COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals
Bureau of Special Education Appeals

In Re: Richmond Consolidated School District ("RCS") **BSEA#: 14-10881**

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 c. 71B), the state Administrative Procedure Act (MGL c. 30A) and the regulations promulgated under these statutes.

A Hearing was held on November 3, 4, 5 and 25, 2014, in Springfield, MA before Ann F. Scannell, Hearing Officer. Those present for all or part of the Hearing were:

Mark[1]	Student
Mark's Mother	
Mark's Step-father	
Gordon Parker	Consulting Psychologist, RCS
Jenerva Strock	Special Education Director, RCS
Ward Johnson	School Psychologist, RCS
Sharon Kokoefer	Occupational Therapist, RCS
Monica Zanin	Principal, RCS
Geoff Bell-Devaney	Special Education Teacher, RCS
Rachel Kanz	Teacher, RCS
Kristen Valenti	Teacher, RCS
Dominic Bondini	School Adjustment Counselor, RCS
David Purvis	Teacher, RCS
Judith Imperatore	Transition Specialist
Joanne Odato-Staeb	Autism Consultant
Fred Dupere	Attorney, RCS
Matthew Engel	Attorney, Parents
Deborah Lovejoy	Court Reporter
Lisa Regensburger	Court Reporter

The official record of the Hearing consists of documents submitted by the parents and marked as Exhibits P-1 through P-19; documents submitted by the school district and marked as Exhibits S-1 through S-42; and, approximately three and one half days of

[1] Mark is a pseudonym used for confidentiality purposes in publicly available documents.

oral testimony. Written closing arguments were submitted on December 15, 2014 and the record closed on that date.

INTRODUCTION

Mark is a 14 year old boy who resides with his mother and step-father in Richmond. Mark is currently a residential student at the Middlebridge School in Narragansett, Rhode Island. His parents unilaterally placed him at Middlebridge in July of 2014. Prior to that, Mark attended the Hillside School in Marlboro, MA, pursuant to a unilateral placement, from September of 2013 until April of 2014. Before being placed as a residential student at the Hillside School in September of 2013, Mark attended the Richmond Public Schools. Mark has been diagnosed with Asperger's Syndrome, Obsessive Compulsive Disorder ("OCD"), Generalized Anxiety Disorder, Attention Deficit Hyperactivity Disorder ("ADHD"), Sensory Processing Disorder and a Math Disorder.

On June 30, 2014, Mark's parents filed a Hearing Request with the Bureau of Special Education Appeals ("BSEA"). It is the parents' position that the June 2014-June 2015 Individualized Education Program ("IEP") does not provide Mark with a free, appropriate public education ("FAPE") in the least restrictive environment. Further, the IEP cannot be modified to provide Mark with a FAPE in the least restrictive environment, and the Middlebridge School is an appropriate program. The parents are also seeking reimbursement for their costs of placing Mark at the Middlebridge School.

Richmond filed a response to the parents' Hearing Request on July 10, 2014. It is Richmond's position that the proposed IEP does provide Mark with a FAPE in the least restrictive environment, and the Middlebridge School is not an appropriate program for Mark. Further, the parents are not entitled to retroactive reimbursement for their costs associated with placing Mark at the Middlebridge School for the 2014-2015 school year.

This matter was originally scheduled for Hearing on August 4, 2014. On July 23, 2014, RCS requested a postponement of the Hearing which was granted. The matter was rescheduled for Hearing on September 16, 18 and 22, 2014. On August 7, 2014, the parents requested a postponement of the Hearing, which was granted. Following a conference call on August 29, 2014, the matter was rescheduled for Hearing on November 3, 4 and 5, 2014. The Hearing went forward at that time. A fourth day of Hearing was added on November 25, 2014 and the Hearing concluded at that time.

ISSUES

The issues to be decided in this matter are:

1. Whether the June 2014 to June 2105 IEP was reasonably calculated to provide Mark with a FAPE in the least restrictive environment;
2. If not, can the IEP be modified to meet this standard;
3. If not, is the Middlebridge School an appropriate program; and,

4. Are the parents entitled to be reimbursed for their costs of unilaterally placing Mark at the Middlebridge School for the 2014 to 2015 school year.

FACTS

Mark is a 14 year old boy who resides with his mother and stepfather[2] in Richmond. He has been diagnosed with Aspergers, ADHD, anxiety, OCD, motor delay and sensory difficulties, and most recently with a math disorder. These disabilities negatively affect Mark's ability to access the curriculum. As a result Mark is eligible for special education services and is serviced by an IEP. (Exhibit P-1)

Mark has been a student in the Richmond Public Schools since 1st grade. He underwent a psychological evaluation with Jennifer Bergeron, Psy.D. in the summer of 2012. Dr. Bergeron diagnosed Mark with Asperger's Syndrome at that time. When he returned to school in September of 2012, the TEAM met to discuss the evaluation, and Mark was found eligible for special education services. Prior to being found eligible for special education services, Mark had been serviced by a 504 Accommodation Plan. (Exhibits P-6 and S-4 and testimony of Strock and parent)

Mark's initial IEP from 2012 to 2013 called for direct occupational therapy services to address his sensory deficits and direct social skills services with the school adjustment counselor. Mark was fully included in the regular education classroom which consisted of no more than 12 students. This IEP and placement was fully accepted by the parents. (Exhibit S-4 and testimony of parent and Strock)

During the late fall and early winter of 2012, there were several behavioral incidents that caused some concern. In October, Mark retaliated against a student by hitting the student in the face with a lunchbox. Two months later, on two separate occasions, Mark used inappropriate language while speaking to a female peer. Mark also spoke inappropriately to a substitute teacher and was given a two day in school suspension. Several weeks later, Mark inappropriately approached a student. (Exhibit S-28 and testimony of Strock and Bondini)

As a result of these incidents, the school suggested that Mark undergo a risk assessment. David Boyer, Ph.D conducted the assessment in late January 2013.
Dr. Boyer opined that Mark's problematic behaviors were best understood in the context of his Aspergers and his difficulty understanding social expectations. Dr. Boyer recommended school based strategies and interventions to address his Aspergers, continuation in individual counseling, participation in a social skills group, continuation of a mentoring relationship and ongoing psychiatric consultation. The TEAM met on April 11,

[2] Mark has lived with his mother and stepfather for several years. His mother and stepfather were present for the Hearing. Mark's biological father was not present for the Hearing and only sees Mark occasionally. Therefore, for purposes of this decision, Mark's mother and stepfather will be referred to as the parents.

2013 to review Dr. Boyer's testing. No changes were made to Mark's IEP at that time. Per Dr. Boyer's suggestions, however, the school adjustment counselor, Mr. Bondini, had discussions with Mark's outside therapist about the use of common language, and the Special Education Director, Jenevra Strock began reeducating the staff about Autism Spectrum Disorder ("ASD") and Asperger's Syndrome. (Exhibits P-3 and S-29 and testimony of Strock and Bondini)

Also, during the fall and winter of 2012, Mark's parents became concerned with Mark's interactions with other students and raised questions about whether Mark was being bullied at school. They did not file any formal reports of bullying with the school. Ms. Valenti, Mark's math and homeroom teacher, did not observe any incidents of bullying. She did, however, advise Mark's mother that she would be in the hallways during transitions to monitor Mark's peer interactions. No other staff received any reports of bullying. (Testimony of Zanin, Bondini, Strock, Valenti and Mark's stepfather)

During the winter and spring of 2013, Ms. Valenti reported to Mark's mother that Mark was struggling in class since returning from winter break. She thought it was due to his inconsistency with school attendance. Ms. Valenti noted that Mark's attention was lacking and he was requiring more assistance in class. Mark's mother reported that there was an increase in Mark's OCD behaviors at home, increased anxiety at home, including separation anxiety and some assaultive behaviors at home. The school adjustment counselor, Dominic Bondini, worked with Mark's outside therapist on strategies to lower Mark's anxiety.[3] (Exhibit P-18 and S-40 and testimony of Valenti, Bondini, Johnson and Strock)

In May of 2013, Mark was hospitalized at the Franciscan Children's Hospital due to his increased anxiety and OCD symptoms. Mark's separation anxiety from his mother had escalated and he was missing time from school. There was no mention of any school related issues. Mark remained hospitalized for 10 days. Upon discharge, it was recommended that he move to a step down program and increase his passes to home and school. Mark's parents drove him to the step down program but Mark did not attend the program because of concerns with the location of the program. (Exhibits P-8 and S-30 and testimony of Mark's stepfather, Strock and Johnson)

Shortly thereafter, Mark's parents provided Richmond staff with a note from Mark's treating psychiatrist recommending that Mark remain out of school. Richmond provided home-based tutoring to Mark for the duration of the school year. Over the summer, Mark attended the Trails Carolina Wilderness therapy program in North Carolina. (Exhibits P-16 and S-30 and testimony of Strock and Mark's stepfather)

While Mark was attending the wilderness program, he was evaluated by Sarah Lewis, Ph.D. Dr. Lewis reiterated Mark's diagnoses of ADHD, OCD and ASD. Her testing re-

[3] Mr. Bondini has known Mark since first grade and has worked with him for several years. As part of his work with Mark, Mr. Bodini worked closely with Mark's outside therapists and providers. (Testimony of Johnson, Strock and Bondini)

vealed that Mark's overall intellectual abilities were solid and his language based academic abilities were strong. She noted that Mark did not present with gross impairments in language often seen in youth with ASD. She further noted that in an appropriate environment, Mark demonstrated relational skills that are better developed than many adolescents with ASD. (Exhibit P-5 and S-18)

Dr. Lewis' opined that Mark would benefit most from continued intervention in a nurturing and structured residential environment, that specialized in working with adolescents diagnosed with ASD, ADHD and related difficulties. She recommended direct teaching of social skills, participation in a social skills group, regular individual therapy, family therapy, specific accommodations such as untimed tests and frequent breaks and opportunities to build self-esteem in activities and areas of interest. The discharge summary from the wilderness program recommended that Mark transition to a boarding school where he could receive 24 hour academic and emotional support. (Exhibits P-5, S-18 and S-32)

On August 21, 2013, the parents notified Richmond that they were unilaterally placing Mark at the Hillside School. An annual IEP meeting was held on September 5, 2013 to draft a new IEP. (Exhibit S-40 and testimony of Mark's stepfather and Strock)

Mark attended the Hillside School until the end of April 2014. The Hillside school staff were concerned with continuing Mark's placement because of Mark's inconsistency in class attendance and difficulty with focus. Before a final decision was made, the parents removed Mark from the Hillside School. (Exhibit S-40 and testimony of Johnson)

Shortly thereafter, Mark's physician provided a note to Richmond to resume home-based tutoring. Richmond provided this tutoring through the end of the school year. (Exhibit S-40 and testimony of Mark's stepfather and Strock)

A TEAM meeting was scheduled for June 13, 2014 to discuss Mark's three year reevaluation. At the meeting Mark's parents agreed to a transition assessment and an occupational therapy assessment. The school also proposed a math evaluation and the parents subsequently consented. The parents requested that the school draft an IEP while the assessments were pending and a discussion was held regarding Mark's needs and appropriate services for him. The TEAM felt they had enough information to determine if Mark remained eligible for special education services and also to draft a partial IEP. (Dr. Lewis' testing revealed math deficiencies and Ms. Valenti also recognized Mark's difficulties in math so direct math instruction was part of this IEP).(Exhibits S-5, S-14 and P-11 and testimony of Strock, Johnson and Mark's stepfather)

Richmond sent a proposed IEP to the parents on June 24, 2014. This IEP, with effective dates of June 13, 2014 to June 12, 2015, called for direct occupational therapy services, direct services with the school adjustment counselor, pullout math instruction with a special education teacher, group social skills and services to address anxiety with a behaviorist. Extended school year services were proposed, as well as numerous classroom and testing accommodations. The proposed placement was a full inclusion pro-

gram. Mark would have the same teachers from the prior year because they looped with the students for two years. There would be 9-11 students in his class. Mark's parents rejected the services and placement, and informed Richmond on June 23, 2014, that they were unilaterally placing Mark at the Middlebridge School. (Exhibits S-6 and S-13 and testimony of Strock, Johnson, Valenti, Bell-Devaney, Kanz and Purvis)

On June 24, 2014, a transition assessment was conducted by school psychologist, Ward Johnson, Ph.D.. Dr. Johnson found no additional barriers that would affect Mark's ability to work selling cars or work in a job requiring strong written language skills. The primary barriers to making a successful transition to adulthood continued to be his difficulties with anxiety, OCD behaviors, weakness in math and social issues due to his ASD. (Exhibits S-15 and P-13 and testimony of Johnson)

On June 28, 2014, an occupational therapy assessment was conducted by the school occupational therapist, Sharon Kokoefer. The results revealed deficits in fine motor coordination and sensory issues. Ms. Kokoefer recommended that Mark use a graphic organizer and a binder system and become involved with chores, meal preparation, crafts and sports. (Exhibit S-19 and testimony of Kokoefer)

On June 30, 2014, the parents filed a Hearing Request with the BSEA. A TEAM meeting was held on July 21, 2014 to discuss the occupational therapy testing and the transition assessment results. At the meeting, it was also noted that Mark would undergo a math evaluation. As a result of the meeting, an updated IEP was proposed. This IEP reflected the results of these assessments but no substantive changes were made. On August 19, 2014, the parents rejected the IEP services and placement. (Exhibits S-7 and S-12 and testimony of Strock, Johnson and Mark's stepfather)

A math evaluation was conducted by Kevin Tobin, Ph.D on August 7, 2014. The testing revealed weak math fluency and below average math problem solving and application skills. Dr. Tobin opined that Mark would require evidence based math intervention to improve his math deficits. (Exhibit S-16 and testimony of Strock and Johnson)

Another TEAM meeting was held on September 11, 2014. The parents elected not to attend the meeting. Dr. Tobin's report was reviewed and the TEAM concluded that Mark had a specific learning disability in math. The TEAM also considered two recommendations made by Judith Imperatore, M.Ed, made when she met with some of the school staff on August 28, 2014.[4] (Exhibits S-9 and S-11 and testimony of Strock, Johnson, Imperatore and Mark's stepfather)

An amended IEP was sent to the parents on September 11, 2014. This IEP added a math goal and updated Mark's disabilities to include a math disability. Other minor changes were also made. The service delivery grid remained the same as the original

[4] Ms. Imperatore was retained by Mark's parents to conduct a transition assessment and as part of her assessment, Ms. Imperatore reviewed Dr. Johnson's transition assessment and made two recommendations to the Richmond staff she met with on August 28, 2014.

proposed IEP. The parents rejected the IEP services and placement on September 25, 2014. (Exhibits S-9 and S-11 and testimony of Strock, Johnson and Mark's stepfather)

During the summer of 2014, a comprehensive transition assessment and vocational evaluation was conducted by Judith Imperatore, M.Ed. and her associate, Joanne Odato-Staeb. This was a private assessment initiated by Mark's parents. Ms. Imperatore used various instruments in compiling her assessment, including a life skills inventory, personal learning style inventory, transition planning inventory, vocational preferences inventory, transition to work inventory and a self-determination/self-advocacy checklist. She also conducted interviews and viewed the program at Richmond on August 28, 2014 and the Middlebridge program sometime in August. Exhibit P-17 and testimony of Imperatore and Odato-Staeb)

On October 4, 2014, Ms. Imperatore and Ms. Odato-Staeb completed their report. The first time the Richmond staff saw this report was when they met with Attorney Dupere to prepare for this Hearing. The report was included in the parents' exhibit binder. This report was not shared with the TEAM prior to the Hearing.[5](Exhibit P-17 and testimony of Strock, Parker and Johnson)

DISCUSSION

It is not disputed that Mark is an individual with a disability falling within the purview of the Individuals with Disabilities Act ("IDEA"), 20 USC 1400 *et seq*. and the Massachusetts special education statute, MGL c. 71B. The IDEA was enacted "to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education, employment and independent living."[6] FAPE must be provided in the least restrictive environment. Least restrictive environment means that, "to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."[7]

Mark's right to a FAPE is assured through the development and implementation of an individualized education program ("IEP").[8] An IEP must be custom-tailored to address a student's "unique" educational needs in a way reasonably calculated to enable him to

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[5] For reasons explained in the Discussion section, this report and testimony of Ms. Imperatore and Ms. Odato-Staeb) were not considered in the process of rendering this Decision.

[6] 20 USC 1400(d)(1)(A). See also 20 USC 1412(a)(1)(A); *Mr. I ex. Rel. L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1 (1st Cir. 2007)

[7] 20 USC 1412(a)(5). See also 20 USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c)

[8] 20 USC 1414(d)(1)(A)(i)(I)-(III); *Honig v. Doe*, 484 U.S. 305 (1988); *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982)

receive educational benefits.[9] A student is not entitled to the maximum educational benefit possible.[10] Similarly, the educational services need not be, "the only appropriate choice, or the choice of certain selected experts, or the child's parents' first choice, or even the best choice."[11] The IDEA further requires that special education and related services be designed to result in progress that is "effective."[12] Further, a student's level of progress must be judged with respect to the educational potential of the child.[13]

Massachusetts special education regulations provide that specially designed instruction and related services described within the IEP must be sufficient to "enable the student to progress effectively in the content areas of the general curriculum."[14] Massachusetts also requires that the special education services be designed to develop a student's educational potential.[15]

An IEP is a snapshot, therefore the IEP must take into account what was, and was not objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.[16] The critical inquiry is whether a proposed IEP is adequate and appropriate for a particular child at a given point in time.[17]

As to the parents unilateral placement of Mark at the Middlebridge School, the IDEA and accompanying regulations allow parents to enroll their child in a private school and seek retroactive reimbursement for the cost of the private school if a school district fails in its obligation to provide a FAPE to a student with a disability.[18]

The parents must also show that the private school was appropriate. A private school placement is considered appropriate if the education provided by the private school is "reasonably calculated to enable the child to receive educational benefits."[19] The First Circuit clarified the standard for private placement, holding in *Mr. I v. Maine School Administrative District No. 55*, 480 F.3d 1 (1st Cir. 2007), "…a private placement need provide only *some element* of the special education services missing from the public alternative in order to qualify as reasonably calculated to enable the child to receive educational benefit. Nor must the placement meet every last one of the child's special educa-

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[9] *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir.1993)
[10] *Rowley*, 458 U.S. at 197
[11] *G.D. Westmoreland Sch. Dist.*, 930 F.2d 942 (1st Cir. 1991)
[12] 20 USC 1400(d)(4); *North Reading School Committee v. Bureau of Special Education Appeals*, 480 F. Supp.2d 479 (D.Mass. 2007)(the educational program must be reasonably calculated to provide effective results and demonstrable improvement in the various educational and personal skills identified as "special needs")
[13] *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F.3d 18 (1st Cir. 2008)
[14] 603 CMR 28.05(4)(b)
[15] MGL c.71B; 603 CMR 28.01(3)
[16] *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983 (1st Cir. 1990)
[17] *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir. 1993)
[18] 20 USC 1412(a)(10)(C)(n), *Sch. Comm. of Burlington v. Dep't. of Educ.*, 471 U.S. 359 (1985)
[19] *Florence County School District Four v. Carter*, 510 U.S. 7 (1993)

tion needs. But the reasonableness of the private placement necessarily depends on the nexus between the special education required and the special education provided."

There is no dispute as to Mark's eligibility for special education services. The only dispute in this matter is whether the most recent IEP proposed by Richmond offers Mark a FAPE in the least restrictive environment. The parents, as the party seeking relief in the instant case, have the burden of persuasion.[20] It is their burden to show that the IEP proposed by Richmond will not allow Mark to make effective progress; that is, that the IEP was not reasonably calculated to provide Mark with a FAPE in the least restrictive environment. Further, the parents must show that the proposed IEP cannot be modified to meet that standard.

As with eligibility, there is also no dispute as to Mark's needs. Mark's anxiety and OCD can increase to the point where he is unavailable for learning. His social skills deficits contribute to his difficulty with peer relationships and sometimes produce inappropriate behavior. Additionally, Mark struggles with certain math abilities. Richmond has proposed an IEP that will, in their opinion, address Mark's deficits and provide him with a FAPE in the least restrictive environment. Mark's parents believe that the proposed IEP is lacking and will not provide Mark with a FAPE, and that the Middlebridge School is the appropriate placement for Mark. After a careful review of the testimony and the documentary evidence, I find that the parents have not met their burden.

Federal and state special education law dictate that in order to determine whether a particular IEP is reasonably calculated to provide a FAPE to the student, one must take into account the information that was available at the time the IEP was promulgated. In this particular case, at the time the IEP was promulgated Mark had not been a student in the Richmond schools for over a year. Richmond had not evaluated Mark since June of 2011 and had no information from the Hillside School, where Mark and been unilaterally placed by his parents, although Richmond had requested information from the Hillside School.

The information that was available to the TEAM at the time the June 2014 to June 2015 IEP was promulgated, included Dr. Boyers' evaluation, an evaluation from Dr. Lewis that was conducted when Mark was attending the Trails Wilderness Program in North Carolina, information from Mark's parents and the information the Richmond staff had from working with and teaching Mark during the years he was a student in the Richmond public schools.

Although Mark was scheduled to undergo a three year reevaluation at the time the IEP was proposed, his parents were reluctant to have more evaluations done because they felt that Mark had already undergone numerous evaluations. After discussion, the TEAM concluded that they had enough information to determine whether Mark remained eligible for special education services and the types of services Mark needed to

[20] *Schaffer v. Weast*, 546 U.S. 49, 62 (2005)

make effective progress. The TEAM also agreed that an occupational therapy evaluation and a transition assessment were warranted, but per the parents' request, a partial IEP would be promulgated at that time pending these evaluations.

The proposed IEP accurately identified Mark's disabilities and the nature of their impact on Mark's ability to access his education. The service delivery grid included consultation by a behaviorist once a week for 60 minutes to assist Mark's parents and consultation twice a week for 60 minutes to the Richmond staff. Direct services included occupational therapy, twice per week for 30 minutes, a daily 15 minute check-in with the school adjustment counselor, a 45 minute session with the school adjustment counselor per week to work on anxiety and social issues, 60 minutes per week with the behaviorist for direct social skills training and pullout math with a special education teacher for 45 minutes, 4 times per week. The IEP also contained several accommodations including but not limited to extended time, chunking assignments, frequent breaks and frequent check-ins. Mark would participate in an extended school year and a staff person would be assigned to keep an eye on him during unstructured times. Mark would be in a full inclusion program in a classroom of 9-10 students co-taught by a regular and special education teacher.

Richmond also incorporated into the propose IEP many of the recommendations made by Dr. Lewis and Dr. Boyer who had most recently evaluated Mark. These recommendations included social skills training, a nurturing and structured environment, positive behavioral approaches, chunking strategies, and extended time. In developing this IEP Richmond also relied on past experience with having educated Mark for several years prior. In addition, Richmond solicited information from the Hillside School where Mark was a student from September 2013 to April 2014.[21] They also solicited information from Mark's parents and were more than willing to work with them to adjust the proposed IEP in order to provide Mark with a FAPE in the least restrictive environment. I was impressed with Richmond's cooperative effort and flexibility in drafting this IEP. The District's responsiveness was not surprising, however, given the testimony and documentary evidence that revealed a caring staff that was totally available to Mark's parents and Mark during the time Mark was a student in the Richmond Public Schools.

All the information available to Richmond was reviewed and considered in promulgating this IEP. When additional information was received, TEAM meetings were held to review the new information and incorporate it into the IEP. This process occurred twice and resulted in the final draft of the proposed IEP on September 11, 2014. While this final draft IEP was not substantially different from the June draft, it did, however, incorporate the additional information that was gathered and an updated Transition Planning Form to reflect the staff's meeting with the transition specialist.

It was readily apparent through the testimony that Richmond staff were diligent in drafting this IEP and made significant efforts to propose an IEP that would allow Mark to

[21] Information was not received from Hillside until July so the TEAM considered that information at the next IEP meeting on July 21, 2014.

make effective progress. Further, the Richmond staff were persuasive in their testimony that they would be able to provide these services to Mark. They had taught him before he left Richmond schools. He had made effective progress in school during this period. He would have the same teachers again if he returned to Richmond.

In rejecting this IEP, the parents did not specifically comment on the proposed services, nor did they explain the basis for rejecting these services during their own testimony at Hearing. Instead, Mark's parents argue that Mark needs a residential placement in order to be provided with a FAPE. They are relying on Dr. Lewis' report and the recommendation of the Wilderness Trails summer program to support their argument that Mark needs a residential placement.

The parents are correct that Dr. Lewis recommended a residential placement for Mark. Dr. Lewis, however, did not testify at the Hearing. She issued a report after evaluating Mark on one occasion in July of 2013 when he was attending the Trails Wilderness program in North Carolina. Dr. Lewis never spoke with any of the Richmond staff, never received nor requested any written information from Richmond about their program, never observed Mark in any school setting and never reviewed the proposed IEP. Accordingly, Dr. Lewis' opinion that Mark "would benefit most from continued intervention in a nurturing and structured residential environment, which specializes in working with adolescents diagnosed with ASD, ADHD and related difficulties," lacks support and credibility.

Mark's parents additionally argue that because Mark is making progress at the Middlebridge School, which is a residential school, and wasn't making progress at the Richmond Schools when he left in the spring of 2013, Mark can only receive a FAPE through a residential placement. Unfortunately, the evidence does not bear out this argument. Mark was making effective progress at the Richmond Schools as evidenced by the credible testimony of the Richmond staff, his grades and his MCAS scores. The Richmond staff did testify that following the 2013 Christmas break, Mark was having difficulty staying focused and consistently remaining in class and was eventually hospitalized. This evidence, however, does not necessarily support the need for a residential placement. The fact that Mark had an episodic increase in anxiety after a school vacation and problems focusing in class is not sufficient evidence to prove that the proposed IEP is not reasonably calculated to provide Mark with a FAPE. Nor is the fact that he was hospitalized. The records from the Franciscan Children's Hospital reflect that Mark was hospitalized due to his increase in anxiety at home and specifically his separation anxiety. Dr. Johnson and Ms. Strock credibly testified that Mark's mother reported to them that Mark's anxiety and OCD behaviors had increased at home and he was exhibiting assaultive behavior at home, and the Richmond staff testified that although Mark was having increased difficulty in the classroom, he was still making effective progress. The Franciscan discharge report recommended that Mark receive more passes to attend school with no indication that Mark's increase in anxiety was school-related. Additionally, the Hillside School, which is a residential school, reported that Mark was having

the same difficulties attending in class and staying in class within their residential setting.[22] The parents presented no evidence that provided a nexus between Mark's difficulty focusing in class and class attendance, and his need for a residential placement in order to receive a FAPE.

Finally, Mark's parents are relying on testimony and documentary evidence from transition specialist, Judy Imperatore, and autism consultant, Joanne Odato-Staed to show that the proposed IEP was not reasonably calculated to provide a FAPE to Mark. The parents engaged Ms. Imperatore's and Ms. Odato-Staed's services in the spring of 2014. A report of their findings was completed on or about October 4, 2014. This report was never provided to Richmond. Richmond had no opportunity to conduct a TEAM meeting to review the report and make any changes to the IEP. Richmond staff testified that they never received the report, and the first time they viewed the report was when their attorney showed them the parents' exhibit binder.

By not providing this report to Richmond, the TEAM process could not be fully implemented. By all accounts, the TEAM would have convened to review this report in the same manner it had convened to review other reports and information that was presented to them. To allow the parents to rely on the testimony and report of Ms. Imperatore and Ms. Odato-Staed to attempt to prove that the IEP was not reasonably calculated to provide a FAPE to Mark, would circumvent the TEAM process, violate the special education laws and prejudice the school district. I, therefore, have not given any weight to the testimony of Ms. Imperator or Odato-Staed or their respective report.

The parents have not presented sufficient evidence to meet their burden of proof to show that the June 2014 to June 2015 proposed IEP is not reasonably calculated to provide a FAPE to Mark in the least restrictive environment. The persuasive and credible evidence shows that Mark's ASD, OCD, ADHD and math disabilities negatively impact his ability to access the curriculum and the proposed IEP appropriately addresses these disabilities to allow Mark to make effective progress. The proposed IEP contains measurable goals that address his math weakness, his social deficits and his anxiety. Mark will receive direct special education in math several times per week, occupational therapy twice a week to address his sensory issues, daily check-ins with the school adjustment counselor, Mr. Bondini (who over several years of working with Mark has established a wonderful rapport with him), a weekly session with Mr. Bondini to directly address his social deficits and a weekly session with a behaviorist to address his anxiety and group social skills. Furthermore, Mark will be one of 9-11 students in the inclusion class that will be co-taught by a regular education teacher and a special education teacher. Mark will also have the benefit of several classroom and MCAS accommoda-

[22] Dan Leaventhal, the Dean at the Middlebridge School, testified at Hearing that Mark was making progress there. However, no teacher testified and Mark had only been a student at Middlebridge for a few short months at the time of Dean Levanthal's testimony. Further, no documentary evidence was presented to support Dean Levanthal's testimony. This testimony is not sufficient to meet the parents' burden of persuasion to show that the proposed IEP is not reasonably calculated to provide Mark with a FAPE.

tions to address his organizational, anxiety and ADHD related deficits. Finally, Mark will participate in an extended year program to address any potential regression. All of these services will be provided within the least restrictive environment with his peers.

I find that the proposed IEP is reasonably calculated to provide Mark with a FAPE in the least restrictive environment. The parents have not met their burden of persuasion. I would, however, encourage Richmond to conduct a more comprehensive transition assessment as it would likely contribute valuable information with respect to on-going programming for Mark. I would also encourage the TEAM to discuss wrap around services that may be beneficial to Mark, including the potential for after school services.

Since I find that the proposed IEP is reasonably calculated to provide FAPE in the least restrictive environment, it is not necessary to address the question as to whether the IEP can be modified to meet the FAPE standard or whether the Middlebridge School is appropriate.[23] Further, since the proposed IEP is reasonably calculated to provide Mark with a FAPE in the least restrictive environment, the parents are not entitled to reimbursement of costs associated with unilaterally placing Mark at the Middlebridge School.

ORDER

The June 13, 2014 to June 12, 2015 IEP is reasonably calculated to provide Mark with a FAPE in the least restrictive environment.

So Ordered by the Hearing Officer,

_____
Ann F. Scannell
Dated: January 6, 2015

[23] Having found that the IEP is reasonably calculated to provide Mark with a FAPE in the least restrictive environment, it is not necessary to determine whether the Middlebridge School was an appropriate placement. Therefore, it is not necessary to include information and testimony about the Middlebridge School in this Decision.