

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

In re: Quin¹

BSEA #1605247

RULING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This matter comes before the Hearing Officer on the Parent's Motion for Summary Judgment and Framingham Public Schools ("Framingham" or "District")'s Cross Motion for Summary Judgment. The procedural history of this matter is complex and is recounted here only to the extent it is relevant for purposes of deciding this motion.

Following the filing of a Hearing Request by the District on January 11, 2016, the issuance of a Stay Put Ruling on January 26, 2016 on Parent's Motion after oral arguments, the filing of a counter-claim by Parent on February 23, 2016², the withdrawal of the District's Hearing Request on March 18, 2016, and a Motion to Dismiss filed by the District on March 22, 2016 (since withdrawn)³, the Parent filed a Motion for Summary Judgment on her claim on March 22, 2016, along with a Memorandum in support thereof. On April 29, 2016 the District filed an Opposition to the Parent's Motion along with its own Motion for Summary Judgment, accompanied by a Memorandum in support thereof.⁴ Parent filed an Opposition to the District's Cross Motion for Summary Judgment on May 6, 2016, accompanied by a Memorandum in support thereof. The Child, through Counsel appointed in a child welfare matter pending in the Framingham Juvenile Court who then noticed his appearance at the BSEA, filed his Response to the Parties' Respective Motions for Summary Judgment on May 6, 2016.

Oral arguments were held on the parties' Cross Motions for Summary Judgment on May 19, 2016. In advance of these arguments the parties supplemented the exhibits they had filed

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

² On February 26, 2016 Parent filed an Amended Response to the District's Hearing Request, seeking affirmative relief for exclusion of Quin from school and discrimination against him. On March 1, 2016, following the District's Response to Parent's Amended Response (filed on February 26, 2016), Parent filed a Second Amended Response, clarifying that she is seeking compensatory services for Quin's exclusion from school for thirty-four (34) days between November 17, 2015 and January 22, 2016.

³ An Order issued on March 17, 2016, following a Conference Call on March 10, 2016 established timelines for the filing of the pre-hearing Motions and Oppositions thereto. Parent filed her Opposition to Framingham's Motion to Dismiss on March 22, 2016, along with her Motion for Summary Judgment. Several Conference Calls took place in the weeks that followed, during which the issue of standing was discussed; on April 8, 2016 Framingham withdrew its objection on this basis as to any claims that allegedly accrued while Quin was in Parent's custody, but it later reinstated this objection. Ultimately Framingham addressed the question of standing in its Motion for Summary Judgment.

⁴ Parent filed a Motion to Strike portions of Framingham's Cross Motion for Summary Judgment on April 29, 2016. The District filed its Opposition to Parent's Motion on May 2, 2016. Upon consideration of the Parties' arguments, I decline to strike those portions of the District's Motion, though I view them as an expression of the District's position and not as established facts.

previously, in advance of the Stay Put Ruling. For purposes of this Ruling, I have admitted School Exhibits 1-39 and Parent Exhibits 1-28.⁵

The Parties' Motions for Summary Judgment focus on two issues. The first is one of first impression and arises in the particular circumstances of this case: whether a parent who has custody of her child at the time she files a claim for compensatory services at the BSEA, has standing to maintain that claim when she loses custody of her child to a state agency during the pendency of the matter. The second is whether six year-old Quin was kept out of school, first without services, then with ten hours per week of tutoring, by agreement of the parties pending placement in an out of district placement, or whether this situation was the result of procedural irregularities and occurred without the consent of the Parent thereby warranting an award of compensatory services.

For the reasons below, the Parent's Motion for Summary Judgment is hereby ALLOWED in part and DENIED in part. The District's Motion for Summary Judgment is hereby DENIED.

I. Legal Standard for Summary Judgment

Pursuant to 801 CMR 1.01(7)(h), Summary Decision may be granted when there is "no genuine issue of fact relating to all or part of a claim or defense and [the moving party] is entitled to prevail as a matter of law." This rule of administrative practice is modeled after Rule 56 – Summary Judgment – of both the Massachusetts and Federal Rules of Civil Procedure.⁶ The party seeking summary judgment begins by demonstrating, with the support of its documents, that there is no genuine issue relating to the claim or defense. This party bears the burden of proof, and all evidence and inferences must be viewed in the light most favorable to the party opposing summary judgment.⁷

In response to a Motion for Summary Judgment, the adverse party "must set forth specific facts showing that there is a genuine issue for trial."⁸ To survive this Motion and proceed to hearing, the adverse party must show that there is "sufficient evidence" in his favor

⁵ Exhibit 26 purports to be an audio recording of a voicemail message left by a Department of Children and Families (DCF) social worker on Parent's telephone voicemail on March 24, 2016 regarding whether Parent had the approval of DCF to pursue her claim against Framingham subsequent to the transfer of custody of Quin to DCF. The District objected to admission of this exhibit because, as explained in Note 16 and accompanying text, *infra*, DCF has clarified through its legal counsel that it did not follow its own procedures to delegate any authority to Parent. As I ruled during oral arguments on May 19, 2016, Exhibit 26 has been admitted to the extent it bears on Parent's state of mind, and not for the truth of the matter that it represents DCF's position as to Parent's authority to represent Quin in these matters. (See S-39, Memorandum submitted by Assistant General Counsel for DCF, Brian Pariser, to the Parties on May 12, 2016). In support of her Motion for Summary Judgment and her Opposition to District's Motion for Summary Judgment, Parent submitted two affidavits dated March 11, 2016 and May 5, 2016. I have admitted these affidavits into evidence and for ease of reference labeled them P-27 and P-28, respectively.

⁶ Federal Rule of Civil Procedure 56 authorizes the entry of summary judgment whenever it appears that "there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law."

⁷ *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 252 (1986). A "genuine" issue is one that a reasonable fact finder, on the record before her, could resolve in favor of either party. *Id.* at 248. A fact is "material" when it "might affect the outcome of the suit under the governing law." *Hayes v. Douglas Dynamics, Inc.*, 8 F.3d 88, 90 (1st Cir. 1993).

⁸ *Anderson*, 477 U.S. at 250.

that the fact finder could decide for him.⁹ “If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.”¹⁰

Because the Parent and the District have submitted cross motions for summary judgment, as to each of the issues before me I determine whether a genuine issue exists that would preclude entry of summary judgment and if not, whether either party prevails as a matter of law.

II. Standing

There is no material disagreement between the parties as to the facts relevant to the question of standing. Parent had custody of Quin on February 23, 2016, when she filed her counterclaim against the District seeking compensatory services for the events that occurred between November 17, 2015 and January 22, 2016. On February 29, 2016, the District filed a 51A report¹¹ with the Department of Children and Families (DCF or “the Department”) (S-38, ¶38) On that same date a judge in the Framingham Juvenile Court issued an order granting temporary custody of Quin to DCF and continued the matter for a temporary custody hearing on March 15, 2016. (S-33) On March 15, 2016, the judge extended the grant of temporary custody of Quin to DCF through May 24, 2016 (S-34). On March 16, 2016, a Special Education Surrogate Parent (SESP) was appointed for Quin by the Department of Elementary and Secondary Education (DESE) at the request of DCF. (S-35; S-39) The terms of such an appointment provide the SESP with “all the rights and responsibilities of a parent in matters relating to the special education process,” including the ability to make educational decisions for a child in state custody. (S-35) On March 18, 2016, a Team meeting was held. The Parent was not present; DCF was present, and the SESP participated by telephone. (S-38; Framingham Motion for Summary Judgment). On that date the SESP signed a Placement Consent Form (PL1) dated March 18, 2016 to March 17, 2017, placing Quin at a private day school. (S-36) An Individualized Education Program (IEP) was sent to the SESP on March 28, 2016 and signed by the SESP on April 4, 2016. (S-37) In the meantime, Counsel appointed to represent Quin in the child welfare proceeding filed a Notice of Appearance on his behalf at the BSEA on March 31, 2016. To date Quin remains in the Department’s temporary custody, pending a trial on the merits of a care and protection petition, pursuant to G.L. c. 19, § 24. (S-39)

After Quin’s new IEP was signed by the SESP, Framingham raised the issue of standing, suggesting that because Parent no longer held educational decision-making rights for Quin, she could not maintain her claim before the BSEA. According to the District, “[i]t would make no sense to say that the Parent could maintain a Hearing Request for educational services for the Student where the Parent does not have educational decision making authority . . . and can have no role to play in determining educational services, whether compensatory or otherwise.”¹² To support its position, the District relied on a number of cases holding that a non-custodial parent

⁹ *Id.* at 249.

¹⁰ *Id.* at 249-50.

¹¹ G.L. c. 119, §51a details the procedures to be followed when a mandated reporter, which includes school personnel, suspects abuse or neglect of a child.

¹² District’s Motion for Summary Judgment.

does not have standing to file a due process claim, or intervene as a party in a pending action, before an administrative agency on behalf of her child.¹³

Parent distinguished these cases on the basis that in none of them did the parent have custody of the child at the time she filed, or sought to intervene in, a matter on behalf of her child. Parent raised two additional grounds for standing: first, DCF had consented to her retaining whatever authority she needed in order to pursue this particular claim before the BSEA; and second, she possesses her own independent right to maintain this claim for compensatory services on behalf of Quin, consistent with the holding of the United States Supreme Court in *Winkelman ex rel. Winkelman v. Parma City School District*.¹⁴

Quin, through Counsel, filed a Response to the Parties' Respective Motions for Summary Judgment on May 6, 2016. Quin adopted and supported in full Parent's Motion for Summary Judgment as well as her Opposition to the District's Cross Motion for Summary Judgment, and adopted all of her arguments in support thereof. Quin also noted, through counsel, that on May 2, 2016 he obtained an Order from the Framingham Juvenile Court appointing a guardian *ad litem* (GAL) for Quin to specifically address and assert his claims in this proceeding should Parent be deemed to lack standing. A copy of the Appointment of the GAL was provided to all parties, and the GAL filed a Notice of Appearance on May 16, 2016.

In the meantime on April 28, 2016, DCF, through legal counsel, filed a Motion to Intervene "for the limited purpose of addressing the question of who may appear before the BSEA as the proper representative for a child in the department's custody." Parent filed an Opposition to this Motion, and the District filed a Response to Parent's Opposition supporting DCF intervention. After oral arguments during a Conference Call on May 10, I denied that Motion by Order dated May 17, 2016. DCF provided all parties with a written summary of its position, which was submitted as an exhibit by the District in support of its Summary Judgment Motion.

DCF focused its argument on the issue of educational decision-making authority, citing statute and case law to the effect that when a parent is relieved of custody of her child, even temporarily, she loses the ability to make decisions related to normal incidents of custody, including education.¹⁵ The only reference by DCF specifically to Parent's standing before the BSEA, is its assertion that "[o]nly a lawful special education decision-maker would have the authority to prosecute a hearing seeking relief that the mother is no longer permitted to accept on behalf of the child." (S-39) DCF also clarified that although workers involved in Quin's case may have indicated informally to the Parent that she could pursue her Summary Judgment motion the agency did not, in fact, formally authorize Parent to prosecute her claim.¹⁶ A DCF

¹³ See *Fuentes v. Bd. of Educ.*, 569 F.3d 46 (2d Cir. 2009); *Student v. Needham and Newton Public Schools*, BSEA #01-1094 (Crane 2000).

¹⁴ 550 U.S. 516 (2007).

¹⁵ See G.L.c. 119, § 21; *Care and Protection of Jeremy*, 419 Mass. 616, 619-20 (1995).

¹⁶ In an Addendum to Parent's Motion in Opposition to Framingham's Motion to Dismiss, filed on March 24, 2016, Parent represented to the BSEA that she was authorized by DCF to pursue her Motion for Summary Judgment. It appears that she did in fact receive informal authorization in the form of a telephone call from a DCF social worker to the effect that the worker, on behalf of DCF, so authorized the Parent. Counsel for the child confirmed this

document, *Guidance on Appointment of Special Education Surrogate Parents* (rev. Jan. 2013) provides for a procedure by which, in certain circumstances, DCF may delegate special education decision-making responsibility back to a parent who has lost custody of a child under a care and protection petition. Neither party suggests that this procedure was followed in this case.¹⁷ The Department expressly took no position with respect to whether Parent possesses an independent cause of action.

There is no doubt that on February 23, 2016, when Parent filed her counterclaim for compensatory services, Quin was living with her and she was responsible for decision-making regarding his IEP, placement, and other special education issues, and there are no indications of any limitations on her authority. Under both the IDEA and the BSEA's own Hearing Rules,¹⁸ Parent had standing to prosecute that claim before the BSEA.

Although she contended initially that she maintained the right to make educational decisions for Quin subsequent to his temporary commitment to DCF custody, Parent has since acknowledged that she does not currently possess such educational decision-making authority. Moreover DCF has clarified that it did not actually formally delegate decision-making authority back to Parent, as explained above. As such, the only question before me is whether her subsequent loss of custody vitiates Parent's right to pursue a claim for compensatory services for her son arising from events that occurred while he was in her custody.

None of the cases addressing the ability of parents to pursue a due process hearing on behalf of children of whom they do not have custody addresses the unusual circumstances of this case. The District relies on *Fuentes v. Board of Education*, in which the Second Circuit Court of Appeals held that where applying New York law resulted in the determination that a particular non-custodial father had no right to control educational decisions (the custody order did not expressly permit joint decision-making authority or designate particular authority with respect to the child's education), he lacked standing to sue as a "parent" under the IDEA.¹⁹ In this case, a divorce decree granting exclusive custody of the child to his mother had entered four years prior to the father's filing of the due process complaint.²⁰

The BSEA case on which the District relies, *In Re Student & Needham and Newton Public Schools*, addresses some of the concerns raised by the District in this case, specifically that a court had previously considered the question of which parent should be the person responsible for parental decision-making regarding educational services and, through its orders,

through his own contact with DCF staff involved in the case. The Department does not dispute that this occurred, but asserts that this did not and does not constitute proper delegation of decision-making authority.

¹⁷ DCF also indicated in its Memorandum that a conflict of interest may exist where Parent continues to represent her child before the BSEA, as they are separate litigants in the Care and Protection case. Quin, however, has indicated through counsel that he supports Parent's position in this matter.

¹⁸ See 34 CFR § 300.30(a) defining Parent, for purposes of the Individuals with Disabilities Education Act (IDEA) as follows: (1) a biological or adoptive parent, (2) a foster parent (with an exception not relevant here), (3) a guardian (but not the State if the child is a ward of the State), (4) an individual acting in the place of a biological or adoptive parent with whom the child lives, or an individual who is legally responsible for the child's welfare, or (5) a surrogate parent who has been appointed in accordance with the law. See also BSEA *Hearing Rule* I(A) (including parents among parties that may request a hearing before the BSEA).

¹⁹ *Fuentes v. Board of Educ.*, 569 F.3d at 47.

²⁰ See *Fuentes v. Board of Educ.*, 540 F.3d 145, 147 (2d Cir. 2008).

decided against the non-custodial parent who sought to intervene as a party in a matter brought by custodial parent; and the potential for disagreement between the custodial parent and the non-custodial parent as to the proper resolution of the matter (i.e relief requested, whether to continue litigation, etc.).²¹ In denying the non-custodial mother full party status, Hearing Officer William Crane cited to cases from multiple jurisdictions and stated, “every relevant decision I am aware of has concluded that a non-custodial parent without educational decision-making authority does not have standing to initiate a due process hearing to contest the special education or related services for his or her child.”²² It may well be true that a parent cannot *initiate* a due process hearing if she does not have custody of her child at the time she files her hearing request, but that is not the case before me. Moreover the potential for a conflict between the SESP and/or the GAL for Quin and the Parent is mitigated in these circumstances, where the GAL has expressed, on Quin’s behalf, agreement with Parent’s position. Furthermore, Parent has acknowledged that she does not currently possess educational decision-making rights. As such, should I find that Framingham committed procedural violations for which compensatory services are owed, it is the SESP and/or the GAL, as the holder of educational decision-making rights, who will ultimately consent to the delivery of those services.

There is, however, support for the proposition that lack of custody is not tantamount to lack of standing. In *Doe v. Anrig*, prior to the initiation of proceedings by a non-custodial father at the BSEA, a divorce decree granted the child’s mother sole legal custody, though his father retained responsibility for his educational expenses.²³ The father had filed a hearing request at the BSEA seeking reimbursement for services rendered to his son on the grounds that the IEPs prepared and implemented by Brookline failed to provide his son with a free appropriate public education (FAPE).²⁴ The BSEA had dismissed the father’s suit “on the ground that [he] had no ‘standing’ to challenge the education program devised and implemented by” the District because “a divorced, non-custodial parent had no legal authority to accept or reject an IEP.”²⁵ The U.S. District Court for the District of Massachusetts remanded the case to the BSEA for a determination as to whether Brookline had provided the student with a free appropriate education, which required reversing the BSEA on the grounds of the non-custodial father’s standing.²⁶ This decision was ultimately vacated and remanded; the basis of that remand is

²¹ See *Student v. Needham and Newton Public Schools*, BSEA #01-1094 (Crane 2000).

²² See *id.* and cases cited.

²³ 651 F. Supp. 424, 426 (D. Mass. 1987).

²⁴ See *id.* at 428.

²⁵ *Id.*

²⁶ See *id.* On further appeal, the Court emphasized that under the Education of the Handicapped Act (IDEA’s precursor), “absent a restraining order from the state court, a parent’s right to be involved in his child’s educational planning and progress is basic,” and that federal law “unequivocally mandates extensive parental involvement.” *Id.* at 429. For these reasons, the U.S. District Court for the District of Massachusetts concluded that the school district had improperly excluded the non-custodial father from participating in educational planning for his son. See *id.* Although this decision was later vacated and remanded (Apr. 3, 1987), I find that the Court’s reasoning applies to the case before me insofar as the District has been denying the Parent the opportunity to participate in Team meetings for Quin because she is currently without the authority to make educational decisions for him. At this stage in the care and protection proceedings, DCF’s goal for Quin is reunification with his mother, and it is therefore in both Quin’s and Parent’s best interests that she remain involved in planning for his education. (See DCF Permanency Planning Policy, Policy # 2013-1 (effective July 1, 2013), at 2 (“Permanency planning begins with the goal of safely maintaining a child at home. If placement becomes necessary to ensure safety, the child’s first goal is reunification with her/his family”). DCF’s Assistant General Counsel confirmed during the Conference Call on May 10, 2016 that the goal for Quin at this time is reunification.

unclear from the record. I need not rely on this case, however, to conclude that a parent who filed a due process complaint at a time that she had custody of her child, seeking relief stemming from events that occurred while she had custody of her child, does not lose standing to pursue that complaint on his behalf by virtue of the fact that she lost custody of him subsequent to the filing of her claim.

Because I find that nothing cuts off Parent's ability to prosecute a claim she timely and properly filed at the BSEA seeking compensatory services for events that occurred between November 17, 2015 and January 22, 2016, while Quin was in her custody, I need not address the question whether in these circumstances Parent holds independent rights as a real party in interest under *Winkelman*.

III. Quin's Absence From School Between November 17, 2015 and January 22, 2016

The uncontested facts, recited in the Stay Put Ruling, include the following: Quin, who is six (6) years old, has been diagnosed with Generalized Anxiety Disorder and Attention-Deficit/Hyperactivity Disorder. (S-10) He attended kindergarten at the McCarthy Elementary School in Framingham during the 2014-15 school year. During kindergarten, Quin was found eligible for special education and an IEP was developed that placed him in a full inclusion program. (S-8) The IEP, which was accepted by his Parent, covered the period from October 7, 2014 to October 6, 2015. (S-8) Quin began attending first grade at the McCarthy in a full inclusion program pursuant to this IEP.

On September 30, 2015 the Team met for Quin's annual review. It wrote an IEP for the period from September 30, 2015 to September 29, 2016, which also placed him in a full inclusion program. (S-18) On October 21, 2015 the Team proposed an amendment to Quin's IEP to include two (2) hours per week of direct Applied Behavioral Analysis (ABA) services and thirty (30) minutes per month of Board Certified Behavioral Analysis supervision. Parent accepted this Amendment on November 2, 2015. (S-20). Also on October 21, 2015, Parent signed a release to permit Framingham to explore out-of-district day programs for Quin. (S-21) The parties agreed that a referral would be sent to the ACCEPT Collaborative of the Pittaway School ("ACCEPT"). (S-38, ¶¶ 4, 8, (Shor Affidavit))

The parties agree that Quin did not attend school from November 17, 2015 until January 22, 2016. There is some disagreement as to what occurred during this time. I set forth the facts below, noting where disagreement exists, and in my analysis I construe these facts in the light most favorable to the party opposing summary judgment on that particular element.²⁷

A. Timeline of Events

²⁷ See *Anderson*, 477 U.S. at 252.

a. November 17-30, 2015

The Parties agree that Quin stopped attending school at McCarthy Elementary on November 17, 2015. He was marked absent on that day. (S-27) The Parties also agree that on that date, McCarthy Elementary School Team Coordinator Nancy Shor called Parent. That call appears to have occurred early in the morning and lasted approximately two minutes.²⁸ (P-16) During this telephone call, Ms. Shor informed Parent that Quin had not been accepted to ACCEPT, the one program to which she had permitted the District to send a referral, and obtained Parent's agreement to send referrals to other out-of-district programs. (S-38, ¶¶11, 12) According to the District, Ms. Shor also told Parent, in light of Quin's "escalating behaviors and inability to access educational services in the inclusion program," that Quin was "having significant problems in school and that he was not effectively accessing educational services;" because of this, she "discussed with the Parent the option of out-of-school tutoring while [the District was] trying to place [Quin] in an out-of-district program." (S-38, ¶¶14, 17) According to Parent, Ms. Shor told her that McCarthy Elementary could no longer handle her son or provide Quin with what he needs because he was taking away from the instruction of other children through his disruption of teachers and other students. (P-27, ¶¶ 4, 5, 9 (Parent Affidavit I)) School records suggest that Quin received "tutoring in lieu of the regular classroom day, due to his difficulty regulating his behaviors and accessing the curriculum in the general education setting." (S-37)

In any event, during the telephone conversation on November 17, 2015, Ms. Shor asked Parent whether she would consider out-of-school tutoring pending out-of-district placement, and Parent agreed. (S-38, ¶14; P-27, ¶¶4, 7) At the time, Parent believed that her son would not be permitted to attend school. She kept him home from school the next day because she believed he would be sent home if she sent him to school. (P-27, ¶¶8, 10; P-28, ¶4, (Parent Affidavit II)) Parent kept Quin home from Tuesday, November 17 through Friday, November 20 and on Monday, November 23, 2015. (S-38, ¶18) With the exception of November 17, 2015, Quin was not marked absent for any of these days, according to an attendance record dated January 11, 2016. (S-27) Quin received no services between November 17 and November 23, 2015, a total of five school days.

On November 23, 2015 Parent signed a form that was either sent home in Quin's sister's backpack on that date or handed to her by Ms. Shor at school.²⁹ The form is dated November 23, 2015 and states simply, "The Framingham Public Schools is offering [Quin] tutoring services (2 hours per day) while awaiting the identification of an out of district placement." It contains the name (though not the signature) of Nancy Shor, Team Evaluation Coordinator-McCarthy School, and provides two lines for parent signatures, one stating "I agree to [Quin] receiving tutoring

²⁸ Parent submitted into evidence her telephone record for the relevant period, which shows two telephone calls from a phone number purporting to be Ms. Shor's at McCarthy Elementary School, each lasting one minute. Although the District contests the content of that phone conversation, it has produced no evidence to controvert the Parent's account of its length. (P-16)

²⁹ According to Parent, she received a phone call on November 23, 2015 to inform her that a tutoring form was being sent home with Quin's sibling and she first received it on that date. (P-27, ¶11) According to the District, a consent form for tutoring was sent home on November 17, 2015, presumably with Quin's sibling as Quin was not in school that day, but it was not returned at that time. Ms. Shor gave Parent a copy of the form when she saw in her school on November 23, 2015, and she signed it at that time. (S-38, ¶15)

services (2 hours per day) while awaiting an out of district placement,” and the other stating, “I do not agree to [Quin] receiving tutoring services (2 hours per day) while awaiting an out of district placement starting” (*sic*). Parent signed under the first line. (S-22)

Quin did not attend school on Tuesday, November 24 or Wednesday, November 25, 2015.³⁰ (S-38, ¶18) He was not marked absent for either of these days, according to Framingham’s attendance records. (S-27) Quin received no services on November 24 or 25, 2015. Framingham provided no services for Quin for seven days in November 2015.

b. November 30, 2015-January 7, 2016

Tutoring began on November 30, 2015. Quin received two hours a day of tutoring, five days a week, after school hours. It was provided by Ron Johnson, who became the McCarthy Elementary School behavior interventionist in 2014. Prior to this position, he taught his own behavior class for six years, then worked as a teacher assistant. According to the District’s uncontested evidence, Mr. Johnson consulted with Quin’s classroom teacher and special educator and tutored Quin using the work that his teacher provided. (S-28, ¶¶20, 21)

The Team reconvened on December 9, 2015. (S-25) There is some disagreement about the content and tone of this meeting, including whether Parent requested that Quin be allowed to return to the McCarthy. The Parties agree that Parent requested that Quin be permitted to attend the “Stapleton Subseparate Program,” an in-district placement that had been suggested by the District at the Team meeting on September 30, 2015 but rejected by the Parent at that time. (S-28, ¶25) During this meeting, the District agreed to Parent’s request for referrals to out-of-district assessment programs, and Parent signed a Release form for this purpose. (S-26) The District asserts that the parties discussed and agreed to continue out-of-school tutoring while out-of-district placements and assessment programs were explored. (S-28, ¶26)

At some time during December or January, Quin was accepted to between one and three out-of-district programs,³¹ but the Parent did not agree to his attendance at any of them.

c. January 8-January 21, 2016

On January 7, 2016, Counsel for Parent informed Counsel for the District of Parent’s wish to return Quin immediately to school. (P-8) Parent was informed, through Counsel, that “appropriate services are not available for the Student at McCarthy so he should not return there. Framingham continues to offer the tutoring. Framingham continues to offer placement in any of the out of district programs to which he has been accepted. Framingham continues to be open to exploring other programs. . .” (P-8, email from Counsel for District to Counsel for Parent, 1/8/16)

³⁰ There was no school on November 26 and 27, 2015 due to the Thanksgiving holiday.

³¹ The District states that Quin was accepted to three programs pending parent visits: BICO, Italian Home and Dr. Franklin Perkins. (S-38, ¶28) Parent believes her son was accepted at BICO only. (P-27, ¶9) The evidence before me does not include any acceptance letters, but I find resolution of this dispute immaterial to the issues before me.

Quin was not permitted to return to school until January 22, 2016, the day after the Pre-Hearing Conference at which the undersigned Hearing Officer issued a Stay Put Ruling to the effect that Framingham was to permit him to return to school immediately. In the interim he continued to receive tutoring two hours per day, five days per week.

B. The Parties' Positions

Parent contends that the District committed several procedural violations that impeded her opportunity to participate in the decision-making process regarding Quin's education, and that its actions amount to the denial of FAPE as a matter of law. Specifically, Parent argues that although Framingham refers to "interim services" and a "transition period," the District in fact changed Quin's placement unilaterally without providing the requisite notice or Team meeting, thereby denying her the opportunity to participate in this process; that Quin was wrongfully excluded from school without a Manifestation Determination; and that the District failed to obtain her informed consent to a change in placement. As such, Quin is entitled to compensatory services for the period from November 17, 2015 to January 21, 2016.

Framingham asserts that its conduct did not amount to a deprivation of FAPE because its actions were taken with Parent's knowledge and consent (with the possible exception of the last nine days), and Parent's conduct substantially contributed to the delay in out-of-district placement of Quin. Specifically, the District argues that Quin's absences from school between November 17 and November 25, 2015, were the result of Parent's choice; that he received FAPE between November 30, 2015 and January 21, 2016 by means of home tutoring, which actually provided him with more services than his full inclusion placement due to his inability to access his education in school; that to the extent any procedural irregularities occurred, it is because interim services and "transition time" are to be expected when a Team has determined that a student's last accepted IEP is no longer appropriate but has not yet drafted a new IEP;³² and that Parent consented to these interim services in the form of home tutoring when she signed the tutoring form in November, did not object to continued tutoring at the IEP meeting in December, and failed to invoke "stay put" until January 8, 2016.

C. Procedural Violations

Under the IDEA, a Hearing Officer may find that a child was denied FAPE as a result of procedural violations if the procedural inadequacies "(i) impeded the child's right to a free appropriate public education; (ii) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or (iii) caused a deprivation of educational benefits."³³

³² In its Cross Motion for Summary Judgment, the District asserted, "when there is a transition from an in-district placement to an out-of-district placement, there will always be a transition time between the Team determination that the then current IEP no longer meets the Student's needs and the writing of the new IEP. This transition time cannot be deemed a violation of the Student's rights under the IDEA, nor is it a denial of FAPE as argued by Parent."

³³ 20 U.S.C. § 1415(f)(3)(E)(ii).

In the case before me, Parent alleges that the District committed procedural violations that amounted to a denial of FAPE by changing Quin’s special education and related services without following required procedures, depriving her of the opportunity to participate in the decision-making process with respect to him. The undisputed facts before me include the services Quin was entitled to pursuant to the IEP in effect between November 17, 2015 and January 22, 2016. This IEP, for the period from September 30, 2015 to September 29, 2016, provides for a full inclusion placement consisting of three hundred (300) minutes per day, five (5) days per week of behavioral services provided by the special educator, general educator, and teaching assistant; thirty (30) minutes per day, five (5) days per week of reading instruction provided by the special educator, general educator, and teaching assistant; and thirty (30) minutes per day, four (4) days per week of math instruction provided by the special educator, general educator, and teaching assistant. (P-1) This IEP, as amended, also provides for two (2) hours per week of Applied Behavioral Analysis (ABA) and thirty (30) minutes per month of supervision by a Board Certified Behavioral Analyst (BCBA). (P-2)³⁴

As explained above, it is undisputed that Quin did not receive these services between November 17, 2015 and January 21, 2016. In order to determine whether the District’s conduct regarding the changes in Quin’s programming amounted to procedural violations that resulted in the deprivation of FAPE, I examine first whether the District’s recommendation and implementation of the tutoring program constituted a change in Quin’s placement.

1. Change in Placement

School districts are not permitted to make unilateral changes to a child’s educational program,³⁵ but this does not mean that every change with respect to a student’s operative placement constitutes a violation of this mandate.³⁶ In order for an alteration to a student’s program to qualify as a change in placement, there must be “a fundamental change in, or elimination of, a basic element of the educational program.”³⁷ A change in location constitutes a change in placement if it “results in a dilution of the quality of a student’s education or a departure from the student’s LRE [least restrictive environment]-compliant setting.”³⁸

In this case, Quin’s IEP provided for 300 minutes of behavioral services, 150 minutes of reading instruction, 120 minutes of math instruction, 120 minutes of ABA services, and approximately 7.5 minutes of BCBA supervision per week, all delivered in a full inclusion setting. His tutoring program entailed 600 minutes per week (two hours a day, five days per week) of one to one instruction. There is no question that a fundamental change occurred in at least one element of Quin’s program: he did not receive BCBA supervision, and there is no

³⁴ The amendment providing for ABA services and BCBA supervision was signed by Parent on November 2nd, 2015. (P-2).

³⁵ See, e.g., *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 82 (3d Cir. 2010); *Susquenita Sch. Dist. v. Raelee S.*, 96 F.3d 78, 83 (3d Cir. 1996).

³⁶ See *DeLeon v. Susquehanna Cmty. Sch. Dist.*, 747 F.2d 149, 154 (3d Cir. 1984) (concluding that modifications to the method of transportation to and from school did not constitute a change in placement that would violate the stay put provision).

³⁷ *Sherri A.D. v. Kirby*, 975 F.2d 193, 206 (5th Cir. 1992); see *Lunceford v. District of Columbia Bd. of Ed.*, 745 F.2d 1577, 1582 (D.C.Cir.1984).

³⁸ *A.K. ex rel. J.K. v. Alexandria City School Board*, 484 F.3d 672, 680 (4th Cir. 2007).

indication in the record that Quin’s tutoring included two hours per week of ABA services. (P-1; P-2) Moreover, even if the District is correct that Quin was unable to access his education at school, and somehow two hours per day of tutoring did not result in a dilution of the quality of his instruction, there is no question that where Quin’s IEP called for a full inclusion program and he received one to one instruction instead, a departure from his LRE-compliant setting occurred. A private tutoring program is inherently a restrictive environment. The District’s proposal for and implementation of Quin’s tutoring program constitutes a change in placement.³⁹

As school districts are not permitted to make unilateral changes to a child’s educational program,⁴⁰ this change in placement could have been accomplished properly in three ways. Quin’s Team could have determined, upon considering his progress, that a change in placement was necessary and, pursuant to an appropriately comprised Team meeting, drafted an IEP reflecting this change; the District could have changed his placement pursuant to a disciplinary infraction, after providing the required due process;⁴¹ or the District and Parent could have agreed to an alternative placement.⁴²

a. Change in Placement through the Team process

Where a school district contemplates changing a student’s placement, the IDEA requires that it accomplish this change through the Team process, in compliance with due process and considerable procedural safeguards.⁴³ For example, a district is required to provide prior written notice whenever a change in placement of a child is proposed.⁴⁴ Such notice must include:

- (A) a description of the action proposed or refused by the agency;
- (B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

³⁹ This finding is not inconsistent with my previous conclusion that home tutoring did not constitute Quin’s “then current educational placement” for purposes of stay put. As I stated in that Ruling, quoting *Verhoeven v. Brunswick Sch. Comm.*, 207 F.2d 1, 10 (1st Cir. 1999), “The policy behind section 1415(j) supports an interpretation of ‘current educational placement’ that excludes temporary placements. Section 1415(j) is designed to preserve the status quo pending resolution of administrative and judicial proceedings . . . [to ensure] that the student remains in the last placement that the parents and the educational authority agree to be appropriate.” The need to preserve the status quo pending resolution of administrative proceedings, central to the issue of stay put, does not inform my analysis here.

⁴⁰ See, e.g., *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 82 (3rd Cir. 2010); *Susquenita Sch. Dist. v. Raelee S.*, 96 F.3d 78, 83 (3d Cir. 1996).

⁴¹ 34 CFR 300.536 (“For purposes of removals of a child with a disability from the child’s current educational placement, a change of placement occurs if,” *inter alia*, “[t]he removal is for more than 10 consecutive school days”).

⁴² See *Honig v. Doe*, 484 U.S. 305, 323, (1988) (recognizing that parents or guardians may agree to a change in placement pending the outcome of proceedings initiated under the IDEA). *Cf. CP v. Leon County School Bd. Florida*, 483 F.3d 1151, 1156 (11th Cir. 2007) (Under 20 U.S.C. § 1415(j), “a school board shall not change the current educational placement unless or until it can agree on an alternative placement with the parents, or until the issue is resolved through the administrative process”).

⁴³ See 20 U.S.C. § 1415(a).

⁴⁴ See 20 U.S.C. §1415(b)(3) (requiring prior written notice whenever a local educational agency proposes to initiate or change, or refuses to initiate or change, “the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child”).

- (C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (D) sources for parents to contact to obtain assistance in understanding the provisions of the related subchapter;
- (E) a description of other options considered by the IEP Team and the reason why those options were rejected; and
- (F) a description of the factors that are relevant to the agency's proposal or refusal.⁴⁵

In the matter before me, the District initiated a change from a full inclusion program to home tutoring for Quin, which as I have found constituted a change in placement. As such, it was required to provide Parent with prior written notice. The only form of prior notice that was provided to Parent by District was a telephone call from Ms. Shor to Parent, in which she recommended the out-of-school tutoring program.⁴⁶ This telephone call cannot be considered prior written notice. The District also provided Parent with a form that it refers to as a “tutoring consent form” after Quin stopped attending school and before tutoring began. This form, however, lacked the information required by law, such as an explanation of the basis of this action and any reference to procedural safeguards.⁴⁷ The form contained only the Parent’s two options: to accept tutoring or to not accept tutoring.⁴⁸

In addition to prior written notice, the IDEA requires that a change in placement occur through the Team process.⁴⁹ The entire Team must meet and thoroughly discuss all possible options for a student prior to initiating a change in placement; failure to do so may constitute a denial of FAPE.⁵⁰ Moreover, courts have emphasized the importance of parental participation, holding that “procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA.”⁵¹

Although the parties have presented evidence that Quin’s Team convened on October 21 and December 9, 2015, there is no record of a Team meeting that occurred prior to the

⁴⁵ 20 U.S.C. § 1415 (c)(1).

⁴⁶ Parent’s telephone records show a phone call from the District (P-16), and both the Parent and the District agree that it was Ms. Shor who suggested that Quin receive home tutoring pending placement in an out-of-district program, although Parent disputed that Quin required placement in such a program.

⁴⁷ See 20 U.S. C. § 1415 (c)(1).

⁴⁸ See Part III(A)(a), *supra*, for a detailed description of this form, which was admitted into evidence as School Exhibit 22.

⁴⁹ See 20 U.S.C. §1414(e) (“Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.”)

⁵⁰ See *Doug C. v. Hawaii Dept. of Educ.*, 720 F.3d 1038,1047 (9th Cir. 2013) (finding that a parent’s absence at a team meeting likely resulted in the Team’s failure to fully consider his preferred placement for his child, and concluding that “an IEP team’s failure to properly consider an alternative educational plan can result in a lost educational opportunity” constituting a denial of FAPE.)

⁵¹ *Amanda J. ex rel. Annette J. v. Clark Cnty Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001); see 20 U.S.C. §1415(b)(1) (requiring that districts provide parents with an opportunity to, *inter alia*, examine all records relating to their child and “participate in meetings with respect to the identification, evaluation, and educational placement” of their child).

conversation between Parent and Ms. Shor on November 17, 2015, during which the District proposed the change in placement to home tutoring,⁵² nor is there evidence that a Team meeting occurred prior to the implementation⁵³ of the change of placement.⁵⁴ The District did hold a Team meeting to discuss the change on December 9, 2015, but an after-the-fact meeting is not enough to remedy the District's decision to change Quin's placement without the participation of Parent.⁵⁵ The District's failure to hold a Team meeting prior to Quin's change in placement from full inclusion to home tutoring deprived the Team, including Parent, of the opportunity to work cooperatively to consider all options and potentially identify a more appropriate placement and/or constellation of services for him pending an out-of-district placement acceptable to all parties.

For these reasons, I conclude that Quin's change in placement was not accomplished through a procedurally adequate Team process.

b. Change in Placement through the Disciplinary Process

A district "may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days."⁵⁶ If a district removes a student with a disability from his current educational placement for more than ten school days for disciplinary reasons, it is considered a change in placement.⁵⁷ Pursuant to the IDEA, within ten (10) school days of any decision to change a student's placement "because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the Team" must conduct a manifestation determination to ensure that the student is not disciplined for conduct related to his disability.⁵⁸ Only under special circumstances not relevant here may the school make a disciplinary change in placement without regard to whether the behavior is determined to be a manifestation of the child's disability.⁵⁹ If the placement of a child with a disability is changed for disciplinary reasons, the Student shall continue to receive educational services in an alternative setting.⁶⁰

⁵² Through Ms. Shor's telephone call to Parent on November 17, 2016, the District proposed the change in placement to home tutoring. (S-38, ¶¶14, 17; P-27, ¶¶4, 7).

⁵³ Quin began receiving tutoring on November 30, 2015. (S-38, ¶20).

⁵⁴ Although the Team discussed possible out-of-district placements for Quin at the October 21, 2015 meeting (though it did not generate an IEP calling for such a placement), there is no evidence that the Team discussed a change in placement to home tutoring at that time. (S-20; S-21).

⁵⁵ See *Doug C.*, 720 F.3d at 1047 ("where an agency violates the IDEA by producing a new IEP without the participation of the child's parents, 'after-the-fact parental involvement is not enough' because the IDEA contemplates parental involvement in the 'creation process'" (internal citation omitted)).

⁵⁶ 20 U.S.C. 1415(k)(1)(b).

⁵⁷ 34 CFR 300.536; see *Honig v. Doe*, 484 U.S. 305, 328-29 (1988).

⁵⁸ 20 USC § 1415(k)(1)(E); see 34 CFR 300.530(e)(1).

⁵⁹ See 20 U.S.C. § 1415(k)(1)(G) (setting forth these circumstances, which involve weapons, drugs, and the infliction of serious bodily injury).

⁶⁰ 20 U.S.C. § 1415(k)(1)(D) ("A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall-(i) continue to receive educational services, as provided in section 1412(a)(1) of this title, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and (ii) receive, as appropriate, a functional

In this case, the District asserts that it did not suspend Quin or change his placement on a disciplinary basis. (S-38, ¶¶16, 18; P-4) Yet the undisputed facts indicate that the District was concerned about his behavior and had communicated that concern to his mother.⁶¹ (S-38, ¶¶2, 13, 14, 17; P-27, ¶¶5; P-28, ¶¶11). Ms. Shor told Parent that Quin should be placed in the out-of-school tutoring program, “given [his] escalating behaviors and inability to access educational services in the inclusion classroom.” (S-38, ¶14; P-8) The District denies that it changed Quin’s placement unilaterally, stating that Parent consented to its proposal for tutoring because Quin’s behaviors interfered with his ability to learn in the classroom. (S-38, ¶14) With regard to Quin’s absences between November 17 and November 25, 2015, the District asserts that “[n]o one at the McCarthy School told the Parent that [Quin] could not come to school,” so Parent kept him home of her own accord, notwithstanding its failure to mark Quin absent after November 17, 2015. (S-27; S-38, ¶¶16, 18). Parent interpreted the District’s conduct and recommendation for out-of-school tutoring to mean that Quin had been suspended, and that the District was offering home tutoring as an alternative to Quin receiving no educational services at all. (P-27 ¶¶10, 12, 13; P-28, ¶4)⁶²

Considering the uncontested evidence before me, I find Parent’s interpretation of District’s conduct and communication to be reasonable under the circumstances. The District’s proposal for a change in placement was justified by the District as arising from Quin’s behavior; presented to Parent in an informal manner unaccompanied by the required procedural safeguards; and appeared to leave her without a meaningful choice.⁶³

Although the District denies that the basis of its action was disciplinary, it appears to have accomplished a constructive suspension without complying with a number of procedural safeguards.⁶⁴ Framingham removed Quin from his then-current placement in a full inclusion program, based on his behavior, to an alternate tutoring setting for approximately thirty-four (34) days. This is considered a change in placement.⁶⁵ The District failed to convene a manifestation determination meeting, which Parent later requested formally on December 7, 2015 (P-6).⁶⁶

behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.”)

⁶¹ According to Ms. Shor, “By the end of September, [Quin] was having significant emotional and physical outbursts in the classroom, on a daily basis and had been removed from the classroom 12 times.” (S-38, ¶3)

⁶² After the phone conversation with Ms. Shor on November 17, 2015, Parent “had no doubt that [her] son would not be allowed back into school at this time”. (P-27, ¶4) See P-27 ¶13 (Parent stated that many times when her son was from home from school “he told [her] that he was kicked out of school.”)

⁶³ The District provided no mechanism by which Parent could have indicated that she preferred for Quin to continue to attend his current program at McCarthy Elementary School. (P-28, ¶¶ 4, 5; S-22) See also, Affidavit of Parent, where Parent stated that “if [she] “chose” to keep [Quin] home, it was out of coercion or fear of confrontation (in front of [her] son) when he was sent home, and that “from the beginning of this entire process [she has] felt coerced by [District].” (P-27, ¶¶ 4, 6)

⁶⁴ See *R.B. ex rel. Parent v. Master Charter Sch.*, 762 F. Supp. 2d 745, 750 (E.D. Pa 2010) (court determined that parent’s interpretation of school’s communication that parent – who regularly transported disabled child to school and occasionally served as her aide – could not return to school, as prohibiting child’s attendance, and its corresponding decision to drop child from the attendance role after ten consecutive absences constituted unilateral removal despite school’s insistence that it was parent’s decision to keep child at home).

⁶⁵ See 34 CFR 300.536 (For purposes of removals of a child with a disability from the child’s current educational placement, a change of placement occurs if the removal is for more than 10 consecutive school days).

⁶⁶ On December 7, 2015, Parent, through Counsel, formally requested a manifestation determination.. (P-6).

For these reasons, I conclude that to the extent Quin’s change in placement may have been a constructive suspension; it was not accomplished through a procedurally adequate disciplinary process.

c. “Otherwise Agreed Upon” Change in Placement.

As Quin’s change from a full-inclusion program to home tutoring was not accomplished through a procedurally adequate Team or disciplinary process, for it to have been proper, it had to have been an “otherwise agreed upon” change in placement.

Pursuant to the IDEA, a student’s then-current educational placement may be changed during the pendency of a dispute if the parents and the school district agree to such a change.⁶⁷ The District asserts that Quin’s placement in the tutoring program, pending an out-of-district placement, was the result not of a unilateral change by the District, but rather of an agreement made with Parent.⁶⁸ In my consideration of whether the parties in fact entered into a valid agreement, I am guided by the IDEA’s definition of consent, which requires that: (1) the parent has been fully informed of all information relevant to the activity for which consent is sought; (2) the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity; and (3) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.⁶⁹

The District contends that it obtained Parent’s consent when Ms. Shor proposed the change in placement over the phone and when Parent signed a “tutoring consent form.” (S-38, ¶14; S-22) To the extent Parent agreed that Quin would receive tutoring, this “agreement” may not have been effectuated properly.⁷⁰ If Parent felt like she had no other choice but to consent, then she did not understand that granting her consent was voluntary.

Based upon the uncontested facts of this case, that Parent’s signature on the tutoring form constitutes informed consent valid under the IDEA is unlikely, but not impossible. This question, which turns in part on Parent’s understandings and intentions, cannot be resolved on summary judgment.

⁶⁷ See 603 CMR 28.08(7) (“In accordance with state and federal law, during the pendency of any dispute regarding placement, the eligible student shall remain in his or her then current educational program and placement unless the parents and the school district agree otherwise”); *Honing v. Doe*, 484 U.S. at 324-325 (explaining that the drafters of the IDEA did not intend for § 1415(e)(3) to operate inflexibly, and therefore “allowed for interim placements where parents and school officials are able to agree on one”). *Cf. CP v. Leon County School Bd. Florida*, 483 F.3d 1151, 1157 (11th Cir. 2007) (where student had invoked stay-put, school board could not implement alternative interim placement without an agreement to do so).

⁶⁸ See Affidavit of Nancy Shor (“[Parent] agreed to out-of-school tutoring pending out-of-district placement”). (S-38, ¶14)

⁶⁹ 34 CFR 300.9; see 603 CMR 28.02(4).

⁷⁰ Issues include: the brevity of the conversation between Ms. Shor and Parent on November 17, 2016 (P-16; P-27, ¶3); the brevity of the form Parent signed (S-22); and the lack of detail regarding the specifics of the tutoring to be provided. (S-38, ¶¶ 20, 22, 27)

IV. Conclusion

Based on the evidence before me, I find that Parent has standing to maintain her claim before the BSEA. I also find that a change in Quin's placement occurred, and that this change did not comply with due process requirements of either the Team or the disciplinary process. I cannot at this stage make a determination with respect to an agreed upon change of placement on the undisputed facts before me.

ORDER

As to the issue of standing, Parent's Motion for Summary Judgment is hereby ALLOWED. The District's Motion for Summary Judgment is DENIED.

As to the issue of whether Framingham committed procedural violations amounting to a violation of FAPE, warranting an award of compensatory services, Parent's Motion for Summary Judgment is hereby DENIED. District's Motion for Summary Judgment is also DENIED.

A Hearing is scheduled for June 8, 2016. The only issue for Hearing is as follows:

Whether the conversation between Parent and Ms. Shor on November 17, 2015, together with the tutoring form the District generated and Parent signed on November 23, 2015, constituted an "agreement otherwise" allowing for an interim change in placement pending the resolution of a dispute over Quin's placement and services.

Should I find that the answer to the question above is no, then I delegate to the Team the responsibility of determining the amount and nature of services required to compensate for the approximately thirty-four (34) days of school Quin missed, taking into account the ten hours of tutoring per week that was provided. I will retain jurisdiction of this matter through September 1, 2016 so that I may provide assistance in this determination in the event that the Team is unable to come to an agreement.

By the Hearing Officer:⁷¹

Amy M. Reichbach
Dated: June 6, 2016

⁷¹ The Hearing Officer gratefully acknowledges the diligent assistance of legal intern Danielle Lubin in the preparation of this Ruling.