

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

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

BSEA #2004002

**DECISION**

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

A hearing was held remotely over Zoom on June 15, 16, 18, 22, 24, 29, and 30 and July 1 and 14 before Hearing Officer Amy Reichbach. Those present for all or part of the proceedings, all of whom agreed to participate virtually, were:

Mother	
Father	
Lori Anselmo	School Psychologist, Nashoba Regional School District (NRSD)
Katie Blue	Former Social Work Intern, Walker Day School
Kelsie (Bromberg) Bossardet	School Adjustment Counselor, Early Rise, NRSD
Bethany Bressette	School Psychologist, NRSD
Thrassos Calligas	Student's Psychiatrist
Dr. Kathryn Connolly	Private Neuropsychologist
Joan DeAngelis	Director of Pupil Personnel, NRSD
Patricia Donohue	Teacher Coordinator, Three Rivers
Nichole Farrington	Former Family Intervention Specialist, Youth Villages
Theresa Garvin	Student's Private Therapist
Laurie Gobeil	Director of Child Youth and Family Services for the Northeast Area, Massachusetts Department of Mental Health (DMH)
Tanya Holstein	Service Authorization Specialist, DMH
Lauren Ide	Residential Education Clinician and Clinical Supervisor, Walker Day School
Andrea Messier	Clinician, Three Rivers
Katie Zayka Moura	Special Education Teacher, Early Rise, NRSD
Ross Mulkerin	Principal, Center School, NRSD
Anne Neylon	Team Chair, NRSD
Allison (Webster) Padden	Board Certified Behavior Analyst, NRSD
Monica Simmons	Educational Coordinator, Walker School

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

Lauren Smith	Former Clinical Educator, Franciscan Children’s Hospital Unit 1
Kim Terwilliger	School Counselor, NRSD
Suzanne Zaroni	Supervisor for Children, Youth, and Families, DMH
Alisia St. Florian, Esq.	Attorney for NRSD
Carla Leone, Esq.	Attorney for Parents
Laura Leone	Paralegal for Parents
Jeffrey Morgan, Esq.	Attorney for DMH
Daniel Morse, Esq.	Attorney for DMH
Debra Quinn, Esq.	Attorney for Three Rivers
Alison Sexson	Legal Intern, Bureau of Special Education Appeals
Alexander Loos	Court Reporter
Jane Williamson	Court Reporter

The official record of the hearing consists of documents submitted by the Parents and marked as Exhibits P-1 to P-205; documents submitted by Nashoba Regional School District and marked as Exhibits S-1 to S-67; documents submitted by the Department of Mental Health and marked as Exhibits D-1 to D-6; approximately nine days of recorded oral testimony and argument; and a nine-volume transcript produced by court reporters.<sup>2</sup> At the request of the parties the case was continued to August 14, 2020 and the record held open for submission of closing arguments. The parties’ closing arguments were received and the record closed on that date.

## INTRODUCTION

On October 18, 2019, Parents filed a *Hearing Request* against Nashoba Regional School District (NRSD, or the District) alleging that then-eight-year old Preston, who presents with Specific Learning Disabilities in Reading and Writing, Executive Dysfunction, Dysgraphia, Reactive Attachment Disorder, and Disruptive Mood Dysregulation Disorder, with a rule out of Anxiety Disorder, requires a residential therapeutic educational placement. They asserted that the intensive supports and services provided to Preston, including at a Community Based Acute Treatment (CBAT) program and an extended evaluation at the Walker School, were not sufficient to enable him to cope and handle his emotions such that he could progress in his education and instead, resulted in his hospitalization during the spring of 2019 at Franciscan Children’s Hospital, and subsequent placement at Three Rivers, a Department of Mental Health (DMH)-funded Clinically Intensive Residential Treatment Program (CIRT). The most recent Individualized Education Program (IEP) proposed for Preston, for the period from May 22, 2019 to May 21, 2020, placed him in NRSD’s in-district Early Rise Program.<sup>3</sup> Parents requested that the BSEA order NRSD to place Preston in a full year residential therapeutic school designed for children with co-existing psychiatric, emotional, and learning disabilities, and order the District to compensate for past failures to provide Preston with a free, appropriate public education (FAPE), through both substantive and procedural violations, in the form of reimbursement for

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<sup>2</sup> Several exhibits were marked for identification but not admitted into evidence.

<sup>3</sup> This program was referred to as both “Early Rise” and “Early Risers” throughout the course of the Hearing. As such, I use the two terms interchangeably.

costs associated with private therapy, hospitalization, psychiatrist and psychologist fees, evaluations, / or prospective placement in and transportation to a full year therapeutic residential program.<sup>4</sup>

The Hearing was scheduled for November 21, 2019. On October 23, 2019, NRSD requested postponement of the Hearing. The following day, the District filed its *Response*, arguing that Preston does not require a residential placement in order to receive a FAPE, and that the District's ongoing proposal for the Early Rise Program is reasonably calculated to meet his educational and social/emotional needs in the least restrictive environment. To the extent Preston may require a residential placement, NRSD asserted, this is due to familial issues that are separate from the District's obligation to provide him with a FAPE.

During a Conference Call that took place on November 5, 2019, the parties jointly requested a two-month postponement to permit them to work together toward resolution and file a motion to join DMH. The Hearing was scheduled for January 27, 29, and 30, 2020, with a Pre-Hearing Conference to take place December 12, 2019.

On November 6, 2019, the District filed a *Motion to Join the Department of Mental Health*, contending that Parents are seeking residential placement which, if needed, may be for non-educational reasons. Furthermore, DMH had found Preston eligible for its services and is actively involved with Preston and his family, up to and including the agency's funding of Preston's placement at Three Rivers. Although DMH initially opposed joinder, on November 20, 2019, the agency withdrew its *Opposition*.

During the Pre-Hearing Conference on December 12, 2019, Counsel for NRSD mentioned that she might request Local Educational Agency (LEA) assignment from the Massachusetts Department of Elementary and Secondary Education (DESE), as Father resides in a different town (and school district) from Mother, who resides within the boundaries of NRSD. On December 13, 2019, I issued an Order joining DMH, and scheduled a further Conference Call for December 18, 2019. On December 19, 2019, after that call, two more dates were added to the hearing: February 3 and 6, 2020.

On January 7, 2020, Parents filed a *Motion to Compel* regarding outstanding discovery requests to NRSD; they modified this *Motion* on January 14, 2020. On January 16, 2020 I received Notice of LEA assignment from NRSD, indicating that DESE had assigned Berlin-Boylston Regional School District (BBRSD) joint fiscal and programmatic responsibility for Preston. Counsel for NRSD also flagged a potential conflict of interest. I *sua sponte* joined BBRSD to the matter, as Counsel for NRSD also represented BBRSD, and as such could not move for joinder. We discussed both of these issues during a Conference Call on January 17, 2020. On January 21, 2020, I received a Notice of Conflict from Counsel who represented both districts, along with a postponement request noting that new counsel for NRSD and BBRSD would require time to familiarize themselves with the matter. When replacement Counsel for each school district filed a Notice of Appearance, they also requested postponement. Parents objected strenuously, arguing that NRSD had long been aware of father's residence and had mailed information to him at his address prior to the filing of the *Hearing Request*, Counsel for

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<sup>4</sup> Parents also requested money damages, attorney's fees and costs, and expert witness fees.

the District was aware of the potential conflict of interest at the time of the Pre-Hearing Conference, and NRSD had not informed DESE of the pending BSEA matter at the time it requested LEA assignment. As such, Parents argued, NRSD had not acted in good faith and the Districts' joint postponement request should be denied. Following a Conference Call on January 29, 2020, Parents agreed to the continuance and the Hearing was scheduled for May 11-14, 2020, with a further Conference Call on April 13, 2020.

BBRSD appealed DESE's assignment of joint responsibility on or about February 14, 2020, and on March 11, 2020, DESE reversed its earlier decision, assigning sole responsibility to NRSD. On March 19, 2020, replacement counsel for NRSD withdrew, and initial counsel filed a Notice of Appearance. Replacement counsel for BBRSD did the same shortly thereafter. On April 6, BBRSD filed a *Motion to Dismiss* itself from the matter, and on April 7, 2020, I allowed that *Motion*.

On or about April 13, 2020, NRSD requested, and the BSEA issued shortly thereafter, a subpoena *duces tecum* for a number of documents concerning Preston to the Keeper of Records at Three Rivers, a program of Cutchins Programs for Children and Families, where Preston had been placed in June of 2019 and where he remained at the time the Hearing commenced. Three Rivers filed a *Motion to Vacate and/or Quash Subpoenas* and its *Motion to Modify and Limit Subpoena Duces Tecum* on May 1, 2020. The same day, Parents filed a letter in support of these motions and NRSD filed an *Opposition to Three Rivers' Motions*. Three Rivers filed two Affidavits in support of its motions on May 4, 2020. In the meantime, on May 1, 2020, NRSD filed its second *Motion to Postpone* the Hearing scheduled to begin May 11, 2020 (*Second Motion*). On May 2, 2020, Parents filed their *Opposition to NRSD's Second Motion*. I heard arguments on all of these issues telephonically on May 1, 2020. On May 8, 2020 I issued a *Ruling* allowing Three Rivers *Motion to Vacate and/or Quash Subpoenas*; allowing in part and denying in part its *Motion to Modify and Limit Subpoena Duces Tecum*; and allowing NRSD's *Second Motion to Postpone*. I established processes under which information would be shared confidentially and I would conduct an *in camera* review of some of the information submitted by Three Rivers before releasing it to the District. The Hearing was scheduled for June 15, 16, 18, and 22, 2020.

The parties soon recognized that additional dates would be necessary, and the Hearing was ultimately scheduled for, and took place on June 15, 16, 18, 22, 24, 29 and 30, and July 1 and 14, 2020.<sup>5</sup>

The issues for hearing were delineated as follows:

1. Whether the IEP proposed for Preston for the period from April 28, 2020 to April 27, 2021,<sup>6</sup> which was modified mid-hearing to provide placement in a therapeutic

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<sup>5</sup> The District filed a mid-hearing *Motion to Postpone* over the weekend June 27, 2020. Parents and the Department of Mental Health (DMH) both filed strenuous oppositions to the *Motion*, which I denied on June 30, 2020.

<sup>6</sup> On June 1, 2020, Parents filed an assented-to *Motion to Amend* their *Hearing Request* to add claims related to the Individualized Education Program (IEP) proposed on April 28, 2020.

- residential program,<sup>7</sup> is reasonably calculated to provide him with a free appropriate public education (FAPE);
- a. If I find that it is not, are Parents entitled to compensatory services from the period of time from April 28, 2020 to the present date, and/or modification of the IEP?
2. Whether the IEPs proposed for Preston for the period from March 7, 2018 to March 6, 2019 and the period from March 13, 2019 to March 12, 2020, and the amendments thereto, were reasonably calculated to provide Preston with a FAPE;
- a. If I find that the answer to either of those questions is no, whether Parents are entitled to compensatory services for past failure to provide FAPE, in the form of reimbursement for costs associated with private therapies, hospitalization, psychiatric/psychological fees, evaluations, etc. and/or prospective placement in and transportation to a full year therapeutic residential program.
3. Whether NRSD has committed procedural violations that amount to a deprivation of a FAPE because they impeded Preston's right to a FAPE; significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of FAPE to Preston; or caused a deprivation of educational benefits, specifically by:
- a. Failing to give meaningful consideration to the input of Parents and private clinicians at Team meetings on the following dates: 9/20/2018; 10/2/2018; 3/13/2019; and/or 5/22/2019;
  - b. Failing to make placement a Team decision at the Team meetings that occurred on 3/13/2019 and/or 5/22/2019;

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<sup>7</sup> At the time the Hearing commenced, Nashoba Regional School District (NRSD or the District) was offering placement at a therapeutic day program in connection with the IEP it proposed for the period from April 28, 2020 to April 27, 2021. As such, this issue was then framed as follows: Whether the IEP proposed for Preston for the period from April 28, 2020 to April 27, 2021, placing him in a therapeutic day program, is reasonably calculated to provide him with a free appropriate public education (FAPE); if I find that it is not, can it be modified to do so, or does he require a therapeutic residential program; if I find that Preston requires a therapeutic residential program, is that for education reasons? Midway through the Hearing, the District offered, and Parents accepted, placement at a therapeutic residential program, but the contents of the IEP remained in dispute. At this point, DMH moved orally for dismissal from the case. The District opposed the motion, and Parents took no position. Given the posture of the matter, I deferred my ruling orally and invited DMH to follow up with a written motion. No such motion was filed. In light of this partial resolution of the matter, NRSD renewed its postponement request, and both Parents and DMH noted their opposition. I denied the District's request but scheduled an additional day to accommodate the final witness.

- c. Failing to provide accurate Written Notice of the discussions following Team meetings held on 9/20/2018; 10/2/2019; 3/13/2019; and/or 5/22/2019;
- d. Failing to give meaningful consideration at a Team meeting that occurred on April 28, 2020 to input from Preston's service providers, Parents, and the results of an Independent Educational Evaluation; and/or
- e. Failing to take proactive measures to monitor the provision of services to Preston during his placement at Three Rivers, including requesting consent to evaluate or consent to receive information regarding Three Rivers' evaluations or recommendations, and failing to convene the Team.

For the reasons below, I conclude that the IEPs proposed for Preston beginning March 7, 2018 were not reasonably calculated to provide him with a FAPE. Although NRSD committed several of the procedural errors outlined above, these errors did not amount to a deprivation of FAPE.

### **FINDINGS OF FACT**

1. Preston is nine years old. He was born in Colombia and transitioned from the hospital to a foster home at two days old. Parents obtained custody of him when he was five months old and were able to bring him to the United States for adoption four months later. There was speculation that Preston's birth mother may have abused alcohol and substances during her pregnancy. She received care at the end of her pregnancy. (P-2, P-98, P-144, P-150; Calligas, II: 122; Mother, II: 157-160) Parents also suspect that the older son of Preston's foster mother, who was intermittently in the home, may have displayed inappropriate behavior toward the children in the home. (P-144)
2. Since Preston's adoption, throughout his life, Parents have been characterized as loving and supportive of him. (Garvin, I: 71-72, 115-116, 142; Farrington, I: 194, 217-218, 230-231; Calligas, II: 133, Blue, III: 50-51; Bressette, VII: 253)
3. Preston has been described as an intelligent, kind, creative, funny, independent, curious, outgoing, athletic, sweet, and determined child with complex mental health issues. He enjoys arts and crafts and being active. He was raised bilingual. (P-135, P-184; S-31; Mother, II: 160-61; Father, IV: 306, V: 10-11)
4. Preston's mother has a Master's degree in education. She is licensed in Massachusetts to teach art, grades K to 12, and English, grades 5 to 8. She has completed additional coursework in social-emotional learning, special education, and neurological and child development, but she is not licensed in any of these areas. Mother is currently employed by a public school system, where she has taught since 2005. (Mother, II: 154-55, IV: 65)

5. Mother became concerned about Preston's behaviors when he was about 18 months old. He saw a behaviorist twice a month between the ages of two and three. (Mother, II: 161, 165)

6. Parents separated when Preston was two or three years old and later divorced. They share custody of him, though when not in a hospital, Community-Based Acute Treatment (CBAT) program, or residential placement, he spends more time at Mother's home.<sup>8</sup> (P-2, P-144, P-145; Mother, II: 161-62) In early 2020, the Department of Elementary and Secondary Education (DESE) determined that the school district financially and programmatically responsible for Preston is NRSB.

7. As a young child Preston was diagnosed with autism spectrum disorder (ASD), anxiety, attention deficit disorder, and a non-verbal learning disability. (P-2; S-31) Preschool teachers observed him to display sensory seeking behaviors and rigid thinking, as well as aggressive behaviors such as throwing rocks in the direction of peers. He appeared unable to read peers' non-verbal clues and had difficulty understanding personal boundaries, often touching peers without permission. (P-144) Preston was hyperactive, possessive of toys, and easily overwhelmed. He would get overly excited or angry about something and have a difficult time containing his energy, which could cause him to become unsafe. Transitioning to non-preferred activities was difficult for him. (Father, IV: 306-07, 310)

8. Mother contacted the District regarding concerns related to sensory needs and behavioral difficulty while Preston was in preschool. A classroom observation was recommended as part of a developmental screening process, as was an occupational therapy (OT) screening. Team chair and school psychologist Lori Anselmo<sup>9</sup> conducted the observation on January 6, 2016. Preston presented with strong language skills. He exhibited both impulsive and sensory seeking behaviors, though he responded well to redirection. Socially, Preston interacted with his peers, but the nature of his interactions was often taunting, and he became too physical at one point. Ms. Anselmo observed that Preston's preschool teachers were utilizing effective strategies with him and she recommended their continuation. She also recommended that the school counselor consult regarding his peer interactions and self-regulation when he began kindergarten and that he participate in a social skills, friendship, or self-regulation group with the school counselor. Ms. Anselmo suggested that Preston's teacher consider developing a behavior plan for him. (S-51; Anselmo, VI: 194, 197-200)

NRSB occupational therapist Barri Godbout, M.Ed, OTR/L conducted an OT evaluation of Preston on February 25, 2016. She recommended a number of accommodations to address sensory processing concerns. (S-50)

9. Around the same time, at the recommendation of his pediatrician Preston was referred to Dr. Thrassos Calligas for a child psychiatry consult, which occurred when he was five years

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<sup>8</sup> The custody schedule provides for Preston to spend every other weekend and the opposite Thursday night with his father, his girlfriend, and her daughter. (P-150; Garvin, I: 159; Father, IV: 309, V: 6)

<sup>9</sup> Lori Anselmo has a bachelor's degree in psychology, a Master's degree in school psychology, and a Certificate of Advanced Graduate Studies (CAGS). She is nationally certified as a school psychologist and holds a school psychologist license through the Massachusetts Department of Elementary and Secondary Education (DESE). (Anselmo, VI: 194)

old.<sup>10</sup> Dr. Calligas is a board-certified child psychiatrist and has a medical license in Massachusetts. He completed a three-year adult residency training and a two-year child fellowship at McLean Hospital, and also spent a year at Children’s Hospital focusing on developmental disabilities. For the past 30 years, Dr. Calligas has been supervising residents from Massachusetts General Hospital and from McLean. Over the course of his 40-year career, Dr. Calligas has worked with thousands of children and attended at least 50 IEP meetings. In addition to his outpatient practice, through which he saw Preston, Dr. Calligas works on the inpatient unit at Franciscan Children’s Hospital (FCH). (P-2; Calligas, II: 109-11, 115-16; Mother, II: 166-68)

10. At the time of Preston’s referral to Dr. Calligas, his mother reported that he would swing between joyous, sweet, and aware of others, and anger that became physical, which he was unable to control. (Calligas, II: 136) Dr. Calligas noted that he presented with symptoms of “daily disruptive tantrums and aggression, anxiety, mood and relatedness.” From this time through September 20, 2018, Dr. Calligas met with Preston and one of his parents regularly, for approximately 30 to 45 minutes every couple of months, and he maintained contact with Preston’s other service providers. (P-2; Calligas, II: 138; Mother, II: 169)

11. On or about January 30, 2016, Dr. Calligas made preliminary diagnoses of anxiety disorder, rule out mood disorder, rule out ASD, rule out attention deficit hyperactivity disorder (ADHD), rule out reactive attachment disorder (RAD), oppositional defiant disorder (ODD), and sensory integration disorder. He noted that Preston displayed a poor attention span and low frustration tolerance, did not seem to have empathy for others, and became more disorganized as it was time to leave his appointments. Over the next few years, Dr. Calligas prescribed a number of medication increases, trials, and changes. (P-2; Calligas, II: 113, 136-38)

12. After his second appointment with Preston, Dr. Calligas recommended that Preston undergo a full neuropsychological and psychological evaluation due to concerns about his attention, impulsivity, relatedness, and emotional issues. (Mother, II: 169, III: 75) Dr. Richard Monahan, PhD, ABPP conducted a battery of tests across four days in February 2016. These included the following intellectual and neuropsychological tests: the Wechsler Preschool and Primary Scale of Intelligence – Fourth Edition (WPPSI-IV); Neuropsychological (NEPSY-II): auditory attention, speed naming, affect recognition, theory of mind, design copying, memory for faces, memory for names, narrative memory, finger tapping, imitating hand positions, and visuomotor precision; and the following personality tests with the following performance levels: Drawings (acceptable), Children’s Apperception Test (little accomplished); Rorschach Inkblot Test (minimal accomplished); Conger Sentence Completion (acceptable); and the Roberts Apperception Test (minimal accomplished). Dr. Monahan also had Mother, Father, and a

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<sup>10</sup> There is some confusion as to whether Dr. Calligas met Preston in January 2015, June 2015, or January 2016. Dr. Calligas’ treatment notes reference a first meeting on January 18, 2015 when Preston was five years old. They next refer to a meeting on January 30, 2016. (P-2). Testimony offered by Mother and Dr. Calligas indicates that Preston began seeing Dr. Calligas when he was five years old, which would have been after November 2015. (Calligas, II: 111-12; Mother, II: 166-68). Mother testified that Preston subsequently met with Dr. Calligas every four to six weeks. (Mother, II: 168-69) At some point, Dr. Calligas answered in the affirmative a question suggesting that he began seeing Preston in June 2015. (Calligas, II: 129) I find that Dr. Calligas’ first treatment note likely contained an erroneous date.



preschool teacher separately complete questionnaires for the Behavioral Assessment System for Children (BASC-2).

Dr. Monahan found Preston challenging to evaluate. Based on his WPPSI-IV scores, Dr. Monahan concluded that Preston is a bright child with strengths in non-verbal analysis, perceptual motor functioning, and visual memory; that his verbal skills are at least average but he gets easily fatigued when he has to reason things out and/or deal with more challenging material; and that his attention is better on tasks that involve using his hands. Preston did well across all domains of the NEPSY. Dr. Monahan observed that personality testing was limited by the difficulty in engaging Preston, but there appeared to be issues around siblings needing attention and the health of mothers having babies. On the BASC-2, Preston's behavior was concerning. His behaviors clustered around several diagnoses, most notably ODD, ADHD, anxiety disorders, and depressive disorders. Dr. Monahan found no evidence of ASD.

Dr. Monahan recommended school placement in an academically challenging therapeutic setting with a high ratio of teachers to students (no more than 1:8 or 10), as well as repeated personality testing in 18 months. (P-3) Mother shared these findings with the District. (Mother, III: 76)

13. Around the same time, in March 2016, the District conducted more of its own testing. Preston's overall performance demonstrated High Average intellectual functioning.<sup>11</sup> He performed well on academic measures, but self-control presented an area of particular weakness. Both home and school ratings of his social emotional and behavioral functioning revealed below average social skills, social communication, cooperation, responsibility, empathy, and engagement. Preston also presented with a tendency towards impulsivity, a desire to exert control over his environment, a low frustration tolerance, and difficulty processing his emotions. (P-8; S-48) Psychological testing, performed by Ms. Anselmo over the course of two days, revealed that although Preston would interact with peers, he was often taunting, becoming too physical, and that he appeared to have difficulty tolerating serious emotion.<sup>12</sup> Teacher and Parent ratings were significant for internalizing and externalizing behaviors across settings. (P-161; S-48) The District also conducted a speech/language evaluation, on which all areas assessed fell within the average to above average range. (P-144; S-47, S-48, S-49, S-50; Anselmo, VI: 201-03)

14. On March 28, 2016, NRSD convened an initial eligibility meeting for Preston, chaired by Ms. Anselmo. After reviewing psychological, academic achievement, speech and language, and OT assessments conducted by the District, as well as Dr. Monahan's independent evaluation, the Team found him eligible to receive special education services as a student with a Health Impairment. The Team discussed Dr. Monahan's recommendation for a small substantially separate therapeutic program based on Preston's inability to self-regulate, but determined this would be too restrictive a placement for Preston. Instead, the Team included in the proposed IEP some flexibility in the location of services typically delivered in the general education classroom, so that they might be delivered outside of this setting as needed in the event that Preston required a less stimulating environment. Mother expressed her concern about placement in a larger

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<sup>11</sup> Ms. Anselmo decided not to administer the Wechsler Preschool and Primary Scale of Intelligence because of Preston's concurrent neuropsychological assessment. (Anselmo, VI: 201)

classroom for kindergarten when he was already displaying behavioral issues in a smaller class with two teachers. (P-4; Mother, III: 78-81)

Preston's initial IEP, dated 3/28/16 to 3/27/17, placed him in a full inclusion setting with sensory/fine motor and social behavioral goals. It included 30 minutes per cycle of social/emotional services to be delivered by the counselor and general education teacher in the general education setting and 60 minutes and 30 minutes of OT and social/emotional services per cycle to be delivered through pull-outs with the occupational therapist and counselor, respectively. (P-4)

Parents accepted this IEP on April 14, 2016, though they declined to send Preston to the integrated pre-school program due to childcare and scheduling. (P-4; Anselmo, VI: 204-05)

15. During the spring of 2016, Mother reported to Dr. Calligus that Preston was becoming more irritable and aggressive, particularly when faced with structure or limits. Moreover, although he was shy, he would attach to people but would not be nice to them and his friendships would not last. At this point, Dr. Calligus noted diagnoses of ADHD, ODD, and mood disorder consistent with prenatal drug exposure. (P-2)

16. At some point in 2016, the Department of Children and Families (DCF) was notified about concerns regarding possible sexual abuse by Preston, but the allegation was unsubstantiated. (P-98; Father, IV: 311)

17. When kindergarten commenced in the fall of 2016, Preston was placed at the Center School in a full-day, full inclusion classroom with an instructional assistant and 19 other students; approximately five to seven students in Preston's class attended for only half days. There were approximately 550 students at the school. In accordance with his IEP, during kindergarten Preston met with an occupational therapist and with school counselor Kim Terwilliger. Ms. Terwilliger, who has a Master's degree in education with a concentration in school counseling and holds a Massachusetts school counselor license, explained that unlike school adjustment counselors, school counselors work in the general education setting and do not provide therapy. In kindergarten, Ms. Terwilliger provided both pull-out and push-in services for Preston. The former occurred in a small group with the occupational therapist and one other student; the latter was during specials, as Preston needed the support in these less structured classes. Ms. Terwilliger tracked Preston's progress toward his objectives in personal notes she maintained, which she then used to write progress reports. (Terwilliger, V: 66-67, 69, 73-74, 78-79)

At this time, Preston's tantrums had become fewer and shorter; though he was still impulsive and had poor boundaries, he was not having the same previous dark moods and severe meltdowns. He displayed little insight. Over the course of the next few months, Preston began demonstrating increased aggressive behaviors and poor boundaries at home and at school. (P-2, P-4, P-7, P-5; Mother, III: 82-84, 90-91, IV: 69-70; Mulkerin, IV: 267, 273; Anselmo, VI: 216)

18. During this time Preston was working with his private therapist and Ms. Terwilliger on "Zones of Regulation" to help him develop coping skills and remain regulated. Ms. Terwilliger

reported that Preston had success in individual sessions, which Mother believes was attributable to the low student to staff ratio, though he was still struggling with adjusting his behavior independently. Ms. Terwilliger consulted with Preston's teacher regularly. (P-6; Mother, III: 87-89; Terwilliger, V: 78-81)

19. NRSD convened Preston's Annual Review on February 27, 2017. Mother expressed concern about Preston's social interactions and lack of self-regulation, as she believed his emotional dysregulation had increased. She asked the District about a possible placement in NRSD's therapeutic classroom, though she did not know at the time that it was called Early Rise. District personnel explained that Preston would not be eligible for that program until second grade. Team members reported that Preston was demonstrating age-appropriate fine motor and early academic skills and had not required formalized behavior interventions in months. The IEP proposed for the period from 2/27/17 to 2/26/18 included a social behavioral goal, and provided for one, 30-minute meeting with the counselor per cycle, focused on social skills. Parents fully accepted this full inclusion IEP on March 13, 2017, though they requested that the Team reconvene in the fall to monitor Preston's progress closely. (P-8; Mother, III: 92-96)

20. Toward the end of the school year, Preston was exhibiting more aggression and conflicts at school and was not demonstrating empathy. Mother characterized the behavior Preston was displaying at school as a less extreme version of what was happening at home. Mr. Mainini emailed Parents on May 23, 2017 to inform them that Preston had been distracted and overly active, and that he had reverted to "hitting, kicking and arguing with the other students when things don't go his way." In response to an email from Mother, on May 30, 2017, Mr. Mainini described an ongoing conflict with a peer that involved arguing, yelling, and getting physical. Around this time, Ms. Terwilliger discussed with Parents peer conflicts that involved Preston "getting handsy," which Mother interpreted as putting one's hands on someone else in an unwelcomed manner. When she was told about this behavior, it was described as aggressive due to Preston's inability to keep his hands to himself. (P-2, P-11, P-13; Mother, III: 97-100, 104-05, IV: 80, 83) On June 19, 2017, Assistant Principal Karen Cronin emailed parents about an incident in which Preston had used unkind words and tone with classmates but when redirected by his teacher, began hitting and kicking furniture. (P-15) By the end of the year, Preston had formed and maintained only one friendship, as the rest of his classmates refused to play with him. Their parents expressed to Mother and Mr. Mainini their concerns about Preston's behavior. Mother found herself apologizing to his classmates' parents every few months. As far as she knew, the school did nothing further to address her concerns. (Mother, III: 84-85, 104-05; Father, IV: 318)

At this point, Preston only had one goal on his IEP, which was a social behavioral goal. In his June 16, 2017 progress report, Ms. Terwilliger noted a "slight uptick in [Preston's] frustration levels of late." Even as Preston's aggressive behaviors increased, NRSD did not propose any assessments, nor did the District propose an amendment to his IEP (P-14; Mother, III: 98-99, 106-07, IV: 81)

21. Around this time, Parents obtained a private OT evaluation for Preston at Integrated Children's Therapies Inc. (ICT) due to concerns about his self-care, emotional regulation, proprioceptive input, and fine motor skills. Parents forwarded this evaluation to the District over

the summer of 2017 and agreed to have the Team consider it during the progress meeting scheduled for October. The evaluation, conducted by Veronica Ho, OTR, recommended OT 1 x 60 minutes per week with monthly reviews as well as a home program, to focus on emotional regulation, motor planning, motor coordination, and reflex integration. ICT tasked Parents with giving Preston opportunities where he could use self-regulating strategies at home by setting up routines and providing regular access to items that provided deep sensory input, fidget toys, and exercises that help him release energy. Parents also began using the Zones of Regulation tool with Preston at this time. (P-12; S-31; Mother, III: 100-04)

22. In the meantime, in July 2017, Mother reported to Dr. Calligas that Preston's aggressions and provocative behaviors were occurring daily, that he would try to physically manipulate people when he was frustrated (including twisting his baby sibling's head), and that he had threatened to kill his sister when he did not like something she did. Father was not seeing the same behaviors at his house. At this point, Dr. Calligas noted that he believed Preston had a mood disorder and an emerging behavior disorder. (P-2)

23. One month later, toward the end of August 2017, Preston punched a peer while on a camping trip with Father. He was seeking out aggressive videos and, when angry, threatened verbally with graphic descriptions of how he would injure others. Dr. Calligas noted that Preston was showing appropriate interest in school and learning, that it was not clear what his behavioral issues were, and that his diagnoses included mood disorder, attachment disorder, and ADHD. (P-2)

24. While Preston was in first grade, during the 2017-2018 school year, his mother was in frequent touch with his teacher, counselor, and occupational therapist. All three were very responsive to her concerns. (P-17, P-18, P-22, P-23, P-26, P-27, P-32, P-34) When Preston needed to leave the classroom for behavior, he would be sent to the office to discuss what had happened and brainstorm potential resolutions with the principal or assistant principal before returning to class. Although he could not remember many specifics, Center School Principal Ross Mulkerin recalled Preston's behavior escalating over the course of first grade. Still, he believed that some of what NRSD personnel witnessed was "typical handsy kindergarten/first grade behavior." (Mulkerin, IV: 270, 272, 282-83, 298-99)

25. Ms. Terwilliger reported to Parents that Preston struggled in the first four to six weeks of the school year, but with consistent incorporation of direct support from his counselor and paraprofessionals in his classroom, as well as a structured behavior intervention plan and explicit social skills instruction, many of his negative behaviors lowered in intensity and frequency resulting in many consecutive months of success. As a result, his behavior intervention plan was put on hold midyear, though he continued to receive support in the classroom and direct counseling services. (P-65; Terwilliger, V: 86-87)

26. Specifically, Parents were notified by email of two events during the first month of school, one involving difficulty staying focused and keeping his hands to himself. The other involved violence during school hours (punching a classmate) and a threat of violence during the after school program (telling a classmate he would shoot her with a gun) As a result of this behavior, Preston was suspended from the after school program for one week, and the police

came to the home to question Preston and his family. No charges were filed. When Mother informed the school of this incident, no Team meeting was convened to address the behavioral issue, and no assessments were proposed. (P-17, P-18, P-19, P-20; Mother, III: 108-10, IV: 90-91; Mulkerin, IV: 275-76)

27. Preston's Team convened on October 4, 2017 to review his progress as well as the ICT OT evaluation. At this meeting Parents expressed their concerns, which they reported were also concerning to his psychiatrist: Preston's anger control, escalating behavioral difficulty at home and school, and increased mood swings. He was also having difficulty taking responsibility for his actions when behavioral challenges occurred. As such, Parents were concerned that Preston was becoming a danger to himself and his peers. They were particularly concerned that Preston had begun the school year in this manner, as generally it would take him some time to become comfortable in an environment before these behaviors start manifesting at a high level, consistent with his RAD diagnosis. The Team discussed initiating a functional behavioral assessment (FBA)<sup>13</sup> for Preston at school to inform a behavioral intervention plan (BIP) and adding a behavioral consultant to his Team. Ms. Terwilliger recommended an additional pull-out counseling session with her per cycle to address his social emotional challenges. The Team noted that Preston is in a supported classroom and benefits from the support of the instructional assistant when she is present, particularly during transitions. An amended IEP issued from this meeting. It included a summary of the OT evaluation and provided for additional support during lunch and recess; an additional session of social skills instruction/counseling and social/behavioral support inside the general education classroom; consultation by a behavior consultant; and flexible removal from the general education classroom to complete work in a less stimulating environment; and recommended the initiation of an FBA and trial sensory breaks. Parents accepted the amended IEP on October 31, 2017. (P-21; Mother, III: 111-13; Terwilliger, V: 76; Anselmo, VI: 212, 214-15)

28. Mother testified that she requested a change in placement to a substantially separate classroom during the meeting, but there is no indication of this request in the N1. (P-21; Mother, III: 112-13) Ms. Anselmo testified that she did not recall Parents requesting a change of placement at this time, though she remembered them expressing concern that he may need a more restrictive environment at some point and asking questions about the District's new therapeutic program. (Anselmo, VI: 214)

29. According to the District, a positive behavior support plan was developed in October 2017. District personnel referred to it as a Function, Accommodations, Interactions and Response (FAIR) plan. Ms. DeAngelis described a FAIR plan as a document based upon data collected as part of an FBA, but when asked whether it constituted a behavioral intervention plan she refused to answer on the grounds that she is not a board-certified behavior analyst (BCBA). She testified that an FBA is generally presented to a Team. Ms. Terwilliger testified that in Preston's case, the FAIR plan was developed in conjunction with a BCBA who collected data that helped the Team understand that the primary function of his behavior was attention. It

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<sup>13</sup> An FBA generally identifies the behavior of concern as the target, then identifies antecedents for that behavior, consequences that are reinforcing that behavior, desired replacement behaviors, and strategies that may encourage the replacement behavior. (Anselmo, VI: 249)

included a “happy hands” social story, a token system in the classroom, and an “if/then” visual. Ms. Terwilliger testified that she did not collect data around that plan but suggested that the teacher or BCBA might have done so. The FAIR plan was never annexed to an IEP, and Parents never received it when Preston was in first grade. (P-186; S-67; Terwilliger, V: 81-86, 101, 126-27, 160; Anselmo, VI: 308; DeAngelis, IX: 83-86)

30. On October 17, 2017, Ms. Terwilliger sent to Parents some of the visuals being used with Preston at school, particularly to assist him in taking responsibility. She attached worksheets entitled “Happy Hands,” “If Then Board,” and “my think it over sheet,” which were designed to be filled out with his teacher’s help, as Preston liked adult attention. (P-22; Mother, III: 115-17; Terwilliger, V: 109)

31. Although they received these visuals from Ms. Terwilliger, Parents did not view the worksheets they received as a behavior intervention plan. Based on her own experience as a teacher, Parent believes that BIPs generally contain goals, require daily teacher signatures, and provide space for teachers’ narrative input. The worksheets Preston received did not meet these criteria, and he would only fill them out with support at home. (Mother, III: 115-17; Father, IV: 321; Terwilliger, V: 100-01) Mr. Mulkerin also testified that BIPs are generally written and contain intended or expected outcomes, the plan to get the student to that outcome, and interventions to be employed should a situation arise where the student exhibits undesirable behaviors. (Mulkerin, IV: 287-88) Preston’s FAIR plan, which Parents received for the first time in discovery preceding the hearing, did not list or address antecedents. (P-67; Anselmo, VI: 252)

32. Also in October 2017, Mother brought Preston to see therapist Theresa Garvin, LICSW for an intake. Ms. Garvin has a Master’s degree in social work and is licensed in Massachusetts as an independent clinical social worker. Over the course of her 30 year career in child guidance clinics, residential treatment programs, school social work, and private practice, including time directing a family preservation project and a partial hospitalization program for children and adolescents, Ms. Garvin has worked with thousands of children diagnosed with mood disorders, attention deficit hyperactivity disorder (ADHD), generalized anxiety disorder, sensory processing disorders, oppositional defiant disorder (ODD) and other conduct disorders, RAD, post-traumatic stress disorder (PTSD), and other developmental traumas. (Garvin, I: 58-60) Ms. Garvin conducted an initial patient intake of Preston, as well as intakes of Preston’s mother and her spouse (Preston’s stepfather). At this time, Parent relayed recent events, including Preston’s history of trying to scare and threaten people, especially at home. Parent was concerned about Preston’s lack of friends at school, and she was worried about his safety at school and the safety of his peers. (Garvin, I: 64-66)

33. Ms. Garvin is not qualified to administer any psychological or cognitive testing. (Garvin, I: 137) In formulating her psychosocial assessment of Preston, she utilized Mother’s description of Preston’s development, as well as his medical, school, and family history, including his IEP, the District’s evaluations, and information from Dr. Calligas, in addition to her conversations with Preston and his family and observations of him in the office and interacting with other people. Ms. Garvin concluded that he had ADHD combined type and generalized anxiety disorder, with rule-outs of ODD, intermittent explosive disorder, and Disruptive Mood

Dysregulation Disorder (DMDD), as she did not have sufficient information to make conclusive determinations as to the last three. (Garvin, I: 68, 138-40)

Due to financial, insurance, and scheduling issues Preston was not able to start seeing Ms. Garvin until February 2018.<sup>14</sup> From this time forward, Preston was scheduled to meet with her every other week. Ms. Garvin did family work as well with both Mother and Father to assist them in developing strategies and interventions to employ with Preston. (P-161; Garvin, I: 64-65, 70, 141-43)

34. In the interim, in November 2017, Preston was drawing violent pictures at school and becoming physically aggressive with classmates. Mother spoke with Preston's teacher, Amy Keough, and Principal Mulkerin about these incidents. (P-23, P-24, P-25, P-26, P-29, P-30; Mother, III: 118-21) Dr. Calligas described Preston's behavior around this time as demonstrating aggression, lack of impulse control, and the inability to take responsibility for his actions. (P-2)

Despite this escalating behavior, Preston's IEP was not amended, the Team did not reconvene, and no assessments were proposed. (Mother, III: 121)

35. At some point in the late fall, Preston was no longer permitted to use the school's public bathroom near the cafeteria. Instead, Preston was required to use the nurse's bathroom in the front office because he repeatedly "pantsed" other boys when he was in the bathroom with them. (Mother, III: 123) Parents were also informed some time that year that Preston was one "school bus warning" (for aggressive behavior toward another student) away from suspension from riding the school bus. Parents began driving him to school for a period of time thereafter. (Mother, IV: 88-90)

36. In January 2018, Preston was demonstrating increased sensory-seeking behavior at home and appeared to have developed a preoccupation with people's private areas. However, he was displaying better behavior at school, maintaining a quiet body, and showing significantly less sensory seeking behavior. Ms. Keough reported to Ms. Terwilliger that the token system was no longer working to manage his behavior, but his conflicts with peers had lessened. Ms. Terwilliger believed Preston had responded appropriately to interventions by demonstrating positive social skills and a positive peer group, so the FAIR plan was faded. (P-32; Terwilliger, V: 87-88; Anselmo, VI: 308-09)

37. In February 2018, Preston's anxiety made it difficult for him to get on the bus in the mornings, and he would have outbursts immediately coming off the bus at the end of the day. Preston was also having difficulty sleeping. (Mother, III: 127)

38. Between February and May 2018, Ms. Garvin met with Preston approximately eight or nine times. (Garvin, I: 141) She observed that Preston struggled with any non-preferred activity and had extreme difficulty regulating his emotions. There were often no obvious triggers for Preston's outbursts, which made it difficult for the adults in his environment to know what would

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<sup>14</sup> In the interim, Preston transitioned out of the outpatient therapy practice he had been attending for the previous two years. (Garvin, I: 66)

set him off. According to Ms. Garvin, when Preston became frustrated or angry, he would refuse to comply with directions or escalate to the point of throwing things, screaming, threatening, or hitting. For these reasons, Ms. Garvin characterized Preston's presentation as very severe. (Garvin, I: 69-71)

39. Dr. Calligas shared Ms. Garvin's concerns. In clinical notes from his meeting with Preston and his mother that occurred on or about March 7, 2018, Dr. Calligas wrote that Preston's aggressive behavior and blaming of others was continuing, and he was showing no remorse. He was displaying curiosity about genitals, had hit his sister in that area, and was plotting with another child to punch a girl "in the privates." At this time, Dr. Calligas noted ODD, developmental social deficits, impulsivity, and disruptive behavior disorder. (P-2)

40. On March 7, 2018, Preston's Team convened for his Annual Review. Parents reported that Preston did not have any friends in school or in the community and had not been on any playdates. He was struggling with academics, and he had reported to Parents that the classroom aide was scribing for him in class. Parents did not believe Preston was making progress. They reported Preston's physicians' concern about his significant behavioral and emotional regulation challenges, potential carry over into school, and recommendations for a therapeutic placement. According to school-based Team members, however, Preston had shown improved behavioral and emotional regulation at school, maintained a good relationship with his teacher, and was supported by peer connections. Behavioral challenges continued but were reduced in severity and frequency. The Team believed one of the two sessions per cycle of social-emotional support provided by the counselor should occur within the general education classroom to facilitate generalization, and proposed an increase of social/behavioral support within the classroom as well, in light of the increased writing demands of second grade. The Team declined to add instructional assistant support to his service delivery grid but determined that such support would be provided during specials and faded as needed. The Team determined that given his progress, Preston no longer needed a behavioral consultant as part of his Team. Accommodations were updated. Despite Preston's physicians' recommendation of a therapeutic setting, the Team recommended a full inclusion placement and the IEP noted that "all Team members expressed agreement that [Preston] is successful in his current placement, and thriving in part because of the peer connections." (P-37; Mother, III: 128-29, 132; Father, IV: 320; Anselmo, VI: 216-17)

The proposed IEP, dated 3/7/18 to 3/6/19, contained one goal. This Social Behavioral goal aimed for Preston to improve his social behavioral skills by demonstrating age appropriate personal space skills in 60% of measured opportunities with decreasing adult prompts; in the counseling room, using conflict scenarios, stating the problem, determining possible solutions, and deciding how all parties could be feeling, with 80% accuracy; and utilizing strategies taught to work through frustrating situations with a calm body/voice in three out of five opportunities with adult support. (P-37; S-46)

The IEP provided for a full inclusion placement, with social/behavioral support provided in the general education classroom by the general educator, special educator, and paraprofessional 6 x 165 minutes per 6 day cycle; and social/emotional support provided by the counselor in the general education classroom 1 x 30 minutes per 6 day cycle and in a pull-out setting 1 x 30



minutes per 6 day cycle. The District representative signed this IEP on March 21, 2018. (P-37; S-46)

41. Although the N1 does not mention it, Mother testified, and the District acknowledged in its Answers to Parents' Interrogatories and through the testimony of Ms. Anselmo, that in March of 2018, Preston's mother indicated that he was experiencing behavioral challenges outside of the classroom and requested a change in placement that would incorporate more support and a therapeutic approach. However, according to the District, per her comment on the N1 dated May 4, 2018, Mother expressed her agreement with the District's determination not to change placement. Mother testified that the Team agreed to revisit placement the following year. (P-186; Mother, III: 130-31; Anselmo, VI: 274)

42. Mother followed up with Ms. Anselmo to express that although she was hopeful about the following year, she remained concerned about a full-inclusion placement. She requested that the District include specialized instruction in written expression. Ms. Anselmo rejected this request because although Preston was exhibiting frustration, he was producing grade level written work. (Anselmo, VI: 284-85)

43. On April 24, 2018, Ms. Terwilliger emailed Mother to indicate that she had met with Ms. Anselmo to tweak the proposed IEP in accordance with Parents' requests for more specific objectives. (P-38; Terwilliger, V: 114-15; Anselmo, VI: 220-23) As Mother was observing a reemergence of Preston's troubling behaviors, she gave Ms. Terwilliger permission to speak with Ms. Garvin. The District already had a release to speak with Dr. Calligas. (Mother, III: 131-32, 134-35)

44. On April 30, 2018, Preston refused to do work in class, got visible angry, yelled, and used inappropriate language with his teacher. Ms. Keough informed Mother, who responded that Preston was becoming increasingly aggressive verbally and physically in other contexts and a medication change was planned. (P-39; Mother, III: 135)

45. During the months of May and June 2018, Ms. Garvin observed that Preston's outbursts were increasingly violent and his dysregulation more severe, particularly with his family. Mother shared concerns about Preston's threats to decapitate people and kill his family. (Garvin, I: 69-73, 149-150) According to Ms. Garvin, at this time Preston's moods determined his behavior, and because these moods and behaviors changed so rapidly, triggers could not be identified. During therapy, it was difficult for Ms. Garvin to help Preston regulate his feelings, and at times she witnessed concerning behaviors that were regressive in nature. (Garvin, I: 83-84)

46. Around this time, in May 2018, Mother informed her family that she was pregnant and both of Preston's parents moved into different homes with their new partners. Although Ms. Garvin recognized that these events would be difficult for Preston and could potentially trigger escalation, neither she nor any of his other clinicians attributed the degree of his behavioral dysregulation to these changes in family structure and environment. (Garvin, I: 98-100, 112, 115, 150-52; Calligas, II: 143-44; Mother, II: 163)

47. On May 4, 2018, Preston's Team issued an N1, and on May 5, 2018, a revised IEP for the period from 3/7/18 to 3/6/19 [2018-2019 IEP], indicating Mother's lack of full agreement with the proposed placement. According to the N1, Mother expressed that she would like Preston to stay at his current school but was torn, as she also believed a change of placement to a therapeutic setting would prevent future difficulties. The Team Chair agreed to carefully monitor Preston, but reiterated the school-based Team members' concern that changing his placement at a time that he was successful would be detrimental to his progress. Some wording changes were made to the IEP. As revised, Preston's benchmarks/objectives for the Social Behavioral goal read:

“[Preston] will demonstrate age appropriate personal skills (keeping hands to self, keeping an appropriate distance between himself and others) in various school environments (ex: in line, during recess/lunch, on the rug) in 60% of measured opportunities with decreasing adult prompts.

In the counseling room, using conflict scenarios, [Preston] will state the problem, determine possible solutions, decide how all parties could be feeling with 80% accuracy.

[Preston] will utilize strategies taught (i.e. take calming breaths, get help from an adult, use a problem solving script) to work through frustrating situations with a calm body/voice in 3 out of 5 opportunities with adult support.”

The District also agreed to notify parents in writing of behavioral outbursts and inappropriate touching, and the counselor agreed to consult with Preston's mental health providers outside of school. Finally, the Team agreed to reconvene in October to review Preston's progress following his transition to second grade. (P-40; S-46; Mother, III: 137-39)

48. In the meantime, Preston's behavior at school deteriorated. On May 7, 2018, Assistant Principal Christy Nealon contacted Parents to inform them that Preston had been sent to her office that day, where he filled out a “think about it sheet” because he had intentionally stepped on another student's foot and either kicked or pushed her. He said he had done this because he was frustrated and angry that the other student was in his space. (P-41; Mother, III: 140-41; Father, IV: 322-23)

On May 9, 2018, Preston hit another student with a book, and once again was sent to the office to fill out a “think about it sheet” with Ms. Nealon. (P-42; Mother, III: 141)

On May 11, 2018, Preston had a conflict with a peer during recess, which he escalated by pushing the peer. Again, he was sent to the office to fill out a “think about it sheet” with Ms. Nealon. (P-43) That same day, Preston's teacher contacted Parents to let them know he seemed very unsettled, “slightly on edge most of the time,” and “‘handsy’ with things around him.” He also “had a pretty short fuse” for being redirected.” (P-44)

On May 17, 2018, Ms. Keough contacted Parents to inform them she was sending home four “think about it sheets,” and to request that they speak, as Preston's behaviors were escalating. According to Ms. Nealon, on that day, Preston had shaped his hands into a gun and pointed them

at a classmate, twisted a classmate's arms, and called his teacher a murderer when she told him he had to go to the office. (P-45, P-46)

On May 23, 2018, Preston filled out another "think about it sheet" with Ms. Nealon, as he had hit a classmate who he reported was "getting in his business" and didn't listen to words asking her to stop. (P-50)

On May 24, 2018, Preston swore at a classmate at lunch and did another "think about it sheet" with Ms. Nealon. (P-51)

On May 31, 2018, Preston hit a classmate who did something he did not like, had a hard time following directions, and told a classmate he was going to kill her because he was sad she said he was not going to be his friend. He then sat by himself in the quiet corner, saying, "die." (P-53) This was not the first time Preston had exhibited this kind of behavior. (Mother, III: 149-150)

49. As Preston's behavior continued to spiral downward, Parents spoke with Ms. Keough on May 18, 2018, and Ms. Keough then contacted Ms. Terwilliger about reinstating a reward system for positive social behaviors. Mother requested another meeting, and Ms. Keough asked whether she was looking for an informal meeting or a reconvene of the Team. Parent clarified that she was requesting a Team meeting, in light of the behaviors Preston had been demonstrating. She did not believe the "think about it" worksheets were effective in managing Preston's dysregulation or aggression. Ms. Keough asked that Parents contact Ms. Anselmo to schedule a Team meeting (P-47, P-48; Mother, III: 140-46)

50. On May 23, 2018, Mother emailed Ms. Anselmo with an urgent request to convene the Team meeting, writing "We discussed gathering as a group again to discuss the changes before finalizing the IEP and in order to best plan for the next school year." (P-49; Mother, III: 145-46; Anselmo, VI: 224, 289-90, 293)

51. Although Ms. Anselmo supported a reconvene in light of the increasing frequency of Preston's inappropriate behaviors in school, on May 25, 2018, she wrote to Mother, "I've checked with my director and the tricky thing is that, with an IEP proposal out, we can't reconvene a Team meeting until you take action on the proposed IEP. If you want to send in a response to the IEP, I can set up a Team meeting for sometime (*sic*) in June, and then we can discuss if we need to make any changes." Director of Pupil Personnel Joan DeAngelis had told Ms. Anselmo that even though Parents were requesting a meeting, since the District had not received a formal response to the proposed IEP, it would not be appropriate to reconvene the Team.<sup>15</sup> (P-49; Anselmo, VI: 290)

52. Ms. DeAngelis has a bachelor's degree in sociology, with a dual minor in school psychology and social work, a Master's degree in social work, and a CAGS in educational leadership. She holds DESE certifications as an elementary, middle, and high school principal; assistant superintendent; superintendent; and supervisor/director of pupil personnel. Ms.

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<sup>15</sup> At hearing, Ms. DeAngelis testified that a Team may reconvene while there is an unsigned IEP in existence, but that if the Team had just proposed an IEP, "we would want the parent to take action on it, so we could have a conversation about what the concerns were." (DeAngelis, IX: 100-01)

DeAngelis is also a licensed independent clinical social worker in Rhode Island. She worked as director of a collaborative-based school, residential director of a special education school, and principal before becoming the Director of Pupil Personnel in another Massachusetts public school district. She is starting her fifth year in her current position. As Director of Pupil Personnel for NRSD, Ms. DeAngelis provides supports to all students across the District; oversees the budget, staffing, and special education programming throughout the District; supervises and evaluates a variety of staff members; and reviews IEPs. She is ultimately responsible for the 600 NRSD students on IEPs. (DeAngelis, IX: 8-11)

53. On May 28, 2018, Parents partially rejected the 2018-2019 IEP, rejecting the lack of a benchmark for academic frustration, and returned it to NRSD. They accepted the full inclusion placement. (P-40, P-52; S-45, S-46) According to Mother, Parents accepted the placement because they erroneously believed such action was necessary for the Team to reconvene. They did not view accepting the full inclusion placement as an obstacle to having the Team consider a new placement for Preston. (Mother, III: 146-47)

54. Ms. Anselmo generated an N1 on June 1, 2018 for a Team reconvene on June 13, 2018 at 12:00 PM to discuss Preston's progress and behavioral trajectory and consider adjustments to his IEP and/or placement. Mother requested the day off from work to attend. (P-54, P-186; Mother, III: 150; Anselmo, VI: 226, 293-94)

55. On June 4, 2018, Ms. Terwilliger emailed Ms. Anselmo to explain that she had spoken with Ms. Keough and Mr. Mulkerin regarding Preston and that the behavior plan would be reinstated. Ms. Terwilliger believed Mr. Mulkerin had also spoken Ms. DeAngelis about Preston. At this time, Preston was angry on a daily basis. Ms. Terwilliger felt his problems were becoming more than she was trained to handle, and she no longer believed that the general education setting at Center School was meeting his needs. In her email to Ms. Anselmo, Ms. Terwilliger requested that placement be "on the table to talk about at the reconvene," as an open discussion regarding second grade was needed. She had not heard back from Ms. Anselmo yet, but emailed again the following day, as Preston had been sent to the office for hitting a peer and taking his snack. Ms. Terwilliger indicated that she planned to email Mother to mention that they would probably discuss placement at the reconvene; she said she would wait for a response before emailing Parents. Ms. Anselmo responded that she would prefer to speak with Ms. Terwilliger in person, as she did not like to talk placement via email. Furthermore, Ms. Anselmo felt that she needed to speak with Ms. DeAngelis first. (P-55, P-56; Terwilliger, V: 90-91, 131, 138-39; Anselmo, VI: 294-96)

56. According to Mother, she contacted Ms. Terwilliger in advance of the scheduled Team meeting to discuss possible placements for Preston when he entered second grade. Mother recalls Ms. Terwilliger being in agreement with her, and believed that Ms. Terwilliger intended to discuss placement at the upcoming team meeting. (Mother, III: 151-53)

57. On or about June 11, 2018, Preston was admitted to the emergency room (ER) due to aggression and suicidal and homicidal ideation; he stated that he would cut his mother's throat while she slept and kill himself. He also punched his pregnant mother's stomach and pushed his

sister down the stairs. He reported that he did not know why he was acting that way.<sup>16</sup> On June 18, 2018, Preston was transferred to Taravista Behavioral Health Center. (P-57, P-59; Mother, III: 154-55)

58. Mother contact Ms. Anselmo while Preston was in the ER to inform her of what had transpired. Ms. Anselmo indicated that she preferred to defer the Team meeting until the hospital had conducted assessments and clinicians made recommendations regarding placement, particularly as Preston had not been evaluated for two years at this point. (Mother, III: 159; Anselmo, VI: 257-58) Mother requested, and expected, that the Team meeting would still occur on June 13, 2018, but NRSD canceled the meeting over Parents' objection, without written notice. The District never rescheduled this meeting.<sup>17</sup> (Mother, III: 159-61, IV: 253; Anselmo, IV: 300-01)

59. On the Progress Report issued June 21, 2018, Ms. Terwilliger noted that over the previous several weeks, Preston had struggled with personal space and unsafe outbursts on a daily basis but that she had explicitly omitted data from these weeks and reported only on the first months of the trimester. The Progress Report indicated that Preston had continued to demonstrate maturing social skills and an awareness around maintaining personal space (two out of four opportunities independently). He had learned to control his emotions and hands more consistently (averaging two to three unsafe outbursts per month) and, when frustrated, was able to utilize strategies in two out of five opportunities. (S-44)

60. Preston's first grade report card indicates that he was meeting all speech, listening, and language standards, and either meeting or demonstrating an understanding of essential skills and concepts in all reading standards. On the social behavior and work habits scale, he was meeting expectations in six categories and inconsistently meeting expectations in nine. This report card signaled a decline in skills during the third trimester. (P-58; Anselmo, VI: 299-300)

61. Preston was discharged from Taravista with diagnoses of DMDD; ADHD, combined type; ODD; sensory integration disorder; semantic-pragmatic disorder; rule-out ASD; and asthma. He was transported by ambulance to McLean-Franciscan Children's Community-Based Acute Treatment Program (Franciscan CBAT) on July 3, 2018. (P-57; Calligas, II: 115,122; Mother, III: 164-65)

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<sup>16</sup> Mother testified that on or about June 7, 2018, Preston came home from school agitated, became destructive and violent at home, and refused to go to therapy. Mother called Ms. Garvin seeking advice and was advised to call the Mobile Crisis team. Mobile Crisis was unable to come that night, but when they arrived the next day, they assessed Preston and escorted him to the emergency room (ER). As an appropriate bed could not be located for him and Parents did not want him to remain overnight in an adult ER, Parents brought him home that night. He then hit his sister while in the car with Father, and Parents were advised by both Ms. Garvin and Mobile Crisis to bring him to the ER. Preston remained in the Newton-Wellesley ER until he was discharged to Taravista Behavioral Health Center. (Mother, III: 155-59; Father, V; 17)

<sup>17</sup> Ms. Anselmo testified that although she and Parents agreed that it was urgent to hold a Team meeting, they all agreed to postpone it until the following week, but at that point Preston was still in the ER and then the school year ended. (Anselmo, VI: 225-26)

62. Dr. Calligas characterized Disruptive Mood Dysregulation Disorder (DMDD) as a diagnosis for children whose mood presents in a dysphoric or depressed state, and then suddenly changes due to mood dysregulation. (Calligas, II: 124-25)

63. A CBAT is an intensive primarily behaviorally-based program focused on evaluating a child and family, looking at diagnostic, behavioral, and educational issues, and assisting a child in developing coping skills, anger and anxiety management skills, and regulation strategies. The typical length of stay at a CBAT is two to four weeks. (Calligas, II: 115, 121). Upon arrival at the Franciscan CBAT, Preston was evaluated by Dr. Anthony Sossong, who noted admission diagnoses of Major Depressive Disorder, recurrent, severe, without psychotic features; ADHD, combined presentation; and ODD. Dr. Sossong met with Preston approximately once a week while he was at the CBAT. (P-59) During this time, Dr. Calligas, who worked on the inpatient unit at Franciscan Children's Hospital (FCH), would confer with Dr. Sossong about Preston and his needs. (Calligas, II: 116-17) Preston was also assessed by case manager/clinical social worker Kathleen Pirozzolo, LICSW, upon arrival. (P-59)

64. While at Franciscan CBAT, Preston received a Behavior Notice on July 9, 2018, a Behavior and Safety Notice on July 12, 2018, a Behavior and Safety Notice and a separate Behavior Notice on August 1, 2018, a Behavior and Safety Notice on August 15, 2018, a Behavior and Safety Notice on August 26, 2018, a Behavior Notice on August 29, 2018, two different Behavior and Safety Notices on August 31, 2018, a Behavior and Safety Notice on September 8, 2018, a Behavior and Safety Notice on September 21, 2018, a Safety Notice on September 26, 2018, a Behavior and Safety Notice on October 2, 2018, a Behavior and Safety Notice on October 8, 2018, a Behavior and Safety Notice on October 9, 2018, a Behavior and Safety Notice on October 10, 2018, a Behavior Notice on October 12, 2018, and a Behavior and Safety Notice on October 19, 2018, for behaviors on the CBAT that included dysregulation, throwing things, destroying rooms, hitting and banging on windows, swearing at and threatening to hurt staff and kill everyone, exhibiting verbal and physical aggression toward peers, and hitting, punching, and kicking staff. In addition to these, he received three Behavior and Safety notices for incidents that occurred during visits with Mother. On July 29, 2018, while he was on a visit with Mother, Preston was hitting, kicking, and running into the street when asked to put on his shoes. He began spitting and making comments about wanting to kill someone. He received a Behavior Notice and Safety Notice on this day. He also received a Behavior Notice and Safety Notice on August 11, 2018 for behaviors while on a home pass with Mother. On October 6, 2018, while on home pass with Mother, Preston was throwing things, hitting, and swearing, and Mother had to request police assistance to transport him back to the CBAT. (P-59)

65. Although he did not treat Preston while he was in the Franciscan CBAT over the summer, Dr. Calligas would visit him every so often to reassure Preston that he remained involved. (Calligas, II: 117, 140-41) Based on his observations of Preston, Dr. Calligas concluded that Preston was a "high-risk child" due to his severe attachment issues. Dr. Calligas remained very concerned about Preston, as he did not believe Preston had developed a conscience or a sense of what was right and wrong. (Calligas, II: 117-18)

66. Over the summer of 2018, Preston was having rapid, unpredictable outbursts of violence in response to limit-setting and becoming dysregulated and aggressive toward staff. Diagnostic

considerations included RAD<sup>18</sup>, rule out DMDD, and consideration of callous and unemotional traits. Dr. Sassong convened a family meeting with Parents review treatment options and aftercare dispositions with Parents, including a potential need for long-term residential and/or in-home services. (P-59)

67. During the summer of 2018, Mother reached out to Ms. DeAngelis to discuss Preston's placement for second grade. Ms. DeAngelis mentioned the Early Rise program, which Parent had heard was therapeutic and offered more support than the general education classroom. Ms. DeAngelis stated that before a decision could be made, the Team would have to convene to consider it. At this point, Parents knew little about the program or its staffing; the only information they had was from their friends in town and Ms. DeAngelis, as nothing was available online. (Mother, IV: 96-98; DeAngelis, IX: 15-16, 118)

68. In late August or early September, Ms. DeAngelis reassigned Preston's case to school psychologist Bethany Bressette. Ms. Bressette has a bachelor's degree in psychology and a Master's degree in counseling with a concentration in educational psychology, as well as a Certificate of Advanced Graduate Study (CAGS) in school psychology. Ms. Bressette holds both her national certification and her Massachusetts professional licensure as a school psychologist. At this time, Ms. DeAngelis updated Ms. Bessette about Preston's case and told her he would most likely attend Early Rise. (Bressette, VI: 322-26)

69. On or about September 6, 2018, Parents applied for services from the Department of Mental Health. (P-57)

70. During a telephone call with Ms. DeAngelis on September 8, 2018, Mother requested that the District observe Preston at the hospital and provide a 45-day assessment of him. Ms. DeAngelis rejected both of these requests orally. She indicated to Mother that NRSD personnel do not visit hospitals, and that the District would not fund a 45-day assessment unless Preston returned to the District first and attended NRSD's therapeutic classroom. (P-62)

71. Around this time, on September 6 and 7, 2018, Parents retained Dr. Kathryn Connolly of Concord Comprehensive Neuropsychological Services to conduct a neuropsychological evaluation of Preston at the Franciscan CBAT. (P-60; Connolly, IV: 111)

Dr. Connolly has a Master's degree, a Ph.D., and a CAGS in school and counseling psychology. She completed two years of clinical training, one in pediatric neuropsychology and one in adult neuropsychology. She is currently licensed in Massachusetts as a psychologist and formerly held a license as a school psychologist as well. Dr. Connolly worked in both hospital and public school settings before opening her private practice six years ago. During her years as a school psychologist, Dr. Connolly consulted to substantially separate programs, serving children with social-emotional needs and language-based needs. She worked with school staff and BCBA's to

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<sup>18</sup> Dr. Calligas described reactive attachment disorder (RAD) as a condition that results from a child not having a sense of security and connection with a caregiver from an early age and impacts brain development. (Calligas, II: 123-24) One manifestation of RAD is for a child to escalate more quickly and act out more once he becomes comfortable in an environment. (Garvin, I: 112)

formulate goals and behavior plans for students, and she conducted staff trainings. In her private practice, Dr. Connolly conducts evaluations and performs educational consultations. Over the course of her career, she has conducted neuropsychological evaluations of well over a thousand children with a range of disabilities including learning disabilities, ASD, ADHD, major mental health, depressive mood, and schizoaffective/bipolar disorders. (Connolly, IV: 102-10)

Dr. Connolly spoke with Preston's parents and his clinicians at Franciscan CBAT in the course of the evaluation. She was unable to complete all of the testing she planned to administer in two days due to Preston's non-compliance. He became aggressive and dysregulated, throwing things, expressing anger with facial expressions, and making self-deprecating comments to the point where he was put into the time-out room.

Although she did not develop a full report in advance of the Team meeting scheduled for September 20, 2018, Dr. Connolly wrote an Abbreviated Draft Neuropsychological Summary and Recommendations (Abbreviated Report). Dr. Connolly's Abbreviated Report discussed her findings on the Wechsler Abbreviated Scale of Intelligence – Second Edition (WASI-II), the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V), the Beery Task of Visual-Motor Integration (Beery VMI), the NEPSY-2, and Pediatric Behavior Rating Scales (PBRS). Preston's evaluation revealed High Average verbal and nonverbal cognitive abilities and severe deficits across many areas of executive functioning. When faced with challenging or novel tasks, he demonstrated general noncompliance, although with encouragement, frequent breaks, and praise for positive behaviors, Preston was able to complete a few challenging tasks with variable performance. Combining rating scales and test data, Dr. Connolly concluded that Preston responds well to structured settings and clear instructions. (P-60)

Preston's academic testing revealed reduced literacy skills, with reading, math and writing skills below grade and age expectations. As such, he required direct instruction in all areas of reading. Preston also exhibited significant difficulties with writing, and writing tasks resulted in increased noncompliance, defiance, and impulsivity. Dr. Connolly concluded that Preston would require OT to improve fine motor dexterity and handwriting. He struggled to apply his understanding of math principles, exhibiting widespread learning difficulties. His severe behavioral difficulties and emotional dysregulation impacted his progress across all academic areas. Dr. Connolly diagnosed Preston with RAD and DMDD. She observed that he was presenting with substantial learning deficits consistent with an emerging Specific Learning Disability in Reading and Writing, but she did not have sufficient evidence to render a formal diagnosis. She also observed executive functioning difficulties and found that ADHD might be a secondary component of his presentation. Dr. Connolly concluded that because he was showing signs of high anxiety related to his struggles, a rule-out of an Anxiety Disorder was appropriate to be given and monitored. Describing him as significantly compromised and vulnerable to high anxiety, depressed affect, explosive outbursts, irrational beliefs, sexualized behaviors, aggressive reactions and threats to others and himself, Dr. Connolly stated that Preston could be considered a safety risk to himself and others. She concluded that Preston functions best in structured, familiar environments, and recommended either placement in a residential setting or a 45-day placement in a smaller safe, structured milieu, designed for students with co-existing psychiatric and higher functioning neurodevelopmental disabilities, where he could make progress academically, functionally,



socially, and emotionally with intensive and consistent structure while being assessed comprehensively. (P-60; Connolly, IV: 114-19)

72. Although the Team had not reconvened since the spring, in an internal District email dated September 13, 2018, Preston was described as a student at the Center School “who may attend Sawyer,” the NRSB elementary school where Early Rise is located, but that placement was not definite because “there are some things still being decided and worked on with parents and District. A request was made to reinstate him at the Center School in the meantime, as some how he had been removed from Center’s enrollment, though no change in placement or location had been discussed at a Team meeting. Ms. DeAngelis could not explain how this might have happened, except to say that this was communication between secretaries. (P-61, P-62; Mother, III: 159-61; Father, IV: 375-76; DeAngelis, IX: 119-21)

73. An emergency Team meeting occurred on September 20, 2018, at Parents’ request. It was attended, by telephone or in person, by Parents, Ms. Garvin, Dr. Calligas, Dr. Sassong, and Ms. Pirozollo. For NRSB, Team chair Ms. Bressette, Ms. DeAngelis, school-based Team members from the Early Rise Therapeutic Program (special needs teacher Kathleen Moura, school adjustment counselor Kelsie Bossardet,<sup>19</sup> general education teacher Maura Feely, occupational therapist Karen Fitzpatrick), and Ms. Terwilliger (listed as “Interventionist”) attended. Ms. Terwilliger was the only Team member from NRSB who had actually met Preston. During this meeting, Mother presented the District with Dr. Connolly’s Abbreviated Report, but the Team stated it would need time to review the report before discussing it. Preston’s clinicians from Franciscan CBAT reported that he had already exceeded the typical length of stay, that he was continuing to engage in aggressive and impulsive behaviors, and that he was not yet ready to return home.<sup>20</sup> His completion of academic work provided by the District was inconsistent. The District asked about involvement with outside agencies such as DMH and DCF; Parents responded that they had a DMH application pending but were not pursuing DCF services at this time. Ms. Terwilliger reported what she viewed as Preston’s high level of success for much of first grade, following an adjustment period of four to six weeks at the beginning of the year.

Parents requested that the District change Preston’s disability category from “Health Impairment” to “Emotional Impairment,” but the Team denied this request. Parents also requested that NRSB support a 45-day assessment of Preston in a therapeutic residential setting and suggested Dr. Franklin Perkins, Devereux, Walker, St. Anne’s, and Dearborn STEP. Preston’s clinicians indicated that he could not step down to a public school setting, and that he needed this kind of assessment across settings to determine how his educational and psychological needs intertwine. The N1 reflects that the District responded by stating that “the discussion of residential services or the completion of a ‘residential assessment’ is a conversation to have with outside agencies, and is not within the purview of the school district.”<sup>21</sup> Instead, NRSB offered to propose placement within Early Rise, the District’s multi-grade partial

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<sup>19</sup> Ms. Bossardet is referred to by her maiden name, Bromberg, in some of the documentation.

<sup>20</sup> Ms. Pirozollo reported that Preston was destroying property, avoiding school work, melting down when asked to do any non-preferred activity, and failing to make meaningful connections. The clinicians from Franciscan CBAT were concerned that if Preston went into a public school, his attachments would not improve and these problems would continue. (Calligas, II:120; Father, IV: 329)

<sup>21</sup> At hearing, Ms. DeAngelis acknowledged that funding of a placement turns on a child’s unique educational needs, not on obtaining an additional source of funding. (DeAngelis, IX: 132)

inclusion therapeutic classroom, to meet Preston's therapeutic needs within the education setting. The District also suggested advancing Preston's three-year reevaluation. NRSD indicated that the District would consider conducting the reevaluation of Preston at Franciscan CBAT. Parents objected to this idea, as they believed his functional skills should be assessed in an educational setting, but ultimately consented to clinical, speech/language, occupational therapy, educational, health, and psychological assessments, as well as an observation. The District did not propose a home assessment at this time. (P-2, P-62, P-65, P-66; S-40, S-41; Garvin, I: 85-88, 93; Calligas, II: 118-22; Mother, III: 167-73, IV: 95-96, 256-57; Father, IV: 329-37; Bressette, VI: 329, 331-33, 334-36; DeAngelis, IX: 16-17, 137)

74. Parents and clinicians did not believe NSRD was receptive to their input at this meeting, but instead focused on the fact that Preston's problem behaviors that presented at the CBAT did not manifest when he was at school. This led NSRD to assert that Preston would be safe in a public school environment.<sup>22</sup> According to Ms. Bressette, the District considered the Franciscan CBAT clinicians' recommendations but did not agree with them in light of Ms. Terwilliger's behavioral data, their new knowledge regarding Preston's triggers, and what they viewed as Preston's success in first grade. (Garvin, I: 91-92; Calligas, II: 119-20; Mother, III: 170-71; Bressette, VII: 31, 35)

75. Early Rise was created by Ms. DeAngelis, NRSD principals, Team chairs, and school psychologists during the 2016-2017 school year and opened in the 2017 school year to meet the needs of students with social-emotional challenges. It aims to develop participants' pro-social behaviors, social-emotional coping strategies, positive peer relationships and adult relationships within school by facilitating their academic success in the least restrictive environment. Early Rise serves up to six students and is staffed by a special education teacher, a full time licensed clinical social worker, two paraprofessionals, and a BCBA who is available to the program part of the week. Students' IEPs vary, based on individual needs; some students participate in the mainstream with support, while others are fully supported in the smaller setting. (P-128, P-186; S-22; Padden, VII: 281; DeAngelis, IX: 17-19, 142-43)

76. On or about September 28, 2018, NRSD sent a proposed Amended 2018-2019 IEP to Parents. The amendment incorporated 6 x 90 minutes per cycle of Academics/Social Skills Services provided by the special needs teacher/counselor outside of the general education setting, amounting to a Partial Inclusion placement. Parents rejected the IEP as developed on October 4, 2018. (S-43)

77. In the meantime, on September 28, 2018, Parents provided NRSD with a letter from Preston's pediatrician, Dr. Simon, indicating that Preston's mental health had deteriorated significantly over the past six months, such that he was no longer the same child the District had known. Dr. Simon requested that Preston be placed in a therapeutic school. (P-63, P-65; S-40; Mother, III: 178-79)

78. On October 2, 2018, the Team reconvened to formally review Dr. Connolly's Abbreviated Report. Dr. Connolly joined by telephone to present her results. Ms. Pirozzolo

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<sup>22</sup> Dr. Calligas testified at Hearing that it was common for children to be hospitalized for home behaviors, because sometimes the school can contain behaviors that are not able to be contained at home. (Calligas, II: 142)

participated on behalf of the Franciscan CBAT, as did school-based Team members from the Early Rise Therapeutic program, specifically Ms. Bressette, Ms. Moura, Ms. Bossardet, Ms. Feely, Ms. Fitzpatrick, speech/language pathologist Emily Vinci, Ms. DeAngelis, and attorneys for both Parents and the District. No-one at the meeting had worked with or observed Preston in a school environment. Dr. Connolly's findings and Parents' concerns are discussed at length in the N1. The Team considered a specialized Risk Assessment to assess Preston's likelihood to engage in sexually aggressive behaviors due to events shared by Parents and incidents of "pantsing" that had occurred at school. Although Parents agreed to provide the District a safety assessment performed upon intake at Franciscan CBAT, NRSB formally proposed a Risk Assessment to gain more information regarding Preston's needs and likelihood to engage in sexually provocative and aggressive behavior. The District also proposed an observation to take place at the CBAT in order to obtain additional knowledge regarding his needs and presentation.

The N1 also reflects Parents' request for a 45-day residential placement evaluation, which the District rejected and instead offered a 45-day school program extended evaluation. In rejecting Dr. Connolly's recommendation for a residential evaluation, NRSB relied on the District's experience with Preston and its belief in Early Rise as a program staffed by a dedicated group of specialized professionals that can provide interventions and supports for students to help them succeed both socially and academically. NRSB "again reiterated their desire to partner with an outside agency, such as DMH or DCF."<sup>23</sup> It appears that Ms. Bressette believed then, and continued to believe at the time of the hearing, that a "discussion of residential services or completion of a residential assessment is a conversation to have with outside agencies and is not within the purview of the school district," at least where a school can effectively service the child's educational needs. At this time, the District again declined to change Preston's primary disability category, as Dr. Connolly had not completed her evaluation,<sup>24</sup> and NRSB had proposed a three-year reevaluation, a risk assessment, and an observation. Asked whether the District was accepting Dr. Connolly's evaluation, Ms. Bressette reserved the right to complete her own psychological evaluation of Preston. (P-40, P-41, P-65; S-40; Mother, III: 180-186; Connolly, IV: 114-19; Father, IV: 338; Bressette, VI, 342, VII: 47-48, 54-55, 58; DeAngelis, IX: 17, 20, 22-26, 136)

79. On October 4, 2018, Parents accepted the proposed reevaluation in full, as they felt the District was not open to a residential assessment and there were no other options. Specifically, they consented to a social-emotional assessment and a psychological assessment. None of the testing for the District's three-year reevaluation was completed within 30 days. (P-66; S-39; Mother, III:187-88, IV: 231; DeAngelis, IX: 146-52)

80. On October 8, 2018, the District sent Parents a Second Amended 2018-2019 IEP, dated 9/20/2018 to 3/06/2019. It incorporated discussion of the brief draft of Dr. Connolly's neuropsychological evaluation. (S-42) Dr. Connolly did not believe this IEP was appropriate for

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<sup>23</sup> According to Ms. Bressette, she initiated the conversation about Department of Mental Health and/or Department of Children and Families involvement during the Team meeting that occurred in September 2018. (Bressette, VI: 335-36)

<sup>24</sup> Dr. Connolly indicated at the Team meeting that she would be administering additional rating scales and measures and collecting additional data before completing a final report. (Bressette, VI: 337-38)

Preston, as it reflected a piecemeal approach to goals with pull-outs, rather than a therapeutic program. As such, it did not align with her recommendations. (Connolly, IV: 120-21)

81. At some point thereafter, Dr. Connolly submitted a finalized Neuropsychological Assessment. She recounted that she had administered the WASI-2, the NEPSY-2, the VMI, the Kaufman Test of Educational Achievement (K-TEA-3), the Children's Self-Report and Projective Inventory (CSRPI), the Pediatric Behavior Rating Scale (PBRs), and a Parent Interview and Review of Records, but that due to compliance issues, some tasks were only partially completed, and additional tasks were attempted but could not be completed. In this version of the report, Dr. Connolly noted that due to Preston's noncompliance, attention fluctuations, and low frustration tolerance, the scores obtained are highly variable and underestimate his true potential, but she characterized the results as a valid indicator of his behavioral dysregulation, aggressive behaviors, and general noncompliance. She recommended that additional tests be administered to further assess Preston's memory, attention, executive functioning, academic and social-emotional functioning once he is more stable. (P-64)

82. On October 15, 2018, Dr. Sassong and Ms. Pirozzolo sent a letter to Ms. DeAngelis describing Preston and his participation at the Franciscan CBAT. He continued to struggle with self-regulation, impulsivity, tolerating frustration/distress, and expressing his feelings in safe and healthy ways. Preston had been unable to maintain safety during community and home passes, "engaging in targeted aggression towards more vulnerable peers and family members in a way that seems premeditated, callous, and unemotional." Dr. Sassong and Ms. Pirozzolo described Preston's symptoms as consistent with diagnoses of Major Depressive Disorder, recurrent, severe, without psychotic features; ADHD, combined presentation; RAD; and rule-out DMDD. They also described his educational and psychiatric needs as "deeply intertwined," and recommended an educational environment that is fully integrated into a residential program with supports sufficient for his psychiatric needs. Specifically, they strongly recommended a 45-day residential assessment structured to monitor Preston's behavior closely; occupational therapy; and regular check-ins, taking breaks, and in-the-moment support. They also suggested that the Team reconvene as soon as possible to reevaluate his IEP. (P-67)

83. On October 16, 2018, NRSD proposed an extended evaluation (EE) to take place between 10/17/18 and 1/4/19. The consent form did not specify the location where the EE would occur. On October 18, 2018, Parents rejected two portions of the EE, specifically, the failure to list Perkins and Devereux Schools as additionally proposed programs, and references to sexualized behavior, which Parents did not view as a current concern. Parents also noted that they expected Franciscan's recommendation upon discharge to inform the decision as to whether Preston would be evaluated in a day or residential setting. (P-69; S-39; Mother, III: 188)

84. On October 18, 2018, Parents rejected the Second Amended 2018-2019 IEP in full and refused the proposed partial inclusion placement at the Sawyer School. (P-68; Father, IV: 339)

85. At some point NRSD sent a consent form to Parents for an Observation and a Risk Assessment. On October 24, 2018, Parents rejected this proposal in full and requested a meeting to discuss. No such meeting was held, and Ms. Bressette could not recall having contacted Parents to follow up. (S-38; Bressette, VI: 342, VII: 41)

86. On November 9, 2018, DMH rejected Preston's application for clinical services, stating that there was insufficient clinical information available to determine whether the cause of Preston's functional impairment was due to a qualifying diagnosis. Parents formally appealed this determination on November 19, 2018. (P-71, P-72; Holstein, VIII: 106; Gobeil, VIII: 156)

87. In the meantime, while Preston remained at the Franciscan CBAT unable to maintain baseline behavior long enough to be discharged, it was unclear where he would be placed upon release. Eventually, Preston was discharged because Parents' insurance would not fund a longer stay. As Preston historically tended to act out more at Mother's house than at Father's, Parents, Ms. Pirozzolo, CBAT staff, and Ms. Garvin discussed the possibility of temporarily shifting primary custody to Father. Ultimately the group determined that this would not be in Preston's best interest, because it could be seen as a rejection by his mother. (Garvin, I: 93, 96-98, 101, 160; Father, V: 18-20)

88. In late September or early October, in preparation for Preston's discharge from the CBAT, Parents applied for MassHealth coverage for Children's Behavioral Health Initiative (CBHI) services from the Justice Resource Institute (JRI) and Wayside Youth and Family Support Network (Wayside). Parents hoped these wraparound services would support them in keeping Preston home, though neither they nor his clinicians believed these services would be sufficient.

On November 2, 2018, while he was still at the Franciscan CBAT, Preston was admitted to Metro West Community Based Services' Program in order to support him in his upcoming transition and to support his family in keeping him at home. He was assigned an intensive care coordinator, Dylan Santos, through Wayside, and a therapeutic mentor and family partner/in-home family therapist through JRI. In addition, Preston continued to participate in individual therapy.

Preston's Individual Care Plan, developed by this team, noted that he lacks insight into his emotions and sets unrealistic expectations for himself and others, which leads to low frustration tolerance, difficulty coping with mistakes, low self-esteem, and negative attention-seeking behaviors. He is rigid in his thinking and struggles with flexibility; he is impulsive, manipulative, has difficulty communicating feelings, and does not pick up on social cues. Moreover, Preston struggles to take ownership and blames others for his own actions. Due to his callous, unemotional traits and impulsive behaviors, Preston often endangers the safety of himself or others, without even recognizing the safety implications of his actions.

Preston and his family also worked with this CBHI team to create an Individualized Action Plan to support them in meeting their overarching goal of permitting Preston to maintain safety during supervised family time by being able to communicate emotions. Wayside tracked progress toward these goals through regular Care Plan meetings. (P-73, P-75, P-88, P-95; S-37; Garvin, I: 102; Mother, III: 189, 202)

89. In the meantime, NRSD sent out packets to potential placements for an extended evaluation (EE) in a therapeutic day placement. The packets included data from Dr. Connolly's

abbreviated draft and the last time Preston had been evaluated, in addition to a statement of the objectives for the evaluation. The referral question for Preston's extended evaluation stated, "Additional information is needed to clarify the diagnostic picture for [Preston], particularly in the areas of social skills, coping skills, and social-emotional functioning to guide interventions. The assessment is also needed to evaluate his risk to engage in physical aggression and sexualized behaviors." Ultimately the Walker School was selected by the parties to conduct the EE. (S-39; Bressette, VI: 342-43, VII: 90; DeAngelis, IX: 29-30)

90. Preston was discharged from Franciscan CBAT on November 26, 2018 and began Walker's 45-Day Assessment Program the next day. NRSB sent an N1 providing for adjusted EE timelines, in light of the earlier than anticipated start date. The extended evaluation period was scheduled to end on February 9, 2019. Although Ms. Bressette remained the Team chair for Preston, she had no further contact with Walker until January. (P-75, P-80; S-36; Mother, III: 165; Bressette, VI: 343-44, 346, 353)

91. In preparation for this transfer, on or about November 21, 2018, Walker staff completed a Risk Assessment of Preston, in which he was shown to have a number of safety and protective factors as well as past or current risk factors. (P-74; Mother, III: 190-91)

92. Walker is a Chapter 766-approved therapeutic day school that also serves students who reside on campus. It features a small classroom size and a high adult-to-student ratio that includes teachers, assistant teachers, and direct care counselors whose responsibilities include behavioral and emotional support to students as they participate in classroom activities. Teachers work with the clinical team, occupational therapists, and speech therapists, to incorporate therapies and recommendations into the day-to-day learning in the classroom. Walker students have ASD, emotional and behavioral challenges, and/or learning challenges. Walker utilizes consistent schedules and routines and collects data through observation on behavioral targets to formulate best practices to educate each child. (Simmons, VI: 90-93, 101-02)

93. Walker education coordinator, Monica Simmons, served as the point person for Preston's extended evaluation at Walker. Ms. Simmons has a Master's degree and an initial Massachusetts license in moderate special needs. She has worked at Walker in multiple capacities since 2010. In her current position as Educational Coordinator, a position she has held for the last 10 years, Ms. Simmons supports teachers in classroom management and ensures that Walker students are taught in accordance with their IEPs, that progress is monitored through informal assessments and progress reports are developed, that points are collected, and that daily reports are sent home to Parents. Ms. Simmons supervised Preston's teacher, Lauren Allen, during his time at Walker. At the time she oversaw Preston's extended evaluation, Ms. Simmons had been involved in fewer than five EEs. She testified that she understood the purpose of Preston's extended evaluation to be to gain an understanding of his presentation in the classroom in terms of how he managed frustrations, how, if he exhibited behaviors, Walker worked with him to manage those, and to gather information regarding his academic performance. This information was to be gathered through observation and informal assessment and formulated as recommendations for managing academic performance and classroom behavior. Asked how Walker might assess social-emotional regulation needs within an extended evaluation, Ms. Simmons stated that she

could not answer, as it was more of a clinical question. (Simmons, VI: 88-90, 94, 125-26, 171, 177)

94. Preston made a smooth transition to Walker, as his teacher Lauren Allen reported to Parents on November 30, 2018 that he had adjusted well, made friends, and stayed in class. Like every student at Walker, he was on a behavior plan. Preston received primarily “Satisfactory” grades on his fall report card, with “Needs Improvement” in grammar, several social studies categories, and three of ten classroom behavior and motivation categories. Ms. Allen commented that Preston presented positive participation and behavior throughout his academics but was working on not calling out and initiating his schoolwork without negative comments. Furthermore, he did a great job once focused on the task but could be easily frustrated when he did not feel confident about the concept presented. Preston’s November and December daily updates, written by staff and provided to Parents, generally reflected that he was participating in academic blocks, though he was struggling to begin schoolwork (once crumpling up and throwing paper) and follow directions at times, could be provocative when arguing with peers, and was agitated on one day to the point where he had to create apology notes with much support. (P-77, P-78, P-79, P-83, 85; Ide, VI: 28-29; Simmons, VI: 111)

95. Preston’s assigned clinician at Walker was Katie Blue, a social work intern. While attending the Walker School, Preston met with Ms. Blue for weekly one-hour counseling sessions outside of the classroom, which consisted primarily of play therapy and psychoeducation around emotions. Overall, they worked together for approximately two months. During this time, Ms. Blue spoke with Parents weekly. As a clinical intern with neither a license nor a Master’s degree, Ms. Blue was supervised by Lauren Ide, with whom she met weekly. (Garvin, I: 74, 108; Blue, III: 7-8, 22) Ms. Ide has a bachelor’s degree in psychology and a Master’s degree in social work. She is licensed in Massachusetts as an independent clinical social worker and worked at Walker for approximately five to six years as a residential educational clinician and clinical supervisor. In this capacity, Ms. Ide provided individual and family therapy to residential clients and clinical check-ins to day students; wrote treatment plans, provided consultation, and completed clinical assessments; and provided clinical supervision to full-time clinical employees and clinical interns. Ms. Ide was heavily involved in Ms. Blue’s treatment of Preston but did not provide any direct services to him. (Blue, III: 9-11, 18-19, 25-26; Ide, VI: 7-9) According to Ms. Ide, Walker utilizes cognitive behavioral therapy and solution-focused therapy frameworks, along with trauma-informed care. Ms. Ide could not confirm whether Walker staff have expertise in working with students with RAD or mood dysregulation disorders. (Ide, VI: 11-12)

Ms. Blue was not qualified to conduct any testing of students during her time at Walker, nor did she know who may have been qualified to do so. She did not recall whether any psychological testing of Preston had been done by NRSB or within Walker while Preston was there. (Blue, III: 22-23)

During Ms. Blue’s time as Preston’s clinician, teachers reported to her regarding the outbursts he was having in class, exhibiting behaviors such as slamming hands on the desk, throwing work and pencils on the ground, breaking pencils, yelling, and swearing. She did not intervene when he became dysregulated at school; she viewed her role as addressing emotional and behavioral

issues with Preston after they occurred. At hearing, Ms. Blue could not remember whether Preston had been restrained while at Walker, but she did recall that Preston's classroom behavior improved through his time at Walker. She did not recall whether she collected any data regarding Preston's sensory sensitivity; physical aggression; ability to follow directions or stay in his seat in the classroom; noncompliance, swearing or calling people rude names; or difficulty with limits and boundaries during his time there. (Blue, III: 18, 31, 33-34, 52)

96. In addition to the daily written updates Parents received from Walker, Mother spoke weekly with Ms. Allen and either Ms. Blue or her supervisor Ms. Ide. Ms. Blue told Mother that Preston reported that he was feeling at his best (a level 10) almost every day. At times he refused to come to therapy, and when he did come, it appeared to be to avoid academic activities. Ms. Allen explained that Preston's academics took him a long time to complete, and that he would often spend time in the sensory room. Ms. Allen also reported that Preston was displaying concerning behaviors in class but was not that bad when compared to his classmates. Some of Preston's incidents involved flipping tables, punching things, breaking pencils, throwing objects in the classroom, and storming out. He struggled with frustration, but with staff redirection was able to return to the classroom. Mother believed that Ms. Allen was downplaying Preston's actual behavior. (Mother, III: 195-96, IV, 233-35)

During this time, Preston continued struggling at home with escalated unsafe behavior. (P-84; Mother, III: 198-99)

97. The formal DMH eligibility appeal occurred on December 10, 2018. Staff from the Franciscan CBAT wrote a letter in support of the appeal, explaining that Preston's significantly protracted admission was "in large part due to the persistently high risk of harm to others that required careful collaboration with community-based services." They requested that DMH reconsider its decision, as DMH services were both clinically warranted and medically necessary. Dr. Sossong and Ms. Pirozzolo reasoned as follows:

"In our experience, [Preston] demonstrates a degree of psychiatric pathology that is much more significant than his admission history suggests. We believe that were it not for the exceptional outpatient psychiatric care and committed parental involvement, [Preston] would have been hospitalized much sooner and more frequently. Despite the outstanding family and treatment supports, he requires more intensive services than could be provided in the outpatient setting without intensive in-home, community-based, and school-based supports. [Preston]'s educational and psychiatric needs are deeply intertwined, and he requires an educational environment that provides adequate social and emotional supports." (P-80, P-81)

Upon consideration of the clinical documentation, along with an interview of Preston and his mother, DMH determined that DMDD is the primary cause of Preston's functional impairment, and as a result, he was eligible for DMH Child, Youth and Family Services. Parents were informed on December 12, 2018 that the denial of service authorization had been reversed. (P-81, P-82; Mother, III: 189; Father, IV: 332; Holstein, VIII: 109-10; Gobeil, VIII: 158-59)



DMH contracted with Youth Villages for Intercept Services. Intercept is a trauma-informed cognitive behavioral therapy model of treatment that focuses on the behaviors and symptoms that prevent a child from being successful in the community. Designed to help Preston remain safely in the home, Intercept was more intense than the services the family had been receiving through CBHI. (Mother, IV: 93-95; Farrington, I: 283; Gobeil, VIII: 166-67) In the meantime, however, CBHI remained in place. (Garvin, I: 102-03)

98. Ms. Blue conducted a Childhood and Adolescent Needs (CANS) assessment on January 9, 2019.<sup>25</sup> Although both Ms. Blue and Ms. Ide described the CANS as an initial assessment given to Walker students upon intake, Ms. Blue did not administer Preston's until he had been there for about six weeks, and at the time of the Hearing she could not recall the purpose of the CANS.<sup>26</sup> (Blue, III: 37-38, 54; Ide, VI: 12-13)

Although the report was based, in part, on a telephone interview with Mother, Mother believed the report was not an accurate representation of the information she shared with Ms. Blue. It reflected lower concerns across multiple categories than Mother believes she expressed. (Mother, III: 203-07)

99. As Preston's clinician, Ms. Blue was permitted to communicate with his collaterals. She testified that she always felt that Preston's collaterals were responsive and helpful, though she only remembered specifically communicating with Ms. Garvin. (Blue, III: 28, 53) According to Ms. Garvin, it was unclear what the goals of Preston's sessions with Ms. Blue were, and what was happening when they met. Ms. Blue reported to her that frequently Preston either did not want to come to counseling or wanted to leave his sessions early. (Garvin, I: 107)

Ms. Blue did not recall speaking with anyone from the District while Preston was at Walker. (Blue, III: 28) However, Ms. Blue testified that even if she had spoken with NRSD personnel, she might not have written any of the information down because she was taught to do evaluations of students using only the information she herself gathered from their time at Walker. (Blue, III: 29)

100. The extended evaluation midpoint meeting at Walker took place on January 7, 2019. Parents, Ms. Bressette, Ms. DeAngelis, Ms. Simons, Ms. Blue, Ms. Ide, Ms. Santos, and Preston's CBHI family therapist all attended. The N1 indicates that results and data showed Preston had made a successful transition to the Walker Day School, consistently earning positive

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<sup>25</sup> According to Ms. Ide, Ms. Blue was certified to administer the CANS, and it was common practice for Ms. Ide to review her assessments. (Ide, VI: 22)

<sup>26</sup> On a scale from 0 (no evidence of problems) to 3 (several disruptions or problems), Ms. Blue rated Preston at a 1 (doing adequately, with mild or minor problems) in family functioning, living situation, social development, sexual development, school achievement, interpersonal, spiritual/religious, community life, identity, ritual, caregiver physical health, depression, anxiety, conduct, adjustment to trauma, self-mutilation, danger to others, social behavior; and a 0 in recreational, developmental, legal, medical, physical, school achievement, school attendance, family, educational, talents/interests, relationship permanence, language, caregiver strengths, most caregiver needs, child psychosis, substance abuse, child danger to self/suicide risk, other self-harm, sexually abusive/aggressive behavior, runaway, delinquency, and fire-setting categories. She indicated that Preston was at a 2 (moderate problems) in school behavior, optimism, oppositional behavior, anger control, and judgement, and a 3 (clear evidence of a dangerous level) in attention deficit/impulse. (P-92)

behavior points around 90-100% of the time for being safe, ready, and kind in school. (S-33, S-34, S-35) To the extent Walker collected data regarding Preston's coping skills, social-emotional functioning, physical aggression, and sexualized behaviors, it was collected by observation. Ms. Ide could not recall whether any of these areas were tracked while Preston was at Walker. (Ide, VI: 24-26)

Walker reported that Preston had made positive relationships with peers and staff; was kind, could positively interact, and had handled changes to his classroom well; and was completing 100% of his assigned work and doing well during unstructured time. Preston required some support in initiating a task, particularly around morning work; after the first week, academic work was no longer a trigger. Faculty reported that he was able to use his words, express his feelings, and process and resolve concerns. Moreover, he was not reacting to others who were disruptive. Staff also reported that end of day transitions could result in some anxiety for Preston, but giving him time to organize his materials and pack up at the end of the day helped. (S-33)

Parents were surprised to hear this information, as it did not align with what Ms. Allen and the CBHI team had been reporting. Despite Preston's behaviors, he was described as a model student compared to his peers. Father observed that the data chart presented did not provide relevant information about some of the variables. Mother asked about how the data presented regarding Preston's behaviors and emotions had been collected, and Walker School personnel explained that it was based on what he told them. This concerned Mother because in her experience Preston was not an accurate self-reporter<sup>27</sup> and would oftentimes tell people what he thought would make them happy.<sup>28</sup> (Mother, III: 196-97, IV: 238-42; Father, IV: 341-44)

101. A few days later, in response to questions Mother had asked at the midpoint meeting, Ms. Simmons sent Parents a written summary of Preston's academic functioning.<sup>29</sup> According to Ms. Simmons, Preston was reviewing grade level materials in math and reading. His math skills were fairly strong, and he was practicing second grade math standards. He was becoming more comfortable reading aloud and participating in a third grade reading class. He was continuing to struggle with writing tasks and could be defiant when asked to do them. When eager to share his answer, he often answered for or before other students could do so, or without appropriately raising his hand, even when prompted to do so. At this point, Preston could engage in daily morning work, which permitted him to earn free choice time, but during non-preferred morning work or writing activities he would groan loudly, wrinkle or throw his paper on the ground, break pencils, whisper or yell unkind names to staff presenting the assignment, swear, and show signs of distress and make negative comments to himself or cry. When agitated, he would usually stay at his desk, bang hands on the desk or stomp his feet, sometimes shout or cry.

The report indicated that Preston's check-in targets would be updated to the following:

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<sup>27</sup> Mother shared an examples of Preston reporting that his day was a 10 despite being visited by the police, and screaming at the top of his lungs that he was in the "green zone" as he simultaneously demolished property. (Mother, III: 197)

<sup>28</sup> Mother testified that at this point, she began to notice inconsistencies between the daily updates she received from Walker and the updates she was getting from Ms. Allen. (Mother, III: 198)

<sup>29</sup> Ms. Simmons created this report based on information Ms. Allen, whom she supervised, shared with her. (Mother, III: 200-01; Simmons, VI: 122-23)

Did you use kind words?  
Did you ask for help when you needed it?  
Did you have appropriate student behavior?

Although there are no written definitions for these terms, they are the behaviors tracked by Preston's behavioral plan.

Daily updates issued around the same time indicated that Preston had overall okay or good days and was a kind friend, though one day he was frustrated and threw homework on the ground, telling staff to "shut up," and on another day he struggled to stay settled during writing toward the end of the day, breaking two pencils and telling a teacher to "shut up." With adult help Preston was able to complete his work without leaving the classroom or being too disruptive. (P-86, P-87, P-89; Mother, III: 199-201; Simmons, VI: 140-41, 169)

102. On January 9, 2019 Dr. Connolly met with Preston to complete her Neuropsychological Assessment, and she issued her final report shortly thereafter. In addition to the measures attempted or completed that were listed in her previous report, Dr. Connolly completed or partially completed, due to compliance, selected subtests of the Wechsler Intelligence Scale for Children-V (WISC-V) and additional subtests of the K-TEA-3. Preston was unable to complete the Rey Complex Figure test or the Delis Kaplan Executive Function System (DKEFS). Once again, Dr. Connolly was unable to fully administer all desired testing given Preston's inflexibility.

Dr. Connolly concluded that Preston had an IQ of approximately 117 or 118. Although he was making minimal progress in reading and writing, Dr. Connolly's primary concerns for Preston were therapeutic and social-emotional. She concluded that Preston's social emotional issues directly impacted his access to education, as every time he got frustrated or believed he could not do something, his emotions boiled over and he started believing he was "bad," which he could not tolerate. He would then get angry and hold on to that anger, which would prevent him from accessing the curriculum.

After she completed testing, Dr. Connolly updated the Background Information section of her report to include diagnoses of RAD, Unspecified Mood Disorder, major Depressive Disorder, ODD, Generalized Anxiety Disorder, Sensory Integration Disorder, and ADHD. As she explained, Preston was hospitalized following a series of extreme mood shifts, behavioral outbursts, safety issues at home and school, highly aggressive behaviors and threats of harm to others, and had spent the last few months in the Franciscan Children's Hospital CBAT, an intensive inpatient mental health facility, undergoing intensive therapy and a multitude of mood stabilizing medications. At the time of the report, he remained hospitalized due to continued unsafe behaviors.

Dr. Connolly again recommended that once Preston has stabilized, additional testing should be administered to further assess his memory, attention, and executive, academic, and social-emotional functioning, as his noncompliance, attention fluctuations and low frustration tolerance led to highly variable scores that underestimate his true potential. Nevertheless, Preston's evaluation revealed high average intellectual capacities, with clear strengths in verbal

comprehension, and scores in the average range in fluid reasoning, language, and visual motor skills. He scored in the superior range in social perception, reflecting heightened awareness of his surroundings. Preston exhibited significant difficulties with writing, and reduced literacy and reading skills. His scores on the KTEA-3 demonstrated below grade level and far below age level decoding skills, severe weaknesses in automaticity, and below grade and age level silent reading comprehension. His testing showed severe deficits across many areas of executive functioning, significantly reduced sustained auditory attention, and a tendency to be easily overwhelmed by large amounts of visual information. Preston was resistant to discuss emotions and school, and when these tasks were attempted his dysregulation and avoidance behaviors increased. Overall, results of projective testing and observations during all sessions revealed that Preston shows extreme mood swings, disruptive behaviors, aggression, noncompliance, and a general lack of understanding of his emotional responses on others. He also seemed highly anxious, easily frustrated, impulsive, and distracted. His high level of noncompliance despite intensive treatment demonstrates his current lack of control, as he continued to be aggressive and unsafe to self and others. Moreover, Parent and CBAT reports indicate extremely high levels of behavioral and mood dysregulation, and PBRS ratings revealed that Preston was above the 99<sup>th</sup> percentile for Total Mood Dysregulation.

Dr. Connolly expressed concern that despite continuous placements in CBAT programs and the Walker School, Preston had made no gains in his ability to cope or handle his emotions over a three-month period. He continued to display no frustration tolerance, understanding or awareness of his emotions, no ability to control behavioral reactions, and little to no understanding of the impact of his behaviors on others. He continued to be at high risk of harm to self and others.

In light of her findings, Dr. Connolly concluded that placement in a residential treatment school for students with co-exhibiting psychiatric, emotional, and learning disabilities was necessary to provide Preston with a smaller safe, structured milieu in which he could make progress academically, functionally, socially, and emotionally because of intensive and consistent structure and expectations. She recommended a therapeutic, rather than behavioral, model of programming, with a full-day approach to include a small special needs classroom with clear rules and consistent, non-reactive consequences with like peers; direct one-to-one instruction in reading and written expression using a structured, evidence-based program; small group language-based instruction for all academic subjects; small group instruction in higher-order language skills or thinking maps taught by a speech and language therapist; and intensive daily therapy to help Preston understand and regulate his emotions. Furthermore, she recommended close monitoring of his progress in reading decoding, comprehension, and fluency, with a Team reconvene after two months to determine whether he required more intensive support. She also recommended direct writing support, teaching of self-monitoring strategies, involvement of a BCBA or master's level behaviorist in Preston's Team, an assistive technology evaluation, wraparound services, intensive individual therapy, family and parent counseling, and continued work with his psychiatrist.<sup>30</sup> (P-90; Garvin, I: 110-111; Connolly, IV: 121-28)

103. As of mid-January, Preston was able to behave well at Walker, but he was melting down when he got home. Preston punched his father, brother, and mother and threw Legos at a mobile

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<sup>30</sup> Ms. Garvin read Dr. Connolly's report and agreed with the findings and recommendations it contained. (Garvin, I: 116)

crisis worker. The police were called to the home, as was the mobile crisis team multiple times. (P-96) Around the same time, Walker Day School informed Parents that a classmate on Preston's bus had reported that Preston was touching the classmate's genitals during the bus ride. Mother contact District personnel to inform them of the bus incident, but she was not aware of any consequences he received for his actions from Walker or the District. (P-144; Garvin, I: 79; Mother, III: 208-09) Ms. Simmons created an incident report after speaking with the other student involved, but when she met with Preston to discuss what had happened, Preston did not make a statement. As such, Ms. Simmons classified it as a disclosure rather than a critical incident, which she hypothesized might explain why it did not appear on Preston's charts. (Simmons, VI: 145-46)

104. On January 15, 2019, Mother had to contact both the police and Preston's in-home team (IHT) due to his ongoing aggressive behavior, including chasing his mother while holding scissors. He had also gone after siblings with a pencil, punched, kicked, and thrown items, including furniture, bolted from home, made statements regarding getting his grandfather's gun and shooting, decapitating, or suffocating his family. Preston was sectioned by the mobile crisis team and sent to Westborough Behavioral Health Hospital, and Parents inquired as to whether he could be discharged to Walker's Intensive Community-Based Acute Treatment (ICBAT).<sup>31</sup> (P-93, P-144; Mother, III: 210-11; Father, V: 17) Parents consented to an exchange of information among Walker, Westborough, and the Learn Well tutoring center. (P-94)
105. Upon discharge from Westborough, Preston was admitted to the Walker ICBAT, where staff performed a psychiatric initial evaluation on January 23, 2019. His primary diagnosis was noted as DMDD, and the focus of his admission was medication evaluation, ongoing medication management, therapeutic support, increasing safety and stabilization in the home, decreasing frequency and intensity of aggressive behaviors, identifying triggers and warning signs, increasing access to coping skills, and reviewing disposition planning and supports from DMH with Preston's family. When Preston arrived on the CBAT, staff planned for him to attend the CBAT school where he would receive two hours of tutoring per day with a staff to student ratio of 1:3. Parents signed a release to permit communication between Walker School and Walker ICBAT staff. (P-97, P-98, P-99; Mother, III: 211)
106. The Walker CBAT provides individual, group, and family therapy during admission, delivered by licensed mental health practitioners (LMHCs) or clinical interns supervised by LMHCs, utilizing trauma-informed therapy. Team treatment meetings are held on a weekly basis. (P-135; S-24)
107. While at the CBAT, Preston was assigned to CBAT clinician Elizabeth Wilson, who was also an intern. At times, Preston refused to participate in his sessions with Ms. Wilson. (Garvin, I: 74-75; Father, IV: 346, 350) In addition to meeting regularly with Preston and Parents, Ms. Wilson spoke with DMH and members of the IHT that had been working with the family prior to admission, but her Progress Notes do not indicate that she spoke with Ms. Blue or with anyone from NRSB. Ms. Wilson did, however, attend team meetings for Preston with Parents and their

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<sup>31</sup> Although some of the paperwork regarding Preston's admission refers to the Intensive Community-Based Acute Treatment program (or ICBAT), most of the testimony refers to a CBAT. It is not clear whether there was a distinction between the two at Walker and if so, to which Preston was admitted.

partners, Ms. Farrington, Ms. Santos, other service providers, and Ms. Ide. (P-134) During one of the systems meetings,<sup>32</sup> Ms. Wilson expressed her belief that if Preston could not stabilize at Walker, residential would be a logical next step. Ms. Ide responded that a recommendation for residential would not come from Walker's extended evaluation because the assessment did not have a residential component. This statement both confused and concerned Parents. (Father, IV: 351-54)

108. Ms. Blue did not work with Preston during his time on the CBAT. Although Parents provided her with explicit permission by email to communicate with Walker IBAT, Ms. Blue believed that she was not allowed to communicate with Preston or his parents when he was transferred to there because he had a new clinician at the ICBAT. She testified at hearing that although Walker CBAT and School are part of the same organization and can share information, Walker's practice is to keep everything separate between them. (P-99; Garvin, I: 74-75; Blue, III: 11, 20-21, 46; Simmons, VI: 120) The District did not appear to be aware, until the Hearing, that Ms. Blue had not meet with Preston consistently during his time at the Walker School. (DeAngelis, IX: 182-85)
109. When Preston was at the CBAT, Mother visited him daily for at least an hour. During her visits, Mother observed Preston breaking and flipping furniture, punching, hitting, and tearing. At times staff, including Ms. Wilson, were present when these incidents occurred. Mother did not believe that Ms. Wilson, an unlicensed intern, had sufficient experience with and awareness of how to deal with Preston's issues. (Mother, III: 215-16)
110. Meanwhile, Ms. Santos convened Care Plan meetings in December 2018 and January 2019 that included the CBHI team, Parents, and Ms. Garvin. During these meetings, the group discussed their concern about the lack of treatment Preston was receiving at Walker School and Walker CBAT and the lack improvement in his behavior and relationships. They believed Walker staff were underreporting and downplaying his aggressive and violent behaviors. (Garvin, I: 102-03; Mother, III: 214)
111. At some point, Ms. Garvin visited Preston at the Walker ICBAT. She spent time with him in his room where they played games and talked. When it was time for the children to play outside, Ms. Garvin went with Preston to the playground. She believed the children were not adequately supervised there. Ms. Garvin observed very little dialogue between the staff and the children, and no intervention between the staff and Preston. Instead of supervising the children, or noticing that Preston was playing alone, the Walker staff stood in a circle and talked only to each other. (Garvin, I: 105)
112. Both Ms. Garvin and Dylan Santos maintained communication with the Walker ICBAT regarding Preston. They expressed concern that Parents and Preston needed help creating specific strategies for managing Preston's impulses, aggressive urges, and destructive and harmful behaviors, as well setting consequences and limits for Preston. Ms. Garvin recommended a therapeutic environment for Preston to teach him how to recognize when he started feeling out of control, to regulate his body, and to talk about his feelings and how to cope

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<sup>32</sup> Systems meetings, which include DMH and other providers, occur when a child is placed outside of the home. (Holstein, VIII: 104-05)

with them once he had calmed down. Ms. Santos indicated that many providers had been working with the family to help Preston learn to regulate his behaviors and emotions, and understand that physical aggression is never acceptable, but that Preston's outbursts were beyond the point where these lessons could be taught at home while maintaining Preston's and others' safety. (P-100, P-102)

113. On January 30, 2019, Walker ICBAT staff noted that Preston was doing well overall, had had positive visits with his family and with some prompting was able to transition from visits. He had been attending CBAT school, which was the practice for children on the CBAT, though he struggled often to complete classroom work or wait for the teacher; he swore when he did not receive her immediate attention. He was taking many breaks during school, and though he had not been physically aggressive he was slamming the door often when upset. He enjoyed playing with peers but could get dysregulated easily with those who escalate quickly. He had been only minimally able to engage in individual therapy.

Parents expressed concern that the 45-day evaluation would not be completed if Preston remained at the CBAT school. Walker made an exception to allow him to continue his education at the Walker School. When he walked between the ICBAT and the Walker School, Preston was escorted by a staff member.

Family therapy, off-grounds passes, and in-home therapy sessions began around this time. (P-101, P-119; Mother, IV: 236-37)

114. Youth Villages Intercept Team completed an intake with Mother on or about February 1, 2019, and Nichole Farrington was assigned as the Family Counselor/Family Intervention Specialist. Ms. Farrington earned an undergraduate degree with a concentration in clinical counseling and a Master's degree in science in forensic and investigative psychology, She has worked in direct service, supervisory, and management positions on inpatient units and in residential, on-call, and crisis response programs. Ms. Farrington does not have any DESE licenses, nor has she worked in public schools. Ms. Farrington spent approximately 18 months working for Youth Villages. (P-103; Farrington, I: 180-82, 185-86, 236) Preston was assigned to the Intercept program for the provision of intensive in-home services as he transitioned home from the CBAT. (Farrington, I: 236-37)

As a family intervention specialist, Ms. Farrington met with the family three times a week and remained on call for them Monday through Friday from 6:00 AM to 6:00 PM. Youth Villages also provided for a 24-hour on-call service. Ms. Farrington usually met with Preston once a week at school and twice a week at home. Her main focus was to create a safe home environment for Preston and his family by using a collaborative problem-solving method to try to work through targeted behaviors, and providing Preston with problem-solving skills, self-identifying triggers, strategies to eliminate those triggers, and coping skills to help him remain regulated. (Farrington, I: 187; Mother, III: 219)

Ms. Farrington and her supervisor attended a telephone meeting with Walker ICBAT staff as soon as she began working with Preston. From February 8, 2019 until June 2019, every Friday Ms. Farrington met with Walker ICBAT staff to discuss how Preston was doing, what services

he needed, and what progress was being made toward his goals. (Farrington, I: 189-81) Once she had a release, Ms. Farrington spoke with Ms. Garvin at least once a week to discuss Preston and his needs. (P-103; Farrington, I: 197)

115. Parents shared their concerns about Walker with Ms. Farrington and Ms. Garvin, including their belief that Walker was not informing them of the extent of Preston's dysregulation and that staff did not appear to follow up with him when he acted out. (Garvin, I: 108-09; Farrington, I: 205-206; Father, IV: 349-50, 356-57)
116. In the meantime, on January 30, 2019 NSRD proposed Preston's three-year reevaluation, to be comprised of a teacher assessment/educational history, academic achievement assessment, psychological assessment, observation, medical history, speech and language assessment, and occupational therapy assessment. (S-33)

Around this time, Ms. Bressette reached out to Mother to inquire about Dr. Connolly's report, as she had heard at the end of the midpoint meeting that Dr. Connolly would be completing her assessments in the near future. (Bressette, VI: 355-56)

117. On February 5, 2019, Parents requested that NRSD continue Preston's EE, as he had missed 11 days at the Walker School due to his hospitalization and subsequent placement at the Walker CBAT. Also on this date, Parents indicated to the District that they believed Walker was not collecting sufficient relevant data to inform development of an appropriate IEP. Specifically, they believed that Walker was collecting data on points, but had not collected data or addressed in a therapeutic manner some of his more challenging behaviors that had manifested in school settings, i.e. punching walls, flipping desks, swearing at staff, slamming doors in staff's faces, touching another child inappropriately, and refusing to attend or participate in school. Parents requested that the Team reconvene to consider changing the location of the EE, or at least conducting the proposed three-year evaluation in a therapeutic setting, in order to gather meaningful data regarding skills and strategies Preston lacked when faced with difficult or non-preferred tasks. (P-104; Father, V: 53-57; DeAngelis, IX: 193)
118. Parents, supported by Ms. Farrington, attended a treatment team meeting at Walker ICBAT on or about February 11, 2019. They were told that Preston was doing fine, but were also told that he struggles to complete daily tasks, like getting ready in the morning, and will initially refuse to do so but will then respond after multiple prompts. Asked about what happens when the options are not given, or whether transferable skills are being developed, the CBAT treatment team stated there were no current ones, but they were hoping Youth Villages could work on that with Preston. Shortly thereafter, Ms. Farrington documented that she had witnessed a lack of staff support when Preston was acting out during one of her visits, throwing things at staff and swearing at them when they tried to set limits with him. Similarly, Preston had yelled at and hit, punched, or kicked Parents during some of their visits to him at the CBAT. Parents continued to believe that Walker was not taking his outbursts seriously. (P-105, P-106, P-110, P-134; Father, IV: 358-59)



In mid-February, when Mother arrived to pick Preston up for a home pass<sup>33</sup> he was very dysregulated; he punched his mother, threw a chair, and picked up a table, suggesting that he was going to throw it. Mother reported that the only thing staff did when this occurred was to ask him to please stop. Preston stated that he did not feel safe to go on pass and believed he would hurt someone if allowed to do so. Staff was pushing for him to go anyway, and though Mother took him, she did not feel supported by staff whom she believed had not taken his violence seriously. Shortly thereafter, Father expressed to Ms. Farrington that he agreed with Mother about a lack of consequences for Preston's actions at the ICBAT, and a lack of monitoring when he was taking space, such that he would sometimes have outbursts and punch and kick walls. (P-110) Father also noted that Preston was exhibiting frustration and agitation during visits and on home passes. (Father, IV: 355-56)

119. According to milieu progress notes, when agitated or upset at the ICBAT, Preston would display both physical and verbal aggression by screaming, swearing, yelling, slamming doors throwing tantrums, and throwing objects, and at times he would become aggressive toward staff or his family. Over time he was able to accept adult help to minimize these episodes, including prompting for time away and redirection to a preferred activity. Overall, his peer interactions were appropriate, as were his interactions with adults. (P-10, P-134)

120. At a meeting among Ms. Farrington, Parents, the ICBAT clinician, and other Walker team members on or about February 18, 2019, Walker assured the family that an assessment would be done with recommendations at the end of the evaluation to ensure that Preston would receive the accommodations he required to succeed in school. (P-110)

121. Ms. Blue completed the Child and Adolescent Functional Assessment Scale (CAFAS) for Preston on February 19, 2019, rating him over the preceding 3-month period.<sup>34</sup> On four out of four target behaviors in the "Home" category, Ms. Blue concluded that Preston had severe impairments; she concluded that he had moderate impairments in three out of four "Behavior Toward Others" categories and one out of two impairments in the "Moods/Emotions" category; mild impairments in one out of two of the school/work category, one out of four in the "Behavior Toward Others" category, one out of two in the "Moods/Emotions" category, and one out of one in the "Self-Harmful Behavior" category; and minimal or no impairment in one of two school/work categories, two out of two "Community categories, and one out of one in the "Substance Use" and "Thinking" categories. The term "mild impairment" on the CAFAS is defined by that measure to indicate significant problems or distress. (P-107; Blue, III: 35-37; Ide, VI: 51-53)

Ms. Blue did not speak with anyone outside of the Walker School, including Preston's service providers and Walker CBAT staff, in the course of administering the assessment. According to Ms. Ide, the CAFAS measures a discrete rating period, so events that occurred before or after that period, or in different settings, would not be included. Although Walker's practice is to

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<sup>33</sup> Walker staff did not accompany Preston on his home visits; he was supervised only by Parents. (Farrington, I: 189)

<sup>34</sup> Ms. Blue received guidance from Ms. Ide while completing the CAFAS; Ms. Ide reviewed and approved her report. (Blue, III: 35, 40)

administer the CAFAS every 90 days for students to measure progress, or lack thereof, it appears only one was done for Preston. (P-107; Blue, III: 35-37; Ide, VI: 13-14, 29, 56-58)

122. Walker completed its report on Preston's EE on February 25, 2019, based on contributions by Ms. Blue, Ms. Ide, and Ms. Simmons. Key evaluation findings included results of the Adaptive Diagnostic Assessment of Mathematics (ADAM) and the Diagnostic Online Reading Assessment (DORA), administered within three short testing sessions with adaptive seating and opportunities for breaks. On the ADAM, he scored in the late second grade range overall, indicating that he is on grade level for math. On the DORA, Preston's scores ranged from the kindergarten to the mid-third grade range. His lowest scores were on spelling, phonics, and reading comprehension subtests. The Diagnostic Reading Assessment (DRA) was also administered. His independent reading level was 14, which corresponds with Level H in the Fontas & Pinnell guided reading system, or an independent level of 1.8. This was also his instructional level in terms of comprehension. Results indicated that Preston's oral reading fluency impacted his reading comprehension, and that he requires continued practice and review using comprehension strategies while reading, especially when confronted with unknown words within a sentence. (P-164; S-31, S-32; Simmons, VI: 94-95, 97-99, 157)

The CANS assessment summarized Preston's history of aggressive outbursts, mood dysregulation, poor decision-making, and non-compliance, per parents' report. It indicated that he struggles with following expectations in school and will have aggressive outbursts, though he is doing well in school and performing at grade level. Noted struggles included impulsivity, mood and emotional, dysregulation, high agitation when overwhelmed, peer interactions, participation in recreational activities, hyperactivity, anxiety, oppositional behaviors, and anger control. The CANS also stated that Preston has a history of self-harm and sexualized behavior and that he benefits from a supportive classroom. (S-31)

The extended evaluation report also summarized the results of the CAFAS and included a Clinical Summary written by Ms. Blue, which restated Preston's early history and diagnoses and well as some of his struggles in the classroom, hospitalizations, and involvement of his parents.<sup>35</sup> According to Ms. Blue, Walker would be working with Preston to build classroom skills to help him access the curriculum as well as clinical services to support him in his social development, emotional regulation, and behavioral support planning. (S-31)

Finally, the EE listed 27 recommendations, all of which appear to be accommodations. They include consistent routine and structure of his school day; access to an agenda or list of expected tasks for a class period that can be previewed and crossed out as he progresses through it; access to small group instruction with high staff to student ratio to provide him with individualized support when needed; predictable routines; a multi-sensory approach to academic tasks that connect to his interests; access to visual aid and manipulatives; clarification or break down of multi-step directions, with repetition as necessary; access to a quiet space; opportunities, with a cooperative learning approach, to demonstrate his understanding of a concept by explaining his thought process to teachers and peers; opportunities to collaborate with peers; opportunities to

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<sup>35</sup> Ms. Blue received guidance from Ms. Ide when drafting and completing the clinical summary portion of the extended evaluation. According to Ms. Blue, Ms. Ide told her how to format it, revised it, and signed off on it. (Blue, III: 40-42)

take short breaks and earn individualized incentives; opportunities to learn strategies to assign meaning to sentences; continued review and practice of phonics patterns and phonemic awareness tasks; clear and consistent cause and effect to positive and negative behaviors; forced choices; access to a trusted adult to process difficult emotions and frustrations, and the like. Walker School staff found these strategies effective in working with Preston. (S-31; Simmons, VI: 106-07)

The EE did not contain therapeutic goals, which surprised Parents, who characterized both the EE (and the Walker School overall) as focused on behavior management rather than a therapeutic, trauma-based approach. (Father, IV: 353-54, 360; V: 34-35)

123. The extended evaluation report omitted any information from the CBAT as well as the the recommendations Dr. Connolly made in her January 2019 report. Ms. Garvin characterized Ms. Blue's recommendations as behavioral and academic in nature and noted that the report failed to reflect accurately Preston's level of social-emotional needs. (P-99; Garvin, I: 117-19; Blue, III:46)
124. The extended evaluation did not include any Walker teachers' or clinicians' observations about the relationship between Preston's educational and mental health needs, nor did it make any recommendations regarding placement. (S-31; Mother, III: 218; Father, IV: 360) Ms. Simmons did, however, acknowledge at hearing that Preston's social-emotional presentation impacts his ability to produce work, as he is particularly impeded by his frustration tolerance. Still, she was not aware of any challenging behaviors Preston exhibited that could not be redirected and handled in the classroom. (Simmons, VI: 163-64, 169)
125. Ms. Simmons testified that Walker extended evaluations do not generally include recommendations regarding placement, as Walker is a "neutral party [that works] with the IEP Team," but it is the Team's responsibility to determine placement. Similarly, Ms. Blue, who relied on Ms. Ide's guidance in her assessments, testified that she did not believe extended evaluations were supposed to include recommendations regarding placement or necessary clinical interventions. Ms. Ide testified that at the end of an EE Walker generally recommended interventions and support for a particular child, but not level of care. (Blue, III: 43; Simmons, VI: 106-07; Ide, VI: 71-72)
126. On February 25, 2019, Ms. Bressette emailed Ms. Simmons to request a copy of the Walker EE prior to the meeting scheduled for March 13, 2019. (P-111) Ms. Simmons noted that the District still had to conduct its evaluations and asked whether Walker should draft the IEP and plan to add the results of NRSD's evaluations after the meeting. (P-112) Ms. DeAngelis clarified that the District would be drafting the IEP, but noted that as she had not seen the evaluation results it would be helpful for Walker staff to send some suggested goals, with special attention to input regarding social emotional goals. (P-114)
127. In preparation for Preston's discharge from the ICBAT, Ms. Farrington created a safety plan for Preston and his family to follow. The plan had specific goals for Preston and his family to work towards once he returned home, focused on the creation of effective coping skills, and identification of effective safety plans for referral behaviors such as physical aggression,

problem sexualized behavior, and homicidal ideation. The first part of Youth Village's discharge plan used an emotional thermometer to make a visual representation of Preston's ten steps from his emotional baseline to his most extreme state. At each phase, there are instructions for how Preston could utilize coping skills and strategies to deescalate the situation. In the event that these strategies did not work, there was an emergency back-up plan, which outlined whom to call and what to do. There was also a safety plan for each set of his siblings, and what they were to do when they observed Preston becoming dysregulated.

In contrast, the discharge plan created by Preston's Walker ICBAT clinician was minimal. It contained five pictures with instructions, but it did not outline what Preston or his family should do in the event he began to show signs of dysregulation. (Farrington, I: 187-88, 191-94)

128. Valerie Beyranevand, MS, CCC-SLP conducted Preston's speech and language testing on March 1 and 5, 2019. She administered the Clinical Evaluation of Language Fundamentals, 5<sup>th</sup> Edition (CELF-5) and the Expressive One-Word Picture Vocabulary Test, 4<sup>th</sup> Edition (EOWPVT-4) All of Preston's scores were in the Average range. Recommendations included pairing visuals with oral information; continuing to utilize two strategies he employed successfully (requesting repetition of, or repeating to himself, directions or questions, prior to answering test items); and clear expectations. (S-29)
129. On March 1, 2019, Ms. Godbout, OT, reached out to Walker to introduce herself and ask whether Preston had OT at Walker and if so, what his goals were. As she had been assigned to complete a sensory processing evaluation, she requested that Parents and Walker teachers complete questionnaires. Ms. Godbout appeared to expect that OT evaluations had been completed at Walker, but they had not. Based on these questionnaires, Ms. Godbout recommended a number of accommodations to address Preston's light and sound sensitivities and his ability to be overloaded by visuals, as well as alternative seating, visuals, and multi-sensory materials. (P-116; S-28)
130. On March 6, 2019, NRSD teacher Kathleen Moura<sup>36</sup> met with Preston to conduct an Academic Achievement Evaluation in a single session by way of the Wechsler Individual Achievement Test – Third Edition (WIAT-III). He worked with her willingly, though he displayed frustration when he did not know the answer to a question or was presented with a task he perceived as difficult, most notably reading comprehension and reading fluency tasks. When Preston reached the last reading selection for the comprehension portion of the test, Ms. Moura felt that his level of distress had reached a threshold that justified terminating the testing session.

On the WIAT-III, Preston's performance was Below Average on Oral Language, Listening Comprehension, and Total Reading subtests. He scored in the Below Average range for Oral Reading Fluency and Reading Comprehension and Fluency and in the Average range on Oral Expression, Written Expression, and Mathematics subtests. Ms. Moura attributed Preston's academic deficits to his prolonged hospital stays; she believed he had simply not learned some grade level material.

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<sup>36</sup> Some of the exhibits refer to Kathleen (Katie) Zayka, as this was her maiden name.

Based on her testing, Ms. Moura recommended that instructors obtain Preston's attention prior to giving instruction, use clear, direct instructions, have Preston paraphrase directions to ensure understanding, and provide frequent check-ins. She also recommended that Preston be provided with written expectations, with assignment broken down into manageable parts, and that instructors clarify the meaning of words that may be unfamiliar, with visuals when appropriate; continue to provide explicit instruction in pre-reading and reading for meaning strategies in order to sustain growth in reading comprehension; provide information simultaneously through different modalities; support Preston as he works through the steps of the writing process; allow Preston to complete written assignments on a computer when appropriate; provide the opportunity to review material in a small group setting prior to assessment on cumulative information; administer tests and quizzes in a small group setting; and provide accommodations for Preston's need for movement. (S-27; Moura, VII: 178, 189-90)

131. Preston was discharged home from the Walker ICBAT on or about March 6, 2019. According to his discharge summary, during his time there Preston's emotional and behavioral regulation improved, as he demonstrated the ability to be safe, regulated, and successful in a highly structured and predictable environment with the right medication and consistent therapeutic supports. Moreover, according to the Summary, with a written set of expectations beforehand and a check-in afterward, Preston was able to demonstrate remaining safe, regulated, and following expectations when he went on off-grounds passes. (P-110, P-119, P-124; S-24)

At the time of discharge, Walker ICBAT recommended that Preston continue with current services, including individual therapy with his therapist and medication management, as well as in-home services with his family intervention specialist and therapeutic mentor; that Preston be involved in appropriate after school programming, summer programming, social skills groups, and other activities that provide structure, supervision, and support; and that he and his family continue psychoeducation and support, as well as intensive care coordination. (P-119, P-134; S-24)

At school on the day of discharge, Preston was able to talk about things he liked about being in school, including the small classroom, the sensory room, and having options and breaks. Within the next few days, however, an incident occurred at school where Preston threw a chair, but Parents had difficulty figuring out the details of the situation. Preston later told Ms. Farrington he had been frustrated with an art project, which was why he threw the chair. (P-110)

132. After he was discharged from the Walker ICBAT, Preston and his family worked closely with Youth Villages through June 2019.<sup>37</sup> They attempted to implement positive rewards systems, build in sensory breaks, and provide significant structure for Preston. During this time, Ms. Farrington made frequent home visits, approximately four to five a week, as the family was calling her rather than Mobile Crisis to address Preston's dysregulation. During these visits, Ms. Farrington often witnessed Preston's escalation and dysregulation. On multiple occasions she witnessed him throwing furniture, being physically aggressive with his family members, and refusing to utilize strategies he had been taught to calm and regulate himself. Ms. Farrington worked with Preston's family regularly to create and update goals and safety plans to include

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<sup>37</sup> Upon returning to Walker Day School, Preston resumed working with Ms. Blue. (Blue, III: 20-21)

newly identified triggers. Despite Parents' best efforts, Preston's episodes became more and more dangerous. (P-110, P-115, P-119; Farrington, I: 194-95, 199, 202-203; Father, IV: 313-15)

133. NRSD's extended evaluation report included the Wechsler Individual Achievement Test – Third Edition (WIAT-III), administered on March 6, 2019, and referenced the and the Diagnostic Online Reading Assignment and DRA administered at Walker. On the WIAT-III, Preston scored in the Average range in most areas, including Word Reading, Pseudo-Word Decoding, and Reading Comprehension. He scored Below Average in reading fluency, a score the examiner interpreted with caution as Preston stopped reading to ask questions and talk to the examiner multiple times. Preston fell solidly within the Average range in written expression, and within the Below Average range in the Receptive and Expressive Vocabulary subtests. NRSD interpreted Preston's DORA and DRA scores to indicate that he requires direct instruction in phonemic awareness and reading comprehension. (P-164)

134. On or about March 11, 2019, Preston escalated while at Mother's home, throwing chairs and hitting his stepfather. The next day, he threw a remote at Mother, then became so escalated that she had to call the police. He continued throwing items and trying to kick out a window after Ms. Farrington arrived to assist, and was not receptive to talking about what was bothering him or using skills he had been taught. (P-110)

135. By mid-March, Preston was verbalizing that he was scared about school, particularly not knowing where he would be going, and that he was afraid he would be sent back to a CBAT. (P-110, P-126)

136. In advance of Preston's upcoming Team meeting, Parents visited the Early Rise program on March 12, 2019, as they knew it had been proposed previously for Preston and they wanted to be familiar with it before discussing placement again. They met with school adjustment counselor Kelsie Bossardet (who was then Kelsie Bromberg) and special education teacher Katie Moura (who was then Katie Zayka). During the visit, Parents expressed concern about Preston needing to travel between two buildings and communicated that they did not feel comfortable having the counselor housed in a building he was not in. They also raised concerns about the therapeutic component of the program, the fact that Preston would be the only second grader in the program and the only child in the room fulltime, and his lack of access to the OT room at times. When Mother asked what made the program therapeutic, the staff replied that they used Zones of Regulation and that students had increased access to the counselor and support. Parents were not provided specific information about the components of Early Rise, as staff explained that it was a flexible model that could be adjusted according to students' needs, and that the curriculum would be modified based on students' individual IEPs. Later they received an outline schedule of the basic second-grade day. Staff explained that they anticipated Preston would join general education classrooms when ready, and that staff would determine when he was ready based on his presentation. (P-70, P-125, P-186; Mother, III: 221-27, IV: 17-20, 244; Father, IV: 368-72; Bossardet, VII: 108, 110, 231-32)

137. Parents provided Dr. Connolly's finalized neuropsychological report to the District approximately one week before the Team meeting. Walker was also provided with a copy. (P-

120, P-122) No one from the District, or from Walker, contacted Dr. Connolly before or after the meeting. (Connolly, IV: 128)

138. Preston's three-year reevaluation meeting, which was also his extended evaluation endpoint meeting, took place on March 13, 2019. It lasted approximately two hours. (S-25; Garvin, I: 156) Parents, Ms. Garvin, NRSD Team Chair Ms. Bressette, Ms. DeAngelis, Ms. Moura, Ms. Godbout, Ms. Beyranevand, Ms. Bossardet, NRSD BCBA Allison Padden, Ms. Simmons, Ms. Blue, Ms. Ide, Ms. Allen, DMH Supervisor Suzanne Zanoni, and DMH Director of Child Youth and Family Services for the Northeast Area, Laurie Gobeil, were invited. Several others attended, including Parents' attorney. Principal Danielle Welmore's attendance was excused. (S-22, S-30; Gavin, I: 77) Ms. Farrington participated by telephone for the first hour. (Farrington, I: 197, 204)

139. Although NRSD had proposed a psychological evaluation of Preston and obtained Parents' consent, the District neither conducted its own psychological assessment as part of Preston's three-year reevaluation, nor contracted with Walker to conduct one as part of the EE. (Mother, III: 189, IV, 10-11; Father, IV: 361) According to Ms. Bressette, she was unable to conduct her own psychological evaluation of Preston within the required 30-day period because she did not have access to him while he was in the hospital. Moreover, as Dr. Connolly had indicated that she would be administering additional testing, there were no instruments remaining to administer to a child his age. She does not recall whether she provided written notice to Parents that she would not complete the evaluation within 30 days, but testified that when she presented Dr. Connolly's report at the Team meeting she stated that she could not complete a psychological assessment at the time because everything related to the referral question had been attempted. On cross-examination, Ms. Bressette could neither locate nor formulate a referral question. (Bressette, VI: 383-87, 391-97, 400-01)

140. Attendees at the meeting discussed Walker's extended evaluation as well as the Academic Achievement, Speech and Language, and OT evaluations conducted by NRSD. The District based Preston's eligibility on his Emotional and Health Impairments. NRSD also acknowledged that he presents with learning difficulties in the areas of reading and writing but did not find that he had a Specific Learning Disability. (S-22)

The additional data presented by Walker at the meeting focused on the percentage of classroom points earned and the percentage of time Preston had been in class. The former was divided into three categories: Be Here, Be Kind, and Be Safe. The page included a statement that Preston had not had any critical or behavioral incidents since admission. (P-117; S-21) The District characterized Preston's time at the Walker School as a success and concluded that he was making effective academic and social progress in school. (S-22) Asked why Walker did not collect data on target behaviors such as vocal outbursts, inappropriate words, and property destruction, Ms. DeAngelis stated that it was because these behaviors were not exhibited at Walker, as demonstrated by the data chart. Moments later Ms. DeAngelis denied that she had said this and modified her response to indicate that perhaps his scores on the "Be Here, Be Kind, Be Safe" metric reflected these behaviors. She added that no significant incidences had been reported to the District. (DeAngelis, IV: 169-70, 72)

Mother did not believe that the Walker extended evaluation accurately represented Preston during his time there. It made no mention of his stay at Walker CBAT, or that this placement was necessary for him to complete the EE. The report minimized Preston's needs and struggles while emphasizing his strengths. Parents requested a therapeutic residential placement. (Mother, III: 229-31, IV: 13-14) Ms. Bressette testified, however, that Parents indicated that they were satisfied with the evaluations presented, and Ms. DeAngelis testified that Parents never voiced concerns to her regarding Preston's time at Walker or the extended evaluation report. (Bressette, VI: 358; DeAngelis, IX: 36-37)

Neither the District nor Walker had administered a projective inventory for children or any type of rating scale to be completed by Preston, Parents, or teachers. The District did not present any formalized assessments of its own regarding Preston's psychological, social, or emotional needs. (Mother, IV: 14; Connolly, IV: 13, 130) District staff testified, however, that they believed the Walker report was accurate, based on information gathered from Preston's teacher and the data collected by Walker, and that it answered the referral questions posed. On this basis, NRSD determined that Preston did not need a residential placement and that the District was equipped to meet his needs. (Bressette, VI: 366, VII: 101, 117-19; DeAngelis, IX: 39-40, 170, 199)

141. Due to time constraints, the meeting adjourned before everything had been covered. According to the District's summary in the N1, "[t]he topic of placement was discussed, and the District continues to propose a placement within its elementary therapeutic program, housed within the Florence Sawyer School." According to the N1, Mother and Dr. Connolly disagreed and advocated for placement within a residential school, as recommended in Dr. Connolly's report. Father expressed agreement with their position. In the N1, NRSD referred to Dr. Connolly's recommendation as stemming from his behavioral presentation within the home setting and encouraged Parents to access DMH services. Finally, the N1 states that the meeting adjourned prior to in-depth discussions surrounding the proposed transition from Walker to the District. (S-22; Father, Iv: 365)

142. Although the Team had not completed its agenda during the meeting, NRSD proposed an IEP on March 18, 2019 dated 3/13/19 to 3/12/20 (2019-2020 Draft IEP). Parent and Student Concerns were taken from his 2018-2019 IEP, as the District was awaiting Parents' updated statement. In the Student Strengths and Key Evaluation Results Summary section, the IEP described Preston as a student who makes good connections with teachers and noted that teachers from his current educational setting believe he has made increased progress regarding emotional regulation and social interaction skills. (S-22, S-25)

The 2019-2020 Draft IEP summarized the results of the EE, focusing particularly on Preston's scores on the CAFAS, as well as NRSD's speech and language, sensory-based OT, and academic achievement reevaluations. The IEP referred to Dr Connolly's "brief draft" evaluation, submitted to the District in the fall of 2018, and the final draft submitted in March 2019, with additional scores from the WISC-V and the KTEA-3. Also included was Dr. Connolly's reaffirmation of her previous diagnoses of RAD and DMDD, with a rule out of Anxiety Disorder, and a diagnosis of an emerging Specific Learning Disability in Reading and Writing. The Team considered Dr. Connolly's evaluation as well as parental input, then based on eligibility on an Emotional Impairment and a Health Impairment. (S-23, S-25)



The 2019-2020 Draft IEP listed a number of accommodations and supports such as assistive technology and additional sensory regulating tools. It also provided for consultative occupational therapy services to address self-regulation; consultative services to address behavioral regulation, provided by a behavioral analyst; direct, explicit social skills instruction delivered by a school counselor; access to a therapeutic setting; and use of a behavior intervention plan. It included four goals: Social, Reading, Compensatory Skills, and Academic Support. Moreover, the Draft IEP incorporated inclusion supports to permit Preston to attend “specials” in the general education setting when emotionally regulated and ready to slowly integrate, and the Non-Participation Justification proposed additional flexibility to allow this to occur with staffing supports. (S-25)

Preston’s Social goal aimed to improve his social emotional functioning as outlined by the following objectives: Preston will follow verbal directions and complete required task in a timely manner with no more than two staff prompts in 3 out of 5 measured opportunities; express anger appropriately by using his words to state his feelings in 3 out of 5 measured opportunities; and engage in cooperative play with at least one other peer in 4 out of 6 measured opportunities. Under Current Performance Level, the District noted that Walker had shared that Preston experiences success on a daily basis in the classroom with appropriate accommodations, modifications, and services provided through a therapeutic milieu that also incorporated behavioral shaping supports. Walker described Preston as a “model student” who always earns points on his positive behavioral support tracking sheets. (S-25)

Preston’s new Reading goal focused on gleaning information from fictional and informational text; distinguishing among vowel sounds; demonstrating spelling-sound correspondences; reading grade-level irregularly spelled words; and reading grade-level text orally with accuracy, appropriate rate, and expression. (S-25; Bressette, VI: 97-98)

Preston’s Compensatory Skills goal focused on organization of information and engagement with academic materials through utilizing organizers to solve math problems; organizing and editing written work; following schedules; asking for support; and utilizing tools provided by staff to assist in work completion and self-regulation. (S-25)

Preston’s Academic Support goal focused on improvement of his performance within the content areas of science and social studies. (S-25)

The Service Delivery Grid in the Draft 2019-2020 IEP provided for 7 x 45 minutes per cycle of social/behavioral support to be delivered by a general educator, special educator, and paraprofessional in the general education classroom for specials, as well as 3 x 30 minutes per cycle of social/emotional support to be provided by the counselor individually and 6 x 45 minutes per cycle of social/behavioral support to be provided by the counselor through lunch bunch/recess; 6 x 30 minutes per cycle of reading services to be provided by a special educator or reading specialist; 6 x 90 minutes per cycle of ELA to be provided by the special needs teacher (science, social studies and ELA); and 6 x 30 minutes per cycle of academic support to be provided by the special needs teacher (compensatory skills and math). The Draft IEP also included a parent consult to be provided by the counselor, 1 x 30 minutes per month; 30 minutes

per month of Team consultation with a behavioral consultant and the counselor; 1 x 10 minutes of program coordination among special educators, general educators, and the counselor; and 30 minutes per month of consultation to the Team by the occupational therapist, special educator, and counselor. Proposed ESY consisted of 8 x 45 minutes per week of ESY Academics/Social Skills to be delivered by the special needs teacher/counselor. (S-25)

143. The District envisioned that Preston's IEP would be implemented at the Early Rise Program and the Draft 2019-2020 IEP proposed a substantially separate classroom at the Florence Sawyer School. At this time Early Rise consisted of four students, a special education teacher, a full time licensed clinical social worker, two paraprofessionals, and a BCBA. (P-128, P-186; S-22; DeAngelis, IX: 17-19)

144. According to Parents, Ms. Garvin, and Ms. Simmons, the March 13, 2019 meeting actually adjourned before the Team reviewed Dr. Connolly's report or discussed goal and service delivery; as such, any discussion of placement would have been premature. According to Ms. Bossardet, Early Rise was discussed briefly, but no real dialogue about it occurred during the meeting because other Walker staff needed the room. Mother, Father, and Ms. Garvin testified similarly, and indicated that Ms. DeAngelis brought up the issue of identifying a specific placement in the hallway after the meeting, when she told Parents that the District was going to propose Early Rise and, if they did not accept this placement, Preston would return to the Center School as his stay-put because remaining at Walker was not an option. (P-125, P-128; Garvin, I: 155-57; Mother, IV: 9-16, 21-22, 246; Father, IV: 366-68; Simmons, VI: 178-79, 181-82; Bossardet, VII: 230-31)

145. Ms. Bressette, on the other hand, testified that she was sure the topic had been covered, albeit it not at length, in the last 10 to 15 minutes of the meeting, at which point Parents' attorney asked the Team if everyone agreed that Preston needed a substantially separate placement and all NRSD personnel affirmed that they did. Ms. Bressette indicated that that NRSD was proposing Early Rise because the District believed the program could meet his needs, that both Mother and Ms. Garvin expressed their disagreement, and that the discussion in the hallway focused on the transition to Early Rise, not placement. (Bressette, VI: 360-61, 364-65) Ms. Moura also recalled that it was made clear during the meeting that NRSD was proposing Early Rise, though it was not discussed fully with the family. (Moura, VII: 175-76)

146. At some point after the Team meeting, Parents visited Early Rise again, this time with Preston. (Mother, IV: 17; Father, IV: 371; DeAngelis, IX: 249)

147. Parents partially rejected the IEP on March 21, 2019. They consented to the placement; but crossed out the name of the school. Next to "I consent to the placement," they added the following: ". . . in a substantially separate program that is a true therapeutic milieu, which does not require [Preston] to be in mainstream population and which provides appropriate services and supports as well as an appropriate peer group. After observing, we saw that the partial inclusion program at Florence Sawyer does not constitute such a program."<sup>38</sup> (P-128) In subsequent email exchanges with Ms. DeAngelis, Parents clarified that they were accepting the

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<sup>38</sup> At hearing, Father calculated that according to the Service Delivery Grid on this IEP, NRSD was actually proposing a partial inclusion program. (Fater, IV: 376-77)

District's proposal of placement in a substantially separate classroom, but that from their observations of the program at Florence Sawyer, Early Rise was neither a substantially separate program nor a therapeutic milieu. Moreover, they asserted that the Team meeting did not reach discussions about placement, and they lacked information regarding Early Rise. (P-133; Mother, IV: 16-17; Bressette, VI: 367; DeAngelis, IX: 242-45)

148. Parents appended to their partial rejection a letter indicating that the N1 inaccurately states that Preston's reading and writing difficulties are attributable to his interrupted education; that the IEP was not developed at the Team meeting, goals were not discussed, and – with the exception of services related to literacy deficits – service delivery was not discussed; that the N1 fails to mention Walker staff's recommendation that Preston requires a 3:8 staff to student ratio to succeed, that Parents requested that all of Dr. Connolly's recommendations be included in the IEP; that Preston's clinician advocated strongly against transition at this time; and that placement was not discussed at the meeting, and instead was unilaterally and administratively predetermined by the District. They expressed concern that NRSD was proposing (unilaterally and administratively) a return to the public school setting, against Preston's clinicians' recommendations, without engaging in meaningful conversation. They believed limited access to an appropriate peer group and a vague plan to reintegrate Preston into the mainstream would impede his progress. Finally, they were concerned that Preston's pattern of internalizing anxiety, aggression, and feelings while at school and then releasing them at home in the form of violence could reverse, placing other students at risk of harm. (P-128; S-26)

Specifically, Parents requested that PLEP A incorporate Preston's need for small group instruction across all subjects, and that PLEP B discuss his need for education to be provided within a therapeutic milieu, with therapeutic supports as an integral part of the program, versus "access to a therapeutic setting." They objected to Walker's characterization of Preston, adopted by NRSD, as a "model student", the omission of further testing to determine whether Preston has a writing impairment, and questioned why, for a student with a social-emotional disability, an IEP would contain only one goal for social development, but no emotional or behavior goals. Parents requested that additional accommodations discussed at the Team meeting be included in the IEP. (P-128; S-26)

149. In the letter accompanying their partial rejection, Parents questioned whether an FBA had been performed and the report completed, as no results had been provided or discussed at the Team meeting. (P-128; S-26)

150. Dr. Connolly reviewed the proposed IEP and noted that it did not contain her recommendations, nor did it reflect the level of support Preston required to succeed. Dr. Connolly believed that without residential care, Preston would regress behaviorally. (Connolly, IV: 133-35)

151. Parents requested permission for Dr. Connolly and Theresa Garvin to visit and observe Florence Sawyer as soon as possible, and requested that the District send referral packets to both private therapeutic programs such as Community Therapeutic Day School and Franklin Perkins, as well as therapeutic collaboratives. (P-128; S-26; Connolly, IV: 135-36)

152. On March 26, 2019, Ms. DeAngelis emailed Parents indicating that Preston would be discharged from Walker School at the end of the week and explaining that the inclusion opportunities at Early Rise would be provided to Preston as he makes progress, not upon placement. She expressed concern that Parents had not collaborated with the District around the upcoming transition. Parents responded with a list of questions about, among other things, Early Rise, data collection, expectations for mainstreaming, plans for dealing with aggression, and other NRSD substantially separate programs. (P-131, P-132)

153. It is unclear how, or whether, NRSD monitored Preston's progress toward his IEP goals during the majority of the 2018-2019 school year. Walker did not issue any progress reports that addressed his IEP goals directly, although he was there for four months. It appears that only one progress report was issued during this school year, on June 17, 2019. Although Preston was actually placed at Three Rivers at that time, Ms. Bressette testified that when a student is not available in the district, NRSD would not be able to write progress reports. Moreover, according to Ms. Bressette, her responsibilities as Team chair do not include ensuring that progress reports are written on IEP goals; usually the special educators and service providers write them, and she does not really get involved. (P-10; Bressette, VII: 65, 70-71, VII: 145-47)

154. Preston became more aggressive and severely dysregulated at home around the time of his transition from Walker to Early Rise. Parents were collaborating with Ms. Garvin and Ms. Farrington regularly, but still had had to call mobile crisis many times. The physical aggression Preston had been displaying at home only then began occurring outside the home. Preston was displaying increased frustration, anger, impulsive behaviors, depression, and a negative self-image. He was unable to calm down when he became dysregulated and his providers expressed concern for his personal safety and the safety of others. (P-110; Garvin, I: 123-124; Farrington, I: 203-04, 208-10; Mother, IV: 22, 24-25)

155. Preston completed his assessment at the Walker School on March 29, 2019 and began at the Florence Sawyer School on April 1, 2019. Ms. Moura was Preston's Early Rise teacher. She has a bachelor's degree in psychology and earned her Master's degree in special education in 2017. Ms. Moura holds Massachusetts licenses in moderate disabilities for students in grades P-K through 9 and 5 through 12. Before she was hired by the District in December 2017, Ms. Moura worked as an instructional assistant for a student with social-emotional disabilities, an ABA therapist with students in grades K through 8, and a teacher in a substantially separate program for students with ASD and similar disabilities. (Moura, VII: 158-62, 177)

In preparation for Preston's transition to Early Rise, Ms. Bossardet and NRSD BCBA Allison Padden spoke with Ms. Blue, Ms. Allen, and Ms. Simmons. (Bossardet, VII: 234-35; Padden, VII: 284-86)

Early Rise serves up to six students in first through fifth grade with social and emotional disabilities. It consists of Ms. Moura as the teacher and a counselor, Ms. Bossardet, who provide academic and social support for the students, as well as two instructional assistants in the classroom with Ms. Moura. The classroom is set up to provide space for students who need time outside of the general education classroom to work on their academics. At the time Preston

participated in Early Rise as a second grader, there were two third graders and three fifth graders in the program.<sup>39</sup>

Ms. Bossardet has a bachelor's degree in social work and earned her Master's degree in social work in 2015. She is licensed in Massachusetts as an independent social worker. In 2016, she obtained her school adjustment/school social worker licenses as well. Ms. Bossardet has provided psychotherapy in a community clinic and therapeutic support for public school substantially-separate, partial inclusion, and full inclusion programs. She worked as a school adjustment counselor/school social worker in two different districts before taking a position as a school adjustment counselor/school social worker with NRSD in 2018. In her role with Early Rise, Ms. Bossardet provides push-in and/or pull-out services for all students in the program. In addition to providing individual and group counseling and crisis management for the program, Ms. Bossardet provides consultation and some supervision to program staff and serves as the contact person for outside services providers or community supports. Ms. Bossardet had just begun working for NRSD when she attended Preston's Team meeting in September 2018. (Bossardet, VII: 222-24, 226-28)

When Preston was at Early Rise, his classroom was in the Emerson building, and Ms. Bossardet had her office down the hall. A typical day for Preston mirrored the schedule for the other second grade students, but as he was the only second grader in Early Rise, he was the only student in the classroom for the majority of the day. As such, social demands on him were limited. He received direct instruction on new topics from Ms. Moura and his work was structured in a way that made it manageable for him. Ms. Bossardet provided him with daily individual counseling services utilizing Zones of Regulation and Social Thinking, and during lunch or recess Preston would either eat and play with her alone or participate in a small group lunch bunch with her. When it was time for Preston to participate in specials at school, he would work with another staff member while Ms. Moura taught other students in the program that were at different grade levels, at times in the same classroom. Based on Ms. Moura's and Ms. Bossardet's observations of Preston, they planned to have him work with two different groups of second graders for parts of his education, using a reverse inclusion model. When they encouraged Preston to socialize with other students, he consistently resisted the idea as he believed he was not ready. The closest they were able to get Preston to participating with his peers outside of Early Rise was when he went with a staff member to the school library to check out a book. Still, Early Rise staff planned to "really push integrating with other student more" after April break. They had ongoing conversations with Parents about integrating Preston in counseling settings and beyond, but they did not discuss a specific plan with Parents to begin at that particular time. (P-144; Moura, VII: 160-71, 185, 200-03; Bressette, VII: 111-12, Moura, VII: 170-71, 191-93, 207, 217-18; Bossardet, VII: 235-37, 255, 272-73)

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<sup>39</sup> Mother testified that she believed there were seven students total, including Preston, at the time he attended Early Rise, though the others were in general education classrooms for as much of the day as possible. (Mother, IV: 247-48) In response to an interrogatory regarding Preston's attendance at Early Rise for ten school days in April 2019, the District asserted that there were two fourth graders and one second grader currently in the program, and that one third grader in the same building had been identified as a peer with whom Preston could receive small group instruction. All of these students have social emotional disabilities. (P-186)

Ms. Bressette crossed paths with Preston several times when he was at Early Rise. Each time, his demeanor was calm and his body appeared relaxed. (Bressette, VI: 369-70)

156. During Preston's first week at Early Rise, he was observed by Ms. Padden, who works in a districtwide capacity. Ms. Padden has a bachelor's degree in visual arts and a Master's degree in education and curriculum and instruction, with a specialty in autism studies. She worked as an ABA therapist for a school district and for a private agency, then passed her board exam and became a BCBA in 2013. Since then she has worked as a BCBA in public schools, where she gained experience working with students with trauma and RAD. She began working for NRSD in August 2018 in a districtwide position, which included two days a week at Early Rise conducting observations and consultations, particularly to Ms. Bossardet. Depending on students' IEPs, Ms. Padden may provide parent training. She also conducts FBAs and creates data collection systems for teachers to use, but she does not work directly with students. (Padden, VII: 277-84, 286)

In preparation for her observation, Ms. Padden obtained Preston's records from Ms. DeAngelis and participated in a phone call with the staff from Walker and Ms. Bossardet. The first day Ms. Padden observed Preston, she watched him do writing work with Ms. Moura for approximately one hour. Ms. Moura was using a "first/then" work/trade-in contingency with Preston, to help him understand how much schoolwork he needed to do before he could cash in and have a break. He was mostly regulated, but at some point Preston threw his pencil across the room when he did not want to do the writing. He immediately picked it up and apologized for his behavior. Ms. Padden took notes but did not generate a report after her observation. (Padden, VII: 284-89)

The next week, Ms. Padden observed Preston again. This time, she introduced herself as one of Preston's new teachers and attempted to interact with him. Preston was on the computer and was not interested in engaging with Ms. Padden until he made the connection that she had studied to be an art teacher, just like his mother. (Padden, VII: 289-92)

Following her observations Ms. Padden created a behavior data sheet to track the occurrences of Preston's vocal aggressions and outbursts, as well as minor property destruction and minor noncompliance, throughout his school day. Preston was to take the clipboard with the tracking sheet with him throughout his classes so data could be collected uniformly. (Padden, VII: 294-295)

Preston did not have a BIP while he was at Early Rise; staff were trying to emulate what Walker had been doing with Preston because it had been successful. Ms. Padden compared the data she had collected with the FAIR plan that had been in place when Preston was in first grade and realized that his behaviors were likely stemming from a different motivation. She wanted to continue collecting data and considered conducting an FBA, not based on the behaviors with which he was presenting at Early Rise so much as those he had displayed in other settings. Ms. Padden did not have any direct communication with Parents during Preston's time at Early Rise. (Padden, VII: 295-99; Moura, VII: 207)

157. On April 1, 2019, Parents sent an email to several NRSD staff requesting permission for Dr. Connolly to observe Early Rise. (P-135)

158. On April 3, 2019, Preston's third day at Early Rise, Ms. Farrington met with Preston and Ms. Bossardet at the Florence Sawyer School. Ms. Bossardet reported that Preston had been doing well at school, but she understood that he was struggling at home. Ms. Farrington explained that Preston experiences worry at school and struggles with transitions, and that he is able to hold it together at school, but that he struggles with the anxiety that starts at school when he transitions home. Ms. Bossardet asked Ms. Farrington to let her know when that happens so she could follow up with Preston at school as well. She also established email communication with Parents regarding his day, including counseling sessions, and Parents kept her informed about what was happening at home. (P-10, P-137; Farrington, I: 194, 213; Bossardet, VII: 242-44)

Preston showed Ms. Farrington his classroom. He was the only student in the room consistently; other students entered and exited as needed. There were more teachers than students in the classroom; Preston was consistently surrounded by adults rather than peers. Preston shared with Ms. Farrington that this made him miss being at Walker, because there, being around other students prevented him from feeling like he was weird or that there was something wrong with him. (P-10; Farrington, I: 213-14)

That same day, after school, Preston became extremely violent toward Mother and Ms. Farrington. He was punching people, hitting walls, breaking toys, punching the dinner table, and banging his plate with his fork. He said he was angry but could not explain why. Once he calmed down, he told Ms. Farrington that even though his teachers were nice at his new school, he wanted to return to Walker, where he was more comfortable. During this conversation, Preston also mentioned "mummy bunny," a character that initially appeared in his dreams but had begun to appear when he was awake. "Mummy bunny" has a heart comprised of two dead bunnies and comes into people he knows, which he recognizes because they do not blink. Then he knows that he cannot trust them. Preston explained that he knew "mummy bunny" had possessed both Mother and Ms. Farrington that day, because they were not blinking often enough. Both Mother and Ms. Farrington were alarmed by Preston's apparent hallucinations; Ms. Farrington shared this information with her supervisor and Ms. Garvin. (P-10; Farrington, I: 195-96)

Shortly thereafter, Ms. Farrington observed Preston hugging his sister from behind and rubbing his pelvis on her. He resisted being separated. At Father's home two weeks later, he was being touchy with his sisters as well. (P-110)

159. Ms. Farrington met with Ms. Bossardet and Preston again the following week. Ms. Bossardet reported that Preston was doing well in school overall and that a math computer game had been helping him. Even so, Early Rise staff asked Ms. Farrington if she could help to transition Preston home, not because he displayed difficulty at school but because Parents were reporting how difficult he was when he arrived at home. Ms. Farrington explained that this was not her role. (P-110, P-136; Mother, IV: 32; Moura, VII: 211; Bossardet, VII: 243-44)

During Ms. Farrington's visit to Early Rise, Preston showed her the math game. Ms. Farrington observed that he was not actually working on math problems, but guessing at answers so we could get to a battling portion of the game. She asked Preston who supervised him with the game

and he reported that there was not always someone watching him. He stated that he did not know how he earned the game, but that he would be upset if they did not allow him to play. Ms. Farrington expressed concern that the math game was being used as a time filler rather than a learning tool, as well as about the lack of monitoring and clear expectations around its use. (P-110, P-136; Farrington, I: 213)

Ms. Farrington also expressed her concern that Preston did not have access to any resources to help him when he would start to feel dysregulated. The OT room was only available to him when no other student was using it. (Farrington, I: 214)

160. From the beginning, Mother did not see Early Risers as an appropriate fit for Preston. He was frequently being taught math by paraeducators rather than a special education teacher and Mother did not believe he was making academic progress. He was without peers for much of the day, there did not appear to be a data collection system in place, and with the exception of Ms. Bossardet being assigned to the program, Early Rise did appear to have a social-emotional curriculum or clinical interventions woven through the day. Ms. Bossardet had explained that the classroom functioned as more of a resource room for other Early Rise students to use when they were starting to feel dysregulated; once they calmed down, they would return to their general education classrooms. (Mother, IV: 25-27, 29-30)

161. While Preston was at Early Rise, staff reportedly collected anecdotal and numerical data by recording their observations of him on a data tracking sheet, tallying behaviors such as vocal outbursts, inappropriate words, and property destruction. Ms. Bossardet recorded her data on the IEP Progress Report. Preston experienced some anger or dysregulation while at Early Rise, in the form of vocal outbursts, including negative self-talk, and three incidents of property destruction. Ms. Bossardet testified that she would check in with Parents every morning to see if there had been any incidents prior to coming to school. If so, Ms. Bossardet would check in with Preston, who did not seem to want to talk about it and always reported that he was ok, or in the green zone using the Zones of Regulation tool. It was not until the day before April vacation that Preston expressed that he was worried about going home because had tried to hurt his siblings in the past and he did not want to do that anymore. Ms. Bossardet reviewed coping skills he could use, then shared her conversation with Parents (Moura, VII: 180; Bossardet, VII: 238-41)

162. During the time Preston was at Early Rise, Ms. Farrington observed him asking for help and doing his best to utilize the tools he had at home to help him self-regulate. She became concerned that these techniques were no longer effective, as instead Preston would dysregulate to a dangerous state. Preston's periods of dysregulation were becoming lengthier; often, they would be at least two hours. Even more alarming was that Preston did not recall some of his extreme acts of violence after they subsided. (Farrington, I: 216-18)

163. Mother checked in almost daily with Ms. Bossardet. She shared her concerns about Preston's dissociative behavior and extreme reactions to triggers. The information she received from Ms. Bossardet about how Preston was doing at school did not align with the information she received from Ms. Farrington. Moreover, Preston told Mother that he did not see other children during the day and did not know any of their names. For the ten days that Preston



actually attended the program, Mother observed him as being mostly depressed, or anxious. (Mother, IV: 29-32, 247-48)

164. Even so, Ms. Moura believed that Preston was beginning to form connections with older students in the program, though he had not been there long enough for her to determine whether these were friendships. She reported that Preston only had one outburst during his time at Early Rise, and afterwards, he did the repair work to make it right. Ms. Moura and Ms. Bossardet believed, as April break approached, that Preston was ready for more integration based on the cues he was giving them: he came to school with a positive attitude, he was not saying “I can’t do this,” as much, and he exhibited fewer outbursts in connection with classwork. (Moura, VII: 181-82, 193-94, 201, 208)

165. On or about April 16, 2019, during April vacation, Preston was punching and throwing items in the home, broke a tile and lunged at Mother’s throat with it. Preston then ran from the home to hide in the woods from his mother and stepfather. While Mother was on the phone with Ms. Farrington, Preston tried to hit his brother over the head with a rock. He then broke and threw a tile and tried to hit his sister with a broom, which he broke on Mother instead. Mother called the police. (P-110; Farrington, I: 218-20; Bressette, VI: 374-75)

When Ms. Farrington arrived to offer assistance, about ten minutes after the police had been there, she asked Preston why he thought she had come. He reported that he did not know, and did not know what had happened. The last thing he remembered, he said, was that he was hitting Mother with a stuffed animal, and then the police and Ms. Farrington showed up. When Ms. Farrington told him that he had tried to hit his brother with a rock, Preston became emotional and cried, then asked if he was going to be sent away. Ms. Farrington was concerned that there were gaps in Preston’s memory, and that he was essentially blocking out times when he was most dangerous. Preston suggested that he go to the hospital to be evaluated because he was afraid of what he could do. (P-110; Farrington, I: 220-22; Mother, IV: 33-39)

Mobile crisis arrived and brought Preston to the emergency room (ER) at Emerson Hospital, where he, Mother, Father, Ms. Farrington, and Ms. Garvin met with a clinician. The team agreed that Preston met criteria for inpatient level of care and began looking for an appropriate bed. (P-110; Farrington, I: 223)

Preston remained at the ER until April 18, 2019, when he was discharged to Franciscan Children’s Hospital Inpatient Unit 1 (Unit 1). Preston’s Unit 1 intake reflects concern about possible dissociative episodes, where Preston appeared to forget that he has caused injuries to other people; his visual hallucinations of “Mummy Bunny,” who inhabits the bodies of people in his life; and a new history of bolting, including running into traffic. Preston acknowledged intermittent thoughts of hurting other people as well as wanting to die, but these were not present at the time of his intake interview. His risk assessment includes the following information:

“He presents with escalations in his level of behavioral dysregulation and aggressive impulsivity in his home environment. His presentation is consistent with his existing diagnoses and likely represents a component of his developmental trauma that remains unknown. That said, the differential remains broad and considerations of mood disorders

such as bipolar disorder, major depression, or disruptive mood dysregulation disorder should be made. At this time, [Preston] is at elevated risk of harm both to himself as well as others as evidence by explosive impulsive events of harming others multiple times over the course of the last week with poor insight into his actions as well as a possible dissociative quality to the events.” (P-140)

166. On April 19, 2019, Mother informed Ms. Bossardet of Preston’s admission, and Parents subsequently signed a release to allow for communication between the hospital and NRSD. (P-138, P-139; Bossardet, VII: 249) Ms. Bossardet called Ms. Farrington a few days later, on April 22, 2019, for an update. Ms. Bossardet indicated that she wanted to stay in touch to ensure that she would be prepared for when and if Preston returned to school. (P-110)

167. While Preston was at Unit 1, his hospital teacher/clinical educator was Lauren Smith. Ms. Smith has an undergraduate degree in elementary education and a Master’s degree in special education. She holds Massachusetts elementary education and special education, moderate disabilities, pre-K through grade 8 licenses. As of 2019, she also holds professional licensure, which allows her to oversee and train other teachers, in moderate disabilities, grades 5 through 12. Ms. Smith also holds Florida licenses in special education/exceptional student education, grades K through 12, and elementary education, grades K through 6. She worked as a clinical educator at Unit 1 from November 2017 to April 2020. Ms. Smith has also worked in public schools, at McLean Hospital in various roles, as a clinical research coordinator at the Lurie Center, and as a private educational consultant, advocate, tutor, and ABA therapist. She has worked with students with anxiety, depression, RAD, autism, dyslexia, executive functioning difficulties, and mental health illnesses. Ms. Smith has also trained staff in behavior intervention de-escalation as a CPI instructor. (Smith, I: 271-77, 280-81)

Altogether, Ms. Smith taught Preston for 28 days between April 18 and June 6, 2019, for approximately two hours a day. Preston’s two, one-hour blocks of instruction with her had to be broken into smaller increments because of the severity of his behavioral issues. Ms. Smith often had to modify Preston’s assignments and work with him one-to-one. She noted that he struggled particularly with writing. Ms. Smith felt that she established a good rapport with Preston. She tried to use a positive reinforcement system, allowing him to earn computer time to play fun math games by completing his work, but she did not believe it was particularly successful with him. At times, she would scribe for Preston. Overall, Ms. Smith believed that Preston had a very low frustration tolerance, and observed that as time went on, her modifications for his academics were not enough to keep him calm. He became agitated and aggressive, to the point where he was demonstrating unsafe behaviors such as throwing and breaking objects. He was posturing and threatening others, and at one point he bit a nurse. Ms. Smith testified that Unit 1 did not provide Preston with the opportunity to practice social skills. She believed that because he interacted with different sets of adults during the school week than on the weekend, it was difficult for him to access the consistent support he needed. (Smith, I: 280-90, II: 185-86)

Ms. Smith testified that the District was unreasonable and unreceptive to her input at the Team meeting she attended in May 2019, and that she was utterly shocked that NRSD would not consider the appropriate setting for him. (Smith, I: 296-97) In fact, NRSD’s unwillingness to listen to the recommendations of Unit 1 staff struck her so deeply that she asked Parents to keep

her informed regarding what happened next with Preston so that she could assist them, and although she no longer works at Unit 1, she testified that she had maintained casual contact with Preston's family. Ms. Smith also testified that in addition to her work as an educator, she has represented parents in disputes with school districts regarding special education services. (Smith, II: 174-76)

Ms. Smith testified initially that she did not receive Preston's IEP from the District when he was admitted to Unit 1 and instead had to request it from Parents, that NRSD did not share with her Preston's behavioral plans or strategies that they found useful with him, and that she received nothing except his school work from NRSD. Because Preston had only attended NRSD for approximately ten days, she stated, she did not think District personnel "had a lot of information to share with" her, but if she "believed that they had something that would help benefit [her] teaching [Preston] while he was in the hospital, then [she] would obtain it." (Smith, II: 180, 186-87, 189-91) Upon cross examination, Ms. Smith acknowledged that she might not remember whether the District had sent her a copy of Preston's IEP and academic evaluations, and she could not recall whether she had discussed with his Early Rise teachers whether he had been successful there. (Smith, II: 191-93, 195-96) Ms. Smith testified that the District was not receptive to her input at the Team meeting she attended and that she did not believe Early Rise, or in fact any substantially separate program in a public school setting, could have worked for Preston at the time she was his teacher. (Smith, I: 296, II: 197). Yet she acknowledged that she did not know the staffing structure of Early Rise, the credentials of staff members, how many students would have been in classes with Preston, or what their disabilities were. (Smith, II: 198-200) On redirect examination, she then stated that she could not say whether Early Rise was appropriate for him. (Smith, II: 216-17)

168. While at Unit 1, Preston was seen by his treating psychiatrist, Dr. Calligas, who expressed concern about the increase of dissociation Preston was experiencing. Ms. Farrington, who visited him at least once a week,<sup>40</sup> and the social worker on the unit shared this concern as well, and the social worker expressed her belief that Preston would be placed in a therapeutic residential placement. After Preston had spent 10 days at Unit 1, the team reported that they had seen Preston's aggression in treatment, that he was participating in groups when prompted to, and that he had done well in school where he was receiving instruction 1:1 due to his age. Mother expressed concern that Preston was spending too much time playing video games without limits. She also indicated that she was unsure about residential treatment, as she did not want Preston to be there long term, and she wanted to be able to see him daily. (P-110, P-141; Farrington, I: 224-25)

169. On or about April 24, 2019, Preston told Dr. Calligas that he felt he was always unsafe. Dr. Calligas met with the hospital social worker and Parents to review Preston's recent "deeply concerning events of both impulsive and predatory aggression." The group discussed recommending placement in a residential program where structure and intensive therapy would be available. (P-141)

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<sup>40</sup> During her visits, Ms. Farrington noted that Preston's room reeked of urine, which signaled to her that he was wetting the bed and hiding clothes. She was not alarmed by this behavior, as it was not new for him. (Farrington, I: 224-25)

170. Recognizing the drawbacks of residential placement (institutionalization, worsening of attachment issues, young age), Dr. Calligas nevertheless recommended placement of Preston in a residential program that could provide integrated behavioral, psychological, and pharmacological treatment because intensive, multidisciplinary intervention, including home-based and parent guidance, had not succeeded in reversing or slowing down the problems. Moreover, both Preston and his younger siblings would be at risk if he continued to live at home. Preston's clinical treatment team concluded that Preston is at very high risk for major psychopathology, including mood (depression), behavior (conduct disorder), and personality disorder (antisocial, narcissistic). (P-140, P-141)

171. On May 3, 2019, Ms. Farrington completed a Youth Villages Psychosocial Assessment of Preston. As treatment issues, she listed animal cruelty; homicidal ideation; out of home placement; physical aggression; problem sexual behavior; and removal from his birth parents at a young age. She flagged the following issues: restless and fidgety body movements; marked uncooperativeness during the assessment; marked anger, hostility, fear, anxiety, apprehension, mood swings, and homicidal ideation. She also noted slight or occasional depression and sadness, visual hallucinations, disorientation to person or place, and difficulties with insight, judgement, memory, and phobias. (P-143)

172. A referral was made to DMH for residential placement on or before May 10, 2019. (P-141) Specifically, Preston's treatment team on Unit 1 requested transfer to a Clinically Intensive Residential Treatment Program (CIRT) due to his continued escalating physically and sexually aggressive behaviors toward family members. (P-144; Calligas, II: 191-92) A CIRT is a staff-secure residential program that has a highly intensive therapeutic component administered by master's level clinicians specifically trained in trauma-informed therapy and trauma-reduction techniques to help youth manage their anxiety. Clients have access to therapy multiple times a week, and staff monitor extensive peer interactions and groups. School is included in a CIRT. (Holstein, VIII: 111-12)

173. By May 16, 2019, Preston was continuing to show irritability, poor frustration tolerance, impulsivity, and aggression on Unit 1. He had escalated multiple times, had caused property damage, and had punched a peer, though he had not been violent with staff. He made a comment about cutting off his private parts with a Lego, and stated that he was afraid he would hurt one of his siblings if he went on pass. He was, around this time, also responding to structure and able to recover from incidents which, in the past, would have resulted in regressed and dysregulated behavior. At times he demonstrated an increased capacity to self soothe and reflect. (P-110, P-140, P-141) Progress notes from the unit written in May indicate that Preston required 1:1 support throughout the day on the milieu because of his difficulty with transitions, trouble with social interactions and boundaries, and difficulty sustaining attention. He was demonstrating poor frustration tolerance and even in a structured inpatient unit, he was unable to manage small inconveniences or disappointments. He required redirection around physical boundaries, as he was observed to touch peers' and staffs' bottoms and use a sexualized tone toward staff. Staff noted that as the hospitalization had progressed, Preston's frustration tolerance and behavioral issues became more present. Diagnoses were listed as DMDD, with a possible precursor to a Major Depressive Disorder; RAD; ADHD; learning disabilities in reading and writing; and Developmental Disorder. (P-141, P-144; Calligas, II: 128-29)

174. Around this time, Parents met with Dr. Calligas and Preston's Unit 1 social worker Kara McTague, who recommended that Preston be placed at Three Rivers, which is the only CIRT in Massachusetts that accepts children Preston's age. Ms. McTague said she would look into it, and assured Preston's mother that Preston could stay on Unit 1 until an appropriate placement was located. Both Dr. Calligas and Ms. McTague expressed their belief that returning to Early Rise would present a significant risk to Preston emotionally, physically, and emotionally. (Mother, IV: 48-49)

175. The District scheduled a Team meeting for May 22, 2019.<sup>41</sup> (S-18, S-19) This meeting to discuss Parents' partial rejection of the IEP had initially been scheduled for April 9, 2019, but Parents had requested that the meeting be delayed, as there was no new evaluative data to discuss. (S-20; Bressette, VI: 371-72)

176. On May 22, 2019, NRSD reconvened the Team to review Preston's progress. At this time, Preston remained on Unit 1. Preston's school-based team, including his special educator, counselor, BCBA, occupational therapist, school psychologist/Team chair, the Director of Pupil Personnel, and attorneys for Parents and the District attended in person. Parents, Ms. Farrington, and the Unit 1 treatment team, including Ms. Smith and Ms. McTague, participated by speakerphone. (S-13; Farrington, I: 226-227; Mother, IV: 39-41)

Preston's Unit 1 team reviewed his function on the unit, emphasizing his low frustration tolerance, frequently leading to disruptive behavior and aggression, as well as his diagnostic issues, including RAD, Anxiety Disorder, and Mood Disorder, that affect him across multiple domains of functioning. (P-141) The District asked questions about Preston's time on Unit 1, including positive behavioral management systems, and were told that Preston did not have a systemic positive behavior intervention plan at Unit 1, nor was a BCBA on his treatment team. (S-13) Based on what they heard at the Team meeting, neither Ms. Bressette nor Ms. DeAngelis was impressed by Preston's educational programming on Unit 1. (Bressette, VI: 376-78; DeAngelis, IX: 46-47)

Parents, supported by Unit 1 clinicians, requested that NRSD add a goal for natural environment training, which they believed would assist Preston in integrating skills across settings. NRSD did not agree to include this goal in Preston's IEP and instead proposed a home assessment. Parents did not believe a home assessment made sense at this point, as Preston was not in the home. (S-13; Mother, IV: 43-45; Father, IV: 378)

NRSD shared what had worked with Preston in his time at Early Rise, as well as information regarding his behavioral outbursts and the lack of threats to others or attempts to harm others, which the District categorized as similar to Preston's behavioral presentation at Walker. NRSD shared that Preston had been in the process of becoming more comfortable with the school. He was building relationships with his peers, teacher, and therapeutically trained paraprofessionals, engaging in daily counseling, and had begun attending specials with staff support when he was hospitalized due to events in the home. Other arrangements were being made to include more peers through lunch bunches and small group instruction, which was scheduled to begin after

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<sup>41</sup> The meeting was initially scheduled for May 21, 2019 as a result of a clerical error. (Bressette, VI: 372)

April vacation in order to give Preston more time and input into when he was ready for these changes. The District emphasized that Preston was not engaging in the same level of dysregulation he presented outside of school within school settings at Walker or the Frances Sawyer School, and insisted that his needs could be met within Early Rise. (S-13; Farrington, I: 228; Mother, IV: 42; Bressette, VI: 366, VII: 122-23)

After NRSD reviewed the program and supports, Preston's hospital team asserted that they did not believe Early Rise would be appropriate for Preston given what they viewed as the lack of sufficient therapeutic resources and the absence of peers with whom Preston could work on social interactions. His clinicians reviewed the importance of intensive intervention and strongly recommended a therapeutic residential school environment to maximize consistency and minimize transitions. (P-110, P-141; Calligas, II: 126-27, 130, 149-50; Mother, IV: 41-42)

DMH concurred with this recommendation, opining that Preston needs a therapeutic structured school environment that helps with social skills and provides him with opportunities to have appropriate peer interactions and to participate fully in an academic school day with intensive supports. Parents again requested a therapeutic, residential, out-of-district placement. (P-145; Mother, IV: 45; Father, IV: 374-75)

In light of Parents' previous partial rejection of the 2019-2020 IEP, the Team agreed to add an objective to his current Social goal targeting an increase of accurate emotion identification and modify language in the Nonparticipation Justification to clarify that Preston would only enter the general education setting when he was showing stable regulation of his emotions. Parents inquired about a substantially separate program, and NRSD responded that his service delivery grid "does reflect a substantially separate level of programming for a student with high therapeutic needs." (S-13; Bressette, VI: 378-79)

177. The District made the revisions it had agreed to and proposed an IEP for the period from May 22, 2019 to May 21, 2020 (2019-2020 IEP). The revised Social goal added a fourth benchmark, stating that Preston will accurately identify his feeling (i.e., angry, frustrated, sad) in two out of four opportunities. The revised Nonparticipation Justification read as follows, "Additionally, as [Preston] continues to make gains in his ability to manage his strong emotions and make positive choices, the Team also agreed to allow him to exit the special education setting and enter the general education setting (based on his ability to show stable regulation of his emotions) with supports on any given school day so that he may continue to be educated in the least restrictive environment." (S-17)

This IEP continues to refer to the "brief draft" neuropsychological evaluation submitted by Dr. Connolly in the fall of 2018, though the final evaluation had been completed on or about March 6, 2019 and provided to the District in advance of the March 15, 2019 Team meeting. (S-17)

The District included with the proposed IEP and Placement Consent form a consent form for a home assessment. (P-120, P-122; S-17) Parents did not return the consent for the home assessment and the District never followed up. (Bressette, VI: 123-24; DeAngelis, IX: 256)

178. On May 24, 2019, Parents rejected the proposed 2019-2020 IEP in full and rescinded their acceptance of the placement.<sup>42</sup> (S-12, S-16)

179. Although DMH views residential intervention as a last resort, to be used for the shortest period of time necessary, on or about May 31, 2019, the agency approved Preston's admission to the DMH-funded Three Rivers Program. (D-1, Messier, II: 22)

180. Three Rivers is a 12-bed facility for children between the ages of 6 and 12, with a staff to client ratio of 3:1. At the time of his placement, Preston was one of seven or eight children housed in the facility. Three Rivers staff members are licensed and certified, with a master's degree or higher. (Garvin, I: 163; Messier, II: 16-17, 22, 75)

During a child's time at Three Rivers, staff complete daytime and evening logs tracking positive and negative behaviors, medical concerns, visits and phone calls, additional observations, and progress toward individual goals. (S-61, S-62, S-63, S-64, S-65)

Students admitted to the Three Rivers CIRT attend the Three Rivers School, a Collaborative for Educational Services (CES) school, contracted by DMH to provide educational services for the Three Rivers Program. CES is part of DESE's Special Education in Institutional Settings (SEIS) program. The counselors who work in the milieu are also present in the school. (P-110, P-141, P-179; Messier, II: 25; Donahue, II: 227, 253) As the teacher coordinator at the Three Rivers School, Patricia Donohue supervises two teacher, one of whom is licensed to teach moderate disabilities grades pre-K through 8, and the other of whom is on a waiver, as she is licensed to teach high school English Language Arts and is working on her special education certification. Ms. Donohue also teaches social-emotional learning to all students five days a week. Ms. Donahue has a bachelor's degree in human development and a Master's degree in curriculum and instruction. She holds Massachusetts certification in general education grades 1 through 6 and special education, moderate disabilities, for grades K through 8. Ms. Donahue has worked as a social worker, a family-based therapist, a general education teacher and school administrator in parochial schools, and an educational consultant focusing on inclusion and classroom management skills (Donahue, II: 221-25)

The Three Rivers campus consists of a school building/residential building, with an administration building across the street. Children sleep on the second floor of the school building while attending school and eat in the cafeteria on the bottom floor. Preston's clinician's office was in the administration building. (Messier, II: 69-70)

181. At the time of Preston's admission to Three Rivers, both he and Parents expressed their desire for Preston to be able to live at home safely. The post-Three Rivers Plan A was for Preston to be home with his mother with continuum services and a therapeutic school, with a Plan B a residential school or group home and therapeutic school. (P-162)

182. On June 6, 2019, Preston was discharged to Three Rivers, with a projected discharge date from there of January 6, 2020.<sup>43</sup> (P-110, P-157; Mother, IV: 49) DMH requested this placement

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<sup>42</sup> Ms. Bressette testified that Parents rejected the IEP and placement on June 11, 2019. (Bressette, VI: 380)

to avoid the likelihood of serious harm by reason of mental illness, as Preston was showing mood instability, impaired judgment, and impaired reality testing, as well as making suicidal statements, expressing homicidal ideation, and demonstrating aggressive behavior toward others. (P-148; S-54) Three Rivers determined that Preston was appropriate for CIRT level of care due to his inability to remain safe/stable in the community with supports; repeated or lengthy inpatient admissions to an inpatient psychiatric unit; major mental health or trauma diagnosis; behavioral/emotional behaviors that would otherwise require long-term inpatient psychiatric care; an IQ of 70 or above; and the ability to respond to and utilize relationships as a basis for change and growth.<sup>44</sup> (P-150; Holstein, VIII: 139-40) On the same date, Parents signed a release for NRSD to share information about Preston with Three Rivers. (P-149)

183. Three Rivers listed Preston's diagnoses upon admission as DMDD, RAD, and ADHD, and stated that he was referred secondary to concerns and issues of: persisted and repeated significant aggressive behavioral patterns; easily triggered prolonged temper tantrums that could include property destruction; impulsive, unpredictable, and dangerous behaviors, including bolting, sometimes into traffic; reported history of visual hallucinations involving "Mummy Bunny"; a history of being involved in sexualized behaviors with a school peer and suspected inappropriate touching of a family member; history of suicidal ideation; poor peer interactions; needing a safe and highly structured environment to keep himself and others safe while he begins to learn more adaptive and appropriate skills to deal with emotions; needing help to develop more appropriate peer and family relationships; and needing to engage in individual trauma-informed and family therapy to help him stabilize and experience an improved self-image. (P-150; S-54)

184. Three Rivers Clinician Andrea Messier, LMHC, ATR, administered the CANS on June 6, 2019. (S-53; Messier, II: 17, 21, 76) Massachusetts training and certification is required in order to administer the CANS.<sup>45</sup> (P-15, Messier, II: 76)

On the CANS, Ms. Messier indicated that Preston has, or in the last 12 months has had, at least one diagnosable DSM-IV or ICD-10 disorder that interferes with family, school, and community activities. She also indicated that he had demonstrated an inability to build or maintain satisfactory interpersonal relationships and inappropriate types of behavior or feelings under normal circumstances. As such, she concluded that Preston has a Serious Emotional Disturbance. (S-53)

185. Three Rivers' initial Treatment Plan for Preston listed two social and two individual problems, with objectives and interventions to assist him in reducing aggressive and threatening behavior toward others by expressing his feelings in non-aggressive ways; reducing his sexualized behaviors and invasion of people's space by keeping his hands to himself, maintaining socially acceptable boundaries, and increasing his understanding of and ability to

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<sup>43</sup> Three Rivers is a short-term program, where children are placed, ideally, for three to six months, though many end up staying for six to ninth months. (Messier, II: 82)

<sup>44</sup> Both DMH Director of Youth and Family Services for the Northeast Area, Laurie Gobeil, and Preston's clinician at Three Rivers, Andrea Messier, characterized the program as a lateral move from hospital-level care, which is not an appropriate long-term setting. (Messier, II: 91; Gobeil, VIII: 170-71)

<sup>45</sup> Ms. Messier also administered the Bird's Nest, a standard Art Therapy assessment that focuses on a child's attachment levels. (Messier, II; 17, 76)



maintain those boundaries; increasing his ability to regulate himself, decreasing aggressive displays, increasing his tolerance for frustration and increasing his ability to express his emotions. (P-151) Over time the goal around sexualized behaviors was removed, as Three Rivers staff did not witness any sexually inappropriate behaviors and replaced with a goal around building trust. (Messier, II: 52, 88)

Ms. Messier was assigned to be Preston's clinician throughout his time at Three Rivers. Ms. Messier has a dual Master's degree in mental health counseling and art therapy. She is licensed in Massachusetts as a mental health counselor and a registered art therapist and has over 51 hours toward her play therapist registration. She has worked at an outpatient clinic and therapeutic day school, and has been at Three Rivers for approximately four years. In her position at Three Rivers, Ms. Messier runs individual and family therapy sessions and consults with DMH, DCF, and other Three Rivers staff. (Messier, II: 13-16) During the academic school year, Ms. Messier sees children for therapy twice a week, for 60 minutes at a time. One session is dedicated to individual therapy, and the other is dedicated to family therapy. Since Preston came from a two-family home, he participated in two separate family sessions each week. (Messier, II: 22) In addition to providing direct clinical services, Ms. Messier collected data regarding Preston through her own observations and experiences with him and through her participation in meetings with other staff once or twice a week. (Messier, II: 81-82) Her treatment plan reports documented his growth and progress toward his goals. (P-167, P-168, P-172, P-182; S-7)

When Ms. Messier began individual sessions with Preston, he could only handle 15 minutes at a time. He was unable to identify emotions or feelings, and he struggled with developing empathy. With consultation with the occupational therapist, over time Ms. Messier found that Preston became more open and vulnerable in therapy, though he continued to experience difficulty identifying and communicating his emotions.<sup>46</sup> Preston has also improved in his ability to take ownership of his own actions, likely due to therapeutic interventions on the milieu where staff assist him in doing repair work. While at Three Rivers, he has developed some friendships with his peers. Although Preston continues experience peer conflict at times, consistent repair work and pre-teaching enables him to get along and collaborate with other children. Due to Preston's inability to compartmentalize, the constant support and minimal transitions he experienced throughout his days at Three Rivers were necessary to keep him regulated. (P-183; S-9; Messier, II: 36-44, 45-48, 51, 56-57, 59-69, 62-65, 86)

186. Preston began attending the Three Rivers School on June 11, 2019. Each day, clients had a morning routine to follow before school, consisting of waking, preparing for school, eating breakfast, and attending a house meeting. Preston attended school from 8:15 am to 2:30 pm, five days a week. The school environment consists of a small classroom with three to five students to one special education teacher and two mental health counselors. Two to three other mental health counselors are in the other classroom, available to anticipate issues, quickly de-escalate, process

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<sup>46</sup> Ms. Messier observed that because Preston has difficulty with vulnerability, when he wants to make a connection with someone he often does it in an aggressive or competitive manner. He has a negative self-concept and carries trauma that appears to be connected to his adoption. Over the course of his time at Three Rivers, Preston has made progress in dealing with these attachment issues, as he is able to talk more about his mistrust of adults, stemming from his feelings of loss related to his biological mother. Ms. Messier believes he still has much important work to do.

with a student who is having difficulty, and assist him in returning to the classroom. The curriculum follows the Massachusetts Curriculum Frameworks and includes daily classes in Math, ELA, Science, Social Studies, and Social Emotional Learning, and the school employs a Positive Behavioral Interventions and Supports approach, incorporating movement and quiet breaks and student self-monitoring. Upon intake, teachers at Three Rivers review a student's file, including his IEP. They also test children informally utilizing measures for math and ELA upon both intake and discharge. (P-179; Donahue, II: 240-41, 245-46)

Rather than employ restraint techniques, Three Rivers School focuses on teaching children to trust the adults around them and to trust themselves.<sup>47</sup> (Garvin, I: 128) During school hours, two psychotherapists, a residential director, a clinical director, and the program director are all available to students as needed and to consult with teachers. School and program staff collaborate both formally and informally on a regular basis. (P-179; Donahue, II: 231-33)

After school hours, youth transition back upstairs for their "chill-out" time, followed by afternoon programming, which consisted of outdoor activities, repair work, and therapy time. The evening routine included dinner and showers before bedtime. (Messier, II: 73)

187. At Three Rivers, Preston participated in a classroom for children between the ages of eight and ten, with a student to teacher ratio of three to one. There are at least two staff members outside the classrooms at all times, sometimes standing in the doorway. These are the same staff that work in the milieu. (Messier, II: 25; Donahue, II: 234-35, 238) When Preston arrived at Three Rivers School, he did not know how to identify his feelings. Ms. Donahue observed him engaging in refusals, getting extremely frustrated during school, and spending long periods of time outside the classroom two to four times a day. When he would get this way, he would tip over desks and chairs, throw papers and rip them to shreds, and walk out of the classroom. It would take staff 20 to 25 minutes to calm him down. As Ms. Donahue and the staff got to know Preston, they were able to start identifying the beginning stages of his rage, and positively reinforce him to take a break, during which they helped him process, or encourage him in his ability to do the work in front of him. Ms. Donahue identified Preston's beginning signals of frustration in the classroom, including body language and negative self-talk, when he says things like, "I am so stupid. I am so stupid. I can't do this." When this happens, the staff come over to him and redirect him, showing Preston that he can do it, and Preston becomes calmer. When a major escalation occurs, staff is readily available to intervene and assist; because of the teachers' ability to understand frustration and escalation, combined with trained staff to assist and intervene, Preston is able, in most instances, to return to the classroom within 10 to 15 minutes. (P-179; S-5; Garvin, I: 128-29; Donahue, II: 238)

At the time of the hearing, in June 2020, Preston was only asking to leave the classroom one to times a week, to avoid becoming dysregulated. Currently, when Preston asks to leave the classroom, he either talks to a staff member or throws a ball and runs around. (Donahue, II: 236-38)

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<sup>47</sup> Ms. Garvin believes that it is imperative for Preston to learn how to trust himself and to trust adults in his life, so he can feel safer and then be safer. (Garvin, I: 130-32)

Three Rivers staff report that Preston is currently on grade level for both math and ELA. During his time at Three Rivers, Preston has made progress in ELA. For example, every ELA class begins with an exercise called a “sentence starter.” At first, Preston would struggle to write one sentence on his own, but at the time of the hearing, Preston would write three or four sentences during this exercise and volunteer to share in front of the class. (Donahue, II: 250-51)

188. Three Rivers School staff hold weekly meetings to discuss the students’ needs, progress, and performance. During Preston’s time at Three Rivers, Ms. Messier attended these formal meetings every two weeks, to update the staff on his therapy sessions. Informally, the staff communicate with each other whenever an issue arises and whenever the staff changes shifts throughout the day. This ensures that all members are completely aware of all events that transpire when they are not around. It also allows the staff to remain consistent in their treatment of each child. (Donahue, II: 239-40)

189. In addition to individual and family therapy and therapeutic school programming, staff at Three Rivers provide constant supervision for all students. Staff were always available to process with Preston in the moment. (Garvin, I; 218) Whenever Preston would break down, staff would make him correct his mistake by doing “Repair Work,” before he was allowed to move on. Every day at Three Rivers was structured to give Preston a daily routine. (Garvin, I: 129) Constant communication between staff members kept Preston from being able to manipulate the adults in his environment as he had been able to do in the past. (Garvin, I: 129, 132-33, 163-64). This continuity of care allows Preston to access his education. (Garvin, I: 133)

190. In early June Ms. Farrington discharged Preston from Youth Villages because it was a home-based program and Preston had been admitted to a residential program. She visited him briefly to finalize the discharge process so he would not feel abandoned. While she was at Three Rivers, Ms. Farrington observed that there were plenty of staff in the facility, with a minimum of one to one support. Ms. Farrington also saw that as she left, Preston walked off to be alone in the corner, and a staff member was following right behind him to check in on him. On June 10, 2019, Ms. Farrington authored Preston’s discharge and aftercare plans, as well as a risk trauma assessment. (P-110, P-154; S-11; Farrington, I: 188, 231-32) Ms. Farrington testified that when Preston is ultimately discharged from residential placement, DMH could contract with Intercept again to support him. (Farrington, I: 254)

191. On June 17, 2019, NRSD issued a Progress Report on Preston’s 2019-2020 IEP. On his Social goal, the District noted that Preston had attended Florence Sawyer School in the Early Rise program from April 1 to April 12, 2019. He demonstrated the ability to follow verbal directions and complete a task in a timely manner with no more than two staff prompts to do so in 3 out of 5 measured opportunities. He was able to express anger in 2 out of 5 opportunities, and with staff prompting, to access a tool to help him quickly deescalate and make a positive choice. Preston was able to engage in cooperative play with at least one other peer in 4 out of 6 opportunities. On his Reading goal, Preston was progressing toward four out of five benchmarks, and had not yet begun to progress toward the last. He was reading at a level F on the Fontas & Pinnell scale, which falls at a first grade, fifth month level – reflecting regression from his scores at Walker in March. On his Compensatory Services goal, Preston was progressing toward all benchmarks. He was progressing toward one of his three Academic Support benchmarks but had

not yet practiced skills relevant to the other two. (P-164; S-10) This is the only Progress Report issued for Preston during the 2018-2019 school year. (DeAngelis, IX: 186-87)

192. In the meantime, on June 11, 2019, Parents rejected the IEP as developed and refused placement in a substantially separate class at Florence Sawyer School. (P-156; Bressette, VI: 380)

193. While Preston was at Three Rivers, Parents participated in treatment conferences consistently and visited regularly, and after some time Preston was able to undertake successful home visits with both Mother and Father. Emails and case notes reflect frequent communication among therapist Andrea Messier, Clinical Director Chris Kaczmarczyk, and Parents. Parents were requesting, and open to, suggestions from Three Rivers staff regarding pre-teaching, managing Preston's bids for connection that manifest as attempts to control, and helping him unpack his core narrative that adults are not to be trusted. (P-146, P-157, P-159; S-56; Messier, II: 29-30)

194. Treatment plan reports developed during Preston's time at Three Rivers demonstrated growth and progress toward his goals, though it was not until mid-September that he was able to participate fully in therapy for 60 minutes twice a week. (P-167, P-168, P-172, P-182, P-83; S-7, S-9)

195. At the beginning of the 2019-2020 school year, Ms. Neylon assumed responsibility for Preston as his NRSD Team chair. Ms. Neylon has a Master's degree in social work and is licensed in Massachusetts as an LCSW and through DESE as a school social worker/school adjustment counselor. She has worked as a Team chair in NRSD since 2008; before that, she worked with nonprofits serving children and youth. In her role, Ms. Neylon chairs annual review meetings for the 50 to 60 students on her caseload, which includes all NRSD students in SEIS settings. According to Ms. Neylon, a school district's responsibility for students in out-of-district placements includes making sure that they are receiving all services they are supposed to be receiving, convening annual review meetings and conducting three-year reevaluations. For students in SEIS placements, Ms. Neylon receives progress reports from the placement on IEP goals and sends them to Parents four times a year. (Neylon, VIII: 8-11, 13-14, 16-17, 20, 53)

196. Ms. Neylon is aware that Preston's IEP contains counseling services, for which SEIS itself does not have the staffing capacity. As such, Preston receives these services outside of the school day. There is no indication on the IEP of this scheduling arrangement. Preston's IEP also provides for an OT consult. To ensure that this service was in place, Ms. Neylon contacted SEIS School District Liaison Joann Rose and Three Rivers' SEIS Teaching Coordinator Pat Donohue in September 2019. Ms. Donohue arranged a meeting between herself, Ms. Donohue, Preston's two classroom teachers, and Three Rivers' occupational therapist P. Candee Gibbs. (P-165; Messier, II: 54; Neylon, VIII: 18-19, 55-56, 96-98)

197. NRSD, through Team Chair Anne Neylon, was invited to participate in a Supplementary Case Conference for Preston on July 24, 2019, but Ms. Neylon was unable to attend. (P-157, P-165)

198. At the systems meeting on September 25, 2019, which Ms. Neylon attended, Three Rivers reported that Preston was doing well in the program, getting up in the morning and attending school daily. He struggled with redirection and identifying his feelings. When things did not go well with his family, he was not able to take responsibility for his role, and when he did admit that he had done something wrong, he felt he was bad and worried that his family would not forgive him. He did not display confidence in his school performance and needed both one-to-one support and redirection in class. He displayed a very poor attention span. (P-157, P-165, P-166)

On the milieu, Preston was also doing well, but he struggled with not getting what he wanted and tended to yell and be rude to staff and peers. When he got very upset, he would go to his room and throw toys around. He was able to handle being redirected more often than not. Preston's peer interactions were overall good, though at time he needed some support in this area. He also had positive relationships with staff, who reported that they trust Preston in the community. (P-170; S-8)

199. In the meantime, on September 16, 2019, Preston's mother contacted Ms. Bossardet to reschedule Dr. Connolly's observation of Early Rise to October 9, 2019. Ms. Bossardet responded affirmatively, and Parent confirmed the appointment by email on September 26, 2019. (P-171)

200. When Dr. Connolly arrived at Florence Sawyer on the morning of October 9, 2019, she was told by the Assistant Principal that the observation had been rescheduled or cancelled because no one was available to co-observe Early Rise with her. Neither Dr. Connolly nor Parents had been informed of this change. (P-173; Connolly, IV: 136) Dr. Connolly rescheduled her observation for November 5, 2019 and requested to see a lesson in the substantially separate classroom, a transition time, any specialized instruction, and to meet with the specialized teaching staff including the social worker and behavioral specialist. (P-177)

201. Parents filed their *Hearing Request* against NRSD on October 17, 2019. (P-174)

202. For two to two and a half hours on November 5, 2019, Dr. Connolly conducted her observation of Early Rise. The Early Rise program is in both buildings that comprise the Florence Sawyer School. The first and second grade Early Rise classroom is in one building; the third and fourth grade classroom is in the other. The two buildings are separated by a wooded path. As a third grader, Preston would have to travel between the two buildings for different specials and services, accompanied by a staff member.<sup>48</sup>

For her observation, Dr. Connolly was accompanied by the Vice Principal, who brought her first to observe in the building that housed the first and second grade program. In the classroom were a teacher, a BCBA, and one student; the social worker entered and left the room a few times. Dr. Connolly requested to see the third-grade classroom, where Preston would be placed. She was brought to the other building to the third-grade classroom, but it was completely empty. No third graders were in the program that year, but there were two fourth graders. When she asked where

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<sup>48</sup> Ms. Farrington also testified about the two-building physical plant of the Florence Sawyer School. (Farrington, I: 266)

the other children were, she was told they were all in their mainstream classes. As a result of this information, Dr. Connolly classified Early Rise as a partial inclusion program that provided children with a “home base” when they needed services to enable them to return to the general education classroom. No actual instruction occurred in the classroom Preston would be in. Dr. Connolly concluded that this program would not be appropriate or beneficial for Preston because he needed to be in the same place with like peers in a small group of three or four students, all getting similar instruction with similar expectations, continuity of staff, and a comprehensive approach. (Connolly, IV: 136-41, 195-96, 198)

203. Preston went off grounds from Three Rivers for the first time with his father, Three Rivers staff, and Ms. Messier on November 5, 2019, and did the same with his mother two days later. He had his first visit in his mother’s home on December 14, 2019, and in his father’s home on December 28, 2019. Preston was accompanied by Three Rivers staff on all home visits. He was able to do well for short period of time, but it was challenging for him to remain safe around his siblings during visits. (P-183; S-9; Messier, II: 29; Holstein, VIII: 120-21)

204. During the quarterly progress meeting at Three Rivers that took place on or about November 7, 2019, which was attended by telephone by Ms. Neylon<sup>49</sup> and Ms. DeAngelis, an issue arose between Parents and the District. The District participated in the portions of the meeting about Preston’s presentation in the milieu and the school setting, but Mother became uncomfortable with the questions Ms. DeAngelis was asking about Preston’s private therapy and what she perceived as a disregard for HIPAA-protected information. As a result, Ms. Messier asked Ms. DeAngelis to leave the meeting when it was time for the team to discuss clinical information. Ms. DeAngelis was upset by this request, as she believed it necessary for her to participate in the entire meeting. Three Rivers staff responded that they would happily answer any clinical questions she might have, but that they would not allow her to hear their discussion of family therapy. (Mother, IV: 49-51, 249; DeAngelis, IX: 48-51)

205. Ms. Neylon and Ms. DeAngelis believe that being “locked out” from parts of these meetings prevented the District from acquiring information on the social-emotional, residential, and therapeutic side of Preston’s presentation, which impeded NRSD’s ability to formulate next steps. Ms. Neylon acknowledged that at this time, it was only private individual and family psychotherapy that the District was blocked from, as NRSD had access to educational and milieu information. (Neylon, VIII: 63-65; DeAngelis, IX: 51)

206. In mid-November, 2019, SEIS School District Liaison Ms. Rose sent an SEIS Academic Report and a First Quarter Progress Report regarding Preston to NRSD. (S-6)

On Preston’s Social goal, Three Rivers indicated that he was making minimal progress toward the first benchmark, as he struggled to complete required tasks in a timely manner and required multiple prompts to refocus. He was making consistent progress toward the second benchmark, as he was able to express his anger appropriately by using words to state feelings in 1 out of 5 measured opportunities. When angry, he would yell, swear, and knock over items, requiring

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<sup>49</sup> Ms. Neylon testified that she attended three meetings at Three Rivers in September, October, and November. (Neylon, VIII: 23, 33)

adult guidance to take space most of the time. He had mastered the last benchmark, engaging in cooperative play with at least one other peer in 4 out of 6 measured opportunities.

On his Reading goal, Preston was making consistent progress toward the first two benchmarks, satisfactory progress toward the third, and minimal progress toward the benchmark regarding reading grade level text.

On his Compensatory Skills goal, Preston was making satisfactory progress toward the first two benchmarks, but he was making only minimal progress toward the third. He was unable to independently identify which tasks are difficult, at times asking for help before being told what the task is and what steps are required.

On his Academic Support goal, one benchmark had not yet been introduced, he was making minimal progress toward another, and satisfactory progress toward a third. (P-180)

207. According to a milieu report prepared for Preston's Conference on December 18, 2019, he was continuing to do well in that setting. (P-184; S-8) His Treatment Plan was revised on January 6, 2020 to incorporate new goals to address his distrusting adults and his aggressive behaviors toward Parents in the home environment. With the exception of his goal to address his struggles with dysregulation, aggressiveness, low frustration tolerance, and impulsivity, in which he essentially stayed the same, Preston was continuing to improve, though he needed assistance the majority of the time. Staff also added a physical problem to the treatment plan, stating that Preston was at risk of adverse effects of psychotropic medications. (P-185; S-7)

208. On January 10, 2020, the District contacted Ms. Rose to request that she schedule an annual review for Preston. NRSD also expressed interest in conducting a classroom observation prior to the meeting. (P-165)

209. On or about January 14, 2020, Three Rivers sent an invitation to NRSD for an upcoming meeting but was subsequently informed by Parents that Parents did not want NRSD to attend. Faced with the prospect of dis-inviting the District, Three Rivers administrators and staff considered offering to conduct internal review meetings regarding Preston's confidential mental health review separately from school meetings for educational purposes, and letting NRSD know that the District was welcome to convene a Team meeting as well. Ultimately, Three Rivers emailed Ms. Neylon to communicate that she had been sent an invitation to an internal case conference erroneously. NRSD did not receive invitations to any other Three Rivers systems or treatment meetings from that point on. (P-146; Neylon, VIII: 34, 65-66)

210. Around this time, Preston was displaying sensory seeking behavior during OT visits. (P-187) The Treatment Plan reports developed in the spring of 2020 demonstrated that Preston was struggling with his goal to express his needs and feelings in non-aggressive ways, improving in his ability to express his emotions, and staying the same in in other areas. (P-188, P-195; S-7)

211. On the Progress Report issued by NRSD on January 31, 2020, Preston had mastered one benchmark in his Social goal, was making consistent progress toward a second, and continued to master a third. For his Reading goal, he had mastered one benchmark, was making consistent

progress toward a second, and was making satisfactory progress toward three others. Preston was making satisfactory progress toward two of his Compensatory Skills benchmarks and minimal progress toward two. On his Academic Support goal, he was making consistent progress toward one benchmark and satisfactory progress toward two others. (S-4)

212. On February 26, 2020, Ms. DeAngelis emailed Three Rivers Program Director Rob Terreden to inquire as to whether additional treatment meetings had been held regarding Preston and to request the opportunity for NRSD to participate in future meetings. At this point, Parents had expressed that they only wanted the District to participate in the academic and school update portion of meetings, but not to be privy to information regarding the milieu of therapy updates. Parents, through their attorney, explained that if the District wished to obtain additional information regarding Preston, they could convene a Team meeting at any time. Mr. Terreden responded to Parents that the distinction between academic and mental health information “seems blurry at best when requesting special ed services specifically for mental health/behavioral reasons.” (P-146; DeAngelis, IX: 51)

213. Although the Annual Review meeting was initially scheduled for mid-May, NRSD requested that it be advanced to March or early April. (P-146) Although Ms. DeAngelis recognized that she could obtain some of the information she sought at a Team meeting, the District did not convene a Team meeting prior to the annual review because NRSD had just conducted a three-year reevaluation, and had received both Ms. Messier’s November letter and progress reports indicating that Preston was making progress. (DeAngelis, IX: 52, 260)

214. Ms. Gibbs, OTR/L, conducted an evaluation of Preston across 11 dates between October 2, 2019 and February 11, 2020. She administered the Beery VMI; the Jordan Left Right Reversal Test, 3<sup>rd</sup> edition; the Test of Visual Perceptual Skills, 4<sup>th</sup> edition; the Bruininks-Oseretsky Test of Motor Proficiency, 2<sup>nd</sup> edition (BOT-2); and the Sensory Integrated and Praxis Tests (SIPT). The classroom teacher completed the Sensory Processing Measure questionnaire, and Ms. Gibbs conducted clinical observations, and consultation with teachers and staff.

Initially, Preston was reluctant to go to the occupational therapy room. In October, he needed many movement breaks; expressed perceived failures with words, facial expressions, gestures, and flopping; and exhibited avoidant behaviors such that he was unable to continue productive testing after 45 minutes. Eventually, he became more enthusiastic about participating in sessions.

Ms. Gibbs observed that Preston’s profile of dyspraxia, sensory defensiveness, and sensory modulation are statistically correlated to early traumatic events. She concluded that although his overall skills place him in the average range for visual motor integration, visual perception, and total motor composite, he displays some specific challenges and underlying foundational deficits that compound his sensory modulation issues and emotional regulation abilities.

Ms. Gibbs recommended that Preston receive direct OT services; vestibular training, strength exercises, bilateral whole body exercises and activities; structured, frequent, scheduled intense movement breaks to include heavy loading into joints; calming strategies as part of his day to include deep pressure into his muscles; activities such as performing heavy work and deep pressure techniques before attempting to verbally process negative behaviors or complex issues;



a wedge for his chair, band on his desk for his feet, and chewing gum for testing of seated work; the opportunity to repeat novel and challenging motor tasks 6 times in a row; special lined paper and bold lines for cutting projects; untimed tests and the option to review test answers and make changes before handing them in; daily typing program practice; and potentially, talk to text programs for completing written reports and tests requiring more than two sentences. (P-189, P-196)

215. Dr. Connolly conducted another Neuropsychological Examination of Preston on March 15 and 16, 2020, including an observation at Three Rivers. Over the course of five hours, Dr. Connolly administered the Weschler Intelligence for Children – Fifth Edition (WISC-V); the California Verbal Learning Test (CVLT-C); the Wide Range Test of Memory and Learning (WRAML-2); the Rey Osterrick Complex Figure Test; the K-TEA-3; the Gray Oral Reading Test-5 (GORT-5); the Delis-Kaplan Executive Function System (DKEFS); and the Children’s Self Report and Projective Inventory. Dr. Connolly also administered a number of rating scales, specifically the Behavior Rating Inventory of Executive Function-2 (BRIEF-2); the Behavior Assessment System for Children-3 (BASC-3); the Connors 3 Attention Rating Scale, the Pediatric Behavior Rating Scale (PBRs); Sentence Completion; Draw-a-Person; and the Childhood History Form, Revised. Finally, she reviewed previous records and conducted a clinical interview. (P-193)

During testing, Preston presented as an active student whose attention and mood were variable. At times he was motivated to do well and cooperated with work demands; at other times he was irritable and easily frustrated, with fluctuating attention and impulsive responding, which impacted task compliance. Dr. Connolly concluded that due to his attention fluctuations, mood dysregulation, and low frustration tolerance, Preston’s scores are more variable and may underestimate his true potential. However, she felt the results are a valid indication of his current cognitive and academic skills.

On the Verbal Comprehension Index, Preston tested mostly in the Average range, with a strong fund of word knowledge. He required and responded well to the one-to-one setting but was hesitant to elaborate on or provide a second response when prompted. On the Fluid Reasoning Index, Preston’s performance fell in in the High Average Range. He made some impulsive errors when he did not consider all possible choices but was able to quickly correct these errors when cued. On the Visual-Spatial Index, Preston showed skills in the Superior range, but at times he became frustrated when he was not immediately successful and had trouble shifting his approach to solve the problem. Preston’s Processing Speed scores were in the Average range, and his Working Memory was in the Superior range, though his attention weaknesses were observed as the verbal tasks increased in length and complexity.

On selected subtests of the WRAML-2, Preston exhibited difficulty with sustained focus and attention, as well as severe frustration with task demands. Taken together, test results indicate that Preston benefits from having time to process verbal information a multi-modal presentation. His difficulty with sustained attention and low frustration tolerance severely limits the amount of information he can encode and use in his daily environment.

Dr. Connolly utilized the NEPSY-2, the Rey Complex Figure Test, and the BRIEF-2 to evaluate Preston's executive functioning. He showed strong visual-spatial skills and visual memory, combined with weak visual planning, organization, and executive control. He demonstrated weaknesses in quick cognitive shifting and inhibition, as well as great difficulty independently managing task performance in his daily environment and severe trouble with task inhibiting and monitoring responses.

In Reading, Preston performed in the Average range, but his reading comprehension scores suggest that he continues to struggle to understand grade-level texts. Moreover, he demonstrated specific weaknesses in inferential and narrative comprehension of texts, and showed that he required substantial and differentiated instruction. Although Preston's decoding had improved, with regard to fluency he became quickly frustrated with task demands, and the task was discontinued. In Math, Preston's conceptual skills were an area of strength, and he was able to meet grade level expectations in Concepts and Applications. Consistent with severe weaknesses in sustained vigilance and effort, his Math Fluency skills could not be measured. Preston was unable to complete the written expression subtest, so Dr. Connolly could not rate his Written Language skills. She recommended that he receive direct instruction in this area.

Data on Preston's social-emotional functioning revealed many areas of significant behavioral, emotional, and social stress. Preston's alertness to signs of potential hostility and rejection and inability to avoid difficulties owing to his impulsiveness and the inability to restrain his emotions frequently manifest in outbursts of frustration, irrationality, and aggression. He showed a lack of both self-awareness and understanding of his emotional responses. Preston's responses on the BASC-3 indicated high levels of school problems, atypicality, attention problems, hyperactivity, and external locus of control. He presented as highly anxious, edgy, easily frustrated, impulsive, and distracted, especially when faced with complexity. He displayed a lack of empathy that limits his connection to others and leads to aggressive behaviors with no remorse. He continues to be aggressive and unsafe to self and others. Preston was rated Clinically Significant on the PBRS in Irritability, Atypicality, Hyperactivity, Aggression, Inattention, Affect Regulation, and Social Interactions.

Dr. Connolly concluded that Preston presents primarily with RAD and DMDD, and that despite continuous placements at CBAT programs and Residential Programs including Three Rivers and Walker, Preston has made minimal gains in his ability to cope or handle his emotions. At this point, he continued to display no self-awareness, little frustration tolerance, limited understanding or awareness of his emotions, no ability to control his behavioral reactions, and little to no understanding of the impact of his behaviors on others. He continued to be at high risk of harm to self and others. According to Dr. Connolly, Preston's deficits impacted him across the curriculum.

Dr. Connolly concluded that it is evident that highly structured, residential, therapeutic settings are crucial to help Preston stabilize his emotions and minimize his incidents of aggressive behavior. She recommended that Preston be placed in a small, highly structured specialized residential school that uses a systematic full-day approach and is designed to meet the needs of children with co-existing psychiatric, emotional, and learning disorders. This program should be based on a therapeutic residential model, rather than a primary behavioral one, and should

provide intensive treatment and support for Preston's psychiatric condition as well as social skills training, intensive therapy, and support for his learning and executive functioning weaknesses. Specifically, Preston's placement should include the following components: small special needs classroom with like peers with similar learning and academic deficits; direct, one-to-one instruction in reading and written expression using a structured, evidence-based program; small group language-based instruction at his level for all academic subjects; small group instruction in higher-order language skills or thinking maps taught by a speech and language therapist; and intensive, daily therapy to help Preston understand and regulate his emotions. She recommended that the educational setting provide a substantial focus on teaching foundational pre-learning skills; a significant degree of academic intervention; specialized reading instruction; daily, direct one-to-one instruction in Math; direct instruction in writing; extra time; direct supports and strategies for managing his executive weaknesses; audio textbooks; direct occupational therapy; involvement of a BCBA or master's level behaviorist; and intensive individual therapy. (P-193; Connolly, IV: 143-49, 204, 215-16, 219-20)

216. At the systems meeting on March 12, 2020, Three Rivers School reported that Preston was afraid to make mistakes and continued to lack confidence in his academic ability, but could undertake tasks with encouragement and become proud of himself. Teachers also reported that Preston was on grade level and stronger in ELA than in Math. He had started asking for breaks in the room rather than leaving. In individual therapy, his relationship with Ms. Messier had strengthened and they were able to discuss topics more in-depth. He was able to endure home passes, with staff support, for approximately half an hour. (P-187)

Preston's therapist discussed his continued struggle with feelings of mastery, self-esteem, containment, relating to another person, management of his emotions, and flexibility. He commonly projected his emotions, blame and accountability on others around him. He was slowly beginning to work on his ability to trust adults. Preston had begun displaying more hopeless and depressive symptoms, resulting in less caring, increased anger, and more frequent displays of negative thoughts about himself. (P-191; S-9)

On the milieu, Preston was struggling with increased anxiety and low frustration tolerance, was easily triggered, and struggled to do simple tasks. He exhibited increased behaviors of swearing, arguing with others, provoking peers, and following staff directions, and was more susceptible to negative patterns of thinking. It was difficult for Preston to take responsibility for his part, and he often avoided processing feelings of behaviors with staff. Toward the end of the quarter, he made some gains – doing well overall with peer interactions, starting to be able to tolerate feedback, mistakes, and staff directions. He also made gains in terms of mood, behaviors, and frustration tolerance, and needed regular reassurance that he was showing improvement. Preston made several comments about not trusting adults and feeling unworthy of love. (P-192; S-8)

217. On April 10, 2020, Three Rivers prepared a Progress Report for Preston. (P-197; S-2) At this time, he was participating in remote learning through the SEIS Student Remote Learning Plan while remaining at the Three Rivers Program due to school closures necessitated by the coronavirus pandemic. (P-194, P-200)

On his Social goal, Preston had mastered his first and third benchmarks and was making consistent progress toward his second. On his Reading goal, he had mastered three benchmarks and was making satisfactory progress toward the others. On his Compensatory Services goal, Preston was making satisfactory progress on three benchmarks and minimal progress toward a fourth. On his Academic Support goal, Preston was making consistent progress toward one benchmark and minimal progress toward two. (P-197; S-2)

218. On April 28, 2020, an IEP meeting occurred over Zoom, attended remotely by Parents, their attorney, Ms. DeAngelis, Ms. Neylon, Dr. Connolly, Ms. Rose, Ms. Donahue, SEIS DMH Coordinator Jaime Bell, Ms. Messier, Ms. Kaczmarczyk, Mr. Terriden, Ms. Gibbs, and Three Rivers Family Support Coordinator Amy Breton. Parents excused the absences of Preston's Three Rivers teacher and the speech and language pathologist. Although she was the DMH point person for Preston at the time, Tanya Holstein was not invited to the Team meeting, as Ms. Neylon was not aware she was involved. Ms. Neylon testified that she did not convene the Team prior to this date because waiting until closer to Preston's discharge date would permit the Team access to accurate, current information about his presentation as decisions were being made about next steps. (P-157, P-200 S-1; Messier, II: 66-67; Neylon, VIII: 24-26, 81)

Ms. Messier shared her observations regarding Preston's presentation, which areas of therapy he still needed to work on, and where he had made progress. She provided an example of Preston's tendency to connect two logical events in his life in an illogical way, thereby creating false narratives in his head.<sup>50</sup> She and other Three Rivers staff members explained that Preston was making progress, but it was slow, and with significant support. They asserted their belief, based on 11 months of experience with him, that Preston required a residential therapeutic setting, as consistent care across settings gives him the best opportunity to flourish and continue to improve his skills. They also shared that Preston had exceeded the length of stay of a CIRT, but that they did not feel comfortable discharging him without an appropriate placement. (Messier, II: 65-68; Mother, IV: 54-55)

At the time of the meeting, Dr. Connolly's written evaluation report was not yet available, though Dr. Connolly shared her impressions. Three Rivers had recently provided the District with Ms. Gibbs' OT assessment, and Ms. Gibbs shared her recommendation that Preston have an OT goal to help him regulate across all settings. The District's occupational therapist was not in attendance at the Team meeting but reviewed Ms. Gibbs' report subsequent to the meeting and drafted OT accommodations, goals/objectives and service delivery recommendations. The N1 for the meeting stated that both reports could be reviewed at a future meeting, though there is no indication in the record that such a meeting has occurred.<sup>51</sup> (S-1; Connolly, IV: 150-51; Mother, IV: 56-57; Neylon, VIII: 93)

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<sup>50</sup> At Hearing, Ms. Messier recounted as an example an incident where Preston believed that a child he was playing basketball with threw the basketball at the rim on purpose so it would hit Preston in the head. Ms. Messier explained that this incident was clearly an accident, but that Preston felt targeted. (Messier, II: 65-66, 83)

<sup>51</sup> Ms. Neylon testified that although the Team did not have Ms. Gibbs' report sufficiently in advance of the Team meeting and therefore offered to reconvene the Team to consider it, NRSD's occupational therapist reviewed the report after the Team meeting and incorporated information, including recommended services and accommodations, into the IEP. According to Ms. Neylon, Parents did not object to this process because they were eager to get the goals and services into the IEP. Parents, however, rejected the IEP in part because they believed the OT goals proposed were insufficient in light of Ms. Gibbs' report. (Neylon, VIII: 30-32, 58-59)

Parents expressed their desire to have Preston educated in a residential setting, as they believed he required this in order to access education. Although NRSD did not provide reports, data, or assessments in support of its position, the District asserted, based on observations of Preston during his ten days at Early Rise, that he could return to that placement and be successful there. (P-200; S-1; Mother, IV: 58; Father, IV: 381-82) Asked to explain the basis of this belief, Ms. Neylon stated that Preston's behaviors, as they are being exhibited right now, "do not necessarily rise to the level of requiring residential," in part because he was able to attend school when at Three Rivers and at Early Rise. She testified that DMH-contracted providers could have supported Preston in the family home or in a group home while he attended a private day school. (Neylon, VIII: 40-41, 45-46, 48-49)

Ms. DeAngelis testified that she placed more weight on school-based data and observations of Preston, based on staff members' experience with him in school every day, than on the recommendations of Dr. Connolly and Dr. Calligas, because independent evaluations are only "a snapshot in time." Moreover, according to Ms. DeAngelis, based on the information from Three Rivers, Preston did not "sound any different than the time he was" in Early Rise or at Walker. Even so, the District proposed a therapeutic day program rather than Early Rise in light of the fact that Preston was currently in a very restrictive placement and NRSD believed a step-down would be the most appropriate next step. (DeAngelis, IX: 53-54)

219. Preston's May 6, 2020 Treatment Plan indicated that he was improving in his progress toward two goals and was staying the same in two others. (P-199)

220. On May 14, 2020, NRSD proposed an IEP for the period dated 4/28/20 to 4/27/21 (2020-2021 IEP) that included placement in a substantially separate private day school with an IEP focused on social/emotional functioning, social skills, academics, compensatory skills, regulation skills, fine motor skills, and motor skills.

The proposed IEP summarized the results of the OT evaluation conducted at Three Rivers, the Walker Extended Evaluation, the 2019 NRSD reevaluation and Dr. Connolly's draft evaluation from the fall of 2018. It listed Preston's disabilities as in the areas of Emotional Impairment (RAD and DMDD) and Health (Attention Deficit Hyperactivity Disorder) and listed numerous accommodations. The IEP included six goals.

The IEP described Preston's Current Performance Level for Social/Emotional goal as follows: Preston puts forth great efforts in anything he tries, utilizes a Check In/Check Out system to self-monitor his daily progress on goals, and is able to express his anger appropriately by using words to state his feelings in 40% of measured opportunities. His goal was formulated as follows: Preston will improve his social/emotional functioning by, with adult support, identifying his emotions in 60% of measured opportunities; expressing his emotions appropriately by using words to state his feelings in 60% of measured opportunities; and expressing his needs/wants appropriately in 60% of measured opportunities.

Under Preston's Social Skills goal, his Current Performance Level stated that he is able to follow verbal directions and complete required tasks with minimal prompts and when confused or

struggling with work, is able to ask teachers for support. He enjoys playing cooperative games with peers and adults but at times becomes easily upset during the game and may accuse others of cheating. Preston's goal stated that he would improve his social skills by utilizing perspective-taking skills to develop an understanding of the connection between his behaviors and how these behaviors affect others/his relationships in 60% of measured opportunities and, with adult support, accepting and generating compromise solutions to conflicts when playing/working cooperatively with others in 60% of measured opportunities.

Under his Academics goal, Preston's Current Performance Level stated that he is able to ask and answer questions to demonstrate understanding of key details in fictional and informational texts and match words to vowel sounds (though doing so incorrectly at times when reading the words); that he has a reading rate of 95 words per minute; that he struggles with mispronunciation, and that his expression while reading has improved. Preston is able to independently utilize a graphic organizer to complete tasks accurately, but when dysregulated he is unable to utilize a tool independently. With adult support, he is able to utilize a graphic organizer for writing and editing his assignments. The goal provided that Preston will improve his academic skills, as measured by the following objectives: given instruction with a grade level text, Preston will make inferences about character and author's purpose with 90% accuracy in all measured opportunities; use pre-writing tools to assist with written assignments in 90% of measured opportunities; develop an understanding of the essential components of a paragraph by completing a graphic organizer which includes a topic sentence, support details, and a conclusion with 75% accuracy in all measured opportunities; and, given support, Preston will identify the operation of a word problem and use words, pictures or drawing to effectively solve with 75% accuracy in all measured opportunities.

According to Preston's Current Performance Level for his Compensatory Skills goal, he is able to use tools such as rubrics, checklists, and graphic organizers to assist him in completing his work in 40% of measured opportunities. With support, he can utilize graphic organizers and use a multiplication chart to check his work. He has demonstrated minimal ability to independently follow a schedule, relying on teacher support to utilize a schedule or directions and to explain directions to him. Preston struggles to identify the difficulty level of assignments and to advocate for help only when he requires it. His Compensatory Skills goal states that he will improve these skills by utilizing personal classroom tools (e.g. schedules, written directions) to make two spontaneous attempts per day to determine the next expectation, activity, or direction; independently start work within two minutes of being given an assignment/directions in 60% of measured opportunities; assess and identify the difficulty of an assignment in 60% of measured opportunities; and advocate for assistance only when needed in 80% of measured opportunities.

A new goal entitled Regulation is included in the proposed IEP. Under Current Performance Level, the Team explained that Preston presents with sensory modulation and emotional regulation deficits that affect his social participation. When he is becoming dysregulated in the classroom, he is able to identify and use effective self-calming strategies with adult support in 20% of measured opportunities. Preston is able to verbalize or demonstrate his need to leave the classroom to take space but does not readily participate in a strategy to help him regulate and return to class promptly. The goal anticipates that Preston will improve his regulation skills as follows: with decreasing verbal prompts, choose and perform one co-regulating strategy with an

adults in 80% of measured opportunities; with decreasing verbal prompts, choose and perform one self-regulating strategy in 80% of measured opportunities; request and perform effective self-calming strategies from a list of six in 80% of measured opportunities; increase his time in the classroom actively engaged in academic tasks to 90% of the time; and, with decreasing verbal prompts, use socially appropriate words and tone when experiencing a conflict or concern in 90% of measured opportunities.

For his Fine Motor Skills goal, the Team reported that Preston scored in the Average range on the Beery VMI and on some additional fine motor areas, but very low in some motor coordination tasks, demonstrates poor to fair motor output for printing and writing sentences and numbers, and some of his work is illegible. His goal poses that he will improve his fine motor skills as measured by writing one to two sentences onto specialized lined paper with accuracy of alignment, size, case, and formation of 80% of the letter in 80% of measured opportunities; copy two sentences and four math equations from the board with no more than one omission of a number or letter in 80% of measured opportunities; actively participate in a daily typing program for increasing amounts of time (up to 15 minutes) with 90% accuracy; and, with no more than one error, cut out shapes with curved lines along a thick bolded line in 75% of measured opportunities.

Preston's Motor Skills goal, based on Current Performance Levels in the Average range with some measurable deficits in core strength, lower limb strength, and balance, states that he will improve his motor skills, as measured by four objectives: completing 12 consecutive sit-ups in less than 30 second in 80% of measured opportunities; holding a wall sit with 90 degrees of flexion of hips, knees, and ankles with heels on the floor in 50% of measured opportunities; holding a supine flexion position with good form for 30 seconds in 50% of measured opportunities; and complete activities such as jumping side to side over a line/string/rope 12 times in 50% of measured opportunities.

The proposed IEP called for 120 minutes per week of social/emotional services to be provided by the counselor, 1470 minutes per week of academic/social skills per week to be provided by the special education teacher, and 60 minutes per week of OT to be provided by the occupational therapist. It also provided for 60 minutes per month of OT consultation to the Team, and extended school year (ESY) programming to prevent substantial regression. (P-200; S-2)

221. On May 25, 2020, Parents rejected the IEP in part and refused the placement in full. They believed the proposed IEP did not reflect the goals and services recommended by Team members. Parents requested that the District send referral packets to programs the Team had agreed were potentially appropriate for Preston upon discharge from Three Rivers, including JRI Littleton Academy and Dr. Franklin Perkins. Parents believed the discussion at the Team meeting had made clear that Preston requires a comprehensive residential therapeutic program that provides intensive clinical treatment for RAD in a 24/7 setting. As such, they viewed the District's proposal of a therapeutic day program as unreasonable.

Parents also rejected the IEP in part due to certain errors and omissions, specifically that their concerns that had been relayed at the Team meeting did not appear in the Parent and/or Student Concerns section, the omission of a goal for emotional regulations and development of, and

ability to access, coping skills, as well as identifying feelings and taking responsibility for his own actions and feelings; omission of a goal for development of empathy, social thinking (social pragmatics) and development of social skills; omission of goals for reading comprehension and written expression; and omission of a goal and direct services for his mental health needs, which impact him educationally. They also rejected omission of their request that his IEP help him explore his strengths and build his confidence, and provide for an educational setting that will address his therapeutic needs, so he is supported mentally and emotionally, and can thus access an education.

Parents also rejected the omission of input from Dr. Connolly as presented at the Team meeting on April 28, 2020. As she had recently evaluated Preston and met with his teachers, and the Team welcomed her impressions at the meeting, they believed this information should have been included in the Student Strengths and Key Evaluation Results Summary section. Specifically, they asked that the IEP include information about the impact of Preston's mood disorder on his attention; his rigidity and inability to think flexibly at school; and how easily he is derailed by anything he perceives he is not doing correctly. They also asked that Dr. Connolly's observations about the impact of DMDD and RAD across the curriculum be included, as well as the severity of Preston's sensory sensitivities, which required OT, and the fact that he cannot tolerate a class of more than four to five students at a time. Among other things, Parents asked that Dr. Connolly's recommendation for a residential therapeutic program due to RAD and difficulty with transitions be written into the IEP, along with her recommendation for direct individualized instruction in reading fluency and reading comprehension.

Furthermore, Parents rejected the omission of input in PLEP A from SEIS through Pat Donahue regarding the impact of Preston's disabilities in the classroom. They listed 14 specific behaviors and accommodations they would like to see, including the fact that Preston currently receives 1:1 direct instruction in math and ELA and participates in Social-Emotional Learning Group four to five times a week at Three Rivers.

Parents also rejected the omission of input in PLEP A and PLEP B from Andrea Messier as to how Preston's disabilities impact him in the classroom, specifically 14 characteristics, accommodations, and behaviors.

Parents listed a number of items in the IEP that they asserted were not supported by the information presented at the Team meeting, including use of a behavior plan.

They suggested language communicated by the Team that should be added to Goals, Current Performance Levels, Performance Criteria, and Benchmarks/Objectives. They also requested the addition of an Executive Functioning/Organization goal and a schedule modification such that Preston be provided with year-round programming, not just ESY. (P-201; Mother, IV: 59; Neylon, VIII: 77-78)

222. Mother testified that she maintained daily contact with Three Rivers from Preston's admission through the date of her testimony at Hearing. She stated that he made more progress there than he had anywhere else. Although it was slow progress, by the time of the Hearing, Preston could sometimes name his emotions, express that he needed a break, and apologize to



others, and was now willing to read aloud to Parents for the first time. (Mother, IV: 53-54; Father, IV: 379-80)

223. During the year plus that Preston attended Three Rivers, NRSD never observed him there, nor did the District request consent to conduct additional evaluations, with the exception of the proposed home assessment. (Mother, IV: 52-53)

224. On June 1, 2020, Parents amended their *Hearing Request* to include the proposed 2020-2021 IEP. As relief for this claim, they sought funding for at least one full school year of therapeutic residential placement, with the actual duration of such placement to be determined by the educators and clinicians working with him. (P-202, P-203; Mother, I: 251-52)

225. From the time Preston began at NRSD through the commencement of the hearing, the District emphasized that Preston had never been hospitalized for behaviors or incidents that had occurred at school. NRSD personnel viewed Preston as a young person whose problems stemmed from the home environment. To the extent he ever required residential placement, a proposition they disputed, such placement was the responsibility of DMH, as it would not have been for educational reasons. (Calligas, II: 142, 143-44; Connolly, IV: 180-85, 208; Mulkerin, IV: 279; Bressette, VI: 330, 374-75, VII: 139-41; Padden, VII: 316; DeAngelis, IX: 138-39)

226. By the time of the hearing, Ms. Garvin, Dr. Connolly, and Dr. Calligas, all with considerable expertise in their fields and all of whom had developed significant knowledge of Preston, agreed about how Preston presents, what he needs, and that he needs it now. Ms. Messier, who has spent over a year working closely with Preston, agrees.

As recognized by all of these experts who have worked closely with Preston over the past few years, Preston's behavioral health challenges and his academic challenges are intertwined. Preston's mental health impacts his ability to learn and prevents him from accessing the curriculum because when he feels overwhelmed he becomes dysregulated, then becomes aggressive and combative. He cannot access the curriculum or make academic progress without consistent support. He holds on to feelings and brings them from one setting to another. Due to his inability to compartmentalize his feelings, including his anxiety, Preston requires continuity of staff, minimal transitions, and consistency of approach across settings, with minimal transitions, in a therapeutic residential placement that provides a small, structured milieu and is staffed at the Master's level or above by providers with specific expertise and training in his diagnoses. (Garvin, I: 69, 82-83, 85, 132-33, 173; Messier, II: 62-64; Holstein, VIII: 116-17; Gobeil, VIII: 174-75, 192)

Three Rivers staff believed Preston needed more consistency of staffing and approach than even a campus setting consisting of a group home and a school could offer, as he lacks the ability to generalize skills across domains. (Gobeil, VIII: 178)

227. With appropriate supports over time, Preston would be able step down from residential placement after making progress in his self-awareness, his ability to regulate his behaviors, and his frustration tolerance, as well as improvement in his executive skills, overall tolerance, and

relatedness. (Connolly, IV: 224-25) When this happens, DMH is likely to play an important role in supporting his transition home. (Calligas, II: 148-49; Zaroni, III: 72; Gobeil, VIII: 182)

228. Throughout Preston's life, Parents have been supportive of Preston and willing to collaborate with clinicians and teachers in his best interests. (Garvin, I: 71-72, 115-16, 142; Farrington, I: 194, 217-18, 230-31; Calligas, II: 133, Blue, III: 50-51) Parents believe that NRSD's failure, for multiple years, to recognize that he requires more intensive services has hurt him emotionally, as he has bounced in and out of hospitals. These transitions have exacerbated his preexisting conditions, hurt his relationships with family members and the community, and impacted his ability to access his learning. (Mother, IV: 60-61; Father, IV: 382-84)

229. Parents' goal is, and always has been, to have Preston live safely at home. They would like him to attend school in the least restrictive environment that will enable him to make progress; recognize his strengths; be invested in his learning; feel successful; and become a functioning member of the community. (P-110, P-145, P-162; Mother, IV: 60; Father, IV: 380, V: 47; Bressette, VII: 153)

230. At the time the hearing commenced, Preston had exceeded the length of time Three Rivers viewed as appropriate for him, but no appropriate successor placement had been identified. His clinicians all believed he was ready to be transferred to a therapeutic residential placement akin to Three Rivers, but closer to home. This proximity would help him to achieve his goal, which was shared by his clinicians, to live safely at home. (Garvin, I: 169-70, 175; Calligas, II: 147-48; Messier, II: 82-83, 93, 99)

231. At the time of the hearing, NRSD continued to propose the 2020-2021 IEP, including placement at a therapeutic day program. Following the seventh day of hearing, the District agreed to a therapeutic residential placement and the parties jointly filed a letter narrowing the issues for hearing, but a dispute remained regarding the goals, services, and language of this IEP. (Tr. VII, 5)

## DISCUSSION

It is not disputed that Preston is a student with a disability who is entitled to special education services under state and federal law. 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.<sup>52</sup> To prevail, they must establish by a preponderance of the evidence that one or more of the IEPs proposed by the District for Preston between March 7, 2018 and April 28, 2020, and the amendments thereto, was not reasonably calculated to provide Preston with a FAPE; and/or that the District committed at least one procedural violation in connection with Team meetings held on 9/20/2018, 10/2/2018, 3/13/2019, 5/22/2019, and/or April 28, 2020; or by failing to

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<sup>52</sup> See *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

adequately monitor the provision of services to Preston during his placement at Three Rivers, that amount to a deprivation of FAPE.<sup>53</sup>

If I decide, based on the evidence before me, that NRSD failed to propose IEPs during the relevant period reasonably calculated to provide Preston with a FAPE, and/or that NRSD committed the alleged procedural errors and that these errors amounted to a deprivation of a FAPE, I must determine the appropriate remedy. As Parents' claims relating to the 2020-2021 IEP, which were framed in their *Amended Hearing Request*, have been partially resolved with an agreed-upon residential therapeutic placement, I must determine only whether this IEP must be modified to provide Preston with a FAPE. As to compensatory claims for past failures to provide Preston with a FAPE, I must determine whether Parents are entitled to the remedies they requested in their initial *Hearing Request*: reimbursement for their expenditures and/or an additional year for Preston at a residential therapeutic placement.

I address the delineated issues below.

I. Nashoba Regional School District Failed to Offer Preston a Free Appropriate Public Education from October 2018 through the Commencement of the Hearing

A. *Legal Standard for Free Appropriate Public Education*

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE].”<sup>54</sup> FAPE is delivered primarily through a child’s IEP, which must be tailored to meet a child’s unique needs after careful consideration of the child’s present levels of academic achievement and functional performance, disability, and potential for growth.<sup>55</sup> As summarized by the United States Supreme Court in *Andrew F. v. Douglas County School District*, the IEP must “describe how the child’s disability affects the child’s involvement and progress in the general education curriculum, and set out measurable annual goals, including academic and functional goals, along with a description of how the child’s progress toward meeting those goals will be gauged.”<sup>56</sup> “To meet its substantive obligation under the IDEA, a [district] must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”<sup>57</sup> The goals of all students should be “appropriately ambitious . . . just as advancement from grade to grade is appropriately ambitious for most students in a regular classroom.”<sup>58</sup>

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<sup>53</sup> See *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990) (Districts are liable for procedural violations if parents prove both that a violation occurred and that the “procedural inadequacies compromised the pupil’s right to an appropriate education, seriously hampered the parents’ opportunity to participate in the formulation process, or caused a deprivation of educational benefits.”)

<sup>54</sup> 20 U.S.C. §1400 (d)(1)(A).

<sup>55</sup> *Andrew F. v. Douglas Cty. Reg’l Sch. Dist.*, 137 S. Ct. 988, 999 (2017); *D.B. ex rel Elizabeth B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012).

<sup>56</sup> 137 S. Ct. at 994 (internal quotation marks omitted), citing 20 U.S.C. §§1414(d)(1)(A)(i)(I)-(III).

<sup>57</sup> *Andrew F.*, 137 S. Ct. at 999.

<sup>58</sup> *Id.* at 1000.

Similarly, Massachusetts FAPE standards require that an IEP be “reasonably calculated to confer a meaningful educational benefit in light of the child’s circumstances,”<sup>59</sup> and designed to permit the student to make “effective progress.”<sup>60</sup> Evaluating an IEP requires viewing it as a “a snapshot, not a retrospective. In striving for ‘appropriateness, an IEP must take into account what was . . . objectively reasonable . . . at the time the IEP was promulgated.’”<sup>61</sup>

Under state and federal special education law, a school district has an obligation to provide the services that comprise FAPE in the least restrictive environment that will “accommodate the child’s legitimate needs.”<sup>62</sup> For most children, a FAPE “will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade.”<sup>63</sup> However, “the benefits to be gained from mainstreaming must be weighed against the educational improvements that could be attained in a more restrictive (that is, non-mainstream) environment.”<sup>64</sup>

I measure each proposed IEP against these standards.

B. *IEPs Proposed by NRSD from March 7, 2018 through April 28, 2020*

1. The 2018-2019 IEP was reasonably calculated to provide Preston with a FAPE at the time it was written, but subsequent events compelled amendment.

The IEP proposed by NRSD for Preston for the period from March 7, 2018 to March 6, 2019, as amended May 5, 2018, contained one Social Behavioral goal, which aimed to assist Preston in attaining his social behavior skills with a focus on maintaining personal space, problem-solving, identifying feelings, and using strategies to work through frustrating situations. It provided for a full inclusion placement, with paraprofessional support and counseling once per cycle in the general education setting and once per cycle as a pull-out. At the time the District proposed this IEP, NRSD was aware of Dr. Monahan’s evaluation, conducted two years earlier, which had recommended a therapeutic placement, as well as Parents’ and Preston’s treating psychologist’s concerns about his anger control, mood swings, and sensory-seeking behavior. Team members also knew that Preston had experienced some difficulties in kindergarten and the beginning of first grade, but that he had appeared more regulated in more recent months as he attended individual and group sessions with Ms. Terwilliger. Although Mother requested a therapeutic placement at the Team meeting on March 7, 2018, she indicated that she was willing to try the full inclusion placement and requested that the Team revisit placement the following fall. Parents did not respond immediately to the proposed IEP.

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<sup>59</sup> *C.D. v. Natick Pub. Sch. Dist.*, 924 F.3d 621, 624-25 (1st Cir. 2019) (cert denied).

<sup>60</sup> 603 CMR 28.05(4)(b) (IEP must be “designed to enable the student to progress effectively in the content areas of the general curriculum”).

<sup>61</sup> *Roland M.*, 910 F.2d at 992 (internal quotations and citations omitted).

<sup>62</sup> *C.G. ex rel. A.S. v. Five Town Comty. Sch. Dist.*, 513 F.3d 279, 285 (1st Cir. 2008); see 20 USC § 1412(a)(5)(A); 34 CFR 300.114(a)(2)(i); MGL c 71 B, §§ 2, 3; 603 CMR 28.06(2)(c).

<sup>63</sup> *Andrew F.*, 137 S. Ct. at 1000.

<sup>64</sup> *C.D.*, 924 F.3d at 631 (quoting *Roland M.*, 920 F.2d at 993).

During the term of the IEP, however, evidence accumulated that Preston was struggling at home and in school. He was being sent to the office frequently in May and June, and both Parents and Ms. Terwilliger questioned whether his needs could be met in a full inclusion classroom at Center School. When Mother requested a Team meeting to address these developments, the District erred in requiring her to respond to the outstanding proposed IEP before reconvening. Nevertheless, Parents did respond, rejecting the omission of a benchmark for academic frustration and accepting the placement. At this time, notwithstanding the omission of this benchmark, the 2018-2019 IEP was reasonably calculated to provide Preston with a FAPE.

Subsequent events, however, required that the Team reconvene to consider and propose additional goals and services, as well as a change in placement in order to provide Preston with a FAPE. At the emergency Team meeting on September 20, 2018, Preston's Franciscan CBAT clinicians shared that he was engaging in aggressive and impulsive behaviors, completing academic work inconsistently, and could not step down safely to a public school setting. Parents and clinicians requested an extended evaluation in a residential therapeutic milieu where Preston could be assessed across settings to determine how his educational and psychological needs intertwine. Preston's pediatrician and psychiatrist supported these requests. The Team reconvened on October 2, 2018 to review an abbreviated neuropsychological report submitted by Dr. Connolly, based on the first two days of her assessment of Preston in September. Dr. Connolly suggested that Preston required direct reading instruction to address his reduced literacy skills as well as OT and other interventions to address his significant writing difficulties. She formalized Preston's diagnoses of reactive attachment disorder (RAD) and disruptive mood dysregulation disorder (DMDD) and recommended either a residential therapeutic placement or an extended evaluation in a smaller, structured residential therapeutic milieu where Preston could make progress academically, functionally, socially, and emotionally while undergoing an assessment. Dr. Calligas shared with the Team that in the absence of residential therapeutic treatment, Preston would continue to have difficulty managing his mood, behavior, and attachments. NRSB Team members appeared to believe that NRSB could not fund a residential treatment or assessment for Preston.

On October 8, 2018, the District proposed a Second Amended 2018-2019 IEP, dated September 20, 2018 to March 6, 2019, which incorporated discussion of Dr. Connolly's report and proposed a partial inclusion placement in Early Rise. Shortly thereafter, Preston's CBAT clinicians wrote to Ms. DeAngelis to emphasize Preston's struggles with self-regulation, impulsivity, and frustration tolerance, as well as his inability to maintain safety during community and home passes. They strongly recommended a 45-day residential assessment, to include occupational therapy.

Despite numerous strong recommendations for a residential therapeutic extended evaluation from experienced clinicians, NRSB maintained, on the basis of its experience with Preston during kindergarten and first grade, that Early Rise was appropriate to meet his needs. NRSB did not update Preston's goals or services and proposed an assessment at a therapeutic day program rather than a residential program. Parents ultimately accepted the extended evaluation and three-year reevaluation within a day program, though they rejected the IEP and placement. In the meantime, Preston remained at the CBAT until late November.

At this time, given the information available to the District, its decision not to develop additional goals, and its proposal for a partial inclusion placement at Early Rise was not appropriate. Although the CBAT clinicians, Dr. Calligas, and Dr. Connolly all recommended that the extended evaluation take place at a residential therapeutic program, given Preston's early age I cannot conclude that proposing an extended evaluation at a day placement was unreasonable at this time.

2. The 2019-2020 IEP was not reasonably calculated to provide Preston with a FAPE.

Preston's Team reconvened on March 13, 2019 to review Walker's extended evaluation as well as NRSB's three-year reevaluation. At this point, Preston had been hospitalized and subsequently transferred to the Walker CBAT due to his ongoing aggressive, violent behavior and suicidal and homicidal ideation, which continued despite intensive home-based supports. Even at the CBAT, Preston was breaking and flipping furniture and punching and hitting other students. Although the Walker school was reporting that he did well, there were significant limitations to its data collection and conclusions. Data was not being collected on some of Preston's known negative behaviors, and communication from the school appeared to underreport those behaviors. Preston's clinician, who completed a significant portion of the extended evaluation report, was an unlicensed, inexperienced intern, though she was supervised in this work. She spent limited time with Preston during the extended evaluation, given his stay on the CBAT. Parents and clinicians had expressed their concerns about the limitations of Walker's program and report, including the fact that information regarding Preston's struggles on the CBAT, and even his presence there, was omitted. After Preston's discharge from the CBAT, he was frequently dysregulated at home, throwing furniture, physically aggressing with family members, and finding himself unable to calm down using learned strategies. Although Parents had consented to a psychological assessment as part of Preston's three-year reevaluation NRSB did not complete one.

By this time, Dr. Connolly had finalized her Neuropsychological Assessment and Report and diagnosed Preston with RAD, Unspecified Mood Disorder, major Depressive Disorder, Generalized Anxiety Disorder, Sensory Integration Disorder, and ADHD. She had highlighted Preston's significant difficulties with writing, reduced literacy and reading skills, severe executive functioning deficits, and aggression, despite his high average intellectual capacities. Dr. Connolly strongly recommended placement in a residential therapeutic school for students with co-exhibiting psychiatric, emotional, and learning disabilities to enable Preston to make academic, functional, social, and emotional progress. Parents requested placement in such a program. Dr. Connolly, Dr. Calligas, and Ms. Garvin were all reporting that Preston's mental health and educational issues were intertwined.

Although the meeting ended before everything was covered, NRSB issued a Draft 2019-2020 IEP consisting of Social, Reading, Compensatory Skills, and Academic Support goals. The Social goal focused on following directions and completing tasks; expressing anger appropriately; and engaging in cooperative play. Once again, the District proposed placement in Early Rise, this time characterized as a substantially separate program. To the extent Parents

were unable to participate in a full discussion of Preston's IEP and potential placement, they expressed their views in writing shortly thereafter and during the Team meeting that occurred on May 22, 2019.

Parents partially rejected this IEP on March 21, 2019 but consented to placement in a substantially separate program in a true therapeutic milieu. They indicated that they did not view Early Rise as such a program, nor did Dr. Connolly. At some point, Parents must have agreed that Preston could attend Early Rise, as he began there upon discharge from Walker.

There is no question that at the time it was proposed, the Draft 2019-2020 IEP was not reasonably calculated to provide Preston with a FAPE. Had the information before the Team been limited to the Walker extended evaluation, and had everyone agreed that this evaluation was an accurate representation of Preston's functioning, NRSD's proposal may have been defensible. However, Dr. Connolly's report, information provided by Franciscan and Walker CBATs, Dr. Calligas, Ms. Farrington, Ms. Garvin, and Parents demonstrated that Preston required multiple goals addressing his social emotional functioning. Moreover, whether it was categorized as partial inclusion or substantially separate, Early Rise did not offer the intensive therapeutic services the experts recommended across the board.

By the time the Team reconvened on May 22, 2019, Preston had spent ten days at Early Rise, after which he had been hospitalized again for violent, aggressive, dangerous behavior. Although Early Rise staff had good intentions, their emphasis on integrating Preston with his neurotypical peers within his first few weeks in the program demonstrates their limited understanding of the complexity of his profile and the severity of his presentation. Preston did not have an adequate peer group with whom to interact at Early Rise; other students in the program appeared to use the classroom where Preston spent almost all of his time as simply a home base, where they could regulate and receive support before returning to the general education setting. By this time, Dr. Calligas, Preston's Unit 1 social worker, and DMH all agreed that Preston required CIRT placement due to his mood instability, impaired judgment, and impaired reality testing, as well as suicidal statements, homicidal ideation, and aggressive behavior toward others.<sup>65</sup>

Once again, NRSD proposed Early Rise, based on Team members' belief that Preston was not engaging in the level of dysregulation within school settings at NRSD and Walker as he did outside of school. The only changes NRSD made to the Draft IEP was the benchmark related to identification of feelings and the addition of language clarifying that Preston would not be mainstreamed too quickly. Parents rejected the proposed 2019-2020 IEP dated May 22, 2019 to May 21, 2020 and rescinded their prior acceptance of placement in a substantially separate therapeutic classroom.

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<sup>65</sup> I do not rely on the testimony of Preston's CBAT clinical educator, Lauren Smith, in reaching this conclusion. As Ms. Smith was internally inconsistent and she appeared to harbor bias against NRSD, I do not credit her testimony regarding her communications with NRSD or her opinion as to the Early Rise program.

Given all the information NRSD had before it at the time it proposed the 2019-2020 IEP there is no reasonable explanation for the District's insistence that Early Rise could meet Preston's complex needs. The 2019-2020 IEP thus was not reasonably calculated to provide Preston with a FAPE.

3. The 2020-2021 IEP was not reasonably calculated to provide Preston with a FAPE.

When the Team convened on April 26, 2020, Preston had been receiving intensive services at Three Rivers for 10 months following his hospitalization on Franciscan Children's Hospital Unit 1. Staff who worked with him clinically, educationally, and on the milieu witnessed slow progress, even with continuity of staffing and consistency of approach across settings, with minimal transitions, in a therapeutic residential placement that provides a small, structured milieu and is staffed at the Master's level or above with specific expertise and training in his diagnoses. Although the District believed it did not have all relevant information regarding Preston's individual and family therapy, it had received regular Progress Reports from Three Rivers and had access to additional information through a Team meeting, should that have been needed. A second Neuropsychological Assessment administered by Dr. Connolly had been submitted to the Team as well, according to which Preston exhibited difficulty with sustained focus and attention, severe frustration with task demands, and difficulty with reading fluency and comprehension as well as writing. The evaluation also indicated that Preston displayed a lack of empathy that limits his connection to others and leads to aggressive behaviors with no remorse, and that he is aggressive and unsafe. He continued to display no self-awareness, little frustration tolerance, limited understanding or awareness of his emotions, no ability to control his behavioral reactions, and little to no understanding of the impact of his behaviors on others. Preston's deficits impact him across the curriculum, and he continues to be at high risk of harm to self and others.

Faced with all of this information, including strong, supported recommendations for a highly structured, residential, therapeutic setting that provides intensive treatment and support for Preston's psychiatric condition as well as social skills training, intensive therapy, and support for his learning and executive functioning weaknesses from Dr. Connolly, Dr. Calligas, Ms. Garvin, Ms. Messier and other Three Rivers staff, NRSD proposed placement in a substantially separate private day school.

The proposed IEP for the period from April 28, 2020 to April 27, 2021 was comprised of a Social/Emotional goal focused on identifying and expressing emotions appropriately and expressing wants and needs appropriately, all with adult support; a Social Skills goal focused on perspective-taking and accepting and generating compromise solutions with adult support; an Academics goal focused on reading comprehension and writing; a Regulation goal focused on choosing and performing self-regulating and co-regulating strategies and self-calming activities, increasing time spent on academic tasks, and using socially appropriate words and tone; as well as Fine Motor and Motor Skills goals. The IEP proposed 120 minutes of counseling per week and 60 minutes of OT per week, in addition to OT consultation and ESY programming.



At the time it was proposed, the 2020-2021 IEP was not reasonably calculated to provide Preston with a FAPE, notably because it failed to place Preston in a residential therapeutic program. NRSD's decision, midway through hearing, to modify the placement did not cure all of the deficits. As recognized by Parents in the letter appended to their rejection of the initial proposed IEP, Preston requires additional goals focused on emotional regulation, social pragmatics, the development of coping skills and empathy, and executive functioning. Given his difficulties with reading comprehension and written expression, these areas should each have their own goal.

C. *Nashoba Regional School District's Proposed IEPs Became Increasingly Unreasonable, in Light of the Information the District Was Receiving*

Parents have met their burden to prove that NRSD failed to propose IEPs, or amendments thereto, that were reasonably calculated to provide Preston with a FAPE, at least as far back as the beginning of second grade (fall 2018). Beginning with Dr. Calligas, and followed by Dr. Garvin, Franciscan CBAT clinicians, Dr. Connolly, and staff from the Walker CBAT, Franciscan Hospital Unit 1 and Three Rivers, experienced clinician after experienced clinician recommended a therapeutic residential placement for Preston, or at least an extended evaluation in that setting to learn more about the degree to which Preston's emotional impairments and mental health were intertwined with his ability to learn. As Preston's presentation worsened at home and in CBATs and manifested, at times, in school, NRSD personnel maintained – in the face of multiple expert opinions to the contrary – that his dysregulation, escalation, aggression, low frustration tolerance, etc. stemmed from the home and were manageable in a partial inclusion, and then a substantially separate in-district, setting, the latter with significant inclusion opportunities. Meeting after meeting, the District insisted that Early Rise could meet Preston's needs. NRSD's position was not only unreasonable, but untenable.

II. Parents Failed to Prove that the District Committed any Procedural Error Amounting to a Deprivation of FAPE

For Parents to prevail on these claims, they must establish, first, that NRSD committed one or more procedural errors. Whether procedural errors occurred in this case turns on several related questions connected to Parents' right to participate fully in the Team process: what it means to give meaningful consideration to the input of Parents and private clinicians; what it means to determine placement as a Team; and what comprises accurate Written Notice following a Team meeting. This claim also implicates what it means for a school district to monitor the provision of services to a student who is placed out-of-district. If Parents establish the existence of one or more procedural errors, then I must determine the impact of those errors.

A. *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.<sup>66</sup>

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<sup>66</sup> See *Honig v. Doe*, 484 U.S. 305, 311 (1998) (“Congress repeatedly emphasized throughout the [IDEA] the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent

They are so important that the IDEA recognizes that even if no substantive irregularities have occurred, procedural errors may amount to a deprivation of a FAPE if “the procedural inadequacies – (I) impeded the child’s right to a free appropriate public education; (II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or (III) caused a deprivation of educational benefits.”<sup>67</sup> In determining whether procedural violations amount to a deprivation of FAPE, courts focus on the degree to which school districts offered parents the opportunity to play an important participatory role.<sup>68</sup>

*a. Consideration of Input from Parents and their Experts: Claims 3(a), 3(b), and 3(d)*

As outlined above, the IDEA recognizes the central role parents play in formulating a student’s IEP. Well-developed law regarding independent educational evaluations (IEEs) reflects the importance of experts’ input as well. In *Schaffer v. West* the United States Supreme Court characterized IEEs as a tool that provides “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.”<sup>69</sup> Regardless of the source of funding of an IEE, a school district “must take into consideration the results of a properly performed IEE in deciding how to improve upon the student’s” IEP.<sup>70</sup>

The IDEA does not, however, 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.”<sup>71</sup> Pursuant to its implementing regulations, if a parent “shares with the public agency an evaluation obtained at

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assessments of its effectiveness). See also *Andrew F.*, 137 S. Ct. at 994 (2017) (“These procedures [set forth in 20 U.S.C. § 1414] emphasize collaboration among parents and educators”); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982) (“Congress placed every bit as much emphasis on compliance with procedures giving parents and guardians a large measure of participation in every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard”).

<sup>67</sup> 20 U.S.C. § 1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); see *Roland M.*, 910 F.2d at 994.

<sup>68</sup> See, e.g., *Roland M.*, 910 F.2d at 995 (where parents did not cooperate with attempts to create IEP and there was no “indication of procedural bad faith” on school’s part, school district had “fulfilled the essence of its procedural responsibility”); *A.M. v. Monrovia Unified Sch. Dist.*, 627 F.3d 773, 780 (9th Cir. 2010) (no procedural violation of parental right to participate meaningfully where parents did not participate in Team meeting but district had taken steps to obtain their presence); *Ms. S. ex rel. G v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1132-33 (9th Cir. 2003) (superseded by statute on other grounds) (where parent disagreed with receiving district’s temporary placement of her son, upon transfer, pending completion of a “proper evaluation” and alleged that District’s “take it or leave it” position did not allow for meaningful parental participation, court found that where school district attempted to schedule several assessments and other IEP meetings, notifying her in advance, “school district ha[d] repeatedly provided the parent with the opportunity to participate meaningfully in the IEP process” and as such, “ha[d] not violated its obligations under 34 CFR §300.345”).

<sup>69</sup> *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).

<sup>70</sup> *D.S. ex rel. M.S. v. Trumbull Bd. of Educ.*, 357 F. Supp. 3d 166, 172 (D. Conn. 2019).

<sup>71</sup> *Trumbull*, 357 F. Supp. 3d at 171.

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.”<sup>72</sup> 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.<sup>73</sup> 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.<sup>74</sup>

Parents allege that NRSB committed procedural violations during Team meetings on September 20 and October 2, 2018; March 13 and May 22, 2019; and April 28, 2020 by failing to give meaningful consideration to the input of Parents and private clinicians. Ms. DeAngelis’ testimony at hearing regarding the relative insignificance of outside evaluations notwithstanding, both the documentary evidence and the testimony before me demonstrates that at each of these meetings, the Team heard and discussed the views of Preston’s Parents and clinicians. As summarized above, detailed summaries of evaluations conducted by Dr. Connolly appear in IEPs and/or NIs in connection with each of these Team meetings, as do notes reflecting opinions expressed by Preston’s psychiatrist, therapist, and parents. That the Team declined to adopt the recommendations of these experienced professionals does not mean that its members did not consider their input, or even that they did not do so meaningfully. Whether the Team’s decisions in light of the information it received and considered were reasonable is a separate question that implicates substantive, rather than procedural, protections.

Parents’ second procedural claim raises a related issue: what does it mean for placement to be a Team decision? As with the issue of meaningful consideration, it is difficult to define precisely what this means. Pursuant to the IDEA’s implementing regulations, a placement decision must, among other things, be made by “a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.”<sup>75</sup> Consistent with these regulations, Parents and their experts certainly have a role in determining placement, but what this really comes down to is whether their input has been considered meaningfully. As I concluded above, a Team does not have to adopt the requests made by parents or the recommendations of their experts to meet its obligation to ensure that placement is a Team decision.

It is not entirely clear that Parents were fully engaged in a placement decision on March 13, 2019 because the discussion was still ongoing at the time the meeting ended. Avenues of communication between Parents, their collaterals, and the District remained open, however, between that time and the Team reconvene on May 22, 2019. Moreover, at some point during this period, Parents did consent to placement at Early Rise, though they subsequently rescinded that consent. Once again, the reasonableness of the Team’s placement decisions implicates substantive, rather than procedural, protections.

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<sup>72</sup> *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.

<sup>73</sup> 603 CMR 28.04(5)(f).

<sup>74</sup> *Trumbull*, 357 F. Supp. 3d at 172 (internal citations omitted).

<sup>75</sup> 34 CFR 300.116(a).

As to both of these issues, Parents have not proven that the District failed to give meaningful consideration to the input of Parents and private clinicians, or that the Team failed to make placement a Team decision by excluding the input of Parents and/or their clinicians on the specified dates. As such, Parents have failed to prove that NRSD committed a procedural error, much less one that deprived Preston of a FAPE.

*b. Accurate Written Notice: Claim 3(c)*

Parents allege that NRSD failed to provide accurate Written Notice following four specific Team meetings. IDEA's implementing regulations require a school district to provide written notice to Parents when, among other things, it refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of FAPE to the child.<sup>76</sup> Such notice must include, among other things, a description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to take the action; and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action.<sup>77</sup> This requirement, as with other procedural protections, exists to ensure that parents receive information that enables them to participate fully in decisions regarding their child's education.

Though the N1 forms generated by the District tended to be very detailed, at times they did not include all of the information above and, in several cases, the District failed to provide written notice at all. For example, when the District cancelled the Team meeting scheduled for June 2018, when NRSD failed to respond to Parents' request for a meeting that fall to discuss the District's proposed observation and risk assessment, and when Ms. Bressette failed to administer a psychological assessment as part of the three-year reevaluation in early 2019, Parents did not receive written notice that complied with the requirements above.

Establishing that the District failed to provide accurate Written Notice in these instances, however, is not the end of the analysis. For Parents to prevail on their procedural violation claim, they must prove that this failure significantly impeded their opportunity to participate in the decision-making process regarding the provision of a FAPE to Preston; or caused a deprivation of educational benefits. Had the District convened the Team meeting in June or in response to Parents' request, or had Ms. Bressette administered the assessment, different decisions may have been made regarding Preston's placement. But this claim involves only notice, not actions or decisions. Parents, who have participated actively in Preston's Team meetings throughout his time at NRSD, have failed to establish a connection between the District's failure to provide adequate written notice following Team meetings and Preston's right to FAPE, their opportunity to participate in the decision-making process regarding the provision of a FAPE to Preston, or Preston's receipt of educational benefits.

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<sup>76</sup> 34 CFR 300.503(a)(2).

<sup>77</sup> *Id.* at 300.503(b)(1)-(2).

c. *Monitoring*<sup>78</sup>

This claim focuses on NRSD's obligation to monitor proactively the provision of services to Preston during his placement at Three Rivers, including requesting consent to evaluate, consent to receive information regarding Three Rivers' evaluations or recommendations, and failing to convene the Team. When a student is in an out-of-district placement, the school district is required to make a good faith effort to ensure that his IEP is being implemented appropriately and that service delivery is aimed at assisting the student in meeting his IEP goals.<sup>79</sup>

While Preston was at Three Rivers, SEIS produced Progress Reports detailing Preston's progress toward his goals, and Ms. Neylon communicated with Ms. Rose to ensure that Preston was receiving services. For several months, Ms. Neylon also participated in systems meetings at which she received updates on Preston's progress in school and on the milieu (and, for at least one month, in therapy). Once NRSD stopped receiving invitations to systems meetings, the District was aware it could gather information from Three Rivers by scheduling a Team meeting, which it did in April 2019.

To the extent Parents assert that NRSD should have convened additional Team meetings and/or conducted evaluations as part of its obligation to monitor Preston's progress, I disagree. Preston's annual Team meeting was not scheduled to occur until the spring of 2020, and at the time of Preston's admission to Three Rivers, NRSD had recently funded an extended evaluation at Walker and conducted its three-year reevaluation, which included speech and language and OT assessments. Although the District had failed to conduct its own psychological evaluation, NRSD had received a recent Neuropsychological evaluation from Dr. Connolly. As such, it was not necessary for NRSD to conduct additional evaluations.

Moreover, given testimony at hearing, in addition to the evidence before me, I do not believe that additional evaluations, reports from Three Rivers staff, and/or Team meetings would have influenced NRSD's view of Preston and his needs. Furthermore, it is clear that Preston was, in fact, finally receiving the services he needed to make progress while at Three Rivers.

For these reasons, I conclude that Parents have failed to prove that NRSD committed procedural errors in its monitoring of Preston at Three Rivers.

## CONCLUSION

After reviewing the testimony and documents in the record, I conclude that although Parents failed to prove that Nashoba Regional School District committed procedural errors that deprived Preston of a FAPE, they did prove that the IEPs, and amendments thereto proposed by

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<sup>78</sup> In their closing statement, Parents made arguments regarding NRSD's failure to monitor Preston's progress during second grade, including during his extended evaluation at Walker. Although this may have been among the many allegations contained in their *Hearing Request*, it was not among the claims framed by Order dated June 9, 2020 or the Order I issued on July 7, 2020, after NRSD modified the 2020-2021 IEP to include a residential therapeutic placement. As such, I do not address them.

<sup>79</sup> 603 CMR 28.06(3).

NRSD for Preston from October 2018 to the present were not reasonably calculated to provide Preston with a FAPE.

As remedies for their claim regarding the 2020-2021 IEP, Parents placement in a residential therapeutic school as well as modification of the IEP. As discussed above, placement for the term of the 2020-2021 IEP was resolved in July, when NRSD offered a residential therapeutic program. Preston will likely remain there through at least the expiration of his 2020-2021 IEP. Parents also requested compensatory services for past failure to provide FAPE, in the form of placement in and transportation to a full-year therapeutic residential program, reimbursement for costs associated with private therapies, hospitalization, psychiatric/psychological fees, evaluations, etc.<sup>80</sup>

It is impossible to know the outcome, had NRSD proposed more intensive services and placements at an earlier date. Considering the equities, I find that the appropriate relief is an additional year of residential therapeutic placement, such that Preston is entitled to remain in such a setting through the end of the 2021-2022 school year. Should Preston's educators and clinicians at that program, in consultation with Parents, Dr. Calligas, Ms. Garvin, Dr. Connolly, and/or other experts of Parents' choice, believe he no longer requires such an intense level of service prior to that date they may convey that recommendation to NRSD, in which case the District will convene a Team meeting to determine next steps. In accordance with this decision, NRSD may not, of its own accord, propose an IEP that removes Preston from a residential therapeutic placement prior to the end of the 2021-2022 school year. As to the current IEP, which I have determined is not reasonably calculated to provide Preston with a FAPE, the District will convene a Team meeting, to which Preston's current residential therapeutic placement is invited, for the purpose of creating additional goals and benchmarks.

## ORDER

Nashoba Regional School District is hereby directed to convene a Team meeting, to which Preston's current residential therapeutic placement is invited, for the purpose of revising the 2020-2021 IEP.

Nashoba Regional School District is hereby ordered to provide Preston with a residential therapeutic placement through the end of the 2021-2022 school year, to be terminated early only under the conditions described above.

By the Hearing Officer:<sup>81</sup>

/s/

Amy M. Reichbach

Dated: September 23, 2020

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<sup>80</sup> Parents submitted no documentation of their expenditures during the period in issue.

<sup>81</sup> The Hearing Officer gratefully acknowledges the diligent assistance of legal intern Alison Sexson in the preparation of this decision.