

July 21, 2009

**COMMONWEALTH OF MASSACHUSETTS**  
**BUREAU OF SPECIAL EDUCATION APPEALS**

---

***SHREWSBURY PUBLIC SCHOOLS***

V.

Blair

BSEA # 09-4456

---

**BEFORE**

LINDSAY BYRNE

HEARING OFFICER

**Parent, Pro Se**  
**Alisia St. Florian, Attorney for Shrewsbury**

**COMMONWEALTH OF MASSACHUSETTS  
BUREAU OF SPECIAL EDUCATION APPEALS**

In Re: Blair<sup>1</sup> and the Shrewsbury Public Schools

BSEA #09-4456

**Decision**

This Decision is issued pursuant to M.G.L.c. 71B, 20 U.S.C. 1401 *et. seq.*, 29 U.S.C. 794 and the regulations promulgated under these statutes. A hearing was held in the above-entitled matter on May 26, 2009 at the Shrewsbury Town Hall in Shrewsbury, Massachusetts. Those present for all or parts of the proceeding were:

Ms. B	Parent
Melissa Maguire	Special Education Director – Shrewsbury Public Schools
Ann Gustafson	Team Chair - Shrewsbury Public Schools
D’Arcy McCarthy	Special Education Teacher - Shrewsbury Public Schools
Catherine Duchesneau	Teacher, Oak Middle School - Shrewsbury Public Schools
Robert Cornacchioli	Director of Technology - Shrewsbury Public Schools
Alisia St. Florian	Attorney for Shrewsbury Public Schools
Maureen Pires	Court Reporter
Lindsay Byrne	Bureau of Special Education Appeals Hearing Officer

The official record of the hearing consists of documents submitted by the School labeled S-1 through S-26, documents submitted by the Parent labeled P-1 through P-5 and P-7<sup>2</sup>, and approximately 5 hours of recorded oral testimony. Both parties submitted closing arguments on June 8, 2009 and the record closed on that date.

**ISSUES**

The issues for Decision were set out in a PreHearing Order issued on April 8, 2009:

- I. Whether the 2008-2009 Individualized Education Plan developed by Shrewsbury in December 2008 is reasonably calculated to provide a free, appropriate public education to Blair in the least restrictive setting?

---

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

<sup>2</sup> All the Parent’s documents are defaced with extensive personal commentary, highlighting and underlining. Due to the Parent’s *pro se* status and the impossibility of fully redacting the Parent’s proposed documents at the hearing, certain accommodations have been extended. For the most pertinent items I rely on the clean copies that are duplicated by the School’s exhibits. For the others I disregard all handwritten notations and symbols and view as evidence only the underlying content of the original document. Some parts of exhibits nonetheless are excluded: in P-5, the pages containing the results of testing by the Sylvan Center in February 2008 and the bar graphs created by the Parent are excluded. The reading charts prepared by the Parent and included behind Tab 6 are excluded. P-8 is excluded as irrelevant to the issues before the BSEA.

- II. If not, whether Blair requires a specialized school setting, such as Broccoli Hall, to receive a free, appropriate public education
- III. Whether the Parent is entitled to reimbursement of the cost of purchasing a computer and whether Blair is entitled to an award of compensatory education due to Shrewsbury's failure to provide a free, appropriate public education consistent with the BSEA Decision issued in the matter of the Shrewsbury Public Schools, BSEA #08-2466 on March 12, 2008 (14 MSER 68 (2008).) during the 2008-2009 school year?

## BACKGROUND

This hearing evolved out of long history of parental dissatisfaction with the Shrewsbury Public Schools. This conflict culminated in a March 2008 due process hearing. The Decision in that matter, BSEA #08-2466<sup>3</sup>, found that the February 2008 – February 2009 IEP proposed by Shrewsbury, with minor modifications, was reasonably calculated to provide a free, appropriate public education to Blair. The approved IEP called for the Student to receive special education services within the general education class in all content area subjects, as well as pull-out instruction in reading and learning skills. The Hearing Officer added a specialized spelling program and a school provided laptop computer equipped with the Kurzweil reading program for use both in school and at home. The modified IEP outlined in the March 12, 2008 Decision is the Student's placement pending appeal.

The Team reconvened on December 10, 2008 to develop a new IEP for the Student. The Team proposed an IEP with special education services substantially similar to those approved by the prior hearing officer. The proposed IEP, however, deleted the laptop computer, the systematic spelling program and an MCAS accommodation (S-1). The Parent rejected the proposed IEP, indicated her intent to withdraw the student from school, and did not attend a scheduled meeting to discuss the proposed IEP (S-1). The School then requested this hearing seeking a finding that the program it proposed for the Student offered him a free, appropriate public education. The Parent responded that the inclusion program proposed by Shrewsbury was not appropriate for the Student, and requested that he be placed instead at Broccoli Hall, a private, approved, special education day school.

---

<sup>3</sup> S-26; In Re: Shrewsbury Public Schools; 14 MSER 68 (2008).

## SUMMARY OF EVIDENCE

1. Blair is a thirteen year old 7<sup>th</sup> grade middle school student. He has received special education services through the Shrewsbury Public Schools since the 2<sup>nd</sup> grade to address weaknesses in written language (S-1). The most recent three year evaluation conducted in the spring of 2007, found that Blair had average cognitive potential with notably slow processing speed. He demonstrated strong sustained attention and concentration, but needed extended time for processing and production and modified length assignments. At the time of testing his academic achievement skills were at grade level, though his reading rate and fluency were below average (S-14, 15, 16). A neuropsychological evaluation conducted in March 2008 confirmed earlier findings. Dr. Harvey Botman reported that Blair's neuropsychological functioning fell within the average range in all tested domains. Dr. Botman noted that Blair demonstrated substantial weaknesses in processing speed that could affect his reading and homework completion (S-9).
2. After the Decision in BSEA #08-2466 was issued, Blair's Team met five times: on March 25, 2008 to address the modifications to the 2008-2009 IEP ordered by the BSEA; on June 4, 2008 to review the neuropsychological evaluation conducted by Dr. Botman; on September 24, 2008 to check in about the implementation of the IEP in the 7<sup>th</sup> grade setting; on November 11, 2008 at the Parent's request to review Blair's progress; and on December 10, 2008 to assess progress, and develop new goals and/or services (S-3 through 8; S-10). Other than the additional services ordered by the BSEA, no changes were made to the 2008-2009 IEP as a result of the Team meetings.
3. In the fall of 2008, Blair entered the 7<sup>th</sup> grade in a co-taught full inclusion program. All content area courses: math, language arts, science and social studies were tandem taught by both a special education and a regular education teacher. In addition Blair participated in a specialized reading program for two fifteen minutes sessions per week, a specialized spelling program during his daily academic support periods and additional learning skills instruction in lieu of a foreign language class.

All of Blair's homework assignments were loaded onto a Kurzweil program in a laptop computer he was to carry with him between home and school (S-11). After the

Parent expressed concerns about Blair's fatigue, homework completion and rate of progress, the school offered to add additional academic support before and/or after school. The Parent declined. The School offered "Homework Academy" on Saturdays. The Parent declined. The School offered to substitute academic support for all or some of the chorus classes in Blair's schedule. The Parent declined. The Parent requested that no homework be assigned to Blair and that no school staff discuss Blair's IEP or learning accommodations with him. The School complied (Gustafson; Maguire; McCarthy; S-2, 3, 4).

4. D'Arcy McCarthy, the special education teacher who co-taught all the academic classes during Blair's 7<sup>th</sup> grade year, and also provided academic support, testified that she worked with Blair most of every school day. She described Blair as prepared, motivated, participatory and socially appropriate. Although Blair began the 7<sup>th</sup> grade school year with reading and spelling skills at approximately the 5<sup>th</sup> grade level, he participated in oral discussions and demonstrated content mastery at grade level. Ms. McCarthy agreed that Blair needs more than the average length of time to absorb new concepts, and that he benefits from reteaching, reviewing, pre-teaching, test preparation. He requires prompting, organizational assistance and extra time to complete written assignments. Over the course of the 7<sup>th</sup> grade Blair made progress in his reading fluency and rate so that he is operating at grade level expectations in both controlled texts and literature. Nevertheless he could benefit from more focused time to address homework assignments. Ms. McCarthy recommended that Blair participate in additional small group (4 students) academic support classes instead of chorus, and attend the after-school homework academy (McCarthy; S-12; P-5).
5. Ms. McCarthy testified that she and the special education aide were responsible for implementing the Kurzweil program for Blair. The process for loading and adapting text with the Kurzweil program is cumbersome and time-consuming. First the material must be gathered and prepared for scanning into the school building computer. Then it must be scanned page by page. Then it must be edited word for word by someone familiar with the intended text and assignment. Then the edited text is downloaded to the school district's network server. Then it is transferred to the individual student's computer, but

only while the student's computer is at school. Blair was resistant to Kurzweil programming. He claimed he didn't like to use it and regularly "forgot" to make his computer available for downloads. Blair preferred to use taped books. Ms. McCarthy concluded that Kurzweil was not a useful technology for Blair. She recommended intensive, regular reading practice and the use of books on tape when necessary instead.

Ms. McCarthy also stated that Blair derived little benefit from the discrete spelling program ordered by the BSEA. She observed that it diverted Blair's attention from the general classroom instruction from which he does derive significant educational benefit. Instead Ms. McCarthy recommended that spelling be included in the editing and organizing strategies Blair works on during academic support classes (McCarthy; see also Gustafson).

6. Catherine Duchesneau was Blair's 7<sup>th</sup> grade regular education language arts and social studies teacher. She taught collaboratively with Ms. McCarthy. Ms. Duchesneau testified that Blair was an active participant in the regular classroom, operating at grade level in oral discussions and near grade level on other assignments with appropriate accommodations and modification. His below grade level results on the standardized GATES reading test administered in September 2008, nevertheless placed him in the average range. He can read a short grade level passage with success. His comprehension breaks down as text length increases due to his slow processing speed. Ms. Duchesneau stated that Blair benefitted from teacher support and instruction to improve his memory, vocabulary and reading rate as well as from modified assignments which allowed him to be successful. Blair demonstrated progress in reading and written production over the course of the year. Based on her work with Blair, Ms. Duchesneau recommended that:

1. spelling be taught in context, as part of writing fluency exercises instead of as an isolated program;

2. taped readings be provided instead of the Kurzweil program which Blair did not use effectively; and

3. Blair participate in an additional academic support class (Duchesneau; see also Gustafson)

7. In April 2007, Shrewsbury loaned Blair a laptop computer for use in school and at home. During the fall of 2008, Blair's use of the Kurzweil program on the school-provided laptop for homework assistance was inconsistent. In November 2008, Blair's laptop was taken to the school system's technology department as it was not working properly. During the repair process it was discovered that the computer had been used to access inappropriate internet sites. The barracuda filters and other security measures in use on the school system's network would have prevented access to the offending sites. The time stamps on the computer access logs indicated view of the sites during non-school hours. Shrewsbury's information technology department determined that the inappropriate sites were accessed while the computer was off school grounds and not connected to the school district's network (S-25). According to Robert Cornacchioli, Information Technology Director for Shrewsbury Public Schools, accessing inappropriate websites is an infraction of the School's acceptable use policy to which all users, including borrowers such as Blair, agree. The information concerning Blair's computer was forwarded to the middle school principal for disciplinary action. The computer was cleaned, repaired, internet access disabled and returned to Blair (Cornacchioli).

No disciplinary action was taken against Blair. To be operational, however, Kurzweil requires internet access. Therefore the school modified Blair's assignments so that all homework would be completed in school. Blair's access to the internet through the loaned computer was restricted to the school's network (Maguire.)

Blair's school-provided laptop was returned to Shrewsbury in January 2009 (S-25). Blair reported that he had received a laptop as a gift from his father for use at home. That computer has never been brought to school for use during the day or for loading Kurzweil (Maguire; Gustafson; McCarthy).

8. The Team met on December 10, 2008, to develop an IEP for December 2008-2009. Blair's teachers reported that he was appropriately placed in the co-taught inclusion program and that he was making effective progress. No other assessments, evaluations or observations were submitted to the Team for consideration. Both Blair's teachers recommended that:

- 1.) he continue to receive special education services in a co-taught inclusion model;
- 2.) taped books be substituted for Kurzweil programming;

- 3.) the systematic spelling program be eliminated and spelling added to the written language goals;
- 4.) Blair participate in additional academic support classes and afterschool homework assistance (McCarthy; Duchesneau).

In addition, the Team discussed reasonable homework expectations for Blair, a reasonable limitation on the use of school-provided computers, and the deletion of an accommodation for standardized testing, including MCAS (Maguire).

9. Shrewsbury developed an IEP for the December 2008 – 2009 time period calling for Blair to remain in a co-taught inclusion setting with testing, instructional and production modifications and accommodations to address his slow processing, weak written language and associated organizational and executive functioning deficits. The IEP also provides for four periods per week of academic support and four 15 minute sessions of special education assistance in reading. The IEP includes computer aided instruction and production during the school day, including use of the Kurzweil program when available for lengthy text, and text on tape. The IEP does not offer extended day special education services. The N-1, however, lists extended day options available to Blair should the Parent agree to additional support (S-1; S-2; Maguire; Gustafson).
10. The Parent rejected the proposed 2008-2009 IEP in full on January 20, 2009, and requested that Blair be removed from all special education instruction (S-1). She later consented to continuation of special education services pursuant to the last accepted IEP pending the outcome of this hearing (Administrative Record). The Parent testified that none of the special education services Blair participates in, or that have been provided in the past or proposed for the future, is appropriate for him. In her view Blair has made no educational progress in the Shrewsbury school system and requires a small, segregated, self-paced special education environment such as Broccoli Hall to make effective educational progress.
11. Blair was tardy to school at least 51 times during the 2008-2009 school year (S-23; Maguire). He frequently did not bring the school-provided laptop to school. When he did have the school provided laptop in school Blair often refused to use it in class or to

make it available for Kurzweil programming. Blair has not brought the personal laptop he received in the winter 2009 to school. Since at least December 2008 Blair has not handed in any homework assignments. Though homework completion does not factor into Blair's grades, it does offer an additional opportunity for skills and content mastery that Blair now misses. Blair has not participated in any of the additional before or after school support services offered to him (Maguire, Gustafson). Nevertheless Blair has made progress in reading and written language skills. Although he has not achieved all the objectives set out in the last accepted 2008-2009 IEP, his academic performance warranted promotion to the 8<sup>th</sup> grade at the conclusion of the school year (McCarthy; Duchesneau).

12. Neither the Parent nor any educational expert on her behalf has observed Blair at school. There are no evaluations or assessments or expert recommendations of any sort in this record that might support Blair's placement in a special education program other than the co-taught inclusion model currently offered by the Shrewsbury Public Schools.

## FINDINGS AND CONCLUSIONS

There is no dispute that Blair is a student with special learning needs and is therefore entitled to a free, appropriate public education pursuant to M.G.L.c 71B and 20 U.S.C. §1401 et seq. The primary issue before me is whether Shrewsbury has offered Blair that education. After careful consideration of all the evidence proffered in the hearing and of the arguments of both parties, it is my determination that Shrewsbury has, at all relevant times, made a free appropriate public education available to Blair.

1. First, the great weight of the evidence supports the conclusion that throughout Blair's 7<sup>th</sup> grade year Shrewsbury has implemented the 2008-2009 IEP as approved and modified by the BSEA in March 2008. When class and homework assignments were not fully loaded into the Kurzweil program on Blair's school provided laptop it was because Blair and/or his parent failed to make the computer available to the school staff. Furthermore, Shrewsbury's temporary removal of the school-provided laptop when unacceptable use was discovered in November 2008 was both reasonable under the circumstances and brief. Shrewsbury immediately offered and implemented alternate means of delivering

Kurzweil programming and written production accommodations to Blair, such as additional academic support time during and outside of regular school hours. Most of the proposed alternatives were declined by the Parent.

There is no credible evidence in the record to support the Parent's assertion that Shrewsbury failed either to implement the BSEA approved IEP or to afford appropriate effective alternatives when strict implementation was not possible. Nor is there any evidence that Blair experienced any negative educational consequences due to the brief unavailability of the school-provided laptop computer. Instead I am persuaded by the credible testimony of Ms. McCarthy, Ms. Duchesneau, Ms. Gustafson, and Ms. Maguire that Blair demonstrated educational progress under the March 2008 – March 2009 IEP approved by the BSEA and implemented by Shrewsbury. Finally, the Parent provided no evidence for her assertion that, as a result of the repair and reconfiguration of Blair's school provided laptop computer (due to the unauthorized use), she was required to purchase a laptop for Blair in order to continue his access to Kurzweil programming in both the home and school settings. Indeed, all evidence presented supports contrary conclusions: that Blair did not effectively use a school-provided laptop for home-school Kurzweil programs; that Shrewsbury provided effective alternatives to home-school Kurzweil programming targeted to Blair's IEP goals when the school-provided laptop was unavailable; that the appealing Parent did not purchase a substitute computer; and that when Blair had access to his own laptop he did not bring it to school for use in class or to be loaded with the Kurzweil program.

Therefore I find, based on the preponderance of the credible evidence in the record, that Shrewsbury fully discharged its obligation to implement the 2008-2009 BSEA approved IEP for Blair during the 7<sup>th</sup> grade year.

2. Next, I find that all the expert and other reliable evidence in this record supports the conclusion that the December 2008-December 2009 IEP developed by Shrewsbury is reasonably calculated to provide a free, appropriate public education to Blair in the least restrictive setting. I rely particularly on the testimony of Ms. McCarthy and Ms. Duchesneau as they are the witnesses with the most thorough knowledge of Blair's day to day functioning in the school setting. Both stated that a co-taught inclusion model appropriately meets Blair's identified special education needs in the areas of reading,

written production, and executive functioning. Both recommended that Blair receive additional academic support either during or outside school to accommodate his slow processing speed. Both stated that even without the recommended increase in academic support Blair was making effective educational progress in a co-taught model in 7<sup>th</sup> grade, and predicted that he would continue to make progress in the substantially similar program proposed for his 8<sup>th</sup> grade year. The proposed IEP incorporates other recommendations made by Ms. McCarthy and Ms. Duchesneau: elimination of the discrete spelling program, addition of a spelling objective to the written language goal, and addition of texts on tape as an accommodation to Blair's slow reading rate (S-1). The IEP also reflects the recommendations of the only other evaluation in the record, those of Dr. Botman, that Blair receive support and instruction in developing study skills and strengthening executive functioning (Compare S-9 and S-1). There are no other educational recommendations in the record. There is no indication in this record that the type and frequency of special education services Shrewsbury intends to deliver to Blair in accordance with the proposed 2008-2009 IEP are inappropriate for him. Nor is there any indication in this record that Shrewsbury is not capable of implementing the proposed IEP. Therefore I find that Shrewsbury has carried its burden of proving that the IEP it has proposed for Blair is reasonably calculated to ensure that he receives a free appropriate public education and that the Parent has not proved otherwise.

3. Finally, the Parent sought an Order approving public funding for Blair's placement at Broccoli Hall, a private special education day school, for the 2009-2010 school year. She did not, however, introduce any educational recommendations supporting Blair's placement in a program other than the one he currently attends in Shrewsbury. Nor did she offer any information about Broccoli Hall or about how Broccoli Hall would address Blair's documented special education needs. This lack of evidence, taken together with the previous finding that Shrewsbury's proposed 2008-2009 IEP is appropriate for Blair, makes it unnecessary for me to fully address the Parent's request for an alternate educational environment.

## ORDER

The 2008-2009 Individualized Education Plan developed by Shrewsbury in December 2008 is reasonably calculated to provide a free, appropriate public education to Blair in the least restrictive setting. There is no evidence to support a finding that Blair requires a specialized school setting such as Broccoli Hall to receive a free, appropriate public education.

Throughout the 2008-2009 school year Shrewsbury fully and appropriately implemented the 2008-2009 IEP as approved and modified by the BSEA Decision in #08-2466 to the extent the Student and Parent cooperated with its implementation. There is no evidence that any procedural or substantive failure of implementation is attributable to the Shrewsbury Public Schools. There is no evidence that Blair experienced any educational deprivation during 2008-2009 due to any action or inaction on the part of Shrewsbury Public Schools. There is no evidence that Shrewsbury failed to make appropriate assistive technology available to Blair. There is no evidence that the appealing Parent purchased a computer for Blair's use as a result of Shrewsbury's failure to provide appropriate assistive technology. There is no evidence that Blair used his personal laptop for school-related activities. Therefore Blair is not entitled to an award of compensatory education and the Parent is not entitled to reimbursement of the cost of purchasing a laptop computer.

July 21, 2009

---

Lindsay Byrne, Hearing Officer

**COMMONWEALTH OF MASSACHUSETTS  
BUREAU OF SPECIAL EDUCATION APPEALS**

**EFFECT OF BUREAU DECISION AND RIGHTS OF APPEAL**

**Effect of the Decision**

20 U.S.C. s. 1415(i)(1)(B) requires that a decision of the Bureau of Special Education Appeals be final and subject to no further agency review. Accordingly, the Bureau cannot permit motions to reconsider or to re-open a Bureau decision once it is issued. Bureau decisions are final decisions subject only to judicial review.

Except as set forth below, the final decision of the Bureau must be implemented immediately. Pursuant to M.G.L. c. 30A, s. 14(3), appeal of the decision does not operate as a stay. Rather, a party seeking to stay the decision of the Bureau must obtain such stay from the court having jurisdiction over the party's appeal.

Under the provisions of 20 U.S.C. s. 1415(j), "unless the State or local education agency and the parents otherwise agree, the child shall remain in the then-current educational placement," during the pendency of any judicial appeal of the Bureau decision, unless the child is seeking initial admission to a public school, in which case "with the consent of the parents, the child shall be placed in the public school program". Therefore, where the Bureau has ordered the public school to place the child in a new placement, and the parents or guardian agree with that order, the public school shall immediately implement the placement ordered by the Bureau. *School Committee of Burlington, v. Massachusetts Department of Education*, 471 U.S. 359 (1985). Otherwise, a party seeking to change the child's placement during the pendency of judicial proceedings must seek a preliminary injunction ordering such a change in placement from the court having jurisdiction over the appeal. *Honig v. Doe*, 484 U.S. 305 (1988); *Doe v. Brookline*, 722 F.2d 910 (1st Cir. 1983).

**Compliance**

A party contending that a Bureau of Special Education Appeals decision is not being implemented may file a motion with the Bureau of Special Education Appeals contending that the decision is not being implemented and setting out the areas of non-compliance. The Hearing Officer may convene a hearing at which the scope of the inquiry shall be limited to the facts on the issue of compliance, facts of such a nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Education or other office for appropriate enforcement action. 603 CMR 28.08(6)(b).

## **Rights of Appeal**

Any party aggrieved by a decision of the Bureau of Special Education Appeals may file a complaint in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts, for review of the Bureau decision. 20 U.S.C. s. 1415(i)(2).

An appeal of a Bureau decision to state superior court or to federal district court must be filed within ninety (90) days from the date of the decision. 20 U.S.C. s. 1415(i)(2)(B).

## **Confidentiality**

In order to preserve the confidentiality of the student involved in these proceedings, when an appeal is taken to superior court or to federal district court, the parties are strongly urged to file the complaint without identifying the true name of the parents or the child, and to move that all exhibits, including the transcript of the hearing before the Bureau of Special Education Appeals, be impounded by the court. See *Webster Grove School District v. Pulitzer Publishing Company*, 898 F.2d 1371 (8th Cir. 1990). If the appealing party does not seek to impound the documents, the Bureau of Special Education Appeals, through the Attorney General's Office, may move to impound the documents.

## **Record of the Hearing**

The Bureau of Special Education Appeals will provide an electronic verbatim record of the hearing to any party, free of charge, upon receipt of a written request. Pursuant to federal law, upon receipt of a written request from any party, the Bureau of Special Education Appeals will arrange for and provide a certified written transcription of the entire proceedings by a certified court reporter, free of charge.