

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

In RE: Lionel¹

&

BSEA#1406696

Fall River Public Schools

DECISION

This Decision is issued pursuant to M.G.L. c. 71B and 30A, 20 U.S.C. §1400 *et seq.*, 29 U.S.C. § 794 and the regulations promulgated under those statutes. A Hearing was held on May 30, June 2, 3, and 10, 2014 at the Administrative Offices of the Fall River Public Schools in Fall River, MA. Those present for all or parts of the proceeding were:

Mr. and Mrs. L.²

Lisa Nowinski

Gretchen Timmel

Robert Fricklas

Ashley Abbott

Patricia Davis

Paula Rego

Katherine Salvatore

Bridget Murphy

Thomas Keating

Cheryl Feeney

Parents

Psychologist, The Lurie Center

Evaluator/Advocate, The Lurie Center

Director of Special Education, Meeting Street School

Autism Specialist, Fall River Public Schools

School Adjustment Counselor, Fall River Public Schools

Team Facilitator, Fall River Public Schools

Autism Specialist, Fall River Public Schools

Teacher, Spencer-Borden School, Fall River Public Schools

Supervisor of Attendance, Fall River Public Schools

Grade 2 Teacher, Spencer-Borden School, Fall River
Public Schools

Speech-Language Pathologist, Fall River Public Schools

Vice-Principal, Spencer-Borden School, Fall River

Carrie Brady

Kathleen Cobb

¹ "Lionel" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

² "Mr. and/or Mrs. L." is a pseudonym chosen by the Hearing Officer to protect the privacy of the family in documents available to the public.

Michael Ward	Principal, Spencer-Borden School, Fall River
Ivonne Medeiros	Director of Student Services, Fall River Public Schools
Diane Parent	Attorney for School
Ashley Berman	Attorney for Parents
Pamela Milman	Attorney for Parents
Jane Williamson	Court Reporter
Lindsay Byrne	Hearing Officer

The official record of the Hearing consists of: documents submitted by the Parents marked P-1 through P-60 and P-62 through P-79; documents submitted by the School marked S-1 through S-43; and approximately 23 hours of recorded testimony and argument. The Parties made oral closing arguments on July 7, 2014 and the record closed on that date.

ISSUES

1. Whether the 2013- 2014 Individualized Education Program developed by Fall River Public Schools in May 2013 was reasonably calculated to provide Lionel with a free appropriate public education?
2. If not, are the Parents entitled to reimbursement of expenses they incurred in connection with the unilateral placement of Lionel at the Meeting Street School in Providence, Rhode Island?
3. Whether the School initiated truancy proceedings in the Massachusetts District Court and a neglect complaint with the Massachusetts Department of Children and Families in retaliation for the Parents' request for a due process hearing?

SUMMARY OF THE EVIDENCE

1. Lionel is an eight year old student with diagnosed developmental delays, autism spectrum disorder, and other health challenges. Lionel began the 2011-2012 school year as a kindergarten student in a private school at the Parents' election. At the suggestion of the private school Mr. and Mrs. L. requested an initial special education evaluation from the Fall River Public Schools. Fall River conducted the evaluation and determined that Lionel was eligible for special education services. At a Team held on December 9, 2011 Fall River proposed an Individualized Education Program ("IEP") providing for placement in an inclusion kindergarten class with small group pull out classes for specialized instruction in math, English language arts, and behavior. The Parents accepted the IEP in January 2012 and Lionel began attending the Fall River Schools shortly thereafter. (P-17; S-14; P-19; S-15; P-20; S-7; S-13) The Team reconvened in February 2012 and added occupational therapy and adaptive physical education to Lionel's program. The Parents accepted the Amendment. (P-17; P-16; S-6) Progress Reports completed through the end of the 2011-2012 school year record slow, steady progress. (P-21; S-6)
2. In March 2012 Dr. Lisa Nowinski, a psychologist associated with the Lurie Center at the Massachusetts General Hospital, conducted a comprehensive neuropsychological evaluation of Lionel at the Parents' request. According to standardized measures set out in the evaluation

report Dr. Nowinski found Lionel to have generally low average cognitive functioning with some nonverbal reasoning skills falling in the high average range and some spatial skills falling in the borderline range. He displayed significant difficulty with attention, concentration and behavioral regulation. At that time, in a quiet one-to-one setting, Lionel did not demonstrate the capacity for sustained tabletop or seatwork learning. He had difficulty following directions and conforming his behavior to environmental and social norms. Dr. Nowinski also observed that Lionel lacked age appropriate social skills. She agreed with the findings of prior evaluators at the Lurie Center and elsewhere that Lionel met the criteria for autism spectrum disorder, attention deficit hyperactivity disorder, and developmental delays. (P-15; S-22)

Dr. Nowinski recommended that Lionel complete his kindergarten year in a substantially separate classroom.³ She further recommended that he attend a regular first grade class with a 1:1 or 2:1 aide. She stressed that the adults working with Lionel should be trained in Applied Behavioral Analysis (“ABA”) and use that framework consistently with Lionel. Dr. Nowinski made a number of recommendations for classroom accommodations, including: the use of a structured, consistent schedule; a written/visual schedule; limited transitions and routine changes; reduced distractions; frequent, regularly scheduled breaks; sensory breaks and fidget items; and executive coaching. Finally, to address Lionel’s behavioral and social needs, Dr. Nowinski recommended that Lionel’s program include a formal social skills curriculum and a formal behavioral support plan. (P-15; S-22; Nowinski)

3. The Team met on May 22, 2012 to review Lionel’s progress and to plan for the 2012-2013 school year. The Team was not aware that Lionel had been evaluated at the Lurie Center and did not have access to Dr. Nowinski’s findings and recommendations. The Team proposed that Lionel attend a substantially separate early elementary classroom designed for students with autism spectrum disorders. The Team added direct social skills instruction and a summer program to Lionel’s plan. The Parents accepted the proposed 2012-2013 IEP for Lionel’s first grade year. (P-9; S-5)

4. Dr. Nowinski’s evaluation report, dated April 4, 2012 was received by Fall River on September 7, 2012. A Team meeting was held on September 18, 2012 to review the findings. No changes were made to Lionel’s program or placement as a result of that review. (S-9)

5. The 2012-2013 school year was challenging for Lionel. He attended the substantially separate early elementary class designed for students with autism spectrum disorder in accordance with the March 2012-March 2013 IEP accepted by the Parents. Lionel displayed some aggressive and non-compliant behaviors that prompted a functional behavioral assessment and the development and implementation of a behavior support plan. (P-57; P-58; S-21) Twice Lionel’s behaviors were sufficiently dangerous to other children or to staff as to result in a brief “restraint”. (P-60). Ms. Cobb, the Vice-Principal at Spencer-Borden, testified that she saw Lionel regularly throughout the school year both as part of his behavior plan and in her role as vice principal. She stated that his ability to manage frustration, contain aggression and conform to behavioral expectations improved significantly and steadily while he attended Spencer-Borden. (Cobb; See also: P-56; P-57; P-59; P-62; P-63; P-21; P-44; S-4; S-3; S-27.)

³ At the time of the evaluation Lionel was placed in a regular kindergarten class. See ¶ 1.

6. The Team reconvened on March 27, 2013 to review Lionel's progress and to develop an IEP for the 2013-2014 school year. Fall River proposed an IEP continuing Lionel's full time placement in the substantially separate classroom with specialized services geared toward students with autism spectrum disorders. The proposed March IEP added a weekly session of speech-language service to address Lionel's articulation difficulties. The Parents accepted the proposed 2013-2014 IEP on April 26, 2013. (P-8; S-4)

7. Gretchen Timmel, a psychologist and teacher associated with the Lurie Center, observed Lionel in the substantially separate ASD classroom for approximately 2 hours on March 12, 2013. (P-24; P-13; S-23) Based on that observation, and her prior understanding of Lionel's learning needs from her discussions with the Parents and Dr. Nowinski's report, Ms. Timmel recommended that Lionel receive language based academic instruction in a small group from a teacher with training and experience teaching students with Autism Spectrum Disorders and receive direct social skills and social pragmatics instruction based on "Theory of Mind" principles, along with multiple practice opportunities with similarly functioning and mainstream peers and settings. She also recommended that sensory techniques be incorporated into classroom practices; that Lionel's Individualized Behavior Plan reflect an understanding of "Theory of Mind" principles and of Lionel's sensory challenges; and that his program provide opportunities for inclusion with typically developing peers for appropriate behavior models and possible academic instruction. Ms. Timmel also recommended that Lionel's IEP include consultation from a Board Certified Behavioral Analyst to ensure appropriate development and implementation of an ASD-focused behavior plan. It is not clear from the record when the Parent received Ms. Timmel's written report. (Timmel)

8. The Team reconvened on May 28, 2013 to review Ms. Timmel's observation report and Lionel's progress during the 2012-2013 school year. The Team also discussed Dr. Nowinski's earlier, and previously considered, evaluation report. The Team revised the 2013-2014 program for Lionel to include English language arts ("ELA") and math instruction in a mainstream setting and continuing instruction in social skills, behavior, adaptive physical education, occupational therapy and speech-language services in the substantially separate setting. The service delivery grid of the revised IEP reflects the addition of supported instruction in ELA and math in the mainstream setting. The IEP included the recommended visual cues and supports for behavioral expectations, routines, and academics. It also included a positive behavior support plan to be implemented by school staff in all settings addressing the sensory, behavioral and attentional challenges experienced by Lionel. (P-7; S-3; P-15, S-22; P-21; P-59) The Parents accepted the resulting IEP, dated July 8, 2013 - May 27, 2014, on June 25, 2013. (See also: Rego; P-39)

9. Dr. Nowinski conducted a repeat neuropsychological evaluation on July 18, 2013. She found improvement in all areas of intellectual, academic, behavioral, attentional and social functioning. Lionel continued to exhibit the cognitive inflexibility and social skills deficits consistent with the diagnosis of Autism Spectrum Disorder. He also continued to have a slower processing speed and more limited attentional skills than his typical age peers. Dr. Nowinski recommended that his educational plan include:

- a. a highly structured behavior plan based on ABA principles;

- b. a full time 1:1 aide trained in ASD;
- c. a home-school communication notebook;
- d. individual academic instruction when achievement is “falling below his same age peers”;
- e. continuation of physical therapy, occupational therapy and social skills support.

The school received Dr. Nowinski’s evaluation report on November 5, 2013. (P-12; S-24)

10. Lionel started the 2013-2014 school year as a second grade student in the partial inclusion setting accepted by the Parents. The substantially separate class had 11 students, 1 Teacher, and 3 full time paraprofessionals. Lionel also had a dedicated 1:1 paraprofessional who accompanied him during his mainstream ELA and math classes. An autism specialist participated in the classroom two days a week to provide specialized assessment, training, support, data collection analysis and behavior management planning. (Cobb; Rego; Ward; Davis; P-45)

11. The lead teacher in the substantially separate classroom resigned on September 18, 2013. A substitute teacher took over the classroom from September 19, 2013 until mid-November. At that time the class had four days of daily substitute teachers and a ten day stretch of internal coverage. Another long-term substitute teacher was assigned to the classroom from the beginning of December, 2013 until February 7, 2014. As a result of the staffing changes the school’s principal and vice-principal introduced additional support to the classroom. The autism specialist’s time in the classroom was increased; the reading and math instructional coaches were assigned to provide more time directly to the students and training to the teacher and paraprofessionals; weekly staff meetings with the building principal and/or vice principal were held; all staff attended monthly trainings relating specifically to working with students with ASD; the district’s Team facilitator, Paula Rego, became directly responsible for ensuring implementation of the students’ IEPs. Michael Ward, Principal of The Spencer Borden School, testified that although during this time classroom staff regularly brought to his attention those students needing additional support or services, none of the staff mentioned Lionel as a candidate for supplemental or alternate interventions. (Rego; Medeiros; Ward; Cobb; Davis; P-36; P-38)

12. Lionel continued to attend school during September and October, 2013. The school adjustment counselor, Patricia Davis, testified that at that time Lionel presented as an eager, engaged participatory learner with an excellent fund of knowledge. Although he resisted tabletop and paper/pencil tasks he never engaged in any negative behaviors warranting discipline, removal or implementation of a replacement behavior plan. Ms. Davis stated that she had never been called to the ASD classroom during the 2013-2014 school year to address the behavioral needs of Lionel or any other student. No discipline or conduct reports were filed with the building principal concerning Lionel. The mainstream 2nd grade teacher responsible for Lionel’s ELA and math instruction reported that his behavior was not a concern. (Davis; Feeney)

13. Cheryl Feeney teaches 2nd grade at the Spencer-Borden School in Fall River. She follows the standard 2nd grade curriculum in reading, writing and math using the principles of the Responsive Classroom. Lionel attended her class daily for morning meeting and ELA between 9:00 and 9:45 am and for math between 1:15 and 1:45 pm. He was accompanied by a paraprofessional. Ms. Feeney testified that Lionel participated appropriately in class activities

and appeared to enjoy the classroom instruction. She observed that Lionel engaged in independent social interactions with the mainstream peers and reported that he made significant social progress while in her class. Ms. Feeney also observed that Lionel's academic skills were not always at the level of the mainstream class. When that happened she provided alternate activities to Lionel's group and the aide would facilitate the modified instruction. Lionel participated in the classroom wide token based behavioral system and earned treasures from the treasure box for accomplishments such as finishing a task or remaining seated when asked. Ms. Feeney did not have any concerns about Lionel's behavior in her classroom. (Feeney)

14. Corrie Brady, Speech-Language Pathologist, reported that Lionel was making progress toward the achievement of his speech-language goals in the fall of 2013. He was cooperative and happy during their sessions and did not exhibit any disruptive behaviors. (Ward; Cobb; Davis; Brady; P-63)

15. The Team reconvened on November 5, 2013 to review the results of the July 2013 neuropsychological evaluation conducted by Dr. Nowinski and to discuss Lionel's progress. There was no regular education teacher at that meeting. No changes were made to the previously accepted IEP. (S-9; P-30; P-40; P-63)

16. Lionel has a long school history of tardiness and poor school attendance. (P-22; P-33; P-34; S-26; S-35) Between the start of the school year 2013 and December 4, 2013 Lionel had 15 absences and 11 tardies. Subsequent to December 4, 2013, with the exception of one tardy day on December 17, 2013, Lionel did not attend the Fall River Schools for the remainder of the 2013-2014 academic year.

Ms. L. did not offer any medical excuse for Lionel's extended absence. She did not alert the Fall River Public Schools to any issue precipitating Lionel's absence or preventing his return to school. She did not request a home education program for medical reasons. She did not request permission to home-school Lionel. The Parents did not reject the IEP in effect for the 2013-2014 school year. Lionel did not participate in any educational activities between December 4, 2013 and May 12, 2014 when he began attending the Meeting Street School at the Parents' election. (Ms. L; Keating; Ward)

17. Spencer-Borden has an "attendance team" responsible for addressing any concerns about student attendance at the school. The Team, which meets at least monthly, consists of the school adjustment counselor, the truant officer, the vice-principal, the principal, the school nurse, and the special education liaison. The Team discussed Lionel regularly, beginning in December 2013. The Team decided to delay taking any formal actions to address Lionel's extended unexcused absence from school until a permanent special education teacher was in place in Lionel's substantially separate classroom. The new teacher, Bridget Murphy, began on February 7, 2014. The attendance team decided to permit Ms. Murphy to encourage the Parent to send Lionel to school, informally at first, then through formal meetings and written transition plans. When, after another six weeks, those attempts were unsuccessful, the team determined that assistance from outside authorities was necessary to secure Lionel's education. The School filed a Report of Child Neglect (51A) with the Department of Children and Families on April 1, 2014.

The School filed a “Failure to Send” Truancy Complaint with the Juvenile Court on April 10, 2014. (P-33; P-34; S-37; Keating; Davis; Ward; Rego)

18. Bridget Murphy has been the special education teacher assigned to the early elementary Autism Spectrum Disorders classroom at the Spencer-Borden School since February 7, 2014. Ms. Murphy earned a dual Masters degree in special education and applied behavioral analysis and is teaching on a DESE waiver pending expected completion of her supervised hours in July 2014. She is licensed as a speech-language therapy assistant and certified to Level II in American Sign Language. She has experience as an ABA therapist conducting discrete trials and developing and implementing individualized programs for social pragmatics and inclusion support. (P-73; Murphy)

Ms. Murphy described the classroom which Lionel would have attended as geared specifically for high functioning students with ASD. There were three paraprofessionals and one Teacher in the classroom at all times. An ASD specialist was also in the classroom two days a week. There were eleven students assigned to the class: 4 in kindergarten, 1 in first grade and 6 in 2nd grade (including Lionel). The classroom follows a consistent daily routine, with visual and verbal cues and reminders for all students:

8:25 Greeting, breakfast

Morning work- an individual assignment to be completed independently awaits each student at a designated place at a classroom table.

Morning meeting- using the Responsive Classroom model which reinforces social skills, review classroom rules, review classroom-wide behavior system and the chart posted on the wall, discussion of classroom jobs to foster responsibility and community building; calendar/weather activities.

Sensory break- stretching, jumping

English language arts- 1:1 or in a small group of similarly skilled peers

Sensory/movement break

Outdoor recess

English language arts

11:00 Lunch

11:45-12:00 Recess

12:00-12:30 Sensory time - quiet music, dim lights

12:30 Clean up, large group meeting

12:30-1:30 Math- 1:1 and small group

1:30 - 2:00 Social skills- structured skills instruction using Theory of Mind, social thinking, Project Achieve-based curriculum

2:00 Mainstream specials or student choice time (practice social skills)

2:30 Closing circle- token and prize awards

A classroom wide token behavioral support system with visual reminders and verbal reinforcement is implemented throughout the day. The entire daily schedule and all classroom activities are based on ABA principles. The classroom uses a structured, multi-sensory, behavioral approach to teaching, with repetition, routine; visual supports, clear, concise

instructions and predictable patterns and expectations. (Murphy; see also: Davis; Salvatore; P-73; P-43; P-44; P-45; S-32; P-36)

There is a small quiet room attached to the classroom where students may elect to go if they need less stimulation. The classroom is located next door to the “sensory room” which is used for scheduled sensory breaks and when students elect more active methods of decompressing if warranted. (Salvatore; See also S-32)

19. Ms. Murphy reviewed Lionel’s last accepted (July 2013- May 2014) IEP and determined that it could be appropriately implemented in the early elementary ASD classroom. She compared the IEP to the evaluations in Lionel’s school file, including those from the Lurie Center, and concluded that the IEP contained all the pertinent services, strategies and accommodations recommended by the evaluators, including: a non-contingent sensory diet, a positive behavior support plan, visual supports, a structured routine, and integration into grade level mainstream English language arts and math. Ms. Murphy testified that Lionel’s academic skills and needs place him squarely in the middle of the functioning levels of the other students in the ASD classroom. Ms. Murphy, in conjunction with the ASD specialist, created behavior tally sheets to record Lionel’s responses to his behavioral support plan which centers on refusals, non-compliance and aggression reduction. (Murphy; P-73; P-43; P-44; See also Salvatore; Rego)

20. Ms. Murphy developed a “Re-entry Transition” plan for Lionel which sought to familiarize him with new adults in the classroom, to reintroduce him gradually to the classroom environment and routine, and to help him manage any anxiety or associated interfering behaviors in a structured predictable way. The plan included home visits, picture introductions, after school visits to a staffed classroom, social stories, partial day visits and flexible merging into full day attendance over the course of four weeks. The transition would be monitored by both Ms. Murphy and the ASD specialist who would be responsible for collecting and analyzing the ABA data. The plan provided for continuous home-school monitoring and a Team meeting at the end of the transition period. (P-30; P-31; P-32:S-2; S-30) Meetings were held on March 6 and March 13, 2014 to discuss Lionel’s return to the Spencer-Borden School. The Parents objected to the length of the transition period but otherwise indicated agreement with the plan.

Ms. Murphy and Ms. Davis, the School Adjustment Counselor, visited Lionel at his home after the meeting on March 13, 2014. On March 14, 2014 Lionel visited the classroom for 15 minutes after school. Subsequent scheduled home visits were strained or did not occur. The Parents did not follow through to schedule visits to the school. (Davis; Murphy; Ms. L.)

21. On May 7, 2014, as Lionel remained out of school, Fall River requested permission to conduct home and health assessments. The Parents declined to consent. Fall River invited the Parents to a Team meeting to plan for Lionel’s 2014-2015 school year. The Parents declined to attend. (P-75; S-33; P-79; Ms. L.)

22. The Parents enrolled Lionel in the Meeting Street School on May 12, 2014. The Meeting Street School is approved to provide special education by the state of Rhode Island. Robert Fricklas, the Director of Special Education at the Meeting Street School, described the program there. (P-23; P-24; P-25).

The Meeting Street School is an inclusion day school which emphasizes interventions based on sensory integration techniques and uses a TEACH/Levine model of classroom organization with integrated related services. It does not use ABA or Theory of Mind principles. Grade 2 has 13 students: 9 typical students and 4 with special needs. There are two teachers in the class: one regular education teacher and one special education teacher. The Meeting St. School follows the Rhode Island CORE academic curriculum. All students receive three sensory integration breaks a day in a specially equipped gym to address emotional dysregulation. Lionel also receives two thirty minute sessions per week of occupational therapy, speech-language therapy and adaptive physical education. There is no classroom wide or building wide behavior management system. At the time of the Hearing Lionel had attended full days of school without any significant behavioral incidents since he began on May 12, 2014. (Fricklas)

23. Ms. L. testified that she did not attend the Parent-Teacher conferences for 1st or 2nd grade at the Spencer-Borden School. She did not observe the ASD classroom at any time during the 2013-2014 school year. She did not attend the March 2014 Open House for the new teacher in the ASD classroom. Ms. L. agreed that the July 2013 through May 2013 IEP developed by Fall River and accepted by her in June 2013 was consistent with the recommendations of her “professional team” at the Lurie Center. (P-9; S-5; Ms. L.; Salvatore) Ms. L. never rejected the IEP. She testified that she was dissatisfied with the Fall River program because it did not have a qualified teacher and Lionel was not making progress in school. She did not discuss her concerns about Lionel’s educational progress with Fall River staff. She does not know the educational or professional qualifications of Lionel’s current teachers at the Meeting Street School. (Ms. L.; but see: P-10; P-21)

Ms. L. did not arrange substitute or supplemental education services for Lionel for more than five school months. She testified that Lionel was too sick or anxious to attend school after December 4, 2013. There is no evidence that Lionel was seen by a health practitioner to assess and/or address those concerns. (P-64; P-66.)

FINDINGS AND CONCLUSIONS

There is no dispute that Lionel is a student with special learning needs and is thus entitled to receive a free appropriate public education pursuant to M.G.L.c.71B and 20 U.S.C. §1401 *et seq.* The issue for resolution here is whether the 2013-2014 Individualized Education Program developed by the Fall River Public Schools is reasonably calculated to ensure that he does. After careful consideration of all the evidence submitted in this matter, and the arguments of counsel for both parties, it is my determination that Fall River has offered, and has implemented to the extent permitted by parental action, a special education program that is individually tailored to meet Lionel’s unique identified learning needs and to permit him to make effective progress commensurate with his potential in the least restrictive environment. The 2013-2014 IEP at issue in this Hearing therefore meets the procedural and substantive requirements of both the

Massachusetts and the Federal special education laws. The Parents did not carry their evidentiary burden of proving otherwise. *Schaffer v. Weast*, 546 U.S. 49 (2009) My reasoning follows:

The 2013-2014 IEP accepted by the Parent and implemented by the School was the culmination of several Team meetings that considered and discussed Lionel's adaptation to, and progress in, a substantially separate special education program designed for students with high functioning autism spectrum disorders, during the 2012-2013 school year. The Team determined that Lionel made progress in all spheres, academic, behavioral, motor and social, with the specialized instruction and positive behavioral supports available to him in that classroom.⁴ The Team considered the evaluations and observations conducted at the Parents' request by the Lurie Center and incorporated recommendations that were not already set out in the IEP. In particular, Fall River revised the 2013-2014 IEP to reflect the recommendations of Ms. Timmel and Dr. Nowinski that Lionel participate in mainstream academics with special education support along with continued academic, behavioral and social instruction in a small group, ABA-based, class. (Cf P-8; S-4; and P-9;S-5) It was reasonable for the Team to select for the 2013-2014 school year, a program model in which Lionel had demonstrated successful progress during the 2012-2013 school year. It was also reasonable for the Team to follow the recommendations of outside evaluators for a less restrictive educational environment when there was no showing at that time that Lionel could not participate meaningfully in a regular education classroom for part of a school day. Further, it was reasonable for Fall River to implement the proposed program as it had been accepted by the Parent.

When the Team met in November, 2013, to review Lionel's progress all evidence indicated that Lionel was making demonstrable educational progress. (P-63; P-21; S-3; P-10) There was no evidence of any negative effect on Lionel due to the presence of a long term substitute teacher in the ASD class. I rely heavily on the testimony of Ms. Davis, Ms. Feeney, Ms. Cobb, Ms. Brady and Ms. Rego as support for finding that Lionel was an active participant in all areas of his program, that he had no behavioral or conduct difficulties during the fall 2013, and that he was meeting his IEP goals. There is no credible evidence to the contrary.⁵

The great weight of the documentary and credible testimonial evidence in this matter supports the conclusion that the 2013-2014 IEP accurately and comprehensively reflects the recommendations of Lionel's service providers and educational evaluators for a special education program providing both individual and small group ABA-based academic, behavioral and social instruction and supported participation in mainstream academics and activities with typical peers, that the accepted IEP was implemented at all times when Lionel was available to participate, and that Lionel benefitted from that participation.

⁴ I note that Dr. Nowinski's July 2013 evaluation data though not available to the Team developing the 2013-2014 IEP, confirmed the determination that Lionel had made slow but effective progress in all tested areas during the 2012-2013 school year. (P-12; S-24)

⁵ I specifically credit the testimony of the staff of the Fall River Public Schools all of whom I found to be knowledgeable and professional. In addition their testimony was buttressed by the documents. On the other hand the testimony of Ms. L. was internally inconsistent and not supported by the documentary evidence nor corroborated by other witnesses. I therefore do not assign her testimony significant weight.

The Parents' assertion that the early elementary ASD classroom did not have a teacher between September 19, 2013 and February 7, 2014 is without merit. A long term substitute teacher is a teacher. Further there is no evidence that the presence of a long term substitute rather than a permanent teacher during September, October and November 2013 when Lionel attended school had any negative effect on the delivery of appropriate special education services to him.

The Parents' argument that Fall River filed a school truancy report with the District Court and a 51A Neglect Report with the Department of Children and Families in retaliation for the Parents' request for a due process hearing is similarly without merit. There is ample independent support, both preceding the Parents' February 7, 2014 BSEA hearing request and in the two months after that, for a truancy complaint: more than 70 days of absence from school without an excuse and without any alternative educational services. This evidence does not support a finding of pretext or of retaliation. Further, the Parents made no persuasive connection between their assertion of their due process rights under the IDEA and any subsequent school action other than those required by the IDEA's dispute resolution system itself.

The evidence supports a finding that the educational recommendations of the Parents' evaluators and those of Fall River staff who worked directly with Lionel are consistent and were properly incorporated into the 2013-2014 IEP at issue here. I further find that with the appointment of Bridget Murphy as the permanent teacher and of Ashley Abbott and Katherine Salvatore as the ASD specialists Fall River offered Lionel fully qualified, creative, dynamic and knowledgeable professionals capable of implementing the 2013-2014 IEP. I note particularly Ms. Murphy's careful review of Lionel's educational record and her development of a comprehensive, individualized transition plan as evidence of her dedication and skill.

Finally, because I have found the 2013-2014 IEP to be reasonably calculated to assure a free appropriate public education to Lionel, I do not reach consideration of the appropriateness of the Parents' unilateral placement at the Meeting Street School.

ORDER

The 2013- 2014 Individualized Education Program developed by the Fall River Public Schools was reasonably calculated to ensure provision of a free appropriate public education to Lionel.

By the Hearing Officer

Lindsay Byrne
Dated: July 30, 2014