**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

In re:   Rand[[1]](#footnote-2)                                BSEA #1912408

**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 WebEx[[2]](#footnote-3) on May 28, June 11, and July 2, 2020 before Hearing Officer Amy Reichbach. Those present for all or part of the proceedings, all of whom agreed to participate virtually, were:

Mother

Sarah Cronin Special Education Teacher, LABBB

Jessica Murphy Director of Student Services, Sharon Public Schools

Tracey Stoll Director of Learning Solutions

Alisia St. Florian, Esq. Attorney for Sharon Public Schools

Anne Bohan Court Reporter

Alison Sexson BSEA Intern

The official record of the hearing consists of documents submitted by Parents and marked as Exhibits P-1 to P-21[[3]](#footnote-4); documents submitted by Sharon Public Schools and marked as Exhibits S-1 to S-10; and a three-volume transcript produced by a court reporter. At the request of the parties the case was continued to July 30, 2020 and the record held open for submission of closing arguments. Closing arguments were received and the record closed on that date.

**INTRODUCTION**

On June 19, 2019, Parents filed a *Hearing Request* against Sharon Public Schools (Sharon, or the District) alleging that the Individualized Education Program (IEP) proposed for Rand for the period from June 20, 2017 to June 5, 2018 was not appropriate for him. Furthermore, Parents asserted that an independent observation report they obtained, which was delivered to Sharon on or about June 12, 2017, was not given full consideration by the District. They requested reimbursement for a private social skills program and social skills groups Rand attended in the summer of 2017 and private social skills groups he attended in the fall and winter of the 2017-2018 school year. Furthermore, Parents requested reimbursement for the observation report they obtained and/or a District-funded observation of Rand by the same provider. Sharon filed a *Preliminary Response* on June 24, 2019, indicating that it wished to explore informal resolution, and on June 27, 2019, Parents indicated that they too wished to attempt to resolve the dispute informally. The Hearing was scheduled for July 24, 2019.

 On July 1, 2019, Sharon requested that the Hearing be postponed for ten weeks, as Counsel was not available on the scheduled date, and because such a postponement would permit the parties to work together toward resolution. On July 8, 2019, Parents agreed to the postponement request. A Pre-Hearing Conference was scheduled for August 8, 2019, and the Hearing was scheduled for October 1 and 2, 2019.

 On August 7, 2019, Parents requested that the Pre-Hearing Conference be postponed, as Rand’s mother had been ill and Parents were working to gather documentation to provide to Sharon. The District assented. On August 29, 2019, Sharon requested a Conference Call, as District personnel had been unable to reach Parents regarding documentation and discussion of potential resolution. When the BSEA Scheduling Coordinator attempted to schedule a Conference Call, Parents were unavailable for several weeks. On September 11, 2019, the District indicated that it had not been able to communicate with Parents and requested a further postponement of the Hearing. Parents did not respond. The Hearing was postponed to November 25 and 26, 2019. On October 31, 2019, Sharon again requested a Conference Call, as personnel had heard nothing from Parents. The BSEA was, similarly, unable to reach them for some time, and on November 18, 2019, Sharon requested the issuance of a 14-day *Order to Show Cause*, arguing that Parents had effectively failed to prosecute the matter. In the meantime, on November 19, 2019, I issued an Order indicating that as the parties had failed to submit timely exhibits and witness lists, they would be precluded from introducing evidence at the hearing in the absence of mitigating circumstances. A Conference Call was scheduled for November 22, 2019.

 Following the Conference Call, I allowed the parties’ joint written request for postponement of the hearing until February 27, 2020 to permit them to work together to exchange documentation and otherwise explore informal resolution. On January 27, 2020, the District advised the BSEA that it had not received any of the paperwork discussed during the Conference Call that took place on November 22, 2019. Following a Conference Call on February 5, 2020, the parties jointly requested that the Hearing on February 27, 2020 be converted to a Pre-Hearing Conference to permit them to clarify the issues for hearing and continue working together toward resolution, and the Hearing was postponed to May 6, 2020. On February 11, 2020, the District informed the BSEA that it still had not received the relevant paperwork.

 On February 26, 2020, Parents requested that the Pre-Hearing Conference scheduled for the next day be postponed due to time constraints related to transportation of Rand’s sibling. They also requested that both the Pre-Hearing Conference and the Hearing in the instant matter be postponed until after the issues regarding Rand’s sibling had been resolved. By Order dated February 26, 2020, the Pre-Hearing Conference was cancelled. The Hearing remained scheduled for May 6, 2020, and I specified the following, in bold print: “Should Parents wish to reschedule the Hearing for another date between May 6 and June 19, 2020, they may make that request in writing after conferring with Counsel for Sharon regarding the District’s availability. No postponements will be allowed beyond that date.”

 Following the Conference Call that took place April 22, 2020, Parents requested postponement of the Hearing scheduled for May 6, 2020 to May 28 and June 11, 2020, stating that they needed additional time to attempt to reach agreement with Sharon for reimbursement, and if not, to prepare for hearing due to the impact of coronavirus and emergency orders of school shutdown and state closures. On April 25, 2020, the District agreed to this request, so long as no further postponements were allowed. On April 27, 2020, I issued an Order scheduling the virtual Hearing[[4]](#footnote-5) for May 28 and June 11, 2020. I specified, “as explained previously, because this case was initially filed in June 2019 and involves events that occurred in or about the summer of 2017, no further postponement requests will be granted in the absence of exigent circumstances **and the agreement of the District** (emphasis in the original).” The Order established May 20, 2020 as the due date for exhibits and witness lists.

Sharon timely submitted these documents. At 3:56 PM on May 20, 2020, Rand’s mother sent an email to the BSEA and the District explaining that she would miss the end of business day deadline for delivery of exhibits because she had “been struggling with a crashed computer trying to recover files that still need printing with a jammed broken printer/copier and recreating the exhibits list.” She promised to, and did, deliver them the following day to the BSEA and the District. Parents did not, however, provide a hard copy of the exhibits to the court reporter, as they had been instructed to do.

 Over Sharon’s objection, filed on May 21, 2020 and heard on May 27, 2020, I accepted Parents’ late-filed witness list and exhibits. That same day, approximately 24 hours before the Hearing was to begin, Parents filed a document entitled *Motion to Request Information to Prepare for Cross Examination of SPS District Witness*. As I explained that day, this was neither the appropriate time nor the appropriate vehicle for a discovery request.

 Before the Hearing commenced, I framed the issues as follows:

1. Whether the IEP (and amendments thereto) proposed for Rand by Sharon Public Schools on or about June 20, 2017, was reasonably calculated to provide him with a free, appropriate public education (FAPE);
2. If the answer is no, what is the appropriate remedy? Does it include reimbursement for social skills programs and groups Rand attended in the summer of 2017 and the fall/winter of the 2017-2018 school year;
3. Whether the District erred procedurally in failing to consider an independent observation report at a Team meeting on or about June 20, 2017 and such error amounted to a violation of FAPE because it impeded Rand’s right to a FAPE; significantly impeded Parents’ opportunity to participate in the decision-making process regarding the provision of FAPE to Rand; or caused a deprivation of educational benefits.
4. If the answer to (c) is yes, what is the appropriate remedy, and does it include reimbursement for the observation report and/or a District-funded evaluation by the same provider.

On May 28, 2020, the first day of the Hearing ended early, because Parent became ill. The night before the second day of Hearing, Parent informed the parties by electronic mail that she might be unable to speak due to respiratory illness, and the second day ended early on June 11, 2020 for that reason. A third and final day was scheduled for July 2, 2020.

Following the second day of Hearing, on June 18, 2020, the District requested permission for an additional witness, who had not been on its witness list, to testify, and requested that a subpoena issue. In its request, the District stated that this witness had attended a particular Team meeting and could provide information regarding Rand’s IEPs, programming, and presentation during the relevant time period. The following day, on June 19, 2020, Parents requested a subpoena *duces tecum* for documents it described as having “been previously requested of parties and never produced,” including “education records specifically milieu, clinical, emails, correspondence, notes on telephone calls, correspondence and emails and any records that identify [Rand] or his parents that may include medical services billing, notes, documents or files that directly reference [Rand] or his parents.” They also requested documentation related to an event that allegedly occurred in November 2018 at Lexington, Arlington, Burlington, Bedford, Belmont Collaborative (LABBB Collaborative or LABBB) and requested that subpoenas *duces tecum* be issued to both the District and LABBB for these documents. On June 19, 2020, the District filed an *Opposition* to Parents’ request for subpoena *duces tecum*, noting that at no time since the matter was filed have parents sought discovery in this case.

On June 22, 2020, Parents requested that a Conference Call to “request clarification regarding Hearing procedures and exhibits” be scheduled prior to 6:00 PM on June 23, 2020. The same day, I issued an Order denying their request. In my Order I noted the following:

At this point, we are two days into the Hearing in a matter filed over a year ago. One day remains. At no point before the Hearing began did Parents request clarification regarding Hearing procedures and exhibits, and despite being informed that we would discuss the Hearing during the Pre-Hearing Conference they later requested be postponed indefinitely, they never asked to reschedule the Pre-Hearing Conference.

 On June 23, I issued a *Ruling on Parents’ Mid-Hearing Request for Subpoena Duces Tecum and Sharon Public Schools’ Mid-Haring Request to Amend Witness List* in which I reviewed the purpose and content of BSEA *Hearing Rules* regarding timelines to enable the parties to prepare for, and Hearing Officers to preside over, fair and orderly hearings. I denied both parties’ motions.

 During the third day of Hearing, Sharon moved orally for a Directed Verdict, which I denied orally.

**FINDINGS OF FACT**

1. Rand is a seventeen-year-old resident of Sharon. (P-8; S-8) He is artistic, friendly, creative, and helpful to staff and peers. Teachers describe him as an engaging student who has a desire to succeed academically, though he often presents at school as anxious and concerned. (P-13)
2. Rand attended LABBB at the time the *Hearing Request* was filed, with the intention of transitioning back to Sharon High School in the fall of 2019. (P-3; Murphy, III: 176) During all times relevant to the instant *Hearing Request*, Rand lived in Sharon with his family and attended either the Manville School of Judge Baker Children’s Center (Manville School, or Manville) or LABBB, both placements funded by Sharon. (P-3; Mother, III: 57; Murphy, III: 179) Between 2014 and 2019, Rand attended four different programs: Home for Little Wanderers/Longview Farm [HLW], Manville, LABBB, and Sharon High School. With the exception of Sharon High School, as to which I did not take evidence, Parents were initially happy with each placement, but over time became dissatisfied and requested a change. (Mother, III: 101-04, 114-15)
3. Rand, the youngest of three siblings, was adopted by Parents at 16 months of age. He was diagnosed with failure to thrive, and it was suspected that his biological mother used drugs during his pregnancy. He was removed from his biological mother’s care when he was one month old and was placed in multiple foster care homes for fifteen months before his adoption. (P-12, P-18; Mother, I: 108)
4. As a young child, Rand had sensory sensitivities to sound, light, and textures. According to Mother, he was assessed in 2009, while he was in preschool, and subsequently received both occupational therapy (OT) and physical therapy (PT) services. (P-18; Mother, 109-110)
5. Rand began therapy with Dr. Marcia Wright in September 2009 for anxiety and anger management issues. Dr. Wright expressed concern that he might have attention deficit hyperactivity disorder (ADHD) due to his fidgetiness and distractibility. (P-18)
6. Rand attended the Cottage Street School (Cottage Street) in Sharon from kindergarten through third grade. His mother described him at that time as an intelligent, very shy and anxious child who was willing to try new things if he could scope them out first. (P-18; Mother, I: 109)
7. Rand began to experience social problems at the end of second grade, in the spring of 2011. His older sibling was displaying rage toward other family members, and Rand began developing difficulty leaving home, including for school. He reported to an evaluator that he had been bullied on the bus. (P-18; Mother, I: 110-12)
8. On September 9, 20, and 27, 2011, when Rand was in third grade, Parents obtained a private neuropsychological evaluation and educational consultation at the Integrated Center for Child Development. (P-18; Mother, I: 110-111) Dr. Benetti-McQuoid concluded that Rand was a bright and likeable young boy with core reasoning skills well above age expectations, a history of considerable self-regulatory difficulties, and broader executive control weaknesses. Although Rand exhibited strong verbal learning and memory skills for contextualized information, he demonstrated considerable weakness in broad-based executive control functioning, which contributed to lower than expected academic performance. Ultimately, Rand’s academic skills were deemed not to be commensurate with his intellectual potential. Dr. Benetti-McQuoid diagnosed Rand with ADHD and an anxiety disorder, with the possibility a co-existing mood disorder. She recommended that Sharon develop a 504 plan for Rand. (P-18) Parents subsequently scheduled a meeting with the District for this purpose. (P-17, P-18; Mother, I: 111)
9. A Team meeting took place at Cottage Street on April 10, 2012 to discuss Rand’s needs and develop a 504 Accommodation Plan for him. Parents rejected both the initial plan and a subsequent plan that was developed and sent home to them between that date and June 5, 2012, and they requested additional testing. Around this time, Rand’s principal expressed concern to Parents several times about Rand’s absences from school. In fact, Rand missed most of third grade due to his refusal to leave the house. However, due to his intellect, he was able to keep up with his academics. (P-17; Mother, I: 111-12)

When Parents communicated that they were unable to bring Rand to school because he was unbuckling his seat belt, the principal suggested sending the School Resource Officer (SRO) to the home to assist them. Parents declined, as they believed that having the SRO come to their home would only heighten Rand’s anxiety. (P-17; Mother, I: 113)

1. On May 16, 2012, Rand’s therapist, Dr. Wright, wrote to the District to request that Rand’s absences be considered excused due to medical reasons connected to his anxiety and resulting symptoms. She indicated that she had diagnosed him with Generalized Anxiety Disorder and Separation Anxiety Disorder, and noted that he also met the criteria for ADHD. Parents also submitted a letter from Rand’s medication provider explaining that he attended weekly sessions there to address separation anxiety and a mood disorder. (P-17)
2. A second neuropsychological evaluation completed in May and June of 2012 resulted in a recommendation of a 504 plan with specific strategies for math, organization, and social skills. (P-12)[[5]](#footnote-6) A Team meeting was scheduled for June 14, 2012 to discuss it, as well as Parents’ concerns about the proposed 504 plans. (P-17)
3. At the meeting, the Team determined that because testing did not indicate that Rand required specialized instruction, he did not need an IEP. Rand was placed on a 504 Accommodation Plan. (P-8; S-8; Mother, I: 115-116)
4. Due to redistricting, Rand began fourth grade at East Elementary School in the fall of 2012, where he was placed in the Team-Based Learning program. Parents continued to drive him to school to avoid bullying from other students. (Mother, I: 116)
5. Rand’s anxiety increased during fourth grade, making it nearly impossible for him to leave the house to attend school or his medical appointments. Sharon informed Parents at the end of the year that he was being promoted to the fifth grade only for his social emotional well-being. (Mother, I: 117-118)
6. Rand attended East Elementary School for the first half of fifth grade. His anxiety and school refusal increased, to the point where he ran away from school. Rand was evaluated,[[6]](#footnote-7) and the school provided him home tutoring since he would not stay on campus. (Mother, I: 119) With Parents’ consent, Rand was placed at HLW in the spring of 2014 due to severe anxiety and difficulty with social skills. (P-12, P-16; Mother, I: 120-121) Rand experienced bullying while attending HLW, prompting Parents to email the school to request that it be addressed. (P-15; Mother, I: 57-58, 122-23)
7. A Team meeting was held on June 19, 2014 to review Rand’s needs in the areas of social skills development, emotional resilience, and the development of his self-advocacy skills in order to avoid and respond to bullying. The Team developed an IEP for the period from June 19, 2014 to June 18, 2015, which included Social/Emotional, English Language Arts (ELA), Math, and Social Skills goals. Parents accepted the placement at HLW, and accepted the IEP as develop on June 26, 2014. Although they fully accepted the IEP, Parents noted at the bottom of the Placement Consent Form that they were concerned about the harassment and bullying already taking place, and they requested a meeting in September to confirm that HLW was the appropriate placement for Rand. (P-16; Mother, I: 120-121).
8. Rand started attending Learning Solutions (LS) in or about September of 2014 and, with the exception of outside hospitalizations or when Rand reported that he was unable to attend due to emotional distress from things happening outside of the group, he has received privately funded weekly social skills programs since that time. (Stoll, I: 37, 38, 60) LS is a private social-emotional learning center that services children between the ages of two and 21 with social-emotional learning deficits and disabilities. The organization also works with clients’ families, school systems, and private providers. LS employs a cross-disciplinary team of licensed clinicians, including special educators, mental health counselors, counseling social workers, board-certified behavior analysists, and speech and language pathologists. At intake, families provide a client’s educational history, most recent IEP, and diagnostic materials. (Stoll, I: 22-23, 26) Rand’s brother and sister also attend LS. (Stoll, I: 24, 96)

Tracey Stoll founded Learning Solutions in 2009 and serves as its director. (Stoll, I: 22-23) Over the course of her career, which has included 20 years as an educator, Ms. Stoll has taught in both general and special education classes and run private social groups. Ms. Stoll testified that she is a licensed special educator who has “board certification in special education and an advanced autism certificate specialty.” She created LS as an additional resource for children who need extra help in social emotional development because, at the time, not many existed in the Sharon area. (Stoll, I: 22-23)

Rand attended groups at Learning Solutions once a week for 60 minutes for the first few years. (Stoll, I: 66) Groups are formed by LS’ interdisciplinary team, after members consider clients’ language levels, cognitive levels, social-emotional presentation, any diagnostic materials they have, family history, preferences, and proximity. (Stoll, I: 27) Groups are led by master’s level-clinicians, who work on a group-specific social and emotional goal, as well as an individual goal for each group member. (Stoll, I: 30-31; 67-68) Generally, groups cover a range of areas, including emotional regulation, anxiety, coping strategies, social interaction, social cognition, communication among peers, and problem-solving. (Stoll, I: 84-86)

According to Ms. Stoll, when Rand first began at LS, he was very quiet, anxious, and difficult to engage. (Stoll, I: 25) As he was struggling with emotional regulation issues, anxiety, attention, and social communication, Rand was placed in a psychotherapy group facilitated by mental health clinicians. (Stoll, I: 84-86) At some point, he also began attending counseling therapy focused on emotional regulation and coping strategies. (Stoll, I: 36)

Eventually, Rand attended both groups and social-recreational clubs run by Learning Solutions. (Stoll, I: 36, 66) Clubs provide an opportunity for LS clients to come together around a common interest. They are comprised of two to six students and one adult, or eight to ten students and two adults. They are staffed by behavioral coaches, who may be graduate level interns, for whom supervision is provided by licensed clinicians. Clubs are reserved for LS clients who have shown enough improvement in their learned skills and behavioral control to access the staff and feedback needed to interact with both familiar and unfamiliar peers. (Stoll, I: 36, 68-69)

According to Ms. Stoll, during the 2017-2018 school year Rand attended LS about twice a week. (Stoll, I: 67) During the six to nine months preceding the commencement of the Hearing, Rand attended approximately three times a week for two different therapy appointments and to participate in groups and clubs. (Stoll, I: 66-67) During the school year, Ms. Stoll generally provided direct services to Rand only on a coaching level, as a behavioral coach supporting the lead clinician in one of his groups. During the summer of 2017, approximately twice a week she wove in and out of his groups as the supervisor of the day. (Stoll, I: 69-71) LS did not routinely see Rand’s IEPs or other school records; if Parents provided updates, they would be reviewed at internal staff meetings. (Stoll, I: 72)

LS provided progress reports to Parents regarding Rand’s progress toward his goals in social skills groups three times a year but did not provide them directly to Sharon. (Stoll, I: 73) According to Ms. Stoll, Rand has made considerable progress during his time with LS in the areas of independence, demonstrating humor, and understanding humor. He can now handle feedback from staff and go out into the community understanding how to problem-solve during anxious moments. (Stoll, I: 60) He has also formed strong reciprocal friendships. (Stoll, I: 34)

1. Rand spent sixth grade, the 2014-2015 school year, at HLW. (P-12) Although both HLW and Sharon believed the placement remained appropriate for Rand, Parents requested a new placement for the following year. (Mother, III: 59-60) Sharon agreed to explore other placements, without limitation, and Parents ultimately selected Manville. (Mother, III: 60-62)
2. Manville is both a language-based and a therapeutic program that addresses students’ needs in a milieu setting. Teachers are trained to use consistent strategies with students to assist them in processing things individually and within groups. (Murphy, III: 185-86)
3. Following an occupational therapy evaluation that occurred in May 2015, Rand’s Team proposed an IEP for the period from June 2, 2015 to June 1, 2016. The IEP listed his primary disability as emotional, with a secondary disability in health, and placed him at the Manville School for seventh grade. Although Mother testified to signing this IEP, it was not clear whether the IEP was fully accepted or partially accepted. (P-13; Mother, I: 125-126) The IEP included Social/Emotional, Written Expression, Behavioral/Social Skills, Executive Functioning, and Occupational Therapy goals. Progress reports from this period demonstrate growth in all areas. (P-13)
4. At some point in the latter half of the 2015-2016 school year, Sharon proposed a three-year reevaluation. Parents failed to respond for some time, and ultimately rejected the evaluation, except for the educational assessments. (S-6, S-9; Murphy, III: 214-16) They also informed the District that they would not be able to attend the Team meeting scheduled for May 26, 2016 and provided their availability for alternate dates. (S-9)
5. The Team proposed an IEP for the period from June 6, 2016 to June 5, 2017, and Rand returned to Manville for eighth grade in the fall.[[7]](#footnote-8) In Present Levels of Educational Performance, A (PLEP A), the Team explained that although Rand wanted to learn and participate in class, his executive functioning difficulties, combined with his anxiety, affected his ability to follow through with organizational tasks and independent assignments. As such, his social-emotional, behavioral, and social skills deficits impacted his ability to access and make progress in all areas of the school environment. It was also reported that Rand had completed little homework over the course of the 2015-2016 school year, often saying he did not do it, or he forgot it. The IEP included Social/Emotional: Self-Regulation; Social Interactions; Executive Functioning; Written Language; and Occupational Therapy goals. (P-13)

Rand’s current Social/Emotional: Self-Regulation performance level noted that although he had been engaged in most academic tasks and social situations, and was able to demonstrate flexibility when the daily schedule changed, he displayed increased anxiety with increased academic expectations and various perceptions of social situations with peers. Rand was having difficulty identifying his feelings and advocating to staff when he felt anxious. His goal was to use adult-suggested coping strategies to self-regulate in three out of five opportunities when faced with anxiety-producing, confusing, or frustrating situations. (P-13)

Rand’s Social Interactions goal focused on learning to maintain pro-social peer interactions across social and academic contexts, with adult support as needed, four out of five times, in both structured and less structured social interactions. (P-13)

Rand’s Executive Functioning goal was to complete classroom tasks/assignments and demonstrate organization of self and materials in three out of five opportunities, given explicit organizational structures, clear expectations, reinforcers, and checklists. (P-13)

Rand’s Written Language goal focused on his ability, given a writing prompt across content areas, pre-writing organizational activities, structured paragraph templates, checklists, and assistive technology, to write a multi-paragraph essay that meets the requirements of a teacher-created rubric with 80% accuracy. (P-13)

Rand’s Occupational Therapy goal focused on improving his sensory regulation, body awareness, and motor coordination to functionally participate in OT sessions and interact with peers and staff throughout the school day in three out of five measured opportunities. (P-13)

This IEP included 120 minutes, five times per week, of social/emotional/behavioral services delivered by the counseling staff; 60 minutes, once per week, of social/emotional/behavioral services delivered by the clinician; 210 minutes, five times per week, of academics delivered by the special education teacher; one 30 minute OT session per week, delivered by the occupational therapist; and one 15 minute consultation each per week to be provided by the clinician and the occupational therapist. (P-13)

1. The IEP included Extended School Year (ESY) services, 390 minutes per day, four days per week, at Manville during the summer of 2016. Rand participated successfully in this program. (P-13; Mother, III: 96, 98)
2. According to Parent, Rand started the year off as a model student, but his behavior deteriorated as the school year progressed. Parent asserted that upon his return to school following winter break, Rand did his best to start the new calendar year in a better state of mind. This plan was unsuccessful, as Rand was having difficulty with bullying and self-regulation, causing the school to request that Parents pick him up from school early much more frequently than in the past, at times almost daily. (Mother, I: 126-27)
3. On February 8, 2017, Manville School convened an annual conference to update the Team on Rand’s progress and address Parents’ concerns. (P-12; Mother, I: 128) Parents requested an occupational therapy evaluation, hoping that OT would assist Rand in developing tools to help him self-regulate emotionally and physically. While he was reportedly making progress, he was still having trouble interacting with his peers. (P-12; Mother, I: 129-30)
4. The OT evaluation confirmed that Rand needed increased support to be able to regulate his body and understand when he needed to take a break. He continued to demonstrate difficulty when processing sensory information and showed reduced sensory seeking behavior as compared to peers his age. (S-8)
5. Between February and June of 2017, Rand’s behavioral issues escalated. He was accumulating unexcused absences due to anxiety and what Mother described as “issues arising from school.” (Mother, II: 8,[[8]](#footnote-9) III: 74) Parent testified that approximately five Team meetings occurred between April and June 2017, during which Parents expressed their belief that Manville was no longer the right placement for Rand. (Mother, II: 10)
6. Sharon convened a Team meeting on April 26, 2017 to develop a safety plan for Rand, since the occupational therapy was not helping him self-regulate. (P-12; Mother, I: 131)
7. Concerned about Rand’s apparent emotional and behavioral regression at Manville, Parents reached out to Ms. Stoll in April requesting that she observe him at school to develop an understanding of Rand’s emotional and social state during the school day. (Stoll, I: 61; Mother, I: 132-33) Parents explained to Ms. Stoll that while Rand had begun to want to learn again, they believed he might not be in the right environment. (Stoll, I: 61) Ms. Stoll arranged to do her observation of Rand in May 2017. (Mother, I: 133)
8. Ms. Stoll has completed multiple observations in both private and public educational settings, as well as some community settings and camps, as an educational consultant. She has been hired either by a school system or by parents to observe a student and consult to the Team regarding best practices and strategies and/or recommend additional services. (Stoll, I: 38-39)
9. Ms. Stoll conducted her observation of Rand over two days, for a total of one hour and forty minutes. On the first day, she observed Rand in science class and during an unstructured break time. On the second day, she observed him in English Language Arts. Each class included 5-6 peers and two staff. Ms. Stoll described Manville as a busy, active place. Staff and students were able to enter and exit classes based on behavior and need, and each room had a “calm place” where a student could take space. (P-10; Stoll, I: 42-43, 90) She noted that overall, Rand was fidgety, which was not unusual for him, and he was using a strategy she referred to as “object adaptation” for regulation. Although she did not know his behavior plan and therefore was not aware of what Manville was and was not able to provide for Rand, Ms. Stoll believed that staff working with him on both days was very skilled and appeared to know him well. (Stoll, I: 44-45, 48, 50)
10. On May 3, 2017, at 10:00 AM, Ms. Stoll observed Rand in his environmental science class. (P-10) She noted some movement during transition times, but described the lesson she observed as calm and organized, offering students a variety of learning opportunities. Students were regulated and participated in a mostly appropriate way. Rand did some pacing, but generally he was relatively calm and maintained a positive affect. His interactions with peers were fairly positive, and when “adolescent teasing” occurred, it was not necessarily directed at Rand, and he could ignore it. After the first day of observation, Ms. Stoll believed Rand was placed with an appropriate peer set. (Stoll, I: 45, 53, 61)
11. Also on May 3, 2017, Sharon convened Rand’s annual review meeting at 9:00 AM to discuss his IEP, placement, and transition services. (P-11, P-12) The Team was unable to complete the annual review on that date and scheduled a second meeting for May 23, 2017. (P-11)
12. In the meantime, Ms. Stoll completed her observation of Rand on May 22, 2017. (P-10; Stoll, I: 62) On this same day, prior to the observation, Rand was involved in an incident with several other students that upset him. (Mother, I: 133) This incident, which occurred before Ms. Stoll conducted her final observation, carried over into the rest of the day, and consequently, into the observation. Although they did not have the chance to speak before it began, staff informed her of the incident midway through her observation. (P-10; Stoll, I: 52) Ms. Stoll noticed that Rand was fidgeting and visibly agitated. He demonstrated an increasing level of anger toward staff and peers, and he looked around the room a lot. (Stoll, I: 45) Rand was escalating the negative feelings between himself and his peers by fidgeting with his pens in an annoying way. Other students were asking him to stop this behavior, based on how it was making them feel, while other students were escalating him. (P-10; Stoll, I: 45, 54) In the final moments of Ms. Stoll’s observation, she saw the other students say something to Rand, which triggered a physical outburst from him. It was not until later, that the staff informed Ms. Stoll that a student had made a subtle high-pitched ping on the computer. It was this subtle ping that made Rand react physically. Manville staff appeared to be using a particular behavioral strategy that included more visual than verbal prompting and frequent check-ins, but he was unable to access this strategy – and in fact pushed back against it – due to an increased level of anger. Even so, the staff’s attentiveness to Rand’s needs led Ms. Stoll to believe that they knew what his triggers were and how to best help him. (Stoll, I: 50-51, 55)
13. At hearing, Ms. Stoll testified that Rand is calmer in group settings at LS than he was in school. She recognized, however, that groups at LS are less intense and entail fewer demands than an academic setting. (I: 47)
14. Due to the events that occurred on May 22, 2017, Parents canceled the Team meeting set for May 23, 2017, and instead met with the Manville team to discuss their concerns about Rand’s incident from the previous day. (P-11; Mother, I: 134) Prior to the meeting, Manville administrators and the out-of-district liaison for the District explained the importance of the Team meeting process to discuss parental concerns, but Parents disagreed and chose not to include the Out-of-District Coordinator or Manville liaison at the meeting. (P-11; Mother, III: 82)

Ms. Stoll was present at this meeting to discuss her observation with the Team, although she had not yet finalized her report.[[9]](#footnote-10) (Mother, I: 134; Stoll, I: 91) She made a brief presentation. According to Ms. Stoll, the Team was focused on Rand’s academic needs, and addressing the incident that had occurred the previous day, which did not leave her much time to discuss her observation. (Stoll, I: 62, 91, 92) Accepting Parents’ decision and aware that the 2016-2017 IEP was due to expire on June 5, the Team offered several dates to finish the Annual Review: June 1, June 5, and June 6, 2017. (P-13) Parents rejected all of these dates and, after some delay, indicated that they were only available on June 19 or 20, 2017. The District agreed to reconvene at 12:00 PM on June 20, 2017. (P-11)

1. On May 31, 2017, while the Team was waiting to hear back from Parents as to their availability to attend a second Team meeting before the end of the school year, the District sent to Parents a proposed IEP dated May 3, 2017 to May 2, 2018, which reflected the Team’s discussion during the May 3, 2017 meeting and incorporated several edits. It included Sensory Motor, Social Emotional: Emotional Regulation, Executive Functioning, and Written Language goals, and proposed placement at Manville. The proposed IEP also recommended ESY through the Manville summer program to prevent social/emotional regression over the summer. Parents received the proposed IEP on or about June 3, 2017. (P-11)
2. Ms. Stoll finalized her observation report on June 1, 2017. In it, she explained that staff and students had “supported flexibility of classroom environments, both scheduled and non-scheduled.” She observed that although Rand’s classroom peers were consistently talkative and at times impulsive, the staff were consistent, calm, directive, and prepared. She noted that Rand was more comfortable, regulated, and responsive to teacher instructions, on the first day he was observed than on the second day. (P-10)

Overall, Ms. Stoll recommended that the environment be calm and quiet, and offer Rand opportunities, early on before he escalated, to take a break or be prompted to take a break with trusted staff. If Rand were not able to take a break and staff were aware of peers in the environment that might trigger him, an alternate approach would be to remove those peers. (Stoll, I: 57)

Specifically, Ms. Stoll recommended the following teaching practices and accommodations:

1. Reconsider Rand’s peer match, as he benefits from being placed with peers who are motivated to learn consistently, demonstrate motivation to connect positively with peers and staff both verbally and physically, and demonstrate a level of consistent impulse control and self- regulation.
2. Decrease group size for instruction, at least temporarily, to no more than four compatible students (including Rand) and two staff.
3. Consider updates or edits to Rand’s current behavior plan to ensure that it provides scheduled strategies for decreasing dysregulating stimulation throughout his school day, and incorporates positive reinforcers more frequently for compliance to staff directions and positive decision making.
4. Increase frequency of emotional check-in from/with staff across Rand’s school day, in a “safe” place.
5. Provide “jobs” for Rand that can be used as strategies to address escalating emotions or agitation by removing Rand from the classroom while allowing him to “save face” with peers.
6. When Rand demonstrates agitation that he cannot flexibly move past, decrease transitions. Prompt him to a calm, safe space with support before allowing him to move on to the next academic block/space with peers.
7. If Rand is unable to accept staff redirection and prompts to remove himself, consider moving the peer or peers around him that are likely to trigger escalating behavior to allow Rand time to decompress, and then possibly choose to leave the shared space himself.

Ms. Stoll did not make any recommendations regarding a change in placement. (P-10; Stoll, I: 56-57, 93)

1. On June 12, 2017, Parents provided the Team with Ms. Stoll’s report, asserting they wanted to discuss the recommendations and incorporate them into the 2017-2018 IEP. Recognizing that this was fewer than 10 days before the next Team meeting, Parents requested that the District schedule a third meeting before the end of the school year. (Mother, I: 135-36, II: 10) On June 19, 2020, Parents rejected the proposed IEP dated May 3, 2017 to May 2, 2018, in part because they believed it was unfinished, and because Rand’s cohort did not appear to change. Parents asserted that the Goals and Benchmarks were unilaterally created by the District, as they had not been able to provide sufficient input in just one Team meeting. (P-8, P-11; S-7; Mother, I: 134, 148, II: 10-11, III: 8, 27) Moreover, they disagreed with the proposed placement at Manville, which they asserted was predetermined. (Mother, I: 144-48)
2. The Team reconvened to finish Rand’s Annual Review on June 20, 2017, with a 90- minute time limit and a promise to reconvene in September, if necessary, to complete the agenda. (P-8, P-11; S-7; Mother, I: 136, II: 11-12) Parents expressed many concerns. Mother believed they were not presented with any data in connection with Rand’s IEP and/or progress at any of the Team meetings. (Mother, III: 26-27) Parents wanted to see more of a focus on executive functioning across all content areas. Further, they wanted further discussion of transition planning and more information about how social skills were incorporated throughout the day. (Mother, III: 9, 12-13) When Parents requested a social skills goal, Manville proposed an assessment by the speech and language pathologist. Parents indicated that they did not need an assessment because they had a lot of information already, including the LS report that spoke to social skills goals. (Mother, III: 13-14) Manville also proposed an assistive technology evaluation, but Parents did not believe this was necessary, as they already knew what would help him. (Mother, III: 10-11)

Parents also challenged the proposed ESY program for summer 2017. The District had proposed that Rand participate in the twenty-day Massachusetts Department of Elementary and Secondary Education-approved Manville Summer Program, but Parents expressed that Rand did not want to attend. (S-7, S-8)

Finally, Parents addressed their concerns about Rand’s placement at Manville. They did not believe the school had addressed his social skill needs. (P-8; S-7; Mother, III: 9) Parents expressed that Rand did not feel safe there, and that he did not want to continue to attend. (S-7; Mother, I: 136) Parents believed that if Rand remained at Manville for the following year, his aggressive behavior would continue such that he would become a danger. (Mother, I: 138) Manville, however, never expressed to Sharon or to Parents that it could not meet Rand’s needs, (Mother, III: 64; Murphy, III: 184-85)

1. Following this meeting, the Team proposed an IEP for the period from June 20, 2017 to June 5, 2018 [2017-2018 IEP] that included Sensory Motor; Social Emotional: Emotional Regulation; Executive Functioning; Written Language; Social Skills; and Mathematics goals to address his primary emotional and secondary health disabilities. (S-8) Sharon representatives signed this IEP on July 5, 2017. (P-8; S-8; Mother, III: 8, 27)

Rand’s Sensory Motor goal, a revised version of the previous Occupational Therapy goal, focused on improving his skills in the areas of sensory regulation, executive functioning, visual motor integration, musculoskeletal endurance, activities of daily living, and instrumental activities of daily living, to actively and functionally participate throughout the school day in four out of five measured opportunities. (P-8, P-13; S-7, S-8)

Rand’s Social Emotional: Emotional Regulation Goal was updated from the previous year. It anticipated that given an anxiety producing, overwhelming and/or frustrating situation, individual support plan, and staff assistance, Rand would use identified supports coping strategies to self-regulate in three out of five situations. (P-8; S-8) According to the District, the difference between this goal and the previous year’s goal is that Rand would no longer solely rely on an adult to tell him how to self-regulate. This new goal would promote independence, as Rand would start to rely on his own ability to access the self-regulation strategies he was being taught. (Murphy, III: 211)

Rand’s Executive Functioning goal emphasized that given executive functioning supports and staff support, Rand would increase his executive functioning skills as measured by his ability to plan and execute academic and functional tasks, complete multi-step assignments, and problem-solve changes in routine in three out of five opportunities. (P-8; S-8) This goal reflected an increase in Rand’s independence from the Executive Functioning goal in the 2016-2017 IEP. (P-8, P-13; S-8)

Similar to the previous goals, Rand’s Written Language goal was increased in difficulty from the previous IEP. The 2016-2017 IEP included a goal to write a multi-paragraph essay using organizational tools and assistive technology with 80% accuracy. (P-13) The 2017-2018 IEP called for Rand to use the same organization and assistance as before, but now he would be expected to cite to textual evidence in his essays three out of five times. (P-8; S-8)

The 2017-2018 IEP added a new Social Skills goal, which focused on promoting Rand’s ability, given classroom team support, to demonstrate conventional means of self-advocacy to express needs or gain clarification, as evidenced in improved social communication in the classroom in two out of five consecutive opportunities. (P-8; S-8)

A Mathematics goal was added to the proposed 2017-2018 IEP. (P-8, P-13; S-7, S-8) At the time of the Team meeting, Parents expressed concern about Rand’s math fluency and his calculation ability. Although Rand’s teacher commented on his confidence and success in the subject, the District added this goal. It anticipated that given direct multi-sensory instruction, frequent practice and review, sample problems and step by step math templates, reference sheets, visual, manipulatives, math word definitions, and a calculator, Rand will solve Numeric, Statistics and Probability, Geometry/Measurement, and Algebra problems, with faded support and an average of 85% accuracy. (P-8; S-7; Mother, III: 18).

This Service Delivery Grid provided for 120 minutes, five times per week, of social/emotional/behavior services delivered by the counseling staff; 45 minutes, at least once per week, of social/emotional/behavioral services delivered by the clinician; 210 minutes, five times per week, of academics delivered by the special education teacher; one 30 minute OT session per week, delivered by the occupational therapist; and one 15 minute consultation each per week to be provided by the clinician and the occupational therapist in connection with sensory motor and social/emotional services. (S-8)

Proposed accommodations included, among others, a highly structured, supportive classroom; clear, consistent expectations, schedule and routines; individualized behavior support plan with visual cues and prompts; scheduled movement breaks and opportunities to stand and/or move while completing academic work; frequent positive feedback and reinforcement; classroom-based incentive program; visual cueing and extended transition time; executive functioning strategies and tools; presentation of verbal directions visually and in a clear, sequential form; social skills feedback, support, and practice in the moment; therapeutic milieu; time away from classroom setting/stimuli, as needed; and individual therapy. (S-8)

1. Parents received the proposed 2017-2018 IEP on July 9, 2017. (P-8) They believed that it contained inadequate, remedial goals that were not sufficiently challenging. (Mother, I: 136-140) However, according to the District, the goals contained in the 2016-2017 IEP were based on adult intervention, and the goals proposed in the 2017-2018 IEP identified strategies that Rand could use to help him self-regulate. (Murphy, III: 207-13)
2. During the summer of 2017, Parents did not enroll Rand in the Manville Summer Program because they did not want him to be in the same peer group they believed was causing his social-emotional problems; they felt that if he were to go to Manville’s Summer Program, he would have been targeted by the same peers who had been causing trouble with Rand in school. (S-7; Mother, III: 28, 113) Additionally, Parents believed Learning Solution’s programming had more to offer than Manville’s Summer Program. (Mother, III: 100; Stoll, I: 79)
3. Although Mother testified that Parents stated at meetings that they would obtain private services and seek reimbursement, she could not recall a particular meeting where they communicated this to the Team, and she could not recall whether they had ever informed Sharon in writing of this intention. Parents enrolled Rand in Learning Solution’s Summer Program (LSSP) at their own expense. They felt justified in seeking reimbursement for the LSSP because of their belief that the 2017-2018 IEP, including the proposed summer program, was insufficient. (P-21; Stoll, I: 79; Mother, III: 99-100)
4. The LSSP was four hours daily for five weeks.[[10]](#footnote-11) (P-21) In this program, either clinicians or graduate students worked with each group of middle school or high school students, on a 1:4 level. Groups were comprised of peers who were compatible. (Stoll, I: 74) Ms. Stoll supervised the summer program, and at times provided direct services to Rand. (Stoll, I: 70-72) Students do not work on specific individual goals in the summer program. Instead, there are programmatic goals, which LS aims to reach by embedding social skills, social cognition and life skills across community settings. Essentially, Ms. Stoll believes her program encouraged independence by teaching participants how to structure their own time and engage in age-appropriate, skills-based activities. (Stoll, I: 75-77)

In fact, the central goal of LSSP is to increase clients’ functional independence. (Stoll, I: 78) The clinicians running the program collected daily data on each child’s level of functional independence. Ms. Stoll explained that if the clinicians believed a child was not being independent enough, then they would intervene to promote independence in that child. After the intervention to promote the independence, the clinician would take data on what kept the child from engaging in the desired behavior. (Stoll, I: 77-78) The clinicians sent daily progress notes home with students to give to their parents, and the program kept a copy for its records. (Stoll, I: 77) At the end of the summer, Learning Solutions provided a progress report to the parents describing, using percentages, how independent the child was or how much support the child needed across the summer activities. (Stoll, I: 78)

1. Rand began ninth grade in the fall of 2017 at Manville. At this time, Parents had not yet responded to the proposed 2017-2018 IEP.[[11]](#footnote-12) (P-8; S-8; Mother, III: 34, 36)
2. On September 8, 2017, Parents rejected the 2017-2018 IEP, including the proposed placement at Manville, and requested a Team meeting. (P-8; S-5, S-8; Mother, III: 29)
3. Parents enrolled Rand at LS for the 2017-2018 school year. They did not provide Sharon with prior notice that they would seek reimbursement for these services. (Mother, III: 99)
4. According to Mother, Parents met with Sharon’s Director of Student Services and Out-of-District Coordinator on September 8, 2017. (Mother, III: 29) Parents expressed concern that Rand was having difficulty socially because he remained in the same peer group from the previous year and continued to have negative interactions with them. As such, throughout the fall and winter of 2017, they sought a change in Rand’s placement. (Mother, III: 36) Sharon proposed several schools, which Parents stated they would investigate, and also agreed to add to the list any schools Parents might suggest. (Mother, III: 30-33, 80-91)
5. Rand continued to experience difficulties at Manville. (Mother, III: 35) According to Mother, Rand felt so unsafe at school that he was compelled to run away on or about November 6, 2017. (P-6; Mother, III: 36-37) She believes Rand’s refusal to go to school was amplified at this time because he knew Parents had rejected his placement at Manville. (Mother, III: 38) At this time, Rand’s OT services were implemented sporadically due to his absences and his relationship with his school clinician deteriorated. At hearing, Mother testified that she believed Rand was being isolated in the counseling office due to his behavior. Manville offered a family therapy session, which Parents declined. (Mother, III: 39, 40, 43-44)
6. On December 5, 2017, the District requested consent to conduct Academic Achievement, Occupational Therapy, Psychological, and Educational evaluations of Rand in order to address his current needs and to send updated information as part of the referral process. The District noted that it had offered to send referral packets to potential placements but had not received Parents’ consent, despite several attempts via email. (S-6; Mother, III: 79-80, 104, 107-09)
7. According to Parents, they worked to locate an appropriate placement for Rand during the fall of 2017. Although the commute was longer than other options, Parents ultimately chose LABBB, as they believed that it would provide him with social skills goals and instruction in an academically challenging environment. Moreover, because it was contained within a public high school, Rand would have more exposure to the “typical” student experience, which would prepare him to return to the public school system. (Mother, III: 40-41, 46)
8. Manville requested a meeting in December or January, but Parents indicated that they were overwhelmed and unavailable until after the holidays. Following multiple emails among Sharon, Manville, and Parents regarding scheduling to a meeting to discuss the proposed placement at LABBB, a Team meeting was scheduled for January 8, 2018. (Mother, III: 44-45) Parents failed to appear. According to Mother, Parents did not attend the January 8, 2018 Team meeting because they did not know about it until the day of. (Mother, III: 45) Parents did not notify the District they would not be attending until an hour before the scheduled meeting. (Murphy, III: 151, 195)

As they had made multiple attempts to meet at a time that would ensure Parents’ attendance, Sharon and Manville met briefly on January 11, 2017 despite Parents’ absence, to discuss some of their concerns regarding Parents’ issues with Rand’s school placement. At this point, Sharon maintained its willingness to send out referrals, but had not received Parents’ consent to do so. The same day, Sharon sent Parents an N-1 for a Team meeting reconvene, proposing four different dates and times. (S-5; Murphy, III: 197)
9. At some point thereafter, Parents gave the District their consent to have a referral packet sent to LABBB, and the District made the referral. During this time, Rand was not attending school, and Parents were not providing Manville or Sharon with any written explanation of his absences. (Mother, III: 41, 43-45, 77) Although teachers noted in Progress Reports that Rand’s absences were significantly impacting his progress, Parents informed Manville that he would not be returning, and he remained out of school until he was accepted to LABBB in mid-February, at which point he returned to Manville to say goodbye. (P-4; Mother, III: 75)
10. On January 11, 2018, Parents emailed Sharon’s Director of Student Services, Ms. Fisichella, regarding the 2017-2018 IEP, describing their emails as “a partial list of portions of the IEP that are: rejections by omissions, rejected, accepted and a list of corrections to the IEP” for Rand. Among other things, they rejected the omission of the following: extracurricular activities and daily communication between home and school; the ability for Rand to use his phone to contact Parents when he feels anxiety or trauma triggered; the ability for Rand to carry on his person a water bottle or thermos containing a drink other than water; auditory sensory services; assistive technology in the absence of an evaluation; an executive functional goal as it relates to organization and study skills; direct social skills instruction in the classroom setting by classroom teachers; any discussion of Ms. Stoll’s observation report; collection and presentation of data; and a provision preventing Rand from being transported with his sibling and permitting him to be transported to LS after school. Parents asked that the Team make the corrections they requested, and then send them the corrected IEP for signing. Parents did give Sharon permission to send out the uncorrected IEPs in the referral packets, provided, however, that the District included the contents of the email explaining the portions of the IEP Parents had accepted and rejected. (P-5; Mother, III: 47, 72)
11. LABBB is a small program located within Lexington High School. (Cronin, III: 135) Rand began at LABBB just before, or just after, February break, and remained there through the end of the 2018-2019 school year. (Mother, III: 45-46, 74; Cronin, III: 133)

At LABBB, Rand was placed in a classroom with approximately 11 other students, all of whom had autism spectrum disorder and/or social/emotional disabilities. He attended reading, math, science, and history classes, as well as groups focused on mindfulness, self-regulation, self-advocacy, and cognitive-behavioral strategies that were staffed by an occupational therapist, a counselor, and/or a speech and language pathologist. He also received both individual and group counseling and participated in community outings to increase independent living skills. (Cronin, III: 135, 141, 148)

1. Rand worked hard at LABBB, got along with his peers, did very well academically, and made significant social-emotional progress. (Cronin, III: 139-40, 60-61) He became an academic stand-out in biology, and at times he would assist the speech and language pathologist in modeling particular strategies for his classmates. (Cronin, III: 160-61) Rand completed ninth grade taking core academic classes with his peers at LABBB, but began integrating into general education classes in tenth grade. (Mother, III: 47; Cronin, III: 139)
2. Despite Rand’s global success at LABBB, it was difficult for the Team to discern which services to provide and which goals to work toward and track, as the status of previous IEPs was unclear.[[12]](#footnote-13) LABBB compensated for this by tracking data on a separate document, instead of recording it in the Progress Notes on the 2017-2018 IEP. (S-4; Cronin, III: 142-144; Murphy, III: 191-93) Ultimately, the LABBB team looked to the 2017-2018 IEP for guidance. LABBB staff believed that it made the most sense to do this despite being unsure which parts were accepted and rejected. (Cronin, III: 158)
3. Parents filed the instant *Hearing Request* on June 19, 2019. (P-3)
4. On June 28, 2019, Jessica Murphy, Sharon’s soon-to-be Director of Student Services, reached out to Parents to introduce herself and discuss Rand with them. (S-2; Murphy, III: 174) She described Rand’s file as disjointed, between changes in placement, partially accepted IEPS entailing long rejections, and multiple rescheduled meetings. (Murphy, IIII: 176-77) She had to speak with several members of Sharon’s administration to get a clear sense of Rand’s history with the District, and was unable to discern which document comprised the last fully accepted IEP. (Murphy, III: 172-82) Ms. Murphy was aware of the *Hearing Request* at this time. (S-2; Murphy, III: 173-74)
5. On July 12, 2019 Parents met with Ms. Murphy for well over an hour. (S-4; Murphy III: 175) The parties discussed the 2017-2018 IEP and whether the District would approve reimbursement for the LSSP Rand attended in 2017 and 2019, as well as the LS programs he attended during the 2017-2018 school year. As a show of good faith, Ms. Murphy approved Parents’ request to pay for the 2019 LSSP and stated that she would consider the other requests once she received proof of payment, the dates, and information about the program. (Murphy, III: 175-76)
6. On July 15, 2019, Ms. Murphy emailed Parents to ask when she could expect to receive documents regarding their request for reimbursement for the LS programs Rand had attended. She sent a follow-up email on July 18, 2019, as she had not received a response. (S-2)
7. On July 23, 2019, Parents emailed Ms. Murphy, stating that they were working on the materials and she would receive them as soon as they were ready. (S-2)
8. On July 24, 2019, Ms. Murphy sent a further email requesting that Parents respond to the most recently proposed IEP, and reminded them about the outstanding paperwork. She emailed them again on August 1, 2019 to follow up on both issues. As she still had not received a response, on August 8, 2019, Ms. Murphy emailed Parents to request a meeting. (S-2)
9. On September 17, 2017, Parents emailed Ms. Murphy. They explained that they were having difficulty locating LS invoices but hoped to drop everything off within the next few days. (S-2)
10. M.s Murphy followed up again by email on October 2 and November 20, 2019, as she still had not received the requested invoices. On November 22, 2019, Parent responded that she had not finished copying the invoices, as she was overwhelmed with her children. (S-2)
11. On January 27, 2020, Sharon’s attorney notified the Hearing Officer, with a copy to Parents, that Parents had yet to send the District the invoices. (S-1)
12. A conference call between the parties took place on February 5, 2020, during which Parent indicated she would provide the District with the requested documentation no later than February 7, 2020. (S-1)
13. On February 11, 2020, Sharon, through Counsel with a copy to Parents, informed the Hearing Officer that Parents had not submitted the requested documentation. (S-1)
14. Parents did not send the information requested by Ms. Murphy until the middle of May 2020, two weeks before the hearing started. (Murphy, III: 175)

**DISCUSSION**

To determine whether Parents are entitled to a decision in their favor, I must consider relevant substantive and procedural legal standards governing special education. As the moving party in this matter, Parents bear the burden of proof.[[13]](#footnote-14) To prevail, they must establish by a preponderance of the evidence that the IEP proposed by the District for the period from June 20, 2017 to June 5, 2018 was not reasonably calculated to provide Rand with a FAPE; and/or that Sharon committed a procedural violation, in failing to properly consider an independent observation report, that amounted to a violation of Rand’s right to a FAPE.[[14]](#footnote-15)

1. Parents Are Not Entitled to Reimbursement for Learning Solutions Programs During the Summer of 2017 or During the 2017-2018 School Year

Parents privately placed Rand in LS programs for the summer of 2017 and during the 2017-

2018 school year because they believed the 2017-2018 IEP, including Manville’s Summer Program, was not sufficient to address his needs. These programs are essentially unilateral placements. Leaving aside the question whether Parents properly notified the District that they would be unilaterally placing Rand in these LS programs and seeking reimbursement, I describe the framework for this analysis below.

1. *Legal Standard for Unilateral Placement*

Under the Individuals with Disabilities Education Act (IDEA), a parent may be entitled to reimbursement for unilaterally placing a student in private school – or in this case, a private program – without the District’s consent or referral.[[15]](#footnote-16) Section 1412 provides that a Hearing Officer may order reimbursement for the cost of that placement if she finds that a District had not made a FAPE available to the child in a timely manner prior to the parent’s unilateral placement.[[16]](#footnote-17) Hearing Officers and courts have interpreted section 1412 to allow reimbursement for a unilateral placement when 1) the school district had not made a free appropriate public education available to the student prior to that enrollment, and 2) the private school placement, or program, was appropriate.[[17]](#footnote-18) The Parents bear the burden of proving that the school district’s proposed IEP did not provide a FAPE.[[18]](#footnote-19)

 As such, in order to obtain reimbursement for Rand’s participation in the 2017

LSSP and/or LS programs during the 2017-2018 school year, Parents must first establish that the 2017-2018 IEP was not reasonably calculated to provide Rand with a FAPE.

1. *Legal Standard for a 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].”[[19]](#footnote-20) 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.[[20]](#footnote-21) 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.”[[21]](#footnote-22) “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.”[[22]](#footnote-23) 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.”[[23]](#footnote-24)

Similarly, Massachusetts FAPE standards require that an IEP be “reasonably calculated to confer a meaningful educational benefit in light of the child’s circumstances,”[[24]](#footnote-25) and designed to permit the student to make “effective progress.”[[25]](#footnote-26) 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.’”[[26]](#footnote-27)

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.”[[27]](#footnote-28) For most children, a FAPE “will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade.”[[28]](#footnote-29) 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.”[[29]](#footnote-30)

1. *Parents Failed to Prove that the 2017-2018 IEP Was Not Reasonably Calculated to Provide Rand with a FAPE, and are Therefore Not Entitled to Reimbursement*

As explained above, entitlement to reimbursement for their placement of Rand in LS programs during the summer of 2017 and the 2017-2018 school year requires Parents to establish that the 2017-2018 IEP was not reasonably calculated to provide Rand with a FAPE.[[30]](#footnote-31)

Parents challenge the 2017-2018 IEP on several fronts, asserting primarily that Rand’s goals were not sufficiently ambitious, and that the IEP should have included provisions for participation in extracurricular activities and transportation, daily communication between home and school, and additional data collection and distribution. They expressed concern about Rand’s placement at Manville, particularly in connection with his peer group.

At the time the 2017-2018 IEP was developed, Rand was experiencing difficulty at Manville. Although he was due for a three-year reevaluation in the spring of 2016, Parents had declined most of the testing. In June 2017, the Team was working with education assessments performed in the spring of 2016, an OT evaluation performed in 2017, and Team members’ formal and informal observations and data regarding Rand’s progress. In response to some of Parents’ requests for additional accommodations, Sharon proposed updated speech and language and assistive technology evaluations. Parents did not consent to either.

The evidence before me, including Mother’s testimony, demonstrates frequent communication from Sharon and/or Manville to Parents, with some lapses in reciprocal communication in the other direction. Parents did not prove that participation in extracurricular activities and transportation to LS, or transportation provisions regarding Rand’s siblings, were necessary for him to receive a FAPE, nor did they establish that many of the other omissions they contested were required for Rand to receive a FAPE.

I turn now to Parents’ contentions that the goals in Rand’s 2017-2018 IEP were not sufficiently challenging, and that the IEP did not provide for adequate data collection regarding his progress.

Other than Ms. Stoll’s observation report, Parents did not submit into evidence any contemporaneous evaluations from which I could assess Rand’s cognitive or social functioning at the time the 2017-2018 IEP was developed. As such, I have to rely on other sources, including testimony, progress reports, and IEPs. Although Rand’s absences from school appear to have impacted his progress, the IEP proposed for the 2017-2018 school year sets forth goals that demonstrate growth from the previous year, with a primary focus on increasing Rand’s ability to independently manage his emotions. A social skills goal was added, focused on self-advocacy; a new math goal and an updated written language goal reflecting more demanding benchmarks and objectives were included. Although some other goals may appear to have lower benchmarks, a concern Mother expressed in testimony, the objectives incorporate increased levels of difficulty, particularly in Rand’s social emotional and executive functioning goals. Sharon’s Director of Student Services, Jessica Murphy, emphasized that the lower benchmarks in Rand’s new goals in the 2017-2018 IEP reflected that he was essentially learning new skills, and his teachers and clinicians had to track his progress appropriately to determine whether he was achieving them.

Given the information before me, I cannot conclude that Parents have met their burden to prove that the 2017-2018 IEP was not reasonably calculated to provide Rand with a FAPE. As such, I do not reach the issue of reimbursement.

1. Parents Failed to Prove that the District Committed a Procedural Error Amounting to a Deprivation of FAPE, as they Failed to Prove that the District Did Not Consider Ms. Stoll’s Observation Report

For Parents to prevail on this claim, they must establish, first, that Sharon committed a procedural error. Whether a procedural error occurred in this case turns on two questions: (1) whether an observation report triggers procedural provisions that apply to Independent Educational Evaluations (IEEs); and (2) the meaning of “consider” in this context. As Parents did not request public funding for an IEE, and instead seek reimbursement solely as a remedy for an alleged procedural violation, this case does not involve broader issues of public funding of IEEs.

* 1. *Procedural Protections for Children with Disabilities*

The procedural protections embedded in IDEA serve a dual purpose; they ensure that each eligible child receives a FAPE, and they provide for meaningful parental participation.[[31]](#footnote-32) 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.”[[32]](#footnote-33)

* 1. *Legal Standards Governing Independent Educational Evaluations*

In *Schaffer v. Weast*, a case involving public funding for IEEs, the United States Supreme Court emphasized their importance, stating that IEEs give “parents access to an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion. They are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition.”[[33]](#footnote-34) Regardless of the source of funding, an IEE provides parents with access to information about their child they might not otherwise have. Moreover, whether a school district or a parent has paid for an IEE, the District “must take into consideration the results of a properly performed IEE in deciding how to improve upon the student’s” IEP.[[34]](#footnote-35)

 Although there is a well-developed body of law regarding public funding and timing of IEEs, courts and legislatures have provided less guidance regarding what constitutes an IEE. In this case, I must determine whether Ms. Stoll’s observation report was, in fact, an IEE such that the District was required to timely consider it.

1. It is not entirely clear whether Ms. Stoll’s observation report constituted an IEE.

In the instant case, Sharon asserts that there is no obligation under state or federal special education laws for a Team to convene to consider an observation report.

The IDEA does not define the term “evaluation,” but pursuant to its implementing regulation, “[e]valuation means procedures used in accordance with [34] CFR §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.”[[35]](#footnote-36) Moreover, federal regulations define an IEE as “an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.”[[36]](#footnote-37)

Massachusetts law does not address this question, except to require that publicly funded independent education evaluations shall be conducted by “qualified persons who are registered, certified, licensed or otherwise approved and who abide by the rates set by the state agency responsible for setting such rates,” except in unique circumstances.[[37]](#footnote-38)

As neither federal nor state law regarding IEEs explicitly includes or excludes observations, I look to more specific guidance. In 2009, Massachusetts amended G. L. c. 71B, §3, by enacting the “observation law.” This law provided school districts with guidance regarding how to respond to observation requests, with the goal of removing unnecessary obstacles and simplifying the process for parents. Among other things, the law uses the term “parent-designated independent evaluators and educational consultants” to identify individuals a parent may designate to observe the child and the child’s program on her behalf. In an advisory issued shortly thereafter, the Massachusetts Department of Elementary and Secondary Education interpreted the term “independent evaluators” to refer to “those individuals who conduct independent evaluations as provided under federal and state special education laws,”[[38]](#footnote-39) and “educational consultants” to refer to “individuals who advise parents on the child’s needs and program options and, typically, review the child’s educational records.”[[39]](#footnote-40) In a footnote, the advisory further distinguishes between the two, noting that individuals conducting publicly funded IEEs must be “registered, certified, licensed or otherwise approved,” whereas “educational consultants who conduct program observations may or may not be registered, certified, licensed or otherwise approved by a responsible entity.”[[40]](#footnote-41) In contrast to regulations regarding IEEs in general, the observation law is silent as to any obligations on the part of a school district to consider an observation report that has been presented.

It appears that Ms. Stoll acted as an educational consultant, rather than an independent evaluator, in these specific circumstances. As such, it is doubtful that her report would, by itself, constitute an IEE triggering Sharon’s responsibility to convene a Team meeting. The purpose of the observation law, however, is “to ensure that parents can participate fully and effectively in determining the child’s appropriate educational program.”[[41]](#footnote-42) Requiring a school district to timely consider any report arising out of an observation would effectuate this purpose.

1. Sharon timely considered Ms. Stoll’s observation report.

The IDEA does not specify “the role the findings of an IEE should play in terms of a school’s ongoing duty to provide a free and appropriate education.”[[42]](#footnote-43) Pursuant to its implementing regulations, if a parent “shares with the public agency an evaluation obtained at private expense, the results of the evaluation – (1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child.”[[43]](#footnote-44) Massachusetts regulations are more specific, requiring that within ten school days of receiving an independent education evaluation report, the IEP Team must reconvene and consider the evaluation and whether a new or amended IEP is appropriate.[[44]](#footnote-45) Nevertheless, a “school district is not obliged to accept or implement the findings of an independent expert. An IEE need only be ‘considered’ by the school district to decide what services are necessary and consistent with its overarching obligation to provide” a FAPE.[[45]](#footnote-46)

Parents allege that Sharon committed a procedural violation during the June 20, 2017 IEP Team Meeting by not properly considering the IEE conducted by Ms. Stoll. Specifically, Parents assert that the Team did not spend sufficient time on Ms. Stoll’s report, and that it did not fully

consider or implement any of Ms. Stoll’s recommendations based on her observations of Rand at Manville.

 Contrary to their assertions, the evidence shows that although no separate meeting was scheduled to discuss Ms. Stoll’s observation report after it was provided to the Team on June 12, 2020, Ms. Stoll had ample opportunity to provide her input. She attended a meeting that occurred on May 23, 2020, the day after her observation, and presented her written report at the meeting that occurred on June 20, 2017. Furthermore, though no summary of Ms. Stoll’s report appears in the IEP generated after the June 20, 2017 meeting, the accommodations proposed for Rand in the 2017-2018 IEP align, for the most part, with those Ms. Stoll suggested. That the Team declined to adopt all of her recommendations does not mean that its members did not consider her report.

 As such, because I find that Sharon timely considered Ms. Stoll’s observation report, I need not determine whether the report is, in fact, an IEE. Parents failed to prove that Sharon committed a procedural error in connection with this report, much less one that deprived Rand of a FAPE and entitled them to reimbursement and/or a second, publicly funded observation by Ms. Stoll on these grounds.

CONCLUSION

After reviewing the testimony and documents in the record, I conclude that Parents failed to prove that the 2017-2018 IEP was not reasonably calculated to provide Rand with a FAPE, or that Sharon Public Schools committed a procedural error in connection with an observation report provided to the District on June 12, 2020. As such, they are not entitled to reimbursement for the summer 2017 LSSP, LS services they obtained for Rand privately during the 2017-2018 school year, or the observation and report provided by Ms. Stoll.

**ORDER**

 *So ordered.*

By the Hearing Officer:[[46]](#footnote-47)

 /s/

Amy M. Reichbach

Dated: September 7, 2020

1. “Rand” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public. [↑](#footnote-ref-2)
2. Parents requested that the Hearing occur via WebEx rather than Zoom due to privacy concerns. They also requested a recording of the Hearing in addition to a written transcript. I explained that the court reporter could produce a recording if we proceeded via Zoom, but I could not guarantee the same if we proceeded via WebEx. Parents chose WebEx. [↑](#footnote-ref-3)
3. One page of Parents’ Exhibit 8 was excluded, as it had not been produced to the District. Parents’ Exhibit 21 was accepted partially. The District objected to Parents’ Exhibit 22, and it was excluded. [↑](#footnote-ref-4)
4. All parties and witnesses agreed to participate virtually and be recorded. (Parent, Cronin, Sexon, St. Florian, Stoll, I: 115) [↑](#footnote-ref-5)
5. An Annual Conference Report prepared by Manville staff on February 8, 2017 references a neuropsychological evaluation. Sharon’s documentation refers to standardized testing performed by the District in June 2012. (P-12; S-8) [↑](#footnote-ref-6)
6. It is not clear who performed this evaluation. [↑](#footnote-ref-7)
7. Based on the evidence before me, it is unclear whether Parents fully accepted, or partially accepted, this IEP and placement. Both signature pages were left blank in the evidence provided by Parents. The District did not include the 2016-2017 IEP in its evidence binder. Rand’s mother referred to this as his stay-put IEP, though she described it as almost fully accepted. The District’s witnesses were unable to provide clarity. [↑](#footnote-ref-8)
8. On day two of the hearing, Mother was unable to speak due to illness. By agreement of the parties, she typed her testimony into the WebEx Chat box, and BSEA Summer Legal Intern Alison Sexson read it into the record. (Tr. II: 4-6) This statement applies to all citations to Volume II of the transcript. [↑](#footnote-ref-9)
9. Ms. Stoll’s name was not recorded on the Attendance Sheet for that day’s meeting, but both she and Mother testified to her attendance. It is not clear whether she participated in person or by telephone. (S-7; Stoll, I: 103-04; Mother, III: 88) [↑](#footnote-ref-10)
10. Although Ms. Stoll testified that the summer program was five hours per day, the invoices submitted by Parents suggest that the program ran from 9:30 AM to 1:30 PM. (P-21; Stoll, I: 74) [↑](#footnote-ref-11)
11. Mother testified that Parents rejected this IEP on July 5, 2017 and requested a meeting in September to discuss placement, but there is no evidence of this. (Mother, III: 29) [↑](#footnote-ref-12)
12. Mother testified that the 2016-2017 IEP was Rand’s stay-put, as it was his last accepted IEP, but it does not appear to have been fully accepted. (Mother, IIII: 24-26, 70, 73) At another point, however, she referred to it as an “almost fully accepted” IEP. (Mother, III: 112) [↑](#footnote-ref-13)
13. See *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). [↑](#footnote-ref-14)
14. 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.”) [↑](#footnote-ref-15)
15. 20 U.S.C. §1412(a)(10)(C)(ii). [↑](#footnote-ref-16)
16. See *id.* [↑](#footnote-ref-17)
17. See 20 U.S.C. §1412(a)(10)(C)(ii); *Sch. Comm. of Burlington v. Dept. of Educ.,* 471 U.S. 359, 369 (1985); *Schoenfeld v. Parkway Sch. Dist.,* 138 F.3d 379, 382 (8th Cir. 1998) (“Reimbursement for private education costs is appropriate only when public school placement under an individual education plan (IEP) violates IDEA because a child's needs are not met”); *In re: Medfield Public Schools*, 13 MSER 365, 371 (Crane 2007). [↑](#footnote-ref-18)
18. See *Schaeffer,* 546 U.S. at 62 (holding that the burden of proof in an administrative hearing challenging an IEP falls on the party seeking relief). [↑](#footnote-ref-19)
19. 20 U.S.C. §1400 (d)(1)(A). [↑](#footnote-ref-20)
20. *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). [↑](#footnote-ref-21)
21. 137 S. Ct. at 994 (internal quotation marks omitted), citing 20 U.S.C. §§1414(d)(1)(A)(i)(I)-(III). [↑](#footnote-ref-22)
22. *Endrew F.,* 137 S. Ct. at 999. [↑](#footnote-ref-23)
23. *Id*. at 1000. [↑](#footnote-ref-24)
24. *C.D. v. Natick* *Pub. Sch. Dist.*, 924 F.3d 621, 624-25 (1st Cir. 2019) (cert denied). [↑](#footnote-ref-25)
25. 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”). [↑](#footnote-ref-26)
26. *Roland M.,* 910 F.2d at 992 (internal quotations and citations omitted). [↑](#footnote-ref-27)
27. *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). [↑](#footnote-ref-28)
28. *Endrew F.,* 137 S. Ct. at 1000. [↑](#footnote-ref-29)
29. *C.D.*, 924 F.3d at 631 (quoting *Roland M.*, 920 F.2d at 993). [↑](#footnote-ref-30)
30. See 20 U.S.C. §1412(a)(10)(C)(ii); *Burlington,* 471 U.S. at 369 (1985); *Schoenfeld,* 138 F.3d at 382. [↑](#footnote-ref-31)
31. 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). [↑](#footnote-ref-32)
32. 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); see *Roland M.*, 910 F.2d at 994. [↑](#footnote-ref-33)
33. *Schaffer*, 546 U.S. at 60-61. See 34 CFR 300.502(e) (limiting the conditions that a school district may impose upon a parent’s independent education evaluation obtained at public expense). [↑](#footnote-ref-34)
34. *D.S. ex rel. M.S. v. Trumbull Bd. of Educ.,* 357 F. Supp. 3d 166, 172 (D. Conn. 2019). [↑](#footnote-ref-35)
35. 34 CFR 300.15; see *Trumbull*, 357 F. Supp. 3d at 171. [↑](#footnote-ref-36)
36. 34 CFR 300.502(a)(3)(i). [↑](#footnote-ref-37)
37. 603 CMR 28.04(5)(a). [↑](#footnote-ref-38)
38. See 30 CFR §300.502; 603 CMR §28.04(5). [↑](#footnote-ref-39)
39. *Massachusetts Department of Education Technical Assistance Advisory SPED 2009-2: Observation of Education Programs by Parents and Their Designees for Evaluation Purposes* (January 8, 2009). [↑](#footnote-ref-40)
40. *Id*. [↑](#footnote-ref-41)
41. *Id*. [↑](#footnote-ref-42)
42. *Trumbull*, 357 F. Supp. 3d at 171. [↑](#footnote-ref-43)
43. *G.J. v. Muscogee Cnty. Sch. Dist.*, 668 F.3d 1258, 1266 (11th Cir. 2012); 34 CFR 300.502(c); see *Trumbull*, 357 F. Supp. 3d at 172. [↑](#footnote-ref-44)
44. 603 CMR 28.04(5)(f). [↑](#footnote-ref-45)
45. *Trumbull*, 357 F. Supp. 3d at 172 (internal citations omitted). [↑](#footnote-ref-46)
46. The Hearing Officer gratefully acknowledges the diligent assistance of legal intern Alison Sexson in the preparation of this decision. [↑](#footnote-ref-47)