

**COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF ADMINISTRATIVE LAW APPEALS  
BUREAU OF SPECIAL EDUCATION APPEALS**

In re: Ollie<sup>1</sup>

BSEA #2007894

**DECISION**

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC 1400 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the state special education law (MGL c. 71B), the state Administrative Procedure Act (MGL c. 30A), and the regulations promulgated under these statutes.

A hearing was held remotely over Zoom on July 13, 15, 16, 17, and 30 and August 13, 24, 25, 26, and 28, 2020 before Hearing Officer Amy Reichbach. Those present for all or part of the proceedings, all of whom agreed to participate virtually, were:

Mother

Francine Bigda

Speech and Language Pathologist, Springfield Public Schools (SPS)

Melinda Brodecki

Assistive Technology Specialist, SPS

Patricia Burns

Assistant Executive Officer of Special Education and Related Services, SPS

Arria Coburn

Principal, Renaissance School, SPS

Dr. Elena Davis

Assistant Director, James Levine & Associates

Molly Dill

Teacher, SPS

Barbara Ewing

Teacher, SPS

Maureen Ferriter

Vocational Counselor/Transition Specialist, SPS

Dr. Adminda Figueroa-Scott

School Psychologist, SPS

Michael Fitch

Private Evaluator

Pamela Ford

Speech Pathologist, SPS

Patricia Gray

Language Learning Disability Coach, SPS (retired)

Andrea McGovern

Advocate for Student

Laurie Malandrinos

Special Education Supervisor/Education Team Leader, SPS (retiree callback)

Shalon (Brown) Merriman

Teacher, SPS

Dr. Mary Anne Morris

Executive Director of Special Education and Related Services, SPS

Dr. Melissa Mumby

Former Evaluation Team Leader, SPS

Dr. Melissa (Mimi) O'Neill

Supervisor of Clinical and Behavioral Services, SPS

Paris Ortiz

Former Volunteer, Martin Luther King Family Services

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

Colleen Peterson	Speech Pathologist, SPS
Nancy Retchin	Special Education Supervisor, SPS (retiree callback)
Michelle Serafino	High School Special Education Supervisor, SPS
Claire Sibia	School Psychologist, SPS
Luciano Valles	Supervisor of Speech-Language, Hearing, and Language Learning Disabilities
Samantha (Edwards) Vega	Special Education Department Chair, SPS
Kimberley Wells	Chief Schools Officer, SPS
Melinda Phelps	Attorney for SPS
Alisia St. Florian, Esq.	Attorney for SPS
Alison Sexson	Legal Intern, Bureau of Special Education Appeals
Alexander Loos	Court Reporter
Jane Williamson	Court Reporter

The official record of the hearing consists of documents submitted by the Parent and marked as Exhibits P-1 to P-5, P-7, P-8, P-12 to P-15, P-17 to P-22, P-23, P-23(b), P-24, P-26 to P-31, P-33 to P-38, P-40, P-43, P-44, P-50, P-53, P-56, P-59 to P-62, P-65 to P-70; documents submitted by Springfield Public Schools and marked S-1 to S-79 and S(2)-1 to S(2)-66<sup>2</sup>; approximately ten days of recorded oral testimony and argument; and a ten-volume transcript produced by court reporters. At the request of the parties the case was continued to October 2, 2020 and the record held open for submission of closing arguments. The parties' closing arguments were received and the record closed on that date.

## INTRODUCTION

The procedural history of this matter is long and complicated. I issued seven published rulings (and additional unpublished ones) between the filing of the *Hearing Request* on February 24, 2020 and the completion of the Hearing on August 28, 2020. For additional detail, the reader may consult my *Ruling on Springfield Public Schools' Motion to Postpone* issued on April 10, 2020; *Ruling on Various Motions*, issued May 5, 2020, *Ruling on Multiple Motions* issued on May 28, 2020; *Ruling on Springfield Public School's Second Motion to Postpone*, issued June 11, 2020; *Second Ruling on Multiple Motions*, issued June 11, 2020, *Ruling on Parent's Motion for District to Produce Teachers, and Them Pay (sic) Per Diem Rate for Hearing and Parent's Urgent Matter of Discovery/Request for Sanctions*, issued July 2, 2020, and *Ruling on Parent's Motion for Sequestration of Witnesses*, issued July 24, 2020.

In essence, following her withdrawal of a *Hearing Request* filed on December 30, 2019, which was addressed in detail in my *Ruling on Springfield's Partial Motion to Dismiss* in BSEA # 200476, Parent filed a *Hearing Request* on February 24, 2020. As in her previous *Hearing Request*, with additional claims and information in this amended form, Parent alleged that

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<sup>2</sup> The first two pages of S2-38 were struck. Springfield Public Schools (Springfield, or the District) also filed addendums to several exhibits in the course of the hearing, with the agreement of Parent and permission of the Hearing Officer. Specifically, the District offered, and I accepted in evidence, Exhibits S-3B, S-42B, and S-50B. Several additional exhibits offered by the District on July 27, 2020 were excluded.

Springfield had failed to offer Ollie a free appropriate public education (FAPE) since April 2017. According to Parent, the relationship between the family and the District had deteriorated due to the misconduct of Springfield officials to the point that Ollie, who has been diagnosed with autism, ADHD, sensory processing disorder, a language disability, and an intellectual impairment, is now afraid to participate in his own Individualized Education Program (IEP) meetings. She contended, further, that her attempts to have the Superintendent investigate this misconduct has resulted in retaliation against her and her son by both Springfield Public Schools and the Mayor's office. Specifically, Parent argued that Springfield has failed to provide Ollie with a highly qualified reading coach and appropriate reading intervention; failed to create and deliver appropriate transition services; and failed to provide travel training. She requested that the BSEA find that Springfield has failed to offer Ollie a FAPE since April 2017, changed his placement "in denial of parent rights, and violation of IEP placement process," retaliated against parent and student for participating in protected activities, violated student/parent rights by bringing an attorney to a Team meeting without notice, altered the IEP outside of the Team meeting "with the consensus of then removal of (*sic*) intellectual impairment." Parent further requested that the BSEA order Springfield to reimburse her for travel expenses due to the District's failure to provide transportation, hire an independent transitional coach for Ollie and write transition goals that will provide him with a FAPE, write a policy for misconduct by top administration, "pay for two addition (*sic*) college courses in the steps program at AIC for failure to provide support during dual enrollment at STCC resulting in f's for his classes," and "appropriate identification language bases learning disability with compensatory services (*sic*)." The Hearing was scheduled for March 20, 2020.

During several conference calls, the issues for Hearing were narrowed by agreement, and the parties agreed to a two-month postponement to May 15, 20, 21, and 27. On April 10, 2020, I allowed Springfield's request for further postponement, over Parent's objection, because BSEA proceedings were still occurring remotely and my experience with the parties during multiple conference calls and email exchanges led me to believe I would be unable to regulate the presentation of the evidence and the participation of the parties during a virtual hearing for the purposes of ensuring an adequate and comprehensive record.<sup>3</sup> The Hearing was scheduled for June 29 and 30 and July 13, 16, and 17, 2020, and I noted that I would entertain a further *Motion to Postpone* in the event that BSEA proceedings were still occurring remotely at that time. On May 4, 2020, Parent filed an *Amended Hearing Request* to add claims related to the IEP proposed for Ollie for the period from April 16, 2020 to April 15, 2021.

On May 5, 2020 I issued an *Order on Various Motions* to address Parent's *Request for Accommodations*, Parent's *Request for an Emergency Conference Call*, Parent's *Discovery Request*, Parent's *Motion Requesting District Stop Denying SLD Form in IEP Meeting/LEA Authority*, Parent's *List of Witnesses* and the District's *Motion to Exclude Parent Witnesses on the Basis of Relevancy*. Although the District had responded to several of these filings, for the most part my Order reminded Parent of the proper ways to request discovery, subpoenas, etc. I also allowed Parent's *Amendment* to her *Hearing Request*. On May 20, 2020, following a Zoom Pre-Hearing Conference, I issued an Order regarding how the matter would proceed, as the parties had begun filing multiple motions per day, and on May 22, 2020 I issued an Order clarifying the issues for Hearing.

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<sup>3</sup> See BSEA *Hearing Rule IX(B)*.

On May 28, 2020, after a Virtual Motion Hearing held via Zoom on May 19, 2020, I issued a *Ruling on Multiple Motions*. In this *Ruling*, I denied Parent's *Motion for an Independent and Impartial Law Firm to Collect and Produce Discovery Student File Documents*, Parent's *Request for Hearing Officer to Prevent Further (sic) Violation of Parent Rights to Comprehensive Student File/and Freedom of Speech*, and Springfield's *Motion that Parent Keep the Information About This Matter Confidential* and allowed Springfield's *Motion for Protective Order* and *Request for Order Compelling Complainant to Destroy Inadvertent (sic) Disclosed Documents*. I noted that nine additional motions had already been filed by the parties and that I would address these during a further virtual Pre-Hearing Conference on June 3, 2020.

On June 1, 2020, Parent filed a further *Motion to Amend Hearing Issues*, which Springfield opposed, and the parties filed numerous additional motions over the next few days. On June 4, 2020, the District filed a second *Motion to Postpone* the Hearing, requesting that it be postponed until such time as it could occur in person. Parent indicated that she would agree to a postponement until September. On June 8, 2020, I issued an Order limiting filings to Mondays and specifying the ways in which the parties would communicate with each other going forward. On June 11, 2020, I allowed the District's request as to the first two days of the Hearing, given the amount of discovery that remained to be completed, but denied it as to the remainder. I concluded that my experience with the parties during Zoom Motion Sessions had caused me to reconsider my earlier conclusion that I would not be able to preside over a fair and orderly hearing virtually. As such, good cause did not exist to postpone the Hearing until proceedings would occur in person, or even until September.

On June 11, 2020 I also issued a *Second Ruling on Multiple Motions*, which addressed the 13 motions heard during the virtual Motion Session held on June 3, 2020. In it, I allowed Parent's *Motion to Amend Hearing Issues*. I denied Parent's *Motion for Reconsideration IEP Audio Tapes (sic)*, Parent's *First Request for Expedited Discovery Production of Documents and Interrogatories*, Parent's two *Motions to Compel*, Parent's *Motion for a Protective Order*, and Springfield's *Request for Protective Order*. With one limited exception, I allowed Springfield's *Motion to Quash Subpoenas for Personnel Records*, and I allowed in part and denied in part Springfield's *Motion to Quash Subpoena for Regina Tate, Esq., and Other Witnesses*.

Following a further Zoom Pre-Hearing Conference, which took place on June 19, 2020, I issued an Order scheduling the Hearing via Zoom for July 13, 15, 16, and 17 and August 24, 2020. On June 26, 2020, the District filed a letter indicating that although the July Hearing dates had been established in April and reaffirmed in June, and subpoenas had been issued upon Parent's proper, timely requests, many District employees were not working over the summer and as such would need to be paid per diem to attend the Hearing. The District asserted that it was not willing nor should it be required to pay for employees not on its witness list to participate in the hearing, and that these witnesses could not be required to appear absent a court order. Parent filed a response and contended that she needed the BSEA's assistance in discovery issues. On July 2, 2020, I issued a *Ruling* allowing Parent's *Motion for District to Produce Teachers, and Them Pay (sic) Per Diem Rate for Hearing and Parent's Urgent Matter of Discovery/Request for Sanctions*. I indicated that should the District fail to produce properly subpoenaed witnesses and/or fail to meet its discovery deadlines, I would impose sanctions up to and including prohibiting Springfield from introducing its own evidence and/or witnesses at Hearing.

On July 6, 2020, Parent filed a *Motion for Sanctions for Continued Witness Interference*, which the District opposed on the same date. Also on July 6, 2020, Parent filed a *Motion to Submit Evaluation into Evidence (Evaluation Motion)* regarding an evaluation conducted by her expert in June, 2020. On July 8, I held an additional Pre-Hearing Conference via Zoom to address these and four emails I had received from Parent in the preceding two days. On July 9, 2020, Parent filed a *Motion for Sequestration of Witnesses (Sequestration Motion)*. I took the *Evaluation Motion* under advisement, indicated that I would address the *Sequestration Motion* once I had received the District's response, and took no action on the additional emails. Over the weekend, I took the unusual step of issuing a Final Pre-Hearing Order to address multiple emails I had received from Parent regarding distribution of exhibits, Zoom links, and production of rebuttal evidence. As she had raised only general allegations in her *Sequestration Motion*, I directed Parent to submit, by 9:00 AM on the first day of Hearing, sworn affidavits from the particular witnesses whose testimony, she alleged, would be tailored prejudicially in the absence of sequestration. I indicated that I would hear argument from both parties at the beginning of the Hearing.

On July 22, 2020, Parent filed a mid-hearing *Motion for Permission to Amend Hearing (sic) (Mid-Hearing Motion)*. On July 23, 2020, I issued an Order addressing participation on Zoom, additional exhibits the parties wished to enter into evidence, and how we would proceed on Parent's *Mid-Hearing Motion*.

After reviewing the parties' submissions and investigating Parent's allegations fully, I issued an oral ruling on Parent's *Sequestration Motion* at the beginning of the second day of Hearing, which was July 15, 2020. On July 24, 2020, I issued a formal *Ruling* denying Parent's *Motion for Sequestration of Witnesses*.

On August 11, 2020, I issued an Order addressing several issues raised by the parties during and after the most recent date of Hearing, July 30, 2020. Specifically, I clarified the issues for Hearing and, as the District had withdrawn its *Opposition* to Parent's *Motion for Permission to Amend Hearing* in the interests of efficiency, I added a fifth issue. During a Conference Call that took place on August 10, 2020, Parent requested permission to amend her *Hearing Request* yet again to add alleged procedural violations that occurred in connection with Team meetings in April 2020. The District objected and I denied that request. As to Parent's *Evaluation Motion*, I indicated that because the District had not yet had the opportunity to consider the evaluation at a Team meeting, but one was scheduled before the remaining day of Hearing, I would revisit the issue once the Team meeting had occurred. Parent had also filed a *Motion to Admit Additional Document into Evidence* on August 3, 2020, which I allowed over the District's *Opposition*, filed the same day. As the parties recognized that additional days would be required to complete the Hearing, the Order added the following hearing dates: August 13, 24, 25, and 26, 2020. Also on August 11, 2020, I issued an Order clarifying the issues for hearing.

On August 17, 2020, Parent filed a *Motion to Request Reimbursement*, alleging that the District had committed procedural errors in connection with a Team meeting that occurred on August 17, 2020, and as such she is entitled to reimbursement for her expert's attendance at the meeting. A Conference Call was scheduled for August 19, 2020 to discuss the admission of the expert's recent evaluation. During the call, the parties attempted to describe to me in detail what had occurred at the August 17, 2020 meeting but I redirected them, as this was not part of the

case before me. On August 25, 2020, the parties filed a joint *Motion to Continue* to add a tenth day of Hearing on August 28, 2020 and submit closing arguments on October 2, 2020.

As an issue had been raised during the final days of the Hearing regarding the credentials of one of Ollie's teachers, I issued an Order on August 26, 2020 directing Parent to submit any evidence in support of her allegations regarding the lack of an effective waiver by close of business on September 2, 2020, and instructing the District to file its response by September 9, 2020. Both parties were directed to include in their filings a proposed resolution. Parent filed her *Motion* and supporting documentation on August 28, 2020, and on September 9, 2020, Springfield filed a *Motion in Support of Finding that Lack of Waiver does not Equate to FAPE Denial*.

The issues for hearing were delineated as follows:

- (1) Whether the following IEPs proposed by Springfield and not fully accepted by Parent/Student (including transition services), and any amendments thereto, were and/or are reasonably calculated to provide Ollie with a FAPE;
  - a. 5/10/18 – 4/10/19, through 10/2/18<sup>4</sup>
  - b. 4/24/19 – 4/23/20, as amended on or about 5/31/19, 9/25/19, and 2/6/20
  - c. 4/16/20 – 4/15/21
  
- (2) Whether the following accepted, expired IEPs were implemented fully, and if not, what is the appropriate remedy;
  - a. so much of the IEP dated 6/15/17 – 5/1/18 that pertains to the period beginning 2/24/18
  - b. 10/3/18 – 4/10/19
  
- (3) Whether Springfield has committed procedural errors in connection with a meeting in or about September 2018, and/or in connection with a request for an Independent Educational Evaluation made on or about April 22, 2019, and/or in connection with the Team meetings that occurred or were scheduled to occur during April 2020, that amounted to a deprivation of a FAPE because they impeded Ollie's right to a FAPE; significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to Ollie; or caused a deprivation of educational benefits;
  
- (4) Whether any of the District's actions between February 24, 2018 and February 24, 2020, described by Parent as discrimination, retaliation, threat, and abuse of power, impeded Parent's ability or Ollie's ability to participate in IEP meetings;

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<sup>4</sup> This issue was initially framed as the Individualized Education Program (IEP) dated 5/10/18 to 4/10/19, with issue (2)(b) examining an accepted, expired IEP. Issue 2(b) actually pertains to an amendment to the 5/10/18 to 4/10/19, such that issue 1(a) addresses only the period during which this IEP was not accepted.

- (5) Whether the ESY services for summer 2020 accepted by Parent, which were proposed for Ollie in the IEP dated 4/16/20 to 4/15/21, were implemented fully. If not, what is the remedy?

For the reasons below, I conclude that Ollie did not receive the counseling services he was entitled to between 10/3/18 and 4/10/19 pursuant to his amended 2018-2019 IEP, nor did he receive at least two weeks of ESY speech and language services in the summer of 2020. With these exceptions, Parent has failed to prove her claims.

## **FINDINGS OF FACT**

1. Ollie is 20 years old. He resides in Springfield with his mother, who has sole legal and physical custody of him. He is the only child on his mother's side. Ollie has periodic visits with his father, who has two younger sons from other relationships. Ollie is represented by an advocate, Andrea MacGovern, in educational matters, but his mother represented him in the instant Bureau of Special Education Appeals (BSEA) proceeding. Ms. MacGovern has represented over 1,000 children in her 31 years as an advocate. She began working with Ollie in 2016, at Parent's request, but in 2017 Ollie himself engaged her to represent him. (S-3, S-39; MacGovern, V: 194-98, VII: 151-52)
2. Ollie is friendly, soft-spoken, and motivated to succeed in school and in life. He enjoys football, track and field, wrestling, playing video games, going to the mall and movies with friends, and playing sports. His favorite subject in school is history and his least favorite, science. Ollie's teachers describe him as respectful, kind, helpful, and an eager learner. His mother says that he is sweet and motivated both to make others happy and to perform well. He presents as somewhat young for his age in both his perceptions of and responses to social situations and can be socially naïve. He has difficulty at times figuring out appropriate responses to certain comments or situations. Ollie struggles with more subtle aspects of nonverbal communication, perspective taking, and social problem-solving, consistent with his autism spectrum diagnosis (ASD). (S-3, S-38, S-39, S-71; Dill, VI: 69; MacGovern, VII: 164-65)
3. Ollie has consistently expressed a goal to graduate from high school and attend college. He was initially scheduled to graduate from Springfield Renaissance School 6-12 (Renaissance) in June 2019. At that time, he met all credit requirements necessary to obtain a high school diploma but had passed only two of the three required Massachusetts Comprehensive Assessment System (MCAS) examinations. (S-1, S-3; Coburn, IV: 170; Dill, VI: 90; Sibia, VI: 218; MacGovern, VII: 166; Vega, VIII: 15; Morris, X: 42-43)
4. Ollie began attending Renaissance in the fall of 2012, when he entered sixth grade. Renaissance is a magnet school that focuses on STEM (science, technology and mathematics) through a hands-on expeditionary learning approach. Students at Renaissance participate in Crew, a multi-grade advisory program, where they engage in academic intervention, cultural celebrations, and activities focused on self-awareness and transition readiness while building relationships with their teacher and a small group of students. During high school, they are exposed to college preparation skills and information about the college application process.

College trips are scheduled and students opt in to meet with various college advisors. Students have access to a program called Naviance, supported by a guidance counselor, that tracks students' goals and gives them feedback. Naviance also provides college and career readiness skills. (Coburn, IV: 159, 187-88, 200-02, 216, 220-22; Vega, VII: 276; Merriman VIII: 121)

5. IEP Team meetings beginning when Ollie was in high school, particularly those since the fall of 2018, have been long, tense, contentious and chaotic. Often, they are convened for a particular purpose (i.e. to review a new evaluation), but Parent and Ollie's advocate attempt to steer the conversation toward a different set of concerns that then became the subject of the meeting. Team meetings tended to last one and a half to three hours, covering wide-ranging topics not on the original agenda. At times, Education Team Leaders (ETLs) and other administrators requested additional support for meetings, and still had to end without accomplishing the purpose stated on the NI. (Coburn, IV: 168-69, 234-35; Dill, VI: 78, 108; Sibilis, VI: 218-19; Valles, VII: 230-31; Vega, VIII: 12-14; Ewing, VIII: 312-13, 315; O'Neill, IX: 21-23, 129-30; Morris, X: 56-58, 68-69)

6. As a young child, Ollie was diagnosed with sensory integration disorder and around 2004, he was diagnosed with residual pervasive developmental disorder/autism spectrum disorder (ASD) with echolalia. Records also indicate a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and, from 2010 to 2017, a secondary disability category of Communication. Ollie's developmental history is remarkable for speech delays, for which he began receiving services in early intervention, as well as delays in motor skills. Ollie has been eligible for special education services since the age of three, and he was reportedly retained in kindergarten and/or third grade. (S-18, S-38, S-39, S-72; Morris, X: 30)

7. Ollie was evaluated by a District psychologist in 2013, which led to an independent psychoeducational evaluation that raised concerns about his intellectual capacities. The District performed a three-year reevaluation in 2015. (S-38, S-72; Fitch, I: 39, 63-64)

8. Ollie's Team convened on May 20, 2015 for his Annual Review and developed an IEP for the period from 5/20/15 to 5/19/16. Two copies of this IEP are in evidence. The District filed a copy of the IEP, and accompanying flowchart, that listed autism as Ollie's Primary Disability category. (S-78) Parent filed a copy of these documents with the same dates that listed Communication as a Secondary Disability as well. The Team reconvened again in December 2015 to discuss his reevaluation. (P-18, P-62)

9. Ollie's Annual Review meeting took place on May 4, 2016, after which Springfield proposed an IEP dated 5/4/16 to 5/3/17 for a partial inclusion placement, listing autism as his primary disability category. Following a partial rejection and a meeting, Springfield amended the IEP by adding support in the B-grid. Parent accepted this amended IEP dated 9/30/16 to 5/3/17 and partial inclusion placement on September 30, 2016. (P-7, P-18; S-76, S-77)

10. On four dates between December 3, 2016 and January 21, 2017, Michael Fitch performed an Independent Educational Evaluation (IEE) of Ollie.<sup>5</sup> He observed that Ollie performs poorly on timed tests. He required some redirection to task due to inattention and distractibility, but he was compliant and able to comprehend the tasks before him with minimal difficulties. (P-3; S-72; Fitch, I: 113)

Mr. Fitch concluded that Ollie's overall General Intellectual Ability was in the very low range, with some discrepancies across his cognitive profile. Mr. Fitch did not view Ollie's scores as consistent with an intellectual disability, but he flagged pragmatic language skills and auditory processing as particular concerns. As he could not be certain that Ollie's language and communication issues were indicative of a language-based learning disability and not a feature of his autism Mr. Fitch recommended that the Team consider administering a speech and language evaluation to gain further information about Ollie's receptive and expressive language and comprehension.<sup>6</sup> (P-3; S-38, S-72; Fitch, I: 67-70, 113, 122-24, 126-27)

At hearing, Parent appeared very focused on the results of one of the Woodcock-Johnson subtests conducted by Mr. Fitch that, in her view, suggested that Ollie was reading on a second grade, seventh month level. (Fitch, I: 82-83; Peterson, II: 82-83) Other witnesses cautioned against interpreting a single subtest score as an indicator of global performance and clarified that a score on one Woodcock-Johnson subtest does not equate to a student's reading level. They all testified that determining Ollie's reading level would require examining all subtests together, along with other information. Moreover, professional practice does not consider grade level equivalents to be reliable as standard scores. (Peterson, II: 83-84; Davis, II: 190-91, 211, 257-58, VII: 17, 65-66; Ford, III: 202; Vega, VIII: 10-11; O'Neill, IX: 44-47)

11. The Team reconvened to discuss the results of this IEE on May 3, 2017. A flowchart appears to have been created on that date reflecting a determination that Ollie was eligible for special education under both autism and intellectual disability designations. Parent expressed concern about some of the accommodations in Ollie's classes, particularly Biology, and Ms. MacGovern requested that the District consider whether Ollie had a specific learning disability (SLD). The Team recommended that an updated speech/language evaluation and Language Learning Disability (LLD) observation be conducted, and that Ollie attend the summer LLD program. This program provides intensive supports for reading comprehension and vocabulary both for students in the school-year LLD program and other students who are not in the program but require additional language supports. The summer LLD program is one of the few, if not the only, program offered in the summer by Springfield that addresses reading in a small group setting. (P-18, P-68; S-63; Gray, I: 184-85; Peterson, II: 64, 96-97; MacGovern, V: 199, 205-09; Valles, VII: 224-27; Morris, X: 79)

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<sup>5</sup> Mr. Fitch has been licensed as an educational psychologist since 2009 and has been conducting independent educational evaluations since that time. He has worked in public school settings and privately, for families. (Fitch, I: 35-36)

<sup>6</sup> Mr. Fitch also recommended that Ollie receive additional support and instruction in the areas of reading, broad reading, reading fluency, broad mathematics, and written expression, as well as more intensive assistance in the form of accommodations and modifications in the areas of reading rate, mathematics, and written expression. (P-3; S-72)

12. Following this meeting, Springfield Supervisor of Speech-Language, Hearing, and Language Learning Disabilities, Luciano Valles asked Colleen Peterson, MS, CCC/SLP, to assess Ollie's oral and written language as well as his social language development.<sup>7</sup> Ms. Peterson conducted a speech and language reevaluation on May 25, 30, and 31, 2017. She observed that Ollie readily engaged in testing, demonstrated both an understanding and use of humor, requested breaks as needed, and displayed auditory discrimination difficulties, particularly during the receptive vocabulary test. (P-5; S-71; Peterson, I: 222-31, II: 67-75)

Overall, Ollie's scores demonstrated lower language skills than cognitive functioning, as well as stronger expressive than receptive language skills. His general verbal skills were in the very low to borderline range, and his overall writing ability was within the average range. Though he demonstrated a personal strength in his ability to interact socially with others, Ollie appeared to struggle with inferences, and he lacked understanding of the conventions and rules of behavior of his socially appropriate peer group. Ms. Peterson noted that her standardized scores reflected an increase in novel sentence formulation and ability to comprehend word relationships since 2015 testing, and that progress reports indicated growth in all targeted language areas. (P-5; S-47, S-71; Peterson, I: 225-27, 234-35, II: 33-34, 49-51, 79-80)

On the basis of her own testing and review of others' speech-language, psychoeducational, and achievement evaluations and observations, Ms. Peterson believes that Ollie does not fit the profile of students with a language-based learning disability. Rather, he is more accurately characterized as a student with ASD with intertwined language deficits in several specific areas, including receptive vocabulary, language and auditory information processing, and social language development. At the time of her evaluation, Ms. Peterson believed Ollie would benefit from significant support in the classroom, small group size, visual supports, and an approach that incorporates opportunities for skills to be modeled and for Ollie to practice what he has learned. (Peterson, II: 42-43, 46-48, 75, 87)

13. On May 23 and 31, 2017, Patricia Gray conducted an LLD observation of Ollie to develop strategies and recommendations to support his learning needs across all academic areas.<sup>8</sup> Mr. Valles requested this observation, even though Ollie was not in the LLD program. (P-4; S-70; Valles, VII: 227)

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<sup>7</sup> Ms. Peterson has a Master's of Science in Speech/Language Pathology and Audiology. She also holds Massachusetts Board of Speech/Language Pathology and Audiology licensure, a certificate of clinical competence from the American Speech, Language, and Hearing Association, and Department of Elementary and Secondary Education (DESE) certification. Ms. Peterson has been working in Springfield since 2005, particularly within the Language Learning Disabilities (LLD) program, since 2005. As a clinical supervisor, she conducts testing and supervises speech/language pathology assistants, trains staff, conducts observations, supports LLD teachers, and makes curricular recommendations. (P-3, P-5; S-71, S-72; Peterson, I: 218-19, II: 38-39)

<sup>8</sup> Ms. Gray is a certified special educator. She worked at the Curtis Blake Diagnostic Center and the Curtis Blake Day School for 20 years, where she received extensive background and training in specific methodologies for working with students with language-based learning disabilities. She began teaching in Springfield in 2001, became an LLD coach in or about 2005, and retired in 2019, though she returned part-time during the 2019-2020 school year. As an LLD coach, Ms. Gray trained teachers, provided model lessons, proposed interventions, conducted informal student testing, attended Team meetings, and conducted observations. (Gray, I: 146-47, 152-54, 163, 177, 199-202)

Following her observation, Ms. Gray recommended that Ollie be placed in a small, highly structured setting for all academic instruction, where instruction is simple, structured, and differentiated to permit him to utilize his academic strengths; that assignments be short or broken into sections and directions be presented orally and in writing, with teacher monitoring for understanding; that he be seated near the teacher or paraprofessional and receive close supervision with frequent, positive cues to stay on task; and that a reduced number of tasks be required for Ollie to demonstrate competence. In order to support comprehension, Ms. Gray recommended the use of visuals, including graphic organizers; pre-teaching of vocabulary linked to subject matter, including a visual when possible; teaching the use of context clues; utilizing content vocabulary for quick phonemic awareness activities; working with synonyms and antonyms in defining new words; and teaching skills to identify important words and concepts. To support written expression, Ms. Gray recommended the use of writing samples and models, graphic organizers, keywords, copies of notes, and access to word processing and/or speech-to-text software. She did not recommend that Ollie be placed in an LLD classroom because she believed he was, and would continue to be, able to access the curriculum with the supports that were in place and the additional recommendations she had made. Ms. Gray did not recommend a reading program such as Wilson or Orton-Gillingham because, based on Mr. Fitch's report, Ollie's scores demonstrated that comprehension, rather than decoding and encoding, was a central concern. (P-4; S-70; Gray, I: 155, 204-07, 209-10)

14. The Team convened on June 15, 2017 to review the results of the speech and language evaluation, LLD observation, and assistive technology screening. Ms. Peterson and Ms. Gray presented their reports, and Assistive Technology Specialist Melinda Brodecki was present to consider assistive technology needs. Parent requested that Ollie receive speech and language services within the classroom setting instead of pull-out. Upon reviewing the LLD observation report, the Team noted that many of the suggested strategies had already been incorporated into Ollie's IEP, but that the consistency of their implementation across the curriculum is important for his academic success. (P-12, P-18, P-19; S-62, S-63; Gray, I: 191; Peterson, II: 34-35, 54; Valles, VII: 228-29)

15. Following this meeting, Springfield proposed an IEP dated 6/15/2017 to 5/1/2018 for a substantially separate classroom, consistent with Ms. Gray's recommendation, with goals in ELA, Mathematics, Speech and Language, Personal/Social Skills, and Study Skills. The IEP listed Ollie's primary disability as autism and did not include any other disability categories. Ms. Peterson drafted the Speech and Language goal to reflect the accommodations she recommended; Parent did not express concerns with the proposed goal or services in this area. The Team noted that Ollie preferred inclusion due to the social component, but that he should spend the majority of his day in a specialized, small group setting. As Parent and his advocate had given their permission, Ollie could "push in" to general education classes to participate in hands-on "expeditions" at the discretion of the appropriate specialist. In that case, the special educator would preview and review materials to be covered, and Ollie would stay after school for help. (P-12; S-63; Gray, I: 178, 203-04; Peterson, II: 88-92, 94-98; Coburn, IV: 218-19)

The IEP provided for one 20-minute session per 5-day cycle of counseling, one 90-minute session per month of speech/language services, five 60-minute sessions per cycle of each of the following: ELA, Science/Tech, History/Social Studies, and Mathematics; and two sessions of 20

minutes each of executive functioning services, provided by the special education teacher or paraprofessional. The IEP also included 200 minutes of speech and language consultation per school year and 60 minutes per year of occupational therapy (OT) consultation. Proposed ESY services consisted of four sessions of four hours each per 5-day cycle, provided by the special education teacher or paraprofessional and speech and language pathologist (SLP) or speech and language assistant (SLA). The Team recommended that these services be delivered through participation in the summer LLD program. The Team recommended an assistive technology evaluation, as well as a vocational/transitional assessment. The counselor suggested that Ollie participate in a program available to all students that may include an internship and dual enrollment. (P-12; S-63; Gray, I: 184-85; Peterson, II: 62-64, 96-97)

16. In June 2017, Springfield generated, and Parent signed on June 14, 2017, a Consent Form for Assistive Technology and Vocational/Transitional assessments. (S-59)

17. On July 3, 2017, Parent accepted the IEP as developed, commenting that she had spoken with Mr. Valles and specialized summer transportation was being added. She accepted the proposed placement. (P-12; S-63)

18. Ollie attended only six of 18 sessions in the summer LLD program. When present, he worked in a group with two other high school students and did well. (S-73)

19. On September 19, 2017, Ollie participated in an Assistive Technology Evaluation with Assistive Technology specialists Melinda Brodecki<sup>9</sup> and Eileen Correnti. The purpose of assistive technology is to help students gain access to the curriculum and increase their independence and participation in their school days. In the course of the assessment, Ollie's teachers did not raise particular concerns, and the evaluation showed that Ollie had made substantial progress in the use of his assistive technology tools, such as spell-check and an immersive reader with dictation built into his District laptop, since his last assistive technology evaluation in 2013. In fact, Ollie had been trained in these tools and demonstrated the ability to access them independently. The evaluators concluded that Ollie would continue to benefit from assistive technology strategies to maximize his access to the curriculum, including use of school computers to type his work, graphic organizers, vocabulary lists, and learning tools in One Note. The report stated that the Assistive Technology specialist would provide training, consultation, and assistance as needed or requested by the Team. (P-13; S-28, S-61; Brodecki, II: 107, 112-14, 116, 128, 140-43, 146-48)

20. In September and October 2017, Springfield Vocational Counselor/Transition Specialist Maureen Ferriter met with Ollie four or five times to complete an assessment. Ollie was able to fill out the student questionnaire on his own, asking for clarification only a few times. In fact, Ollie was able to explain that he had some limitations with processing, attention, and focusing. Ms. Ferriter had to follow up several times before she received Parent's questionnaire. For

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<sup>9</sup> Ms. Brodecki attended one of the first DESE-sponsored assistive technology certificate programs twenty years ago and has since attended hundreds of hours of formalized training on different tools and assessment protocols. As an Assistive Technology Specialist with Springfield for over a decade, Ms. Brodecki conducts screenings, assessments, and trainings for the entire district. (Brodecki, II: 136-38) Ms. Brodecki had previously evaluated Ollie in 2013, with a focus on handwriting. (Brodecki, II: 105-06)

almost all categories, Parent's scores were much lower than Ollie's perceived abilities. (P-14; S2-42, S2-43; Ferriter, VIII: 166, 169-70, 172-74, 182-92, 203-04)

Based on her evaluation, Ms. Ferriter recommended that Ollie make an appointment with the guidance counselor to map out a plan for further education and training, and that the District refer him to a program to help him develop proficiency in establishing proper living arrangements. Ollie's home and school ratings in self-determination and communication indicated that he needs support in setting up personal goals and in reading, writing, speaking, and listening. Although Ollie reported that he used local transportation, Ms. Ferriter noted that he could use some help in this area, including Pioneer Valley Transit Authority (PVTA) mobility training, through which PVTA travel trainers provide personalized, one-on-one instruction that can focus on destination travel or general orientation, as needed. She explained that Ollie had been traumatized by an incident on a PVTA bus a couple of years ago such that the District should consider the ADA van, which provides paratransit service for people with disabilities, and included contact information for the coordinator of the ADA van. Ms. Ferriter was unable to ensure that Parent connected with the PVTA regarding the ADA van during that school year, as she went out on medical leave. In early 2019, upon learning that Ollie still had not engaged in travel training, Ms. Ferriter followed up with PVTA and with Parent.<sup>10</sup> Ollie eventually applied for access to the ADA Van on May 13, 2019 and obtained a temporary card. That card was due to expire June 4, 2020. (P-14; S-3, S-31, S2-43, S2-46, S2-47, S2-52, S2-53; Ferriter, VIII: 208-212, 214-17, 240)

Ms. Ferriter concluded that Ollie performs best in a structured setting that includes consistency, order, and routine, where tasks are hands-on and broken down into smaller steps and verbal instruction is kept simple. He has good work endurance and physical capacities and would do well in a job that includes task repetition and explanations of expectations. Ms. Ferriter indicated that Ollie would need to develop communication skills, may need some monitoring as he completes job components, and would benefit from a consistent routine with adult supervision and support. Finally, she recommended that he participate in job shadowing opportunities, internships, and mentoring to build his self-esteem, confidence, and self-advocacy skills. (S-28, S2-43)

21. According to Ollie's Progress Reports for the third and fourth report periods, dated February and April 2018, respectively, he was falling behind in math as he was struggling with fundamentals and execution of the concepts. His participation in ELA had decreased. In History he was working well with support from the paraprofessional, and in Chemistry he had to stay after school for support with difficult topics. Ollie was continuing to make progress toward speech and language objectives. He was making progress on his Social Skills goal and significant progress on his Study Skills goal. (P-15; S-53, S-55)

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<sup>10</sup> Upon discovering that Ollie had not engaged in any travel training, Ms. Ferriter contacted the PVTA ADA Coordinator on Ollie's behalf to inquire as to the application process, then reached out to Parent in February 2019 to coordinate a time to assist her with the application. After failing to respond for some time, Parent informed Springfield on March 29, 2019 that she had established an appointment with PVTA about ADA van service on April 23, 2019. (S-31, S2-46, S2-47, S2-48; Ferriter, VIII: 211-12)

22. Ollie's Team convened on April 11, 2018.<sup>11</sup> Ms. Ferriter was excused by Ollie and Parent, due to her medical leave. Ms. Retchin spoke with her beforehand to discuss her report and recommendations so she would be prepared to present it. Parent did not express questions or concerns in connection with Ms. Ferriter's report. During this meeting, Ollie signed the necessary forms to share decision-making with Parent. (P-18; S-52; Ferriter, VIII: 220-21, 265-66, 282-83 Retchin, IX: 176-79)

23. Ollie's Team convened on or about May 11, 2018 for his annual review.<sup>12</sup> Springfield sent the draft IEP, and accompanying N1, to Parent on or about May 21, 2018.<sup>13</sup> The proposed IEP, dated 5/10/2018 to 4/10/2019 (proposed 2018-2019 IEP) provided for a multi-modal approach within a partial inclusion program, reflecting the Team's determination that Ollie should receive small group pull-out instruction in ELA, math, science, and social studies, but could participate in regular education classes at the discretion of the appropriate specialist, with supports. It included a list of accommodations and consisted of six goals in the areas of Written Expression, Mathematics, Speech and Language, Social Skills, Study Skills, and Transition. Proposed B-grid services included one 90-minute session per month of Speech and Language Services, to be delivered by an SLP or SLA, and five 90-minute sessions of Academic Support per 5-day cycle to be delivered by the general education teacher or paraprofessional. C-grid services included five 90-minute sessions per cycle of Academic Support delivered by a special education teacher and one 20-minute session of counseling per cycle, delivered by the counselor. A-grid services consisted of consultation by the certified occupational therapy assistant (COTA) or OT for 30 minutes and 200 minutes by the SLP or SLA per school year. Proposed ESY services were composed of two 60-minute sessions per 5-day cycle. No accommodations were made for secondary transportation services. The IEP included a June 2019 anticipated graduation date. (S-48, S-49, S-50)

Ollie's Transition Planning Form included a post-secondary vision of college attendance, including dormitory residence, and indicated goals to improve academic skills and develop and use age-appropriate communication, social, and organizational skills. The accompanying Action Plan recommended that Ollie explore acceptance requirements for post-secondary schools, develop his understanding of areas in which he needs support and how to seek it out, including contacting Disability Services Offices, investigating and applying for funding sources, and completing college applications. Recommendations were also made that Ollie consider contacting the TAP program at Stavros to learn skills and gain self-confidence to better prepare him for independence, and contacting the ADA van through the PVRTA for local transportation. (S-50)

24. Progress reports issued in June 2018 pertained to the IEP dated 6/15/2017 to 5/01/2018, as Parent had not accepted a subsequent IEP. They indicate that Ollie was meeting his ELA goals

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<sup>11</sup> The record indicates that Team meetings to review Ms. Ferriter's report were scheduled for December 8, 2017, January 28, 2018, and February 2, 2018 and subsequently cancelled. A meeting was then scheduled for this purpose on March 2, 2018. Parent requested that the meeting be rescheduled, and it was then scheduled for April 11, 2018. (S-54, S-56, S-57, S-58, S-59; Ferriter, VIII: 221-23)

<sup>12</sup> Some of the documents indicate that the Team convened on May 11, 2018; others suggest that the meeting occurred on May 10, 2018. (P-18; S-50)

<sup>13</sup> The Principal dated her signature "5/18."

85% of the time, making good progress in Math and Social Skills, significant progress in Study Skills, and adequate progress toward his Speech and Language objectives. (S-47)

25. During the spring of 2018, Ollie participated in a junior internship program through which he interned at Pottenger Elementary School. The school set him up with an internship with custodial staff, though it appears Ollie ended up assisting a coach. He received ratings of “advanced” on employability skills in connection with this opportunity. (P-50; Coburn, IV: 223-24; Ferriter, VIII: 267-68)

26. During spring breaks in 2018 and 2019, Ollie also participated in the Historically Black Colleges & Universities (HBCU) trip run by the Youth Cultural Education Organization (YCEO), an affiliate of Martin Luther King Family Services. This program included monthly workshops from October to June (2017-2018 and 2018-2019 school years) and a college tour during spring breaks, which included schools in several states. The program was funded in part by 100 Males to College, an initiative of the Springfield Public Schools. As part of the application process, Parent provided Ollie’s IEPs and discussed with tour organizers some of the supports he would need to be successful on the tour. The tour itself involved a group of 40 students and six chaperones. Ollie’s participation in 2018 was partially funded by the District. For the 2019 tour, Ollie’s Renaissance teachers supported his application by writing him recommendations. While on the tour, Ollie spent much of the money his mother had sent with him buying food and gifts for other students. During program activities, he had difficulty elaborating on responses to questions, writing five-paragraph essays, and advocating for himself. School districts are not generally involved with preparing students to attend the college tour, but Parent reported to YCEO that she had requested that Springfield provide supports for Ollie, including a paraprofessional. The District did not provide a paraprofessional nor did it contact YCEO about providing other supports or accommodations. (P-33; Ortiz, V: 141-42, 144-48, 164-67, 174-76, 181-82, 187-89, VI: 10, 19-20, 23, 34)

27. During the spring of his junior year, Ollie participated in a dual enrollment ethnic studies class with Springfield Technical Community College (STCC) that met on the Renaissance campus. Springfield Special Education Department Chair Samantha Vega obtained the course syllabus from school counselor Deidre Cuffee-Grey and reviewed the reading assignments to see how the District could support Ollie in this course. She reached out to STCC and learned that Parent and Ollie would have to bring Ollie’s most recent IEP and evaluations to the disability services office, where personnel would consider modifications to the curriculum. Because there was no signed release, Springfield was limited in the information it received from STCC about Ollie; moreover, STCC told Ms. Vega that Ollie’s professor was not obligated to interact with her. Ms. Vega did reach out to the professor several times in March and April but was unable to obtain a response until the end of the semester. At this time, the professor told Ms. Vega that Ollie was doing well, and they set up a time to meet. The professor did not show up for the meeting. In the meantime, the District did share with Ollie and his family that students with IEPs could access student support services on the STCC campus. Ollie did not follow up with those services, and neither he nor Parent contacted Ms. Vega seeking help. Ollie earned a B- in the class. (Serafino, III: 307-08; Coburn, IV:193-96, 198, 205-06, 252; Vega, VII: 277-82)

28. Parent elected to have Ollie participate in the STEM starter academy at Renaissance during the summer of 2018. This program is part of “summer melt,” a program with STCC that supports students entering twelfth grade in learning about college campuses, including student support. All Renaissance students are encouraged to participate in this program, as well as to consider dual enrollment with STCC during their senior year. Ms. Cuffee-Gray assists the school in distributing information about these programs to families. (P-35; Coburn, IV: 190-92, 200-01)

29. Parent requested that the District provide summer services in the form of speech and language supports for Ollie’s class at STCC. On June 28, 2018, Mr. Valles contacted Parent to schedule ten hours of summer services for Ollie with Speech and Language Pathologist (SLP) Francine Bigda for this purpose.<sup>14</sup> (S2-65; Bigda, III: 229)

Once she knew she would be supporting Ollie in his class at STCC, Ms. Bigda called Parent to request the syllabus so she could be prepared. During their first two meetings, Ollie seemed overwhelmed by the class and did not know how to ask about what he did not understand. His history course assigned a significant amount of reading, and Ms. Bigda requested that Parent bring him back on a different day the following week so she could assist him in studying for a test. Parent indicated that she would do so, and that she was also going to speak to Ollie’s professor about accommodations. Ollie did not appear for tutoring that week and when Ms. Bigda called to discuss the remainder of the hours, Parent told her that she would not be bringing him again. Ms. Bigda shared with Mr. Valles that she felt Ollie needed a lot of support with expository text, and Mr. Valles suggested that she work with Ms. Ford to write new speech and language goals for him. (Bigda, III: 210, 213-15, 230-35, 238; Morris, X: 81)

30. At some point in June or July, after school had adjourned, Parent sent an email to Special Education Supervisor Michelle Serafino requesting that Springfield provide a one-to-one paraprofessional for Ollie at STCC during the summer to support his dual enrollment. Renaissance personnel had never received a request like this and made some inquiries. STCC also indicated that it was unfamiliar with such an arrangement. Ultimately, Ms. Serafino responded that it did not appear this had been discussed at a Team meeting and it was not in Ollie’s proposed IEP. As such, she could not agree to it. The District again suggested that Ollie access student support services on the STCC campus, but Ollie did not follow up. (Serafino, III: 307-08; Coburn, IV:193-96, 198, 205-06, 252)

31. On or about August 28, 2018, Ollie received a letter from the Massachusetts Department of Developmental Services (DDS), indicating that the agency had determined that Ollie was eligible for DDS services on the basis of an Intellectual Disability pursuant to 105 CMR 2.01. (P-17)

32. During the summer and fall, as Springfield reviewed transition services in place for Ollie, District personnel followed up on their previous referral to the Massachusetts Rehabilitation

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<sup>14</sup> Ms. Bigda has a Master’s degree in speech and language pathology and a Certificate of Advanced Studies (CAGS) in special education administration. She has DESE educator license in speech and language and hearing and is licensed by the speech and language pathology board. She is in her twenty-ninth year as a speech and language pathologist (SLP) and has also worked as also as an interim special education director. (Bigda, III: 228-29)

Commission (MRC). Ms. Serafino learned that MRC had closed the case due to the family's lack of response. Ms. Serafino wrote to Parent and suggested that Ms. Ferriter re-refer Ollie, as the District believed it would be beneficial for the family and the District to meet with both MRC and DDS to develop a plan for post-secondary services. (S-68, S2-36, S2-44, S2-45; Mumby, III: 74-75; Ferriter, VIII: 178-79, 225-27)

33. As a senior during the 2018-2019 school year, Ollie participated in a number of district-level transition programs designed to prepare students for life after high school, including monthly activities through Operation Graduation, a program that tracks progress toward graduation and college acceptance. All students attend a financial literacy program, which includes a workshop at STCC. Seniors participate in an intensive off-campus program that requires them to put some of these skills into practice. Ollie also participated in 100 Males to College, a Springfield initiative geared toward young men of color. (Coburn, IV: 187-88, 220-23) During this year, Ollie's Team discussed his progress to determine whether and when he could receive instruction in an inclusion setting, in accordance with his last accepted IEP. (Vega, VII: 284-85)

34. Molly Dill was one of Ollie's teachers in ninth and twelfth grades.<sup>15</sup> When Ollie was in ninth grade, Ms. Dill taught him in a pull-out English class and served as his special education teacher supporting his inclusion science and social studies courses. When Ollie was in twelfth grade, Ms. Dill taught Ollie in his inclusion government and economics class, which had 18 to 22 students and a paraprofessional. Ms. Dill implemented the accommodations in his IEP, including small group testing, chunking of materials, graphic organizers, frequent check-ins and breaks, etc. By twelfth grade, Ollie had grown in his ability to produce writing with fewer check-ins. Ms. Dill would monitor Ollie's progress toward targets, such as reading and analyzing dense philosophical texts, and assist him by discussing his interpretations either one-on-one or in small groups and encouraging him as he rephrased questions back to her. With these accommodations and the assistance of the paraprofessional, Ollie was able to access the curriculum, including complex materials, and meet the benchmarks in his 2018-2019 IEP. He received a B in her class. By the end of twelfth grade, he was able to advocate for himself, and Ms. Dill believed he was ready to access college level work, with supports. (S-44 S2-41; Dill, VI: 60-66, 74, 79-80, 82-86, 91-108, 111-13, 121-22, 151, 159, 182)

35. Barbara Ewing was Ollie's Crew and pull-out math teacher during his junior and senior years (2017-2018 and 2018-2019 school years). Ollie stayed after school for extra math help consistently his junior year, less so during his senior year. Ms. Ewing also provided special education support in Ollie's physics class. She became his case manager for his senior year. In this capacity, Ms. Ewing drafted and modified Ollie's IEPs in preparation for his annual review meetings, in collaboration with his other teachers after discussing his progress based on formal and informal data. Ms. Ewing is currently teaching higher level math classes within Springfield, and according to Dr. Morris, she is highly regarded in the District. (Ewing, VIII: 289-90, 297-302; Morris, X: 105)

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<sup>15</sup> Ms. Dill has a Master's degree in teaching, a Massachusetts license to teach social studies, grade 8 through 12, and a Sheltered English Immersion (SEI) endorsement. She began full-time employment at Renaissance in the 2014-2015 school year, following her year as an intern with UMass Amherst's Teach 180 Springfield program. (Dill, VI: 61)

Ms. Ewing has a bachelor's degree in chemical engineering and a Master's degree in business. She is eight credits away from getting a Master's degree in education. She worked for Congress, multinational corporations, and military vendors and taught in private institutions for over 30 years. Ms. Ewing served as a non-profit program director in Hartford, during which she participated in workshops and trainings on differentiating instruction, modifying a math curriculum, and scaffolding. She began teaching full-time in public schools ten years ago. Ms. Ewing has a Department of Elementary and Secondary Education (DESE) license in mathematics, secondary education. She has never been licensed to teach special education, but the District provided training for her on management of the IEP process, support of students and families, and software required to generate reports. In accordance with DESE requirements, Springfield requested a Moderate Disabilities 5-12 waiver on her behalf on October 11, 2017. This waiver was granted on October 17, 2017 and expired on June 30, 2018. Although Ms. Ewing testified that she continued teaching on a waiver, which was renewed annually, documentary evidence reveals that Springfield did not actually apply for renewal. Ms. Ewing does not have any waiver history after June 30, 2018. As such, between August 28 and October 16, 2017 and for the entire 2018-2019 school year, Ollie's math services were not provided by a special education certified teacher. Ms. Ewing was continuing to take courses during this time to maintain the waiver she believed she had. Furthermore, according to DESE, had Springfield requested a waiver for the 2018-2019 school year, Ms. Ewing would have demonstrated continuous progress by attempting to pass the MTEL test in April 2018. As such, the waiver would have been granted, had the District made the request and shown a good-faith effort to hire an appropriately licensed applicant. (P-70; S-79; Vega, VII: 284; Ewing, VIII: 287-89, 327-30, 346-47)

As Ollie's math teacher during his junior and senior years, Ms. Ewing read Ollie's IEPs, focusing on current goals and accommodations such as graphic organizers. Ollie's class consisted of six or seven students, all on IEPs. Ollie was an eager student who volunteered often, providing help to his peers and receiving help from them. Ms. Ewing's teaching included check-ins, encouraging students to let her know when they were lost. Ollie was provided with the same curriculum as general education students, but he was also provided with accommodations that focused on organizing thoughts and materials, consultation and check-ins for understanding, chunking of material, graphic organizers, verbal cues, having him repeat back directions, etc. During his junior year he stayed after school for extra help consistently and earned a B; he stayed less often his senior year and received a C. During his senior year, Ollie met both the targets for the course and the math objectives on his IEP, and Ms. Ewing was impressed with his math skills. Parent never contacted Ms. Ewing with any concerns about Ollie's math progress. (Ewing, VIII: 292-97, 307, 321-22; Morris, X: 113)

As Ollie's special education case manager, Ms. Ewing communicated with his general education teachers, sought out information from all teachers about progress on his goals, based on their formal and informal data, and developed summaries for each course, drafted and modified IEPs in preparation for annual reviews, and attended Team meetings. (Ewing, VIII: 298-300)

36. As of September 25, 2018, Springfield had not received a response to the 2018-2019 IEP it had proposed in May. (S-45) The Team convened on October 3, 2018 to review the unsigned

IEP and update Ollie's speech and language goals, objectives, and service delivery. Team members in attendance were Ollie, Parent, Ms. Ewing, ETL Melissa Mumby, Ms. Dill, Ms. Bigda, SLP Pamela Ford, Mr. Valles, Ms. Cuffee-Gray, Ms. Serafino, DDS Representative Leilani Paniagua (whom the District had not been aware would be present), and Ms. MacGovern. (P-18; S-46, S-68, S2-35; Mumby, III: 62, 79; Serafino, III: 291-93, IV: 110-11)

The meeting devolved quickly, with everyone talking over one another, and became both chaotic and unproductive. Near the beginning of the meeting Parent filled out the signature page on the proposed 2018-2019 IEP, partially rejecting it, and provided it to the District. Under rejected portions of the IEP, she wrote, "Para support dual enrollments." The Team did not agree to Parent's request to provide paraprofessionals in Ollie's dual enrollment courses. Parent requested that Ollie's services be provided in a small group setting and expressed her interest in Ollie participating in the ICE program at Westfield State. Springfield personnel did not believe ICE would be appropriate for Ollie, as most students attending the program had intellectual disabilities and lower academic functioning than he, but ultimately agreed that he could apply and the program would determine whether he was a good fit. Ms. MacGovern focused on Ollie's need to develop additional transition skills. Although this was not a reevaluation meeting, and as such, no evaluation reports were reviewed and no eligibility flowchart was completed during the meeting, both Parent and Ms. MacGovern requested that the District include intellectual disability in Ollie's disability category, as DDS had found that Ollie met their criteria for intellectual disability. Teachers reported Ollie's progress in various areas and explained that they had no evaluation data to support such a change. The Team discussed the fact that Ollie was on track with required credit requirements but had not yet passed all MCAS examinations. Parent mentioned that she would be rejecting graduation, and Ollie appeared surprised by this. The Team recognized the need for transition services beyond grade 12 and determined that it would reconvene to consider such services with the guidance of a transition specialist or vocational counselor. As to speech and language, the Team changed Ollie's goals and moved services to the C-grid. (S-40, S-42, S-44, S-50(b); Mumby, II: 295, 300, III: 68-69, 72, 79-80; Ford, III: 190-91, 194; Bidga, III: 213, 239; Serafino, III: 298-303, 306-07, 326-28, IV: 14-16, 108-09, 111-14; MacGovern, V: 219-21; Valles, VII: 230-32; Ewing, VIII: 313; Morris, X: 31-32)

The Team also discussed Springfield's previous chapter 688 referral of Ollie to MRC. The District indicated that DDS had found Ollie eligible for Adult Services and requested Parent's signature to permit release of school records in connection with a 688 referral. Parent signed the referral. (S-41, S-42, S-43; Mumby, III: 74; Serafino, III: 293, IV: 127)

Ms. Ewing had left the meeting early, at the request of the ETL, to return to class. Later that day, Ollie came into Ms. Ewing's class and shared with her that the meeting was a "zoo" and that he felt embarrassed by his mother. (Ewing, VIII: 313-14)

37. Some procedural irregularities appear to have occurred during this meeting, or shortly thereafter. Dr. Mumby testified that disability categories are not added or changed in the absence of supporting data to inform the Team's discussion of eligibility. (Mumby, III: 73) Even so, it appears that following the meeting, Dr. Mumby went into the special education computer system and created an electronic flowchart for Ollie reflecting eligibility under both autism and intellectual disability, "just based on . . . the way the meeting went." She then recognized her

error, as the Team had not followed the necessary protocol to change the eligibility category, and created a second chart without the intellectual disability. These procedural errors are reflected in running notes on the computer system, which indicate that at some point, around the time of this meeting, Ollie's eligibility was listed as both autism and intellectual disability. A note next to this column states, "should not have changed eligibility during review." A second note that appears to have been written on or about October 22, 2018 indicates that a flowchart was entered, the IEP Review was corrected, and documents were corrected "to be in line with an IEP Review." In an email dated October 4, 2018, Dr. Mumby acknowledged that she had created two eligibility flowcharts, presumably outside of the meeting, and referred to instructions from Ms. Serafino to change the disability category. The email suggests that these changes are related to an IEE conducted the previous year. (P-30, P-43; Mumby, II: 295, 307-09, III: 115-119, 126-27; Serafino, IV: 9-10; Retchin, IX: 310-12)

At hearing, Ms. Serafino testified that Dr. Mumby had contacted her to indicate that she was confused about what had happened at the meeting the previous day and that she had erroneously made changes to Ollie's flowchart. Ms. Serafino instructed her to delete the changes to reflect that the Team had not, in fact, made any eligibility determinations at the meeting and moreover did not believe Ollie was intellectually impaired. Ms. Serafino did not contact Parent about this procedural error, as the form was changed quickly and had not been sent to anyone before that occurred. In fact, Parent never saw these flowcharts until the spring of 2020, when she received them in discovery related to the instant proceeding. (Serafino, IV: 11-12; Morris, X: 154-55)

38. Following the Team meeting, Springfield proposed an amendment to the 2018-2019 IEP, dated 10/3/18 to 4/10/19, for a partial inclusion program, including a comment that Ollie may participate in general education classes with the approval of the appropriate specialist. Although the NI generated in connection with this meeting indicates that the District rejected changing Ollie's disability category outside of the reevaluation process, and the IEP lists Autism as Ollie's Primary Disability and no other disability, the Key Evaluation Results Summary states that Ollie is diagnosed with Autism and Intellectual Impairment. The Service Delivery Grid proposes Academic Support, to be provided by the special education teacher for five sessions of 135 minutes each per 5-day cycle; Counseling, to be provided by the counselor, for one session of 20 minutes per 5-day cycle; and two Speech and Language sessions of 45 minutes each per month. ESY consists of four sessions of four hours each per 5-day cycle, to be provided by a special education teacher and SLP or SLA. The grid includes one, 200-minute consultation per year by an SLP or SLA and one 60-minute consultation per cycle by a COTA or OT. The proposed IEP was dated 10/23/18 and included a Transition Planning Form completed on the same date. (S-42, S-42(b))

39. In mid-October, the District proposed a follow-up meeting and asked Parent when she was available. (S2-37) At some point between the October meeting and January 2019, Parent called Dr. Mumby, irate because intellectual impairment had not been added to Ollie's IEP. She called Dr. Mumby and Ms. Serafino "snakes." (Mumby, III: 82-84)

40. In November 2018, Mary Anne Morris returned to Springfield as the Executive Director of Special Education. Dr. Morris has a Master's degree and a Certificate of Advanced Graduate Studies (CAGS) in educational psychology and a doctoral degree in child family studies. She

holds school psychology, special education administration, and superintendent/assistant superintendent licenses from DESE, as well as state level Allied Mental Health licensure as an educational psychologist. She had previously worked for Springfield as a special education teacher, ETL, school psychologist, supervisor of early childhood, director of special education, and chief of pupil services, before leaving the District in 2015. Shortly after Dr. Morris' return to Springfield, Ms. Serafino approached her for guidance as to Parent's behavior at Team meetings and shared that Parent had told her she did not want Ms. Serafino to be involved in Ollie's case. Around this time, Parent contacted Dr. Morris herself to make this request, referring to Ms. Serafino as unprofessional. Parent also emailed the Superintendent about Ms. Serafino at this time. Dr. Morris agreed to assume supervision of Ollie's Team. (Serafino: III: 320, 324-25, IV: 136; Morris, X: 27-29, 31-34)

41. On January 29, 2019, Parent accepted in full the proposed 5/10/18 to 4/10/19 IEP and placement, as amended 10/3/18. At no time during the life of this IEP did anyone, including parent, approach Dr. Mumby, who was then Ollie's ETL, to report that services could not be delivered or were not being delivered. (S-42(b); Mumby, III: 80-82; Coburn, IV: 242)

42. In the meantime, on October 22, 2018, Springfield proposed a three-year educational and psychological reevaluation. As the District noted in the N1 accompanying the consent forms, this proposal was late. Although Springfield had completed several additional assessments since Ollie's reevaluation/eligibility determination in 2015, eligibility and disability category had not been evaluated and determined at a meeting. As such, the formal reevaluation should have been conducted in May 2018. (S-40, S-68; Mumby, II: 305-06, III: 72, 74)

43. Ms. Vega holds undergraduate and Master's degrees in special education and a DESE license in moderate disabilities. Ms. Vega taught Ollie when he was in middle school and served as his case manager for one year. She worked with Ollie for math MCAS preparation after school during his eleventh grade year and was supposed to provide tutoring for him during the fall of 2019. She also observed Ollie in the classroom at times, in her capacity as special education chair. (S-35; Vega, VII: 264-70, VIII: 72, 94-95).

Ms. Vega administered 11 subtests of the Woodcock Johnson Test of Achievement, Fourth Edition on February 28, 2019. Achievement testing indicated overall oral reading skills in the very poor range and word reading efficiency in the below average range. Specifically, Ollie scored in the low range in the areas involving fluency, which may have been impacted by his need for extra time. Ollie received scores within the low average to average range in all other areas, including written expression and mathematics. Testing showed a strength in decoding. Several of Ollie's scores improved since Mr. Fitch's assessment. Ms. Vega's results are not consistent with Parent's characterization of Ollie's reading level as second grade, seventh month. (S-28, S-35, S2-55; Vega, VII: 287-93, VIII: 8-12, 43-44)

44. On March 20, 2019, Springfield School Psychologist Adminda Figueroa-Scott performed an assessment of Ollie as part of his three-year reevaluation, focusing on his cognitive, adaptive, and social-emotional skills and functioning.<sup>16</sup>

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<sup>16</sup> Dr. Figueroa-Scott has a dual master's degree in marriage and family therapy and clinical mental health counseling, and a doctorate degree in educational psychology. She holds Massachusetts licenses as a mental health

Dr. Figueroa-Scott reviewed past evaluations, observations, and reports in preparation for her assessment. She observed Ollie in class before conducting his Student Interview. She also administered the Wechsler Adult Intelligence Scale (WAIS-IV); the Vineland Adaptive Behavior Scales Third Edition – Domain Level Teacher Form (Vineland-3); the Trail Making Test Parts A & B (TMT); and the Achenbach ASEBA Youth Self-Report for Ages 11-18. Dr. Figueroa-Scott sent the appropriate rating forms to teacher and Parent. She made follow-up calls to Parent on April 12 and 22, 2019. (S-28, S-38, S2-56; Figueroa-Scott, V: 41-44, 54)

On the morning of the assessment, Dr. Figueroa-Scott observed Ollie in a small, special education English class. He was engaged in answering discussion questions about a book the class was reading. When she met with Ollie for the interview, he was initially reluctant to participate in the assessment. He shared with her that he was excited about graduating, going to college, and majoring in business. During testing, Ollie worked diligently with appropriate attention and asked clarifying questions when he did not understand instructions. Dr. Figueroa-Scott determined that Ollie's full-scale intellectual quotient (FSIQ) was in the Low Average range, as were his Verbal Comprehension, Perceptual Reasoning, and Working Memory Index scores. Ollie's Processing Speed was in the Average range. As measured on the TMT, Ollie's attention, speed, mental flexibility, spatial organization, recall, and recognition fell within the Average range. On the Vineland, Ollie's teacher's ratings reflected an Adaptive Behavior Composite (ABC) of 73, in the Moderately Low range, about as expected given his IQ score of 81. Teacher ratings include Communication Skills in the moderately low range, Daily Living Skills in the low range, and Socialization in the low range. Parent ratings placed Ollie in the Low range on all domains; his Adaptive Behavior Composite was also in the Low range. On the ACEBA, which measures social/emotional functioning, three of Ollie's teachers rated him within the normal range on all domains. Ollie also rated himself within the normal range across all domains. Parent did not complete the ASEBA Child Behavior Checklist, as she stated the form had aged out at 18 and Ollie was, by that time, 19. Dr. Figueroa-Scott believed the form remained appropriate, as Ollie was just one week past his nineteenth birthday. (S-28, S-38, S2-56; Figueroa-Scott, V: 49-53, 63-69, 71-72, 126)

Dr. Figueroa-Scott viewed her results as consistent with Ollie's previous testing and concluded, based on her testing, observation, record review, and interview, that Ollie did not have an intellectual disability. Dr. Figueroa-Scott testified that with adequate support, similar to the supports she observed him accessing in his classroom at Renaissance, Ollie can be successful at a college level. (Figueroa-Scott, V: 55-58, 70-71)

45. As the three-year reevaluation meeting scheduled for April 24, 2019 approached, on April 22, 2019, Dr. Figueroa-Scott called Parent to follow up on her portion of the Child Behavior Checklist, which Parent had not returned, because she could not complete her evaluation without it. Parent told Dr. Figueroa-Scott that she would return it by email. Parent then challenged Dr. Figueroa-Scott, suggesting that she was unprofessional and had neither the certification nor the qualifications to evaluate Ollie. Parent stated that she did not want Dr. Figueroa-Scott to have anything more to do with Ollie. She suggested that she, herself, had a law

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clinician and an educational psychologist. Dr. Figueroa-Scott began working for Springfield as a school psychologist in October 2017. (Figueroa-Scott, V: 34-37)

degree and made several rude comments to Dr. Figueroa-Scott, at which point Dr. Figueroa-Scott explained that she would be ending the phone call, and she hung up. Dr. Figueroa-Scott was very upset by this interaction with Parent, which made her feel disrespected. Parent called Dr. Figueroa-Scott again a few hours later to inform her that she would return her portion of the Vineland, but not the ASEBA because Ollie was now 19. She pushed Dr. Figueroa-Scott to discuss Ollie's IQ test results during the telephone call. Dr. Figueroa-Scott explained that she was not comfortable providing the results this way, as she had not completed her report. (S2-56; Figueroa-Scott, V: 73-77, 79; O'Neill, IX: 17-18)

Dr. Figueroa-Scott called her supervisor, Supervisor of Clinical and Behavioral Services Mimi O'Neill,<sup>17</sup> to inform her about what had transpired. As Dr. O'Neill was thinking about next steps, Dr. Morris stopped by her office to discuss an email she had just received from Parent, claiming that Dr. Figueroa-Scott had been very unprofessional and that she did not want Dr. Figueroa-Scott to have any future interactions with Ollie. Dr. O'Neill and Dr. Morris agreed that it would be best for Dr. O'Neill to attend the upcoming Team meeting in her place.<sup>18</sup> Dr. O'Neill informed Dr. Figueroa-Scott of this plan, and Dr. Morris removed her from the Team. Dr. O'Neill reviewed Ollie's file in preparation for the meeting. (Figueroa-Scott, V: 77-79; O'Neill, IX: 13-18, 24-5, 100; Morris, X: 53-54)

46. Dr. Mumby was also nervous and intimidated about the approaching meeting, given her earlier interactions with Parent and negative comments Parent had been making about her to others. As such, she invited Dr. Morris to attend. (Mumby, III: 86-87; Morris, X: 55-56)

47. Ollie's Team convened on April 24, 2019 for his three-year reevaluation. The meeting lasted approximately three hours. Although the names of both Ms. Ford and Dr. Figueroa-Scott appear on the pre-printed Attendance Sheet, neither attended the meeting.<sup>19</sup> Parent signed a form excusing their attendance. Several additional names appear on the sign-in sheet, including Special Education Supervisor Nancy Retchin, who had assumed supervisory responsibility as Parent had requested that Ms. Serafino be removed from the Team,<sup>20</sup> Ms. Vega, Ms. Cuffee-Gray, Principal Arria Coburn, Dr. O'Neill, and Dr. Morris. Ms. Dill and Ms. Ewing were among those in attendance, though Ms. Ewing was excused early. The Team completed the eligibility flowchart at the meeting, finding Ollie eligible for special education on the basis of autism. (S-26, S-27, S-29; Ewing, VIII: 315-16)

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<sup>17</sup> Dr. O'Neill has bachelor's, Master's, and doctorate degrees in psychology. She is licensed by DESE as a school psychologist and special education administrator, and she is SEI endorsed as well. Dr. O'Neill has been employed by Springfield for approximately eight years. In her current position as Supervisor of Clinical and Behavioral Services, she supervises about 21 school psychologists, including interns and practicum students, and nine behavior specialists. (O'Neill, IX: 5-8, 11-12, 18)

<sup>18</sup> Dr. Morris offered to review Dr. Figueroa-Scott's report at the meeting, but Parent declined. (Morris, X: 54)

<sup>19</sup> Parent initially asked why Ms. Ford was not at the meeting. The ETL explained that she had a conflicting meeting and that as speech/language testing had not been completed, the Team could move forward in her absence. (S2-58)

<sup>20</sup> Ms. Retchin has a Master's degree in education and a Certificate of Advanced Graduate Studies (CAGS) in public school administration. She is certified by the DESE as a special education teacher, grades K through 12, and a special education administrator, all levels. She also has a Sheltered English Immersion (SEI) endorsement. Ms. Retchin began working for the District in 1976 and served as a Special Education Supervisor in Springfield at both the middle school and high school levels. Although she retired five years ago, Ms. Retchin currently works part-time as a retiree callback, mentoring or working collaboratively with other Supervisors and doing special projects. (Retchin, IX: 173-75)

According to multiple people who attended this Team meeting, it was contentious and devolved quickly, with many people talking over one another. Ollie, Parent and Ms. MacGovern<sup>21</sup> arrived late, and, claiming that people were being dishonest, Parent insisted on recording the meeting. Ollie, Parent, and Ms. MacGovern expressed concern about the lack of transition services Ollie had received. Parent expressed that she had not received the correct forms for Ollie's psychological testing and requested that his IEP reference ADHD as a secondary impairment. She reported that she wanted Springfield to plan for Ollie to receive support at the college level, including paraprofessional support for his dual enrollment courses, and training in adaptive skills. Ollie, who was participating in the meeting appropriately, expressed concern about earning his diploma and getting help to understand finances. When Dr. Morris attempted to follow up with Ollie by asking what he wanted for his future, Parent accused her of manipulating Ollie with the word "diploma" and accused her of child abuse.<sup>22</sup> Dr. Morris also asked Ollie about what he could and could not do in terms of his adaptive functioning, following up on his mother's scores in this area on the Vineland, which were concerningly low. Ollie's advocate stated that she and Parent would communicate for Ollie due to his "expressive language deficits," which were so substantial that he needed to use graphic organizers to plan out his thoughts for conversations in advance. They put Ollie under a "gag order" for the remainder of the meeting, such that he was not permitted to speak.<sup>23</sup> Although Parent accused Dr. Morris of intimidating Ollie at this meeting, this allegation was unsupported by others who attended. (P-40; S2-56, S2-58; Mumby, II: 334, 338, 342, III: 30-32, 89-90, 95, 238-39; Coburn, IV: 235-36; Vega, VIII: 13-15, 18; Ewing, VIII: 315, 318 O'Neill, IX: 27-29, 31-33, 35-36; Retchin, IX: 180-81, 187-89; Morris, X: 59-67, 75-76)

The Team discussed the evaluations described above. Parent did not object to Ms. Vega's findings on the Woodcock-Johnson. Parent revisited the topic of Ms. Ford's absence from the meeting. Dr. Mumby explained that speech and language had not been part of the three-year reevaluation because the Team had met in 2017 to discuss speech/language and LLD assessments, then had reconvened in the fall of 2018 with Ms. Ford and Ms. Bigda to discuss summer progress and update speech objectives. Parent remained concerned about this and asked that the Team consider the 2017 speech and language evaluations. District representatives explained that they could not be reviewed in the absence of an SLP. The OT reported on Ollie's progress and recommended discharge from consultation services. Parent did not appear to object. When Dr. O'Neill discussed Dr. Figueroa-Scott's assessment Parent became upset and voiced frustration. She indicated her disagreement with the findings before Dr. O'Neill even had the opportunity to review them. Parent questioned Dr. Figueroa-Scott's credentials and referred to her as a moron. (P-40; S2-58; Mumby, III: 91, 93, 98; MacGovern, V: 305-08; Vega, VIII: 12, 16; O'Neill, IX: 33-35, 38-39, 49-50; Retchin, IX: 180-81; 264-65; Morris, X: 71-73, 146)

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<sup>21</sup> Ms. MacGovern left the meeting after the first 20 minutes. (S2-56; O'Neill, IX: 27).

<sup>22</sup> When Dr. Morris asked Ollie his opinion about graduation, Parent interrupted, insisting that Dr. Morris was upsetting Ollie so much he was about to cry. Ollie responded that he was not about to cry, at which point Parent tapped Ollie's leg with a folder, signaling him to stop talking. (Ewing, VIII: 316-17)

<sup>23</sup> Through a letter he addressed to me, Ollie described this meeting as getting out of control, with arguing and talking back, after an exchange of words between Parent and Dr. Morris. He wrote that he was hurt and insulted as a young adult when Dr. Morris asked him how to do particular tasks on his own, like use a knife. Ollie wrote that if he did not attend an upcoming Team meeting, it would be because he did not want to be around Dr. Morris. (P-28)

Ollie's teachers reported extensively about Ollie's progress, including his strengths in the areas of mathematics, following simple directions, writing short essays, summarizing readings of interest, pulling apart unfamiliar words, and accuracy (though not speed) in reading fluency. He was still getting distracted in his science classes at times, needed support to work alone, was not finishing all his homework, and did not stay after school for help. Ollie was finding some chemistry concepts difficult, required them to be broken down, and did not always retain information he came to understand. The Team indicated that with specialized instructional support and accommodations, including guidance in following instructions, reminders to stay focused, checks for understanding, and chunking of concepts, Ollie could access and make progress with grade-level material across all subjects. Ollie's teachers opined that his memory adversely impacts his learning, as his short-term memory creates challenges for retention of concepts. Ms. Cuffee-Gray reported that Ollie had taken three courses through STCC for college credit; he had passed one, did not complete the second, and was presently enrolled in the third.<sup>24</sup> Dr. Morris testified that she recalled the counselor, whose name she could not remember precisely, reporting on her counseling sessions with Ollie. There is no reference to such reports in the N1 or the IEP issued in connection with this meeting. (P-27, P-40; S-30, S-42, S2-41, S2-57, S2-58; Ewing, VIII: 307-09, 332-35 O'Neill, IX: 152-53; Morris, X: 123-24)

District personnel raised the issue of MCAS examinations. Around this time, Ollie had passed ELA and Math retests, but he had received a Warning on the Biology retest, missing the cut off by only a few points. Springfield had provided Ollie with a number of supports to prepare for the retest, including after-school tutoring sessions with teachers. At this point, Springfield believed the best chance for Ollie to obtain a high school diploma, consistent with his goal to graduate and attend college and the Team's goals for him, would be to participate in a cohort appeal. Such an appeal permits students who have a certain grade-point average to apply to obtain credit for an MCAS examination without earning a passing score. Parent would not consent to this option, which she viewed as a way to push Ollie out of school through "wrongful graduation" before he was ready. She and Ms. MacGovern both wanted Ollie to have more time to work on transition skills. (P-40, P-56; S-3, S2-1, S2-37, S2-58; Mumby, III: 89; Coburn, IV: 228-29, 30-31; Retchin, IX: 185-87; Morris, X: 42-43)

When the Team turned to eligibility, members agreed that due to Ollie's outside diagnosis, he would remain eligible under the autism category and filled out the flowchart to reflect this determination. Given that this diagnosis had been given so long ago, Dr. Morris suggested that an updated Autism Diagnostic Observation Schedule (ADOS) be conducted to confirm it and give the Team a sense of Ollie's current functioning.<sup>25</sup> Parent stated that she suspected an intellectual disability, but school-based Team members indicated that testing did not support this category.<sup>26</sup> The Team discussed moving Ollie from partial inclusion to full inclusion, given his success in a general education science class with appropriate accommodations. Parent appeared

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<sup>24</sup> Ollie did not access disability services at STCC. Although Samantha Vega tried to set up a meeting with Ollie's professor multiple times, the professor sent a copy of the syllabus to her but never met with the Team. (Mumby, III: 343-44)

<sup>25</sup> Parent initially objected to the ADOS, but ultimately agreed to have it conducted as part of an independent evaluation. (Morris, X: 200)

<sup>26</sup> Based on her review of Ollie's record, particularly the cognitive component of his evaluations, and her own observations of him, Dr. O'Neill does not believe Ollie has an intellectual disability. Sufficient information was presented to the Team at this time to rule it out. (O'Neill, IX: 30, 32-34; Retchin, IX: 190)

to be upset about the prospect of services being removed. She requested that the Team consider placing Ollie at the Riverview school on Cape Cod. Dr. Morris refused the request, stating that such a program was too restrictive and local community college programs could provide the appropriate level of support. The District agreed to consider the ICE program, though District personnel continued to believe it was not appropriate for Ollie, and to provide an additional year of services to include MCAS preparation, continued participation in college courses for credit, a transitional inventory, and an item analysis of adaptive assessments completed by teachers and parents to inform skill instruction in this area. The Team agreed to reconvene to further define the following year's services. (S-3, S-26, S2-56, S2-57, S2-58; Mumby, III: 112-13, 137-38; O'Neill, IX: 122-24, 166-67; Retchin, IX: 321-25; Morris, X: 65-67, 246)

At the end of the meeting, Parent rejected Dr. Figueroa-Scott's cognitive testing and requested an IEE. (S-3, S-28, S2-56; Mumby, III: 91, 93)

48. After the meeting Dr. O'Neill created the appropriate forms for the IEE, listing specifically a psychological evaluation to include the ADOS. According to Dr. O'Neill, an independent psychological evaluation does not generally include achievement testing unless specifically requested. In this case, such testing was not requested because Parent had not contested the findings of Ms. Vega's achievement testing. Dr. O'Neill sent the forms to Parent on April 25, 2019, along with an N1 explaining the process and a list of providers. On May 6, Parent notified the District of her selected evaluator, Dr. Elena Davis. Dr. Davis contacted Dr. O'Neill to confirm the scope of the evaluation. A contract was created and sent to both Parent and the provider on May 7, 2019. Parent did not contact Dr. O'Neill to request additional testing. (S-3, S-28, S2-56; O'Neill, IX: 49-58)

49. Later the same day, Parent sent an email to several Springfield administrators, including Dr. Morris, stating that she was rescinding her signature for excusal. She asserted that without the speech and language component, it was not an appropriate Team meeting or eligibility determination. She accused Dr. Morris of having been retaliatory, heartless, and an insensitive unprofessional person who violated Ollie's rights. (S2-57; Morris, X: 71-72)

50. Following the meeting, Ollie's Team proposed a full-inclusion IEP for the period from 4/24/19 to 4/23/20 (initial proposed 2019-2020 IEP) that included goals in Reading, Written Expression, Mathematics, Speech and Language, Social Skills, Study Skills, and Transition and listed Ollie's date of graduation as June 2020, pending the need for further services as determined by the Team on a yearly basis. Team members believed they had sufficient data regarding Ollie's evaluations and progress to develop these goals, though they ultimately reconvened the following month. Based on the evaluations and progress reports presented at the meeting, which suggested that Ollie would succeed in a less restrictive environment, the Team proposed moving Ollie's academic services to the B-grid.

Ollie's Reading goal stated that he would be able to read and analyze grade-level texts in order to answer written questions and/or create analytical essays with 85% accuracy as measured by both formative and summative assessments. According to his Mathematics goal, given instruction and support, he would solve multistep word problems, selecting an appropriate equation and solving it correctly with 80% accuracy as measured by both formative and

summative assessments. Ollie's Speech and Language goal stated that within the IEP period, he would improve his receptive and expressive skills for improved communication in the classroom setting by meeting specific benchmarks/objectives involving identification of expository text, text maps, oral summaries, and identification of problems in text. His Social Skills goal stated that he would improve and increase his social interactions with peers and adults within the classroom as measured by specific objectives targeting his ability to describe problem situations and intentions of both himself and peers when peers attempt to take advantage of him, and his ability to understand the rationale for various social skills and identify others' emotional states, with decreasing cueing, via staff report and observations. Ollie's Study Skills goal stated that he would develop a system of organization that assists him with tracking due dates and turning in homework with 85% accuracy, as measured by data collection and staff report. According to his Transition goal, Ollie would develop independence as he works toward transitioning from high school to a college/work environment.

The initial proposed 2019-2020 IEP provided Ollie with Academic Support in the general education classroom, five sessions of 120 minutes per week; one 20-minute Counseling session per week; and two sessions of 45-minutes each per month of Speech and Language services. It also provided for 1 session of 200 minutes per school year of consultation by the SLP or SLA to the Team. Finally, this IEP proposed Extended School Year Services (ESY) to be provided by the special education teacher for two hours, four days a week. (S-28; Mumby, III: 99-100)

51. Parent rejected the initial proposed 2019-2020 IEP in full on May 1, 2019 and requested a meeting to discuss her rejection. She indicated that the IEP was "filled with zero accuracy, retaliation" by the Special Education Director, that full inclusion "was not decided or rejected," that the District did not test in all areas of suspected disability, that Parent and Student were denied meaningful participation, that teachers were not present during the discussion of eligibility, that no psychologist and no speech and language pathologist had been present at the meeting, that transition goals had not been discussed or written, and that Ollie's goals had been written after, rather than during, the meeting. Parent also requested that the Team find Ollie had a communication disability based on his 2017 speech and language testing. (S-28)

52. Also on May 1, 2019, Springfield generated an N1 indicating that it had proposed a cohort appeal for the MCAS, which Parent declined to consider for at least another year. The District also noted that Parent had requested that Ollie remain in pull-out ELA and math, but rejected this request as his recent testing showed that he would benefit from a more inclusive setting, and that it had rejected Parent's request to continue OT consultative services, as Ollie had been demonstrating the ability to work on organizational goals within the classroom. The Team proposed to retain the organizational goal but attach it to an academic teacher. The N1 documented Parent's rejection of the District's psychological testing and request for an IEE, as well as the Team's decision not to request a new speech/language assessment as Ollie was receiving speech/language services under his ASD disability and the last assessment, conducted in 2017, had not endorsed a communication disability. (S-24)

53. On May 19, 2019, Parent requested that Springfield place Ollie in the Threshold Program at Lesley University. (S2-2)

54. A few days before the Team meeting scheduled for May 31, 2019, Dr. Morris reached out to Parent and suggested that the meeting be postponed until a BSEA facilitator could chair, to ensure a productive meeting. Parent responded that she was refusing permission to contact a BSEA facilitator or mediator and indicated that she would not agree to postponement of the meeting. (Morris, X: 77)

55. Ollie's Team reconvened on May 31, 2019 to develop an IEP for a post-twelfth grade year. In attendance were Parent, Ms. MacGovern, Dr. Mumby, Ms. Dill, Dr. Morris, Ms. Retchin, Ms. Vega, Springfield's Chief Schools Officer Kimberly Wells, Ms. Ford, ELA teacher Jennifer Milbier, Dr. O'Neill, Ms. Coburn, Ms. Cuffee-Gray, and Springfield Attorney Melinda Phelps. (S-25, S-54) During the meeting, the Team recommended a reading assessment and an updated speech and language evaluation. Consent forms for both assessments were generated and sent to Parent the same day, along with an N1 form stating that the Team had determined, at the meeting, that further information was needed in order to develop an appropriate IEP. Although Dr. Morris emailed Parent on July 11, 2019 indicating that Springfield did not have a signed consent on record, the evidence before me suggests that Parent accepted the evaluation in full on the day it was proposed.<sup>27</sup> (P-44; S-19, S-21, S-23, S2-3, S2-8, S2-54, S2-61; Mumby, III: 112; Vega, VIII: 17; Retchin, IX: 194)

This meeting was again long and extremely contentious. Springfield's attorney was in attendance, though she had not been listed on the meeting invitation and Parent was upset to see her there.<sup>28</sup> During the meeting, Parent requested that the IEP reflect both communication and intellectual impairments for Ollie. The District refused these requests, as previous assessments did not indicate the presence of an intellectual disability, the Team had no previous documentation of a finding of eligibility for a communication impairment, and a new speech/language assessment had been proposed to evaluate his communication skills. Parent requested an out-of-district placement for Ollie, which the District rejected as overly restrictive. The Team recommended that Ollie participate in tutoring at school to prepare to retake the Biology MCAS in June and suggested that if he did not pass, he could attend a biology class at Renaissance the following year to prepare, but Parent objected to the potential social impact that could have on Ollie. The Team discussed other vocational and/or transitional programming he could attend instead. (Mumby, II: 310-11, III: 100-03; Coburn, IV: 231-33; MacGovern, V: 309-11)

Following the meeting, on the same date, Dr. Mumby clarified that the ESY program the District was proposing was the LLD program, with a focus on reading. District employees explained that although the program would be housed at a middle school building because it was air-conditioned, Ollie would be with his same-age peers. (S2-3; Retchin, IX: 195-96)

Along with the N1 and consent forms, on May 31, 2019, Dr. Mumby sent Parent a draft Service Delivery grid that provided for B-grid Academic Support (five 60-minute sessions per 5-day

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<sup>27</sup> Ms. Ford testified that although the consent form appeared to have been signed on June 1, 2019, it was not processed through Springfield's computer system until mid-August. (Ford, III: 198)

<sup>28</sup> Springfield's attorney attended this meeting as an observer because of criminal allegations Parent had made against Dr. Morris in connection with the April 24, 2019 meeting. She was not there to advise the District on special education matters. (Morris, X: 158)

cycle) and Pre-vocational services (five 90-minute sessions per cycle); C-grid Speech and Language services (two 45-minute sessions per month) and ESY (four sessions of four hours each, per 5-day cycle); and Pre-Vocational (one 60-minute session per month) and Speech and Language (one 200-minute session per school year) consultations. (S2-63) Parent and Ms. MacGovern contend that because other than speech, the goals were not actually drafted during the meeting, they were written unilaterally by the District. (MacGovern, VII: 130-32)

56. In June 2019, Ms. MacGovern informed Springfield that Ollie did not want to participate in practice sessions at his school for the Biology MCAS retest. She also stated that Ollie would likely delay further MCAS activities. (S2-25)

57. Following this meeting, on or about June 10, 2019, the Team proposed a full-inclusion IEP dated 5/31/2019 to 4/23/2020 (first amended 2019-2020 IEP). The Parent/Student Concerns section of this IEP indicated that Ollie had chosen not to attend the meeting but gave permission for his advocate to represent him, and reflected Parent's concern that the Team was not addressing his communication disability, as well as her concern with the lack of support services to help him transition into post-secondary goals. The first amended 2019-2020 IEP included goals in Reading, Speech and Language, Daily Living Skills, and Transition. Ollie's Daily Living Skills goal anticipated that given instruction and/or templates to use, Ollie would demonstrate specified activities of daily living (i.e. compiling a simple budget, participating in travel training and independently reading a bus schedule or calling for a ride) in four out of five practice sessions. This version of Ollie's Transition goal was more specific, stating that given the opportunity and/or instruction, Ollie would demonstrate specified transition skills (completing a job shadow summary log, answering mock interview questions, identifying defining characteristics of potential job/career paths) in four out of five opportunities. (S-19, S-23)

The first amended 2019-2020 IEP included limited supports for the remainder of the 2018-2019 school year, as the Service Delivery Grid included only two 45-minute sessions per month of speech and language services and one 200-minute session per school year of speech and language consultation. In addition to these services, for the 2019-2020 school year beginning on August 26, 2019, this IEP provided Ollie with five sessions of 60 minutes per week of Academic Support and five sessions of 90 minutes per week of Pre-vocational support, both in the general education classroom; and one session of 60 minutes per month of consultation by Vocational/Transition Staff to the Team. ESY services were proposed for four hours a day, four days per week. (S-19, S-23)

58. By the end of the 2018-2019 school year, Ollie had made progress on his IEP goals in social skills, transition skills, study skills, written expression, and math. Although the counselor was slated to provide services under his social skills goal, all progress reports for this goal appear to have been entered by his special education teachers, rather than his counselors. For the 2018-2019 school year, Ms. Ewing's name appears on these progress reports, but she does not recall writing them and does not recognize the writing style. (P-27, S-3, S-42, S-42(b), S-64, S2-59; Ewing, VIII: 308-09, 334-35)

59. At the senior awards ceremony at the end of the 2018-2019 school year, Ollie received the Phoenix Award, given to a student who exemplifies Renaissance's community commitments.

Parent got on stage to thank all the teachers who had supported Ollie through school. (Coburn, IV: 226-27; Vega, VII: 286)

60. According to Ms. MacGovern, Springfield referred Ollie to both the LLD program within the District and the Bridge Program at STCC for the summer of 2019. Ms. MacGovern emailed Dr. Morris on June 26, 2019 to let her know that Ollie had chosen to enroll in Bridge. When Dr. Morris responded that she had investigated the program further and understood that the Bridge program requires a high school diploma, Parent contacted her to say she had set everything up for Ollie. She warned Dr. Morris that she had no right to contact Bridge “or reach out to ruin this opportunity for him by contacting or investigating anything.” (S2-5) Dr. Morris emailed Parent to indicate that as STCC had enrolled Ollie, the institution must be under the assumption that Ollie had earned his diploma. (S2-6) By email dated July 11, 2019, Dr. Morris clarified that the District had not, in fact, proposed the Bridge Program because of this requirement; the District viewed it as a unilateral placement. Dr. Morris requested that Ms. MacGovern provide the District with documentation that the requirement had been waived, after which Springfield could consider providing transportation and academic support in connection with the program. Instead, Parent threatened to sue Dr. Morris if she contacted the program. Ms. MacGovern acknowledged that the District was not obligated to provide tutoring for a program to which it had not formally agreed. (S2-8; Retchin, IX: 196-99; Morris, X: 79-82)

As this exchange occurred, consistent with its proposal and as a precaution in the event that Parent had changed her mind, the District sent a bus to pick Ollie up for the LLD program on July 8, 2019. Parent emailed Dr. Morris and Ms. Retchin, stating that the LLD program had been rejected as no students of similar age were participating and, in her opinion, the program was not appropriate for Ollie.<sup>29</sup> She asked why the Team had not reconvened to discuss summer programming, particularly as Ollie had not received services since May, the proposed IEP had been rejected, and Parent had rescinded her excusal forms. (S2-7, S2-26; Retchin, IX: 200-01; Morris, X: 79-80)

61. In the meantime, Dr. Davis conducted an Independent Psychological Evaluation of Ollie for a total of two and a half to three hours on June 12 and 20, 2019 to assess his cognitive performance and clarify the presence of his ASD diagnosis. She did not conduct academic achievement testing, consistent with her exchange with Dr. O’Neill regarding the scope of the IEE.<sup>30</sup> According to Dr. Davis, Ollie was cooperative, polite, and appropriate during testing. He displayed inconsistent eye contact and no speech abnormalities, though he sometimes repeated examiner questions in an apparent attempt to further process questions and responses. Ollie demonstrated good frustration tolerance and persistence, including on challenging tasks. His attention fluctuated throughout the assessment, and he appeared anxious about timed tasks. (P-38; S-39; Davis, II: 166-72, 187)

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<sup>29</sup> Ms. MacGovern also emailed the District to indicate that the LLD program was inappropriate for Ollie due to other students’ age and the fact that he was not labeled by Springfield as an LLD student. (S2-8)

<sup>30</sup> Dr. Davis is a licensed clinical psychologist. She earned her Ph.D. in clinical psychology and did an extra year program to become eligible for certification in school psychology. She worked as a school psychologist from 2003 to 2006 and part-time in 2012. In 2006 Dr. Davis began working at James Levine & Associates, where she is now an assistant director. She continues to perform assessments for both school districts and families of individuals of all ages. (Davis, II: 164-66)

Dr. Davis found that Ollie's cognitive profile was consistent with Mr. Fitch's report. Ollie's General Intellectual Ability was in the low range, with considerable disparity across ability areas. He demonstrated some weakness in general knowledge and comprehension, and his performance suggested somewhat limited receptive and expressive vocabulary knowledge. Ollie's fluid reasoning was a relative strength, with a score in the average range, and his cognitive efficiency was a relative weakness, with a score in the low range. His short-term working memory was in the low average range, as was auditory processing. Ollie performed particularly poorly in the area of short-term retrieval. His visual processing score was in the low range. Dr. Davis concluded that Ollie's scores show that he may struggle to produce written work at a pace comparable to his peers and may experience frustration as a result. Similarly, he may perceive considerable difficulty following complex verbal instructions, encoding information from verbal lectures, and processing verbal information when simultaneous notetaking is required. (P-38; S-39; Davis, II: 179-83, 189-91, 256)

On other measures, Ollie's self-reports indicated no areas of significant concern, and teachers' reports indicated that Ollie was able to be relatively successful at school with the supports he had. Parent's reports, on the other hand, indicated significant concern across numerous areas. (P-38; S-39; Davis, II: 260-63)

Dr. Davis noted that despite relative strengths such as strong social interest, affability, and desire to please others, which increases his social appeal, Ollie's difficulty discerning unspoken cues and reading social intent makes him vulnerable to being taken advantage of or becoming embroiled in social misunderstanding. She observed that these vulnerabilities, in addition to his discomfort with excessive sensory stimulation and novel settings or demands, and his relative lack of self-awareness regarding some of his areas of difficulty, mean Ollie may become overwhelmed as he moves into the next phase of his life. (P-38; S-39; Davis, II: 203-06)

Dr. Davis diagnosed Ollie with ASD, Level One, ADHD, combined presentation, and a Communication disorder by history. At hearing, she testified that Ollie's cognitive profile is not consistent with an intellectual disability. In her report, Dr. Davis noted that Ollie struggled with aspects of communication, including nonverbal communication skills, eye contact, and use of social communication to generate and maintain reciprocity, though she interpreted many of these struggles to be associated with his ASD diagnosis. Dr. Davis made fourteen recommendations. Among these, she recommended that in the event Ollie chooses to pursue post-secondary education, he focus on college programs for students with intellectual and other forms of developmental disability, including the College Steps program at American International College (AIC), and that he receive comprehensive academic accommodations, including a referral to his school's student services office. She suggested accommodations and supports to address Ollie's attentional and organizational challenges in the general education setting, and support around navigating new environments, given his associated challenges with planning and time management. Dr. Davis also recommended renewed access to vocational-related services through the MRC. (P-38; S-39; Davis, II: 202, 206, 221-22, 271; Malandrinos, IX: 343-45)

62. At the beginning of the 2019-2020 school year, Springfield School Psychologist Claire Sibilgia was asked to conduct testing for Ollie in the area of reading, which she did on September

3, 2019. Ms. Sibia has a degree in school psychology and is licensed in educational psychology. She found Ollie to be polite, well-mannered, and cooperative throughout testing, though at times he needed redirection and appeared to struggle particularly with the Gray Oral Reading Tests – Fifth Edition (GORT-5). He was able to advocate for himself when he needed a break. (S-37)

Ms. Sibia's testing confirmed Ollie's slow pace and deficits in processing speed, short-term memory, and cognitive efficiency, as identified by both Mr. Fitch and Dr. Davis. Ollie's profile remained fairly consistent, with moderate improvement as his word knowledge increased between testing with Mr. Fitch in 2017 and testing with Dr. Davis in 2019, and his overall scores had increased from the extremely low to the low range. She noted that Ollie appeared to be using strategies, such as asking for clarification of directions, which gave him time to process requests and formulate responses. In each assessment, he struggled more with timed tasks. Ms. Sibia recommended accommodations to address Ollie's difficulties in the area of sustained attention and his weaknesses in verbal memory.

Based on her testing and review of the records, Ms. Sibia does not believe Ollie has a specific learning disability in reading, particularly because he does much better on untimed tests. His difficulties emerge more when he is being asked to make predictions and inferences. This is consistent with his tendency toward concrete thinking, associated with his ASD. In a student with an SLD in reading, Ms. Sibia would expect to see more issues with phonological processing and reading comprehension due to time spent trying to make sense of the words. Similarly, Ms. Sibia did not see evidence of a communication disorder separate from his ASD, as people with autism often struggle with receptive language, expressive language, vocabulary knowledge, and semantic. Ms. Sibia does not see anything in Ollie's profile suggesting an intellectual disability either, given his achievement scores in the below average to average range and cognitive scores in the low to average range. She believes he is able to access an inclusion class with appropriate supports and would be able to advocate for himself if he needed help. (S-371; Sibia, VI: 189-94, 196-97, 199-201, 204-06, 209-12, 216-17, 221, 223-24)

63. Ollie's Team convened on September 4, 2019 to review Dr. Davis' evaluation, which was presented by Dr. O'Neill. By this time, Laurie Malandrinos<sup>31</sup> had assumed responsibility for Ollie's case as his ETL.<sup>32</sup> (S-3; S2-27; Malandrinos, IX: 338-39)

In addition to Ms. Malandrinos, Parent, Ms. Retchin, Dr. O'Neill, Ms. Dill, Ms. Vega, Ms. Ford, School counselor Katelyn Chirekos, and Ms. MacGovern attended. Ollie did not; someone noted on the attendance sheet that he was afraid to come due to Dr. Morris. Dr. Davis was not in attendance. At this meeting, the Team considered her recommendations involving supports for post-secondary education. On the basis of these recommendations, the District proposed that

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<sup>31</sup> Ms. Malandrinos has a Master's degree in education, focused on reading and learning disabilities, and has obtained additional training in diagnostic testing and reading methodology. She has worked in Springfield since 1975 as a reading teacher, student support teacher, ETL, and Supervisor of Special Education. Ms. Malandrinos retired in 2014 but was called back part-time to train new ETLs, consult on IEPs, and carry a small caseload of predominantly autistic children. (Malandrinos, IX: 334-38)

<sup>32</sup> Dr. Morris asked Ms. Malandrinos to assume responsibility for Ollie's case, given how difficult it had been for Dr. Mumby. Parent contacted Ms. Malandrinos to assert that Dr. O'Neill was not qualified to present Dr. Davis' report and request that she not attend the meeting. After the April 2019 meeting, apparently, Parent made accusations about Dr. O'Neill to her colleagues. (O'Neill, IX: 59-60; Malandrinos, IX: 338; Morris, X: 57)

Ollie take one class in fall 2019 at STCC through the Dual Enrollment Program and attend College Steps at American International College (AIC) for the 2020 spring semester. There was no controversy regarding Dr. Davis' report; the Team felt many of her recommendations had already been incorporated into Ollie's IEP. Due to time constraints, the District agreed to consider the remainder of Dr. Davis' recommendations when it reconvened on September 25, 2019 to review Reading and Speech and Language testing. (P-30; S-3, S-16, S2-27; Davis, II: 266-67; O'Neill, IX: 58; Retchin, IX: 202-04; Malandrinos, IX: 338-46)

64. Following this meeting, because Springfield could not get Ollie into College Steps for the fall semester, Ms. Retchin reached out to inquire as to application for dual enrollment at STCC and the availability of Saturday classes. Springfield completed an application for him, including a letter of recommendation, On September 6, 2019, Ms. Retchin learned that Intro to Social Work remained open to dual enrollment students and would begin the following day. She forwarded this information to Parent, who responded that it sounded like a good class, and Springfield assisted Ollie with the application, wrote a letter of recommendation, and enrolled him in the class. Ollie was excited about this opportunity. Parent signed a release to permit the District to share information about Ollie with STCC's Disability Center, and Ms. Retchin sent information outlining Ollie's needs for accommodations and Disability Center tutoring to STCC. She indicated her understanding that someone from STCC would contact Ollie or his mother to set up tutoring. When Ms. Retchin followed up with a learning disability specialist at STCC, she was told that Ollie should contact the student success center himself. Ms. MacGovern informed the District that she would reach out to the Disability Center on Ollie's behalf so he could receive his services. (S-33, S2-9, S2-11, S2-39; Retchin, IX: 202-09)

65. Pamela Ford, M.Ed, CAGS, administered a speech and language evaluation in three sessions over two days in September 2019.<sup>33</sup> (S-18) At the time of testing, Ollie had been out of school for several months. (Coburn, IV: 180)

Ms. Ford was familiar with Ollie at the time of her testing, as she had observed his direct speech and language therapy while supervising the speech and language therapy assistant (SLPA) providing his services three or four times during the 2018-2019 school year. There, he worked hard, at times requiring redirection, scaffolding, and visual support. She estimated that he was likely working with reading materials at the sixth or seventh grade level, of high interest and lower readability, calculated to provide him with success while completing a task. Ms. Ford also reviewed Ms. Peterson's testing from 2017 and noted that her results were similar. (Ford, III: 163-66, 169, 172-73)

Ollie presented as quiet, distracted, cooperative, diligent, and affable. He demonstrated humor, was able to respond to questions but did not elaborate, and engaged in learned compensatory strategies such as audible self-talk and repetitions. Overall, Ollie's language skills ranged from below average to significantly impaired. Ms. Ford concluded that Ollie benefits from repetition and requires wait time and explicit teaching when encountering more complex tasks that require

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<sup>33</sup> Ms. Ford has Master's degrees in communication disorders and special education, as well as a Certificate of Advanced Graduate Studies and a license from DESE. She has been working in Springfield as a speech and language pathologist (SLP) for 42 years. (Ford, III: 161)

verbal output and academic rigor. She recommended many classroom accommodations, including constant visual support, modeling, scaffolding, repetition, rephrasing, paraphrasing, chunking information, and the like. She also recommended instruction in vocabulary, comprehension and use of various verb tenses, sentence structure, interpreting and using multiple meaning words, providing details in language expression, and identifying and using inference and logical statements, (S-3, S-18; Ford, III: 164-67, 172-74, 180-83, 188-90)

At hearing, Ms. Ford testified that she does not believe Ollie has a specific learning disability, but she does believe he has both ASD and a communication disability. She would not, however, recommend any services for his language difficulties that he has not received and/or does not already receive. (Ford, III: 187, 206)

66. Ollie's Team reconvened on September 25, 2019 to review Ms. Ford's speech and language testing and Ms. Sibilia's achievement testing, and to further discuss transition services and planning. Parent, Ms. Sibilia, Ms. Malandrinos, Ms. Ford, Ms. Retchin, Ms. Dill, Graduation Coach Latoya Wilson, Ms. Coburn, School Counselor Katelyn Chirekos, and Ms. Retchin attended. Ms. Sibilia, Ms. Chirikas, Ms. Wilson, and Ms. Coburn were all excused early, with Parent's assent. Ollie did not attend this meeting, but Ms. MacGovern presented the District with a statement signed by Ollie appointing her as his representative and providing permission for Springfield to release information to her. Ms. MacGovern feels comfortable representing Ollie's wishes at Team meetings to ensure that he is able to provide input. (S-3, S-15, S-17; MacGovern, VII: 199-200; Vega, VIII: 19; O'Neill, IX: 64)

Ms. Sibilia and Ms. Ford presented their reports, and the Team answered questions and addressed concerns. Both Parent and Ms. MacGovern appeared to approve of Ms. Ford's findings. They expressed concern that Ollie had not been provided with sufficient educational and transitional services, and that he was struggling with the dual enrollment course he was taking at STCC on Saturdays. They also reported that he had missed his appointment with the STCC Disability Center. Although several Team members remembered Parent asking the Team to consider whether Ollie had an SLD, others did not recall this happening. Parent and Ms. MacGovern both raised their voices, and Parent made some derogatory remarks about Dr. Morris and other Springfield central office administrators. (S-7, S-14; Ford, III: 202-03; Sibilia, VI: 219; O'Neill, IX: 61, 64; Retchin, IX: 209-10; Malandrinos, IX: 348-49)

The Team discussed further the proposal to place Ollie at College Steps for spring 2020, and suggested providing tutoring in the Biology MCAS, reading, written expression, and transition skills in the time between the end of the fall semester at STCC and the beginning of College Steps in the spring. The tutoring would be offered by various special education teachers, an SLP, and a vocational counselor at the East Springfield library. (Retchin, IX: 211-12; Morris, X: 87-88)

Consistent with its goal for Ollie, as well as Dr. Davis' recommendation, the District formally proposed a new referral for Ollie to MRC. On September 25, 2019, Springfield sent Parent an N1, accompanied by the 688 form required for the referral. (S-11, S-12, S-13, S-32, S2-50; Malandrinos, IX: 352-53)

67. Following the meeting on September 25, 2019, Springfield proposed tutoring three days a week, four hours on each day, in the following areas: reading, written language, study skills, preparation for the Biology MCAS, vocational training, and speech and language services. The District also proposed eight hours of compensatory speech and language services, offered “in spirit of collaboration” and to address missed sessions as of September 1, 2019. This information appeared in an Amended IEP dated 9/25/19 to 4/22/20 (second amended 2019-2020 IEP) and an N1 generated by the District on or about October 4, 2019. (S-12, S-14; Malandrinos, IX: 350, 413-16; Morris, X: 98-99)

68. The second amended 2019-2020 IEP incorporated recommendations offered by Dr. Davis, Ms. Ford, and Ms. Sibilia, including a vocabulary benchmark and increased speech and language services and specific strategies to assist Ollie in closing reading gaps. The IEP was comprised of goals in Reading, Written Expression, Study Skills, Transition, and Speech and Language. Ollie’s Reading goal stated that with instruction and support, he would be able to read and analyze texts in order to answer written questions, as measured by a set of objectives that included using context to infer meaning of new vocabulary words, applying taught comprehension strategies, applying the elements of story grammar given visual cues, using visualization strategies, and building fluency. His Written Expression goal anticipated that with instruction and support, Ollie would demonstrate growth in his written language skills as measured by a set of objectives that included writing informative responses and writing a five-paragraph essay using specific tools and applying the elements of story grammar, and using visual cues to support comprehension of narratives and guide written summaries. According to Ollie’s Study Skills goal, with instruction and support, he would learn strategies to improve his study skills as measured by a set of objectives that included organizing, prioritizing, and scheduling assignments using a daily planner creating study guides and/or outlines, stating content to study, steps to complete assignments, learning and stating test-taking strategies, etc. This goal was heavily influenced by Dr. Davis’ recommendations. His Transition goal, based in large part on what Ollie had told the Team he believed important to learn, stated that given support and instruction, he would demonstrate transition skills as measured by a set of objectives that includes learning information in the Driving Manual, answering mock interview questions, identifying defining characteristics of potential job/career paths, compiling a budget, and accessing a ride. Ollie’s Speech and Language goal stated that he would improve his receptive and expressive language skills for improved communication by meeting particular benchmarks/objectives involving academic vocabulary/lexicon, identifying types of expository texts, filling out text maps to support comprehension, completing oral summaries of mapped texts, and identifying problems and solutions in text.

This IEP provided for the following direct services in the C-grid: two 90-minute sessions of Pre-Vocational skills to be delivered per five-day cycle by Vocational/Transition Staff; one 90-minute session of Reading Skills per cycle to be delivered by the Special Education teacher; one 90-minute session of Written Expression Skills per cycle to be delivered by the Special Education teacher; one 90-minute session per cycle of Study Skills/MCAS Prep to be delivered by the Special Education teacher; and one 60-minute session per cycle of Speech and Language services to be delivered by the SLP or SLA. (S-14; Ford, III: 200-02; Retchin, IX: 209-11; Malandrinos, IX: 350-51, 354-55, 58)

Under “Additional Information,” the IEP again referenced re-referral to MRC, consistent with Dr. Davis’ recommendation. (Malandrinos, IX: 352-53)

69. The District representative signed this IEP on October 4, 2019. Parent rejected the IEP in part, stating that she was accepting services proposed by the District but did not believe them adequate for Ollie’s transition and academic programming needs. She also rejected the proposed placement in a partial inclusion program and requested that the District support a private day program that incorporates “all best practices and accommodations by specialists.” Parent included a note about significant language and reading delays. Springfield received this rejection on October 25, 2019. District personnel were confused and surprised by Parent’s request for a more restrictive private day program, as they believed there had been general agreement to pursue College Steps. (S-10, S-14; Malandrinos, IX: 355-59)

70. This proposal appeared again in an N1 generated by the District on October 17, 2019. In addition to the information above, Springfield rejected Parent’s request for counseling to address Ollie’s ADHD diagnosis; rejected Parent’s request for transportation to Ollie’s Saturday dual enrollment class at STCC, as it had been reported (inaccurately) that Ollie had been accessing the ADA Van for transportation; and rejected Parent’s request for a residential placement in the Berkshires. (S-11)

71. After she received Parent’s response to the IEP, Ms. Malandrinos emailed her on October 30, 2019, indicating that Parent had not made clear what she was accepting and what she was rejecting. She requested that Parent and Ms. MacGovern review a list and clarify which of the following services she was accepting, and which she was rejecting: (1) College Steps for the 2020 spring semester; (2) Tutoring services for reading, written language, study skills, preparation to take the Biology MCAS, vocational training, and speech and language services, offered three days a week from 1:00 PM to 5:00 PM; (3) Eight hours of compensatory speech and language services; (4) an Assistive Technology screening; (5) a referral to MRC. Ms. Malandrinos indicated that once she received Parent’s response, she would schedule a meeting to discuss implementation of accepted services. (S-10, S2-14, S2-28; Malandrinos, IX: 359-64)

In response, Parent accused the District of attempting to graduate Ollie with what she “suspect[ed] are altered test scores,” stated that he would not be taking the MCAS for at least another year. Further, she referred to Springfield as incompetent and warned Ms. Malandrinos to be very careful in choosing staff to work with Ollie because she would “be at each and every session to ensure corruption or further abuse does not occur.” (S2-28) On the same date, Ms. MacGovern emailed Ms. Malandrinos, writing that they were accepting all proposed services but, because they believed the IEP did not go far enough, they were rejecting the lack of additional programming. Ms. MacGovern requested that all listed services be implemented, and Ms. Malandrinos responded by requesting a meeting to review services, location, and transportation options. (S2-29)

The District offered two possible meeting dates and notified both Parent and Ms. MacGovern that it would be moving forward with the plan to offer tutoring at the library beginning November 11, 2019. (Malandrinos, IX: 363-65)

72. Parent emailed several Springfield personnel on November 4, 2019 requesting the qualifications of any tutors who would be working with Ollie. She also requested both reimbursement for travel training that she had provided and a draft IEP. (S2-14)

73. Dr. Morris responded to Parent on the same day, explaining that it remained unclear to Springfield personnel which elements of the proposed IEP Parent had accepted and which she had rejected. Dr. Morris indicated that the District would commence with proposed services to be delivered by a vocational coach, a licensed special education teacher, and a licensed speech and language pathologist, and that a detailed schedule would be forthcoming. Dr. Morris also confirmed that the District had completed Ollie's registration for College Steps in the spring. Regarding Parent's request for travel training reimbursement, Dr. Morris noted that Parent had refused participation in travel training involving public transportation, that she was unsure what the request involved, and that she had no documentation of any travel. Finally, Dr. Morris reminded Parent that the District had recommended, and sent a bus for, Springfield's summer LLD program, but that Parent had refused the program and instead enrolled him in the Bridge Program at STCC and subsequently prohibited Springfield from communicating with Ollie or STCC about his participation in this program. (S2-14)

It does not appear that Parent responded, but Ms. MacGovern emailed Dr. Morris to let her know that, due to Ollie's low reading levels, Parent was not interested in having him take any standardized tests at that time. She also responded to Ms. Malandrinos, stating that she expected all services listed in the October 30, 2019 email would be implemented as written, pending any further due process of the partial rejection. Ms. MacGovern referenced an "agreement" between Attorney Tate and Parent regarding services being provided at a local library rather than at Renaissance. (S2-14, S2-29)

74. Ms. Retchin initially served as the liaison between Springfield and College Steps. When Dr. Morris reached out to Chris Kennedy of College Steps to discuss enrollment and formalize a contract for the spring semester, Parent tried to prohibit Mr. Kennedy from communicating with Dr. Morris. Mr. Kennedy explained that he had to communicate with Dr. Morris if Parent wanted Ollie to participate in College Steps. (Retchin, IX: 218-19; Morris, X: 93-94)

75. On November 8, 2019, Dr. Morris contacted Parent and Ms. MacGovern to provide the tutoring schedule consisting of accepted services per the second amended 2019-2020 IEP, which was scheduled to begin on November 11, 2019. The schedule provided for three hours of services each on Mondays, Wednesdays, and Thursdays, comprised of 180 minutes of Prevocational Skills; 90 minutes of Academics; 90 minutes of Speech and Language services; 90 minutes of Study Skills, including MCAS preparation; and 90 minutes of Academics/Study Skills. All services were to be provided by a vocational coach, a licensed special education teacher, and a licensed SLP. Dr. Morris requested that Parent confirm Ollie's schedule. (S-9; Retchin, IX: 212-14; Malandrinos, IX: 365; Morris, X: 88-90)

Ollie's advocate emailed Dr. Morris to let her know she would go over the schedule with Ollie and figure out how he would access transportation to the library. Parent, on the other hand, wrote to Dr. Morris accusing her of unethical practices and a disregard for reading instruction for Ollie, whom she described as having a second-grade reading level. She asserted that Dr. Morris' email

had caused Ollie a severe anxiety attack and he was under a doctor's care for it. She warned Dr. Morris that if she did not refrain from contacting Ollie in the future, Parent would pursue a harassment protection order through the courts. At no point, however, did Parent or Ms. MacGovern indicate that Ollie would not attend tutoring. (S-9, S2-30; Retchin, IX: 213-14)

76. On November 12, 2019, Parent emailed Ms. Malandrinos to confirm that Ollie would be attending tutoring the next day and requested an agenda for his pre-vocational session.<sup>34</sup> (S2-13; Malandrinos, IX: 370) Parent also emailed Dr. Morris the same day, asking how Ollie would be getting to the library the next day. Dr. Morris responded that Ms. MacGovern had indicated she would be looking into this, so she could ask Ms. MacGovern. Dr. Morris also explained that Ollie's transition training would include how to schedule the ADA van, and that if accessing the library was problematic, services could be moved to Renaissance. (P-26)

77. On November 12, 2019, Ms. MacGovern emailed Ms. Retchin and Ms. Malandrinos to request that Dr. Morris not contact Ollie directly in the future. (S2-12; Morris, X: 89-90)

78. In the meantime, on or about November 19, 2019, Ollie began working at Lowe's as a Customer Service Associate – Sales Floor. His cousin assisted him in obtaining the job, which consists of inventory work and assisting people on the sales floor. Ollie's job application states that he has a diploma from STCC and does not require any accommodations. (P-23, P-23(b); S-75; Bigda, III: 260-61; MacGovern, VII: 142-43, 193-94; Ferriter, VIII: 231)

79. Though Ms. Vega and Ms. Bigda both went to the library for two consecutive weeks to tutor Ollie, and Ms. Bigda had confirmed directly with Parent that she would be providing speech and language services at the library, he failed to appear<sup>35</sup> (Bigda, III: 245-49; Vega, VIII: 22-23; Morris, X: 90-93)

80. On November 21, 2019, Parent contacted several Springfield personnel to request that assistive technology, including Bookshare and a speech-to-text pen, be provided for Ollie before the holiday weekend. Ms. Retchin responded that Ollie already had Bookshare<sup>36</sup> on his school computer and that Ms. Brodecki planned to review its use during one of the tutoring sessions Ollie was supposed to attend that week. Ms. Brodecki reached out to Parent the following day to schedule a mutually agreeable time and location to review the software. (S-8, S2-15; Brodecki, II: 127, 148-49) In December, in response to Parent's expressed concern about Ollie's access to assistive technology, Ms. Brodecki contacted Parent again. Ms. Brodecki was unable to conduct

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<sup>34</sup> Later in November, Ms. Retchin forwarded to Parent lesson plans developed by vocational counselor Marc Riccio for his tutoring session with Ollie, addressing financial responsibility and community navigation via public transportation. (S-34, S2-51; Ferriter, VIII: 224-25)

<sup>35</sup> Ms. MacGovern testified that there was an issue between Parent and Springfield around this time that caused emotional upheaval right before Ollie was scheduled to begin tutoring, and he felt overwhelmed and uncomfortable. (MacGovern, VII: 141-42)

<sup>36</sup> Ms. Brodecki testified that she had not previously recommended Bookshare for Ollie because she understood it to be for individuals who were blind or physically impaired and unable to hold a book. She had since learned that students with documented print-based disabilities could access Bookshare, though these did not include students with autism spectrum disorder (ASD). As Parent stated that Ollie needed Bookshare for college, Ms. Brodecki set up an account for him and offered to do some training, but Parent did not follow through. (S2-19; Brodecki, II: 153-55)

a screening of Ollie despite multiple attempts.<sup>37</sup> (Brodecki, I: 148-152) On February 3, 2020, another Springfield Assistive Technology Specialist emailed Parent to follow up with Ollie's Bookshare account information. (S2-19)

81. On November 26, 2019, Springfield produced an N1 proposing to suspend, as of November 25, 2019, the Transition/Academic tutoring that had been proposed in the IEP dated September 25, 2019, as Parent had indicated that she would not send Ollie and he had neither reported for any of the six tutoring sessions that had been scheduled nor had he communicated with the District about tutoring.<sup>38</sup> The District proposed a review of the software on Ollie's computer, as Parent had requested, but rejected Parent's request for independent services outside of the District, as the Team believed its proposed program could meet Ollie's needs. Moreover, Springfield emphasized that it had been flexible in offering to provide tutoring at the library, rather than in a school building, to accommodate the family's refusal to access services within a Springfield public school. (S-8; Retchin, IX: 214-15; Malandrinos, IX: 372)

82. Following a Pre-Hearing Conference with this Hearing Officer in a previous matter filed by Parent against the District, and later withdrawn, on February 13, 2020, the District developed an N1. The District rejected Parent's request to hire a private therapist for Ollie. Springfield agreed to provide door-to-door transportation to College Steps; contract with AIC, through their Pioneer Valley Tutoring Services, for 60 minutes per week of specialized Reading instruction and 60 minutes per week of specialized Written Expression tutoring; provide Ollie with 30 minutes per week of counseling with a Springfield School Adjustment Counselor on the AIC campus to address his needs around anxiety and self-advocacy; provide him with 60 minutes per week of services from the speech and language pathologist, also on the AIC campus; and provide eight hours of compensatory speech and language services to account for sessions missed as of September 1, 2019. The District also recommended that Ollie receive one hour of MCAS Biology Prep through a one-to-one mentor on the AIC campus and participate in College Steps' Anxiety Management Course. The N1 further provided that an Assistive Technology Specialist would contact Ollie via email to review the software on his computer, and that the Vocational Counselor would work with Ollie to access and ride the ADA van, for which Ollie remained eligible through June 2020. Ollie was tasked with renewing these services, at which point the van would transport Ollie to and from College Steps. (S-6; Malandrinos, IX: 375-80)

83. These proposals were formalized in a proposed third amended 2019-2020 IEP, dated 2/6/20 to 4/22/20. Neither Parent nor Ollie responded to it. (S-7; Malandrinos, IX: 375-380)

84. Ollie currently attends the College Steps Program at AIC, which he began in the spring 2020 semester. College Steps is a comprehensive transition provider of personalized learning plans and support that aims to ease the transition process into and through college for learners of all backgrounds. Through College Steps, students are permitted to audit or enroll in (for credit)

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<sup>37</sup> Ms. Brodecki was scheduled to meet with Ollie and his tutor during one of these sessions in order to screen Ollie for assistive technology tools and strategies, but when he did not appear for tutoring, she was unable to do so. (S-32)

<sup>38</sup> Ms. Malandrinos testified that Parent had emailed her on or about November 12, 2019 to indicate that Ollie would not attend tutoring until the following week due to a work conflict, but she heard nothing further and, as a result, had sent tutors to the library for the two weeks she expected Ollie to attend. (Malandrinos, IX: 368, 370-72)

one course per semester.<sup>39</sup> College Steps assists students with executive functioning and planning but does not modify the curriculum or provide hand-over-hand assistance. Ollie currently attends College Steps from 9:00 AM to 2:30 PM Monday through Friday for a total of 27.5 hours per week. The program serves three groups of students: enrolled students for whom navigating college is challenging due to social, academic, or independent living barriers; high school transition students; and returning students interested in a 2-year certificate program. For the spring semester of the 2019-2020 school year, the District agreed to pay \$11,950 for approximately 20 hours per week of Transition Services. Springfield has funded the program for the 2020-2021 school year. College Steps has been transformational for Ollie, and both he and his mother are pleased with this placement. (S-3, S-5, S-22, S2-17 S2-24; MacGovern, V: 320-22, VII: 143-44, 169-70; Davis, VII: 52-53; Retchin, IX: 237-38)

85. In early 2020, Ms. Retchin reached out to AIC's Student Success Center to ask whether teachers were available there to deliver the reading services on Ollie's IEP. Before Ms. Retchin could formalize this change through a contract, on February 22, 2020, Parent emailed several Springfield personnel, accusing them of attempting to change Ollie's schedule at AIC without her knowledge and without a signed IEP amendment. She stated that this impacted Ollie's emotional wellbeing, and that the District had purposefully caused him this anxiety. (S2-20; Retchin, IX: 220-22)

86. On March 5, 2020, Parent, Ms. MacGovern, and Springfield staff were invited to a meeting where College Steps staff informed them about Ollie's program. During the semester, Ollie was enrolled in a 3-credit course called Management of Sports Industries. He was also participating in an Anime Club and receiving instruction in foundational skills through the following courses and/or programs: Whole Selves (various facets of relationships, nuances, and how to navigate); Community (budgeting, finance, savings, checking account skills), and Time Management/Organizational Skills. At College Steps, Ollie has access to staff, peer mentors, and support through the Accessibility Center. College Steps reported that Ollie was doing well there, and they wanted him to engage in more social activities. At this time, Ollie's Team agreed to provide tutoring for reading over the summer.<sup>40</sup> (S-3, S-22, S-69; MacGovern, VII: 179; Malandrinos, IX: 374-75)

87. On March 10, 2020, Ms. Retchin contacted Ollie, Parent, and Ms. MacGovern to inform them that the District had arranged for a van from van pool to transport Ollie to College Steps.<sup>41</sup> Ms. Retchin requested that Parent accept the portion of services on the proposed IEP that would

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<sup>39</sup> College Steps students may take more classes, but that would be through American International College (AIC), not College Steps and would involve additional costs. To matriculate at AIC, students must have earned a high school diploma. (S-22)

<sup>40</sup> Ollie was enrolled in the summer LLD program, a stay-put service from his last accepted IEP, to ensure that he would have the opportunity to participate in summer services while the District awaited Parent's response to the proposed IEP. When a staff member from the program called the home on June 20, 2020 to set up virtual services, no-one answered. (Morris, X: 101-04)

<sup>41</sup> Dr. Morris testified that it was unclear how Ollie got to and from College Steps, as he did not utilize the van services offered by the District. When she learned that Ollie was not using the van because he needed it for times outside of the service window, Dr. Morris suggested that the District might be able to reimburse Parent for the car services he used instead. Parent did not provide receipts until the commencement of the instant BSEA matter. (Morris, X: 94-96)

permit AIC to begin delivering specialized Reading/Writing tutoring, funded by the District. As Parent did not respond, the next day Ms. Retchin sent a second email to let Parent, Ollie, and Ms. MacGovern know that the van would be sent as of the following Monday. This service was never implemented due to the COVID-19 pandemic. Ms. Bidga's speech and language services at AIC were also interrupted due to pandemic-related school closures. (S-4, S2-21; Bigda, III: 250-51; Retchin, IX: 224-25, 230-31)

88. A telephonic meeting took place on March 13, 2020 among Parent, Springfield, and College Steps to discuss AIC's shift to virtual programming due to COVID-19 closures and the impact this shift would have on Ollie's schedule. On March 17, 2020, College Steps sent out a revised schedule for Ollie, and later that week reached out to confirm that everyone agreed with how his program would proceed. (S2-22, S2-23; Retchin, IX: 232-33)

89. Ollie's annual review meeting was held virtually for over two and a half hours on April 16, 2020 to develop his IEP and address ESY services. Parent, Ms. McGovern, Ms. Bigda, Ms. Retchin, Ms. Malandrinos, and Sarah Knight and Chris Kennedy from College Steps attended. Ollie was also invited. Parent participated by telephone from the car. The Team learned midway through the meeting that Ollie was in the car with her, when Parent informed them that he had to get out of the car because he was upset with what he was hearing. Ollie did not speak during the meeting. (S-1, S-2; MacGovern, V: 236-37, 249, VII: 172-73; Malandrinos, IX: 381-82; Morris, X: 101)

Prior to the meeting, on or about April 13, 2020, Parent emailed Ms. Bigda to request notes from her speech/tutoring sessions in connection with Ollie's history class. Ms. Bigda responded that she had only seen Ollie twice that summer for services and had not taken any notes. During the meeting, Ms. Bigda presented the speech goal, which included a new benchmark. (S2-31; Malandrinos, IX: 406)

Parent and Ms. McGovern expressed concerns about Ollie's reading abilities, his difficulty with banking, the methodology and amount of reading tutoring, and the identity of tutors for reading tutoring and transition skills training. They also requested that Springfield add to Ollie's disability category. Ms. Malandrinos explained that without data to review that would support additional disability categories, the Team would not consider making this change at this time. As to ESY, Parent requested that the District fund a summer course for Ollie at AIC, even though College Steps did not operate during the summer, and Ms. McGovern requested that Ollie's reading tutors utilize Wilson 4 methodology. Ms. Bigda expressed concern about focusing on decoding and encoding, as she believed it more appropriate to focus on comprehension at this level. Everyone agreed to remove counseling from the service delivery grid, as Ollie had expressed to Ms. MacGovern that he wanted all of his services at AIC and was not interested in working with a Renaissance counselor. (S-1, S03; Bigda, III: 253-55; MacGovern, VII: 174; Malandrinos, IX: 392-93; Morris, X: 172-73)

Ollie was continuing to do well at College Steps. In addition to the information staff had provided the previous month, College Steps reported that Ollie had great participation and was maintaining a B+ average in his Management of Sports Industries Class. He was writing an eight-page paper for that class and collaborating with another student to finish his final project.

Ollie was working well with his mentor, who assists him in structuring his ideas, preparing for quizzes, and reviewing information from class. He uses a virtual schedule, Google Calendar and Face Time to meet with professors, his mentor, and groups of students. Ollie was also continuing to work at Lowe's. (S-3; Retchin, IX: 237-38; Morris, X: 93-94)

College Steps personnel explained that although they do not have a summer program they could, per Parent's request, locate a mentor to work with Ollie on a summer course at AIC, if the District agreed to fund it. The District rejected this request and instead proposed summer tutoring services, to be provided by District staff, for two hours per week in Reading and Written Expression, as well as Speech and Language therapy. In response to Parent's assertion that tutoring services offered on the previous IEP were insufficient, Springfield proposed to increase the number of hours offered. The District rejected Ms. McGovern's request for Wilson 4 methodology on the basis that the District was providing sound reading methodology for reading instruction. Ultimately the Team agreed to contract out reading services to AIC. The initial contract created by AIC designated an hour and a half of services per week. At the time of the hearing, the contract was being reworked to provide three hours of reading services per week. (S-1, S-3; MacGovern, V: 239; Retchin, IX: 252-53, 301-02; Malandrinos, IX: 383-85, 402-03; Morris, X: 102) Despite Ms. MacGovern's belief that Springfield staff who attended the meeting were not authorized to commit District resources to provide services for Ollie, Ms. Retchin and Ms. Malandrinos were, in fact, so authorized. (MacGovern, V: 243-45, VII: 174, 208; Morris, X: 172)

90. The IEP proposed by Springfield for the period from April 16, 2020 to April 15, 2021 lists Ollie's primary disability as autism and contains no secondary disability. The IEP contains a number of accommodations to address the impact of Ollie's ASD on his communication skills. The IEP includes goals in Reading, Written Expression, Speech and Language and Transition and places Ollie in a full inclusion setting at AIC, with Tutoring services. (S-3)

According to the Current Performance Level in his Reading goal, Ollie has read Romeo and Juliet and St. Lucy's Home for Girls Raised by Wolves in a small group class with support and is able to read short stories, though he struggles with specific content-related jargon. His goal is to be able to read and analyze texts, with instruction and support, in order to answer written questions as measured by benchmarks and objectives related to vocabulary, comprehension strategies, fluency, creation of study guides, etc. There is no indication of Ollie's independent or instructional reading levels. (S-3) Parent expressed concern that this goal was the same as the reading goal on Ollie's last IEP. Although she added a new fluency benchmark and expanded on others from the last IEP based on Dr. Davis' reports and the Team's concerns, Ms. Malandrinos did not make significant changes because Springfield had not had the opportunity to implement the goal or tutoring services from the last IEP. (Malandrinos, IX: 408-09)

The Current Performance Level of Ollie's Written Expression goal includes information regarding his grades and work at AIC. His goal is to demonstrate growth in his written language skills as measured by benchmarks and objectives focused on writing informative responses, five-paragraph essays, and summaries, and learning test-taking strategies. (S-3)

Ollie's Speech and Language goal is to improve his receptive and expressive communication skills to support comprehension of and participation in content curriculum at his ability level. Ms. Bigda testified that she tweaked these goals to reflect the fact that he would be attending college courses, such that content and vocabulary from his classes could be used for preview and review during service delivery. (S-3; Bigda, III: 251-52)

Ollie's Transition goal states that he will demonstrate transition skills as measured by objectives involving budgeting, mock interviewing, informal assessments, and community travel, and self-advocacy. (S-3)

The IEP consists of Direct Services as follows, per five-day cycle: three 60-minute sessions of Tutoring, provided by the special education teacher; one 60-minute session of College Steps-Transition, provided by Vocational/Transition Staff; and one 60-minute session of Speech and Language services, provided by the SLP or SLA. It also provides for ESY Direct Services per five-day cycle as follows: two 60-minute sessions of Tutoring, provided by the special education teacher; one 60-minute session of Transition services, provided by Vocational/Transition Staff; and one 60-minute session of Speech and Language services, provided by the SLP or SLA. (S-3)

Under "Additional Information," the District detailed proposed delivery of these services through Ollie's participation in College Steps in the fall semester 2020 and spring semester 2021, as well as three hours per week of tutoring in Reading and Written Expression and one hour per week of Speech and Language therapy, in the fall of 2020. Springfield stated that it would contract with AIC, through Pioneer Valley Tutoring Services, for three hours per week in both the fall and spring semesters. Springfield anticipated contracting with College Steps to work with Ollie on Transition Skills, including time management, prevocational training, budget and finance, the social world, problem-solving, perspective-taking, and/or community and campus resources, and also recommended that Ollie receive one hour of MCAS Biology prep with a mentor. (S-3; Malandrinos, IX: 383-85, 398)

The IEP provides for accommodations for science and technology MCAS examinations.

The IEP further provides for door-to-door transportation to College Steps. According to the "Additional Information" section, on or about May 13, 2019, Ollie completed the application process for eligibility to ride the ADA van and received a temporary card. Springfield informed Ollie and Parent that renewal of the application was required prior to June 4, 2020, and the District suggested that Springfield's Vocational Counselor instruct Ollie on how to access and ride the ADA van and shadow him in the process until he demonstrated independence in riding it. (S-3)

Under "Additional Information," the 2020-2021 IEP indicates that Springfield would like Ollie to review materials to prepare to retake the Biology MCAS exam and/or explore various ways to pass the test in order to obtain a high school diploma. (S-3)

91. The Transition Planning Form (TPF) accompanying Ollie's proposed 2020-2021 IEP erroneously lists June 2019 as his anticipated date of graduation. According to his post-secondary vision statement, Ollie would like to obtain a high school diploma and attend college,

where he would like to live in a dormitory. He is unsure about the field he wishes to pursue but would like to become independent and obtain employment once he completes post-secondary education. The TPF indicates that Ollie's autism impacts transition in the following areas: reading skills; receptive and expressive language skills; written expression; study skills; and transition skills. The action plan provides that he would benefit from MCAS preparation instruction to enable him to pass the MCAS and matriculate to college to pursue a degree. Furthermore, instruction will assist him in improving communication, reading and writing, study, and transition skills through speech and language services, specialized reading and written expression instruction, and academic support with study skills. (S-3)

92. A second virtual Team meeting was scheduled for noon April 29, 2020. On April 24, 2020, Ms. Malandrinos contacted Chris Kennedy, Regional Director of College Steps, to inform him that the meeting had been cancelled, as she had determined that College Steps had already contributed the information it had regarding Ollie's progress and performance. The meeting had not in fact, been cancelled; rather, the time advanced to earlier that morning at the request of one of Springfield's attorneys, who had been invited at Ms. Malandrinos' request. Ultimately, this meeting was cancelled by Parent, who was upset that College Steps would not be attending and that Springfield's attorney would be. (P-60; S2-32, S2-33; Bigda, III: 257; MacGovern, V: 246-48, VII: 122-24; Malandrinos, IX: 399-400)

93. In mid-May, Ms. Bigda began meeting with Ollie weekly for remote speech and language services. For five consecutive sessions, they worked on goals delineated in the last accepted IEP, with a focus on vocabulary and understanding of expository/informational text, in the context of his interest in business management. Ollie had developed self-advocacy skills, in that he was able to request wait time, repetition, and clarification when she presented material that was too complicated for him. His vocabulary had also developed since the last time Ms. Bigda worked with him. Ollie cancelled their final meeting because of his work schedule and was very apologetic when he did so. (Bigda, III: 215-18, 257-60)

94. Around the same time, Parent requested a second IEE, focused on achievement testing, which Springfield agreed to fund. On May 30 and June 26, 2020, Dr. Davis administered this assessment, which consisted of a Record Review, the Woodcock-Johnson Tests of Achievement and Oral Language, the TOWRE, the GORT-5, and the WIAT-IV. During testing, Ollie was cooperative and responsive. He occasionally required rephrasing or repeating of questions, particularly when completing comprehension tasks. Dr. Davis noted inconsistent eye contact and fluctuations in attention during the reading comprehension task. Overall, Ollie's relatively consistent attention to and effort on tasks led her to believe her results were a reasonable estimate of his current functioning.

Dr. Davis concluded that Ollie continues to struggle with basic academic skills. He demonstrates rudimentary reading skills but more limited sight word knowledge and decoding ability as content becomes more challenging. These difficulties, combined with his slower processing speed, likely impact both his fluency and his ability to encode what is read for purposes of subsequent recall and comprehension. Ollie's limited spelling ability is commensurate with his sight word knowledge and decoding skills. He can produce developmentally appropriate grammatical structures for simple writing tasks but struggles when more sophisticated language

or greater elaboration is required. Dr. Davis observed that Ollie has achieved proficiency with some functional reading and writing tasks but is likely to struggle with academic demands involving greater complexity or sophistication. She concluded that Ollie's long-standing deficits with oral fluency skills indicate a specific learning disorder with impairment in reading (reading fluency), but that Ollie's persistent weaknesses with reading comprehension most likely stem from more global challenges with comprehension and memory.

Dr. Davis recognized that it would be harder for Ollie to access college material than for his peers; it would take him additional time to accomplish academic tasks. She recommended that Ollie receive ongoing support of his basic reading skills in order to access grade level material across content areas and more explicit scaffolding of the writing process in order to effectively communicate his ideas, which would assist him in accomplishing his vocational and professional goals. Dr. Davis suggested a number of accommodations in each category, many of which appeared in the proposed 2020-2021 IEP. (P-69; Davis, VII: 7, 13, 22-24, 51, 61-64; Valles, VII: 257-58)

95. On or about July 2, 2020, Parent returned the signature page on the 2020-2021 proposed IEP. She highlighted the lack of signature by an LEA representative and the Principal, rejected the IEP in part, and requested a meeting to discuss the rejected portions. Under Parent Options/Responses, Parent wrote, "I accept these services provisional (*sic*). They do not provide access to a FAPE. I do accept in whole speech goal, and placement, as well as AIC tutors in fall and spring semesters." Under Parent Comment, she wrote, "Services are being accepted provisionally, this IEP was written outside of team (*sic*) meeting without Parent, Student, College Steps input, denial of meaningful participation. Services are only being allowed to prevent further regression. SLD form denied. N1 is inaccurate." Parent appended to her response a document entitled "IEP Rejections," which contested comments in the draft IEP regarding Ollie's anxiety, progress the District described, and Ollie's ability to complete certain tasks, evaluation summaries, etc. Among other things, the letter also asserted that Ollie had attended the meeting and requested to take a class at AIC over the summer; that Parent has been requesting for several years, and had requested again, that the District complete a Specific Learning Disability form and find that Ollie has an SLD; that Ollie, Parent, and Ollie's representative, had been denied meaningful participation in the meeting; and that accommodations, goals, methodology and performance criteria had been created outside of the meeting and without Team input. As to the Service Delivery Grid, Parent explicitly accepted speech services and contested other summer services as not appropriate because they were not being provided by a reading coach. She also accepted three hours of weekly tutoring by AIC. (P-67; S-3(b), S2-34; Retchin, IX: 25)

96. Ms. Malandrinos was concerned about the lack of a fully accepted IEP, as the District had proposed College Steps for the fall semester of 2020 and spring semester of 2021; increased tutoring through AIC; and offered ESY to prevent regression and because Ollie had not accessed any specific reading, written instruction, or transition tutoring since he had left Renaissance in June 2019. (Malandrinos, IX: 386)

97. Although Dr. Morris understood that Parent had accepted speech and language services, as of July 16, 2020, Ms. Bigda had not yet begun summer speech and language services with

Ollie. She testified that she believed the IEP had not been returned yet. (Bigda, III: 224-25; Morris, X: 103)

98. By email dated July 22, 2020, Springfield requested clarification regarding Parent's response, as she appeared to accept the speech goal with IEP services provided "provisionally," yet also indicated that summer services were not appropriate. Parent responded that she had not accepted the remainder of the goals because they had been "written unilaterally outside of a team meeting." Later the same day, Dr. Morris responded that as she now understood that Parent was accepting speech and language services, the District would begin the delivery of the five hours listed in the grid for summer as well as services moving forward into the fall. (P-66, P-67)

99. To date, Ollie has failed the test for his Learners Permit three times. Although Springfield has offered both tutoring for the test and travel training, Ollie has not participated in either. He relies on Lyft for transportation to work and other community activities. (P-2; MacGovern, VII: 156-58; Retchin, IX: 191-92)

100. Evaluators and educators across the board agree that Ollie is not intellectually disabled. For the most part, they also agree that Ollie's functional and academic presentation in school, combined with his evaluations, do not support a diagnosis of a communication disability or SLD in reading. As explained by Mr. Valles,<sup>42</sup> because autism is a developmental disability that impacts receptive and expressive language, the ability to make inferences and predictions, and social interaction, which encompass the communication challenges identified by Dr. Davis, Dr. Figueroa-Scott, Ms. Peterson, Ms. Ford, and Ms. MacGovern, Ollie's language difficulties are intertwined with and subsumed within his ASD diagnosis. Although her most recent report suggests that Ollie's language difficulties constitute a separate SLD in reading, Dr. Davis believes the disability category is less important than an IEP that focuses on the impacts of Ollie's disabilities and reflects the services he needs. (Peterson, II: 42-43; Bigda, III: 240-41; Davis, VII: 61; Valles, VII: 248-50, 263; Vega, VIII: 23-28; Merriman, VIII: 141; O'Neill, IX: 30, 32-34, 139, 71-72, 165; Morris, X: 48-49, 51-53)

101. By the time he completed twelfth grade at Renaissance, Ollie was able to work independently and in groups, participate in classes, and ask for support when needed. He was social with peers, known by his teachers, and an integral part of the school community. Despite his slow processing speed, with accommodations such as extra time, scaffolding, repetition, and supports, Ollie is able to access and make progress with grade level materials. With guidance, support, and mentoring to ensure that he is choosing courses that meet his interests, completing his work, and accessing appropriate outside resources, Ollie can succeed in college. (S-3?; Vega, VIII: 11-12, 30; Ewing, VIII: 324; Morris, X: 46-47, 49)

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<sup>42</sup> Mr. Valles has Master's degree in speech and language pathology, with additional credit hours in speech and language pathology, rhetoric and communication, and educational psychology. He is certified through DESE as a speech and language pathologist and a supervisor, director of academics in all areas. Mr. Valles has spent 23 years as a supervisor of speech and hearing and LLD in the Springfield Public Schools. In this capacity he hires, evaluates, and supervises speech and language pathologists and speech and language assistants; stays current with research practices; and ensures that appropriate methodologies are in place for speech and language services and LLD programs. (Valles, VII: 223-24)

## DISCUSSION

It is not disputed that Ollie is a student with a disability who is entitled to special education services under state and federal law. To determine whether Parent is entitled to a decision in her favor, I must consider substantive and procedural legal standards governing special education. As the moving party in this matter, Parent bears the burden of proof.<sup>43</sup> To prevail, she must prove – by a preponderance of the evidence – that during the specified time period, the District failed to propose IEPs reasonably calculated to provide Ollie with a FAPE; failed to implement accepted IEPs; committed one or more procedural violations that amount to a violation of Ollie’s right to a FAPE; committed actions during the specified time period that impeded Parent’s ability or Ollie’s ability to participate in IEP meetings; and/or failed to implement fully accepted ESY services during the summer of 2020.<sup>44</sup>

I address the delineated issues below.

I. The 2018-2019 IEP (through 10/3/18) the 2019-2020 IEP, and the 2020-2021 IEP Proposed by Springfield Were and Are Reasonably Calculated to Provide Ollie with a FAPE.

A. *Legal Standard for Free Appropriate Public Education*

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE].”<sup>45</sup> FAPE is delivered primarily through a child’s IEP, which must be tailored to meet a child’s unique needs after careful consideration of the child’s present levels of academic achievement and functional performance, disability, and potential for growth.<sup>46</sup> As summarized by the United States Supreme Court in *Endrew F. v. Douglas County School District*, the IEP must “describe how the child’s disability affects the child’s involvement and progress in the general education curriculum, and set out measurable annual goals, including academic and functional goals, along with a description of how the child’s progress toward meeting those goals will be gauged.”<sup>47</sup> “To meet its substantive obligation under the IDEA, a [district] must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”<sup>48</sup> The goals of all students should be “appropriately ambitious . . . just as advancement from grade to grade is appropriately ambitious for most students in a regular classroom.”<sup>49</sup>

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<sup>43</sup> See *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2008).

<sup>44</sup> See *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990) (Districts are liable for procedural violations if parents prove both that a violation occurred and that the “procedural inadequacies compromised the pupil’s right to an appropriate education, seriously hampered the parents’ opportunity to participate in the formulation process, or caused a deprivation of educational benefits.”)

<sup>45</sup> 20 U.S.C. §1400 (d)(1)(A).

<sup>46</sup> *Endrew F. v. Douglas Cty. Reg’l Sch. Dist.*, 137 S. Ct. 988, 999 (2017); *D.B. ex rel Elizabeth B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012).

<sup>47</sup> 137 S. Ct. at 994 (internal quotation marks omitted), citing 20 U.S.C. §§1414(d)(1)(A)(i)-(III).

<sup>48</sup> *Endrew F.*, 137 S. Ct. at 999.

<sup>49</sup> *Id.* at 1000.

Similarly, Massachusetts FAPE standards require that an IEP be “reasonably calculated to confer a meaningful educational benefit in light of the child’s circumstances,”<sup>50</sup> and designed to permit the student to make “effective progress.”<sup>51</sup> Evaluating an IEP requires viewing it as a “a snapshot, not a retrospective. In striving for ‘appropriateness, an IEP must take into account what was . . . objectively reasonable . . . at the time the IEP was promulgated.”<sup>52</sup>

Under state and federal special education law, a school district has an obligation to provide the services that comprise FAPE in the least restrictive environment that will “accommodate the child’s legitimate needs.”<sup>53</sup> For most children, a FAPE “will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade.”<sup>54</sup> However, “the benefits to be gained from mainstreaming must be weighed against the educational improvements that could be attained in a more restrictive (that is, non-mainstream) environment.”<sup>55</sup>

I measure each proposed IEP against these standards.

*B. Proposed 2018-2019 IEP, 5/10/18 through 10/2/18*

As Parent ultimately accepted the 2018-2019 IEP fully, as amended on 10/3/18, I will limit my findings as to whether it was reasonably calculated to provide Ollie with a FAPE to the period before the acceptance. At the time the Team convened to draft this IEP, Springfield should have conducted a three-year reevaluation to inform its IEP. Failing to do so constitutes a procedural error, as discussed below. The District did, however, have fairly recent information: Mr. Fitch’s IEE, Ms. Peterson’s speech and language reevaluation, Ms. Gray’s LLD observation, Ms. Brodecki’s assistive technology evaluation, and Ms. Ferriter’s transition assessment had all been conducted within the preceding year and a half. Progress reports from the period just before the Team meeting suggested that Ollie was making progress toward speech and language, social skills, and study skills goals, but he was struggling in several academic areas within his substantially separate placement.

The Team proposed a partial inclusion placement in May 2018, with B-grid academic support (5 x 90 per week) in addition to C-grid academic support (5 x 90 per week). The IEP was written to be flexible, as Ollie would receive small group pull-out instruction in ELA, math, science, and social studies, but could participate in general education classes as the discretion of the appropriate specialist. Given that similar language appeared in his 2017-2018 IEP for a substantially separate placement, it appears that the actual difference between the two IEPs in terms of service delivery was not significant. More importantly, based on the language of Parent’s partial rejection, which she finally provided on October 3, 2018, the only element of the

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<sup>50</sup> *C.D. v. Natick Pub. Sch. Dist.*, 924 F.3d 621, 624-25 (1st Cir. 2019) (cert denied).

<sup>51</sup> 603 CMR 28.05(4)(b) (IEP must be “designed to enable the student to progress effectively in the content areas of the general curriculum”).

<sup>52</sup> *Roland M.*, 910 F.2d at 992 (internal quotations and citations omitted).

<sup>53</sup> *C.G. ex rel. A.S. v. Five Town Comty. Sch. Dist.*, 513 F.3d 279, 285 (1st Cir. 2008); see 20 USC §1412(a)(5)(A); 34 CFR 300.114(a)(2)(i); MGL c 71 B, §§ 2, 3; 603 CMR 28.06(2)(c).

<sup>54</sup> *Andrew F.*, 137 S. Ct. at 1000.

<sup>55</sup> *C.D.*, 924 F.3d at 631 (quoting *Roland M.*, 920 F.2d at 993).

2018-2019 IEP she rejected was the lack of paraprofessional support in Ollie's dual enrollment classes.

At the time the Team proposed the IEP, in May 2018, Ollie was participating in a spring semester dual enrollment class with STCC, where he ultimately earned a B without accessing the supports Ms. Vega was investigating on his behalf. Springfield proposed 2 x 60 minutes per week of ESY services in the 2018-2019 IEP. Though his Team had not recommended it, Parent elected to enroll Ollie in a summer dual enrollment class at STCC. She then requested that ESY be provided in the form of speech and language support for this class. The District responded by offering 10 hours of tutoring with Ms. Bidga. Ollie attended only 4 of those hours. In the middle of the summer, Parent informed Springfield that Ollie was having difficulty in his class at STCC and also requested paraprofessional support for him. As Ms. Vega had already learned that STCC recommended that students seek assistance through the student support office, and because one of Ollie's transition goals was to identify and seek out supports, including college disability centers, it was reasonable for Springfield to reject Parent's request to assign a paraprofessional to support Ollie in his dual enrollment class.

Based on the evidence before me, I conclude that paraprofessional support for dual enrollment classes was not necessary for Ollie to receive a FAPE for the period from 5/10/18 to 10/2/19. Ollie was successful in his spring 2018 dual enrollment class without such support. In the summer, the District provided speech and language tutoring to support Ollie in his history class; Ollie did not access more than half of the hours he was offered, nor did he follow up on the information the District provided for him regarding how to access support through STCC's disability center. There is no evidence that Ollie enrolled in any other dual enrollment classes before October 2, 2018.

### *C. Proposed 2019-2020 IEP*

This IEP for a full inclusion placement was dated 4/24/19 to 4/23/20 and amended 5/31/19, 9/25/19 and 2/6/20. It covered the last few months of Ollie's twelfth grade year at Renaissance and most of his first post-secondary year. Parent raised several concerns about the IEP. Specifically, she challenged the Team's decision not to list an intellectual disability; the absence of a more recent speech and language evaluation and an SLP at the Team meeting to review it; and what she viewed as inadequate transition services. She continued to reject the lack of a paraprofessional to assist Ollie in dual enrollment classes. Parent also objected to the Team's proposal of a cohort appeal and MCAS tutoring. Although she agreed to the discontinuation of OT consultation during the meeting, her written response to the IEP indicates that she rejected this as well.

Given the information before the Team, including Dr. Figueroa-Scott's psychological evaluation Ms. Vega's achievement assessment, then-current progress reports, detailed reports regarding Ollie's presentation, progress, and challenges by Ms. Dill and Ms. Ewing, both of whom had taught Ollie for nearly two years, it was reasonable for the Team to refuse Parent's request to list an intellectual disability on Ollie's IEP. Moreover, based on this information, Ollie's reading, math, social skills, and study skills goals in this draft are appropriate, but his

transition goal is too vague, particularly given Parent's contention that Ollie had not received sufficient services in this area.

In light of Ollie's expressed desire to graduate from high school and attend college, proposing both a cohort appeal and MCAS tutoring was not only reasonable, but likely required.

The Team's decision to investigate other post-graduate options, rather than propose that Ollie continue to take dual enrollment courses, was also reasonable. To the extent Ollie's post-secondary year would include STCC courses, as explained above, Parent failed to establish that paraprofessional support was required for Ollie to receive a FAPE.

As Ollie had well-established communication challenges for which he was receiving speech and language services, however, there is no explanation for the absence of an SLP at a reevaluation meeting. All the same, Parent did not challenge speech and language goals or services, as had been established in the fall of 2018. She did, however, object to the Team's decision, at this point, not to request a new speech/language assessment, as described in the N1 dated May 1, 2019. This error may have impeded the development of an appropriate IEP, but it was cured shortly thereafter, when Ms. Ford conducted her evaluation in September.

As Parent rejected the District's proposal to discontinue OT consultation, this service should have continued under stay-put, but there is no indication that this occurred and Parent has not raised this as an issue.

After the Team reconvened on May 31, 2019, it developed a more transition-focused IEP. Ollie's proposed first amended 2019-2020 IEP contained a more specific transition goal as well as a daily living skills goal and increased pre-vocational support in the general education setting and through consultation. Proposed ESY services were doubled from 2 x 4 hours to 4 x 4 hours per week. Although Parent and Ollie chose not to avail themselves of the summer LLD program the Team proposed, this program – with its focus on reading – was appropriate for Ollie, and the Springfield offered transportation to provide Ollie with access thereto. The information available to the Team did not render unreasonable its determination not to list a communication disability on Ollie's IEP at this time, and the Team appropriately recognized the need for additional information to clarify Ollie's challenges and abilities in this area through the speech and language and reading evaluations it proposed. Finally, the Team's refusal of Parent's request for a more restrictive out-of-district placement at this time was not unreasonable.

The Team reconvened in September to discuss the additional information it had received through evaluations conducted by Dr. Davis, Ms. Ford, and Ms. Sibia. These evaluations essentially confirmed Ollie's diagnostic profile and the appropriateness of an inclusion placement with supports, the accommodations on his IEP, and transition-focused programming. The second amended IEP that emerged from this meeting included reading, written expression, study skills, transition, and speech and language goals aligned with the information before the Team. Moreover, the Team identified College Steps as an appropriate program for service delivery, but as it was not available in the fall, Springfield facilitated Ollie's dual enrollment at STCC and offered a panoply of tutoring services to address his academic and transition needs. It

also followed up with 688 referrals and travel training suggestions to meet Ollie’s transition needs, and provided information regarding disability services at STCC.

A third amended IEP, responsive to Parent’s concerns, was proposed in February 2020. Springfield proposed to provide transportation to College Steps, MCAS biology preparation through a mentor on the AIC campus, specialized reading and written expression instruction through a contract with AIC, counseling, assistive technology training, and travel training through a vocational counselor. Parent and Ollie failed to respond.

Although Parent and Ollie failed to access many of the services proposed by Springfield during the life of the proposed 2019-2020 IEP, as amended three times, there is no question that this IEP was reasonably calculated to provide Ollie with a FAPE.

#### D. *Proposed 2020-2021 IEP*

The IEP proposed for Ollie for the period from April 16, 2020 to April 15, 2021 places him at College Steps and proposes service delivery for academic and transition goals, including reading and explicit transition instruction. Based on all reports, Ollie is experiencing success in this program and – with the exception of speech and language, where he has established a productive working relationship with Ms. Bigda – prefers to receive services through AIC.

Although Parent objected to the District’s failure to include in the IEP an SLD in reading, Wilson reading instruction, and a summer course at AIC to be supported by College Steps, based on the information before the TEAM, including near-consensus that Ollie’s reading and communication challenges are part of his ASD diagnosis and that an emphasis on decoding is not appropriate for him, this IEP is reasonably calculated to provide Ollie with a FAPE. Moreover, the District’s proposal of MCAS tutoring is consistent with Ollie’s vision to graduate high school. Its proposal for Springfield personnel work directly with Ollie over the summer by providing tutoring in reading, written expression, and transitional skills, is an appropriate way to obtain information to inform future goal development.

## II. Springfield Had Some Implementation Issues, But None Comprised a Material Failure

### A. *Standard for Failure to Implement an IEP*

Where an IEP has been accepted, the analysis shifts to implementation. “To provide a free and appropriate public education to a student with disabilities, the school district must not only develop the IEP, but it also must implement the IEP in accordance with its requirements.”<sup>56</sup> I set forth the standard for this analysis recently, in *In Re Nelson*, BSEA # #2002950, and review it here.

Although the U.S. Court of Appeals for the First Circuit has not elaborated on what constitutes implementation of an IEP, several lower courts within the First Circuit have done so. The most recent published case from the U.S. District Court for the District of Massachusetts,

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<sup>56</sup> *Colón-Vazquez v. Dep’t of Educ.*, 46 F. Supp. 3d 132, 144 (D. P.R. 2014) (citing 20 U.S.C. § 1401(9)(D)).

decided in 2010, linked the failure to implement an IEP to the failure to permit a student to benefit educationally – or in other words, to provide a FAPE.<sup>57</sup> Citing its own 1999 decision, the court outlined the test it would use to determine whether an IEP has been implemented as follows:

- (1) the “failure” to implement must not be a “complete” failure;
- (2) the variance from the special education and related services specified in the IEP must not deprive the student of a FAPE; and
- (3) the provision of special education and related services must make “progress” toward the achievement of the goals stated in the IEP.<sup>58</sup>

As this analysis is difficult to apply, I look to other relevant jurisdictions for guidance. In 2014, the U.S. District Court for the District of Puerto Rico observed that the First Circuit had not addressed the question whether failure to provide all services outlined in an IEP constitutes a per-se violation of the IDEA.<sup>59</sup> As such, it surveyed federal courts across multiple jurisdictions and concluded that they had “generally adopted the standard articulated by the Fifth Circuit in *Houston Independent School District v. Bobby R.*,” requiring “more than a *de minimis* failure” to prevail on an implementation claim under the IDEA.<sup>60</sup> The court summarized the analysis as follows:

... a court reviewing failure-to-implement claims under the IDEA must ascertain whether the aspects of the IEP that were not followed were “substantial or significant,” or, in other words, whether the deviations from the IEP’s stated requirements were “material.” A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP. This standard does not require that the child suffer demonstrable educational harm in order to prevail; rather, courts applying the materiality standard have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific

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<sup>57</sup> See *Doe v. Hampden-Wilbraham Reg’l Sch. Dist.*, 715 F. Supp. 2d 185, 198 (D. Mass. 2010) (noting that plaintiffs had “not met their burden of proof to convince me that these services provided to [Student] did not permit him to benefit educationally”); *id.* (“Finally, under *Ross*, I must determine whether these services allowed [Student] to make progress toward the achievement of the goals in his IEPs”). See also *Ross v. Framingham Sch. Comm.*, 44 F. Supp. 2d 104, 118 (D. Mass. 1999) (“when presented with a claim that a school district failed to implement a student’s IEP, a district court must determine whether the alleged failure to implement the IEP deprived the student of her entitlement to a ‘free appropriate public education,’ as defined under the applicable federal and state prescriptions”).

<sup>58</sup> *Doe*, 715 F. Supp. 2d at 198 (citing *Ross*, 44 F. Supp. 2d at 119).

<sup>59</sup> *Colón-Vazquez*, 46 F. Supp. 3d at 143-44.

<sup>60</sup> See *id.* at 143 (Under *Houston Indep. Sch. Dist. v. Bobby R.*, “to prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP”) (citing 200 F.3d 341, 349) (5th Cir. 2000), *cert denied*, 531 U.S. 817 (2000)).

service that was withheld.<sup>61</sup>

Persuaded by the approach of the U.S. District Court for the District of Puerto Rico, which adopts the approaches endorsed by the U.S. Courts of Appeals for the Fifth, Eighth, Ninth, and Eleventh Circuits as well as the U.S. District Court for the District of Columbia, I apply this analysis to the case before me.<sup>62</sup>

#### B. 2017-2018 IEP, Beginning 2/24/18

Parent fully accepted this IEP, for the period from 6/15/17 to 5/1/18, on July 3, 2017; as the *Hearing Request* was filed February 24, 2020, the parties have agreed that I have jurisdiction to address the period from 2/24/18 to 5/1/18. The IEP provides for a substantially separate classroom, with opportunities for inclusion as appropriate. Pursuant to the Service Delivery Grid, Ollie was to receive one 20-minute counseling session per week, one 90-minute session per month of speech and language services, two 20-minute sessions per week of executive functioning services, and consultation by the SLP and OT. Ollie was also entitled to receive four sessions of four hours per week of ESY. Parent alleges that the District failed to implement the IEP, though she has not identified specific services she believes the District failed to deliver. Moreover, Parent has offered no evidence from which I may conclude that the 2017-2018 IEP was not implemented between February 24 and May 1, 2018.

#### C. 2018-2019 IEP

As Parent accepted the amended 2018-2019 IEP, which was effective 10/3/2018 on January 29, 2019, for implementation purposes I examine the period from 10/3/2018 to 4/10/2019. This amended IEP continued to propose a partial inclusion placement, increased Ollie's academic support and maintained speech and language and counseling services. The *Hearing Request* does not specify which portions of the accepted IEP Parent believes the District failed to deliver, but the evidence at hearing, particularly the testimony of Ollie's teachers, suggests that all accommodations were provided and that Ollie was making progress toward his goals. Springfield was reaching out to Ollie and Parent regarding access to the ADA van and the expired referral to MRC in connection with travel training and transition objectives. During the hearing, two areas of concern arose: I raised the issue of whether Ollie had received the counseling services on his IEP, and a question was raised as to delivery of C-grid special education math services.

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<sup>61</sup> *Id.* at 143-44 (citing and quoting *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9th Cir. 2007) and *Garmany v. District of Columbia*, 935 F. Supp. 2d 177, 181 (D. D.C. 2013) (internal citations and quotation marks omitted)); see *Van Duyn*, 502 F.3d at 815 (“We hold that when a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child’s IEP”).

<sup>62</sup> See *Van Duyn*, 502 F.3d at 815; *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 n.3 (8th Cir. 2003) (noting that courts cannot conclude that an IEP is reasonably calculated to provide a free appropriate public education where “there is evidence that the school actually failed to implement an essential element of the IEP that was necessary for the child to receive an educational benefit”); *Bobby R.*, 200 F.3d at 349; *Garmany*, 935 F. Supp. 2d at 181. See also *L.J. by N.N.J., v. Sch. Bd. of Broward County*, 927 F.3d 1203, 1211 (11th Cir. 2019) (“[W]e conclude that to prevail in a failure-to-implement case, a plaintiff must demonstrate that the school has materially failed to implement a child’s IEP. And to do that, the plaintiff must prove more than a minor or technical gap between the plan and reality; *de minimis* shortfalls are not enough. A material implementation failure occurs only when a school has failed to implement substantial or significant provisions of a child’s IEP.”)

1. It does not appear Ollie received the counseling services on his IEP.

Ollie's 2018-2019 IEP, as amended 10/3/2019, continued to propose a partial inclusion placement, increased Ollie's academic support, and maintained speech and language and counseling services. Specifically, Ollie was supposed to receive 20 minutes of counseling a week, from a counselor, to address his social skills goal. There is no reference to a counselor's name, or progress in counseling sessions, in any of Ollie's progress reports. Guidance counselors attended Ollie's Team meetings, but NIs indicate only that they reported on general education issues, such as dual enrollment. Given the level of detail in the NIs in evidence, I believe that if counselors had reported on Ollie's progress in weekly counseling sessions, this would have been included. As such, I do not credit Dr. Morris' vague testimony that these reports occurred. The record suggests that Springfield failed to provide the counseling services contained in this accepted IEP.

2. Springfield Failed to Provide C-Grid Math Instruction by a Special Educator

As discussed above, the evidence before me demonstrates that during the 2018-2019 school year,<sup>63</sup> Ollie's pull-out math instruction was not delivered by a special educator. To determine whether this constitutes a per se material failure to implement his IEP, I examine both teacher certification and service delivery.

- a. Certification

20 USC §1412(a)(14)(C)<sup>64</sup> and 34 CFR §300.156 (c),<sup>65</sup> both of which outline state obligations to ensure that special education teachers are qualified, describe routes to special education licensure, including alternate routes. No private right of action is associated with these standards. As such, a parent who discover that a special education teacher is not technically

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<sup>63</sup> To the extent Ms. Ewing was without a waiver before October 17, 2017, this is outside the time period addressed in this decision.

<sup>64</sup> Pursuant to 20 USC §1412(a)(14)(A), a state must ensure that special education teachers meet the qualifications listed under 20 USC §1412(a)(14)(C). Specifically, an individual employed as a special education teacher in a non-charter secondary school must have obtained full State certification as a special education teacher (including participating in alternate route to certification, if such alternate route meets minimum requirements), or passed the State special education teacher licensing examination and hold a license to teach in the State as a special education teacher; has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and holds at least a bachelor degree.

<sup>65</sup> Pursuant to 34 CFR § 300.156(a), States must ensure that special education providers are appropriately and adequately prepared and trained, including that they have the requisite content knowledge and skills. An individual is considered to have met the requirements to be employed as a special education teacher if that teacher – (A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching; (B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program; (C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and (D) Demonstrates satisfactory progress toward full certification as prescribed by the State.” The State must ensure, through its certification and licensure process, that these provisions have been met. *Id.* at 34 CFR § 300.156(c)(1)-(2).

qualified to receive a special education license and does not have a waiver, does not automatically have the right to sue the District on this basis.<sup>66</sup>

Hearing Officer Raymond Oliver considered the impact of teacher certification in *West Springfield*, BSEA #99-4094. Parent had alleged that one of her child's teachers, Ms. K, was not properly certified in accordance with recently updated regulations. The Hearing Officer described the issue of certification as technical and noted that it was not addressed directly in the IDEA. As he wrote, the purpose of certification "is to insure (*sic*) a teacher's competence to appropriately instruct and work with her students." In that case, the Hearing Officer considered the teacher's alleged lack of appropriate certification in the context of her employment history, past certifications, and present actions as a teacher of students with special educational needs, as well as state law governing qualifications of special educators. At the time of the hearing, Ms. K had been a teacher of moderate to severe special needs children for over 20 years. She had been qualified for her position under the previous certification requirements, her supervisors believed that she was one of the most qualified instructors in the program, and Ms. K routinely attended workshops and conferences so she could improve her teaching skills. Hearing Officer Oliver concluded that Ms. K was qualified to administer special education instruction in the case before him.

b. The lapse in Ms. Ewing's waiver was a technical error

The evidence before me establishes that during the 2018-2019 school year, Ms. Ewing provided Ollie with C-grid math instruction while she was neither certified nor under an effective waiver to do so. According to DESE, however, the lapse in Ms. Ewing's waiver was technical; had Springfield completed the necessary paperwork, it would have been renewed.<sup>67</sup> As such, in the instant case I do not consider the absence of a waiver a per se violation that entitles Parent to compensatory services. Instead, I examine this error in the context of the services actually delivered by Ms. Ewing and Ollie's progress in his math class during the 2018-2019 school year.

At the time she taught Ollie math during his senior year of high school, Ms. Ewing was enrolled in a Master's degree program in education, had been trained by Springfield in management of the IEP process and support of students with special needs, and had participated in trainings on differentiated instruction, modification of the math curriculum, and scaffolding. She testified about the accommodations she provided for Ollie, including graphic organizers, check-ins, chunking of material, verbal cues, and repetition, as well as Ollie's ability to meet course targets. Progress reports demonstrate that Ollie made progress in math during his senior year. As such, I find that although Ollie did not receive math instruction from a certified special education teacher during the 2018-2019 school year, he did receive the specialized math instruction proposed in his IEP and accepted by Parent.

3. Springfield's errors did not constitute a material failure to implement Ollie's 2018-2019 IEP, as amended 10/3/18

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<sup>66</sup> 20 USC §1412(a)(14)(E); 34 CFR §300.156(e).

<sup>67</sup> I find that although Ms. Ewing testified that she taught Ollie under a waiver during both the 2017-2018 and 2018-2019 school years, she may not have been aware of the District's failure to complete the necessary paperwork to renew her waiver for the second year.

As I have concluded that despite Ms. Ewing’s lapsed waiver Ollie received specialized math instruction, I must determine only whether, under the standard articulated by the United States District Court for the District of Puerto Rico in *Colón-Vazquez v. Department of Education*, Springfield’s failure to provide counseling services constitutes a substantial or significant deviation from the IEP’s requirements.<sup>68</sup> Ollie was entitled to 20 minutes per week of counseling, focused on his social skills and study skills goals. The testimony of his teachers and service providers suggest that even without counseling Ollie was making progress toward his social skills goal. It appears he had access to the counselor for general education purposes, such as dual enrollment and college access programming. As such, in accordance with “the import (as articulated in the IEP) of the specific service that was withheld,” this failure in implementation is not material. Moreover, to the extent I would be inclined to order Springfield to provide compensatory counseling services for Ollie, I note that the Team has already determined that Ollie is not interested in participating in counseling with District personnel at this point in his life, and the District has ensured that he has access to counseling services at AIC.

### III. Springfield Committed Procedural Errors, But Such Errors Did Not Constitute a Violation of Ollie’s Right to FAPE

#### A. *Legal Standard*

The procedural protections embedded in the IDEA serve a dual purpose; they ensure that each eligible child receives a FAPE, and they provide for meaningful parental participation.<sup>69</sup> They are so important that the IDEA recognizes that even if no substantive irregularities have occurred, procedural errors may amount to a deprivation of a FAPE if “the procedural inadequacies – (I) impeded the child’s right to a free appropriate public education; (II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or (III) caused a deprivation of educational benefits.”<sup>70</sup> In *Endrew F. v. Douglas County School District RE-1*, the United States Supreme Court reaffirmed its earlier declaration that collaboration between parents and educators is a key component of the IDEA.<sup>71</sup> In determining whether procedural violations amount to a deprivation of FAPE, courts focus on the degree to which school districts offered parents the opportunity to play an important participatory role.<sup>72</sup>

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<sup>68</sup> *Colón-Vazquez*, 46 F. Supp. 3d at 143-144.

<sup>69</sup> See *Honig v. Doe*, 484 U.S. 305, 311 (1998) (“Congress repeatedly emphasized throughout the [IDEA] the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness).

<sup>70</sup> 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); see *Roland M.*, 910 F.2d at 994.

<sup>71</sup> 137 S. Ct. 988, 994 (2017) (“These procedures [set forth in 20 U.S.C. § 1414] emphasize collaboration among parents and educators”); see *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982) (“Congress placed every bit as much emphasis on compliance with procedures giving parents and guardians a large measure of participation in every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard”); see also *C.G. v. Five Town Cmty. Sch. Dist.*, 513 F. 3d 279, 285 (1st Cir. 2008) (“development of an IEP is meant to be a collaborative project”).

<sup>72</sup> See, e.g., *Roland M.*, 910 F.2d at 995 (where parents did not cooperate with attempts to create IEP and there was no “indication of procedural bad faith” on school’s part, school district had “fulfilled the essence of its procedural responsibility”); *A.M. v. Monrovia Unified Sch. Dist.*, 627 F.3d 773, 780 (9th Cir 2010) (no procedural violation of parental right to participate meaningfully where parents did not participate in Team meeting but district had taken

*B. The District Erred Procedurally Following the October 3, 2018 Team Meeting*

The Team meeting on October 3, 2018 was, by all accounts, chaotic and unproductive. Dr. Mumby committed a procedural error by completing a flowchart outside of the Team process, likely as part of an attempt to make sense of what had occurred in the meeting. Not only was a flowchart created outside of the Team process, but it reflected that Ollie had an intellectual disability when the Team had not, in fact, made this determination. The intellectual disability was removed from Ollie’s special education documentation several weeks later and never appeared as a disability category in an IEP, as it was not supported by assessments, progress reports, or observations by Ollie’s teachers and services providers. Springfield made no attempt to hide this error, as there are notations in the record as to the fact that it had occurred and been rectified. Parent herself was not aware of this error until the spring of 2020, when she received documents in connection with discovery requests in the instant matter. As such, this procedural error did not impede Ollie’s right to a FAPE, significantly impede Parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to Ollie, or cause a deprivation of educational benefits.

Parent asserts that she was denied the opportunity to participate meaningfully in this Team meeting due to the conduct of several District employees, particularly Dr. Morris. This allegation is not supported by the weight of credible evidence, which suggests that in fact the conduct of Parent and her advocate limited the efficacy of the meeting.

*C. The District Committed Some Procedural Errors in Connection with Evaluations in or About April 2019*

Parent contends that the District erred in response to her request for an IEE with Dr. Davis, which she made orally at the Team April 24, 2019. Specifically, she contends that the IEE should have included achievement testing. During this meeting Parent challenged the psychological evaluation conducted by Dr. Figueroa-Scott, but not the achievement testing administered by Ms. Vega. As such, when Dr. O’Neill drafted the IEE forms, she specified that the District was seeking a psychological evaluation. Given discussion at the Team meeting, and Parent’s assent, the forms included administration of the ADOS, and no achievement testing. Dr. O’Neill’s credible testimony suggests that Parent had the opportunity to review the testing that was proposed and to discuss it with Dr. O’Neill and/or Dr. Davis, who was aware of its scope, before the evaluation. When Parent later specifically requested an IEE focused on achievement in 2020, the District funded additional testing by Dr. Davis. I thus find that no error occurred in connection with Parent’s request for an IEE in April 2019.

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steps to obtain their presence); *Ms. S. ex rel. G v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1132-33 (9th Cir. 2003) (superseded by statute on other grounds) (where parent disagreed with receiving district’s temporary placement of her son, upon transfer, pending completion of a “proper evaluation” and alleged that District’s “take it or leave it” position did not allow for meaningful parental participation, court found that where school district attempted to schedule several assessments and other IEP meetings, notifying her in advance, “school district ha[d] repeatedly provided the parent with the opportunity to participate meaningfully in the IEP process” and as such, “ha[d] not violated its obligations under 34 CFR §300.345”).

Though Parent did not raise this claim, the fact that Ollie's three-year reevaluation meeting occurred in April 2019 is indicative of Springfield's failure to timely conduct it. Testimony suggests that a full reevaluation and eligibility determination should have been conducted in May 2018. Springfield did not recognize this error until late October, at which time it proposed the reevaluation. The three-year reevaluation meeting did not occur until April 24, 2019. Between 2015 and 2018, no fewer than five assessments (including an IEE and an LLD observation) had been requested and conducted, but the Team's approach in considering these assessments was more piecemeal, as it convened and reconvened and, in the meantime, the relationship between Parent and Springfield deteriorated.

When the Team did finally reconvene to consider Ollie's three-year reevaluation, no significant changes were made to his diagnostic profile, as the new assessments being considered were consistent with those the Team had considered previously. But another error occurred. Despite the Team's awareness of Ollie's expressive, receptive, and social language deficits and fact that he had been receiving speech and language services for years, the Team had not requested a speech and language reevaluation, no SLP attended the meeting, and Dr. Morris refused to consider what was then the most recent speech and language testing from 2017. Though the Team initially refused Parent's request for updated speech and language testing, ultimately it agreed, and Ms. Ford conducted that testing in September 2019. The amended IEP issued after the Team considered her evaluation, along with others, did not result in a change in the disability categories listed on Ollie's IEP and actually decreased his speech and language services. Although Ms. Ford testified that she believes Ollie has a communication disability, which is not reflected in his IEPs, she did not recommend services beyond those he has received and continues to receive.

In light of all of the information before me, I conclude that although Springfield erred in failing to conduct a timely three-year reevaluation, neither Parent nor the Team was deprived of information required for meaningful consideration of Ollie's needs or meaningful participation in the Team meeting process. I would advise the District, however, particularly in light of the number of previous procedural errors in this case (including some that seem to have occurred prior to the time period I address), to devise a more reliable tracking method, given that frequent, disorganized, and chaotic Team meetings, resulting in frequent assessments and reassessments and multiple IEP amendments, may well strain the tracking process. Based on my experience with this matter, I strongly recommend that the parties engage in facilitated Team meetings going forward.

#### *D. The District Committed No Errors in Connection with April 2020 Team Meetings*

Parent's allegations concerning April 2020 Team meetings appear to be concentrated in two areas: first, her contention that Springfield did not have the right people attend the meeting on April 16, and second, her assertion that the meeting scheduled for April 29 should not have been altered. Ms. Bigda, Ms. Retchin and Ms. Malandrinos attended the April 16 meeting on Springfield's behalf, where College Steps reported on Ollie's progress. Because Ollie had not attended the tutoring offered by the District in the fall of 2019, no Springfield general or special education teachers would have had relevant information to contribute regarding his progress. As such, College Steps staff essentially served this role. Ms. Bigda was there in her capacity as the

SLP who would be providing services for Ollie, and Ms. Retchin and Ms. Malandrinos are both experienced special educators with expertise in reading and learning disabilities, who were authorized to offer appropriate services. As such, I find that the composition of the Team was appropriate. Although the Team believed it had sufficient information at the close of the meeting to propose the 2020-2021 IEP, particularly regarding Ollie's progress, performance, and presentation at College Steps, Springfield agreed to a second meeting at the end of the month. Changing the time to accommodate an attorney's schedule and determining that College Steps's presence was not necessary at the meeting does not constitute procedural error.

IV. Parent's Allegations that Springfield's Actions During the Relevant Time Period Constitute Discrimination, Retaliation, Threat, or Abuse of Power that Impeded Her Ability or Ollie's Ability to Participate in IEP Meetings are Not Supported by the Evidence

Throughout this proceeding, Parent has characterized Springfield's behavior as intimidating to Ollie and herself and retaliatory as a result of her advocacy for her son. As detailed in the findings above, the evidence does not support these claims. Parent's complaints, often made when she was unhappy with assessment results or Team decisions, ranged from accusing administrators of being unprofessional, incompetent, and biased, to name-calling. She made these derogatory comments to staff members and their supervisors, and openly at Team meetings. As a result, several District team members stepped down from their roles, either at Parent's request or because they could no longer tolerate the environment.

Team member after Team member testified about Parent and Ms. MacGovern raising their voices, yelling at Springfield personnel, and derailing Team meetings such that they lasted hours and their purpose could not be accomplished. To address this pattern, the District proposed engaging the BSEA to facilitate meetings, but Parent refused. At no time has the District refused to convene a Team meeting in response to Parent's concerns. It appears that Springfield ultimately began bringing attorneys to Team meetings not to intimidate Parent, but to protect the District and its employees.

To the extent Ollie's participation in his Team meetings may have been impacted, evidence suggests that Parent, rather than the District, limited his ability to contribute meaningfully to discussions. During the April 24, 2019 Team meeting, the last Ollie attended in person, Parent and Ms. MacGovern placed a "gag order" on him midway through the meeting. Up to that point, the District team members had been addressing Ollie and asking for his input. After this meeting, Ollie stopped attending, and Ms. MacGovern attended in his place, acting as his advocate.

There is no evidence that Springfield impeded Parent's ability or Ollie's ability to participate in IEP meetings, much less discriminated or retaliated against, or threatened, either of them, or committed abuse of power.

V. The ESY Services for Summer 2020 that Parent Accepted Were Not Fully Implemented.

On or about July 2, 2020, Parent partially rejected the IEP dated 4/16/20 to 4/15/21. She wrote that she accepted the tutoring services, but believed they were not enough to provide a FAPE, so she requested a Team meeting. Specifically, Parent accepted the speech goal in its entirety, as well as AIC tutors in fall and spring semesters. At the time she testified on July 16, 2020, Ms. Bigda had not started her summer virtual speech and language services for Ollie, as she had not been informed by the District that it had received Parent's response to the proposed IEP. On July 22, 2020, Dr. Morris indicated that she understood Parent had accepted speech and language services and would begin implementing them.

Based on the evidence, I conclude that Springfield was on notice as of July 2, 2020 that Parent had accepted summer speech and language services (one 60-minute session per week) and should have begun tutoring immediately. As such, Ollie is entitled to compensatory speech and language services from July 2, 2020 until the date such services began.

### CONCLUSION

After reviewing the testimony and documents in the record, I conclude that Parent failed to prove that the IEPs proposed for Ollie, that were not fully accepted, for the period beginning February 24, 2018 were not or are not reasonably calculated to provide him with a FAPE. I also find that to the extent Springfield failed to implement aspects of accepted, expired IEPs during this time period, these failures were not material. Although Parent established that Springfield committed several procedural errors during the relevant time period, she did not prove that these errors amounted to a deprivation of FAPE. Moreover, Parent did not prove that the District has in any way impeded her ability, or Ollie's ability, to participate in IEP meetings. Parent did, however, establish that the ESY speech and language services proposed by the 2020-2021 IEP, which she had accepted, had not been fully implemented.

### ORDER

Springfield Public Schools is hereby ordered to provide compensatory services for its failure to timely implement Ollie's ESY speech and language services, one 60-minute session per week, during at least two weeks of July 2020. The number of hours to be provided will be commensurate with the number of hours missed.

By the Hearing Officer:<sup>73</sup>

/s/ Amy M. Reichbach

Dated: November 10, 2020

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<sup>73</sup> The Hearing Officer gratefully acknowledges the diligent assistance of legal intern Alison Sexson in the preparation of this decision.