

AUGUST 13, 2009

COMMONWEALTH OF MASSACHUSETTS
BUREAU OF SPECIAL EDUCATION APPEALS

ELLIOTT

v.

NEWBURYPORT PUBLIC SCHOOLS

BSEA # 09-6961

BEFORE

LINDSAY BYRNE
HEARING OFFICER

MICHAEL TUTEUR & JAMES MANZI, ATTORNEYS FOR THE PARENTS

MARY ELLEN SOWYRDA & DORIS MACKENZIE-EHRENS, ATTORNEYS
FOR THE SCHOOL

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

In Re: Elliott¹ and the Newburyport Public Schools

BSEA # 09-6961

This Decision is issued pursuant to M.G.L.c.71B and 30A, 20 U.S.C. §1400 *et seq.*, 29 U.S.C. §794 and the regulations promulgated under those statutes. A Hearing was held in the above-entitled matter on July 22 and 23, 2009 at the Department of Elementary and Secondary Education in Malden, MA. Present for all or part of the proceeding were:

Mr. & Mrs. E.	Parents
Mariela Vargas	Consultant - ICCD
Rafael Castro	Neuropsychologist - ICCD
Amy Flemming	School Psychologist – Newburyport Public Schools
Karen Brann	Director of Special Education Newburyport Public Schools
Antoinette Willis	Interim Assistant Program Manager – Merrimac Educational Collaborative
Emily Kelley	Observer
Michael Thompson	Observer
Sven Rlethmueller	Attorney for Parents
Michael Tuteur	Attorney for Parents
Mary Ellen Sowyrda	Attorney for Newburyport
Lindsay Byrne	Hearing Officer – BSEA

The official record of the Hearing consists of documents submitted by the Parents marked P-1 through P-19, P-21 through P-26, pages 4 and 5 of P-28, P-30, P-33 and P-35 through P-53; documents submitted by the School marked S-1 through S-11; and approximately 11 hours of recorded oral testimony. Both parties submitted written closing arguments by August 1, 2009 and the record closed on that date.

ISSUES²

1. Whether the 2009-2010 Individualized Education Plan proposed by Newburyport calling for Elliott to be placed in the Social/Emotional/Behavioral classroom at the Merrimac Educational Collaborative in Chelmsford, MA. is reasonably calculated to ensure that Elliott receives a free, appropriate public education in the least restrictive setting?

¹ “Elliott” is a pseudonym selected by the Hearing Officer to preserve the privacy of the Student in documents available to the public.

² At the Hearing, the parties stipulated that “the issue before the BSEA is limited to the substantive appropriateness of the 2009-2010 IEP developed by Newburyport.” The parties agreed that each had acted in good faith during the events that lead up to the development of the proposed IEP on May 27, 2009. While waiving any procedural claims, the parties may have asserted against one another the parties nonetheless retained the right to introduce evidence concerning their evaluation and selection of educational programs for [Elliott].

2. If not, are the Parents entitled to public funding of their unilateral placement at the Eagle Hill School, a private special education day school in Greenwich, CT?

SUMMARY OF THE EVIDENCE³

1. Elliott is a nine year old rising 4th grade student who has received special education services through the Newburyport Public Schools since he was three years old. Initially Elliott's educational and medical presentation was complex. His diagnoses included: pervasive developmental delay; emotional, behavioral and mood dysregulation; attentional deficits; poor social cognition; right hemisphere brain injury; Asperger's Syndrome; anxiety; nonverbal learning disability; Crohn's Disease; reactive airway disease; colitis; auto-immune disease; allergic gastroenteritis/esophagitis; and life threatening food, chemical, and environmental allergies. He has received intensive educational services in private school settings and at home since preschool. He has made significant educational progress over time and currently does not demonstrate many of the learning, behavioral, emotional and health characteristics previously identified as challenging. (P-1-4; P-6; P-7; P-9; Parent; Vargas; Castro).
2. Beginning in December 2001, Elliott received publicly and privately funded evaluation, consultation and direct behavioral/educational/safety support services through the Integrated Center for Child Development. In November 2007, Joseph Moldover, Psy.D., of the Center, conducted a neuropsychological evaluation. He found that on standardized measures of intellectual potential, Elliott scored in the high average range in the verbal domain and the low average range in the nonverbal domain. Academic skills were delayed at approximately one year below his then second grade placement. Noting that Elliott had made significant educational and behavioral progress since beginning school-based interventions, Dr. Moldover identified his continuing areas of "vulnerability" as: executive functioning such as attention, working memory, organization of complex nonverbal information and mental flexibility; emotional/behavioral regulation; and social cognition. Dr. Moldover concluded that one unifying diagnosis could explain Elliott's progress and profile: Nonverbal Learning Disability. He recommended that Elliott receive educational services in a specialized program specifically designed for students with similar learning profiles. According to Dr. Moldover an appropriate educational program for Elliott would have the following characteristics:
 - a) substantially separate, language based academic instruction;
 - b) instruction in a small group (6-8 students) class size;
 - c) special educational teachers with experience instructing students with learning disabilities;
 - d) slow pace, multisensory support;
 - e) direct instruction in problem solving strategies, study skills and organization;
 - f) preteaching and reinforcement of all new concepts;

³ As a result of the parties' stipulation, and of the existence of an agreement between the parties concerning the 2008-2009 school year, the evidentiary record is not necessarily complete. Evidentiary gaps in this Decision discerned by astute readers may be attributed to the parties' efforts to be faithful to their agreements.

- g) direct instruction in, and management of, executive functioning skills, behavioral regulation (attention, participation, flexibility) and prosocial behaviors as designed by a behavior specialist, implemented in the classroom and faded over time;
- h) systematic programs and curricula in reading, writing and math.
- i) peer group composed of students with average cognitive potential, and without primary psychiatric or behavioral challenges;
- j) support for social pragmatics;
- k) occupational therapy to address deficits in visuomotor and graphomotor skills;
- i) speech-language therapy to develop pragmatic language skills.

(P-10)

3. During the 2008-2009 school year Elliot attended the Villa Maria Education Center, a private special education elementary day school in Stamford, Connecticut. (P-18; P-19; P-21 S-7; P-22). Villa Maria provides intensive small group academic instruction to students with specific learning disabilities. Elliott did not receive any specialized services or support targeted to his identified emotional or behavioral needs. Elliott did not participate in occupational or speech-language therapy. There is no evidence that Villa Maria made any adjustments to its environment or services to accommodate Elliott's allergies or other health challenges. (Parent; S-3) Elliott made significant educational progress in all areas during the course of the 2008- 2009 school year. (Parent; Vargas; Castro; S-5; S-6; S-8 P-52)
- 4.) In January 2009; Frances Ingram of the Stern Center conducted a psycho-educational evaluation of Elliott at the Parents' request. Her results were consistent with those obtained by Dr. Moldover the previous year. On standardized measures, Elliott demonstrated verbal thinking skills in the high average range and nonverbal problem solving skills in the average range. He demonstrated overall academic skills within expectations for his age and grade, with relative weaknesses in reading speed and solving math word problems. These results showed that he was making "definite" progress in acquisition of reading, writing and mathematics skills. Ms. Ingram also reported that Elliott's "global executive function score was within normal limits" though his Villa Maria teacher identified some problematic classroom behaviors such as interrupting, difficulty with transitions and changes in routine, organizational and attentional challenges. Ms. Ingram identified specific executive functioning weaknesses in working memory and visual-perceptual processing speed. She did not note any difficulties with social thinking or skills. She recommended continued small group academic instruction in a "responsive" classroom that directly addresses study skills and social understanding for all students. Ms. Ingram included suggestions for instructional strategies and materials targeted to development social cognition. There are no recommendations for behavioral or emotional interventions in her report. (P-52, S-8)
5. In June 2009, Richard Shulik, Phd. conducted a psychological evaluation of Elliott on behalf of Newburyport. At the Parent's request, the testing was administered at the Villa Maria Education Center. Elliott's solidly average scores on standardized measures of

intellectual functioning were consistent with previous test administrations. Dr. Shulik's testing revealed improvement overall Elliott's functional memory to within normal limits. Dr. Shulik noted, however, that the combination of targeted testing of Elliott's attentional abilities, intratest scatter on the memory battery and his observations of Elliott's testing behavior strongly suggested the presence of an attention deficit disorder in addition to the previously diagnosed nonverbal learning disability. He did not note any other type of behavioral, emotional or social difficulties. Dr. Shulik did not make any recommendations about Elliott's educational placement or programming. (P-45, S-4)

6. A Team meeting was held on May 27, 2009, to develop an IEP for Elliott's 2009-2010 school year. The Team included at least one teacher from Villa Maria who was available to participate by telephone. (Parent), Karen Brann, the Special Education Director for Newburyport, testified that she developed a draft IEP based on the information in the Stern Center report (See ¶ 4) and the goals and objectives contained in the IEP being used at Villa Maria. (P-21, S-7) Villa Maria Progress Reports completed in January 2009 indicate generally satisfactory progress toward achievement of academic and social goals. (S-5; S-6). The draft IEP proposed placement at the Merrimac Educational Collaborative. After the Team meeting, Newburyport issued a proposed 2009-2010 IEP with no significant changes from the draft IEP. The Parents rejected the proposed IEP on June 8, 2009. (P-36; S-2, P-37; P-40)
7. At the request of the Parents, Mariela Vargas-Irwin, Psy.D., Director of the Applied Behavior Learning Center, a division of Integrated Center for Child Development, conducted a program observation of the Merrimac Educational Collaborative classroom proposed for Elliott. (P-49; P-50). Dr. Vargas has an extensive clinical history with Elliott having provided both direct and consultative services to him and to Newburyport during Elliott's pre-school and early elementary school years. In preparation for the program consultation she reviewed the evaluations that had been conducted since she last saw Elliott in the spring 2008 and the progress reports from Villa Maria. Dr. Vargas testified that the evaluations confirmed that Elliott had made "remarkable" progress over the course of the 2008-2009 school year in both academic skills and social/behavioral skills. She noted that Villa Maria reported no significant behavioral challenges, no need for 1:1 assistance, and no need for an extensive reinforcement system. Instead, according to Dr. Vargas, Elliott is demonstrating that he is capable of being cooperative, compliant, following instructions and functioning appropriately in a group. Dr. Vargas emphasized that Elliott continues to demonstrate attentional difficulties and would have a hard time focusing in a large group or in an environment with multiple activities. In order to maintain attention and learn appropriately, he needs whole group instruction in a small group setting, as he received at Villa Maria. (Vargas)

Dr. Vargas testified that, based on her June 23, 2009 observation of the emotional behavioral support classroom at MEC the placement proposed by Newburyport would not be appropriate for Elliott. Dr. Vargas noted that the peer group, consisting of students with significant behavioral, emotional, psychiatric or developmental challenges, would

not be appropriate for Elliott who has no behavioral or psychiatric diagnoses. She emphasized that the token economy in which the students participate would be a “step back” for Elliott as he is internalizing natural reinforcements without that type of intensive external structure. Furthermore, the edible reinforcers used as part of the classroom’s, behavioral support system could present health risks for Elliott. Dr. Vargas stated that Elliott needs direct instruction in, and environmental support for, the development of executive functioning skills. The classroom teacher told Dr. Vargas that such instruction is available as needed on an individual basis. According to Dr. Vargas, Elliott learns best with whole, small group instruction and that individualized academic and/or behavioral instruction is counterproductive for him. Dr. Vargas recommended that Elliott attend a highly structured, highly specialized educational program designed for students with specific learning disabilities in which coordinated, integrated instruction in academics, executive function skills, social pragmatics, and motor planning skills is delivered in instructional groups of 2-5 students. (Vargas; P-50)

8. On July 1, 2009 Newburyport offered to make referrals to several other possible educational placements; both public and private, including: The Learning Prep School, The North Shore Consortium, The Murphy Dwyer Academy, The School for Accelerated Learning, and The Greater Lawrence Educational Collaborative. The Parent testified that Learning Prep had previously determined that it could not accommodate Elliott’s learning needs. (See also P-13). She also stated that she had visited each of the potential alternate programs in 2008 and found them to be inappropriate for Elliott. (Parent)
9. The Team reconvened on July 15, 2009 to consider Dr. Shulik’s evaluation report and Dr. Vargas’ consultation report (P-45, S-4; P-50). The Parents requested a placement other than the Merrimac Educational Collaborative. Newburyport did not make any changes to the goals, benchmarks, accommodations, services or placement proposed in its previously offered IEP. The 2009-2010 IEP offered by Newburyport as a result of the July 15, 2009 Team meeting is in all pertinent respects identical to the one sent to the Parents after the May 27, 2009 Team meeting. Newburyport continues to propose the emotional behavioral support classroom at the Merrimac Educational Collaborative as Elliott’s educational placement for the 2009-2010 school year. (S-1; Brann; Parent)
10. Rafael Castro, Phd. is the Director of the Integrated Center for Child Development. He testified that he, or staff from his Center, evaluated Elliott seven times in addition to providing direct instructional and supportive services to Elliott and consultation to Newburyport. Dr. Castro last saw Elliott in 2007 when it had become apparent that Elliott’s diagnostic presentation had shifted from pervasive developmental delay to learning disabilities. Dr. Castro then assigned direct responsibility for Elliott’s evaluations and monitoring to the Center’s learning disabilities specialist, Dr. Moldover.

Dr. Castro testified that he maintains an interest in Elliott and his family and reviewed recent evaluations on their behalf. In particular he noted that Dr. Shulik’s June 2009 report is consistent with the results of Dr. Moldover’s November 2009 evaluation. Both found that Elliott presents classic characteristics of a Nonverbal Learning Disability including poor attention skills, difficulty with social pragmatics, emotional reactivity,

difficulty acquiring early academic skills and vulnerability to anxiety. According to Dr. Castro these characteristics arise from an executive functioning disorder (NVLD) and not from an emotional disability. Therefore Elliott requires educational programming targeted to accommodate and remediate learning disabilities and executive functioning skills. Dr. Castro testified that a program based on behavioral support principles would be inappropriate for Elliott. Dr. Castro pointed out that Elliott has made the most significant, sustained academic and behavioral progress while attending Villa Maria, a school especially designed to accommodate and remediate learning disabilities, not behavioral or emotional disabilities. The challenging behaviors reported by Elliott's Villa Maria teachers: interrupting, impulsivity, inattention, and weak social awareness are characteristic both of nonverbal learning disabilities in general and of Elliott in particular, (P-52). Elliott had nonetheless demonstrated growth in self regulation throughout the 2008-2009 school year. Dr. Castro emphasized that none of the evaluation reports he reviewed contained recommendations for emotional or behavioral goals, strategies or "programs" for Elliott.

For the 2009-2010 school year, Dr. Castro recommended that Elliott attend a specialized academic program geared to remediation of learning disabilities with a strong emphasis on developing executive functioning skills. The program should provide small group instruction (fewer than 11 students) and minimize environmental stimulation. (Castro)

11. Antoinette Willis, Interim Assistant Program Manager for Early Childhood Programs at the Merrimac Educational Collaborative, described the program proposed for Elliott by Newburyport Public Schools: the emotional behavioral support classroom. In her managerial role, Ms. Willis has visited the classroom briefly on a near daily basis. She has not taught in the proposed classroom. According to a program description printed by the Merrimac Educational Collaborative, the goal of the elementary behavioral classroom is

[t]o provide a structured environment and behavior management system with clear expectations and positive reinforcements in order to help students learn to control their behavior, focus on their school work, and improve their overall performance.

The EBS program is housed in a new building which contains both the substantially separate elementary age emotional/behavioral classrooms and the substantially separate elementary age pervasive developmental delay/autism classrooms. The two programs occupy different spaces and do not exchange students. At times there are whole school events such as talent shows. There is no contact with regular education students. There is no cafeteria or library in the building. There is a full time nurse.

The classroom proposed for Elliott can accommodate up to nine 4th and 5th grade students. Currently there are seven students assigned to the classroom. Students are referred to the program when their behaviors interfere with their ability to attend or to benefit from a regular education setting. All students are capable of doing grade level academic work, but require individualized instruction and behavioral support to accomplish it. Currently students function between the 2nd and 7th grade level

academically. There is one student diagnosed with pervasive developmental delay currently in the classroom, and two more scheduled to begin in the classroom in the fall. These three students will have individualized discrete trial training in locations other than the EBS classroom, returning to participate in some classroom activities. The other students have diagnoses such as anxiety, attention deficit hyperactivity disorder and bipolar disorder. None has nonverbal learning disability. As academic instruction is highly individualized, there are limited opportunities for whole class lessons.

An individualized functional behavior assessment and plan is developed for each student in the emotional behavioral support program. Each student then participates in a classroom-wide token economy reward system. There is a “de-escalation” room attached to the classroom where staff will accompany a student whose behavior prevents the student or the other students from concentrating on academic tasks. Since May 2009 Ms. Willis has observed staff direct a student to leave the classroom due to inappropriate behavior such as yelling, screaming, kicking a desk or wall, etc. approximately 5 times. She has directly observed staff removing a student to the de-escalation room for harmful behavior three times. Ms. Willis acknowledged that there is more frequent behavioral dysregulation at the beginning of the school year in the fall.

The classroom is staffed by one teacher, currently teaching under a DESE waiver, and two behavioral aides, one of whom will be pursuing a college degree. A behavioral specialist, occupational therapist, physical therapist and speech-language therapist provide integrated services in the classroom when required by the students’ IEPs. There is a full time nurse in the building who is responsible for developing and overseeing a student’s individual health plan, including allergy responses. Currently there are no students with life threatening allergies in the building.

Ms. Willis cautioned that although the information received by the Merrimac Educational Collaborative from Newburyport suggests that the emotional behavioral support program might be appropriate for Elliott, the admissions process has not been completed and no firm offer of placement has been extended. Ms. Willis acknowledged that Dr. Vargas’ observations of the classroom were accurate (Willis; see also: P-46; P-47; S-11).

12. Due to a medical emergency, Dr. Shulik was unable to explain his evaluation findings at the hearing. Amy Flemming, school psychologist at Newburyport Middle School for 14 years, interpreted Dr. Shulik’s evaluation report instead. Ms. Flemming had no prior contact with Elliott or his family and no connection to the School’s evaluation of or services to Elliott. Ms. Flemming testified that Dr. Shulik’s results confirm a classic presentation of nonverbal learning disability. In his report Dr. Shulik identified a highly significant discrepancy between Elliott’s verbal and performance scores on standardized measures of intellectual potential; difficulties with math, spatial sense and social pragmatics; slower than typical visual-spatial processing; strengths in verbally mediated tasks and note-memory; and some difficulties with attention and impulsivity. Dr. Shulik noted, however, that Elliott was easily redirected, responsive to prompting, had good tools to maintain attention and capable of social relationships. Nothing in Dr. Shulik’s

report indicated that Elliott had an autism spectrum disorder or an emotional/behavioral disorder.

Based on her experience working closely with 2 middle school students diagnosed with nonverbal learning disabilities, Ms. Flemming concluded that Elliott's educational needs are similar to theirs. Elliott would benefit from: small group academic instruction; a specialized math curriculum; support for social perception and emotional regulation; and reduced visual stimuli on printed materials and in classroom environments. (Flemming)

13. The Parent testified that Elliott made impressive progress in the acquisition of academic, behavior and social skills during the 2008-2009 school year at Villa Maria. The Parent credited the intensive language based instruction, the small, cohesive (2-5 student group) and the highly structured, multisensory approach to developing attentional skills and language pragmatics, with supporting Elliott's growth. Despite his positive response to the Villa Maria environment, the Parent now seeks to change schools to Eagle Hill School in Greenwich, CT.
14. The Eagle Hill School is a Connecticut approved private special education day and boarding school in Greenwich, CT. According to its brochure, Eagle Hill provides remedial and compensatory educational programming for students with specific learning disabilities. It uses a total language development approach in small ungraded instructional groups. Core academics, particularly math, use diagnostic-prescriptive teaching. Students also receive at least one language tutorial daily. All students receive direct instruction and support in the development of study skills and social skills. (P-43) There is no evidence in the descriptive materials that Eagle Hill has any capacity to accommodate life threatening food, chemical and/or environmental allergies.
15. The Parent testified that Elliott now fully participates in community and family events without any accommodations to his health conditions, behavior, or other disabilities. The Parent cited Elliott's independent participation in community theatre productions, as well as his vocal performance in a large family wedding, to show that he no longer requires the behavioral support or health supervision that Newburyport is offering in its proposed IEP. (Parent). The last school-based allergy plan in the record dates from the 2005-2006 school year. (P-8)
16. Karen Brann, Special Education Director for Newburyport, testified that she believed the emotional behavioral support program at the Merrimac Educational Collaborative to be a "good fit" for Elliott based on the behavioral goals outlined in the Villa Maria IEP. She also testified that, if Elliott did not have life-threatening allergies, his educational needs could be addressed in a mainstream program. (Brann)

FINDINGS AND CONCLUSIONS

The parties agree that Elliott is a student with special learning needs as defined by 20 U.S.C. § 1401 *et seq.*, and M.G.L.c. 71B and is thus entitled to receive a free, appropriate public education in the least restrictive environment. They disagree about whether the 2009-2010 Individualized Education Plan developed by Newburyport is reasonably calculated to provide that free, appropriate public education. After careful consideration of all the evidence introduced at the Hearing, and the arguments of counsel for both parties, it is my determination that is not. My reasoning follows:

The evaluative information is consistent over time and practitioner. In 2007, Dr. Moldover found Elliott to exhibit learning characteristics consistent with a diagnosis of a nonverbal learning disability. Dr. Moldover did not find then current evidence of an autism spectrum disorder or an emotional/behavioral disorder. (¶ 2) In 2009, Ms. Ingram found Elliott to exhibit characteristics consistent with a nonverbal learning disability. Ms. Ingram did not report evidence of an autism spectrum disorder or an emotional/behavioral disorder. (¶ 4) Most recently Dr. Shulik found Elliott's learning and behavioral profile to be consistent with a nonverbal learning disability and not within autism spectrum disorder or an emotional/behavioral disorder (¶ 5) Dr. Vargas and Dr. Castro, both with long histories of service to Elliott and consultation to Newburyport, agreed with the conclusions of the three evaluators. (¶ 7-10) There is no evidence in this record to support a finding that Elliott has an emotional and/or behavioral disability, only that his learning behaviors are related to and characteristic of a nonverbal learning disability. Nor is there anything within the parameters of the proposed IEP itself to suggest that Elliott has a primary emotional/behavioral disability. (See S-1) There are no current educational recommendations, nor any expert evaluative support, for Elliott's placement in an educational program designed for students identified as having primary emotional/behavioral disabilities. Dr. Vargas and Dr. Castro specifically cautioned against Elliott's placement in a setting designed to remediate behavioral disabilities, predicting that it would be educationally harmful and could precipitate behavioral regression. There is no evidence to the contrary in the record. (¶ 7, 10) Nevertheless the 2009-1010 IEP proposed by Newburyport designated the emotional-behavioral support classroom at the Merrimac Educational Collaborative.

Dr. Moldover, Ms. Ingram, Dr. Vargas and Dr. Castro uniformly recommended Elliott's placement in a highly structured, small group, language based instructional setting designed for students with specific learning disabilities. (¶ 2, 4, 7, 10) The emotional behavioral support classroom described by Ms. Willis does not provide the whole group academic remediation and instruction tailored to students with primary learning disabilities as recommended by all the evaluators in the record. Indeed the EBS program described by Ms. Willis, as well as outlined in the Merrimac Educational Collaborative literature, does not contain any of the elements of an educational program appropriately tailored to Elliott's special learning needs as set out in all evaluations in evidence.
(¶ 11)

Therefore I find that the 2009-2010 IEP proposed by Newburyport does not reflect the uniform and uncontradicted recommendations for appropriate educational services and settings of the expert evaluators and the other members of the Team with knowledge of Elliott's current educational functioning. I further find that there is no competent evidentiary support for Elliott's placement in the Merrimac Educational Collaborative emotional behavioral support classroom selected by Newburyport. The Parents have proved by more than a preponderance of the evidence that the 2009-2010 IEP developed by Newburyport is not reasonably calculated to provide a free, appropriate public education to Elliott.

The Parents have also proved by more than a preponderance of the evidence that in order to receive a free, appropriate public education, Elliott requires instruction in small cohesive groups as part of a highly structured, intensively language based educational program designed to meet the needs of students with specific learning disabilities, executive functioning deficits and difficulty with social pragmatics. They have not convinced me, however, that the Eagle Hill School in Greenwich, CT is the only available program appropriately tailored to Elliott's learning needs, nor am I persuaded that there is no appropriate educational program available to Elliott within Massachusetts. There is no indication in this record that the nature, type or severity of Elliott's disability is so unique or so profound that he must be removed from a public school setting, his home community, or the full spectrum of specially designed educational programs that currently exist in Massachusetts. On the contrary, Elliott's constellation of learning needs as identified by all evaluators is accommodated and remediated in public and private school settings throughout eastern Massachusetts. (See testimony of Vargas, Castro, Flemming, Brann).

The statutory mandate that students with disabilities be educated in the "least restrictive environment" has many facets. To be sure, students with special needs are entitled to participate in the regular education curriculum, with access to regular education materials, activities, and facilities, and alongside students without disabilities, to the extent appropriate and possible. Here, while there are no recommendations for Elliott's placement in a mainstream instructional setting, the principle of least restrictive environment provides guidance on two corollary issues raised by the Parents' request for Elliott's placement at the Eagle Hill School: residential programming and removal from the home community. By dint of geography Elliott's placement at Eagle Hill would require some, perhaps intertwined, form of both. I note, however, that there is no indication in this record that Elliott requires, or could benefit from, residential programming for educational reasons. Instead, the record shows that educational services delivered to Elliott outside of the traditional school day precipitated resistance and behavioral dysregulation (Vargas). Further, the Parent movingly testified to Elliott's investment in and enrichment from his participation in community events and activities. To deprive him of those "normalizing" experiences without a strong showing of a counter-balancing benefit, would ignore the full meaning of "least restrictive environment." To do justice to the concept of least restrictive environment all potentially appropriate educational options close to home should be carefully considered before selecting a school that by its very distance prevents integration into the student's home community. I am not persuaded that Newburyport has at this juncture considered the least restrictive educational alternatives that are appropriately tailored to Elliott's documented learning needs.

Therefore, Newburyport must immediately develop an IEP that reflects the consistent findings and recommendations of all the evaluators, in particular the detailed programmatic recommendations set out in the reports of Dr. Moldover and the Stern Center. I note that the instructional settings, methods, and personnel recommended in the evaluation reports are neither unusual in nor disruptive to traditional public school programs. Then Newburyport must conduct a broad internal and external search for public school programs that currently exist or can be easily adapted to meet Elliott's learning needs. As this record suggests that Elliott's health is no longer a limiting factor, programs and locations previously believed to be untenable may now be appropriate for Elliott. If Newburyport is not successful in this effort within a reasonable period of time, Newburyport may enlarge its search to include private special education day programs capable of implementing Elliott's IEP that are within the regulatory commuting distance. (603 CMR 28.06 (8)).

ORDER

The 2009-2010 IEP proposed by Newburyport is not reasonably calculated to provide a free, appropriate public education to Elliott. Newburyport shall convene a Team no later than August 26, 2009 to develop an IEP and create or locate an educational placement that reflects the findings and recommendations of the evaluators as outlined in this Decision. Newburyport shall issue the new IEP no later than September 1, 2009.

The parties shall submit written status reports to the Hearing Officer on September 4, 2009. The Hearing Officer will retain jurisdiction of this matter to monitor compliance.

By the Hearing Officer,

Dated: August 13, 2009