

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

In Re: Sabis International Charter School

&

BSEA #1803303

Springfield Public Schools

& Yaroslav¹

DECISION

This Decision is issued pursuant to M.G.L. c. 71B, 20 U.S.C. §1401 *et seq.*, 20 U.S.C. §794 and the regulations promulgated under these statutes. A Hearing was held on March 5, 12 and 15, 2018 at the Offices of Catuogno Court Reporting Services in Springfield, MA. Sabis International Charter School, [hereinafter “Sabis”] was represented by Attorney Peter Smith. Springfield Public Schools [hereinafter “Springfield”] was represented by Attorney Regina Williams-Tate. The parent and Student proceeded as *pro se*.

The official record of the Hearing consists of exhibits submitted by Sabis marked SC-1 through SC-48, exhibits submitted by Springfield marked SP-1 through SP-11 and approximately 20 hours of recorded oral testimony and argument. The Parent did not offer any documents in accordance with 20 U.S.C. 1414 (f)(2) and Rule IXA of the *Hearing Rules for Special Education Appeals*. During the Hearing two exhibits

¹ Yaroslav is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

offered by the parent were admitted. (P-1 and P-2). The Parent's Motion for Disqualification and Removal of Counsel for Sabis was DENIED. The Parties submitted written closing arguments on April 17, 2018 and the record closed on that date. Documents attached to the Parent's closing statement and ones submitted after the record closed that were not already in the Hearing record were not accepted as exhibits. On April 26, 2018 after the Hearing Record had closed, the Parent submitted a Motion to Remove the Hearing Officer and an objection to the earlier postponement of closure of the record for receipt of written closing arguments. Both Motions were denied as untimely and unwarranted.

I. ISSUES

1) Whether Yaroslav's (Student's) current placement at the Sabis International Charter School is reasonably calculated to ensure his receipt of a free appropriate public education?

2) Whether the 2017-2018 Individualized Education Program proposed by Sabis, which calls for the Student's placement in a therapeutic residential school, represents the least restrictive special education placement that can meet the Student's identified special education needs?

3) Whether Sabis violated the Parent's procedural rights under the IDEA by failing to accommodate her request to observe the Student's special education program during the fall, 2017?

II. POSITION OF THE PARTIES

Sabis: Sabis argues that Yaroslav has longstanding social, emotional and behavioral disabilities which have proved resistant to a variety of educational interventions of increasing intensity and restrictiveness. Student's disabilities manifest in behaviors that are provocative, aggressive, intimidating and highly sexualized causing significant harm

to peers, staff and the educational environment. Yaroslav received therapeutic and special education services in inclusion settings, a substantially separate therapeutic classroom in a public school and a highly specialized therapeutic private day placement, all with minimal improvement in behavioral compliance. His Parent withdrew him from his therapeutic placement and enrolled him in the Sabis High School program without arranging for continuity of therapeutic intervention. The Parent denies that Yaroslav demonstrates any behaviors of concern and refuses to permit appropriate interventions and/or disciplinary measures. Expert evaluators uniformly recommend placement in a setting that can provide intensive, targeted special education and therapeutic services to address and remediate Yaroslav's social/emotional/behavioral disabilities.

Springfield: Springfield Public Schools was responsible for Student's special education services until the Parent enrolled him in Sabis in 2014. Springfield agrees with Sabis that Yaroslav demonstrates serious, longstanding sexual, physical and verbal behavior that is inappropriate, aggressive, offensive and dangerous. Yaroslav has not demonstrated improvement in these behaviors despite increasingly intensive interventions during the school day. In keeping with the recommendations of all evaluators Springfield therefore supports the IEP developed by Sabis calling for Yaroslav's placement in a highly specialized residential special education program.

Parent: Yaroslav has not engaged in any of the behaviors the schools complain of. He is the victim of bullying, gossip, prejudice, unfair discipline and inappropriate IEPs. He needs better teachers and more understanding from Sabis.

III. SUMMARY OF THE EVIDENCE

1) Yaroslav is an 18 year old young man who began receiving special education services through the Springfield Public Schools in the early elementary grades. He is currently an 11th grade student at the

Sabis International Charter School in Springfield. He attends a partial inclusion program in which he receives most instruction in major academic courses in a pull out special education setting, scheduled and as needed counseling and 1:1 supervision at all times consistent with an approved safety plan. Special education instruction includes three hours daily of 1:1 services (SC-4; SC-5; Mumby)

2) Yaroslav attended first through 5th grades at the MLK Charter School in Springfield. During Yaroslav's third grade year a teacher reported:

In the classroom it has been observed by the examiner many times that [Yaroslav] exhibits behaviors that are distracting to himself, and to other students. He often shouts out answers, sings, dances and is involved in verbal altercations with other students. In one instance, when the examiner (in writing class) was working with another student [Yaroslav] who was expected to be working independently, turned over his desk abruptly in close proximity to the teacher and student, startling all in the classroom. This type of behavior has been noted by the writer of this report since [Yaroslav] was in first grade. (SP-2)

3) In 2009, Yaroslav was a 9 year old 4th grader. He was reported to have frequent outbursts, to be impulsive and inattentive, and to cross into other people's personal space causing interpersonal difficulties, particularly in school. A psychological evaluation conducted by the Community Services Institute found Yaroslav to function within the very low average range of cognitive functioning with ideosyncratic response features. (SP-1)

4) During the 2011-2012 school year Springfield conducted a Functional Behavioral Assessment and developed a Behavioral Intervention Plan for Yaroslav. (SP-5).

The Behavior Intervention Plan (“BIP”) described the challenges Yaroslav presented in the school setting:

[Yaroslav] presents with impoverished social skills. He engages in sexually explicit conversations with peers and adults. He seeks outpeer attention and then often interacts in an offensive manner i.e. using profanity, insults and threats. He attempts to go AWOL when there are groups of peers in the hallways or during transition periods. At these times he will make inappropriate comments instigating conflicts that quickly escalate.

The BIP intends to assist Yaroslav to “Engage in socially appropriate conversations” and “develop a social filter” through:

Direct instruction, by Staff
Social skills training; by Child Guidance Clinician
Anger management, by Staff or Child Guidance Clinician
Providing cues, by Staff
Role Playing, by Staff or Child Guidance Clinician
Modeling, by Staff or Child Guidance Clinician
Stress management, by Child Guidance Clinician
Decision-making lesson, by Staff, or Child Guidance

Clinical

Other: Daily Points

The BIP provided for significant services, interventions, staffing and accommodations to address Yaroslav’s behavior needs, including:

1. Participate in weekly group counseling to develop appropriate ways to communicate displeasure, irritation, anger, etc.

2. Complete a “Fix-it” plan to identify alternative appropriate behaviors following an instance where he has engaged in making derogatory comments to peers and adults.
3. Be removed from class and placed in the process room until he can demonstrate appropriate behaviors-verbal and nonverbal.
4. Use language that is pleasant and calming when speaking in order to avoid stimulation of his inappropriate comments.
5. Meet daily with a point person to review his progress as evidenced by his point sheet. The feedback will be used to celebrate his successes and identify areas to work on.
6. Provide close supervision in order to prevent inappropriate sexually related behaviors from occurring. A Para will be assigned in each class to monitor his conversations with peers and interrupt/redirect inappropriate comments.
7. Structure the environment so that time does not permit opportunities to engage in inappropriate behaviors-maintain a full schedule of activities.
8. Seat close to Para/teacher in order to provide direct/close supervision.
9. Do not allow him to be left alone or unsupervised with other students.

(SP-5)

5) Springfield also conducted a Psychological Evaluation. The Psychologist, Dr. Kernan, reported:

A file review and behavioral scales were completed for [Yaroslav] because of ongoing concerns about his behaviors in the school setting. [Yaroslav] has a history of acting out behaviors dating back to first grade (by his teachers report). His current behavioral presentation is further complicated by [Yaroslav’s] seeming preoccupation with sexualized thought, and he frequently engages peers in a sexual way. This is extremely problematic for both peers and staff. [Yaroslav]’s disruptive behaviors frequently

make it very difficult for his teachers to conduct a lesson effectively. [Yaroslav]'s lack of self-regulation and disinhibition, and what his peers interpret as threats, taunting, and instigation of conflict, can result in reactive and retaliatory responses from peers. Thus far, [Yaroslav] has been unresponsive to interventions and behavioral plans attempting to reframe and deescalate his behaviors.

(SP-2)

Dr. Kernan recommended that Yaroslav be placed in more highly structured educational setting in order to receive intensive behavioral support. He entered the SEBS program, a substantially separate classroom within the Springfield Public Schools for students requiring additional social, emotional and/or behavioral support.

(SP-3; SC-6; SP-2; SP-5; See also Hollenback)

6) Springfield Public Schools conducted a comprehensive neuropsychological evaluation in December 2011 when Yaroslav was an 11 year old 6th grade student. Based on school records the evaluator, Dr. Dufresne, noted a significant behavioral and disciplinary history including problematic social skills, lack of progress in acquiring age and environment appropriate social skills, difficulty monitoring his own behavior and following school rules, as well as provocative and aggressive language and behavior toward peers. Most concerning were multiple incidents of harassment and inappropriate touching of female students, some of which resulted in significant discipline.

Dr. Dufresne reported that Yaroslav had borderline to low average intellectual ability. He had a concrete, task oriented learning style. He had difficulty shifting attention, had limited cognitive flexibility and did not learn by inference, deduction or modeling. Dr. Dufresne also concluded that Yaroslav had a serious behavior disorder which interfered with his ability to access the general education curriculum. Dr. Dufresne wrote:

.....of concern are the frequency, intensity and durations of his maladaptive behaviors, and most recently involving highly provocative sexual content and touching that may result in his becoming involved in the juvenile justice system.

(SP-3)

Dr. Dufresne recommended that Yaroslav be placed in a highly structured setting with continual opportunities for behavioral retraining. He wrote that Yaroslav needed:

.....a setting that offers clear and predictable consequences for Guiding behavior. The consequences for appropriate behavior need to be reinforced through contingent responses. Misbehavior should be viewed as an opportunity to engage in teaching him more appropriate coping and management behavior. Given his learning style an approach that uses a “life space” and contingency contracting and other techniques for developing self control may be the most effective.

(SP-3)

Presentation of academic material would need a similarly highly structured, intensively participatory, approach for Yaroslav. Individual counseling, close communication among service providers, and the development of behavioral scripts would also be useful for him.

(SP-3) See also SP-6, SP-7

7) At the Parent’s request an independent psychological evaluation was conducted by Katrin Weir in April 2012.² Based on her review of previous evaluations and school records as well as clinical

²Dr. Weir’s report contains a detailed review of 32 incidents occurring during the preceding 6 months of the 2011-2012 school year in which Yaroslav aggressively and/or sexually assaulted peers and 4 school staff, eloped from school grounds, used threatening, vile and/or sexually inappropriate language towards and/or about fellow students or school staff. They need not be repeated here but are noted for consistency in type, level and frequency of maladaptive behaviors complained of by schools.

interviews of Yaroslav and his mother, Dr. Weir confirmed the results of earlier evaluations. She wrote:

[Yaroslav] is a 12 year old young man who has a long-standing history of experiencing, emotional, social and attentional elements that interfere with his abilities in an academic setting. Further, he has demonstrated a long-standing history of behavioral dyscontrol that has included nonsexual disruptive behavior of a verbal and physical nature. Over the last year he has demonstrated an increase in both the intensity and frequency of both his verbal disruptive behavior as well as his physically aggressive behavior, now directed toward staff and teachers, as well as peers. Presently, his behavior now involves a sexual component as well. this behavior has been directed towards students. His presentation has resulted in increased concern by the school....[He] currently requires constant supervision while in school. Yaroslav's presentation in sexual matters has deteriorated over the last academic year. He has become physical threatening, as well as sexually provocative and disrespectful. He has been physically violent towards both staff and peers. He has also made sexually provocative statements towards other students and on occasion while touching them. [Yaroslav] demonstrates an inability to control himself without intervention by adults. His behavior at this time exceeds the ability of the environment to maintain his safety as well as that of others around him. He demonstrates limited knowledge about sexual matters. He is likely experiencing increased interest and pressure involving sexual matters as well. He has behaved in sexually provocative ways and does not appear to have a sense of the potential consequences. He is not responding to interventions and efforts at school to address this behavior and maintain his safety and the safety of others. He does not respond to verbal intervention to cease his behavior. He also repeatedly leaves the classroom and wanders around the general building addressing other students in a provocative matter. His behavior involving a sexual component is likely a developmentally

associated augmentation of his longstanding behavioral dyscontrol...

Based on my experience and training in the area of sex offender issues, sexual misconduct and in sexual recidivism risk, [Yaroslav] is likely to continue to act in a sexually provocative manner that includes verbal and physical behavior unless this is directly addressed. He demonstrates significant difficulty in controlling all of his behavior, including that involving contact and verbal sexual behavior. His presentation over the last year suggests a trajectory of increased behavioral dyscontrol. His presentation places both him and others at risk. The academic environment does not appear to adequately address his presentation. He has hurt staff and other students during some of his behavioral outbursts, unintentionally or not.

In my opinion, characteristics or symptoms related to his psychosexual development indicate a treatment program with a component for individuals demonstrating sexual acting out behavior is appropriate at this time. I would endorse placement in an age appropriate program that includes a focus on managing his behavior control, both non sexual and sexual. A specialized setting that includes treatment of his sexual behavior and other psycho sexual matters would be appropriate at this time. He has a number of areas of behavioral dyscontrol that require intervention.

(SP-8; see also Hollenback; Mumby)

8) For the 2012-2013 school year Yaroslav was placed at the Tri County School, a private day school providing intensive social, emotional, behavioral and academic services for students who cannot be appropriately served in an inclusion setting. (SP-5). He remained at Tri County for the 2013-2014 school year. In September 2014 the Parent withdrew Yaroslav from Tri County and the Springfield Public Schools.

Yaroslav entered the 9th grade at Sabis. It is not clear what records Sabis had access to when developing its first IEP for Yaroslav.

(9) Karen Reuter, Director of Sabis described its program. There are 1574 students in grades K-12, of which 480 are in the high school. Enrollment is by lottery in the early grades. High school enrollment is accomplished through a waiting list with a preference for siblings of current attendees. Sabis offers a rigorous college preparatory education program. Eighty percent of students graduate and attend college. Thirteen to fourteen percent of the student population receives special education services. Ethnically the student population is approximately one third each African American, Hispanic and White. (Reuter)

10) Sabis developed, and the Parent accepted, IEPs calling for partial inclusion special education programming during the 2014-2015, 2015-2016, and 2016-2017 school years. According to these IEPs Yaroslav received daily special education in math and English and weekly counseling. Counseling services were targeted to assisting Yaroslav to follow school rules. During these 3 academic years there were a minimum of 34 disciplinary referrals for behavior such as: inappropriate/unwanted touching of other students, profanity, classroom disruptions, failure to follow directions of staff, verbal and physical threats towards other students, school staff and teachers, and theft of school property. At least three incidents resulted in formal manifestation determination meetings, functional behavioral assessments and development of behavioral intervention plans. The Parent declined a school request for an extended evaluation. Neither the Parent nor the school sought the assistance of the BSEA at these times. (SC-2-5; SC-24-33; SC-44, SC-38;)

11) In December 2014, Sabis conducted a neuropsychological evaluation. Along with the typical battery of standardized psychological assessments and behavioral screening instruments, Angela Esh interviewed Yaroslav and his parent and teachers, observed Yaroslav in

the classroom and reviewed his school records. Ms. Esh noted that, although Yaroslav had then been attending Sabis for only two months, his teachers reported noticeable attentional weaknesses, poor memory for academic instruction, weak organizational skills and limited ability to sit still and remain focused in the classroom. Teachers uniformly reported that Yaroslav's interpersonal and communication skills were immature and problematic. They also noted that he was not making expected progress in the general curriculum.

Results of the WISC-IV placed Yaroslav in the borderline range of intellectual functioning. Ms. Esh noted that Yaroslav demonstrated significant difficulty with basic math, reading and writing tasks and required frequent repetition and breaks. Nevertheless Yaroslav demonstrated proficiency in the average range for his age and grade on standardized measures of academic achievement.

Formal behavioral rating scales completed by teachers and parent did not support a diagnosis of emotional disturbance or autism spectrum disorder. They did however yield consistent concerns about Yaroslav's difficulty relating to adults, atypical language (repetitive, unstructured, unconventional) and limited skills necessary for successful interaction with peers and adults in home, school and community settings. Teachers reported a pattern of noncompliance, lack of independent task completion, aggression and conduct problems.

Ms. Esh concluded that Yaroslav met the federal criteria for eligibility for special education on the basis of "emotional impairment". (SC-9; SC-10)

12) In the fall 2016, after three separate incidents in which Yaroslav reportedly touched other students in an unwanted sexual manner, Sabis requested a specialized risk assessment. Dr. Lindsay Wright, a clinical psychologist licensed in MA, NY and CO with more than 10 years of experience conducting sex offender evaluations and risk assessments in prisons, forensic hospital units and other settings,

conducted the evaluation on December 14, 2016. Dr. Wright reviewed Yaroslav's school records, interviewed school staff and Yaroslav and administered standardized and specialized assessments of cognitive, behavioral and emotional functioning. Dr. Wright requested input from the parent but did not receive a response.

Dr. Wright reviewed the school based incidents involving inappropriate/unwanted touching of other students when she met with Yaroslav. Many had been video recorded on the School's security cameras. Others had been observed by school staff, including the adult assigned in accordance with Yaroslav's safety plan to provide 1:1 support at all times. Yaroslav either denied the incidents had occurred or stated that the other student involved was the aggressor. Dr. Wright testified that these two elements: failure to recognize/take responsibility for sexually offensive behavior and failure to conform behavior to acceptable norms even in the presence of a physical escort, significantly elevated the risk that Yaroslav would engage in sexually offensive behavior in the future. Dr. Wright noted that Yaroslav's sexually offensive behaviors were embedded in other assaultive, disruptive, defiant and antisocial behaviors that supported and reinforced poor overall conduct. Of particular concern, Dr. Wright testified, was the long standing nature of Yaroslav's sexually offensive behaviors. Dr. Wright pointed out that school records show that complaints about inappropriate sexual touching in school began in 1st grade. They have continued without significant change in frequency, type or nature since then despite years of 1:1 outpatient counseling, increasingly restrictive and therapeutic schools and out-of-home placements and supervision by community agencies. Dr. Wright was also troubled that, although the schools attempted to impose structure and discipline related to the offensive behavior, Yaroslav's parent denied that the behaviors occurred, complained that other students provoked or framed Yaroslav, and refused to impose consequences at home or permit Sabis to impose them at school. The parent, according to Dr. Wright, supports Yaroslav's recalcitrance in a powerful way. Another major factor contributing to the lack of progress in changing Yaroslav's sexually

offensive behaviors is his low cognitive functioning, combined with weak attentional and memory skills.

Due to his long standing anti-social personality traits, sexually and physically dangerous behaviors, poor boundaries, low cognitive function, weak attentional skills and oppositional defiant disorder, Dr. Wright concluded that Yaroslav was at moderate risk for continued aggressive behavior and sexually offensive recidivism. She explained that it was more probable than not that, without appropriate intervention, Yaroslav would continue problematic sexual and physical behaviors. Dr. Wright recommended intensive therapeutic interventions for Yaroslav including: individual therapy focused on developing appropriate boundaries, empathy and communication skills; family therapy geared to engaging parent in Yaroslav's treatment goals and developing skill-based supervision; direct, highly specialized, sex offender treatment; 1:1 supervision in school settings; a targeted behavioral intervention plan; and participation in a peer support/skills group. (S-11; Wright; see also Hollenback, Green)

13) After completing her December 2016 Evaluation Dr. Wright had the opportunity to review the April 2012 report of the evaluation conducted by Dr. Weir. Dr. Wright testified that she was struck that she and Dr. Weir had reached the same conclusions four years apart. She noted that Dr. Weir's prediction that Yaroslav would continue to engage in sexually problematic and physically aggressive behaviors unless he received intensive targeted interventions had proved to be true as Yaroslav's problematic behaviors had not decreased, and had instead intensified, over the course of the ensuing four years. The persistence of Yaroslav's maladaptive behaviors over time, their resistance to improvement despite changes in school settings and interventions, and Yaroslav's approaching adulthood all indicate that Yaroslav's anti-social behaviors could be habitual and very difficult to treat. (Wright; S-11; see also: SC-8 and SP-5.)

14) In preparation for the triennial Team review of Yaroslav's program, Sabis asked Roberta Green, Ed.D., to conduct a Neuropsychological Evaluation. A licensed school psychologist with twenty years experience, Dr. Green reviewed Yaroslav's school records, interviewed school staff and conducted standardized cognitive, academic, executive functioning, memory, learning style testing. Dr. Green met with Yaroslav in February, 2017 when he was a 16 year old, 10th grade student. She reported that Yaroslav's academic skills fell generally in the average range for his age and grade consistent with and at times exceeding expectations based on his cognitive profile. She noted that Yaroslav continued to display weaknesses in attention, processing speed, emotional/behavioral regulation and working memory as identified in previous evaluations. She reported that there was no evidence to support a diagnosis of a specific learning disability or an autism spectrum disorder.

Dr. Green testified that Yaroslav's neurocognitive weaknesses support placement a highly specialized educational program. He needs a highly structured setting that has consistent routine, repetition, written support, clear expectations and consequences, chunked information, accommodations to slower processing speed and an explicit social skills curriculum in order to learn. He needs a very small staff: student ratio, no more than 3-4 students per staff member, to provide constant monitoring, feedback and support for new learning. Staff needs to have specialized training in de-escalation techniques and skills to recognize, handle and reform sexually aggressive behaviors. She noted that a 1:1 aide and/or a behavioral intervention plan to be followed in the context of a general education program is insufficient to meet Yaroslav's intensive needs.

Dr. Green testified that the combination of Yaroslav's inherent neurocognitive weaknesses, including difficulty following directions, recognizing and adhering to social norms and processing information in the expected time, his entrenched negative behavior patterns and responses as evidenced by his failure to learn appropriate behavioral

skills despite nearly a decade of school-based intervention, and an immature limbic system result in a student who demonstrates, and has consistently demonstrated, an inability to acquire age and community appropriate social/behavioral skills in a day school setting. Dr. Green therefore, for the first time in her capacity as a school psychologist, recommended placement in a specialized residential educational program designed to meet the unique learning/behavioral needs of students who exhibit problematic sexual behavior. (Green; S-12; See also: Hollenbeck)

15) In preparation for the triennial review Sabis also arranged for a functional behavioral assessment to be conducted by an outside behavioral consultation agency. Carol Hanlon and Julie Haugh of Interlocking Connections reviewed Yaroslav's school records, interviewed Sabis school staff, compiled the results of behavioral instruments completed by staff, interviewed Yaroslav and observed him as he moved through his school day schedule on three occasions in February and March 2017. At all times Yaroslav was accompanied by his 1:1 support aide. They focused on three areas of behavioral concern: eloping, inappropriate verbalizations, and hypersexualized behavior. Ms. Haugh testified that she observed all three target behaviors during a school day. While he was highly social with both peers and adults, Yaroslav was not able to maintain socially acceptable language or behavior in any setting except when he ate lunch by himself. He evaded his 1:1 support aide once. His interactions with teachers included aggressive and profane language resulting in an in-school suspension. In one case he proclaimed that he puts candy in his rear end and only "homos" can touch him. Ms. Haugh did not see him touch any other student. When she asked Yaroslav about these incidents he denied they occurred. (Haugh S-13)

Ms. Hanlon analyzed the evidence from the behavioral assessment. She testified that the repetition of the offending behaviors from age 6 to age 12 to age 18 creates lifelong characteristics that resist change without intensive intervention. Even with internal motivation to change

behaviors, counseling alone would be insufficient to produce positive results. Without motivation, behavioral change is extremely unlikely. Ms. Hanlon noted there is no evidence that Yaroslav has insight about his problematic behaviors or has demonstrated interest in behaving differently. She therefore recommended that intensive external structures be put in place to remediate Yaroslav's behavioral deficits and a safety plan be developed to address the dangers he presents in the environment when unsupervised. (Hanlon; S-13)

16) Sabis developed a safety plan to ensure that Yaroslav was accompanied by an adult at all times during the school day, while on the school grounds or during associated school provided transportation. The safety plan included mandatory use of single person restrooms. (SC-33) Behavioral data based on the characteristics of the plan was collected by the accompanying adult. (SC-40) The Parent objected to the use of the safety plan claiming it was not necessary and that the restroom restriction was discriminatory. (Hollenback; Parent)

17) During the 2016-2017 academic year Yaroslav was fully or partially absent from school for 114 days. (SC-37; Hollenback) On the days he was in school 82 separate incidents of classroom disruption and 25 separate incidents of inappropriate sexualized behavior were recorded. (SC-40; S-44; Hollenback) School imposed discipline for various conduct violations resulted in more than 10 days of out-of-school suspensions during the 2016-2017 school year. Yaroslav received compensatory academic tutoring with his regularly assigned special education staff. The Parent then refused to permit any further disciplinary consequences for misbehavior. (SC-38; SC-39; SC-45; Hollenback; Reuter; Parent)

18) In February 2017 Yaroslav and the Parent were advised that any further physical/sexual touching of other students would be formally referred to the police. Since that time there have been no direct physical assaults but Yaroslav has escalated the use of inappropriate, abusive and offensive language to and about other students and teachers. (Mumby;

Hollenback)

19) The Parent asserted that Sabis did not inform her of any of Yaroslav's offending conduct, that Sabis did not take appropriate steps to evaluate or remediate his conduct, and that Sabis did not treat Yaroslav fairly or equitably. During the 2016-2017 school year the Parent was represented by a lawyer. (Parent; but see: SC-45; SC-46, SC-47)

20) A Team meeting was scheduled to occur on May 4, 2017 to consider the results of the outside evaluations conducted during the 2016-2017 school year, Yaroslav's school performance and his current learning needs. The Parent cancelled the meeting. It was rescheduled to the next available day when the entire Team could meet, August 2, 2017. (Mumby)

21) Melissa Mumby, Director of Special Education at Sabis, chaired the August 2, 2017 Team meeting. The Parent, the Student and their attorney attended. The Team reviewed the evaluations conducted by Dr. Wright, Ms. Green, Ms. Hanlon, and Ms. Haughn. The Team discussed Yaroslav's academic and behavioral performance, disciplinary and attendance history and compliance with safety plan throughout the 2016-2017 school year. Based on that review the Team determined that Yaroslav was not making effective progress toward his IEP goals despite the most intensive academic, social and behavioral services available at Sabis. (SC-34, 35, 37, 40, Mumby) Yaroslav demonstrated inadequate progress in math, reading comprehensive, writing and adaptive behavior. (S-34; see also S-35; Hollenback) More troubling, Yaroslav had demonstrated no discernable progress in reducing sexualized and aggressive behavior and language and in acquiring appropriate community behaviors. This indicated poor response to the three hours daily of individualized academic instruction, 1:1 supervision and support in all settings, implemented behavioral intervention and safety plans and specialized transportation. The Team considered that Yaroslav had, for the previous 10 years, consistently demonstrated the same type, level,

and frequency of inappropriate behaviors across educational settings with a variety of interventions with no documented improvement in functioning.

Dr. Mumby testified that the Team discussed whether there were options for appropriate service delivery less restrictive than a residential placement. The consensus was that less restrictive options had not successfully addressed Yaroslov's learning needs and that maintaining him in a day placement impeded his opportunity for learning and that of other students. (Mumby; see confirming testimony of Hollenback)

22) Dr. Wright testified that she told the Team that Yaroslav required placement in a highly specialized, residential educational program with specific expertise and experience in multimodal treatment of sexually dangerous behaviors. Yaroslav needs intensive individual counselling and constant behavioral retraining to reframe entrenched behavioral patterns. In light of his history and the lack of parental support he could not receive the continuity and level of sexual behavior-specific intervention he needs in a less than 24 hour per day community-based placement. Without that type of intensity of treatment Yaroslav's problematic behaviors are likely to continue and to result in significant harm to individuals and the community.
(Wright)

23) Once the Team determined that a residential special education program would be necessary for Yaroslav the Team recessed to arrange for the participation of the Springfield Public Schools, the responsible local school district. The Team reconvened on August 29, 2017. Yaroslav and his parent attended the meeting. Their attorney participated by speakerphone. Sabis had prepared a draft IEP for the Parent and the Springfield Public Schools representative to review and discuss. Dr. von Mering, then the Chief Compliance Officer for Springfield Public Schools, attended. She testified that Springfield rarely endorsed residential programs for its students with disabilities. Fewer than five such placements had been made during her 12 year

tenure with Springfield. After reviewing and discussing the evaluations completed by Springfield, Dr. Wright and Ms. Green, Yaroslav's school history, and the behavioral and disciplinary data collected by Sabis, Dr. von Mering agreed that a highly specialized residential educational program would be necessary to meet Yaroslav's learning needs. She described the IEP drafted by Sabis as extremely thorough and thoughtful. She stated that it captured and synthesized all available evaluative information, traced Yaroslav's poor responses to increasingly restrictive interventions and placements, and made a clear, individualized determination of appropriate programming based on his unique social/emotional/cognitive needs. Dr. von Mering, therefore, authorized Springfield to search for residential special education programs that provide the necessary, expert targeted services and therapeutic milieu for addressing problematic sexual behavior along with other behavioral, social and academic needs.
(von Mering, Mumby)

24) The IEP developed by Sabis calling for Yaroslav's placement in a residential educational program was sent to the Parent on August 30, 2017. (SC-1) The Parent rejected the proposed IEP and, through her attorney, engaged in discussions about possible settlement through the fall 2017. (SC-46)

25) Yaroslav returned to Sabis for the 2017-2018 school year pursuant to the last accepted IEP. (SC-5) Kimberly Hollenback, Assistant Director of Sabis, had known Yaroslav since he began attending in 2014. She testified that Yaroslav's behavior had not changed in type, intensity or frequency throughout his career at Sabis despite increasing and varied services, behavior plans, safety plans, counseling and formal disciplinary consequences. Yaroslav continued to demonstrate problematic and dangerous behaviors in the fall 2017 including: wandering, sexualized language, comments and threats to female students and staff, profanity and threats toward all students and staff, use of racial and gender-based slurs toward and about other students, unwanted and/or threatening touching of others, random

sexually explicit and/or aggressive language, sharing stories involving themes of violence and/or sexual behavior, sharing sexually explicit images, and use of the potential of “Mom’s” intervention as a threat or bargain to avoid consequences for misbehavior. (Hollenback)

Ms. Hollenback stated that during the first 41 days of the 2017-2018 school year there were 55 incidents of classroom disruption and 18 incidents of sexualized behavior. Between October 26 and December 22, 2017 there were 56 incidents of classroom disruption and nine incidents of sexualized behavior. (See eg. SC-40; See also SC-44) the Parent was informed of each infraction. She disputed each one. (SC-46) Behavioral infractions resulted in at least 6 days of out-of-school suspension, 6 days of in-school suspension and an October 12, 2017 referral for a 45 day interim educational placement to be served after school hours. Sabis offered to conduct an extended evaluation during that time. The Parent declined. (SC-46; SC-47) Ms. Hollenback sent the Parent a weekly synopsis of Yaroslav’s behavior by email (SC-46; Hollenback)

26) Ronald McKenzie, a licensed clinical social worker, has been working with Yaroslav since August 20, 2017 at the Parent’s request. Yaroslav regularly attends therapy 50 minutes a week. Mr. McKenzie and Sabis share information when possible. Mr. McKenzie found the evaluation report of Dr. Wright to be very helpful. Mr. McKenzie testified that he agreed with most of Dr. Wright’s conclusions, though he would not recommend a residential therapeutic setting as there is likely to be a “poor-fit” with other students. Mr. McKenzie agreed that Yaroslav is currently a threat to others and requires specialized therapeutic interventions specially tailored to address sexually offending behaviors. (McKenzie)

27) In January 2018 Glen Benson-Lewis, a counseling psychologist, was asked by the Parent to assess Yaroslav. He met Yaroslav twice, once for an introductory meeting, once for testing. Dr. Benson-Lewis also reviewed school based reports. He concluded that

the current educational/social/behavioral environment was not producing positive change. He testified that it was likely that the only effective intervention for Yaroslav would be a change in the parent-child relationship. (Benson-Lewis)

28) In November 2017 the Parent requested that Dr. Malinofsky be permitted to observe Yaroslav's program. Sabis offered a few days/times but the observation did not take place. In January 2018 the Parent asked to observe Yaroslav's program. A date was arranged. The Parent cancelled and did not reschedule. (Reuter; Parent; SC-15, SC-16)

29) During November 2017 Springfield Public Schools sent redacted referrals to private day and residential schools which offered intensive therapeutic services designed to address the needs of students who display sexualized and aggressive behaviors. Three of the four day schools would not accept the Student. Springdale Education Center offered to conduct an extended evaluation. The Parent was advised how to complete the intake process. She did not follow up. Of the two potentially appropriate residential placements, Stetson Academy did not respond and Whitney Academy offered to meet with the Student and family. The Parent was advised of Whitney Academy's interest. She did not follow up. (SP-10; SP-11; SC-46;) von Mering; Parent)

30) Teresa Hodel Malinofsky, PhD., a clinical neuropsychologist, conducted an evaluation of Yaroslav on November 30, 2017. She read reports of earlier evaluations conducted by Dr. Wright and Dr. Green, interviewed Yaroslav and his mother and observed Yaroslav at Sunday school. She did not observe Yaroslav at Sabis, speak to any Sabis school staff or review Sabis school records. Dr. Malinofsky noted that Yaroslav demonstrated strengths in discerning intent and emotion in the body language and vocal tone of other people. He also demonstrated the capacity for appropriate attention, concentration and behavioral control during church-related activities. Dr. Malinofsky wrote that all of Dr. Wright's recommendations appeared to remain appropriate as of the date of her evaluation. (P-1)

31) Ms. Y.³, Yaroslav's mother, testified that she did not remember anything about the August 2017 Team meetings, that she had not read through the IEP proposed by Sabis as a result of those meetings, and did not know what services the IEP offers to Yaroslav. Ms. Y. stated that she would like to have Yaroslav attend a different school because Sabis has never met his learning needs, has discriminated against him and has permitted other students to bully, threaten and lie about him. Ms. Y. has no concerns about Yaroslav's conduct, social skills, study skills, academic performance, or emotional/mental health. She objects to any proposed residential placement. Ms. Y stated that she was contacted about potential transfer to Springdale Education Center and Whitney Academy but did not respond. She acknowledged that she had received notices concerning 193 incidents of classroom disruption and 52 incidents of sexualized behavior but denied that any of the reported incidents occurred. She claimed that Sabis staff were untruthful. Ms. Y. told Yaroslav not to serve any school-imposed consequences for school-related behavior. (Ms. Y.; SC-46)

Ms. Y. testified that Sabis did not interfere with Yaroslav's rights to an Independent Educational Evaluation. She stated she did not follow up on the Sabis offer to arrange times for her, or for her chosen evaluator, to observe Yaroslav's school program. She acknowledged that she cancelled the one firm observation appointment that had been set for January 18, 2018. (Ms.Y.)

32) Yaroslav attended all days of hearing and testified. He complained that Sabis teachers were disrespectful and loud. He maintained that teachers single him out for discriminatory treatment by excluding him from activities and imposing unfair discipline. Yaroslav denied ever engaging in any behavior that would warrant a safety plan, discipline or an alternate placement. (Yaroslav).

33) Yaroslav's problematic behaviors, including: unwanted physical contact; profanity; sexually provocative language; slurs; threats;

³ "Ms Y" is a derivative pseudonym used to protect the Parent's privacy in documents available to the public.

disruptive physical presence; insulting and disrespectful tirades; wandering; and carrying prohibited items such as scissors in school, continued up through the date of the hearing. (Reuter; Hollenback SC-48) Yaroslav received failing grades in three of five academic subjects during the 2017-2018 school year. At times these grades were the result of “Os” earned due to parental instructions not to take a test. (SC-46; Parent)

LEGAL FRAMEWORK

There is no dispute that Yaroslav is a student with special learning needs as defined by 20 U.S.C. 1401 *et seq.* and M.G.L. ch 71B and is thus entitled to receive a free, appropriate public education. A free appropriate public education, often referred to as “FAPE”, is a set of specialized instructional methods and services, curricular modifications, related services, equipment, environmental adaptations and settings that are specifically tailored to an individual student’s unique learning needs and designed to provide a meaningful educational benefit to the student. 34 CFR 300.300(3) (ii); *Endrew F. v. Douglas County School District*, 137 S.Ct.988, 580 U.S. __ (2017). 603 CMR 28.02(17). What constitutes a meaningful educational benefit must be determined in the context of the Student’s potential to learn. At the least, however, the proffered plan for educational services, the Individualized Education Program or “IEP”, must be geared to producing demonstrable improvement in the educational and personal skills identified as special needs. *Lessard v. Wilton-Lyndeborough Cooperative School District*, 518 F.3d 18 (1st Cir. 2008); *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir. 1983).

The IDEA also requires that students with disabilities be placed in the least restrictive educational environment feasible. In other words, students with special learning needs are entitled to receive specialized educational services alongside their non-disabled peers to the maximum extent possible consistent with their own needs, goals and environmental requirements. Removal from the mainstream is warranted only when the

special service cannot be delivered effectively there or when the student demonstrates an inability to learn and make progress in the general education setting. Placement in a more restrictive environment, such as a private day or residential school, is indicated only when the student's learning needs are such that there is demonstrated incapacity to learn, make progress in or derive a meaningful educational benefit from specialized instruction and support services in a general education setting. 603 CMR 28.02 (12). On the other hand, the opportunity to be educated with non-disabled students does not cure a program that otherwise is inappropriate. *School Committee of Town of Burlington v. Dept. of Education of Mass.* 471 U.S. 359 (1985). When evaluating whether or not a residential placement is appropriate for a particular student, a hearing officer must determine whether around-the-clock services are necessary to enable the student to make meaningful educational progress in the areas identified as special needs, or whether the problems that a student might have outside of the school setting are "separable from [the student's] educational problems." *Gonzalez v. Puerto Rico Dept. of Education*, 254 F.3d 350, 352-353 (1st Cir. 2001).

In a due process proceeding to determine whether a school district has offered or provided FAPE to an eligible child or whether the school district has deprived a child of FAPE because of procedural missteps, the burden of proof is on the moving party.

In the instant matter, Sabis International Charter School has the burden of proving by a preponderance of the evidence that the 2017-2018 IEP it developed for Yaroslov is reasonably calculated to provide a free, appropriate public education to him in the least restrictive setting consistent with his identified learning needs and necessary services. The Parent has the burden of proving by a preponderance of the evidence her claim that Sabis failed to respond to her request for an observation of Yaroslav's program thereby excluding her from the Team process and denying Yaroslav a free appropriate public education. *Schaffer v. Weast*, 546 U.S. 49 (2005)

FINDINGS AND CONCLUSION

After careful consideration of all the evidence produced at the Hearing as well as the arguments of the three parties in interest, it is my determination that Sabis has proven, by far more than a preponderance of the evidence, that the 2017-2018 IEP it developed for Yaroslav is reasonably calculated to address Yaroslav's identified special learning needs. I further find that Sabis has proven, by more than a preponderance of the evidence, that a specialized residential education program is the least restrictive setting in which Yaroslav's social, emotional, behavioral and academic needs can be appropriately addressed, and in which he is likely to make meaningful educational progress. I also find that the clear, convincing and substantial weight of the evidence demonstrates that Yaroslav's current placement at the Sabis Charter School pursuant to his last accepted IEP is not providing him with the free appropriate public education to which he is entitled. Finally I find that the Parent has not carried her burden of proving that Sabis committed procedural violations of the IDEA and/or M.G.L. c. 71B that resulted in a denial of FAPE to Yaroslav or interfered with the Parent's participation in the Team process. My reasoning follows.

First, when the Team met on August 2, 2017 to discuss the results of evaluations performed by Dr. Wright and Ms. Green and Yaroslav's progress under the 2016-2017 IEP, it had before it consistent observations and recommendations. Yaroslav's progress reports, behavioral data sheets and disciplinary record all showed a continuing inability to conform behavior and language to community norms, a failure to learn and/or demonstrate age appropriate social/emotional/behavioral skills across school settings, and resistance to specialized intervention. (¶10-16) Ms. Green provided a neutral, unaffiliated perspective on Yaroslav's learning style and needs. Her evaluation results echoed those of earlier neuropsychologists. She told the Team, and testified at the hearing, that the special education services available to Yaroslav at Sabis were insufficient to meet his intense level of need. She recommended placement in a specialized residential

educational setting. (¶ 11 supra) I found Ms. Green to be thoughtful, candid, expert and disinterested in the outcome of this matter and credit her testimony and evaluation in full. Similarly Dr. Wright told the Team that given his history, lack of progress, learning characteristics, age and lack of support outside school, Yaroslav required a highly specialized, residential, education program in order to learn new skills and make meaningful progress toward achieving appropriate IEP goals for self control, emotional regulation and behavioral compliance. I rely heavily on the expertise and recommendations of Dr. Wright whom I found to be experienced, sympathetic and honest. Student, Parent and their lawyer participated in the Team meeting. While they disputed facts supporting the behavioral data and disciplinary record, they did not offer the Team any countervailing expert evidence or opinion. The only credible information available to the August 2, 2017 Team supported the Team's determinations that Yaroslav was not making meaningful educational progress with the most intensive services available at Sabis and that he required placement in a specialized residential educational program in order to make that progress.

Therefore, I find that the August 2017 Sabis Team properly concluded, based on all the information available to it at that time, that Yaroslav required a residential placement. Based on all the evidence available at the Hearing, including that introduced by the Parent, I am also persuaded that nothing less restrictive than a full day, full week, full year program of highly specialized, intensive, behaviorally/cognitively based therapeutic services and interventions is likely to produce meaningful progress in the skills areas Yaroslav needs to acquire to become a competent, contributing adult member of the community.

Yaroslav's problematic sexually based behaviors and language were initially identified in the first grade when he was 6 years old. He is now 18 in the 11th grade. During the intervening years Yaroslav has received a variety of educational and therapeutic interventions in increasingly restrictive settings. None has produced positive change. He is currently escorted 1:1 in all school settings and receives 1:1

educational instruction for most of the school day. Even this level of attention and supervision has failed to remediate, or even reduce, his offensive and dangerous behaviors. He has demonstrated, for years, an inability to learn the skills targeted in his IEPs, or to make progress toward achievement of his IEP goals, or to benefit meaningfully from participation in his special education services or in the general education environment while placed at Sabis. This lack of progress is not attributable to Sabis, or to a failure to implement Yaroslav's IEP. For 3 years Sabis has thoughtfully and continually to the extent permitted by Parent, adjusted services, schedules, personnel and specific interventions designed to accommodate Yaroslav's learning needs and to address his disruptive behaviors. That those efforts have not resulted in the desired learning outcome indicates that the nature and severity of Yaroslav's special education needs are such that they cannot be effectively met in a general education setting. I further find that the Parent and Student had the opportunity to participate in the Team meeting. Finally I find that Sabis complied with 602 CMR 28.06 and 603 CMR 28.10 (6) by suspending the Team process to permit the participation of the local education agency, the Springfield Public Schools, in the placement portion of the Team meeting process.

Next, Parent, Student, their lawyer and a representative of the Springfield Public Schools participated in the Team meeting held on August 30, 2017. The family did not offer any additional or new information to the Team. Upon considering the evaluative, historical, academic, behavioral and disciplinary information available to the August 2, 2017 Team, Dr. von Mering took the unusual step of committing Springfield to a proposed residential placement. I find that the Parent and Student were able to participate meaningfully in the placement portion of the Team process. I further find that Dr. von Mering's acknowledgement that the information available to the August 2, 2017 Team required Yaroslav's placement in a residential educational setting, lends further support to the Team's initial determination. Finally I find, in light of then ongoing interpersonal difficulties with Yaroslav's Parent, continued and escalating inappropriate school behavior on

Yaroslav's part and negotiations with their then lawyer, Springfield timely met its responsibilities to identify potentially appropriate residential placements for Yaroslav.

Third, the 2017-2018 IEP drafted and proposed by Sabis is a thoughtful and comprehensive plan. It accurately recites Yaroslav's educational history, the findings and recommendations of expert evaluators, Yaroslav's current educational performance and the contributions of his Parent. It identifies Yaroslav's disabilities and sets out the instructional and environment accommodations recommended by evaluators and service providers. As recommended by evaluators it prioritizes remediation of Yaroslav's inappropriate sexualized behavior and his antisocial behavior as the first and second educational goals. The IEP also provides for special education to address deficits in executive functioning, reading comprehension, writing and math. The IEP contemplates the provision of targeted therapeutic services to address sexually inappropriate behavior and social skills a minimum of 3 times per week, each in the context of full day/full week program of social/emotional/behavioral support. It continues, even with this recommended level of service, to contemplate 1:1 staffing at all times.

I have carefully considered all the credible evidence at the hearing and rely, in particular, on the testimony of Ms. Hollenback, Ms. Mumby and Ms. Reuter all of whom I found to be uncommonly patient, respectful and forthright under exceptionally, and prolonged, trying circumstances. I also rely on the supporting testimony of Parent's witness, Mr. Mackenzie, whom I found to be persuasive. I find that the 2017-2018 IEP proposed by Sabis meets the recommendations of all evaluators, addresses the observations and recommendations of Yaroslav's direct service providers, and provides for the services and setting that is most likely to permit him to demonstrate effective progress and to derive a meaningful benefit from his education.

Finally, there is no evidence in this record that Sabis: failed to timely inform the Parent of behaviors that merited intervention or

discipline, or fabricated such incidents in order to bully or discriminate against the Parent or Student; failed to include her in the educational planning process for Yaroslav, or interfered in any way with her participation in the two Team meetings held to develop the 2017-2018 IEP; or denied her, or her expert evaluator, the opportunity to observe Yaroslav's program at Sabis. I find Parent's assertions otherwise not credible.

ORDER

The 2017-2018 Individualized Education Program developed by Sabis is reasonably calculated to provide a free appropriate public education to Yaroslav in the least restrictive setting possible. Springfield Public Schools shall immediately recommence the process for identifying, and securing Yaroslav's placement in, an appropriate residential placement.

By the Hearing Officer

Lindsay Byrne

Dated: May 14, 2018