**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In Re: Ollie[[1]](#footnote-1)

& BSEA #2102164

Springfield Public Schools

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DECISION**

This Decision is issued pursuant to M.G.L.c.71B and 30A, 20 U.S.C.§1401 *et. seq.* 29 U.S.C.794 and the regulations promulgated under those statutes. A Hearing was held in the above-entitled matter on January 25 and 26 and February 2 and 11, 2021 at the Springfield Office of Catuogno Court Reporting Service and via a remote videoconferencing platform. The official record of the Hearing includes exhibits submitted by the Parent marked P-1 through P-3; P-6 through P-10; P-14; and P-16-17; exhibits submitted by the School marked S-1 through

S-25; and approximately 19 hours of recorded testimony and argument. The Student, Ollie, is an adult not under guardianship. He has delegated educational decision-making authority to his Parent who proceeded *pro se* throughout the Hearing process. The Springfield Public Schools (hereinafter “SPS” or “the School”), was represented by two attorneys. The Parties elected to present oral closing statements which were completed on February 11, 2021. The record then closed.

PROCEDURAL HISTORY

The Request for Hearing in this matter was filed on September 16, 2020. The Parties had at that time, recently completed presentation of evidence in another BSEA appeal and were awaiting a Decision. That earlier matter, “Ollie and the Springfield Public Schools”, BSEA #2007894, (hereinafter “*Ollie I*”)[[2]](#footnote-2) covered some of the same events, time periods and issues the Parent initially brought to the BSEA in the September 16, 2020 Hearing Request. The Decision in *Ollie I* was issued on November 10, 2020.[[3]](#footnote-3) The Parent was granted leave to Amend the Hearing Request to reflect the findings set out in the *Ollie I* Decision and to include events that occurred after September 16, 2020. The School submitted a Motion to Dismiss designed to further limit and clarify the issues for Decision in this matter. The Parties continued to engage in Team and Resolution meetings, vigorous correspondence and extensive Discovery between the date of the Hearing Request and the beginning of the hearing.

*Ollie I* comprehensively addresses the Parent’s claims that Springfield committed substantive and procedural violations of the IDEA between May 2018 and August 2020. Of particular importance is the Hearing Officer’s finding that the April 2020-April 2021 Individualized Education Program developed by Springfield was reasonably calculated to provide Ollie with a free appropriate public education. *Ollie I at p.303.* She further found no procedural improprieties during the Team process or planning meetings held to develop that IEP. *Ollie I p. 306*. She also noted that the 2020-2021 IEP was being implemented in large part during 2020 even during Covid times. *Ollie I p. 297-298.*

On January 11, 2021 the BSEA issued a Prehearing Order addressing the School’s Motion to Dismiss and setting out the remaining issues for Hearing. On January 19, 2021 the BSEA added one issue at the Parent’s request over the objection of the School. In correspondence and “Motions” submitted throughout the fall of 2020, the Parent requested that the BSEA find that SPS engaged in harassment, malfeasance and other misbehavior which warranted the imposition of unspecified sanctions. As the Parent’s claims required factual support the “Motions for Sanctions” were taken under advisement until the conclusion of the Hearing. They will be addressed as the final issue.

ISSUES

The BSEA has jurisdiction of limited, primarily procedural, issues in this appeal. The Parent’s arguments, both before and during the hearing, appeared to seek a “do over” of those presented unsuccessfully during the *Ollie I* Hearing. This Hearing does not, may not, entertain arguments and evidence designed to challenge the factual findings and legal conclusions made by the BSEA Hearing Officer in the immediately preceding proceedings, *Ollie I*.

The issues, thus properly circumscribed, set out in earlier Prehearing Rulings and presented for resolution here are:

I. A) Whether the Team meetings held on August 17, 2020 and September 10, 2020 complied with the procedural requirements set out in U.S.C. 1414 (d) (B); 34 CFR 300.321?

B) If not, whether Ollie suffered substantial educational harm as a result?

In particular, the following questions must be answered:

1. Did the School fail to include a required autism specialist on the Teams and, if so, did that failure deny Ollie a free appropriate public education?

2. Did the School fail to include a required assistive technology specialist on the Team and, if so, did that failure deny Ollie a free appropriate public education?

3. Did the School fail to include a required special education teacher on the Team and, if so, did that failure deny Ollie a free appropriate public education?

4. Did the School fail to complete a required checklist concerning the identification of a specific learning disability, and, if so, did that failure deny Ollie a free appropriate public education?

5. Did the School fail to consider information brought to the Teams by the Parent (work samples, reading levels, book titles) and, if so, did that failure deny Ollie a free appropriate public education?

6. Did the School fail to document options rejected at the September 10, 2020 Team meeting, and if so, did that failure deny Ollie a free appropriate public education?

II. A) Whether the School denied the Parent and Ollie a meaningful opportunity to participate in meetings held on:

1. August 17, 2020

2. September 10, 2020

3. October 1, 2020

4. November 20, 2020

by reason of harassing, intimidating or mocking behavior or language?

And if so,

B) Whether Ollie was denied a free appropriate public education as a result of those actions?

III. Whether a proposed IEP or revisions resulted from the August 17, 2020 and the September 10, 2020 Team meetings and, if so, whether that IEP is reasonably calculated to provide a free appropriate public education to Ollie?

IV. A) Did the School fail to timely respond to a parental request for an occupational therapy evaluation? And if so, did that failure deny Ollie a free appropriate public education?

V. Did the School fail to make transfer of educational decision-making authority paperwork available to the Student in a timely manner, and if so, did that failure deny Ollie a free appropriate public education?

VI. A) Whether the communications and/or meetings that took place between the School and representatives of Ollie’s current special education placement immediately after the Team meeting of September 11, 2020 constituted a “Team” meeting pursuant to the IDEA?

B) If so, did the failure to include the Parent in those communications/meetings deprive her of a meaningful opportunity to participate in the development of Ollie’s IEP and/or deny Ollies a free appropriate public education?

FINDINGS OF FACT

1. Ollie is twenty years old. He carries a diagnosis of autism. He has received special education services through the Springfield Public Schools since he was three years old. He attended the Springfield Renaissance School, a grade 6-12 school, between 2012 and 2019. He completed the 12th grade at the Renaissance School in June 2019, though he did not receive a diploma.

Ollie is consistently described as soft-spoken, hard working and kind. He demonstrates weaknesses in reading, written language and communication and requires support for organization, self-advocacy, transitional life skills and social skills. (Ms. O; Morris; S-10; S-12)

2. In the spring of 2020, pursuant to an IEP dated 4/16/20 - 4/15/21, Springfield placed Ollie in the College Steps program operated by American International College (“AIC”). College Steps is a privately run transition age program designed for students with disabilities and other disadvantages.[[4]](#footnote-4) Ms. O. accepted the College Steps placement but rejected other components and features of the proposed 4/20 – 4/21 IEP.[[5]](#footnote-5) Ollie has been consistently attending the College Steps program, completing his work and making progress in all target areas (Bigda; P-17; S-1; S-2) At all times during the course of this Hearing Ollie has received the special education placement and services set out in the 4/20 – 4/21 IEP approved by the BSEA in the Ollie I Decision

3. At the Parent’s request SPS funded an Independent Educational Evaluation focusing on Ollie’s reading and language skills. The Parent chose to have the evaluation completed by Elena Davis, Ph.D who had evaluated Ollie in 2019. (P-10) Dr. Davis conducted the independent evaluation in May and June 2020. (P-14)

4. The Hearing in Ollie I took place over ten days in July and August 2020. At the same time, at the direction of the Hearing Officer in *Ollie* I, the Parties continued to communicate about the April 20 – April 21 IEP at issue in that Hearing. On August 6, 2020 Springfield scheduled a Team meeting for August 17, 2020 to discuss the results of the independent evaluation conducted by Dr. Davis. On August 7, 2020 Ms. O. emailed Ollie’s Team chair, Laurie Malandrinos, stating, among other things:

Please ensure that all appropriate staff are present:

Speech, OT (no evaluation was completed showing he don’t (sic) need this service,

Transition program College Steps, assistive technology, autism specialist, vocational

Coach, LLD coach and any other necessary parties.

(S-24)

5. In an email also dated August 7, 2020 Ms. O. alerted SPS that Ollie intended to delegate educational decision making authority to her. SPS offered to make the necessary paperwork and witnesses available at the 8/17/20 Team meeting. The Director of Special Education, Mary Ann Morris, typically attends Team meetings for Ollie. After the Parent claimed that Ollie would be too frightened to participate in the 8/17/20 meeting or to sign the transfer of decision making forms in the presence of Dr. Morris, Dr. Morris volunteered to absent herself from the meeting. On August 16, 2020, the Sunday before the Team meeting, Ms. O. requested the transfer documentation, indicating Ollie would sign at the meeting the next day. The Team meeting convened as scheduled on August 17, 2020. SPS had the forms required for transferring educational decision making available for Ollie’s signature. Ollie did not attend the August 17, 2020 meeting and did not complete the transfer paperwork at that time.

(S-24; Malandrinos)

6. On August 14, 2020 SPS issued a formal invitation to the scheduled August 17, 2020 Team meeting. The list of attendees included: the educational team leader/meeting chair, who is also a special education administrator and teacher; a special education supervisor and teacher; a special education teacher; a speech-language therapist; a supervisor of speech language and language learning disabilities programs, a school psychologist and a representative from the College Steps program. (S-16) It did not include an occupational therapist,, an assistive technology specialist, an autism specialist, a vocational coach or a language learning disabilities (hereafter LLD) coach. The Parent objected. (P-3)

The Parent did not independently arrange for the participation of, an occupational therapist, an assistive technology specialist, an autism specialist, a vocational coach, or an LLD coach. (Malandrinos; Morris)

7. Laurie Malandrinos was the Springfield Public Schools Educational Team Leader and meeting facilitator for the August 17, 2020 Team meeting. She has a masters degree in special education and additional graduate level training in reading, diagnostic evaluations and counseling. Ms. Malandrinos holds state licensure as a special education teacher, general education teacher and special education administrator. She testified that the purpose of the 8/17/20 Team meeting was to review the results of the Independent Educational Evaluation (hereafter IEE) completed by Dr. Davis and determine whether the diagnostic label of Specific Learning Disability (hereafter SLD) requested by the Parent was warranted. It was not an annual review to consider the entire IEP.

As the Team leader it was her responsibility to properly compose the Team. Ms. Malandrinos received the Parent’s 8/7/20 request to include multiple therapists. She reviewed Olli’s previous IEPs and evaluations to determine whether any of the requested individuals were then providing services to Ollie or would have recent, relevant knowledge to contribute to the Team. She determined that Ollie’s IEP did not include the direct services of an occupational therapist, an autism specialist, an assistive technologist, or a vocational or LLD “coach” and, therefore, she did not invite those professionals. The Team included SPS personnel with knowledge of Ollie and licensure in general education, special education, speech and language pathology and school psychology. In particular, Ms. Malandrinos invited Suzanne Vega to fill the role of special educator, as Ms. Vega had had sustained contact with Ollie as a teacher and an evaluator during the last 6 years of his Springfield Public School career. She included Luciano Valles, as he is the supervisor of Springfield’s language learning disabilities programs, as well as Chris Kennedy from the College Steps program, the only then current educational service provider representative. (Malandrinos; see also testimony of Morris; *Ollie I p.300; 286; 296)*

Ms. Malandrinos explained that she did not invite an autism specialist to the 8/17/20 Team because Ollie had not received the services of an autism specialist since early elementary school. No such service or person was listed on his 4/20 – 4/21 IEP. No autism-specific evaluation had been conducted or was being considered. Autism specialists provide services and support to teachers, not directly to a student, at the teacher’s request. None of Ollie’s recent or current teachers or service providers had requested the assistance of an autism specialist. (Malandrinos; Morris; Bigda)

Similarly, Ms. Malandrinos did not invite an assistive technology specialist or an occupational therapist or a vocational coach to the 8/17/20 Team as there were no current services in those disciplines being delivered to Ollie by SPS and no relevant evaluation results for the Team to discuss. (Malandrinos; Morris)

8. Dr. Davis attended the 8/17/20 Team meeting to present her findings and recommendations. The Team completed a four page “checklist” designed by DESE to assist in properly determining whether a student has a specific learning disability. (“SLD checklist”) Ms. Malandrinos polled the Team members and recorded their conclusions. The majority of the Team determined, based on reports by Dr. Davis and other evaluative and observational data, that while Ollie demonstrated weaknesses in reading and could benefit from supportive services, he did not qualify for a discrete SLD diagnosis. The Parent objected[[6]](#footnote-6) (Malandrinos; P-8; S-23)

9. Ms. Malandrinos described the 8/17/20 meeting as “difficult” due to constant interruptions from the Parent and her then advocate, Andrea MacGovern. She did not observe any hostile, threatening, mocking or inappropriate behavior or language on the part of any SPS Team member. On the contrary, Ms. Malandrinos stated, Ms. O. and Ms. MacGovern did most of the talking and were not impeded in any way from full participation in the 8/17/20 meeting. (Malandrinos; S-23)

10. Samantha Vega is currently chair of the Special Education Department at the Springfield Public Renaissance School.[[7]](#footnote-7) She has bachelors and masters degrees in special education. Ms. Vega was Ollie’s substantially separate 7th and 8th grade classroom teacher at the Renaissance School. During Ollie’s 9-12th grade years Ms. Vega supervised his teachers and program, attended his IEP meetings, acted as an MCAS preparation tutor, administered academic achievement testing, and helped him with the College Steps application. She estimates that she has spent at least 1200 hours as a service provider to Ollie in the last 6 years.

Ms. Vega attended the 8/17/20 Team meeting in the role of special education teacher, as the service provider with the most, and longest term, connection to Ollie. She explained that in her role as special education chair at Renaissance she regularly conducts Team meetings using an SLD checklist to determine whether a student has a specific learning disability . A team constituted for that purpose includes: a parent, a special education teacher, a general education teacher, an educational team leader, and a “dataperson”, that is, a professional who has conducted the appropriate testing and can explain the results. Ms. Vega testified that the 8/17/20 Team meeting for Ollie had the appropriate participants and that the suggested SLD checklist was completed there.

Ms. Vega testified that she did not observe any Springfield affiliated Team members engage in intimidating, mocking or harassing language or behavior. She added that Ms. O. and Ms. MacGovern were not prevented in any way from participating meaningfully in the 8/17/20 Team meeting. (Vega).

11. Luciano Valles is the Supervisor of Speech-Language Services and Language Learning Disabilities programs for Springfield Public Schools. He testified that although he has never met Ollie he is aware of Ollie’s educational profile and programming through participation in Team meetings. Mr. Valles attended the 8/17/20 Team meeting for Ollie. He stated that the Team had the appropriate personnel to accomplish its purpose: to review the results of an IEE centered on reading and to determine whether Ollie met the criteria for SLD. Mr. Valles testified that the SLD checklist was completed appropriately at the 8/17/29 Team meeting. (Valles)

12. Clare Sibelia is a licensed school and educational psychologist. She has worked in Springfield Public Schools since 2006. Her primary duties are testing students for education related disabilities and attending Team meetings. She first met Ollie in August 2019 as part of an evaluation of his reading skills. Since then she has participated in Team meetings and Hearings concerning Ollie.[[8]](#footnote-8) Ms. Sibelia testified that the participants in the 8/17/20 Team meeting fully discussed the findings in Dr. Davis’ June 2020 evaluation report. Ms. O. participated meaningfully in the 8/17/20 meeting even if she didn’t like the result. They completed the SLD checklist at the meeting. Ms. Sibelia explained that while her ultimate conclusion about whether Ollie had a discrete specific learning disability in addition to autism differed from that of Dr. Davis, the outcome: a need for supportive services, was the same. According to Ms. Sibelia, Ollie’s receptive and expressive language difficulties, along with memory and processing speed weaknesses that negatively affect his reading skills, arise out of the characteristic cognitive challenges of autism rather than a wholly separate SLD. (Sibelia;

S-20)

13. Francine Bigda has been a licensed speech-language pathologist for thirty years. She also has additional post masters training in special education. She has worked for the Springfield Public Schools for 13 years. She briefly provided speech-language services to Ollie in the summer of 2018. Since then she has attended Team meetings and Hearings concerning Ollie.[[9]](#footnote-9)

Ms. Bigda attended the August 17, 2020 Team meeting. She testified that the Team reviewed the June 2020 evaluation report of Dr. Davis and completed the SLD checklist for Ollie in the same way it is done for any other Springfield Public School student. She stated that there were no irregularities in the consideration of the report or in the completion of the checklist. (Bigda)

14. Nancy Retchin, a high school level special education supervisor for Springfield Public Schools for 10 years, holds a license in elementary and special education and a CAGS in school administration. She has attended Team meetings and Hearings concerning Ollie but has not provided any direct services to him.[[10]](#footnote-10) Ms. Retchin attended his 8/17/20 Team meeting.. Her role was to listen to the experts and distill that information into diagnosis and services. She testified that the Parent, her advocate Ms. MacGovern, and the independent evaluator t, Dr. Davis, who was present,were able to, and did, speak freely and participate meaningfully in the Team meeting. Ms. Retchin testified that the SLD form was completed at the 8/17/20 Team meeting, and that the outcome was not determined or coordinated in advance of the Team meeting. Ms. Retchin did not hear or observe any mocking, demeaning, harassing or intimidating language or behavior toward Ms. O. by any Springfield Public School personnel. (Retchin)

15. Completion of the SLD checklist resulted in a Team finding that Ollie did not qualify for a separate diagnosis of specific learning disability. (P-8). The checklist included a sheet to record observational data (component 4) which did not have a narrative as no formal observation of Ollie by Dr. Davis or by SPS took place. The observation was not completed because Ollie was, at the time of the IEE and the Team meeting, not attending a public school program; was not attending a K-12 program; and was also not in a classroom environment at College Steps due to a summer break and Covid-related restrictions. (Malandrinos; Vega; P-8)

16. Ms. O. and Ms. MacGovern participated fully and thoroughly in the 8/17/20 Team meeting. They were not impeded by any SPS staff or representatives in any manner at any time. While they created confusion, tension and diversion, the Springfield Public School staff and representatives were calm and even in their responses and maintained professional courtesy and contructive suggestions throughout a lengthy, tense meeting. (S-23; see also supporting testimony of Malandrinos, Vega, Bigda, Retchin, Sibilia.)

17. After the Team meeting concluded, Ms. Malandrinos prepared an N-1 documenting the process and the outcome. (S-17) She requested guidance from her supervisor, Dr. Morris, the Director of Special Education for SPS, on choice of the correct form. (P-6; P-8 ) Dr. Morris suggested a small semantic change from “consensus” of the Team to “majority” of the Team to more accurately reflect the sentiment of the 8/17/20 Team. (Malandrinos; Morris) The N-1 and the SLD checklist were loaded onto the SPS central-filing system, Easy IEP, and sent to the Parent on 8/18/20. (Malandrinos, stipulation of the Parties) It is a normal practice within SPS to have multiple people in the special education hierarchy review and/or approve actions and documents. (Malandrinos; Valles, Morris)

18. During the summer of 2020 Ollie received assistive technology support and Springfield Public Schools IT support after he reported difficulty using his school provided computer. Despite being on leave at the time, Melinda Brodecki, an assistive technology specialist for Springfield Public Schools, arranged for the home delivery of a new computer and helped Ollie with the necessary set up and connections. She also offered to conduct an updated evaluation of Ollie’s need for assistive technology. (Brodecki; S-22) Ms. Brodecki testified that she “reached out” to Ms. O and Ollie multiple times between August and December 2020 to offer to schedule an assistive technology evaluation but had not, by the time of the Hearing, received a response. (Brodecki; See also *Ollie I* 281-296)

19. On 9/2/20 Springfield Public Schools issued an Invitation to a 9/10/20 Team meeting: to discuss rejected portions of the 4/16/20 IEP to be facilitated by

the BSEA as part of the agreement between the parties before the

Hearing Officer, Amy Reichbach, on Wednesday, August 19, 2020[[11]](#footnote-11)

(S-15)

The meeting invitees included: an educational team leader (Malandrinos), the Director of Special Education (Morris), a Special Education Supervisor (Retchin) and a speech therapist (Bigda) along with the Student, the Parent, the Parent’s advocate and the School’s legal representatives. The Director of Mediation for the BSEA was scheduled to facilitate the meeting.

20. Ms. O. responded by email on 9/2/20 requesting that the Team include an assistive technology specialist and an occupational therapist. She also alerted Ms. Malandrinos that Ollie would not attend the meeting “because Mary Anne” (Dr. Morris) was a listed participant. Embedded in the email was a request for an occupational therapy evaluation. (S-24) SPS did not invite an SPS occupational therapist or assistive technology specialist to the September 10, 2020 Team because neither would have current, relevant knowledge of Ollie or his program to contribute to the discussion. (Malandrinos; Morris)

21. The 9/10/20 Team meeting was facilitated by the BSEA’s Director of Mediation, Myrto Flessas. At the direction of the then current Hearing Officer, the discussion was focused on resolving any parental objections to the 4/20 – 4/21 IEP that were not part of the Ollie I proceeding. (Morris; Malandrinos; S-15; S-13) Ms. O. fully participated in the 9/10/20 meeting. At one point the Parent attempted to show some papers she claimed were Ollie’s current work samples. The documents could not be viewed by other Team members as Ms. O. held them up to her phone’s camera. Ms. O. did not offer them to the Team at any other time or in any alternate format. Ms. O. requested additional evaluations in the areas of written language and vocational skills. She further requested that the three hours of reading and written language tutoring support outlined in the 4/20 – 4/21 IEP be delivered by AIC – College Steps personnel rather than by Springfield Public Schools’ special education staff. The Team discussed scheduling options for Ollie’s services. The Team did not discuss extended year services for 2021 as the IEP would expire in April 2021. Other parental objections were not discussed as they remained active before the BSEA for Decision. The meeting was well facilitated. There was no disrespectful, harassing, intimidating or mocking behavior or language on the part of any participant affiliated with Springfield Public Schools. (Malandrinos; Morris; Retchin; Bigda)

22. After the Team meeting Dr. Morris contacted AIC to arrange a discussion concerning its provision of services to Ollie. Sarah Knight of the College Steps program, Dr. Morris, and Ms. Malandrinos conferred on 9/11/20. AIC-College Steps agreed to enter into a contract to provide the reading and written language tutoring to Ollie (instead of Springfield Public Schools) and to provide it in addition to, and outside the hours of, the College Steps program. They also discussed and confirmed other contractual obligations AIC-College Steps would be undertaking given its receipt of public funds for the education of a Springfield Public Schools student, such as submission of quarterly progress reports and maintenance of attendance records. They did not discuss any changes to Ollie’s IEP. (Malandrinos; Morris)

23. On September 10 and 14, 2020 Springfield Public Schools issued consent forms to Ms. O. for evaluations of Ollie’s written language and vocational skills. (S-10, S-11, S-14) The forms had not been returned to Springfield Public Schools by the time the issues were formalized for this Hearing, January 11, 2021.

24. On September 17, 2020 SPS issued an N-1 form. The N-1 provides a narrative description of the actions a school proposes to take, or refuses to take, as a result of a Team meeting. The N-1 issued after the 9/10/20 Team meeting notes that Springfield Public Schools was proposing a revised 4/20 – 4/21 IEP. It also noted under “rejected options” that the Team did not address issues that were, at that time, already under consideration by the BSEA. (S-9; Morris; Maladrinos)

25. On September 17, 2020 SPS also issued a revised 4/20 - 4/21 IEP, adding information concerning the 9/10/20 Team meeting, changing the provider of tutoring services from Springfield Public Schools to AIC College Steps and acknowledging the Parent’s request for additional evaluations in the areas of written language and vocational skills. No substantive changes to Ollie’s placement or program were proposed. (S-12; Bigda)

The Parent returned the Response forms on October 22, 2020. She indicated her assent to the placement and her rejection of portions of the revised IEP. The rejections mirrored those then under consideration in Ollie I. At Hearing, Ms. O. testified that she did not want to change Ollie’s placement in the College Steps program or the tutoring and speech-language services he receives pursuant to the 4/20 – 4/21 IEP. Ms. O. stated that she is seeking additional services in occupational therapy and assistive technology. (Ms. O.; S-6)

26. On September 18, 2020 Ms. O. requested a Hearing at the BSEA. The resolution meeting on that request was held on 10/1/20. Before the meeting began Ollie completed the adult transfer of decision-making authority form, designating Ms. O as the sole educational decisionmaker. (Malandrinos; Morris)

27. At the October 1, 2020 resolution meeting, Ms. O. noted that Springfield Public Schools had failed to issue a consent form for the occupational therapy evaluation she had requested in an email dated 9/2/20. Ms. Malandrinos testified that the request had been received in an email concerning the 9/10/20 Team meeting and had been overlooked. She immediately sent a formal consent to evaluate, dated 10/1/20, to Ms. O. (S-7, S-8) The form had not been signed or returned to Springfield Public Schools by the time the issues were finalized for this Hearing on January 11, 2021. Dr. Morris testified that she told Ms. O. that, if Ollie were found to be eligible for occupational therapy, SPS would provide compensatory occupational therapy services retroactive to the date of the Parent’s initial request for an evaluation. (Malandrinos; Morris;

S-24)

28. Other than addressing the Parent’s request for an occupational therapy evaluation, the meeting on October 1, 2020 failed to resolve the Parent’s outstanding complaints about Ollie’s programming, schedule and service. None of the attendees affiliated with Springfield Public Schools engaged in any behavior, or used any language, that could reasonably be considered harassing, intimidating, mocking or disrespectful. (Malandrinos; Bigda; Valles; S-23) The meeting, however, was difficult and unproductive due to constant interruptions, unfounded accusations, and off topic soliloquies by the Parent and the advocate. (S-23)

29. Melinda Brodecki, the Springfield Public Schools technology specialist, emailed and called Ms. O. four times during November 2020 to discuss Ollie’s assistive technology needs and the possibility of an evaluation. Ms. O. did not return her calls. Ms. Brodecki has not received any contact from a service provider or a member of Ollie’s Team requesting assistance with Ollie’s technology needs or with concerns about his access to the curriculum or the educational environment**.**  (Brodecki)

30. A second resolution meeting was scheduled to occur on 11/20/20 to continue to review parental objections to the 4/20 and 9/20 IEPs. This meeting was facilitated by BSEA mediator Steve Lilly-Weber. The parties maintained reasonably appropriate behavior. No SPS attendees engaged in any behavior or used any language that could be reasonably construed as harassing, mocking, intimidating or disrespectful toward the Parent. Ms. O. had every opportunity to, and did, meaningfully participate in the November 20, 2020 Resolution Meeting. (Malandrinos; Morris)

31. On December 1, 2020 SPS issued an N-1 describing the discussion and actions taken at the November 20, 2020 facilitated Team meeting/resolution meeting. The N-1 listed nine areas of discussion and set out the School’s response to Ms. O.’s complaints and requests, some of which are reflected in the 11/10/20 Ollie I Decision. (S-25)

Springfield Public Schools also issued a new IEP for the time period 11/20/20 to 4/15/20.

(S-5) The 11/20/20 IEP was substantively identical to the 4/20 – 4/21 IEP at issue in *Ollie I* and renewed in 9/20. It covered the period of time remaining on the 4/20 – 4/21 IEP. (Malandrinos)

Ms. O. rejected the proposed IEP on 12/15/20 claiming that the IEP was “more than 80% written unilaterally” and that the tutoring provided by the AIC College Steps program should follow the SPS calendar rather than the College Steps calendar (S-4)

32. AIC College Steps is Ollie’s placement pending appeal pursuant to the Decision in

*Ollie I*. Springfield Public Schools has, at all times relevant to this Decision, provided Ollie with a free appropriate public education by implementing the portions of the 4/20 – 4/21 IEP accepted by the Parent, and, ultimately approved by the BSEA.

LEGAL STANDARDS

A. Free, Appropriate, Public Education

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education, familiarly known as “FAPE”.[[12]](#footnote-12) FAPE is delivered primarily through a student’s IEP, which must be tailored to meet a child’s unique needs after careful consideration of the child’s present levels of academic achievement and functional performance, disability, and potential growth.[[13]](#footnote-13) As summarized by the United States Supreme Court in *Endrew F. v. Douglas County School District*, 580 U.S.\_\_,137 S. Ct. 988, 994 (2017) the IEP must “describe how the child’s disability affects the child’s involvement and progress in the general education curriculum, and set out measurable annual goals, including academic and functional goals, along with a description of how the child’s progress toward meeting those goals will be gauged.[[14]](#footnote-14) To meet its substantive obligation under the IDEA, a (district) must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.[[15]](#footnote-15)The goals of all students should be “appropriately ambitious…just as advancement from grade to grade is appropriately ambitious for most students in a regular classroom.[[16]](#footnote-16)

Similarly, Massachusetts FAPE standards require than an IEP be “reasonably calculated” to confer a meaningful educational benefit in light of the child’s circumstances,”[[17]](#footnote-17)and designed to permit the student to make “effective progress.”[[18]](#footnote-18) Evaluating an IEP requires viewing it as “a snapshot, not a retrospective. In striving for appropriateness, an IEP must take into account what was…objectively reasonable…at the time the IEP was promulgated.”[[19]](#footnote-19)

Under state and federal special education law, a school district has an obligation to provide the special educational services that offer FAPE in the least restrictive environment able to “accommodate the child’s legitimate needs.”[[20]](#footnote-20) For most children, a FAPE “will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade”[[21]](#footnote-21) However, “the benefits to be gained from mainstreaming must be weighed against the educational improvements that could be attained in a more restrictive (that is, non-mainstream) environment”[[22]](#footnote-22)

B. Procedural Claims Under the IDEA

The procedural protections embedded in the IDEA serve a dual purpose; they ensure that each eligible child receives a FAPE, and they provide for meaningful parental participation.[[23]](#footnote-23) The IDEA emphasizes and recognizes the importance of its procedural elements by providing that even if no substantive irregularities have occurred, procedural errors may amount to a deprivation of a FAPE if “the procedural inadequacies – (1) impeded the child’s right to a free appropriate public education; (II) significantly impeded the parent’s “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”.[[24]](#footnote-24)

The First Circuit Court of Appeals echoed this statutory language when it considered parental claims of procedural impropriety in *Roland v. Concord School Committee*, 910 F.2d 983 (1st Cir. 1990). It explained that school districts may be found liable for procedural improprieties if a parent proves that a violation of the processes set out in the IDEA occurred and that the “procedural inadequacies compromised the pupil’s right to an appropriate education, seriously hampered the parents’ opportunity to participate in the IEP formulation process or caused a deprivation of educational benefits”. *Roland, supra,* at 994. See also: *Endrew F. v. Douglas County School District RE-1, supra,* in which the U.S. Supreme Court noted that the procedures that foster collaboration between parents and school districts are key components of the IDEA.[[25]](#footnote-25)

C. Burden of Proof

In proceedings under the IDEA and M.G.L. c71B, the party seeking relief bears the burden of proving entitlement to it by a preponderance of the competent evidence. *Schaeffer v. Weast*, 546 U.S. 49 (2008). In Ollie II, this matter, the Parent is the moving party and bears the burden of persuasion on each issue.

D. Res Judicata

There are several legal principles concerning the limitation or preclusion of issues that may appropriately be resolved by the BSEA that are relevant here. As the BSEA issues final administrative decisions in a limited jurisdiction adversarial due process context, it employs the doctrines of *res* *judicata* and collateral estoppel in the same way a court of general jurisdiction does in resolving litigation.[[26]](#footnote-26) The U.S. Supreme Court has noted that these two doctrines “relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and by preventing inconsistent decisions, encourage reliance on adjudication”.[[27]](#footnote-27) These underlying purposes apply equally to a BSEA proceeding.[[28]](#footnote-28)

Under *res judicata,* a final judgment on the merits of an action precludes the parties from relitigating issues that were, or could have been, raised in that action.[[29]](#footnote-29) More specifically, the three elements of *res judicata* are (1) a final judgment on the merits in an earlier suit, (2) “sufficient identicality” between the causes of action asserted in the earlier and later suits, and (3) “sufficient identicality” between the parties in the two suits.[[30]](#footnote-30)

Here, the same parties, Ms. O. and Springfield Public Schools, have fully presented their substantive, factual claims and legal arguments concerning the IEP proposed for Ollie for the period 4/1/20 – 4/15/21 to the BSEA. The BSEA issued a final, comprehensive Decision concerning that IEP, among other issues. Therefore, any substantive parental claims that concern that IEP, or any subsequent IEP that is substantively “identical” and covers the same period of time, are barred by *res judicata*. The Parent may not re-litigate claims or issues she brought, or could have brought, to the attention of the BSEA during an earlier appeal.

FINDINGS AND CONCLUSIONS

There is no dispute that Ollie is an adult student with disabilities entitled to receive a free, appropriate public education pursuant to 20 U.S.C.§1400 et. seq. and M.G.L.c71B. Nor is there a dispute that Ollie is currently receiving a free, appropriate public education. This matter concerns the Parent’s on-going objections to the manner in which Springfield Public Schools determines and delivers that free, appropriate public education. After careful consideration of all the evidence presented at Hearing and the arguments of the parties, with special consideration of, and leeway accorded to, the Parent due to her *pro se* status, I find that the clear and convincing weight of the evidence establishes that the Springfield Public Schools has properly discharged its obligations to Ollie under federal and state special education law. The Parent has not met her burden of proving otherwise.

Before turning to the enumerated issues it is helpful to acknowledge and address foundational themes that touch all of them. First, it is critical to bear in mind that, at all times relevant to this Decision, Ollie has been attending the AIC College Steps program and receiving additional related services and tutoring as set out in the 2020-2021 IEP approved by the BSEA in *Ollie I*. Neither Ollie, nor Ms. O., nor SPS seeks a change in placement or in substantive educational programming.

Second, also a critical backdrop to this Decision is the fact that for four-fifths of the time period covered by this Decision, the Parties were actively, intensively, and a few times constructively engaged in the Ollie I Hearing: presenting evidence and arguments; seeking guidance from the *Ollie I* Hearing Officer, holding meetings at her direction and waiting for a Decision. The Parties had a good deal of communication, structured and otherwise, during the late summer and fall of 2020.

Third, it is important to note that Ms. O.’s repeated claims of Springfield Public Schools’ harassment, intimidation and discrimination have no support in the evidentiary record. On the contrary, email records, audio recordings and other submissions in this administrative process reveal that Ms. O. engaged in the behavior, and used the kind of language, of which she complains. (S-24; P-9; S-23; Ruling on Motion to Strike) To the extent that Team and Resolution meetings were unproductive, or unsatisfactory to Ms. O., it was her own contribution to the meeting that made it so.[[31]](#footnote-31) That Springfield Public Schools did not permit the Parent’s continuous obstructive behavior, unwarranted hostility and disparaging language to interfere with the delivery of appropriate special education services to Ollie deserves commendation not condemnation.

Fourth, throughout the appeal process, Ms. O. demonstrated persistent and pervasive misperceptions and mischaracterizations, advanced arguments replete with faulty assumptions and resisted re-direction. At every stage of the proceedings her recollection and recitation of “facts” has been demonstrably flawed and, therefore, unreliable. On the other hand, at all times relevant to this Hearing, the language and behavior of SPS witnesses and representatives remained uniformly professional, cordial and conciliatory. The testimony of SPS witnesses was rooted in demonstrable fact and governing special education policy and was consistent with the documentary record and with each other. Thus, when the accounts of school witnesses and Ms. O. differ, I credit the testimony of the SPS witnesses.

Finally, the Parent, as the appealing party, had the burden to produce credible, persuasive evidence in support of her claims. *Schaffer v. Weast*, 546 U.S.49 (2008). Ms. O. did not carry that burden on any issue. Therefore, she cannot prevail as a matter of law.

Turning to the issues set out earlier:

I. A) Whether the Team meetings held on August 17, 2020 and September 10, 2020 complied with the procedural requirements set out in 20 U.S.C.§1414 (d) (B); 34 CFR 300.321?

B) If not, whether Ollie suffered substantial educational harm as a result?

A) The Parent claimed that Teams that met on August 17, 2020 and September 10, 2020 failed to meet minimum federal standards as they did not include specialists that she had requested to be present. Composition of special education teams is a school district responsibility. A Team must include the Parent(s), the student if of age, and school district personnel who know the Student, who are licensed to provide special education and grade-appropriate general education, if applicable, who are qualified to interpret evaluations, and who can describe and commit district resources. The district, or the parent, may invite other appropriate individuals provided they have relevant knowledge and experience.[[32]](#footnote-32)

The district declined to include in the August and September 2020 Teams the specialists requested by the Parent. So long as the Team was otherwise properly composed the district was under no legal obligation to do so.[[33]](#footnote-33) When considering just this issue the federal Office of Special Education Programs (“OSEP”) stated that a parent may not require a district to invite a particular public employee to any Team. *Letter to Byrd*, 41 IDELR 94, 104 LRP 1216 (OSEP 2003).[[34]](#footnote-34)

Ms. Malandrinos and Dr. Morris provided cogent and credible reasons for not including an autism specialist, an occupational therapist, a vocational coach, an LLD coach and

an assistive technologist in the August and September 2020 Teams. None was providing services to Ollie. None had conducted a recent evaluation. None had special knowledge of the facts or issues or special circumstances of the student slated to be discussed at the Teams (see paragraphs 7 and 20, *supra*). The Parent was at liberty to invite similarly qualified professionals to accompany her to the Teams. She did not.

The Team held on August 17, 2020 to discuss an IEE concerning SLD included: a special education teacher with knowledge of and experience with Ollie; a speech language therapist with knowledge of and experience with Ollie; 2 special education administrators with additional general education licensure; a school psychologist with expertise and experience in interpreting SLD evaluations; a speech language and LLD program supervisor with expertise and experience with evaluations and with specialized programs and services available through SPS; a representative of the College Steps program; the IEE evaluator, the Parent and her advocate. The roles required by the IDEA: special education, general education, administration, evaluation, and parent, were properly filled. There is no evidence to the contrary.

The facilitated Team held on September 10, 2020 to discuss the Parent’s thirty objections to the 2020-2021 IEP then before the BSEA in *Ollie I* included: 3 special education administrators with additional teacher licensure in general and special education; a speech-language therapist with knowledge of and experience with Ollie; the Parent and her advocate. The roles required by the IDEA were properly filled. There is no evidence to the contrary.

Therefore, I find that the Team meetings held on August 17, 2020 and September 10, 2020 complied with the procedural requirements set out in 20 U.S.C. §1414 (d)(B); 34 CFR 300.321.

B) Even assuming, *arguendo,* that they had not, there is no evidence that Ollie experienced any educational deprivation or that SPS failed to provide any required or authorized educational service to Ollie, in connection with the August or September 2020 Teams.

In particular:

1. Did the School fail to include a required autism specialist on the Teams, and if so, did that failure deny Ollie a free appropriate public education:

No. As explained above, SPS was not required to include an autism specialist on the August or September Teams simply because the Parent requested it. The Teams were properly composed in the absence of an autism specialist. Further, is no evidence that the absence of an autism specialist resulted in a denial of a free, appropriate public education to Ollie. On the contrary, the weight of all evidence, including the findings of the BSEA in *Ollie I,* compel the conclusion that Springfield Public Schools provided a free, appropriate public education to Ollie throughout August, September, October, November and December 2020.

2. Did the School fail to include a required assistive technology specialist on the Teams, and, if so, did that failure deny Ollie a free, appropriate public education?

No. As explained above, Springfield Public Schools was not required to include the assistive technology specialist requested by the Parent on either the August or September 2020 Teams. The Teams were properly composed in the absence of an assistive technology specialist. There is no evidence that the absence of an assistive technology specialist resulted in a denial of, or impeded the delivery of, a free, appropriate public education to Ollie, or interfered with Ms. O.’s ability to participate meaningfully in the Teams.

3. Did the School fail to include a required special education teacher on the Team and, if so, did that failure deny Ollie a free, appropriate public education?

No. The Team included three individuals with licensure and experience in special education, including Ms. Vega who had worked with Ollie as a teacher, tutor and administrator and with Ollie’s teachers as a supervisor (¶10, *supra*). IDEA regulations do not require that the special education representative on a Team be currently providing services to a student.[[35]](#footnote-35) In this case that would be impossible as Ollie is not receiving K-12 special education services.[[36]](#footnote-36) Springfield Public Schools invited Ms. Vega, a special educator with significant, recent knowledge of Ollie, to the August 17, 2020 Team. It thereby ensured proper composition of the Team. There is no evidence that the attendance of Ms. Vega, or the other special educators, at the August 17, 2020 Team resulted in educational harm to Ollie or impeded the Parent’s ability to participate meaningfully in the Team discussion.

4. Did the School fail to complete a required checklist concerning the identification of a specific learning disability, and, if so, did that failure deny Ollie a free, appropriate public education?

No. The credible evidence established that a four page Specific Learning Disability “checklist” was completed at the August 17, 2020 Team meeting. The completed “checklist” was emailed to Ms. O. no later than August 19, 2020. (P-8; Malandrinos; Morris. Paragraph 17 *supra*) The Parent claims first that the SLD checklist was not properly filled out. Otherwise, in her view, the Team would have reached the conclusion that Ollie has a specific learning disability distinct from his autism. She, therefore, objects to the substantive conclusion the Team reached. The substance of the Team’s discussion and conclusion is not addressed here, however, as it was one of the issues considered and resolved by the Hearing Officer in *Ollie I*.[[37]](#footnote-37) The Parent also complains that the observation portion of the “checklist”, component 4, could not be completed as no observation of Ollie took place before the Team meeting. When considering Ms. O.’s objection it is important to remember that the Team meeting was held to review and discuss the IEE conducted by Dr. Davis. Dr. Davis did not conduct a formal observation of Ollie. Page 4 of the SLD form is a guide to notetaking for an observation that “may” occur, not necessarily a required component of the SLD determination process. There were multiple, legitimate reasons to omit an observation in this matter. (See Para.15, *supra*). SPS properly completed page 4/component 4 by noting, accurately, that no observation occurred.[[38]](#footnote-38)

I find, therefore, that an SLD checklist was completed during the August 17, 2020 Team meeting, that the Parent participated in that discussion[[39]](#footnote-39) and that she received a timely copy of the completed checklist. There is no evidence that completion of the SLD checklist denied Ollie a free, appropriate public education or impeded the Parent’s ability to participate meaningfully in the August 17, 2020 Team discussion.

5. Did the School fail to consider information brought to the Teams by the Parent (work samples, reading levels, book titles) and, if so, did that failure deny Ollie a free, appropriate public education?

No. Ms. O. and her advocate brought their own knowledge of Ollie and his educational needs and performance to the August and September 2020 Team meetings. They had every opportunity to present their perspectives during those meetings. The only document Ms. O. submitted to the Team in advance was the IEE report of Dr. Davis which was considered at the August meeting. During both virtual meetings Ms. O. held up papers purporting to be Ollie’s “work samples” to her camera. Other Team members were unable to see the documents and therefore they were not discussed. Ms. O. did not, at any time, submit the documents in an alternate format for Team consideration. (P-8; P-23; ¶ 21) Based on these facts I find that SPS did not ignore parent provided information concerning Ollie during either Team. To the extent that Ms. O. intended to present additional documentary information to the Team, I find that the Teams lacked appropriate notice, form and content of any such documentation and therefore could neither access nor consider that information. Furthermore, there is no evidence that Ollie was denied a free, appropriate public education as a result of the parental miscommunication or that it significantly impeded the Parent’s ability to participate meaningfully in either Team meeting.

6. Did the School fail to document options rejected at the September 10, 2020 Team meeting, and if so, did that failure deny Ollie a free, appropriate public education?

No. On September 14, 2020 Springfield Public Schools issued an N-1 summarizing the discussion held during the facilitated Team meeting on September 10, 2020 (S-9) Under “Rejected Options” the N-1 stated: “The district refused to address issues that are already under consideration by the BSEA.” Both the limitations on the discussion and the subsequent notice to the Parent were appropriate given the unusual circumstances of this matter. (See discussion *supra* at ¶21) There is no evidence that Ollie was denied a free, appropriate public education as a result of clarifying appropriate parameters for discussion during the 9/10/20 Team meeting or the subsequent documentation of those parameters in the 9/14/20 N-1. Nor is there any evidence that the appropriate discussion limitations occasioned by an ongoing BSEA Hearing and enforced by a BSEA Team Facilitator, interfered in any consequential way with the Parent’s ability to meaningfully participate in the 9/10/20 Team discussion. On the contrary, the limits seemed to focus the Team on the parental requests that could be resolved at that time, ie., change of tutoring service provider; and related services evaluations.

II. A) Whether the School denied the Parent and Ollie a meaningful opportunity to participate, by reason of harassing, intimidating or mocking behavior or language, in meetings held on:

1. August 17, 2020

No. All school affiliated witnesses testified credibly that the Parent and her advocate were able to present their views and “facts” for the Team’s consideration. Dr. Davis did not testify otherwise. The testimony of the Parent to the contrary is not credible. It is contradicted by the audio recording of the 8/17/20 Team meeting. To the extent that Springfield Public Schools’ personnel or representatives attempted to redirect or channel the contributions of Ms. O. and Ms. MacGovern they did so respectfully and purposefully in order to focus the Team on the task before it. There is no evidence to support the Parent’s claims that she was “shut down” or otherwise prevented from appropriate participation. Nor is there any credible evidence that Springfield Public Schools engaged in harassing, intimidating or mocking behavior or language. On the contrary, it is the Parent who demonstrated those behaviors and that type of language during the Team meeting. (S-23), I find, therefore, that the Parent was able to participate meaningfully in the Team held on 8/17/20.

2. September 10, 2020

No. The September 10, 2020 Team Meeting was facilitated by the BSEA’s Chief Mediator. All school witnesses testified that the discussion was well facilitated and productive. Ms. O.’s assertions otherwise are not credible. (See e.g. I.6 *supra*) The Team resulted in service changes and proposals that the Parent had specifically raised and requested during Team discussions.

I find, therefore, that the Parent was able to participate meaningfully in the Team held on 9/10/20. There is no evidence to support her claims that Springfield Public Schools engaged in harassing, intimidating, or mocking behavior and/or language during the 9/10/20 Team meeting, nor that Ollie was denied a free, appropriate public education as a result.

3. October 1, 2020

No. The meeting on October 1, 2020 was a Resolution Session. 20 U.S.C.§1415 (f)(B). There is no standard format for resolution meetings. They are intended as a forum in which a school administration representative and a parent can speak informally about the parent’s concerns and ways to resolve them. The BSEA does not supervise the content of, or procedure, for resolution meetings other than to ascertain whether one has been held within the statutory time frame, that is, within fifteen days of the Parent’s Hearing Request. This was. Nevertheless, the testimony of school participants in the 10/1/20 meeting, along with the audio recording, (S-23) establish that the Parent had every opportunity to participate meaningfully. It also supports the twin conclusions that no Springfield Public School personnel engaged in harassing, intimidating or mocking behavior or language during the 10/1/20 meeting and that the Parent did.

4. November 20, 2020

No. The meeting on November 20, 2020 was a Resolution Session facilitated by a BSEA mediator. The participant witnesses testified credibly that no Springfield Public School personnel engaged in harassing, intimidating or mocking behavior or language directed at the Parent, and that the Parent was able to participate meaningfully in the meeting. (¶30) There is no evidence to the contrary.

III. Whether a proposed IEP or revisions resulted from the August 17, 2020 and the September 10, 2020 Team meetings and, if so, whether that IEP is reasonably calculated to provide a free, appropriate public education to Ollie?

The 8/17/20 Team meeting resulted in a Springfield decision not to include a distinct diagnosis of SLD on Ollie’s IEP. Springfield Public Schools formally notified the parent of its determination by issuing an N-1 on 8/18/20 containing this information. (S-17) As no language changes to the 2020-2021 IEP were proposed, and no service changes to Ollie would result, a revised IEP was not necessary. Springfield Public Schools continued to provide a free, appropriate public education to Ollie pursuant to the 4/20 – 4/21 IEP. *Ollie I*.

Springfield Public Schools issued a revised 2020-2021 IEP after the 9/10/20 Team meeting. (S-12; see also S-9) The IEP reflected one service change requested by the Parent: that Ollie’s three weekly hours of tutoring be provided by AIC College Steps personnel rather than Springfield Public Schools personnel. The placement remained the same. The total hours, type and location of service delivery remained the same. The revised IEP issued on 9/17/20 is substantively identical to the 4/20 - 4/21 IEP approved by the BSEA in *Ollie I.* The Parent did not provide any evidence that the personnel change she requested resulted in a denial of a free, appropriate public education to Ollie.

IV. A) Did the School fail to timely respond to a parental request for an occupational therapy evaluation? And if so, did that failure deny Ollie a free, appropriate public education?

In an email to the district dated September 2, 2020, the Parent requested that SPS conduct an occupational therapy evaluation (S-24). That request was overlooked. Although the 9/10/20 Team discussed other parental requests for evaluation, such as vocational and written language, it did not address occupational therapy. When the Parent brought the lapse to the School’s attention during the 10/1/20 Resolution Session, SPS immediately issued a request for parental consent for an occupational therapy evaluation and offered to provide compensatory services were Ollie found to need occupational therapy. (S-8; Malandrinos; Morris) The Parent did not return the consent form during 2020.

Federal and state regulations are silent on the expected time in which a school district must respond to a parental request for a discrete, related service evaluation not part of an initial special education evaluation. For initial evaluations, Massachusetts requires a school to notify parents of a referral within 5 days of receipt. 603 CFR 28.04(1). Federal regulations require only that a school district respond within “a reasonable time” 34 C.F.R. §300.503(a).[[40]](#footnote-40) It is “reasonable” to borrow the 5 day response time from the Massachusetts regulation governing initial evaluations and apply it more broadly to any request for evaluation, as is common practice in Massachusetts school districts, including Springfield Public Schools. Unfortunately, here, Springfield Public Schools did not respond to Ms. O. within 5 days of her request.

While this inaction may, arguably, amount to a procedural violation of M.G.L. c.71B I decline to so find here. SPS immediately rectified its error upon learning of it and offered to provide substantive compensatory services if warranted. The Parent did not timely consent to the evaluation she requested. She cannot now plausibly claim that educational harm resulted from a 23 day delay in SPS response when her own contribution to delay exceeds 90 days. There is no evidence to suggest that a 23 day delay in responding to the Parent’s request for an occupational therapy evaluation caused a denial of a free, appropriate public education to Ollie, or, indeed, had any effect at all on Ollie’s education. Therefore, I find that this *de minimis* procedural misstep does not meet the standard for relief set out in *Roland, supra.*

V. Did the School fail to make transfer of educational decision-making authority paperwork available to the Student in a timely manner, and if so, did that failure deny Ollie a free, appropriate public education?

No. There is no evidence to support Ms. O.’s claim that SPS failed to make appropriate transfer of educational decision-making authority paperwork available to the family in a timely manner. SPS had the paperwork conveniently available and ready for the family at the first meeting opportunity scheduled after their original request. (¶5.) That Ollie did not attend the 8/17/20 meeting to complete the transfer documents is not the fault of Springfield Public Schools. The paperwork was again available to the family on 10/1/20, at the next scheduled event convenient for Ollie. It was completed then. Ollie’s election has been observed since. There is no evidence that the transfer, or lack of transfer, of educational decision-making authority from Ollie to Ms. O. affected the educational services Springfield Public Schools provides to Ollie in any way or impeded Ms. O.’s ability to participate in the educational planning process for him.

VI. A) Whether the communications and/or meetings that took place between the School and representatives of Ollie’s current special education placement immediately after the Team meeting of September 1, 2020 constituted a “Team” meeting pursuant to the IDEA?

B) If so, did the failure to include the Parent in those communications/meetings deprive her of a meaningful opportunity to participate in the development of Ollie’s IEP and/or deny Ollie a free, appropriate public education?

The Parent complains that a virtual meeting that took place between SPS administrators and AIC College Steps administrators on the day after the 9/10/20 facilitated Team meeting was an “illegal” Team meeting because it did not include her. Ms. O. misunderstands the statutory definition and scope of a Team meeting. A Team is a product of special education law and procedure. It is designed to permit schools and parents to come to a common, comprehensive understanding of a student’s learning needs and to develop a plan to meet them. As a result, there are specialized requirements for timing, personnel, documentation and evaluative information. (See discussion at IA *supra*) Not every meeting about a student is a Team. Not every communication among special education and general education providers is a Team.

34 CFR 300.501(c).

Here, the 9/10/20 meeting between Springfield Public Schools administrators and AIC College Steps administrators was clearly not a Team. The participants in the meeting did not consider evaluative information and/or educational performance to determine Ollie’s learning needs. These were determined at earlier Team meetings and reflected on the 2020-2021 IEP. The participants in the meeting did not determine or select the required service type, level or location. Those were determined at earlier Team meetings and reflected on the 2020-2021 IEP. The 9/10/20 meeting was held primarily to discuss the personnel change requested by the Parent and to determine whether the 2020-2021 IEP could be implemented in accordance with her wishes. This meeting was an exercise of Springfield Public Schools’ ongoing responsibility under the IDEA to determine and supervise the scheduling, cost and monitoring of publicly funded educational services provided by a private vendor. Discharge of that responsibility does not involve the Parent. Springfield Public Schools appropriately, and timely, met its obligations to Ollie and to the Commonwealth, to ensure the seamless implementation of Ollie’s 2020-2021 IEP in spite of the significant distractions and hurdles posed by the Parent here. The Parent has, at all times and in all appropriate venues, been offered the opportunity and exercised her prerogative to participate meaningfully in the development and supervision of Ollie’s IEP. The 9/10/20 meeting did not infringe on any of the procedural rights accorded to Ms. O. by the IDEA or M.G. L. c71B, nor did it result in a denial of a free, appropriate public education to Ollie.

I turn now to additional complaints lodged by Ms. O. that are not reflected in the issues set out for resolution. First for consideration is Ms. O.’s requests that the BSEA impose “sanctions” on SPS and its representatives for actions/inactions during the fall of 2020 in connection with: *Ollie I*; the instant due process proceeding; and with matters outside these two

Hearings. Ms. O. objected to the form and timing of exchange of information pertinent to the instant hearing as well as to matters outside the scope of this Hearing, to the exercise by SPS of strategic litigation options available to all parties under 801 CMR 1.01 and the M.R.C.P., and to the exercise by SPS of its legal obligations under the IDEA. Ms. O. also claimed that SPS personnel and its legal representatives engaged in behavior and used language to and about her throughout the fall of 2020 that was disparaging, mocking, intimidating and threatening. She claimed those actions were designed to prevent her from asserting Ollie’s IDEA rights, from participating in the development and oversight of his special education programming, and from effectively advocating for Ollie during the Hearing process. Furthermore, Ms. O. asserted that SPS and its legal representatives created a hostile and adversarial environment during her communications with the district about Ollie, which amounted to retaliation for her efforts to

advocate for Ollie’s IDEA rights.[[41]](#footnote-41) A careful review of the evidence, and considerable contemplation of Ms. O.’s experience and treatment by SPS as a vigorous *pro se* litigant and active participant in all phases and facets of the special education planning process for Ollie, leads to the inescapable conclusion that Ms. O. is wrong. There is simply no evidence that SPS engaged in any of the misbehavior Ms. O. attributes to it. There is no evidence to support a charge of malfeasance. There is no evidence that could reasonably support an allegation of retaliation under Section 504. There is no evidence that SPS or its representatives intentionally, or unintentionally, mistreated Ms. O. in meetings or in correspondence or during the Hearing process. There is no evidence that she has at any time, or in any manner, been denied any rights accorded to her by the IDEA, Section 504 or M.G.L. c71B as a parent or as decision maker. Nor is there any evidence that any action/inaction by SPS personnel or representatives interfered with her ability to participate in, or present her cognizable concerns to, a BSEA proceeding. Therefore, none of the “sanctions” Ms. O. seeks is warranted. Furthermore, there is no evidence that SPS failed to deliver appropriate special education programming to Ollie at any time pertinent to this Hearing.

Finally, one last parental assertion deserves attention. In her closing statement Ms. O. complains that her requests for “reasonable accommodations” were ignored. A fair assessment of the hearing process, and Ms. O.’s participation in it, disproves that claim. Discussions were held both off and on the record, before and during the Hearing, to ensure Ms. O.’s comfort with, access to, and proper utilization of, BSEA hearing format and procedures. When given the opportunity, Ms. O. did not identify any disability-related need or request any specific service, assistive device, procedural alteration or other strategy that the BSEA could arrange to improve her hearing experience.[[42]](#footnote-42) She was accorded significant latitude in framing questions and pursuing issues. She was given Hearing Officer assistance with phrasing, tracking, and completing examinations. There was extra time for identifying, organizing and locating relevant documents. There was no reasonable request for assistance, or for forbearance, that was denied. Throughout the hearing process, as noted elsewhere in the Decision, Ms. O. was an active, engaged participant who demonstrated command of the applicable law, as well as an easy familiarity with the documentary and testimonial aspects of due process proceedings. There is no evidence here that she needed, that she requested, or that she was denied a “reasonable accommodation” as contemplated by 29 U.S.C. §794 or 42 U.S.C. §126. 12131 *et seq.*

ORDER

The 4/20 – 4/21 IEP developed by SPS, and revised in accordance with a Team meeting held on 9/10/20, is reasonably calculated to provide a free, appropriate public education to Ollie and has been implemented throughout the time covered by this Decision. The Parent did not prove the existence of any procedural violations of the IDEA that might warrant a different conclusion or support any of the relief she sought.

By the Hearing Officer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Lindsay Byrne

Dated: March 18, 2021

1. “Ollie” is a pseudonym chosen by the BSEA to protect the privacy of the Student in documents available to the public. Ollie’s Parent may be referred to as the derivative “Ms. O.” from time to time, also to preserve her privacy. [↑](#footnote-ref-1)
2. The official cite is: *Ollie and the Springfield Public Schools*, 26 MSER 275 (2020). [↑](#footnote-ref-2)
3. Administrative Notice is taken of Ollie I. [↑](#footnote-ref-3)
4. See *Ollie I p.296* [↑](#footnote-ref-4)
5. The events of and surrounding the 4/16/20 Team meeting and the development of the resulting IEP are discussed in detail in *Ollie I. p.207-299.* The 4/20 – 4/21 IEP was found to provide Ollie with a free appropriate public education *Id* 306. [↑](#footnote-ref-5)
6. Dr. Davis’ findings and their substantive impact are fully discussed in *Ollie I* p.299-300 and are, therefore, not at issue here. These facts are related solely for clarity. The only issues before me are whether the Team was properly composed, whether the SLD checklist was properly completed and whether the Parent participated in the discussion about it. [↑](#footnote-ref-6)
7. See *Ollie I* p. 286. [↑](#footnote-ref-7)
8. See *Ollie I* p. 292 [↑](#footnote-ref-8)
9. See *Ollie I* p. 297-300 [↑](#footnote-ref-9)
10. *Ollie I* p.295-300 [↑](#footnote-ref-10)
11. *Ollie I.* The Parent’s substantive and procedural claims concerning the 4/16/20 IEP were then before Hearing Officer Amy Reichbach and were resolved by Decision. The 9/10/20 Team was held to address thirty or so discrete objections to that IEP that accompanied her rejection of the IEP on7/2/20. (S-13) Those objections were addressed substantively in the Ollie I Decision. The only issues remaining pertinent for resolution here are procedural: was the 9/10/20 Team properly composed? Did the Parent have a meaningful opportunity to participate in the 9/10/20 meeting: and did the N-1 issued after the meeting accurately reflect the Team discussion? [↑](#footnote-ref-11)
12. 20 U.S.C. §1400 (d)(i)(A). [↑](#footnote-ref-12)
13. *Endrew F. v. Douglas Cty. R.S.D., 580 U.S. \_\_;*137 S. Ct. 988, 999 (2017); *D.B. ex rel Elizabeth B. v. Esposito*,

    675 F.3d 26, 34 (1st Cir. 2012). [↑](#footnote-ref-13)
14. 137 S. Ct. at 994 (Internal quotation mark omitted), citing 20 U.S.C. §§1414(d)(I)(A)(1)(1)-(III). [↑](#footnote-ref-14)
15. *Endrew F.,* 137 S. Ct. at 999. [↑](#footnote-ref-15)
16. *Id.* at 1000. [↑](#footnote-ref-16)
17. *C.D. v. Natick Public School District*, 924 F.3d 621, 624 (1st Cir. 2019) cert denied, 140 S.Ct. 1264 (Mem). [↑](#footnote-ref-17)
18. 603 CMR 28.05(4)(b) (IEP must be “designed to enable the student to progress effectively in the content

    areas of the general curriculum”). [↑](#footnote-ref-18)
19. *Roland M. v. Concord School Committee* 910 F.2d 983, 992 (1st Cir. 1990) [↑](#footnote-ref-19)
20. *C.G. ex rel A.S. v. Five Town County, School District,* 213 F.3d 279, 285 (1st Cir. 2008); see

    20 U.S.C. §1412(a)(5)(A); 34 CFR 300. 114(a)(2)(i); M.G.C. c71B, §§2, 3l 603 CMR 28.06(2)(c). [↑](#footnote-ref-20)
21. *Endrew F.* 137 S. Ct. at 1000 [↑](#footnote-ref-21)
22. *C.D.* 924 F.3d 621, 631(quoting *Roland M.* 920 F.2d at 993). [↑](#footnote-ref-22)
23. See *Honig v. Doe,* 484 U.S. 305, 311 (1998) (“Congress repeatedly emphasized throughout the [IDEA] the

    importance and indeed the necessity of parental participation in both the development of the IEP and any

    subsequent assessments of its effectiveness). [↑](#footnote-ref-23)
24. 20 U.S.C. §1415(f)(3)E(ii); 34 CFR 300.513(a)(2); see *Roland M., supra,* 910 F.2d at 994. [↑](#footnote-ref-24)
25. 137 S.Ct 988,994 (2017) (“These procedures, [set forth in 20 U.S.C. §1414] emphasize collaboration among

    parents and educators”); *see Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982) (“Congress placed every bit as

    much emphasis on compliance with procedures giving parents and guardians a large measure of participation as

    every stage of the administrative process…as it did upon the measure of the resulting IEP against a substantive

    standard”); see also *C.G. v. Five Town Committee School Dist,* 513 F.3d 279, 285 (1st Cir. 2008) (“development

    of an IEP is meant to be a collaborative project”). [↑](#footnote-ref-25)
26. See *Kobrin v. Board of Registration in Medicine*, 444 Mass. 837 (2005) (“final order of administrative agency in all adjudicatory proceeding…precludes re-litigation of the same issues between the same parties, just as would a final judgment of a court competent jurisdiction”). *In Re Neville & Sutton Public Schools,* 13 MSER 352 (2007). [↑](#footnote-ref-26)
27. *Allen v. McCurry,* 449 U.S. 90, 94 (1980). [↑](#footnote-ref-27)
28. Massachusetts recognizes the similar doctrines of claim preclusion and issue preclusion. See *Kobrin v. Bd. of*

    *Registration in Med.,* 444 Mass. 837, 832 N.E.2nd628, 634 (2005), discussed in *In Re: Sonus Networks,*

    *Inc. Shareholder Derivation Litigation,* 499 F.33447, 56-57 (1st Cir. 2007). [↑](#footnote-ref-28)
29. *Allen v. McCurry,449 U.S. 90, 94 (1980). In Re: Sonus Networks, Inc. Shareholder Derivative Litigation,*

    499F.3d 47, 56-57 (1st Cir. 2007); *Kobrin v. Board of Registration in Medicine,* 444, Mass. 837, 843 (2005);

    *In Re: Neville & Sutton Public Schools,* 13 MSER 352 (2007). [↑](#footnote-ref-29)
30. *Gonzalez-Pina v. Rodriguez,* 407 F.3d425, 429 (1st Cir. 2005); *Breneman v. U.S. ex rel. F.A.A.,* 381 F.3d 33,

    38 (1st Cir. 2004). [↑](#footnote-ref-30)
31. This independent finding is also consistent with the view and conclusions of the Hearing Officer in *Ollie I* as she evaluated Ms. O.’s claims concerning earlier meetings between the Parent and Springfield Public Schools. See e.g. *Ollie I* at 307. [↑](#footnote-ref-31)
32. 20 U.S. Code §1414 (B) Individualized education program team

    The term “individualized education program team” or “IEP Team” means a group of individuals composed of

    (i) the parents of a child with a disability;

    (ii) not less than 1 regular education teacher of such child (if the child is, or may be participating in the regular education environment);

    (iii) not less than 1 special education teacher, or where appropriate, not less than 1 special education provider of such child.

    (iv) a representative of the local educational agency who

    (I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

    (II) is knowledgeable about the general education curriculum; and

    (III) is knowledgeable about the availability of resources of the local educational agency;

    (v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

    (vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

    (vii) whenever appropriate, the child with a disability.

    See also: 34 CFR §300.321 (a)(6). The public agency determines the specific personnel to fill the roles …[of] required participants at the IEP Team meeting. Whether other teachers or services providers who are not the public agency’s required participants….can attend an IEP Team meeting is best addressed by state and local officials.” 34CFR Part 300, Analysis of Comments and changes, Subpart D – Federal Register, Vol. 71, No. 156, p. 46675 (August 2006). Verg. *Aen* 1.203. [↑](#footnote-ref-32)
33. 34 CFR §300.321 (a)(6). [↑](#footnote-ref-33)
34. See also: 71 Fed. Reg. 6674 (August 14, 2006). *Cone v. Randolph County Schools*, 302 F.Supp. 2d 500 (M.D.N.C.2004), affd 103 Fed Appx 731 (4th Cir. 2004) (unpublished).  *Newbury Local Schools*, 66 IDELR 200, 115 LRP 34858 (OSEP 2015); *Pikes Peak BOCES* 68 IDELR 149, 116 LRP 29302 (OSEP 2016). [↑](#footnote-ref-34)
35. See discussion at : *Turner v. District of Columbia Public Schools*, 952 F.Supp. 2d 31 (D.D.C. 2013); *Mahoney v. Carlsbad Unified School District*), 111 LRP 30637 (9th Cir. 04/28/11, unpublished) citing *R.B. v. Napa Valley Unified School District*, 48 IDELR 60 (9th Cir. 2007). [↑](#footnote-ref-35)
36. Federal and State special education regulations address K-12 education. They contemplate termination of service on completion of high school. There is an occasional nod to children who have not yet reached compulsory school attendance age. See *e.g.* 34 CFR 300.310 (c). They have not caught up with the growing, and welcome, trend of providing services beyond high school level academics. [↑](#footnote-ref-36)
37. *Ollie I* p.300. [↑](#footnote-ref-37)
38. See S-17. [↑](#footnote-ref-38)
39. See S-23 [↑](#footnote-ref-39)
40. See also: *W.V. v. Matula*, 67 F.3ed 484 (3rd Cir. 1995). [↑](#footnote-ref-40)
41. Although not framed as an issue by either party, advocacy rights and interests accorded to families under the IDEA and Section 504 (29 U.S.C. 794) always merit attention from BSEA Hearing Officers. [↑](#footnote-ref-41)
42. Observe, in contrast, the request of a witness who asserted an auditory processing disorder for additional response time and/or language clarification during her testimony. That request was noted and discreetly accommodated. (MacGovern). [↑](#footnote-ref-42)