

JULY 28, 2015

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

DECISION

IN RE: MANSFIELD PUBLIC SCHOOLS

BSEA #1507326

BEFORE

SARA BERMAN

HEARING OFFICER

MARY ELLEN SOWYRDA, ATTORNEY FOR THE SCHOOL
PARENTS, PRO SE

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

BUREAU OF SPECIAL EDUCATION APPEALS

In Re: Mansfield Public Schools

BSEA # 1507326

DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Massachusetts special education statute (M.G.L. ch. 71B), the Massachusetts Administrative Procedure Act (M.G.L. ch. 30A), and the regulations promulgated under these statutes. This Decision is being issued on the basis of written submissions without a hearing pursuant to Rule XII of the *Hearing Rules for Special Education Appeals*.

The Student in this case (Student) is an eight-year-old rising fourth grader who carries a diagnosis of Autism. Student has received special education services under an IEP from Mansfield Public Schools (Mansfield or School) since first grade. The parties agree that Student requires extended school year (ESY) services pursuant to the requirements of 603 CMR 28.05.

Parent filed a Request for an Expedited Hearing on May 13, 2015 seeking an order finding Mansfield's proposed ESY program for summer 2015 inadequate to meet Student's needs. Parent seeks an order directing Mansfield to fund a summer 2015 placement for Student at The Bridge Center, which is a private summer program selected by Parent.

In its Response to Parent's Hearing Request, the District argues that its proposed ESY services for summer 2015 would provide Student with FAPE because they are reasonably calculated to prevent substantial loss of Student's skills and/or substantial difficulty in relearning skills.

The BSEA denied Parent's request for an expedited hearing and assigned a non-expedited hearing date of June 17, 2015. On May 29, 2015 the Hearing Officer conducted a conference call with the parties during which Parent requested that a decision be issued without a hearing under Rule XII of the BSEA *Hearing Rules*. In an Order dated June 1, 2015 the Hearing Officer memorialized the Parent's request, directed the School to report whether or not it would agree to proceed without a hearing, and advised the parties that by proceeding in this matter they would "waive the right to present the sworn oral testimony of witnesses, to cross-examine witnesses called by the opposing party, to present rebuttal testimony, and to have the Hearing Officer make findings regarding the credibility and persuasiveness of witness testimony."¹ By a letter dated June 2, 2015 the School agreed to a decision without a hearing pursuant to Rule XII. On June 9, 2015, after a second conference call, the Hearing Officer issued an order directing the parties to

¹ See Order issued by Hearing Officer on June 1, 2015.

file all proposed exhibits by June 12, 2015 and all objections to exhibits by June 17, 2015. The Order further provided that the parties could file brief explanatory memoranda that would be considered as argument but not as evidence.

The record in this case consists of Parent's exhibits A through O (hereafter P-A through P-O) and School's exhibits 1-23 (hereafter S-1 through S-23) as well as memoranda from each party. Parent filed objections to parts of the School's memorandum on June 17, 2015 and the record closed on that day.²

On July 3, 2015 a Conclusion and Order was issued in advance of a full decision. That Conclusion and Order is attached to this Decision as Exhibit A and is incorporated in full.

ISSUES PRESENTED

The issues to be determined in this case are the following:

1. Whether the IEP and/or placement that Mansfield has proposed for Student's ESY program for summer 2015 is reasonably calculated to provide Student with a free, appropriate public education (FAPE) in the least restrictive environment by being reasonably calculated to prevent substantial behavioral regression during that period;
2. If not, whether the IEP and/or placement can be modified to provide Student with FAPE as defined above;
3. If the School's proposed ESY program is not appropriate and cannot be made appropriate, whether the Parent's proposed ESY placement at The Bridge Center is appropriate for Student.

POSITION OF PARENT

During the 2014-2015 school year, Student experienced significant emotional dysregulation, primarily anxiety, at least partially because Mansfield provided an inadequate ESY program during the summer of 2014 as well as inappropriate reductions in service during Student's stressful transition to third grade. In order to succeed in Mansfield's proposed partial inclusion placement for fourth grade, Student needs to regain her emotional equilibrium and recover her ability to self-regulate over the summer. For this purpose, Student needs a consistent, full-day, full-summer therapeutic recreational program to implement her social-emotional IEP goals.

Mansfield's proposed ESY program is not calculated to provide Student with FAPE because it is a one-size-fits-all program that is not designed to address Student's unique needs stemming from her autism. The proposed 5-week program is too short in duration, entails too

² On June 18, 2015 the School submitted a June 12, 2015 report from a Functional Behavioral Assessment (FBA) completed by Mansfield. Parent objected to inclusion of this report as an exhibit both because the Team had not yet reviewed the report and because she disagreed with certain portions of it. The Parent's objection is sustained and the FBA report is not included in the record.

many transitions, and lacks the direct Occupational Therapy (OT), speech/language and ABA services that Student needs to prevent the undisputed, well-documented social, emotional and behavioral regression that Student experiences during even short breaks from school. On the other hand, the Parents' proposed ESY program operated by the Bridge Center would meet Student's needs by providing individualized full-day, full-summer programming with a low student to staff ratio, facilitation of friendships, skill-building, and implementation of Student's behavior plan. In the context of a therapeutic recreational program, the Bridge program would address Student's social, emotional and behavioral needs.

POSITION OF SCHOOL

Mansfield's proposed ESY program is calculated to meet Student's needs by providing her with 5 hours per day, 4 days per week for 5 weeks of individualized programming based on Student's IEP. The ESY program is reasonably calculated to prevent excessive regression in Student's academic, social/emotional and behavioral functioning during the summer vacation. The School's proposed program would provide Student with services of a certified special education teacher and familiar shared paraprofessional as well as consultation by an occupational therapist to address sensory needs and "as needed" support from a school psychologist to address Student's anxiety. Student would be paired with at least one familiar peer. In addition, three weeks of the ESY program would encompass recreational opportunities in an inclusive school-sponsored day camp with the support of a special education teacher and paraprofessional. By participating in the proposed program, Student would have the opportunity to strengthen her ties to her school building and peers.

On the other hand, the parent's proposed placement at the Bridge Center is overly restrictive and unnecessary to prevent substantial regression over the summer break.

SUMMARY OF THE EVIDENCE

1. Student is a bright, friendly, happy eight year old girl who lives with Parent in Mansfield. Student's eligibility for special education services from the Mansfield Public Schools is not in dispute.
2. The Parties substantially agree on Student's profile. On standardized testing, Student has demonstrated low-average to average cognitive functioning, with high average performance in some areas. Academically, Student has functioned at approximately grade level (slightly above grade level in some skills and slightly below in others) throughout her school career. Student communicates verbally and is able to relate to adults and peers. Student has many interests, including music and animals.
3. Student was diagnosed with Autism Spectrum Disorder at two years old, at which time she began receiving Early Intervention (EI) services in speech/language, OT and physical therapy.

4. Student's autism manifests itself in social anxiety, sensory regulation difficulties and physical symptoms such as tics and hand-flapping. Parent reports that Student also has occasional difficulty communicating her needs in ways proper to the social context. (Parent's Ex. O-1)
5. Student attended the Norton Public Schools (Norton) for kindergarten (2011-2012 school year). A multi-disciplinary evaluation conducted by Norton indicated that Student had average intellectual functioning. She scored in the high average range for academic achievement in reading, written language, math problem solving and in the low average range for oral expression, numerical operations and expressive vocabulary. (Parent's Ex. A-9, A-11, A-12).
6. Despite Student's cognitive and academic strengths, testing, parent and teacher rating scales and observation revealed social/emotional struggles and difficulties with transition consistent with her diagnosis. On the teacher portion of the BASC, for example, Student was in the "At-Risk" range in the categories of hyperactivity, externalizing problems, somatization, attention problems, and adaptability, and in the "Clinically Significant" range in the categories of atypicality and withdrawal. Student struggled with attention and transitions, and needed redirection and reassurance to act appropriately. (Parent's Ex. A-9, A-11).
7. An OT re-evaluation conducted in February 2012 revealed continued weaknesses in Student's fine motor skills as well as difficulties in the areas of tactile sensitivity, auditory filtering/sensitivity, and sensory seeking behaviors. The OT report stated that difficulties modulating sensory input "may make it hard for [Student] to sit and attend in school." (Parent's Ex. A-14)
8. Student has received extended school year (ESY) services since her kindergarten year in Norton. Student's IEP from Norton dated 3/18/2012 to 3/17/2013 provided ESY services for 4.5 hours per day, 4 days per week for 5 weeks (4.5 hours x 4 days x 5 weeks) during the summer of 2012 between kindergarten and first grade. The ESY services from Norton were designed to address Student's IEP goals in speech and language, pragmatic language skills, social/behavioral skills, English Language Arts, (ELA) and mathematics, reflecting the areas of need revealed by Student's three year reevaluations. ESY services also included OT 1x30 minutes per week to address Student's fine motor and sensory issues. (Parent's ex. B-6)
9. Student entered the Mansfield Public Schools for first grade, at the beginning of the 2012-2013 school year. Initially Mansfield implemented the Norton IEP referred to above. After a Team meeting in February 2013 Mansfield issued a new IEP dated 2/6/2013 to 2/7/2014. Parent accepted this IEP and placement in full. (S-13).
10. In addition to providing for school-year services to Student in a partial inclusion placement, this initial Mansfield IEP provided ESY services for 4.73 hours³ x 4 days x 5 weeks during the summer of 2013. The 2013 ESY services were designed to address

³ Expressed in IEP as 284 minutes.

Student's IEP goals in social/behavioral skills, ELA, and mathematics. This IEP also provided 30 minutes per week each of direct OT and speech/language therapy services during the five-week ESY session. (Parent's Ex. B-5)

11. Mansfield had supported its 2013 ESY proposal with statements from Student's teacher, OT, and speech therapist to the effect that Student regressed significantly in her academic, speech/language, OT, and social/behavioral functioning after even short school breaks of one week or less. (S-18, S-19)
12. On January 29, 2014, the Team convened for an annual review of Student's IEP. The Team chair's notes from this meeting stated that Student was making "excellent progress in all academic areas," as well as "excellent gains" in speech and language skills and OT. These notes recommend a replacement of direct OT services with a consult, with supplemental work on Student's sensory needs taking place "within the school day." (Parent's ex. E-5)
13. From this meeting came the IEP dated 1/29/2014 to 1/29/2015, covering the latter portion of second grade and the first half of third grade. This IEP provided for a partial inclusion placement and contained updated speech /language, social/behavioral, ELA, and math goals. This IEP changed the predecessor IEPs by eliminating Student's OT goal. The IEP also reduced ESY services, removing OT as well as direct speech/language services from the ESY program for summer 2014. The IEP initially listed the ESY program as providing 5 hours x 4 days x 5 weeks during the summer of 2014 to address Student's social/behavioral, ELA, and mathematics goals.
14. A quarterly IEP progress report dated April 8, 2014 noted that Student "continues to make excellent progress in managing her behavior at school," though it also noted continued difficulties when routines are disrupted. The report stated that though Student was able to participate in game play with a familiar peer with direct or visual fading support, Student continued to prefer self-directed or solitary play. (S-17)
15. The parties agree that Student had successful first and second grade years at Robinson Elementary School in Mansfield. The Robinson School serves children in grades K through 2 only. After completing second grade, Robinson students transfer to the Jordan-Jackson Elementary School (JJ School) for grades 3 through 5. The Team met on May 15, 2014 to amend Student's IEP to prepare for Student's anticipated transition to the JJ School for third grade. At that meeting, School representatives on the Team recommended that for transition purposes, Student should attend the JJ School's ESY program rather than the Robinson ESY program that Student had attended in summer 2013.
16. The ESY program at the JJ School would offer Student 2 hours x 4 days x 5 weeks of services as opposed to the 5 hours x 4 days x 5 weeks of services offered at the Robinson (*i.e.*, a reduction in total hours for the summer from 100 to 40 hours). (S-8) Parent inquired as to whether Student could attend partial days at the Robinson ESY program in addition to the ESY program at the JJ so that she could keep the full complement of ESY

hours. Mansfield staff opined that such an arrangement would be confusing to Student. Ultimately, Parent accepted the amended IEP in full. This IEP ran from 5/14/14 – 1/29/15, covering the latter portion of second grade through the first portion of third grade, inclusive of summer 2014. (S-7)

17. The parties agree that Student had a difficult time transitioning from the Robinson School to the JJ School in the fall of 2014 (Parent's Ex. A-7). Student's teachers and Parent reported that Student showed increased anxiety and decreased attention following the move. In email correspondence with JJ staff, Parent reported that Student became sad in the evenings as she thought about going to school the next day. Parent further reported that while preparing for school in the mornings, Student often cried, complained of illness, and begged not to go to school. Student worried that she would make mistakes, and that teachers and classmates "hated" her. Student was so upset on some mornings that Parent had to carry her to the school bus. Any changes in routine, such as a change in bus drivers, increased Student's anxiety. Parent's consistent reassurance that Student would be safe at school, that she should try her best but did not need to be perfect, that no one "hated" her, that her teachers would care for her and keep her safe, etc. did not appear to alleviate Student's anxiety. (Parent's Ex. M-4, M-5)
18. Student's IEP progress report dated November 11, 2014 noted that Student demonstrated dysregulated behaviors leading up to and following days off from school, including long weekends and unexpected breaks. (D-2, S-17)
19. This progress report further stated that Student's inattention impeded some of her oral reading and math performance. (S-17)
20. Parent submitted a "Child's History Update" to Mansfield in conjunction with the November 2014 progress report. Parent stated that Student had shown satisfactory progress in academics, good progress in behavior, very good progress in socialization, and very good progress in self-care. Parent also noted Student's anxiety around school attendance. (S-17)
21. Mansfield conducted Student's three year reevaluation in January 2015 consisting of psychological, OT, educational and speech/language assessments. The psychological assessment revealed overall low-average cognitive functioning. Behavior rating scales showed "within normal limits" results on all areas but social skills on the Parent form. The teacher form showed "clinically significant" results in hyperactivity, anxiety, attention problems and atypicality. The school psychologist reported that Student showed signs of anxiety during testing that interfered with her performance. (Parent's Ex. A-2)
22. Student's OT evaluation reported that Student showed definite dysfunction in hearing, body awareness, balance and motion, and her total sensory system. The evaluator stated that Student's problems modulating sensory input, specifically in the areas of touch and body awareness, were affecting her performance in the classroom. The evaluator

suggested that Student “could benefit from a daily sensory diet outlined by the Occupational Therapist.” (Parent’s Ex. A-4)

23. An educational assessment completed by Student’s general education teacher noted that Student’s school anxiety and attention difficulties had impacted her learning so that Student’s progress has not been similar to that of her peers, but that Student’s progress had been consistent over her personal history. The teacher also noted that Student did not interact in a meaningful way with her classmates.
24. Student’s speech-language evaluation included a pragmatics profile. The report noted that Student displayed only a “limited understanding” of conversational rules, as “she does not maintain eye contact or make relevant contributions to a topic or interact in a structured group without being told to do so.” The report further highlighted Student’s difficulties in reading non-verbal cues such as tone of voice, gestures, and facial expressions, as well as understanding humor. (S-12)
25. Student’s IEP Team convened on February 4, 2015 to discuss the results of the three year re-evaluation. The Team chair’s meeting notes from this meeting reflected Parent’s concerns, which included Student’s ongoing anxiety, though it existed “to a lesser degree,” and a “noted regression in *standardized* testing” since Kindergarten” (emphasis in original). (Parent’s Ex. E-2) The general education teacher noted “a lot of anxiety” and that Student could become “overwhelmed.” Student’s special education teacher commented that Student was more relaxed and comfortable in a smaller setting, followed routines with minimal reminders, and participated actively, though she did require a high degree of support with tracking and comprehension. OT notes showed that Student’s attention impacted her performance. (Parent’s Ex. E-2)
26. The Team proposed a new IEP as a result of this meeting. This IEP, dated 2/4/2015 to 2/4/2016 encompassed the latter half of third grade and the first half of fourth grade, and included ESY services for summer 2015 (between third and fourth grade). The proposal for the 2015 ESY program, which is the subject of the instant hearing, called for 3 hours x 4 days x 5 weeks (totaling 60 hours) to address Student’s social/behavioral, ELA, and math goals. (S-2)
27. Parent rejected this proposed IEP in a letter dated March 22, 2015. With respect to the ESY proposal, Parent stated that Student “really suffered” when her ESY services were reduced the previous summer and requested full-day ESY services. Parent also raised concerns about Student’s heightened anxiety around school attendance and the discontinuance of OT services. (S-3),
28. Subsequently, Parent sought a private speech-language evaluation from Julie Meelia, MS-CCC-SLP and Director of Blue Dragonfly Children’s Therapy. In a letter dated May 25, 2015 Meelia recommended that Student “may need a full day, socially supported, therapeutically supported program with as few transitions as possible” for ESY services. This letter was written before Meelia had the chance to observe Student. The full evaluation report was not available to the parties at the deadline for submission of

documents, has not been considered by the Mansfield Team, and is not part of the record in this matter.

Program Proposed by the School

29. In response to Parent's rejection of the original IEP spanning 2/4/2015 to 2/4/2016, the School proposed an amendment which increased ESY services from three to five hours per day (from 3 hours x 4 days x 5 weeks to 5 hours x 4 days x 5 weeks, representing an increase from 60 to 100 total hours) running from 7/13/2015 to 8/13/2015.
30. Parent rejected this new proposal in a letter dated April 25, 2015. In that letter Parent argued that the ten minute weekly OT consultation contained in the School's proposal is inadequate and that Student requires direct OT services.⁴ Parent also contended that the proposed ESY program would not address Student's increased anxiety when returning to school after breaks. (S-5)
31. In a letter dated June 4, 2015 Mansfield's Director of Special Education made its most recent proposal for the ESY program. Relevant portions of the letter are reproduced verbatim below:
- A 5 hour, 5 week therapeutic summer program that runs from 7/13/15 – 8/13/15, Monday through Thursday. This classroom includes on-going reinforcement of academic and social thinking/behavioral skills.
 - A certified special education teacher with a familiar shared paraprofessional will support her during the summer program. In addition, a school psychologist will consult and provide services as needed to address any issues related to anxiety.
 - [Student's] positive behavior support and academic programs will continue to prevent significant regression.
 - [Student] will be paired with at least one friend she is familiar with to support peer interactions. Play, recreation, sensory integration breaks and strategies will be incorporated throughout the day.
 - OT will be consulted and available as needed.

As an additional part of this summer program, we propose inclusion opportunities for [Student], in order to continue to develop her social skills within the Mansfield Public Schools optional summer program available to all students on a fee-for-service basis; however, Mansfield Public Schools will fund this program for [Student]. The Champs Institute overlaps with our summer program for three weeks. During this time, with the assistance of a familiar and trained paraprofessional with oversight from a special education teacher, [Student] will be integrated with same age peers to

⁴ In its Response to Parent's Hearing Request, the District contends that Student does not require direct OT services.

develop friendships and engage in social conversations; all while enjoying age appropriate activities that we know she will be excited to participate in.

We also propose adding counseling to [Student's] service delivery to assist in monitoring school anxiety both during the summer and school year. It is important [Student] attend the Mansfield summer program to build these social relationships.... (S-6)

Program Proposed by Parent

32. Parent proposes a summer program at The Bridge Center. Located in Bridgewater, MA, the Bridge Center offers a broad variety of summer camp and recreational experiences to children and adults with disabilities. The Bridge Center offers campers "therapeutic recreation and traditional playtime activities in a supportive, small group environment" (Parent's ex. K-1).
33. The Bridge Center operates several different programs tailored to campers with varying disability-related needs. For example, the Center has separate programs for children and teens with physical limitations, behavioral challenges, and for teens with autism spectrum disorders. The program sought by the Parent within the Bridge umbrella is called Camp Discover, which serves campers with all degrees of disability between the ages of 4 and 22. Parent posits that this program would address Student's "important sensory and social skills needs," as well as her "Positive Behavioral Plan and related goals in her IEP."
34. In evidence is a list of The Bridge Center's staff. According to this list, the staff includes one individual with a Master's Degree in Special Education, and two individuals who are Certified Therapeutic Recreation Specialists. Both of these individuals are members of The Bridge Center's administration. (Parent's exhibit K-1) The documentary record contains no information about the qualifications of direct-care staff who would be interacting with Student on a daily basis if she were to attend.

DISCUSSION

There is no dispute that Student is a school-aged child with a disability who is eligible for special education and related services pursuant to the IDEA, 20 USC § 1400, et seq., and the Massachusetts special education statute, G.L. c. 71B ("Chapter 766"). Student is entitled, therefore, to a free appropriate public education, that is, "to a program and services that are tailored to [her] unique needs and potential, and designed to provide 'effective results' and 'demonstrable improvement' in the educational and personal skills identified as special needs." 34 C.F.R. 300.300(3)(ii); *North Reading School Committee v. BSEA*, 480 F. Supp. 2d 489 (D. Mass. 2007); citing *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir. 1993). While Student is not entitled to an educational program that maximizes her potential, she is entitled to one which is capable of providing not merely trivial benefit, but "meaningful" educational benefit. *See Bd. of Education of the Hendrick Hudson Central School District v. Rowley*, 458 US

176, 201 (1982); *Town of Burlington v. Dept. of Education*, 736 F.2d 773, 789 (1st Cir. 1984); *D.B., et al. v. Esposito, et al.*, 675 F.3d 26, 34 (1st Cir. 2012).

In a due process proceeding to determine whether a school district has offered or provided FAPE to an eligible child, the burden of proof is on the party seeking relief. In the instant case, as the moving party challenging the School's proposed IEP, Parent bears this burden. That is, in order to prevail, Parent must prove by a preponderance of the evidence that the IEP and ESY services offered by the District for the summer of 2015 are not appropriate, *i.e.*, are not reasonably calculated to provide Student with FAPE. *Schaffer v. Weast*, 546 U.S. 49, 44 IDELR 150 (2005).

"Preponderance of the evidence" means that it is more likely than not that the School's proposed program is inappropriate and cannot be made appropriate with modifications ordered by the hearing officer. If the Parent meets this burden, then the hearing officer must consider whether the program proposed by the Parent is appropriate. If the Parent does not demonstrate the inappropriateness of the School's proposal, then the inquiry stops, and the hearing officer may not examine the merits of the Parent's proposal. *Id.*

Legal Framework for Extended School Year Services

While the IDEA does not explicitly require school districts to provide ESY services, applicable federal regulations do impose such a requirement "if a child's IEP team determines, on an individual basis...that the services are necessary for the provision of FAPE to the child." 34 CFR 300.106(a)(2)⁵ This federal regulation establishes the following additional requirements for ESY programming at 34 CFR 300.106(a)(3)(i) and (ii):

(3) In implementing the requirements of this section, the public agency may not--

(i) Limit extended school year services to particular categories of disability or

(ii) Unilaterally limit the type, amount or duration of those services

In determining whether or not ESY services are necessary to provide a child with FAPE, many states, including Massachusetts, have adopted a so-called "regression and recoupment" standard.⁶ The applicable Massachusetts regulation provides that ESY programs "may be identified if the student has demonstrated or is likely to demonstrate substantial regression in his

⁵The U.S. Department of Education (USDOE), which issues the federal regulations implementing the IDEA, has commented that "[t]he requirement to provide ESY services to children with disabilities who require such services in order to receive FAPE reflects a longstanding interpretation of the Act by the courts and the Department [of Education]." 71 F.R. 156, p. 46582 (August 14, 2006).

⁶ The USDOE comment associated with 34 CFR 300.106 states that this standard is "derived from well-established judicial precedents." The comment further states that states may, but need not use regression and recoupment as their sole criteria for ESY eligibility. 71 F.R. 156 p. 46582, *supra*

or her learning skills and/or substantial difficulty in relearning such skills if an extended program is not provided.” 693 CMR 28.05(4)(d)(1).

After careful review of documents and memoranda submitted by each party in light of the applicable legal standards articulated above, I conclude that the ESY program and services offered by Mansfield are not appropriate, but may be made appropriate as discussed below.

The parties agree and the record establishes that despite her disability, Student has many areas of strength, including a friendly, enthusiastic personality, the ability and willingness to learn, many solid academic skills, and a variety of interests. The parties also agree that Student’s transition from the Robinson School to the JJ School was difficult. Student was generally happy and enthusiastic about school during first and second grade at the Robinson. After transitioning to the JJ School, Student had school-related anxiety, especially at home but also in school. Student expressed socially-related worries, *e.g.*, the fear that teachers other children did not like her. This anxiety persisted through the school year despite Parent’s and school staff’s support and reassurance.

The documentary record establishes that throughout her school career, Student has experienced significant regression in her identified areas of need—academic, social/emotional and behavioral--during school breaks. This regression has occurred even after relatively short breaks such as long weekends. Mansfield has documented this regression in support of its recommendations for ESY programming during each summer of Student’s tenure in the District.

Mansfield’s most recent proposal for ESY services consists of 5 hours/day, 4 days/week of services for five weeks during summer 2015. The services are designed to maintain Student’s academic and social thinking/behavioral skills. Student’s positive behavior support plan will be continued through the summer. Student would be paired with at least one familiar peer and a familiar shared paraprofessional. The program will be overseen by a certified special education teacher. OT and school psychologist support would be available as needed. Counseling has also been offered. Finally, the School will fund three weeks of a general education summer program which Student could attend with the support of a paraprofessional.

The content of the School’s proposed ESY program appears to be appropriate to meet Student’s identified academic and social/behavioral needs. The proposed program as it stands does not offer the Student FAPE, however, because it is only of five weeks duration. Student would be without any ESY programming for an approximately two week period from August 17 until the first day of school on September 2, 2015.⁷ This gap in service is problematic in light of Student’s documented regression during even very short breaks in her school routine. Additionally, the School’s proposal does not provide Parent with detailed information about how the proposed “overlap” between the ESY program and Summer of Champs Institute would be scheduled, does not explicitly state that the shared paraprofessional would accompany Student to the latter program, and does not indicate how Student would be supported through transitions. In light of the undisputed evidence in the record of Student’s difficulties with transitions and

⁷ Administrative notice is taken of the Mansfield Public Schools calendar for 2015-2016, found on the District’s website. This calendar indicates that September 2, 2015 is the first day of school for Grades 1 through 12 in Mansfield.

uncertainty, such information-sharing between the School and Parent is critical so that both Parent and School staff can prepare and support Student in a collaborative manner.

If Mansfield extends Student's ESY program for an additional two weeks, to and including August 28, 2015, ensures that the paraprofessional actually accompanies Student to the Summer of Champs Institute, and provides Parent with the clarification about scheduling referred to above, the School's ESY program will be appropriate.⁸ If Mansfield's "in house" ESY program normally ends on August 13, 2015, Mansfield, in collaboration with Parent, must locate or create an additional two weeks of appropriate ESY services for Student. Such services may have a therapeutic recreational focus, but must ensure adequate social/emotional and behavioral support for Student.

CONCLUSION AND ORDER

The Conclusion and Order issued on July 3, 2015 and effective immediately upon receipt by the parties is attached and incorporated by reference in this Decision. For convenience, the relevant portions are reproduced below, verbatim.

Based on the documents admitted into the record and in consideration of the arguments of the parties, I conclude that the ESY program proposed by Mansfield in Bernadette Conroy's letter of June 4, 2014 is not appropriate to provide the Student with FAPE. Mansfield's program can be made appropriate, however, by (1) extending the duration of the program for an additional two weeks, to and including August 28, 2015; (2) providing Parent with a detailed schedule explaining the "overlap" of the ESY program and Summer of Champs Institute as well as the interventions to be used to assist Student with any transitions involved; (3) clarifying and/or ensuring that the shared paraprofessional actually accompanies Student to the Summer of Champs Institute.

If the Mansfield ESY program does not normally extend to and including August 28, 2015, Mansfield shall, in collaboration with Parent, locate or create appropriate ESY programming for the remaining two week period. Such programming may have a therapeutic recreational focus.

Because I have found that Mansfield's program can be made appropriate for Student, I do not reach the issue of the appropriateness of the Bridge Center.

By the Hearing Officer

Sara Berman

Dated: July 28, 2015

⁸ Parent has asserted that the absence of direct OT, speech/language and ABA services renders the ESY program inappropriate and contends that the consultative model proposed would be inadequate to prevent regression. Parent has not presented sufficient documentary evidence to support this position with respect to the ESY program.