

**COMMONWEALTH OF MASSACHUSETTS**  
**Division of Administrative Law Appeals**  
**Bureau of Special Education Appeals**

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In RE: Taylor <sup>1</sup>

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BSEA #1500165

East Longmeadow Public Schools

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**DECISION**

This Decision is issued pursuant to M.G.L. c. 71 B and 30 A, 20 U.S.C. § 1401 *et seq.*, 29 U.S.C. 794, and the regulations promulgated under those statutes. A Hearing was held in the above-entitled matter on October 14, 15 and 16, 2014 at the Offices of Catuogno Reporting Services in Springfield, MA. Those present for the proceedings were:

Ms. T. <sup>2</sup>	Parent
Jeanne Deane	Family Friend
Donna Salo	Family Friend
Toni Giannone	Director, The Speech Academy
Deborah Fein	Neuropsychologist (limited presence: testimony taken telephonically)
Danielle Fisher	Independent Speech-Language Pathologist
Kathryn Borek	Speech-Language Pathologist, East Longmeadow Public Schools
Danielle Brunelle	Physical Therapist, East Longmeadow Public Schools
Silvana Ayala	Occupational Therapist, East Longmeadow Public Schools
Jeanne O'Donnell	Teacher, ASD Program, East Longmeadow Public Schools
Mary Elizabeth O'Neil	Teacher, ABA Program, East Longmeadow Public Schools
Joanne Welch	Director of Student Services, East Longmeadow Public Schools
Dennis Warner	BCBA Consultant, River Street School Outreach
Matthew Engel	Attorney for Parent
Peter Smith	Attorney for East Longmeadow Public Schools
Lisa Regensburger	Court Reporter

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<sup>1</sup> "Taylor" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

<sup>2</sup> "Ms. T." is a pseudonym chosen by the Hearing Officer to protect the privacy of the Family in documents available to the public.

Brenda Ginisi  
Lindsay Byrne

Court Reporter  
Hearing Officer

The official record of the Hearing consists of: documents submitted by the Parent labelled P-1 through P-23; documents submitted by the School labelled S-1 through S-33; and approximately twenty hours of recorded testimony and argument. The Parties agreed to present their closing arguments orally, by telephone, which their counsel did on November 25, 2014. The record closed on that date.

### ISSUE<sup>3</sup>

I. Whether the March 2014 to March 2015 Individualized Education Plan developed by the East Longmeadow Public Schools is reasonably calculated to provide a free appropriate public education to Taylor in the least restrictive setting?

II. If not, is the Parent entitled to retroactive reimbursement of expenses associated with Taylor's unilateral placement at The Speech Academy during the summer 2014 and the 2014-2015 school year?

### FINDINGS OF FACT

1. Taylor is a nine year old with multiple, complex disabilities. He has been diagnosed with Autism Spectrum Disorder ("ASD"), Attention Deficit Hyperactivity Disorder ("ADHD"), cerebral palsy with spastic diplegia and low trunk and jaw tone, verbal dyspraxia and apraxia, a severe communication disability, serious motor planning issues and global developmental delays. He wears glasses and orthotics below his knees. Taylor functions in the two to three year old range in most domains with considerably lower functional expressive language skills and somewhat higher functional fine motor and activity of daily living skills. Taylor uses an augmentative communication device with speech generating capability. Taylor did not use the device during any of the evaluations secured independently by the Parent between 2011 and 2014. He did use the device during evaluations conducted by East Longmeadow Public Schools (hereinafter "East Longmeadow") staff and contractors. He is described as happy and cheerful most of the time, with occasional negative behaviors consistent with his ASD or attributable to frustration. He enjoys soccer and track with Special Olympics and swimming and biking with his family. (S-1; S-2; S-3; P-13; S-11; S-12; S-13; S-14; S-15; S-18; S-19; S-21; P-12; P-18; P-19; P-20; S-20; P-22; S-16; Ms. T.)

2. Taylor received early intervention services targeting his developmental delay and communication impairment. He has been receiving special education and related services

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<sup>3</sup> The issues set out in the Hearing Request filed on July 9, 2014 included a claim that the 2013-2014 IEP accepted by the Parent, and Taylor's placement at the Meadowbrook School pursuant to that IEP, did not provide Taylor with a free appropriate public education. That issue is deemed abandoned as it was not articulated at the Hearing and no evidence directly on point was presented by either Party. It will nonetheless be addressed tangentially in the factual findings. (S-2) See also: *In Re: Westport Public Schools*, 19 MSER 106 (2013) which addressed the general rule that an accepted, implemented, expired IEP not the subject of a BSEA appeal during its "lifetime" may not be reviewed by the BSEA.

through East Longmeadow since age three. He repeated Kindergarten and completed the 2<sup>nd</sup> grade during the 2013-1014 school year. He participated in a substantially separate classroom in which all activities and teaching strategies were based on the principles of Applied Behavioral Analysis (“ABA”). The 2013-1014 IEP provided for the following school week services: a one-to-one paraprofessional trained in ABA strategies; two thirty minute one-to-one sessions with a paraprofessional focused on developing social skills in mainstream settings and three additional sessions in the specialized setting; three thirty minute occupational therapy sessions, two in the ABA classroom, one in the mainstream ; two thirty minute physical therapy sessions in a specialized setting; three thirty minute speech-language therapy sessions, two in the ABA classroom, one in the mainstream with an additional two sessions devoted to augmentative communication. The ABA Teacher also provided discrete trial trainings (“DTTs) and other academic instruction in the ABA classroom while the IEP permitted Taylor to participate in mainstream 2<sup>nd</sup> grade classroom activities for up to half a day. The IEP provided for two hours per week of individual home instruction. East Longmeadow funded three forty-five minute sessions of independent speech-language services which Taylor participated in before arriving at school. (S-2)

3. Mary Elizabeth O’Neil, the Lead Teacher in Taylor’s classroom, described his program. The program is administered and coordinated by an interdisciplinary team of ASD professionals that meets at least weekly. The Team discussed Taylor exclusively for 20-30 minutes each week. The Team consisted of Ms. O’Neil, Ms. Ayala, the occupational therapist, Ms. Borek, the speech-language therapist, Ms. Brunnelle, the physical therapist, Ms. O’Donnell, the social skills specialist, Ms. Fisher, the independent speech-language pathologist, Mr. Warner, the ABA behavioral consultant and the 2<sup>nd</sup> grade regular education teacher. (O’Neil, see also O’Donnell; S-32)

There were eleven students in Taylor’s class. The classroom was staffed with one full time teacher along with six full time and one half time paraprofessionals. One of the paraprofessionals was dedicated exclusively to Taylor and accompanied him in every setting except during discrete trial trainings. All the paraprofessionals received more than 60 hours of specialized training in ABA techniques, strategies and data collection. In addition, the speech-language, occupational and physical therapists, the social skills teacher and the behavioral consultant were in the classroom regularly implementing and overseeing IEP services for all students in the classroom. (O’Neil)

Taylor arrived in the classroom between 8:50 and 9:20 a.m. depending on his before-school speech-language therapy appointment. He followed the arrival routine (put away backpack, outer clothes in cubby, toilet, etc.) independently and without prompts. He then moved to his own workspace for one half hour of reading/writing activities followed by 15-20 minutes of DTTs. At 10:30 Taylor went to the mainstream 2<sup>nd</sup> grade for reading/writing or specials for 20-30 minutes. He returned to the ABA classroom for related services and DTTs until 12 noon. Lunch, recess and social skills instruction took place between 12 and 1 pm. At one o’clock Taylor returned to the mainstream 2<sup>nd</sup> grade for sustained silent reading or writing activities. At 1:20 he returned to the ABA classroom for independent academic work, activity of daily living skills instruction, related services and closing activities until the bus came between 3:15 and 3:30. (O’Neil)

Ms. O'Neil met with Ms. T. in September 2013 to set up Taylor's 2 hour per week after-school program. Shortly thereafter the Parent secured 10 hours per week of home programming through the May Institute and declined further home services through East Longmeadow. (O'Neil; Ms. T.)

Ms. O'Neil testified that she has known Taylor for 4 ½ years. She met him when she conducted the first East Longmeadow ABLLS Assessment. Since then she has conducted follow-up ABLLS in 2011 and 2014 as well as a VB-MAPP in 2014. She prepared a comparison chart of target skills which documents slow, steady improvement in all areas between 2011 and 2014. Particularly strong gains were recorded in receptive language and in expressive labelling using a communication device. This data aided the formation of the goals and objectives set out in the proposed 2014-2015 IEP. (S-13; S-17; P-10; S-22; S-23; O'Neil)

Ms. O'Neil testified that she observed behavioral and communication progress throughout the 2013-2014 school year. When Taylor first arrived in the program he would wipe everything off the work table. It was difficult to get his attention or compliance with directions. By the end of the school year he knew the routine and participated without incident. He demonstrated progress in toileting, functional eating and drinking, social relatedness and confidence, and understanding of math. The greatest gains, however, were in functional communication and literacy. Taylor used his communication device to show more knowledge than expected. He could request, comment and express quickly, efficiently and accurately with the communication device. Also, by the end of 2014 Taylor could write sentences from dictation and from memory, he could use word prediction programs and read primers on his communication device. He could also tell stories in sign language, and demonstrated more functional signs and vocalizations than he had at the beginning of the school year. Ms. O'Neil stated that Taylor has the capacity to become functionally literate. She testified that Taylor benefits from the structure, repetition, reinforcement, and data driven goal setting of ABA-based instruction. (O'Neil)

After completing second grade all students move to a new building housing middle elementary age students and programs. Taylor was scheduled to complete second grade in June 2104. Based on her direct work with Taylor and her assessments over time of discrete areas of Taylor's skill development, Ms. O'Neil recommended that Taylor continue into the 3<sup>rd</sup> grade in the specialized ABA-based classroom program at the Mapleshade School because that program intensively focusses on the development of functional communication skills using a total communication approach emphasizing augmentative communication tools and assistive technology. She noted that Taylor's primary educational need is communication. According to Ms. O'Neil, the specialized support and interventions in the Mapleshade classroom, along with increased mainstreaming opportunities there, would appropriately address Taylor's learning needs. (O'Neil; See also S-4; S-5; S-6;)

4. Jeanne O'Donnell is the Autism Spectrum Disorders Teacher responsible for providing direct social skills instruction to Taylor pursuant to the 2013-2014 IEP. She testified that she worked daily with Taylor in multiple settings: the mainstream classroom, the ABA classroom, lunch, recess, halls, specials, related services, and with multiple other services

providers: his one-to-one paraprofessional, classroom paraprofessionals, and the occupational, physical, and speech-language therapists as well as facilitating interactions with Taylor's mainstream peers. Ms. O'Donnell noted that Taylor is a complex, highly social student. His primary social need is to increase his capacity for sustained play with a peer. Ms. O'Donnell uses ABA methodology, pivotal response training and incidental teaching to structure her teaching and to foster communication. She testified that Taylor uses his communication device in all settings except lunch and recess. He also points, signs, and vocalizes. (O'Donnell; S-21; S-32)

5. Kathryn Borek, a Speech-Language Pathologist for the East Longmeadow Public Schools, worked directly with Taylor beginning in the 2011-2012 school year. She testified that Taylor is a total communicator who uses signs, gestures, vocalizations, word approximations, picture symbols and a communication device to express his wants and needs. Taylor works on his communication goals throughout the school day in all settings with his aide, other paraprofessionals, teachers, therapists and peers. Ms. Borek noted that inclusion with typical peer language models is helpful for Taylor's language development and his self-esteem. She also noted that Taylor uses his communication device consistently in all activities and settings. The continual work on communication using all effective methods promotes learning, generalization, independence and socialization. (Borek; S-32)

Ms. Borek conducted a functional communication evaluation in February 2014 as one component of the comprehensive language re-evaluation for Taylor's three year review. She reported:

[Taylor] is a non-oral communicator who uses vocalizations, gestures, signing, picture symbols, and his communication device (Vantage Lite) to communicate. He mostly spontaneously expresses himself with single words/icons on his communication device and signs with some phrases (2-3 words) through both his communication device and signs. [Taylor] is able to express his name, basic needs, preferences, routines, interests, and some emotions (happy, sad) through his communication device, signs/gestures, and/or pictures. He will point to areas on his body to express physical feelings (i.e. points to cuts on his body, points to his head or stomach if they hurt.... [Taylor] is able to respond to greetings ("hi" & "bye") through verbal approximations, his communication device, and waving. He initiates interactions with familiar communication partners, and this is a relative area of strength for him. [Taylor] will gain attention by vocalizing, tapping his communication partner, and using his communication device. [Taylor]'s eye contact has improved with his communication partners. .... At times, he does exhibit self-stimulatory behaviors with electronics (i.e. scrolling through on the iPad or people on his communication device); however this has decreased in structured settings over the year. [Taylor] expresses choices through a variety of means: communication device, signs, head nod to answer, body movements, taking objects, gestures, vocalizations, eye gaze, and attempting speech. He expresses

pleasure/discomfort through vocalizations and pointing. [Taylor] identifies his name utilizing his communication device. He is also able to write his first name; however legibility can vary depending on motor planning and attention to task. He labels objects through his communication device, sign language, attempted speech, vocalizations, and pointing. [Taylor] does utilize spontaneous common gestures (i.e., come, stop, wave, call, thumbs up, pointing). He typically uses one to two words/icons on his communication device and with signs. However, within a structured activity he will use three words/icons on his communication device or signs.... [Taylor] does become upset when he is not understood by his communication partners. [Taylor] currently utilizes a speech-generating device (Vantage Lite). He also has a visual picture schedule that he follows. His ability to navigate within the device has greatly improved this past year....

[Taylor] currently is not carrying his device with him during transitions due to previous behaviors. However, staff make sure he has access to it while transitioning. [Taylor] does initiate communication with familiar staff through use of his communication device in addition to vocalizations and tapping his communication partner. He will gain attention of staff by using his communication device to say their name. [Taylor]'s spontaneous expressive language on his communication device primarily consists of nouns. However he is demonstrating improvements in spontaneously using some verbs (i.e., "come") and combining two icons/words (i.e., "call + name") on his device. [Taylor] is able to request desired items/places using "I want + item". He does request "help" and the "bathroom" using his communication device. [Taylor] does request and identify places he is going throughout the school with his device. He tells his teachers where he is going when he leaves a classroom (i.e., "I'm going to \_\_\_"). [Taylor] is also able to indicate when he wants to be done with an activity (i.e., "all done").

(S-19).

Based on her evaluation; a comparison of the results obtained in that evaluation and those reported in the previous language evaluation conducted by Ms. Jury, an East Longmeadow speech-language pathologist, in February 2011; a review of the progress reports Ms. Borek prepared during the 2012-2013 and 2013-2014 school year; and her own direct observations and professional expertise, Ms. Borek testified that Taylor had made demonstrable progress in the acquisition of communication skills with the interventions and services he received in the ABA program coordinated by Ms. O'Neil (S-19; cf S-19 and S-12; S-4; S-5; S-6; S-7; S-8; S-9; S-10). In particular Ms. Borek noted that when she first began working with Taylor he had just been introduced to his communication device. He would just turn it on and off. Now he turns it on and off appropriately. He can operate the speech generating capability. He know if he makes a mistake and can correct it. He looks through the vocabulary to select the picture/word he wants. He asks questions, makes functional requests, is able to combine up to three icons, and can answer personal questions. These skills allow functional communication with others in his

environment. In addition, Ms. Borek noted, Taylor's receptive language, always stronger than his expressive, has continued to grow. In 2011 he did not understand pronouns. He does now. He is able to identify some colors now, a skill he did not have in 2011. He understands some spatial concepts now, a skill not evident in 2011. In 2011 Taylor could not participate in any standardized language testing. In 2014 Ms. Borek was able to conduct the PPVT as he could identify pictures using his communication device. (Borek)

Ms. Borek coordinated speech-language services with Taylor's outside speech-language pathologist, Danielle Fisher. She also worked closely with other members of the Team both to provide day-to-day communication support for Taylor and to develop the proposed IEP for 2014-2015. Ms. Borek recommended that Taylor's direct school-based speech language services be increased to three 45 minute sessions outside of class and one 30 minute session in the general education classroom. That recommendation was incorporated into the proposed March 2014-March 2015 IEP. (-3; P-13) Ms. Borek would continue to be responsible for delivering the direct speech-language services to Taylor were he to attend the AT/AAC classroom at the Mapleshade School proposed in the 2014-2015 IEP. In addition to the placement the Parent rejected the language goal outlined in that IEP. According to Ms. Borek the Parent believed the language goals and interventions for Taylor should place greater emphasis on teaching and eliciting oral language. As a result of the rejection the Team continued to work on the language goals from the last accepted 2013-2014 IEP for the remainder of the 2013-2014 school year. (S-4; Borek)

6. Danielle Fisher, a speech-language therapist in private practice, has been working directly with Taylor since March 2011. Initially she provided therapy twice a week before school at the Parent's expense. At some time the School agreed to add her services to Taylor's special education program and she became a part of Taylor's special education Team. Thereafter Ms. Fisher coordinated her therapy and goals with the speech-language pathologist and the occupational therapist at East Longmeadow. During the 2013-2014 school year Ms. Fisher worked with Taylor on Tuesday, Wednesday and Thursday from 8:30-9:15 a.m.. He then went directly to school. Ms. Fisher has expertise in motor speech disorders, apraxia, and dyspraxia. She uses PROMPT training and speech drills with multisensory interventions, concentrating on developing and strengthening oral-motor production of speech sounds.

Ms. Fisher testified that Taylor had demonstrated growth in his communication skills between 2011, when she began working with him, and 2014. For example, in 2011 Taylor used seven functional signs in isolation. In 2014 he used more than 60 signs, singly and in combination, more than 30 of which he used spontaneously and independently to communicate. She conducted a formal speech-language evaluation in February 2014 as part of Taylor's comprehensive three-year special education reevaluation. She noted:

[Taylor] is a friendly and engaging eight year old child. He demonstrates a strong desire to interact, communicate and be heard by those around him. [Taylor] communicates using both verbal and nonverbal means of communication. [Taylor]'s verbal communication consists of ten word approximations. His phonetic inventory or sounds that he can produce correctly consists of 5 consonants and 4 vowels. [Taylor] exhibited increased jaw

control and labial movements since his last speech assessment. However, he continues to demonstrate low oral muscle tone and difficulty coordinating oral movements. [Taylor] is beginning to sequence sounds given a sensory-motor approach that employs multisensory cues to the jaw and face. His performance on the oral-motor exam and speech testing is consistent with moderate-severe oral and verbal apraxia. Therefore, [Taylor]'s progress in this area is slow but steady. [Taylor] exhibits effective use of nonverbal communication through gesturing, facial expressions and his use of sign language. [Taylor]'s expressive signing vocabulary has doubled since his previous IEP meeting and has expanded to include 60 signs. Furthermore, [Taylor]'s comprehension of spoken language has also progressed. He understands and follows most two-step directions, comprehends personal pronouns, and a variety of spatial concepts and descriptive language concepts. His receptive vocabulary is at a 3 year, 7 month level and is a relative area of strength. [Taylor]'s social language skills continue to develop. His strengths include his comprehension of nonverbal communication and his use of nonverbal communication for social interactions, and his ability to express affection, gratitude, and remorse. Pragmatic weaknesses include his verbal self control, behavioral control, and comprehension of turn taking in the classroom and/or during games. Overall, [Taylor] has demonstrated progress in his communication skills.

(P-20; S-20)

Based on her continuing work with Taylor, Ms. Fisher recommended that he receive direct speech-language services targeting all modes of communication. In 2014 she told Ms. T. that while Taylor was demonstrating reluctance to engage in activities designed to address oral motor skills and speech production, and greater enthusiasm for and growth in signed communication, she would continue to work on speech production with Taylor. Ms. Fisher recommended:

- Speech language therapy using a total communication approach
- Continued use of an augmentative communication device across all environments
- Implement a sensory-motor approach for teaching sound production and sound sequencing.
- Speech practice should be frequent and consist of five minute intervals.
- Consistent communication between speech-language pathologists working with [Taylor] in regards to speech target sounds and sound sequences, as well as augmentative communication goals and progress.
- Continue [Taylor]'s education of sign language, as well as educating immediate family and caregivers.
- Home carryover program- It is highly recommended that



caregivers participate in [Taylor]'s speech and language program to ensure generalization of learned skills and strategies across environments.

- Parent/patient education re: the nature of communication difficulties and home facilitation techniques.

(P-20; S-20 *sic*) (Fisher; S-27)

7. Sylvan Ayala, an Occupational Therapist with additional certification in sensory integration and praxis, initially evaluated Taylor in 2008 as part of the preschool team and has provided direct occupational therapy services to him since then. At the time he entered the East Longmeadow Public Schools he had poor trunk control, limited motor strength, decreased oral motor and oral sensory awareness which resulted in poor feeding and constant drooling, and no hand-eye coordination. By 2011, his next comprehensive reevaluation, Taylor could imitate oral motor movements, could eat at a table, and imitate directional lines on a sheet of paper. In 2014 when Ms. Ayala reevaluated Taylor, she reported that he still exhibited significant difficulty with planning, executing and maintaining motor movements. Nevertheless he demonstrated progress in oral motor skills and feeding, activity completion, socialization, independence, functional use of his communication device and effective coping skills to manage transitions and anxiety. Though he wears glasses, vision is an ongoing additional challenge for him. Nevertheless, by the spring 2014 Taylor was a social and communicative student who used every possible means to engage communication partners. (Ayala; S-14; S-18; S-7; S-8; S-5; S-6)

During the 2013-2014 school year Ms. Ayala worked directly with Taylor twice a week in 30 minute pull-out sessions, one of which was a co-treatment with the speech-language therapist, Ms. Borek, and once a week for 30 minutes in Taylor's mainstream class. Taylor's one-to-one aide participated in all sessions so she could carry over, reinforce and promote generalization of skills. Taylor always had his communication device with him, and used it. He also used signs, an iPad, and a picture system for effective two-way communication. (Ayala)

Ms. Ayala reviewed all of the evaluations prepared for the Team meeting held to develop the 2014-2015 IEP. She testified that the Team agreed that Taylor's primary educational need was communication and speech. Based on that consensus and her own observations Ms. Ayala recommended that the 2014-2015 IEP provide for continuation of direct occupational therapy services at the same level and configuration as Taylor had received during the 2013-2014 school year, and for placement in the AT/AAC classroom at the Mapleshade School. (Ayala; S-2; S-3; P-13)

8. Danielle Brunelle, the Physical Therapist who provided twice weekly pull-out therapy to Taylor during the 2013-2014 school year, testified that Taylor has a complex neurological profile and severe motor planning deficits that significantly affect all aspects of his development and education. She uses neurodevelopmental techniques to address Taylor's balance, gait, strength and motor planning. Ms. Brunelle testified that while generalization of skills remains inconsistent, Taylor has made significant improvement in activities and skills requiring balance and motor planning. Work on communication goals is embedded in all physical therapy activities. Taylor uses his communication device during all physical therapy sessions. (Brunelle; S- 17; S-21)

Ms. Brunelle provides direct physical therapy to the four students assigned to the AT/AAC classroom at Mapleshade School. A certified occupational therapy assistant is present in the classroom all day and provides direct occupational therapy and support, reinforcement and generalization throughout the day. Adaptive physical education is conducted in the classroom which houses a variety of adaptive and sports equipment. Based on her work with Taylor and her knowledge of the AT/AAC class at Mapleshade Ms. Brunelle recommended that Taylor attend the Mapleshade program because of its focus on enhancing communication skills as well as the availability of appropriate related services. (Brunelle)

9. Dennis Warner is a Board Certified Behavioral Analyst (“BCBA”) who has evaluated Taylor and directed ABA- based interventions and associated data collection for Taylor since the 2011-2012 school year. During the 2012-2013 school year, at the Parent’s request, the paraprofessional collected data to evaluate the relative efficacy of western and naturopathic medicines. Following a Functional Behavioral Assessment (“FBA”) in February 2013, Mr. Warner developed interventions to address two target problem areas: aggression and elopement. The data shows a decrease in those negative behaviors over the course of two years. (Warner; S-15; S-24; S-25)

10. Deborah Fein, PhD., an independent psychologist, conducted a Neuropsychological Evaluation at the Parent’s request in December 2013. (P-22; P-23; S-16) She found that the results obtained on standardized measures of intellectual and developmental functioning were consistent with the reports of previous evaluations conducted by Neurologist Herbert Gilmore, M.D. and psychologist Judith Souweine, (P-18) and with diagnoses of autism spectrum disorder, global developmental delay, cerebral palsy and apraxia. Dr. Fein obtained her results through a one-to-one interview with Taylor who did not have access to his communication device, and with Ms. T. Dr. Fein did not obtain any then current information from school personnel or other service providers when completing her evaluation. She testified that she did not find Taylor’s oral-motor dysfunction and motor planning difficulties remarkable.

Using the Mullen Scales of Early Learning to assess Taylor, then 8.8 years old, Dr. Fein found that Taylor functioned generally in the 3 to 3.5 year range in: nonverbal reasoning, receptive language, and fine motor skills. Dr. Fein assessed Taylor’s expressive language skills using the Vineland 2 Adaptive Behavior Scales which attempts to standardize parental reports concerning a student’s adaptive functioning. On this measure Taylor’s expressive language skills were discrepant with the receptive language level he achieved on the Mullen Scales, falling at the 1.4 year level. Dr. Fein explained that the absence of Taylor’s communication device did not affect the scoring of that particular instrument as the Vineland is normed to measure solely spoken responses. On the other hand, if Taylor were able to communicate functionally, with a communication device or otherwise, commensurate with his other cognitive measures, Taylor’s life outcome would be significantly improved. Based on her evaluation findings Dr. Fein added a diagnosis of Developmental Language Disorder, Expressive Type.

Dr. Fein recommended that Taylor's special education program include:

... a very structured ABA-based intervention program (at school and at home) to increase his functional academic skills, communication, social behaviors, daily living skills and compliance. He should continue to receive that same intensity of services that he is receiving now with the same staff who know him so well. A summer program that mirrors the goals and strategies of the school-year program will be needed to avoid a regression of skills...., focus on functional academic skills; intensive speech and language therapy for spoken language, written language and use of a communication device; home-based ABA programming to focus on social skills, community behaviors, daily living skills, play/leisure skills and behavior management; use of "ipod" (sic) and appropriate applications.

(P-22, S-16)

Dr. Fein noted that alternative strategies and programs for addressing Taylor's lagging expressive communication skills should be explored and, if possible trialed, in conjunction with any recommendations made by Dr. Shane. (Fein; P-22; S-16)

11. Dr. Howard Shane conducted a communication evaluation over the course of 2 ½ hours on March 19, 2014. The Parent and Ms. O'Neil offered pertinent background observations. Dr. Shane understood that Taylor used his communication device across all settings. He recommended slowly transitioning Taylor from the Vantage SGD he was then using to an iPad Proloquo 2 Go and introducing a First/Then Board. (P-12)

12. The Team convened on March 13, 2014. The Team recommended continuing the type, level and frequency of the special education and related services Taylor had been receiving during the 2013-2014 school year throughout the summer 2014 and into the next school year. As Taylor would be completing the second grade at the conclusion of the school year during the span of the IEP the Team discussed the advantages and disadvantages of the two specialized classrooms that could be appropriate for Taylor: the ABA classroom at Meadowbrook and the AT/AAC classroom at Mapleshade, without reaching a firm conclusion. The Parent requested the Team to consider placement at The Speech Academy, a private special education school in Easton, CT. (S-2; S-3; P-13; Ms. T.; Borek; Ayala; Brunelle; O'Neil)

13. The proposed IEP for the period March 2014 through March 2015 reflects the recommendations of the Team for a continuation of the previous type and level of special education and related services with additional speech-language service time. There were no contrary contemporaneous professional recommendations available to the Team. The proposed IEP designates the substantially separate classroom at the Mapleshade School as Taylor's placement. On May 19, 2014, Ms. T. rejected the Mapleshade placement as well as the summer services and placement outlined in the proposed IEP. She also rejected the language and physical therapy goals. She requested that Taylor receive daily sessions of occupational therapy, physical therapy and social pragmatics training, along with 2 hours per day of speech-language

therapy in school in addition to the speech-language services provided by East Longmeadow outside the school day. Ms. T. requested that Taylor's placement be designated as the Speech Academy in Easton, CT., to begin in the summer 2014 and continue in the 2014-2015 school year. (S-3; S-30; P-13; Ms. T.; Welch)

14. Joanne Welch, the Director of Special Education for East Longmeadow, and Ms. T. discussed the rejection of Taylor's IEP and Ms. T.'s placement requests on multiple occasions in person, by telephone, and through electronic correspondence ("email"). Ms. Welch spoke at length on several occasions with Toni Giannone, the Director of the Speech Academy, about her program, about Taylor, and about the possibility of collaborating on a specialized program and/or placement for Taylor. (Ms. T.; Dr. Welch; Ms. Giannone) There was never a meeting of the minds about the delivery of Speech Academy services to Taylor either in East Longmeadow or in Easton. No IEP was developed reflecting the Speech Academy placement requested by the Parent. (P-8; Welch; Ms. T.; Giannone)

15. Toni Giannone, the Founder and Director of the Speech Academy which has been in operation since September 2010, described the program. It provides intensive speech-language therapy, a minimum of 2 hours of individual work daily, for students with significant communication disorders. It operates on a therapeutic model where most students receive one-to-one speech-language, physical and occupational therapies for the bulk of the school day. Academic instruction is delivered individually or in very small groups, never greater than three students to one teacher. The 35 teachers and therapists are licensed in their specialty and have appropriate state certifications. There are 35 students in the school, and a waiting list. The students range in age from 5 years old to 18 years old. Forty percent of the students have apraxia or present with other neurologically based conditions resulting in inability to speak. Some have an autism spectrum disorder and some have significant language learning disabilities. The Speech Academy is accredited and approved by the State of Connecticut to deliver special education services. (Giannone; P-24; P-17)

16. Ms. Giannone assessed Taylor using the Verbal Motor Production Assessment for Children. She observed that Taylor demonstrated limited trunk, head and neck control and poor oral motor strength and capacity to imitate. She testified that in addition to his serious oral motor issues, Taylor has an Autism Spectrum Disorder, Attention Deficit Disorder, a significant cognitive disability and significant sensory barriers to learning. He is able to learn new information primarily in one-to-one settings. She recommended that he receive intensive and coordinated language skills instruction in all settings. The instruction should be direct, structured, systematic and routine. It should target the development of speech production and intelligibility, language mediated cognitive concepts, and social language and behavioral pragmatics and include some work on social behavior with peer models. To address these needs Ms. Giannone recommended that Taylor receive direct speech-language therapy in 5 two hour sessions per week, at a minimum. (Giannone; P-3; P-4; See also S-20)

17. Ms. T. testified that she was unhappy with East Longmeadow's lack of focus on improving Taylor's speech production and objected to the emphasis on sign and the use of the communication device. Taylor did not often use the communication device at home. Her goal is to have Taylor become functional in oral language equivalent to his receptive language level.

She intends to exhaust all possible methodologies designed to improve “verbal” communication before moving to alternative communications devices and systems. Ms. T. believed that the program at the Speech Academy would afford him the best opportunity for speech improvement. She placed Taylor at the Speech Academy unilaterally in July 2014 where he has remained at least through the date of the Hearing, in part because East Longmeadow had not proposed a classroom placement for him for the 2014-2015 school year. Ms. T testified that Taylor is happier and more relaxed at home since began attending the Speech Academy. He has learned to say two new words: “pop” and “mop”. (Ms. T; but see: S-20, P-7 and S-3, P- 19)

18. At the Speech Academy Taylor follows a daily schedule primarily consisting of one-to-one therapeutic services in half hour chunks in sensorily segregated environments. (S-30) He does not use his communication device. (Giannone; O’Neil; Borek; Fisher) The distance between Taylor’s home and the Speech Academy is approximately 85 miles. It takes an hour and a half to two hours each way depending on traffic and weather. While in transit Taylor uses his iPad or he naps. He does not have his communication device with him in the car. (Salo; S-29)

## FINDINGS AND CONCLUSIONS

There is no dispute that Taylor is a student with special learning needs as defined by 20 U.S.C. §1401 *et seq.* and M.G.L. c. 71 B and is thus entitled to receive a free, appropriate public education. The dispute here centers on what type of intervention constitutes that “appropriate” public education. In the congruent federal and state statutory schemes the IEP is the vehicle for delivering that appropriate education to an eligible student. To be found “appropriate” an IEP must be individually tailored to the student’s unique learning needs and designed to provide specialized instruction and related services that are reasonably calculated to produce meaningful improvement in the targeted educational and personal skills.<sup>4</sup> Whether an educational benefit is meaningful must be determined in the context of a student’s learning potential.<sup>5</sup> The relevant statutes also reflect a policy preference for educating students with and without disabilities together. To that end they require IEP Teams to ensure that “to the maximum extent appropriate” students with disabilities are placed in the least restrictive environment compatible with delivery of the necessary specialized services.<sup>6</sup> The educational program developed by the IEP Team, or offered to the student in a particular IEP, might not be the only appropriate program, methodology or placement. It might not reflect the opinion of an educational expert or experts. It might not be the program or placement the parent would have chosen had the parent free rein to do so. So long as it reasonably addresses all the identified learning needs of the individual student, and ensures those services are delivered in a setting (s) that is capable of producing a meaningful educational benefit to the student, the IEP will be confirmed.<sup>7</sup> In a due process proceeding to determine whether a school district has offered or provided a free, appropriate public education to an eligible student the burden of proof is on the party seeking to

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<sup>4</sup> 34 C.F.R. 300.300 (3) (ii); 34 C.F.R. 300.39 (b) (3); 603 CMR 28.01 (3);

<sup>5</sup> *DB v. Esposito*, 675 F.2d 26 (1<sup>st</sup> Cir. 2012); *Lessard v. Wilton-Lyndesborough Cooperative School District*, 518 F. 3d 18 (1st Cir. 2008).

<sup>6</sup> 20 U.S.C. § 1412 (a) (5) (A); 34 CFR 300.114 (a) (2) (i); *School Committee of the Town of Burlington v. Dep’t of Education*, 471 US 359 (1985).

<sup>7</sup> *GD v. Westmoreland School Dist.*, 930 F.2d 942 (1<sup>st</sup> Cir. 1991).

change the *status quo*. In the instant case that party is the Parent.<sup>8</sup> After careful consideration of all the evidence presented at the hearing, and the thoughtful arguments of counsel for both Parties, it is my determination that the Parent did not carry her burden of proving that the 2014-2015 IEP developed by East Longmeadow Public Schools was inappropriate for Taylor. On the contrary, the weighty preponderance of the credible evidence supports a finding that the 2014-2015 IEP developed by East Longmeadow is reasonably calculated to ensure that Taylor receives a free appropriate public education in the least restrictive setting. My reasoning follows:

First, I note that there is no evidence in the record to support a finding that the 2013-2014 school year program Taylor participated in was inappropriate for him. Instead, the consistent testimony of the witnesses who worked directly, day to day, with Taylor over the course of at least three consecutive years established that Taylor was making noticeable and measurable progress in the acquisition of the foundational behavioral, cognitive, communication, motor and social skills that were targeted in the 2013-2014 IEP. That testimony is corroborated by contemporaneous data collected by Taylor's paraprofessional, and by the results reported on comprehensive evaluations conducted during the 2013-2014 school year. (O'Neil; O'Donnell; Borek; Brunelle; Ayala; Warner; S-4; S-5; S-6; S-27; S-11; S-12; S-13; S-14; S-18; S-19; S-21; S-22; S-23; S-24; S-25. I therefore rely heavily on the testimony of Ms. O'Neil, Ms. O'Donnell, and Ms. Brunelle that Taylor's growth would likely continue in a similar manner and at a similar pace in a program that continued the type and level of special education services he had been receiving during the 2013-2014 school year. Based on the demonstrative progress Taylor achieved in all target areas during the 2013-2014 school year I can reasonably conclude he would be likely to make similar progress with similar educational interventions during the ensuing 2014-2015 school year.

Furthermore, the 2014-2015 IEP proposed by East Longmeadow contains the type, level and setting of special education and related services recommended by Team members for Taylor. (See ¶ 3, 5, 7, 8 ) There were no contrary, credible, expert recommendations available to the Team as it developed the IEP for the summer 2014 and the 2014-2015 school year. Since then the Director of the Speech Academy evaluated Taylor using one standardized instrument. Based on that August 2014 evaluation, she made a number of service recommendations that had already been incorporated into the proposed 2014-2015 IEP. (Compare P-3 and P-13, S-3.) The one service recommendation she made that is not otherwise reflected in the proposed IEP is for a daily 2 hour speech-language therapy session. That recommendation does not comport with the testimony of witnesses who know Taylor well that his attention span and interest are fleeting and he benefits from a variety of stimuli and interventions to maintain focus. (See e.g. ¶ 6) Furthermore, I note that Taylor does not participate in a two hour long speech-language therapy session on any day at the Speech Academy (¶ 14;15)

The Parent's argument that resolution of this matter turns on determinations of credibility captures only part of the dispute. This matter is fundamentally about methodology. The School and the Parent disagree on the nature of Taylor's primary educational goal and the means to achieve it. The Parent wants Taylor to talk. She seeks intensive, and exclusive, cultivation of that mode of communication. East Longmeadow on the other hand, wants Taylor to be a "functional communicator" regardless of the mode of communication, and offers Taylor a

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<sup>8</sup> *Schaffer v. Weast*, 546 U.S. 49 (2005).

variety of tools in that pursuit, including intensive one-to-one speech production therapy and environmental intervention and support to enhance vocalization.<sup>9</sup> In the absence of evidence of inappropriateness or lack of benefit for a particular student a school is generally free to choose the methodological approach and instruments suited to the student's learning need and goal. So long as the chosen methodology is carefully tailored to the student's unique needs, and is supported by reasonable educational research, accepted practice and successful outcomes, it will be upheld. *GD v. Westmoreland*, 930 F.2d 942, 949 (1<sup>st</sup> Cir. 1991)<sup>10</sup>

Here there is ample evaluative, observational and anecdotal evidence to support the continued emphasis on developing multi-modal, multi-channel communication strategies and options for Taylor. All the school-based and independent providers and evaluators recommend continuing to offer and to strengthen multiple communication opportunities for Taylor. I find that the proposed 2014-2015 IEP will do that. Only the Parent seeks an exclusive focus on speech development. There is no expert evidence in this record to support the notion that depriving a student of one communication method will increase that student's facility with another. Where, as here, the intended method, speech, is heavily dependent on development of foundational motor and neurological skills not within the behavioral control of the student, recommendations to limit the student's access to alternate communication methods would perforce have to be particularly persuasive. Parents are, of course, free to choose and to try any form of education, or any specific non-harmful methodology, they sincerely believe will provide a significant educational benefit to their child. Absent proof of the failure of a different appropriate approach chosen by the school, however, parents are not entitled to public funding of that choice.

## ORDER

The 2014-2015 Individualized Education Program proposed by East Longmeadow Public Schools is reasonably calculated to ensure that Taylor receives a free appropriate public education in the least restrictive environment consistent with that goal. The Parent is therefore not entitled to reimbursement of expenses she incurred in privately placing Taylor at the Speech Academy during the summer 2014 and the 2014-2015 school year.

By the Hearing Officer

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Lindsay Byrne

Dated: December 18, 2014

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<sup>9</sup> See generally: *K.M. v Tustin Unified School District*, 725 F. 3d 1088 (9<sup>th</sup> Cir. 2013), cert. den. 134 S Ct. 1493 (2014) and related discussion at DOJ/OSERS/OCR 11/12/14, 64 IDELR 180.

<sup>10</sup> See also: *Board of Education of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S.776 (1982); *Carlson v. San Diego Unified Sch. Dist.* 54 IDELR 213 (9<sup>th</sup> Cir. 2010, unpublished); *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d (7<sup>th</sup> Cir. 1988) cert. den. 488 U.S. 925 (1988).