

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

In Re: Student v.
Acton Public Schools &
Acton Boxboro Regional School

BSEA # 1405736

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.

Parents requested a Hearing in the above-referenced matter on February 7, 2014. Thereafter, by agreement of the Parties, the matter was scheduled for Hearing on June 2, 4, 5 and 9, 2014, at DALA/BSEA, One Congress St., Boston, Massachusetts before Hearing Officer Rosa I. Figueroa. Those present for all or part of the proceedings were:

Student's father	
Student's mother	
Heather Gold, Esq.	Attorney for Parents
Rafael Castro	Neuropsychologist
Carla Brockway	Private Tutor and ABA trainer with Acton Public Schools
Maureen Austin	School Counselor, Learning Prep School
Joan E. Foster	Chief Operating Officer and Administrator of Special Education, Learning Prep School
Nancy Nevils, Esq.	Attorney for Acton Public Schools
Elizabeth L. Huber	Acton-Boxboro Regional School
Mary Emmons	Coordinator of Secondary Pupil Services, Acton-Boxboro Regional School
Spencer Harvey	Seventh Grade Social Studies Teacher, Acton-Boxboro Regional School
Melissa Meek	Sixth Grade Teacher, Acton Public Schools
Nicole Soucie	BCBA Consultant to Acton-Boxboro Regional School
Elizabeth Broadwater	Seventh Grade Science Teacher, Acton-Boxboro Regional School
Richard Cowen	School Psychologist, Acton-Boxboro Regional School
Kristen Kelley	Special Education Teacher, Acton-Boxboro Regional School
Amy Reichbach	BSEA Hearing Officer, observer
Carol Kusinitz	Court Reporter, Doris Wong Court Reporting Services

The official record of the hearing consists of documents submitted by Parents marked as exhibits PE-1 through PE-69, and documents submitted by Acton Public Schools (Acton) & Acton–Boxboro Regional School (AB) marked as exhibits SE-1 through SE-64 (except that pages 4, and 13 through 18 of SE-64 are excluded), SE-65, SE-66, SE-66A, SE-68, SE-69, SE-69A, SE-71, SE-72, SE-73 (including SE-73A), SE-74 (except that pages 4 and 13 to 18 are excluded), SE-75, SE-76, SE-77, SE-78, (SE-79 marked for identification only), SE-80, SE-81 and SE-82; recorded oral testimony and written closing arguments. The Parties' written closing arguments were received on July 23, 2014. The record closed on that date.

HEARING ISSUES:

1. Whether the IEP and placement offered by Acton for the period from April 3, 2013 to January 15, 2014 as amended on June 18, 2013¹, was reasonably calculated to offer Student a Free, Appropriate Public Education (FAPE) in the least restrictive environment consistent with state and federal law?
2. Whether the IEP and placement offered by AB covering the period from January 14, 2014 to January 13, 2015, following Student's unilateral placement by Parents at LPS, was reasonably calculated to offer Student a Free Appropriate Public Education (FAPE) in the least restrictive environment consistent with state and federal law?
3. Whether Parents are entitled to reimbursement for their unilateral placement of Student at the Learning Prep School for the 2013–2014 school year, and for prospective placement of Student at Learning Prep School for the 2014–2015 school year.

POSITIONS OF THE PARTIES:

Parents' Position:

Parents assert that Acton's and AB's failure to explore alternative programs and services and disregard of the information and evaluations provided by Student's parents, clinicians and its own staff resulted in a denial of FAPE to Student. They argue that the overwhelming evidence supports their belief that the integrated Connections Program at AB was inappropriate even with the modifications provided. Parents state that their experts recommended Student's participation in a language-based program that addressed all of his educational needs and offered Student a community of like peers, for seventh and eighth grades (2013–2014 and 2014–2015), but instead Acton and AB disregarded these recommendations forcing Parents to reject the proposed program and placement for the 2013–2014 and the 2014–2015 school years, Student's seventh and eighth grades. As such, Parents had no choice but to unilaterally place Student at Learning Prep for the 2013–2014 school year, for which they seek reimbursement inclusive of transportation. Parents also seek an order for prospective placement of Student at Learning Prep for the 2014–2015 school year.

¹ This IEP covered the period from June 18, 2013 through January 15, 2014 (SE-32; SE-34).

Similarly, Parents argue that AB's proposal for extended year services must be rejected because it fails to provide Student with the program and placement he requires.

Acton Public Schools and Acton–Boxboro Regional School's Position:

Acton and AB argue that they have offered Student appropriate placement in in–district programs in which Student was able to make effective progress in all areas of need. Furthermore, AB argues that its offer to have Student participate in the integrated Connections Program in AB under a partial inclusion model, with specific modifications, was appropriately designed to provide Student a FAPE. It also constitutes a lesser restrictive program than what Parents propose.

Furthermore, AB argues that its excellent staff (inclusive of the special education teacher who had been working with Student since he was in fourth grade), would have made it possible for Student to receive specially designed instruction in reading, math, written language, speech and language, counseling (added later), and executive functioning support. As part of the proposed partial inclusion program, AB also offered to provide assistance to address Student's communication, academics, social skills and fine motor skills in the general education setting as well as consultation among staff.

FINDINGS OF FACT:

1. Student is a fourteen year–old resident of Acton, MA. He has been diagnosed with Autism Spectrum Disorder (ASD)(previously Pervasive Developmental Disorder/Not Otherwise Specified). He also presents with anxiety, attention, processing and executive functioning and control deficits as well as significant learning related deficits and variable delays in cognitive functioning (Kelley, Castro, Mother; PE-6, PE-7; PE-8; PE-9; PE-10; PE-12; PE-13; PE-14; PE-15).
2. Student received all of his education between Kindergarten and sixth grade in Acton and has at all times been eligible to receive special education services (Mother). Between Kindergarten and fifth grade he participated in partial inclusion programs supported by an aide, with pull out services, under accepted IEPs (SE-2; SE-3; SE-4; SE-6; SE-15). During this time, the parties worked cooperatively to address Student's needs in said environment (Meek, Kelley, Mother, Father, Castro, Brockaway). Also, during this time, Parents shared their concerns regarding Student's social deficits and his inability to make "at least one true friend" (Mother).
3. Beginning in January 2006, Parents had Student evaluated by Dr. Rafael Castro, pediatric neuropsychologist, and thereafter, had Dr. Castro re-evaluate him in May 2007 and in June/ July 2008, February 2010, November/ December 2011, May 2013 and May 2014 (PE-1; PE-6; PE-7; PE-8; PE-9; SE-1; PE-10; SE-17; PE-10; PE-11; SE-29; PE-15).
4. The neuropsychological evaluation performed by Dr. Castro in June and July 2008 demonstrates the impact Student's disabilities had on his language, communication, social

functioning, skill acquisition and learning skills (PE-8; Castro). According to Dr. Castro, the 2008 testing showed significant discrepancies between Student's verbal and nonverbal abilities and executive control issues were also noted (*Id.*).

5. Dr. Castro noted positive improvements in Student's behavioral presentation, management of stereotypical tendencies, ability to sustain attention and focus on activities especially when engaged in non-verbal tasks (PE-8). While he found that the results of this evaluation showed that Student had made "encouraging gains" in numerous developmental areas, he noted that Student's language processing presented residual deficits involving verbal formulation, narration and articulation of ideas in an organized manner. Regarding executive control Dr. Castro noted emerging problems with cognitive efficiency as demonstrated by a test of processing speed. He stated that

At this point, while aspects of his intellect reflect functioning at the 45th percentile, his performance on standardized measures of processing speed skills fall of the second percentile. This is a pronounced the gap between these skill sets. This area is not a major concern in the short term, as there is not a high premium on speed in the second and third grades. However, it will become more prominent down the road... Student is a child who will likely struggle with these shifts to broader problem solving skills involving abstraction, as children like him tend to be sequential and concrete in their view of novel situations...From a social and emotional perspective... Student continues to be less overtly aware of his remaining areas of difficulty and his peers continue to treat him with a level of understanding and acceptance. However, in considering Student's future, it is possible that his learning style and related challenges may result in him becoming more divergent from his typical peers and, at the time, a more specialized learning environment may be required to meet his needs (PE-8).

According to Dr. Castro, Student continued to have difficulties processing information quickly and continued to face challenges when attempting to learn verbally presented information and with organizing the information for recall (PE-8).

6. Dr. Castro found that while Student continued to follow an upward development trajectory from which he had derived benefit, and despite Acton's high level of commitment, and implementation of comprehensive interventions and ancillary supports, he continued to present social vulnerabilities and significant language-based challenges. He made recommendations for Student's partial inclusion program for second grade "with the understanding that a more specialized learning environment may be required in the future". He recommended interventions akin to those used in language-based classroom, speech and language therapy, special education supports to target academic skills acquisition, occupational therapy, math and social development support. Parents forwarded this report to Acton (PE-8).

7. Dr. Castro evaluated Student on February 12, 19 and 24, 2010. Again, Dr. Castro found that Student had continued to make progress, albeit his response to interventions had been more modest than seen in the past, and the gap between him and his same aged–peers was widening. Dr. Castro warned that without the required interventions, Student’s clinical picture would likely deteriorate further, leaving no other choice but placement in an alternative specialized program (PE-9; SE-1). He noted that

It is possible that even with such generous pull–out services put into place in the near future, their cumulative impact may not be sufficient to support Student, and that an alternative placement, more suitable to meet his complex needs, the sought (PE-9; SE-1).

Parents shared Dr. Castro’s 2010 report with Acton and continued to provide Student with private tutoring and therapies, arranged for play dates, enrolled Student in activities, attended field trips, and accessed psychopharmacological interventions (PE-9; SE-1).

8. By the end of Student’s fourth grade, his literacy assessments showed that he was at a late second/ early third grade level Student struggled with fluency and comprehension of oral reading placing him within the “instructional” range level (SE-61).
9. According to Parents and Dr. Castro the gap between Student and his peers widened further by the fall of Student’s fifth grade (Castro, Mother).
10. Acton conducted Student’s three year re-evaluation between November 2011 and January 2012 (SE-8; SE-9; SE-10; SE-11; SE-12).
11. On November 2 and 7, 2011, Kristin Kelly, Student’s special education teacher in the partial inclusion program and IEP chairperson,² conducted an educational assessment of Student using the Wechsler Individual Achievement Test 3rd Edition (WIAT-III) (SE-8; PE-45). Student had to be tested in multiple sessions over the two–days and his attention was variable during testing; he needed redirection and was apologetic when he did not understand what to do with a task. Student obtained a “very low” score in math fluency–addition and “below average” scores on the reading comprehension, math problem solving, sentence composition, math fluency–subtraction and math fluency–multiplication subtests. He obtained a “average” score in word reading, essay composition, pseudo–word decoding, numerical operations, oral reading fluency (102, his highest score), and spelling.³ Ms. Kelley recommended specialized, small group instruction to assist student with a reading

² Ms. Kelley was Student’s special education teacher in the partial inclusion program in for fourth, fifth and sixth grade. She also chaired Student’s IEP Team meetings during those years (Kelley). Ms. Kelley is certified as a special education teacher in Massachusetts (Kelley; SE-68).

³ On the written expression portion of the test, Student
... Had a difficult time combining three ideas into one. ... Four out of the seven sentences were incomplete.... he was given 10 minutes to plan and write his essay... [he] chose not to plan his ideas out first, and started writing his essay... [Student] needed more than 10 minutes to complete his paragraph, but providing more time would have invalidated the testing results (SE-8).

comprehension and math reasoning. She also recommended numerous accommodations, to wit: “visual supports, additional time to complete tasks, organizers and editing checklists for writing tasks, explicit written or verbal instruction in planning out a task, frequent check-ins for attention, scaffolding for more challenging reading materials to aid comprehension, and previewing and reviewing skills ” (SE-8; PE-45).

12. On November 23, 30 and December 7, 2011, Dr. Castro re-evaluated Student and observed him in his fifth grade program in Acton at Parents’ request. Dr. Castro also spoke with some of Student’s service providers in Acton who reported that in school, Student displayed some anxiety, appeared nervous, worried, had difficulty concentrating and completing his work (PE-10; SE-17; Castro). Dr. Castro also noted an increase in anxiety when Student was presented with demands which exceeded his capacity and he appeared to become more easily overwhelmed leading to reduced executive control, comprehension and processing speed. Testing showed variability in Student’s abilities. As a result, Dr. Castro recommended that instead of looking at the overall index of cognitive development, Student’s profile should be interpreted according to his individual strengths and weaknesses.
13. Student was eleven years, six month old at the time of this evaluation. His WIAT–III and GORT–4 reading comprehension scores placed him three to four years below grade and age level expectation. During testing, Student continued to demonstrate weaknesses with working memory, suggesting difficulties in “attending, encoding, and organizing information” (PE-10; SE-17). Dr. Castro also noted that Student demonstrated executive functioning difficulties involving focus and attention to task as well as significant weaknesses with fine and gross motor coordination and integration. Dr. Castro recommended continuation of a combination integration and pull-out model program in which Student received direct services outside the general education setting for reading, writing, math, speech and language, occupational therapy and social pragmatics.⁴ Additionally, he recommended that an occupational therapist address issues with visual motor integration and sensory input management to help Student calm himself. Services by a BCBA were also recommended to help address Student’s behavioral and emotional issues (PE-10; SE-17).
14. Dr. Castro further recommended that Student continue to develop his social pragmatic skills. He explained that Student struggled to understand the subtle nuances of socially based information and social interactions and opined that Student’s ability to advance socially in situations involving typically developing peers was compromised. Dr. Castro found that Student became anxious when presented with social demands that exceeded his capacity. As a result, Student had a tendency to avoid said situations (PE-10; SE-17).

⁴ “[Student’s] programming should continue to provide him with both integration and pull-out services. These elements remain necessary for his programming. The first element of his programming should be providing [Student] with integration opportunity’s throughout the day.... The goal of integration continues to be to develop his social skills and increase opportunities with interactions with his same age peers. Peer modeling of appropriate behaviors, language, and social relationships are all beneficial to [Student]....[Student] continues to require adult support when he is in the integration classroom. Adult support is required to assist him with academics, facilitating interaction with peers, and increasing his communication skills” (PE-; SE-17).

15. Nancy Ferraro, M.Ed., school psychologist, conducted a psychological evaluation on December 19, 2011 (SE-9; PE-47). She administered selected subtests of the WISC-IV, WRAML 2, Roberts Apperception Test, Sentence Completion, Kinetic School Drawing, conducted an observation during science class and a Student interview. Student's cognitive skills in the measures administered fell in the below average range, except that he obtained mixed average/ below average scores for memory skills. Higher level abstract concepts were found to be particularly challenging for Student. Ms. Ferraro noted that

Listening skills and attentional skills impacted [Student's] ability to maintain focus, converse, and execute tasks fluently and efficiently (SE-9; PE-47).

During the interview Student indicated having age appropriate interests and noted that he got along with almost all of his classmates and enjoyed playing with two of them during recess (although he could not mention an activity). He stated that he played only with his sibling during weekends and otherwise engaged in solitary activities such as playing *Wii* and watching television (SE-9; PE-47).

16. Ms. Ferraro noted that during science class Student required re-explanation of the task and structuring of the worksheet to complete the small group assignment. During testing it was noted that he frequently interjected "Sorry" at times somewhat out of context, and his intermittent inattention disrupted his flow of ideas and ability to grasp what was occurring. He asked for redirection and it was noted that during the Word Reasoning subtest of the WISC-IV, he repeatedly responded to part of the cue instead of "listening or holding on to all of the information" (SE-2). Ms. Ferraro noted that Student was not administered sufficient subtests to derive a Full Scale IQ and as such, her evaluation focused on "more narrow domains of cognitive functioning" (SE-9; PE-47). In the WRAML 2, Student scored below the average range in memory for unrelated words, for designs and details in pictures, although his attentional skills fell within the average range. His picture drawing in the Kinetic School Drawing was akin with that of a somewhat younger student. She found that Student continued to require special education services throughout the day noting that he needed assistance with social pragmatic and language skill development and noted that Student appeared to demonstrate anxiety during less structured situations when unsure of what was expected of him or when he felt that he would fail at a task. Ms. Ferraro warned that when Student did not feel successful he was more prone to discouragement which had a negative impact on his ability to progress socially and academically (SE-9; PE-47).
17. Meredith Abramowicz, MS CCC-SLP, conducted Student's speech and language evaluation between November and December 2011 and January 2012, by (SE-10; PE-46). She administered the Clinical Evaluation of Language Fundamentals, 4 Edition (CELF-4), the Social Language Development Test Elementary (SLDT), informal social-cognitive testing, spontaneous language sample, and she reviewed records. Ms. Abramowicz noted that during testing Student needed initial listening prompts, movement breaks, and he benefitted from repetition and clarification of the instructions. In the Concepts and Following Directions, Recalling Sentences, Formulating Sentences, and Understanding Spoken

Paragraphs subtests of the CELF–4, Student scored in the below average range for receptive and expressive language skills. In the SLDT, which measures social language skills inclusive of nonverbal communication, he scored in the below average range in his ability to make inferences (the ability to take someone’s perspective in a photograph based of contextual cues such as, gesture, posture, facial expression, background clues and so forth), and he scored within the average range for supporting peers in which he is called upon to take the perspective of a main character in a particular situation. His scores in the social cognitive measures was stronger, and with prompting, he demonstrated good recall of simple background information albeit lacking descriptive details about events or people and a solid story framework (SE-10; PE-46). Ms. Abramowicz recommended modeling a slower rate of speech to help student with processing information, simplification of language and vocabulary, provision of visual and auditory instructions, monitoring for comprehension, providing models and examples prior to initiation of a task, stating and restating the main idea, provision of structured learning measures, fostering Student’s discussion of critical background information and particular details related to personnel events, assistance with taking notice of facial and body language appearing in pictures, and reducing screen time activities to no more than 2 hours per day (warning that too much screen time could have a negative effect on Student’s attention, comprehension, ability to visualize information and his social–language skills) (SE-10; PE-46).

18. Kathleen Harrington, BS, OTR/L, performed the occupational therapy reevaluation on January 10 and 13, 2012 (SE-11). Ms. Harrington performed the Bruininks–Osteretsky Test of Motor Proficiency, 2nd edition (BOT–2), the Fine Manual Control, Manual Coordination and Body Coordination Subsections; Test of Visual–Motor Skills, revised (TVMS–R), The Beery Developmental Tests of Motor Coordination and Visual Perception (Beery); Observation of Hand Skills; Ayers Scale for Handwriting Speed; and Handwriting Samples. On the BOT–2, Student demonstrated overall below average fine motor abilities but showed dramatic improvement in his gross motor abilities relating to coordination and balance, areas in which he scored within the average range. Ms. Harrington however, noted that Student presented lower–than–average muscle tone which in her opinion could impact the quality of his motor skills. The TVMS–R showed Student’s deficits with motor coordination, and the Beery his deficits with visual–motor skills albeit age–appropriate visual perceptual skills. Student demonstrated mature hand skills in completing the “snap, zipper, buckles, Velcro, buttons, lace tying” skills with both hands. He was also able to appropriately manipulate items with his hands and his handwriting speed was solid although he used loosely formed letters, a large letter size and his spatial planning was diminished. The report notes that Student was learning to type by using a structured keyboarding program (SE-11).
19. Ms. Harrington recommended continued occupational therapy services to help Student improve fine motor–based activities (especially writing). She suggested provision of visual models as needed and the use of lined paper to help Student with proper letter placement and letter sizing (SE-11).
20. Student’s then current teacher assessment was completed by Ms. Kelley on January 19, 2012 (SE-12; PE-48). It notes that in language arts Student could write a paragraph when

provided with support and graphic organizers; he could verbally answer questions which focused on specific, concrete topics but struggled to demonstrate understanding of broad topics in history and social studies; in science and technology he had difficulty following class discussions and with hands-on activities even with assistance, and he struggled to comprehend higher level concepts. According to Ms. Kelley, Student required support with attention especially when the material was challenging, but could partake of lessons and discussions if given support. Socially, he was noted to misinterpret the actions of his peers and he required support to understand and interact with his peers, as well as with groups of children, during structured and unstructured activities/ settings (SE-12; PE-48).

21. Student's Team convened on January 25, 2012, his fifth grade year. At the meeting, Parents raised their concern that Student lacked appropriate peer interactions and that he had difficulties knowing how to react to situations that fell outside his learned repertoire of responses which his typically developing peers intuitively knew (PE-23). At this meeting Acton discussed the results of Student's three-year re-evaluation, noting that Student scored in the very low to average ranges on different skill sets in the academic assessments administered. Acton proposed to continue the partial inclusion program it had proposed the previous years. The Team developed goals to address Student's receptive and expressive language skills, academics, social skills⁵, social-cognitive, and motor skills. Parents accepted the IEP on December 12, 2012 requesting a change of time for speech and OT services (PE-25; SE-15).
22. The Team reconvened on June 14, 2012, the end of Student's fifth grade to discuss the report of Dr. Castro's evaluation of November/ December 2011, and services for the first part of Student's sixth grade (PE-25). Acton's Team noted that Student had been exposed to modified fourth and fifth grade curriculum and noted progress. The Team however found that Student was having difficulty in math and offered to provide Student math outside the general education classroom for the following school year (SE-18; SE-19; SE-20).
23. The June 2012 Team proposed an IEP covering the period from June 4, 2012 to January 25, 2013, offering to continue Student's partial inclusion program in Acton (SE-20). Under this IE, Student would participate in regular education homeroom, science, social studies specials such as music, art, physical education and library, as well as lunch and recess with the assistance of an ABA trainer. The IEP offered direct special education services as follows: twice per week half an hour speech and language, fifty minutes daily reading; one hour four times per week math, forty minutes four times per week written language; half an hour

⁵ To complete this goal Student would have to:

1. In real life situations [Student] will identify when someone is being mean or nice or neutral in four out of five opportunities independently.
2. When something upsetting occurs picked, [Student] will use a strategy to stay calm and not overreact in four out of five opportunities with adult support.
3. [Student] will choose an age appropriate topic, ask good questions and make good comments for up to 5 back and forth volleys in four out of five opportunities independently.
4. [student] will work in an academic group by listening to the group member's ideas and fulfilling his role in four out of five opportunities with reduced adult support (SE-15).

weekly executive functioning support, half an hour weekly social skills; and half an hour weekly occupational therapy (SE-20). It also offered a once per month parent clinic consultation by the special educator, a twenty minute weekly consultation with the staff by the special educator and the ABA trainer, fifteen minute weekly communication consultation by the speech and language pathologist, one hour monthly behavior observation and consultation by the BCBA, a half an hour weekly parent clinic, and occupational consultation fifteen minutes per month by the OT (SE-20).

24. Parents accepted the IEP in full on June 28, 2012, but ultimately opted out of the half hour weekly occupational therapy service because of the peer grouping (SE-20; Mother). During fifth grade, Student had been paired with student X⁶ whom, according to Parents, Student did not like and about whom he perseverated. Mother did not think that student S was a good match for Student socially, behaviorally or academically. Parents shared their concerns with Acton and requested that Student be paired with a different child, and also attempted to have Student's schedule changed to reduce the amount of time the two children spent together (Mother). The change in schedule was however not possible (SE-20; Mother).
25. Ms. Kelley observed that Student had issues with student X during fifth grade mainly because Student misinterpreted the behaviors of others, such as assuming that they were laughing at him or were stealing thoughts from his brain when others provided responses similar to what Student was thinking. This happened in particular with student X although not all of their interactions were problematic (Kelley). When Student became agitated over the behaviors of others, he engaged in vocal outbursts such as yelling out in class, crying, tattling to an adult or making inappropriate comments (SE-50; Kelley).
26. In March 2012, Nicole Soucie, a BCBA who offers consultation services to Acton and AB, developed a Behavior Support Plan for Student in consultation with Ms. Kelley, after determining that Student's behavior was attention seeking. The Plan provided Student reinforcement for not engaging in attention seeking behaviors as a means to help him focus on himself, rather than on the behaviors of others (SE-50). According to Ms. Soucie and Ms. Kelley, the plan was successful and Student's behaviors faded over time but with a more immediate success regarding the vocal outbursts which were reduced to less than one per day by June 2012 (SE-19; Soucie). By the end of sixth grade, Student's vocal outbursts had become almost extinct. Ms. Kelley also engaged Student in writing his thoughts and worries in a journal when anything or anyone bothered him (Kelley). Ms. Soucie suggested that Parents also encourage Student to write in his journal at home every time Student started talking about having experienced a negative interaction with a peer, and especially with student X (Kelley, Mother). Ms. Soucie opined that Student may say things that were not a reflection of his true feelings because he was getting attention from his parents. She testified that the journal had been effective in school and at home, but Parents did not share her enthusiasm (Soucie). At home, Student continued to be isolated spending most of his free time watching television, playing videogames, using the computer or drawing. He continued to perseverate about student X even with the use of the journal which Parents eventually

⁶ "student X" is a pseudonym given to protect the identity of this student.

discontinued. Parents testified that it became harder to engage Student at home and Father stated that Student even began to resist spending time with him (Mother, Father).

27. Ms. Kelley testified that Student referred to a couple of peers in Acton as his friends or “buds” and stated that while Student and student X were not friends in fifth grade, the relationship between them evolved over time, and that in sixth grade she saw them playing together at times during recess. She also testified that when the relationship between the two students changed in sixth grade, she told their parents so as to encourage play dates but these did not occur outside school (Kelley).
28. Parents were informed that the one regular education student who was friendly to Student and who had been in his same grade section during previous years would no longer be placed in the same class as Student (Mother). Given Parent’s choice not to have Student pursue a friendship with student S, Student would have no interaction with any other classmates outside school during sixth grade (Mother, Father).
29. A math assessment administered in sixth grade to determine readiness for fifth grade math demonstrated that Student needed to review and master fourth grade math concepts before he could tackle fifth and sixth grade math (SE-59).
30. Mother testified that during the fall of 2012 (Student’s sixth grade), she and Ms. Kelley had a conversation regarding Student’s placement for seventh grade during which Ms. Kelley indicated that Student was too low functioning to participate in the language-based program at AB’s junior high school (Mother, Kelley). At that point, Parents pursued placement of Student at Willow Hill School.
31. In November 2012, Father (acting as chaperone), spent two–nights at Sargent Camp with Student and his classmates (Father, Kelley, Meek). Acton specially selected the peers with whom Student would be grouped in order to increase Student’s chances for success, though according to Father, Student had no friends. When prompted he participated in the activities but he otherwise remained solitary amid other sixth graders. During meal time, student spoke only Father and at night while other peers horsed around Student stayed reading in his bed (Father).
32. In December 2012, Mary Emmons, AB Coordinator of Secondary Pupil Services, observed Student during his reading and math sessions where he was paired with student S. According to Ms. Emmons there was no interaction between Student and student X even while eating a snack. She noted that Student followed directions and that he rocked and was brooding “to calm [himself] down” (SE-64; PE-50). During another observation on February 5, 2013, Ms. Emmons noted that Student displayed good student skills. Her notes reflect that Student’s aide reported that Student had significant difficulty attending when instruction was taking place in general education social studies and that he fidgeted and talked out. He was reported to be functioning at the second grade level. Later that day, in special education English language arts he had great difficulty with comprehension (*Id.*). Ms. Emmons noted

Reading at about the third grade level, Comprehensions issues... knew the sentence didn't make sense as he read it wrong but unable to go back independently to re-read without prompting and direct instruction. Great difficulty with comprehension and needed 1:1 questioning and prompting. Rushes through work and needs support with pacing... looks for reassurance. Wants to do well and looks to teachers. Cooperative and compliant difficulty with higher level thinking skills (SE-64; PE-50).

33. Starting in 2012, Parents privately enrolled Student at Advances Learning Center (Advances), a center for students with autism spectrum disorders (PE-51; PE-52). Two 2013 notes from Advances note that Student participated in a weekly, two hour long social skills group supervised by a Board Certified Behavior Analyst (BCBA). Ten objectives addressed social skill development such as eye contact, use of age-appropriate humor, game playing, turn taking, conversation, reading the audience, changing the subject when others were losing interest (e.g., looking away, rolling eyes, and other), and cheering, encouraging, smiling or complementing others during game playing (PE-51; PE-52).
34. Student's Team met on January 16, 2013 at which time Parents again raised their concerns regarding Student's lack of friends and failure to make adequate social and academic progress (PE-27; PE-8). Parents emphasized their belief that Student required a language-based program that would allow him to make true friends (PE-27). The Team emphasized the need for Ms. Emmons to conduct further observations. The Team deferred the determination regarding a proposed program and placement for the 2013-2014 school year until April 2013, meanwhile, Parents looked at Learning Prep School (LPS) (Mother).
35. On January 16, 2013, Parents wrote to Acton advocating for Student's placement at Willow Hill for the following school year because of the lack of progress evidenced up to that point in Acton. In the letter, Parents noted Dr. Castro's opinion that Student would require out of district placement and that Dr. Castro supported Willow Hill (SE-22). Dr. Castro testified that he had conversations with Parents during this period noting his initial prediction that this would eventually be inevitable and the passage of time now supported it (Castro).
36. Student was accepted to LPS in February 2013, however, according to Parents, they waited to make the final decision until Dr. Castro conducted an observation of the proposed program at AB (Mother).
37. On March 8, 2013, Parents accepted the January 2013 proposed IEP and placement noting that their acceptance was intended only through August 2013 (PE-27).
38. At Parents' request Lonnie R. Ouellette, MA, M.Ed. conducted an observation of Student on April 2, 2013 (SE-26). She observed Student during the latter part of lunch (during which he was having lunch with three other special education students), small group English language arts, computer work, and the general education science class. Although Ms. Ouelette's report noted minimal peer engagement by Student, it overall provided a positive report of Student's class performance describing him as an engaged learner who was eager to please

his teachers.⁷ She noted that when interacting with the language arts teacher, Ms. Pierce, Student used rich vocabulary and grammatical constructs appropriately, used wonderful and congruent affect. She noted that his comments

...were delivered in a polite manner, without humor, concurrent affect, appropriate volume, and use of gestures (SE-26).

Ms. Oullette noted that during her observation of computer work Student sustained attention to task and completed it successfully with minimal distraction while the students on either side of him engaged in off-task behaviors. Student had one interaction with a peer during computer work; he asked if he could use the swing first later that day. In science he sat at a desk with a group, attended to text on the Smart Board and followed along reading with the class. When directed to work with a peer, he sought one out and worked with him cooperatively to complete the assignment (SE-26).

39. Parents did not share Ms. Oullette's report with Acton prior to the April 3 or the June 18, 2013, Team meetings (Mother).
40. The Team reconvened on April 3, 2013 to plan Student's transition into middle school. The Team proposed a partial inclusion program at the J.R. Grey Junior High in AB, noting that Student would have access to three to four peers in his integrated social studies, science and substantially separate math and English classes (PE-28; SE-28). The proposed IEP offered to continue Student's then current program through the end of the school year. It also offered a six week extended school year (ESY) program, four days per week for 210 minutes, and a thirty minute speech and language session each week for the length of the ESY. For the 2013–2014 school year, the IEP offered specialized English fundamentals, math fundamentals and academic support, each, five times per week for forty–five minutes, and also offered ninety minutes twice per week of extended school day programming. The 90 minutes twice per week of extended day service to work on homework with a special educator and the 45 minute daily academic support were an addition to the services Student was already receiving in sixth grade (PE-28; SE-28; Kelley). Consultation would also be provided weekly by the speech and language pathologist (fifteen minutes), the special education teacher (twenty minutes), once per month by the occupational therapist (fifteen minutes) and by the BCBA (one hour). In the general education science and social studies classrooms Student would receive support daily. The meeting notes indicated that Student had developed

⁷ “[Student] sustained joint attention/active engagement to the instruction and content/materials. He worked with greater degree of independence than his peers, completed his work then attempted to move ahead. When he completed a worksheet without prompting, he checked his work, and made corrections. He required minimal prompting by his teacher to complete tasks, and responded appropriately to 18 out of 18 opportunities to do so. When the teacher went over the worksheets, he made appropriate corrections, and added text to his answers. When asked to comment or respond, he used complete sentences to do so. He was minimally distracted by the peer who engaged in attention-seeking behaviors that were effectively read directed by the teacher. During the observation,[student] assisted his peer in providing him the answer to a question. The pace of that instruction and expectation for task completion was brisk. Throughout the observation period during academic support, [Student] engaged in appropriate social interactions with the teacher” (SE-26).

“excellent student skills”, attributable to his being in the inclusion model, and that Student had begun advocating for himself (PE-28; SE-28; Kelley).

41. The proposed program was housed at J.R. Grey Junior High School, which houses seventh and eighth graders transitioning from five elementary schools in Acton and one in Boxboro. Approximately 142 of the students attending present with special education issues mostly relating to learning and communication disorders. Mary Emmons (who had observed Student three times during the 2012-2013 school year at Ms. Kelley’s request) concluded that the junior high, with some modifications, would be appropriate for Student. It would later be determined that Ms. Kelley, would also be transitioning with some of her students to AB when an additional special education English and math class was developed to match Student’s instructional level, and an assistant position was added to support the incoming seventh graders. On May 7, 2013, Ms. Kelley notified Mother that she would be Student’s special education teacher in the junior high (PE-28; SE-28; Kelley).
42. This IEP was forwarded to Parents on April 9, 2013. On May 13, 2013, Parents rejected the program and placement with the understanding that the IEP was accepted “to the extent necessary to implement the service delivery grid, accommodations, modifications and report on the goals” (PE-28). Parents’ decision to reject the IEP was based on conversations with Dr. Castro and their lingering concerns regarding Student’s programming in Acton up to that point.
43. On May 20, 23 and 28, 2013, Dr. Castro, assisted by Dr. Gleason, conducted a neuropsychological evaluation⁸ of Student and later observed the proposed program at AB (PE-11). His report restates Student’s diagnosis of pervasive developmental disorder (PDD-NOS) but states that as Student has matured, his presentation became more “salient for learning and executive functioning challenges consistent with a language based learning disability (LBLD)” (PE-11; SE-29).
44. Dr. Castro observed the proposed program on June 3, 2013 (PE-11; PE-12; PE-28; Castro). He later wrote an Addendum to his previous evaluation report stating that the gap between Student and his peers had widened and the integrated program, in his opinion, no longer met Student’s academic needs (*Id.*; SE-30). He further stated that

[Student] ha[d] demonstrated little advancement academically, was exhibiting increasing anxiety, and [was] not experiencing social success in his [then] current classroom placement. This [was] of significant concern to his academic presentation, and also represent[ed] a strong risk factor for growing emotional difficulties (PE-11).
45. Dr. Castro’s Addendum stated his support for placement of Student in a substantially–separate, language–based program as opposed to the partial inclusion program he had

⁸ The test scores appearing in the report contained some scoring errors (Castro). These errors did not ultimately change Dr. Castro’s opinion as to his recommendation for future programming for Student.

supported up to that point. He further stressed the need for a cohort of like peers with whom Student could develop relationships, something that was paramount to Student's emotional well-being and social development (PE-12; PE-29; SE-30; SE-31, Castro).

46. Dr. Castro testified that prior to writing a report it is customary for him to meet with a student's parents to "flesh out" the recommendations that are later incorporated into the report. In cross-examination he acknowledged that Student had made very good progress in certain areas (such as reading). He further testified that in some academic areas Student was "overachieving based on his capacity" (Castro). From a social-emotional point Dr. Castro raised concern about Student's increasing loneliness and isolation (PE-11; SE-29). His report supported Student's placement in a language-based program.
47. On June 10, 2013 Parents provided Acton with the Addendum to Dr. Castro's evaluation and a letter notifying the district that Student had been accepted at Learning Prep School, and requesting that Acton/ AB forward a referral and fund said placement (which met with Dr. Castro's approval) (SE-31). Parents further communicated their intention to place Student unilaterally, starting on August 27, 2013, and that they would be seeking tuition and transportation reimbursement from Acton (PE-12; PE-29; SE-30; SE-31, Castro).
48. In response, Acton/AB reconvened the Team on June 18, 2013 and proposed a partial inclusion program at AB's junior high. The IEP contained the same services delineated in the April 2013 IEP with the addition of adaptive physical education once per week for 45 minutes under part C of the service delivery grid. It notes in the Key Evaluation Results Summary that

According to Dr. Castro's report (5/13), [Student's] performance across academic assessments revealed a pattern of findings that is consistent with Language Learning disabilities. The school Team does not agree that [Student] is a learning disabled student, however is a child [whose] disability is autism with learning difficulties associated with this disability (PE-29).

The Team also rejected Dr. Castro's recommendation for provision of a rule-based reading program. The proposed IEP was forwarded to Parents on June 26, 2013 and on July 11, 2013 Parents rejected the IEP and placement (PE-29).

49. Student's Progress Reports for the 2013-2014 school year, dated June 24, 2013, note that the pace of the regular education classroom was challenging to Student from a social standpoint, requiring adults to provide support when Student conversed with peers (PE-41).
50. Melissa Meek, Student's sixth grade homeroom, social studies and science teacher⁹, testified that Student was friendly with a typically developing peer in her class; she observed him play and interact during indoor recess, class and during free time at the end of the day, and she

⁹ Ms. Meek is a Massachusetts DESE certified pre K to grade 3 special education teacher and elementary education teacher.

testified that she also saw Student play with another special education student (Meek). Ms. Meek, Ms. Kelley, Ms. Soucie and Anna Pierce, Student's ABA trainer, observed Student interact with student X in a variety of settings and opined that the students were friends (Kelley, Soucie, Meek). Ms. Soucie opined that Student would continue to need consultation by a BCBA to increase skills and continue adding skills to his repertoire (Soucie).

51. Ms. Soucie prepared a graph of Student's behaviors during sixth grade for science and social studies reflecting that most of Student's responses at the beginning of sixth grade had to be prompted, but he gained great independence by the end of sixth grade in following instructions, showing active engagement, and providing the correct answer in the work being done in class. Regarding social cues, the graphs showed that Student was independently responding appropriately to peers 60% of the time. She opined that Student should continue to participate in general education social studies and science in seventh grade and that he would be able to participate in class and answer questions (SE-74; Soucie).
52. Ms. Meek further testified that Student did well in his News Report presentations during homeroom, and he also was an active participant in her social studies class, raising his hand and asking or answering questions. She testified that his need for adult support faded as sixth grade went on and that he appeared to be more independent. Overall, she found Student to have "very good student skills" and that his performance on the modified tests demonstrated that he was learning the main concepts taught. Similarly, Ms. Meek found that he did well in science although Student's contributions were not as sophisticated as those of others (Meek).
53. By the end of sixth grade, Student's decoding skills had greatly improved but he continued to struggle with reading comprehension (SE-61). According to Ms. Kelley, Student's oral reading fluency of a late second grade/ early third grade passage had progressed to the "advanced" level, but he continued to demonstrate limited comprehension of all passages read. By the end of sixth grade, he was able to read independently at a second grade level and was about to become independent at the third grade level; with teacher support, he was at approximately mid-3rd grade level. Ms. Kelley characterized Student's progress as "great". She also found that Student's MCAS Portfolio demonstrated his progress in all aspects of reading (SE-60; SE-61; Kelley). The MCAS Portfolio and benchmarks developed for math at the end of sixth grade (proposing to target fifth and sixth grade level math) showed Student's progress in this area. Ms. Kelley also noted that Student was better able to target more complex math tasks over time, though he was still lagging behind his same age peers (SE-50; SE-59; SE-60; Kelley).
54. By the spring of 2013, Student was able to write a multi-paragraph essay (5 paragraphs) after independently brainstorming the ideas for the essay, writing the topic sentence, details and the conclusion sentence; this, in contrast to his writing performance in the fall of 2012, when he was working on writing a one-paragraph essay with adult support (SE-59).
55. In the proposed program at AB Ms. Kelley would have been Student's teacher for daily math, English, and academic support. Student would have had four peers in English and

math and depending on the day, three to four students during academic support with one to two assistants. The students in Ms. Kelley's classes would have been from the Connections program (which services students with academic and social pragmatic issues), and from the Language Learning Program (LLP) (designed for students with communication and/or learning disabilities). Student would have received speech and language from the speech and language pathologist (Kristin Yargeau) with three to four other students during which assistance would have been provided by Pat Loria (SE-49). Science (with Ms. Broadwater), social studies (with Ms. Harvey), specials and homeroom would have been provided in general education where Student would have received adult support from two teaching assistants. For lunch Student could have gone to the cafeteria or to "Movies and Munchies" available to all students and supervised by a teacher (Kelley). According to Ms. Kelley the peers in the Connections Program and LLP would have been appropriate peers for Student (Kelley).

56. Ms. Kelley would have also been Student's teacher for academic support in the Learning Center during which he would have previewed, reviewed and received reinforcement for concepts taught in the seventh grade general education setting, prepared for tests and learned study skills (Kelley). Also, Ms. Kelley and the teachers in the general education classes would meet once every four days and maintain frequent communication through email to modify work as needed (SE-62; SE-63).
57. Teacher assistants received a one day training on ABA methodology (principles and data collection), on incorporation of social skills and generalization of social skills. They also would have received additional training during the school year on social problem-solving and how to de-escalate frustration (Kelley). Ms. Soucie provided monthly observation of students in the Connections Program and would have also been able to give teaching assistants feedback during those times (Soucie).
58. Student began attending LPS on August 29, 2013. To date he remains unilaterally placed at LPS (Mother).
59. LPS is a Massachusetts Department of Elementary and Secondary Education approved special education school which offers language-based instruction to children with language and learning challenges who present with deficits such as Student's (SE-60; PE-62; PE-63; Austin, Castro). LPS has successfully addressed the needs of students who present with PDD-NOS, Aspergers, Non-verbal learning disabilities and language learning disabilities (PE-62). Teachers at LPS are certified in their content area. Individual attention and instruction is delivered through small classes at varying levels. At LPS, language-based instruction is integrated throughout the day and Thinking Maps (visual tools for effective learning) are used throughout to address organization, memory, retention and to help students become more independent (PE-61). Social Thinking is at the heart of the program and is used to teach perspective taking not just social skills. According to Ms. Austin, Student's counselor at LPS, it teaches how to think socially and to understand that people have thoughts about one another. All students and staff are educated in Social Thinking. Students

receive content based curriculum with their peers at the same pace as opposed to in a pull-out model (SE-60; Austin). LPS also offers summer programming (PE-60).

60. All students at LPS receive individual counseling to address, social skills, organization and to discuss what they consider an issue as well as issues identified by teachers. Student received individual counseling to address his social emotional needs and to help him process group dynamics and the behaviors of others (Austin). He also received language arts, reading comprehension, math, speech/language, written language, social studies, science/written language, and occupational therapy/work skills which focused on his gross and fine motor skills, motor planning and written output during individual and group sessions (PE-57; PE-59). Student also received art and participated in computer lab (PE-57).
61. When Student arrived at LPS his organizational, academic and social skills were deficient or scripted (PE-54; Austin). He was shy, defensive, nervous, highly anxious and highly dependent on adults. When anxious or overwhelmed he froze. His counselor and Ms. Austin described him as displaying “learned helplessness” which carried over into the home, where Parents had to select his clothes, help him shower, help him with homework, pour his juice and provide for all of his entertainment (PE-54; Austin, Mother, Father). Student’s self-esteem was low, and he lacked a sense of ownership of his work product. He did not know how to take notes or organize his binder independently. He called everybody a friend but did not understand the elements of friendship (e.g., trust, having fun together, etc.), had no understanding of perspective taking or nuance of social norms. According to Ms. Austin, his social skills were non-existent or scripted (PE-54; PE-55; PE-56; Austin).
62. At LPS Student is grouped with like peers throughout the day and during after-school activities, offering students an opportunity to practice the skills they learn across settings (Austin). According to Ms. Austin, Social Thinking has had a remarkable effect on Student (Austin).
63. On October 7, 2013, Dr. Castro observed Student at LPS finding that it was providing Student the type of programming he required and noting that Student had made a successful transition, appearing comfortable with his classes and teachers. Student was observed to manage his environment independently, and demonstrated great personal responsibility and adaptive skills especially in regards to organization, planning and time management. Dr. Castro noted that Student was happy to see him and introduced him as his friend to several classmates (PE-13). He also noted that Student displayed many appropriate student skills (e.g., attending to the teacher and responding to directives). Dr. Castro however, raised concerns that residual academic and social issues lingered and suggested another observation after Student had an appropriate period of adjustment (PE-13; PE-14). Specifically, Dr. Castro remarked that when unsure as to how to proceed with an activity or answer a question Student waited for the teacher to prompt him or guessed the answer. Dr. Castro attributed this inability to self-advocate or “prompt dependency” to the high level of adult support Student received in Acton. Dr. Castro also observed Student to display difficulty processing

new information, inhibiting distracting information and integrating learned information into new constructs, especially when the information was presented verbally (PE-13).¹⁰

64. At the time of Dr. Castro's observation, two months into Student's transfer there, Student was evidencing his social difficulties. Dr. Castro noted Student's inability to interact effectively with a partner in math class unless he received prompting from his teacher. Student also failed to ask questions when he did not understand an assignment, content or concepts, a skill with which LPS was working. According to Student's math teacher (Ms. Desatnick), Student lacked the communication skills necessary to facilitate working cooperatively with a partner. Student's performance in reading comprehension (with Elaine Yellin), and science (with Christina Matson), was much better as he contributed to the discussions and participated despite his noticeable difficulty in making connections between ideas or drawing on background knowledge (PE-13). According to Dr. Castro, these were weaknesses Student was carrying from his previous placement.¹¹ According to Dr. Castro, at LPS teachers provide Student consistent structure across settings and learning supports such as "scaffolding, visual supports, repeated practice with concepts and extra time to develop newly introduced ideas". Teachers build upon Student's base of knowledge, by helping him understand new content and apply his learned skills to new situations (PE-13).
65. In addressing social skills, Dr. Castro stated that LPS was offering Student unique opportunities. Classmates had invited Student to get together outside school which Dr. Castro found to be critical to Student's development of a sense of self and as part of a community, and also essential to Student's "communication and pragmatic skill development across all social contexts". Dr. Castro recommended that Student remain at LPS or an LPS-like placement, as this setting offered Student the type of "comprehensive wrap around programming" he needed, with a sufficiently large, similar cohort of peers who shared some of his same interests and with whom Student could authentically connect (PE-13).
66. AB reconvened the Team on November 14, 2013, after receiving Dr. Castro's observation report. The Team proposed to amend the IEP adding a once per week, twenty-six minute counseling session, noting that AB continued to support the proposed in-district program. The Amendment reflecting counseling, which would have been provided by Dr. Rick Cowen, AB psychologist (SE-68), in a group with four other students¹², was forwarded to Parents on December 18, 2013. According to Ms. Kelley, the proposed program would have

¹⁰ Dr. Castro explained that said breakdown in processing and comprehension would prevent Student from "participating meaningfully in grade level instruction within the general education environment" which was likely to follow a faster pace and where language used was more complex (PE-13).

¹¹ In his report, Dr. Castro related discussions with Student's LPS teachers who stated that Student required time with the material to slowly build conceptual understanding regarding the information (PE-13). The teachers (Ms. Desatnick and Ms. Yellin) were confident that

...with consistent structure and learning supports, including scaffolding, visual supports, repeated practice with concepts, and extra time to develop newly introduced ideas, [Student was] slowly building his capacity to learn higher-level skills. In this way, [Student's] teachers were observed building upon his base of knowledge and helping him to develop frameworks to understand new content or apply learned skills to new context (PE-13).

¹² All of the students in Dr. Cowen's counseling sessions would have been new to Student.

met Student's academic, emotional and social needs (Kelley). Parents rejected the Amendment on December 24, 2013, and reiterated their request for reimbursement for Student's placement and transportation (SE-36; SE-37; PE-30).

67. A December 2013 progress report from Advances Learning Center notes Student's mastery of three of his ten benchmarks and the expectation that he would achieve mastery of the remaining seven by a target date of June 2014 (PE-52). The transition plan portion of the report states in pertinent part

The prompt levels and reinforcement system for each social skill objective continue to be faded systematically, until Student is independently performing the social skills without any adult support, in the presence of a variety of peers and in a variety of environments. Student's progress continues to be monitored weekly in order to ensure that the teaching techniques used are effective (PE-52).

The report goes on to explain that Student responded well to the interventions during the time spent at Advances and that he had made progress quickly and was working on making his social skills appear more natural (*Id.*).

68. According to Parents, Student was generalizing learned skills and his newly developed independence into the home; knew what his assignments were and completed his homework independently (PE-13; Mother, Father)
69. AB convened Student's Team on January 14, 2014 to conduct Student's annual review. Prior to this meeting, AB's staff did not discuss Student's progress with his LPS providers (PE-31; SE-42). The resulting IEP, which covered the period from January 14, 2014 through January 13, 2015, offered Student placement in the partial inclusion program at AB for the remainder of the seventh grade and the beginning of eighth. The services in this IEP were identical to the previous IEP except that it reflected the additional 26 minute weekly counseling session offered in the November 2013 Amendment (SE-42). Parents rejected this IEP and placement in full on January 26, 2014¹³ (SE-42).
70. The January to April 2014 LPS progress reports show that Student was progressing effectively toward meeting his language arts, reading comprehension, math, speech/language, written language, social studies, science/written language, occupational therapy/work skills, social/emotional/counseling goals and objectives. Student continued to participate satisfactorily in art and computer lab with minimal additional reinforcement. The notes describe Student as an active and motivated participant who required minimal cueing to stay on topic. His organizational skills showed improvement and he was becoming more independent with academic demands (PE-57). His attendance was perfect for the first and second term and he made the honor roll (PE-58).

¹³ AB received the rejected IEP on January 27, 2014 (SE-42).

71. On April 15, 2014, Dr. Castro observed Student again at LPS during the same classes he had previously observed in the fall of 2013 (math, reading comprehension and science), and also observed him during lunch. Student was thirteen years old at the time of this observation. Dr. Castro observed that Student had made discernable gains and had greatly reduced the amount of anxiety-driven behaviors that had previously been observed, across settings.¹⁴ Student was also observed to self-advocate in class and ask more questions. During lunch, Student was observed to interact with others appropriately, maintaining eye-contact and was more successful at “inhibit[ing] distracting or unrelated information” during conversation (PE-14). More poignantly, Dr. Castro remarked that for the first time Student was starting to develop reciprocal friendships with some of his LPS peers. Dr. Castro concluded that LPS met the criteria of the type of program he recommended and noted that Student had made marked improvement socially and emotionally (PE-14; Castro).¹⁵
72. Per Parental report, Student was generalizing more of the skills learned into the home setting demonstrating much more independence completing his homework, accessing organizational strategies and in his social interactions (Mother, Father, Castro).
73. Dr. Castro recommended that Student continue to participate in the same type of placement as LPS, noting that

Within a supportive learning environment with a substantial cohort of like peers, [Student] is for the first time developing meaningful relationships and learning how to navigate more mature social situations. Direct instruction of social skills in areas including, social pragmatics, social problem solving, as well as health and sexuality related issues (e.g., privacy, dating) should remain an integral part of his educational program. Instruction should be based off of appropriate, systematic curriculum, with a carryover of key concepts across the day by all staff working with [Student]... in order to facilitate continued development of relationships with peers, [Student] should be encouraged to participate in school supported events and activities, as well as have opportunity's to socialize with his classmates during less structured, age appropriate activities outside of school (PE-14).

Dr. Castro stressed the importance of providing a reasonable number of peers from which Student could choose friends, so that he could learn how to select, make and maintain friendships, adding that the process should be similar to what would occur in a natural setting. He specifically rejected the notion that presenting Student with only one peer option was appropriate (Castro).

¹⁴ Dr. Castro noted having observed some brief episodes of anxiety-related and stereotypical behaviors during his observation especially during the science class which behaviors he attributed to interpersonal stressors (PE-14).

¹⁵ In May 2014, Dr. Cowen also observed Student at LPS. Dr. Cowen had previously observed Student while in the sixth grade in Acton. The record lacks any reports of his observations and he did not testify at Hearing.

74. Dr. Castro performed additional testing on May 5 and 7, 2014 (PE-15). Cognitive testing continued to show Student's split in cognitive profile between his nonverbal (upper limits of the borderline range, PRI=79) and his verbal (VCI=71, even lower) functioning. Processing speed continued to be an area of vulnerability, but his working memory abilities showed improvement. Student struggled when processing material presented verbally. Dr. Castro opined that this showed cognitive progress¹⁶ (PE-15).
75. The May 2014 evaluation noted Student's difficulties problem-solving when presented with novel situations based on social conventions. His abstract thinking ability was found to be compromised and he continued to show deficits with reading comprehension. He also demonstrated vulnerabilities with attention and executive control, including planning, organization (both mentally and physically), and integration of information. The evaluation report also noted Student's potential for heightened anxiety (PE-15).
76. Dr. Castro continued to opine that in addition to Student's diagnosis of Autism Spectrum Disorder (ASD) consistent with the DSM- 5 (previously PDD-NOS), Student's presentation was consistent with a language-based learning disability (PE-12).
77. At LPS Student has learned to do his homework independently, no longer required Father to assist him in bathing, or Mother to select his clothes. Student now brushes his teeth, showers, selects his clothes and gets himself ready on his own every morning (Mother, Father). He has also become more independent in speaking with friends and partaking with them for entertainment without needing Parents to facilitate the interactions. He has now built reciprocal friendships and has four real friends who call him and whom he calls, and he has been invited to their houses and has gone out with them to the movies, dances, carnival, and other age-appropriate activities (Mother, Father, Castro, Austin). According to Ms. Brockway, Student is now able to take the perspective of others, something she had not seen before (Brockway). He has learned to organize his binder, does his homework, takes notes and works more independently. Moreover, he takes pride and ownership in his school work and accomplishments (Mother, Austin). Ms. Austin testified that once Student was provided with the right foundation and language-based programming and interventions, he was able to generalize across settings (Austin). He appeared in the school play alongside his peers and is now a happy, independent and engaged member of the LPS community (Austin, Mother, Brockway).
78. Ms. Soucie testified as to the importance of allowing Student to continue to have opportunities to generalize the skills he acquired in the small group sessions to a larger group inclusive of regular education students, and to be able to model them so as to learn more sophisticated skills (Soucie). Ms. Emmons also supported this recommendation noting that "the world does not change for the disabled" (Emmons).

¹⁶ At Hearing, Dr. Castro conceded that as a general rule, when standardized tests scores remain the same over time, this means that the student is making progress commensurate with that of his peers, and that the gap between them is neither increasing nor decreasing (Castro).

79. AB reconvened Student's Team on May 14, 2014, to discuss the results of Dr. Castro's evaluation and observation of Student at LPS (SE-44; SE-45). Ms. Austin participated via telephone conference call. The Team proposed that Student participate in AB's extended year program and recommended Student's participation in essentially the same partial inclusion program and placement as delineated in the previous IEP for eighth grade. The May 2014 IEP covering the period from May 28, 2014 through January 13, 2015 was rejected by Parents on May 30, 2014¹⁷ (PE-32; SE-69; SE-70; SE-42; SE-73; SE-73A).
80. Ms. Kelley testified that she and the proposed Connections Program eighth grade teachers would collaborate for six days during the summer of 2014 to create the modified curriculum for the students in her program who would be moving on to the eighth grade (Kelley).
81. Dr. Castro, reviewed the IEPs of the proposed cohort for seventh and eighth grades and opined that the proposed peer group in AB presented with a large differential in functioning (many with a 20 to 30 I.Q. point differential). Also, they did not share the same interests as Student, rendering them inappropriate peer matches. Through his practice Dr. Castro knew some of the other students who would be attending AB with Student and found them not to be appropriate peers for Student (Castro). Dr. Castro also opined that the program was fragmented and lacked the type of cohesiveness necessary for the natural development of relationships Student required (Castro).
82. Over the years Student has had medication adjustments both while in Acton and at LPS. The record lacks any indication that the thirty or so medication changes to address anxiety and attentional issues have been a significant factor with respect to Student's education (Mother).
83. Student has remained at LPS since September 2013, where he also attended the 2014 summer program (PE-64). Transportation during this period has been provided by Parents except on the days where they carpooled (PE-43; PE-66; PE-67).¹⁸

CONCLUSIONS OF LAW:

Parents, Acton and AB agree that Student is an individual with a disability falling within the purview of the Individuals with Disabilities Education Act¹⁹ (IDEA) and the state special education statute²⁰. The Parties also do not dispute Student's Autism diagnosis or his related learning deficits, but, while Acton and AB view Autism to be his primary deficit, Parents and Dr. Castro view his learning deficits to be akin to a language-based learning disability and (Castro, Austin) and therefore support interventions appropriate for language-based learning deficits.

¹⁷ The rejection was hand delivered to Ms. Emmons at the Hearing on June 2, 2014 (SE-73A).

¹⁸ According to Mother, the distance between their home and LPS is fourteen (14) miles each way (Mother).

¹⁹ 20 USC 1400 *et seq.*

²⁰ MGL c. 71B.

The Parties also disagree as to the appropriate placement to address Student's needs. Acton and AB argue that the district can properly offer Student a free, appropriate public education (FAPE)²¹ within a partial inclusion program in AB. Parents disagree, and having placed Student at LPS since September 2013, seek reimbursement for their unilateral placement, transportation and also request an order for prospective placement at LPS.

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 needs²² in a way "reasonably calculated to confer a meaningful educational benefit"²³ to the student.²⁴ Additionally, said program and services must be delivered in the least restrictive environment appropriate to meet the student's needs.²⁵ 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.²⁶ Educational progress is then measured in

²¹ MGL c. 71B, §§1 (definition of FAPE), 2, 3.

²² 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").

²³ See *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) where the court explicitly adopted the meaningful benefit standard.

²⁴ *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 Dir. 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.").

²⁵ 20 USC 1412 (a)(5)(A).

²⁶ 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").

relation to the potential of the particular student.²⁷ At the same time, the IDEA does not require the school district to provide what is best for the student.²⁸

As the party challenging the adequacy of Student's proposed IEP, Parents carry the burden of persuasion pursuant to *Shaffer v. Weast*, 126 S.Ct. 528 (2005), and must prove their case by a preponderance of the evidence. Also, pursuant to *Shaffer*, if the evidence is closely balanced, the moving party, that is Parents, will lose.²⁹

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.

Consistent with federal law, the specialized services, and in fact the IEP, which is “designed as a package[,] . . . must target ‘all of a child’s special needs,’ whether they be academic, physical, emotional, or social” as in the instant case. *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1089 (1st Cir. 1993) (quoting *Town of Burlington v. Dept of Educ.*, 736 F.2d 773 (1984) (internal citation omitted)). In light of this mandate, “the sufficiency of a student’s IEP is not measure solely by his academic success.” *T.H. v. District of Columbia*, 620 F.Supp.2d 86, 89 (D.D.C. 2009). What this means is that “a program which maximizes a student’s *academic* potential does not by that fact alone comprise the requisite “adequate and appropriate” education. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 982, 991 (1st Cir. 1990). Instead, an IEP that provides FAPE must promote a student’s development in all areas of need. Upon consideration of the evidence, the applicable legal standards and the arguments offered by the Parties in the case at bar, I conclude that while Student’s academic needs were being appropriately met in Acton, his social and emotional needs were not. The evidence supports a finding that Student was not progressing effectively in the social/emotional realm, his areas of greatest need. As such, Parents were justified in placing Student at LPS and have therefore met their burden of persuasion pursuant to *Shaffer* regarding reimbursement for Student’s unilateral placement for the 2013-2014 school year. Moreover, they have also met their burden of persuasion regarding Student’s prospective placement for the remainder of the IEP period ending in January 2015, as explained below.

I. The April/ June 2013 IEP:

It is a well-established principle that an IEP must be judged at the time it was proposed, that is,

²⁷ *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.”).

²⁸ 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.”)

²⁹ *Shaffer v. Weast*, 126 S.Ct. 528 (2005) places the burden of proof in an administrative hearing on the party seeking relief.

...the issue is whether the IEP was “objectively reasonable... at the time the IEP was promulgated by the school district. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990) (internal quotations omitted).

Therefore, analysis of what Student was legally entitled to receive turns on the IEP proposed in April 2013, as amended in June 2013 (covering the period April 2013 through January 15, 2014)³⁰ prior to Parents’ unilateral placement. With this guidance I turn to consideration of the program proposed by Acton for the 2013–2014 school year, for purposes of considering Parents’ initial claim for reimbursement for their unilateral placement of Student at LPS.

In the fall of 2012, Ms. Kelley shared concerns with Mother and with Acton’s administration as to whether Student’s needs could be appropriately met in AB’s junior high given his then presentation (Kelley, Mother). The evidence is persuasive that faced with Ms. Kelley’s apprehension and in light of Student’s concerning presentation in the home, Parents initiated their pursuit of an alternative educational placement that was consistent with Dr. Castro’s recommendations. Parents made their placement concerns known to Acton as early as January 2013 (SE-22). On March 8, 2013, Parents accepted the IEP resulting from the January 2013 Team meeting, however only on a limited basis through August of 2013.) (PE-27). Parents requested that Ms. Oullette observe Student in his sixth grade program in Acton and later requested that Dr. Castro observe the proposed program in AB. Aware that Parents would pursue out of district placement for the following year, Acton and AB attempted to propose a program and placement that was a continuation of the program Student had received in Acton up to sixth grade (Kelley, Mother). When the Team met on April 3, 2013 to plan Student’s transition, the Acton members of the Team supported Student’s placement in–district, but added a daily academic support period and 90 minutes of extended school day services to the IEP.³¹ Parents rejected the April 2013 proposed program and placement for the sixth grade on May 13, 2013 (PE-28).

Following Parents’ initial rejection in May 2013, Dr. Castro observed AB’s proposed program on June 3, 2013, shortly before the June 2013 Team meeting (Castro). By then, Dr. Castro opined that Student’s social/ emotional needs were lagging too far behind, that he was isolated, had not been able to establish any meaningful friendship that carried outside school with any of his peers, and was not deriving benefit from his exposure to the typically developing peers in Acton for purposes of furthering his socialization skills.³² Dr. Castro

³⁰ Also, Acton was persuasive that although the two, forty five minute speech and language services had been omitted from the Grid due to clerical error, this service appeared in the N1 Proposal to Act section and had never been intended to be dropped.

³¹ When Parents received the proposed IEP for Student’s sixth grade Ms. Kelley had not yet been offered the job to continue on with her students in the AB Connections Program. Parents were made aware of Ms. Kelley’s involvement in the junior high program on May 7, 2013.

³² Acton argued that Dr. Castro had previously supported the partial inclusion programs offered by the district and noted that he had made his recommendation for a change in placement without having observed Student in his sixth grade class or communicated with Acton’s staff in sixth grade. Dr. Castro had evaluated and observed Student in Acton the previous year during which Ms. Kelley had been Student’s special education teacher. He had also received teacher input; had stayed in contact with Parents throughout that year and was aware of their concern (initially raised by Ms. Kelley in the fall of 2012) regarding the lack of an appropriate program/ peers for Student in

also noted Student's increasing anxiety, which Acton did not deny but rather submitted was not clinically significant (Castro, Meek, Kelley). As such, he supported out of district programming for Student in seventh grade.³³

When Acton's Team reconvened in June 2013, Acton again recommended that Student receive his education in AB's Connections Program with Ms. Kelley who had accepted the offer from AB to move with her sixth grade students to the junior high.

Social and Emotional Domains

Historically in Acton, Student had two peers of note (Kelley, Meek, Mother). One was a regular education student who was described as very kind toward him but whose parents requested be separated from Student at the end of fifth grade, and the other was student X. It is important to note that in anticipation of the 2012–2013 school year, Parent wrote to Ms. Laramie alerting her of Student's anxiety about being paired with student X, but in an email dated August 6, 2012, Ms. Laramie responded that there was no one else with whom to pair him. Ms. Laramie however assured Parent that Ms. Kelley was aware of the situation and would help them work out their issues (SE-55). In October 2012, Parent requested that Student's OT session be changed to give Student a breather from student X, but Ms. Kelley informed her that such scheduling was unavailable. Ms. Belunis also informed Parent that she had no other students with whom to pair Student (SE-55).³⁴

Acton nevertheless supported the friendship between student X and Student and also supported the idea that having one predetermined friend was appropriate (Meek, Soucie, Kelley).³⁵ At Hearing, many of Acton's staff testified that Student and student X were a good match and some opined that they were friends because they had seen them smiling, interacting with each other or swinging together at recess (Kelley, Meek, Soucie). Ms. Kelley noted Student's social progress in conversational skills and (referring to student X) opined that Student had been able to make his first friend (Kelley). Ms. Brockway however, testified that in her opinion Student "tolerated" student X and explained that she did not think that Student would have chosen to spend time with student X if they were not required to be supported together (Brockway).

AB; and had reviewed Student's IEP (Castro). At the time of his observation, Ms. Kelley had also communicated with Parents informing them that she would move on to the junior high with her students, one of which would have been Student.

³³ Dr. Castro testified that Student was also lagging behind his peers academically and that the gap was by then too large to close. However, this opinion is inconsistent with portions of his report and other information discussed later in this Decision.

³⁴ Parents testified that in their desire for Student to form at least one true friendship, early on and through fifth grade, they had tried to facilitate Student becoming friends with student X outside school. Student however resisted spending time with him and protested (Mother, Father). Once Parents stopped supporting the friendship with student X, Student had no social interactions with any other classmate afterschool or on weekends (Parents, Meek, Kelley).

³⁵ Acton however, did not pair them for the Camp Sargent experience and Student did not seek to spend time with student X at that time (Father, Meek, Kelley).

Acton did not deny that Student made several comments throughout the years as to feeling annoyed by Student X and not wanting to spend time with him; nor did Acton deny knowledge that Mother did not wish for student X to be the one individual with whom Student interacted in or outside school (SE-55; Mother, Kelley). In response to objections to being paired with student X, Acton recommended that Student address his objections via writing in a journal, this as a behavioral intervention in an attempt to help Student stop perseverating about his complaints (Mother, Nicole Soucie). The journal was never reviewed by any staff in Acton although Acton opined that its implementation had been successful (Soucie, Kelley).

Parents objected to the fact that Student had not been given the opportunity to process or express his feelings and concerns about student X. Ms. Austin testified that this would have been a good opportunity to teach Student perspective taking/ how to make a friend (Austin). Dr. Castro and Ms. Austin specifically rejected the notion of having a predetermined friendship and denying Student the ability to process his feelings as counterproductive to his social development- (Castro, Austin).

While I found Ms. Soucie to be a knowledgeable BCBA, I am not persuaded that a behavioral plan alone, regardless of the number of similar peers, is sufficient to achieve development of a true, reciprocal and lasting friendship. While development of friendships as part of Student's social/ emotional goals should be pursued, and a behavioral plan may be a helpful component toward achievement of such goal, Dr. Castro and Ms. Austin were persuasive that this should occur in a more natural environment; one that can also provide Student natural opportunities to practice his skills across settings.

Student's significant, on-going³⁶ social deficits are undisputed, and the record is replete with documentation. Student's IEP noted that in the resource room, he needed adult prompting and visual supports to carry conversations; during snack time, he was more interested in eating than conversing, and that he had not able to use his conversation skills in the lunch room without consistent adult prompting (SE-6). His June 24, 2013 Progress Report stated that the pace of the regular education classroom was challenging from a social standpoint, and noted the need to provide Student adult support when he conversed with peers (PE-41). Ms. Belunis' email of December 11, 2012, states that Student did not interact with his peers during math even when others were nice to him (PE-44). Ms. Emmons' observations of Student in sixth grade also note minimal interactions with peers, although Student's interactions with adults were appropriate; indeed, he initiated interactions with adults (SE-64). Similarly, Ms. Ouellette's report notes minimal interactions between Student and his peers, but comments on his positive interactions with adults (SE-26). Student's Data Home logs, completed by Anna Pierce, Student's case manager, noted only eleven instances during a school year during which Student interacted with another student, and additional sparse

³⁶ Back in 2011 and 2012, Ms. Abramowitz, noted the impact that Student's receptive and expressive language and social-cognitive difficulties had in his ability to communicate effectively with peers and adults, and in accessing the academic and social curriculum. She explained that those areas were not separate entities, but rather a dependent combination of skills critical for school success (SE-10).

instances mentioned during indoor recess (SE-25). Similarly, the logs failed to document Student having any interactions with other children during lunch, with or without prompting. Instead, the logs described him as engaging in solitary activities such as drawing (SE-25).

Outside of school Student had no friends and also preferred engaging in solitary activities (e.g., playing *Wii*, watching television, and reading). At home he was reported to play only with his sister and by sixth grade this had become infrequent (Mother, Father).

Student's social deficits and lack of any significant friendships was of great concern to Parents. The record reflects that especially in 2012 and 2013, Parents repeatedly requested that as part of Student's social goals, Acton work on helping him develop one or two true friendships that could carry over from one year to the next. They requested that a goal be added to this effect (but asked that this target someone other than student X with whom Student struggled) (Mother). The proposed 2013–2014 IEP, addressing the end of sixth grade and beginning of seventh grade, contained a social goal which sought to have Student be able to explain the meaning of idioms, have a conversation, be able to tell a joke and problem solve social situations independently 100% of the time and accurately 80% of the time, but included no goal regarding Student making and maintaining at least one friend. A pertinent section of his then current performance noted

[Student] currently attends a social skills group with three other students, and he appears to really enjoy coming to the sessions. [Student] has been working on understanding figurative language, joke telling, basic conversation skills, and storytelling throughout this year. After discussions, [Student] is able to demonstrate understanding of figurative language by drawing a picture or writing a sentence using the expression successfully in 80% of opportunities. [Student] also remembered and independently shared a joke he had learned successfully to the group this week. He needed some support explaining why it was funny to his peers. When telling a story, [Student] needs visual supports and reminders to make eye contact with everyone. When it comes to the give and take of conversations, [Student] is able to listen to his peer's news and come up with an appropriate comment 80% of the time. He is very often empathetic and kind to them. For example, when another student was asked who his friends were. When [Student] heard them say they had none, he said "Aw. We're all your friends here" and meant it. When it comes to asking questions, [Student] needs processing time and some support to figure out what information may have been missing for what else could connect to their news (PE-26; PE-27; PE-28; PE-29; SE-69; SE-73).

One of the objectives in this goal called for Student to have a conversation with three volleys in four out of five opportunities³⁷ (PE-28; PE-29; SE-28; SE-34). The record reflects that

³⁷ The fifth grade social goal called for Student to "choose an age-appropriate topic, ask good questions and make good comments for up to 5 back and forth volleys in four out of five opportunities independently" (PE-26). It would appear that as Student moved into sixth and later grades, the expectation for this goal was actually reduced.

this objective, as well as all other objectives under his social skills goal, remained the same in the IEPs proposed not only for sixth and seventh grades but also for eighth grade (PE-28; PE-29; SE-28; SE-34). Clearly, if Student's social skills had progressed as argued by Acton, the social goal would have reflected different objectives from one year to the next. The record however shows that it did not (*Id.*).

Steadfast in their belief that Acton had successfully addressed Student's social needs and promoted a viable friendship, AB argued that it could continue to do so, asserting that in the proposed seventh grade program, Student would have access to approximately nine students who would be socially appropriate peers and among whom he could choose a friend. Parents disagreed arguing that of those nine potential students, only five had not previously been paired with Student, and none³⁸ of those five would have been in his math, English, social studies, science, i.e., in his core group. According to Parents, this was an indication that those peers were not appropriate matches for Student (SE-66). Ms. Kelley testified that Student would also be paired with two other students for academic subjects (one of whom will not be in AB for 8th grade; the other was student X.) Dr. Castro reviewed the IEPs of the proposed AB cohort and opined that the group presented with a large differential in cognitive functioning (many with a 20 to 30 point I.Q. differential) and with differing interests from Student's, rendering them inappropriate peer matches. It is noteworthy that Dr. Castro knew some of the other students who would be attending AB with Student and found them to be inappropriate peers for him (Castro).

Importantly, Dr. Castro also indicated that the AB program was fragmented, lacking the type of cohesiveness necessary for the natural development of relationships Student required. In contrast, according to Dr. Castro, the "sizable aggregation" needed for Student's social development could be found at LPS (Castro).³⁹

Acton and AB challenged Dr. Castro's credibility arguing that Dr. Castro had appeared before the BSEA in previous cases, always on behalf of parents, and that 95% of his 200 or so evaluations conducted last year, were at the request of parents. I however, credit Dr. Castro's testimony and opinion, regarding his observations of Student in Acton, AB and LPS, and his recommendations for addressing Student's social emotional needs. He is an experienced neuropsychologist who possessed a solid understanding of Student and his social emotional needs by virtue of having evaluated him numerous times over the years. He offered very specific examples of how Student's social emotional deficits impacted his development, as well as of Student's progress over the past twelve years, including his performance at LPS. He also offered a balanced view of the staff observed in Acton referring to some as "wonderful".

³⁸ The only exception was one student who would have been in his English class only (Kelley).

³⁹ "It's just the permission to have people who have interests in sports and people have interests in drama and people have interests in anim[ation], and they kind of naturally gravitate to the formation of groups, which is what affords the formation of relationships.... By this point, the possibility that our child is going to make a true, meaningful, lasting, reciprocal connection with a typically developing peer in the junior high is as close to zero as you can get. That's just not going to happen" (Castro).

I am thus persuaded by a preponderance of credible evidence that from a social standpoint Student was not making effective progress toward meeting his social goal, that an appropriate peer group was not available to Student in the seventh grade program proposed by AB, and that AB's proposed IEP and placement were not reasonably calculated to offer Student a FAPE in this regard.

Parents argued that in addition to social concerns, Student's emotional needs had not been properly addressed by Acton. In school and at home Student had episodes of anxiety, loss of attention and frequently used the word "sorry" (SE-9). Psychological testing showed Student's difficulties with higher level abstract concepts and noted that when Student felt unsuccessful "he was vulnerable to discouragement" (SE-9). Student's emotional vulnerabilities were also observed by Ms. Meek and Ms. Kelley. At one point Ms. Kelley was sufficiently concerned about Student's perseveration over school issues regarding academics and peers that she discussed them with Ms. Soucie, who suggested implementation of a behavioral plan and journal writing (Kelley, Soucie). Parents argued that while somewhat effective in reducing Student's outward behaviors, these interventions failed to properly address his feelings. (Ultimately, Ms. Kelley and Ms. Soucie opined that Student was a happy and engaged participant in school and neither expressed a major concern over Student's emotional welfare.)

Father testified that during third, fourth and fifth grade Student willingly engaged in activities with him, but by the end of sixth grade Student no longer expressed interest in doing anything with father; instead he spent his time alone.

Student also became increasingly less independent, requiring the assistance of Parents for bathing, selecting his clothing, pouring a glass of juice and for all of his entertainment (Mother, Father, Broackway). During her time with Student in the home, Ms. Broackway also observed Student's loss of independence, anxiety and perseveration over things that happened in school (Broackway). Parents engaged Student in private counseling for a period of time but Mother testified that the counseling sessions were terminated by the therapist who opined that they were not helping Student (Mother). Dr. Castro expressed the opinion that Student's social isolation was taking an emotional toll, and he warned that it could get worse (Castro).

It is difficult to ascertain how much of Student's emotional presentation is a function of his ASD or, as Dr. Castro suggested, more indicative of the toll his social isolation was taking. Ultimately I am persuaded that Student presented with some emotional issues related to anxiety, frustration and lack of understanding of social behaviors. Acton did not propose to address these issues from an emotional standpoint until after Student had been unilaterally placed at LPS (i.e., AB did then add counseling to his IEP). I find that Acton's April and June 2013 IEPs were therefore not reasonably designed to address Student's emotional needs.

Academics

I next consider Student's needs in the academic domain. Parents argue that from an academic standpoint Student's needs were not being addressed appropriately. As discussed below, I find that the evidence supports a finding to the contrary.

I first review Student's academic progress. Ms. Kelley testified that while Student continued to struggle with reading comprehension, his decoding skills had greatly improved (SE-61). Student's oral reading fluency of a late second grade/ early third grade passage had progressed to the "advanced" level, though he continued to demonstrate limited comprehension. By the end of sixth grade, he was able to read independently at a second grade level and was about to become independent at the third grade level; with teacher support, he was at approximately mid-3rd grade level. Ms. Kelley characterized Student's progress as "great". She also found that Student's MCAS Portfolio demonstrated his progress in all aspects of reading as well as in math, where he had been able to target more complex tasks over time (SE-50; SE-59; SE-60; SE-61; Kelley). Also, by the spring of 2013, Student was able to write a multi-paragraph essay (5 paragraphs) after independently brainstorming the ideas, writing the topic sentence, details and the conclusion sentence; this, in contrast to his writing performance in the fall of 2012, when he was working on writing a one-paragraph essay with adult support (SE-59).

Ms. Soucie's graph of Student's behaviors in sixth grade science and social studies reflect that while most of Student's responses at the beginning of sixth grade had to be prompted, he gained great independence by the end of sixth grade in following instructions, showing active engagement, and providing the correct answer in the work being done in class (SE-74; Soucie). Ms. Meek also indicated that Student did well in his News Report presentations during homeroom, and was an active participant in her social studies class, noting that his need for adult support faded as sixth grade went on. She found Student to have "very good student skills" and that his performance on the modified tests demonstrated that he was learning the main concepts taught. Student also did well in science although his contributions were not as sophisticated as those of his peers (Meek).⁴⁰

I further note with respect to academic progress that Dr. Castro conceded Student had made meaningful academic progress in some areas (PE-11; Castro). In fact, he opined that the academic piece had advanced in some ways further than he would have expected given Student's cognition (Castro). The testimony offered by the staff in Acton only corroborated this (Kelley, Meek; Soucie).

I turn next to Parents' argument regarding the inappropriateness of Student's participating in mainstream classes. There is certainly no dispute that within the general education setting

⁴⁰ Refer also to Ms. Oullette's observation offering a view of Student's performance in line with what Ms. Kelley, Ms. Meek and Ms. Soucie reported (SE-26).

Student cannot access the curriculum independently (PE-11; Castro). However, there is robust support for his mainstream experience built into the IEPs under review. First, Student would be supported by a teacher assistant in general education science, social studies, during specials and homeroom (SE-49; Kelley). Further, and of great significance, Ms. Kelley, in addition to serving as Student's special education teacher for daily math, English, would have provided him daily academic support, during which she would have previewed, reviewed and offered reinforcement for concepts taught in the seventh grade general education setting. Student would have also been able to prepare for tests and learn study skills (Kelley).

Moreover, frequent communication between Ms. Kelley and the teachers in the general education classes would have facilitated modification of Student's work as needed (SE-62; SE-63). Finally, Ms. Kelley and Ms. Soucie would have been responsible for the initial and ongoing training and supervision of the teacher assistants assigned to support Student in the mainstream (Soucie; Kelley). Ms. Kelley, Ms. Soucie and Ms. Meek testified that AB's seventh grade program would have been appropriate for Student, and opined that with the supports in place he would have been able to participate effectively in general education social studies and science (SE-74; Kelley, Soucie).

It is clear that AB proposed every accommodation and service it viewed necessary to further Student's academic success, and the record unquestionably supports a finding that Student met with academic success in Acton, in some areas progressing beyond cognitive expectations. Ms. Kelley, who had worked with Student for over three years (and candidly raised potential concerns in 2012 regarding the appropriateness of AB) impressed me as a competent and knowledgeable professional who truly cared for Student. Her commitment to the Connections Program and to her students is admirable. As such, I find her testimony regarding Student's academic progress and the academic appropriateness of Acton's and AB's proposed inclusion programs for Student to be credible and reliable, and am not persuaded that AB would not have been able to provide an academic program suited to the academic challenges Student would have faced in seventh grade. Thus, I find that from an academic standpoint, Acton provided Student a program that offered him a FAPE, and that AB's proposed seventh grade academic program with Ms. Kelley would have also afforded Student a FAPE.

I. Reimbursement for LPS for the 2013-2014 school year:

Parents concerns with Student's presentation and apprehension over the appropriateness of the programs available in junior high led them to initiate their search for an out of district program in the late fall of 2012. Later that year, faced with the offer to continue Student's placement in a partial inclusion program similar to what he had received before, Parents notified Acton and AB of their intent to seek out of district placement. After rejecting the IEPs in April and June 2013, they notified Acton and AB of their intention to place Student at LPS for the 2013–2014 school year and seek reimbursement.

LPS is a MADESE approved private school primarily servicing children with language-based learning disabilities who do not exhibit significant social, emotional or behavioral challenges. Ms. Austin testified that language-based instruction is embedded within the curriculum across all educational settings throughout the day. Students are grouped in small classes according to their levels of performance and needs. Teachers are certified and LPS follows the Massachusetts Framework Curriculum for content areas such as science, math and English language arts. Students are exposed to grade level curriculum (Austin). More importantly the cornerstone of LPS is the implementation of Thinking Maps, Social Training and Community. Ms. Austin further explained that all students at LPS receive counseling (Austin).

Ms. Austin credibly testified that when Student arrived in LPS, he demonstrated lack of confidence in his abilities, he was nervous and his responses appeared to be scripted. He was unable to organize his binder, work or do his homework without adult support. He called people his friends but he did not understand the meaning of friendship (Austin). Ms. Austin opined that Student presented like many of the students LPS serviced and that a program like LPS was appropriate to address all of his areas of need, offering him unique opportunities to address his social emotional deficits through a variety of structured and unstructured activities, in and out of school, and by providing a cohort of similar peers (Austin).

Dr. Castro observed Student at LPS on October 13, 2013, shortly after Student's transition into that program. His observation report notes that Student's transition had been fairly smooth but that Student was still displaying some anxiety. Dr. Castro however found this program to be appropriate to meet Student's needs and emphasized the importance of Student having a cohort of similar peers to effectively address his development of self and to develop his pragmatic and communication skills (PE-13).⁴¹ Dr. Castro testified that in April of 2014, he observed a much more mature and independent Student (Castro). Parents also reported observing significant improvement in Student's independence, socialization and peer relationships (Father, Mother, Brockway).

Dr. Castro supported Student's placement at LPS noting that the small group classes and language based-interventions within a unified program with a "sizable aggregate of similar peers" was needed to help Student connect meaningfully with peers so as to promote his development of meaningful reciprocal relationships (PE-15; Castro). At LPS, Student could practice social skills in a variety of settings throughout the day, an essential element of an appropriate program for Student. Also, the implementation of Thinking Maps, Social Training and Community was essential in meeting Student's greatest area of need.

⁴¹ "While we recognize the importance of building discrete social pragmatic, problem solving, and communication skills within the context of a structured and predictable, setting, it is apparent that [Student] requires natural and authentic opportunities with like peers to generalize learned skills and to problem-solve through new and unpredictable situations in and out of the classroom. In his previous placement, [Student] had limited opportunity to work across context on social communication skills in the context of naturally occurring opportunities. However, the continuity and consistency of LPS's social pedagogy allows [Student] to practice important social and communication skills within a community of peers while receiving consistent feedback from teachers trained under the same curriculum (PE-13)." (PE-13).

At LPS Student was able to develop reciprocal friendships that extended outside school. He was happy, suggesting his desire to and satisfaction for having friends (Castro). Ms. Brockway testified that Student has shared his enthusiasm with her and while in their previous interactions in Acton Student perseverated on other students, had misunderstood situations and was preoccupied with others laughing at him, she noticed a marked difference since he started attending LPS. Ms. Brockway noted that by the end of seventh grade, not only was Student capable of perspective sharing, he was much more animated, engaged and relaxed (Brockway, Castro). Ms. Famiglietti, who had been providing Student with a private social skills group since Student was in Acton also noted the accelerated rate of progress and independence Student showed since attending LPS (PE-51; PE-52; Castro).

While the IDEA favors placement of students in the least restrictive environment, it is well established that when this is not feasible, students may be placed in private schools at public expense. *School Comm. of Burlington v. Dept. of Ed.*, 471 US 359, 369 (1985). Also, Parents are not bound by the same statutory requirements of FAPE that apply to public schools when considering the appropriateness of a private educational placement, a standard articulated by the Court in *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 13-14 (1993).⁴² In keeping with the First Circuit Court of Appeals opinion, if parents can show that the public school failed to offer a FAPE, so long as the private school chosen is reasonably calculated to enable the student to receive educational benefit parents may be reimbursed.

A private placement needed provide only *some element* of the special education services missing from the public alternative in order to qualify as reasonably calculated to enable the child to receive educational benefit...[n]or must the placement meet every last one of the child's special education needs. *Mr. I. v. Maine School Administrative District No. 55*, 480 F.3d 1, n. 22 (1st Cir. 2007) (internal quotations and citations omitted; emphasis in original); *Rafferty v. Cranston Pub. Sch. Comm.*, 3315 F.3d 21, 26 (1st Cir. 2002).

The preponderance of the evidence supports a finding that given Student's social stagnation, Parents unilateral placement was justified and that LPS was an appropriate choice. As such, Parents are entitled to reimbursement for their unilateral placement of Student at LPS for the 2013–2014 school year.

II. The January/ May 2014 IEP:

AB's proposed program and placement for the period from January 2014 through January 2015 are found in the IEPs drafted in January and May 2014 (SE-34; SE-42).⁴³ These IEPs

⁴² See *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 13-14 (1993), "private school need not necessarily meet state educational standards or be state-approved, and need not meet federal statutory definition of FAPE". See also, *Doe v. West Boylston School Committee*, 4 MSER 149, 161 (D. MA. 1998) (in order for a private placement to be rendered appropriate it need not meet Massachusetts FAPE standards).

⁴³ The Team participant sign in sheet for January 2014 did not list any LPS staff as having participated. In contrast, the May 2014 form notes that Ms. Austin was called via telephone (SE-73).

are identical to the one promulgated in June 2013, except that AB has proposed to add a weekly counseling session for Student. AB however provided no testimony from the individual who would have been responsible to implement this service or evidence as to how this service would have been coordinated with other services and efforts to address Student's social-emotional needs.

Many of the goals appearing in this IEP were the same as those in the June 2013 IEP. Similarly, the proposed peer group is virtually the same except for one student in the seventh grade group who would not be moving to eighth grade along with the other students in the Connections Program (Kelley).

AB argued that to date nobody has recommended adding a benchmark that called for Student to generalize a school friendship to the home, but that if one were added to Student's IEP, Ms. Soucie could work with Student and other staff toward implementation and monitoring (Soucie). This argument is not persuasive for two reasons. First, Parents and Dr. Castro had previously raised the importance of such a goal and Acton did not develop it. Moreover, the proposed peer group is virtually the same as it would have been in seventh grade except for one student, and as discussed above (in the context of the April and June 2013 IEPs) was not found to be appropriate. Thus, even were AB to develop such a goal at this point, AB's ability to promote such friendship in the natural environment (by allowing Student to gravitate toward a peer of his choice to develop a friendship) is doubtful. That said, as Student matures and solidifies his social skills, it is certainly conceivable that AB may be able to successfully implement such a goal with him in the near future.

In sum, the evidence is persuasive that the IEPs promulgated by Acton for the periods April 2013 to January 2014 (the programs proposed for Student's seventh grade) and January 2014 to January 2015 (covering the second half of seventh grade and the beginning of Student's eighth grade) were not reasonably calculated to offer Student a FAPE. During these periods Student required a program that offered him access to a reasonable aggregate of similar peers with whom he could develop meaningful friendships. The record supports a finding that LPS was an appropriate parental choice. As such, Parents have met their burden of persuasion under *Shaffer*.

Since Student's IEP period ends in January 2015, and anticipating that he will continue to solidify his skills and progress effectively at LPS, it is essential that AB together with LPS providers begin to closely evaluate Student's performance, presentation and needs to ascertain the appropriate time to transition him to a lesser restrictive environment.⁴⁴

⁴⁴ I note that Student will be entering high school in fall of 2015, at which point programmatic options and aggregate of similar peers may drastically change.

ORDER:

1. AB shall reimburse Parents for their unilateral placement of Student at LPS for the 2013–2014 school year and for reasonable transportation expenses.
2. AB shall continue Student’s placement at LPS for the remainder of the current IEP period, that is, January 13, 2015.
3. Student’s AB Team shall convene prior to January 2015, inclusive of key members of Student’s program at LPS, to consider Student’s educational placement for the remainder of eighth grade and the beginning of ninth grade.

By the Hearing Officer,

Rosa I. Figueroa

Dated: September 2, 2014

September 2, 2014

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

**ACTON PUBLIC SCHOOLS &
ACTON-BOXBORO REGIONAL SCHOOL DISTRICT**

BSEA # 1405736

BEFORE

**ROSA I. FIGUEROA
HEARING OFFICER**

**HEATHER GOLD, ESQ., ATTORNEY FOR PARENTS
NANCY NEVILS, ESQ., ATTORNEY FOR
ACTON PUBLIC SCHOOLS AND ACTON-BOXBORO
REGIONAL SCHOOLS**