

**COMMONWEALTH OF MASSACHUSETTS
SPECIAL EDUCATION APPEALS**

In Re: Milton Public Schools

BSEA #09-3554

DECISION

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

On December 10, 2008, Parents filed a hearing request with the Bureau of Special Education Appeals (BSEA) alleging Student’s IEP and placement at Milton High School were not providing Student with a free, appropriate public education in light of his significant learning and social-emotional needs. Parents sought placement in an “appropriate and safe educational setting” with a daily reading tutorial and various accommodations. The hearing request further stated that Student would be starting a trial placement at the Learning Prep School in early January 2009, and that Parents would be seeking funding from the Milton Public Schools (hereafter Milton or School) for this placement should the trial prove successful. On March 10, 2009, Parents informed Milton that they would be seeking an order for Milton to fund Student’s placement at Learning Prep School from January 19, 2009 forward.

The hearing was postponed several times at the request of the parties, who were attempting informal resolution of the matter. A pre-hearing conference was held on January 25, 2009. A hearing was held on March 17, April 15, and April 16, 2009.

The Parents were represented by an advocate, and the School was represented by counsel. Each party had an opportunity to examine and cross-examine witnesses and submit documents into the record. The record consists of Parents’ exhibits P-1 through P-36, School’s exhibits S-1 through S-110, and tape recorded testimony and argument. At the parties’ request, the conclusion of the hearing was postponed to May 1, 2009 for submission of written closing arguments and the record closed on that day.

Those present for all or part of the proceeding were:

Student’s Mother

Student’s Father

Jason McCormick, Psy.D. Private Neuropsychologist

Kim Sullivan Special Educator, Milton

Mark Driscoll Special Educator, Milton

Abby P. Raelin, Ph.D. School Psychologist, Milton

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| Jeff Rubin | Director of Pupil Personnel Services, Milton |
| Louise Thomson | Special Educator, Milton |
| Barbara Plonski | Director of Science, Milton |
| Tracy Grandeau | Team Chair, Out of District Coordinator, Milton |
| Robin Lee | Speech-Language Pathologist, Milton |
| Ginny Brennan | Advocate for Parents |
| Tim D. Norris, Esq. | Attorney for Milton |

ISSUES PRESENTED

1. Whether the IEP and placement that Milton provided for Student for May 2008 – through May 2009 was reasonably calculated to provide the Student with a FAPE.
2. If not, whether the Parents’ unilateral placement at the Learning Prep School was appropriate such that Milton should fund this placement.¹

POSITION OF PARENTS

Student’s learning disabilities significantly impair both his academic and social functioning. Despite the best efforts of Milton, the Parents, and Student himself, Student is not able to make effective progress within the Milton Public Schools, and has not done so for some time. Student struggles academically, and is simply unable to truly comprehend or apply course material. Socially, Student is isolated and vulnerable. He has been the target of bullying. After many years in Milton, Student still lacks very basic skills for living in the community, such as making change and telling time. He is not receiving adequate pre-vocational or vocational services. Especially in light of both his age and the severity of his disabilities, Student needs intensive and effective instruction in functional academic, social and community living skills so that he can achieve some degree of independence and self-sufficiency when his special education services end. Parents are more concerned about this goal than about whether or not Student passes MCAS.

In contrast to Milton’s placement, Student’s placement at the Learning Prep School has provided Student with the intensive remedial instruction with compatible peers that Student needs in order to make effective academic and social progress. Moreover, Student is happier, more confident, more secure, and more socially engaged at Learning Prep. Parents were reasonable and justified in placing Student at Learning Prep, and Milton should fund this placement.

POSITION OF SCHOOL

The Parents have failed to carry their burden of demonstrating that the IEP offered by Milton was not reasonably calculated to provide Student with a FAPE in the

¹ Learning Prep. has not collected any tuition payments to date from Parents; therefore, Parents requested that any reimbursement ordered go directly to Learning Prep. rather than to them.

least restrictive environment. As testified to by Milton educators who saw Student on a daily basis, Student made progress towards meeting his IEP goals in reading, writing and mathematics as well as in his inclusion science class. Although Student's progress was slow, this was to be expected given Student's significant cognitive weaknesses. Parents did not provide evidence to rebut that proffered by Milton. Moreover, Milton amended its IEP to add services and/or methodologies requested by the Parents, but Parents removed Student from Milton High School before enough time had elapsed to assess Student's response. Similarly, Student left Milton High School before he had had an opportunity to fully participate in the vocational exploration program offered to him.

As for Parents' allegations of bullying and lack of safety for Student at Milton High School, the School provided evidence, unrebutted by Parents, that the few uncomfortable situations encountered by Student did not constitute bullying. These incidents were isolated, properly dealt with by the School, and were not repeated. Milton took steps to increase Student's safety and comfort level, as well as to facilitate peer interaction. Overall, Milton High School was safe for Student, and addressed his social and emotional needs.

Even if Parents had met their burden of showing that Milton's program was inappropriate, which they have not, Parents have failed to prove that the Learning Prep School (hereafter LPS) is appropriate for Student. They have failed to rebut testimony of School witnesses who concluded that LPS was and is too restrictive for Student, and that its instructional level is below Student's capabilities.

Finally, at most, Parents could receive prospective funding for LPS, as Parents failed to give the legally required notice to Milton of their intention to make a unilateral placement. Indeed, even as of the hearing date, Student's enrollment status at LPS was unclear, and there is no evidence that he was placed there in a way that could subject the School to a claim for reimbursement.

FINDINGS OF FACT

1. Student is a now-sixteen year old boy who lives with his family in Milton. Student is a pleasant, friendly, polite teenager, who works hard in school. His eligibility for special education and related services is not in dispute.
2. Student has received several diagnoses since beginning school, including ADHD and non-verbal learning disabilities. According to standardized tests conducted by Milton in 2007 and a private evaluator in 2008, Student's cognitive skills are unevenly developed. His verbal reasoning abilities are low-average to average, while non-verbal reasoning skills are in the below average to low average range. Student's academic performance in all areas is within the low to very low range. Particular areas of weakness include reading decoding and fluency, math, and written expression. Student also struggles with pragmatic language and age-appropriate social skills, and has few friends of his own age outside of school. Student is unable to tell time using an analog clock. He is not able to make change or calculate the

change due to him when he makes purchases. (Mother, McCormick, Raelin, Thomson)

3. Student began falling behind academically and socially in first and second grade. Parents became concerned that Student was not acquiring reading and math skills. In third or fourth grade, Parents had Student evaluated by Children's Hospital, which, according to Mother, diagnosed Student with fine motor weaknesses, dysgraphia, dyslexia, and ADHD. (Mother)
4. Milton initially placed Student on a § 504 plan, and then issued its first IEP for Student in approximately third grade, to address learning disabilities in reading, written expression and math. The initial IEP called for pullout reading instruction, physical and occupational therapy, and speech therapy. Additionally, in fourth grade, Parents had Student placed on medication for his ADHD. In general, Parents felt that Student was well-supported in elementary school. (P-7, Mother)
5. In March 2004, when Student was in fifth grade, Milton conducted a three-year re-evaluation, which included a psychological evaluation by Abby P. Raelin, Ph.D. The evaluation comprised various standardized tests targeting visual and auditory memory,² which were previously-identified areas of weakness. This 2004 testing showed that Student's skills in both areas were below age expectations, although they had improved since previous testing in 2001. Dr. Raelin recommended keeping tasks short and highly structured, monitoring Student's on-task behavior and comprehension, breaking up longer, complex assignments into smaller segments to help with organization and keep Student from becoming overwhelmed, providing accommodations "consistent with an attention deficit," such as preferential seating, monitoring, etc., monitoring medications, and supporting and encouraging Student since he "seemed unsure of himself and his abilities." (S-12)
6. The re-evaluation of 2004 was used to develop Student's IEP for sixth grade, which was the first year of middle school. Student's middle school program consisted of placement in substantially separate language based classrooms for most of the school day with co-taught science and social studies as well as participation in a "lunch bunch" group. (P-7)
7. According to Mother, middle school was more difficult for Student and Parents than elementary school. Parents found that they were "not allowed" to meet with the aide assigned to help Student. At TEAM meetings, they were told that Student's functioning was "below average." During Student's last year of middle school, Parents became concerned about safety when another student targeted Student for harassment. (Mother)
8. In an effort to supplement Student's middle school experience, Parents privately funded the services of an occupational therapist, a nutritionist, and tutors for math and

² The School's testing in 2004 was limited because Student had received extensive testing from Children's Hospital in November 2003. (S-12)

reading. To support Student's social development, the Parents also privately paid for the Academy program³ for two years, although they felt it was not very effective. (Mother)

9. Milton conducted Student's next (and most recent) three-year re-evaluation in March 2007, during Student's eighth grade year. This re-evaluation consisted of psychological, educational, and speech-language assessments. (S-9 – S-12)
10. The psychological assessment was conducted by Susan J. Whalen, Ed.D, who administered the WISC-IV, Tasks of Emotional Development, (TED), and the classroom portion of the BASC-2. (S-9) The WISC-IV indicated that Student had "a unique set of thinking and reasoning abilities [that] make his overall intellectual functioning difficult to summarize by a single score..." (S-9). In general, the WISC-IV showed Student to have verbal reasoning abilities that were solidly average (55th percentile for age). On the other hand, Student's non-verbal skills, including non-verbal fluid reasoning and perceptual organization fell in the low average range (18th percentile), as did his skills in the areas of sustained attention, concentration, and mental control, including in the area of working memory. (S-9) Student's processing speed was significantly below average, in the 7th percentile. Student's WISC-IV scores had increased significantly in three subtests (Comprehension, Block Design and Picture Concepts) over testing from three years previously. (S-9)
11. Dr. Whelan concluded that socially and emotionally, Student presented as engaging, anxious when meeting with a new adult, concerned about his performance, somewhat impulsive, relating better to adults than to peers. Student enjoyed his family and familiar activities such as bike-riding and playing with his dog, but wished he were more adept socially. She found that Student "depends on structure and familiar routines to manage his anxiety. These may include reading, going to church, riding his bike on a familiar route...In these familiar situations he can maintain his composure, different from others, [sic] when he is uncertain about his behavior, the behavior of peers, and the behavioral expectations of the situation..." (S-9)
12. Ms. Deanna Magill performed the educational assessment, which consisted of ten subtests of the Woodcock-Johnson-III Tests of Achievement. Ms. Magill's report states that Student's "performance on the achievement subtests suggests that his overall achievement is in the very low range." Specifics are as follows:
 - Reading: Overall basic reading skills were in the "low" range. Word Reading was "very low;" Word Attack was "low," "suggesting that he has not generalized the phonetic rules;" reading simple sentences and deciding if true or false yielded a "low" score; filling in missing words in sentences was "low," and subtest was very difficult due to lack of comprehension and incorrect decoding.

³ The Academy is a program designed to teach social skills in a recreational context. (Mother)

- Math: Computational skills and automaticity with basic math facts were “very low.” More specifically, Student’s ability to solve addition, subtraction, and multiplication problems was inconsistent, and he could not do division problems. He did somewhat better with a calculator, with which he could do problems with division, fractions, mixed numbers, decimals, and negative integers after instructions on how to input the problem. Automaticity with addition, subtraction, and multiplication was a “low” skill. Scores for word problems were “very low” because Student did not know procedure for solving the problem and just added all the numbers in the problem. (S-10)
- Written Language: Overall written expression performance was in the low range, with spelling and sentence writing being, respectively “very low” and “low,” and writing sentences in response to a question being low average. (S-10)
- Academic Skills: A composite measure of Student’s reading decoding, math calculation, and spelling of single word responses was “very low average.”
- Academic Fluency: A measure of how quickly Student could complete items involving basic skills was “low.”
- Academic Applications: Performance in this area of applying academic skills to academic problems was “very low.”

13. Ms. Magill’s conclusion was that Student, overall, was:

performing within the low to very low range in all academic areas. A relative strength for [Student] was his ability to write sentences in response to questions. When you compare his testing done three years ago to current testing, [Student] has made some progress but it is negligible. The older a student is, the more they need to do to score similarly. In most areas, [Student] scored at the same grade level as he did three years ago but since he is three years older, the difference is much greater. (S-10)

14. Ms. Magill recommended services focused on improving Student’s reading and writing skills as well as on improving his application of these skills. She also recommended emphasis on improving Student’s number sense so that he could be able to know if an answer was incorrect and accurately use a calculator. (S-10)

15. The speech/language assessment, conducted by John Desmond, consisted of selected subtests of the Clinical Evaluation of Language Evaluation (CELF-4) to assess receptive and expressive language skills. Of the five subtests administered, Student scored in the “low average” range (16th percentile) in one (Recalling Sentences), the “below average” range (9th percentile) in another (Concepts and Following

Directions), and “significantly below average” (1st percentile) in two others (Word Classes and Formulated Sentences.). He scored in the high average range (63d percentile) in one subtest, Word Definitions. (S-11).

16. The Milton TEAM convened on April 25, 2007 to discuss the evaluations referred to above and formulate an IEP for Student’s freshman year in high school. Upon hearing Ms. Magill’s report of “negligible progress” in particular, Parents were very concerned about Student, since previous progress reports had been positive. (Mother) Moreover, Parents did not feel that the progress Student purportedly was making in school was reflected at home. They were particularly concerned that Student still (at age 13) could not tell time or make change, and was very naïve and immature socially. Mother testified that School members of the team said that Student would receive “intense services” in high school, and she found this reassuring. (Mother)
17. On May 18, 2007 Milton issued an IEP for May 2007 through May 2008, covering the final month or so of eighth grade and the majority of Student’s freshman year in high school. (S-4) This IEP described Student as an enthusiastic participant in school, who was attentive in class and was “often able to take in a great deal of verbal information.” He was able to demonstrate knowledge of strategies with reminders to use them independently. He could be impulsive, often missed social cues, and needed help to develop peer relationships. Student was receptive to strategies to stay on task and interact in conversations with adults. He was working on strategies to relate to peers. (S-4)
18. The “Vision Statement” in the IEP was for Student to have a successful transition to high school, increase personal responsibility, pass MCAS, complete grade level assignments, and make strides in social interaction so that Student could “integrate into society post graduation.” (S-4)
19. The IEP called for extensive accommodations, including books on tape for content area texts, an aide for regular education classes that were not “following an inclusion model” and to model social interactions, consistent routines, not penalizing for spelling errors when grading content, use of a scribe and/or word processor for writing, a waiver of the foreign language requirement, clarification of social rules, and additional similar accommodations, as well as numerous additional accommodations for testing.
20. Additionally, the IEP called for modified/specialized instruction in reading, language arts, math, and academic support. The IEP contained a total of 9 goals, addressing Student’s needs in the areas of reading, writing, English language arts, speech/language, math, and “social” (addressing Student’s misreading of social cues). (S-4)
21. To address the foregoing, for high school, the IEP called for placement in a sub-separate language-based setting for “LB English” and reading (5 x 48 minutes/week) as well as pullout services in the form of 4 x 48 minutes per week of academic

support, 1 x 48 minutes per week each of speech/language services and adjustment counseling. (S-4) Science would be in a co-taught regular education classroom. The IEP did not indicate the setting for math instruction. (S-4) Parents accepted this IEP and placement in full on June 14, 2007. (S-4)

22. Student began attending Milton High School pursuant to the accepted IEP in September 2007. Parents soon became concerned because of delays in full implementation of the accepted IEP. (Mother)
23. For example, Student's IEP provided that Student was to receive reading instruction (as well as English Language Arts and writing) in a substantially separate, language-based classroom. However, Student did not start receiving specialized reading services from the special education teacher, Ms. Thompson, until approximately January 2008, mid-way through the 2007-2008 school year. (Mother, Thompson, S-4)
24. Additionally, Parents noted that Student continued to have social problems, and was socially much less mature than his peers. They were concerned about several incidents which they characterized as bullying.⁴ (Mother)
25. In or about February 2008, Parents informed Milton of their concerns about Student's reading and math performance. On February 26, 2008, based on Parents' concerns regarding Student's reading difficulties, Milton had a reading assessment conducted by Ms. Tracy Grandeau, a special education teacher who also is Milton's high school TEAM chair and out of district coordinator. The assessment consisted of the Gray Oral Reading Test-4 (GORT-4), which is designed to measure reading comprehension, fluency, accuracy, and rate. (Grandeau, S-3, S-8)
26. Student's performance on the GORT-4 was in the "poor" range for rate and accuracy, and in the "very poor" range (below first percentile) for fluency. Student scored in the "below average" range (16th percentile) for comprehension. Student had difficulty with decoding, and with substituting words such as "what" for "we." He read slowly, word-for-word, and was not able to read in an automatic fashion. His fluency and accuracy declined as the passages he read got longer – i.e., nine lines – and more complex. (S-8)
27. Ms. Grandeau's recommendations included encouraging Student to preview material before starting an assignment, introducing new vocabulary and concepts prior to starting an assignment, providing Student with guiding questions or notes, showing Student how to take simple notes on reading, encouraging visualization, encouraging use of Books on Tape, providing extra time for reading assignments, and continuing instruction in comprehension and decoding. (S-8) Ms. Grandeau did not recommend further testing in reading at that time.

⁴ Parents characterize the incidents in question as "bullying;" the School deems them uncomfortable peer situations. There is no dispute, however, that on several occasions, other students acted inappropriately towards Student.

28. The TEAM met on February 29, 2008 to discuss both the reading assessment and Student's math performance. Milton proposed an IEP amendment adding 48 minutes per week of math instruction to work on basic math skills without using a calculator, including the four basic operations, decimals, percentages, and real-life applications (e.g., making change). (S-3) The amendment also stated that Student would continue in his substantially separate reading and language-based English classes. Parents accepted this amendment in full. ⁵ (S-3)
29. In March and April 2008, Parents had Student evaluated by a private neuropsychologist, Jason McCormick, Ph.D., in order to "clarify [Student's] diagnostic profile, monitor his progress since prior testing, and identify further interventions to promote progress..." (P-7) Dr. McCormick's evaluation consisted of a review of pertinent records, interview with Parents, clinical observation, and a battery of approximately 18 standardized tests of cognitive and academic functioning. Additionally, Parents completed several questionnaires and rating scales pertaining to behavior, and Student's special education teacher completed the Achenbach Teacher Report Form. (McCormick, P-7)
30. In an undated report issued after the evaluation, Dr. McCormick stated that Parents were concerned with Student's slow academic progress in high school, and continued difficulty with social interaction, including at least two incidents of being publicly ridiculed or hit by other students. Student's special educator reported that Student was a pleasure to have in class, but had "poor abilities to read social cues, manage the interpersonal demands of social situations with peers, interpret facial expressions, maintain eye contact, and monitor the volume of his voice." According to the teacher, Student also functioned slightly below grade level in science and well below grade level in English, reading and math. He needed much one-to-one attention to help him organize his materials and hand in assignments. (P-7)
31. Dr. McCormick's report described Student as a friendly, cooperative student who seemed much younger than his age because of his impulsive behavior, cognitive limitation, and poor social pragmatic skills. He needed frequent breaks and an additional testing session because he was distractible and fatigued easily during testing. (P-7)
32. Cognitive testing revealed that Student had an "atypical cognitive profile," with reasoning skills spanning from the low average range on some subtests to well below average on others. Student's verbal reasoning skills were in the low average range, his visual reasoning skills and processing speed were below average (first percentile), and working memory was in the borderline range (third percentile). (P-7)
33. Standardized academic testing indicated that since prior testing, Student had made "little or no progress in most academic areas and in fact has shown regression in other

⁵ Mother testified that Student's reading instruction and additional math instruction could not be scheduled without eliminating Student's keyboarding class and one period of regular math instruction. (Mother)

areas. In general, most of [Student's] basic academic skills lie in the Borderline range or below, with most skills lying between the second and fifth grade range (between four and seven years below his current grade placement.") (P-7)

34. Specifically, the WIAT-II showed that Student's skills in numerical operations and math reasoning had declined since prior testing in 2006. Standard scores for numerical operations fell from 82 to 71 (corresponding to grade equivalents of 5.05 to 4.07). Scores for math reasoning fell from 60 to 42 (or from a grade equivalent of 3.01 to 2.04)
35. Word reading and pseudo-word decoding were in the borderline range, consistent with prior testing. (P-7) Student showed regression in spelling, with standard scores falling from 73 to 59 (Below Average) In general, test scores showed that Student had made less than one year's progress in the two years since 2006, such that "the gap between his decoding skills and those of his peers has continued to widen..." Written expression skills fell in the Borderline range, and had not been previously measured with the WIAT.
36. On the Woodcock-Johnson Test of Achievement-III (WJ-III) Student achieved a standard score of 67 (3.07 G.E.) in math fluency, in the Below Average range. Student did not appear to know math facts automatically. (P-7)
37. Scores on the GORT-IV were similar to those achieved on the same test in the prior month (February 2008), i.e., in the borderline range for rate and accuracy, the below average range for fluency, and low average for comprehension. (p-7) In silent reading comprehension, measured on the Gray Silent Reading Test, Student achieved a standard score of 61 (G.E. 2.08), or below average.
38. Tests of Student's visual-motor skills showed fine-motor difficulties likely to impact handwriting. Student also had difficulties with executive functioning, i.e., with sustaining mental effort, initiating problem solving activity, switching between tasks, and organizing and regulating mental processes.
39. In general, Dr. McCormick noted that Student had many strengths, including a "terrific personality and marvelous spirit." He viewed Student as a young man who wanted to do well and make others happy, and who genuinely enjoyed school and his life in general. Student also had solidly average skills in many areas of language processing, particularly in the area of oral language.
40. On the other hand, Dr. McCormick affirmed Student's prior diagnoses of ADHD as well as a non-verbal learning disability (NLD) that resulted in a "clear impairment in [the] ability to reason through visually-presented material relative to his capacity for verbal reasoning."
41. Dr. McCormick also found that Student's "cheerful cooperative demeanor...masks the social difficulties he is experiencing at school and with same-age peers in

general.” He described Student as friendly and outgoing but “quite naïve and young for his age,” preferring to spend time with younger children. Structured interviews and questionnaires completed by Parents revealed “social development in the Borderline range.” Also in the Borderline range were Student’s ability to accurately identify facial expressions and take the perspectives of others. (P-7) S

42. Finally, Dr. McCormick noted with great concern Student’s “negligible progress in most academic skills and actual regression in others.” Dr. McCormick predicted that Student would make few educational or social gains, would risk emergence of anxiety or depression, disengagement from the educational process, and inability to transition from school to adult life without “an intensification of supports, a change in instructional methodology, and a reprioritization of educational goals.” (P-7)
43. Dr. McCormick recommended placing Student in a small (8 – 10 students), structured, language-based classroom for all core academic areas, with peers having similar profiles. He further recommended intensive, specialized instruction in reading (including daily instruction with a rule-based method); written expression (individualized, with a specialized curriculum); math; life skills (community safety, functional math), vocational training, and social skills as well as a summer program to prevent regression. (P-7)
44. On May 28, 2008 the TEAM convened to consider Dr. McCormick’s report and develop an IEP for May 28, 2008 through May 27, 2009. The resulting IEP, provided for continued placement at Milton High School. (S-2) The IEP called for essentially the same accommodations as in the prior IEP. (S-4) There were some changes in goals; the Reading goal was adjusted to focus on decoding, and the Writing, Speech-Language, Social/Emotional and Mathematics goals were made more explicit with more detailed benchmarks. The Speech-language goal specifically addressed pragmatics. A Vocational goal was added. The service grid provided for placement in a substantially separate classroom for all academic subjects except for science for 2008 -- 2009 (as contrasted with 2007 – 2008, where both science and social studies were in the general classroom, with support). Science was to be in a regular classroom, with the support of an aide. (As it turned out, the science class was co-taught, with a regular and special education teacher. (Plonski, Sullivan)) Other Grid C services included 1 x 48 minutes per cycle of speech/language services, 4x48 minutes per cycle of “vocational” instruction (which appeared to consist of identification of interest areas and job qualifications, reading classified ads, mock job interviews, etc.) 4 x 48 minutes per cycle of academic support , and 1x 48 minutes per week of adjustment counseling.⁶ (S-2) Under “Additional Information,” the IEP noted Student’s anticipated graduation date as June 30, 2011. Finally, the IEP provided for an extended year program (S-2)

⁶ Logistically, Student spent nearly two periods per day (eight periods per five-day cycle) in the study skills classroom. One period per day focused on time management, study skills, and homework help, and the other period focused on functional math and vocational skills. (S-8)

45. Accompanying the IEP was a Transition Planning Form (TPF) which stated the anticipated date of Chapter 688 referral as June 2009. (P-3) This form stated Student's "Post-Secondary Vision" as "[w]ith appropriate supports and intensive services," acquiring literacy and math skills for post-secondary education or vocational training, and gaining social pragmatic and functional life skills to allow him to live as independently as possible and engage in age-appropriate social experiences. (P-3) The TPF "Action Plan" provided the following in the domains required by the form:
- Instruction—working towards high school graduation requirements, functional skills instruction, social pragmatics instruction; career exploration.
 - Employment—work on prevocational skills, learn job-finding skills, attend Career Quest Program⁷ (focusing on employment process, communication/social skills, on-the-job training).
 - Community Experiences/Post School Adult Living—investigation of community resources such as MRC, community service (a MHS graduation requirement). (P-3)
46. On July 1, 2008, Parents consented to the placement, but partially rejected the IEP, and attached a detailed, 5-page letter discussing their areas of disagreement. Parental consent to the placement was conditioned on the "understanding that we would require Dr. Jason McCormick to conduct an observation at our expense, within the first three weeks of school to determine the appropriateness of the IEP placement.
47. Among other things, this letter noted Parents' concerns with Student's "lack of progress and areas of identified regression noted in independent testing," along with "significant" delays in reading, writing, and math, "limited" social pragmatic skills "which place him at risk in a traditional school environment." The letter further stated that Parents felt that "the programming at the high school is inadequate to meet [Student's] intensive needs. [Student] requires a comprehensive and intensive program that includes vocational training and transition planning." (S-2)
48. Parents' letter requested that the IEP specifically mention numerous areas of Student's areas of weakness, including processing speed and working memory, math, reading, and writing skills, executive functioning, concentration, social immaturity and vulnerability to bullying, and reduced visual-motor abilities. The letter further rejected the absence of a daily reading tutorial, and specific instruction to address executive functioning weaknesses, and asked for numerous changes and additions to goals, benchmarks, and accommodations. (S-2)
49. Student entered tenth grade in September 2008 pursuant to the partially rejected May IEP referred to above. The TEAM reconvened on September 8, 2008 to discuss the rejected portions of the IEP and make further revisions. On September 12, 2008, Milton issued a revised IEP for the 2008-2009 school year that added two, sixty-minute reading tutorial sessions to be held after school during the academic year. (Grandeau, P-1, P-2) In a letter dated October 3, 2008, Parents partially rejected this

⁷ The record contains no other information about this program.

revised IEP. They accepted the placement, accommodations, and services, but rejected the omission of standardized testing to measure academic progress as well as well as the absence of any reference to prior bullying. Parents also objected to the wording of the vision statement, and noted that Student had not received books on tape that had been provided for in prior IEPs. (S-1)

50. Finally, Parents' October 3 letter reiterated their concern about Student's "lack of progress and areas of identified regression noted in independent testing..." as well as "significant delay[s] in reading writing in math." Parents further noted that Student "has limited functional life skills" and "limited social pragmatic skills that place him at risk in a traditional school environment." Parents were "concerned that the programming at the high school is inadequate to meet [Student's] intensive needs. [Student] requires a comprehensive and intensive program that includes vocational training and transition planning." (S-1)
51. As stated above, despite concerns of Parents, Student started tenth grade at Milton High School pursuant to the amended IEP. Several of Student's teachers and providers testified as to his performance and functioning during the first part of his tenth grade year.
52. Student's speech/language pathologist, Robin Lee, testified that she had worked with Student during his freshman and the first part of his sophomore years at MHS. During tenth grade, Student participated in a group of four students (2 boys and 2 girls) who met weekly to work on social pragmatics, (including conversational skills such as eye contact, understanding non-verbal cuing, etc.), expressive language, and voice quality, (e.g., learning to modulate rate and volume of speech) as well as writing. Ms. Lee testified that overall, Student's abilities fell in the middle range within the group; however, he was "a leader" in verbal discussions, contributing many thoughts and ideas to the group. (Lee) Ms. Lee felt that Student had made progress in the area of written expression, as measured by her observation of an increase in the length and level of detail of his written sentences. Ms. Lee had not measured progress in writing via standardized testing during the period at issue. Ms. Lee was not aware whether or not Student was generalizing his skills outside of the speech sessions, but assumed that teachers would contact her if he was not doing so. (Lee)
53. In addition to the weekly speech/language group, Ms. Lee also facilitated a boys' group in which Student participated during tenth grade. The purpose of this group, which consisted of seven students on IEPs (including Student) and six typical peers, was to encourage inclusion of students with disabilities in out-of-school activities. (Lee) During the fall of 2008, the boys' group went on two field trips: bowling followed by a meal in a food court, and the Basketball Field House followed by shopping in Boston. Ms. Lee testified that Student "thrived" with typical peers, who enjoyed Student and his sense of humor. On the bowling field trip, Student was able to order food on his own in the food court, but needed help counting his change after paying for it. Ms. Lee had no knowledge of whether Student had additional, outside

contact with the typical boys' group members. (Lee) Parent testified that he did not. (Mother)

54. Student's reading and ELA teacher for grades 9⁸ and 10, Ms. Louise Thomson, testified that during tenth grade, she taught Student 3 x 48 and 1x 90/week for ELA and 1x48/week for reading in a substantially-separate class of seven students. Ms. Thomson stated that she used a program called "English 1-2-3" which parallels the standard MHS ELA curriculum and consists of age-appropriate, high-interest reading materials. (Thomson)
55. Ms. Thomson felt that Student had progressed in reading comprehension and decoding. Student performed better in comprehension, which was an area of relative strength, than in decoding, which was challenging and where his progress was slow. Ms. Thomson addressed Student's decoding needs by having him do oral reading, sounding out words and using context to assist with decoding. She did not use a specific remedial decoding program because—unlike Dr. McCormick--she had felt that by the time a student is in high school, he/she should be focusing on content rather than decoding, and could use taped texts to understand material that he could not decode. As of the hearing date, however, Ms. Thomson testified that she was "not sure" that a structured decoding program would not be helpful to Student. (Thomson)
56. Ms. Thomson did not use standardized tests to measure Student's progress. Rather she used a combination of in-class tests and quizzes, assignments, and class participation to assess how Student was doing. She testified that Student was doing "better" in ELA when he left Milton than when she first had met him. (Thomson)
57. In the area of writing, Ms. Thomson testified that she used the "Empower" program, which uses templates and graphic organizers to teach students drafting, organization, and proofreading skills. She testified that at the beginning of ninth grade, Student could write a simple sentence but not a paragraph. By mid-tenth grade, Student was beginning to be able to write a five-paragraph essay, with templates, graphic organizers, and moderate teacher support. Ms. Thomson did not believe that Student had been able to generalize his writing skills outside of the classroom. (Thomson)
58. Finally, Ms. Thomson testified that Student had not been consistent with homework completion. (Thomson)
59. Student's teacher for math, history, and academic support was Mr. Mark Driscoll. Mr. Driscoll typically saw Student for 4 periods per day during tenth grade. Mr. Driscoll testified that in history class, Mondays and Tuesdays were spent pre-viewing the vocabulary and main topics that would be used in the text, then reading the text as

⁸ As noted above, during ninth grade, Student's IEP called for decoding instruction, but he did not receive this service until approximately January 2008. At that time, Ms. Thomson discovered that Student's name had been inadvertently omitted from the list of incoming ninth-graders who were to receive decoding services.

a group. The remaining history classes were spent studying a particular country and reading and discussing newspaper articles to study current events. Mr. Driscoll testified that the text initially used by the class was too difficult. That text was replaced by an easier one (for the whole class), and Student was better able to read the new text. (Driscoll) (Parent, on the other hand, testified that even the substitute text was too difficult for Student.)

60. Mr. Driscoll felt that Student made progress in history class. He noted that in answering a quiz question about why the lives of children during the Industrial Revolution were different from the lives of kids today, Student provided five or six reasons. Only one other student in the class was able to name as many reasons. (Driscoll)
61. Regarding math, Mr. Driscoll testified that Student, like all of his peers in math class, was still learning the four basic operations and was overly reliant on a calculator. Mr. Driscoll removed all of the students' calculators, and found that all students improved their basic skills in operations with one- and two-digit numbers. Mr. Driscoll testified that Student made progress, particularly in addition, subtraction and multiplication (division was still difficult for him). Student was beginning to recognize different denominations of money and to use money without a calculator. Mr. Driscoll felt that his skill in this area was at the elementary to middle school level. He recalled that Student could tell time and make change by the time he left Milton High School. (Driscoll) Parent disagrees with this view. (Mother)
62. With respect to academic support, Mr. Driscoll testified that on alternate Fridays, he helped Student organize his backpack and prioritize his obligations. Student had made some progress in his ability to do this independently but needed to improve his skills further. Student "usually" completed his homework assignments. (Driscoll)
63. In addition to the substantially-separate classes referred to above, Student participated in a co-taught regular education tenth grade biology class led by a certified, regular education science teacher, Ms. Barbara Plonski, and co-taught by a special education teacher, Ms. Kimberly Sullivan. (Plonski)
64. During the period at issue, Ms. Plonski's class was studying various aspects of cell functioning, including relevant principles of chemistry and biochemistry. Ms. Plonski taught this material using a variety of approaches, including lectures, labs, visual aids, manipulatives, and guided notes. (Plonski)
65. Ms. Sullivan deferred teaching of content to Ms. Plonski, and played a supportive role by circulating through the classroom assisting students. Ms. Sullivan was actively involved in Student's participation in biology class. She scribed Student's assignments and tests. She also spoke with him frequently in and out of class to ensure that he had class notes and materials, and that he understood the material being taught. (Sullivan)

66. Parents continued to be concerned about social issues and safety in tenth grade. Mother testified that Student's ability to assess social situations, read social cues, or understand when someone might intend to do harm to him were well below what was appropriate for his age; she estimated that his social skills were comparable to those of a child eight to ten years old. (Mother) Parents felt that as a result, Student was particularly vulnerable to bullying. Mother testified that Student did not always report peer issues to her, but would confide in his sister, who then reported the issues to Parents. She also testified that she knew when Student had had a bad day, because he would cry or have anger outbursts at home. (Mother)
67. Parents were also concerned that Student appeared not to be making friends at school. (Mother) Ms. Sullivan, one of Student's special education teachers, ate lunch with Student a couple of times per week after he reported that he had no one to sit with at lunchtime. (Sullivan)
68. Two peer incidents occurred during October 2008. The first incident occurred in early October in math class, on a day when a substitute teacher was present. On that day, a fellow student got upset with Student, put a trash barrel over his head, and punched and slapped him. Parents reported the incident to the Milton Police Department, which conveyed the information to the MHS liaison officer. The other student was subsequently removed from the math class. Student's father met with Mr. John Drottar, the MHS principal, and discussed the incident, and Student's vulnerability resulting from his disability. Mr. Drottar stated that he would attempt to assure that more experienced substitutes were used in Student's classes, and to be vigilant regarding Student's safety. (Drottar)
69. Several days later a second incident occurred, this time in the cafeteria. Student had broken an unwritten rule of the cafeteria by sitting in another student's temporarily empty seat. When the other student returned, he put Student in a headlock. The other student was disciplined. (Drottar, Mother)
70. Mr. Drottar testified that Milton High School was, overall, a safe school that takes a "harsh" stance towards bullying and harassment. The student handbook strictly prohibits such activity. The school uses a curriculum called "A World of Difference" to educate students on the importance of mutual respect. Select upper class students are trained to assist incoming ninth graders with adjusting to high school, and with learning the high school's policies regarding respect for other students. (Drottar) Mr. Drottar had not been aware of Student's disability-related social issues prior to meeting with Student's father, and understood Parents' concerns, but felt that the school was responsive to the incidents reported, Student could be safe at Milton High School.
71. On October 3, 2008, Dr. McCormick conducted an observation of Student at Milton High School to assess the appropriateness of the intensified programming. Dr. McCormick observed two language-based classes, English language arts (ELA) and

history, as well as the inclusion biology class. (McCormick) Dr. McCormick's report, issued on October 16, 2008, noted that Student was "a hard working, enthusiastic and happy student" who was very eager to please and who actively participated in all of his classes. He volunteered regularly, and was able to correctly answer questions, particularly factual ones.

72. In the co-taught inclusion science class, Dr. McCormick observed that Student volunteered to answered questions (some correctly and some not), kept up with the in-class assignment of filling out the blanks in an outline, and complained once that the teacher was "going too fast." Dr. McCormick noted that it was unclear how much Student actually understood the concepts being taught. (P-8)
73. As was the case in biology class, Student actively participated in the substantially-separate history class taught by Mr. Driscoll. In fact, Student was the only one of the six students answering questions and volunteering.
74. Dr. McCormick reported that Ms. Thomson's sub-separate English class was structured and organized, but did not comment on Student's participation in particular. (P-8)
75. Overall, Dr. McCormick felt that Student was less able to keep up with academic expectations than he appeared to be. Student needed much teacher assistance to help him with tasks such as finding the second page of a newspaper article in history class. (P-8) Dr. McCormick noted that as of the time of his evaluation, Student was not yet receiving the reading tutorial provided for in his IEP⁹ or an audio version of his science text, that the history text was too difficult, according to Parents (Milton subsequently provided a different text), and that the pace of the science class was too fast for Student. Dr. McCormick also noted that the IEP failed to make adequate provisions for home-school communication over issues such as homework, as well as formal teacher consultation time, and criticized the absence of a specific vocational program and life-skills goals.
76. In sum, Dr. McCormick felt that although Milton was committed to Student's success and had been attempting to meet all of his needs, Student required a "cohesive educational program specifically designed to meet the needs of students with alternative learning styles." An appropriate program would include classes of no more than 8 to 10 students, consistent use of language-based instructional techniques, as well as a "system to enhance organizational and study skills" across all subject areas, reinforcement of social skills throughout the day, daily specialized reading instruction, and vocational and life-skills instruction that is both school and community-based. (P-8, McCormick)

⁹ As stated in his prior report, Dr. McCormick had concluded that Student needed one hour daily of specialized reading instruction, using "systematic approaches to teaching phonemic analytic skills, fluency, and comprehension." Dr. McCormick felt that the two hours per week of after-school reading instruction provided for in the IEP were insufficient, but was concerned that there was no room in Student's schedule for additional reading during the school day and that Student might be overly stressed by additional after-school sessions. (P-8)

77. Dr. McCormick testified that he had suggested that the Parents consider the Learning Prep School (LPS) for Student, which he felt would provide Student with the systematic instruction that Student needed. After his observation, Dr. McCormick believed that Milton High School could not meet Student's needs, despite increasing intensity of services by Milton, given his minimal academic progress over the years coupled with his social immaturity and vulnerability, (McCormick)
78. Beginning on January 5, 2009, Parents enrolled Student in LPS in Newton, MA for a two week trial, with the intention to seek funding for that placement from Milton if the trial was successful.
79. On or about January 19, 2009 Student was accepted for enrollment in LPS. In a letter dated March 10, 2009, Parents' advocate stated the following:

As you are aware, [Student] was allowed a two week trial at Learning Prep School (LPS) in Newton beginning January 5, 2009. At this time [Student] continues to attend LPS while the parties attempt to resolve this matter. Please be advised that if the parents prevail at hearing they are seeking retroactive reimbursement beginning on January 19, 2009... (P-23)

80. Student has continued at LPS from January 2009 through the date of hearing.

Parents' Proposed Program

81. Parents have not presented specific background information regarding LPS; however, I take administrative notice of information about the school contained in the DESE directory of private special education schools. Specifically, the DESE directory indicates, and the parties do not dispute, that LPS is a Chapter 766-approved private day school located in Newton, MA. LPS serves students in grades 2 through 12. (See www.doe.mass.edu/profiles) I further take administrative notice of the LPS website insofar as it states that the school specializes in educating students with significant language-based learning disabilities and resulting impairments in reading, writing, and spoken language, as well as in related areas such as social pragmatics, attention, and executive functioning. (Mother, McCormick) LPS has rules regarding physical contact designed to prevent harassment and bullying. (Mother)
82. Mother testified that Parents elected to place Student at LPS because the services at Milton High School were not coordinated or intensive enough to enable Student to make effective progress, despite the efforts of Student, Parents, and school staff. (Mother) After researching and investigating LPS, Parents felt it would be a good fit for Student, that staff worked together in a coordinated way, that Student would receive needed assistance with social interactions and vocational exploration, and that staff there understood him. (Mother)

83. At LPS, Student was in small, homogeneous classes. In addition to core academic subjects, Student studied computer keyboarding and social pragmatics. He met regularly with a designated counselor. (Mother)
84. Mother further testified that after two months at LPS, Student was a “new kid.” She felt that Student benefited from being in a small class of similar peers who did not have behavior problems. Mother observed that after starting at LPS, Student began reading at home on his own and became independent with his homework. Student commented that the “kids at LPS are nice,” and had phone conversations with other students. Mother felt that Student benefited from the pacing of classes at LPS as well as from “thinking maps” that were used across the curriculum to analyze and organize material being taught. (Mother)
85. On March 3, 2009, Ms. Grandeau and Ms. Raelin observed Student at LPS in language arts and science classes. In general, they observed that Student was the most enthusiastic and engaged student in his group, that the ELA class was not using technology, and that the science lesson was at approximately a first grade level, far below the level at which Student had been achieving at MHS. Ms. Grandeau felt that there were no methods or accommodations used at LPS with Student that could not be replicated at MHS. (Grandeau, Raelin)

Program Proposed by the School

86. Milton’s program has been extensively described above. In sum, Milton had been providing Student with substantially separate instruction in all academic subjects except for science (biology), which was co-taught, as well as 2 after-school sessions per week of reading instruction to address decoding, instruction in study skills/academic support, and speech/language therapy including social pragmatics. Additionally, Student participated in an integrated boys’ group that was not reflected in his IEP.

FINDINGS AND CONCLUSIONS

Based on the evidence at the hearing, I conclude that IEP and services provided by Milton pursuant to the IEP for May 2008 through May 2009 (as amended) was not reasonably calculated to provide Student with FAPE. I further conclude that the Learning Prep School was appropriate from the January 19, 2009 through the end of the 2008-2009 school year. My reasoning follows.

There is no dispute that Student is a school-aged child with a disability who is eligible for special education and related services pursuant to the IDEA, 20 USC Section 1400, *et seq.*, and the Massachusetts special education statute, G.L. c. 71B (“Chapter 766”). Student is entitled, therefore, to a free appropriate public education (FAPE), that is, to a program and services that are tailored to his unique needs and potential, and is designed to provide ‘effective results’ and ‘demonstrable improvement’ in the educational and personal skills identified as special needs.” 34 C.F.R. 300.300(3)(ii);

Lenn v. Portland School Committee, 998 F.2d 1083 (1st Cir. 1993), citing Roland M. v. Concord School Committee, 910 F.2d 983 (1st Cir. 1990), cert. denied, 499 U.S. 912 (1991).

Education must be provided in the least restrictive environment (LRE) consistent with an appropriate program; that is, students should be placed in more restrictive environments, such as private day or residential schools, only when the nature or severity of the child's disability is such that the child cannot receive FAPE in a less restrictive setting. (Id.) On the other hand, the opportunity to be educated with non-disabled students does not cure a program that otherwise is inappropriate. School Committee of Town of Burlington v. Dept. of Education of Mass., 471 U.S. 359 (1985).

In a due process proceeding to determine whether a school district has offered or provided FAPE to an eligible child, the burden of proof is on the party seeking to change the status quo. In the instant case, as the moving party challenging the School's IEP and placement, Parents bear this burden. That is, in order to prevail, they first must prove, by a preponderance of the evidence, that Milton's IEP and services were not appropriate, i.e., were not reasonably calculated to provide Student with FAPE. Schaffer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005).

If Parents meet this burden, they must then prove that LPS was appropriate for Student.¹⁰ The Parents are not held to the same appropriateness standard as the school district, however, and need only demonstrate that the LPS program was or is responsive to Student's special needs, so that he can benefit educationally. Florence County School District Four v. Carter, 510 US 7, 13 (1993), Doe v. West Boylston School Committee, 28 IDELR 1182 (D. Mass., 1998); In Re Gill-Montague RSD, BSEA #01-1222 (Crane, August 2001).

In the instant case, the parties have much agreement on Student's profile as a highly likeable, enthusiastic, hard-working young man with relative strengths in verbal comprehension, along with significant, long-standing deficits in reading decoding and fluency, math, and written expression, as well as problems with executive functioning and attention. The parties also agree that Student is naïve and socially immature, and that he struggles with pragmatic language and age-appropriate social skills. Mother's testimony that while at MHS Student had no friends outside of school, that he could not confidently tell time or make change at the age of 16, and that he was "tolerated" by his teammates in town sports, was not disputed or contradicted by the School.

Finally, there is no dispute that Student's progress has been extremely slow, despite many years of special education services and accommodations provided by Milton, good attendance and behavior on the part of the Student, support and involvement by Parents, and a cordial relationship between Parents and Milton.

¹⁰ If parents of an eligible disabled child can prove that the program and services offered by their school district do not provide FAPE, they may be reimbursed for the costs of unilaterally placing their child in a private program, if they also can prove that the privately obtained services are appropriate. Burlington, supra.

Standardized educational testing conducted as part of Milton's most recent (2007) three year re-evaluation revealed that Student's progress since 2004, as characterized by Milton, had been "negligible."

Subsequent testing and record reviews by Dr. McCormick in 2008 showed that Student had made less than one year's progress since 2006 in decoding skills, and that his spelling and math skills had regressed during that time. While all witnesses who were asked the question indicated that Student could not be expected to progress at the same rate as his non-disabled peers (McCormick, Raelin), no witness testified that Student should be expected to make "negligible" progress over the course of three years.

The Milton TEAM responded to the 2007 three-year evaluation with some increase in the intensity of services for ninth grade, including extensive modifications, substantially-separate language-based English classes, and various pullout services, including for reading. There were problems with full implementation of this IEP, however; for example, due to an apparent clerical error, Student did not begin the pullout reading instruction prescribed in his IEP until midway through his freshman year.¹¹

After numerous meetings and an outside evaluation by Dr. McCormick, Milton modified Student's IEP for tenth grade to provide for nearly all instruction (except for science) in a substantially separate classroom, as well as accommodations, additional goals, pullout services for speech/language (including pragmatics) and academic support, and twice-weekly after-school instruction in decoding. However, Parents remained concerned that Student still struggled with academics as well as basic skills necessary for independence such as handling money and telling time, and felt that the MHS program was neither coordinated nor intensive enough to meet Student's needs. Dr. McCormick shared the Parents' concerns, noting, for example, that Milton did not (and, logistically, probably could not) provide more than two sessions per week of specialized reading instruction rather than the five he had recommended, and that Student needed, and noting also that the IEP made little or no provision for coordination among service providers. Parents were increasingly worried about Student's future ability to work and live as independently as possible.¹² (Mother)

Moreover, while Milton provided Student with pragmatics instruction, the record does not indicate that this instruction was carried out across the curriculum as recommended by Dr. McCormick. Indeed, Ms. Lee, Student's speech/language therapist, testified that she did not know whether Student was able to generalize to other settings the pragmatic skills that he practiced with her, and stated that she assumed other teachers

¹¹ Parents fully accepted the IEP for 2007 – 2008, and do not request compensatory services for non-implementation. This information is relevant, however, because it indicates possible contributors to Student's continued slow progress.

¹² Despite the alarming findings regarding Student's academic progress—or lack thereof—as measured by standardized testing conducted both by Milton's own psychologist (2007) and Dr. McCormick (2008), Milton did not use standardized measures to assess Student's response to various modifications in his IEP during the first part of tenth grade, relying instead on Student's day-to-day performance in class to assess progress.

would inform her if Student was not generalizing such skills. There was no evidence on the record, however, of a mechanism for ensuring that Student's teachers knew what Student was working on with Ms. Lee or for keeping track of whether Student was generalizing new skills.

Further, Mother testified credibly and without contradiction that Student had virtually no peer relationships outside of those orchestrated by school personnel. Student participated in a boys' group comprising boys with disabilities and hand-picked typical peers, but had no contact with peer group members outside of school. When Student had problems in the school cafeteria, Milton gave him the opportunity to eat lunch with a teacher. There was no evidence that Student ever acquired a group of peers to sit with in the cafeteria on a regular basis, or was given specific instruction or support in doing so.

Finally, regarding the issue of safety, Mother testified convincingly that Student's disabilities, which result in his inability to read social cues accurately and difficulty perceiving when someone intends to harm him, make him particularly vulnerable to bullying and harassment. Indeed, Student was physically assaulted by peers at least twice during October 2008, once in the math classroom and once in the cafeteria. Mr. Drottar, the MHS principal, testified equally convincingly that MHS had a strong anti-bullying policy, and had responded quickly and effectively to the incidents in question. I conclude that Parent has not demonstrated that, overall, Student was unsafe at MHS. What these incidents do verify, however, is Student's difficulty with assessing and protecting himself in social settings, and the validity of Dr. McCormick's recommendations for more intensive, consistent instruction in social pragmatics that is reinforced throughout the day.

Milton takes the position that Student benefits from modeling the social behavior of typical peers. I note, however, that as of tenth grade, Student still lacked the ability to interact with peers on an age-appropriate level outside of a structured setting such as the boys' group, or to independently navigate ordinary high school social settings such as the cafeteria.¹³ Student was surrounded by typical peers from kindergarten through the first half of tenth grade, has a typically developing sibling, and is involved in community youth sports where he is "tolerated." If Student had been able to learn age-appropriate social skills by modeling typical peers, common sense dictates that he would have done so by tenth grade.

This is not to say that Student has derived no benefit from exposure to typical peers, and there is no dispute that family and teachers find Student to be personable, caring, well-behaved, well-liked, and very capable of positive relationships, and that classmates, in general, like him. There also is no dispute, however, that Student's social immaturity, which stems from his disabilities, has rendered him both vulnerable and socially isolated, both inside and outside of the school setting, for many years, and that his progress in this regard has been limited, at best. It is clear from the record that Student's very significant deficits in this area have not been, and possibly could not be,

¹³ It should be noted that when Ms. Plonski testified about Student's interaction with typical peers in biology class, she stated that the typical students were supportive of and helpful to Student, but did not describe the relationships as reciprocal.

adequately addressed in the programs provided by Milton, even with the addition of social pragmatics instruction, and that Student needs a program where pragmatics are embedded throughout the school day.

In sum, Parents have met their burden of demonstrating that Milton's most recent IEP for 2008-2009 was not reasonably calculated to provide Student with FAPE. Student certainly has potential to learn, but his disabilities are significant and pervasive, affecting not only his academic performance but also his ability to function among peers in school and in the community, as well as to attain independence. As the record demonstrates, the IEP and placement did not provide the intensive, coordinated services, including ongoing instruction in social interaction and pragmatics, that Student needs, given the nature and severity of his disabilities, the "negligible" progress made under similar IEPs in the past, and the approximately 3.5 remaining years of special education eligibility. It is clear that as recommended by Dr. McCormick, Student's academic and social skill deficits need to be addressed throughout the day, in a coordinated, systematic manner, and that the program provided by Milton did not meet this need.

Parents have also met their burden of proving that LPS was appropriate as a unilateral parental placement under the relevant standards. While the specific evidentiary record regarding LPS is thin, there is no dispute that LPS is a Chapter 766-approved private day school designed for students with language-based learning disabilities. The record does not contain detailed information about whether and how LPS explicitly teaches social pragmatic skills. Mother testified without contradiction, however, that since his enrollment at LPS, Student has commented on liking his fellow students and has had telephone conversations with peers, something he had not done while attending MHS. Mother also testified, without contradiction, that Student has been happier, has been reading for pleasure and completing homework independently since beginning his tenure at LPS. LPS, therefore, meets the standard for a unilateral parental placement.

Finally, Parents have provided Milton with sufficient notification of unilateral placement to allow for reimbursement for the costs of such placement for the time period requested. I take administrative notice of the hearing request in this matter, filed in December 2008, which clearly informed Milton that Student would begin a trial placement at LPS beginning in January 2009, and that Parents intended to seek funding for that placement should the trial prove successful. Moreover, Parents' advocate provided notice in March 2009 that Student had been accepted at LPS as of January 19, 2009, and that Parents were seeking funding from Milton from that date forward. Milton and Parents have had ongoing communication since the filing of the hearing request, and there has been ample opportunity for Milton to clarify Student's enrollment status at LPS. Further, there is no evidence of a barrier to Milton's funding the placement that is cognizable under the relevant statutes or regulations. LPS is an approved Chapter 766 school which by definition accepts public funding. Milton has presented no evidence to support its claim that there is no mechanism for funding the placement or that the parties and LPS could not fashion an appropriate mechanism.

ORDER

The Order issued on August 8, 2009 in this matter, and effective that date, is incorporated by reference and is reproduced below, verbatim for convenience:

1. Upon presentation of invoices or other appropriate documentation, the Milton Public Schools shall reimburse the Parents for out-of-pocket expenses for Student's placement at Learning Prep. Schools (LPS) from January 19, 2009 through the end of the 2008-2009 academic year. If Milton receives documentation verifying costs or expenses that Parents owe to LPS for this time period, but have not paid, Milton may pay LPS directly.
2. Upon presentation of appropriate documentation, Milton shall reimburse Parents for transportation that they provided to Student between LPS and his home during the period referred to above according to the requirements of 603 CMR §28:07(6).

By the Hearing Officer:

Sara Berman

August 27, 2009