

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

**In Re:** Grafton Public Schools v.  
Student

**BSEA # 1304180**

**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.

Grafton Public Schools (Grafton) requested a Hearing in the above-referenced matter on December 19, 2012, and thereafter requested a short continuance of the Hearing to January 17, 2013. The Hearing was held on January 17, 2012, at the office of Catuogno Court Reporting Services, 446 Main St., Worcester, Massachusetts before Hearing Officer Rosa I. Figueroa. Those present for all or part of the proceedings were:

Student's father

Regina Williams-Tate, Esq. Attorney for Grafton

Arnold Lundwall Special Education Administration, Grafton

Frank Sutton School Psychologist, Grafton

Kimberly Cahill Sabourin Specialist, Grafton

Debbie Leonard Lovejoy Court Reporter, Catuogno Court Reporting Services

The official record of the hearing consists of documents submitted by Grafton marked as exhibits SE-1 through SE-19<sup>1</sup>; recorded oral testimony and written closing arguments. The Parties waived closing arguments and therefore the record closed on January 17, 2013.

**HEARING ISSUES:**

1. Whether the Extended Evaluation IEP promulgated by Grafton in November 2012 covering the period from November 26, 2012 through January 29, 2013, proposing a forty-five day placement at the Grow School is reasonably calculated to offer Student a Free, Appropriate Public Education (FAPE) in the least restrictive environment consistent with state and federal law?

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<sup>1</sup> Parent did not submit any documents but was allowed to rely on the documents submitted by Grafton.

## **POSITIONS OF THE PARTIES:**

### **Grafton's Position:**

Grafton does not dispute Student's eligibility to receive special education services.

Mindful of Father's objection to Student's participation in a separate day school, and mindful of Student's lack of participation in any formal school program during the past year, Grafton proposed a forty-five day, extended evaluation at the Grow School (Grow). This placement would allow the staff to better understand Student's current strength and weaknesses, while addressing his social/ emotional and academic needs in a structured therapeutic environment. At the conclusion of the forty-five day assessment, Grafton would reconvene Student's Team to ascertain whether he is ready to be placed in a less restrictive environment or attend a separate day school.

Grafton seeks an order from the BSEA that at present, its proposed program and placement at Grow offers Student a FAPE in the least restrictive environment appropriate for Student.

### **Parent's Position:**

Father wishes for Student to return to school as soon as possible. He however, disagrees with Grafton's proposed placement at Grow because Student belongs with "normal" students and would feel out of place at Grow. He is further concerned about alleged physical abuse which took place at Grow years ago, and believes from conversations with other children who attend Grow that the abuse continues to date. Also Student would "feel funny" travelling in the van.

Father strenuously objects to Dr. Boyer's evaluation and findings and asserts that Student is not a "bad kid", but rather an adolescent doing adolescent things. He does not understand what Student did that was so wrong that he cannot attend his regular education placement in Grafton. Father states that if Student cannot be placed in Grafton, he wishes for Grafton to provide a teacher to homeschool Student. Father's day job prevents him from educating Student in the home.

## **FINDINGS OF FACT:**

1. At present, Student is a twelve-year-old resident of Grafton, Massachusetts, who has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD) (SE-2). He has significant difficulty with working memory, self-monitoring, organizing, planning and initiating tasks. He also has difficulties with math (SE-4). He has been inconsistently medicated for ADHD, most recently with *Concerta*, but at present he takes 20 milligrams of *Adderall* daily with which he is doing well (SE-11; Father). When not in school, Student enjoys skateboarding, bike-riding and hanging out with friends (SE-17).

2. During the 2010-2011 and 2011-2012 school years Student lived in Lanesborough and Pittsfield, Massachusetts respectively (SE-SE-4; SE-9; SE-10).
3. On or about February 2010, while Student was a fifth grader at the Lanesborough Elementary School, he underwent a Functional Behavioral Assessment (FBA) at the Berkshire Family and Individual Resources, Inc.. The target behaviors subject of this FBA, were those that interfered with Student's ability to socialize with peers appropriately and behaviors which significantly interfered with his ability to focus on activities or tasks (SE-2).
4. Aimee Erskin, MS Ed., BCBA, who conducted the FBA noted that Student appeared to enjoy the attention he received when he engaged in negative behaviors such as provoking (including teasing others), talking back (including being disrespectful, rude, swearing and the like) and non-compliance (failure to follow instructions or direction after two verbal prompts). According to Ms. Erskin, the aforementioned behaviors occurred when Student was attempting to escape or avoid tasks and when he wished to access preferred items or engage in preferred activities (tangibles). She noted that the behaviors served as a way for Student to release anger and frustration (SE-2).
5. Ms. Erskin recommended participation in a very structured environment that offered clear concise instructions and where access to preferred tangibles was contingent on Student refraining from engaging in the targeted, negative behaviors. She recommended using a visual schedule, and a "break" card that allowed him to disengage from situations in a more appropriate manner, participation in therapy and or anger management, and implementation of a differential reinforcement contingency to reduce negative behaviors and increase responses that produced positive appropriate behaviors (SE-2). She also recommended assigning a one-to-one paraprofessional that could monitor task completion during the school day
6. Student's fourth grade English and Math MCAS results were in the needs improvement range. He also achieved a needs improvement in his fifth grade Mathematics and Science and Technology/Eng. MCAS, and a proficient score in English Language Arts MCAS (SE-1).
7. In sixth grade Student was absent twenty-three (23) times, tardy eighteen (18) times and dismissed seven (7) times (SE-5). His report card shows that he obtained an F (55) in reading; C- (71) in science; D (65) in writing; D (63) in social studies; C+ (77) in mathematics; and, B- (80) in work study (SE-5).
8. Following a Team meeting on or about February 14, 2011, Lanesborough forwarded Parents an IEP offering Student participation in a full inclusion program in Lanesborough (SE-4). To address Student's math difficulties, the IEP offered math instruction in a small group, substantially separate classroom, seven times forty minutes per five day schedule. Two other goals in this IEP address Student's executive functioning and independence issues. This IEP, which covered the period from February 14, 2011 through February 13, 2012, was forwarded to Father on March 8, 2011 and fully accepted by Father on June 7, 2011(SE-4).

9. Also on February 14, 2011, Mount Greylock Regional School District (Mount Greylock) forwarded an IEP to Parents calling for Student's placement at Mount Greylock. Like the Lanesborough IEP, this IEP offered math instruction in a small group, substantially separate classroom, seven times forty minutes per five day schedule, and it offered direct math support in the general education classroom five times, forty-four minutes per week by the paraprofessional (SE-10).
10. Student started his seventh grade at Mount Greylock Regional High School where he had a Behavior Support Plan (BSP) designed by Ms. Erskine, targeting: non-compliance, provoking, and talking back (SE-3). He was described as aggressive and verbally assaultive with a tendency to shut down (SE-6). The BSP provided an explicit reinforcement system to replace and produce specific skills. The criteria for success in this plan was described as decreasing non-compliance, provoking and talking back behaviors by twenty five percent (25%) each quarter, and one hundred percent (100%) decrease of physical behaviors that displayed as aggression and property destruction by the end of the school year. Student was also expected to follow the school schedule and complete tasks in three out of five activities per day (SE-3).
11. An incident report log created at Mount Greylock Regional High School states
  - 9/12/2012- [Student] was asked to report to the office by Ms. Kalser, but as he was en route, he was re-directed by Mr. Barnes to report to the Student Support Center. He disregarded this directive and walked around.
  - 9/16/2012- Student is suspended for one day due to a variety of disrespectful and disruptive behaviors. These behaviors include destruction of property, not following directions, and truancy.
  - 9/22/2011- During lunch, [Student] walked up to another student and hit him in the face. Based on witness statements, this was premeditated.
  - 9/27/2011- During the change of classes as students were moving through the hallways, [Student] punched another student in the chest. For this infraction, [Student] is suspended for four days, but due to his behaviors and actions, he may be out for up to 45 days (SE-7).
12. The Student's Team convened on October 3, 2011, to hold a manifestation determination meeting regarding Student's suspensions and a CHINS Petition. Several options were presented to Father including assigning a one-to-one paraprofessional (which Father rejected because it would make Student look different) and placement of Student at Housatonic Academy which option Father also rejected (SE-9).
13. The October 3, 2011 Team agreed to obtain additional clinical evaluations and recommended a forty-five (45) day, out of school placement due to Student's unsafe and disruptive behaviors. During those forty-five days Student would be evaluated and would receive 2 hours daily tutoring at a public location. The Team would be reconvening prior to December 6, 2011 to discuss the report of the clinical evaluations, placement and Student's progress in tutoring (SE-9).

14. Father failed to return the consent for evaluation form so Student's evaluation was not completed, and after two days of tutoring at the Juvenile Resource Center, the tutor quit because of Student's behavior and Student was enrolled in Pittsfield Public Schools, where Mother resides (SE-9).
15. Father testified that because of work he could not stay home with Student during the 45-day suspension and Student went to live with Mother in Pittsfield (Father).
16. On or about November 2011, Student moved to Pittsfield to live with Mother (SE-6). By early 2012, Student had returned to live with Father (SE-11).
17. Student's Team convened in Pittsfield on November 14, 2011, and the Team proposed that Student receive his education in a self-contained classroom (SE-6).
18. Student's seventh grade first quarter grades were:

English	F
Enrichment IV	D
Exploratory	P
Gym	-
Mathematics	F
Science	F
Social Studies	B

19. Between November 8 and December 19, 2011, Student was suspended six times for:
- Failure to follow administrative directive; school disturbance. Leaving the area without permission.
  - [Slapping] another Student in the face.
  - Chronic disruptive classroom and school behavior. Creating unsafe situations by leaving the Program and wandering around the building. [Refusing] to follow any and all directives.
  - Sexual assault on a Student and Chronic Disruptive behavior. [Student] was observed with his hands on another male student. He stopped when he saw the staff person and the student told her "he just grabbed my head and rubbed his balls on me." This incident was reported to Mr. Cherry. Must return with safety planning meeting.<sup>2</sup>

A first disciplinary hearing was held on December 15, 2011, to address the first three transgressions, and he was further suspended for nine days for the sexual assault on the other

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<sup>2</sup> The same day this sexual assault occurred, December 19, 2011, Student also slapped a female student on her buttocks (SE-6).

student and for chronic disruptive behavior<sup>3</sup> (SE-6). Student displayed little or no remorse after the incidents and made statements such as “I don’t care” or denying that he had done something (SE-6).

20. A second disciplinary hearing was scheduled for January 4, 2012 by the Pittsfield Public Schools (SE-6).
21. On January 19, 2012, Mount Greylock proposed (and Father accepted) an IEP for the period from January 2012 to January 2013 calling for Student to be placed at Housatonic Academy, a public day school (SE-8). The same day Father also consented to an educational and psychological evaluation of Student (*Id.*).
22. A handwritten note attached to this IEP states that Student attended the program for a couple of days before Father withdrew him (SE-8).
23. Mount Greylock held Student’s IEP annual review on February 8, 2012 (SE-9). It also intended on discussing Student’s placement because of Father’s refusal to send Student to Housatonic Academy, Student’s assigned placement. The Team recommended residential placement for Student and completion of a full psychological evaluation to best determine the appropriate day program for him (SE-10). Tutoring would resume on February 16, 2012 at the Lanesborough Library (SE-8).
24. On February 16, 2012, Mount Greylock forwarded to Parent an IEP covering the period from January 19, 2012 to January 18, 2013. This IEP proposed delivery of instruction to Student in a structured therapeutic environment that offered small-group (or one-to-one) settings, with a one-to-one paraprofessional assigned to Student, and implementation of a behavior plan. The Service Delivery Grid in this IEP offered five times, forty-four minutes paraprofessional support as direct services in the general education setting, and seven times forty minutes math instruction by the special education staff outside the general education classroom. The IEP also offered two hours daily, one-to-one tutoring from October 24 to November 7, 2011; twice per week tutoring at Lanesborough Public Library from February 16, 2012 to February 7, 2013; and two hours, once per week tutoring from February 16, 2012 to February 7, 2013 (SE-9).
25. Student last received tutorial services from Mount Greylock on March 13, 2012 (Father). Father interrupted the tutorial services<sup>4</sup> following allegations made by Student that the tutor had been inappropriate with him (SE-11; SE-12). Following the accusations, the tutor

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<sup>3</sup> Student’s chronic misbehavior in the classroom and in school was described as insubordinate for refusing to follow all directives and creating unsafe situations by leaving the program and wandering the building (SE-6). He was disrespectful of several staff; used profanity (calling a teacher a f---ing bitch repeatedly); made sexually inappropriate comments to other students; talked about smoking marijuana and drinking beer; and asked staff to buy him liquor and/ or drugs; threw books across the room; kicked a door (SE-6).

<sup>4</sup> “When asked about his progress with tutoring, [Student] disclosed that he no longer had a tutor because he accused him of looking up his shorts when he leaned back in his chair which he reported had upset his father” (SE-11).

resigned and the Lanesborough Library requested that the parties seek an alternative site to offer tutoring due to Father's disruptive behavior at the time of the accusations (SE-13).

26. David Boyer, Ph.D., performed a psychological evaluation of Student on February 20 and March 27, 2012 (SE-11). Dr. Boyer administered the Wechsler Intelligence Scale for Children- Fourth Edition (WISC IV); selected subtests of the Woodcock-Johnson Tests of Academic Achievement- Third Edition (WJA-III); Conner's Continuous Performance Test (CPT II); Behavior Rating Inventory of Executive Function (BRIEF); Rey Complex Figure Test and Recognition Trial (RCFT); House-Tree-Person Drawing (HTP); Draw a Person (DAP); Rotter Incomplete Sentence Blank (RISB); Children Depression Inventory- Second Edition (CDI-2); Millon Adolescent Clinical Inventory (MACI); and, Behavior Assessment System for Children, Second Edition (BASC-2). He also reviewed Student's records and conducted an interview (SE-11).
27. Dr. Boyer's testing results placed Student in the low average to average range of intelligence. Student evidenced deficits in the area of working memory due in part to difficulties with concentration, inattentiveness and mental sequencing. Also deficient was his ability to process visual information accurately and quickly, and his ability to copy symbols which would likely compromise his math operations (SE-11)
28. Dr. Boyer had previously evaluated Student in 2010 finding him to be functioning in the low average range of intellectual functioning with specific deficits in attention and executive functioning which impacted his academic performance. Behaviorally, Student was found to be socially perceptive and engaging with a tendency to dismiss the rights of others, poor judgment and difficulty taking personal responsibility for his behavioral choices (SE-11).
29. Dr. Boyer noted that during the evaluation conducted in 2012 Student tested limits, was disrespectful to the evaluator and showed minimal effort until Student's grandmother joined Student and Dr. Boyer in the evaluation room. The grandmother's presence in the back of the room helped Student become more compliant and cooperative. Dr. Boyer further noted that Student had denied the allegations of misconduct during his interview and noted that Student's test taking behavior was indicative of Student's need to control situations when he feels insecure or inadequate. He further noted that Student's response to certain test required tasks show that he has poor impulse and emotional control. Attention and executive functioning measures placed him in the clinically significant level for executive functioning and problem solving issues. Seven of the eight subscales showed him to present with difficulty shifting from one activity to the next and he was observed to present difficulties planning, initiating school tasks, self-monitoring, following through with goal-directed behavior, and working memory deficits. Student also presented moderate difficulties with visual motor and visual spatial processing, showing greater ability to recognize visual information than to recall or duplicate it (SE-11).
30. Dr. Boyer noted that Student "projected a sense of inadequacy and hopelessness for which he appeared to compensate through grandiosity". Student's drawings revealed a sense of disconnection, psychosexual immaturity, themes of aggression. He expressed feelings of

hostility and rage toward his mother, while appearing to idolize his father. He also provided disinhibited sexual responses. According to Dr. Boyer, Student's profile suggested that he may be covering-up significant concerns. He further noted that Student "appeared to present himself in the most favorable light and showed either a marked deficit in self-insight, a strong inclination for denial or a deliberate misrepresentation of himself" (SE-11). At the time of the evaluation Student did not report feeling depressed or having any self-injurious thoughts. When asked about his academic experience, he acknowledged needing assistance in math while wishing to be in regular education classes. He denied having engaged in assaultive behavior, and noted that once enraged, he calmed down when the rage was over. When asked what three wishes he would want he responded:

All the money in the world; I could drive... I could get away with anything I want... it would be great [when asked to explain he stated] kill someone ... not physically... make their life a living hell (SE-11).

31. On the BASC-2, Student was reported to exhibit a high level of disruptive, aggressive, rule-breaking behavior. In school Student displayed a pattern of anti-social functioning with concerning increase in problematic intrusive sexual behavior (SE-11). Father characterized Student's behavior as typical of adolescent boys (Father). Dr. Boyer however noted that Student exhibited beliefs, thinking distortions and attitudes that could land him in the correctional system and which appeared to facilitate and reinforce aggressive, manipulative behaviors. Dr. Boyer found this behavior to be indicative of a developing psychopathy (SE-11).
32. According to Dr. Boyer, Student demonstrated similar cognitive strengths and weaknesses as he had exhibited in the January 2010 evaluation, as well as inconsistent motivation throughout the evaluation making it difficult for Dr. Boyer to derive an accurate Full Scale IQ score. Student evidenced a solid fund of knowledge and vocabulary, his perceptual reasoning skills were proficient and he spelled well. Academically, Student continued to display poor grasp of math operations and computation as well as difficulty processing numerical information automatically. Dr. Boyer opined that Student's difficulties with visual-motor integration impacted his performance in math and interfered with his ability to copy material from the blackboard effectively (SE-11). Similarly, his executive functioning deficits negatively impacted his ability to initiate, organize and follow through with tasks. Dr. Boyer concluded that Student

had developed a sense of learned helplessness in response to his academic challenges which led to his task avoidant behavior (SE-11).

Dr. Boyer concluded that Student's then current home and school environments did not provide adequate consistency, discipline and supervision, and were marked by crisis in the sense that Student experienced numerous changes in school and at home. As a result, he opined that Student had not learned how to repair or work through situations in which he infringed upon the rights of others, which was made worse by adults around him colluding in blaming others for Student's misbehavior and failing to maintain consistent, appropriate,



behavioral expectations. On a positive note, he praised the opportunities provided by his family to pursue healthy interests and found Student's charisma and energy to serve him well (SE-11).

33. Dr. Boyer recommended that Student be placed in an extended-day, well-structured, therapeutic day program which focused on adolescent males with conduct problems. To effect the desired behavioral changes, the program should offer a high saliency of rewards and consequences. He stressed the importance of parental support of the placement and continuous communication of basic feedback between Parents and school personnel. Student's emotional state should be monitored through frequent check-ins with a designated school staff member to anticipate possible conflicts and pre-teach Student appropriate responses and coping strategies. To achieve this, Dr. Boyer recommended the development of a safety plan at school and at home to prevent and manage aggressive, bullying and sexually inappropriate behaviors (SE-11).

34. Additional recommendations made by Dr. Boyer included:

- [Student] is encouraged to participate in individual counseling with a focus on managing his anger, tolerating frustration and resolving conflict with others. Insight-oriented therapy and attempts to remove his defenses to will most likely lead to an angry withdrawal from therapy. Reworking the underpinnings of his anti-social behavior will require a multi-prong approach including behavior modification techniques and gradual implementation of cognitive restructuring methods so that he can change unhealthy thinking patterns that reinforce misconduct.
- [Student's] family would benefit from parent support services to help them implement rules, structures and expectations consistent with his school program's goals.
- Group therapy is recommended to challenge incorrect thinking errors and to help [Student] work cooperatively with others. Given his interest in high sensation activities, an Adventure Based Counseling program would be suggested.
- Along these lines, it is strongly recommended that [Student] participate in a sexual decision-making group for high risk youth that challenges myths and attitudes that reinforce abusive behavior in relationships.
- Referral to a Big Brother or mentor program is recommended to increase [Student's] network of positive role models.
- In school, [Student] would benefit from an active, hands on curriculum with a strong vocational component. Strategies that are typically helpful for students with ADHD should be implemented in the classroom. Also, [Student] should work on his executive function skills with the school's behavioral counselor.
- [Student] will require additional support for math. Strategies to increase his math skills should include:
  - a) Use of concrete, "hands-on" technologies such as the abacus to learn math concepts.
  - b) Lots of repetition and use of rhythm and music to help memorize math facts.

- c) Application of math problems to real life situations.
  - d) Clear and precise use of verbal construction during math operations to compensate for the lack of intuitive and visual spatial integration skills.
  - e) Use of a pocket-size reference for basic math facts with each fact to be blacked out after it[has] been mastered through practice and repetition.
- Lastly, [Student] is encouraged to develop competency in the areas that provide him a healthy means of empowerment and opportunities to develop a positive peer group as he moves through his adolescence. He would benefit from joining organized activities in the community to include outdoor adventure and sports. He might also consider volunteer work such as working with the elderly since he had expressed compassion for this population (SE-11).
35. Dr. Boyer also recommended consultation with a child psychiatrist to monitor Student's ADHD medication, as he stressed the importance of ensuring that Student took his medication consistently.
36. Father disagreed with Dr. Boyer's evaluation results and recommendations and raised concerns that Dr. Boyer had asked Student sensitive and or inappropriate questions during his interview, especially when the conversation occurred without another adult present (Father). Father stresses that Student is not a "bad kid" and feels strongly that he should be in a regular education program with "normal kids". He explained that at the time of the incidents, Student had transitioned from a parochial school to a much larger sixth grade setting in a public school; his medications had been changed from *Concerta* to *Adderall*; and he was starting puberty, all of which had a negative impact on Student (Father).
37. Mount Greylock convened Student's Team on April 11, 2012 to discuss Dr. Boyer's evaluation report. The Team agreed that Student required a therapeutic day placement with an extended day component and offered Student placement at Tri-County<sup>5</sup> (pending acceptance) for the period covering January 19, 2012 through January 18, 2013. The Team hoped with the supports in this type of placement Student would learn the necessary appropriate skills to maintain his behavior when he returned to school in his community. The Team also discussed the negative impact on Student's academic progress caused by the numerous placements he experienced during that year due to Father's removals (SE-12). Father did not attend the Team meeting (SE-13).
38. April 18, 2012 Mount Greylock forwarded the IEP and Father rejected the proposed placement on May 9, 2012 (SE-12).
39. Kimberly Grady, Director of Pupil Personnel Services at Mount Greylock, wrote to Father on May 14, 2012 confirming receipt of the rejected placement and informing Parent that

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<sup>5</sup> Tri-County was offered in part because Father had previously demanded that Student be withdrawn from Housatonic Academy, the local therapeutic day placement for Mount Greylock's students (SE-13).

tutoring did not constitute programming and was only being offered in response to Student's behavior pending the results of Dr. Boyer's evaluation (SE-13). Ms. Grady recited the numerous difficulties encountered by Mount Greylock and notified Father that the district would be requesting a Hearing before the BSEA to address Student's education (SE-13). Mount Greylock requested a Hearing before the BSEA on June 15, 2012 (Administrative notice of BSEA #12-9568).

40. Administrative review of the case involving Mount Greylock and Student, BSEA #12-9568, shows that Mount Greylock withdrew its Hearing Request when Father and Student moved to South Grafton, Massachusetts.
41. Between March 2012 and September 2012, Student stayed at home watching television and not doing much (Father).
42. Father registered Student in Grafton on September 10, 2012. On the Information Needed by Driver portion of the Transportation Request Form, Parent marked the boxes stating that Student had occasional emotional outbursts and was difficult to control (SE-14). Father provided little additional information on Student and requested that Grafton not contact Mount Greylock (Lundwall).
43. Arnold Lundwall, Special Education Administrator in Grafton, wrote to Father on September 12, 2012, notifying Father that Grafton required a complete copy of Student's record from his previous placement inclusive of the IEP, the most recent evaluations, report cards and discipline reports. Mr. Lundwall notified Father that the most recent IEP signed by Father on January 19, 2012 called for placement of Student in a public separate day school (SE-16).
44. On September 12, 2012 Grafton provided Father an Evaluation Consent Form seeking Father's permission to conduct a special education assessment, an academic assessment, a psychological assessment and an observation of Student (SE-15). On September 16, 2012 Father accepted the proposed evaluation in full and also consented to a release of information for Student's records from Mount Greylock, but requested that there be no verbal communication between the two districts (*Id.*).
45. On September 21, 2012, Grafton scheduled the evaluations which would be conducted by Frank Sutton, a school psychologist in Grafton who is properly licensed and certified in Massachusetts (SE-15; SE-17).
46. On or about September 19, 2012, Grafton attempted to initiate tutoring services for Student with Renee Bailey, a teacher in the Social Studies Department, and Chris Underwood, after school at the town library (SE-18; Lundwall). Delivery of services was difficult due to Father's preference that the tutoring be delivered in the mornings, not the afternoons (when kids should be outside riding their bikes) or the evenings (SE-18). This made delivery of tutorial difficult since the tutors were employed as teachers during the day (Lundwall). Father also requested that tutoring be delivered at a location other than the town library (SE-

18). Tutoring has been sporadic without a great deal of face-to-face contact with Student (Lundwall).

47. Mr. Sutton conducted Student's evaluation on October 30, 2012 (SE-17). The assessment was part of Student's three year reevaluation. Father was present in the testing room during most of the evaluation, reminding Student on a few occasions "to sit up and pay attention" (SE-17; Sutton). Overall, Student did not put much effort into the math and written language subtests and therefore the results in those areas were considered to be an underestimation of his true ability (*Id.*).
48. Mr. Sutton administered the Wechsler Intelligence Scales for Children- fourth edition (WISC-IV), Wechsler Individual Achievement Test- third edition (WIAT-III), Behavioral Assessment Scales for Children- second edition (BASC-2) Student and Parent report forms, Personality Inventory for Youth (PIY), Semi- Structured Student Interview, and he reviewed teacher reports, records and interviewed Student (SE-17).
49. The cognitive testing performed by Mr. Sutton found Student's overall cognitive ability to fall in the borderline range of intellectual functioning with significant scatter, which Mr. Sutton explained would make it difficult for Student to keep up with his peers in a wide variety of situations where age appropriate reasoning abilities and thinking are called into play. Verbal and nonverbal reasoning ability fell in the low average range. Also in the low average range was Student's ability to sustain attention, and exert mental control. When compared to same age peers, Student's processing speed and ability to process simple or routine visual material fell in the extremely low range. He also presented weaknesses in visual tracking and scanning, resulting in Student being left with little mental energy and time for more complex tasks such as understanding new material. Mr. Sutton concluded that Student would have difficulty managing grade-level tasks (SE-17).
50. Student performed best in the Basic Reading and Oral Language portions of his Achievement test. Written Expression, Math and Math Fluency presented significant difficulties for Student yielding very low scores, however Mr. Sutton explained that given Student's lack of consistent effort in these areas the scores may underestimate Student's true ability (SE-17).
51. Student's and Father's BASC checklists did not indicate any areas that were in the clinically significant or at risk ranges. However, Mr. Sutton concluded that Student's elevated L scores indicated that he may have been trying too hard to make things seem better than they were (SE-17). Remarking on Student's academic performance and cognitive status, Dr. Sutton indicated that

Statements on the PIY allow all for the records of symptoms associated with the experiences of poor performance in school and difficulty with cognitive processes. Student is unlikely to experience school and academic activities as satisfying. Academic achievement does not come easily to him, and his motivation, study skills, and self-discipline may be insufficient.... Teacher observations and individual assessment of cognitive and academic

performance are likely to suggest cognitive deficits and to document inadequate language skills, limited reading comprehension, or other problems in achievement.

[Regarding behavior problems and limited self-control Student's] self-description in these areas suggest the presence of uncontrolled behaviors such as impatience, restlessness and impulsivity. He describes behavior that is likely to be seen by others as unorganized and insufficiently planned. Such behavior is frequently associated with tasks that remain incomplete and goals that are seldom met. Teachers may have difficulty tolerating these behaviors (SE-17).

Student did not describe his home and family life as a significant source of conflict. He also appeared to be unconcerned about his health and did not present with the kind of somatic symptom associated with psychological distress or tension. Similarly, he did not present elevated clinical levels of depression or anxiety, and appeared to be socially well-adjusted deriving satisfaction from relationships with peers and adults (SE-17).

52. Mr. Sutton noted that Student would benefit from small group, classroom settings with structured behavioral components. He recommended that Student be seated in close proximity to the teacher, have supported visual backup to materials presented orally and that in general the material should be presented visually. Student's attention should be obtained before delivering instructions and when transitioning to new topics, and tasks should be broken down in small, manageable units. When providing instructions, Student should be asked to repeat them to make sure that he has heard them. Extended time for tests and quizzes was also recommended as well as encouragement of Student to check his work for errors prior to turning it in. To enhance current skills, Mr. Sutton recommended academic support and participation in a study skills group (SE-17).
53. Mr. Sutton suggested that Student's social/ emotional/ behavioral issues be managed through out of school counseling and recommended that in-school counseling focus on dealing with the more day-to-day school related concerns (SE-17).
54. Grafton convened Student's Team in late November 2012 (SE-19). Mother, Father and Student attended the Team meeting as did Mr. Sutton, Ms. Cahill-Sabourin, Steve Duff (the Director of Grow), a clinician and a classroom teacher. The Grafton evaluations were reviewed at the meeting, at the conclusion of which the Team recommended a forty-five day evaluation placement at the Grow School which is part of the Southern Worcester County Education Collaborative (Grow). Mother also supported Student's placement at Grow (Cahill-Sabourin).
55. Kimberly Cahill-Sabourin, Grafton's out of district coordinator explained that Grow is a separate day program. It has been in existence for over fifteen years. It offers a structured therapeutic program to eligible students as well as community-based vocational opportunities. The curriculum follows the Massachusetts Curriculum Frameworks and

students enrolled at Grow take the MCAS. The program is staffed by teachers, clinical social workers and counselors properly licensed in Massachusetts. The clinical staff also offers therapeutic support to parents. The school runs an elementary school program in one location and a middle school and high school program at a separate location. It also offers a program for students eighteen to twenty-two (Cahill-Sabourin).

56. Grow matches the profiles and cognitive levels of students when placing them in a particular group. There are approximately six to eight students in each classroom with one teacher and an instructional assistant. There are approximately three or four seventh grade classrooms and Student would attend the one that best suited his profile (Cahill-Sabourin).
57. The clinical staff addresses the behavioral and emotional needs of the students at Grow. Each student is assigned a clinician and there is a “critical team” to whom students are not assigned individually, but who are able to intervene if a student is ever in crisis. The program uses a social skills training curriculum, offers therapeutic supports and follows a point and level system (Cahill-Sabourin).
58. At Grow students can access vocational services when reaching the eighth or ninth grade depending on their academic level. Vocational opportunities are provided in landscaping, automotive, hotel and hospital work (Cahill-Sabourin).
59. Grow has provided extended school year programs but it is unclear whether it offers extended day programming (Cahill-Sabourin).
60. According to Ms. Cahill-Sabourin, Grafton and Grow enjoy very good communication and they have had success transitioning students back into the public school setting when the students are ready. Some students however, have remained at Grow or have been transferred into more intensive private day programs (Cahill-Sabourin).
61. Given the amount of time that has lapsed since Student was last in school, Grafton is unsure as to whether Student can have a safe and successful experience at Grafton without the additional information obtained through the forty-five day assessment (Cahill-Sabourin).
62. Following the Team meeting in November 2012, Father and Student toured Grow. Student recognized at least one child whom he knew from his neighborhood. They saw two classrooms, an art studio and the cafeteria (PE-9).
63. Grafton’s Extended Evaluation IEP, which covered the period from November 26, 2012 through January 29, 2013, was rejected by Father on December 5, 2012 (SE-19).
64. Father recognizes that at this point Student will need assistance in getting readjusted to any school program and therefore proposed that Student start by attending Grafton Middle School for half-a-day until he is fully reintegrated. Father testified that he had asked Grafton to allow Student to attend school for a half-a-day to see how he did, but Grafton refused because of Dr. Boyer’s report (Father).

65. Father objects to Student's placement at Grow, stating that Student does not belong there. At Grow Student would feel out of place. Father asserts that he has learned from at least one fourteen year-old student who attends Grow (who is friendly with Student) that the staff at Grow has been physically aggressive toward students in the past, and Father believes that this continues to happen now. Father asserts that he asked the student very specific questions about the alleged abuse which he did not wish to discuss at Hearing. Father did not corroborate the allegation with that student's parents and the student continues to attend Grow. Also, Father did not file a 51A with the Department of Children and Families (DCF) or a complaint with the Massachusetts Department of Elementary and Secondary Education (DESE). Regarding Student's proposed placement at Grow, Father is also concerned that Student does not wish to travel by van because it would make him "feel really funny being on a short little van" in addition to its distant location from the home when considering that Grafton's Middle school is near Father's home (Father).
66. Ms. Cahill-Sabourin testified that she has no knowledge of any physical abuse of children taking place at Grow now or before. From time to time, she has made unannounced visits to the school to check on students placed there by Grafton and has never witnessed any impropriety from the staff (Cahill-Sabourin).
67. Father testified that Grow brought back bad memories from Student's past. He opined that Grow, the Housatonic Academy or any other therapeutic day center would not be of any benefit whatsoever to Student. Father viewed Student as any other "normal kid" who may be somewhat delayed academically because of the amount of time that he has been out of school. Father disagrees with placement of Student at Grow or any other therapeutic school (Father).
68. Father asserts that if Student cannot attend a regular education program in Grafton, Grafton should pay for Student to be homeschooled at Father's home. Father's day-job prevents him from homeschooling Student and he does not have the training and expertise to do so (Father).

## **CONCLUSIONS OF LAW:**

The Parties do not dispute that Student, who presents with ADHD and learning deficits, is an individual with a disability falling within the purview of the Individuals with Disabilities Education Act<sup>6</sup> (IDEA) and the state special education statute<sup>7</sup>. As such, Student is entitled to a free, appropriate public education (FAPE).<sup>8</sup>

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<sup>6</sup> 20 USC 1400 *et seq.*

<sup>7</sup> MGL c. 71B.

<sup>8</sup> MGL c. 71B, §§1 (definition of FAPE), 2, 3.

In the case at bar, Father disputes the placement proposed by Grafton, asserting that Student belongs in the regular education seventh grade program in Grafton. Grafton argues that because of the length of time that lapsed since Student was last in school, the disciplinary history involving Student and the lack of current information regarding his educational, psycho/ emotional and social needs, he requires a forty-five day assessment at the Grow School. Also, Grafton is concerned that his safety and that of others calls for additional information prior to reintegrating Student into a mainstream setting. Grafton asserts that the proposed forty-five day evaluation IEP at the Grow School offers Student a FAPE in the least restrictive environment, while allowing Grafton to obtain much needed information. 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<sup>9</sup> in a way "reasonably calculated to confer a meaningful educational benefit"<sup>10</sup> to the student.<sup>11</sup> Additionally, said program and services must be delivered in the least restrictive environment appropriate to meet the student's needs.<sup>12</sup> 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.<sup>13</sup> Educational progress is then measured in

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<sup>9</sup> 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").

<sup>10</sup> See *D.B. v. Esposito*, 675 F.3d 26, 34 (1<sup>st</sup> Cir. 2012) where the court explicitly adopted the meaningful benefit standard.

<sup>11</sup> *Sebastian M. v. King Philip Regional School Dist.*, 685 F.3d 79, 84 (1<sup>st</sup> Cir. 2012) ("the IEP must be custom-tailored to suit a particular child"); *Mr. I. ex rel L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1, 4-5, 20 (1<sup>st</sup> Dir. 2007) (stating that FAPE must include "specially designed instruction . . . [t]o address the unique needs of he child that result from the child's disability") (quoting 34 C.F.R. 300.39(b)(3)). See also *Lenn v. Portland School Committee*, 998 F.2d 1083 (1<sup>st</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> 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.").

<sup>12</sup> 20 USC 1412 (a)(5)(A).

<sup>13</sup> 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



relation to the potential of the particular student.<sup>14</sup> At the same time, the IDEA does not require the school district to provide what is best for the student.<sup>15</sup>

As the party challenging the adequacy of Student's proposed IEP, Father carries the burden of persuasion pursuant to *Shaffer v. Weast*, 126 S.Ct. 528 (2005), and must prove his case *by a preponderance of the evidence*. Also, pursuant to *Shaffer*, if the evidence is closely balanced, the moving party, that is Father, will lose.<sup>16</sup>

Upon consideration of the evidence, the applicable legal standards and the arguments offered by the Parties in the instant case, I conclude that given the unique circumstances of this case, and for the reasons explained below, the forty-five day assessment IEP offered by Grafton is reasonably calculated to meet Student's needs. Father did not meet his burden of persuasion pursuant to *Shaffer*. My reasoning follows.

Prior to entering Grafton Student had been the subject of numerous disciplinary processes between 2010 and 2012. Student entered Grafton on or about September 10, 2012, under an accepted IEP drafted by Mount Greylock which called for him to receive tutorial services.

Grafton has offered tutoring since his enrollment in September 2012 through the present, the delivery of which has been inconsistent due to parental preference and Student's preference and availability. It is clear however, that Student requires participation in a formal school program capable of addressing all of his needs, and at this point, continuation of tutoring in lieu of school attendance is a disservice to Student.

Father's initial reservations and reluctance to allow open communication between Grafton and Mount Greylock made it difficult for Grafton to obtain the information it required in order to properly plan for Student's reintegration into school. Initially, Father provided only partial records and attempted to limit the contact between Grafton and Mount Greylock (Lundwall, Sutton). Father however consented to a release of records from Mount Greylock

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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").

<sup>14</sup> *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 199, 202 (court declined to set out a bright-line rule for what satisfies a FAPE, noting that children have different abilities and are therefore capable of different achievements; court adopted an approach that takes into account the potential of the disabled student). See also *Lessard v. Wilton Lyndeborough Cooperative School Dist.*, 518 F.3d 18, 29 (1<sup>st</sup> Cir. 2008), and *D.B. v. Esposito*, 675 F.3d at 36 ("In most cases, an assessment of a child's potential will be a useful tool for evaluating the adequacy of his or her IEP.").

<sup>15</sup> E.g. *Lt. T.B. ex rel. N.B. v. Warwick Sch. Com.*, 361 F.3d 80, 83 (1<sup>st</sup> 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.")

<sup>16</sup> *Shaffer v. Weast*, 126 S.Ct. 528 (2005) places the burden of proof in an administrative hearing on the party seeking relief.

and Mr. Lundwall spoke to Kimberly Grady in Mount Greylock after consulting with Grafton's attorney.

Upon receipt of the information, and in consideration of Father's disagreement with the results of Dr. Boyer's evaluation, the Parties agreed to have Student reevaluated, this time by Mr. Sutton. The cognitive and academic performance results of Mr. Sutton's evaluation yielded similar results to the evaluation performed by Dr. Boyer, demonstrating Student's intellectual and academic abilities to fall within the borderline and low average range, and both finding that the test results may have been skewed by Student's lack of total investment in the test. Visual scanning, tracking and processing speed were particularly deficient. Test results also showed significant deficits in written expression and math.

Mr. Sutton also raised concern that Student's social, emotional and behavioral assessments

...indicated some concern in relation to his ability to find satisfaction within an academic environment, and that he is likely to be under motivated and lack sufficient effort to meet with success. [Student] also presents with some under-controlled behaviors such as impatience, restlessness and impulsivity. He is likely to be seen as unorganized and lack the ability to plan out routines (SE-17).

With the results of Mr. Sutton's evaluation and the additional records from Mount Greylock in hand, Grafton convened Student's Team in November 2012. Student, Father and Mother participated in the Team meeting together with Grafton and Grow School personnel. The Team, including Mother, recommended Student's participation in a small-group, highly structured, therapeutic setting capable of addressing Student's educational, behavioral, social and emotional needs. The Team specifically recommended Student's participation at the Grow School.

After touring the Grow School, Father and Student disagreed with the Team's recommendation. Father harbored additional reservations regarding Student's attendance to any therapeutic day program based on Student's fleeting attendance at Housatonic Academy (Father). In an effort to appease Father's concerns, Grafton recommended that Student participate in a forty-five day assessment at a separate day school to obtain additional information, to ease his re-integration to school and in an effort to maintain the safety of all involved. Father rejected this offer urging Student's gradual re-integration to a regular education, seventh grade program in Grafton, and, in the alternative, requested that Grafton personnel homeschool Student in Father's home (Father).

The evidence shows that at this time the forty-five day assessment at the Grow School is the appropriate placement for Student, as it will allow Grafton an opportunity to assess Student's current needs accurately over a period of time and ascertain Student's readiness to attend a more mainstream program. At the completion of the assessment, or sooner if the Team so elects, Student's Team shall re-convene to evaluate Student's progress and needs and make recommendations for the remainder of the school year and/ or next year.

Father's concerns regarding alleged physical abuse of students at the Grow School are unpersuasive and likely, untrue. The source of these allegations is other fourteen year old students with whom Student is friendly. Father provided absolutely no corroboration for any of these allegations and it is worth noting that those students continue to attend the Grow School. To date Student has adeptly sabotaged every effort to avail himself of the types of programs where he can learn the skills he will need to become a productive, independent adult. Father has both demonstrated unconditional support for Student and has minimized the severity of the disciplinary incidents that caused Student's suspension in the first place. It is further concerning that throughout this period Student has not engaged in any counseling or work that can help him address his behavioral, social and emotional needs. Student requires the type of structured program and assessment that Grafton's IEP proposes before he is ready to enter a less restrictive program in Grafton.

The evidence is convincing that Grafton's IEP reflecting a forty-five day assessment at the Grow School is reasonably calculated to offer Student a FAPE in the least restrictive environment. Father did not meet his burden of persuasion pursuant to *Shaffer*.

**ORDER:**

1. Grafton shall offer Student participation in in a forty-five day evaluation placement at the Grow School.

By the Hearing Officer,

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Rosa I. Figueroa

Dated: February 14, 2013

**February 14, 2013**

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

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**GRAFTON PUBLIC SCHOOLS**

**BSEA # 1304180**

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**BEFORE**

**ROSA I. FIGUEROA  
HEARING OFFICER**

**REGINA WILLIAMS-TATE, ESQ., ATTORNEY FOR  
GRAFTON PUBLIC SCHOOLS  
PARENT, PRO-SE**