

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

**In Re: “Mapletown” Public Schools<sup>1</sup>**

**BSEA #1406097**

**DECISION**

This decision is issued pursuant to the Individuals with Disabilities Education Act or IDEA (20 USC Sec. 1400 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 USC Sec. 794); the Massachusetts special education statute or “Chapter 766,” (MGL c. 71B) the Massachusetts Administrative Procedures Act (MGL c. 30A) and the regulations promulgated under these statutes.

On March 3, 2014, the Mapletown Public Schools (Mapletown or School) filed a request for an expedited hearing with the Bureau of Special Education Appeals (BSEA). In its hearing request, as clarified by correspondence dated March 12, 2014, the School seeks a “40-day assessment in a collaborative program in order to determine appropriate programming for the student.” The School alleges that “due to [Student’s] violent behaviors and non-compliance...” the School is unable to implement Student’s IEP; that in Student’s current inclusion setting in a public elementary school the School is unable to provide “a wraparound of supports and services...” that Student needs to receive a free, appropriate public education (FAPE).

The School further alleges that it needs information from an extended evaluation to determine the appropriate services and placement for Student. According to the School, the evaluation must be conducted in a collaborative setting because the School lacks the resources to conduct an in-district evaluation, especially in light of safety concerns created by Student’s behavior. The School proposes Collaboratives “A,” “B,” or “C” as sites for the evaluation.<sup>2</sup>

The School seeks an order from the BSEA because Parents object to having the Student removed from the Mapletown Public Schools for the purpose of a 40-day evaluation. Parents assert that if Student requires additional evaluations, these can be conducted within the district.

The BSEA granted the School’s request for an expedited hearing, and set an initial hearing date of March 19, 2014. At the request of the Parents, the BSEA granted a brief postponement, and the hearing was held on April 1, 2014<sup>3</sup> at the administrative offices of the Mapletown Public Schools. The School presented an oral closing argument

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<sup>1</sup> “Mapletown” is a pseudonym used to preserve the anonymity of Parents and Student in publicly available documents.

<sup>2</sup> The names of the proposed collaboratives are also redacted for privacy purposes.

<sup>3</sup> The hearing was removed from the “expedited” track; however, in light of the urgency of the concerns raised in the School’s hearing request, this Order is being issued in advance of the full Decision.

on April 3, 2014 via telephone conference call. The conclusion of the hearing was postponed to April 7, 2014 to allow the Parents to file a written closing argument. On that date, the Parents filed their written closing statement and the record closed.

At the request of the School, on April 18, 2014, a Conclusion and Order was issued in advance of a full decision. That Conclusion and Order is attached to this Decision and is incorporated in full.

At issue is whether the Mapletown Public Schools has demonstrated that the Student requires an extended 40-day evaluation to determine the services and placement necessary to provide him with FAPE and, if so, whether that evaluation must take place in an out-of-district collaborative setting.

The School was represented by counsel, and the Parents represented themselves and the Student *pro se*. Each party presented documentary evidence and examined and cross-examined witnesses.

The record in this case consists of the School's exhibits S-1 through S- 23, Parents' exhibit P-1, several hours of tape-recorded testimony, and the transcript created by the court reporter.

Those present for all or part of the proceeding were:

Parents

L.C.	Director of Pupil Services, Mapletown Public Schools
E.S.	Special Education Director, Mapletown Public Schools
E.M. ("Principal")	Principal, elementary school attended by Student
J.F. ("Supervisor")	Evaluation Team Supervisor
E.S. ("Teacher")	Student's fourth grade teacher
H.M. ("Special Educator")	Special education teacher
K.R. ("Psychologist")	School psychologist
E.G. ("SLP")	Speech/language therapist

Kate Meinelt, Esq.	Attorney for Lexington Public Schools
Anne Bohan	Court Reporter
Sara Berman	BSEA Hearing Officer

### **ISSUE PRESENTED**

The issues for hearing are the following:

1. Whether the School requires information from an extended evaluation of the Student lasting up to 40 days in order to develop an appropriate IEP and placement.
2. If so, whether that evaluation must take place in an out-of-district educational collaborative.

## **POSITION OF MAPLETOWN PUBLIC SCHOOLS**

Student has been struggling with behavioral outbursts that interfere with his educational progress, disrupt the education of other students, and raise concerns for his and other students' safety. Student's behavioral problems, as well as his difficulty with engaging in and producing schoolwork, prevent him from fully accessing the curriculum or making progress consistent with his considerable academic potential. At present, Mapletown must focus on containing and managing Student's behavior by imposing few demands and providing 1:1 support. The district is unable to provide Student with a free, appropriate public education (FAPE) because it lacks sufficient clinical and behavioral information about how to best address Student's social, emotional, behavioral, and learning needs.

This information can only be obtained through an extended evaluation, where Student is assessed and observed over a period of time by professionals with expertise in evaluating children with similar profiles. Mapletown is not able to conduct such an evaluation within the district because of the complexity of Student's profile, which does not seem to fit into a particular diagnostic category, and his history of aggressive outbursts. On the other hand, the collaboratives A, B, and C all would be capable of providing an appropriate extended evaluation because of their small student populations, high staffing levels, and expertise in assessing children with a range of disabilities. Additionally, it would be helpful to Mapletown to have Student assessed in a neutral location, by "fresh eyes," even if he returns to the district after the evaluation.

## **POSITION OF PARENTS AND STUDENT**

If the Student needs additional evaluations or more intensive services, the School can provide these in one of two specialized in-district programs, the Autism Program, or the Behavior Program,<sup>4</sup> whichever is the better fit, with accommodations and modifications as needed to address Student's needs. The School is not justified in removing the Student to a collaborative because it has not attempted to provide such accommodations and modifications in the less restrictive setting of the public school. Further, the School has exaggerated and/or mischaracterized the Student's behavioral issues. In fact, Student's behavior is both predictable and manageable.

## **FINDINGS OF FACT**

1. Student is a nearly 10-year-old fourth-grader who attends a public elementary school operated by Mapletown. His eligibility for special education services from Mapletown is not in dispute.

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<sup>4</sup> "Autism Program" and "Behavior Program" are pseudonyms for two distinct district-wide programs that Mapletown operates to serve children within the corresponding diagnostic categories.

2. Student is highly intelligent and academically capable. (Testimony of Principal, Teacher, Special Educator, S-2) Student has many outside interests including playing basketball, chess, and computer games, doing crafts, playing two different instruments, and participating in church youth activities. (Testimony of Father)
3. Student has been diagnosed with Pervasive Developmental Disorder (PDD/NOS). (S-2) As a result of this disability, Student often struggles with interactions with peers and adults, and can be rigid and/or irritable. He has trouble understanding the perspective of other people or how his behavior might affect others. Student can get upset and oppositional if he is required to do something that he does not wish to do, or if he perceives that he is being treated unfairly. At times he has had physical altercations with other children and has produced violent drawings. While Student has very strong core academic skills (with a relative weakness in essay composition) he has had difficulty with complying with teachers' requirements to produce work when and in the manner that the teacher requires. Student might read a book or draw at his desk rather than complete an assignment, and tends to withdraw from the classroom group. (Principal, Teacher, S-2, 5, 6).
4. Student entered the Mapletown Public Schools at the start of first grade (2010-2011 school year), having attended preschool and kindergarten in another town. (S-2) Student had not been identified as a special education student, and did not have an IEP or Sec. 504 plan. Student began having some behavior problems during first grade, including non-compliance, non-completion of work, and non-participation with class activities. (Special Educator, S-2) The record does not show that either the School or Parents referred Student for an evaluation in first grade.
5. Behavior problems continued during second grade (2011-2012) resulting in multiple phone calls from the School to Parents and many occasions when the School asked Parents to pick Student up. (S-1, S-2) During April and May 2012 (second grade), Student received disciplinary notes for bus infractions (e.g., disobeying instructions of driver to remain seated, to refrain from crossing behind the bus, opening the emergency window). (Principal, S-1)
6. In May 2012, Student lost bus privileges for approximately three days, and then was required to sit at the front of the bus near the driver. (S-1) He was again suspended from the bus from mid-June 2012 to the end of the school year for an altercation with another student. (S-1)
7. In addition to the bus suspensions, Student was suspended twice from school during June 2012, once (for two days) for allegedly grabbing a child around the neck and later shaping his fingers like a gun and pretending to shoot the other child; and once (again for two days) for allegedly kicking another child in the groin area. (S-1, Principal) The School informed Parents that Student could not return to school without an "assessment of care" from a mental health professional. (S-1) Parents obtained this assessment which indicated that Student did not pose a danger to self or others and could safely return to school. (Principal, Father)

8. In response to the ongoing disciplinary concerns, the School had meetings and phone conversations with the Parents, instituted positive behavioral supports, and referred Student to the guidance counselor; however, the School did not refer Student for a special education evaluation. Parents did request such an evaluation at the end of the 2011-2012 school year. The evaluation was scheduled to begin at the start of the following school year (fall 2012, third grade). (S-2)
9. Meanwhile, during the summer of 2012, Parents sought a private neuropsychological evaluation because they were concerned with Student's behavior at home as well as at school. Parents' greatest concern was with Student did not know how to interact with peers, especially at school, was easily provoked, overreacted to small problems, and had few friends. Parents believed that Student felt negatively towards his teachers and school authorities because he felt that he was always being punished. (S-2)
10. The private evaluation, conducted by Margaret Manning, Ph.D. in June and July 2012, consisted of interviews with Parents, conversations with the Principal and a psychiatrist who had conducted a partial evaluation of the Student, and a battery of standardized tests and behavior rating scales. (S-2)
11. Student's scores on the WISC-IV were in the "superior" range for verbal comprehension, perceptual reasoning and processing speed, and solidly "average" for working memory. Tests of executive functioning showed some relative weaknesses in executive functioning resulting in Student being impulsive, having trouble "putting on the brakes," and being unaware of his behavior. (S-2) Student was able to have conversations and interact well in a 1:1 situation, but had trouble discussing his own emotions or social relationships. When the evaluator asked the Student about his recent suspensions and difficulties with peers, the Student appeared "unconcerned and unaware of the effects of his behavior. His school's report and his presentation during the assessment suggest a lack of social/emotional reciprocity." (S-2, emphasis in original) The evaluator stated that "given his well-developed verbal cognitive abilities, [Student's] lack of insight into both social situations and his emotions is unusual." (S-2)
12. Based on her evaluation, Dr. Manning concluded that Student met the criteria for Pervasive Developmental Disorder Not Otherwise Specified (PDD-NOS), which "is a category used to describe a severe and pervasive impairment in the development of reciprocal social interaction when the criteria are not met for a specific pervasive developmental disorder (e.g., Asperger's or Autism). (S-2) She further opined that Student should be monitored for a possible future ADHD diagnosis.
13. Dr. Manning made the following recommendations: completion of a Chapter 766 evaluation which should include an occupational therapy (OT) assessment due to weak visual-motor integration skills; development of an IEP; opportunities for supplemental and enriched learning to keep Student challenged and engaged; formal counseling with both the school psychologist and outside therapist to work on emotional and behavioral regulation as well as social skills; a school-based social

skills group; a functional behavioral assessment and consultation from a BCBA to develop behavior plans in school and at home; positive behavioral interventions in the classroom, and participation in social activities in the community. Dr. Manning recommended a follow-up assessment in six months and re-evaluation in one year to verify whether the PDD-NOS diagnosis was still valid and to assess the result of interventions. (S-2)

14. Mapletown received a copy of Dr. Manning's report in August 2012. (S-2)
15. Mapletown conducted a special education evaluation of Student in September 2012, at the start of third grade. The evaluation consisted of academic testing and classroom observation, speech/language testing, psychological and occupational therapy (OT) assessments, functional behavioral assessment (FBA) and home assessment. (S-3) Formal testing in academics revealed skills in the average to superior range in all areas, with relative weakness in essay composition. Speech/language testing showed that Student had average to above average expressive and receptive language skills. His pragmatic skills were average in a 1:1 testing situation, but he had difficulty applying these skills to a group setting in the classroom. (S-2)
16. The School's psychological assessment revealed that Student had average to well-above average cognitive skills, coupled with weaknesses in social perception, social communication, rigidity, that all are "characteristic features of students with mild or "high functioning" Autism spectrum diagnoses..." (S-3) The OT assessment revealed problems with "social participation," "planning and ideas," and visual motor (handwriting) skills. Other skills were average. (S-3)
17. The FBA consisted of classroom observations, teacher interviews, records reviews and standardized instruments. The targeted behaviors included defiance, distancing from class activities and inappropriate language and physical aggression. (Teachers reported that the last two behaviors had only happened on one occasion). The behaviorist concluded that Student's defiant and distancing behaviors were maintained by access to teacher attention, in that when Student did not immediately get teacher attention he chose a preferred activity (such as reading) rather than obeying the teacher. He then had trouble transitioning from the preferred activity. The evaluator produced a list of recommendations including a specific, written individual behavior plan with a clear positive reinforcement schedule. (S-2)
18. The Team convened in approximately October 2012 to consider both the private and school-based evaluations. The Team found Student eligible for services and developed an IEP that was accepted by the Parents. (Psychologist) (There is no copy of the 2012-2013 IEP in the record). According to the school psychologist, Student seemed to stabilize behaviorally and increase his class participation during third grade. Towards the end of the third grade year, however, the third grade teachers consulted the school-based behavior support team because Student's engagement was declining and his social difficulties and violent drawings were increasing. (Psychologist)

19. In response, the psychologist and behaviorist tried to keep adjusting Student's behavior support plan. They also began questioning, at the end of third grade, if Student needed a placement with a higher level of services. There was no formal Team meeting during third grade to discuss this concern, however. (Psychologist)
20. At the start of the next school year (2013-2014, fourth grade) the Team reconvened and issued an IEP for 2013-2014. That IEP called for placement in the general education classroom with goals in pragmatics, classroom adaptation, and writing. The service grid provided for 15 minutes/week of specialist consultation with the teacher in Grid A; 8x30 minutes/week of instructional assistant or special educator support for classroom adaptation and 3x30 minutes/week of such support for writing; and 2x30 minutes/week of small group social pragmatics instruction from the SLP in Grid C. The IEP also contained numerous accommodations, including a behavior support plan. Parents accepted this IEP in full. (S-5)
21. Student attended fourth grade pursuant to the IEP referred to above. According to the fourth grade teacher, Student seemed to lack motivation for tasks that did not interest him or were difficult for him such as writing or explaining how he got his answers in math. He needed constant monitoring, prompting, and redirection to stay on task, stay seated, sit up straight, and generally engage with the work. If not watched, he would wander off and engage in unapproved activities, e.g., take art supplies from the closet and create something on his own. (Teacher)
22. As the fourth grade year went on, Student began drawing stick figures with violent themes (guns, swords, knives, flames, severed heads) on his papers. Sometimes he jumped on other children's backs unexpectedly or shaped his fingers like a gun and pretended to shoot other children. The Teacher was concerned and consulted on an ongoing basis with the school psychologist and behaviorist to adjust Student's behavior plan. (Teacher) For the most part, the adjustments were unsuccessful. (Psychologist)
23. On or about October 11, 2013, Student was involved in a disciplinary incident on the school bus. Previously, the bus driver had decided that Student needed to sit towards the front of the bus, near the driver, because he allegedly had been throwing items on the bus.<sup>5</sup> After dismissal, Student got on the bus, sat in a seat towards the back, and began reading a book. He continued to read and refused to move to the front when asked, first by the driver, and then by the assistant principal. The Principal then had all of the other children clear the bus, and called in the School crisis response team to board the bus. Student continued to sit in his seat, reading and ignored the adults. The School called Mother to the scene. When she arrived, Student quickly followed her instructions and left the bus. (Principal)

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<sup>5</sup> Parents dispute the School's version of the story and the Principal testified that she had no direct knowledge of what transpired with the object-throwing incident. The details of this story are not essential for purposes of this case, however.

24. In a letter dated October 18, 2013, the Principal notified Parents that Student would be suspended from bus privileges for 2 weeks, pursuant to applicable bus regulations. (S-8)
25. On October 24, 2013, the Team convened to address Student's issues with bus behavior, and issued an IEP amendment that increased Student's classroom support for his classroom adaptation from 8x30 minutes/week to 12x30 per week and also increased his access to the school counselor from 1x30 minutes/week to 2x30 minutes/week. Parents accepted this amendment on October 28, 2013.<sup>6</sup>
26. In a letter dated November 6, 2013, the Principal informed Parents that Student had been engaged in bullying behavior towards a classmate, including "repeated name-calling, writing/telling stories that created an unsafe learning environment." The letter advised Parents to consult with outside clinicians and also warned that future incidents would result in suspension for three days or more. (Principal, S-12)
27. On December 11 or 12, 2013, Student reportedly assaulted another student in art class. A substitute art teacher reported that Student had made violent drawings targeting the other child, who got upset and ripped up the drawings. Student then allegedly got angry, tackled the other child, and according to some reports (disputed by Parents) put a choke hold on him. The children were separated, but all children in the class were very upset. (Teacher, Principal)
28. As a result of this incident Student was suspended for three days, December 12, 13, and 16, 2013. Parents were required to obtain an "assessment of care" from a mental health clinic as a condition of Student's return to school. (Principal, S-16)
29. On December 16, 2013, the Team met to review most recent behavioral incidents, Student's ongoing dysregulation and disengagement, and his lack of response to interventions. Parents mentioned that Student's Assessment of Care determined that Student was safe to return to school and not an imminent threat to himself or others. The Evaluation Team Supervisor suggested that staff in Student's current setting could not meet his needs. He further suggested that Student undergo a 40-day evaluation at Collaborative A. Parents were willing to learn more about this option. (S-16, Supervisor)
30. The Principal and Evaluation Team Supervisor also stated that "administratively," Student could not return to his classroom after completion of his suspension. The Supervisor directed Parents to meet with him to develop a "safety plan" for re-entry. (Supervisor, S-17) Under this plan, Student returned to school on or about December 17, but rather than returning to his classroom he was placed in the resource room, where he did his regular fourth grade classroom work under 1:1 supervision. Student had the option of attending the cafeteria and specials. (Principal)

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<sup>6</sup> The Team did not address whether Student required special transportation or accommodations such as a bus monitor. (Principal, Father)



31. Meanwhile, on October 23, 2013, at the request of the Evaluation Team Supervisor for Student's elementary school, Student was observed for approximately 1.5 hours in his fourth grade classroom by Ms. J.H., who is the Evaluation Team Supervisor of the district's Autism Program. (Supervisor, S-9, S-10). Ms. J.H. found that Student behaved and interacted more or less appropriately during her observation, responding to feedback when he engaged in some annoying behaviors. (S-10). Ms. J.H. suggested that she had no immediate concerns for Student. However, she would consider whether the Autism Program might be appropriate to address "pro-social behavior development, behavior regulation, and attention." Ms. J.H. also suggested exploring the district's specialized Behavior Program. (S-10)
32. On November 14, 2013, in an email to the Evaluation Team Supervisor, Ms. J.H. suggested additional BCBA assessments for Student including the VB-MAPP, a structured observation, and a teacher interview. On November 15 and December 4, Ms. J.H. contacted the Supervisor to suggest an observation by the Behavior Program director, as well as set up additional observation by staff from the autism program on December 16, 2013. (S-14)
33. On December 10, 2013, the School drafted a proposal to conduct the evaluations and observations referred to above. This proposal was never formally completed or presented to Parents. The observations by the Autism Program, the suggested assessments, and observation by the Behavior Program staff did not occur. Student was still under suspension on December 16, the date that had been arranged for the first observation. The assessments did not take place, and the observations were not rescheduled, primarily because the Evaluation Team Supervisor and other staff felt that the Student was imminently going to leave the elementary school to be evaluated in Collaborative A. (Supervisor)
34. On January 2, 2014, Parents attempted to attend a scheduled visit at Collaborative A. Unbeknownst to both Parents and the School, Collaborative A was closed due to a snow emergency. Parents rejected the option of Collaborative A based on their view that the unannounced closing was unprofessional. Also, they had read an unfavorable on-line review of the program. (Principal, Father, S-19)
35. On January 13, 2014, the School developed a formal proposal for a 40 day assessment in a collaborative. (S-22)
36. After multiple meetings with the Supervisor, as well as a visit to Collaborative B (which accepted Student), Parents were still wavering on their decision. Ultimately, on February 11, 2014, Parents formally rejected the proposal for an out-of-district assessment. (Supervisor)
37. Meanwhile, on January 23, 2014, once it was clear that Student was not immediately leaving the district for a 40-day assessment, he was transferred to a different fourth-grade classroom, where he has remained up to the hearing date. The School hired a substitute teacher to serve as Student's 1:1 assistant. After an initial "honeymoon"

period, the Student has continued to have problems with disengagement, non-compliance and difficulties with peers. (Principal, Supervisor)

### **PROGRAM PROPOSED BY SCHOOL**

38. The School has proposed placing Student at any one of three collaboratives, A, B, and C. (Supervisor)
39. Most of the evidence regarding these collaboratives was provided by the Evaluation Team Supervisor, J.F. The Supervisor, who holds certifications in special education and various administrative positions, was employed by Collaborative B for 17 years immediately prior to coming to Mapletown, in 2012. The Supervisor worked initially as a teacher at the collaborative. He subsequently worked in several administrative positions before becoming co-director. In his capacity as an administrator, the Supervisor had participated in the development of a 40-day assessment program there. Additionally, he is familiar with staff and programming at all three collaboratives suggested as possible sites for an evaluation. (Supervisor)
40. The Supervisor testified that based on his interactions with Student and Parents, as well as his consultations with staff from the in-district Autism and Behavior programs and his knowledge of the personnel at all three collaboratives, any one of them would be able to provide the type of evaluation sought by the School. In his (and the School's) view, while either the Autism program or the Behavior program operated by the district might possibly meet Student's needs, he seemed somewhat different from the students enrolled in both programs.
41. Additionally, it was not clear whether either program could accommodate potential aggressive outbursts; according to the psychologist, Student's behavior can be more severe than that shown by students enrolled in either program. Finally, in both of the district-wide programs, students are in mainstream classrooms for part of the day, while Student seems to do better in smaller settings. (Supervisor, Psychologist)
42. On the other hand, according to the School, any one of the collaboratives could meet the needs of Student for an evaluation because of their small size, therapeutic orientation, and on-site clinical and behavioral staff who could be "pulled in" as needed for Student. (Supervisor, Psychologist) Additionally, School personnel believe that it would be useful to have Student viewed by "fresh eyes," in a neutral setting, rather than possibly miss vital information by having him viewed through either an "autism lens" or "behavior lens." Additionally the School would like to minimize disruption that could result from having Student evaluated in both in-district programs. (Supervisor, Psychologist)

## **PROGRAM PROPOSED BY THE PARENTS**

43. The Parents agree that Student would benefit from an extended evaluation. They believe, however, that this evaluation can be accomplished in a less restrictive environment than the collaboratives proposed by the District, and are willing to have Student evaluated in either the Autism Program or Behavior Program operated by the School.
44. The Autism Program consists of two settings for students on the autism spectrum. One program serves children who are severely affected by autism, and may be non-verbal. The second program serves students with an autism spectrum diagnosis who are very capable intellectually but who have significant social skills deficits. Social skills curriculum is embedded in the program on a daily basis. Depending on need, students may be taught in separate, small group settings, or integrated, with support, into regular classrooms. The second program is the only one that would be considered for Student. (Psychologist)
45. The Behavior Program is designed for students with emotional and behavioral difficulties. Like the Autism program, it provides a dedicated, separate classroom for small group instruction or for students to take a break if needed, but also affords students the opportunity to participate in general education classrooms when appropriate. Students receive counseling from a psychologist attached to the program as well as social skills instruction. (Psychologist)
46. In general, the two programs are not used for evaluation; students are placed there on the basis of their IEPs. (Psychologist)

## **DISCUSSION**

After reviewing the testimony and documents on the record, I conclude that the School has proved<sup>7</sup> that an extended evaluation of up to 40 days is necessary to determine Student's needs and develop an appropriate IEP and placement. Despite his intelligence, creativity and academic ability, and despite support from both School staff and his Parents, Student has not been able to meet the social or work production demands of his inclusion placement. He has had behavioral outbursts that have raised concerns of both School staff and Parents. Behavioral interventions to date have not been consistently effective. Indeed, Parents agree that an extended evaluation is appropriate.

The only real point of disagreement is the appropriate location for the evaluation. Here, I find that the School has not met its burden of proving that one of the suggested collaboratives is the least restrictive environment appropriate to meet the Student's needs for evaluation. It is axiomatic that FAPE entails educating a child in the least restrictive

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<sup>7</sup> As the party seeking a change in the status quo, the School has the burden of showing, by a preponderance of the evidence, that the current program is inappropriate and the proposed program is appropriate. Schaffer v. Weast, et al., 126 S.Ct. 528, 441 IDELR 150 (2005)

environment (LRE). That is, to the maximum extent appropriate, a student must be educated with students who do not have disabilities, and “removal...from the regular educational environment occurs only when the nature of severity of the disability of a child such that education in regular classes with the use of supplementary aids and services, cannot be achieved satisfactorily.” See 20 USC Sec. 1412(a)(5)(A); G.L. c. 71B Sec. 3.

Here, the student has spent his entire educational career, albeit problematically, in full inclusion settings and needs an extended evaluation. The School operates two district-wide programs that appear, on their face, to be appropriate resources for this purpose. Both programs provide opportunities for a hybrid of substantially separate and general classroom instruction, depending on the Student’s needs. Both address two of Student’s main areas of need, namely, instruction in social skills and emotional self-regulation. The concern of the Supervisor that evaluation by one program might “miss” information about Student’s needs because of its particular orientation can be cured by having Student observed by representatives of both programs, regardless of where he is placed for evaluation.

Indeed, the district itself considered either or both of these programs as potentially appropriate for the Student and started an observation process that was never concluded. While the School psychologist stated that neither of the two programs were set up for evaluations, and neither could accommodate Student’s potential behavioral issues, the School did not provide evidence, beyond the psychologist’s statements, that the programs could not meet Student’s needs with the addition of supplementary aids or services. I note in particular that no representative from either program testified at the hearing, or provided written documentation of their respective programs’ inability to accommodate Student.

### **CONCLUSION AND ORDER**

The parties are referred to the Conclusion and Order issued on April 18, 2014 which is incorporated by reference and attached to this Decision.

By the Hearing Officer:

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Sara Berman

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Date



