COMMONWEALTH OF MASSACHUSETTS
SPECIAL EDUCATION APPEALS

Student v. Mashpee Public Schools     BSEA #03-1193

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.

A hearing was held on February 25 and February 28, 2003 at the Bureau of Special Education Appeals, before Catherine M. Putney-Yaceshyn, Hearing Officer.

PROCEDURAL HISTORY


Those present for all or part of the Hearing were:

Student
Student’s Mother
Debora LaMonica*   Student’s psychiatrist
Daniel J. Putnam*   Student’s counselor
Michael W. Turner   Parent’s attorney
Marie Grable   School psychologist, Mashpee Public Schools
Sheryl Obuchon   Special needs teacher, Mashpee High School
Grace C. Day   Administrator of Special Education, Mashpee Public Schools
Ruth Spivey   Special education teacher, Mashpee High School
John P. Dolen   Adjustment counselor, Mashpee Public Schools
William Butler   Attorney, Mashpee Public Schools
Catherine M. Putney-Yaceshyn   Hearing Officer

*Testimony was taken via speaker phone by agreement of the Parties.

The official record of this hearing consists of documents submitted by the Parents marked 1 through 29 and documents submitted by the School marked 1 through 15 and approximately 14 hours of recorded oral testimony.

ISSUES

1) Whether the IEPs proposed between 6/26/02 and 2/25/03 were reasonably calculated to provide the Student with a free appropriate education in the least restrictive environment.

2) Whether the Student has been provided with a free appropriate education between 6/26/02 and the present.

3) Whether the Student requires a residential placement.

4) Whether the Student is entitled to compensatory services for any period from 6/26/02 until the present.
SUMMARY OF THE EVIDENCE

1. The student (hereafter, “Student”) is a seventeen-year-old eleventh grade student residing in Mashpee Massachusetts, within the Mashpee Public School District (hereafter, “Mashpee”). He is diagnosed with ADHD, bi-polar disorder, and a possible nonverbal learning disability. (S-1, P-10) He has attended the Mashpee Public Schools since his ninth grade (2000-2001). Student’s most recent cognitive assessment reported his cognitive ability was in the low average range with a verbal IQ of 93, a performance IQ of 78 and a full scale IQ of 84. (P-8, S-9) Student shows strength in short-term memory and processing speed and shows weakness in auditory processing. (S-1)

2. Student attended the Immaculate Conception School in Springfield prior to transferring to Mashpee Public Schools in September 2000. A psychological assessment of Student conducted during his seventh grade reported his verbal IQ was 94, his performance IQ was 84, and his full scale IQ was 89. (P-4)

3. Mother testified that Student had attended a parochial school in Springfield for grades four through eight1. She explained that his father passed away while Student was in the sixth grade and the school evaluated him in 1998 to assess whether he was suffering from depression. Mother testified that Student had difficulty in social situations in the past and after his father died he became aggressive and defensive when she told him he was doing anything inappropriate. She testified that she did not tell anybody about the problems Student was having when she enrolled him at the Mashpee Public Schools. (Mother)

4. Ruth Spivey, a certified, special education teacher with approximately fourteen years experience, testified that she has known Student since he enrolled at Mashpee High School in his ninth grade. She stated that his prior district had not sent Mashpee any records and Mashpee staff were unsure where to place him2. After speaking to Mother, Mashpee placed Student in an inclusion classroom while they waited to receive his records. She testified that during the fall Student voiced his displeasure about moving from Springfield and said that he missed his friends. She stated that Student had some difficulty adjusting to his new school because he had not wanted to move. She testified that “some behaviors were being exhibited” but Student was not having social emotional difficulties initially. By October or November, she testified, Student was not doing well academically. (Spivey)

5. Ms. Spivey conducted a special needs assessment of Student on October 23, 2000 (Student’s ninth grade) using the Kaufman Test of Educational Achievement. She observed that Student was prompt in attending to the scheduled testing session and

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1 During his eighth grade year at Immaculate Conception he received the following grades:
  Reading/Literature:  C+, C-, F, C (conduct: N, N, N, S); Language:  C+, C-, B, B+ (conduct: N, N, N, S);
  Mathematics:  C-, C-, C, B- (conduct: N, N, S, S); Science:  B+, B-, B, A (conduct: S, S, S, S); Social
  Studies:  B, B+, C-, C- (conduct: S, N, S, S). (P-6)

2 She testified that the guidance counselor had placed several calls to his prior school district, but Mashpee
  had not yet received any records. (Spivey)
he responded willingly to all queries. Student obtained the following scores: Math: ss: 114, ge: 12.6; Reading: ss: 107, ge: 10.8; Spelling: ss: 120, ge: 12.9+; Composite: ss: 119, ge: 12.9+. Ms. Spivey noted that the “normal range of standard scores is from 75 to 125. She concluded that Student scored above average in math, reading, and spelling. (P-6)

6. Ms. Spivey administered a cognitive and educational evaluation of the Student on November 30, 2000, when Student was fourteen years, six months and in grade 9.3. She used a battery of tests from the Woodcock-Johnson –Revised. Ms. Spivey noted that Student’s overall ability fell within the average range. His short-term memory and processing speed are significant intra-cognitive strengths for Student. His visual processing ability was a weakness for Student. She noted that auditory processing is a significant intra-cognitive weakness for Student and may present difficulties in reading, decoding, spelling, learning a foreign language, understanding directions, and note taking. She recommended that Student remain in his current regular education classroom with some accommodations4. (P-7, S-8)

7. Ms. Spivey testified that she attended a Team meeting on December 12, 2000. She stated that Student’s prior district still had not provided Mashpee with Student’s records and Student was “starting to have problems.” Mother had called her and requested that Mashpee consider whether his classes were too difficult for him because Mother thought he was getting frustrated. The Team drafted an IEP for the period from 12/12/2000 to 12/12/2001 which was accepted by Mother on January 6, 2001. The IEP called for placement in the general education classroom with a 15 minute consult from the special education teacher and English support in the classroom 5 x 45 minutes per week. The IEP identified Student’s areas of disability as weakness in auditory and visual processing. It provided for accommodations including use of visual outlines and graphic organizers for listening tasks, providing clear directions of limited length and complexity; extra time for reading and writing activities, and use of computer for writing assignments. (P-17, S-2)

8. Mother testified that by the spring of 2001 Student’s behavior changed. She testified that he became “very violent, distant, like he wasn’t in touch with reality.” She stated that he had a very short fuse, made bizarre statements sometimes and was almost incoherent at times. She testified that she brought Student to see Ilana Tal who evaluated the Student and began therapy with him. She testified that Student began seeing Dr. Deborah LaMonica shortly thereafter and she prescribed respidoral for Student. (Mother) Ms. Spivey testified that “things began to deteriorate” at school in the middle of ninth grade. She stated that she was in constant contact with Mother at that time. (Spivey)

3 ss: standard score; ge: grade equivalent score
4 The recommended accommodations included: use of computer for writing (spell check); provide student with visual outlines, aids, and graphic organizers for tasks involving listening; give clear, direct instructions for all tasks, limited in length and complexity; avoid copying from the board whenever possible. When possible, provide student with a written copy of the material; allow extra time for reading and writing activities; do not penalize the student for difficulties in reading and writing activities.
9. On April 9, 2001, Ms. Spivey sent a memo to school staff scheduling a Team meeting for April 11, 2001 regarding Student. The memo indicated that “action needs to be taken before vacation.” Ms. Spivey testified that Mother had been expressing concerns about the Student not doing well in his classes and his classes being too difficult. Also, Student had had an altercation with another Student and had been suspended. (Spivey) Mr. Dolen, Ms. Spivey, Mother, Student’s algebra teacher, Ms. Belanger, and teaching assistant, Linda Bonano attended a Team meeting on April 11, 2001. (P-19)

10. The Team decided that Student would be placed in the Resource Room for English, World Civ, Env. Science and Algebra. Student would follow the curriculum for each of his former classes and remain on each teacher’s class lists. (P-18) Mother signed the Team Determination of Type of Placement form indicating Student would receive some services outside the General Education Classroom, but did not check a box indicating whether she accepted or rejected the placement decision. (P-19)

11. Ms. Spivey testified that there was a marked improvement in Student’s behavior after he was placed in the resource room. She testified that she was providing Student with one to one tutoring and he was able to work at a slower pace. She helped him break information down and taught him strategies to make him more confident about accomplishing tasks. She explained that Student was doing the same classwork that he would have been doing in the regular classroom and that his teachers brought the work to her in the resource room. (Spivey) Mother testified that she believes that placing Student in “lower level classes and not expecting as much academically” from him led to Student being under less pressure and to a decrease in his disciplinary problems. (Mother) Ms. Spivey testified that Student lacked confidence in his accomplishments academically. She helped him to break material down and insure that he understood. She testified that the staff used track as an incentive for him and it was something that bolstered his self-esteem. She stated that at some point the assistant track coach tutored him in geometry to help him remain eligible to run track. (Spivey)

12. Student testified that he was transferred from level two to level one classes because he lost his motivation to do his work after one term. He felt like he could not keep up with the work. He testified that he stopped doing his work and he really does not want to do his work. He stated that he would not want to do higher level work either. He testified that the large group made it difficult for him. He stated that the other students knew what they were doing and he was always behind. He also stated that in the larger classes when he asked questions he did not think the teacher really understood what he was asking. He stated that he eventually stopped bothering and stopped caring. (Student)

13. Ilana Tal administered psychological testing to Student on June 13, 2001. She noted Student was “restless and ‘annoyed’ throughout most parts of the testing

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5 Mother testified that Student was not doing well and she thought the classes were too difficult for him. (Mother)
administered” and had difficulty sitting in one place during some subtests. She reported that Student “presented with a slightly depressive flavor.” He avoided eye contact and maintained a flat affect for most of the time according to Ms. Tal. She reported that Student complained of being tired after forty minutes and they had to stop and continue testing a few days later. Ms. Tal reported that the testing is considered valid when “broken and continued in a second period” although “it may not be the ideal situation.” (P-9, S-10)

14. Ms. Tal administered the WAIS III to assess Student’s functioning. She noted that Student was only 15 years old, “below the age adjusted scores calculated for this test.” She stated that his scaled scores were calculated according to a 16 year old scale. She stated that “although such scores may appear invalid in the absolute sense as they would not reflect [Student]’s age appropriate cognitive ability, they contain a great deal of valuable material and thus should be considered as part of the overall assessment.” Student obtained a verbal IQ score of 104, a performance IQ score of 102, and a full scale IQ score of 103, which places him within the average range of intellectual functioning as measured by this test for a 16 year old. Ms. Tal reported Student’s projective test findings as assessed by the Rorschach Inkblot Test and the Thematic Appreciation Test. She concluded that Student showed signs of depression, perseveration and preoccupation with aggression (toward self and others). She opined that Student “gives evidence of being affected by some emotional distress that interferes with his ability to function effectively.” She concluded that Student’s level of stress “appears to derive in part from negative feelings he is experiencing towards himself in relation to personal characteristics he regards as undesirable, or ill-advised actions he may take.” She stated that Student “appears to be less capable than other people of dealing effectively with everyday experience, especially with respect to social situations. His limited social skills are likely to be contributing to awkward, inept, or inappropriate management of interpersonal relationships. She recommended Student continue his psychiatrist visits and individual therapy and family and home support to “better deal with [Student]’s situation.” (P-9, S-10)

15. Student’s Ninth grade report card reflects the following grades: Algebra I: B-, C-, F, F (teacher comment: “more effort needed, assignments incomplete/missing); English: C, C, D-, C+; Science: B+, C+, F, D (teacher comment: more effort needed); World Civ: A, C+, D-; A-. (P-13)

16. During the ninth grade, Student was involved in 11 disciplinary incidents which resulted in 9 office detentions and 2 out of school suspensions. (P-15) On October 30, 2000 Student received an office detention due to a physical confrontation. On January 2, 2001 Student received an office detention for not dressing for gym class. On March 12, 2001, Student received an office detention for cutting class. On April 3, 2001, Student received an office detention for “multiple incidents.” On April 5, 2001, Student received an office detention for insubordination. On May 10, 2001, Student received an office detention for abusive language. On May 17, 2001,  

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6 The report does not indicate when the second day of testing occurred.
Student received an office detention for disruption of class. On May 18, 2001, Student received an office detention for “multiple incidents.” On May 18, 2001, Student received an office detention for defiant behavior. On June 4, 2001, Student received a 5 day suspension for “fighting, threatening another student, swearing.” On June 28, 2001 Student received a one day out of school suspension for insubordination. (P-14)

17. Janet MacFarlane, Assistant chief Probation Officer of the Barnstable County Juvenile Court Department sent a letter dated September 19, 2001 to Patricia Farrell in the guidance department of Mashpee High School. The letter stated that Student’s Mother had filed a CHINS application on July 19, 2001 alleging Student was a “Stubborn Child.” She requested that Mashpee provide information regarding Student’s school performance. (P-25) Mother testified that during the summer of 2001 (between Student’s freshman and sophomore years) Student often argued with her when she told him to do things and Student had approximately six physical confrontations with her. She testified that he once kicked her car door. (Mother)

18. Ms. Spivey testified that the Team met on October 2, 2001 intending to review the evaluation done by Ilana Tal. She stated that the Team was concerned because the evaluation report had not been provided and the evaluation had occurred in June. She testified that the evaluation was faxed to the Team during the meeting, portions of it were handwritten, and it lacked a diagnosis. She testified that the Team requested time to review the report and agreed to reconvene. (Spivey)

19. The Team reconvened on October 19, 2001. The Team Chairperson, Ms. Cyr, special education director, Ms. Day, special education liason, Charlotte Soucy, adjustment counselor, Eileen Frazier, guidance counselor, Pat Farrell, Ruth Spivey, Mother, and Mother’s advocate, Ms. Greer, attended the meeting. The Team discussed having an “in-house” psychologist evaluate Student and Mother signed an evaluation consent form. (P -19) Ms. Spivey testified that Team informed the Student’s advocate that they would need a recommendation from Dr. LaMonica. Dr. LaMonica never provided the Team with any report or recommendations. (Spivey)

20. Mary Acunzo, Ph.D., conducted a psychological evaluation of Student on December 6, 2001 when Student was 15.7 years old. (P-8, S-9, Grable, S-16) She administered the WISC-III, the VMI, the self-rating scale of the BASC, and the Sentence Completion Test. She noted that Student was cooperative and alert during

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7 The evaluation report listed the date of evaluation as 1/3/01 and Student’s age as 14 years, 11 months. Ms. Grable testified that she spoke to Dr. Acunzo and asked her to check her protocol and Dr. Acunzo verified that the date of the evaluation on her protocol said 12/3/01 and Student’s age was recorded as 15 years, 7 months. Ms. Grable testified that she and Dr. Acunzo reviewed the recorded sub-test scores and verified that the correct scores appeared on the report. Dr. Acunzo wrote a letter to Grace Day, dated March 18, 2003 reporting that she had written the wrong date of evaluation and age of Student on her report. Dr. Acunzo confirmed the correct information and indicated the error likely resulted because she used a template on her computer and did not change the date of evaluation or age of student.
8 Developmental Test of Visual Motor Integration
9 Behavioral Assessment System for Children
the testing although somewhat anxious. His anxiety was more noticeable on timed
tests and he expressed frustration at times. Student scored within the low average
range on overall cognitive ability as assessed by the WISC. His Verbal IQ was
reported as 93, his performance IQ was reported as 78, and his full scale IQ was
reported as 84. Arithmetic was an area of significant strength and comprehension
and picture arrangement were areas of significant weakness. Dr. Acunzo noted a
significant difference between Student’s verbal and performance IQ scores. She
reported that Student’s profile “is suggestive of visual-spatial and possible
interational compromises.” She explained that his profile would have social and
academic implications. She stated that Student presented with “significant emotional
concerns” and stated it was important for Student to have ongoing psychiatric
consultation to monitor him medically and psychotherapy to help him cope with
“these issues.” She recommended that Student’s teaching be explicit and
“emphasize context and meaning.” She recommended that he have a reduced
workload when appropriate and be give extra time for tests and assignments. She
also recommended that Student be taught study skills such as taking notes when
reading. (P-8, S-9, S-16)

21. Student was evaluated by Eugene J. D’Angelo, Ph.D., of Children’s Hospital on
January 3, 15, and 28, 2002.\(^{10}\) The report stated that the evaluation was requested
“to determine whether [Student] might be exhibiting a psychotic disorder and/or the
possibility of Asperger’s Disorder, which his mother had only recently heard about
from others.”\(^{11}\) Dr. D’Angelo described Student as “quite subdued and moderately
defensive but relatively communicative throughout the evaluation.” He reported that
Student “minimized concerns of his parents about his prior difficulties with peers
and substance abuse.” Student reported “actively struggling with feeling very
frustrated with his anxiety, academic difficulties, and poor self-esteem.” He reported
that Student remains very uncomfortable in school, “experiencing his classmates as
either rejecting or overlooking him.” On the Youth Self-Report Questionnaire, the
only significant elevation was on the anxious-depressed factor. His mother noted
significant elevations on Learning Problems, Anxiety, and Conduct on the Connor’s
Questionnaire. Dr. D’Angelo reported that Student’s projective test responses
“suggested Student experiences moderate depression and variability in his ability to
integrate emotional reactions in his life.” He stated that Student “does not manifest
evidence of any formal thought disorder at this point in time...[and] there were no
unusual or bizarre precepts or organizational features noted.” He noted the presence
of “rather significant depression” and dysphoric mood.” The results of the
Adolescent Coping Orientation with Problem Experiences Scale results showed “an
elevation in depression accompanied by increased anger and cynicism.” The MMPI-
A showed an absence of psychotic symptoms, “although anxiety approximates, but

\(^{10}\) Dr. D’Angelo administered the Minnesota Multiphasic Personality Inventory-Adolescent Version
(MMPI-A); Rorschach; Thematic Apperception Test; Adolescent Coping with Problem Experiences Scale;
Youth Self-Report Questionnaire; Young Mania Rating Scale; Connor’s Parent Questionnaire; Atypical
Child Development Scale; and Analysis of Sensory Behavior.

\(^{11}\) Dr. D’Angelo referenced a June 2001 evaluation that resulted in a diagnosis of Psychotic Disorder NOS.
The record does not contain a report with any such diagnosis. The Ilana Tal report was completed in June
2001, but it does not contain a diagnosis of Psychotic Disorder NOS.
does not reach, clinical significance.” He concluded that Student’s overall testing performance “was more consistent with a mood disorder, most likely, a bipolar disorder.” He diagnosed Student with Bipolar Disorder NOS and Learning Disorder.

Dr. D’Angelo concluded that Student “exhibits moderate depression, significant interpersonal and performance anxiety, and variability in his problem-solving skills.” He opined that managing his anxiety could result in Student feeling easily overwhelmed and upset both at home and in school.” He noted that “the only time he reports being calm is in his participation on the track team”, but noted that the pleasure of running and not necessarily the sense of belonging due to being on a team appears to be the source of his enjoyment. He wrote that during the evaluation Student showed “moderate depression and tenuous self-esteem.” He concluded that “a PDD spectrum disorder such as Asperger’s Disorder was not apparent, however Student did have some symptoms that are contained in “these problems.” He noted “It is possible that he exhibits a nonverbal learning disability which may be a milder version of problems that, in their more severe manifestation, become PDD spectrum disorders.” He recommended that Student’s services be intensified. He noted that may include placement at a therapeutic day school program where he might benefit from a smaller, structured classroom program, the presence of therapeutic staff members, the use of group and milieu treatments, intensification of parental support services, and careful monitoring of his socioemotional response. He suggested the use of strategies such as anger replacement and relaxation interventions as part of Student’s psychotherapy. He also recommended that Student’s psychotherapy address his residual feelings of loss regarding the death of his father and his move from Springfield. (P-10, S-11)

22. An IEP for the period from March 7, 2002 to December 12, 2002 was proposed after a March 7, 2002 Team meeting. The Parent/Student Concerns section states that Mother wants Student to be in an out-of-district placement. The IEP indicates that Student was recently diagnosed with bipolar disorder and presents with a non-verbal learning disability. It indicates that Student is not progressing satisfactorily in his school performance which prompted further testing to specify Student’s disability. The IEP states that Student “has difficulty comprehending interpersonal communication by interpreting visual cues like facial expressions, body language, etc.” The IEP proposed accommodations including providing Student with visual outlines and graphic organizers for listening tasks; providing Student with notes during lectures; providing clear, direct instruction for all tasks and limiting length and complexity; providing additional time for reading and writing activities; and allowing for use of a computer for writing assignments. The service delivery grid proposes consultation by the special education teacher 1 x 15 minutes per cycle and consultation with the school adjustment counselor 1 x 15 minutes per cycle. It provides for academic support 6 x 45 minutes per cycle. The IEP provides for substantially separate mathematics, English, and study skills classes with a special education teacher 6 x 45 minutes per cycle. It provides for counseling with the
school adjustment counselor 1 x 30 minutes per cycle. The IEP in evidence does not contain a signature page. (P-20)

23. Parent’s attorney sent a letter dated May 17, 2002 to Grace Day indicating that he was attaching a “partially rejected education signature page.” The referenced page is not contained in evidence. His clients’ concerns are listed and are summarized as follows. His client is concerned over the IEP’s lack of measurable annual goals; she alleges there has been no transitional planning; she believes he requires a summer program to deal with his emotional issues; she would like Student to be in a vocational program. Parent’s attorney requests that a Team be convened to discuss the Parent’s issues. (P-24)

24. The Team reconvened on June 12, 2002. The Parent/Student concern section contained the same language as the previously proposed plan with the addition of Mother’s concern regarding whether Student will need a job coach and what kinds of career opportunities will be available to him. The accommodations previously proposed are the same and an additional accommodation is added, “weekly contact regarding homework assignments and projects with parent.” The service delivery grid is the same as the previously proposed grid described in P-20. Under the Additional Information section it states: “In pre-transition planning, a 688 referral will be made to Cape Cod Tech in the Fall of 2002 for a vocational assessment. It is expected that [Student] will graduate in June 2004. The signature page was signed by Grace Day on June 26, 2002 and was not signed by the Parent. (P-21)

25. Student’s Tenth grade report card reflects the following grades: English 10: --14; F, R.R. English: B, C15 (teacher comment: pleasure to have in class, participates in class); R.R. Math: D+, D, C-, C+ (teacher comment: seeks help when needed, pleasure to have in class); R.R. Skill Strat. I&2: B-, B, B; Science and Nature: B-, B, B, D-; World Civ. A-, B, C-, C (teacher comment: does little or no homework.) (P-15)

26. The Team reconvened on November 13, 2002. The proposed IEP was very similar to the IEP previously proposed (P-21) and described above. Goals and objectives were added to address Student’s social emotional functioning. Student’s counseling with the school adjustment counselor was increased from 30 minutes to 45 minutes per cycle. There were additions made to the Additional Information section which referenced the vocational assessment conducted on Student on October 22, 2002 and discussed at the Team meeting. The IEP indicated that Student’s guidance counselor

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12 The Parent’s attorney stated that his letter (P-24) accepted the services, but rejected the placement of all the IEPs up until that point. The Hearing Officer reminded him that he would have to get that information on the record through his witnesses. None of the witnesses testified that P-24 was intended to accept the services but reject placement for all IEPs to date and P-24 does not contain such language. (P-24)

13 Mother testified that she rejected the placement and thinks she rejected some of the services, but does not know which services she rejected. (Mother)

14 There is no grade listed for first quarter.

15 The Student was in English 10 during the first two quarters and in resource room English for the third and fourth quarters.
would further discuss the results with Student and would assist Student in selecting appropriate courses to attain a June 2004 graduation and post-secondary education. An SAT preparation class was recommended and Student’s track coach was to discuss Student’s potential to compete in college track. The level of academic requirements and expectations in the Resource Room was to be increased. A letter was to be sent to Community Connections to inquire about their involvement with Student. Student was to be encouraged to pursue a part-time job, especially in the summer. (S-1)

27. Sheryl Obuchon testified that she has 24 years experience in teaching in a resource room. She is certified in K-12 and 5-12 special education. She stated that she has worked with Student since September 2002 and Student is in her English, Skills Strategies, and Math classes. She testified that for English, Student is grouped with two other eleventh grade students who are at about the same level as him. She stated that she covers the same material in Student’s class as she does in her eleventh grade inclusion class. She testified that if Student were in an inclusion English class he would need an assistant. She explained that he is in small classes because he requires individual attention. She stated that Student seems to enjoy reading in English class which she views as progress. Student confirmed reading a “cool book,” Fallen Angels, which is part of the eleventh grade curriculum. Student’s class is level 1, which Ms. Obuchon described as entry level.16 Ms. Obuchon described Student as a typical sixteen-year old in that he likes school on some days and dislikes it on others. She stated that he is polite, but does not always want to work. She testified that Student could do level 2 work with a great deal of support. She sees Student’s ability as being in the low average range. (Obuchon)

28. Ms. Obuchon testified that she uses a math text book that develops key ideas used in the SATs for Student’s math class17. She stated that she follows the eleventh grade curriculum pretty closely and Student’s math class is similar to the integrated math course that eleventh graders typically take. She stated that Student does very well in math. She testified that she does not think Student could handle a higher level math class without a 1:1 aide trained in math because he requires 1:1 attention to focus and organize due to his difficulty organizing and planning out things. (Obuchon)

29. Ms. Obuchon described Student’s skills strategy class as being specifically provided to special education students. She stated that Student brings missing homework assignments or projects or make-up tests/quizzes from other classes to complete. He also completes skills packets which are graded. If Student has nothing else to do, she assigns him work from skills books and grades him on each activity. Student earned an A on his mid-term exam. She stated that Student has made progress in writing his assignments down and bringing enough work to stay busy. (Obuchon)

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16 Ms. Obuchon testified that Mashpee High School has levels 1, 2, 3, and Advanced Placement. Level 1 is “entry-level”, level 2 is “college prep” and level 3 is “college prep. with more requirements.”

17 Ms. Obuchon testified that Student is the only person in the school using that particular math book and that she could not get him any other book because there were no others in the building. (Obuchon)
30. Ms. Obuchon testified that Student has never acted violently or swore in her classroom and has always related to her in a very appropriate manner. She stated that the students who are grouped with Student have auditory processing issues, similar cognitive levels, and all require similar accommodations as Student requires. She described Student’s learning difficulties as visual/auditory processing difficulties, difficulty with organization, and needing clear and concise instructions and repetition. She also noted he has difficulty with written language. She views Student as comfortable in the resource room setting. She believes Student seems satisfied with the level of his work and stated he does not seem to want to do better or more work. She considers Student to be a “star” at track and stated that he talks to her about it a lot. She believes Student is making progress in managing his behavior. She often saw him last year when he was having difficulty with behavior. He has not had any serious discipline problems this year. She testified that Student passed the English portion of the MCAS. (Obuchon) Student also passed the re-test of the mathematics portion of the MCAS. (S-15; Day)

Ms. Obuchon testified that she brought Student to the Cape Cod Community College (hereafter, CCCC) Learning Disabilities workshop presented by present and past students who had learning disabilities and went to CCCC. She said that Student was upbeat and positive about the workshop. Student testified that he wrote about his experience at the workshop during Ms. Obuchon’s class. She testified that she believes Student has matured and is able to make better choices for himself. (Obuchon)

31. Ms. Day testified that Mashpee Public Schools had been providing transitional planning since they first met Student in the ninth grade. She sent a letter to Parent dated January 22, 2003 stating that Mashpee had communicated with Community Connections to “explore what they may have to offer a student like [Student].” Ms. Day stated that she enclosed a referral form for services and requested that Parent complete the form and return it to Community Connections. (P-26, S-13) Ms. Day testified that she sent the letter because the Parent and the Team were expressing concern for Student’s vocational interests and job opportunities. Community Connections acts as a consultant to schools and agencies to connect students to jobs, assess vocationally. Mother testified that she did not send the application because it only referenced part-time employment during the school year which was untenable for Student due to his track schedule. Additionally,

18 Ms. Obuchon testified that she assigned Student a detention recently because he skipped her class.
19 Student wrote the following paragraph with the heading “What I Learned About CCCC” after attending the workshop. “Yesterday I went to Cape Cod Community College. I learned a lot about the college. They have people with problems like blindness. They have people with problems like blindness, dyslexia, and ADHD. It seems like the place for me. I know I can get in there and make it. It has all the stuff I need. I also learned that if you want to get into the college, all you need is a high school diploma. They have programs there for people like me.” (S-14) Student testified that his paragraph accurately reflected his feelings. (Student)
20 In response to questioning by Parent’s attorney regarding the presence of a statement of transitional services to be provided in the IEP proposed pursuant to the March 7, 2002 Team meeting, Ms. Day testified that the page which would have contained the statement (the signature page) was missing from the exhibit. (Day)
Mother stated that when she contacted Community Connections they informed her that most of their clients had mental retardation or severe disabilities.  (Mother) Ms. Day testified that Mashpee has done a vocational assessment of Student and the guidance counselor reviewed the results with Student. She testified that the guidance counselor has spoken to Mother about the vocational technical school. She testified that there is a teacher at the high school who does job coaching and job placement. Additionally, she has spoken to Scott Chauncy, of Community Connections, regarding Student’s profile and appropriateness for services they provide. He informed her that he could assist in setting up a partial evaluation and finding a job and doing some follow up with job coaching and consultation. Ms. Day testified that transitional services were discussed many times at Team meetings and that Parent’s counsel often raised the issue. (Day)

32. John Dolen testified that he is a school adjustment counselor and team chair for Mashpee High School. He is a licensed independent clinical social worker, level one and is certified as a school adjustment counselor. He has known Student since his ninth grade and works with him this year. Mr. Dolen described his work with Student during the ninth grade as crisis intervention which he explained included working with Student and his teachers because of Student’s behavioral difficulties. He described Student’s behavioral difficulties as oppositional behavior and acting out. Mr. Dolen did not find his behavior atypical for a student who moves from a former school district he loved to a new district. He testified Student sometimes acted out verbally and was referred to him. He described his role as trying to help the Student adjust. He worked with him one on one and spoke to Mother a lot. He testified that he met with Student as often as he could during the week and whenever a crisis arose he would intervene. Mr. Dolen testified that he was the vice-principal and not the adjustment counselor during Student’s tenth grade. He made it a point to catch up with Student and see how he was doing and he was pleased to not be seeing Student for disciplinary reasons and complimented Student. (Dolen)

Mr. Dolen testified that he sees Student both for scheduled and unscheduled meetings. When Student asks to see him on an unscheduled basis he makes time for him as soon as possible. He sees him for 1.5 – 2 sessions per week. He testified that he sees Student almost every day after school as well while Student is working out in the weight room or practicing with the cross country team. He testified that this year he has worked on developing a relationship with Student and helping him to identify and focus on the issues he is having. He also deals with the social anxiety Student experiences. He helps him to de-stress and cope with the anxiety as it effects his learning. Thirdly, he works on Student’s social skills with him. They engage in problem solving. They “go through rehearsal and identify things that work well.” He testified that he uses a model of success and stated that the use of models is important. (Dolen)

Mr. Dolen testified that Student has made a huge amount of social emotional progress over the past three years. He has a seen a huge move from his ninth grade “reactive mode” to a more “preventive mode.” He stated that instead of engaging in
Mr. Dolen testified that he believes Student’s participation on the track team is very important to him. He stated that Student showed him letters colleges sent him expressing their interest in him and Student was very proud. He thinks Student is capable of attending CCCC and he has expressed desire to get an associates degree as an athletic trainer. He discussed the types of classes he would need to take with Student. He testified that he has a good relationship with Student and is interested in Student. He has observed Student in the classroom and he appears to be attending and participating. He testified that Student is receiving appropriate services at Mashpee. He thinks group therapy could benefit Student and thinks it is possible to put together a group at Mashpee High School as he has done so in the past. He stated that ideally Student would receive a social skills group, as it would be a nice adjunct to his program. (Dolen)

Mr. Dolen testified that it would be detrimental for Student to go to a residential program. He has made a huge adjustment at Mashpee High School and his participation in track means a lot. He has made some bonds with other students and is beginning to have some academic success. He testified that it takes a while to develop trust with the supports that he now has in place and there could be a set back period if it changed. (Dolen)

33. Debora A. LaMonica, MD, wrote a letter dated February 19, 2003 (less than one week before the Hearing) and addressed “To whom it may concern.”21 She wrote that she is Student’s treating psychiatrist and Student has been diagnosed with “Mood Disorder, NOS” and consequently requires a “yearlong, seven day a week residential, therapeutic milieu.” She wrote that “an appropriate treatment plan for [Student] must encompass ongoing, intensive, individual and group therapy in order for [Student] to learn the necessary strategies to cope with his disorder.” She stated it is crucial to coordinate and reinforce emotional strategies in educational and non-educational settings. She stated that Student requires direct instruction in social

21 The record is unclear as to the intended recipient of the letter
skills and independent living skills\textsuperscript{22}. She concluded that Student “requires a therapeutic residential milieu for his emotional stability and growth.” (S-29)

34. Debora LaMonica testified that she is board certified in child, adolescent, and adult psychiatry and specializes in child and adolescent psychiatry. She has known Student since April 2001 when he first came to see her. She has seen Student 17 times\textsuperscript{23}. Her working diagnoses of Student are “mood disorder (NOS) and Pervasive Developmental Disorder (NOS). She stated that when she first met Student he was very labile and would “blow up” under “even moderately stressful situations.” She stated that she sees him “falling tremendously behind academically because he can’t seem to deal with the normal stresses of academics.” She testified that Student’s social deficits are not being addressed effectively. She opined that Student requires a therapeutic milieu, meaning he requires “therapeutically trained persons to help him negotiate normal every day tasks.” She testified that she has been told that Student has been placed in an environment where there are very few stressors and he does not interact with many children. When asked what she would recommend as an appropriate placement for Student she testified that “in a perfect world, I would love [Student] to have a 24 hour residential therapeutic school that will give him his best if not his only shot at being a contributing member of society and she thinks he might have a very good prognosis with that\textsuperscript{24}.” She explained that she recommended a residential setting rather than a day school because “a lot of his problems have also been out of the school setting.” She then stated that Student does not have as many interactions with “other kids” as she would like and he has had “a lot of unfortunate interactions with his mother\textsuperscript{25}.” (LaMonica)

35. Dr. LaMonica testified that she obtained her information regarding Student’s performance in school from Student, his Mother, his advocate, and his attorney. She has not reviewed his school record, his report cards, or his progress reports. She has not reviewed Student’s IEPs. She has not met with or spoken to Student’s teachers or counselors or any Mashpee administrators. (LaMonica)

36. Marie Grable testified that she has been the school psychologist at Mashpee Public Schools for five years and is certified as a school psychologist. She testified that she was on maternity leave at the time that Dr. Acunzo evaluated Student and would have evaluated him herself otherwise. She testified that Mashpee views Student as having a unique set of needs in the social emotional and cognitive areas. Based upon her review of all the assessments she believes Student exhibits characteristics of nonverbal learning disability and signs and characteristics of a mood disorder. She

\textsuperscript{22} She testified that he needed instruction in independent living skills because he has “tremendous difficulty reading social cues and children like this generally need coaching in how to get along on a daily basis.”

\textsuperscript{23} She stated that she last saw Student on December 17, 2002.

\textsuperscript{24} She also testified that Student’s attorney asked her “in the best case scenario what her best wish for Student would be and that is where her recommendation for a residential placement came from.”

\textsuperscript{25} Dr. LaMonica explained that she was referring to problems Student has with Mother when “he is stressed and he blows up.” She stated that she thinks that happens less frequently now than in the past, but it still happens.
reviewed the Springfield psychological evaluation of Student (P-4) and stated his profile is consistent with a nonverbal learning disability\textsuperscript{26}.

Ms. Grable testified that she has some concerns with the Ilana Tal evaluation. Her primary concern is that the evaluator measured Student’s cognitive functioning on the WAIS III which is an adult test. It is norm referenced for children age 16 and above. In the Children’s Hospital evaluation, Dr. D’Angelo did not conduct any cognitive assessments or assessments in the area of academic achievement. He appears to have relied upon Ilana Tal’s evaluation and concludes that Student’s cognitive ability is in the range Ms. Tal reported it. Ms. Grable was also concerned about Dr. D’Angelo’s diagnosis of bi-polar disorder. She testified that there did not seem to be any evidence that Student has had a manic episode that would qualify for a diagnosis of bi-polar. She is concerned that Dr. LaMonica, Dr. D’Angelo, and anybody else who relied upon Ms. Tal’s evaluation as an estimate of Student’s cognitive ability and functioning made assumptions and judgments that may not be accurate in that she assumed Student is of average cognitive ability in both verbal and non-verbal abilities. (Grable)

37. Daniel Putnam testified that he is a Massachusetts licensed independent social worker (LICSW). He has worked as a senior counselor at the Gossel Thorne Counseling Center where he currently provides counseling to Student. He met Student in October 2001. Student initially was receiving services from Ilana Tal, also of the Gosnold Thorne Center. Dr. LaMonica requested that Mr. Putnam counsel Student because there “hadn’t been a good mix” between Ms. Tal and Student and Mother. Mr. Putnam sees Student approximately bi-weekly for a one hour session. He meets with Student alone and with Mother who provides him with information regarding Student’s behavior and activities since their last session. (Putnam)

He testified that the predominant topic he and Student have discussed over the past three to six months has been how Student relates to other students at school and how he can fit in and feel like he can get along better with the other students. He testified that Student talks to him about his friends and about his concern about “saying the wrong thing and not coming across as being cool.” He opined that Student’s mood disorder causes him to feel worthless about himself and he shows irritability, poor motivation, poor willingness to resolve problems and work through what is bothering him. He also stated that Student shows poor “emotional reciprocity” meaning he lacks the ability to appreciate how he comes across to other people and he misinterprets the social and non-verbal cues that others communicate to him. He further stated that Student has difficulty initiating and wanting to do anything about his difficulties. He testified that Student has made some improvements, but his deficits are still there. (Putnam)

\textsuperscript{26} Ms. Grable testified that the sub-test scores show some scatter and the comprehension sub-test (ss:2), picture arrangement (ss: 6), and object assembly (ss: 5) scores are significant with regard to a diagnosis of Non verbal learning disability. She stated that those sub-tests show weaknesses in the areas of visual perception and non-verbal problem solving. (Grable, P-4)
Mr. Putnam testified that he thinks the counseling goals drafted by Mashpee in the most recently proposed IEP (S-1) are appropriate for Student and are similar to the things he has been working on with Student. He did not find that that 45 minutes per week was sufficient time for his counseling. He testified that Student is “experiencing social feelings of inadequacy on an ongoing basis every day.” He believes that due to Student’s problems with processing and his impulsivity he needs to be able to learn to deal with things in a more timely and consistent and frequent manner. He believes Student requires more time to practice the social skills he works on with him. He thinks group therapy would benefit Student because it would provide him with an opportunity to “process an interaction with another individual in a setting where everyone is there to learn and make changes.” Mr. Putnam testified that Student will need vocational training and psychological support to learn to handle his first work experience. He recommended that Student attend a residential school such as the Chamberlain school. He testified that such a program will be “more beneficial because it is more intense.” He also testified that a residential school would provide Student help toward independent living and living in a dorm would provide additional social interactions outside of the regular school and extracurricular activities. (Putnam)

38. Mr. Putnam never met any Mashpee staff or administrators. He never spoke to any of Student’s teachers or counselors. He never attended a Team meeting or observed at Mashpee High School. He has not been authorized to speak to the counselor at Mashpee High. He testified that it would be helpful for him to communicate with the Mashpee counselor who works with Student because they “would want to parallel their therapy as much as possible so they are not working at any cross purposes.” He thought it would be helpful to avoid confusing Student by giving him separate sets of instruction. He testified that the Mashpee counselor had called and asked to speak to him, but Mother had rescinded a prior release for them to communicate. He stated that Mother “felt that the issues going on with Student at home were issues she wanted to remain part of the private therapy session and she did not want it to become part of discussion” with the school. (Putnam)

39. Student’s eleventh grade report card reflects the following grades (through January 31, 2002): U.S. History: C+, C-; R.R. English: C-, D+ (teacher comment: more effort needed, work incomplete); R.R. Math: C+, B- (teacher comment: works cooperatively); World Languages: F, F; Earth/Space Science: D-, B+. (P-16, S-4)

40. The Student testified “I’ll admit I’m not trying much.” He stated that he has not had issues outside of school. He gets into arguments with his Mother, “but that’s about it.” He stated that he does not really hang out with many people. He thinks that if he went to a residential school he would be able to make friends with students who are like him and probably would be able to stay friends with them. He testified that things at school are a little better now than they were in ninth grade. He testified that he “was always trying to act cool and stuff and tried to talk back to teachers.” He testified that it got a little better in tenth grade because his level one courses were not
as difficult and he started participating in track. He testified that he likes track and wants to continue with it, but would rather go to a residential school. He said his sessions with Mr. Dolen “help him a little bit” and he feels a little better after meeting with him. He said Mr. Dolen helps him deal with conflicts with other students. Student testified that he has not been to any Team meetings because his Mother feels he should go to class instead. He testified that his guidance counselor, Ms. Farrell, and he have discussed his plans for after high school and he will be taking the PSATs. Student testified that he feels that the amount of time that he spends with Mr. Dolen is sufficient. He does not feel like he is behind in his classes and he knows what he is doing in his resources room classes. He testified that he thinks he could do level 2 work in a small group with individual attention. (Student)

41. Mother testified that Student did not have any disciplinary issues at school during his sophomore year. She does not think Student will be able to have a job when he graduates because “he is not developing at a rate where he should [and] where he’d be ready for a job.” She testified that she has never requested that Student have a vocational program. She thinks Student requires a residential therapeutic setting. Mother testified that Student has spent most weekends at home by himself this year. She stated that track is the only socialization that he has had. She testified that Student tried to get a job at Burger King last year, but he did not follow through and did not pursue any other jobs. (Mother)

FINDINGS AND CONCLUSIONS:

Student is an individual with a disability, falling within the purview of the Individuals with Disabilities Education Act (IDEA)27 and the state special education statute.28 As such, he is entitled to a free appropriate public education (FAPE). Neither his status nor his entitlement is in dispute. Under the FAPE standard, the IEP proposed by the school district must offer the student a free appropriate public education that meets state educational standards. This education must be offered in the least restrictive environment appropriate to meet the student’s individual needs. Federal law also requires that the student be able to fully participate in the general curriculum to the maximum extent possible. 20 USC § 1415(d)(1)(A)(iii); 34 CFR 300.347(a)(2)(I) and (a)(3)(ii); 64 Fed. Reg. No. 48, page 12595, column 1; See also, In Re: Worcester Public Schools, BSEA # 00-1912, 6 MSER 194 (2000).

Effective January 1, 2002, Massachusetts adopted the federal standard requiring that the IEP proposed by the school district offer the student a Free Appropriate Public Education that meets state educational standards. MGL c. 71 B § 1, 2, 3; See also 603 CMR 28.01 & 28.02 (21) Additionally, the federal law requires that the student have access to full participation in the general curriculum, to the maximum extent possible. Also, the student’s education must be offered in the least restrictive environment appropriate to

27 20 USC 1400 et seq.
28 MGL c. 71B.
29 20 USC 1412(5)(A)
meet his/her individual needs\textsuperscript{30}. 20 USC §1414(d)(1)(A)(iii); 34 CFR 300.347(a)(2)(i) and (a)(3)(ii); 64 Fed. Reg. No. 48, page 12595, column 1; MGL c. 71B § 1; 603 CMR 28.02 (12). See \textit{In re: Worcester Public Schools}, BSEA # 00-0912, 6 MSER 194 (SEA MA 2000) and \textit{In re: Gill-Montague Public Schools District}, BSEA # 02-1776, August 28, 2002.

As previously discussed in \textit{In re: Gill-Montague}, “the Massachusetts statute defines FAPE as “special education and related services as consistent with the provisions set forth in 20 U.S.C. 1400 et seq. [the IDEA], its accompanying regulations, and which meet the education standards established by statute or established by regulations promulgated by the board of education,”\textsuperscript{31}, including the Massachusetts state curriculum frameworks.\textsuperscript{32} The IDEA in turn defines FAPE as “special education and related services that:

(A) have been provided at public expense, under public supervision and direction, and without charge;
(B) meet the standards of the State educational agency;
(C) include an appropriate preschool, elementary, or secondary school education in the State involved; and
(D) are provided in conformity with the individualized education program required under section 614 (d).\textsuperscript{33}

As stated by the federal courts, the LEA is responsible to offer students meaningful access to an education through an IEP that provides "significant learning" and confers "meaningful benefit" to the student\textsuperscript{34}, through “personalized instruction with sufficient support services …” \textsuperscript{35}. The requirements of the law assure the student access to a public education rather than an education that maximizes the student’s individual potential. \textit{Lenn v. Portland School Committee}, 998 F.2d 1083 (1\textsuperscript{st} Cir. 1993); \textit{GD v. Westmoreland School District}, 930 F.2d 942 (1\textsuperscript{st} Cir. 1991).

The First Circuit Court of Appeals interpreted minimally acceptable standards of educational progress requiring that the IEP yield “effective results” and “demonstrable

\textsuperscript{30} 20 USC 1412(5)(A); 603 CMR 28.02(12)
\textsuperscript{31} MGL c. 71B, §1.
\textsuperscript{32} See the \textit{Mass. Department of Education’s Administrative Advisory SPED 2002-1: Guidance on the change in special education standard of service from “maximum possible development” to “free appropriate public education” (“FAPE”), Effective January 1, 2002} (hereafter \textit{Mass. FAPE Advisory}), 7 MSER Quarterly Reports 1 (2001).
\textsuperscript{33} 33 USC 1401(8). The federal regulations adopted pursuant to the IDEA include a similar definition of FAPE. 34 CFR 300.13.
improvement” in the “various educational and personal skills identified as special needs,”
36 in the context of the potential of the particular student.37

Similarly, the Massachusetts special education statute defines “special education” to
mean “educational programs and assignments . . . designed to develop the educational
potential of children with disabilities . . .” which permit a student to make meaningful
educational progress.38 MGL c. 71B § 1, the special education statute in Massachusetts,
requires that eligible students receive special education services designed to develop the
student’s individual educational potential”39 consistent with the interpretation provided
by other Courts. The IEP is the road map that defines the services to be offered and the
measurable goals embodied therein determine whether the student has made educational
progress.40 See also, In Re: Arlington Public Schools, BSEA # 02-1327, issued on July

The IEPs proposed between 6/26/02 and 2/25/03

The credible evidence shows that the IEPs proposed between 6/26/02 and 2/25/03 were
reasonably calculated to provide Student with a free appropriate public education in the
least restrictive environment. The evidence further shows that Student has made progress
in all of the identified areas of weakness during the relevant time period.

Student has been provided with personalized instruction with sufficient support services
to permit him to benefit educationally. His instruction in math and English was provided
in a small group and he was provided with a study skills class to provide him additional

36 Lenn v. Portland School Committee, 998 F.2d 1083 (1st Cir. 1993) (program must be “reasonably
calculated to provide ‘effective results’ and ‘demonstrable improvement’ in the various ‘educational and
personal skills identified as special needs’”); Roland v. Concord School Committee, 910 F.2d 983 (1st Cir.1990); Burlington v. Department of Education, 736 F.2d 773, 788 (1st Cir. 1984).
development must be measured with respect to the individual student, not by his relation to the rest of
the class, as declining percentile scores may represent the student's inability to maintain the same level of
academic progress achieved by regular peers and not necessarily a lack of educational benefit); Ridgewood
Board of Education v. NE, 172 F.3d 238 (3rd Cir. 1999); MC v. Central Regional School District, 81 F.3d
389 (3rd Cir. 1996), cert. denied 519 US 866 (1996); Roland v. Concord School Committee, 910 F.2d 983
(1st Cir. 1990); Kevin T. v. Elmhurst, 36 IDELR 153 (N.D. Ill. 2002).
38 The Massachusetts Department of Education (DOE) stated that the “FAPE standard . . . requires the
school district to provide personalized instruction tailored to the student’s needs, with sufficient support
services to permit the student to make meaningful educational progress.” Mass. FAPE Advisory (see
footnote 8 above for full title and citation of Advisory) (emphasis supplied).
39 603 CMR 28.01(3). The Massachusetts Department of Education has also noted that the Massachusetts
Education Reform Act “underscores the Commonwealth’s commitment to assist all students to reach their
full educational potential.” Mass. FAPE Advisory (see footnote 8 above for full title and citation of the
Advisory). M.G.L. c. 69, §1 states in part that a paramount goal of the commonwealth is “to provide a
public education system of sufficient quality to extend to all children the opportunity to reach their full
potential.”
40 County of San Diego v. California Special Educ. Hearing Office, 93 F.3d 1458 (9th Cir. 1996) (the
correct standard for measuring educational benefit under the IDEA is whether the child makes progress
toward the goals set forth in IEP and not just whether the placement is reasonably calculated to provide
the student educational benefits.); Evans v. Board of Education of the Rhinebeck Central School District, 930
F.Sup. 83 (S.D. N.Y. 1996) (the IEP must include measurable criteria to assess the student’s progress).
support. Parent’s argument that Student was not provided with grade level instruction and was placed in classes which were not sufficiently challenging is not supported by the record. Ms. Obuchon credibly testified that she provided Student with grade-level instruction in math and English. (Obuchon) Student passed the English and Math MCAS which supports Ms. Obuchon’s testimony that Student received grade level instruction and supports Mashpee’s contention that Student made academic progress. Student’s testimony that he was reading a book in English class that all Mashpee eleventh grade students were reading is also contrary to claims that he did not receive grade level instruction.

Student benefitted from the counseling services provided by Mr. Dolen. Student testified that he felt “a little better” after his sessions with Mr. Dolen. Mr. Dolen was a very credible witness. His testimony showed that he has taken an interest in Student and has developed a good rapport with him. He clearly knew the Student quite well as he had worked with him during the ninth grade when Student experienced behavioral difficulty in school. Mr. Dolen’s testimony also showed that he was willing to make himself available whenever Student requested additional support and that he is genuinely interested in Student’s success as he seeks him out after school and shows interest in Student’s athletic accomplishments. Student appears to appreciate Mr. Dolen’s interest in his accomplishment as evidenced by Student’s showing Mr. Dolen letters that interested colleges sent to him regarding track.41 Student has responded positively to Mr. Dolen’s services and is comfortable seeking him out as needed. (Dolen) Mr. Dolen’s testimony that Student has made progress socially was persuasive. He was able to describe specific instances in which Student had come to him with a problem, taken his advice, and reported back to him that he had resolved the problem. Additionally, Mr. Dolen testified that Student had gone from a student who was isolated during the ninth grade to a student who he now observes being with peers during lunch and in the hallways. (Dolen)

The proposed IEPs appropriately maintained Student’s placement for three of his classes in the resource room. Student’s testimony confirmed that he felt more comfortable learning in the small group environment. Mother testified that Student was placed in the small group classes because he had not been able to handle the larger classes when he was placed in them in ninth grade. Ms. Obuchon testified that Student has made progress in all three of the classes she teaches him. She noted that he seems to enjoy reading now and has made progress in writing his assignments down and bringing enough work to study skills class to stay busy. (Obuchon)

The evidence did not support Parent’s contention that Student behaved inappropriately both at school and at home. In fact, the evidence showed that Student had a difficult time transitioning to the Mashpee Public Schools and has since adjusted well. Student, by his own admission, tried to “act cool” during the ninth grade by talking back to his teachers. Student admitted that he had not been motivated to do his school work and still was not motivated to do more challenging work. The testimony of Student’s teachers, Student, and Mother support a finding that although Student was involved in a number of

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41 Student’s outside counselor, Mr. Putnam, was not aware that Student had received letters from colleges.
disciplinary incidents during the ninth grade, he had been involved in only one minor incident since then, cutting one class. The improvement in Student’s behavior since the ninth grade shows that Student has made progress in managing his behavior.

The only witnesses who testified that Student was not making effective progress were Mother, Dr. LaMonica, and Mr. Putnam. Both Dr. LaMonica and Mr. Putnam testified that they had not seen Student’s IEPs, progress reports, or report cards and had not spoken to any Mashpee Public Schools employees regarding Student’s performance. They were not familiar with the services being provided to Student or the services available at Mashpee High School. I did not credit their testimony regarding Student’s progress or the level at which he was working.

The Parent’s argument that Student was not provided with sufficient transitional planning services is not supported by the evidence. Ms. Day testified that Mashpee began planning for his transition when he first enrolled in school. Ms. Obuchon brought Student to a seminar for students with disabilities at CCCC. A vocational assessment was done pursuant to Parent request. The guidance counselor and Mr. Dolen spoke to Student regarding the PSATs and courses that he would need to take if he wished to be an athletic trainer. The Team also referred Student to Community Connections which Ms. Day credibly testified could provide some job coaching services. (Day, Dolen, Obuchon) Mother did not show that the transitional services were not provided in a timely manner nor that they were not appropriate for Student. There were no transitional services requested by Mother that were not provided by Mashpee.

Based upon the foregoing, I find that the IEPs proposed and the services provided to Student between 6/26/02 and 2/25/03 were appropriate and enabled Student to make academic and social progress.

Residential Placement.

As I have already determined that Mashpee Public Schools has proposed appropriate IEPs and implemented appropriate services for the Student, I cannot find that the Student requires a residential placement. I did not credit the recommendations made by either Dr. LaMonica or Mr. Putnam in that regard. Dr. LaMonica testified that “in a perfect world, I would love [Student] to have a 24 hour residential therapeutic school that will give him his best if not his only shot at being a contributing member of society.” However, the standard I must apply is not a perfect world standard. Having determined that Student is making effective progress in the Mashpee Public Schools it is unnecessary to look at a more restrictive option and especially unnecessary to consider the most restrictive environment, a residential placement. Neither Dr. LaMonica nor Mr. Putnam knew anything about the services provided or available at the Mashpee Public Schools and neither had spoken to anybody from Mashpee to obtain information about Student’s school performance. I did not credit the testimony of either one of them.
Compensatory Services

The First Circuit Court of Appeals has long recognized the right of a student to receive compensatory education as a form of relief to remedy previous deprivations due to a deficient IEP. *Pihl v. Massachusetts Department of Education*, 9 F. 3d 184 (1st Cir. 1993). Where a denial of essential special education services or a significant interruption in the provision of those services has occurred during the period of the Student’s entitlement to special education, compensatory services may be awarded. *Stock v. Massachusetts Hospital School*, 467 NE. 2d 448, 392 Mass. 205 (1985).

I have not found that Student was denied essential special education services nor that he experienced any interruption in his services. Therefore, I find that Student is not entitled to compensatory services.

**ORDER**

I find that the IEPs proposed by the Mashpee Public Schools for the periods between 6/26/02 and 3/25/03 were reasonably calculated to provide Student with a free and appropriate public education in the least restrictive environment. I also find that Student did in fact receive FAPE during the relevant time period. I do not find that Student requires a residential placement nor do I find that the Student is entitled to compensatory services.

Although I find that Mashpee provided Student with a free appropriate public education at all relevant times, the evidence suggests that Student would benefit from a social skills group. Mr. Dolen testified that he has previously run social skills groups and that he thinks a group would be a nice adjunct to Student’s program. Although Student has made progress in the social area, there is no dispute that he continues to have social anxiety. The Team should consider whether Student requires a social skills group in addition to the counseling that he receives from Mr. Dolen.

The Team shall convene to determine whether Student requires a social skills group in addition to Mr. Dolen’s counseling services.

By the Hearing Officer,

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Catherine M. Putney-Yaceshyn
Dated: July 2, 2003

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42 See M.G.L. c. 71B §1 establishing that the disabled student’s period of entitlement runs from the time s/he is 3 years of age until s/he attains a high school diploma (or its equivalent), or the day of the student’s twenty second birthday, whichever comes first. 603 CMR 28.02 (9).