus obligating the district to notify Parents formally of its intent to provide small group instruction for the following year, and failure to give such advance notice prior to a change in the services violated the notice provisions of the IDEA and c. 71B, and the pertinent regulations).

²⁹ *Diaz-Fonseca v. Comm. of Puerto Rico*, 451 F.3d 13, 31 (1st Cir. 2006).

³⁰ *In Re: Haverhill Pub. Sch.*, BSEA # 2005314, 26 MSER 176 (Berman, 2020).

³¹ See *C.G. and B.S. v. Five Town Comty. Sch. Dist., et al.*, 513 F. 3d 279, 288 (1st Cir. 2008); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 987 (1st Cir. 1993); *Murphy v. Timberlane Reg'l Sch. Dist.*, 22 F.3d 1186, 1197 (1st Cir. 1994).

³² *Pihl v. Mass. Dep't of Ed.*, 9 F.3d 184, 189 (1st Cir. 1993).

the other hand, compensatory relief will not generally be awarded for merely technical, *de minimis* violations that do not result in a denial of FAPE or preclude parents from meaningful participation in the Team process.³³

6. Burden of Proof

In a due process proceeding, the burden of proof is on the moving party that is seeking relief. If the evidence is closely balanced, the moving party will not prevail.³⁴

APPLICATION OF LEGAL STANDARDS AND CONCLUSION:

In the instant case, it is not disputed that Student is a student with a disability and that, as a homeschooled student residing in Northborough, Massachusetts (P-G; Parent), Student is entitled to special education and related services.³⁵ At issue here is whether the District failed to provide Student with reading services between March 2021 and June 2021. If so, did the District's failure to implement Student's IEP deny Student a FAPE such that a remedy is appropriate? Because Parent is the moving party, she bears the burden of proof.³⁶

After careful consideration of the totality the evidence presented at the hearing, and of the arguments of Parent and the District's counsel, I find that Parent has not carried her burden of showing that the District failed to implement Student's IEP during the period in question or that the District otherwise engaged in any improper action or inaction that might have compromised Student's entitlement to a FAPE. My reasoning follows:

It is indisputable that Parent partially accepted the IEP for the period February 21, 2021 to February 21, 2022, which included reading services (2x60) and math services (2x30). (P-G; Parent; Bertonazzi; Shaughnessy) It is also uncontroverted that Parent subsequently declined all math services and requested that reading services be limited to once per week. Because Student continued to be homeschooled, it was agreed that the accepted Reading services would be delivered on a remote platform via a recurring Zoom link that was set up for her by Ms. Shaughnessy. (P-G; Parent; Bertonazzi; Shaughnessy) Ms. Shaughnessy began to deliver reading services to Student on March 1, 2021, and Student participated in a total of 4 reading sessions. (Parent; Shaughnessy)

Although disputed, I find that Parent offered no credible evidence to support her belief that reading services were no longer available to Student after March 22, 2021. During the March 22 incident, Parent indicated to Ms. Shaughnessy that Student would no longer participate in Zoom sessions with her; she also voiced her intention to secure a new provider for Student. (Parent; Shaughnessy) In contrast, during the session, Ms. Shaughnessy did not indicate to Parent that

³³ *Murphy*, 22 F.3d at 1196.

³⁴ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

³⁵ M.G.L. c. 71B, § 3.; 603 CMR 28.03(1)(e); see also *Administrative Advisory SPED 2018-1, Guidance and Workbook for Calculating and Providing Proportionate Share Services for Students with Disabilities Enrolled by Their Parents in Private Schools, July 27, 2017, as revised July 2018* which may be found at <https://www.doe.mass.edu/sped/advisories/2018-1.html>

³⁶ See *Schaffer*, 546 U.S. at 62.

sessions would not continue. In addition, both Principal Cyr and Mr. Bertonazzi denied telling Parent that services were “halted” or that a new teacher would be assigned. (Cyr; Bertonazzi) Parent even admitted on cross examination that, during the March 26, 2021 meeting with Principal Cyr and Mr. Bertonazzi, neither promised a staff reassignment nor indicated that services were discontinued. Principal Cyr’s letter of findings dated April 14, 2021 did not reference a provider reassignment but instead encouraged Parent to reach out to Ms. Shaughnessy outside of Zoom sessions with any concerns. (S-7; Cyr)

The record reflects that the only assurance made to Parent after her meeting with Principal Cyr and Mr. Bertonazzi is that she would be provided with a “follow up”, not a new teacher or information on continuing the reading services further. And, as Principal Cyr’s April 14, 2021 letter of findings was sent to Parent in a timely manner following completion of her investigation into Parent’s complaint about Ms. Shaughnessy, I conclude that the promised “follow up” was provided.³⁷ (S-7; Parent; Cyr)

A parent may not dictate staffing assignments to a school district; such responsibility is wholly within the prerogative of the district, provided that the staff assigned has the education, training and expertise to provide the service.³⁸ Here, Ms. Shaughnessy was a highly trained and experienced Orton Gillingham provider who had the education and expertise to work with Student. (Shaughnessy; Cyr; Alan) Parent offered no evidence to the contrary. While Parent, although mistakenly, may have believed a new teacher would be reassigned to student at some point in time, the fact is that it was her decision not to have her daughter participate in reading services.

Moreover, the preponderance of credible evidence shows that following the March 22, 2021 incident, the District continued to make services available to Student. Student had an account on the District’s website as well as a Google classroom and a Zoom link for reading services with Ms. Shaughnessy. (S-8; Shaughnessy) Owing to Parent’s contradictory statements and inconsistent testimony, I did not find credible her claim that either Student’s account on the District’s website or Zoom was deactivated or “inactive”.

I first address the status of Student’s account on the District’s website, and Parent’s assertion that it had been deactivated. In her Request for Hearing, Parent alleged that her “daughter was unable to access any course work or school tools that had been accessible to her prior to [the] complaint.” (P-K; P-M) In both her Request for Hearing and communication to PRS, Parent stated she had “tried to access the school website,” but Student’s “access had been dis activated.” (P-J; P-K; P-M; Parent) She further wrote to PRS that Student “actually lost access trying to log

³⁷ The latest that Parent would have reviewed the letter would have been on May 13, when Principal Cyr emailed it to her, at her request. Nevertheless, the letter was available for Parent’s review earlier because Principal Cyr had sent it to Parent on April 14 via certified mail. Parent refused its attempted delivery three times. (P-C; P-F; Cyr)

³⁸ See, for example, *In Re: Norton Pub. Sch.*, 1609348, 23 MSER 40 (2017) (“Within the basic framework of an IEP, schools have considerable professional discretion and flexibility in how they fulfill their responsibilities. Thus, for example, schools generally have discretion over such items as classroom placement, staff assignments, and methodologies”) (citations omitted); *Yuba City Unified Sch. Dist.*, 2013120207, 2013110182, 114 LRP 17835 (SEA CA, 2014) (where the nurse selected by the district had extensive expertise working with students with autism, Parents could not demonstrate that she was not appropriate because she was not the Parents’ preferred nurse).

into the [school's] online forum immediately following [the complaint]."³⁹ However, these statements are inconsistent with Parent's testimony that Student never attempted to log into the website after March 22. (Parent)

With respect to the status of the Zoom link, I find no credible evidence was adduced to demonstrate that the link was inactive and that instruction was unavailable to Student. Ms. Shaughnessy testified that she had checked the link after the March 22 incident to ensure that it was working, and it was. Her testimony is further persuasive because she did not schedule any other students for Student's timeslot. (Shaughnessy) Ms. Shaughnessy's testimony was buttressed by Principal Cyr's testimony that she had not assigned any additional students to Ms. Shaughnessy to be serviced during Student's pre-scheduled sessions. (Cyr) On the other hand, Parent's only evidence with regard to the alleged deactivation of the Zoom link was her testimony to the effect that she had "no communication" about the Zoom link being active and did not have Student attempt to access it; and her July 30, 2021 communication with PRS, questioning why she would "assume that a Zoom link was still active" where she had received "NO [c]ommunication from a teacher or staff and her NPS School account shut down!" (P-K; Parent)

In contrast, I found the testimony of Ms. Shaughnessy, Principal Cyr, and Mr. Bertonazzi to be credible and consistent as to the question of the status of Student's continued access after March 22, 2021. Ms. Shaughnessy testified that she had checked the link after the March 22 incident to ensure that it was working, and it was. Her testimony is also persuasive because she did not schedule any other students for Student's timeslot. (Shaughnessy) Ms. Shaughnessy's testimony was further buttressed by Principal Cyr's testimony that she had not assigned any additional students to Ms. Shaughnessy to be serviced during Student's pre-scheduled sessions. (Cyr)

Parent also argued that "there would have been no way for [her] to be aware that classes were being resumed since this had been communicated on a weekly basis prior to filing the complaint." (P-J) Yet no evidence was presented at hearing to demonstrate that a link had been forwarded to Parent on a weekly basis prior to March 22. Instead, as evidenced by emails dated March 4, 2021 and March 19, 2021, Ms. Shaughnessy set up a recurring Zoom link (<https://nsboro-k12-ma-us.zoom.us/j/88402870491>) which, on a couple of occasions, she re-sent to Parent "if [she] need[ed] it again." (S-8; Shaughnessy; Parent)

Parent's testimony presented additional inconsistencies which undermined the credibility of her statements. For instance, Parent's PRS Complaint indicated that she had made "multiple" attempts "throughout April-May 2021 by email, phone and Zoom" to resolve her concerns with the District. (S-1; Parent) Similarly, in her Request for Hearing, Parent asserted that "[d]espite [her] efforts to contact the school to resume services, [she] was ignored." (P-M) However, Parent's only Parent-initiated contact with the District following her meeting with Principal Cyr and Mr. Bertonazzi was her email to Mr. Bertonazzi on May 4, 2021 asking that the certified

³⁹ Because Parent had previously struggled to log into Student's account on the District's website in early March, it is plausible that she attempted to log into Student's account on the District's website after March 22 but had difficulty logging in, as she had in the past. (P-A; S-8; Parent; Shaughnessy)

letter of findings which she had declined to retrieve be sent via email. She did not inquire then or thereafter about Student's reading services.⁴⁰ (P-F; Parent; Bertonazzi)

Parent also testified that she received no communication from the District regarding the investigation into the March 22 incident. (Parent) However, Ms. Cyr testified that, in accordance with her usual practice, she sent her letter of findings via certified mail to Parent. (P-F; Cyr). According to Principal Cyr, it was returned to the District following 3 attempts to deliver it. (Cyr) Parent confirmed that delivery was attempted, but she was busy with work and could not pick up the letter. (Parent) Principal Cyr then emailed Parent the letter on May 13, 2021 at Parent's request. (P-C; P-F; Cyr) Parent's testimony that following the March 26 meeting there was "silence" from the District is therefore inaccurate. (Parent).

Parent's inability to answer certain questions with specificity while testifying at the Hearing also undermined her credibility. For example, Parent testified that she is a teacher licensed in Massachusetts in secondary education. (Parent) However, when questioned regarding her teaching license, Parent refused to provide additional information. Similarly, Parent made a general allegation of racial discrimination by District staff against herself and her daughter, but when asked for specific information, refused to offer any. Also troubling was Parent's inability to articulate the relief she sought in the instant matter. (Parent) In her June 1, 2021 PRS complaint, Parent demanded 1.5 million dollars. (S-1) In her August 9, 2021 Request for Hearing, Parent wrote:

"I would like the [District] to be held accountable for failing to implement my daughter's IEP. I would like [the District] to be instructed to stop obstructing my daughter's right to service (*now and in the future*) as defined by Massachusetts law regarding Special Education." (P-M)

At Hearing, she argued that "damages" should be awarded but could not identify what these would be nor what educational harm was suffered by Student or what private services she had secured for her daughter that would warrant compensation or reimbursement. (Parent)

Although the District offered Student compensatory services in an attempt to settle the matter, I do not find that Student is entitled to any.⁴¹ (Alan; Parent) The credible evidence shows that it was Parent's insistence that that the District reassign Ms. Shaughnessy and her refusal to allow Student to participate in sessions with the District-assigned provider that impeded Student's ability to receive benefit from her IEP. The District's obligation was to offer services, and the Parent's was to make Student available. The District satisfied its obligation. Parent's argument that the District should have informed her of Student's "absences" makes little sense in the context of a third-grade student who was being homeschooled by her mother. Particularly where, as here, she had made it clear to multiple District staff that her child would not participate in any sessions with the assigned provider. (Parent; Shaughnessy; Cyr) Compensatory services are an

⁴⁰ The District also contacted Parent on April 6, 2021 regarding signatures for the IEP. Parent responded to the District's email but did not inquire about services. (P-B; S-3; Parent)

⁴¹ The evidence shows that the District offered compensatory services to Student in an attempt to safeguard its staffing resources and forgo a hearing, but Parent chose not to accept the District's repeated offers. (S-11; Parent; Alan)

equitable remedy,⁴² and, as discussed *supra*, I find that Parent's conduct interfered with the ability of the District to fulfill its obligations.⁴³

ORDER:

The Northborough Public Schools did not fail to make weekly reading services available to Student during the period March 2021 to June 2021. No compensatory services are owed for the time period in question.

So Ordered by the Hearing Officer,

/s/ Alina Kantor Nir

Hearing Officer

Dated: January 5, 2022

⁴² *Diaz-Fonseca*, 451 F.3d at 31.

⁴³ See, for example, *C.G. and B.S.*, 513 F. 3d at 288.