

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

In Re: Student v.
Abington Public Schools

**BSEA # 1407763
& BSEA # 1502743**

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.

Mother requested a Hearing in the above-referenced matter on April 17, 2014.¹ The matter was continued at Mother's request and a Pre-hearing conference was held on July 1, 2014. The Parties then engaged in mediation, but could not resolve their differences and the case was scheduled for Hearing on October 20 and 21, 2014. On August 25, 2014, Father filed a Motion for Clarification of Stay-put which was decided via Ruling issued on September 11, 2014. Father then filed a Hearing Request on October 10, 2014. The matters were consolidated on October 14, 2014. A Hearing on both BSEA matters was held on October 20, 21 and 24, 2014, at the Offices of Murphy, Hesse, Toomey & Lehane, at 300 Crown Colony Drive, Quincy, Massachusetts. The matters were heard by Hearing Officer Rosa I. Figueroa.

On October 24, 2014, the District requested that the BSEA provide a pseudonym for the School District. Father filed an objection to the District's request on October 31, 2014. Thereafter, the District and Father filed additional submissions on November 3 and 6, 2014. Upon consideration of their submissions I concluded that assigning a pseudonym to the School District is not warranted for purposes of this Decision.

Those present for all or part of the proceedings were:

Student's father²

Student's mother

Mother's husband

Andrew Norton, Esq.

Julie Bazinet

Mary Williams

Attorney for Mother

Former BCBA at Abington Public Schools

Middle School Special Education Teacher, Abington Public

¹ Parents, who are divorced, share custody and educational decision-making for Student. Student lives primarily with Mother in Abington.

² Father appeared pro-se.

	Schools
Kelley McLoughlin	Speech and Language Pathologist, Abington Public Schools
Sarah Ryans	Pathfinders Program Coordinator, League School
Patricia Cosgrove	Consultant for out of district schools, Abington Public Schools
Mary Ellen Sowyrda, Esq.	Attorney for Abington Public Schools
Felicia Vasuduan, Esq.	Observer from Murphy, Hesse, Toomey & Lehane
Dympna Thomas	Assistant Superintendent, Abington Public Schools
Cheryl Culberio	Middle School Team Chair, Abington Public Schools
Roseanne Kupolska	Middle School Principal, Abington Public Schools
Nancy Ingemi	Paraprofessional
Tanya Faynberg	School Psychologist
James Robbins	High School Special Education Team Chair, Abington Public Schools
Mary Scott	Program Director, South Shore Educational Collaborative (Mini School)
Maurine Gattine	BCBA, South Shore Educational Collaborative
Katie Faria	Teacher, South Shore Educational Collaborative (Mini School)
Casey Savage	Social Worker, South Shore Educational Collaborative (Mini School)
Ellen Bernier	Speech and Language Pathologist, South Shore Educational Collaborative (Mini School)

The official record of the hearing consists of documents submitted by Mother marked as exhibits ME-1 through ME-28, Father's exhibits FE-1 through FE-10, and documents submitted by Abington Public Schools (Abington) marked as exhibits SE-1 through SE-3; recorded oral testimony and oral closing arguments. The record closed on October 24, 2014.

MOTHER'S HEARING ISSUES:

1. Whether Student is entitled to placement at the League School consistent with a January 21, 2014, Team meeting placement determination.
2. Whether Abington violated Student's and Mother's procedural due process rights when it offered Student placement at the South Shore Educational Collaborative.

FATHER'S HEARING ISSUE:

1. Whether the IEP offered by Abington for the period from October 2014 to October 2015 should be implemented at the South Shore Educational Collaborative consistent with the least restrictive environment requirement of federal and state law? or,
2. Whether Student's IEP should be implemented at the League School.

POSITIONS OF THE PARTIES:

Mother' Position:

Mother asserts that during the second Team meeting on January 21, 2014, the Team reached a determination that Student should be placed at the League School for ninth grade. Thereafter, the Team leader contacted Patricia Cosgrove, the out-of-district coordinator for Abington, who made an administrative determination, outside the Team, that the South Shore Educational Collaborative (SSEC) was the appropriate out-of-district placement for Student. Despite Mother's rejection of this placement, because Father agreed to it, Abington placed Student at the SSEC. Mother states that it was not until after she filed a Hearing Request and Abington's attorney conferred with the Team participants that Abington issued a second placement page calling for Student to attend the League School. Mother demands that Student be placed at the League School consistent with the Team's determination during the January 21, 2014 Team meeting.

Father's Position:

Father states that Student should be allowed to stay at the South Shore Educational Collaborative consistent with Abington's initial placement offer and where Student is currently attending school pursuant to a Stay Put Order. Father asserts that the collective data supports a finding that this placement is working for Student and he argues that it is also the least restrictive environment appropriate for Student. As he understands, at SSEC, Student has the opportunity to have contact with regular education children on a regular basis, consistent with the least restrictive environment (LRE) requirement of the IDEA. According to Father, the methodology and student population at League are overly restrictive for Student, a position also embraced by Abington. Father asserts that Student's cognitive functioning is significantly above the student population at League and he further states that Student does not need to be isolated from his non-disabled peers within the confines of a private school setting.

Father agrees with Mother that the ultimate goal for Student is that he graduate from high school and attends college.

Abington Public Schools' Position:

Abington states that even though it believes that Student can be appropriately educated at the public high school, at Hearing it takes no position regarding what it interprets to be a dispute between Mother and Father regarding which is the appropriate placement for Student. It agrees to place Student at the League School as Mother desires, or maintain Student's placement at the SSEC as Father prefers. Either way, Abington maintains that at the SSEC Student is receiving a Free and Appropriate Public Education consistent with the IDEA.

Lastly, Abington argues that any procedural irregularity should not result in a change in placement for Student. Instead, Abington seeks that the Hearing Officer examine Student's potential to succeed as a college bound student in light of his entitlement to receive a FAPE in the least restrictive environment for the balance of his 2014-2015 IEP.

FINDINGS OF FACT:

1. Student is a fifteen year-old, eighth grade resident of Abington, MA. He has been diagnosed with Autism/ PDD-NOS (with significant pragmatic language and sensory integration difficulties) as well as Anxiety Disorder NOS and ADHD. He also presents with attentional, organizational and slow processing issues. Student's disabilities make it difficult for him to relate to his peers, manage new and unfamiliar situations, and manage his feelings. He also presents with sensory issues but is able to manage them through the use of proprioceptive input (FE-2).
2. Student has been described as polite, friendly and caring. He displays strengths in drawing, an activity in which he is interested, and is very creative. He also enjoys playing video games. Student wishes to attend college and become a scientist (FE-2).
3. Parents are divorced and have very strained communication. While they disagree about many issues regarding Student, they agree on Student's post high school vision of attending college (Mother, Father, Cosgrove). Both Parents care deeply about Student and are very involved in his education (FE-9; Mother, Father).
4. Early 2011 classroom observations by Bonnie Glickman, M.Ed., NCC, raised concerns regarding Student's difficulties within large classroom settings and apparent isolation. Within the large classroom settings, Student did not participate in lessons and did not interact with anyone other than his one-to-one aide (ME-14). Student was fidgety, spoke loudly, lacked eye-contact and was not focused during instruction. Ms. Glickman's recommendations focused on helping Student process his experiences (Theory of mind) to address social emotional deficits, teaching him to become a more independent learner, better coordination of instruction across all subject areas, and attention to sensory processing to ease anxiety and maintain focus. Ms. Glickman also recommended additional goals to address social skills, social thinking, organizational skills and mathematics (ME-14).
5. Susan Fletcher, MS, CCC-SLP, Abington, conducted a speech and language evaluation over five separate sessions on or about December 2010 and January 2011. The evaluation demonstrated Student's very poor pragmatic language skills. It is noted that in the Test of Pragmatic Language-2, he struggled across all test subcomponents. He also displayed weaknesses in ability to recall a series of unrelated words, responding to questions he had just heard and in answering questions that called for higher level thinking as per the TAPS-3. Recommendations for Student to receive speech and language services would later be made (ME-18).
6. Academic testing performed by Abington also showed that while Student's general language and vocabulary abilities were within the average range, he presented with significant weaknesses with receptive vocabulary, auditory comprehension, reasoning, word memory, spelling and math. He also displayed slight fine motor weaknesses (ME-19).

7. Student was seen at Children's Hospital's Developmental Medicine Center on February 9, 2011. The report of said visit, notes that Student: struggled with transitions or when pulled away from a preferred activity; engaged in hand flapping, unusual hand and finger movements as well as scripting and echolalia; spoke in a monotone voice; struggled with turn taking and sharing; and became overly focused on topics of interest (ME-19). Overall, the evaluator at Children's Hospital, Demetra Pappas, M.D., MPH, found Student's cognitive abilities to fall within the average range, with significant weaknesses in processing speed. He also displayed low average performance abilities in receptive vocabulary, math, and spelling. Receptive language, auditory comprehension, word memory and reasoning were significantly challenging areas for Student as evidenced in the READS Collaborative 2010 evaluation report reviewed by Dr. Pappas (ME-19).
8. Dr. Pappas' report notes and agrees with previous 2008 recommendations to address Student's behavioral issues (struggles with stimming behaviors, difficulties with communication and social interactions and task refusal) in a structured program utilizing Applied Behavioral Analysis (ABA). His program should also include repetition of planned teaching opportunities with sufficient amounts of one-to-one adult attention, and frequent and consistent reinforcement for maintenance and acquisition of new skills. An experienced one-to-one behavioral assistant supervised by a Masters level behavioral specialist should be assigned to Student. Dr. Pappas also recommended ten hours per month of ABA consultation in school and at least two hours per week home-based consultation. She further recommended speech and language instruction (receptive and pragmatic skills) inclusive of opportunities for generalization of skills to more natural settings, and participation in a small structured social skills group to address social communication and social skills issues. Occupational therapy to address fine motor challenges was recommended. Year round services were recommended and the importance of continued communication between educators, service providers and Parents was emphasized. Overall, Dr. Pappas recommended an intensive level of instructional support and numerous accommodations for Student (ME-19).
9. In October and November of 2011, Julie Bazinet, M.Ed., BCBA, Abington, conducted classroom observations of Student. At the time, Student was in the sixth grade. Teachers reported greater compliance with tasks and change with implementation of accommodations (such as preferential sitting and frequent reminders), and a one-to-one paraprofessional to prompt him, in his full inclusion program with 31 students (ME-20).
10. Ms. Bazinet observed issues with certain independent functioning skills in school, such as his inability to transition independently from one location to another, as well as tremendous inconsistency in his overall level of independence; Student frequently looked to his paraprofessional for prompting to continue from one task to another, and to engage in and complete tasks. While he was observed to engage in social interactions within small group settings, social pragmatic skills were not exhibited in large group settings. Ms. Bazinet agreed with Dr. Pappas that Student would benefit from ABA (exclusive of discrete trial training) to address routine, organizational and independent functioning skills. She also recommended that Garcia-Winner's Social Thinking Curriculum be implemented as the

primary social skills training method for Student, as well as other interventions to help him in his areas of challenge (ME-20).

11. Student's Team convened on December 12, 2012 resulting in the proposal of a partial inclusion program for the period from December 3, 2012 to October 28, 2013. This IEP's meeting notes reflect the Team's concerns regarding Student's inability to cope with the school environment and with being bullied. It also notes that small group settings worked best for him (ME-15). Mother accepted this IEP and placement on January 29, 2013 (ME-15).
12. In May 2013, Student was placed in a substantially separate program due to increases in challenging behaviors, aggressiveness and inappropriate comments to peers and adults. His behaviors were impacting his grades and academic progress. Student's behaviors were triggered by a change in routine and two students about whom Student had a negative perception (ME-21; Williams). Specifically, Student was easily triggered by the two students in the mainstream setting, but once in the substantially separate classroom, his interactions with those other students were nearly eliminated and he became better able to access the curriculum. Prior to entering the substantially separate classroom, Student had been unable to initiate classroom work independently and required at least two prompts to complete up to 50% of his classroom work; he displayed whining, crying, coughing head banging work refusal and non-compliance behaviors that required his removal from the classroom (ME-16; ME-17).
13. Student was placed in Ms. William's substantially separate classroom where he spent most of his academic day with three other students (ME-21; Williams). From this point forward Abington staff created a situation in which Student was isolated from other students in order to reduce triggers to Student's behaviors. Student and Ms. Williams got along "famously" (Williams).
14. Student's 2013 progress notes reflect that while Student continued to make progress, he "still required prompting to accurately sequence routines or follow complex verbal directions" (FE-2).
15. The Team reconvened on June 13, 2013 and proposed participation in a substantially separate classroom in middle school, with mainstreaming for art, chorus, history and cultural Spanish. Student also required one-to-one adult support for organization, attention, prompting, redirection, access strategies for self-control, monitoring of behavior and completing written tasks. He also required a "shadow prompt to transition throughout the day", and required cues and repetition of directions to follow classroom rules and complete assignments. This plan was accepted by Mother on June 25, 2013 (ME-16; ME-17).
16. Student started eighth grade under an accepted IEP covering the period from December 3, 2012 to October 28, 2013, as amended in June 2013. The IEP called for participation in a substantially separate program at the middle school. Student spent most of his day with four other students in Ms. Williams' substantially separate classroom where he received ELA,

math, science and life skills and he participated in field trips throughout the community (ME-21; ME-16).

17. In September 2013, the beginning of Student's eighth grade, Ms. Bazinet conducted another Functional Behavioral Assessment as part of Student's three year re-evaluation. Ms. Bazinet concluded that Student did not require a behavior intervention plan in his substantially separate classroom, but needed accommodations and full support throughout all academic areas, even when in the small group setting. In mainstream classrooms he required consistent prompts to stay on task, complete all classwork and follow classroom directions. Certain antecedents such as: lengthier writing assignments, interactions with two specific students or changes in routine without warning caused Student anxiety and he was unable to access strategies to deal with these situations. He was observed to have made progress overall in the substantially separate setting. Ms. Bazinet continued to recommend that Student's IEP reflect his need for the use of ABA as a methodology (ME-21).
18. On October 1, 2013, as part of his three year re-evaluation, Student participated in a psychoeducational evaluation at READS Collaborative (READS). John C. Dorn, M.A., Psy.D., the evaluator, noted marked improvement in Student's behavioral interactions including smiling and engaging in eye contact, when compared to the previous evaluation in 2010. Motorically, he displayed atypical motor mannerisms (hand flicking) and substantial gross motor awkwardness. He was in a constant, restless and fidgety motion during the evaluation but he put good effort into the evaluation (ME-22).
19. Dr. Dorn's evaluation revealed Student's cognitive abilities to fall within the average range as per the WISC-IV IQ indices (Verbal Comprehension score of 99/ 47th percentile, Perceptual Reasoning 98/ 45th percentile, and Working Memory 99/ 47th percentile), with weaknesses in processing speed (a score of 59, placing him in the .3 percentile) (ME-22; FE-2). However, Student presented with

atypical social and emotional reciprocity and interpersonal skills consistent with Autism/ PDD that has interfered with his academic functioning in a variety of ways. In combination with his attentional and anxiety issues, he has trouble working independently and completing tasks independently even of a very simple nature. He becomes obsessed with interfering thoughts, such as Star Wars or things that have happened to him in the past. He can still have catastrophic reactions which impacts his day with meltdowns and inappropriate/ aggressive behavior. These difficulties emerge due to the SSD/ PDD; however, there may be an underlying Anxiety Disorder if not Mood Disorder that accounts for some of the anger and difficulty coping (FE-2).

On the WIAT-III he scored in the above average range in the Pseudoword Decoding subtest and in the average range for all other academic areas except that weaknesses were noted in the timed completion portions of the simple math calculations subtest, in which he scored in the below average range (math fluency addition, subtraction and multiplication) (FE-2; ME-17; ME-22). Dr. Dorn recommended further exploration of psychopharmacological

intervention to help Student address anxiety, and continued outpatient individual psychotherapy with a family component. Academically, he found that Student was responding well to the small group, substantially separate classroom with a low teacher-to-student ratio (ME-22).

20. On October 7, 2013, the READS' Speech and Language Assessment was conducted by Sandra Donnelly, M.A., CCC-SLP. Ms. Donnelly administered the Clinical Evaluation of Language Fundamentals-4 (CELF-4), the Test of Problem Solving 2 Adolescent (TOPS-2) and she reviewed the Student's IEP, the psychoeducational evaluations and interviewed Mother (ME-23).
21. On the Understanding Spoken Paragraphs subtest of the CELF-4, which "assesses receptive and expressive language skills on isolated tasks and in content", Student displayed weaknesses in his ability to interpret and accurately respond to questions from spoken paragraphs. He also had difficulty interpreting, making predictions and drawing inferences from the stories he read. His greatest area of weakness was displayed on the Test of Problem Solving 2 (TOPS 2) where Student displayed decreased problem solving and reasoning skills, with scores in the below average range, demonstrating Student's difficulty interpreting information and using critical thinking skills. Specifically, he had great difficulty organizing his thoughts in a sequential manner so as to understand the perspective of others and to be able to interpret and integrate appropriate solutions to every day social issues. According to Ms. Donnelly, this deficit impacts Student's relationship with his peers as he lacks the ability to interpret inferences, demonstrate maturity in his behavior, or state solutions to problem behaviors. Ms. Donnelly recommended continuation of speech and language therapy services that focused on problem solving and on social pragmatic skills (ME-17).
22. The Functional Behavioral Assessment conducted at READS indicated that Student required full support with task initiation, staying on task, following classroom direction and completing tasks throughout all academic areas regardless of whether he was in the mainstream or in a small group setting. It was noted that he struggled with "getting the big picture" and that his deficits in social reasoning impacted him behaviorally. When his anxiety increased he was unable to access strategies to help him cope with the situation and make reasonable decisions. His social-emotional and behavioral issues prevented him from accessing the curriculum within a regular education classroom setting (FE-2; ME-17).
23. The FBA further showed that Student had improved emotionally and psychologically, having gained better control over his emotions. He responded well to positive reinforcement, limit setting and cueing, and was cooperative. He however, continued to be triggered by internal thoughts over which he became obsessed and anxious at times with catastrophic reactions which caused inappropriate aggressive behaviors or meltdowns. The READS evaluation suggested an underlying Mood Disorder or Anxiety Disorder as the causes for Student's difficulties with coping and anger. Furthermore, his scores in the Test of Problem Solving 2 (TOPS2) identified Student's ability to interpret information and use of critical thinking skills as his greatest weaknesses. Problem solving and reasoning skills deficits impacted his ability to interpret and integrate proper solutions to everyday social situations (ME-17).

24. The record contains numerous email communications between Father and various school teachers, service providers and administrators inquiring as to Student's educational (academic, behavioral, social and emotional) status starting in March 2013. Numerous instances of Father's dissatisfaction with the lack of communication or timeliness of the communications are also contained in Father's Exhibits (FE-9).
25. On October 16, 2013, in response to Father's email inquiring about Student's behavior in school, Julie Bazinet emailed Father reminding him that as had been discussed in May of 2013, all communication regarding Student would occur through Ms. Williams (FE-9). The previous day, Father also communicated with Roseanne Kurposka (Middle School Principal), regarding not having received communication with respect to an upcoming Team meeting at the same time as Mother (FE-9).
26. Student's Team convened its annual IEP review meeting on November 4, 2013 at which time the Team also discussed the results of the READS evaluation and determined Student's continued eligibility (Culbert).
27. Student's Team reconvened on or about November 13, 2013, to develop an IEP for the remainder of eighth grade and the beginning of ninth grade, and "determine placement" (ME-28). Student would be transitioning into high school during the 2014 –2015 school year. The attendance sheet reflects the following invitees: Julie Bazinet (behavioral consultant), Mathew Campbell (social studies teacher who was excused from attending), Sherrill Culbert (Team chairperson), Tatyana Faynberg (school psychologist), Lori Loughlin (occupational therapist), Kelley McLaughlin (speech and language pathologist), Stephanie Reynolds (guidance counselor), Father, Student, Mother, Mary Williams (special education liaison/ Student's special education teacher) (ME-27).
28. Following the November 2013 Team meeting, Student continued to be found eligible to receive special education services. Abington proposed an IEP covering the period from November 2013 to October 2014, offering Student participation in a partial inclusion program in Abington's middle school for the remainder of eighth grade and at Abington High School (High School) for the beginning of ninth grade. On December 3, 2013, Mother accepted the proposed program and placement only through the remainder of eighth grade, but rejected the proposed High School placement (ME-17).
29. On January 4, 2014, Ms. Culbert emailed Father informing him that she had not sent him the Team meeting notes but had made a copy for him and would be forwarding the notes shortly (FE-9).
30. Student's Team reconvened on January 10³, 2014, to discuss Abington's earlier proposed placement at the High School for ninth grade, which placement had been rejected by Mother (Williams, McLaughlin). Abington's staff explained that at the high school they could mimic the same program Student was accessing in middle school where Student would be

³ The Team meeting notes incorrectly dated this meeting January 9, 2014 (ME-17).

able to go to the school psychologist's, the nurse's or the guidance counselor's offices when he had a social emotional meltdown. Student would have three supported academic classes (math, ELA and biology), two academic support classes for work completion and two co-op classes (life skills and pre-vocational), and he would receive one-to-one support throughout the day. All related services would continue to be provided at the high school, that is: once per week social emotional skills development, once per week speech and language and a weekly fifteen minute consultation by a behavioral psychologist (ME-17; ME-3). During the meeting, Mother disagreed with some of the representations of what academic support would be like for Student based on her visit and discussions with individuals at the High School (ME-3; Mother). The Team also discussed concerns regarding transitions and the high level of cueing and support required by Student (as evidenced during a science class observation) to stay on task and to complete tasks. During the meeting Mother again noted her reluctance to have Student attend Abington's High School as it would be inappropriate for Student to reach his post-secondary education goals and the family wished to focus on Student's social-emotional issues which could be best addressed in a therapeutic environment (ME-17). The Vocational Program was also discussed but rejected by Parents who were interested in having Student continue on to college after high school (Williams, Mother, Father).

31. At the meeting Mother noted that she had gone on line looking for out-of-district options, such as the Higashi School, Walker School and The League School (McLaughlin, Mother). After reviewing these and several other programs, she concluded that the League School appeared to be the most appropriate option for Student and she would be visiting the Pathfinders' program at the League School later that day. At the conclusion of the meeting, it was clear that the South Shore Vocational Technical High School would not be appropriate for Student and because of Mother's apprehension about the High School, the Team would reconvene again to discuss placement. Julie Bazinet offered to contact Sara Ryans at the League School to meet with Mother. Ms. Ryans had previously worked with Student in Abington (ME-3). Mother's thoughts and findings regarding the League School would later be discussed at a Team meeting a week and a half later (ME-4). The Team further recommended that Parents connect with outside adult agencies (ME-17).
32. On or about January 10, 2014, Mother visited the League School finding the students there to be engaged and happy. The classes offered a low student to teacher ratio and the schedules balanced sensory breaks and academic courses. Mother found that occupational therapy and speech and language services were offered on a "push-in" as opposed to a pull-out basis, and were embedded in the curriculum (ME-4; Mother). Mother was most impressed with the program and she opined that Student would not be "out of place" as his behavioral issues would be addressed as part of his day (ME-4; Mother). Sara Ryans, who had been Student's speech and language pathologist in Abington for sixth, seventh and the beginning of eighth grade prior to working at the League School, noted that she would like Student to visit the program. Based on her knowledge of Student and the League School, she opined that Student would excel at the League School (ME-4; Ryans).
33. Several members of Abington's Team also visited the League School to gain a better understanding of the program and assess its appropriateness for Student. Ms. Williams, Ms.

Bazinet, Ms. Faynberg, Ms. McLaughlin and Ms. Culbert visited on January 17, 2014. They toured the facilities, viewed the classrooms, viewed evidence of students' work, observed lunch, the school's store at which students work or purchased items, and met with Ms. Ryans to discuss the Pathfinders program and different models available. The staff was unable to observe the classroom to which Student would be assigned on that day because they were on a field trip (Williams, McLaughlin).

34. Abington's staff learned that the entire staff at the League School is trained in Social Thinking Curriculum, and that speech and language interventions are embedded throughout the students' day, across settings. (Williams, McLaughlin). Ms. Williams asked numerous questions as to how the program would be able to meet Student's needs, goals and interests, including his need for a full year program (*Id.*).
35. Ms. Bazinet noted that the work hanging on the hallways and in the classrooms were age appropriate, in depth and demonstrated each student's unique abilities. She and Ms. Faynberg were most concerned about Student's need for social/emotional and behavioral interventions to be embedded throughout the day. They were informed that League uses SCERTS Model (ME-4; ME-5), and Ms. McLaughlin testified to being most impressed with the fact that social components were built into every interaction, and observed that everyone (including the secretary) was interacting appropriately with the students, implementing social goals appropriately. She was also impressed with the push-in model for service provision and noted that at the League School Student would not require a one-to-one aide throughout the day. Ms. McLaughlin opined that from a speech and language standpoint, the League School would be appropriate for Student (McLaughlin).
36. Ms. Ryans further explained that academically the school focused on the Massachusetts Frameworks Curriculum and that students receive ELA, math, history and social studies daily. At the high school level, the Pathfinders Program has two groups of approximately five or seven students each, and the students move between the two classrooms throughout the day. All the teachers hold Massachusetts certification or are working toward their certification, but not necessarily in their subject area. There is also a speech and language pathologist, an occupational therapist, a social worker and behavioral support staff supervised by the clinical staff who work with the students. The staff arrives at 7:30 a.m. and meets weekly to discuss the students' progress, goals and to plan for the week. The staff engages in professional development twice per month (Ryans).
37. Ms. Ryans testified that most of the students at the League School work just below grade level but Student can access grade level curriculum (Ryans).
38. The League School is a Massachusetts Department of Elementary and Secondary Education approved special education school which offers specialized instruction to children on the autism spectrum (Ryans). There are 28 students total, 26 of which are boys. Students are grouped by age and grade. In the high school, there is one ninth grader, two tenth graders, one twelfth grader and three eleventh graders (Ryans).

39. Specifically, the Pathfinders Program is geared toward students who wish to receive a high school diploma and go on to college, or a vocational program. Individual attention and instruction is delivered through small classes with a high teacher to student ratio. The academic program can be designed around the particular student's needs as the student population dictates what they work on; the staff would be able to provide biology, earth science and algebra 2 to Student. Every week students go on community trips and they work with job coaches. Social Thinking is used by all of the staff to teach social skills across settings (Ryans). Students are offered the opportunity to participate in music, drama, arts, culinary arts and student counsel activities during the school day (Ryans).
40. Abington's staff left the League School feeling very positive about the program and the prospect of Student attending starting in July 2014 (Williams).
41. Student's Team reconvened on January 21, 2014, to discuss Student's placement and Mother's visit to the League School. Roseanne Kurposka, Mother, Julie Bazinet, Mary Williams, Kelley McLaughlin, Sherrill Culbert and James Robbins (who arrived at the meeting late), were present (ME-1). The meeting notes also mention that Tanya Faynberg, the middle school's school psychologist, was also present. Father called shortly before the meeting stating that because of car trouble he could not attend (ME-6). This meeting date had been planned around Father's schedule and availability as discussed during the previous January 2014 meeting (ME-10). Abington decided to proceed with the meeting even though Father could not attend (Culbert, Kurposka).
42. A staff member meeting note states that the purpose of the meeting was to address Mother's rejection of the Abington High School placement and discussion of the "trip to the League School" (ME-2). The Team compared Abington's High School program with the League School, noting the difficulties Student would encounter at the high school managing transitions given that it was a much bigger setting than the middle school (ME-6). The foreign language requirement would have to be waived for Student (ME-6). Each of the Team members that visited the League School shared their views and opinion on the school and its appropriateness for Student especially in addressing his social/ emotional needs (Williams, Bazinet, McLaughlin, Mother).
43. Several meeting notes from the January 21, 2014 Team meeting state Mother's opinion that the League School would be fantastic for Student in that it offered a full day, small group, high teacher to student ratio program which incorporated the social piece throughout the day; this in contrast with what she characterized as the damage control approach offered at Abington during the previous year which required Student to receive one-to-one support throughout the day. During the visit to the League School, even the admissions director and the secretary were observed using social thinking with the students (ME-4). Ms. Williams supported the League School placement and she testified that Ms. Culbert was in agreement as to the appropriateness of the program at the meeting. According to Ms. Williams, while Student had made academic progress at Abington, he had not progressed effectively in the behavioral, social emotional realms, his areas of greatest need (ME-6; Williams, Bazinet). The notes further reflect that Mother would be taking Student to visit the League School

(ME-5). Concerns regarding Student's travel time were raised but Mother opined that Student would do well with the commute to the League School as he did well in cars so long as he had his DS and music (ME-6; Mother).

44. At the League School, the teachers meet every morning for an hour, before the start of the school day, to discuss the students' needs. At the time of the visit, there were thirteen (13) students in the high school level (one would be graduating the summer of 2014). When ready, students can transition back to their district school to help maintain their connection with their communities. It was noted at the January 21, 2014 Team meeting that Student had no connections with his home community, so making a connection with any community would be important for him (ME-6).
45. The Team felt positive about Student attending the Pathfinders Program at the League School, and Ms. Bazinet noted her desire that Student be able to begin at the League School in July 2014 (ME-4; ME-6). Ms. Kurposka explained that the District's out-of-district coordinator would be in contact with Parents regarding out-of-district placement for Student. During the meeting, Ms. Kurposka texted back and forth with Dympna Thomas (Assistant Superintendent in Abington) regarding the Team's discussions about out of district placement and the League School (ME-2). Ms. Kurposka noted that once the process was turned over to the out-of-district coordinator, the out-of district coordinator would discuss a start date with the parents (ME-4).
46. The Team meeting notes prepared by Ms. Culbert, Team Leader, note that decisions regarding out of district placement are made at the administrative level not by the Team, once the Team determined that out of district placement should be considered (ME-6; Culbert). Dympna Thomas, testified that once the Team made the final decision to move the Student out-of-district, the determination regarding actual placement was not the result of a vote but rather a meeting between Parents and the out-of-district coordinator (Thomas).
47. At the conclusion of the January 21, 2014 Team meeting it was the understanding of Mother, Ms. Williams, Ms. Bazinet and Ms. McLaughlin that the Team had agreed that Student would attend the League School for high school (Mother, Williams, Bazinet, McLaughlin). No other potential out-of-district placement was discussed and Ms. Culbert did not mention at the meeting that the high school or any other placement was being considered (Williams). Ms. Culbert and Ms. Kurposka disagreed that a determination regarding the League School had been made (Kurposka, Culbert).
48. According to Ms. Williams, it is typical for the Team Leader to collect Team member notes at the conclusion of a meeting and summarize them. This however, was not Ms. Culbert's practice (Culbert). The official Team meeting notes are the ones prepared by the Team Leader and it is those which are then distributed to the parents, not the individual notes taken by the Team members (Williams). Ms. Culbert testified that she did not receive meeting notes from any of the Team members after the January 21, 2014 meeting and therefore, she only forwarded her notes to Father and Mother (Culbert). The additional meeting notes were kept by Ms. Williams and Ms. Bazinet in their files until they were requested and later

produced for Hearing, except that Ms. Williams handed her notes to Mother prior to that (Culbert, Williams).

49. On January 21, 2014, Ms. Culbert emailed Father informing him that Mother and the Team had met to discuss their impressions of League School for Student. She further noted that

To consider this out-of-district option, our next step is to involve our out of district coordinator, Pat Cosgrove. She will be contacting you to discuss [Student's] and your thoughts about his future planning/placement etc. (FA-9).

50. Abington communicated with Patricia Cosgrove, an out-of-district consultant to Abington, (Cosgrove). Student's records were forwarded to her after January 28, 2014 (SE-2). Thereafter she spoke to teachers and Parents about Student. Ms. Cosgrove is responsible to make out-of-district recommendations to Teams and she also oversees students in their out-of-district placements (Cosgrove).

51. Ms. Cosgrove was not present at any of Student's Team meetings up to this point but she did not support the League School for Student as she opined that the program was better suited for students pursuing a more vocationally oriented path, and it was her understanding that students at the Pathfinders program possessed lesser abilities than Student. Ms. Cosgrove did not investigate the Pathfinders Program specifically for Student, but she had consulted for another student who attended Pathfinders and had spoken to colleagues about it. She favored the SSEC because it offered a curriculum that more closely resembled a public high school, as did Dr. Thomas (Cosgrove, Thomas). As such, Ms. Cosgrove communicated her desire that Parents consider the SSEC for Student to Ms. Williams and later to Parents (Cosgrove, Williams).

52. Tanya Faynberg, Abington's Middle School psychologist, opined that Student needed to be challenged and was capable of accessing grade level curriculum when prompted to stay on task (Faynberg).

53. On February 3, 2014 Father communicated with Principal Kurposka to complain about Ms. Williams' failure to communicate and refusal to forward her meeting notes to him. Father expected to receive a copy of everything communicated or forwarded to Mother, and he became upset when Ms. Williams informed him that Mother had not received the meeting notes following the January 21, 2014 Team meeting and had therefore requested the notes taken by Ms. Williams. Ms. Williams suggested that Father should request the official meeting notes from Ms. Culbert, the Team Leader (FE-9)

54. In an email communication between Mother and Ms. Cosgrove, dated February 10, 2014, Mother specifically stated her opinion that the SSEC was not a better alternative than the League School, and therefore she refused consent to having Student's records forwarded to the SSEC for evaluation of his candidacy for admission (ME-25).

55. On February 23, 2014, Father emailed Mother informing her that he had released Student's records to the SSEC and that he would let her know when a parental visit to the program was arranged, as Student had been found to be an appropriate candidate for their program (ME-26). Mother testified that Father had used an email address she no longer used and therefore she had been unaware of the communications between Ms. Cosgrove and Father. Father's email had been forwarded to Mother by Student's teacher. Mother replied via email that: 1) Father was aware that at the most recent Team meeting the Team had agreed on the League School for high school, 2) she again noted that she had objected to forwarding Student's records to SSEC, and 3) she stated that Ms. Cosgrove, had agreed after speaking with Student's teachers that SSEC was not the best option for Student. Ms. Cosgrove replied that Mother's third statement to Father contained incorrect information. Ms. Cosgrove made no comment as to Mother's other two statements (ME-26).
56. Ms. Cosgrove observed Student in Abington and discussed concerns with Ms. Williams that Student was being kept in a bubble, that the staff was highly modifying his program, and creating a very restrictive setting for him in order to help him access his education. When walking down the hallways, the paraprofessional was using her body to shield Student from others. He required a great deal of prompting to get anything done and he exhibited great difficulty with transitions. Ms. Cosgrove advised Abington that it should not wait until September 2014 to place Student but rather should move forward with out-of-district placement forthwith (Cosgrove).
57. On March 3, 7, 11, 2014 Father and Ms. Williams exchanged emails regarding Student's performance in school and Student's assignments. Ms. Williams had been designated by Abington as the sole contact person for Father regarding Student (FE-9).
58. Ms. Cosgrove wrote to Ms. Williams on March 27, 2014, informing her that she anticipated sending home a Placement Page within a week, calling for Student to attend SSEC and asking her not to tell Student until it was definite. Student would be in a single classroom with three other peers and a male teacher (Adam Tiro). She further noted that when Student was ready he could transition into the SSEC high school. Ms. Cosgrove noted that Parents had been complimentary of Student's Team (SE-1; Cosgrove).
59. Ms. Cosgrove had little contact with Mother and Father and her interactions were limited to Student's out-of-district placement (Cosgrove).
60. On March 31, 2014, Ms. Cosgrove wrote to Parents to inform them that SSEC had found Student appropriate and that Mary Scott (SSEC Program Director) had supported a visit by Student. As such, she requested that Parents agree on a day and time to take Student to SSEC for a visit. Mary Williams would be assisting with the transition process. Ms. Cosgrove further wrote

I have Mary sending you a placement page for a May 1 start. This will give Mary 3 days post the April vacation to assist [Student] with the transition and my goal is for [Student] to have a restful vacation. We

can all talk about when to tell him his transition date. I do not want him to feel anxiety over the transition (or as little as possible) – so we can ask Mary to give us guidance in this regard.

61. Anticipating acceptance of the proposed placement, on April 2, 2014, Ms. Cosgrove emailed an N1 to Ms. Williams, and asked her

to prepare a Placement Page stating South Shore [Educational] Collaborative (sep[arate] day school) with a start date of May 1, 2014 – current IEP end date (SE-3).

62. Ms. Cosgrove emailed again on April 2, 2014, asking that the N1 and placement page go out that same date (SE-3).

63. As directed by Ms. Cosgrove, on April 4, 2014, Abington issued a placement page offering Student placement at the South Shore Educational Collaborative and noting that

The Team met and determined an out-of-district placement within the least restrictive environment was an appropriate recommendation for [Student] – to initiate on May 1, 2014.

The district considered programs available to [Student]. The recommendation for South Shore Collaborative is being made due to the least restrictive nature of the program as well as the fact that it gives [Student] an opportunity to attend South Shore High School within the next year and / or as recommended by the Team.

Teacher, behavior therapist, and counselor observations, as well as parent input were reviewed by the team as well as by the district consultant/specialist in out of district placements.

[Student] is not making effective progress in his current school setting at the middle school. The Team is hopeful that, with a change of school placement, student will enjoy attending school and be able to focus his attention on his academic and social success.

The Team will discuss placement for the fall of 2014 no later than June 30, 2014 (ME-7).

64. On April 7, 2014, Ms. Williams emailed Ms. Culbert regarding Student's N1 and stating

I filled out the N1 with [Ms. Cosgrove's] form and added the placement page –they went in the mail today and you have a copy on your desk (SE-3).

65. Mother rejected the SSEC placement offer on April 7, 2014 (ME-8). On April 10, 2014 Father accepted the placement offer (ME-9). Prior to accepting the SSEC placement, Father had not visited the League School, and had not discussed said school with any of the January 21, 2014, Team members. All of his information regarding said school was obtained on line (Father).

66. In mid-April 2014, Father wrote several emails to Peter Schafer (Superintendent of Schools), Dymrna Thomas, and Principal Kurposka, complaining about the lack of communication between the middle school staff and himself (FE-9).
67. On or about April 16, 2014, Ms. Cosgrove communicated with Father with respect to Student visiting the SSEC (Cosgrove).
68. Mother wrote to Dymrna Thomas on April 15, 2014, asking that Ms. Thomas clarify for Father the misunderstanding regarding Student's placement at the SSEC. She noted that during the January 21st Team meeting the Team members had discussed the appropriateness of the League School for Student and stated that all Team members, including Ms. Culbert and Ms. Kurposka, had voiced their approval of said placement. Thereafter, Mother had received the placement page calling for SSEC which she had rejected after visiting it as suggested by Ms. Cosgrove. Mother again noted her desire for Student to attend the League School as agreed to by the January 21, 2014 Team members (ME-10). Ms. Thomas opined that Ms. Williams and Ms. Bazinet had not told the whole truth about the Team's determination favoring a League School placement. She testified that when she confronted Ms. Williams, the latter had simply stated that she was doing what was best for Student (Thomas).
69. On April 28 and 29, 2014, Father emailed several members of Student's middle school team seeking clarity regarding Student's transition into SSEC, homework at the middle school and Student's overall school performance at the middle school (FE-9).
70. Student began attending the SSEC's Mini-School, a program specializing in educating students diagnosed with Pervasive Developmental Disorder, Autism Spectrum Disorder, Developmental Delays and language delays on May 1, 2014 (FE-7; Gattine). The Mini-School offers services to students between five and twenty two years of age, using a multidisciplinary approach including ABA, positive behavioral programming, language-based instruction, augmentative and assistive technology, incidental teaching and sensory integration (FE-7). The social emotional components are embedded in the classroom instruction (Gattine). The instruction can be delivered in one-to-one, small group or large group settings with a high staff to student ratio, and it follows the Massachusetts Curriculum Frameworks for English Language Arts, mathematics, science and technology, social science and history. Support services such as occupational and physical therapy, assistive technology, speech and language therapy, music therapy, adapted physical education and yoga are offered. The school supports a strong communication model between school and home and also offers parent training and monthly family support groups. It also offers extended day and extended school year programming (FE-7). Functional life skill training is incorporated into the school day and social skills training is an integral component of the program. Vocational training is offered for students fourteen years old and older. The school is located in public school buildings in the SSEC participating towns (FE-7). No after school sports or clubs are offered. All Students within the different SSEC programs are on IEPs (Gattine, Scott).

71. Maureen Gattine, licensed BCBA, and certified special education teacher is the Assistant Program Director at SSEC. She explained that the SSEC High School resembled more of a natural setting for students and stated that as would be the case at the League School, all Abington students who complete the high school requirements at the SSEC, receive their diplomas from Abington and can attend the graduation ceremony at Abington (Gattine).
72. Progress reports addressing work completion, behavior, social/ emotional, communication/ social language and transition goals, completed by Student's teacher, Adam Tiro, show that Student was doing well in all areas, although he had not yet faced difficult situations, and had not had a need to use coping skills to deal with conflict or frustrating situations as none had arose (FE-5).
73. Student's SSEC report card dated June 18, 2014 shows that Student obtained a 90 in biology, 91 in ELA, 92 in American history 1, and 95 in algebra, life skills, reading and gym (FE-5)
74. On June 10, 2014, Ms. Cosgrove held her first official Team meeting for Student as out-of-district coordinator and program overseer (Cosgrove).
75. The parties participated in a Pre-hearing Conference on July 1, 2014.
76. On July 17, 2014, Abington issued a new placement page for Student calling for him to attend the League School in Walpole, Massachusetts, for the period from September 2 to October 14, 2014 (ME-11). Mother accepted this placement on July 20, 2014 (ME-12).
77. Following an observation during the admissions process and a review of the records, Student was officially accepted to the League School on August 19, 2014 (ME-13). Ms. Ryans was present during Student's visit/ interview at the League School. He was provided with a schedule to attend biology, ELA and lunch. Student appeared happy and interacted well with his peers (Ryans).
78. Emails between Father and Pat Connolly, Admissions Coordinator at the League School dated August 20, 2014, suggest Father's distrust of open communication with both of Student's Parents. In her response, Ms. Connolly assured Father that going forward he would be included in all communications (FE-8).
79. Mary Scott, certified in special education, is the Program Director at the SSEC Mini School. Ms. Scott is responsible to supervise all of the staff and programs for the Mini School. According to her there was no difference between a private school placement and a collaborative such as SSEC (Scott).
80. Ms. Gattine testified that Student was doing very well at SSEC and had not exhibited any of the target behaviors appearing in his Abington behavioral plan. She is in Student's classroom twice per week for sixty minutes but does not provide direct services to Student. Ms. Gattine reviewed the data collected on Student's behaviors using the Antecedent/

Behavior/ Consequence (ABC) plan and the information collected regarding appropriate responses. Student's behaviors collected during the first sixteen days of school showed a rise in behavioral incidents when compared to the incidents noted between May and June 2014. Ms. Gattine attributed this increase to Student's participation in a larger class (Gattine).

81. At the SSEC Student meets with his social worker clinician to address social skills using Social Thinking and focusing on what are expected and unexpected behaviors. He receives all of his academics in one classroom which is headed by a teacher, assisted by two paraprofessionals. There are four other boys in Student's class, all presenting with Autism Spectrum Disorder, except for one who has not yet been diagnosed (Gattine).
82. Katie Faria, Student's Teacher at SSEC Mini School and Casey Savage⁴, Social Worker, SSEC, both testified that Student was doing well at SSEC (Faria).
83. Ellen Bernier, Speech and Language Pathologist, SSEC Mini School, met with Student twice per week for social pragmatics since May 2014. She noted that Student was making steady progress, appeared comfortable and was beginning to develop relationships. He however continued to need support in class and would require participation in a structured summer program (Bernier).
84. Student's Team convened at the SSEC on October 8, 2014, to discuss his program (FE-2). Present at the meeting were: Patricia Cosgrove, Katie Faria, Maureen Gattine, Mary Scott, Father, Mother and Student's step-father. The resulting IEP, drafted by Student's classroom teacher, clinician and speech and language pathologist targets task completion, social emotional, social behavior, communication/ social and transition goals (FE-2).
85. The data collection sheet attached to this IEP notes that at the time Student transitioned into the Mini School, the target behaviors were inappropriate comments to peers, inappropriate comments to staff, self-control in a hallway and tantrums. Within the Mini School setting, Student displayed no tantrums or inappropriate behaviors in the hallways leading to the removal of these two target behaviors from his behavioral plan. The narrative further explains that Student's inappropriate comments toward staff and peers were target behaviors the Mini School continued to work on and further noted that said inappropriate comments were usually paired with tone. The Mini School uses behavior analysis and social skills training when targeting the aforementioned behaviors noting that the behaviors occurred at low frequency and intensity and were usually followed by Student repeatedly apologizing in loud voice. (The data showed that across sixteen (16) school days Student had five instances of inappropriate tone, three (3) instances of inappropriate comments to staff and two (2) instances of inappropriate comments to peers.) The narrative notes that the antecedent to Student's behaviors include: staff asking Student to do something for which he is not ready or which he does not wish to do at that moment; and giving Student a time frame to transition into a different activity when Student knows that he is unable to finish his work (FE-2).

⁴ Ms. Savage discussed Student's group work with communication in which a Social thinking curriculum was being used (Savage).

86. At the SSEC, Student follows a classroom incentive point program in which students can earn up to four (4) behavior and academic points during academic periods and four (4) additional points for completing homework. When they earn 90 % of the points they are awarded a break and/ or receive Friday Activity time, during which they engage in the activity of their choice (FE-2). The dual benefit of the Friday Activity is that students work on social skills including body language, non-verbal cues, conversation (all of which are facilitated during the event), and they learn to build friendships (FE-2).
87. The school day at the SSEC starts at approximately 8:00 a.m. and ends at 2:00 p.m. At the Mini School, Student attends a substantially separate classroom with four (4) other peers most of the day. In the fall of 2014, Student began attending an art class at the SSEC High School with paraprofessional support. In this art class there are two other SSEC High School students who present with varying disabilities. The student population at SSEC consists of special education eligible students with varying disabilities (FE-2).
88. On October 14, 2014, Elizabeth H. Brady, M.Ed., BCBA, observed Student at the SSEC Mini School. Her report notes that Student worked quietly, he volunteered to read his work, requested additional time to finish a task, and participated in the activities in each of his classes. Ms. Brady noted that he gave “a very detailed and well-written response” to an inquiry by his teacher which called for Student to state his favorite music and provide a list of favorite artists. During the art period, he engaged in conversation with the social worker while waiting for the teacher, and later, while painting a mural, Student engaged in conversation about the technical aspects of painting and was observed to be highly focused and paint very carefully. During break time, Student engaged in a card game with another student during which their comments related to the game they were playing (ME-24).
89. Ms. Brady noted that ABA principles had not been implemented in Student’s classroom. She had also not observed teaching of “socially significant behavior, in particular communication and social skills” such as reading body language, engaging in reciprocal conversation, maintaining eye contact, and other social skills. According to her, there was no facilitation of interactions or conversations between the students (ME-24). Ms. Brady concluded that
- ...the classroom [did] not provide a learning environment that was based on the principles of Applied Behavioral Analysis. During the observation, socially significant behaviors were not addressed, data collection and analysis did not occur, and the effectiveness of teaching procedures in terms of skill acquisition, maintenance, and generalization was unclear (ME-24).
90. Ms. Gattine disagreed with portions of Ms. Brady’s interpretation of her observation of Student in his SSEC program (Gattine).
91. Student has remained at the SSEC during the pendency of this proceeding pursuant to a Ruling on Clarification of Stay Put, issued on September 11, 2014.

92. Shortly before the Hearing on October 10, 2014, Parents were informed that Student would start attending a biology class within SSEC High School, that is, South Shore High, with paraprofessional support. Students enrolled at the South Shore High are special education students with varying disabilities. The biology teacher is certified in the subject matter. As noted above, this current school year Student also attends an art class with three other students at the South Shore High (FE-6; Gattine, Scott).
93. At SSEC Student is receiving grade level curriculum in all subject areas. His classroom teacher, Ms. Faria, is certified in special education. She is assisted by a paraprofessional. At the Hearing Ms. Scott reported that Student was responding well to the program, was having no issues in class with the accommodations offered, such as extra time for work completion and frequent check-ins, and was enjoying his social skills group (Scott, Savage, Faria). With paraprofessional support prompting him to move from one task to another, he was doing well in class (Scott). According to Ms. Faria, Student had made two friends from within his program (Faria).
94. FE-6 contains numerous emails, from Katie Faria and Adam Tiro updating Parents on Student's positive weekly progress at SSEC (FE-6). Ms. Faria notes that for the 2014-2015 school year there were five students in Student's class and they all got along well. Both Ms. Faria and Mr. Tiro opined that Student fit well academically and socially (FE-6).
95. Abington continues to offer Student placement at both SSEC and the League School.

CONCLUSIONS OF LAW:

Parents and Abington agree that Student is an individual with a disability falling within the purview of the Individuals with Disabilities Education Act⁵ (IDEA) and the state special education statute⁶. The Parties also do not dispute Student's Autism Spectrum Disorder and ADHD diagnoses or his related learning deficits. Rather, they disagree as to the out-of-district placement to which Student is entitled.

Abington asserts that SSEC can properly offer Student a free, appropriate public education (FAPE)⁷ and Abington states that it is the least restrictive environment in which to educate Student. However, Abington also recognizes that Student's needs can be met at the League School, consistent with some of the Team members' determination in January 2014. As such, it has issued two placement pages, one calling for Student's placement at the SSEC and another calling for Student's placement at the League School. Abington asserts that despite any procedural transgression, Student has not been denied a FAPE. Father argues that SSEC is the appropriate and least restrictive placement for Student because of the opportunities for participation at the SSEC high school. Said placement is consistent with the IEP issued by

⁵ 20 USC 1400 *et seq.*

⁶ MGL c. 71B.

⁷ MGL c. 71B, §§1 (definition of FAPE), 2, 3.

Abington in April 2014. Mother disagrees, favoring placement at the League School, consistent with the January 21, 2014 Team determination.

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 needs⁸ in a way "reasonably calculated to confer a meaningful educational benefit"⁹ to the student.¹⁰ Additionally, said program and services must be delivered in the least restrictive environment appropriate to meet the student's needs.¹¹ 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.¹² Educational progress is then measured in relation to the potential of the particular student.¹³ At the same time, the IDEA does not require the school district to provide what is best for the student.¹⁴

⁸ 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").

⁹ See *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) where the court explicitly adopted the meaningful benefit standard.

¹⁰ *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 he child that result from the child's disability") (quoting 34 C.F.R. 300.39(b)(3)). See also *Lenn v. Portland School Committee*, 998 F.2d 1083 (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.").

¹¹ 20 USC 1412 (a)(5)(A).

¹² 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").

¹³ *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

Since both Parents in the case at bar filed Hearing Requests, they must each prove their cases by a preponderance of the evidence. Consistent with *Schaffer v. Weast*, 126 S.Ct. 528 (2005), Mother carries the burden of persuasion with respect to the original placement determination and the appropriateness of the League School for Student, and Father carries the burden of persuasion regarding the appropriateness of the SSEC for Student.¹⁵

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

The evidence supports a finding that Abington was obligated to offer Student placement at the League School consistent with the determination of the Team on January 21, 2014. In this regard Mother has met her burden of persuasion pursuant to *Schaffer*. The evidence is also persuasive that the League School would offer Student a FAPE. I note that Abington does not take the position that Student would be denied a FAPE at the League School but rather that he is already receiving a FAPE at SSEC.

Father's and Abington's assertion that in issuing a placement page calling for the League School a few months after issuing one calling for the SSEC, the dispute turned away from Abington and became a disagreement between battling parents, is only one aspect of the case. Abington's practice of making administrative determinations regarding out-of-district placements is contrary to law, as it seriously hindered Mother's opportunity to participate in the decision-making process and further disregarded the January 21, 2014, Team determination, both of which constitute significant procedural violations. In the end, Abington's procedural violations in this regard substantially altered the course of this case and exacerbated an already fragile situation between Parents. (I note that Abington later attempted to correct the situation by issuing a second placement determination, and taking the position that Student would receive a FAPE at either placement.)

The IDEA¹⁶ and Massachusetts Special Education law¹⁷ and regulations are clear that the determinations regarding an eligible student's individualized program and placement fall solely within the purview of the student's Team, as discussed below.

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.").

¹⁴ 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.")

¹⁵ *Schaffer v. Weast*, 126 S.Ct. 528 (2005) places the burden of proof in an administrative hearing on the party seeking relief.

¹⁶ See 20 USC §1414 et seq.

¹⁷ See MGL c.71B §3.

Consistent with federal standards, the Massachusetts Special Education Regulations specifically provide that

At the team meeting, after the IEP has been developed, the Team shall consider and identify needs of the student, the types of services required and whether such services may be provided in a general education classroom with supplementary aids and/or services or in a separate classroom or school. The Team shall consider all aspects of the student's proposed special education program and specify that the student's IEP and determine the appropriate placement to provide the services. The Team shall determine if the student shall be served in and in-district placement or an out of district placement and shall determine the specific placement according to the following requirements. 603 CMR 28.06(2) [Emphasis supplied].

While at Parental request a placement meeting may be held following the original determination that a student requires an out-of-district placement, nothing in the Massachusetts Regulations leaves the determination to a single individual or to school administrators as Ms. Culbert and Dr. Thomas suggested. Participant requirements at placement meetings in Massachusetts must be consistent with the requirements outlined at 34 CFR 300.116(a)(1)¹⁸, which specifically calls for the placement decision to be made

by a group of persons including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

While it is clear that Ms. Cosgrove is knowledgeable about placement options, she could not make placement determinations for Student outside the Team process. The record shows that no Team meeting was convened between January 21, 2014 and April when the placement page calling for Student to attend the SSEC was issued. As such, both Mother and Father were denied meaningful participation in the placement determination (even if Father ultimately agreed with the placement proposed by Abington).

The evidence is persuasive that following Mother's December 2013 rejection of the proposed Abington high school placement for Student Abington knew that Mother was looking for a more therapeutic type placement capable of addressing Student's social emotional issues. When the Team's discussions were suspended on January 10, 2014, Mother specifically stated that she was interested in the League School and would be viewing that program for Student later that day. The only logical conclusion from the credible evidence is that the purpose of the reconvening of the Team on January 21, 2014 was to discuss Mother's observations (and later Abington's staffs' observations) of the League School, to determine placement for Student.

¹⁸ See 603 CMR 28.06(2)(e).

While there is little disagreement (except by Ms. Kurposka and Ms. Culbert) that the early January Team had agreed to evaluate and discuss out-of-district placement for Student, this recommendation was finalized during the January 21, 2014 meeting convened specifically to discuss the League School. By then, Abington staff had an opportunity to visit the League School and discuss its appropriateness with Ms. Ryan, an individual uniquely capable of assessing the program for Student as she had been his speech and language provider in Abington for over two years. The evidence is persuasive that those present at the Team with information and experience based on working with Student supported placement at the League School. There was consensus among them, and even Ms. Culbert voiced no disagreement that the League School would be appropriate. No other placement was discussed as an option except the Abington high school, a program which in many ways would have mirrored the cocoon created for him in middle school and which program would have been inappropriate given the level of programming needed to manage Student's behaviors. Only Ms. Kurposka, Ms. Culbert and Dr. Thomas (who was not present at the meeting) supported placement of Student at the high school. While the high school may have been able to manage Student and offer him appropriate academic options, it would not have been able to promote his effective progress from a social/ emotional and independence standpoint, something critical for Student at that time. Therefore, Ms. Kurposka's, Ms. Culbert's and Dr. Thomas¹⁹ testimony in this regard is not credible.

Furthermore, there would have been no reason for Ms. Kurposka to text Ms. Thomas during the January 21, 2014 Team meeting but to inform her that the Team had agreed that Student required out-of-district placement and that the League School had been discussed and supported by most of the Team members present. No other out-of-district option was discussed within the context of the Team meeting convened specifically to determine placement for Student.

The weight of the evidence supports a finding that Ms. Williams, Ms. McLaughlin and Ms. Bazinet genuinely supported the most appropriate program for Student. They each made recommendations based on their experience and knowledge of Student, something Ms. Cosgrove lacked at the time she suggested pursuing the SSEC. I am persuaded that Ms. Cosgrove's recommendation for the SSEC was appropriate, but her determination was made outside the Team process and was therefore, impermissible. If Abington wished to explore additional placements after the Team's determination that the League School was appropriate for Student, a Team meeting had to be convened *prior* to issuance of a placement page calling for a placement which had never been considered and discussed by Student's Team. The procedural violations in the instant case seriously hindered Parents' opportunity to participate in the decision making process regarding the delivery of a FAPE to Student, and as such cannot be considered *de minimis*.²⁰ 20 USC §1415(f)(3)(E)(ii). Therefore, I find that

¹⁹ I further note that Dr. Thomas testified that she had never before testified at a BSEA Hearing. Administrative notice of *BSEA # 11-5932*, decided in August 2011 by Hearing Officer Sara Berman, however, names Dr. Thomas as the sole witness testifying on behalf of the school district. As such I give no weight or credibility to her testimony.

²⁰ 20 USC §1415(f)(3)(E)(ii) authorizes Hearing Officers to find that a student has been denied a FAPE if the procedural violation:

Mother has met her burden of persuasion that the January 21, 2014 Team entered a determination that Student required out-of-district placement at the League School.

Furthermore, since Abington is not challenging the appropriateness of either program and has issued placement pages for both, I can only conclude that the League School would be able to provide Student a FAPE. Therefore, in consideration of the credible testimony regarding the League School offered by Ms. Ryans, and Abington's decision to issue a placement page for placement of Student there, I conclude that Mother has also met her burden of persuasion that the League School is an appropriate placement for Student.

I next turn to Father's claims. The record is undisputable that as a result of Abington's disregard for the Team's determination and issuance of the SSEC placement, matters became more complicated. Once Father accepted the SSEC placement, Abington had little option but to place Student there and defend against Mother's claims filed shortly thereafter. It also found itself in the unusual position of having to defend its decision to issue a second placement page calling for The League School.

Father's main concerns were that there had been lack of sufficient communication between him and Student's lead teacher Ms. Williams, and that he had not participated at the Team meeting in January when the League School was discussed. He reasoned that since he was part of the Team, the Team could not have made a determination regarding Student's placement without him.

While it is correct that Parent was not in attendance at the Team meeting when the determination to place Student at the League School was made, his lack of participation is insufficient to overturn the Team's determination. First, it is possible that he would have been in agreement with the League School placement decision when made. But even if he had not been in agreement, the Team had reconvened for the specific purpose of discussing placement, and more specifically, the appropriateness of League for Student. Father's dissent would have been heard and the basis for the dissent discussed, but ultimately, he, as Mother, is only one of the Team members and his disapproval, if not supported by the Team members, would not have been outcome determinative since he had little information about the League School even up to the date in which he accepted placement at the SSEC. The record is further persuasive that Father's decision to accept placement at the SSEC was motivated by his goal to have Student move on to college after high school, and his understanding that the SSEC was a less restrictive environment because Student could partake of the South Shore High School programs when he was able to do so. At the time, Father understood this to mean that Student would be with regular education, not just special education students.

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- (I) Impeded the child's right to a free appropriate public education;
 - (II) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parent's child; or,
 - (III) Caused a deprivation of educational benefit.

In his submissions Father has consistently argued that the SSEC program is less restrictive for Student than the League School. The least restrictive environment (LRE) requirement of the law mandates that to the maximum extent appropriate students with disabilities be educated with non-disabled students and the removal from general education settings

occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 603 28.06(2)(C).

Father is correct regarding the LRE mandate, and the academic opportunities at SSEC are more likely to lead to what both parents seek for Student, a college bound high school diploma. I note however, that there is little difference between the Collaborative Program and the League School consistent with the testimony of Ms. Scott. Both would educate Student with special education students whether in smaller or larger group settings and in both programs Student would spend the majority of his day in a small group setting composed of mostly boys most of whom have been diagnosed with Autism Spectrum Disorder. Both programs are capable of meeting Student's academic, social/ emotional and behavioral needs. Both use Social Thinking curriculum and ABA methodologies to address social goals and behaviors. Both offer social group, counseling and other related services opportunities. The League School however, offers more extra-curricular activities and community outing opportunities during the school day than SSEC.

The evidence is persuasive that Student has been receiving a FAPE at the SSEC where he is beginning to be included in larger, more mainstream like settings, at least as of October of this year. In addition to his academic needs, the SSEC program has also been able to address Student's social/ emotional issues appropriately and communication with Parents can only be described as excellent. Father has therefore, met his burden of persuasion that Student has received a FAPE at the SSEC and would be likely to continue to do so were Parents to agree to allow him to remain there. Nevertheless, the SSEC placement was the result of a procedurally tainted process and cannot be allowed to stand.

Father's only other complaint in his Hearing Request was that the middle school lead teacher, Ms. Williams, had failed to communicate effectively with him regarding his son. This issue has been formally addressed internally by Abington and therefore, for purposes of this Decision, I need not address it further.

In conclusion, while both Parents have met their burden of persuasion regarding the appropriateness of the League School and the SSEC for Student, Abington's initial procedural due process violations cannot be ignored and as such Student is entitled to placement at the League School for the remainder of his IEP period and the 2014-2015 school year, including the summer program. However, mindful of the progress he has made at the SSEC the Parties are encouraged to consider whether it makes sense to move him half way through the semester. I however, leave this determination solely in Mother's hands.

ORDER:

1. Abington shall place Student at the League School for the remainder of his IEP period and through the 2014-2015 school year inclusive of summer programming.

By the Hearing Officer,

Rosa I. Figueroa

Dated: December 3, 2014

December 3, 2014

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

ABINGTON PUBLIC SCHOOLS

**BSEA # 1407763 &
BSEA # 1502743**

BEFORE

**ROSA I. FIGUEROA
HEARING OFFICER**

**ANDREW NORTON, ESQ., ATTORNEY FOR MOTHER
FATHER, PRO-SE
MARY ELLEN SOWYRDA, ESQ., ATTORNEY FOR
ABINGTON PUBLIC SCHOOLS**