

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

Student v. Weymouth Public Schools

BSEA #1400689

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 said statutes.

PROCEDURAL HISTORY

Parents requested a hearing on July 23, 2013. Multiple jointly requested postponement requests were allowed while the parties attempted to resolve their dispute. The hearing was reassigned to hearing officer Catherine Putney-Yaceshyn on December 11, 2013.

The hearing was held on December 17 and 18, 2013. The Parties requested a postponement to file written closing briefs and the hearing officer allowed their request to submit their briefs by January 15, 2013. The Parties submitted their closing briefs and the record closed on January 15, 2014.

Those present for all or part of the hearing were:

Mother

Father

Carolyn Bridgemohan

Christine Cedrone

Erin McLoughlin

Nicole Ruprecht

Student's developmental pediatrician

Attorney, Parents

BCBA, Weymouth Public Schools

Special education teacher, Weymouth Public Schools

James Ellis

Behavioral Consultant for Weymouth Public Schools

Naomi Turk

Consulting clinical psychologist for Weymouth Public Schools

Theresa Skinner

Administrator of Special Education, Weymouth Public Schools

Joan Woodward

Observer, Weymouth Public Schools

Alycia Lindquist

Special education teacher, Weymouth Public Schools

David Dilley

Consulting BCBA for Weymouth Public Schools

Katie Meinelt

Attorney, Weymouth Public Schools

Virginia Dodge,

Court reporter

The official record of this hearing consists of Parents' exhibits marked P-1 through P-7, Weymouth Public Schools' exhibits marked S-1 through S-16, and approximately eight hours of recorded oral testimony.

ISSUES

1. Whether the IEP proposed by the Weymouth Public Schools for the period from December 5, 2013 through December 4, 2014 was reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.
2. If not, whether the IEP can be modified to provide Student with a free appropriate public education in the least restrictive environment.
3. If the IEP as developed is not appropriate and cannot be modified to be made appropriate, whether the Higashi School in Boston would provide Student with a free appropriate public education in the least restrictive environment.

SUMMARY OF THE EVIDENCE

1. The student (hereinafter, "Student") is ten years old and resides in Weymouth. Student has been diagnosed with autism, intellectual disability, heterotopia, seizure disorder, pica and other disruptive behaviors, including disrupted sleep and aggressive behavior. (Bridgemohan, P-6)
2. It is very difficult for Parents to manage Student's behavior in the home. In the evenings Student goes to bed at around 8:00 p.m. Either Mother or Father has to lie with him until he falls asleep (for approximately one hour). He often wakes as his parent is attempting to leave the room. He usually wakes up between 11:30 p.m. and 3:00 a.m. He will sometimes go back to sleep for a short time, but is sometimes up for the rest of the night until it is time for him to go to school. When he wakes up he engages in constant verbal stimulation and stereopathy. He walks from room to room and turns lights off and on, makes high pitched vocal sounds and wakes up the entire family. Mother tries to redirect him using an activity bag in the spare room. He never complies and refuses to do the tasks she tries to get him to do. She tries to get him to look at books or watch television, but he just wants to walk around the house. Mother is often awakened to noises downstairs or in the kitchen. She has found him sitting on top of the stove trying to light the burners or trying to cook. He also removes items from the refrigerator and empties them in the sink. He flushes things down the toilet and has broken numerous household items. While using the bathroom, Student will put his hands in the urine stream. He often does not wipe himself and if she reminds him to use toilet paper he unrolls the entire roll and stuffs into the toilet. (Mother)

Every exit door in the house has a deadbolt lock with a key. Because Student has figured out how to use the key to unlock the deadbolt, Parents have to hide the key. He has been able to figure out how to open keyed deadbolts on doors in the home and has gotten outside. There is an alarm on the door that alerts parents if the door has been opened. All of the windows in the house are screwed shut except for the bathroom window. The bathroom window can be opened approximately six inches. (Father) One night while father was home, Student found an ironing board, carried it upstairs, used it to pry open the window, stood on the toilet and toilet paper holder and managed to get the top part of his body out the window. Father found him hanging out the second story window and grabbed him by the legs to keep him safe. (Father, P-5, P-6) The Saturday before the hearing Father woke up when the home alarm sounded. He ran downstairs and checked all the bedrooms. Then saw that the front door was wide open. He went outside and saw Student's footprints in the snow. Student was on the neighbor's property playing in the snow. (Father, Mother)

Although Parents try to encourage Student to be independent while getting dressed, Mother usually has to dress him to ensure that he is ready when the bus arrives. He often tries to remove his clothes while she is making breakfast. Mother has to try to keep Student in the kitchen while she cooks because otherwise he will leave the room and engage in unsafe behaviors. Despite Mother's sitting beside him and encouraging him to eat, Student seldom eats much breakfast. When Mother attempts to assist Student's twin brother in getting ready for school Student wanders around the house and often breaks things. Shortly before the hearing Student removed most of the ornaments from the Christmas tree and smashed them with his foot. After breakfast Mother brings Student to the bathroom to brush his teeth, which he usually does not want to do. She has a very difficult time trying to get him to brush. When she tries to make him do things he does not want to do he screams, squeezes her hands and pinches and squeezes her arms. He has head butted her several times and injured her nose in the process. Mother often has several bruises on her body from Student's aggressive actions toward her. During her last physical examination her doctor questioned her about the bruises and gave her a phone number to call if she was a victim of domestic violence. Student dislocated Mother's toe in September 2013 when Mother refused his request for ice cream at 3:00 a.m. (Mother) Student is also shows aggression toward Father and his twin. He punches, head butts, pinches and kicks them. He recently began throwing his twin down and is much bigger and stronger than him. (Father)

After school Mother has difficulty supervising Student while trying to prepare the family's dinner. Student needs to stay in the kitchen with her to avoid his engaging in unsafe behaviors. She tries to engage Student and get him to help with dinner, but he is not very compliant. Mother usually eats her dinner as she cooks it to allow herself to be available to sit beside Student and assist him in eating his dinner. She must sit beside him to ensure he does not get up from the table and to encourage him to take a couple of bites of his dinner. It is very difficult to get Student to take a shower. Mother has to either get in the shower with him to

prevent him from getting out or she gets completely soaked. Student has very dry skin which requires moisturizing lotion. Because he does not like the sensation of the lotion, Mother struggles to get the lotion on him. It can take close to an hour to get Student's pajamas on because he does not want to put them on. It is another struggle to give him his medicine because he likes to spit it out. Mother has to hold him down while he takes his medication and make sure he ingests it.

Parents do not think Student has made progress at Weymouth Public Schools. Mother has reported to school staff that Student acts differently around school staff than he does at home with Parents. Mother does not think that the skills he has learned at school have carried over into the home. For years Mother has been reporting the difference in his home behavior and the behavior his teachers have reported in school. She has requested a different teaching method and more intense services over the years and Weymouth has refused her requests.

In addition to the home services Weymouth provides, Student receives PCA services. His grandparents and an aunt are his PCAs. When one PCA is in the home assisting with household chores another always accompanies the first to follow Student around and ensure he does not injure himself.

Student was found eligible for (now) DDS services in 2006. Mother called the agency a few times regarding respite services and they were able to provide Student with swimming lessons. However, due to state budget issues the services offered to Student were limited. Also, Mother did not know what services were available through DDS.

3. Recently Parents have begun residing in separate residences to allow Student's sibling and one Parent to sleep at night. If Student's sibling needs a break from Student he can go to his father's residence. When Mother needs to get some sleep Student sleeps at his father's residence and when father needs sleep Student sleeps at his mother's residence. (Mother)
4. Parents filed a request for hearing seeking a residential placement for Student on July 29, 2013. Weymouth convened a Resolution Session on August 6, 2013. The district rejected Parents' request for a residential placement and made a proposal to Parents. Weymouth proposed completing a comprehensive program evaluation by an independent BCBA, an independent functional behavioral assessment, and a full neuropsychological assessment. Additionally, Weymouth proposed "upon completion of [Student]'s compensatory home ABA hours" an additional five hours of direct home services (for a total of ten hours) be provided to Student¹. They similarly proposed adding a second hour of supervision by a BCBA upon completion of Student's compensatory hours. Finally, they proposed that the BCBA continue working with the family to access additional home services through their health insurance. Weymouth outlined its BCBA's attempts to assist

¹¹ Nothing in the record explains why Student was receiving compensatory services.

Parents in accessing additional home services through their health insurance. (S-11)

5. The Team had a reconvened meeting on October 29 2013. The Parent concern section of the IEP generated pursuant to the meeting contained the notation “2/2013 [Student]’s family has concerns with ADLs and sleep. They have expressed frustration with the fact that there appears to be slow/minimal progress across many areas. ... [Student]’s family continues to have concerns with the lack of consistent improvement in safety skills.” The Team’s vision statement indicated it would like to see Student better able to generalize skills to home and community settings. In addition, the Team’s sought for Student to increase his attention independence and to become more engaged when integrated into general education. The IEP contained a number of accommodations including: home/school notebook², encouraging Student to use environmental cues, visual supports, directions presented in small steps, redirection to task, predictable routine, verbal models and visual prompts to gain follow through, high rates of reinforcement, use of first/then board and increasingly more complex reinforcement schedules, use timers to increase completion of tasks within a functional amount of time, and repetition/visual supports for new material/learning. (S-2) The Present Levels of Educational Performance B section noted needs in the area of communication and “Other: physical.) The Behavior box was not checked. The IEP indicates that Student’s disability significantly affects his communication, specifically his ability to attend, follow and process language and to communicate his wants and needs consistently. Student has difficulty generalizing across settings, contexts, and materials. The IEP contains goals in the following areas: Functional Academics, Social Skills, Communication(Expressive), Communication/Receptive, Attention/Focusing, Home Services, and Occupational Therapy.

The service delivery grid contains the following services. The A grid provides for consultation with the physical therapist 1 x 10 minutes per five days; consultation with the ABA Supervisor 1 x 60 minutes per five days; consultation with the speech language pathologist 1 x 10 minutes per five days, consultation with the occupational therapist 1 x 10 minutes per five days and ABA Supervision/Home 1 x 60 minutes per five days. There are no services in the B grid.

The C grid contains the following services from 9/4/2013 to 2/27/2014: physical therapy with the physical therapist 1 x 30 minutes per 6 days; ABA with the ABA provider 10 x 60 minutes per 6 days, and occupational therapy with the occupational therapist 1 x 30 minutes per 6 days. The following services in the C grid run from 10/29/2013 to 2/27/2014: Generalization of Skills (Special Education Teacher and Staff) 6 x 110 minutes per six days, Functional Academics (Special Education Teacher and Staff) 6 x 90 minutes per six days, Communication (all special education staff) 6 x 30 minutes per 6 days, and Communication (speech

² Ms. Ruprecht testified that she did not implement any kind of home school communication until October 2013, after it had been recommended by Dr. Turk. (Ruprecht)

language pathologist) 2 x 30 per six days. The following services run from 2/28/2013 to 2/27/2014: Parent Training- Home (ABA provider) 5 x 60 minutes per five days. There are extended year services for the period from 7/1/2013 to 8/15/2013 as follows: Extended Year Services (Summer Program Staff) 4 x 240 minutes per week and ABA (ABA Provider) 5 x 60 minutes per five days. There are additional extended year services, EYS-Home ABA Program (ABA Provider) 15 x 60 minutes per five days for the period from 8/16/2013 to 9/2/2013.

The Schedule Modification portion of the IEP indicates that during the “shoulder weeks” that the extended school year program is not offered, Student’s home service hours will be increased to 15 hours per week. Additionally, ABA home services will be provided during February and April breaks. (S-2)

6. Carolyn Bridgemohan, M.D., is a developmental pediatrician and an assistant professor at Harvard Medical School. Her specialty is the diagnosis and management of autism in people ranging in age from eighteen months to twenty one years. Student has been her patient since 2004 when she saw him for an initial evaluation. She sees him two to three times per year. She is responsible for monitoring Student’s development, reviewing his educational plans, and making recommendations about educational and medical programming to target his developmental needs. She has reviewed numerous school documents pertaining to Student and attended a February 2013 Team meeting. She noted that Student needs prompting and assistance for all daily skills. She has witnessed Student’s aggressive behavior, as he has hit people during office visits. She did not have an opportunity to review Student’s most recently proposed IEP. She has not observed his current middle school classroom or spoken to any of his teachers or any Weymouth staff (other than those she spoke to at the February 2013 Team meeting). She has not observed Student in his home or spoken to any of his home service providers.

Dr. Bridgemohan has informed Student’s Team of her opinion that Student has very significant needs and a very high level of risk of injuring himself when he is not in a structured setting. She believes he requires a more specialized private program that has expertise in educating children with autism spectrum disorders. Dr. Bridgemohan believes Student requires a residential placement because he has such a high level of disruptive and unsafe behaviors. The disruptive behaviors include aggression toward family members at home and trying to escape from the home or yard. He does not demonstrate any safety awareness and attempts to touch hot items or to run out in the street. He has a very disrupted sleep pattern for which she and his other providers have not been able to identify a medical solution. He is often up at night, unsupervised and has the potential to do something unsafe. With respect to his sleep issues she recommends that Parents safety proof his environment or that he be provided with one-to-one supervision to eliminate the safety risk at night.

Dr. Bridgemohan has been recommending that Student attend a more specialized program for students with autism spectrum disorders since at least February 2011. (P-2, P-3, P-4) Most recently, she recommended a residential placement for Student due to his severe and extreme safety risk. (P-5)

7. Kerim Munir, M.D., MPH, DSc, saw Student in his office on October 21, 2013. He summarized his observations, findings, and recommendations in a document marked as P-6. He did not testify at the hearing. Dr. Kumir's report indicates Student has had significant aggressive behaviors at home and his identical twin is afraid of him. He notes that Student has been tried on various medications to address his sleep and behavioral issues, which have been ineffective. He opined that Student requires twenty four hour supervision and placement in a highly specialized program with a residential component for children with autism spectrum disorders. (P-6)
8. James Ellis, Ph.D, BCBA-D, has a private practice and was hired by Weymouth to conduct a program evaluation. Dr. Ellis' Ph.D. and Master's degrees are in child clinical psychology and he is a certified behavior analyst. Prior to starting his private consulting practice, he spent approximately twenty years working primarily with students on the autism spectrum. For approximately ten years he worked at Melmark New England and was the director of consultation services. He provided direct consultation services and oversaw the delivery of those services by Master's and doctoral level consultants. He also worked at the May Institute for approximately ten years as the Assistant Director of Home-based Services, a Program Director, and an Educational and Behavioral Consultant. (S-16) His experience is primarily working with students with autism between the age of three and young adulthood. He has worked with students of varying levels of communication and functional skills. He has worked with many students with profiles similar to Student, having limited communication skills and a high rate of repetitive kinds of behavior.

Weymouth contacted Dr. Ellis and asked him to look at Student's needs for service and support in the home and to determine whether Student required a residential placement. He observed Student twice at school (for approximately two and a half hours each time) and twice in his home (for one and a half to two hours each time.) He observed Student engaging in near constant wandering behavior including instances of placing objects in his mouth and two instances when he climbed onto the toilet and fiddled with the window lock.

Dr. Ellis concluded that Student requires a very systematic approach in dealing with any challenging behaviors, which he described as those that might be safety concerns or that interfere with Student's functioning in any way. He noted that the focus of Student's program should be functional skills that are going to make a difference in his life, especially regarding his communication, his ability to take care of himself and his ability to be independent.

Dr. Ellis noted that across both home and school settings, Student is demonstrating slow progress with most targeted skills and that to date, intervention has resulted in limited progress in reducing interfering and unsafe behaviors. He noted that although there is some inconsistency in what is reported by Parents and school staff, Student's skills and behaviors are generally consistent across the school and home environments. He attributed the differences between Parents' reports of frequent unsafe behaviors in the home and school staff's report of less unsafe behavior to the difference in structure across the home and school environments.

The most concerning behavior observed by Dr. Ellis was Student's wandering. He did not see a lot of it in school because Student is so closely supervised. He did see some wandering in the gym and observed Student trying to leave the room or go into another side room. At home, Student engages in a high rate of wandering behavior that often involves exploring things, picking up things and putting them in his mouth, all of which can lead to unsafe situations.

Dr. Ellis determined that a change was required in the focus of Student's home services, and that the intensity of his home services needed to be increased to at least two hours per day (for a total of 10 hours per week.) He recommended there be a shift in his IEP to focus more on the development of functional skills. He suggested goals be added in the areas of daily living skills, leisure skills, and behavior. He recommended that Weymouth continue using applied behavior analysis due to its demonstrated effectiveness through decades of research in helping students with autism to learn and decrease interfering behaviors. However, he recommended that the delivery of educational services be more systematically delivered across the home and school environments. He recommended that data be collected on all targeted skills and behaviors and frequently reviewed. He explained that provision of more systematic teaching and intervention would require an increase in the training provided to staff and in the amount of BCBA consultation provided to Student's school program to at least two hours per week. He also recommended that the delivery of home services focus on developing teaching and intervention procedures that can be implemented by Student's parents. He stated that Student's parents should be assisted with accessing resources outside of those provided by the school, including services from the Department of Developmental Services.

Dr. Ellis noted that Weymouth's Communication Enhancement Program (CEP) had many of the components that he recommended, but many components required strengthening. He noted the program had a "nice structure," very strong teacher, and very good teacher-to-student ratio. He also observed some very good teaching and some good use of prompting and reinforcement procedures and use of visual supports. However, he did not see enough of the aforementioned components. Dr. Ellis testified that the December 5, 2013 IEP which is the subject of the instant case reflected the recommendations he made.

Dr. Ellis recommends placing students in residential settings when serious challenging behaviors present a danger to the individual or to others and the behaviors cannot be appropriately managed. Dr. Ellis anticipated that Student would make more significant progress upon the intensification of home services, and thus did not recommend an out of district day or residential placement at this time. However, he recommended close monitoring of the effectiveness of the changes to Student's educational program. He stated that the team should reconvene if after six months of intensified home services, Student is not demonstrating notable decreases in interfering and unsafe behaviors in the home. At that time he suggested the team make a determination about how to move forward. Dr. Ellis noted that he did not specify a six month review of Student's progress to suggest that there would be a "major resolution" of Student's issues at that time, but because he would expect to be able to determine at that point whether things are headed in the right direction or not. He also cautioned that the success of the program would depend in large part on the implementation of the IEP. (Ellis)

9. Alycia Lindquist has a bachelor's degree in communication disorders and audiology and a Master's degree in special education. She is certified in special education at all levels. Prior to working in the Weymouth Public Schools she worked in the Pilgrim Area Collaborative as a one-on-one aide for a student with autism and at the May Center where she received training in ABA (applied behavioral analysis) and worked primarily with students with autism. She was Student's teacher from September 2010 until June 2013, Student's second, third and fourth grades in the CEP at Wessagusset Elementary School. The CEP program was designed for students with significant impairment in communication, social skills, cognitive abilities and behavior. The majority of students in the program have diagnoses of autism.

Ms. Lindquist noted that Student demonstrated strength in following classroom routines and directions and weakness in maintaining attention and focus. He benefited from one to one or small group instruction when learning new skills. Most of the students in the program demonstrated deficiencies in receptive and expressive communication skills, auditory processing, social skills, behavioral and emotional regulation, adaptive living skills and the ability to acquire new skills. The CEP primarily uses ABA methodologies including some discrete trial training. The staff does a lot of prompting and uses visual supports. They use positive behavioral supports including reinforcement systems. In Student's fourth grade classroom there were six students, a full time teacher, a full-time classroom paraprofessional, a one-to-one aide (for another student), and a full time ABA therapist. Students followed a daily schedule and a pretty consistent routine. Staff used a lot of visual supports. Some students used picture exchange communication (PECS) and some used communication boards. Students worked one-on-one or in small groups primarily. All of the staff working in the classroom had received some degree of training in ABA including attending a district-wide ABA training. The district BCBA consulted to the classroom and assisted with training the ABA

therapist and paraprofessionals. Student was able to follow classroom routines and was able to navigate through the school building. He always had staff with him. He was able to follow familiar directions and complete familiar classroom tasks. He could retrieve supplies when directed and could independently get a snack and lunch from his locker next to the classroom. He could independently get the recycling bin and bring it across the hall to empty it. He was accompanied by a classroom staff or his ABA therapist and participated in specials outside of the classroom with his fourth grade peers.

Ms. Lindquist noted that Student's independence with classroom routines increased during the three years she taught him. Staff noted an increase in his spontaneous expressive communication, but only for highly preferred items and activities. She described his progress as slow, but steady and noted that it could fluctuate. Ms. Lindquist observed fewer than five instances in which Student showed aggression during the three years that she was his teacher. Student never directed aggression toward her. He showed aggression toward the staff in the form of an arm squeeze. She did not collect data relating to aggression because it occurred so infrequently. Ms. Lindquist did not recall Student engaging in unsafe behaviors in the classroom other than biting erasers off of pencils. Student was independent with toileting by the end of his fourth grade.

10. Nicole Ruprecht has a bachelor's degree in elementary education and special education. She has a Master's degree in education in language and literacy with a concentration in special education. She is certified in elementary education grades 1 through 6, and in moderate special education grades N through 9. She is the CEP teacher for grades five and six and has been for four years. Prior to working in Weymouth, she worked with students with autism including one year as a classroom teacher at the May Institute and two years at the North River Collaborative as an ABA para professional. Ms. Ruprecht has been Student's classroom teacher since September 2013.

There are eight students in Ms. Ruprecht's current class, including Student. Some of the students are higher functioning and some are lower functioning than Student. There are five adults in the classroom, all of whom are trained at varying levels in working with students with autism. They are all trained in crisis prevention and the BCBA provides training and Ms. Ruprecht models her methodology every day. Student is able to enter the school building with the supervision of a paraprofessional and put his materials away. He then completes self-care skills and is able to complete two of the four steps independently and two with gestural prompts. After the morning routine Student works on one-to-one discrete trials for about twenty minutes in a separate part of the classroom and then participates in morning meeting. Student is reinforced during that time and data is taken. The ABA therapist sits behind him and reinforces him for having quiet lips and answering a question appropriately. Student answers questions and requires less processing time when verbal questions are accompanied by a picture or visual cue. Student then participates in academic time and Ms. Ruprecht has begun chunking

her academic time at Dr. Ellis' recommendation. Student is able to go through the lunch line with his class and a paraprofessional. He is able to choose what he wants if there is something he likes. Student is able to follow classroom routines and navigate the school building, but he is never alone. He is always with a staff member and often with a small group or his entire class. Student is able to change for gym class, can ask for water, and can walk to the water fountain by himself. He can appropriately use the bathroom, but does want somebody to stand outside the bathroom. Student does not require prompting when he is in the bathroom. Student is able to pack his own backpack to go home and waits for Ms. Ruprecht to write in his home-school communication book before he zips the backpack.

Since September Ms. Ruprecht has witnessed two instances of aggressive behavior, namely two arm squeezes directed at staff. She noted that Student does wander from one part of the classroom to the other when he is not engaged in a structured activity. He does not go outside the classroom. Ms. Ruprecht began using a home school communication book at the end of October after Dr. Turk recommended an increase in home school communication. Ms. Ruprecht explained that Student's mother sometimes informs her when Student has been up early and that is important information for the staff to know when Student starts his day. (Ruprecht)

11. Ms. Ruprecht believes that Student is able to communicate verbally, but chooses not to at times. She stated that Student can clearly state a simple complete sentence when he wants something, such as "I want chips." or "I want the bathroom." She explained that Student presents with high stereopathy at times, but is easily redirected. (Ruprecht)
12. The Team reconvened on December 5, 2013 and reviewed Dr. Ellis' report. The Team made some modifications to Student's IEP based primarily upon Dr. Ellis' recommendations. The Service Delivery grid contains the following modifications. In grid A, the ABA Supervision consult is increased from 1 x 60 minutes per five days to 2 x 60 minutes per five days. The ABA Supervision/Home services were increased from 1 x 60 minutes per five days to 2 x 60 minutes per five days. There were no services in the B Grid. The C grid remained substantially the same as proposed in the previous IEP, with the addition of five hours per week of Parent Training-Home (ABA Provider) for a total of ten hours per week.

The revised IEP maintains the same goals and benchmark/objectives with respect to goals one through five and goal eight. It modifies the benchmark/objectives in goal 6, Attention/Focusing, to focus more on Student's independently completing tasks, increasing independence around transitions and responding to adult's verbal requests for attention. The IEP significantly modified the benchmark/Objectives within the goal in Home Services. The modified benchmarks are geared toward increasing Student's compliance with parental requests and with directions for familiar tasks. It increases direct instruction in appropriate behaviors in the

community and increases the focus on activities of daily living, specifically, dressing, showering, and toileting. The IEP includes a goal in Leisure/Recreation and indicates that goal is to be worked on in both the home and school setting. It adds a goal in behavior management targeting off-task behaviors, compliance with adult directions, vocal and motor stereotypy, decreasing unsafe behaviors, and demonstrating an adaptive response to aversive noises. Finally, the IEP added a goal in the area of ADLs with benchmark/Objectives targeting tooth brushing, hand washing, and unpacking and repacking his belongings.

The Additional Information section of the IEP includes a notation dated 12/5/13. “Staff training of ABA principles for consistent implementation and carryover of skills. The team will collaborate with medical staff on sleep issues. Jim Ellis, behaviorist, will consult to the school district (CEP program) regarding carryover of suggested recommendations. (S-1)

13. David has bachelor’s degrees in human services and special education. He is certified as a special educator with licensure in severe special needs and has a Master’s degree in education. He is a board certified behavior analyst. He has a private practice in which he provides behavioral consultation and services to school districts and family primarily in southeastern Massachusetts. Previously he was a classroom teacher at the May Institute for five years and a group home manager for two years. He was a special education teacher in public schools for approximately six years. He then became a district wide autism and behavioral specialist. He then worked at Beacon Services for six years and was the president and associate vice president of clinical services before starting his own practice.

Weymouth requested that Mr. Dilley conduct a thorough program evaluation to determine the appropriateness of Student’s program. Typically, to complete such an evaluation he would do three or four school observations and two or three observations in the home. He would also do a records review. He typically conducts his first observation prior to doing a records review. In this case he was only able to conduct the first observation before Parents revoked their consent for him to conduct the evaluation³.

Mr. Dilley observed Student in the classroom for approximately three and a half hours. He observed Student’s ability to follow directions, to line up and wait in line, and to move from one part of the building to another. He observed him transitioning from one space to another and observed him participating in lunch. He was able to see both compliance and noncompliance with instructions. He observed the classroom teacher collecting data and implementing “reductive strategies, some antecedent strategies” and positive behavior supports. He did not observe any instances of aggression. The only problematic behavior he observed was Student’s periodic eye closing. He explained that the strategies that he would

³ Parents revoked their consent after learning that Mr. Dilley had previously been employed by Beacon Services and supervised some of Student’s direct care providers. Mr. Dilley had been to Student’s home and met with Parents in his capacity as a supervisor at Beacon. (Dilley)

expect to see staff using with Student include applied behavior analysis, research-based intervention, the use of visuals, functional communication strategies and training, data collection, and functional behavior assessments. Mr. Dilley observed “evidence of those strategies.” Mr. Dilley’s report included a recommendation that opportunities for inclusion should be explored because he believes Student has the foundational skills necessary to participate in inclusion opportunities throughout the day. He explained that Student had no explosive or safety-related behaviors that would preclude his inclusion and displayed the ability to sit for “extended periods of time” and to observe and listen to his peers.

Mr. Dilley recommends out of district placements for students who engage in high magnitude problem behavior, high magnitude aggression, or self-injurious behavior. Additionally, he may recommend such a placement based on “pure frequency of behavior” that interferes with a student’s ability to be in the classroom. Mr. Dilley did not see any of the aforementioned kinds of behavior during his observation of Student.

In order to address Student’s inability to sleep through the night and night wandering behavior, Mr. Dilley would recommend a consultation with a board certified behavior analyst. He would have been willing to go to Student’s home at any time, including when Student was being put to bed. He stated that “other home-based services such as the kind that Student receives now” are helping to reduce his problem behaviors. Mr. Dilley also mentioned community based services such as crisis teams, but did not know how a parent would access such a crisis team. (Dilley, S-5)

14. Erin McLoughlin is a behavior specialist/autism specialist in the Weymouth Public Schools. She is a BCBA consultant and consults to Student’s classroom and to his home program. She has worked in Weymouth since February 2013. She has a bachelor’s degree in elementary education and severe special needs and a Master’s degree in severe special needs. She has taken graduate courses in early childhood special education, has an educational specialist certificate in applied behavior analysis, and is a Ph.D. candidate in Applied Behavior Analysis. She is a Massachusetts certified teacher in severe special needs at all levels and elementary education (grades one through six.) She is a board certified behavioral analyst.

Ms. McLoughlin first met Student in February 2013 and has worked with him since that time. She described him as being sweet and quiet for the most part, but stated that he engages in vocal stereopathy that can be loud at times. Student learns well when he has many opportunities to practice the same skill. He retains skills once he has mastered them. Student responds well to people with whom he is familiar. When he is with one of the home therapists he has known for a long time Ms. McLoughlin observes more spontaneous or initiated verbal behavior from Student. Student is able to follow his classroom routine.

Ms. McLoughlin's role in the classroom is to consult with the teacher and the staff. She does very little direct work with the students. She makes recommendations to the teacher and staff about how things should be done. She is in the classroom specifically for Student for one hour per week. She has never observed Student engaging in aggressive behavior in the classroom, but has observed verbal stereopathy. However, Student is always redirected out of the stereopathy and she has never seen him have to leave the group or classroom to minimize the disruption. She has also seen Student engage in motor stereopathy where he gets out of his seat and might jump or engage in some intense motor activity. Student responds well when he has somebody working closely near him. There is almost always a staff person sitting next to him so that he or she can deliver prompts that Student needs to be able to respond to the teacher. When the teacher asks him a question he responds to the extent that he can independently and with prompts will give the rest of the expected response. Student did not show an increase in challenging behaviors during his transition from the elementary school to the middle school. She has observed that Student is currently learning the routines of his classroom.

Ms. McLoughlin also consults to Student's home program⁴⁴. Her role is to work with the family and staff. She checks in with Mother to find out how everything is going and whether anything is different. She reviews data from the past week and notes from her staff. The focus of his home program prior to Dr. Ellis' evaluation had been around independence and leisure activities. Additionally therapists were working on Student's stereopathy and compliance with directions, especially concerning safety. Most of Student's two hour session involves using a picture activity schedule to show Student activities he is expected to complete and allowing him to choose a reward to earn when he finishes his activities. Student is required to look at the picture for an activity, gather the required materials, bring them back to the table and complete the activity. Activities might include completing a puzzle or building something with Playdoh or Legos. He then has to clean up the activity and look at the picture schedule to see what the next required activity is. He must do all four of the required activities before accessing his reinforcer. Student has shown progress in his ability to follow the picture activity schedule in that he has systematically increased the number of activities that he is required to complete. The picture activity schedule is important for Student because he needs to be able to engage in activities that are functional that he can complete independently when he is at home. It is important that he be able to do this when staff members are not present so that his parents can instruct him to engage in an activity and not have to directly supervise him while he completes the task. The staff is currently working on increasing Student's independence on completing tasks by having the person working with him move further away from him while he continues to work. The goal is for parents to be able to instruct Student to engage in an activity and go in another room to prepare dinner or assist

⁴⁴ In addition to Ms. McLoughlin, there are currently two therapists who work with Student in the home and one additional therapist is receiving training to work with Student. One of the home staff also works in Student's classroom, but his role in the classroom is unclear from the record. (McLoughlin)

Student's sibling with homework while Student safely engages in a functional activity.

The home program has community goals and staff use natural opportunities to support the family in the community. Staff has accompanied Student when his sibling had a doctor's appointment and practiced waiting in the waiting room. Staff has accompanied the family to get a Christmas tree and for other outings in the community to assist Student in practicing skills.

Student can generalize skills he has learned from one home service provider to another. However, he does not follow his parents' instructions in the home as he does the instructions of his service providers.

Student is currently receiving eight hours per week of ABA services and one hour of Ms. McLoughlin's consultation in the home per week⁵.

Currently the home program is working on reducing his vocal stereopathy. He is learning to respond to the direction, "Have a quiet voice." He has been working on that for several months and is making progress. Initially he made rapid progress in maintaining a quiet voice for three second intervals. However, when the interval was increased to five seconds his progress did not continue. Ms. McLoughlin instructed the staff to go back to the three second interval and Student is showing slow steady progress at that level. (S-6, McLoughlin)

During the time Ms. McLoughlin has been working in the home with Student (for one hour per week for approximately ten months) she has only seen one occurrence of aggression during which he pinched his mother. The unsafe behaviors she has observed include Student engaging in pica and wandering behavior. The ABA staff has also observed the pica and they keep notes on it. They have seen squeezing of an arm and hitting. Ms. McLoughlin has observed Student independently get up to use the bathroom. He occasionally needs a prompt to tell staff that is what he wants. He will usually say, "I want bathroom." He occasionally needs a prompt to remember to wash his hands, but can do so independently. He can put his shoes on independently. She has observed Student comply with parent directives while she is in the home also.

Ms. McLoughlin attended the December 5, 2013 Team meeting. Dr. Ellis presented his recommendations to the Team and explained that there had to be consistency across settings in what areas are being addressed and how they are being addressed in order for Student to be successful. She therefore made sure that it was clear in the IEP that the goals she was adding were to be targeted in school and at home.

⁵ Student's IEP for the period from February 28, 2013 to February 27, 2014 provides for five hours per week of parent home training with the ABA provider. (S-2) An N-1 dated August 6, 2013 indicates that Student is receiving compensatory home ABA hours. (S-11) The record is unclear as to whether Student continued to receive compensatory hours at the time of the hearing.

Ms. McLoughlin explained that Student performs differently at school than he does at home. She attributed the differences to both his learning history at home and the very different structure between home and school. She explained that if he is able to master something at school he then has to be taught to do that at home. She added a goal to Student's IEP addressing behavior management which was intended to target Student's unsafe behaviors. It was added to ensure that unsafe behaviors were being targeted in the same way across all settings. She added a goal for activities of daily living because although he is mostly independent with some activities of daily living at school, he is not carrying over the independent ability to complete the same skills at home. Additionally, she explained the need to explicitly and incrementally teach Student to comply with parental directives in the home in the same manner that he is expected to comply with directives from school staff at school and in the home.

Ms. McLoughlin discussed the leisure and recreation goal added to the IEP. The purpose of this goal is to increase Student's time when he can independently do an activity that he chooses. Instead of simply telling Student not to wander around, the goal is to "give him something better to do in that time." The aim of the leisure and recreation goal is primarily to increase Student's engagement in appropriate activities and encourage him to engage in them for longer periods of time.

Ms. McLoughlin explained that the first step in implementing Student's behavior goal will be defining each behavior clearly. Then, for each behavior the staff seeks to reduce, they have to teach something in its place. They would develop very explicit teaching programs targeting what Student should do instead of what he is doing and defining how to respond when he does engage in one of the behaviors. Since Student has attempted to turn on the stove in the past, Ms. McLoughlin stated that they could make a picture icon that says "hot" and place it on the stove when Mother is cooking. Then, staff would show Student he has to walk around the stove when it is on during every session until Student learns to walk around the stove when the "hot" icon is on it. She stated that she has not yet developed the programming and would seek Dr. Ellis' consultation regarding what they would teach to extinguish the unsafe behaviors. (McLoughlin)

Ms. McLoughlin testified that Mother reports to her when Student's unsafe behaviors happen, but does not keep data on these incidents. She has asked Mother to keep data, by making a tally mark whenever an unsafe behavior occurs, but Mother has not done so. She explained that data has to be collected in the moment in order for it to be useful to her and that in order to change the behaviors when staff is not here, they have to have data on it⁶.

⁶ Despite Ms. McLoughlin's testimony, neither she nor anybody else at Weymouth recommended an overnight observation of Student to address parental concerns.

Ms. McLoughlin believes Student is currently receiving a free appropriate public education and that the ten hours of home ABA services and two hours of home ABA consultation are sufficient to work on Student's goals. (McLoughlin)

15. Naami Turk, Psy.D., conducted a neuropsychological evaluation of Student and observed him in the classroom for approximately five hours. Dr. Turk described Student as a slow, structured, incremental learner. She noted that he benefits from a great deal of reinforcement and tangibles work well for him as do preferred activities. She noted that Student appeared comfortable in the classroom environment and with the classroom staff. Student benefits from preview and review of classroom materials. He can follow classroom routines and moves between classroom locations with prompting and the use of tangibles. Dr. Turk did not observe any unsafe behaviors in the classroom that would lead her to believe that he requires a more restrictive placement.

Dr. Turk sought to assess Student's nonverbal capacity for intelligence in her evaluation of him. She administered the Test for Nonverbal Intelligence (TONI) and used both Form A and Form B in order to assess Student's working memory and his ability to remember rules of a newly learned activity. A BCBA accompanied Dr. Turk during the evaluation and provided reinforcers to Student throughout the evaluation. After completing Form A, they took a motor break. Student went outside and ran around for a while. When they returned and Dr. Turk introduced Form B, Student immediately knew what to do. However, he hit a ceiling and could not regroup and regain the attention span he initially had even with the use of reinforcers. As a result, Student scored at the 27th percentile (in the average range) on Form A, but only at the 6th percentile on Form B. Thus, she concluded that Student's cognitive ability falls somewhere between the sixth and twenty seventh percentile. She explained that there are many things that interfere with Student using skills including his inattention and distractibility. Student also uses "diverging techniques" when an activity becomes non-preferred, such as complaining that his foot hurt so he could stop working and go to the nurse's office.

Dr. Turk assessed Student's functional ability by having Mother and his teacher complete the Vineland and AVAS. She determined that his functional ability is at the first percentile in most areas and lower in some areas. She noted that both his seizure disorder and his attentional difficulty impact his functioning. She recommended that his medical Team further assess Student's attention. Dr. Turk believes Student has made progress within the classroom because of his ability to transition. She noted that he made a nice transition from his elementary school CEP program to the middle school CEP program. She also noted that he made gains in knowing the rules and routines and demonstrating comfort in the building and familiarity with peers.

16. Dr. Turk reviewed the December 5, 2013 IEP and found it to be reasonably calculated to allow Student to make meaningful progress in the least restrictive

environment. She did not recommend any changes to the program. However, she did recommend improving communications between the home and school. She also recommended that Parents access DDS services for Student. Additionally, although she was not tasked with assessing the home services, based upon Mother's concerns about safety in the home, she recommended that "a needs analysis of home-based services be conducted in order to ensure... that supports and services were in place from the school and to ensure that [Student] would be able to generalize some of the skills he's learning at school into the home environment." (Turk, S-4)

17. Theresa Skinner is the Administrator of Special Education for the Weymouth Public Schools. She recently asked Ms. McLoughlin to bring an application for DDS services to parents and assist them in filling it out. Ms. Skinner then followed up with DDS and learned that Student had been found eligible for DDS services in 2006. She is not aware whether Parents are currently accessing DDS services. She is aware of Student's issues surrounding sleeping and would be willing to collaborate with any sleep specialists and with Dr. Ellis or Mr. Dilley to put supports in place to assist the family. (Skinner)

FINDINGS AND CONCLUSIONS:

Student is an individual with a disability, falling within the purview of the Individuals with Disabilities Education Act (IDEA)⁷ and the state special education statute.⁸ As such, he is entitled to a free appropriate public education (FAPE). Neither his status nor his entitlement is in dispute.

A FAPE is provided when the school district implements an IEP that is "reasonably calculated" to insure that the child receives meaningful 'educational benefits' consistent with the child's learning potential." *Hunt v. BSEA & City of Newton*, No. 08-10790-RGS, 2009 U.S. Dist. LEXIS 79775, at *4 n.8 (D. Mass. Sept. 4, 2009) (quoting *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. 16.*)

While an IEP must conform to the procedural and substantive requirements of IDEA, "the obligation to devise a custom tailored IEP does not imply that a disabled child is entitled to the maximum education benefit possible." *Lessard, v. Wilton-Lyndenborough Cooperative School District et.al.*, 518 F.3d 18 at 23. Additionally, the IDEA does not require school officials to in effect finance alternative care as a means of remedying issues in a child's life that are unrelated to education. *Abrahamson v. Harshman*, 701 F.3d 223, 227-228 (1st Cir. 1983).

Under the Individuals with Disabilities Education Act (IDEA) and Massachusetts law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); (M.G.L. ch. 71B.) A FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and

⁷ 20 USC 1400 *et seq.*

⁸ MGL c. 71B.

conform to the child's IEP. (20 U.S.C. § 1401(a)(9).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).)

There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the hearing officer must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the hearing officer must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) An IEP is not judged in hindsight; its reasonableness is evaluated in light of the information available at the time it was promulgated. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990)

The burden of persuasion in an administrative hearing challenging an IEP is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 534, 537 (2005) In this case, Parents are the party seeking relief, and thus have the burden of persuading the hearing officer of their position.

I find, based upon a preponderance of the evidence that there are crucial components missing or unspecified by the IEP. This leads me to conclude that the IEP for the period from December 5, 2013 to December 4, 2014 is not reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. My reasoning follows.

Although the IEP (S-1) includes many of the recommendations made by Dr. Ellis, it does not adequately address the issue of Student's sleep disruption and nocturnal wandering. This wandering issue was noted to be a significant safety issue by Dr. Ellis, Mr. Dilley, Dr. Turk, Dr. Bridgemohan, and Parents. Despite the recognition that Student's inability to sleep during the night posed a significant safety risk, not to mention a likely impediment to his ability to learn during the day after not sleeping for many hours the night before, the IEP addresses it with one non-specific statement in the Additional Information section of the IEP as follows, "The team will collaborate with medical staff on sleep issues." (S-1) There is nothing in the grid to address the sleep and resultant safety issue. There is not even any statement as to how Weymouth proposes to assess Student's needs in this area nor how it will determine whether the sleep issue is a behavioral issue for which it must provide services or a medical issue. Although Dr. Ellis (and Ms. McLoughlin) testified that he would provide consultation services to address Student's home programming, his services are not included in the grid. The only reference to Dr. Ellis' consultation services found in the IEP is found on the Additional Information page of the IEP. It states, "Jim Ellis, behaviorist, will consult to the school district (CEP program) regarding carryover of suggested recommendations. There is no mention of Dr. Ellis providing consultation to the home program. There is no indication of how many hours Dr. Ellis will consult to the program. Additionally, Dr. Ellis testified that the appropriateness of the IEP will depend greatly on the implementation of the IEP. He testified that he will be responsible for ensuring that the IEP is implemented. Yet the IEP contains no indication of how Dr. Ellis is to ensure the IEP is being appropriately implemented.

Another omission from the grid is staff training or Dr. Ellis' consultation around staff training. Dr. Ellis' recommendations included additional staff training to ensure consistency in prompts and carryover. The only reference to staff training is a brief statement in the Additional Information section reading, "Staff training of ABA principles for consistent implementation and carryover of skills." There is no specification as to the number of hours to be provided or the specific skills in which the training is to be provided.

Although carry over between school and home was recognized as a critical piece of the effectiveness of Student's program, there is no specific information as to who is responsible for ensuring the carryover or how consistency is going to be ensured. Although there was reference to one staff person from the classroom also being a provider of home services, it is unclear from the record what that person's role was in the classroom nor what the person's training and qualifications are. It is also unclear whether the two hours of consultation provided by Ms. McLoughlin to the home program and the two hours of consultation she provides to the CEP program would give her sufficient time to ensure carry over between the programs in addition to her other responsibilities.

Given these crucial omissions IEP, I find that the IEP is not reasonably calculated to provide Student with the free appropriate public education to which he is entitled. I turn to the second question before me, whether the IEP can be modified to provide Student with a free appropriate public education in the least restrictive environment.

While theoretically, it may be possible to modify the proposed IEP (S-1) sufficiently to provide Student with FAPE, it is not clear that the modifications can be made sufficiently quickly given the significant safety concerns surrounding Student's current programming. Dr. Ellis' recommendations include several items that may take significant time to implement. Specifically, Dr. Ellis recommended that "the behavior plan for increasing [Student]'s attending and decreasing off-task and repetitive behaviors needs to be updated with clearer guidelines." The record does not contain any behavior plan or any reference to a behavior plan. It is unclear how long it would take for staff to draft and implement a behavior plan. Additionally, Ms. McLoughlin testified that she would consult with Dr. Ellis to create a plan for addressing unsafe behaviors in the home. She explained that the behaviors would have to be specifically defined and addressed. It is not clear how much time it would take to identify which behaviors required intervention, define the behaviors, determine an effective method for addressing the behaviors, and training staff to address the behaviors consistently across all settings. Student cannot afford to wait for modifications to his program to be made. He is at risk of harm every minute that he is unsupervised. His inability to sleep at night magnifies his safety risk. Since it is impossible for Parents to supervise him all night long and Student is unable to safely occupy his time once he is awake, Student is at significant risk of harming himself every time he awakens in the night.

Despite Parents' many reports of Student's inability to carry over safety skills into the home, coupled with his inability to sleep through the night, Weymouth has not done any kind of assessment of Student's sleeping difficulty to date. They have not done a functional behavior assessment or requested an observation (by a BCBA) of his night time routine or the overnight hours when his behavior is of greatest concern. Weymouth

has also failed to propose any services despite their consultant's flagging the significance of the issue.

Although Parents have raised significant and legitimate concerns about Student's safety, they have not met their burden of proving that Student's needs can only be met by placement in a residential setting. They have failed to present any testimony from an expert in Student's *educational* needs. Although Dr. Bridgemohan has extensive experience in assessing the *medical* needs of students on the autism spectrum, her lack of expertise or credentials in education made her an unreliable witness with respect to Student's current educational needs. The only other evidence Parents presented with respect to Student's need for a residential placement was the report of Dr. Munir. Dr. Munir is also a medical expert without expertise in education. He did not testify at the hearing and was not subject to cross examination nor was he available to respond to questions of the hearing officer. Thus, his recommendations are of limited use. However, Parents' credible and compelling testimony about Student's presentation in the home and his inability to generalize safety skills into the home cannot be ignored.

Parents have been unable to sustain their burden of showing that Student requires a residential placement. Conversely, Weymouth has been unable to show that their most recently proposed IEP can provide Student with a FAPE or be modified to immediately provide Student with a FAPE or even to ensure his safety.

Parents have not provided a scintilla of evidence with respect to the Higashi School. They did not produce any witness who had any knowledge of the programs provided by the Higashi School nor its appropriateness for Student. Therefore, I cannot order a placement at the Higashi School. However, they have raised considerable concern regarding Student's ability to be safe in the home setting given his inability to generalize safety skills especially upon waking in the night.

Weymouth's expert, Dr. Ellis, testified that Student does not require a residential placement at this time. However, he also testified that he recommends placing students in residential settings when his or her challenging behaviors present a danger to the individual or others. The record supports a finding that Student's behaviors present a danger to himself and his family. Therefore, I do not find Dr. Ellis' conclusion that Student does not require a residential placement to be persuasive.

I am thus left with the conundrum of having determined that Weymouth's proposed IEP is not reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment, it cannot be modified (in a reasonable amount of time) to be made appropriate, and the Parents' have not provided any evidence to support the appropriateness of their proposal. Therefore, further evaluative information is necessary to determine what type of placement Student requires to receive a FAPE. I hereby determine that the evaluative information before me is inclusive with respect to Student's need for a residential placement. Therefore, I am ordering Weymouth to conduct an extended evaluation of Student pursuant to 603 CMR 28.05(2)(b) and 300 C.F.R. 502(d). The extended evaluation shall be completed in a residential setting to ensure Student's safety twenty-four hours a day and to enable an assessment of Student's sleeping disruption and wandering. The questions to be determined by the extended evaluation are

1) Whether Student requires a residential placement to receive a free appropriate public education in the least restrictive environment and 2) What services are necessary to ensure Student's safety if and when he wakes during the night.

Although multiple witnesses testified that Parents should access outside services to obtain additional support for Student, none of the witnesses was able to point to any specific service for which Student would be eligible or which Parents could currently access. Therefore, I find that Parents have not been remiss in accessing available services for Student.

ORDER

Based upon the foregoing, I find that Weymouth's proposed IEP for the period from December 5, 2013 through December 4, 2014 was not reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

The IEP cannot be modified to provide Student with a free appropriate public education in the least restrictive environment.

Parents have not met their burden in demonstrating that Student requires a residential placement or that the Higashi School is an appropriate placement for Student.

Weymouth shall immediately identify a placement that can conduct an extended evaluation to address the questions of 1) Whether Student requires a residential placement to receive a free appropriate public education in the least restrictive environment and 2) What services are necessary to ensure Student's safety if and when he wakes during the night. At the end of the evaluative period, the Team will convene to address the findings of the extended evaluation and propose an IEP in keeping with the findings. If there is any dispute with respect to the proposed IEP, the Parties shall return to the Bureau of Special Education Appeals for a determination of the appropriateness of the IEP.

By the Hearing Officer,

Catherine M. Putney-Yaceshyn

Dated: February 6, 2014