

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

In Re: Stoneham Public Schools v.
Student

BSEA # 1400720

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.

Stoneham Public Schools (Stoneham) filed a Hearing Request in the above-referenced matter on July 25, 2013. Following a request for postponement of the Hearing and for scheduling of a telephone conference call filed by Stoneham, the Hearing was scheduled for September 11, 2013. The Hearing was held on September 11, 2013, at DALA/BSEA, One Congress St., Boston, Massachusetts before Hearing Officer Rosa I. Figueroa. Those present for all or part of the proceedings were:

Nancy Nevils, Esq.	Attorney for Stoneham Public Schools
Linda Gross	Director of Student Support Services, Stoneham Public Schools
Vanessa Connors	Special Education Teacher, SEEM Collaborative
Kristine Nickas	School Principal, SEEM Collaborative

The official record of the hearing consists of documents submitted by Stoneham Public Schools (Stoneham) marked as exhibits SE-1 through SE-15; and recorded oral testimony. Parent did not attend the Hearing and did not file any documents prior to the Hearing. Following the Hearing, On September 11, 2013, an audio transcription of the proceeding was forwarded to Parent along with an Order extending closing of the record through September 19, 2013, to offer Parent an opportunity to respond in writing. No response was received from Parent. The record closed on September 19, 2013.

HEARING ISSUES:

1. Whether the IEP covering the period from June 2013 to June 2014, calling for Student's participation at the SEEM Collaborative Therapeutic Learning Center is reasonably calculated to offer Student a free, appropriate public education (FAPE) in the least restrictive environment consistent with state and federal law?

STONEHAM'S POSITION:

Stoneham brings this action on behalf of Student who currently attends the SEEM Collaborative Therapeutic Learning Center, pursuant to a stay-put IEP. Stoneham seeks a determination from the Bureau of Special Education Appeals (BSEA) that the proposed IEP and placement for the 2013-2014 school year, offering to continue Student's placement at the SEEM Collaborative Therapeutic Learning Center is reasonably calculated to offer Student a FAPE and constitutes the least restrictive environment appropriate for Student.

According to Stoneham, Parent has not accepted an IEP in several years. Stoneham states that the Program Quality Assurance (PQA) division of the Massachusetts Department of Elementary and Secondary Education (DESE) has instructed school districts and collaborative programs to decrease the attendance of students placed in collaborative programs who lack accepted IEPs calling for such placement. As such, in order to maintain Student's enrollment and implement the proposed IEP at SEEM Collaborative Therapeutic Learning Center, Stoneham requires a BSEA finding that SEEM Collaborative is the appropriate placement for Student in lieu of Parent's acceptance.

FINDINGS OF FACT:

1. Student is a twelve year old resident of Stoneham, Massachusetts who has been diagnosed with Autism¹ (in 2003) and Prader-Willi Syndrome (in 2005). She is a non-verbal communicator who functions below the second grade level and who requires constant supervision to remain safe and on task (SE-1). She presents with receptive and expressive language impairments that impact her ability to process, understand and learn language and interfere with her ability to acquire information. Student's disabilities impact her cognitive, communication, behavioral, sensory and social functioning. She has also been diagnosed with hypothyroidism and is being treated with human growth hormones. She presents delayed protective balance reactions which can increase the risk of falls and is required to wear a soft helmet during indoor and outdoor motor activities (SE-1).
2. Student is described as a playful, charming student who enjoys playing with farm animals, bouncing on a therapy ball, playing with toy cars, "high-fiving" adults and learning. She can follow one step directions and is able to sit and work on a one-to-one basis for five to ten minute periods if provided with breaks and allowed to play with a preferred toy for self-stimulation. She wears pull-ups at all times and is taken to the bathroom every hour and a half (SE-15). Student engages in self-injurious behaviors that cause tissue damage (Connors).
3. Student has received her education at the SEEM Collaborative Therapeutic Learning Center (SEEM Collaborative) located at The Beebe School in Melrose since 2007 (SE-15). She is

¹ On the Gilliam Autism Rating Scale (4/07) Student scored a 9 in the areas of stereotyped behaviors and social interactions, placing her at the 37th percentile, with an overall Autism Quotient of 94, also at the 37th percentile (SE-15).

accessing the Massachusetts Curriculum Frameworks at approximately the access skill and entry point level. Her needs require that her education be provided in a highly structured, therapeutic learning environment that offers participation in a small group setting with low student to teacher ratios. A therapeutic delivery model must be integrated into the program across all settings. Multi-modal teaching approaches and basic sign language are used in the delivery of information. Student requires explicit instruction connecting new concepts to previously learned material, repetition and extensive reviews in order to acquire skills (SE-1). Because of her very low functioning and global issues, Student requires teacher prompting and the assistance of a one-to-one aide throughout the day (Connors).

4. Over the past three to four years Student's instruction at SEEM has been delivered by Vanessa Connors. Ms. Connors is a certified elementary education and special education teacher in Massachusetts. She has also completed the course work to obtain certification as a behavior specialist and expects to obtain Board certification as a behavioral specialist soon (Connors).
5. Over the past two years, Mother has not attended any Team meetings and has not returned the paperwork reflecting her determination to accept or reject the proposed IEP and placement for Student (Nickas, Connors).
6. Student's multidisciplinary, three-year re-evaluation was conducted by Kelly Markussen (interim teacher), Abby Underkoffler, OTR/L (occupational therapy), Giselle Leary (physical therapist) and Alysha Paulson (Speech and language pathologist) in March and later updated in May 2010 to document Student's progress (SE-1). Student was eight years, seven months old (8.7) at the time of this evaluation. She was administered the following tests: Peabody Developmental Motor Scales-Second Edition (PDMS-2Sensory Profile- Caregiver Questionnaire; Assessment of Basic Language and Learning Skills (ABLLS- sections B, S, V, Y, and Z); School Functional Assessment (SFA)- Activity Performance section; and clinical observations were conducted (SE-1).
7. The multidisciplinary, three-year re-evaluation report notes that Student engages in tantrum behavior (yelling, pushing, hitting herself and others) when directed by the teacher to a non-preferred activity, when she is searching for food or when a preferred object is taken away. Because of her Prader-Willi Syndrome, she seeks food at any opportunity and therefore requires constant supervision to monitor food intake. It was further noted that Student had started to seek out positive interaction with familiar staff at SEEM and had started to initiate familiar play routines such as tickles, hand taps and "chase" (SE-1).
8. The results of the multidisciplinary evaluation shows that Student requires visual prompts (such as pointing) to follow a simple direction. When given the picture of an item she could match the picture to the appropriate object from among three options. She was able to imitate two motor activities and five gross motor actions but could not imitate fine motor movements ("touching objects in sequence, blowing, speed of objects and actions or sequences of actions"). The evaluator noted tha Student required a verbal prompt to match the speed of the desired action to be imitated after demonstration was offered. Student made

spontaneous sounds like “mmm, eaaaae and aaa” but did not imitate the sounds or words modeled for her to repeat. She was non-verbal, could not identify letters or words, could not spell, and could not count objects or identify numerals. She did not converse with others but would let them hold her hand. She made eye contact when spoken to, but did not initiate greetings, shared items or interact with peers unless an adult was there to initiate the exchange. When requesting food or toys Student touched or grabbed the desired item, or she pulled the shoulder of the person with whom she wished to communicate and opened the person’s hand to give that person an icon to communicate her desires. She could not label any item by name and did not use any words. She used three signs spontaneously, those were, the signs for “more”, “drink” and “eat”. Student’s language development was found to be significantly below age level (SE-1).

9. During the evaluation, Student was observed to play with peers by performing one action, such as throwing the ball, but she did not wait or check to see if the partner was ready to receive the ball. She was able to sit in a small group with one or two students for five minutes without being disruptive and could take turns during group instruction, but could not sit in large groups without being disruptive and was similarly unable to follow classroom routines. She was also unable to generalize learned skills across settings (SE-1).
10. Regarding self-help skills, Student could take her socks off, walk to the bathroom independently, and could pull up her pants. She however, was not consistently independent with toileting routines requiring assistance on occasion. She could not dress, wash her hands and face, or brush her hair and teeth independently, and also, could not close zippers, tie her shoes or fasten buttons. She was able to eat finger foods and drink from a straw independently and could drink from a cup or use a spoon if prompted, but could not cut or spread with a knife, take prepared lunch to the table, pour liquid into a cup or glass, or clean her area after a meal (SE-1).
11. Student’s motor skills were appropriate for gait, kneel, walking forward and backwards and rolling sideways. She could also throw, roll and catch a ball independently but she evidenced difficulty performing movement tasks requiring more sophisticated eye-hand coordination. Similarly, she could not perform activities that required her to hop, jump or run independently. Regarding fine motor skills, Student could mark a paper with a crayon, was able to use a pincer grasp when picking up small objects, could place a small peg into a peg board, and could transfer objects from one hand to the other (SE-1).
12. In visual motor coordination tasks, Student was able to isolate her index finger when pointing and used a mature pincer grasp. She also demonstrated functional grasp and release patterns but was unable to turn individual pages of a book at a time (SE-1).
13. Student demonstrated good core strength, equilibrium and upright functional alignment sitting and standing, but demonstrated some muscle weakness in her lower extremities and slight hypotonia. During prolonged seated activities, Student demonstrated difficulty maintaining adequate posture. The evaluator noted that Student’s cognitive impairment interfered with her ability to complete portions of the PDMS-2 test successfully (SE-1).

14. Student was able to move throughout the classroom, doorways and hallways in familiar settings without assistance, but she demonstrated difficulty maneuvering around obstacles in non-familiar settings. She was observed to be able to ascend and descend stairs using the handrail for support, and with guidance, could carry a small object while using the stairs but her occasional sudden posterior loss of balance (most notably when going up the stairs) posed a serious safety risk. Student also required assistance to safely board and disembark from vehicles (SE-1).
15. By the end of the 2011-2012 school year, gains were noted in Student's strength and dynamic balance. She was also able to demonstrate the movement pattern required for jumping activities, and with encouragement, could jump lifting both feet off the ground (SE-1).
16. As part of the multidisciplinary evaluation, Parent was asked to complete a sensory profile questionnaire. Her responses indicated that Student's auditory and tactile performance fell within the typical range. The Vestibular/ Proprioception indicators showed Student's tendencies toward excessive movement; she enjoys bouncing, rocking and swinging. The visual questions showed how easily frustrated Student became when attempting to find objects in competing backgrounds. It was noted that Student also tends to stare intensely at people and objects. The olfactory/ gustatory questions indicated Student's tendency to chew or lick nonfood items and high craving for food items. It was further noted that she tends to place small objects or manipulatives in her mouth (SE-1).
17. The clinical observation portion of the assessment evaluated Student's musculoskeletal, neuromotor and hand function/ dominance. The observations were remarkable for a slight decrease in lower extremities and reduced strength in hip extensor muscles, as well as an increased base of support and legs externally rotated. Student presents with "marked lumbar lordosis, with compensatory thoracic kyphosis and cervical extension in addition to slight right spinal rotation" for which she "has been prescribed a Dynamic Movement Orthoses (DMO)" (SE-1). SEEM Collaborative staff report that according to Mother, Student no longer wears the DMO because they were too tight and she noticed circulation changes in Student's extremities. In school, a wedge cushion has been placed in Student's seat to help her maintain a more neutral alignment during seated activities. Student has also been prescribed a supra malleolar orthosis (SMO) but the ones she was wearing at the time of the evaluation were too small and Mother had booked an orthopedic appointment for June 2010 to evaluate the SMO's in addition to the DMO (SE-1).
18. Student's neuromotor assessment showed that she demonstrated bilateral anterior protective extension and she demonstrated protective extension response on her right side (with cueing) but not on the left. The report explained that this would prevent Student from protecting herself if she fell. It was further noted that Student did not demonstrate any hand dominance and was not able to manipulate clothing fasteners of any kind (SE-1).

19. Overall Student demonstrated significant variability in the adaptive behavior scores. Strengths were noted in gross motor skills, and she was cooperative. It was noted that she responded positively to reinforcers which were found to yield effective positive results. Aggressive behaviors, including pinching, grabbing, tantrumming, scratching and throwing objects and food stealing require implementation of a behavior plan. It was also recommended that she continue to receive physical therapy and occupational therapy (SE-1). Additional recommendations resulting from the 2010 multidisciplinary evaluation included:

- Constant supervision for health, safety, and learning.
- Assistive technology devices (switches, buttons, fidgets toys).
- Total communication approach (i.e., pictures, gestures, AAC, verbalizations).
- Repetition and review of skills.
- Additional wait time to process and respond to information.
- Sensory diet (monitored by the occupational therapist).
- Visual supports.
- Home school communication –daily notebook.
- Use of simple language, breakdown of tasks (one step commands).
- Multi – sensory approach.
- Physical guidance as needed.
- Highly structured/routine environment.
- Adapted feeding equipment (utensils, cup, bowl, etc.), adapted coloring and writing tools, adapted scissors, slant board, adapted handwriting program.
- Use of soft helmet during indoor/outdoor physical activity.
- Work presented on the vertical plane.
- Photos with a white background (SE-1).

20. Student's IEPs over the years have offered consultation and direct services in a separate setting to address Student's social/ emotional, speech and language, occupational therapy, physical therapy and academics in a therapeutic program. Instruction is provided through discrete trial teaching, consistent routines, pre-teaching, break down of tasks into one step directions, rephrasing, repetition, initial demonstration, extended time to process, behavioral momentum strategies, limited field choices, prompt fading, previewing, connecting previously learned material and other methodologies. Throughout her tenure at SEEM Collaborative she has received her education in very small classrooms with a high teacher to student ratio, and has been assigned a one-to-one aide (SE-14; SE-7, SE-9; SE-10; SE-15). She has an individualized behavior intervention plan, individualized reinforcement system and many other accommodations such as:

- Behavior support and frequent verbal and visual reinforcement, encouragement, praise.
- Close supervision (hand-held assistance etc.) on stairs/playground equipment or for safety (due to balance and safety issues).
- Physical prompting/ hand-over-hand assistants as needed to complete tasks.
- Opportunity for frequent movement breaks.
- Decrease auditory and visual distractions.

Incorporate daily sensory diet (monitored by OT).
Total communication approach/modified sign, verbal and photos, *Go-Talk*.
Assistive Technology Devices (switches, buttons, fidget toys).
Wedge cushion
Modeling/demonstration (SE-14).

21. During the 2012-2013 school year, Student's class consisted of a staff to student ratio of four (4) (one teacher and three instructional aides) to six (6) students. It is noted in Student's IEP that she requires constant supervision to stay safe and on task therefore, one of the instructional aides is assigned to Student full time even though it is not reflected in the IEP (SE-14; Connors). During the 2013-2014 school year the teacher to student ratio will be four (4) to five (5) students (Connors).
22. As with her previous IEPs, the 2013-2014 school year IEP targets goals for functional academics, social/ emotional areas, communication, occupational therapy, physical therapy, and motor skills. Also as with previous IEPs, this IEP offers participation in an extended school year program that runs from July 1 through August 9, 2013 (SE-14). Student did not attend the extended school year program in 2012 or 2013 (SE-13; Connors). The 2013-2014 IEP increases Student's speech and language consultation services from fifteen minutes per month to thirty minutes per month, and calls for social emotional consultation services fifteen minutes per month (Connors).
23. The additional information portion of the IEP notes in pertinent part:
- 5/25/12: TEAM meeting scheduled for 1:00. Teacher reports that when she attempted to give parent the meeting reminder prior to the meeting, parent refused and stated she would not be at the meeting.
- 10/29/12: TEAM meeting scheduled for 9:00. Parent was verbally notified of meeting location and time by SEEM staff at pick up on 10/25/12. Parent responded that she does not attend meetings with the district and would not attend this meeting.
- 11/15/12: TEAM meeting scheduled for 1:00. Parent was verbally notified of meeting location and time by SEEM staff at pick up on 11/13/12. Parent again responded that she would not attend a meeting with the district (SE-15).
24. The IEP was forwarded to Parents on or about June 17, 2013 but Parents did not respond to the proposed IEP and placement (SE-14; Connors, Nickas).
25. On September 6, 2012, Parent denied permission for Student to attend any field trips whatsoever, including walking in the community or by using the school van for transportation (SE-3). The same day, Parent also declined consent for Student to be photographed, videotaped or for any audiotapes of her to be made, and also declined permission to have SEEM Collaborative publish any picture of Student on its website (SE-4). Parent signed a modification of the discipline code granting permission to SEEM

Collaborative staff trained in Safety Care, to use de-escalation techniques and physical intervention if necessary (SE-5).

26. Also on September 6, 2012, Parent signed a “Parent Authorization for Medication Form” denying the school permission to give Student any over the counter medication or apply sunscreen but identifying bees stings as her only allergy and granting the school nurse permission to use the Epi Pen if necessary “via Parent only”(SE-2). Four months later, on January 2, 2013, Parent again denied dispensation by the school nurse of any over the counter medication to Student and stated that Student had no allergies (SE-8).
27. On September 10, 2012, Parent denied consent for the release of information and Student’s Health Record by any physician, therapist, case manager or other agency, including Student’s physician Dr. Heschlimann, to anyone at SEEM Collaborative indicating instead that all medical information would be shared via Parent (SE-6).
28. On April 5, 2013, Stoneham forwarded a Consent for Evaluation request to Parent seeking to conduct Student’s three year re-evaluation, to which Mother failed to respond. In an attempt to engage Mother and seek her input, Stoneham attempted to schedule several meetings throughout the year to no avail (SE-11).
29. On May 29, 2013, Stoneham forwarded a meeting invitation to Parents inviting them to participate in a IEP meeting to discuss, Student’s progress and end of the year annual review, placement and Student’s re-evaluation. The meeting would be convened on June 18, 2013 (SE-12).
30. As scheduled, Student’s Team convened on June 18, 2013. The meeting notes state the staff’s concerns regarding Student’s health and education as well as Mother’s lack of engagement (SE-13). The meeting notes state

[Mother] refuses to communicate with any staff.

[won’t] accept any notes –from anyone including nurse [regarding] health.

Need to hid[sic] notes [regarding] illness/concerns.

Can’t communicate with any of her doctors (no releases signed).

Orthotics², not wearing helmet anymore with strap.

AFO’s laces coming untied, fall off easily- impacts stability.

Mom: [indicated that Student is] not needing helmet during the day; only outside and when using stairs.

[she] was speaking to teaching [staff] early in school year.

Attendance: Q1-12, Q2-15, Q3-9; Q4-9 ([some absences are] half days, field trip days, no real trend).

Food being provided to child: only a hand[ful] of dry food (crackers), no other food provided to her per Mother’s request. Not having enough? Trying to food steal from others. Staff doesn’t know –hasn’t been able to communicate.

² Student has foot and spine orthotics (SE-15).

At times there is not enough spare clothing.
 IEP: needing to revert back to stay-put. See draft IEP.
 Clearly seizure activity.
 Not given an understanding of medication.
 PT: concern @ spine.
 * Needs coordination of care.
 [Mother] doesn't send [Student] to summer program recommended.
 Evaluation: not necessary for the education however it is essential
 to: need to have communication others
 : speak with
 Previously:
 Bee allergies- no epi pen @ school
 Mom reporting no allergies
 Eye glasses – doesn't wear them, mom says she doesn't need them (SE-13)

31. The quarterly reports for the 2012-2013 school year show that of the 180 total school days Student was present in school 128 days (SE-7; SE-9; SE-10; SE-15). The regular school day runs from 8:40 a.m. to 2:45 p.m., however, on the days Student attended school, she typically arrived in school between 9:00 a.m. and 9:30 a.m., and was picked up by Mother between 2:00 p.m. and 2:30 p.m. (Connors).
32. The quarterly reports note that Student made effective progress toward reaching the objectives in her social, academics, sensory motor/ fine motor development, gross motor skills, and expressive/ receptive language (SE-7; SE-9; SE-10, SE-15).
33. Regarding her social skills goal, on two occasions she was able to pass preferred objects with verbal and gestural prompting achieving 100 % on five out of five trials, whereas she had only done this on three out of five probe sessions at the beginning of the year. In academics she went from receptively identifying "dinosaur" (and learning to identify "napkin" at the beginning of the year) from among a field of two (2) items with 80 % accuracy, to receptively identifying "dinosaur", "car", "spoon", "cup", "napkin", "fork" and "block" from among a field of three (3) items with 80% accuracy. She could also independently sort two (2) different objects from among 15 different pairs of objects, with 100 % accuracy on more than three (3) consecutive sessions. In a task requiring her to listen to a story and match the corresponding picture to the book from a field of 3 pictures, she accomplished this with 100% accuracy with seven (7) books at the end of the school year whereas she could only do it with three (3) books at the beginning of the school year. She was also independently matching different shaped objects to a corresponding colored square in two out of five opportunities with 60% accuracy. In occupational therapy, she was able to transition independently to the room with close supervision while using the stairs, could open the doors in the building in a timely manner, she was showing a right hand preference for fine motor skills activities. She was increasing her imitation of brush strokes, could imitate vertical and horizontal lines with a marker and appeared to enjoy these activities. It was however noted that her reduced visual attention to task impacted her ability to imitate visual and fine motor skills. When completing skills requiring bilateral hand coordination she often required

physical prompts to use both hands so as to complete the task efficiently, such as when stringing large beads into a string, or when pushing buttons into a hole. She was able to take her shoes and jacket off and place them where instructed to place them and could assist in putting her shoes and jacket on. Also, after her zipper was initially hooked, she could pull it up and down. Student was feeding herself by using a spoon or her fingers, and she was not yet toilet trained. Progress was also noted with gross motor skills. With supervision, by the end of the year Student was able to navigate different surfaces and ramps but continued to display difficulty with balance when ascending or descending stairs. Ms. Leary, the MSPT, noted that Student had not worn her rigid back brace since the start of the 2012-2013 school year and opined that this had halted progression of her continued motor development because of the consistent donning of the rigid back brace which impacted back alignment. This was of great concern to her and the reason for implementing several positioning interventions to promote maintenance and development of normal musculoskeletal alignment, which in turn improved Student's ability to remain seated at her desk for significant periods of time. She is also given opportunities for stretching, mobility and strengthening through movement breaks built into her school day. Ms. Leary noted that Student's sensory seeking activities such as rocking interfered with her ability to consistently attend to motor tasks (SE-7; SE-9; SE-10, SE-15).

34. The quarterly reports noted Student's progress during the twice per week speech therapy sessions to work on her expressive and receptive language skills. Student was described as a multi-modal communicator who used non-speech vocalizations, cries, and a voice output device, to make her needs and desires known. In the context of the therapy sessions Student could use a *Go Talk 20+* to ask for a preferred object or activity. When given an initial gestural cue, Student could use the *Go Talk 20+* to construct a "I want" plus "object" sentence with 70% accuracy across three (3) consecutive sessions. She also used the *Go Talk 20+* to request up to five (5) non-food items in four out of five opportunities, and could use up to three button sequences to indicate her wants (e.g. "I want more high fives"). It was further noted that Student continued to need great deal of prompting to engage in therapy activities targeting receptive language. The accuracy of her performance increases when asked to identify an action (e.g., "touch sleeping") and decreases when asked to identify a common verb from a field of three (3) options. Overall, her performance improves when using an iPad (SE-7; SE-9; SE-10, SE-15).
35. The 2013-2014 school year started on September 3, 2013, however, Student did not begin attending school until September 9, 2013, and had to be sent home the first two days she was in school because she arrived covered in fleas. Her first full school day was Wednesday September 11, 2013, when she arrived in school free of fleas (Connors).
36. According to Ms. Connor and Ms. Nickas (School principal at SEEM Collaborative), the staff has great concerns regarding Student's safety and well-being (Connors, Nickas). Mother does not allow Student to go with the other children on field trips, walks or across the street to the playground. According to Ms. Connors, Student is being deprived of opportunities to work on appropriate behaviors in the community. Also, Mother has reduced Student's snacks and only provides a handful of animal crackers for the entire day. Mother

has also requested that Student not be given any drinks during the day even when Mother is no longer providing any juice or other drinks for her (Connors).

37. Mother does not communicate with the staff at SEEM. She is always talking on her cell phone and when staff speaks to her, she ignores them and walks away (Connors). She has also declined consent for the school nurse and the physical therapist to speak with Student's doctors and the staff is greatly concerned about the need for Student to receive medication given a past history of seizures and potential bee allergies (Connors).
38. The strap in Student's soft helmet has been removed by Mother making it easy for Student to take it off or throw it. Student is also not wearing her orthotics which is concerning to her physical therapist given her balance instability and concerns when she ascends and descends staircases. The staff also noted that during the 2012-2013 school year, Mother provided new shoes for Student which had to be laced. Mother laced them very loosely and the staff tied them tighter to prevent them from slipping off. The next day, Mother had again tied her laces loosely this time making multiple knots and the staff untied them and tied them tighter again. The next day Mother had sewn the laces loosely and the staff undid the hem and tighten the shoe laces once again. The following day Student arrived in school with her shoe laces glued and fitting loosely. The staff is concerned that the shoes can come off easily increasing the potential for Student to fall (Connors).
39. Ms. Nickas filed a MGL c.119§51A report last year which was screened out by the Department of Children and Families (Nickas). Linda Gross, Stoneham's Director of Student Support Services filed a new MGL c.119§51A on or about September 10, 2013 because of the fleas incident and the reduction in snacks provided by Mother (Gross).

CONCLUSIONS OF LAW:

There is no dispute that Student is an individual with a disability falling within the purview of the Individuals with Disabilities Education Act³ (IDEA) and the state special education statute⁴. As such, she is entitled to a free, appropriate public education (FAPE).⁵

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 needs⁶ in a way "reasonably calculated to confer a meaningful

³ 20 USC 1400 *et seq.*

⁴ MGL c. 71B.

⁵ MGL c. 71B, §§1 (definition of FAPE), 2, 3.

⁶ 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").

educational benefit”⁷ to the student.⁸ Additionally, said program and services must be delivered in the least restrictive environment appropriate to meet the student’s needs.⁹ 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.¹⁰ Educational progress is then measured in relation to the potential of the particular student.¹¹ At the same time, the IDEA does not require the school district to provide what is best for the student.¹²

In the instant case, Stoneham seeks a determination that its proposed IEP for the 2013-2014 school year is appropriate and offers Student a FAPE. Stoneham’s concern is that Mother neither participates in meetings regarding Student’s education, nor communicates with staff and has not accepted any IEPs in several years. Mother has also not consented to Student’s

⁷ See *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) where the court explicitly adopted the meaningful benefit standard.

⁸ *Sebastian M. v. King Philip Regional School Dist.*, 685 F.3d 79, 84 (1st Cir. 2012) (“the IEP must be custom-tailored to suit a particular child”); *Mr. I. ex rel. L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1, 4-5, 20 (1st Cir. 2007) (stating that FAPE must include “specially designed instruction . . . [t]o address the unique needs of the child that result from the child’s disability”) (quoting 34 C.F.R. 300.39(b)(3)). See also *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir. 1993) (program must be “reasonably calculated to provide ‘effective results’ and ‘demonstrable improvement’ in the various ‘educational and personal skills identified as special needs’”); *Roland v. Concord School Committee*, 910 F.2d 983 (1st Cir. 1990) (“Congress indubitably desired ‘effective results’ and ‘demonstrable improvement’ for the Act’s beneficiaries”); *Burlington v. Department of Education*, 736 F.2d 773, 788 (1st Cir. 1984) (“objective of the federal floor, then, is the achievement of effective results--demonstrable improvement in the educational and personal skills identified as special needs--as a consequence of implementing the proposed IEP”); 603 CMR 28.05(4)(b) (Student’s IEP must be “designed to enable the student to progress effectively in the content areas of the general curriculum”); 603 CMR 28.02(18) (“*Progress effectively in the general education program* shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the child, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district.”).

⁹ 20 USC 1412 (a)(5)(A).

¹⁰ MGL c. 69, s. 1 (“paramount goal of the commonwealth to provide a public education system of sufficient quality to extend to all children the opportunity to reach their full potential. . . .”); MGL c. 71B, s. 1 (“special education” defined to mean “. . . educational programs and assignments . . . designed to develop the educational potential of children with disabilities”); 603 CMR 28.01(3) (identifying the purpose of the state special education regulations as “to ensure that eligible Massachusetts students receive special education services designed to develop the student’s individual educational potential. . . .”). See also Mass. Department of Education’s Administrative Advisory SPED 2002-1: Guidance on the change in special education standard of service from “maximum possible development” to “free appropriate public education” (“FAPE”), effective January 1, 2002, 7 MSER Quarterly Reports 1 (2001) (appearing at www.doe.mass.edu/sped) (Massachusetts Education Reform Act “underscores the Commonwealth’s commitment to assist all students to reach their full educational potential”).

¹¹ *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 199, 202 (court declined to set out a bright-line rule for what satisfies a FAPE, noting that children have different abilities and are therefore capable of different achievements; court adopted an approach that takes into account the potential of the disabled student). See also *Lessard v. Wilton Lyndeborough Cooperative School Dist.*, 518 F.3d 18, 29 (1st Cir. 2008), and *D.B. v. Esposito*, 675 F.3d at 36 (“In most cases, an assessment of a child’s potential will be a useful tool for evaluating the adequacy of his or her IEP.”).

¹² 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.”)

three year re-evaluation nor has she provided medical or other information on Student, and has not allowed communication with Student's doctors. Mother declined all opportunities to participate at Hearing and therefore, I consider only the information presented by Stoneham in rendering my decision.¹³

Upon consideration of the evidence, the applicable legal standards and the arguments offered in the instant case, I conclude that Stoneham's proposed IEP and placement for the 2013-2014 school year, with one modification (incorporation of the one-to-one aide in the IEP), is reasonably calculated to offer Student a FAPE in the least restrictive environment appropriate to meet her needs. While I am also persuaded that Student is not being denied FAPE, in order to obtain updated evaluative information Stoneham may and shall proceed with Student's three year re-evaluation expanded to include the health, cognitive and psychological evaluations. My reasoning follows.

Student is a child with significant disabilities due to her autism and Prader-Willi diagnoses. She presents with developmental delays, motor delays and at twelve years of age, is a non-verbal communicator who is not yet toilet trained. Student uses sounds, signs, pictures and gestures to communicate her needs to others. Her language development is significantly below age level. Within a familiar context, she is able to follow simple routine directions such as stand up or sit, and inconsistently responds to her name. She has very basic self-help skills and continues to require assistance with dressing, toileting and using utensils when eating. When expressing frustration, she makes loud non-speech noises or rocks in her chair, and if angry will squeeze her hands on the side of her head or squeeze the arm of the adult closest to her (SE-1). She appears, however, to recognize people and locations and enjoys singing, or rather vocalizing to songs.

She also is prone to tantrums, something that has greatly decreased in school through implementation of the behavioral plan. Due to her Prader-Willi diagnosis she has an insatiable appetite and will attempt to steal food, something aggravated by the reduction of snacks and beverages provided by Mother. The evidence shows that since 2007 her education has been appropriately delivered at the SEEM Collaborative TLC program where she participates in a small-group setting with a 4 to 5 teacher to student ratio this 2013-2014 school year. According to Ms. Connors, all of the children in Student's class function below the second grade level. Although not reflected in her IEP, she has been assigned a one-to-one aide to assist her throughout the day. Student requires teacher prompting to perform and complete tasks (SE-1; Connors). Her IEP appropriately addresses functional academics, physical therapy, occupational therapy, motor skills, social/ emotional needs and communication (SE-14).

Student's academic services are delivered using one to one discrete trials pursuant to an Applied Behavioral Analysis (ABA) model. Data is collected and analyzed by the teacher and SEEM's behavioral analyst. There are two full time BCBA's at SEEM, one of whom is

¹³ I also rely on the facts recited in the Facts section of this decision and incorporate them by reference to avoid restating them except where necessary.

assigned to Ms. Connors' class to review the data with her weekly, and once a month with the clinical staff, that is, the occupational therapist, physical therapist, speech and language pathologist, the school nurse and the instructional aides. The BCBA is available throughout the day (Connors).

The SEEM collaborative staff is rightly concerned about Student's poor attendance, as she misses numerous days of school, arrives late and leaves early on the days she does attend and has not participated in the extended school year programs in 2012 and 2013, depriving her of much needed educational time. The staff is also concerned about Mother's refusal to allow Student to participate in any outside school activity so as to carry over her education and work on appropriate behaviors in the community. The school is also concerned over issues regarding safety due to Student not wearing her back or leg braces, the missing strap on her helmet, and wearing loosely fitting shoes. Lack of communication with Mother and her lack of consent to communicate and have access to outside medical and other service providers is also concerning as is the lack of food and drinks provided to Student and personal hygiene as she arrived this year covered in fleas (See facts #5, 24, 25, 26, 27, 28, 29, 31, 35, 36, 37, 38, *supra*).

Stoneham is persuasive that its proposed IEP and placement is reasonably calculated to offer Student a FAPE and is the least restrictive environment and the record is clear that Student has made effective progress in her current program. However, even greater educational progress may well have been effectuated were Student's safety, well-being and access to the full complement of education services offered not compromised by Mother. This circumstance is extremely concerning and, if continued, will likely pose a significant impediment to Student's ability to gain critical daily living, communication and safety skills, and will compromise her future independence. Mother is urged to work collaboratively with the school to ensure Student's health, safety and access to the full complement of available educational opportunities.

Assessing Student's current functioning so as to better plan her education is critical (Nickas, Connors). Stoneham is persuasive that it must proceed with Student's three year re-evaluation as mandated under the IDEA, which shall be expanded to include a health evaluation to better understand her medical needs, and a psychological and cognitive evaluation to obtain a full picture of her cognitive and developmental needs. As such, substitute consent is hereby granted. Ms. Nickas was further persuasive that said updated evaluation will also help Student when and if Mother applies for DDS services on Student's behalf.

ORDER:

1. Stoneham shall implement proposed 2013-2014 IEP calling for Student's placement at SEEM Collaborative Therapeutic Learning Center as it is reasonably calculated to offer Student a FAPE in the least restrictive environment appropriate to meet her needs.
2. Stoneham shall modify the proposed IEP and incorporate provision of the one-to-one aide in the IEP.
3. Stoneham shall proceed with Student's three year re-evaluation inclusive of (but not limited to) a health, cognitive and psychological evaluation.

By the Hearing Officer,

Rosa I. Figueroa

Dated: October 11, 2013

October 11, 2013

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

STONEHAM PUBLIC SCHOOLS

BSEA # 1400720

BEFORE

**ROSA I. FIGUEROA
HEARING OFFICER**

**NANCY NEVILS, ESQ., ATTORNEY FOR
STONEHAM PUBLIC SCHOOLS**