**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**SPECIAL EDUCATION APPEALS**

**In Re:** Student v. **BSEA #**12-4227

 Brookline Public Schools

# 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.

Parent requested a Hearing in the above-referenced matter on December 21, 2011. Following a denial of Parent’s request for reconsideration of denial of expedited status, and a request for postponement of the IDEA hearing date by Brookline Public Schools, on January 24, 2012, the matter was scheduled to proceed to Hearing in February 2012. The Hearing was held on February 15, 16 and 24, 2012, at the Bureau of Special Education Appeals, 75 Pleasant St., Malden, Massachusetts. Those present for all or part of the proceedings (in person or via telephone conference call) were:

Student’s mother

Sherry Rajaniemi-Gregg, Esq. Parent’s Attorney

Harvey Botman, Ph.D. Neuropsychologist

Mrs. X Educational Consultant/ Parent’s friend[[1]](#footnote-1)

Karen Shmukler Out of District Coordinator, Brookline Public Schools

Kristen A. Eposito-Balboni Assistant Superintendent for Student Services, Brookline

Public Schools

Julie McDonnell Brookline Police Department

Xenia Johnson-Bhembe, MD Psychiatrist, Consultant to Brookline Public Schools

Mitch Abblettt Manville School Clinical Director

Joslin Murphy, Esq. Attorney for Brookline Public Schools

Amie Rumbo Catuogno Court Reporter

The official record of the hearing consists of documents submitted by Parent and marked as exhibits PE-1 through PE-5 and PE-7 through PE-30, and those submitted by Brookline Public Schools (Brookline) marked as exhibits SE-1 through SE-33, recorded oral testimony and written closing arguments. The Parties’ Closing Arguments were received on March 8, 2012 and the record closed on that date.

## HEARING ISSUES:

1. Whether the IEP and placement proposed by Brookline in January 2012, offering Student residential placement at the Knight Children Center, and in the alternative, at St. Ann’s Home and School, can appropriately meet Student’s needs and offers her a free and appropriate public education (FAPE). If not;
2. Whether Student is entitled to public funding for residential placement at the Walden Street School?

**POSITIONS OF THE PARTIES:**

**Parent’s Position:**

Parent asserts that Student requires residential placement to address her educational needs as she failed to make effective progress at Manville, requiring two hospitalizations in the fall of 2011. Parent asserts that Walden Street School, the placement recommended by several of her independent evaluators and care providers, is best suited to meet Student’s unique needs. Parent most particularly relies on the results of the neuropsychological evaluation conducted by Dr. Botman and on his recommendations for Student. Parent rejects the placement offers made by Brookline, finding numerous issues which she alleges render the programs inappropriate for Student.

Additionally, Parent raises numerous procedural due process violations, most notably Brookline’s offer of two distinct placements which, according to Parent, were not discussed at the Team meeting in January 2012. Parent states that Brookline’s procedural transgressions are sufficient to assure Student/Parent their choice of program.

Parent seeks public funding for residential placement of Student at the Walden Street School.

**Brookline’s Position:**

Brookline agrees that Student is eligible to receive special education services. While it does not agree that Student requires long-term residential placement, it does agree that at this point she requires short-term residential placement to gain stability in order to access a FAPE.

It asserts that the program proposed for Student at the Knight Children’s Center in Jamaica Plain, Massachusetts is appropriate and argues that alternatively, the St. Ann’s Home and School located in Methuen, Massachusetts is also appropriate. It asserts that proposal of St. Ann’s Home and School was made in response to Parent’s stated displeasure with the Knight Children’s Center program which Parent and her advocate described as “too institutionalized”.

Brookline asserts that the program proposed by Parent at the Walden School, is inappropriate for Student because it lacks an appropriate social peer group, and it would fail to offer Student an appropriate academic program.

Brookline asserts that it has acted promptly and responsibly at all times and disputes the procedural transgression which Parent alleges.

**FINDINGS OF FACT:**

1. Student is an eleven-year-old resident of Brookline, Massachusetts, who is eligible for special education services under the categories of Emotional and Social Pragmatics (PE-1). Over the years, she has been given numerous diagnoses including Pervasive Developmental Disorder (PDD), Asperger’s Disorder, Non-Verbal Learning Disorder, Bipolar Affective Disorder, Generalized Anxiety Disorder, and Attention Deficit Hyperactivity Disorder (ADHD) (SE-2; PE-10). She has also been diagnosed with Post-Traumatic Stress Disorder, Oppositional Defiance Disorder, Mood Disorder, Borderline Personality Disorder, and Non-verbal Learning Disabilities, although there has been disagreement between Parent, Brookline and some of the physicians and evaluators who have treated and/or assessed her with regard to the diagnosis of Borderline Personality Disorder, Bipolar Disorder, Mood Disorder and ADHD (SE-5; PE-10; Abblettt). The Parties do not dispute that Student possesses superior cognitive abilities and that her Verbal, Perceptual Reasoning, and Working Memory Indices all fall within the Superior range, with Language Processing speed falling solidly within the average range (Whelan, Botman). (According to testing completed in March 2011, Student has a Verbal IQ of 121, a Perceptual Reasoning IQ of 121, a Working Memory IQ of 120 and a Processing Speed of 94.) On the WIAT III, Student’s academic skills fell in the above average range for reading and in the average range for writing and math. She was noted to need support and assistance with social interaction skills (PE-1).
2. The Parties agree that Student’s emotional disability impacts her social and academic functioning. She is artistically inclined, and enjoys reading, writing, drawing and learning as well as sharing her knowledge with others. Much of her positive self-image is derived from her academic and artistic achievements (SE-19; Parent, McDonnell). According to Parent, Student desires to have friends but at present has none, she also has difficulties with “transitions and can be rigid in her coping style” (SE-8).
3. Since preschool, Student has had numerous placements which, from first grade, have included Brookline P.S., Manville (twice), Pathways, and homeschooling for at least a portion of the fourth grade. (Parent, Shmukler). Student most recently attended an out-of-district day program at the Manville School in Jamaica Plain (SE-1; Parent, Abblettt, Shmukler).
4. Student has had several psychiatric hospitalizations resulting from incidents involving increased aggression and agitation. According to Parent, at home, Student’s mood and behavior can suddenly shift and she can physically assault Parent, step-parent or her siblings. During some of the hospitalizations Student evidenced episodes of depressed mood with crying and tearfulness (SE-5; Parent).
5. Student had her first psychiatric hospitalization at New England Medical Center in August 2003 (SE-23).
6. Student’s second hospitalization occurred on May 10 and lasted through May 26, 2006, while she was in Kindergarten. At that time, Parent brought Student to the emergency room at Cambridge Hospital on the advice of her out-patient psychiatrist Janet Wozniak who treated Student following her discharge from New England Medical Center (NEMC). The Discharge Summary notes a discrepancy between Parent’s description of Student in the home and the preschool, pre-Kindergarten and Kindergarten school reports. The report also notes that Dr. Wozniak did not obtain information from the schools and it was unclear whether she had reviewed the Franciscan Hospital reports either (SE-5). The Discharge Summary further notes that Student’s

irritable moods, aggressive behavior, and pressured speech have only been noted at home. They have not been observed by school [personnel] or directly observed by medical staff, not even by the Emergency Room physician who met with [Student] when she was taken to the hospital because of behavior at home that was described as manic.

[Student] demonstrated mildly depressed mood, but no delusions, no hallucinations, no pressured speech or voice, no signs of tension. The Emergency Room psychiatrist reported signs of anxiety: i.e., sign of psychomotor agitation, excessive over activity in response to inner tension, some decreased concentration. [She] was reported to scratch the EMT on the way over to Cambridge Hospital.

The only behavioral issues consistently reported by someone other than mother, are [Student’s] boundary problems and issues with people touching her. [Student] has been reported by prior doctors as showing signs of anxiety and hyper-vigilance (increased sensations to touch and sound inputs for example).

At the time of admission to the CAU [Child Assessment Unit hospitalization], [Student] was diagnosed with Child Onset Bipolar Disorder, most recent episode manic and ADHD, Combined Type and Anxiety Disorder NOS. As the rest of this report indicates our diagnostic impressions were somewhat at variance with this (SE-5).

1. The Cambridge Hospital Child Assessment Unit (CAU) Discharge Summary states that Student was happy, calm, engaged and focused on activities and school work, integrated well with peers and responded well to staff. She slept and ate well, complied with the demands made of her and followed the rules of the unit. She did not demonstrate any signs of clinical depression, ADHD or mania, but demonstrated signs of severe anxiety for which she was diagnosed with Generalized Anxiety Disorder (SE-5). The Summary further noted that Student was observed to become more likely to be aggressive when Parent was present and further noted that the bulk of her aggressive behavior was directed at Parent. Both Student and Parent appeared to be highly reactive to each other’s “mood, level of agitation and anxiety. [Student] would lash out, [Parent] would look frightened and either physically withdraw or threaten to do so [and Student] would escalate” (SE-5; SE-6). The staff observed that when Student became agitated, if the other person remained calm and set appropriate limits, expressed concern for Student and engaged her with curiosity and expressed willingness to help her, she would de-escalate quickly (Id.). Parent indicated her interest in learning the clinical approach followed at the CAU called “Collaborative Problem Solving” based on a book by Dr. Ross Green. Student’s discharge diagnosis was: Post-traumatic Stress Disorder, Anxiety Disorder NOS and rule out Mood Disorder NOS and Bipolar Disorder. AXIS IV noted “problems with primary supports” (SE-5).
2. On or about January/ February 2007 Student started to attend the Manville School (Manville), a private out-of-district placement supported by Brookline. This placement was intended to address Student’s issues with attention, impulsivity, verbal and physical aggression, sensory issues, poor affect regulations and difficulties in her social interaction with peers (SE-3).
3. Student was hospitalized at Franciscan Children Hospital between August 19 and September 2, 2008, CBAT in July 2009 and had additional psychiatric hospitalizations at Cambridge Hospital in September 2008, July 2009 and at the end of September 2009 (PE-23).
4. Parent interrupted Student’s placement at Manville in 2009 due to Parent’s concerns over difficulties between Student and peers. At Parent’s request Student was placed at Pathways in September 2009. While at Pathways Parent become concerned over Student’s difficulties with peers and how she was being physically handled (SE-1; SE-23; Parent). Parent withdrew Student from Pathways on or about October 2009 in favor of home-schooling, after she and Manville were unable to reach an agreement as to treatment modality for Student (SE-1; Abblettt).
5. A Franciscan Children’s Hospital (FCH) Clinical Resume describes Student’s psychiatric hospitalization for the period December 21, 2009 through January 21, 2010. Student was nine years of age at the time. Her then chief complaint was that owing to home-schooling “she was spending too much time with her mother” and offered this as an explanation for the worsening of her aggressive and impulsive behaviors in the home. Student offered that she had become frustrated with Parent, had attacked her and then thrown a mirror, and also admitted physically hurting her step-father. She stated that she was not sleeping. Student was taken off Zoloft, to which she was apparently reacting, and placed on Seroquel instead. She has had numerous trials of various medications (PE-23).
6. During her hospitalization at FCH, Student struggled with peer interactions, requiring redirection from aggressive behaviors, but did well with her individual work with staff. Individual sessions with therapists dealt with anger-management and addressed Student’s desire for and difficulties with peer relations. The treatment team noted the difficulties for Parent in home-schooling Student, and the benefits of having teachers, staff and therapists work with Student. The treatment team also noted the benefit of having peers available to Student to address her social relation issues. The team’s diagnostic impressions were Bipolar Disorder, Anxiety Disorder, Nonverbal Learning Disorder and Attention Deficit Hyperactivity Disorder. Under AXIS IV the discharge diagnosis was “Stressors related to primary supports and social and educational environments”.[[2]](#footnote-2) Student was discharged on the following medications: Seroquel 150 mg pot id, Lithium ER 600mg po qhs, and Centrum M V I tab po qam (PE-23).
7. Student was home-schooled until February/ March 2010 when the clinical staff, during Student’s hospitalization, recommended that Student be enrolled in a school program (SE-1; SE-23; Parent).
8. Upon returning to Manville in 2010, Student was placed in a class with eight other children and continued to receive her education pursuant to an IEP covering the period May 27, 2010 to May 26, 2011, fully accepted by Parent on June 4, 2010 (SE-3; SE-18; SE-24).
9. On January 18, 25 and February 1 and 3, 2011, Miriam Pirone, M.S., CCC-SLP performed a Speech and Language Evaluation of Student. She administered the Test of Problem Solving-3 (TOPS-3) and the Clinical Evaluation of Language Fundamentals-4 (CELF-4 –Pragmatics Profile) to assess Student’s pragmatic language skills. She also assessed Student informally by administering the I LAUGH Framework[[3]](#footnote-3) (SE-4). Ms. concluded that Student presented with average to above-average receptive and expressive language skills, and with mildly impaired pragmatic language skills, with relative weaknesses in

using appropriate strategies to gain attention, observing turn-taking rules [in] the classroom or social contexts, responding to constructive criticism, whole body listening, apologizing and accepting apologies, responding to teasing/anger/ failure/disappointment in an expected manner, and responding to non-verbal cues efficiently and fluidly (SE-4).

To address Student’s pragmatic language skill deficits in the home and school environments, Ms. Pironi recommended that Student participate in two, thirty minute sessions of speech and language per week (SE-4).

1. Robert Babigian, CAGS/NCSP (C.V. at SE-14) and Krista L. Nashawaty, M.S. of Brookline, conducted a psychological evaluation of Student on January 20, 28 and February 4, 2011(PE-26; SE-2). The report, dated March 14, 2011, cites to the numerous tests, rating scales and observations of Student conducted by Mr. Babigian and Ms. Nashawaty. Their evaluation evidenced many of the same types of issues discussed in previous evaluations, suggesting the

Presence of previously identified challenges within areas of anxiety, social communication and understanding, slower rates of processing, and some mild executive dysfunction (PE-26; SE-2).

As a result of their evaluation, Ms. Nashawaty and Mr. Babigian opined that Student would benefit from participation in a highly structured, supportive program that offered a reduced student to teacher ratio, where expectations were clear and the staff had knowledge and expertise working with students who presented with social and emotional difficulties. The evaluators further recommended that Student participated in regular education classes that offered differentiated instruction and enrichment to promote academic growth. They continued to support the accommodations and modifications listed in Student’s then current IEP[[4]](#footnote-4) and noted that in order to support development of Student’s social communication skills, Student should be grouped with students who shared a profile similar to hers. Ms. Nashawaty and Mr. Babigian supported Student’s participation in a social communication and interaction group that focused on teaching Student perspective taking, reducing social rigidity and fostering appropriate social behavior. They also encouraged Student’s participation in social and physical activities outside school with typically developing peers to assist Student in her interaction skills. Finally, to address Student’s anxiety issues they recommended self-monitoring and regular meetings during the school day with a therapist who worked with Student on coping skills and help her understand her strengths and weaknesses (SE-2).

1. At Manville Student received weekly psychotherapy with Iliana Partan, LICSW, to help her process social/peer interactions, anxiety and emotional reactions resulting from challenging exchanges. Student was reported to have a positive relationship with her therapist and was an active participant in their sessions. Additionally, Student partook in a weekly group therapy session which focused on conflict resolution, pro-social interactions and developing empathy skills (SE-3).
2. A Clinical Summary prepared by Mitch Abblett, Ph.D. (Student’s Case Manager at Manville during the 2010-2011 school year), in conjunction with the April 5, 2011 IEP notes that Student’s clinical services at Manville focused on helping Student identify her feelings, impulses and behavioral responses, as well as addressing her anxiety and helping Student develop positive self-management and more adaptive coping strategies. He noted that Student evidenced impulsive behavior and at times reacted in a way that was disruptive and frustrated her peers. She however, was responsive to adult support and feedback in group sessions and was noted to demonstrate slow progress. He also noted that Student was very sensitive to feelings of shame and rejection and very much wanted to be accepted. The summary states that Parent also reports that Student has been able to demonstrate behavioral stability in the home during the 2010-2011 school year. Mr. Abblett further offered support services to Parent in the home (SE-3).
3. A Manville Bullying Prevention and Intervention Incident Reporting Form dated April 28, 2011, details three incidents between Student and a peer while in the school van. The dates of the incidents were February 8, March 24 and April 7, 2011. The incidents were addressed by Manville staff and Student processed the incidents with her case worker, Ms. Partan. The document states that the investigation did not yield a finding of bullying and states that Student did not feel threatened by her peer (PE-25).
4. The service delivery grid of the last accepted IEP, covering the period April 5, 2011 to April 4, 2012, contained the following services in Grid A: Motor/sensory consult with the occupational therapist 1 x 15 minutes per five day cycle and communication consult with the speech language therapist 1 x 15 minutes per 5 day cycle. There were no services in the B grid. The C grid provided for “social emotional” services from the counseling staff 5 x 120 minutes per five day cycle; “social emotional services” with “therapist, C.M.” 1 x 60 minutes per five day cycle; “motor/sensory” with the occupational therapist 2 x 30 minutes per five day cycle; “communication” with the speech language therapist 2 x 30 minutes per five day cycle; academics with the special education teacher 2 x 180 minutes per five day cycle. The C grid contained the following extended year services to be provided between July 5, 2011 and August 4, 2011: Social emotional with the counseling staff 5 x 240 minutes; Social/emotional with a clinician 1 x 60 minutes and academics with a special education teacher 5 x 120 minutes (PE-1; SE-19). Goals and benchmarks in this IEP targeted accepting and giving feedback, body and space awareness, peer relations: perspective taking, written expression, and executive functioning. This IEP also offered numerous accommodations (PE-1; SE-19).
5. The progress reports for the first, second and third quarters of that school year comment on Student’s progress regarding her goals centered on school behavior, written language, social/ peer relations and body and space awareness, reporting improvement and progress in all areas. She however was not demonstrating the ability to perform independently more challenging tasks such as resolving conflict with peers independently. In most areas she was reported to be making gains toward her annual goals and benchmarks (SE-18; Abblettt). Due to the progress achieved by Student during the 2010-2011 school year, Parent had inquired about moving Student to a less restrictive placement and had applied to Clearway, a non-therapeutic school, in April 2011 (SE-9). At the Team meeting on April 5, 2011, the Team recommended continued placement at Manville (PE-1; SE-19).
6. Student’s fifth grade Massachusetts Comprehensive Assessment System (MCAS) administered during the spring of 2011 resulted in a Proficient score in English Language Arts and Science and Technology/ Engineering, and a Needs Improvement in Math (PE-28).
7. Parent accepted the IEP in full and consented to Student’s continued placement in Manville on April 20, 2011[[5]](#footnote-5) (PE-1; SE-19).
8. Student attended Camp Akeela[[6]](#footnote-6), a residential summer camp for children who need extra support in the development of their social skills, from July 26 through August 19, 2011. She was noted to have enthusiastically participated in all camp activities and seemed to enjoy camp. Student presented several behavioral concerns that were difficult for her counselors to manage. She can be stubborn and had a difficult time following directions. According to her progress report, she did not understand the concept of “fair.” She could also be very bossy to her bunk mates which often hindered her ability to keep friends. She seemed to benefit most when her schedule was predictable and structured. Although Student made some “great connections” with others, she was sometimes very concerned about herself. This led to her being bossy and unkind to others. She had difficulty understanding that her peers disliked her behavior and did not like being with her when she was being mean and inconsiderate. She was often defiant with counselors and refused to do chores and follow camp rules. She often bossed her peers and told them what to do and how they were doing things wrong. By the end of the summer, many of her peers were frustrated or annoyed with her. The camp staff found that Student would benefit from adult support with a focus on how she can better treat her friends, adults and authority figures, as she struggles to understand how she comes across to others (PE-3).
9. During the summer of 2011, the home situation presented with numerous challenges for Student which caused her aggressive behavior toward family members to escalate. By the end of the summer, a sibling with whom she was close left for college and her step-father moved out, in part due to Student’s aggressive behaviors toward him (Parent, Abblettt).
10. Student and Parent had been seeing Dr. David Whelan, a MA licensed psychologist and Director of the Think Kids Clinic at Massachusetts General Hospital (MGH), on a weekly or every other week basis, since July 2010. Dr. Whalen was attempting to assist them with Student’s challenging behaviors. Dr. Whalen used Collaborative Problem Solving in his approach to therapy with Student and her family. He testified that Student felt easily shamed by criticism. She felt attacked when Parent placed demands and became very reactive in her perception of Parent. He noted that it was difficult for her to read cues accurately in her interactions. All of the aforementioned impeded her progress. Dr. Whalen terminated treatment in September 2011 because Parent reported problems with public transportation and because Student had reached a plateau in therapy and had become “less workable”, more dysregulated and increasingly more difficult to engage in the therapeutic modality. After terminating therapy, Dr. Whalen did not see Student again until February 14, 2012 for an update right before Hearing. He opined that in addition to individual therapy, Student required group therapy to address some of the skills in which she is lagging behind due to her difficulties. He testified that Collaborative Problem Solving was helpful in the beginning but hot completely successful over time (PE-5; Testimony of Dr. Whalen).
11. Student started the 2011-2012 school year at Manville consistent with her last accepted IEP.
12. On September 25, 2011, Student was taken to the hospital as a result of aggressive behavior against Parent in the home (involving threats to kill Parent). Student returned home on October 4, 2011. She would be hospitalized again in late October 2011 because of pushing and/or hitting Parent. Each time parent called 911 and Student was taken by ambulance (Parent).
13. On October 19, 2011, Karen Shmukler of Brookline, Mitch Abblettt, Clinical Director at Manville, Hanna Savransky (School Principal), Jen Litman (Educational Supervisor) and Parent met at Manville School to discuss Student’s progress, parental concerns regarding therapies and Parent’s belief that Student was being excluded from gym class. It was explained that Student had an incident with a peer during two gym classes and was told to sit out gym for the following class as a preventive measure to avoid escalation.

In September 2011, Student had required a two minute time out and in October, upon returning from the hospital had required two time outs. Dr. Abblettt shared that Student was presenting with more anxiety as a result of the changes in the home and Student’s transition into middle school and sixth grade. Dr. Abblettt explained that while Student’s behaviors in school were different form those in fifth grade, Student was not presenting any significant behaviors in the school setting. In response to Parent’s inquiry as to whether Student could be hospitalized from school, Mr. Abblettt explained that Student’s responses in school were well within the norm of their typical student.

The Team discussed ways in which to assist Parent access more intensive services for the home and encouraged her to access Children’s Behavioral Health Initiative (CBH) services. The Team opined that with the heightened reactivity in the home, it was likely that Student would have another crisis hospitalization. In order to avoid this, the Team discussed the possibility of a CBAT placement to try and interrupt the pattern that was escalating at home. The Manville staff continued to support placement of Student at Manville but recognized that the clinical work was challenging and required Parent to continue to meet with Dr. Abblettt. Brookline offered additional home and community-based services and supports including therapeutic mentoring and tutoring for Student (SE-20).

1. Student was admitted to the Walker CBAT on October 26, 2011 for increased aggression toward her family. Her discharge summary lists her diagnoses as NVLD, anxiety, mood disorder and states that she presents with aggression toward her mother and increasing difficulties at school. While on the unit Student had difficulty with peers, accountability, and mood. Student was never restrained during her time at Walker, but required “hands-on” on a few occasions because she had difficulty accepting simple directions. She sometimes argued with staff which consisted of her crying, yelling, and in one instance kicking staff. She had a very difficult time getting along with her mother and she would often provoke an argument with her. Toward the end of her time at Walker her meetings with her mother were less aggressive and she avoided getting into conflicts with peers. Although Student was generally not physically aggressive she was often verbally aggressive toward staff, which included screaming, yelling, and crying. She would often try to provoke conflicts with peers and enjoyed seeing others in trouble. She often would say something negative to a peer, stare at them for long periods of time, or try to bump into them in order to provoke a reaction. Although she had difficulty getting along with peers within a group setting, she generally was cooperative with peers in a one-on-one setting. Student had trouble getting along with female staff, but generally listened to the directions of male staff (PE-4; SE-7).
2. The discharge summary listed helpful behavioral interventions as follows. Student needs firm directions when asked to complete a task. The CBAT noted that if Student puts up a fight in response to a staff directive, the staff member should not adjust the directive, as Student is seeking to engage in a power struggle. Student requires a structured environment with firm limits. Staff members are recommended to keep a close eye on Student when she is in a group setting with peers and to promote one-on-one peer interactions. Student should be “called out” for her negative behavior with peers. Student was noted to benefit from individual therapy. It was recommended that Student receive ongoing family therapy to focus on including all involved family members, as Student will require a very structured, predictable and consistent environment to ensure her ongoing emotional stability. The discharge summary recommended that Student continue to engage in weekly individual therapy and have monthly appointments with her psychiatrist to ensure medications continue to be beneficial. It was recommended that the family get connected to an in home therapy team. Respite was recommended on a planned basis to provide Student and her family with strategic intermittent breaks to assist in reducing the potential for future hospitalizations. A therapeutic after school program was recommended as well as a school and community based social skills group. Student was discharged from Walker CBAT on December 15, 2011 (PE-11; PE-8).

1. By letter dated November 8, 2011 (received by Denise Rochin and Karen Shmukler in Brookline on November 9, 2011), Parent fully rejected the IEP covering the period April 2011 to April 2012, as well as placement at Manville. The letter further notified Brookline that Parent sought public funding for residential placement of Student at Walden Street School of the Justice Resource Institute in Concord, Massachusetts. Parent stated that Student’s complex profile and her multiple hospitalizations indicated that Student required the structure of a twenty-four hour program. She further noted that despite Student’s high cognitive abilities, she was not accessing the curriculum because of the interruptions caused by being out of school (PE-29; SE-21).
2. Following Parent’s letter to Brookline, Harvey I. Botman, Ph.D., conducted a neuropsychological evaluation[[7]](#footnote-7) of Student on November 12, and 16, 2011 at the request of Mother. The testing was conducted at the Walker CBAT while Student was an inpatient on the unit. The testing and interviewing was conducted during two sessions. The first session lasted approximately two hours and was ended when Student showed distress and reported a headache. The second session lasted over four hours. Student presented as friendly and verbal. She willingly participated in both sessions, followed directions, and accepted support. Her eye contact was satisfactory, although she tended to avert her gaze when asked to talk about herself and her behavior. Her language skills were strong. She was much better in communicating factual information than she was in communicating personal information. She avoided talking about her feelings or about events that were difficult for her. She would not say much about how she got along with others and did not wish to discuss her relationships with peers, teachers and family members. She occasionally expressed uncertainty during testing and asked if she was doing okay (PE-10).
3. Dr. Botman noted that dysregulation had continued to disrupt Student’s functioning even though she had received mental health and special education services. Her then current neuropsychological testing evidenced strong language functioning, satisfactory visuospatial processing, satisfactory learning, satisfactory social perception, adequate sensorimotor functioning, and variable executive functioning. Her executive functioning was found to “involve satisfactory nonverbal fluency, strong conceptual reasoning, and weaknesses in inhibition and attention.” Dr. Botman noted that his findings showed that Student was a bright individual whose functioning could be impeded by weaknesses in executive functioning involving inattention, impulsivity, and disorganization. Executive functioning rating scales completed by Student’s Mother and her Manville teachers showed Student struggling with “executive dysfunction involving deficits in set-switching, emotional control, behavioral inhibition and self-monitoring.” ADHD rating scales completed by her mother and her teachers showed clinically significant levels of ADHD and oppositionality. Mental health checklists completed by her mother and her teachers showed clinically significant levels of social problems and anxiety/depression. The checklists completed in the fall of 2011 showed clinically significant levels of aggression and non-significant levels of withdrawal in contrast to the checklist from Student’s teacher of the previous year which showed non-significant levels of aggression and clinically significant levels of withdrawal (PE-10).
4. Dr. Botman noted Student’s difficulty in talking about herself “seemed to be so severe that it was highly unlikely that she would benefit from interventions that were designed to help her process her feelings and learn from her experience if they did not catch her in the act and bring things immediately to her attention.” He reported that current personality testing found Student “struggling with tendencies for idiosyncratic thinking, propensities for self-referential thinking, affective lability, emotional volatility, a narrow inflexible behavioral repertoire, and low interpersonal relatedness.” He concluded that due to the aforementioned features of personality, Student needed a therapeutic milieu to move toward more adaptive functioning. He noted that Student lacked the strengths and skills necessary to make use of less inclusive forms of therapy. He concluded that Student requires a “comprehensive, round-the-clock, therapeutic” program to make steady gains (PE-10).
5. Dr. Botman found that “while [Student’s] capacity to think about social situations in the abstract was solid, her capacity for social interaction was skewed by her affects and impulses.” He concluded that Student needs to be “involved with others to make progress on her social issues.” He noted it was clear from her history that this involvement would only occur if she lived in a residential setting with others her age because she has never been successful in maintaining peer relationships in everyday situations. Dr. Botman concluded that Student “needs to be involved in a well-structured, all-encompassing, highly-predictable environment…that will promote her ability to understand how her behavior contributes to the outcomes that occur in her life.” He also noted her need for a therapeutic program that can provide her with activities with peers and “on-the-spot feedback about her peer interactions” (PE-10).
6. Dr. Botman listed the following diagnoses of Student: Axis I: Attention Deficit Hyperactivity Disorder–Combined Type, Mood Disorder Not Otherwise Specified, Pervasive Developmental Disorder–Not Otherwise Specified, Mathematics Disorder (by history), Disorder of Written Expression (by history), Learning disorder—Not Otherwise Specified (due to executive dysfunction); Axis II: No Diagnosis; Axis III: Asthma; axis IV: Placement in special needs schools; recent hospitalizations; no friends; Axis V: Current Global Assessment of Functioning=61, Irritability, inattention, anger, agitation, oppositionality, irritability, dysphoria, aggression (PE-10).
7. Dr. Botman made a number of recommendations for Student. He noted that the extent and cumulative impact of her issues have diminished somewhat during her time at the WCBAT, but she remained fragile, vulnerable, and at risk for relapse due to the limited progress made on her therapeutic goals. He stated that Student requires residential treatment due to her lack of self-awareness and self-initiative to make progress in less restrictive settings. He recommended that her special education program consist of “small classes, systematic instruction, fully-integrated support for executive dysfunction, and social skills building.” He noted that she needs well-organized, upbeat teachers and an interactive classroom. Her lessons should be tailored to promote both her academic and social emotional progress. She needs an academic program that can challenge her strong intellectual abilities. He recommended specific interventions to address her weaknesses in mathematics, written expression, and executive functioning[[8]](#footnote-8). Further, he noted that it would “be important to help [Student] recognize when she becomes irritable, agitated, dysphoric and/or angry so that she can learn to take steps to manage her feelings and her behavior appropriately.” She requires structure and support to behave adaptively (PE-10).
8. Even though Dr. Botman noted that Student has not consistently benefited form psychiatric medications, he recommended that she continue to have regular visits with her psychiatrist so that the effectiveness of her medications can be monitored. He found that she will benefit from social skills training and should receive such training in a group where she can interact with peers and put her skills to immediate use. He noted that she will need guidance and support as she interacts with peers because her peer relationships have been difficult over the years. He reported that Student required individual counseling to learn how to work on her behavior. Finally, Dr. Botman recommended family therapy (PE-10). Although he submitted an undated letter in the late fall 2011 at Parent’s request, the full report of his evaluation would not be available until January 2012 (PE-9; PE-10).
9. Student’s Team reconvened on November 17, 2011 at the Manville School to discuss Mother’s rejection of the IEP (PE-2; SE-22). The Manville staff reported that Student had made effective progress at Manville across domains. The staff believed Student continued to be well served by Manville and that Student is able to access her education in that setting. They noted that the “relational dynamics at home, are what needs to be addressed on a clinical level with their work with the family, as well as by the outside providers.” Student’s family did not agree that Student’s then-current difficulties had anything to do with the family. They reported that they had an outside neuropsychological report which supported their position. The outside evaluation had not yet been shared with the district. The Team discussed ways to provide supports and services after school and on weekends, including therapeutic mentoring and tutoring, and Saturday programs that were “skill-based, social and recreational” such as Youthcare and Spotlight, which could also offer Parent some respite. The family did not believe any of the suggestions would work for Student. The Team resolved to reconvene when the district received the outside evaluation (PE-2; SE-22). Brookline forwarded to Parent the School’s narrative proposal on November 22, 2011 (PE-2; SE-22)
10. An unsigned memorandum from F. Jon Higgins, LICSW, Director of Walker CBAT, and Nerline Destin, LICSW, dated November 23, 2011 recommended a short term residential placement for Student due to reports of her increased aggression at home toward Mother and other family members. The memorandum noted that the placement would ideally address social cuing/coaching, teaching self regulation skills and providing Student and her family with therapy (PE-4).
11. Also on November 23, 2011, Mr. Higgins and Ms. Destin wrote another letter “To Whom It May Concern” providing suggestions on how to best manage Student in her then current classroom at Manville with respect to peer interactions. The recommendations were based on the observations, interactions and interventions used at the Walker CBAT. Walker staff forwarded this document to Brookline (SE-31).
12. Sometime in November 2011, Parent called St. Anne’s School and Home to inquire about its residential program for Student (Parent).
13. Kristal J. Lukacs, LCSW, Massachusetts Society for the Prevention of Cruelty to Children, began working with Student and Mother as their Intensive Care Coordinator and discussed ways in which Children’s Behavioral Health Initiative (CBHI) services could support the family, but ultimately these services were not found to be appropriate. Shortly after initiating her work with the family and talking to Student and Parent, in November 2011, Ms. Lukacs filed a M.G. L. c. 119 §51 A against Manville staff. The §51 A was however, screened out by the Department of Children and Families (Abblettt, Parent, Shmukler).
14. Xana Locke, LCSW, wrote a letter dated December 1, 2011, to the Brookline Public Schools. Ms. Locke provides social work services in Student’s pediatric primary care office and worked with Mother for approximately three months to identify additional resources and care coordination for Student. She stated her concern that Student has struggled through multiple emergency department visits and subsequent hospitalizations due to her ongoing issues with aggression toward others. Ms. Locke stated her support for the family’s request for Student to be placed in a residential school setting such as the Walden Street School. She stated that the residential program would be able to provide twenty-four hour care to allow Student to appropriately access her education (PE-8).
15. On December 6, 2011, Mitch Abblettt, Ph.D. (SE-13) submitted a summary of Manville’s conceptualization of Student’s educational and clinical care needs as well as Manville’s recommendations. Based on their work with Student and her family over the previous four years, Manville staff opined that Student could be appropriately served in Manville. The program’s staff opined that although Student was “struggling with a significant exacerbation of her emotional, behavioral and developmental difficulties” as a result of multiple stressors that began during the summer 2011, she had evidenced more stability and had made progress. Dr. Abblettt noted that Manville had remained open to work with Parent and had implemented methodologies such as Collaborative Problem Solving when Parent suggested it. Similarly, Manville had been willing to take Student back after Parent’s efforts to home-school Student had been insufficient. He stated that he was aware of at least twelve behavioral incidents in the home during the fall of 2011, while there had only been two incidents in school neither of which was considered serious. He recommended Student’s continued participation in a therapeutic day program, however, because of the lack of trust and concerns raised by Parent, Dr. Abblettt asked that a meeting take place between Parent and the Manville administration prior to Student’s return to that school, to ensure that “agreements as to communication, care and management” of Student were put in place (SE-9).
16. In his December 6, 2011 letter, Dr. Abblettt raised concern regarding Student’s complex clinical picture, which he believed was the result of a multitude of factors, including past and present individual and contextual variables and that nobody had succeeded at helping the family understand that, in Manville’s opinion,

A crucial underpinning of the ongoing instability and escalated nature of [Student’s] behavior [was] the disturbance in the caregiver/child interaction dynamic. While [Student] clearly struggles with social pragmatics, executive function, and a learning history of poor peer/social functioning, she also is most likely to escalate into dangerous physical aggressive behavior during exchanges with primary caregivers in which her misperceptions are met with caregiving responses which fall short of soothing and containing [Student]’s distress and frustration. From direct observation of [Student’s] escalated behavior directed at mother, it appears that her mother consistently attempts to respond to [Student], but [Student] experiences these reactions as unsettling, and therefore escalates further in a reactive attempt to underscore her experience of unmet needs. This would create a difficult circumstance for any caregiver and increases the odds of further responding that leads to more escalated behavior from [Student]. This pattern is unintentional and mutually reinforced/maintained over many exchanges. This dynamic … was likely exacerbated in recent months due to reported changes in the family home dynamics, as well as by increased social/academic demands by the fact of her promotion into Manville’s Middle School (SE-9).

Dr. Abblettt, speaking for Manville, stated that in order for change to take place the family would require intensive and consistent family-based psychotherapy. Focusing on Student’s needs alone was insufficient in Manville’s opinion. Additionally Student would need medication management, individual therapy, safety/ crisis intervention and school collaboration. Given the then current situation, Manville supported a short-term residential placement for Student or specialized foster care through involvement of the Department of Children and Families (DCF) that supported Student’s continued attendance at Manville, until Student could successfully return home with supports (SE-9).

1. David A. Whelan, Psy.D., Director of Clinical Services, MGH Department of Psychiatry, wrote a letter dated December 14, 2011 addressed “To Whom it May Concern.” He noted that he worked with Student, Mother and Student’s stepfather in family therapy from July 2010 until September 2011. He reported that Student exhibited major mood and anxiety issues and significant indications of cognitive rigidity and poor social skills consistent with a PDD-NOS diagnosis, in addition to notable problems with sensory processing. He referenced Student’s CBAT placement and his understanding that there had been significant improvement in her overall functioning there. Thus, he stated his belief that she might be able to “make therapeutic gains that have to date eluded her” with a similar type of structure that could be provided in a residential setting (PE-5). Dr. Whelan testified that he relied on the information provided by Parent regarding what had transpired since September 2011 (when he terminated treatment) when he wrote the December 2011 letter in PE-5. Dr. Whelan never observed Student in any of her educational programs and has never spoken with any of Student’s teachers or school service providers (Whelan).
2. Emily Lannigan, LICSW, and Jess Morris, M.D., of Brookline Community Mental Health Center, wrote a letter dated December 13, 2011 to Student’s attorney. The letter outlined Student’s history and stated that the signatories have been concerned by Student’s problems in perspective taking which led to the additional diagnosis of Asperger’s Disorder. They noted that Student shows mood fluctuations often related to frustration generated by misunderstanding and feeling misunderstood by others. They concluded that “Due to the significant decline in functioning during recent months there is a concern that a therapeutic school and outpatient therapy and psychiatry are not sufficient to meet [Student]’s needs at this point in time” (PE-7).
3. On December 15, 2011, Brookline forwarded a Consent for Evaluation Form seeking Parent’s permission to conduct an independent evaluation of Student’s needs, including observation at school, interviews with Manville’s staff, a record review and a meeting with Student and Parent. Brookline further requested consent for a home-based assessment to ascertain what appropriate home-based services could be implemented (SE-20).
4. While at CBAT, a representative of Walden Street School met with Student at Parent’s request (Parent).
5. On December 15, 2011, Parent wrote to Dr. Abblettt, Kristal Lukas, Xana Locke and Jim Prince (copy to Kevin Best) regarding avoidance of abuse and neglect at school (SE-24). Parent wrote

I am very reluctantly agreeing to allow [Student] to attend Manville on a temporary basis. As you know, I have grave concerns about your ability and the staff’s ability to keep her safe, both emotionally and physically. There will be a heightened level of monitoring of any incidents in which [Student] is mistreated by staff or by other children, due to inadequate supervision by staff.

Luckily for [Student], I have access to advice from someone who specializes in civil lawsuits against schools in cases where children have been abused or neglected at school.

Let’s hope that there is no need to revisit this issue (SE-24).

1. On December 16, 2011, in advance of the re-entry meeting scheduled to occur on the same day, Dr. Abblettt wrote to Parent stating that

Based on the clear high degree of concern you have about our ability to safely work with [Student], we will need to cancel the reentry meeting for today until we can have a meeting to come to more agreement as to the suitability of [Student] returning to school with us. As we discussed… before prior to [Student] returning to us after you’ve had concerns about our ability to safely work with her, we need to made sure that our expectations are aligned as much as possible prior to having a reentry meeting with [Student]. As I indicated in a previous email, and as we discussed and agreed at [Student]’s discharge meeting at Walker, the reentry meeting’s purpose is to give [Student] a unified message that a return to Manville (even if only temporary) is viewed by all (including you) as being in her best interest. Anything short of this will mitigate [Student]’s success with us. Based on your message, our concern is your mistrust of us creates an obstacle to [Student]’s chances of successful transition into the school. Therefore, we (you, us, Brookline) will need to meet either at Brookline’s offices, or here at Manville, to discuss and come to a better collaborative agreement prior to a reentry meeting for [Student]… (SE-24).

1. Also on December 16, 2011, Parent responded to Dr. Abblettt and included the same individuals as in her email of December 15th, inquiring as to how soon she could meet with Dr. Abblettt and stating

I’m reminding you again that you are violating the law if you prevent my child from retuning to school Monday. My attorney is very capable of handling that issue (SE-24).

1. Student was discharged from her CBAT at Walker on or about December 15, 2011 (SE-8).

1. In response to the communications between Parent and Manville, Brookline convened a meeting on December 20, 2012, shortly before the winter break, which included Parent, Grandparent, Dr. Abblettt, Karen Shmukler (Brookline’s Out of District Coordinator), Jim Prince (Manville School’s Director) and Kristal Lukacs (Intensive Care Coordinator). Up to this point Brookline did not know that Student would not be returning to Manville (SE-25; Shmukler). Walker had no space for Student so Ms. Shmukler forwarded redacted referral packets to the Italian Home (IH) and Knight Children’s Center (KCC). Upon receiving the consents from Parent later in December 2011, she forwarded unredacted packets to the same schools. Ms. Shmukler testified that since Student would have had another week of school upon being discharged from Walker, she arranged for tutoring to be initiated the day after Christmas. She also attempted to arrange for occupational therapy (OT) and speech services, but Parent turned down the offer for OT and Ms. Shmukler was unable to find anyone to offer speech. According to Ms. Shmukler, there was no discussion regarding software for Student or a computer at that time (Shmukler).
2. Parent filed her request for Hearing before the BSEA on December 21, 2011 seeking public funding for placement of Student at Walden (Parent).
3. Two days later, on December 23, 2011, Ms. Shmukler (SE-17) who was also Acting Assistant Superintendent in Brookline, wrote to Parent to inform her that the Italian Home (IH) had indicated that Student would be appropriate for their program and could provide her residential placement effective January 3, 2012 following an intake on December 27, 2011. In her communication, Ms. Shmukler mentioned that the IH Director had stated that she believed that she had met with Parent and Student before and had shared with Parent her belief that Student would be appropriate for the IH program. Lastly, Ms. Shmukler informed Parent that she would be away the last week in December and suggested that any communication to facilitate this placement should be directed to Attorney Murphy, Brookline’s Attorney. Parent responded that she planed to send Student to Walden Street School, but would convey Brookline’s offer to her attorney (PE-26).
4. Parent testified that on or about December 2011, Parent and Student visited KCC. Parent and Student had also visited the IH. Parent testified that she did not like KCC because she was concerned about what happened in the dorm between 4:00 p.m. and 8:00 p.m., and neither she nor Student liked what they observed at KCC. Parent further testified that Student had not liked KCC because she had not liked the Arts and Crafts since she was very serious about art (Parent).
5. Student received tutoring during the December school break until the tutor became ill and Parent asked him not to return. Parent obtained educational software for Student and since Parent had only one computer in the home, which she needed, she purchased a second computer for Student for which she is requesting reimbursement (PE-15; Parent). Parent also enrolled Student in private swimming lessons and Student attended an art class.
6. On January 5, 2012, Parent wrote to Ms. Shmukler and to Ms. Esposito-Balboni (SE-15) providing Brookline notice pursuant to 20 U.S.C. §1412(a)(10)(C)(iii) that she would be placing Student at Walden Street School and requested that Brookline amend Student’s IEP to reflect residential placement of Student as well as fund said placement (SE-27).
7. Dr. Botman’s neuropsychological evaluation was received by Brookline on January 5, 2012. After much difficulty attempting to set a date and coordinate among the numerous participants, the Team meeting to discuss the evaluation and programming for Student was scheduled for January 18, 2012. Brookline forwarded the meeting invitation on January 13, 2012 (SE-28; Esposito-Balboni, Abblettt, Shmukler, Parent, Bhembe). Parent requested to have the Team meeting convened in Brookline and consequently waived the attendance of most of Manville’s personnel. Mitch Abblettt was the only representative from Manville in attendance at the Team meeting (Shmukler).
8. Student’s January 18, 2012 Team participants included Mitch Abblettt, Robert Babigian, Karen Shmukler, Parent, Xenia Johnson-Bhembe, Xana Locke, Harvey Botman and Mrs. X (Parent’s friend). The purpose of the meeting was to discuss Dr. Botman’s evaluation and Parent’s request for a change in placement (SE-28). When discussing Student’s IEP services and Parent’s request for a change in placement, the Team worked off a draft IEP which was essentially the same IEP as the one she had while at Manville, except that Dr. Abblettt drafted a new goal for counseling. The Family Therapy/ Caregiver/ Child goal was labeled “Draft” at the top of the page (PE-18; SE-28). The goal stated

Given consistent participation in family/systemic counseling/therapy which includes opportunities for primary caregivers and [Student] to learn about unique patterns of interaction and how to better act/react to resolve distress/upset without escalation, [Student] will maintain self-regulation and safe management of her anger/distress in 2 out of 4 situations at home and within treatment/school settings that have proven to be triggers for emotional behavioral escalation in the past (PE-18; SE-28).

Parent testified that she was quite dismayed to see this proposed additional goal in the IEP because no such goal had first been discussed by the Team (Parent). The draft IEP also included a statement under Additional Information in which Brookline conveyed its support of a short term residential placement for Student. It was proposed that Student and the family participate in ongoing therapy which would be essential to Student’s successful transition to the home and to a less restrictive educational environment (SE-28; PE-18). This goal caused such consternation that the Team agreed to forgo the family reunification goal and allow Student’s new providers (once she was at the new placement) to draft it (Shmukler).

1. Ms. Shmukler testified that the Team discussed Walden, Italian Home and Knight Children Center. Mrs. X voiced her objections to KCC and IH, Dr. Abblettt discussed his concerns regarding Walden, and Ms. Shmukler discussed KCC. St. Ann’s was brought up but not discussed.

1. Xenia Johnson Bhembe, MD (psychiatrist, SE-16) attended the meeting and conducted a review of Student’s records on behalf of Brookline. Based on her record review, she opined that Student was not a danger to herself or others and that she did not require residential placement in order to receive a FAPE. She testified that Parent accessing in-home services and family therapy was a critical piece and that there could be better utilization of community resources (Bhembe).
2. Dr. Esposito-Balboni and Dr. Shmukler of Brookline, and Parent, participated in a Resolution Session in January 2012, approximately one week after the Team meeting (Esposito-Balboni). According to Parent, St. Ann’s was discussed as an option for Student at that meeting (Parent). Ms. Esposito-Balboni testified that St. Ann’s was brought up but not formally offered because Ms. Shmukler had not yet visited the program (Esposito-Balboni).
3. Following the Resolution Session Ms. Shmukler visited St. Ann’s and testified that she was very impressed with the program and that it offered a good peer cohort for Student, fourteen girls ages eight to thirteen. Those in residential placement were ten to thirteen years old (Shmukler).
4. On January 25, 2012, Brookline forwarded the proposed IEP and placement to Parent. (PE-19; SE-28). Ms. Esposito-Balboni testified that in consideration of the complexity of the case, the contentious relationship between Parent and Manville, Student’s hospitalizations and multiple school changes, Brookline suggested two placements in hopes that Parent would accept one of them and Student could resume her schooling. However, by then, Parent was adamant that Student should go to Walden and nowhere else (Esposito-Balboni).
5. The proposed IEP which covered the period April 5, 2011 through April 4, 2012 was modified offering Student short term placement in a latency age residential placement for the specific clinical goal of addressing “family systems intervention and family reunification”. Regarding Dr. Botman’s evaluation, Brookline disagreed with the basis of his analysis and reliance on the Rorcharch Inkblot Test –Exner Comprehensive System (RIT). Brookline agreed with Dr. Abblettt’s view that Student had made effective progress at Manville across domains and that home environment issues and a transition to middle school accounted for her difficulties in the fall of 2011 (PE-19; SE-29; Shmukler, Abblettt). While the Italian Home, the Knight Children’s Center and Walker School were presented at the meeting, Brookline offered Student placement at either the Knight Children’s Center or St. Ann’s Home and School (PE-19; SE-29). During the Resolution Session on January 23, 2012, Parent indicated that she was not interested in looking at St. Ann’s Home and School (presented as an option on that day). Brookline did not support Parent’s request for placement of Student at Walden because: it is a program developed for older girls; it has no stand-alone day program that could be used as a step-down for Student; and it follows a long term treatment model (Id.)
6. As with the previous IEP, Student’s social/ emotional, motor/ sensory, communication and academics would be addressed at the residential placement. Brookline also offered extended school year services at a supportive, therapeutic summer program (PE-19; SE-29). The additional information section in this IEP stated

The district is supporting a short term residential placement at this time. Once [Student] has begun her new program, the district will work with the new program to ensure that all goals, services and supports are integrated between her educational and residential programming. [Student] and her parent will also be participating in ongoing family therapy which will include opportunities for primary caregivers and [Student] to learn about unique patterns of interaction and how to better act and react to resolve distress and upset without escalation. This will be important to ensure successful transition, home and to a less restrictive educational setting (PE-19; SE-29).

1. The Knight Children Center of the Home for Little Wanderers, located in Jamaica Plain, Massachusetts, is a Massachusetts Chapter 766 approved day, residential and summer school (SE-11). It offers educational services to children diagnosed with Attention Deficit Disorder, Behavioral Disorder, Emotional Disturbance, Mild Learning Disabled, Mood Disorder, Post Traumatic Stress Disorder, Reactive Attachment Disorder or Sexually Reactive (SE-10). Children, male and female, between the ages of five (5) and fourteen (14) years of age receive comprehensive residential and day treatment/ educational services in a therapeutic milieu. The student to staff ratio is approximately four to one but in the residence it is three to one. On a typical evening, the evening staff with be composed of four behavior support counselors and a shift staff for a total of eleven children. The overnight ratio at KCC is seven children to one staff, including an awake overnight counselor. Students at KCC receive individual and group therapy services and are also offered educational evaluation and assessments, psychopharmacology, family therapy, speech and language and occupational therapy services (and sensory integration tools/ rooms) according to each student’s IEP. KCC follows a Cognitive Behavior Therapy approach and a Positive Behavior Support system. The program places a strong emphasis on family participation (SE-10; Shmukler).
2. There are currently eleven students in the residential program, five or six of whom are females (an eight year old, one ten year old, one 12 year old, and two eleven year olds). The day program has twenty three students, six of whom are girls (one eight years old, three eleven years olds, one twelve and one thirteen year old), and two additional girls were expected to join the program. Most of the females are in the ten to thirteen age group. A thirteen year old girl (whose academic skills fall between the ninth and tenth grade) would be the female peer in Student’s proposed class within a highly individualized, differentiated instruction type environment, but Student would also have access to other similar aged females for socialization purposes. Enrichment opportunities are available to students during and after school, and students participate in off grounds activities as well. While students may opt-out of some activities (preferring to read) they are greatly encouraged to participate in group activities as much as possible including team sports and group games. These activities offer an opportunity to work on turn taking and interpersonal or social skills. Students who express individual preferences such as dance or playing a musical instrument are encouraged to pursue these activities and opportunities are offered for them to pursue them on and off campus. Opportunities are also offered for students whose behavior is deemed to be safe to participate in community or recreational sports leagues several times per week. Students are also encouraged to learn how to spend time alone by engaging in activities of interest to them (SE-10, SE-33; Shmukler).
3. The program offers numerous after-school activities as well as opportunities for access to integration with the community. MCAS preparation and testing is provided. The classroom teachers are Massachusetts certified and behavioral counselors work with teachers to offer consistent therapeutic support (SE-11).
4. Dr. Botman visited the Knight Children’s Center on January 17, 2012 at Parent’s request. Dr. Botman met with Megan Dwyer, the School’s Principal, and learned that the school is scheduled to move to a campus in Walpole in the fall of 2012. He testified that children in the residential program at KCC have opportunities to interact with children in the “CBAT” which KCC also serves during their “CBAT” stay. Dr. Botman opined that since most of the peers in Student’s cohort were boys, two girls and the possible girls from the “CBAT” would not be a sufficient number of female peers with whom Student could interact even if they were all latency age. Also, according to Dr. Botman, the program did not foster the teaching of recreational activities (such as painting which Student enjoys) that offer opportunities for socialization. Dr. Botman opined that KCC would fall short of what Student required and he raised concern regarding Student’s ability to commute to KCC when it moved to Walpole, which is approximately twenty miles north of Brookline (Botman).
5. An email from Megan Dwyer of KCC to Karen Shmukler dated February 13, 2012, outlines the numerous inaccuracies reflected in Dr. Botman’s report regarding KCC. Ms. Dwyer explained that KCC does not have a CBAT. It rather has a Behavioral Treatment Residential program (BTR). She explained that clients at the BTR have less acute presentation than children requiring a CBAT and that the BTR is basically a “step-down from a hospital setting”. She also stated that at KCC Student would have access to numerous students, male and female, at the beginning of the day, during lunch and recess during afternoon group activities, during community activities and also during short term groups or dyads created to work on specific social skill goals for students (SE-33; Shmukler).
6. St. Ann’s Home and School, Inc., located in Methuen, Massachusetts, is a Massachusetts Chapter 766 approved day, residential and summer school that offers educational services to children diagnosed with Asperger’s Syndrome, Attention Deficit Disorder, Behavioral Disorder, Bi-polar, Depressive Disorder, Emotional Disturbance, Learning Disabled, Mental Illness, or Reactive Attachment Disorder (SE-10). Children, male and female, between the ages of five (5) and seventeen (17) years of age receive comprehensive residential and day treatment services. The student to staff ratio is approximately four to one. The program offers students special education in one of eighteen small classrooms, recreational and social activities are structured, psychotherapy is offered to the students and family counseling services are also available. It has separate dorms for latency age and adolescent male and female students, and has a gymnasium, arts and crafts center, a computer center, medical therapy area, and large playing fields for students. St. Ann’s offers students the possibility of participating in a day program as a step down from residential as students become able to return home (SE-10).
7. On February 7, 2012 Joseph Cronin, MSW, Admissions Director at St. Ann’s, wrote to Ms. Shmukler notifying her that Student was an appropriate candidate for admission to St. Ann’s (SE-12).
8. Parent’s preferred program, Walden Street School, is located in Concord, Massachusetts and is also a Massachusetts Chapter 766 approved residential school that offers educational services to children diagnosed with Depressive Disorder, Developmental Disabilities, Emotional Disturbance, Learning Disabled, Mood Disorder, Non-verbal Learning Disability, Pervasive Developmental Disorder (PDD), and Post Traumatic Stress Disorder (SE-10; PE-21). It serves only females between the ages of twelve (12) and twenty-two (22), and the student to staff ratio is approximately three to one. The focus of the program is to service adolescent girls who present with social, educational and emotional issues. At present there are between twenty-two and twenty-four students in residence. One of the residences hosts Students ages twelve to fourteen. There are currently one twelve year old student (who is developmentally delayed) and three or four thirteen (13) to fourteen (14) year old students in the program (Mrs. X, Shmukler, Esposito-Balboni). The school uses the Attachment, Regulation and Competency (ARC) framework which was developed by the trauma center at JRI and provides numerous Trauma Informed Treatment Inventories (i.e., Trauma Informed Yoga, Neurofeedback, and Sensory Programming) (PE-21; SE-10). According to Mrs. X, ARC has components of Collaborative Problem Solving. Students also participate in activities such as horseback riding, music, art, dance, photography, cooking lessons and sports (PE-21; SE-10).
9. Kristen Esposito-Balboni, Brookline’s Assistant Superintendent, Ms. Shmukler and Dr. Abblettt opined that Walden did not offer an appropriate peer group for Student and that she would be best served at a latency type program (Esposito-Balboni, Shmukler, Abblettt). Ms. Esposito-Balboni explained that since the twelve year old student in Walden was developmentally delayed, given Student’s intellectual abilities, Student would be placed in a class with fifteen year old girls. Walden is a program designed for adolescents, not latency aged children, and the school did not offer a “step-down” day program which may be needed later (Esposito-Balboni).
10. Ms. Esposito-Balboni testified that because the letters received by Brookline in December 2011, recommending residential placement, were not evaluation reports they did not warrant convening of the Team for the exclusive purpose of discussing them. The Team would be and was convened a month later following Brookline’s receipt of Dr. Botman’s evaluation (Esposito-Balboni).
11. According to Student’s pediatrician, Dr. Rebecca Horne, Student suffers from motion sickness and until recently has not been able to travel in a car for more than twenty minutes without experiencing nausea and discomfort (PE-21; Parent). Brookline’s transportation coordinator wrote on February 7, 2012 that there had been no reports of Student experiencing car or movement sickness while being transported to and from school for well over a year . She stated that at Parent’s request, Student had been allowed to sit in the front seat next to the driver who also reported that Student had not reported or demonstrated any car sickness (SE-30). During the summer of 2011, Student attended camp Akeela in Vermont to which she travelled by large air-conditioned bus with no report of difficulties with car sickness. Parent testified that the reason Student did not experience car sickness then was because she travelled in the large air-conditioned bus (Parent). According to Dr. Horne and Parent, Student can travel by train without experiencing discomfort (PE-20; Parent)
12. Julie McDonnell is a Brookline police officer with the Special Unit addressing sexual assault and juvenile issues. She testified that she has responded to three Parental calls at Student’s home: the first in September 2010, the second in September 2011, and the third in January 2012. She reported that the police department had calls registered as far back as 2005 involving Student and Parent. When she visited the first two times she found Student hiding under the bed, and on the third visit locked in her room. She described Student as calm and withdrawn, but cooperative and respectful of adults. Student did not need to go to the hospital for evaluation except after the second visit, and then, only at Parent’s suggestion. Officer McDonnell testified that while speaking to Student in her room she noticed some art work which she described as very good. She described Student as a very intelligent and artistic child who enjoyed reading (McDonnell).
13. According to Officer McDonnell, In January 2012 Student was feeling unhappy and overwhelmed about the potential change of school (McDonnell).

**CONCLUSIONS OF LAW**:

The Parties do not dispute that Student is an individual with a disability falling within the purview of the Individuals with Disabilities Education Act[[9]](#footnote-9) (IDEA) and the state special education statute[[10]](#footnote-10), and that her constellation of needs (Fact #1) entitle her to a free, appropriate publiceducation (FAPE).[[11]](#footnote-11)

The main dispute between the Parties involves the appropriateness of the residential program offered by Brookline, and, if found inappropriate, whether the program selected by Parent would afford Student a FAPE. Parent also raises procedural violations which she argues are so significant that they warrant placement of Student in Parent’s school of choice. In rendering my decision, I rely on the facts recited in the Facts section of this decision and incorporate them by reference to avoid restating them except where necessary.

The IDEA and the Massachusetts special education law, as well as the regulations promulgated under those acts, mandate that school districts offer eligible students a FAPE. A FAPE requires that a student’s individualized education program (IEP) be tailored to address the student’s unique needs[[12]](#footnote-12) in a way reasonably calculated to enable the student to make meaningful[[13]](#footnote-13) and effective[[14]](#footnote-14) educational progress. Additionally, said program and services must be delivered in the least restrictive environment appropriate to meet the student’s needs.[[15]](#footnote-15) Under the aforementioned standards, public schools must offer eligible students a special education program and services specifically designed for each student so as to develop that particular individual’s educational potential.[[16]](#footnote-16) Educational progress is then measured in relationto the potential of the particular student.[[17]](#footnote-17) School districts are responsible to offer students programs and services that will allow them to make meaningful, effective progress.[[18]](#footnote-18)

As the party challenging the adequacy of Student’s proposed IEP, Parent carries the burden of persuasion pursuant to *Schaffer v. Weast*, 126 S.Ct. 528 (2005)[[19]](#footnote-19), and must prove her case by a preponderance of the evidence. Also, pursuant to *Shaffer*, if the evidence is closely balanced, the moving party, that is Parent, will lose. *Id*.

Upon consideration of the evidence, the applicable legal standards and the arguments offered by the Parties in the instant case, I conclude that Parent failed to meet her burden of persuasion pursuant to *Shaffer* , and find that the IEP proposed by Brookline, offering Student placement at the Knight Children’s Center (and in the alternative St. Ann’s), is reasonably calculated to meet Student’s needs. Having entered this finding I need not consider the appropriateness of Walden Street School. However, since Parent was not present to hear presentation of most of Brookline’s case, I find it necessary to explain the reasons why Walden is ultimately inappropriate to meet Student’s needs. Student is not entitled to public funding for an out-of-district residential placement at Walden Street School as explained below.

Student is an eleven-year-old resident of Brookline who presents with a history of behavioral and emotional dysregulation associated with “social, emotional, attentional, sensory and executive functioning skill” difficulties, which have prevented her from accessing the curriculum effectively in mainstream settings (SE-2). She is especially sensitive to negative feedback, and the ability to take other people’s perspective is challenging to her. Student can become overly anxious and emotional when she lacks an understanding of academic demands, crying, shutting down and/ or withdrawing socially (SE-2).

She presents difficulties with social interactions and has been observed to follow peers around rather than engaging in interactive play with them. She can also present as self-centered (pushing someone out of the way to get what she wants) and has been noted to blame others (even if not their fault). Student is however, aware of her propensity to become frustrated and sad and has learned ways to calm herself down, but is not always able to avoid escalation. As a result of her documented disabilities, she often misunderstands social interactions (SE-2). She is intelligent, inquisitive, loves to read and demonstrates a true desire for knowledge (Abblettt, Parent, Shmukler, McDonnell).

The relationship between Student and Parent, despite being loving and positive, is marked by significant intensity, and most of Student’s aggressive incidents have manifested in the home, directed towards Parent and at times other family members (Whelan). Dr. Whelan described the intricacies of the relationship between Parent and Student, explaining that children like Student need their parent’s input for guidance, support and to help with self-regulation, but Student pushes Parent away and is not able to accept her help. Dr. Whelan worked with Student’s family for approximately one year, using Collaborative Problem Solving, but these services were terminated in September 2011 when a plateau had been reached and he deemed the services no longer helpful. Dr. Whalen would not see Student again until February 14, 2012 for an update just before Hearing (Whalen). To date, Parent continues to favor the Collaborative Problem Solving approach with Student.

The parties generally agree with most of the diagnoses given to Student, but disagree as to her true abilities and potential, as well as the best way to address her deficits. Staff in Brookline, at the Cambridge Hospital Psychiatric Unit, at FCH and Manville have seen and continue to see Student as more capable and less aggressive than she has typically presented in the home. There is also some disagreement between the parties regarding the diagnosis of Personality Disorder given to her by Dr. Botman (SE-32; Abblettt, Botman, Shmukler).

The record shows that Student’s fifth grade year in Manville was relatively stable and that Student made progress across all areas, even though Parent disputes this finding. In April 2011, Parent accepted the IEP and continued placement of Student in Manville for the 2011-2012 school year, Student’s sixth grade. Parent later rejected this IEP in the late fall 2011 (Parent).

It is undisputed that Student’s educational life has been interrupted numerous times and is marked by multiple changes. It is also undisputed that numerous changes have occurred within the family unit, especially during the summer of 2011 during which time individuals on whom Student relied moved out of the family home, leaving only Student and Parent in the home. That same summer, Student transitioned from elementary to middle school which, albeit in the same school (Manville), involved getting used to a new teacher and causing Student some anxiety (Parent, Abblettt). Dr. Abblettt testified that none of the behaviors displayed by Student in school during that period of time was significant or beyond the norm for the average student at Manville (Abblettt).

The record shows that Student’s aggressive behaviors in the home escalated to the point where Parent feared for her safety and Student was hospitalized twice in the fall of 2011, during which time her medications were changed with a positive result (PE-11, Parent). The Parties agree that during the beginning of sixth grade, Student’s life was in turmoil, although the brunt of her escalated dysregulation was in the home (Abblettt, Shmukler, Parent). This resulted in Student’s being out of school and mostly in hospitals, this preventing her from making effective progress during the sixth grade (Shmukler). Thereafter, in an attempt to help stabilize Student and improve the family dynamics, once it became clear that Student would not return to Manville Brookline agreed to a short-term residential placement for Student, which Manville also supported (Abblettt, Shmukler, Botman).

Parent had Student interviewed by a representative of Walden while she was at the Walker CBAT and also had her independently evaluated by Dr. Botman in mid November 2011 in an effort to gain support for residential placement for Student (PE-10). On November 8, 2011, Parent rejected the April 2011 IEP and made her first request for public funding of a residential placement for Student at Walden (PE-29). In December, she obtained additional letters from individuals who had treated Student over the years and from Dr. Botman, in support of her residential request (PE-5; PE-7; PE-8; PE-9). Initially the Walker CBAT staff supported Student’s return to Manville, but soon thereafter recommended residential placement for Student (SE-31; PE-4; PE-8; PE-11).

Student’s Team met in November 2011 to discuss Parent’s rejection of the IEP (Abblettt, Parent). The Team was reconvened again on December 20, 2011 after it became evident that following Student’s discharge from the Walker CBAT on December 15, 2011, she would not be returning to Manville (SE-24; Abblettt). Between November and December 2011, a M.G.L. c. 119 §51A had been filed against Manville regarding Student and while Manville was willing to consider Student’s return to Manville, it found it necessary that Parent supported this placement as a pre-requisite to Student’s re-entry (Id.). Only after it became clear that Parent would not support Manville, was this placement option rejected for Student by the Team. Dr. Botman’s evaluation had not been received when the Parties convened in December 2011.

At the meeting on December 20, 2011, Parent again requested funding for residential placement of Student and specifically requested Walden. Brookline requested that Parent provide consent to forward referral packets to the IH and KCC. Since the winter holidays were fast approaching, Brookline forwarded redacted packets to the aforementioned placements to ascertain whether Student would be an appropriate candidate for those placements and ascertain whether openings were available (Shmukler, Esposito-Balboni). Another redacted packet was later forwarded to St. Ann’s when Parent’s attorney informed Brookline that Parent would not send Student to IH or KCC.

The day after the December 20th meeting, Parent filed her request for Hearing and two days later returned her consent for packets to be forwarded. Unredacted packets were forwarded by Brookline following receipt of Parent’s consent (Shmukler).

Shortly after the December 2011 meeting, Brookline also arranged for Student to receive tutoring. Tutoring was initiated and ultimately terminated by Parent. An offer for continued tutoring was renewed in January 2012, including OT services. Thinking that she would unilaterally place Student at Walden, Parent declined the offer (Parent, Shmukler).

According to Parent, Brookline also recommended two educational software programs for Student which she could access on line. Parent testified that she purchased a computer for Student as well as the programs and seeks reimbursement (Parent). Brookline denied knowledge of Parent’s intention to purchase a computer and also of Parent’s allegations that it recommended purchase of the software program. Brookline therefore declined to pay (Shmukler). The record lacks sufficient support for Parent’s claim regarding the need for purchase of the computer, something which Parent also did not communicate to Brookline prior to purchase (PE-15; Parent, Shmukler). As such, there should have been no expectation by Parent that she would receive reimbursement for her unilateral decision regarding purchase of a computer. Parent is not entitled to reimbursement for the computer. Similarly, there is insufficient evidence to support her claim that Brookline suggested purchase of the software. Ms. Shmukler testified credibly that there was no discussion regarding software or Student needing a computer during the December 20, 2011 meeting (Shmukler).

In December 2011, Parent contacted Walker School and was told it had no openings. Student and Parent also visited KCC and IH, disliking both programs (Parent). By January 3, 2012, both IH and KCC were ready, willing and able to offer Student placement, but Parent was not willing to accept either placement (Shmukler).

On January 5, 2012 Brookline received Parent’s new notice of intention to place Student unilaterally at Walden and seeking public funding (SE-27). The same day, Brookline also received Dr. Botman’s evaluation report and after much difficulty assembling the participants, it convened Student’s Team on January 18, 2011, “within ten school days of the time when the school district received the report of the independent evaluator” consistent with 603 CMR 28.04(5)(f)[[20]](#footnote-20) (Esposito-Balboni). I note that the letters submitted by Parent in December 2011, in support of her request for residential placement, were not “evaluation reports” within the meaning of 603 CMR 28.04(5)(f) and as such did not trigger a responsibility on Brookline’s part to convene a Team meeting within the meaning of the IDEA and the Massachusetts special education regulations.

At the Team meeting on January 18, 2012, the Parties discussed Dr. Botman’s report, the proposed IEP including the draft of the new proposed “Family therapy/ Caregiver/ Child” goal drafted by Dr. Abblettt, the appropriateness of Walden, as well as KCC, IH and St. Ann’s was also mentioned (PE-18; SE-28). Thereafter, Ms. Esposito-Balboni wrote to Parent denying her request for funding of a residential placement at Walden and stating the reasons for said denial (PE-16; Esposito-Balboni).

The Parties participated in a Resolution Session on January 23, 2012, and on January 25, 2012, Brookline forwarded Parent an IEP calling for residential placement of Student and proposing KCC and/ or St. Ann’s (PE-19; SE-29).

Parent alleged that the IEP resulting from the January 18, 2012 Team meeting was procedurally deficient because it was not developed appropriately through the Team process, offered multiple placements, and because it denied Student a FAPE. Parent alleges that all of the procedural deficiencies created an educational loss for Student which is actionable. Parent defines this loss as a denial of access to the type of residential placement Student requires, as well as resulting in her having spent the last three months receiving only tutoring at home. I will continue to examine the procedural deficiencies alleged by Parent before turning to the substantive issue, that is, the appropriateness of the proposed program.

Parent’s first procedural challenge involved Brookline’s forwarding of redacted IEPs, prior to seeking parental consent to forward unredacted IEPs. Parent alleged that forwarding redacted packets prior to receiving consent violated Student’s confidentiality. She especially took issue with the fact that the Admissions Director at St. Ann’s was able to identify Student from a previous visit and referral initiated by Parent. Brookline explained that sending redacted packets devoid of personally identifiable information was common practice and in no way violated Student’s rights. I agree. It is common practice in Massachusetts for schools to forward redacted packets when the appropriateness of a placement is being discussed as a preliminary step. At times, such a request has been initiated by parents also. Brookline’s forwarding of the packets in no way was intended, nor did it violate Student’s rights, and contrary to Parent’s assertion, denotes the seriousness with which it took Parent’s request for a residential placement. Brookline’s actions show a responsible, expeditious response to Student’s needs. The fact that the Admissions Director at St. Ann’s was able to draw her own conclusions and infer that the child in the referral packet was the same child she had previously met and considered was in no way the result of a culpable act by Brookline; rather, having previously met her and reviewed her documents, St Ann’s Admissions Director was able to ascertain that the complex profile presented belonged to Student.

Next, Parent took issue with the new “Family therapy/ Caregiver/ Child” goal appearing in the January 2012 IEP. She argued that the goal was not the result of a Team discussion pursuant to federal and Massachusetts special education regulations. I note that the goal was labeled “draft” at the top of the page clearly indicating that it was subject to discussion as an addition to the IEP. Nothing in the federal or Massachusetts regulations forbids the drafting of a proposed goal prior to the Team meeting so long as the proposed goal is available for and subject to discussion during the Team meeting by the participants. The record reflects that the proposed goal was discussed at the Team meeting of January 18, 2012 and ultimately deleted from the proposed IEP because of the consternation it caused Parent (Shmukler, Abblettt). I find that Brookline did not commit any procedural violation in doing this.

Parent is correct thatunder both federal and Massachusetts special education regulations, the IEP placement must be determined by Student’s Team. 603 CMR 28.05(6)[[21]](#footnote-21). This determination implies a discussion of the programs proposed for the particular student. 603 CMR 28.06(2)(f)(2) further requires that the out-of-district placement designated by the Team be as close to the student’s home as possible. [[22]](#footnote-22)

Parent asserted that there was no discussion of the proposed placements during the Team meeting and as such, Brookline’s proposed placement was not the result of the Team decision. This assertion is however, contrary to the evidence. Mrs. X recalled discussions about KCC, Walden and St. Ann’s during the January 18, 2012 Team meeting and agreed that Dr. Botman’s report was difficult to discuss without touching upon specific placements. Dr. Botman also recalled some discussion of specific placements during the Team meeting but could not recall which specific program had been discussed. Dr. Abblettt and Ms. Shmukler also testified as to discussions of KCC and Walden during the Team meeting. They further commented that by the time these discussions ensued, Parent was adamant that she wanted Student to attend Walden. They opined that Parent was not open to discussing any other program. The record shows that by January 18, 2012, Parent had forwarded at least two “10 day notices” to Brookline requesting public funding for Walden, had verbally indicated her interest in placing Student at Walden, and had already filed a Hearing Request seeking to obtain this placement (by December 2011).

The evidence is persuasive that by January 18, 2012, prior to receiving Brookline’s proposed IEP for Student, Parent had disengaged from the collaborative process and would consider no placement other than Walden for Student. Mrs. X testified to the fact that Parent wanted only Walden. Parent’s “single-minded refusal to consider any other placement… constitutes an unreasonable approach to the collaborative process” which the Court in at least one First Circuit case has found sufficient to justify denial of the requested relief. *C.G. v. Five Town*, 513 F 3d 279, 288 (1st Cir. 2008).

The IDEA is clear that the IEP Team must also identify the particular location at which Student’s services will be delivered. See *In Re Sutton Public Schools*, BSEA # 09-7983, 16 MSER 18, 53 (Crane, 1/26/2010) (“…by explicitly assigning the IEP Team as the responsible entity to identify the specific program location” where a student will receive his/her services).

Parent strongly argued that Brookline’s failure to select the placement proposed by Parent and supported by Dr. Botman, the Walker CBAT staff and additional service providers working with Parent and Student, as well as the offer of two distinct placements in the placement page are procedurally deficient. In support of her position Parent relies on two decisions from the Ninth Circuit, *Union School District v. Smith*, 15 F.3d 1519 (1994) and *Glendale Unified School District v. Almasi*, 122 F. Supp. 2d 1093 (2000).

In *Smith*, the school district failed to formally offer a school to parents because the parents had expressed an unwillingness to accept that placement. *Smith* held that the school was obligated to make the offer because:

The requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any. Furthermore, a formal, specific offer from a school district will greatly assist parents in ‘present[ing] complaints with respect to any matter relating to the ... educational placement of the child *Id.* at 1526.

In *Almasi*, the court held that the district's offer of multiple placement types rather than a specific, firm, recommendation constituted a procedural violation of IDEA, which resulted in a denial of FAPE for the child. *Id.* at 1107-08. *Almasi* clearly interprets *Union* as requiring that the district make a single placement offer:

The District apparently offered Talar multiple placement options in an effort to accommodate a demanding parent who previously had demonstrated her unhappiness with the options available from the District. However, the District's offer of various types of classrooms, located at a number of different school sites, with varying school-day durations, does not comport with the *Union* requirement that the District make a formal, specific placement offer” *Id.* at 1108.

At first glance, the above-mentioned case seems factually analogous to the instant case. However, as argued by Brookline in its Closing Argument, *Almasi* involved the offer of four separate, distinctly different placements; the offers were all made at the same time; and only one of the potential placements was found by the Hearing Officer to be appropriate. The instant case is distinguishable in the following ways: both of the placements offered for Student (KCC and St. Ann’s) are appropriate (as will be discussed later in this decision), and the testimony made it clear that while Brookline fully supported KCC, it offered St. Ann’s as an alternative in response to Parent’s statements regarding Parent’s and Student’s alleged reaction when they visited KCC, and only after it appeared that Parent would clearly reject KCC. Moreover, KCC and St. Ann’s are not two distinctly different placements as was the case in *Almasi*, but rather quite similar, as Parent concedes in her closing argument[[23]](#footnote-23), both substantially meeting the criteria of what has been recommended for Student.

In addition to the factual differences between *Almasi* and the instant case, it should be noted that cases following *Almasi* and *Smith* dealt with instances where no placement recommendations were made.[[24]](#footnote-24) In *J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist.,* the court found that lack of formal offer of placement was a “harmless error” when Parents knew in advance what the offer would be and had already rejected it. *See* 611 F. Supp. 2d 1097, 1127-28 (E.D. Cal. 2009) *aff'd*, 626 F.3d 431 (9th Cir. 2010). The court reasoned that it did not matter whether the school made a formal offer if it knew that offer had already been rejected. *Id.* This practical line of thinking could be applied herein –it is not in bad faith to propose two placements concurrently when the district already knows that the first has been rejected.

Regarding St. Ann’s, Parent also argued that it was unfair to propose this placement so close to Hearing when she neither had the finances to cover an additional observation nor had been afforded sufficient time to arrange for a visit/ observation of this placement. This argument is unpersuasive as Parent was already acquainted with St. Ann’s. Having considered it a year earlier, she had already visited the program. Also, the Hearing Request was initiated by Parent who wished to proceed to hearing expeditiously. Nothing prevented Parent from requesting a short continuance of the case to visit the program. Lastly, I note that while *Almasi* and *Smith* may provide guidance, they are not binding in Massachusetts as they are Ninth, not First, Circuit decisions.

Regarding the timing for convening the Team meeting and for presentation of the IEP to the Parent, Brookline complied with the timeframes established under federal and state law and regulations.

Parent’s procedural allegations are found to be without merit and in no way invalidate Brookline’s proposed IEP. As such, I turn to the appropriateness of the specific placement proposed by Brookline, KCC.

Parent states that based on the recommendations of Dr. Whelan and Dr. Botman, KCC cannot offer Student the type of environment she requires to address her social skill deficits, aggression and cognitive thought process which interferes with her behavior and ability to relate to others, especially because it follows a point and level system which is counterproductive for Student.

The description of this program as described in Facts # 71, 72, 73, and 75 shows that KCC serves latency age children with profiles similar to Student. It is capable of offering Student challenging academics, and allows her to pursue the type of extra-curricular activities Student enjoys, such as painting. At KCC, Student would have a cohort of peers who are her intellectual and social matches in a program that runs from eight in the morning to four in the afternoon and fosters afterschool activities that will promote Student’s personal interests and social relations (Shmukler).

In addition to the cognitive behavior therapy modality, the school uses positive interventions and supports infused through the cognitive behavioral therapy piece. I note that during her visit to KCC, Parent reported that Student had commented on a point and levels chart which was publicly displayed and which Student found to be shaming. Dr. Abblettt testified that Student required a combination of interventions and approaches to help her break the patterns she has developed and opined that the experienced clinical staff at KCC would work with Student to provide the types of interventions that would best work for her. He also stated that the type of therapy used at KCC closely resembled what has been recommended by Dr. Botman. Dr. Abblettt agreed that a pure point and levels system would not work for Student, but disagreed that some form of cognitive behavior therapy modality with positive interventions would not be helpful (Abblettt, Shmukler).

Parent’s other concern regarding KCC was that it was described by her advocate/ friend as appearing too institutionalized. I note that the two aforementioned concerns raised by Parent are insufficient to render the program as a whole inappropriate. The evidence is persuasive that, as described by Dr. Abblettt, its capable staff would work with Student and Parent to make the experience a favorable one for Student, including cultivating her personal interests. Additionally, KCC would be able to offer family treatment therapy and treatment plans that involved family participation (SE-10)

Dr. Whelan testified that his recommendations for Student addressed the level of care Student required rather than any specific placement. He opined that not every residential placement would be appropriate for Student and discouraged any that relied heavily on a point system, instead recommending that Student be assisted through a program that focused on helping her develop self-regulation skills, and one where her intellectual and academic needs were met (Whelan).

Dr. Whelan testified that when he last saw Student in mid February 2012, she was eager to be in a residential environment (Id.).

I did not find Dr. Botman’s opinion of KCC to be persuasive, both in terms of the accuracy of his description of the program and its appropriateness for Student. His report and understanding of the KCC program included numerous inaccuracies and what essentially amounts to a complete misunderstanding and misrepresentation of what KCC has to offer. I note that his report was the result of an interview with the Program Director as opposed to observations and first hand in-depth understanding of the program. As such, I do not find his description to be reliable and do not rely on his opinion regarding the appropriateness of this program for Student (Facts # 74). In contrast, I found the testimony of Dr. Abblettt and Ms. Shumkler to be credible and persuasive in all regards and specifically in relation to KCC. Dr. Abblettt possessed personal knowledge of the clinical staff and spoke highly of the staff’s training and experience in dealing with students like Student (Abblettt). It is also important to note that KCC offers a step-down day program in addition to its residential program, a feature that has been recommended for Student. Additionally, its clinical piece will be able to provide the family therapy piece which will be essential for Student’s eventual return home (Abblettt).

At present, KCC is the appropriate program closest to Parent/ Student’s home, and even when it moves to Walpole in the fall of 2012, it will still be within reasonable distance from Brookline. Parent’s allegations regarding the level of Student’s car sickness is not totally persuasive as the evidence shows that with special arrangements such as sitting in the front seat of a van, or riding in a larger bus or in a train, Student has demonstrated absolutely no discomfort even when travelling great distances such as from Brookline to Vermont where her summer camp was located (SE-30; Parent, Shmukler).

The evidence is persuasive that KCC is an appropriate placement, capable of providing Student FAPE consistent with the proposed IEP.

Since I have found KCC to be appropriate to meet Student’s needs, I need not proceed further to review either St. Ann’s or Walden’s appropriateness for Student. I do so in the instant case, however, to the extent that such review may help Parent understand my reasoning, given that she was not present during most of the school’s presentation of its case. I note that her absence in no way impacted this decision, but explanation of the criteria that persuaded me to disagree with her position is important to share so that she can better understand my findings. Parent is seen as a caring and loving individual who has devoted her life to help Student, even if some of her choices have not borne a fruitful outcome.

**St. Ann’s:**

Parent’s major concern regarding St. Ann’s was two fold: (1) it is the placement farthest away from Brookline and since Parent would mostly rely on public transportation to reach it, this could interfere with her ability to access it, to participate in the different activities and maintain her relationship with Student; and (2) Dr. Botman’s understanding that the placement followed a behavioral modality not recommended for Student.

While Parent is correct that St. Ann’s, located twenty miles north of Boston, is the placement farthest away from Brookline, it is not much farther than Parent’s preferred placement (Shmukler). In general, St. Ann’s is similar to KCC and, based on its description (Fact # 76), it is also found to be capable of offering Student an appropriate program and placement that would allow her to make effective progress. St. Ann’s would offer Student appropriate instructional and social peer groupings, as well as the type of social and clinical activities that would promote her development. Family counseling is available. St Ann’s also offers the possibility of a step-down from a residential to a day program (SE-10; Shmukler). Thus, while I acknowledge Parent’s concern, there is insufficient evidence to conclude that the program as described would not be capable of meeting Student’s needs.

I note that Brookline offered this placement as a second choice when it became clear that Parent would reject placement at KCC, in a desperate attempt to locate a suitable placement for Student, who is at home pending resolution of this case. The offer of St. Ann’s also responded to Parent’s view of the KCC program as too institutionalized, and Student’s alleged statement that she did not want to attend KCC because of concerns over the behavioral chart displayed in a public area (Shmukler).

**Walden:**

Walden, Parent’s preferred choice for Student, was described as a wonderful and beautiful school, but it is not designed to address latency aged children’s needs and it serves a different type of population, one presenting with difficulties different than those presented by Student. As such, it is not capable of offering Student a FAPE at this juncture.

In reaching this conclusion, I rely on the credible testimony of Ms. Shmukler and Dr. Abblettt, two highly qualified professional individuals who have known and worked with Student over the years. In addition Dr. Abblettt has worked with the staff and a student at Walden. (He noted that Walden staff is thought to be younger and less experienced than at KCC). In contrast, Dr. Botman has only recently met Student, having evaluated her three-and-a-half months ago, and not having had the opportunity to observe Student in any educational placement. He also did not speak with any of Student’s teachers or providers at Manville and has not worked with students at Walden.

Dr. Botman provided some contradictory testimony in trying to support his recommendation for Walden, when addressing the significant age discrepancy between Student and her intellectual peers (who are fifteen, sixteen and seventeen years old) there. Ms. Shmukler testified that during her visit to Walden she had learned that the peer closest to Student in age, already a year older than Student, was cognitively delayed (Shmukler). Dr. Botman testified that Student might find more comfortable the role of “mascot” to older girls than that of a full participant in a group. This testimony is disconcerting given that Student desperately wants to have real friends. At Walden, Student would not have intellectually age appropriate peers with whom she could develop a relationship among equals (Shmukler, Abblettt). Also, on cross examination, when presented with the reality of the proposed peers’ profiles and ages at Walden Dr. Botman testified that this was not promising for Student. He testified that it would be important for Student to be with same age peers, preferably females, because while she was above age level intellectually, she was relatively immature and below age level socially (Botman).

Mrs. X[[25]](#footnote-25), Mother’s friend’s testimony is also not persuasive as her opinion of Walden is colored by the fact that her own daughter (who is fifteen years old) is placed there and is also a client of Dr. Botman. Mrs. X’s issues with KCC were that in her opinion the place looked cold and institutionalized, with stark time out rooms and she did not believe that there was a sufficiently large group of female students that could serve as a cohort to Student (Mrs. X).

Ms. Shmukler testified that all three programs mentioned above would be approximately the same cost to Brookline. She was adamant however, that in good conscience she could not support Walden because it was the wrong program for Student because of the instructional peer group and the fact that the population was adolescents as opposed to a latency age group. The evidence is undisputed that while intellectually solid, Student is very immature for her age. Neither Ms. Shmukler or Dr. Abblettt agreed with Dr. Botman that Student’s need to be surrounded by females exclusively overrode the age difference, and neither agreed with Dr. Botman’s view that it would be appropriate for Student to develop social skills with children who, instead of seeing her and treating her as a peer, viewed her as a mascot. Student requires a program where she has peers with whom she can work on her social skills, students that are her intellectual and developmental peers, even if the program is mixed gendered.

Lastly, it is important to note that the success of any program for Student will depend on Parent’s support and involvement so that she and Student can develop a healthy relationship through a new family treatment plan, with the ultimate goal of having Student return home and receive her education in a less restrictive environment (Bhembe, Abllett).

‘

**ORDER:**

1. Brookline shall implement the IEP proposed on January 2012 offering Student placement at KCC, as this placement is reasonably calculated to offer Student FAPE consistent with state and federal law.
2. Brookline is not responsible to reimburse Parent for the computer or the software purchased by Parent.

By the Hearing Officer,

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Rosa I. Figueroa

Dated: March 30, 2012

**March 30, 2012**

# COMMONWEALTH OF MASSACHUSETTS

# DIVISION OF ADMINISTRATIVE LAW APPEALS

# BUREAU OF SPECIAL EDUCATION APPEALS

**BROOKLINE PUBLIC SCHOOLS**

**BSEA #12-4227**

### BEFORE

**ROSA I. FIGUEROA**

**HEARING OFFICER**

**SHERRY RAJANIEMI-GREGG, ESQ., ATTORNEY FOR PARENT**

**JOSLIN MURPHY, ESQ., ATTORNEY FOR BROOKLINE PUBLIC SCHOOLS**

1. Parent’s friend has been given a pseudonym. Her name is not being provided so as to maintain the confidentiality of her daughter who is a minor. [↑](#footnote-ref-1)
2. Student’s educational placement at the time was home-school (PE-23). [↑](#footnote-ref-2)
3. I LUGH is an acronym in which each letter represents the following: I= initiation, L= listening with one’s eyes and brain, A= abstract and inferential language skills, U= understanding the perspective of others, G= getting the big picture or gestalt processing, and H= humor (SE-4). [↑](#footnote-ref-3)
4. “Breaking down multi-step directions and previewing directions.

 Repeated and clarified directions.

 Using structured writing templates and graphic organizers.

 Use of spelling or grammar checking devices.

 Use of computer or alpha-smart.

 Extended time on tests and quizzes as well as to complete all assignments.

 Additionally [Student] should be granted ‘wait time’ to help her formulate responses and ideas.

 Consistent adult praise and encouragement.

 Frequent staff check-ins to monitor anxiety levels.

 Pre-warning for transitions/changes in schedule” (SE-2). [↑](#footnote-ref-4)
5. On May 11, 2011 Parent again accepted the IEP having made a change to the administrative data sheet relative to telephone numbers (PE-25). [↑](#footnote-ref-5)
6. Camp Akeela is located in Vermont. (P-3) [↑](#footnote-ref-6)
7. Tests Administered: Geometric Puzzles, Arrows, Design Copying, block Construction, Word Generation, Comprehension of Instructions, Phonological Processing, Animal Sorting, Response Set, Inhibition, Auditory Attention; Imitating Positions, Fingertip Tapping, Manual Motor Sequences, List Memory, Narrative Memory, Memory for Designs, Memory for Names, Memory for Faces, Theory of Mind, & Affect Recognition of the Developmental Neuropsychological Assessment—Second edition (NEPSY-II); Rorschach Inkblot Test -- Exner Comprehensive System (RIT); Behavior Rating Inventory of Executive Function--Parent & Teacher Forms L(BRIEF); Conners’ Rating Scales—Revised, Parent Form & Teacher form (CRS-R); Teacher Report Form (TRF); Child Behavior Checklist (CBCL) (P-10) [↑](#footnote-ref-7)
8. He noted that his testing did not address academic skills, but that Student has a documented history of weakness in math and organizational aspects of written expression (Botman). [↑](#footnote-ref-8)
9. 20 USC 1400 *et seq*. [↑](#footnote-ref-9)
10. MGL c. 71B. [↑](#footnote-ref-10)
11. MGL c. 71B, ss. 1 (definition of FAPE), 2, 3. [↑](#footnote-ref-11)
12. E.g., 20 USC 1400(d)(1)(A) (purpose of the federal law is to ensure that children with disabilities have FAPE that “emphasizes special education and related services designed to meet their unique needs . . . .”); 20 USC 1401(29) (“special education” defined to mean “specially designed instruction . . . to meet the unique needs of a child with a disability . . .”); *Honig v. DOE*, 484 U.S. 305, 311 (1988) (FAPE must be tailored “to each child's unique needs”). [↑](#footnote-ref-12)
13. *Board of Education of Hendrick Hudson Central School District v. Rowley,* 458 U.S. 176, 192 (1982) (goal of Congress in passing IDEA was to make access to education "meaningful"); *Deal v. Hamilton County Board of Education,* 104 LRP 59544 (6th Cir. 2004); (“IDEA requires an IEP to confer a ‘meaningful educational benefit’ gauged in relation to the potential of the child at issue”); *G. by R.G. and A.G. v. Fort Bragg Dependent Schs*, 40 IDELR 4 (4th Cir. 2003) (issue is whether the IEP was reasonably calculated to provide student meaningful educational benefit); *Weixel v. Board of Education of the City of New York*, 287 F.3d 138 (2nd Cir. 2002) (placement must be “‘reasonably calculated’ to ensure that [student] received a meaningful educational benefit”); *Houston Independent School District v. Bobby R*., 200 F.3d 341 (5th Cir. 2000) (educational benefit must be "meaningful"); *Ridgewood Board of Education v. NE for ME*, 172 F.3d 238 (3rd Cir. 1999) (IDEA requires IEP to provide "significant learning" and confer "meaningful benefit"). [↑](#footnote-ref-13)
14. *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir. 1993) (program must be “reasonably calculated to provide ‘effective results’ and ‘demonstrable improvement’ in the various ‘educational and personal skills identified as special needs’”); *Roland v. Concord School Committee*, 910 F.2d 983 (1st Cir. 1990) (“Congress indubitably desired ‘effective results’ and ‘demonstrable improvement’ for the Act's beneficiaries”); *Burlington v. Department of Education*, 736 F.2d 773, 788 (1st Cir. 1984) (“objective of the federal floor, then, is the achievement of effective results--demonstrable improvement in the educational and personal skills identified as special needs--as a consequence of implementing the proposed IEP”); 603 CMR 28.05(4)(b) (Student’s IEP must be “designed to enable the student to progress effectively in the content areas of the general curriculum”); 603 CMR 28.02(18) (“*Progress effectively in the general education program* shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the child, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district.”). [↑](#footnote-ref-14)
15. See generally *In re: Arlington*, 37 IDELR 119, 8 MSER 187, 193-195 (SEA MA 2002) (collecting cases and other authorities). [↑](#footnote-ref-15)
16. MGL c. 69, s. 1 (“paramount goal of the commonwealth to provide a public education system of sufficient quality to extend to all children the opportunity to reach their full potential… ”); MGL c. 71B, s. 1 (“special education” defined to mean “…educational programs and assignments . . . designed to develop the educational potential of children with disabilities . . . .”); 603 CMR 28.01(3) (identifying the purpose of the state special education regulations as “to ensure that eligible Massachusetts students receive special education services designed to develop the student’s individual educational potential…”). See also Mass. Department of Education’s Administrative Advisory SPED 2002-1: Guidance on the change in special education standard of service from “maximum possible development” to “free appropriate public education” (“FAPE”), effective January 1, 2002, 7 MSER Quarterly Reports 1 (2001) (appearing at [www.doe.mass.edu/sped](http://www.doe.mass.edu/sped)) (Massachusetts Education Reform Act “underscores the Commonwealth’s commitment to assist all students to reach their full educational potential”). [↑](#footnote-ref-16)
17. *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 199, 202 (court declined to set out a bright-line rule for what satisfies a FAPE, noting that children have different abilities and are therefore capable of different achievements; court adopted an approach that takes into account the potential of the disabled student); *Deal v. Hamilton County Board of Education,* 104 LRP 59544 (6th Cir. 2004); (“IDEA requires an IEP to confer a ‘meaningful educational benefit’ gauged in relation to the potential of the child at issue”); *HW and JW v. Highland Park Board of Education*, 104 LRP 40799 (3rd Cir. 2004) (“benefit must be gauged in relation to the child's potential”); *Houston Independent School District v. Bobby R*., 200 F.3d 341 (5th Cir. 2000) (progress should be measured with respect to the individual student, not with respect to others); *T.R. ex rel. N.R. v. Kingwood Twp. Bd. of Educ.,*205 F.3d 572, 578 (3d Cir. 2000) (appropriate education assessed in light of "individual needs and potential"); *Ridgewood Board of Education v. NE*, 172 F.3d 238 (3rd Cir. 1999) (“quantum of educational benefit necessary to satisfy IDEA . . .requires a court to consider the potential of the particular disabled student”); *Mrs. B. v. Milford Board of Ed.*, 103 F.3d 1114, 1122 (2d Cir. 1997) (“child’s academic progress must be viewed in light of the limitations imposed by the child's disability"); *MC v. Central Regional School District*, 81 F.3d 389 (3rd Cir. 1996), *cert. denied* 519 US 866 (1996) (child’s untapped potential was appropriate basis for residential placement); *Roland v. Concord School Committee*, 910 F.2d 983 (1st Cir. 1990) (“academic potential is one factor to be considered”); *Kevin T. v. Elmhurst*, 36 IDELR 153 (N.D. Ill. 2002) (“Court must assess [student’s] intellectual potential, given his disability, and then determine the academic progress [student] made under the IEPs designed and implemented by the District”). [↑](#footnote-ref-17)
18. E.g. *Lt. T.B. ex rel. N.B. v. Warwick Sch. Com*., 361 F. 3d 80, 83 (1st Cir. 2004)(“IDEA does not require a public school to provide what is best for a special needs child, only that it provide an IEP that is ‘reasonably calculated’ to provide an ‘appropriate’ education as defined in federal and state law.”) [↑](#footnote-ref-18)
19. *Schaffer v*. *Weast*, 126 S.Ct. 528 (2005) places the burden of proof in an administrative hearing on the party seeking relief. [↑](#footnote-ref-19)
20. 603 CMR 28.04(5)(f) states

(f) Within ten school days from the time the school district receives the report of the independent education evaluation, the Team shall reconvene and consider the independent education evaluation and whether a new or mended IEP is appropriate. [↑](#footnote-ref-20)
21. **Determination of placement**.  At the Team meeting, after the IEP has been fully developed, the Team shall determine the appropriate placement to deliver the services on the student’s IEP.  Unless the student’s IEP requires some other arrangement, the student shall be educated in the school that he or she would attend if the student did not require special education.

	1. Identification by the Team of placement shall proceed in accordance with the options delineated in 603 CMR 28.06.
	2. Lack of an identified placement shall not delay the proposal of the IEP to the parent following the Team meeting. 603 CMR 28.05(6).Similarly, 603 CMR 28.06(2) addressing determination of placement states that:

At the Team meeting, after the IEP has been developed, the Team shall consider the identified needs of the student, the types of services required, and whether such services may be provided in a general education classroom with supplementary aids and/or services or in a separate classroom or school.  The Team shall consider all aspects of the student’s proposed special education program as specified in the student’s IEP and determine the appropriate placement to provide the services.  The Team shall determine if the student shall be served in an in-district placement or an out-of-district placement and shall determine the specific placement according to the following requirements:

(a) The decision regarding placement shall be based on the IEP, including the types of related services that are to be provided to the student, the type of settings in which those services are to be provided, the types of service providers, and the location at which the services are to be provided… [↑](#footnote-ref-21)
22. When an out-of-district placement is identified by the Team, the determination shall ensue that the student’s placement is as close as possible to the student’s home.  The Team shall not recommend a day or residential school program outside of the city, town, or school district in which the student resides unless there is no suitable program within the city, town, or school district.  The school district shall implement the placement decision of the Team and shall include consulting with personnel of the school contemplated to provide the program for the student to determine that the school is able to provide the services on the student’s IEP.  The Team shall not recommend a specific program unless it is assured that the adequacy of said program has been evaluated and the program can provide the services required by the student’s IEP.  Team identification of specific schools, however, shall not supersede LRE considerations, IEP considerations, or requirements to give preference to approved programs as provided in 603 CMR 28.06(3)(d).  603 CMR 28.06(2)(f)(2). [↑](#footnote-ref-22)
23. See page 27 of Parent’s Closing Argument. [↑](#footnote-ref-23)
24. Cases that have cited *Almasi* and *Smith* regarding placement offers have largely dealt with school districts that denied FAPE because they made *no* formal placement offers. *See, e.g.*, *A.K. ex rel. J.K. v. Alexandria City Sch. Bd.*, 484 F.3d 672, 681 (4th Cir. 2007) (IEP proposed no specific schools of the five suggested to Parent); *Redding Elementary Sch. Dist. v. Goyne*, No. S001174WBSGGH, 2001 WL 34098658, at 5 (E.D. Cal. Mar. 6, 2001) (school never made a formal placement offer); *A.K. ex rel. J.K. v. Alexandria City Sch. Bd.*, 544 F. Supp. 2d 487, 493 (E.D. Va. 2008) (school never identified a particular school in any IEP). Cases where placement offers have been made and rejected by parents have declined to follow *Smith. See, e.g.*, *N.R. ex rel. B.R. v. San Ramon Valley Unified Sch. Dist.*, C 06-1987 MHP, 2007 WL 216323 (N.D. Cal. Jan. 25, 2007) (finding no denial of FAPE where an offer had been made and rejected). There have been no cases citing *Almasi* for its holding that proposing more than one placement concurrently constitutes a denial of FAPE. [↑](#footnote-ref-24)
25. Mrs. X is licensed in Massachusetts in elementary education grades 1 to 9 and in special education grades 7 to 12, and has had previous experience as an educator (Mrs. X).

The Hearing Officer gratefully acknowledges the assistance of legal intern, Stephanie Berger. [↑](#footnote-ref-25)