

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

In Re: Gabriel¹ and the Shrewsbury Public Schools

BSEA #1400468

DECISION

This Decision is issued pursuant to M.G.L. c. 71B and 30A, 20 U.S.C. §1400 *et seq.*, 29 U.S.C. §794 and the regulations promulgated under those statutes. A Hearing was held on November 6 and 7, 2013 at the Town Hall in Shrewsbury, MA. Those present for all or part of the proceeding were:

Mr. & Mrs. G.	Parents
Joseph Moldover	Neuropsychologist
Diane Nesman	Speech-Language Pathologist
Maria Grimshaw	Speech-Language Pathologist, Shrewsbury Public Schools
Arlena Randazzo- Boyle	Speech-Language Pathologist, Shrewsbury Public Schools
Bridget Nichols	ELC Program Coordinator, Shrewsbury Public Schools
Melissa Johnson	Classroom Teacher, Shrewsbury Public Schools
Laureen McGourty	Occupational Therapist, Shrewsbury Public Schools
Anne Pullman	Preschool Teacher, Shrewsbury Public Schools
Amanda Park	School Psychologist, Shrewsbury Public Schools
Lisa Robinson	Director, Preschool Programs, Shrewsbury Public Schools
Melissa Maguire	Director, Pupil Personnel Services, Shrewsbury P.S.
Alisia St. Florian	Attorney, Shrewsbury Public Schools
Lindsay Byrne	Hearing Officer

The official record of the Hearing consists of exhibits submitted by the Parents marked P-1 through P-33, exhibits submitted by the School marked S-1 through S-54, and approximately 10 hours of recorded oral testimony and argument. The Parents, *pro se* since September 9, 2013, represented themselves at the Hearing. The School was represented at all stages by an attorney. The Parties elected to make oral closing arguments at the conclusion of the presentation of evidence on November 7, 2013 and the record closed on that day.

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

ISSUES²

1. Whether the May 30 2013 - November 7 2013 IEP developed by Shrewsbury is reasonably calculated to ensure that Gabriel receives a free appropriate public education? And
2. If not, does Gabriel require a full day placement in the ELC classroom in order to receive a free appropriate public education?

SUMMARY OF THE EVIDENCE

1. Gabriel recently turned five years old. He is consistently described as very bright, charismatic, insightful, cooperative and motivated. Gabriel's Parents were concerned about his speech and language development throughout his toddler years. He also displayed some self-stimulatory behaviors and routines that concerned the Parents. They enrolled him in private speech, language services, occupational therapy and a socialization group. He did not participate in IDEA Part C early intervention services. (Parent)
2. In March 2012 when Gabriel was 3 years 4 months old Shrewsbury requested parental consent to conduct an initial special education evaluation. The consent form was not returned to Shrewsbury. The Parent denies receiving Shrewsbury's request. (S-15; S-16; Parent; Robinson)
3. In July 2012, when Gabriel was 3 years 7 months old, the Parents requested that Diane Nesman, a private speech-language pathologist evaluate Gabriel. Ms. Nesman conducted a standard child eligibility test battery and found that Gabriel demonstrated significant difficulties in all three domains of language: syntax, morphology, and pragmatics. She noted significant delays in language comprehension and observed a number of "red flags" for Autism Spectrum Disorder. In particular Ms. Nesman noted substantial articulation difficulties with Gabriel's intelligibility judged to be fair in known contexts to poor/unintelligible in unfamiliar contexts. Although his receptive language scores were high - well above his expected age performance at 5 years 5 months - Ms. Nesman diagnosed Gabriel with Mixed Expressive/ Receptive Language Disorder. Ms. Nesman has provided private, individual speech-language services to Gabriel weekly since her initial evaluation. She testified that Gabriel has made substantial improvement in all areas since she started working with him. In particular Gabriel's expressive language is generally intelligible. He displays minor, brief stereotypical behaviors when his environment is not structured. Those behaviors do not interfere with his engagement in therapy or his progress and Gabriel does not "look autistic". (P-27; Nesman)

Ms. Nesman has not observed Gabriel in school or at home. She has not participated in any Team meetings or coordinated her services with the school in any way. In September 2013, at the Parent's request, Ms. Nesman administered the Goldman-Friscoe test. She was not aware

² This statement of the issues is memorialized in the prehearing scheduling order dated 10/18/13 which followed a prehearing conference on 9/17/13 and a status conference call held on 10/17/13. At the Hearing the Parent indicated that he no longer sought an ELC placement for Gabriel, but requested some sort of full day special education service. No Motion to Amend the Hearing Request or the Prehearing Order was proffered. 34 CFR . 508.

that the Parents had declined the School's request to conduct the same test at the same time. (Nesman)

4. In August 2012 the Parents enrolled Gabriel in Shrewsbury's integrated preschool program as a typically developing three year old. The class met at the Wesleyan Terrace School for 2 ½ hours 2 days per week. There were 15 three and four year old children assigned to the class. Three or four of those children entered with IEPs. The preschool teacher, Ann Pullman, had previously served the district as an ABA Technician. She was assisted in the classroom by two aides, a physical therapist and an occupational therapist.

Ms. Pullman testified that Gabriel acclimated easily to the classroom routine and peers. His behavioral challenges, typically refusals and using the body to communicate, were typical of the age group and could be redirected. His articulation was intelligible to the teachers and students and did not noticeably interfere with communication. Ms. Pullman testified that in all preschool target areas Gabriel exceeded age expectations for three year olds adjusting to a new classroom. (Pullman)

5. In September 2012 the School conducted an initial special education eligibility evaluation. Debra Cushman conducted the initial psychological evaluation. Based on the results of standardized testing, a parent interview and teacher/therapist reports, Ms. Cushman concluded that Gabriel demonstrated average to very superior skills in all assessed areas of functioning. He demonstrated particular strengths in non-verbal reasoning, in receptive vocabulary, and in early academic skills. His social and adaptive skills were noticeably weaker, though still within the average range for his age. Ms. Cushman also noted that although Gabriel displayed brief episodes of stereotypical self-stimulatory behavior in the 1-1 testing situation, those behaviors did not interfere with his performance. She recommended that Gabriel receive direct social skills instruction. (P-18; S-20)

6. Lauren McGourty conducted the initial occupational therapy evaluation in September 2012. She found that Gabriel demonstrated some difficulties processing touch and visual information which in turn led to exhibition of some self-stimulatory behavior. She noted, however, that these behaviors decreased in frequency and duration over the course of her evaluation, were easily redirected with a verbal cue, and did not interfere with Gabriel's participation in the classroom. She recommended the use of a variety of sensory strategies that are typically found in a preschool classroom. She did not recommend any direct, individual occupational therapy services for Gabriel.

Ms. McGourty continued to observe Gabriel over the course of the 2012-2013 school year and during the beginning of the 2013-2014 school year as part of her role as occupational therapy consultant to the classroom. She testified that initially Gabriel used the recommended sensory equipment and strategies as needed in the context of a sensory rich classroom environment. She added that he currently does not use, and does not need to use, any particular sensory equipment or strategy to participate appropriately in all classroom activities. Ms. McGourty also noted a significant decrease in self-stimulatory/stereotypical behaviors and an increase in independent social communication over time. She testified that she observed a total of 10 seconds of self-stimulatory behavior since January 2013. (McGourty; P-16; S-10; S-33- S-39)

7. Arena Randazzo-Boyle conducted the initial speech-language evaluation in September 2012. She noted that Gabriel was receiving private speech-language services but that no information from that therapist was available. Ms. Boyle found that Gabriel's overall language scores on standardized measures of functioning were very high and were well above the typical score for his age, then 3 years 10 months. On the other hand scores obtained on the Goldman-Fristoe revealed that Gabriel demonstrated developmental articulation errors that placed him at the 2 year 7 month level. His functional and social language skills were judged to be below age expectations. Ms. Randazzo-Boyle recommended direct speech-language therapy and classroom consultation to address these concerns. (P-17; S-21; Randazzo-Boyle)

8. Lisa Robinson, Director of Shrewsbury's Preschool Programs, observed Gabriel at the Wesleyan Terrace preschool several times over the course of the evaluation period in the fall of 2012. (P-19; Robinson) These observations, the evaluations of Shrewsbury's occupational therapist, speech-language therapist and psychologist, along with the Parents' input and the results of the evaluation conducted by Ms. Nesman in July 2012, formed the basis of Shrewsbury's initial special education eligibility decision. At the Team meeting on November 8, 2012 the Team determined that Gabriel was eligible for special education services on the basis of a developmental delay. (Robinson; McGuire)

Shrewsbury proposed an IEP calling for Gabriel's placement in an integrated pre-kindergarten class at the Parker Road School. This class had 15 four and five year olds, of whom four or five were following IEPs. The class met for four afternoons per week. There was a full time teacher, a full time classroom assistant, a shared assistant and an ABA Technician who was assigned to other children. In addition to typical classroom activities geared toward Gabriel's IEP goals in expressive and receptive communication, articulation and social skills, Gabriel's IEP provided for a direct social skills instruction with the school psychologist for 30 minutes per week and three 30 minute sessions with a speech-language pathologist. (S-9; S-10; P-12; Robinson; Maguire)

9. The Parents consented to the proposed Parker Road placement but rejected the omission of full day programming, the omission of a 1:1 aide; the omission of direct occupational therapy services; the omission of program oversight by a behaviorist; and the lack of references in the IEP document to ABA methodology. (P-13; S-9; S-10)

10. At that time there were no educational recommendations available to the Team members calling for full day special education programming, for a 1:1 aide, for direct occupational therapy services, for behaviorist oversight, or for the use of ABA methodologies with Gabriel. The Parents reported significant behavioral and self-stimulatory difficulties at home. They declined a proffered home assessment. (Parent) The November 2012 - November 2013 IEP provided for monthly consultation by an occupational therapist. The IEP also noted that an observation and a Functional Behavioral Assessment ("FBA") would be completed once Gabriel began attending the Parker Road preschool. The conduct of the FBA was assigned to Bridget Nichols, the ELC coordinator with special expertise in the development of educational programs for children with Autism Spectrum Disorder. (P-12; P-13; S-9; Robinson; Nichols; McGourty)

11. Gabriel began attending the Parker Road preschool classroom shortly after the 2012-2013 IEP was developed. Melissa Johnson, the Preschool Teacher is a certified early childhood educator who prior to shifting to the Lead Teacher position four years ago had been an ABA Technician in the Shrewsbury schools for ten years. She testified that when she first met Gabriel in November 2012 he had noticeable communication difficulties. Without an understanding of context Gabriel's speech was nearly incomprehensible to the unfamiliar listener. Ms. Johnson related that on entrance Gabriel's behavior and activity of daily living skills were immature for a 4 year old. For example, Gabriel was not yet toilet trained. Ms. Johnson noticed that he displayed stereotypic self-stimulatory gestures during "down" times and "heavy sensory" activities such as sand table. These behaviors were primarily "excited hands" and an unusual object gaze. Gabriel was however, quickly and easily redirected with words from an adult. The behaviors did not interfere with learning, with participation in classroom activities, or with peer relations. Gabriel quickly learned the classroom routine, age appropriate ADL skills such as dressing for outdoors, and pre-kindergarten academic readiness skills. (Johnson)

12. Bridget Nichols, a Board Certified Behavior Analyst since 2008, supervises and provides consultation to the Parker Road preschool program. Ms. Nichols conducted a Functional Behavioral Assessment in Gabriel's preschool classroom in December 2012 and January 2013. According to Ms. Nichols the purpose of the FBA was to assess Gabriel's expression of motor stereotypy, to determine the level of interference posed by the motor stereotypy, and if warranted, to collect sufficient data to develop a behavioral intervention plan. (Nichols)

Ms. Nichols testified that over the course of her assessment she noted brief (2 second) low level self-stimulatory behaviors (finger manipulations and atypical eye gaze) an average of 4.75 times in a twenty minute period. These behaviors occurred primarily during unstructured or language intensive activities. They appeared to address a heightened need for sensory input. Ms. Nichols noted that both the occupational therapist and the teacher intervened effectively to redirect Gabriel with words alone. Gabriel responded quickly and appropriately to the teacher's directions. None of the behaviors interfered with Gabriel's access to or participation in classroom activities or with his social relations. Ms. Nichols emphasized that even at the beginning of Gabriel's transition to the preschool class he was always able to respond appropriately to the environment, to his peers, to adult direction and to a conversation around him. He showed strong shared and joint attention. (Nichols; S-22; P10)

Ms. Nichols testified that the preschool classroom incorporates the governing principles of ABA, eg.: positive reinforcement, skills training broken down into small chunks, natural fading of teacher prompts. She did not recommend any different or additional strategies or services to address Gabriel's self-stimulatory behaviors. Therefore she did not recommend an individual behavioral intervention plan for Gabriel. Nor did she recommend increasing the intensity or the length of the preschool class in which Gabriel was then participating. (Nichols; S-22; S-27; P-10)

13. Shrewsbury offered to schedule a Team meeting to review the results of the FBA. The Parents requested that the review meeting be held at the same time as the one to be scheduled to review the results of the evaluation Dr. Joseph Moldover conducted at the Parents' request. That meeting was held on May 30, 2013. (Maguire)

14. Joseph Moldover, PsyD., conducted a neuropsychological evaluation of Gabriel in February 2013 at the Parents' request. (P-8; P-33) Dr. Moldover testified that he understood that the Parents were seeking a full day preschool program for Gabriel and that his role was to understand Gabriel's overall cognitive functioning, social and communication skills, and to look for any signs of Autism Spectrum Disorder. Dr. Moldover conducted his evaluation one-to-one in his office. He did not observe Gabriel in any other setting. Dr. Moldover also reviewed reports from Gabriel's teachers and parents. He found that Gabriel scored well above his expected age level on all standardized measures of intellectual functioning and pre-academic achievement. Dr. Moldover noted some language based "vulnerabilities" particularly in the areas of phonological processing and sound-symbol associations. He also noted some developmental atypicalities such as repetitive motor mannerisms and subtle atypical visual regard. These signs led to a diagnosis of high functioning Autism Spectrum Disorder ("ASD"). Dr. Moldover cautioned, however, that Gabriel's extremely high cognitive functioning and fluid reasoning skills ameliorate the typical expectations of a student with this diagnosis. Nevertheless Dr. Moldover recommended that Gabriel receive a full day, full year, ABA intensive program designed to eliminate unwanted behaviors and increase desired behaviors. Dr. Moldover noted that research supports this type and level of intervention for every and all students with a diagnosis of ASD. He did not point to any particular learning characteristic unique to Gabriel to support his recommendation for full day, full year educational programming. (Moldover; P-8)

15. The Team reconvened on May 30, 2013 to review the results of the Functional Behavioral Assessment and Dr. Moldover's Neuropsychological Evaluation as well as the preschool progress reports. (S-22; P-10; P-8; P-11; S-24; P-7) The Shrewsbury members of the Team disagreed with Dr. Moldover's recommendation for full day programming noting that Gabriel had made significant progress in all IEP target areas in the half-day preschool program. The Parent left the meeting dissatisfied. (Robinson; Nichols; Johnson)

The Parent testified that since Gabriel had made so much progress in a half-day program she believed he could make even greater progress in a full day program and could therefore acquire typical functioning. The Parent acknowledged that her most prominent concern was Gabriel's self-stimulatory behaviors and that those behaviors "seem to be going away." (Parent)

16. The Team reconvened on June 17, 2013 to develop an IEP for Gabriel. To address the Parents' concerns about the potential benefits of a longer program and to align the program more closely with Dr. Moldover's recommendations, Shrewsbury developed an IEP calling for placement in a half day integrated preschool class meeting five mornings a week. To address the Parents' concerns about the length of the school day Shrewsbury also offered to place Gabriel in a regular education slot in an afternoon preschool class on a tuition basis. The IEP also provided for direct speech-language services during the summer and added the BCBA as a member of Gabriel's Team. The proposed IEP continued the type and level of direct speech-language therapy and social skills instruction Gabriel had participated in during the 2012 – 2013 school year. (S-9; S-12; S-2; S-5; P-5)

Shrewsbury also requested consent to conduct a home assessment to evaluate Gabriel's behavior in an out-of-school, less structured, setting. Ms. Robinson explained that home assessments may point to the need for additional special education services outside the school environment. (Robinson; P-5; S-2; S-5)

17. The Parents declined the proffered home assessment and the summer speech-language services. (P-3; P-4; S-7; Parent) On July 18, 2013 Shrewsbury received a letter from an attorney purporting to represent the Parents accepting the services outlined in the proposed 5/13-11/13 IEP on an interim basis and rejecting the adequacy of the IEP.³ The Parents' attorney filed an appeal at the BSEA challenging the appropriateness of the proposed IEP on July 19, 2013. (S-4; Administrative Record)

18. Gabriel entered the five mornings per week preschool class in September 2013. Melissa Johnson continued as his teacher. She testified that while she noticed an "uptick" in self-stimulatory behaviors when Gabriel returned to school the behaviors did not interfere with his transition or with his access to or participation in any classroom activities and they quickly abated. Ms. Johnson stated that currently Gabriel is behaviorally and socially indistinguishable from his classroom peer group. He has very strong academic skills and already meets all kindergarten readiness criteria. Gabriel's speech difficulties continue to interfere with an unfamiliar listener's understanding in an unknown context. Ms. Johnson noted, however, that Gabriel does not appear to be frustrated with requests for repetition and that his speech is universally understood by his peers. It does not interfere with reciprocal play or communication or with participation in large group activities. Ms. Johnson testified that Gabriel does not need an extended day program to acquire any mainstream readiness skills. (Johnson; S-48)

19. Ms. Grimshaw continues to provide direct speech-language services to Gabriel within the preschool classroom and in a one-to-one setting. She testified that Gabriel has no language deficits that affect his progress or participation in the preschool class. Although his speech can be "slushy" he has made significant progress in conversational sounds in connected speech. He is motivated, confident, cheerful and engaged in speech-language therapy and in all classroom activities. No teacher or student has raised a concern about not understanding Gabriel's speech. Ms. Grimshaw testified that no modifications or accommodations to the curriculum or environment are necessary for Gabriel to benefit from or participate meaningfully in the preschool classroom. She further stated that Gabriel is currently mainstream kindergarten ready in terms of speech-language functioning. (Grimshaw)

20. Ms. Nichols has observed Gabriel in the preschool classroom throughout the fall 2013 in her capacity as the supervising/ consulting BCBA. She testified that she has no concerns about Gabriel's behavior. The self-stimulatory behaviors that concerned the Parents in the winter of 2013, then at a more frequent but non-interfering level, have significantly decreased. When present they do not interfere with Gabriel's access to or participation in the classroom. Ms. Nichols testified that no modifications to the curriculum are necessary for Gabriel. He has age appropriate behavioral and attentional skills, learns from typical peer models, and has strong shared and reciprocal social skills. (Nichols)

³ During the Hearing the Parent claimed that the Attorney's notice to Shrewsbury was not authorized.

21. Dr. Moldover observed Gabriel for two hours in the preschool classroom on October 7, 2013. He testified that the classroom was well organized and structured with clear, consistent routines and expectations. He observed many positive developmental teaching techniques and strategies, but could not say whether the classroom program was ABA based due to the lack of data recording.

Dr. Moldover stated that Gabriel was an engaged, participatory member of the classroom community and had made observable progress in all developmental areas. He reported that of the behaviors of concern to the Parents in February 2013 aggression was not evident and stereotypical self-stimulatory movements were only minimally evident.

Dr. Moldover remained concerned that, despite the noticeable decrease in “interfering behaviors” there was insufficient attention to developing Gabriel’s pro-social behaviors, in particular to skills necessary to initiate and maintain peer communication and shared and independent play. Dr. Moldover maintained that a full day ABA based program would be necessary for Gabriel to acquire age appropriate skills in this area because that is the best practice for students with a diagnosis of Autism Spectrum Disorder. Dr. Moldover did not observe the direct social skills instruction component of Gabriel’s special education program. (P-1; Moldover)

22. The ELC classroom at Parker Road School is a substantially separate preschool designed to provide intensive behavioral and pre-academic support to students who cannot yet participate meaningfully in the mainstream. The students in the ELC class typically have aggressive behaviors, need a quiet, low-stimulation environment, and require one-to-one discrete trial instruction to learn new skills. There are no educational, communication or behavioral findings or recommendations in this record that would indicate that Gabriel needs the type or level of special educational services provided to students placed in the ELC program. Ms. Maguire, Ms. Johnson, and Ms. Nichols testified that an ELC placement for any length of time or type of service would not be appropriate for Gabriel. (Maguire, Johnson, Nichols)

23. The Parents have not observed the Parker Road classrooms in which Gabriel has been placed. The Parents did not observe the ELC classroom. (Parent)

24. In September 2013 Shrewsbury requested consent to conduct updated evaluations of Gabriel including a home assessment and speech-language assessment. The Parents declined to consent. (Robinson; Parent; S-1; S-3)

25. The IEP at issue in this Hearing runs to November 7, 2013. Shrewsbury attempted to schedule a Team meeting to develop an IEP to cover the period November 7 2013 forward. The Parents declined to participate in a Team meeting. The Parents also declined to participate in the Parent-Teacher conference typically scheduled to take place for preschool students in October. (Maguire; Johnson; Parent)

FINDINGS AND CONCLUSIONS

There is no dispute that Gabriel is a student with special learning needs as defined by 20 U.S.C. §1400 and M.G.L. c.71B and is thus entitled to receive a free appropriate public education. The issue presented for decision here is whether Shrewsbury has met its obligation to provide appropriate special education programming to Gabriel by placing him in a half day integrated preschool classroom. After careful consideration of all the evidence adduced at the hearing it is my determination that it has. The Parents did not carry their burden of proving otherwise. *Schaffer v. Weast*, 546 U.S. 49 (2005)

The clear weight of the evidence establishes that Gabriel has made significant progress in all target areas since he began attending a half day integrated preschool program in November 2012. All witnesses reported improvements in Gabriel's skill sets. In particular his teachers noted improvement in Gabriel's classroom behavior and language, activity of daily living skills, social skills and attention. (Johnson) The occupational therapist noted improvement in sensory modulation and integration. (McGourty) The speech-language pathologist noted improvement in both the phonological processes and Gabriel's articulation skills in conversational connected speech. (Grimshaw) Ms. Nichols noted a decrease in expression of self-stimulatory behavior. (Nichols) Dr. Moldover noted both a reduction in the frequency and duration of stereotypic self-stimulatory behaviors and an improvement in pro-social behavior in the seven months between his February 2013 evaluation and the October 2013 classroom observation. (Moldover; P-1; P-8) The Parent also reported a decrease in self-stimulatory behaviors outside the school setting. There is no evidence in this record that Gabriel has failed to make progress commensurate with his potential.

Nor is there any evidence that the setting or services are inappropriate for Gabriel. Indeed Dr. Moldover testified that the integrated preschool classroom in which Gabriel participates has the appropriate type and level of services for him for as long as it operates. The crux of the issue is that the Parents believe, and Dr. Moldover's February 2013 evaluation suggests, that Gabriel should have "more". It is apparent that the belief is premised on the notion that all children with a diagnosis of autism spectrum disorder benefit from full day, full year intensive ABA-based educational programming.⁴ Nowhere in his report, however, or in his testimony did Dr. Moldover make a connection between the general research literature and Gabriel's unique learning characteristics, his individual functioning and/or his educational experience.

Federal and state special education law, and practice, require school districts to develop programs and services that are individually tailored to address each student's unique needs. Broad categories of service by disability type are impermissible. In order to be eligible for a particular special education or related service there must be a showing that the service meets an identified learning need, and provides an educational benefit that would permit the student to make progress toward attainment of her/his IEP goals and movement to a less

⁴ For example, Dr. Moldover's February 2013 report states: "The literature on intervention for children with ASD clearly indicates the need for both intensity and a high level of consistency in both reducing atypical behaviors and in building appropriate communication and social skills. Moreover, summer programming is necessary for children with this diagnosis in order to prevent skill regression in the absence of ongoing instruction." (P-8, p. 6)

restrictive environment. 603 CMR 28 02 (17). *D.B. ex rel. Elizabeth B v. Esposito*, 675 F. 3d. 26 (1st Cir. 2012). Here there was no convincing showing that Gabriel required a full day preschool program to achieve his IEP goals or to move to a less restrictive setting. On the contrary, the uncontroverted evidence demonstrates that Gabriel made significant progress in all IEP areas with the services offered in the 4 afternoon per week integrated preschool during the 2012 – 2013 school year. The May/June 2013 Team was therefore justified in according greater weight to Gabriel’s positive experience in the half day preschool than to Dr. Moldover’s unsupported recommendation for full day programming. Furthermore, absent any new information to indicate a change in functioning or learning profile it was reasonable for the Team to conclude that Gabriel would continue that pattern of progress with a five day a week placement and additional attention from a behaviorist.

Since the implementation of the disputed IEP, Gabriel has achieved, or is making rapid progress toward achieving the May 2013 - November 2013 IEP goals. Further the uncontroverted evidence demonstrates that Gabriel has acquired the academic, behavioral, communication and social skills necessary to move to a mainstream kindergarten on schedule for his age in September 2014. By all relevant measures available to Shrewsbury and to this Hearing Officer then, Gabriel is making effective educational progress. Therefore I find that the Parents have not established by a preponderance of the evidence that Gabriel needs intensive ABA programming on a full year, full day basis in order to make effective educational progress.

The Parents asserted that despite any progress in the school setting Gabriel continues to exhibit a noticeable degree of stereotypical self-stimulatory behavior at home. If true, educational interventions might be warranted. To make that determination, however, the behaviors of concern to the Parents must be assessed. Since the Parents have consistently declined the proffered home assessments there is no basis on which Shrewsbury could develop additional services to meet a potential need for generalization and/or structure in addition to the half day preschool. Nor is there any foundation to support a BSEA finding that such services would be appropriate for Gabriel at this time.

The Parent argued that Shrewsbury has an obligation to provide appropriate special education programming to a student even in the face of parental non-cooperation. I agree. And I find that it has. Based on all the evidence presented at the Hearing it is my determination that Shrewsbury appropriately considered the findings and recommendations of Gabriel’s parents, teachers, therapists, and evaluators at the May and June 2013 Team meetings, designed a program that incorporated their recommendations, and designated an age-appropriate placement in which that program and related services could be delivered to Gabriel. I further find that Gabriel is making effective educational progress in that integrated preschool program, and therefore that the May 2013-November 2013 IEP is reasonably calculated to provide, and has provided, a meaningful educational benefit to him.

ORDER

The half day integrated preschool program set out in the May/June 2013 to November 2013 IEP developed by Shrewsbury is reasonably calculated to provide a free appropriate public education to Gabriel.

By the Hearing Officer

Lindsay Byrne
November 26, 2013