

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

In Re: Ludlow Public Schools v.
Student

BSEA # 1603589

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.

On November 2, 2015, Ludlow Public Schools requested an Expedited Hearing in the above-referenced matter. The matter was granted expedited status by the BSEA Director and via Order issued on November 4, 2015. Two telephone conference calls were unsuccessfully attempted prior to Hearing because of Parent's unavailability. Via Order issued on November 6, 2015, the Hearing was scheduled to proceed on two consecutive dates in November so as to afford both parties ample opportunity to present their cases. The November 6, 2015 Order also provided the Parties deadlines to request subpoenas, and to submit exhibits and witness lists. It also stated that given the expedited status of the case, the matter would conclude on November 18, 2015 and no postponements beyond that date would be granted.¹

On November 9, 2015, Parent requested recusal of the Hearing Officer and dismissal of Ludlow Public Schools' Expedited Hearing Request. The same date, Parent notified the BSEA that she was not available for Hearing on November 17, 2015. On November 9, 2015, Ludlow opposed Parent's request for Recusal and dismissal.

Parent's request for recusal and to dismiss the case were denied via Ruling issued on November 10, 2015, however, given her stated unavailability on one of the dates for Hearing, the Hearing dates were changed to November 16 and 18, 2015 in order to accommodate her schedule.

On November 12, 2015, Parent renewed her Motion for Recusal requesting in the alternative administrative re-assignment of the Hearing Officer. Both requests were denied via Ruling issued on November 12, 2015.

¹ Decisions on Expedited matters are due within ten calendar days from the IDEA Hearing date which in this case was November 17, 2015.

The Hearing was held on November 16, 2015, at the Offices of Catuogno Court Reporting, 1414 Main St., Suite 600, Springfield, Massachusetts before Hearing Officer Rosa I. Figueroa. Those present for all or part of the proceedings were:

Rebecca Bouchard, Esq.	Attorney for Ludlow Public Schools
Eva Tillotson	Director of Student Support Services, Ludlow Public Schools
Jennifer Mennard, BCBA	Autism Consultant, Ludlow Public Schools
Karly Orsi-Cordova, BCBA	Intensive Autism Program Teacher, Ludlow Public Schools
Donna Katz	Occupational Therapist, Ludlow Public Schools
Katherine Prajzner	Speech and Language Pathologist, Ludlow Public Schools
Jennifer Murphy	Physical Therapist, Ludlow Public Schools
Jill Yarkey-Judd	Adaptive Physical Education Teacher, Ludlow Public Schools
Kristen Bunten, RN	Nurse Leader, Ludlow Public Schools
Brenda M. Ginisi	Court Reporter, Catuogno Court Reporting
Parent did not appear at the Hearing	

The official record of the Hearing consists of documents submitted by Ludlow Public Schools (Ludlow) marked as exhibits SE-1 through SE-24; recorded oral testimony and Ludlow's oral closing argument offered at the conclusion of the Hearing on November 16, 2015. The record closed on that date.

HEARING ISSUES:

1. Whether the IEP and placement offered by Ludlow on April 21, 2015, as amended on September 22, 2015 (covering the period April 13, 2015 to April 12, 2016) is reasonably calculated to offer Student a Free, Appropriate Public Education (FAPE) in the least restrictive environment consistent with state and federal law?

POSITIONS OF THE PARTIES:

Parent's Position:

As noted above, Parent did not participate in the Hearing. She however, rejected the proposed placement and via letter dated November 13, 2015, stated her concerns and position as follows:

- 1) Ludlow [P]ublic [S]chools originally out-placed my son after not being able to properly address his behaviors. At present, they have the same consultant overseeing his programming, and this is the person responsible for ensuring that staff [was] trained appropriately in handling behaviors, which she continuously neglected to do. The fact that [Student] is bigger now, these behaviors are more of a problem because his weight and strength can cause him to cause harm to himself or to others. Ludlow has

not addressed his behavioral plan with me at any point to date. It is also not in his IEP.

- 2) When I viewed their proposed program in September, there was a paraprofessional working in the classroom whose neglect of my son on his first day of first grade caused me to remove my child from school. It is my firm belie[f] that this person does not have common sense and I have no doubt that if she is allowed to care for my son that she will expose him to a health or safety risk. It is inappropriate of the district and the BSEA to continue to ignore this concern, because the paraprofessional is the person who is responsible for both the health and safety, as well as the direct delivery of most of the education of the student. This district has consistently employed staff with little knowledge and apparently gives them little training.
- 3) That new classroom is not set up to support the education of autistic children. The classroom teacher is supposedly a Board Certified Behavior Consultant, and so is the district autistic consultant who oversees the program. Any knowledgeable individual would not submit children with autism to the inappropriate conditions in this classroom. Rest assured if my son attends Ludlow's program, I have sufficient grounds to file a formal complaint with the BCBA organization, the Behavior Analyst Certification Board, as I believe that both individuals are violating their profession's *Guidelines for Responsible Conduct for Behavior Analyst and the Professional Disciplinary and Ethical Standards*, given the conditions in the classroom. For the record, I have absolutely no problem doing this, as I have already contact the BACB Legal for advice.
- 4) Last of all – but MOST importantly – Attorney Bouchard stated in her expedited hearing request, that the proposed IEP would allow my son to receive “...an individualized health care plan and any services necessary to meet his health related needs”. This is completely untrue!

Referring to the most recent IEP updated on or around September 22, 2015, there is absolutely no information in the IEP that states that the child will have an individualized Health Care plan for the district will supply in services necessary to meet [Student's] health related needs.²

² In her letter, Parent went on to state:

It is my belief at this time that this hearing should not go forward, given the fact that I have re-filed, and in my new hearing request, I challenged the sufficiency of Ludlow's proposed IEP due to predetermination, which would render it invalid.

Administrative notice of BSEA #1603808 shows that Parent filed a Hearing Request on November 9, 2015.

Therefore, Atty. Bouchard was not truthful to the BSEA in her description of what the proposed IEP provides when she filed this expedited hearing request. She has intentionally misrepresented what is offered in this IEP and I find this extremely concerning and inappropriate, given the needs of this child. This case should be thrown out based on this very critical violation alone...

[Student] needs a placement that can meet all his needs, and Ludlow is not it. It is my belief that the next appropriate placement, given the fact that his last placement was the May School, is the River Street School in East Windsor, Connecticut. At the discharge meeting held earlier this year at the May School, the director, Erica Kearney, had suggested this school as one of three programs that she felt was appropriate for [Student]. The other two were Agawam, which we had already tried, and [Lower Pioneer Valley Educational Collaborative,] LPVEC, which I had reviewed and found inappropriate. Also, Ludlow had approved [Student's] placement at River Street three years ago, but they did not have an opening for him at that time. I toured this school this past June and spoke with admissions, and they are willing to accept [Student] once a referral is received from the District. Their 1:55 nurse-to-student ratio also assures that [Student's] health needs would be met more so than in the public school, where the ratio is 1:250 to 1:400 or so.

In closing, Parent stated that the earliest she could be ready for hearing would be November 30, 2015.

Ludlow's Position:

Ludlow does not dispute Student's entitlement to special education as a result of his diagnosis of autism. Rather, Ludlow seeks BSEA intervention given its concern that Student has remained out of school since May 2015. According to Ludlow, Parent had removed Student from the placement called for by his 2014-2015 IEP on May 15, 2015, over a breakdown in communication and alleged retaliation and safety concerns.

On April 21, 2015, following Student's three year re-evaluation, Ludlow offered Student placement in a highly structured substantially separate classroom specifically designed to meet the needs of children with autism. According to Ludlow, the proposed program also offers speech and language, occupational and physical therapies, as well as adaptive physical education services, and an individualized Health Care Plan. Ludlow states that it is committed to provide any necessary services to meet Student's health related needs.

Ludlow states that on May 13, 2015, Parent rejected Ludlow's proposed program and placement and then requested a Hearing before the BSEA on May 21, 2015. Parent withdrew her Hearing Request three days prior to the Hearing scheduled in that case.

Ludlow further states that in September 2015 it reconvened Student's Team to review an Augmentative and Alternative Communication Evaluation, and on September 22, 2015, and subsequently forwarded to Parent an amended IEP.

According to Ludlow, Student's last day at the May Center School was May 15, 2015, and he has remained out of school since that date.

Ludlow argues that the proposed in-district IEP and placement is appropriate to meet Student's needs, and affords him a FAPE in the least restrictive environment consistent with federal and state special education laws. Ludlow seeks an Order from the BSEA affirming that its proposed program and placement are appropriate for Student.

FINDINGS OF FACT:

1. Student is a nine year-old resident of Ludlow. He has been diagnosed with a communicative Disorder, Autism Spectrum Disorder/Pervasive Developmental Disorder, Intellectual disability and a chromosomal duplication (SE-1; SE-6). It is suspected that he may also have Apraxia of Speech (Prajzner). He also presents medical issues regarding allergies, chronic constipation and nighttime awakening (SE-12; SE-24).³ Student is considered to be a fourth grader but his skill level and abilities fall well below grade level.
2. Consistent with his diagnoses, Student presents with expressive, receptive and pragmatic language issues. He also has difficulty with sustaining attention and with focus, which make it difficult for him to access the curriculum and attain skills consistently. He has a great deal of energy, is strong and very physical, and "needs to learn the differences with physical contact and when it is appropriate". Student needs to learn how to interact appropriately with peers and adults, and how to communicate his needs more appropriately. He also needs to be toilet trained (to recognize and ask to go to the bathroom, and learn to execute bathroom routines independently), and must also be able to demonstrate his mastery of activities of daily living (ADL) skills across settings (SE-1). He however has good developmental skills and demonstrates independent functional mobility, although he does tend to walk on his toes and requires cueing for consistency when descending the stairs. His gross motor level falls within the 36 to 60 month level. His ability to perform tasks seems to be dependent upon whether the task is familiar to him and has been practiced recently, since generalization and retention of skills is a challenge for him (SE-6).
3. According to the most recent IEP, Parent seeks assistance in helping Student improve his sleep issues and school arrival time. She is also concerned about ensuring that his health issues are properly addressed and that he is safe in his educational environment (SE-1).

³ In 2011, Dr. Aeri Moon, M.D., suspected that Student's mouthing behavior, oral fixation and nocturnal awakening was suggestive of GERD in addition to constipation, but Parent was reluctant to start Student on antireflux regimens (SE-24).

4. Student attended pre-school, Kindergarten and the beginning of first grade in Ludlow through the fall of 2012 (SE-18; SE-21).
5. On June 29, 2012, Ludlow forwarded a Notice of Proposed school District Action to Parent (N1), following convening of the Team on June 19, 2012, that discussed the rejected portions of Student's IEP and placement for the end of Kindergarten and the beginning of first grade. The Team recommended Student's participation in a substantially separate program at the East Street Elementary School for the period covering March 28, 2012 to March 27, 2013 and also proposed conducting an adaptive physical education evaluation (SE-23).
6. In July 2012, Ludlow attempted to accommodate Parent's request to conduct three observations of Student's proposed 2012 summer program (SE-22). Despite Ludlow's numerous emails, attempts to facilitate the observations during the month of July 2012, Parent did not show up for the scheduled observations and did not respond to Eva Tillotson's (Ludlow's Director of Student Support Services) emails (SE-22). In a letter dated July 19, 2012, Ms. Tillotson noted that Ludlow would like Student to attend the Summer Program. However, Student did not attend the summer program during the summer of 2012, and Parent did not send him to school at the beginning of the 2012-2013 school year (SE-22).
7. On September 22, 2012, Ms. Tillotson forwarded a third copy of Student's proposed IEP to Parent, seeking parental response and offering to reconvene the Team to address any concerns by Parent (SE-22).
8. Dr. Gary Nielsen, M.D., MS, Student's pediatrician wrote a letter on October 4, 2012, noting that Student had missed school from Thursday August 30 through October 2, 2012 due to parental concerns that Student's needs were not being met from a safety and hygiene standpoint and therefore, his school absences should be excused (SE-22). Other than stating that Student has special needs associated with his autism spectrum disorder, the letter provides no medical reason why Student was out of school, however, a previous letter dated September 29, 2012 notes that by parental report there had been issues regarding Student's nutrition, hygiene, academics, lack of consistent implementation of assisted communication devices, safety and poor communication between the school and the home. Based on Student's complex diagnosis and presentation and Parent's allegations, Dr. Nielan recommended a change in placement for medical reasons. Until such placement was located, Dr. Nielsen found the Health Plan presented by Parent to be appropriate for implementation in Ludlow (SE-22). The Health Care Plan was signed by Parent on October 15, 2012, by the physician on October 25 and by the Ludlow School Nurse on October 30, 2012 (SE-22).
9. Ms. Tillotson wrote to Parent on October 9, 2012, noting her concern regarding Student's difficult behavior and aggression toward other students since his return to school (SE-22). Ms. Tillotson opined that Student had regressed and lost skills he had demonstrated the previous year because of his frequent absences since the end of the 2011-2012 school year and lack of participation in the summer program. Ms. Tillotson recommended Student's participation in an Extended Evaluation at either the May Center or New England Center for Children (SE-22).

10. Ludlow forwarded a Placement page to Parent on or about January 2, 2013 proposing a change in Student's placement to a substantially separate classroom within the Agawam Public Schools (Agawam) (SE-21).
11. Between January 2, and March 27, 2013, Student participated in an Extended Evaluation at the Verbal Behavior Classroom at the Robinson Park School, in Agawam (SE-18; SE-19). Thereafter, Student continued attending said substantially separate program under fully accepted IEPs through his termination on or about December 2013 (SE-18; SE-19; SE-21).
12. Dr. Nielan wrote a letter on September 12, 2013, recommending Student's enrollment at the May School for Childhood Development to address his severe Autism and the regression experienced over the summer of 2013. Ludlow received this letter on October 1, 2013 (SE-24).
13. On September 16, 2013, Margaret L. Bauman, M.D., Pediatric Neurologist, wrote a letter explaining that by Parent's report Student's progress had been poor as Student's bladder control and urinary incontinence had increased and he was wetting his pants numerous times during the week. Parent also reported concerns regarding the staff's expertise in the use of assisted technology and inadequate communication between school and home. Dr. Bauman recommended Student's participation in a highly structured, behaviorally intense program to address his safety, toilet training and self-injurious behaviors (SE-24). Dr. Bauman's letter was received in Ludlow on October 1, 2013 (SE-24).
14. Dr. Nielan wrote another letter on October 6, 2013, alluding to Dr. Bauman's report that Student had regressed regarding his "urinary incontinence/bathroom training and self-injurious/adverse behaviors since the summer of 2013 when Susanna [his former paraprofessional] left his care and a new paraprofessional was assigned" (SE-24). Dr. Nielan had also been informed that Student's safety had been compromised by potential exposure to life threatening allergens including chocolate and cheese crackers. Consistent with Dr. Bauman's September 16, 2013 letter, Dr. Nielan's October 6, 2013 letter recommended a change in placement to a behaviorally-based school such as the River Street School or the May Center, because of Student's medical needs (SE-24). He was aware that neither school had space available, and made further communication and allergy policy recommendations until such a placement were available (SE-24).
15. On December 3, 2013, Ludlow forwarded to Parent a placement page proposing to place Student at the Lower Pioneer Valley Educational Collaborative Autism Program located at Ludlow High School (SE-21). Parent rejected this placement on December 12, 2013 (SE-21).
16. Student was next placed at the May Center School (May Center) in January 2014, at Parent's request (SE-20; Tillotson).

17. Student's Team convened at the May Center on or about January 13, 2014 to address May Center staff concerns regarding Parent's excessive daily communications, misuse of the home consultation and inconsistent or incomplete parental data necessary for Student's programming (SE-20). Parent was not in attendance at this meeting (SE-20). By October 23 2014, Student's binder was filled with Parent's numerous emails, and every time a question was answered in the daily log, it was returned by Parent with many more questions, in a tone perceived by the staff working with Student to be abusive. Staff at the May Center was concerned that the amount of daily communication was taking away from Student's instructional time. The May Center staff was continuously questioned by Parent and not allowed to do their jobs. Also, the twice per month 90 minute home consultations did not occur in the manner in which it was designed, and later, when the consultation time was changed to begin at 3:00 p.m., Parent requested that it take place over the phone instead of in the home, alleging that the consultation was upsetting to Student (SE-20). According to May Center staff, Parent was not consistent with the time of the telephone consultation, at times calling the May Center after Student had arrived home. Similarly, she did not provide all of the data requested by the May Center so that they could properly address Student's issues in the home⁴ (SE-20).
18. On or about July 18, 2014, Dr. Nielan, completed an Epi-pen medication order to address Student's allergy to "dairy, eggs, chocolate, sensitive to oats, seasonal allergies [which] include Kentucky bluegrass, dust mites, maple and oak tree pollens, and cat/ dog dander" (SE-2).
19. On August 7, 2014, Dr. Nielan wrote a note stating that Student's sleep issues which caused him to be tardy were being worked on, and he requested that the recipient of the note work with Parent to address the issue (SE-24). Dr. Nielan had written a similar note on October 22, 2013, explaining that Student's tardiness in the mornings was due to the long trip to school and his chronic sleep issues. That note also referenced Student's dairy allergy which prevented him from ingesting any product that contained dairy, though he did not need to be in a special room isolated from milk/ dairy (SE-24).
20. Dr. Nielan completed a Massachusetts School Health Record on behalf of Student on or about September 18, 2014. This document notes that Student is allergic to: dog and cat dander, dust mites, maple trees, oak trees, Timothy grass, Kentucky bluegrass, milk, chocolate, and also pecans and cashews for which he has been prescribed an Epi-pen. This note includes items not present in the July 2014 Epi-pen medication order. Student's health was otherwise found to be normal (SE-2).

⁴ "Since March 2014, the May Center has been asking for [Student's] daily routines at home so they can support his toileting and sleep issues. [Parent] has given the domain toileting data, but she has needed clarification several times on how to collect the data. She didn't provide the daily routines until October 3, 2014. The May Center [cannot] help [Student] with these issues if they don't know what his home routines are. As a follow up to the October 3, 2014 information provided, the May Center asked [Parent] to submit five days of the detailed data so that they can help with [Student's] sleep issues, but she has yet to do so" (SE-20).

21. Student attended second grade, the 2014 to 2015 school year, at the May Center School (May Center) pursuant to an IEP fully accepted by Parent on April 30, 2014, that offered individualized and specialized instruction to address functional daily life skills, social interactions, receptive language, gross motor skills, safety and toileting (SE-1; SE-6; SE-12).
22. The May IEP offered Student sixty minutes daily of social/behavioral services, 210 minutes daily of academic instruction, and thirty minutes daily of verbal imitation, gross motor skills and activities of daily living, all provided by Applied Behavioral Analysis (ABA) instructors. Additionally, it offered one hour per week speech and language consultation services, thirty minutes per week of occupational and physical therapy services consultation, and two thirty minutes behavior analysis consultation in the home per month with the ABA instructor (SE-12).
23. Student's placement at May Center was terminated on May 15, 2015, due to Parent's dissatisfaction with this program and after the relationship between Parent and the May Center staff could not be repaired. Among Parent's concerns was the lack of a fulltime nurse at the May Center and provision of an individualized health plan on file (SE-12). During his tenure at the May Center, Student frequently arrived late, something that impacted his full access to the program (SE-12).
24. Student's has remained out of school since May 15, 2015 (Tillotson).
25. On February 16, 2015, Dr. Nielan, wrote a letter noting Student's long history with constipation and requesting that Parent be provided with a detailed chart of the approximate length and consistency of Student's bowel movements (SE-2). Dr. Nielan attached a copy of the Bristol Stool Chart, a form which is not commonly used in the United States (Bunten).
26. Erica Kearney and Cassandra Fontaine, of May Center School were responsible for conducting Student's Assessment of Basic Language and Learning Skills (ABLLS) in February 2015 (SE-7). The evaluators noted that Student was demonstrating strengths in many of the skill areas assessed, explaining that the ABLLS was used to develop educational objectives which focused on daily living skills, academics, motor skills, social, communication and safety skills (SE-7).
27. Specifically, the ABLLS assessed Student's performance⁵ regarding: visual performance, receptive language, motor imitation, vocal imitation, requests, labeling, intraverbal, spontaneous vocalization, syntax and grammar, play and leisure skills, social interactions, group instruction, generalized responding, reading skills, writing skills, dressing skills, eating skills, grooming skills, toileting skills, gross motor skills and fine motor (SE-7).
28. The ABLLS also analyzed Student's cooperation and reinforced effectiveness. The evaluators noted that Student worked readily with three or more instructors and produced approximately the same rate and quality of work with each one (i.e., looking at the

⁵ For specifics regarding Student's performance on the ABLLS see SE-7.

instructors for feedback after responding approximately 70% of the time, and was able to wait ten (10) seconds if a reinforcer was delayed) (SE-7).

29. On March 2, 2015, Ludlow convened an Emergency Team Meeting to address issues between Parent and the May Center staff after Parent had stopped sending Student to school for two weeks and had indicated via a February email that she intended to terminate the placement by April 17, 2015 (SE-20). Parent was concerned that she was not receiving the information she needed regarding Student's bowel movements which, in her opinion, made his placement unsafe (although at the time, neither the May Center nor Ludlow had medical documentation regarding this issue). Ludlow considered the May Center to be an appropriate placement for Student, however, Ludlow agreed to forward packets to other potential placements to ascertain their availability. The parties further agreed that Student would remain at the May Center through April 17, 2015 (SE-20).
30. A May Institute Medication Order completed by Dr. Aeri Moon, MD, GI, on March 9, 2015, notes Student's allergies and need for an Epipen. It states that Student required 10 to 15 ounces of fluids/ water during school hours, requests the use of the Bristol Stool Scale, and notes that only snacks provided by Parent should be given to Student (SE-24). Accordingly, a copy of the Bristol Stool Chart, and the fluid/ water form were attached to the Medication Order Form (SE-24).
31. Jennifer Murphy, Ludlow's physical therapist, conducted Student's three-year physical therapy re-evaluation on March 11, 2015 (SE-8). Ms. Murphy did not use standardized testing due to the nature of Student's disability, his decreased attention and limited ability to follow verbal directions. Instead, she used a developmental checklist and observation to conduct the evaluation, noting that Student who had been accompanied by a direct case staff and an intern, remained mostly quiet during the evaluation and was observed to be teary at the end of the evaluation (SE-8).
32. Ms. Murphy assessed Student's developmental, functional mobility, gross motor abilities finding Student to present with good developmental skills, with functional muscle strength and noting his independence with functional mobility despite his tendency to walk on his toes. He displayed difficulty learning and performing unfamiliar motor tasks. His gross motor level was found to be at a 36 months level with scattered skills up to about a 60 month level when comparing his skills to those on a developmental checklist. His ability to complete tasks was dependent on his familiarity and whether it had been recently practiced. He is able to learn gross motor skills through modeling and repetition but his disability makes it difficult for him to retain and generalize the skill being taught. Ms. Murphy found Student's gross motor skill level to be significantly below age expectations and as such recommended that he receive physical therapy (SE-8).
33. Reggie Toussaint, M.Ed., OTR/L Ludlow Public Schools, conducted Student's Occupational Therapy evaluation on March 13, 2015 at the May Center (SE-10). In reaching her evaluation conclusions, Ms. Toussaint relied on the Sensory Profile 2 completed by Parent and the classroom teacher (this is a standardized caregiver questionnaire to measure a child's

response to common, daily sensory events), the Fine Motor Skills portion of the ABLLS, the Brigance/Michigan Developmental Scales (informally used), her own clinical observations of Student's sensory processing, and she consulted with Student's classroom staff at May Center. She noted that during the evaluation, when presented with tasks that were not part of Student's routine, he needed additional instruction and repeated presentations before his skill level could be assessed (SE-10).

34. Ms. Toussaint found Student to demonstrate a varied pattern of sensory processing whereby he sought touch, visual, movement and oral input. He also sought olfactory input but this was reported to be observed mostly at home. Ms. Toussaint noted that Student walked on his toes while bringing his hands to the sides of his head, which she opined was a way to seek proprioceptive input. She further noted that behaviors indicative of sensory processing impairment were seen in higher frequency in the home (SE-10).
35. Student's May Center program offered ABA as well as a highly structured and predictable approach, which, combined with the intensity of behavioral strategies and reinforcement, appeared to help Student better self-organize. As such, Student demonstrated fewer maladaptive behaviors and less of a need for sensory input in school. The May Center teachers clarified that they did not use "Sensory Integration", but provided Student play breaks (e.g., bouncing on a therapy ball) and reinforcers (e.g., plush toys) at school (SE-10).
36. Ms. Toussaint observed Student during bathroom routines noting that while he was fairly independent with disrobing for toileting, and requiring only a gestural prompt to use soap when washing his hands, he was less independent in brushing his teeth requiring partial prompts for most of the task. He was also working on putting on socks (SE-10).
37. On the Michigan Developmental scales Student's perceptual/ fine motor skills were up to the 27 month range with some scattering of skills from the 28 month to the 4 year level in puzzle completion (SE-10).
38. Ms. Toussaint found that Student continued to require occupational therapy and offered specific recommendations for same (SE-10).⁶

⁶ Ms. Toussaint recommended:

- the occupational therapy services should continue with weekly consultation to develop fine motor/perceptual motor and self-care programs for structured work sessions within the classroom. Sensory suggestions can also be provided for school and home. These could include movement, oral, tactile, the pressure and visual.
- within [Student's] school program if similar to his present program, sensory activities can be provided as functions during play breaks or as reinforcers.
- [Student] is on a restricted diet with restricted oral options. If he is seeking oral input Jigglers, blow toys and possible gum chewing are all options that could be explored as appropriate oral activities.
- [Student] does seek movement and options should be available. These can include bouncing/rolling over therapy balls, using scooters or scooter boards, playground equipment, swings and trampolines.

39. Alison Morgan, M.S., CCC-SLP, Ludlow Public Schools, performed Student's speech and language evaluation on March 19, 2015 (SE-9). She was unable to administer standardized speech and language testing because of Student's age and skill level. Ms. Morgan relied on the results of the Goldman Fristoe Test of Articulation 2nd edition (GFTA-2), the ABLLS administered by May Center's speech and language pathologist, and also her own observations during discrete trial work, the therapy session and during classroom activities, as well as on teacher and staff reports. She noted that Student worked well with adults, and was cooperative and compliant with the staff's instructional demands. Generally, he was observed to sit quietly with his hands on his lap, and while his attention was generally good, the staff noted that he could be distracted by loud noises. Ms. Morgan noted that a token economy was effectively used for him to earn reinforcers (SE-9).
40. According to Ms. Morgan, given minimal gestural prompts and verbal directions Student transitioned around the classroom to his different activities and followed his schedule when prompted. He participated in circle activities with minimal staff support and appeared to enjoy the group activities (e.g., he smiled, vocalized and clapped his hands) (SE-9).
41. In her report Ms. Morgan noted that Student communicates through vocalizations of one or two words and labels items to express his choices. His verbal productions demonstrate sound omissions and substitutions (e.g., "chi-me" instead of "chex- mix"). He has a baseline of 17 words on the iPad. He responds to greetings with "hi" but does not initiate greetings. He wears a bathroom icon on his wrist and while he will sporadically request to go to the bathroom he requires verbal prompts. Ms. Morgan noted that Student was observed to follow directions during a circle time activity but he needed tactile prompts to initiate the motor action (e.g., clap hands to choose a song). With prompting, he was able to follow directions such as "'clap', 'wave', 'stomp', 'feet', 'tough' 'head', 'touch nose' and 'turn around'" (SE-9).
42. Ms. Morgan noted that Student's speech expression had "limited variation in vocal tone and prosody", and he could not imitate prosody, volume or tone, but was observed to increase his vocal volume when he became excited (SE-9). Student's intelligibility was poor with unfamiliar individuals, and when his utterances are out of context even if the listener is familiar to him. He uses pacing strategies to reduce his rate of speech which in turn

-to gain skills in the fine motor/perceptual motor area [Student] has shown he does respond to working on these skills in discrete trials. It is important to choose skills that have functional components and real life applications.

-[Student] has shown good progress in areas of grooming and dressing as indicated by the data of programs he is presently working on. When able, adding closures would be beneficial. One progression from easiest to hardest is on zip, zip up (not engaging), on snapping, buttoning medium buttons, unbuttoning, snapping light snaps, engage in a zipper, and tie laces (SE-10).

increases the accuracy of speech production, otherwise his words blend together resulting in unintelligible utterances and sound omissions (SE-9).

43. Ms. Morgan concluded that Student presented with expressive, receptive, articulation and pragmatic language deficiencies for which he requires continued speech and language services (SE-9).
44. Ludlow contracted with *Communicare*, LLC, to perform Student's Augmentative and Alternative Communication (AAC) Evaluation (SE-11; Katz). The evaluation was performed by Hillary Jellison, MS, CCC-SLP, ATP, and Nerissa Hall PhD, CCC-SLP, ATP, on March 12, 23 and April 16, 2015. Parent accompanied Student to this evaluation. The report notes that Student was not attending school at the time *Communicare* performed the evaluation (SE-11). The report of this evaluation was not available until on or about August 1, 2015, and therefore, the evaluation was not reviewed by the time of the April 2015 Team meeting. Rather, Ludlow reconvened the Team in September 2015 to discuss the results of this evaluation (SE-1; SE-11).
45. The AAC evaluators used task-specific and diagnostic activities to measure Student's strength and weaknesses. These included the Wisconsin Assistive Technology Initiative (WATI); the SETT Framework and the AAC Genie. A tablet: iPad/iPad Mini, was used to access *Word Wizard*, and *Boardmaker Online* applications, using *Boardmaker Studio/Intellitools* software. Additionally, the evaluators reviewed the available Occupational Therapy evaluation of March 2015 Student's IEP, consulted with May Center staff, conducted their own observations and briefly interviewed Parent (SE-11). The evaluators noted that pursuant to the Additional Information portion of Student's IEP, at May Center, Student used an iPad with Proloquo2Go with a five button overlay, which they explained was an AAC application offering customizable voice output. They noted that the vocabulary used by Student through the Proloquo2Go was designed to support his ability to make choices and his baseline with this device was reportedly 17 words (SE-11).
46. Student was quiet, cooperative and engaged during the ACC evaluation, and he did not display extraneous movement, frustration, or visual or auditory stimuli. When he moved around the room (mostly walking on his toes) seeking visual tactile sensory feedback, he was easily redirected with simple visual and gestural signs. No maladaptive aggressive behaviors were observed (SE-1). During the AAC evaluation he produced the following vocalizations "hi, apple, cookie, yay, 'cookie, ahh', three, no, 'I wan hup' [I want help] yeah, Thommy [Thomas], 'all done Thommy', 'all done dar' [(star)], five, 8, 9, 10, 2, 3, 4, 5, 6, 7, 8, 9, I want more Wiggles, pinwheel, mommy", which were used for "initiation, response, request, cessation of task, rote counting, [and to seek attention]". Most notable was his receptiveness to predictability and structure, and his success with tasks with short tasks with clear expectations (SE-11).
47. The ACC evaluators recommended the use of AAC for communication that offered Student consistent access across environments to low-tech communication tools offering a

combination of topic specific vocabulary and core words⁷ with modeling (SE-11).⁸ A “sensory diet” inclusive of activities such as swings, rocking chair, a mini trampoline or time on a therapy ball was also recommended if not already in place. For academics, Ms. Jellison and Ms. Hall recommended multi-model assistive technology tools, and “a hybrid approach” to instruction which includes principles of ABA structure and consistent expectation for teaching functional skills which can be generalized into everyday environments. Lastly, they raised the importance of consistency so that Student could focus on content rather than focusing on how to operate the activity (SE-11).

48. Ludlow’s Team convened on April 13, 2015 to discuss the results of Student’s three year re-evaluation, review the IEP and discuss a new placement given that Student’s placement at the May Center would end on May 15, 2015 (SE-6). The Team recommended Student’s participation in the Intensive Autism Program at the East Street Elementary School starting on May 18, 2015. Individuals from May Center as well as Ludlow’s evaluators, nurse and representatives from the Department of Developmental Services, the Department of Children and Families and Parent, were present at the meeting (SE-6)
49. Following the Team meeting, Ludlow offered Student an IEP that addressed his activity of daily living skills, speech and articulation, visual/perceptual fine motor skills, cooperative/reinforcement/effective/behavior/reduction (CoopReinEffBehRed), receptive language listener response, imitation, expressive language/intraverbals, pre-academic skills, and social interaction/leisure class routine (SocIntLeisClassRout) (SE-6).
50. In a five day cycle, the IEP offered the following consultation services: 120 minutes between the autism teacher and the BCBA; 15 minutes by the physical therapist; 15 minute between

⁷ “i. Communication goals should be focused on requesting, directing another’s behavior, protesting, commenting, social etiquette, making choices, etc. They need to be functional, and expressive language tasks should be incorporated into academic tasks as much as possible.

ii. Vocabulary should be set up in consistent locations, and offer a combination of core vocabulary (to build motor planning, <http://www.aacandautism.com/lamp/why>), and topic specific vocabulary to support choice-making and participation.

iii. Color coding should be consistent and following a coding system (i.e., *Fitzgerald Color Key*).

iv. Real photos and a consistent icons set should be used ” (SE-11).

⁸ Specifically, *Communcicare* recommended:

2b: communication partner use of specific strategies is essential to [Student’s] success The way in which team members ask questions, provide AAC modeling, prompt and reinforce [Student] all affect his performance. It is important that an AAC implementation plan is developed that clearly details implementation strategies.

2c: careful implementation of a prompting hierarchy is critical. When addressing a new skill provide enough prompting to ensure his success. When working on a learned skill, provide the least amount of prompting necessary (preferably just use wait time). The least-to-most hierarchy ranges from wait time/expectant pause, verbal, visual/picture/written, visual point prompt, a partial physical prompt and a full physical prompt.

2d: acknowledge, model and support a total communication approach in all environments. This includes using vocalizations, AAC, pictures/visuals, eye gaze, and facial expressions. It is critically important that team members model appropriate use of total communication (AAC modeling/aided language stimulation) within natural context-based tasks (SE-11).

the occupational therapist and the occupational therapist assistant; and, 60 minutes by the speech and language pathologist. This IEP also offered 90 minutes per month consultation between the autism teacher and the BCBA (SE-6).

51. The B grid of the IEP notes that Student would receive direct adaptive physical education once per week for 40 minutes. The C section of the grid offered the following services:

<u>Type of Service</u>	<u>Type of Personnel</u>	<u>Frequency and Duration/ Per 5 day Cycle</u>
Academic support	1:1 paraprofessional	5 x 360 min./ 5 days
Physical therapy	Physical Therapist	1 x 30/ min./ 5 days
Adaptive physical education	Adaptive PE teacher	1 x 43 min./ 5 days
Speech and language	Speech & Lang. Pathologist/ SLP assistant	3 x 30 min./ 5 days

As reflected in the service delivery grid, Student would receive educational services in the substantially separate autism classroom throughout most of his day (SE-6).

52. The April 2015 IEP also offered Student participation in a six week extended school year program which included 45 minutes daily with the Autism Special Education Teacher; one-to-one (1:1) paraprofessional support 180 minutes daily; a weekly 30 minutes physical therapy session; two, 30 minutes speech and language services per week; and, one 30 minutes weekly session of occupational therapy (SE-6). The IEP also offered numerous other accommodations (SE-6).
53. A separate service delivery grid appears as part of this IEP offering Student: 90 minutes per day academic support by the autism special education teacher; 60 minutes daily behavior/autism consultation by the Autism special education teacher; twice per week 30 minutes occupational therapy by the occupational therapist and/or her assistant from April 13, 2015 to April 12, 2016; and, once per week 30 minutes occupational therapist and/or her assistant between July 7 and August 14, 2015 (SE-6).
54. The Team also determined that Student required an Augmentative and Alternative Communication Evaluation which Ludlow would pursue with *Communicare* upon receipt of Parent's consent for evaluation (SE-6).
55. The April 2015 IEP was forwarded to Parent on April 21, 2015 and Parent rejected this IEP and the proposed placement at the East Street Elementary School on May 11, 2015 (SE-6).
56. A Toilet Training Protocol dated April 29, 2015 sought to teach Student how to self-initiate and complete toileting independently (SE-5). In order to work on this goal, Student would have access to unlimited amounts of liquids during the day, including the minimum 10 to 15 ounces of fluids recommended by Dr. Aeri Moon, and information regarding fluid consumption would be tracked daily on an AB toileting data (SE-5).

57. On May 14, 2015, Jennifer Mennard, M.Ed., BCBA, Ludlow Public Schools, drafted a Behavioral Intervention Plan (BIP) for Student using his revised plan of April 6, 2015, written at the May Center (SE-3). Frequency and duration data would continue to be recorded to track the targeted behaviors regarding the implementation of the plan during Student's transition to Ludlow. The data collected would be analyzed by the district wide BCBA, who would make the necessary modifications, so as to decrease interfering behaviors until they are eliminated, while increasing functional skills. The BIP notes Student's use of a vertical schedule with icons across daily activities, including following his schedule, tasks, and play with provision of "immediate behavior specific social praise paired with a preferred edible..." (SE-3). The BIP delineates specific behavioral expectations regarding schedule, tasks, circle activities, table activities, play, lunch, recess and during production of verbal communication. Because of Student's allergies, only edibles brought from home would be used as reinforcers (and during lunch). Student's plan targeted the following behaviors: W sitting (sitting on the ground knees together with feet on the outside of the legs); aggression (scratching, biting or attempts to bite, grabbing and squeezing) toward self and/ or others; mouthing objects; self-injury (hitting his head with his fists, slapping his head with an open palm, hitting fists to legs and/or biting his wrist); flopping (instances of knees, buttocks or stomach touching the floor out of context or when not been asked to do so); and, bolting (instances of walking more than 5 feet away from the instructor or running away) (SE-3).
58. Kristen Bunten, BSN, RN, NCSN, Ludlow's Health Care Coordinator, sent an email to Parent on May 14, 2015, requesting additional information from Parent to facilitate Student's transition from May Center to Ludlow so that his individualized health care plan could be created (SE-2). Nurse Bunten provided Parent with a blank Medication Order Form seeking information regarding any medication that needed to be available for Student in school, including over the counter creams and dietary supplements, and informed her that Ludlow would need to have a physician's order for any medication required by Student. Nurse Bunten sought documentation from Student's physician regarding kidney/ renal function issues that impacted Student's health care, an issue which Parent had raised during the April 2015 Team meeting. Consent forms were also attached to the email seeking Parent's consent for Ludlow to communicate with Student's physicians at Massachusetts General Hospital (MGH) and at the Pediatric-Adolescent Medicine unit where Student received his primary care (SE-2). Nurse Bunten also requested written clarification from Student's physician regarding the total volume of liquid Student needed to consume during school hours, and provided Parent with her contact information indicating that she and Nurse Rosanne would be amenable to meet with Parent prior to Student's return to Ludlow (SE-2).
59. Parent responded to Nurse Bunten's email on May 14, 2015, informing her that Student would not be attending school in Ludlow and stating that she would keep the email should circumstances changed (SE-2).
60. Nurse Bunten attended the transition meeting held at the May Center during the spring of 2015. She testified that at present, Student does not have a current, updated Health Care Plan but one would be developed prior to his transition into the district. While she was generally

aware of Student's issues with constipation and allergies, Nurse Bunten was concerned that the information in Student's file (regarding allergies) was not consistent and noted the need for medical clarification. She stressed the importance of speaking with Student's physician to identify which of the allergies were life-threatening so that she could place an alert in the building, and also better understand which of his allergies were seasonal. Contact between Ludlow and Student's physician was routine according to her, and frequently sought to ensure proper implementation (Bunten).

61. Nurse Bunten explained and that there is a fulltime nurse assigned to the East Street Elementary School, where she estimated between 40 and 50 students were on health plans of a varied intensity. The nurse would be able to administer the Epi-pen should the need arise. Also, building administrators, and Student's teachers and paraprofessionals were taught how to recognize the symptoms associated with allergic reactions and were trained to administer the Epi-pen. An Epi-pen would always be available for Student in the building consistent with any order issued by his physician. She explained that it took approximately twenty minutes to train staff on the use of Epi-pens and noted that she ran refresher courses every six months after they were trained (Bunten).
62. Nurse Bunten supported continuation of Parent packing Student's preferred snacks/ reinforcers as a safety precaution. Having reviewed the May Center's Medical Order (SE-24), and the available medical information on Student, Nurse Bunten opined that Ludlow could absolutely provide the medical care required by Student, noting that he was not the most medically complex student in Ludlow (Bunten).
63. On May 15, 2015, the May Center issued a Discharge Summary, which document was received in Ludlow on May 18, 2015 (SE-13). The Family Involvement and Participation section of the IEP noted that Parent:

...[was] a heavily involved in [Student's] education, requesting to be informed of any and all changes immediately. She often made suggestions/ recommendations on skills to address and desired interventions to address them. Moreover, she frequently provided theories as to why [Student] engaged in particular behaviors (toileting, grabbing, crying, etc). At times her involvement was perceived as interfering and destructive because she regularly required additional time from [Student's] teachers and clinicians to discuss her concerns and answer her questions. Communication systems were in place during [Student's] time and at the May Center which included a daily home/school log and bi-weekly home consultation visits. [Parent] expressed concern regarding staff in the home for these visits and requested consultation via phone. During in home consultations [Parent] was asked to collect data regarding her concerns (e.g., sleeping, toileting) but [Parent] was never able [to] produce the data required for appropriate consultation and effective interventions (SE-13).

64. According to the May Center Discharge Summary, Student engaged in behaviors such as flopping, grabbing, w-sitting and self-injurious behaviors which interfered with his learning. On occasion, Student approached teachers and peers to “high five” as a form of social interaction. The primary academic skills focused on: “1) cooperation, 2) reinforce effectiveness, 3) visual performance, 4) fine motor, 5) imitation, 6) speech and verbal imitation, 7) receptive and expressive language, 8) social interactions, 9) leisure, 10) classroom routines, 11) activities of daily living, 12) gross motor and 13) pre-academic skills” (SE-13). He responded well to the use of ABA techniques as a result of which a reduction of target behaviors was noted as well as promoting acquisition of desired skills. The ABA techniques used included discrete trials, reinforcement (using a token economy at table such as edibles, praise and access to toys), scheduling, a fast pace of instruction and structure (SE-13).
65. The May Center Discharge Summary notes that Student used verbal language to request certain items, but his intelligibility may be minimal to someone not acquainted with him. He did not exhibit spontaneous novel speech and only used a small repertoire of familiar speech. Student was able to access his iPad independently for a small number of items, and could discriminate among known icons in a field of up to five icons (SE-13). He engaged in adaptive physical education which included, rolling, throwing or kicking a ball, walking up a flight of stairs, rolling and/ or imitating yoga poses (SE-13).
66. The May Center Discharge Summary also noted that Student was not toilet trained and that he had one bowel movement and three urine accidents within the previous two months. He is able to void in the toilet and with prompting to use the bathroom every 30 minutes and with fifteen minute reinforcement for dry pants was able to remain dry. To increase his independence with toileting he carried a wrist watch with icons and was learning to exchange the icons to use the bathroom. The Discharge Summary notes that he is able to brush his teeth, wash his face and hands with minimal prompting and could also put on and take off his shoes and socks (SE-13).
67. Student’s final Progress Reports for the period from April 2014 through May 30, 2015 note both his progress and continued struggles while at the May Center. He evidenced slow but steady progress, as well as meeting objectives in the goals addressing Visual Performance and Fine Motor Skills, Imitation, Speech and Verbal Imitation, Receptive Language, Expressive Language, Pre-academics, Activities of Daily Living, Gross Motor skills, and in Social Interaction, Leisure and Classroom Routines (SE-14; SE-15; SE-16; SE-17). Regarding the goal addressing Cooperation, Reinforce Effectiveness and Behavior Reduction goal, Student could work for up to 5 minutes receiving only social praise and delayed presentation of reinforcement, but it was unclear whether he would be able to meet his goals because of his absences and delayed arrivals in school (SE-14; SE-15; SE-16; SE-17).
68. Erica Kearney, M.A., BCBA, Program and Clinical Director, and Sarah Helm, M.A., BCBA Assistant Clinical Director at the May Center, raised concerns in the Discharge Summary about Student’s tardiness and absenteeism, stating that

[Student's Parent] transports him to school in the morning and he takes the bus, in the afternoon. His attendance and tardiness has been a great concern during his time at the May Center. Since starting at the May Center [Student] has missed a total of 43 school days. He has never arrived to school before 8:35 a.m. (school starts at 8:30) and his average arrival time at the time of this report is 9:06 a.m. Due to the variability of his attendance is difficult to assess his problematic behaviors and whether or not interventions are effective (SE-13).

69. According to Parent, she had a difficult time getting Student to the May Center on time because he got too comfortable and became resistant to leaving the home in the morning, especially if he had gotten up later than usual. Parent had tried to set a schedule but “things usually happened which caused him to be late” (SE-12). Also, Student had numerous medical appointments.
70. Student's Team reconvened on September 21, 2015, to discuss the rejected IEP and to review the results of Student's Augmentative and Alternative Communication Evaluation conducted by *Communicare*, LLC (SE-1). The Team proposed to amend the April 2015 IEP to incorporate the recommendations of the aforementioned evaluation, and continued to recommend Student's participation in a substantially separate, highly structured program with one to one direct teaching of skills, at the Veterans Park Elementary School Autism Program in Ludlow (SE-1).
71. This IEP notes that Parent wished for Student to work on his handwriting and that he be able to write his name. She was also concerned about activities of daily living (ADL) such as: “putting on his shoes and socks, dressing himself, zipping, toileting and tooth-brushing”. Parent was also concerned that Student needed to slow down when eating to prevent choking (SE-1).
72. The IEP notes that Student will receive individualized and specialized instruction on functional daily life skills, toileting and safety. It provides goals addressing gross motor, speech and articulation, ADLs, “CoopReinEffBehRed”, visual perceptual fine motor, sensory processing, imitation, receptive language listener response, expressive language/ intraverbals, social skills and leisure class routines, and pre-academic skills (SE-1).
73. Within a five day cycle, the IEP offered 120 minutes consultation between the autism teacher and the BCBA, 15 minute consultation by the physical therapist, 15 minute consultation between the occupational therapist and the occupational therapist assistant, 60 minutes consultation by the speech and language pathologist and 60 minute consultation between the occupational therapist and the occupational therapist assistant to focus on assistive technology. It also offered a once monthly 90 minute consultation between the autism teacher and the BCBA (SE-1).
74. The B grid notes that Student would receive direct adaptive physical education once per week for 40 minutes. The C section of the grid offered the following services:

Academic support	1:1 paraprofessional	5 x 360 min./5 days x week
Adaptive physical education	Adaptive PE teacher	1 x 43 min./5 days x wk.
Physical therapy	Physical Therapist	1 x 30 min./5 days x wk.
Speech and language	Speech & Lang. Pathologist/ SLP assistant	3 x 30 min./5 days x wk.

Although not explicit in the Service Delivery Grid, Student would also receive instruction by the Autism special education teacher as his educational services would be provided within the autism classroom with two other students (each of whom also has a dedicated 1:1 paraprofessional), for over 75 % of his school day (SE-1). Ms. Orsi-Cordova, the special education teacher/BCBA responsible for the proposed classroom, noted that reverse inclusion will begin in late November 2015 (Orsi-Cordova).

75. The IEP also offered Student participation in a six week extended school year program including 45 minutes daily with the Autism Special Education Teacher, one-to-one (1:1) paraprofessional support 180 minutes daily; a weekly 30 minutes physical therapy session; two, 30 minute speech and language sessions per week; and, one 30 minute weekly session of occupational therapy (SE-1).

76. Under methodology of instruction this IEP states that Student will receive,

- 1:1 [one-to-one] Speech/ Language services, P.T. services, O.T. services; O.T. will include sensory motor approach providing opportunities for vestibular, proprioceptive and tactile input.
- Multi-modal approach for all therapies (visual, verbal, tactile, pictures, sign language, etc.).
- Consistent and continuous adult assistance for safety concerns, to access the curriculum and the school environment including all outdoor activities and lunch, total communication approach (SE-1).

Specifically, Student's program would

...consist of direct teaching of skills which includes: discrete trial training; structure task boxes, incidental and naturalistic teaching for the generalization of skills; behavioral monitoring; continual adjustment of programs; specific teaching strategies that break skills into small steps; teaching each step of the skill intensely until mastered; frequent drill and review of previously acquired skill; errorless teaching strategies; verbal, visual, and gestural prompts; fading of prompts as skills are required; positive reinforcement and extinction procedures. Data will be collected daily and used to monitor and adjust programming, as needed. [Student] will be provided with individualized adult support for direct supervision/service throughout the day to assist with programming, safety and ADL skills.

77. A daily home-school communication log would be provided, and the Bristol Stool Chart toileting icon (in which staff has been trained) would be used to report Student's stool production. Student would have a function-based behavior plan similar to the one he had at the May Center and a preference assessment for motivation would be completed. Because of Student's allergies, only food brought from home will be used as edible reinforcers. Student would have access to low-tech communication tools which contained a combination of "core words and topic specific vocabulary". He would also continue to use a vertical schedule with icons across his daily activities (SE-1).
78. Student's classroom would offer a highly structured environment that offers encouragement, with built in sensory motor breaks which would be changed frequently and are inclusive of movement, deep pressure/ touch, tactile and movement breaks. Handheld fidget items will be readily available and icon/ visual schedule will be used to signal transitions and routines. The plan includes numerous other accommodations (SE-1; Orsi-Cordova).
79. Although the date on the IEP/Amendment and Placement Notice (N1) is September 22, 2015, the document was forwarded to Parent on September 30, 2015(SE-1).⁹
80. Jennifer Mennard, Ludlow's BCBA consultant developed a daily school/ home communication log that would be sent home every day. Parent would then complete her portion of the log and return it to school each day. The portion of the communication log prepared by the school staff calls for information regarding Student's mood; his program and mastery of tasks; food consumption during snack, lunch and recess; comments on target behaviors; OT, PT and speech services; and notes and reminders by the teacher. The home sheet calls for Parent to provide the school daily information regarding Student's night and morning with respect to: mood, activities, food eaten at dinner and breakfast; toileting, sleep, and parental comments on behavior and other input meant for the staff (SE-4; Mennard).
81. Ludlow staff is confident that they can implement an appropriate toilet training protocol that is effective and safe for Student. According to Nurse Bunten, Ms. Mennard and Ms. Orsi-Cordova, the pertinent staff is trained and amenable to using the Bristol Stool Chart preferred by Parent and Student's primary physician (Bunten, Mennard, Orsi-Cordova).

⁹ The N1 references the Parent's Notice of Procedural Safeguards in the body of the document, however the pertinent "Enclosures" box in the N1 was not checked off. The document however, states at paragraph two,

As you know, special education regulations provide protection to you and your child. You will find specific information about your legal rights within the Parents Notice of Procedural Safeguards, including sources that you may contact for help in understanding your rights. This notice is enclosed for initial evaluations. You should have received your "Parent's Notice of Procedural Safeguards" at the beginning of the school year if you will be attending an IEP/Amendment or Placement meeting during this school year. We will also disseminate the notice at your request and upon disciplinary removal to an interim alternative education setting. You should carefully review this brochure and the enclosed material before making any decisions... (SE-1).

82. According to Ms. Mennard and Ms. Orsi-Cordova, Ludlow would start implementing the BIP used while Student was at May Center until they had an opportunity to work with, evaluate and observe Student, so they can ascertain if he has regressed and what, if any, modifications may be warranted (Mennard, Orsi-Cordova).
83. Ms. Tillotson testified that she was confident that Student's physical therapy, occupational therapy, speech and language, ABA, adaptive physical education services and classroom instruction could be appropriately delivered by the staff responsible for delivery of services at the Intensive Autism Program at the East Street Elementary School. She further noted that all of the staff responsible for working with Student hold the necessary licensure/certification and possess experience in their respective field. Moreover, many of them possess licensure and/or experience that surpass the minimum requirements of their positions (Tillotson).
84. Ms. Tillotson, Ms. Mennard, Ms. Orsi-Cordova, Ms. Katz, Ms. Murphy, Ms. Prajzener, and Ms. Yarkey-Judd all testified that while they were confident that the proposed IEP can meet all of Student's needs in a safe environment, they would perform informal evaluations and observations of Student upon entering school so as to ascertain the level of regression he may have experienced while being out of school, if there are areas not yet identified that may need attention and what modifications to the program or specific services may be warranted. Ms. Bunten proposed to communicate with Parent and Student's physicians to develop an updated Health Care Plan and Ms. Mennard would also work with Parent and observe Student to update the Behavioral Plan including the toileting plan (Bunten, Mennard).
85. Ms. Orsi-Cordova testified that while the specific paraprofessional assigned to work with Student had not been identified, this individual would be available when Student arrived. She was not aware of Parent's difficulties with the previous paraprofessional, but noted that if Parent had reservations about that individual (who currently assists a different child in her classroom) she would ensure that said individual did not work with Student at any time (Orsi-Cordova).
86. Jennifer Murphy, Physical Therapist, Ludlow Public Schools, would be responsible to offer consultation to the Intensive Autism Program team members and also, direct services to Student. She had first met Student in 2010 before he left for Agawam. According to Ms. Murphy, his skills were still significantly below expectation level and she would be amenable to increasing her services if Student needed it (Murphy).
87. Jill Yarki-Judd is the adaptive physical education teacher in Ludlow who would be responsible to deliver adaptive physical education services to Student. She testified that she had evaluated Student in 2012 although she had not worked with him. At present she works with the two other children in the proposed program and would start her work with Student on pre-teaching skills (Yarki-Judd).
88. Donna Katz, Occupational Therapist, Ludlow Public Schools, would provide occupational therapy to Student. She first met him at the Team meeting in September 2015 and had never

worked with him before. Ms. Katz reviewed the occupational evaluation performed by Ms. Toussant and agreed with her recommendations to focus on sensory process and fine motor deficits, grasp and activities of daily living. She also reviewed the independent Augmentative and Alternative Communication assessment and agreed that Student should have access to low technological tools and a multi-modal, total communication approach. Ms. Katz agreed that Student's skill level matched the two other children in the proposed program nicely (Katz).

89. Kate Prajzner is the speech and language pathologist assigned to work with Student. She has experience working as an ABA teacher and has used augmentative communication technology before. She reviewed the speech and language evaluation performed by Ms. Morgan in March of 2015 and understood Student's needs, strengths and weaknesses. She noted that as per the evaluation performed by *Communicare*, Student was not a candidate for high tech communication and therefore, a device such as an iPad may not be recommendable at present. She planned on targeting Student's receptive language skills and pragmatic language, and would work with the other members of the Team, particularly his paraprofessional, and provide the necessary training to address Student's communication issues (Prajzner).
90. As classroom teacher, Ms. Orsi-Cordova, who is also a BCBA, would collaborate with the therapists assigned to work with Student and the paraprofessional (especially in areas where the instruction overlapped with her responsibilities), as well as with the inclusion teacher to implement the goals and objectives in Student's IEP. She would also be responsible to conduct assessments, and take and interpret data for Student (Orsi-Cordova).
91. Ms. Orsi-Cordova testified that her curriculum was aligned with the State Framework Curriculum, and noted that the instruction comes with visual low tech devices which have been recommended for Student. Ms. Orsi-Cordova would pay close attention to Student during the transition period to ascertain his current skill level (Orsi-Cordova).
92. Ms. Orsi-Cordova described her classroom and the different work areas and noted that the classroom had a bathroom with two stalls and a sink which would facilitate Student's toileting training plan. Her classroom is designed according to the Nova University model, and provides individual instruction areas for small and large groups, uses independent work systems following the TEACCH model from North Carolina for children with autism, and includes an area where students have access to a trampoline and a yoga ball which are used as reinforcers (Orsi-Cordova). Student's in her class use all areas daily. Ms. Orsi-Cordova noted that most of the services offered in Student's IEP would be delivered in her classroom except, for example, physical therapy or occupational therapy services. To prevent Student from bolting she noted that his plan calls for him not to be farther than five feet away from the responsible adult (Orsi-Cordova).
93. At present there are two paraprofessionals in Ms. Orsi-Cordova's room, both of whom are assigned to work with a specific student, however, there are times when they may work with the other child (Orsi-Cordova).

94. Ms. Mennard is the BCBA consultant to Ludlow since 2014, and at presents she is responsible for approximately 20 students including those in the classroom proposed for Student. She also provides consultation to the staff responsible to implement services for the students in her caseload, as well as conducts the necessary training. Were Student to attend Ludlow, her responsibilities would include consulting to the program as well as to Parent, and training the staff including the paraprofessional (Mennard). Ms. Mennard testified that as part of her responsibilities she is on call to assists any teacher who may be addressing a crisis with a student (Mennard).
95. Ms. Menard testified that she knew Student from when he previously attended Ludlow, at which time she was consulting to the program as an employee of James Levine and Associates (Mennard). Back then, she consulted to Parent and assisted her with Student's toileting plan. Ms. Mennard testified that she was also supposed to conduct a functional behavioral assessment (FBA) as part of her consultation in the home, but Parent declined (*Id.*).
96. Ms. Mennard conducted 3 to 5 observations of Student while he attended the May Center. She also interviewed the teachers and other staff responsible for the delivery of services to Student. Ms. Mennard attended the Team meeting in April 2015 and developed the provisionary behavior intervention plan (BIP) (designed to decrease problem behaviors and increase appropriate behaviors) and the toileting plan as continuations of what was being implemented at the May Center, with some tweaking on her part. She also developed the home/ school communication log proposed for Student. Regarding the BIP, Ms. Mennard explained that she would need to collect data because she did not have information regarding the antecedents, but had relied on anecdotal information provided by the teacher and would need ongoing data collection from the new teacher, which she would review on a weekly basis at a minimum to assess the success of the interventions implemented (Mennard). Communication with staff in Ludlow is ongoing and the staff communicates by emails and/or phone calls constantly (Mennard). Ms. Mennard testified that Student's progress or regression would be assessed when he began attending the program and she would make any necessary programmatic modifications. For example, Ms. Mennard testified that at the May Center Student was no longer using the Velcro watch to assist with toilet training, which could indicate that he was self-initiating. She explained that Student would not need to navigate the hallways to reach the bathroom as the bathroom was located inside his classroom, easing his access to a bathroom, and noted that she expected to have good results with Student also (Mennard).
97. When questioned about the risks to Student remaining out of school and not attending a program, Ms. Mennard recalled that when Student did not attend the Ludlow summer program prior to entering Agawam, a "big spike" had occurred with his problem and self-stimulatory behaviors, while his attention was noted to decrease (Mennard). Similarly, arriving to the May Center late in the mornings caused him to evidence regression in his daily living skills (Mennard).

98. Ms. Mennard testified that the program being offered to Student was a comprehensive ABA program that relied on more than just discrete trial training and used other evidence-based interventions. The program would also be individualized enough to meet all of Student's needs. She also noted the importance of having Student generalize the skills he masters in school into the home/ community, and was willing to work with Parent to facilitate generalization into the home. In her opinion the Ludlow program is "very appropriate for Student" (Mennard).
99. Parent and Student visited the proposed Intensive Autism Program at the Veterans Park Elementary School in October 2015 (Tillotson). Ms. Orsi-Cordova testified that Student came right to her and seemed comfortable (Orsi-Cordova). According to Ms. Tillotson and Ms. Orsi-Cordova, Student joined the rest of the children during work on the calendar and the reading activity, and recess and lunch at the cafeteria with other general education students. Student appeared comfortable and willingly joined in the day's activities (Orsi-Cordova, Tillotson). Ms. Orsi-Cordova, who had reviewed Student's evaluations prior to his visit, opined that his abilities fall between the two other children in the classroom and therefore, Ms. Orsi-Cordova and Ms. Mennard asserted that these were appropriate peers for Student.
100. On October 20, 2015 Dr. Nielan forwarded a Physician's Statement for Temporary Home or Hospital Education (Physician's Statement) to Ludlow (SE-24). This document notes that Student will be out of school and at home for more than 14 days due to Autism and ADL issues, further stating that Student requires a "school setting that meets his challenging needs" (SE-24).

CONCLUSIONS OF LAW:

The Parties in the instant case do not dispute Student's diagnoses nor that Student is an individual with a disability falling within the purview of the Individuals with Disabilities Education Act¹⁰ (IDEA) and the state special education statute¹¹. The Parties' disagreement stems from their position as to the program proposed by Ludlow. While Ludlow argues that it can properly offer Student a free, appropriate public education (FAPE)¹² to meet Student's complex needs within the Intensive Autism Program at the Veterans Park Elementary School in Ludlow, Parent disagrees, stating that Ludlow cannot ensure Student's health and safety within its program. Parent seeks an out-of-district placement identified a couple of days prior to Hearing, in her letter of November 13, 2015, as the River Street School in East Windsor, Connecticut.

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.

¹⁰ 20 USC 1400 *et seq.*

¹¹ MGL c. 71B.

¹² MGL c. 71B, §§1 (definition of FAPE), 2, 3.

A FAPE requires that a student’s individualized education program (IEP) be tailored to address the student’s unique needs¹³ in a way “reasonably calculated to confer a meaningful educational benefit”¹⁴ to the student.¹⁵ Additionally, said program and services must be delivered in the least restrictive environment appropriate to meet the student’s needs.¹⁶ 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.¹⁷ Educational progress is then measured in relation to the potential of the particular student.¹⁸ At the same time, the IDEA does not require the school district to provide what is best for the student.¹⁹

¹³ 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”).

¹⁴ See *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) where the court explicitly adopted the meaningful benefit standard.

¹⁵ *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 Cir. 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.”).

¹⁶ 20 USC 1412 (a)(5)(A).

¹⁷ 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”).

¹⁸ *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 199, 202 (court declined to set out a bright-line rule for what satisfies a FAPE, noting that children have different abilities and are therefore capable of different achievements; court adopted an approach that takes into account the potential of the disabled student). See also *Lessard v. Wilton Lyndeborough Cooperative School Dist.*, 518 F.3d 18, 29 (1st Cir. 2008), and *D.B. v. Esposito*, 675 F.3d at 36 (“In most cases, an assessment of a child’s potential will be a useful tool for evaluating the adequacy of his or her IEP.”).

¹⁹ 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.”)

As the party challenging the adequacy of Student's proposed IEP, Parent carries the burden of persuasion pursuant to *Schaffer v. Weast*, 126 S.Ct. 528 (2005), and must prove her case by a preponderance of the evidence. Also, pursuant to *Shaffer*, if the evidence is closely balanced, the Party challenging the IEP, that is Parent, will lose.²⁰

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. I note that Parent did not attend the Hearing and did not submit any documents. Technically, she therefore, did not meet her burden pursuant to *Shaffer*. However, in rendering this Decision I have considered her position in addition to the evidence presented by Ludlow. As such, and relying on the available evidence, the applicable legal standards and the argument offered by Ludlow, I find that the program proposed by Ludlow is appropriate to meet Student's needs and would offer him a FAPE. My reasoning follows.

Student is a nine year old, strong and energetic autistic child. He also presents with chromosomal duplication, gross and fine motor deficiencies, and expressive, receptive, and pragmatic language deficits. Student is suspected of having Apraxia of Speech. His vision and speech are however, reported to fall within functional limits, therefore, he can access low tech assistive technology tools and other supports. Activities of daily living also present a challenge to him and he is not fully toilet trained (SE-1; SE-11).

The evidence shows that Student benefits from a highly structured environment with predictable routines. He requires intensive academic and behavioral supports within a substantially separate educational program that addresses his speech/ language, and occupational and physical therapy needs (SE-1; SE-11; Tillotson, Mennard, Murphy, Orsi-Cordova, Katz, Prajzner).

For communication, Student relies primarily on the use of one or two word phrases, which are oftentimes scripted, to convey his preferences and label items. He is able to follow some of his classroom routines, and up to the time he left the May Center, had been working on numerous skills including a pre-academic curriculum which focused on identifying letters by their sound, 1 to 1 correspondence, locating his first name in print and counting (SE-11).

His most recent educational experience was at the May Center where he received educational services through May 2015, pursuant to a fully accepted IEP (SE-12). Student has been out of school since May 15, 2015, due to Parent's disagreement with the proposed program and placement offered by Ludlow in April 2015, as amended through the IEP issued following the AAC evaluation discussed in September 2015 (SE-1; SE-6; SE-11).

Student's Team met on April 21, 2015 to review the results of his three-year re-evaluation. The staff working with Student at the May Center participated in that meeting at which time the Parties knew that Student would not be attending the May Center past May 2015. No

²⁰ *Schaffer v. Weast*, 126 S.Ct. 528 (2005) places the burden of proof in an administrative hearing on the party seeking relief.

information other than the information shared by the May Center staff and the reports of the three year re-evaluation was available to the Team in April of 2015.

The evaluations were conclusive that although Student had made some gains, he was still substantially below age level expectations, with little to no functional communication, delays in mastery of daily living skills, as well as in fine and gross motor skills (SE-7; SE-8; SE-9; SE-10; SE-14; SE-15; SE-16; SE-17). Ms. Morgan had found that Student continued to require speech and language services due to his significant articulation, expressive, receptive, and pragmatic language deficits (SE-9). Similarly, Ms. Kearney had found delays in all areas measured by the ABLLS, Ms. Murphy had found significantly below normal range gross motor skills, and Ms. Toussaint had found perceptual/ fine motor skills to be at the 27 month range, with a scattering of skills from the 28 month to the four (4) year level with a varied pattern of sensory processing issues (SE-7; SE-8; SE-10).

The April 2015 Team concluded that Student continued to require a substantially separate, ABA based program, specially designed for students on the autism spectrum who also presented with related communication, occupational therapy, physical therapy and speech and language needs.

The April 2015 Team further agreed to conduct an Alternative Augmentative Communication evaluation to be performed by *Communicare*, an agency independent from Ludlow. The Team would reconvene in September 2015 to discuss the results of said evaluation. Given Student's impending completion of his time at the May Center, Ludlow forwarded the proposed IEP to Parent on April 21, 2015 (SE-6). Nurse Bunten contacted Parent to update the medical information on Student, however, Parent deferred any action regarding a Health Care Plan because she did not intend for Student to participate in the program (SE-2; Bunten). On May 11, 2015, Parent rejected the proposed program at the East Street Elementary School which ran from May 18 to August 25, 2015 (SE-6). That summer, Student did not participate in Ludlow's summer program.

The Team reconvened in on September 21, 2015 to discuss the results of the evaluation conducted by *Communicare*, as a result of which additional recommendations regarding augmentative communication were added to the IEP (SE-1; SE-11). The Team recommended that Student receive educational services at the Autism Program at the Veterans Park Elementary School in Ludlow, headed by Ms. Orsi-Cordova (SE-1). Parent also rejected this placement. I note that at the time of her rejection Parent lacked first-hand knowledge of the proposed placement as she had not visited the program and had not met many of the individuals that would be responsible for Student's education.²¹ Her rejection

²¹I note that Parent first visited the Intensive Autism Program at the East Street Elementary School in October 2015 after the Hearing Officer requested during the Pre-Hearing Conference held in a previous case involving some of the same issues and Parties that she view said program. That case, BSEA #1509319 had been requested by Parent in May 2015. Parent withdrew BSEA #1509319 two days prior to the Hearing (scheduled for November 5 and 6, 2015) because of insufficient preparation time.

was purportedly based on her opinion of Student's experience in Ludlow a few years earlier, and her concerns regarding Student's health and safety.²²

Similarly, the record lacks any evidence that Parent had pursued independent evaluations in support of her position that the proposed placement was inappropriate for Student. The documents supportive of Parent's choices consist of letters drafted by Dr. Nielan who states in each letter that he relied on parental report to reach his conclusions. There is no evidence that Dr. Nielan possesses expertise in designing or running educational programs for autistic children. Similarly, there is no evidence that he, Dr. Bauman or Dr. Aeri Moon (GI) ever visited Ludlow's proposed program or spoke to any of the service providers in the proposed program. As such, Dr. Nielan's recommendations regarding educational programming for Student are found to be unreliable and not considered in rendering this Decision.

Regarding Student's Behavioral plan, Ms. Mennard testified that a plan similar to what was available at the May Center would be in place upon Student's transition into the program. Observations would be made and data would be collected and analyzed to ascertain if and how the plan should be modified. Ms. Mennard explained that the proposed ABA interventions available in Ludlow were more than simple discrete trial training; rather the program was more comprehensive, also utilizing other evidence-based interventions (Mennard). More importantly, both she and the classroom teacher (Ms. Orsi-Cordova) were trained and licensed BCBAs and are in constant communication with one another (Mennard, Orsi-Cordova).

One of Parent's reservations regarding the proposed program was that an aide who works with another child in the room had previously worked with Student and, according to Parent, had compromised his safety. Ms. Orsi-Cordova explained that the particular aide Parent was concerned about was assigned to another student and given Parent's reservations, would not be responsible for Student at any time. Ms. Orsi-Cordova testified that the particular aide assigned to work with Student had not yet been identified, but was certain that an appropriate one would be available when Student began attending the program (Orsi-Cordova).

Turning to the Health Plan, Nurse Bunten was persuasive that an appropriate Health Care Plan that complied with Student's physician's orders would be in place as soon as she received clarification regarding Student's medical needs from his physicians (Bunten). She would also make sure that the staff working with Student was properly trained and that there were a number of individuals knowledgeable in the proper administration of an Epi-pen available in his building at all times. If needed, Nurse Bunten would place a medical alert in the building on Student's behalf. She was persuasive that Ludlow could effectively meet Student's medical needs and that an appropriate Health Care Plan could be in place when Student entered Ludlow (*Id.*).

Turning to the appropriateness of the proposed program generally, Parent and Student first visited the Veterans Park School's program on or about October 2015 (Tillotson). Ms. Orsi-Cordova and Ms. Tillotson testified that Student comfortably approached Ms. Orsi-Cordova,

²² I take administrative notice of allegations in Parent's Hearing Request in BSEA #1509319.

integrated easily into the class routine, participated in the reading activity alongside the two other students assigned to this classroom, appropriately stood in line at the cafeteria and participated in lunch and recess with other typically developing children (Orsi-Cordova, Tillotson). The record shows that Student accepts instruction from a variety of individuals; he is cooperative and overall responds well to the structure of this specialized program within the public school building. The record further shows that he also responds well to one-to-one instruction as observed during his tenure at the May Center.

Based on her review of Student's evaluations and her observations during the Ludlow visit, Ms. Orsi Cordova opined that Student's skills fell in the middle *vis á vis* the two other student's in her class (Orsi-Cordova). Similarly, after reviewing the results of the three-year re-evaluations, Ms. Katz, Ms. Prajzner, Ms. Mennard and Ms. Orsi Cordova shared the same opinion that the Autism Program at the Veterans Park Elementary School was appropriate for Student and would offer him a FAPE.

The evidence supports a finding that Ms. Orsi-Cordova, Ms. Prajzner, Ms. Mennard, Ms. Murphy, Ms. Katz, Ms. Yarkey-Judd, and Ms. Bunten are knowledgeable, committed, professionals who possess the necessary licensure, training and experience to deliver the specific services for which they are responsible pursuant to Student's proposed IEP (Tillotson, Orsi-Cordova, Prajzner, Mennard, Murphy, Katz, Yarkey-Judd, Bunten). I found their testimony to be credible and reliable.

At this point there is no way of knowing how Student's lack of schooling during the past six months has impacted him, but it is likely that it has caused some regression. The evidence shows that in the past, the numerous interruptions in service caused him to regress. This is not surprising given the severity of his disabilities. He has only demonstrated gains, albeit minimal, when he has enjoyed the structure and consistency of a specially designed program that met his unique needs. Considering that he will soon turn 10 years of age, his severe delays must be addressed immediately before the proverbial "window of opportunity" to receive special education services closes.

While Parent appears to be a loving, caring and devoted parent, the record shows that her need to control every aspect of Student's education has interfered with his ability to receive a FAPE. As described by the documents from the May Center, she has been micromanaging every aspect of Student's education. The record lacks evidence that she possesses the necessary educational background, expertise or licensure in autism, occupational therapy, ABA, speech and language, physical therapy, alternative augmentative communication, or as a teacher of special education children to dictate the methodology or approaches effective in educating Student. She has often raised health and/ or safety concerns prior to interrupting Student's educational services. It would appear that her concern for Student makes it difficult for her to trust that the individuals responsible for delivering Student's services will be able to do so effectively and in a safe manner. It is therefore, imperative that the lines of communication between Parent and Ludlow's staff be effective and reasonable.

Moreover, communication between Ludlow and Parent is essential to Student's ability to generalize his skills across settings. Effective communication must also include direct input from Student's physicians to ensure his safety. In this regard, Nurse Bunten and Ms. Mennard or Ms. Orsi-Cordova should be able to communicate with Dr. Neilan and Dr. Moon, at least initially so as to develop a safe and effective Health Care and toilet training plan. Also, in order to be effective, home consultation services must occur in the home, at a reasonable time agreed to by the Parties during the staff's contractual hours, and not via telephone as previously requested by Parent.

Ludlow shall work with Parent to ensure that Student begins attending school in accordance with Massachusetts law as soon possible.

Lastly, I turn to Dr. Nielan's Physician's Statement of October 20, 2015 which states that Student would be out of school for more than 14 days due to Autism and ADL issues, and therefore, required home education. This Physician's Statement also stated that Student required a "school setting that meets his challenging needs" (SE-24).

603 CMR 28.03(3)(c) provides guidelines regarding provision of Educational Services in a home or hospital setting, stating that,

Upon receipt of a Physician's written order verifying that any student enrolled in a public school or placed by the public school in a private setting must remain at home or in a hospital on a day or overnight bases, or any combination of both, for medical reasons and for a period of not less than 14 school days in any school year, the principal shall arrange for provision of educational services in the home or hospital. Such services shall be provided with sufficient frequency to allow the student to continue his or her educational program, as long as such services do not interfere with the medical needs of the student. The principal shall coordinate such services with the Administrator of Special Education for eligible students. Such educational services shall not be considered special education unless the student has been determined eligible for such services, and the services include services on the student's IEP. 603 CMR 28.03(3)(c).

Home or hospital educational services require that the reason for delivery of such services be medical. The note prepared by Dr. Nielan fails to state any valid medical reason which would prevent Student from attending school. As such, it is insufficient to achieve Parent's desire that Student's services be delivered in the home.

I find that the program proposed by Ludlow is reasonably calculated to offer Student a FAPE and constitutes the least restrictive environment.

ORDER:

1. Ludlow shall immediately implement its IEP offering Student placement in the Autism Program at the Veterans Park Elementary School.
2. Student's Health Care Plan shall be updated and ready for implementation on Student's first day of school.

By the Hearing Officer,

Rosa I. Figueroa

Dated: November 25, 2015

November 25, 2014

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

LUDLOW PUBLIC SCHOOLS

BSEA # 1603589

BEFORE

**ROSA I. FIGUEROA
HEARING OFFICER**

**PARENT PRO SE
REBECCA BOUCHARD, ESQ., ATTORNEY FOR
LUDLOW PUBLIC SCHOOLS**