

November 18, 2021

**COMMONWEALTH OF MASSACHUSETTS**

*Division of Administrative Law Appeals*

**Bureau of Special Education Appeals**

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**DECISION**

**BSEA # 2202940**

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**BEFORE**

**MARGUERITE M. MITCHELL  
HEARING OFFICER**

**ROBERT KRAUS, ATTORNEY FOR PARENTS  
ALISIA ST. FLORIAN, ATTORNEY FOR SCHOOL  
JOSHUA D. KRELL, ATTORNEY FOR LEAGUE SCHOOL**

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

**In Re: Student and Quincy Public Schools  
and League School of Greater Boston**

**BSEA# 2202940**

**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.

Parents and Student requested an Accelerated Hearing on October 4, 2021, which was scheduled for November 3, 2021. Thereafter, on October 25, 2021, the parties jointly requested an additional day of Hearing on November 2, 2021. The Hearing was held as scheduled remotely via a virtual platform at the request and agreement of the parties on November 2 and 3, 2021 before Hearing Officer Marguerite M. Mitchell. All parties were represented by counsel. At the conclusion of the witness testimony on November 3, 2021, each party made an oral closing argument and the record closed. Those present for all or part of the proceedings, all of whom agreed to participate virtually, were:

*Mother*

*Father*

*Brother*

*Robert Kraus, Esquire*

*Joshua D. Krell, Esquire*

*Alisia St. Florian, Esquire*

*Patrick Fuller*

*Kerry Figueiredo*

*Anne Maxon, RN*

*Sarah Lussier, BCBA*

*Michele Sherwin, Ed.D.*

*Cheryl White*

*Larry Sauer*

*Heurteloux Chery*

*Ibrahim Kamara*

*Susan R. Manea, M.D.*

*Erin Perkins*

*Julianne Graham*

*Rachel Niegelberg*

*Marion Shultz*

*Jane Werner*

*Marguerite M. Mitchell*

*Attorney for Parents and Student*

*Attorney for League School of Greater Boston (“League”)*

*Attorney for Quincy Public Schools (“Quincy”)*

*Director of Education – League*

*Director of Residential Services – League*

*School Nurse – League*

*BCBA – League*

*Transition Program Coordinator – League*

*Chief Operating Officer – League*

*Chief Executive Officer – League (Observer)*

*Former Residential Staff – League*

*Residential Staff – League*

*Medical Director, Integrated Center for Child Development*

*Assistant Superintendent – Quincy*

*Director of Special Education – Quincy*

*BSEA Intern (Observer)*

*BSEA Intern (Observer)*

*Stenographer – Doris O. Wong, Associates*

*Hearing Officer*

The official record of the hearing consists of documents submitted by the Parents and Student and marked as Exhibits P-1 to P-6 and P-8 to P-16<sup>1</sup>; documents submitted by League and marked as Exhibits L-1 to L-13; documents submitted by the Quincy and marked as Exhibits Q-1 to Q-19; and approximately nineteen hours of stenographically recorded oral testimony by thirteen witnesses resulting in a two-volume transcript.

### **RELEVANT PROCEDURAL HISTORY:**

Relevant procedural history was previously set forth in my earlier *Subpoena Duces Tecum Ruling* on this matter issued on October 27, 2021. To summarize, on October 4, 2021, Parent filed an *Expedited Hearing Request* (Hearing Request), asserting that at a meeting on September 23, 2021 League notified Parents, Student, and the District, of its intention to terminate Student from its residential school program on or before October 23, 2021.

Simultaneous with filing the *Hearing Request*, Parents and Student also filed a *Motion for Stay-put* with a corresponding *Memorandum in Support* (“*Motion for Stay-put*”) to prohibit the proposed placement change scheduled for October 23, 2021. The BSEA denied the request for Expedited status but did grant Accelerated status to the matter on October 4, 2021.

Given the pending termination of Student, at the request of the parties the initial Conference Call was advanced to October 8, 2021. During the Call, the parties agreed any responsive pleading by League or Quincy to Parents’ *Motion for Stay-put* would be filed by October 13, 2021. A hearing on the *Motion for Stay-put* was also scheduled for October 15, 2021 (“*Motion Hearing*”).

On October 13, 2021, League filed its *Opposition to Parents’ Motion for Stay-Put (Opposition)*. On October 14, 2021, Quincy filed its written response to Parents’ *Motion for Stay-Put* supporting Parents’ position. On October 14, 2021 League filed its *Response* to the Hearing Request (*Response*), admitting some of the allegations and denying others. In both its *Opposition* and *Response* League asserts Student is and continues to be a “clear and present danger” to himself, his peers and staff and is currently “making minimal progress in terms of accessing the FAPE to which he is entitled.” League requests that its planned termination of Student be found lawful and appropriate<sup>2</sup>.

On October 15, 2021 upon learning that the alternative educational program that had previously accepted Student was no longer available, the parties agreed to hold a Pre-Hearing Conference in lieu of the Motion Hearing. At the conclusion of the Pre-Hearing Conference, League, without waiving its objection to the Motion for Stay-put, agreed to “temporarily stay the original termination date of October 23, 2021, pending issuance of the decision on the merits after the November 2, and 3, 2021 hearing.” On October 18, 2021, League filed a written request to add

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<sup>1</sup> Exhibit P-7 was intentionally deleted and is not part of the record. Exhibit P-15 consists of a series of four (4) video clips and is the subject of my *Ruling on League School of Greater Boston’s Opposition to Parents’ Request for Subpoena Duces Tecum For Video/Audio of May 10, 2021 Incident (Subpoena Duces Tecum Ruling)*.

<sup>2</sup> The basis for this request in both the *Response* and *Opposition* was that the Judge Rotenberg Center (JRC) had accepted Student for placement at the time these documents were filed. However, as discussed below, JRC is no longer available for Student. No other program has accepted Student or is otherwise available for Student. Despite this, League continues to seek termination of Student and opposes being identified as the stay-put placement for Student relying on the same arguments set forth in the *Response* and the *Opposition*.

another issue for hearing relating to a legal determination of stay-put<sup>3</sup>. Parents and Quincy agreed with this request.

On October 25, 2021, at the request of the parties, a further Conference Call was held to discuss pre-hearing issues. A Ruling granting all pre-hearing requests and setting forth the issues for hearing as requested by the parties was issued on October 26, 2021. The Hearing commenced on November 2, 2021, as scheduled and closed on November 3, 2021 at the conclusion of the oral closing arguments of the parties.

### **POSITION OF THE PARTIES:**

Parents “vehemently disagree” with the proposed termination of Student given that he will be “aging out” of special education when he turns 22 in September 2022, and that another transition for Student prior to age 22 is unnecessary, improper and would deprive Student of a free appropriate public education (FAPE) in the least restrictive environment for him to make effective progress. Parents submit that Student was and remains appropriate for League,<sup>4</sup> that any issues Student had for which termination was being sought was due to League not properly addressing his needs and administering his medications, and that Student should stay at League, which provides FAPE in the least restrictive setting. If League is not currently providing Student with a FAPE, his programming and services can be supplemented so he can be provided with a FAPE. Finally, Parent’s submit League is Student’s stay-put setting as it is his current program and placement pursuant to an accepted IEP, has not been found to be, nor should it be found to be, unsafe for Student, and another appropriate, viable and less restrictive placement has not been identified and accepted.

League admits it no longer identifies Student as suitable for its programs due to ongoing safety concerns impeding his educational progress and is seeking to terminate Student. It acknowledges Parents’ disagreement with this request as well as Student’s age and upcoming transition from special education to adult services. However, League does not believe it can meet Student’s needs anymore, nor that it can or is providing Student with a FAPE, and further argues that it is not the appropriate stay-put placement for Student. In addition, League denies that it could be made appropriate for Student or that any of its actions contributed to Student not currently receiving a FAPE.

According to League, since arriving at League, Student has had increasingly severe and intense behavioral incidents that League has responded to in multiple ways through convening Team meetings, and modifying Student’s classroom environment through IEP Amendments. League has also made numerous changes to Student’s Behavior Support Plan, and consulted with Student’s psychiatrist as to potential medication changes. Most importantly, League has increased Student’s staffing, progressing from 1:1 staff during the day and residential waking hours, to 1:1 staff twenty-four hours a day, seven days a week, to his current 2:1 staffing level twenty-four hours a day, seven days a week. League alleges that Student is not receiving and cannot receive a FAPE at League as, since May, Student has had the 2:1 staffing in place at all times, and has been separated from his peers in the residence, being the only student on a floor

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<sup>3</sup> Prior to that the parties had discussed and agreed on three issues for hearing.

<sup>4</sup> Parents also disputed the appropriateness of a then-proposed alternative placement, which is no longer available.

intended for eight other students. Student is receiving minimum expectations from staff “in an effort to keep his behaviors under control,” and no other programming options can be implemented without risking the health and safety of staff, other students and Student.

League points to three separate significant behavioral incidents, discussed further in the Findings of Fact section below, that took place on February 1, 2019, August 9, 2019 and May 10, 2021, as well as the overall increasing intensity of Student’s behavioral dysregulation. League submits that it notified the District and Parents of its decision to terminate student in May 2021 but agreed to maintain Student until another program was located. According to League, in May 2021, all parties, including Parents, Student and the District agreed that League was no longer a “safe or appropriate placement” for Student, and nine referral packets were sent out with Parents’ consent. When League learned that JRC had accepted him in August 2021, it moved forward to terminate Student formally.

Finally, League disputes that it is the stay-put placement for Student. League asserts that stay-put guarantees the “... type of special education program and services rather than [the right] to a specific school”<sup>5</sup> (emphasis theirs). League further argues that requiring League to be the stay-put placement for Student would, in essence, render purposeless the regulations authorizing private schools to terminate publicly-funded students<sup>6</sup>.

Quincy submits that it recognizes and appreciates all of the work that League has done with Student, and the difficulty League faces in educating Student. Quincy argues it has maintained a good relationship with League and seeks to continue to do so. However, Quincy also supports Parents’ position, based on the fact that Student cannot be without a residential placement “even for one day”. Acknowledging that Parents had not accepted the proposed alternative placement, Quincy believed there was a “very real concern” that this placement may not be available any longer for Student, which is now the case. Quincy believes that the evidence does not support League’s termination of Student, as Student’s behavioral dysregulations, particularly the incident on May 10, 2021, was a direct and substantial result of League staff’s failure to follow Student’s behavior plans. Quincy submits that League cannot terminate a Student for an incident in which it does not follow the plan it developed. Moreover, Quincy asserts that Student has been and continues to make effective progress, given his circumstances, before and after the May 10, 2021 incident, and he has been making and continues to have success at League. Even if League is not currently offering Student a FAPE, additional supports and services exist that could ensure he does receive a FAPE and Quincy is fully committed to funding them. Finally, Quincy agrees with the Parents that League is stay-put as no other viable, appropriate program is available to Student to attend.

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<sup>5</sup> A substantial portion of League’s *Opposition* was based on there being an alternative private residential educational program that had accepted Student, to which the Parents would not consent. However, on October 15, 2021 the parties learned this alternative program was no longer available. League never supplemented its *Opposition*. Reliance on a viable alternative placement as justification for why League is not stay-put is now moot.

<sup>6</sup> League relied on the holdings in *In Re: Falmouth Public Schools and the Coting School*, BSEA #05-1581,10 MSER 496 (Ruling, Sherwood, 2004), *In Re: Dracut Public Schools and Melmark*, BSEA #09-1566, 14 MSER 286 (Crane, 2008), and *In Re: Student and Georgetown Public Schools and Landmark School*, BSEA #1408733, 20 MSER 169 (Ruling, Oliver, 2014).

## **ISSUES IN DISPUTE:**

The issues for hearing in this matter, as specified by the parties, are as follows:

1. Is Student getting a FAPE at League?
2. If Student is not receiving a FAPE at League, is there a way for him to receive a FAPE at League?
3. If there is not a way for Student to receive a FAPE at League, what options are available for him to receive a FAPE in some other setting?
4. Does stay-put apply to situations in which a private school terminates a student on the basis of an imminent threat to the health and safety of the student and/or others?

## **FACTUAL FINDINGS<sup>7</sup>:**

1. Student is 21 years old and is diagnosed with Autism Spectrum Disorder with a severe level of affectation (Level 3), as well as an Intellectual Disability – Severe. Father is Student’s legal guardian. (Father, VI, 276; Q-9).
2. At a Team meeting held on December 16, 2016, Student’s transition to high school the following school year was discussed. At the time, it was noted that Student was aggressive and destructive, “likes to stay up and stack things”, and had had an increase in aggressions and non-compliance requiring a “high rate of support at home and school”. Parents were struggling to maintain boundaries due to Student’s physical aggressions; however he did respond to the behavior intervention plan in place at school. (Q-1).
3. Student began attending League as a day student in July 2017. In November 2017, due to increasing behavioral concerns, Student began to attend League as a residential student, remaining as such to this day. (Sherwin VI, 196; Fuller VII, 277-278; Q-9).
4. The League School of Greater Boston is approved to support 110 students ages 3 to 22 who are diagnosed with Autism Spectrum Disorder. The majority of League’s students attend as day students, however there is also a residential program for up to 32 students. League operates twelve months a year, 365 days residentially, with a 216 day school program. League adheres to the SCERTS (Social Communication, Emotional Regulation and Transactional Supports) model as its transdisciplinary framework under which various treatment modalities are applied, including ABA (Applied Behavioral Analysis) and TEACCH (Treatment and Education of Autistic and Related Communication Handicapped Children). (Sherwin VI, 206; White VII, 43-45, 49-54, 84-85; L-13).
5. Student attends the Transition Program at League. This Program focuses on functional academics, vocational training, social communication, emotional regulation, independent living skills, community experiences and safety awareness. There are six classrooms with up to eight students, one head teacher and two assistants in each. The Program is supported by a

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<sup>7</sup> I have carefully considered all of the evidence and testimony presented in this matter. I make findings of fact, however, only as necessary to resolve the issue(s) presented. Consequently, all evidence and all aspects of each witness’ testimony, although considered, is not included if it was not needed to resolve the issues.

team of specialists including a Board Certified Behavior Analyst (BCBA), clinician, occupational therapist (OT), speech-language pathologist (SLP), behavior specialist and a program coordinator. A contracted therapist and consulting psychiatrist are also available. Teachers provide daily communication to families and between school and residential staff (most students in this Program are residential students). IEP goals for residential students are designed to be carried out in the residence and in school, and “strict data collection protocols are followed”. Staffing at the residential program consists of one staff for every two students. Families are provided with at least weekly updates from the residence. Residential staff also consult with specialists including Speech, OT, BCBA and a clinician “to insure there is consistent programming between the school and the residence.” (L-13).

6. According to League’s Program and Student Description Policy 1.2, the Transition Program “... incorporates principles of the SCERTS Model, which is designed to target priority goals in social communication and emotional regulation through the implementation of transactional supports (i.e., interpersonal and learning supports.)” The types of emotional regulation goals that may be developed for students in this program include,  
“responding to partners’ use of behavioral strategies, decreasing the amount of time to recover from extreme dysregulation, identifying the need to utilize regulating strategies, using language strategies to request regulating activities and using metacognitive strategies to regulate emotional state during periods of dysregulation. All staff members provide transactional supports for these goals to maximize learning opportunities.”  
The Transition Program also “...provides structured, center-based classroom environments with direct instruction, including errorless teaching and discrete trial training if needed as well as other principles and techniques of ABA.” Instruction occurs in hygiene routines, activities of daily living, mealtime routines, behaviors, leisure, specials like music, art, adaptive physical education and culinary, and vocational training at the school and in the community, where students earn a paycheck. There is also a significant community learning component to the Program allowing students to practice their academic, vocational, daily living, safety, communication, leisure and social skills. Transition planning for students into adult services begins at the age of 14 with a stronger emphasis starting at age 18. (L-13).
7. When Student first began attending League the existing staffing model of 4:1 students to staff ratio in school and 2:1 in the residence was provided. However, starting in spring, 2018, he increased to 1:1 staff support for safety reasons, for his entire school day and waking hours in the residence, including weekends and vacations. In May 2021, as discussed further below, Student briefly had 1:1 staffing 24/7 and then a few days later was provided 2:1 staffing all day and night. The increased staffing support is reflected in Student’s IEPs. (Father VI, 270; White VII, 39-40; Figueiredo VII, 215, 225, 229; Fuller VII, 277-278; Q-3; Q-4; L-11).
8. Student’s current IEP is dated 06/03/2021 to 06/02/2022 (“21/22 IEP”). The description of Student in the 21/22 IEP as well as a statement of his present levels of performance both academically and in other educational areas has not changed significantly from any of the IEPs Student has had while attending League. (Q-3, Q-6, Q-13, P-2).

9. Student is described in the 21/22 IEP as a “funny, positive, happy and engaging kid” with interests in music and cooking. The 21/21 IEP indicates Student is currently staffed 2:1 twenty-four hours per day, seven days a week. Since his discharge from a hospitalization in May 2021, he has been receiving his educational programming at the residence. The Team vision in the 21/22 IEP is for Student to successfully transition to the highest level possible in a group home setting when he ages into adult services. (Q-13, P-2).
10. Educationally, Student works significantly below grade level. His disability of autism affects his progress across the curriculum, evidenced by a slower rate of learning, ability to attend to task, behavior regulation challenges, and difficulty generalizing skills, thereby impacting his ability to comprehend complex and abstract concepts. Student needs a “dense level of teacher and visual support” to make progress in the curriculum. Academically, skills must be broken down into smaller steps and taught in a systematic manner, allowing for multiple opportunities for repetition and generalization. Substantial accommodations including a multi-sensory approach to teaching, visual and verbal supports, emotional regulation strategies, additional processing time, frequent breaks, and adaptive tools, devices and strategies are necessary. Student has 1:1 support for learning, and 2:1 staffing. He also requires a consistent positively oriented behavior management system, on-site OT and speech and language support and clinical consultation to make progress academically, socially and emotionally. (Q-13, P-2).
11. In addition, Student has significant communication challenges impacting his ability to access the curriculum and successfully interact with both peers and adults. Student also engages in high rates of self-stimulatory behaviors and has difficulty maintaining attention to task. He requires on-going sensory input to remain focused, as well as an emotional regulation plan that identifies triggers causing his dysregulation, strategies to use, and a behavior support plan with ongoing modifications as necessary, and numerous other communication, activities of daily living, hygiene and community-based accommodations. (Q-13, P-2).
12. The 21/22 IEP contains goals in the areas of adaptive behavior, emotional regulation, social communication, vocation/transition, hygiene, functional mathematics, functional ELA, community safety, and physical therapy<sup>8</sup>. (Q-13, P-2).
13. Shortly after Student arrived at League, in September 2017, League prepared an Emotional Regulation Support Plan (“ERSP”) for him. The ERSP notes things which are “triggers” for Student include requests not being fulfilled. When student is showing extreme

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<sup>8</sup> Student receives consultation in the A-Grid 1 x 10 minutes/week from a BCBA for behavior support, an SLP for speech communication, an OT for occupational therapy, a Clinician for emotional regulation and a PT for physical therapy. Direct services in the C-Grid comprise adaptive behavior 4 hours/week by a BCBA and special education staff; 2:1 staffing: student support by a special educator/residential staff 24 hours/day, 7 days a week split between school (6 hours per day) and the residence; emotional regulation 4 hours/week by special education staff, the clinician, the OT and behavior staff; social communication 4 hours/week by the SLP and special education staff; vocational readiness skills 7.58 hours/week by the special education teacher and special education staff; hygiene 2 hours/week by the OT and special education staff; functional math and functional english 3 hours/week for each subject, by the special education teacher and special education staff; community safety 2 hours/week by the OT and special education staff; and physical therapy 30 minutes/week by the PT. The IEP also calls for Student to be educated in a residential program, 365 days per year with a 12-month, 216 school-day calendar year, per the League school’s schedule. Placement is designated as the residential program located at League.



dysregulation, defined as “physical aggression towards others (punch, scratch, push through people), or property destruction? (threw a chair once)”, the strategies in the ERSP include removing the demand, giving ample personal space (“step away from him while maintaining safety”), refraining from verbal prompts and offering “first/then” visuals. Student was also showing PICA behaviors sporadically and engaging in food steals at that time. (L-4).

14. In April 2018, Student was referred to Dr. Susan Manea by League due to ongoing struggles with behavior and adjusting to the residential program. Dr. Manea is board certified in pediatrics and genetics and is licensed in Massachusetts and Rhode Island. She has worked as a psychiatrist for over 20 years, the past 15 years at Integrated Center for Child Development (“ICCD”), currently as its medical director, working with students with learning and developmental disabilities and a variety of behavioral and mood disorders. She specializes in providing psychopharmacology to students on the autism spectrum, and follows them into their thirties for medication management. She provides regular developmental and medical follow-up, checking on the progress of her patients academically, socially, and emotionally and making recommendations for programming, parent support and medical referrals, as well as prescribing medication for attention, focus, mood, anxiety, behavior and sleep disorders with which her patients may struggle. (Manea VI, 40-44).
15. Student’s prescribed medications include Risperdal, three times a day to address his aggression, irritable behavior and for mood regulation. He also is prescribed Depakote twice a day for either mood stabilization or to reduce the risk of seizures<sup>9</sup>. Additionally, Student has been taking Trazedone since June 2021 to assist with sleep disturbance. Failure to take these medications consistently will make them less effective and could lead to changes in mood, dysregulation in behavior and sleep patterns. Student could also become anxious, irritable, moody and withdrawn. Failing to take Depakote regularly could lead to seizures. Finally, Student has a PRN for Ativan, that was prescribed before he started seeing Dr. Manea. (Manea VI, 47-49, 5-86).
16. Student’s most recent 3-year reevaluation was performed by League in spring 2018. Student was administered an Educational Assessment, a Speech-Language Evaluation, a Physical Therapy Evaluation, an Informal Vocational Evaluation on June 8, 2018, and an Occupational Therapy (OT) Evaluation. (L-11).
17. Of relevance, the OT Evaluation noted that with regard to sensory processing, “previewing [Student] prior to touching him is important as he can startle when touched unexpectedly.” It also noted Student’s need to put things away, move them out of view or stack and line things up as a way to attempt to control his environment. Further, it recognized that when Student was dysregulated “outlining expectations through visual means, limiting verbal interactions, offering movement or change of venue and providing ample personal space are helpful in navigating challenging situations.” (L-11).
18. In February 2019, while in school, Student became dysregulated and pulled one of his front teeth out when it became caught on a zipper. Parents were upset to learn about this as at the time, several staff were present. (Father, VI, 308; Figueiredo VII, 217; Q-9).

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<sup>9</sup> Student’s Depakote prescription was started after a medical hospitalization due to seizures he had in 2020.

19. On August 30, 2019, while in the residence, Student pulled a second tooth out of his mouth. The incident report for this event reads, “Incident in full detail: Student was in his room listening to music on his iPad. Student then began (sic) agitated and started ripping his socks, as a result he pulled his teeth out. Student was then taken to children’s hospital for care for his teeth.” (L-4).
20. In response to these incidents, revisions were made to the ERSP in August 2019 and March 2020, adding various prevention strategies including 1:1 staffing and revised Student’s “triggers” to add “denied access”. His strategic prevention strategies were updated to add, among other updates, the use of a divider in the classroom to separate him from his peers for safety and to provide him with a quiet environment, and an individualized behavior plan. Additionally, Student’s actions of extreme dysregulation were ultimately updated to involve “physical aggression towards staff and peers (i.e., punch, scratch, kick, bite, hit), property destruction (i.e., throwing furniture, flipping tables, ripping down bulletin boards), mouthing items, self-injurious behaviors, [and] does not process verbal prompts and instructions.” The strategies for extreme dysregulation were revised to only be removing furniture and other items from the environment, providing ample physical space, prompting to sit and count and calling behavior staff while referring to response protocol. Student was noted to show PICA behaviors sporadically, needs regular bathroom breaks and picks at cuts and dry lips. A preference for male staff was indicated, and it was advised that developing a rapport is very important as Student can pick up on his partners’/staffs’ mood and tone of voice. Finally, the ESRP was revised to mention that Student has a PRN for Ativan, and that protective sleeves and blocking pads were available to staff for safety. (L-4).
21. Sarah Lussier, BCBA, started at the League School as a Head Teacher in 2017 and worked in that capacity until February 2021 when she transitioned to the role of a BCBA. She first met Student at a summer camp, the Bridge Center, in 2016 before he attended League and she became his Head Teacher in July 2018, and his BCBA in February 2021. Ms. Lussier holds an undergraduate degree in severe special education from Bridgewater State University and a Master’s in Applied Behavioral Analysis from Simmons College. She holds a Massachusetts Educator’s license in Severe Disabilities-All Levels and became a BCBA in 2020. (Lussier, VII, 146-147).
22. Heurteloux Chery was a residential staff member who worked to support and assist Student from his enrollment at League in 2017, until 2019 (when Mr. Chery left League’s employ.) Ibrahim Kamara is a residential staff member who has been and continues to support Student, as his one-to-one residential aide. Mr. Chery and Mr. Kamara described Student’s aggressive behaviors in the residence to primarily consist of attempts to or acts of scratching or biting staff, and on occasion, hitting or kicking, but never with the intent to injure. As Mr. Chery explained Student, unlike other aggressive students at League, is never going to “send you to the hospital” with his aggressions. Student’s triggers often involve denying him access to food or putting hands on him. However, residential staff, including Mr. Chery and Mr. Kamara know not to block Student from getting food if he is hungry. According to Mr. Kamara, Student is a “little, tiny bit” more aggressive than other students he consistently works with at League, “when he wants something, you know, that’s the only time”.

Effective strategies to avoid or deescalate dysregulation for Student are, first and foremost, to get to know Student and form a bond with him, as well as giving him space, clearing the area around him and talking to him. Although Student acted aggressively towards Mr. Chery “so many times”, he typically has not been aggressive towards Mr. Kamara, and neither Mr. Chery nor Mr. Kamara was afraid of Student at any time because they knew him and knew how he would attack staff, so they were able to prepare for it and avoid injury. (Chery, VI, 153-157, 164-165, 171-172; Kamara, VI, 238, 244, 253).

23. In the beginning of 2020, Student began having increased dysregulation in school, moving from 0 days of dysregulated behavior noted on his school daily communication log in January 2020, to 3 days in February 2020 to 6 days in March 2020 before the school closed due to the COVID-19 pandemic. Residentially during this time, Student had 1 incident report in January 2020 involving aggression towards a peer and towards staff, slamming items and doors, and flipping a table. He had no residential incident reports in February 2020 but had 3 residential incident reports in the first half of March 2020, involving ripping his own clothing, banging walls, slamming his hands on furniture and attempting to bite staff when he was attacked by a peer; ripping a peer’s shirt who was yelling, moving furniture and pulling the hair of a peer; and scratching a peer on the neck and face while in the van after a community outing. (Lussier VII, 206; P-9; Figueiredo, VII, 220; L-4).
24. Schools closed on March 19, 2020. The period of school closure was difficult for Student and his behavioral dysregulation increased. His aggressions towards staff resulted in some staff missing work. During this time, at least eight incident reports were written involving instances of student engaging in various types of behavioral dysregulation, sometimes involving several different behaviors. Within these 8 incident reports, Student’s behaviors included moving and flipping furniture (occurred in 3 reports), throwing objects (occurred in 3 reports), banging his iPad on surfaces (occurred in 2 reports), biting staff on the hand (occurred in 1 report), hitting staff (occurred in 1 report), hitting peers (occurred in 1 report), throwing items away (occurred in 1 report), slamming doors (occurred in 2 reports), ripping his own clothing (occurred in 2 reports), smearing feces on the wall (occurred in 1 report), creating a hole in his drywall (occurred in 1 report), ripping a bulletin board (occurred in 1 report) and attempting to bite staff (occurred in 1 report). Staff utilized various strategies including administration of a PRN Ativan on two occasions as well as providing verbal redirection, bringing Student to his room to calm, bringing Student to the basement to stack items and count, and taking a walk or letting him listen to music (L-4).
25. In June 2020, Parents requested Quincy send out referral packets to other residential schools in order to see if there was “something better” for Student than League. Parents were not in agreement with recent actions by League although they still felt League was an appropriate placement and could continue to provide Student with a FAPE. Although League staff may have learned of this search later, they were not aware of it at that time. Referral packets were sent to four residential schools specified and requested by Parent. None of the programs had openings available or otherwise did not accept Student. (Father VI, 288-290, 308-309; Sherwin VI, 208-210; Graham VII, 319, 330, 342; Q-5; Q-18).

26. When in-person learning resumed at League in July 2020, League administration approved the following recommendations for Student, with parental consent: 1) a separate classroom<sup>10</sup> with some sensory items like a bean bag chair, but limited furniture; 2) permission to leave the room at any time and choose to do activities in the room, outdoors or elsewhere, although he will be reinforced to remain in expected areas per his behavioral support plan; 3) staff have discretion to close the door and use the separate classroom as a time-out room per time-out procedures and response protocols in Student’s BSP if Student engages in a “target problem behavior” while in the room; and 4) data on desired behaviors and problem behaviors will be collected all day to “inform decisions related to [Student’s] physical location within the school”. The recommendation protocol document developed to outline this plan noted that the ability to convert Student’s classroom into a time-out room had the benefit of avoiding the use of physical management (i.e., physical restraint), reducing the chance of student and staff injury, and reducing the number of people needed to support Student which would decrease the risk of exposure to COVID-19<sup>11</sup>. (Lussier 206-207; L-6).
27. On July 14, 2020 League created a Behavioral Support Plan (“BSP”) for Student. The BSP was updated four times during the month of July 2020, through July 29, 2020. Antecedent procedures to “get ahead of the problem behavior”, importantly include “do **NOT** deny access to food.... There is no limit to the number of snacks he can request, however keep portions small to create more opportunities for him to communicate/request” (emphasis in original). Further “only familiar staff trained on this BSP can work with [Student], his staff should always have a radio on their person.” Other antecedent procedures of relevance include providing Student with as much control and choice as possible over his environment and avoiding unstructured time. (L-4).
28. The July 2020 BSPs establish programs to increase on task behaviors, following directions, and to reduce or target physical aggression and property destruction behaviors. Response protocols exist to address when Student removes his iPad cover, mouths inedibles, leaves the classroom without permission, takes/gathers non-permitted items, and engages in physical aggression and property destruction. The responses for “takes/gathers non-permitted items” include, as the first protocol, “do not block access, unless the item is dangerous (aerosol, heavy objects, etc.). Do not crowd him”. The responses for “physical aggression and property destruction”, include, as the first protocol, “call for assistance and use the least restrictive Safety Care<sup>12</sup> strategy necessary for safety.” (L-4).
29. On September 16, 2020, Student’s BSP was updated by the BCBA then supporting Student (9/16/2020 BSP)<sup>13</sup>. Changes were made to the proactive/antecedent strategies section providing for Student to be moved back to the small group school classroom while still allowing him continued access to the individual room as he chose. Student’s schedule was also changed from performing only preferred recreational activities with no learning tasks or

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<sup>10</sup> Ms. Lussier explained that Student’s separate classroom was a larger space that had been used as a time-out room in the past but was converted into a separate classroom for Student. (Lussier, VII, 206).

<sup>11</sup> No date was provided for this document.

<sup>12</sup> Safety Care is the restraint training program League follows.

<sup>13</sup> No testimony or evidence was provided as to the reason for this update; however given the focus of the update, it appears to have been changed, at least in part, in light of Student’s progress and ability to be able to tolerate learning tasks or work demands since returning to the school building.

work demands to including “several learning tasks or work demands per day to be determined by his teacher”. Further the requirements to follow Student’s daily schedule exactly as written and to contact the BCBA or behavior staff if prevented from doing so, were eliminated as were the requirements to minimize stimuli in the room and ensure access to varied and high-quality reinforcers. (L-4).

30. In September and October 2020, League administered an Assessment of Basic Learning and Language Skills (ABLLS) to Student. Recommended educational priorities included focusing on language skills of requesting, labeling and intraverbal skills; increasing independence with self-help skills, particularly in the area of toileting, grooming and hygiene; increasing his tolerance of working in a small group instructional setting; and extending his math skills to address money concepts, time telling and number sense. Student had some basic academic skills but he continued to need to work on functional academics. Strengths were noted in intraverbal skills including labeling common items, identifying some action verbs, and requesting desired items throughout the day, and following simple and familiar directions. His receptive and expressive language skills were found to be limited, thereby impacting his ability to interact with peers for extended periods of time and to participate in a small group without disruptive behavior. Additionally, limited ability to label actions, use adjectives, pronouns and prepositions and follow complex directions were noted. Recommended accommodations included access to a visual classroom schedule, within-task checklists to breakdown steps, using timers for transitions and breaks, previewing and modeling new tasks and activities and repetition. (S-11).
31. In September 2020, Student underwent an independent Neuropsychological and Academic Assessment (“IEE”) conducted by Diane Locatelli Stephens, Ph.D. and Rafael Castro, Ph.D. of ICCD for the purpose of garnering recommendations for programming and interventions as he transitions towards adult living. (Q-9). This was the first time ICCD had evaluated Student. A report of the IEE was issued in October 2020. Student was found to have skills in the Severely Delayed range as compared to same aged peers. His intellectual functioning overall was substantially reduced, with skills clustering around the three-year equivalency, with some scattered capacities reaching closer to the five-year level. Student’s receptive and expressive communication abilities, however, were around a two-year equivalency. Additionally, Student’s social development was an area of relative weakness, as his social capacities measured below the first percentile as compared to same aged peers, with abilities clustering just above a one-year equivalency. Student also had very narrowly focused leisure skills. (Father VI, 265; Q-9).
32. According to the IEE, Student,  
“continues to demonstrate a high level of impulsivity and respond maladaptively to his own feelings, with indications that heightened levels of anxiety, upset and even isolation from family and everyday experiences exacerbate these concerns, as evidenced by report of the difficulty he had during the quarantine. It is apparent that these behaviors, which include aggression and urinating outside of the toilet, significantly impact [Student’s] ability to access instruction, make progress towards skills necessary for independent living, and more importantly maintain safety. Altogether,

maladaptive behavior and emotional dysregulation remain a significant barrier that must be considered a priority at this time.” (Q-9).

33. As part of the IEE, Drs. Castro and Stephens reviewed behavioral data of Student, noting that during the period of 7/13/2020- 8/25/2020 Student showed on-task behavior 71% of opportunities, followed directions in 70% of opportunities, physically aggressed in 1% of opportunities, engaged in property destruction in 4% of opportunities and bit in 0.5% of opportunities. Student’s 7/29/20 BSP was reviewed. Additionally, an observation of Student at League was conducted on October 5, 2020 for approximately an hour while Student was in the school building. (L-4; Q-9).
34. The IEE evaluators also interviewed Student’s then- teacher, Ms. Lussier and Student’s one to one aide, Mr. Kamara. Ms. Lussier reported that in January 2020, Student had had a spike in aggressive behavior with episodes requiring multiple staff involvement to regulate him. Student’s behaviors increased even further after schools were closed in the spring of 2020 due to the COVID-19 pandemic. As a result, when schools reopened after the COVID-19 closure, Ms. Lussier explained how the Team “planned carefully and systemically for [Student’s] transition back into the school setting.” During that time, he was given minimal demands and was staffed 2:1 whenever he was outside his learning space. The Team was at that time slowly increasing demands, fading the second staff and working on reintegrating Student into classroom environment with his peers. She advised that “[Student] benefits from a ‘sanitized’ environment with limited visual distractions, as well as reduced verbal prompting, use of first/then language, choice boards, consistent schedule, and little down time. It is also important, ... that staff honor requests for snacks.” (Q-9).
35. Consistent with his testimony at hearing, Mr. Kamara advised the evaluators he had seen a decrease in challenging behavior over the past three months, fewer urinary accidents, and, overall, thought Student had made positive gains in his three years at League. Mr. Kamara acknowledged Student does not always demonstrate the same skills with other staff as he does with Mr. Kamara, whom he knows well. Mr. Kamara advised that for Student to be successful he “requires strong relationships with his caregivers and is more successful with men versus women.” He also indicated that his biggest concerns for Student were his reduced communication skills and the difficulty others have understanding his needs. (Q-9).
36. The IEE recommended that Student continue to receive intensive support with wrap around instruction in a residential placement designed to address the totality of his complex needs 24 hours a day, 12 months a year. It was further recommended that instructional strategies be implemented throughout his day, both in school and in the residence, that “... continue to align with the principles of applied behavior analysis (ABA).” Other recommendations included a highly structured program with skills broken down and built upon systemically over time, not just through discrete trial instruction, but also during leisure, social, daily living, community, vocational and group activities. Ongoing data collection should be used to inform Student’s programs and procedures which must be clearly defined, systematic, run consistently by staff and designed with a goal to develop skills while reducing maladaptive behavior, was also recommended. (Q-9).

37. According to the IEE, Student should continue to be supported by a multi-disciplinary team, consisting of a special education teacher, BCBA, SLP, OT, PT and a transition/vocational specialist that develops and provides Student with an individualized curriculum covering school, community and residential settings. Although he also continues to require 1:1 support across all settings, the IEE recommends a plan be developed to fade this support, if possible, over time. A specific plan for such fading and for pairing him to work with another peer was incorporated into the recommendations. Additionally, a plan for Student to work with non-preferred staff over time was recommended for generalization purposes. All staff working with Student were recommended to be fully trained in ABA methodologies and physical intervention techniques, a minimum of 40 hours of pre-service training including coursework and the opportunity to shadow experienced staff, with ongoing professional development and on the job feedback from supervisors. A master's level BCBA should provide program oversight at least three hours per week in both school and the residence to modify behavioral intervention, train staff and track Student's progress. A doctoral level autism and behavior specialist was also recommended to support Student's program in a consultative way. Further programmatic recommendations included an ongoing comprehensive behavior support plan to decrease maladaptive tendencies and increase Student's ability to respond adaptively, with proactive strategies for staff to follow in both the day and residential settings, a multi-tiered reinforcement system, increasing task demands as behavior remains low, and data collection. Finally, a calming routine that Student regularly practiced was recommended to be developed by the BCBA working closely with the OT so as to support de-escalation<sup>14</sup>. (Q-9).
38. With regard to a reintegration plan for Student to return to the small group classroom post Covid-19 school closure, the IEE suggested that it include predetermined criteria over successive days, rather than weeks to ensure Student accesses experiences with others so as not to become increasingly isolated. (Q-9).
39. The IEE report concludes by advising that ICCD remains available for consultation and additional assistance, if needed. (Q-9).
40. At Ms. Lussier's recommendation (and the BCBA before her), staff track Student behaviorally using partial interval recording, breaking the intervals into 10 minutes and tracking if Student engages in any of the behaviors the BSP targets to decrease (physical aggression, property destruction, self-injurious behavior). (Lussier, VI, 157-158).
41. According to Student's behavioral data for November 2020, he was on-task an average of 97% of the time, followed directions an average of 95% of the time and slept in school 41% of the time. School behavior data from March 7, 2021 to May 2, 2021 shows that Student was on task 83.74% of the time, followed directions 80.85% of the time and slept in school an average of 27.06% of the time. He also engaged in physical aggression 2% of the time, property destruction 2% of the time, and biting 0.2% of the time during this time. The data

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<sup>14</sup> Recommendations around IEP goals and objectives were also made in the IEE, including the addition of an independent living skills goal and a community access goal. The IEE recommends that OT direct services be increased to at least 2 hours per month in both school and the residence. A vocational specialist was also recommended to consult with the Team with vocational exploration to be done in the future. (Q-9).

also notes that on March 21, 2021 Student began refusing his medications. (Lussier, VII, 158-159; L-5).

42. A team meeting to review the IEE was held on January 14, 2021. In addition to Parents, Julie Graham, Quincy's Director of Special Education since the summer of 2020, Michele Sherwin, Ed.D., Transition Program Coordinator for League for the past six years, and Dr. Stephens were in attendance. Dr. Sherwin had a different recollection of the meeting than Parents and Ms. Graham. Dr. Sherwin testified that she recalled advising the IEE recommendations could not be met at League (particularly 40 hours of pre-service training of staff) and that League was inappropriate for Student. However, both Father and Ms. Graham had no recollection of this. Moreover, prior to this meeting, Parents had met with the IEE evaluators to discuss their findings and at no time were they told the evaluators thought League was inappropriate for Student or that it could not implement their recommendations. (Father VI, 266, 305-306; Sherwin VI, 205-207, 218-220; Graham VII, 308).
43. At the conclusion of the Team meeting, an IEP Amendment was drafted consisting of changes to 3 daily living skills objectives (teeth brushing, thoroughly wiping when using the bathroom and transitioning between steps in a hygiene routine). The amendment also called for, the addition of a new social communication objective, the addition of a new community safety goal and the creation of a written classroom reintegration program. The classroom reintegration program contained 8 steps. Steps 1-4 had to be met over 3 consecutive days without occurrence of physical aggression or property destruction to advance to the next step, while steps 5-7 had to be met over 5 consecutive days without occurrence of physical aggression or property destruction. Finally, the amendment proposed a Vocational Assessment. Parents fully accepted the IEP Amendment on March 4, 2021. (Q-7).
44. A Notice of Proposed School District Action form ("N1") was prepared by the District on January 22, 2021 and sent to the Parents at the conclusion of the meeting. It does not indicate any concerns with League's appropriateness. In fact, in response to the question "What rejected options were considered and why was each option rejected?", the N1 states "none". I credit Parent's and Ms. Graham's recollection on this point as it is consistent with the N1 created at the time. (Father VI, 305-306; Graham VII, 307-308; Q-10).
45. Student's March 12, 2021 Progress Reports (for IEP dated 6/5/2020 to 6/4/2021) advised that for each of the seven (7) goals Student was "expected to achieve this IEP goal" or otherwise meet the objectives by the end of the IEP period. He was noted to be "progressing" for every objective under each goal with the exception of goal #5 for which no status was provided for each objective. (P-11).
46. On March 30, 2021, the BSP was updated again and a new format was used. It begins with a section entitled "Function: Why is the person engaging in this behavior?" that explains that Student's significant cognitive deficits potentially impact his ability to understand and process information. It hypothesizes, based on data collection, direct observation and staff report that Student may engage in physical aggression and property destruction in order to access desired actions and items, and in order to escape adverse conditions, such as loud environments; however, it notes that a functional analysis has not been completed. Common



antecedents include loud noises, denied access to preferred items or activities, other students' dysregulation, transition from a preferred to a non-preferred activity, change in schedule or routine and unstructured/downtime. (L-4; Q-11).

47. All other provisions of the prior BSP (drafted on 9/16/20) were included in this version except that instead of allowing Student to choose to return to his individual classroom, the 3/30/21 BSP provides for reinforcements to be delivered twice as often when he is in the small group classroom as when he is elsewhere in the school. (L-4; Q-11.)
48. At Student's April, 2021 Parent Teacher Conference, Parents were informed Student was doing a great job and making a lot of progress. They were also told that although the school was seeing an increase in behavioral incidents they were, in the spring and summer of 2020, more short-lived and redirectable than those that had occurred during the spring and summer of 2019. (Father VI, 275; Lussier VII, 180-181).
49. On April 17, 2021, Student was found eligible for adult supports through the Department of Developmental Services (DDS). (P-4).
50. Approximately six weeks before May 10, 2021 Student began inconsistently taking his medications and also began sleeping irregularly, typically not sleeping at night and sleeping significant hours during the school day<sup>15</sup>. (Manea VI, 55-56; Maxon VI, 104-106; P-8; P-9; P-16).
51. What has been characterized as Student's most serious behavioral incident occurred on May 10, 2021. Shortly after midnight, Student dysregulated and ultimately bit a portion of the tip of a finger off a staff person, the House Manager, who was supporting him that night ("Finger-Bite Incident")<sup>16</sup>. Video footage of the Finger-Bite Incident was entered into evidence in this matter. There was also an incident report submitted, although it describes the antecedents to the incident differently than what is shown on the video. The staff member suffered permanent damage and has been out of work on worker's compensation leave since this time. (Maxon VI, 131; White VII, 20, 91; P-15; L-3).
52. The video and audio footage covers approximately three minutes before and five minutes after Student bit the staff member. The video leading up to the finger bite begins with Student watching a cartoon on his iPad in the kitchen while the staff member is helping him

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<sup>15</sup> Although sleeping in school was a regular behavioral trait of Student's for which data had been collected since at least November 2020, his sleep during lower periods of extreme dysregulation was more akin to naps and lasted between one to about two and a half hours. Starting in March 2021 through May 10, 2021, his sleep time in school increased often to between four and five and a half hours a day. (P-9, L-5).

<sup>16</sup> The incident report relating to the incident describes what happened as follows, "[Student] was administered a PRN at midnight due to dysregulation. He was agitated, very vocal, and aggressive, demanding to go out in the van, removing items from the cabinets and fridge and lining them up. House Manager came in to cover the shift and was attempting to redirect [Student] from removing the lunches from the fridge, and he quickly bit her left index finger. [Student] then went into the bedroom of a peer and attempted to aggress towards him while he was sleeping. [The peer] sustained a scratch to his hand. [He] was verbally redirected to leave the bedroom, which he did. [Student] sat after several prompts, but shortly became very agitated and dysregulated, moving furniture, ritualistic and repeating demands...." (L-3).

with a snack. Both Student and the staff member are calm and appear unagitated. The staff member leaves the kitchen to sweep, and Student remains, eating his snack. He finishes his snack, puts down his plate and opens the refrigerator door. Staff directs him verbally to leave the kitchen and after a short pause he closes the refrigerator door without taking anything out and leaves the kitchen. Upon leaving the kitchen he goes up to the staff member and makes a request which he repeats twice, walks back into the kitchen, and opens a cupboard. Staff finishes sweeping and follows him back into the kitchen, closes the cupboard and directs him verbally to leave and go to sleep. Student moves to other cupboards and opens and closes them without removing anything. He then returns to his snack plate, licking the spoon. Staff again directs Student verbally to leave the kitchen, but Student opens the refrigerator instead. Staff tells Student “Out of the refrigerator ... this is no time to eat”. Student then reaches into the refrigerator and pulls out a lunch bag but before he can stand up with it, the staff member, who is directly behind him looking over his shoulder, grabs the lunch bag out of his hands and puts it back in the refrigerator advising “Nope, that is lunch for tomorrow morning when you go to school.” Staff closes the refrigerator and again verbally directs Student to leave the kitchen, but Student instead reopens the refrigerator door. He stands calmly looking inside and then, after a moment, quickly reaches in and grabs the lunch bag again. Staff tries to grab the bag, but Student holds it out of the way and turns around. The staff member, now standing behind Student, grabs his free hand and reaches for the lunch bag that Student is holding. Student begins to push against staff and make protesting vocalizations. He frees himself from the staff person’s hands and walks to the corner of the kitchen with the lunch bag. Staff goes over to him to try to get the lunch bag continually verbalizing “that’s for tomorrow” and “you are not having lunch”. Staff again reaches for the lunch bag coming into physical contact with Student’s hand holding the lunch bag and Student responds by moving towards staff and hitting her with the lunch bag. Staff attempts to block the hits and grab the bag at the same time, but Student turns and walks out of the kitchen with the bag. The staff member follows Student out of the kitchen and again reaches for the lunch bag from behind Student. Staff is now holding the bag and trying to pull it from Student with one hand while pushing Student’s free upper arm with the other hand. Student drops his iPad, which he had also been holding, and turns to face staff and they begin to physically push and pull against each other each using both hands. Student is pushing the staff member backwards while trying to get the lunch bag free. Student succeeds in freeing the lunch bag and staff grabs Student by both sides of his jacket near his chest, while he continues pushing her backwards. Staff calls for help and moves her hand to push against the bottom of the left of Student’s face. Student bends his head towards staff’s hand, and she pulls it away, again calling for assistance, but he follows it quickly and bites her left index finger causing the staff to release that hand completely from Student. The staff member reacts to the bite but is still holding onto Student from the back of his jacket with her other hand, while Student turns and walks away calmly. Student bends down to pick up his iPad and proceeds to sit on the couch while the staff member goes into the bathroom to address the finger bite. (P-15).

53. The video after the bite shows Student has now walked into the living room and sat on the couch with the lunch bag. He opens the lunch bag while a second staff member tells him not to do that. The second staff member reaches for the bag, but he pulls it away and she backs up and watches him. He takes out a container which this staff quickly grabs, backs up and

holds, while continuing to face and watch Student before walking away to talk with the injured staff member. Student, meanwhile, focuses on the other food in the bag. He retrieves a bag of chips and takes the lunch bag and throws it behind him. Student opens the chips and begins to eat them, then stands up quickly, after taking a bite of chips, and walks with the chips in his hand into another peer's bedroom. Both staff are now standing near the kitchen discussing the injury, but the second staff notices Student in the peer's room and requests assistance from the injured staff. The injured staff walks into the room and verbally directs Student to leave, which he does, kicking off his shoes and throwing his jacket onto the ground outside the bedroom. Student returns to sit on the couch and begins to gnaw on his own finger while both staff continue to discuss the injury. Student arises suddenly and goes to his own room and shuts the door hard. Staff discuss obtaining coverage for the injured staff when the peer comes out of his room, with Student's iPad, handing it to the second staff. Both staff continue to discuss the injury when Student reappears from his bedroom and the injured staff tells him to "go lay down buddy". Student ignores the direction, instead noticing the container the second staff had taken away and put on a desk. He goes to the container and the injured staff asks what he is eating. The second staff tells her it is his lunch. Student opens the container takes a small bite and walks to the trash to throw its contents out. He then walks back into the kitchen. The injured staff follows him towards the kitchen but does not enter. The second staff tells her to "just leave it, let him do whatever he wants". They continue to discuss coverage so the injured staff can get medical attention. Student walks out of the kitchen holding food and the injured staff advises he has something he should not, but the second staff repeats "just let him do whatever he wants". Student walks back into his bedroom with the food and does not return before the video ends. (P-15).

54. On the morning of May 10, 2021, after the Finger-Bite Incident, Anne Maxon, RN School Nurse for League School for the past five years, emailed Parents to advise Student has not been consistently compliant with his medications. Nurse Maxon advises, "This is likely contributing to his severe dysregulation, manic behavior and extreme agitation." She also suggests Parents explore with Dr. Manea different forms of the medication, either liquid or injections. She recommended liquid, but also noted injection was an option that would only require administration once every 3 months. During her testimony, Nurse Maxon explained that if Student were ever changed to an injectable form of medication this could be accommodated at the League. (Maxon VI, 109-110; P-6).
55. On May 11, 2021, in response to the Finger-Bite Incident, Ms. Lussier drafted, with support of other League staff, an Emergency Safety Protocol (ESP) for Student. The ESP indicates that Student's history involves pulling out two of his front teeth while he was extremely dysregulated, as well as biting objects. It also references that "physical aggression has led to significant staff and student injuries", although it does not specify that Student bit off a portion of a staff member's fingertip, as described above. (Lussier VII, 162-163; L-7).
56. Ms. Lussier testified that while the ESP was similar to the BSP, it differed in that it provides specifically for staff to remain at least 3 feet apart from Student at all times, to wear protective sleeves, to have 2:1 staffing with eyes on Student at all times, and also includes "9-1-1 & Psychiatric Assessment Call Criteria" ("911 Criteria"), as well as implementation of a "blocking pad containment procedure", which the ESP specifies to be a physical

management procedure for which a safety measures report must be completed (“Restraint Criteria”). (Lussier VII, 194; L-7).

57. Ms. Lussier also testified that the ESP remains in place at this time and would stay in place should Student ever return to the school building. It was updated as recently as October 7, 2021. (Lussier VII, 163-164, 195, 204-205; L-7).
58. The only time the ESP’s 911 Criteria or the Restraint Criteria was used was on May 14, 2021 as discussed below<sup>17</sup>. It has not been needed since that day, although all staff who support Student have been fully trained on the ESP. (Maxon VI 138-139; Lussier VII, 203; L-7).
59. On May 13, 2021, the District proposed an Amendment to Student’s then-existing IEP (dated 6/5/20 to 6/4/21) providing for 1:1 staffing 24 hours per day, 7 days per week at the request of League<sup>18</sup>. An N1 was also prepared on May 13, 2021 and, along with the draft Amendment, sent to the Parents reflecting this increased staffing. The Amendment was typed and noted 1:1 support, and the N1 also noted the proposal was to increase 1:1 support. Parents accepted the Amendment on June 10, 2021 but the accepted copy of the Amendment form shows that the typed 1:1 support had been crossed out and handwritten over it was 2:1 support<sup>19</sup>. (Father VI, 270; Graham VII, 309, 313-314; Q-7; Q-12).
60. League has provided Quincy with regular progress reports, and, more recently, daily reports on Student. Quincy has also received incident reports about Student when they occur, except for the Finger-Bite Incident. Although Quincy requested a copy of the incident report for the Finger-Bite Incident, it never received one until it was produced as an exhibit by League in this Hearing. (Graham, VII, 306-307, 310).
61. On May 14, 2021, Student again became significantly dysregulated, this time in the school building. An incident report was created and was provided to Quincy. Student was walking with his 1:1 in the hallway when he aggressed towards another peer making loud noises. Student’s 1:1 staff implemented a blocking pad procedure to protect the peer and Student began to hit the back of his own right hand hard against the wall. Staff attempted to redirect

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<sup>17</sup> Ms. Lussier confirmed that to her knowledge, there have only been two occasions when Student has required physical management during his entire time at League consisting of the supine hold, which Ms. Lussier referred to as a “floor seated hold” on May 14, 2021 and a “chair stability hold” in 2018 or 2019 while he was in the classroom as a result of unsafe property destruction involving throwing large and unsafe objects. Ms. Cheryl White, League’s COO, testified that last year alone there were approximately 100 restraints for all 102 students at League including Student. (Lussier VII, 199-201; White, VII, 76, 79).

<sup>18</sup> Ms. Graham testified that when she initially spoke with the District regarding the May 10, 2021 incident, League only requested that Student’s 1:1 support be increased to 24 hours per day, 7 days per week (i.e., overnight), which Quincy agreed to support. Dr. Sherwin testified differently, instead recalling that League had informed the District during these conversations that it was no longer an appropriate placement for Student. However, on May 11, 2021, Dr. Sherwin emailed League staff to advise she received a call that morning from the District and an amendment was being sent to parent to sign for “24/7 1:1 support”. No mention is made in this email about Dr. Sherwin telling Quincy she felt League was no longer appropriate for Student, nor do any of the responses to this email from League staff reference this. (Graham VII, 309; Perkins, VII, 350; Sherwin VI, 210, 230-232; L-6).

<sup>19</sup> It is unclear who made the edit or when from this form, however, this Amendment was submitted by Quincy, and all parties testified that after the May 17, 2021 Team meeting, discussed below, 2:1 support was proposed and agreed to by the entire Team.

Student and Student then aggressed towards staff, scratching his face and hands and hitting him. A blocking pad procedure was again used as was a supportive guide to bring Student to the time out room. Student slammed the time out room door while walking in and then took off his shoes, pants and jacket. He then began to bite the collar of his t-shirt and rip it with his hands. He also made loud vocalizations, banged on the wall and hit himself. Student was unable to regulate. He was so dysregulated that a PRN of Ativan could not be administered. Consistent with the ESP, Staff called 911. 911 arrived and administered Student Ketamine, an intramuscular medication. In order for the medication to be administered, staff placed Student in a supine floor hold to stabilize him for one minute. Student fell asleep when the medication took effect and he was transported to Good Samaritan Hospital by ambulance. (Maxon VI, 132; Lussier VII, 199-200; L-3).

62. On May 14, 2021 Dr. Manea had a virtual visit with Parents and League staff lasting approximately forty (40) minutes. She had last seen Student in August 2020. League staff advised her of Student's recent behavioral dysregulation, medication noncompliance and disruption of sleep cycles leading to the Finger-Bite Incident and Student's current hospitalization. Dr. Manea was not surprised to learn that Student had been dysregulated once she was informed about his medication inconsistency for the past six and a half weeks. Dr. Manea explained that Student's failing to take his medications consistently could result in "seeing more of the behaviors we were treating, like aggression and irritability, and also can throw off mood and general regulation [and] can impact sleep." (Manea VI, 53-56; P-16).
63. In addition to agreeing to collaborate with the hospital, League and Parents, Dr. Manea recommended reestablishing Student's sleep cycles, reducing the number of times his Depakote was administered daily from three to two (thereby increasing each dose so the total daily amount remained unchanged)<sup>20</sup>, utilizing familiar staff and administration methods Student is comfortable with to improve compliance, providing consistent and predictable routines, revising Student's behavioral plans to promote taking medication consistently, and adjusting sleep cycles. Dr. Manea advised that adhering to a strict sleep routine was necessary, so Student should be prohibited from sleeping during the day, and the Ativan PRN should not be used, if possible, so as to prevent napping<sup>21</sup>. (P-16).
64. Student was hospitalized in the emergency department of Good Samaritan Hospital from May 14, 2021 to May 17, 2021. During his hospitalization he underwent a daily psychosocial assessment that included a discussion with Ms. Cheryl White, Chief Operating Officer for League (since August 2020), on May 16, 2021. He also underwent a daily psychiatry consult. Student's hospital records note that Ms. White advised the hospital that League was "unable to say if the school intends on giving notice of being unable to provide proper placement for [Student] at this time and that a larger conversation needs to take place with the District before that can be determined." League was requesting Student be admitted to a psychiatric unit for further assessment, based on concerns with their inability to safely

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<sup>20</sup> This recommendation resulted in Student no longer needing to take any medications while in school, where he most frequently was struggling to take it. (Maxon VI, 105).

<sup>21</sup> Prior to this time, Student was given a PRN dose of Ativan regularly when he engaged in behavioral dysregulations during the school day. (Maxon VI, 105).

manage him, and for his well-being and that of his peers and staff. However, he was never found to meet that admission threshold. He was discharged on May 17, 2021 with minor medication changes and a recommendation to follow up with his primary care physician or return to the emergency room if there were further acute concerns. (P-13; L-12).

65. On Sunday, May 16, 2021 Ms. Graham emailed Ms. Kerry Figueiredo, League's Director of Residential Services for approximately three years<sup>22</sup>. Ms. Graham was seeking to confirm that League's plan for Student continued to be what had been discussed with Ms. Perkins, namely, that League will allow Student to return with the "1:1 24/7 staffing that was agreed upon with Michele [Sherwin] and I as the district pursues a new placement for [Student]". Ms. Graham advised she was worried, after reading emails to the parents that morning, that this had changed. If it had changed, she also questioned "how can the district support this while we pursue a new placement". Ms. Figueiredo responded that she wished to wait to reply to this query when the Team could all be together. (Graham, VII, 314-315; Perkins VII, 347-348; L-6).
66. On May 17, 2021, the Team convened for approximately one hour for a re-entry meeting. Many of the witnesses in the instant matter were present at this Team meeting: Parents, Ms. Graham, Ms. White, Ms. Lussier, Ms. Figueiredo, Dr. Sherwin, and Patrick Fuller, League's Director of Education for the past five years (and a twenty-year employee at League). The plan developed at the meeting involved increasing Student's staffing to 2:1 support 24 hours per day, 7 days per week and maintaining Student's living and learning on a floor in the residence all day without any peers, so that he could stabilize his medications and sleep. Additionally, daily updates on Student would be to be sent to Quincy and the Parents, reporting, among other things, Student's medication compliance, sleep pattern and the staff working with him. Dr. Sherwin summarized the Team meeting in an email to League staff only, sent on May 18, 2021. In the summary she noted that "the district will be pursuing another placement for [Student] since it is clear he needs a more supported environment". (Sherwin VI, 200-201; Graham VII, 317-319; L-6).
67. Since May 2021, Quincy has sent referral packets or otherwise reached out to and contacted over 20 residential programs in Massachusetts, Connecticut, New York and Rhode Island. No program (other than JRC, which accepted Student in August, but which no longer has an opening available) has accepted Student nor does any program have an opening available for Student. (Graham VII, 319-320, 338; Q-18).
68. On June 1, 2021, DDS's Transition Coordinator contacted Parents to begin the process to develop a plan for Student when his school entitlement services end on September 22, 2022. She also offered to speak with the Parents about DDS "services and non-services" prior to Student turning 22. (Father VI, 266; P-4; P-5).
69. Student's June 4, 2021 Progress Reports (for IEP dated 6/5/2020 to 6/4/2021) advised that for each of the seven goals student was "expected to achieve this IEP goal" or otherwise meet the objectives by the end of the IEP period. He was noted to be "progressing" for every

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<sup>22</sup> Ms. Graham had not been part of the discussion League had with Quincy when student had been hospitalized the previous Friday as she had been out on a personal day then.

objective under each goal and even met one of his three physical therapy goal objectives. This included all of the objectives in his Goal #1, Adaptive Behavior, despite the Progress Report summary that referenced his “two significant behavioral incidents that led to a hospitalization”, with the resulting determination to provide Student with 2:1 staffing, 24/7 and all educational programming occurring in the residence. (P-11).

70. The Team convened again for Student’s annual review meeting on June 3, 2021, and the 21/22 IEP, discussed above, which included the 3/30/21 BSP within Additional Information, was proposed. Conflicting testimony was presented as to whether the Team agreed that League was no longer an appropriate placement for Student at this meeting (and/or at the earlier reentry meeting in May 2021). The Transition Planning Form included in this IEP notes Student would “... attend the League School of Greater Boston as a day student and a residential student for the 2021 (sic) school year until a new placement has been determined by the district”. It also noted that,

“League School staff will help facilitate [Student’s] transition to new (sic) placement, arranging observations and by working closely with his district and parents once they have identified a site for him. We will also reconvene the team to share [Student’s] needs in the areas of functional academics, social communication, emotional regulation, behavior and vocational skills. The information (sic) will report his needs to his new placement in order to assure that [Student] makes a smooth transition.”

Additionally, the N1 form about this meeting noted, in response to the question “What rejected options were considered and why was each option rejected?” that “At this time [Student’s] parents are seeking a change in placement. He has displayed some high intensity dysregulated behaviors recently and they feel that his needs are not being met in his current placement<sup>23</sup>.” (Father VI, 284-288, 301-302, 305; Graham VII, 317, 331-334; Sherwin VI, 210, 230-232; White, VII, 21-23, 61, 64-65; Fuller VII, 285-286; Q-13; Q-14; P-2).

71. Parents fully accepted the 21/22 IEP (including the Transitional Planning Form) as written and consented to placement on June 10, 2021<sup>24</sup>. (Q-13, P-2).
72. Student’s daily schedule since being maintained solely in the residential setting runs in half hour increments from 8:30 am to 2:30 pm. Within those hours, his schedule calls for half an hour for breakfast and lunch, each, a half hour to wake him up and perform hygiene activities, and three half hour leisure blocks. He also has a half hour each for morning meeting, household chores, ELA, vocational/life skills work, functional math and social interaction. (L-6).
73. League staff testified that in reality they have observed Student to access academic instruction for no more than approximately forty-five minutes a day, however it is unclear which of these blocks in his daily schedule, the staff members considered “academic

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<sup>23</sup> Father testified that he was not the author of this statement in the N1 and it did not accurately reflect how he felt at the conclusion of the June 3, 2021 Team meeting. Father acknowledged that he did agree to and did thereafter sign consent for referral packets to be sent to other residential programs after this Team meeting, but that did not mean he agreed League was no longer appropriate for his son.

<sup>24</sup> This is the same date Parents signed and accepted the Amendment for the 20/21 IEP that had been prepared on May 13, 2021, discussed above.

instruction”. Daily summaries provided by League indicate that on September 17, 2021 Student engaged in “school-work” from 9:30 to 10:30 consisting of morning meeting work, household chores and ELA, after waking and performing hygiene activities and having breakfast. Similarly, on September 21, 2021, Student completed “school-work” consisting of morning meeting, household chores, ELA and math after waking, performing hygiene activities and having breakfast for a total of approximately 45 minutes. More recently, according to the daily reports of October 18 and 29, and November 1, 2021, Student has successfully completed waking and hygiene activities independently, morning meeting, breakfast, ELA activities, household chores and math activities daily. He is also sleeping through the night and taking all of his medications regularly. (Sherwin VI, 201-202, 204; White VII, 58; Figueiredo VII, 230, 249-251; Q-19; L-6).

74. Student has also engaged in numerous trips outside of the League residence on a daily basis, since June 2021, consisting primarily of van rides around the surrounding neighborhoods, and also, at times to community locations. Since May 2021 Student will regularly order food through the drive-in, go to area parks, ponds or the airport to watch wildlife, take a walk, watch the planes at a nearby airport, go fishing with staff, and, at times, has also gone into restaurants and grocery stores with staff. No behavioral dysregulation has occurred when Student has been out of the van in the community with staff. If Student has become dysregulated on the van, staff have been able to address it appropriately, consistent with his BSP. His ESP has not been necessary. This was true even on September 8, 2021 when Student became dysregulated in the van being driven by Mr. Kamara and started aggressing towards the other staff member by breaking the staff’s glasses and scratching his face<sup>25</sup>. In response to Student’s aggression, the staff being targeted switched out with Mr. Kamara who redirected Student in the van successfully, so he was able to return to baseline. (Maxon VI, 135-137; Kamara VI, 251-252; Figueiredo, VII, 226; Q-19; L-3).
75. During the school day, Student interacts with his 2:1 staff all day for academic services. Ms. Lussier is also present daily for between 30 minute and an hour for staff supervision, assistance with running plans, provision of materials needed to run the programs for his IEP goals and academic instruction and also staff training on League’s teaching procedures. Student also sees his PT twice a week for services. (Lussier, VII, 171-172).
76. Student has not had any peer interactions, even in the residence, since his discharge from the hospital, and has not yet returned to the school building, even for a visit. (Sherwin VI, 200-202; Father, VI, 304-305; White VII, 19; Lussier VII, 166; Figueiredo, VII, 234-235).
77. Ms. Figueiredo testified that for the approximately 21 weeks between his May 2021 discharge from the hospital and early October, Student had forty-eight incident reports. However, League produced its Incident Report Summary, and an actual review of that summary information shows there have been a total of thirty-one incident reports written regarding Student between May 18, 2021 and October 7, 2021, involving twenty-seven separate incidents of behavioral dysregulation (physical aggression to himself or staff, property destruction, or acting unsafely on the van). Two of the incident reports repeated the

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<sup>25</sup> Ms. Figueiredo acknowledged that the staff member did not need to seek medical attention after the incident. (Figueiredo, VII, 226).



same incident, while two others appear to have been one incident of behavioral dysregulation separated into two reports. Finally, two more were related to fire or emergency access alarms that were activated, not behavioral dysregulation.

78. By way of comparison, from March 25, 2021<sup>26</sup> to Student's hospitalization on May 14, 2021 (approximately seven weeks), Student had twenty instances of behavioral dysregulation involving either physical aggression to himself, staff<sup>27</sup> or peers, or property destruction. Additionally, Ms. Lussier confirmed that Student's recent aggressions, although slightly higher in number, are not as intense as they had been in the past, and staff are able to follow the BSP and redirect Student back to being on-task. (Figueiredo VII, 235, 256-257; Lussier, VII, 168; L-3).
79. Student's behavioral data from July 2021 was fairly consistent with data from a year ago, reflecting on task behavior 87% of the time, following directions 87% of the time, engaging in aggression 3% of the time, engaging in property destruction 2% of the time and sleeping an average of 36% of the time. In the evenings during July 2021, Student was on task 99% of the time, followed directions 99% of the time, engaged in aggression 0.1% of the time, and engaged in property destruction 0% of the time<sup>28</sup>. (Lussier, VII, 159; L-5).
80. On July 6, 2021, after reviewing the recent daily updates Ms. Graham emailed Ms. Figueiredo to request that League "slowly and purposefully reintroduce [Student] to spending time out of the residence and back in the school building." Ms. Graham noted that the daily logs indicated Student appeared more regulated, behaviorally, and was also sleeping on a more consistent schedule and taking his medications properly. (Graham VII, 321; L-6).
81. League agreed to Ms. Graham's request and a Team meeting was scheduled for late July 2021 to discuss a plan to reintegrate Student into the school building, similar to the successful approach taken by the Team in January 2021 to return Student to a small group classroom setting. The School Reintegration Program ("2021 Reintegration Plan") that was developed contains ten (10) steps, with steps 1-5 requiring 3 consecutive days without occurrence of physical aggression or property destruction to advance to the next step, and steps 6-10 requiring 5 consecutive days without occurrence of a physical aggression or property destruction to advance to the next step. However, unlike the classroom reintegration program developed in January 2021, the 2021 Reintegration Plan notes that if Student engages in physical aggression or property destruction for 2 consecutive days, he will return to the previous step. The various steps involve rotating the primary staff (Steps 1

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<sup>26</sup> League began using a new database to enter incident reports on or about March 25, 2021. A total of twenty-one (21) incident reports were written between March 25, 2021 and May 14, 2021 involving Student but two repeated the same incident.

<sup>27</sup> Ms. White testified that Student engaged in severe dysregulation on October 14, 2021 while the parties were participating in the Pre-Hearing Conference. Ms. White alleged Student punched a staff member in the face for getting too close to Student when he was following him to the van. However, the incident report from that day indicates that Student only attempted to hit staff after the staff member had accidentally stepped on the back of Student's sandal while they were walking out for a van ride. After this attempted aggression, staff gave Student space, contacted the BCBA's and obtained a PRN of Ativan for Student which was successful in regulating him. (White VII, 89-90; Q-15)

<sup>28</sup> Behavioral data for Student's biting behavior was not tracked or not provided.

and 2), delaying access to requests for van rides, preferred foods and the iPad (Steps 3 and 4), denying access to a request by providing an alternative choice (Steps 6 and 7), and visiting the school building using different identified access routes (Steps 8, 9 and 10). (Graham VII, 322; Lussier VII, 164-166, 196; Q-2).

82. Although progressing through Steps 1-5 in approximately a month, Student has been at Step 6 since September 2021. Based on her review of the data, Ms. Lussier determines when Student can move to the next step. Step 6 requires 5 consecutive days of success to move to the next step. At the Hearing, Ms. Lussier advised that the last time she had reviewed his progress data was over a week ago, however, although she usually tries to review it weekly. Thus, she acknowledged that at the time of the Hearing he may have already met criteria to move to Step 7. Further, although acknowledging that generally if students seem to stall in the implementation of a behavioral program the program is reexamined to see if any modifications should be made, Ms. Lussier confirmed this had not yet been done for Student's progress on the 2021 Reintegration Plan. She agreed to do that in the near future. Daily reports provided by League indicate Student was "currently on Step 6" on September 21, 2021 but also that he had "started level 6 today" on November 1, 2021. The same 1:1 staff is identified on both reports, thereby calling into question the fidelity with which the 2021 Reintegration Plan is being adhered to by League staff. (Sherwin VI, 213; White VII, 97-98; Lussier VII, 196-198; Q-19).
83. On July 12, 2021, Ms. Lussier updated Student's BSP ("7/12/21 BSP") as well as a Residential Behavior Guideline document first developed for Student approximately a year earlier, on July 14, 2020 for Student ("RBG"). The last time the RBG was updated for Student prior to Ms. Lussier's update was on September 16, 2020 when the 9/16/200 BSP was also revised<sup>29</sup>. (L-4; L-8).
84. The July 12, 2021 revisions added proactive/antecedent strategies including that Student be staffed 2:1 at all times, staff should *always* maintain visual supervision at all times to assess student for safety, staff to remain 3 to 5 feet from Student and wear protective gear (gloves and sleeves) as needed, [Student] should be allowed access to snacks during van rides, and if an item or activity is unavailable, provide 2-3 alternative choices ... and let [Student] know when the item or activity will be available" (emphasis included). (L-4; L-8).
85. Since first being drafted in July, 2020 the proactive/antecedent strategy in the BSP of "do **NOT** deny access to food" discussed above (emphasis in original) has been included in all other BSPs and the RBG. The requirement that "only familiar staff trained on this BSP can work with [Student]" has also been maintained. Additionally, the first protocol for the targeted behavior of "takes/gathers non-preferred items" to "not block access unless the item is dangerous .... Do not crowd him" has also remained, as has the first protocol for the targeted behavior of "physical aggression and property destruction" to "call for assistance and use the least restrictive Safety Care strategy necessary for safety." (Q-11; L-4; L-8).

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<sup>29</sup> Throughout the record there are two different formats for the BSP. It is not until the July 14, 2020 revisions that they are titled differently – a BSP and a RBG plan. The information is substantially similar between the two documents; often identical, and whenever a revision is made to one format, it is also made to the other formatted version. For purposes of this Decision both documents are taken together to be Student's combined behavioral intervention plans for that timeframe.

86. Dr. Manea testified that Student is not being “allowed to be successful at League, given the environment that’s been created.” Parents believe League has provided Student with a FAPE in the past and, with modifications (such as ensuring Student is working with preferred staff, particularly in implementing the 2021 Reintegration Plan), they could still do so. Mr. Kamara similarly testified that he believes Student is currently able to try to begin successful reintegration into the school building, with the support of Mr. Kamara and another staff, with success. (Manea, VI, 78; Father, VI, 276, 294-295; Kamara, VI, 252).
87. Dr. Sherwin testified that when the re-entry plan to have Student educated in the residence with 2:1 staff and no peers, was developed, he was getting a limited FAPE in terms of peer interaction and socialization. Although the 2021 Reintegration Plan is being implemented, she does not believe the people doing it “have adequate training”, and is concerned that Student has been at step 6 of this Plan for a while. As a result, at this point in time she believes that, as terrible as this belief is, Student is not receiving FAPE at League any more. (Sherwin, VI, 200-201, 212, 214).
88. Ms. White testified extensively that League is not currently providing Student with a FAPE, and that no modifications could correct this. “There’s no way that [League] can reasonably provide [Student] with a free and appropriate public education, [as] there continues to be risks to the health and safety of [League’s] school environment.” Ms. White believes Student’s inability to receive a FAPE at League is due to League not having sufficient resources to address his behaviors so that he is able to access his education. Although Ms. White finds it “super unfortunate”, she acknowledges that Student is being denied an access to a FAPE under his current program wherein he is kept in a building by himself, complies with a prompt less than 20 minutes a day and utilizes building blocks “as a result of serious injury to [League’s] staff person and [League’s] inability to maintain a healthy and safe environment.” She does not consider Student’s current program to be a FAPE in light of the progress he made prior to being educated in the residence on an isolated basis. She further noted that although Student has a reintegration plan, “he’s stuck at Step 6”. Additionally, she testified that maintaining Student at League until he turns 22 would only result in him continuing to not receive a FAPE for this timeframe; League would only be “holding him”, as League does not have the necessary behaviorally trained staff or access to professionals with sufficient experience in managing severe behavior to support Student and provide him with a FAPE. (White, VII, 37-42, 69-71, 75, 91, 97, 122).
89. Ms. Lussier agreed with Ms. White’s testimony that League “unfortunately” cannot continue to provide Student with a FAPE given the limited experience and lack of appropriately trained staff to address Student’s dysregulated behaviors, which she believes would require putting Student on an extinction behavior program. (Lussier, VII, 147, 169, 188).
90. Mr. Fuller agreed that Student is not receiving an appropriate education at League at this time. He, too, feels that it is not good for Student to be “up at the house”. But, he finds it necessary due to League staff’s lack of expertise to properly support the behaviors Student has exhibited in the day school. Mr. Fuller was firm in his opinion that League cannot support Student at this time. (Fuller, VII, 281, 295).

91. In late August or early September, League learned that one of the placements which had received a referral packet, JRC, had accepted Student. Upon learning of this acceptance, League notified Quincy at the next meeting that it would be presenting Quincy and the Parents with a notification of termination of Student in 30 days<sup>30</sup>. (White, VII, 23-24; Graham, VII, 234-237; L-6).
92. By letter dated September 22, 2021 to Parents and Ms. Graham, signed by Mr. Fuller, League formally requested a Team meeting for the planned termination of Student pursuant to 603 CMR 28.09(12)(b). The letter stated that,  
“Due to ongoing safety concerns that impede his educational progress, the League School no longer identifies [Student] as a suitable student for the League School Day and Residential Program. As per our *planned termination* policy, League School is requesting that at the Team meeting scheduled for September 23, 2021, [Student’s] planned termination from League School be discussed. We are also requesting that [Student] be terminated from the League School Day and Residential Program within 30 days of the meeting and no later than October 23, 2021<sup>31</sup>.” (emphasis added).  
This was the first written notice League provided of its position that it was no longer appropriate for Student and that League intended to terminate Student. (L-1).
93. On September 26, 2021, Mr. Fuller also emailed a Department of Elementary and Secondary Education (“DESE”) employee, Megan Bowie, to advise that League was doing a “planned termination” of a student. He explains this is “due to safety concerns and profound behavioral issues”. He notes Student is “unable to tolerate being in a classroom environment with other students and has made limited behavioral progress as indicated in data collected in [Student’s] Behavioral Support Plan.” He advises Student is being staffed 2:1, references Student’s attempts to aggress to other staff and peers, and also mentions the incident “in which he bit part of a staff member’s finger off.” He concludes by explaining,  
“League School does not possess the degree of behavioral supports or intensive programmatic structure necessary to ensure the safety and wellbeing of other students, staff or [Student]. We believe that [Student] requires a more contained and behaviorally oriented program that is familiar in working with complex individuals with serious behavioral concerns including significant aggressive behaviors *in addition to* Autism Spectrum Disorder<sup>32</sup>.” (emphasis added). (L-6).
94. Section 5 of the 2021-2022 Placement Agreement<sup>33</sup> between League and Quincy, dated July 30, 2021 addresses Discharge and Termination. Relevant provisions of Section 5 state,

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<sup>30</sup> Mr. Fuller’s August 31, 2021 email to League staff outlining his conversation with Quincy does not describe the termination as an “emergency termination”. Further, as discussed above, this placement is no longer available.

<sup>31</sup> The word “emergency” never appears in this letter.

<sup>32</sup> The word “emergency” never appears in this email.

<sup>33</sup> It is unclear if this is League’s “termination policy” that the September 22, 2021 letter referenced, however, it is the only document in evidence that sets forth written termination procedures.

“(a) The School [(League)] agrees to use its best efforts to maintain the Student’s placement. Notwithstanding the above Section 4 [‘Term’], the School may discharge the Student under any of the following conditions: ...

(3) the school has given 30 days notice to the LEA and the student’s parents/guardians or person with legal responsibility for the Student; ...

(6) The IEP does not accurately describe the Student, in that the Student requires a level of staff, services, or support services beyond that regularly provided in the School’s program unless accommodated under an individual price agreement; the Student presents a clear and present threat to the health and safety of the Student or others or some other situation exists, which makes it inappropriate for the Student to remain in the program....

(b) in the case of an emergency, the Student may be discharged immediately, provided that the LEA has been given a reasonable opportunity to convene an emergency team meeting, depending upon the nature of the emergency. In the event of emergency discharge, the School shall prepare a discharge summary, which explains the circumstances of the discharge. *In any other event*, the School will give 30 calendar days’ notice and prepare a discharge Plan for the Student....” (emphasis added). (L-2).

95. The Team reconvened on September 24, 2021 to discuss League’s request to terminate Student and his acceptance at JRC. Parents advised that they were not in agreement with JRC. Dr. Manea also advised against any transition for Student given Student’s significant struggles with transitions and the upcoming transition that will be necessary in September 2022 when Student turns 22, and ages out of special education and into adult services. (Manea VI, 59-60, 66; P-3; Q-16).

96. Parents were not in favor of Student attending JRC due to concerns about an unnecessary transition, and their inability to obtain sufficient information to determine that JRC was the appropriate environment prior to the deadline they had to respond to the proposed placement. Nevertheless, they visited and researched JRC further before finally rejecting it fully as a placement on October 4, 2021. They also explored the possibility of Student attending JRC for the day and remaining at League residentially, but League did not agree to this plan<sup>34</sup>. (Father VI, 290-292, 300-301, 310-311; Graham VII, 331; P-1; P-3; Q-16; Q-17).

97. Despite Parents’ objections, Quincy proposed placing Student at JRC at this meeting. (Q-16).

98. Since the filing of the Hearing Request, in addition to extensive exploration of other potential placements for Student, Quincy has obtained a verbal commitment from the agency it contracts with for BCBA services to provide them with a BCBA for Student. This agency BCBA is available to consult with League regularly and provide it with supports, including conducting observations, reviewing and making adjustments to Student’s BSP and other protocols, administering an FBA, and providing additional training to staff that work with Student. (Graham, VII, 326-327, 329).

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<sup>34</sup> Additionally, Quincy contacted four (4) other programs about a hybrid day placement with Student remaining at League residentially. (Graham, VII, 331).

99. Quincy never considered Student to be behaving or struggling in any greater way than any other students with autism that is has placed in a residential program. Student is not the only student Quincy has at League, but he is the only residential student. Although Quincy recognizes there is some room for growth and possible changes to Student’s program, it believes, given current circumstances, that Student is receiving a FAPE at League. (Graham, VII, 323-24, 338-339; Perkins, VII, 355-356).
100. The student support plans of approximately 50 students at League, including Student, include behavioral support plans. Of those, about 10 have aggressive behaviors. (There is another student at League who has hit his head, at least 2 other students currently bite, and there are other students who scratch). Further, in a given year, between 2 to 10 current students will engage in behavior towards another that results in the target needing medical attention. (Lussier, VII, 176-177, 188-189, 192-193; Figueiredo, VII, 238, 265).
100. Dr. Manea remains available to consult with League regarding Student’s medication needs, changes, and the different modalities of ensuring his medication is taken consistently. (Manea, VI, 61-62).
101. Mr. Kamara remains willing to support Student in reintegrating into the school building with other staff, if needed. (Kamara, VI, 252-53, 57).
102. Although the 21/22 IEP indicates that an FBA will be completed, to date, this has not occurred. (Lussier, VII, 167-68; P-2; Q-13).

## **LEGAL ANALYSIS:**

### **1. Free Appropriate Public Education.**

It is undisputed that Student is a student with a disability who at all relevant times has been eligible for special education and related services under the Individuals with Disabilities Act (“IDEA”), the Massachusetts special education statutes (M.G.L. c. 71B), and their related regulations<sup>35</sup>. The parties further agree that Student requires, and will continue to require until September 2022, when he turns 22, a residential educational program as set forth in his IEP.

The right to a free appropriate public education (FAPE) for all students with a disability is guaranteed by both federal and state law<sup>36</sup>. A FAPE is “special education and related services [consisting of] both ‘instruction’ tailored to meet a child’s ‘unique needs’ and sufficient ‘support services’ to permit the child to benefit from that instruction<sup>37</sup>.” Under state and federal special

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<sup>35</sup> 20 USC 1400, *et seq.*; M.G.L. c. 71B; 34 CFR 300.000, *et seq.*; 603 CMR 28.00 *et seq.*

<sup>36</sup> *Id.*; The first purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living". 20 U.S.C. §1400 (d)(1)(A).

<sup>37</sup> 20 USC 1401(9), (26), (29); *C.D. v. Natick Public School District, et al.*, 924 F.3d 621, 624 (1st Cir. 2019), quoting *Fry v. Napoleon Community Schools*, 137 S. Ct. 743, 748-749 (2017).

education law, a school district has an obligation to provide the services that comprise FAPE in the "least restrictive environment"<sup>38</sup>."

"The 'primary vehicle' for delivery of a FAPE is an IEP<sup>39</sup>." An IEP, therefore, must be "custom tailored" and "individually designed" so as to be "reasonably calculated to confer a meaningful educational benefit" to a student<sup>40</sup>. The Supreme Court has further explained that to receive a FAPE, a student's educational program must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances<sup>41</sup>." Massachusetts' "meaningful educational benefit" standard adopted by the 1<sup>st</sup> Circuit in *D.B. v. Esposito*, set forth above, comports with this standard in *Andrew F.*<sup>42</sup>. Thus, the examination of effective progress must be made in the context of the educational potential of the student<sup>43</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 and was not objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated<sup>44</sup>." Progress will look different depending on the "unique needs" student, but in all cases must be "appropriately ambitious"<sup>45</sup>. An analysis of a student's individual progress on his or her IEP, in light of his or her circumstances, is necessary to determine if the student is receiving a FAPE<sup>46</sup>.

While the educational services being provided do not need to be "the only appropriate choice or the choice of certain selected experts, or the child's parents' first choice, or even the best choice<sup>47</sup>", progress must still be "effective" and a student must show "demonstrable improvement" in the various 'educational and personal skills identified as special needs'" for that student to be receiving a FAPE<sup>48</sup>. "An IEP is designed as a package. It must target "all of a child's special needs", whether they be academic, physical, emotional or social<sup>49</sup>."

In the instant case, the appropriateness of Student's IEPs is not in dispute, as the 21/22 IEP was fully accepted as drafted and its contents are not being challenged. Thus, the FAPE question in this matter is one involving implementation rather than proposal. In other words, for me to

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<sup>38</sup> 20 U.S.C § 1412(a)(5)(A); 34 CFR 300.114(a)(2)(i); M.G.L. c. 71 B, §§ 2, 3; 603 CMR 28.06(2)(c).

<sup>39</sup> *D.B. ex rel. Elizabeth B. v. Esposito*, 675 F. 3d 26, 34 (1st Cir. 2012) quoting *Lessard v. Wilton Lyndeborough Cooperative School Dist.*, 518 F. 3d 18, 23 (1st Cir. 2008).

<sup>40</sup> *Sebastian M. v. King Philip Reg'l Sch. Dist.*, 685 F.3d 79, 84 (1st Cir. 2012); *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1086 (1st Cir. 1993); *Esposito*, 675 F.3d at 34.

<sup>41</sup> *Andrew F. ex. re. Joseph F. v Douglas County Sch. Dist., RE-1*, 137 S.Ct. 988, 999, 1001 (2017).

<sup>42</sup> *Johnson v. Boston Pub. Schs.*, 906 F.3d 182, 194-95 (1st Cir. 2018).

<sup>43</sup> See *Lessard*, 518 F.3d at 29.

<sup>44</sup> *Roland M. v. Concord School Committee*, 910 F. 2d 983, 992 (1st Cir. 1990).

<sup>45</sup> *Andrew F.* 137 S. Ct. at 992; 603 CMR 28.02(17) defining "progress effectively in the general education program".

<sup>46</sup> *Id.*

<sup>47</sup> *G.D. v. Westmoreland Sch. Dist.*, 930 F.2d 942, 948 (1<sup>st</sup> Cir., 1991)

<sup>48</sup> *Lenn*, 998 F. 2d at 1089-90; see *Sebastian M.*, 685 F. 3d 79, 84 ("... an IEP need not be designed to furnish a disabled child with the maximum educational benefit possible").

<sup>49</sup> *Lenn*, 998 F. 2d at 1089-90; quoting *Burlington v. Dept. of Ed.*, 736 F. 2d 773, 788 (1st Cir. 1984) *aff'd* 105 S.Ct. 1996 (1985); see *Roland M.*, 910 F. 2d at 992 ("... purely academic progress ... is not the only indicia of educational benefit implicated either by the Act or by state law").

determine whether Student is receiving a FAPE I must look to whether or not Student is receiving the special education and related services called for in his IEP. “To provide a free appropriate public education to a student with disabilities, the school district [and private school at which the Student is publicly placed] must not only develop the IEP, but must implement the IEP in accordance with its requirements<sup>50</sup>.”

Finally, the procedural protections embedded in IDEA are so important 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>51</sup>.” These procedural benefits serve a dual purpose; they provide for meaningful parental participation and they ensure each eligible child receives a FAPE<sup>52</sup>. Here, it is undisputed Parents fully participated in all decision-making processes, even if they did not agree with all the decisions being made. Thus, in considering whether Student is receiving a FAPE, I will also examine if any procedural errors occurred impeding his right to a FAPE or causing a deprivation of educational benefits to him<sup>53</sup>.

## 2. Emergency Termination by Private Schools and Stay-Put.

Stay-put is a right guaranteed by both the IDEA and Chapter 766 enabling a student to remain in his or her educational placement during the pendency of an administrative due process hearing, pursuant to an accepted IEP, unless otherwise agreed to by the parents and district<sup>54</sup>. This provision helps to ensure continuity for the student<sup>55</sup>. Students receiving their education in out-of-district placements, including private special education day and residential schools, are entitled to the “full protections of the state and federal special education law and regulations.”

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<sup>50</sup> *Colón-Vazquez v. Dep’t of Educ.*, 46 F. Supp. 3d 132, 144 (Dist. P.R. 2014).

<sup>51</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>52</sup> See *Honig v. Doe*, 108 S.Ct. 592, 298 (1998) (“Congress repeatedly emphasized throughout the [IDEA] the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness); see *Bd. of Educ. v. Rowley*, 102 S.Ct. 3034, 3050 (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>53</sup> 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); see *Roland M.*, 910 F.2d at 994; *In Re: Nashoba Regional School District and Quinelle*, BSEA No. 2009112, 27 MSER 84 (Reichbach, 2021) (analyzing claims relating to a failure to monitor a student’s academic, emotional and social progress, or lack thereof, as a potential procedural violation of the IDEA due to it potentially impeding the student’s right to FAPE, significantly impeding parents’ opportunity to participate in decision-making regarding the provision of a FAPE to the student, or causing a deprivation of educational benefits to the student.)

<sup>54</sup> 20 USC 1415(j); 34 CFR 300.518 (2019); 603 CMR 28.08(7); *Honig*, 108 S.Ct. at 594 (1988); *Verhoven v. Brunswick School Committee*, 207 F. 3d 1, 7 (1st Cir. 1999)

<sup>55</sup> *Verhoeven*, 207 F.3d at 10, recognizing that Section 1415(j) “is designed to preserve the status quo pending resolution of administrative and judicial proceedings under the Act.” The preservation of the status quo ensures that the student remains in the last placement that the parents and the educational authority agreed to be appropriate.” (internal citations omitted); *Honig*, 108 S.Ct. at 298 (recognizing that stay-put rights promotes meaningful parental participation in their child’s educational placement); see *Northampton Pub. Schs. & Lolani*, BSEA #04-0359, 9 MSER 397 (Ruling, Byrne, 2003).



603 CMR 28.06(2)(f)(1). Private schools, however, may seek to terminate a student's enrollment either on a "planned" or an "emergency" basis. 603 CMR 18.07(5) (c) and (d)<sup>56</sup>.

Emergency terminations are only allowed if the "student presents a clear and present threat to the health and safety of him/herself or others." 603 CMR 18.05(7)(d). In such cases, the private school must follow the procedures of 603 CMR 28.09(12). Part (b) of that regulation prohibits private special education schools from terminating enrollment of any student "... *even in emergency circumstances*, until the enrolling public school district is informed and assumes responsibility for the student." (emphasis added). At the request of the public school, the private school must delay termination for up to two weeks to allow the public school to convene an emergency Team meeting or conduct other appropriate planning discussions before a student is terminated. *Id.* Upon agreement of both schools, the termination may be delayed for longer than two weeks. *Id.*

While the conflict between a private school's termination rights and a student's stay-put rights often implicates public policy concerns<sup>57</sup>, Massachusetts private special education schools are bound by stay-put provisions when they are seeking to terminate a student. As the Hearing Officer explained,

"The only permitted exception to maintenance of the "status quo" placement is a temporary removal as a result of a serious and dangerous disciplinary incident. See 20 U.S.C 1415 (j)(k). Even then, impartial administrative review and

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<sup>56</sup> 603 CMR 18.07 states,

(a) Upon admission of a student pursuant to 603 CMR 28.00, the school shall ascertain a school district contact person. The school shall keep such person informed of the progress of the student *and shall notify that person immediately if termination or discharge of the student is being discussed.*

(b) The school shall, *at the time of admission, make a commitment to the public school district or appropriate human service agency that it will try every available means to maintain the student's placement until the local Administrator of Special Education or officials of the appropriate human service agency have had sufficient time to search for an alternative placement.*

(c) Planned Terminations:

1. *Except in emergency cases, the school shall notify the school district of the need for an IEP review meeting.* The school district shall arrange such meeting and provide to all parties including the parent and if appropriate, the student, notice of this meeting (10) days in advance of the intended date of the meeting. The meeting shall be held for the purpose of planning and developing a written termination plan for the student.
2. The plan shall describe the student's specific program needs, the short and long term educational goals of the program, and recommendations for follow-up and/or transitional services.
3. The school shall thoroughly explain termination procedures to the student, the parents, the Administrator of Special Education and officials of the appropriate human service agency.
4. *The written termination plan shall be implemented in no less than (30) days unless all parties agree to an earlier termination date.*

(d) *In case of an emergency termination, which shall be defined as circumstances in which the student presents a clear and present threat to the health and safety of him/herself or others, the school shall follow the procedures required under 603 CMR 28.09(12) (emphasis added).*

<sup>57</sup> See *Falmouth Pub. Schs., The Cotting Sch. and Susan S.*, BSEA # 05-1581, 10 MSER 496, (Ruling, Sherwood, 2013) ("Whether this termination standard conflicts with a student's state and federally protected stay-put right is debatable. Public policy concerns are at issue – the importance of changing a student's school placement (and location) as few times as possible, and the importance of having private schools that serve a specific population of students.").

approval of the school district's emergency action is required [on an emergency basis]. In the instant matter, the parties agree that [Lolani's] actions do not merit treatment under this Section of the regulations. There is no legislative language exempting publicly funded students placed in private special education facilities from application of the stay-put doctrine. *In Re: Lolani*, BSEA #04-0359, 9 MSER 397 (2003) citing *Honig v. Doe*, 484 U.S. 305 (1988).”

Thus, while Massachusetts regulations permit publicly funded private schools to terminate a student's enrollment, a student's stay-put placement at a private school does not automatically end simply because the regulatory two-week timeframe has expired, even in cases of emergency terminations where a finding of threat of harm exists<sup>58</sup>. In cases where a student has no available alternate placement and cannot safely return home, the private school may have a continued obligation to provide the stay-put placement<sup>59</sup>.

### 3. Burden of Persuasion.

In a due process proceeding, the burden of proof is on the moving party.<sup>60</sup> If the evidence is closely balanced, the moving party will not prevail.<sup>61</sup> Here, the burden of proof is on the Parents for the first three issues and on League for the fourth issue.

## DISCUSSION

In making my determinations, I rely on the facts I have found as set forth in the Findings of Facts, above, and incorporate them by reference to avoid restating them except where necessary.

This dispute, centers around Student's current and ongoing ability to receive a FAPE at League and Student's placement options if League is found not to be able to provide Student with a FAPE, even with modifications. Upon consideration of the evidence, the applicable legal standards, and the arguments offered by the parties, I find that although Student had been receiving a FAPE at League since his discharge from the hospital on May 17, 2021, this changed in early to mid-September, 2021, such that he is not receiving a FAPE currently. However, I also find that modifications can be made to League's program to enable Student to again receive a FAPE. I further find that another transition prior to Student's transition from special education to adult services would deprive Student of a FAPE in light of his age and struggles with transitions. Finally, with regard to the stay-put issue, I conclude that League did not properly terminate Student on an emergency basis and, even *arguendo*, if it had done so, the facts and circumstances of this matter necessitate that League be identified as Student's stay-put placement. My reasoning follows:

### **1. Student Is Not Currently Receiving a FAPE at League.**

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<sup>58</sup> *In Re: Framingham and Guild Sch. For Hum Servs., Inc. and Dept. of Dev. Servs.*, BSEA#1808824, 24 MSER 286 (Putney-Yaceshyn, 2018); *In Re: Lolani*, BSEA #04-0359, 9 MSER 397 (2003).

<sup>59</sup> *Id.*

<sup>60</sup> *Schaffer v. Weast*, 126 S.Ct. 528, 534, 537 (2005).

<sup>61</sup> *Id.* (placing the burden of proof in an administrative hearing on the party seeking relief).

Student's IEPs have always been accepted in full and were never rejected during their period of applicability. Therefore, for purposes of my FAPE analysis, I focus on the timeframe starting in May 2021. When Student was initially discharged from the hospital, on May 17, 2021, League and Quincy acted appropriately and in accordance with the IDEA by developing a plan at the reentry meeting on that date to support Student based on the needs he was then presenting. The parties agreed at that time to increase Student's staffing to 2:1 support 24 hours per day, 7 days per week, and to keep Student living and learning on a floor in the residence all day without any other peers so that he could stabilize his medications and sleep. It was also agreed daily updates on Student would be sent to Quincy and Parents as a way to improve communication.

Thereafter, at the June 3, 2021 Team meeting, the necessary elements of this plan were incorporated into Student's 21/22 proposed IEP. The 21/22 IEP also noted that an FBA was being completed, after which the BSP would be revised<sup>62</sup>. The re-entry plan and subsequent IEP revisions were informed by both the behavioral data available to the Team, Student's discharge summary from his hospitalization, evaluative data, and input from all Team members.

Although this was a highly restrictive reentry plan, I find that at that time it was appropriate, in light of Student's then circumstances. I further find that the IEP (into which the plan was incorporated) provided Student with FAPE in the least restrictive environment for him to make effective progress<sup>63</sup>. While this plan did not include provisions as to how or when these restrictions would be faded, Ms. Graham timely requested to reconvene the Team to discuss fading some of these restrictions, after reviewing the daily updates from League and noticing Student was stabilizing. Thus, the failure of the Team to develop a fading plan earlier, did not result in a deprivation of FAPE to Student.

When the Team reconvened in late July to develop the 2021 Reintegration Plan, this, too, was appropriate, and consistent with the IDEA procedural mandates.<sup>64</sup> At that time, Student's behavioral data showed he was doing well both during the day and in the evenings. His behaviors in July 2021 were consistent with his behaviors a year earlier<sup>65</sup>. League never advised it was unable to implement the 2021 Reintegration Plan or that it needed additional support for Student to follow the revised 7/20/21 BSP or the ESP he had in place, at that time, either. Thus, I find the 2021 Reintegration Plan was also data-informed, based on information known to the Team relating to Student's current and past successes, and able to have been implemented by League. As the Team was in full agreement with it, its creation and implementation were proper and consistent with the IDEA's procedural requirements.

Additionally, the 2021 Reintegration Plan was consistent with the recommendations of the IEE. Although the plan developed at the May 2021 reentry meeting ran counter to the recommendations in the IEE, Student's needs at that time were different. Once he stabilized, it was appropriate for the Team to return to implementing the IEE recommendations (which had

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<sup>62</sup> It is unclear in the record whether a consent for this FBA was ever sent to or signed by Parents.

<sup>63</sup> *Endrew F.*, 137 S.Ct. at 1001 (2017).

<sup>64</sup> It is, however, unclear why there was no discussion at that time as to the status of or need for an FBA.

<sup>65</sup> Student's stabilizing behaviors in the summer of 2020 had led his Team to decide, in September 2020, that it was appropriate for Student to begin to reintegrate into his small group classroom from the isolated classroom he had first been in when in-person learning resumed after the COVID-19 school closures in 2020. Student's 9/16/2020 BSP was revised to reflect this decision to start reintegration at that time.

been properly incorporated into Student's IEP, to the extent they were not already included, at the Team meeting in January, 2021<sup>66</sup>), particularly as these recommendations included essential transition services Student requires to move from school to adult services<sup>67</sup>.

The IEE was commissioned in September, 2020 to obtain recommendations for programming and interventions as Student transitions to adult services. It stressed the importance of fading staff support and increasing Student's interactions with peers in school, residential work and community-based settings. The IEE noted the negative impact that increased isolation could have on Student and the need to establish reintegration of Student with other peers sooner rather than later. It IEE also noted Student must receive a highly structured program with ongoing data collection by staff. Recommendations for programming, plans and interventions to address these concerns were clearly and specifically provided in the IEE.

Given this, I find that at all relevant times, the Team has had before it the necessary strategies, supports and interventions that Student required to receive a FAPE. Once the intervening concerns of medication regulation, sleep and a spike in behavioral dysregulation in the spring of 2021 had resolved, the Team properly resumed implementing the IEE recommendations.

However, the record reveals that in early to mid-September, Student stopped receiving a FAPE at League. Every witness who testified agreed that Student's current program of being educated exclusively in the residence, with only his 2:1 staff, limited access to other adults, and complete isolation from any peers is not appropriate for him. While it was originally a data-driven plan designed to reengage Student into a lesser restrictive environment, the reintegration (which should begin at Step 8) has not yet occurred. Every educationally licensed and trained witness employed by League (Dr. Sherwin, Ms. White, Ms. Lussier, and Mr. Fuller) testified that Student is not currently receiving a FAPE at League. Ms. White testified even further, that should Student remain at League until he turns 22, he would continue to not receive a FAPE. All these witnesses, who are intimately familiar with League's resources, advised that League does not have appropriately trained staff with sufficient experience to address the behaviors with which Student demonstrates. Their testimony in this regard is highly persuasive.

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<sup>66</sup> See 20 USC 1401(34); *C.D. v. Natick*, 924 F.3d at 621, citing 20 USC 1414(d)(1)(A)(i)(VIII)(aa)-(bb) and M.G.L. c. 71B §2; *Lessard*, 518 F.3d at 24.

<sup>67</sup> 20 USC 1401(34) (The IDEA requires that IEPs "include[] ... appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and ... independent living skills" as well as "transition services ... need[ed] to assist the child in reaching these goals" in order to receive a FAPE. Although a stand-alone transition plan is not necessary under the IDEA for a school to meet its obligations, the statements of transition services must be incorporated into the IEP and must be reasonably calculated to enable the student to receive an educational benefit); *Lessard*, 518 F.3d at 24; see 20 USC 1401(34) defining "transition services" as,

"a coordinated set of activities for a child with a disability that, (A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including ... adult services, independent living, or community participation; (B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and (C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and ... acquisition of daily living skills and functional vocational evaluations."

The other witnesses with direct, firsthand knowledge of Student, Father, Mr. Kamara and Dr. Manea, also concluded that Student is not able to progress in his current environment, although, unlike the League witnesses, they all were of the opinion that Student's environment could be successfully modified at League to allow him to begin progressing again. Such modifications include the support of behaviorally and psychopharmacology trained outside consultants, garnering updated evaluative information of Student, and the increased involvement of preferred staff to assist with implementing the 2021 Reintegration Plan. These recommendations are consistent with the IEE's recommendations as well.

Quincy, on the other hand, is of the opinion that Student is currently receiving a FAPE at League, in light of his circumstances. I do not rely on Quincy witnesses' testimony, however, as they have never actually met or observed him. Ms. Perkins also acknowledged that her opinion as to whether Student was currently receiving a FAPE was based on what she had heard at the hearing, as she has only had direct involvement with Student or his family by phone on two occasions, in May 2020 and May 2021.

I agree with League that Student's current educational environment is prohibiting Student from receiving a FAPE at this time. Additionally, despite the 21/22 IEP indicating that an FBA would be conducted, it has not been done. I find there was a deprivation of educational benefits to Student such that he no longer is receiving a FAPE<sup>68</sup>. Student is therefore entitled to compensatory services from League to mitigate his deprivation of educational benefits from mid-September 2021 to the present.

The responsibility to provide a FAPE to a publicly placed student in a residential school lies with both the private school and the sending public school district<sup>69</sup>. Despite Quincy's belief that Student is still receiving a FAPE, given his circumstances, Quincy has reached out to over 15 programs on behalf of Student, some multiple times, as well as to four hospital settings, both in Massachusetts and in surrounding states. It has also verbally secured the services of a contractual BCBA to provide on-site support at League. Quincy also presented evidence demonstrating that it has been fully supportive of all League's requests for additional staff since Student was placed at League. Ms. White confirmed that since May, League has charged Quincy more than its standard residential rate as set by the Operation Services Division of the Commonwealth, due to the increased supervision needed for Student. Quincy has never objected to this increased cost.

Financial support and alternative placement or services exploration, however, is not sufficient to fully meet Quincy's FAPE obligations to Student. Pursuant to 603 CMR 28.06(3)(b), Quincy is also obligated to provide individual program oversight of Student's program in the form of "monitoring the provision of services to and the program of" Student. These monitoring activities include plans and site visits and cannot be delegated to any other entity. *Id.* It does not appear that Quincy has undertaken these monitoring or supervision activities any differently

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<sup>68</sup> See 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); *Roland M.*, 910 F.2d at 994; *In Re: Quinelle*, BSEA No. 2009112, 27 MSER 84 (2021).

<sup>69</sup> 603 CMR 28.06(2)(f) guaranteeing students in out-of-district placements entitlements to the "... full protections of state and federal special education law and regulations." Additionally, a Team "shall not recommend a specific program unless it is assured that the adequacy of said program has been evaluated and *the program can provide the services required by the student's IEP.*" (Emphasis added).

since mid-September 2021 than it had between May 2021 and mid-September 2021, despite Student's plateauing progress at this time. Had it done so, it likely would have recognized the need to implement some of the modifications I am ordering below, thereby enabling Student to begin receiving a FAPE again. This obligation cannot be overlooked, particularly where, as here, Student is being educated at a school that is acknowledging it is no longer able to provide FAPE to Student. I therefore find that compensatory services for this lack of supervision are owed to Student by Quincy in the form of more intensive oversight and supervision.

## **2. Student Could Receive A FAPE at League With Modifications.**

Despite my conclusion that Student is no longer receiving a FAPE at League, the evidence supports a determination that a FAPE could be provided to him there. Although League has had success with implementing plans to address Student's dysregulation in the past, League administration witnesses testified that Student is not able to receive a FAPE there anymore as he continues to engage in significant behavioral dysregulation at this time, and there are no other accommodations and supports that could be implemented to provide Student with a FAPE. (Sherwin VI, 224; Figueiredo, VII, 224, 238). According to these witnesses, Student's behaviors have become unmanageable for League. Thus, instead of educating Student, League argues that it is only able to "maintain" or merely "hold" Student. These administrators, however, do not work directly with Student regularly, if at all, and the testimony from his direct service providers does not support their testimony. I do not, therefore, find it persuasive.

Throughout his placement at League, Student's behavioral dysregulation has involved instances of physical aggression to himself, other peers and staff as well as property destruction. Student has continually engaged in mouthing behaviors which transitioned into biting behaviors shortly after arriving at League. Student mouths and/or bites objects (his iPad, clothing, zippers), himself (his arm and fingers) and even staff (including Ms. Lussier on the hand in February 2019, a staff member on their arm prior to February 2021, and the House Manager's fingertip on May 10, 2021). Student's behaviors have at times been so significant that they have resulted in permanent damage to himself (pulling out his own teeth twice), objects (banging his head into walls leaving marks in the concrete), and even to a staff member (Finger-Bite Incident). Staff have needed medical attention as a result of Student's behaviors at times (Ms. Lussier for a bite on her hand, and the House Manager for the Finger-Bite Incident).

Student's behaviors were described in different ways by various witnesses, including cyclical (Dr. Manea, Ms. Lussier), roller coaster (Father), ups and downs (Lussier) intentional (Dr. Sherwin), unpredictable (Maxon, Figueiredo), or impulsive (Figuereido). But, these behaviors are not new to League, nor do I find that they have been progressively increasing to an unmanageable level or are now significantly different than they were previously. In fact, Ms. Lussier testified that typically Student has historically required between three to five staff to respond to his significant dysregulations since she has known him. Notwithstanding this, during his almost five years at League, Student has only required a restraint (referred to as a "physical management" by Ms. Lussier) on two occasions, inclusive of the restraint administered at the request of the ambulance staff on May 14, 2021 to enable Student to be transported to the hospital. Moreover, the 911 Protocol has also not been needed since the May 14, 2021 incident. Thus, I agree with Dr. Manea's and Ms. Lussier's characterization of Student's behaviors (which

Father also supported) as being on a continuum or cycling through good and bad periods that at its peak involves aggression, biting and disrupted sleep cycles. (Manea VI, 60; Lussier VII, 151). I am persuaded by Dr. Manea that the Finger-Bite Incident was, “another blip”. (Manea, VI, 74). Importantly, right now, I find Student to be in a better, less dysregulated place than he was in May 2021.

Dr. Manea provided reliable testimony about the services and supports Student needs to stabilize his mood, decrease his aggression and regulate his behavior and emotions<sup>70</sup>. She also explained that Student’s behavioral dysregulations are a result of antecedents or “triggers” that can be avoided or calmed utilizing specific strategies, redirection and reinforcements, which properly trained staff can implement successfully. I found highly persuasive Dr. Manea’s opinion that Student is currently not being given an opportunity to be successful at League, given the restrictive environment he is living in.

With respect to what Student would require in order to receive a FAPE, I found the testimony of Student’s direct care providers, Mr. Chery and Mr. Kamara, as well as Ms. Lussier and Nurse Maxon, the League staff who directly support Student’s behavioral needs, to be most persuasive. Ms. Lussier was forthright in acknowledging information that was both supportive of her opinions, as well as contrary to them. Additionally, her summary of Student and his needs was consistent with her description of Student to Drs. Stephens and Castro during the IEE. Similarly, Mr. Kamara and Mr. Chery, presented highly credible testimony. Mr. Kamara’s testimony was also consistent with what he provided for the IEE. Both Mr. Kamara and Mr. Chery testified as to their personal experiences with Student during times of regulation and dysregulation, including his antecedent behaviors.

Specifically, these witnesses testified that staff need to get to know Student and form a bond with him, refrain from touching Student when he is agitated, give Student space when he is dysregulated, and implement all elements of his BSP and ESP. According to these witnesses, ongoing staff training for all staff working with Student is another critical component for Student’s success and cannot be overlooked.

All of these witnesses (Mr. Chery, Mr. Kamara and Ms. Lussier) also testified Student’s behaviors were not unique at League. Other students at League engage in physical aggressions, including biting, scratching, property destruction and self-injurious behavior. Despite acknowledging Student to be one of the more intense behavioral students at League, Mr. Chery explained he was never going to “send you to the hospital” with his aggressions. (Chery, VI, 154).

Nurse Maxon also confirmed that staff must be careful with a lot of other students at League who may lash out, just as staff are with Student. I rely on Nurse Maxon’s testimony and find her to have been credible in explaining why she did not consider Student dangerous. However, I

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<sup>70</sup> I found Dr. Manea to be highly credible in her area of expertise, although I do not rely on her testimony regarding school placement options. Dr. Manea herself acknowledged that she was only “a bit” familiar with the different available autism spectrum disorder programs, and also confirmed she has not visited them. However, as her professional knowledge and expertise focuses on addressing mood, aggression, behavior and emotions of students with developmental disabilities, particularly adolescents and early adults with autism spectrum disorders. I rely on her testimony in these areas, but not as to the appropriateness of a specific school.

also acknowledge Nurse Maxon's fears about working with Student and her discomfort in working alone with him. She is vigilant and cautious at all times around Student and has another staff member present. Nurse Maxon's compassion towards Student and all the students at League, as well as to League itself, was evident. In contrast to administrative witnesses from League, who were of the opinion that nothing else could be done to support Student at League, Nurse Maxon testified to strategies she uses to continue to support Student.

I did not find reliable Ms. White's testimony that in her opinion, no modifications could be made to better support Student at League. While Ms. White may have wholeheartedly believed this to be true, her testimony was at times contradictory, inconsistent and exaggerated. For instance, Ms. White initially testified that Student's biting behaviors are unique at League, but then acknowledged that other students engaged in biting and scratching incidents. She also believed that Mr. Chery and Mr. Kamara's strategy of getting to know Student as a way to best support him and keep him regulated was "not a workable plan" although she has never worked directly with Student herself and last saw him about a month ago. (White, VI, 63).

Similarly, Ms. Figueiredo and Mr. Fuller were firm in their opinions of League's inappropriateness and the inability to make changes that would render League appropriate for Student. As with Ms. White, their statements were internally inconsistent. Mr. Fuller testified extensively as to how unsafe and dangerous he considered Student to be, and how due to these concerns it is not possible for Student to be reintegrated into the school building safely. He also testified, though, that he believed Student should return to an in-district program in Quincy, given Quincy's failure to secure an available alternative program.

In the same way, Ms. Figueiredo testified that Student was such a risk to other students in the residences that it was not possible to attempt to reintegrate him with other peers there. She agreed with Ms. White that League staff were not running Student's BSP consistently, although she stated that they run every other student's BSPs consistently. Thus, Ms. Figueiredo did not consider the BSP to be an appropriate tool to support reintegration of Student with his peers. According to Ms. Figueiredo, the risk that Student will engage in aggressions towards peers in the residence makes it necessary to prohibit Student from engaging with peers in the residence at all. However, she also testified that although Student will engage in aggressions towards staff on van rides, van rides with staff are still permitted activities for Student.

Despite acknowledging that the staff member involved in the Finger-Bite Incident was not following the BSP<sup>71</sup>, and knowing that in the weeks leading up to it Student was not sleeping regularly or consistently taking his medications, Ms. White, Ms. Figueiredo, Mr. Fuller and Dr. Sherwin still found it a justifiable incident to rely on to support termination of Student. Confusingly, and somewhat surprisingly, Ms. White testified that the fact that the staff member did not follow the plan supports League's position that it cannot be modified to provide Student

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<sup>71</sup> Despite the testimony and hence my conclusion that the House Manager did not follow the BSP, although she was trained on it, I want to take this opportunity to note how much I was struck by the level of professionalism, calmness and care she showed Student, particularly after he had bitten her. She was the staff who went into the peer's bedroom and verbally redirected Student to leave, in a calm and kind way. She never became angry, exasperated or annoyed with Student and she never blamed or criticized Student even after he had bitten her.



with a FAPE<sup>72</sup>. According to Ms. White, League staff do not have the necessary training or expertise to follow written behavior plans League creates. This includes behavior plans like Student's BSP that contain simple and direct antecedent procedures such as "do NOT deny access to food"<sup>73</sup>.

League's planning and programming to reintegrate Student into school after the COVID-19 closures in 2020 evidences that it knows how to successfully support Student to reengage with peers and staff after a period of isolation. League's initial plan provided Student his own classroom, separate from all his peers, in the school building. Student was so successful with this plan that as evidenced by his 9/16/20 BSP, he was ready and able to begin reintegrating into the small group classroom as well as move from having no demands or tasks placed on him to having daily learning tasks and work demands given. An appropriate and successful written classroom reintegration plan was thereafter developed by the Team at the January 14, 2021 Team meeting and implemented in accordance with an IEP Amendment.

Currently, Student is in a more regulated state. Although he is not completely regulated, all agree that this cannot be expected of Student, given his constellation of needs. However, when he has become dysregulated, recently, the incident reports since his discharge from the hospital indicate that staff have been successful at returning him to a calm or baseline state. Moreover, there are many supports in place should he begin to cycle into a period of greater or more intense dysregulation again, including the pharmacological support of Dr. Manea, the successful previous approaches of tiered reintegration into social situations as done after COVID, the recommendations in the IEE, and the support of familiar and preferred staff who remain willing to work with Student, like Mr. Kamara, and, I believe, Ms. Lussier.

### **3. League is the LRE for Student to Receive a FAPE.**

I further find an outcome that would require Student to relocate to another program within the next 10 months before he turns 22 whether it be an established program, or one created for him,

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<sup>72</sup> Another example of Ms. White's inconsistent testimony involved her criticism of Mr. Chery and Mr. Kamara's approach to Student, as not consistent with his BSP. According to Ms. White, it was inappropriate for Mr. Chery and Mr. Kamara not to follow Student's behavior plan because "the idea is the plan is written and you follow the plan." (White, VII, 63). But somehow, the failure of the House Manager involved in the Finger-Bite Incident to follow the BSP was not noted to be problematic.

<sup>73</sup> Nor do I agree with Ms. White's explanation that the SCERTS methodology employed by League prohibits it from being able to support Student. League's own program description policy submitted into evidence, and Ms. White's further explanation of the SCERTS model, particularly as it relates to information on League's website, advises it supports the emotional regulation and behavioral needs of students with autism by employing a transdisciplinary framework under which it utilizes behavior modification principles as one of its treatment modalities, such as the ABA and TEACHH models – programs which are known for providing behavior modification supports to students with autism spectrum disorders. (White, VII 83-84; L-13) According to their program description the Transition Program Student attends, "incorporates principles of the SCERTS Model, designed to target priority goals in social communication and emotional regulation through the implementation of transactional supports ... [through] goals targeted across activities, settings, and social partners." The Program description describes as examples of emotional regulation goals "... decreasing the amount of time to recover from extreme dysregulation, identifying the need to utilize regulating strategies, ... and using metacognitive strategies to regulate emotional states." These are precisely the programming and goals that Student requires and has been working on and are contained in his 20/21 IEP and recommended by the IEE.

would deny Student FAPE. Dr. Manea's opinion as to the impact another transition would have on Student was persuasive, based on her direct knowledge of Student's response to his transition into the League's residential program. She indicated that not only would the transition to a new program (assuming one could be located or created in the next few months) likely take the remaining time until Student's 22<sup>nd</sup> birthday, but it would also be detrimental to his well-being.

Student is successful in familiar, consistent and structured environments. He struggles substantially adjusting to new environments. He first came to meet Dr. Manea due to ongoing transition struggles he was having 6 months after he had moved to the residential program at League. His prior reintegration programming had to be broken down into small, discrete steps to be successful at returning to a small group classroom setting both before COVID, when he was separated from his peers using the classroom divider, and after COVID, when in-person learning resumed. When Student is not having success, he becomes dysregulated.

Thus, I credit Dr. Manea's assessment that the likely result of any transition of Student will be a period of increased dysregulation, not to mention unhappiness. As I find that there are modifications to League's program that can be implemented to allow Student to receive a FAPE, an additional transition is also unnecessary. While a transition will be legally unavoidable in September 2022 when Student's eligibility for educational programming ends, it is contraindicated for an earlier transition to occur. Rather, as the IEE recommends, the upcoming months should focus on preparing Student for the transition when he reaches 22, not arguing over whether he should remain in his current programming.

I therefore conclude that in order for Student to make effective progress, in light of his circumstances (his upcoming 22<sup>nd</sup> birthday which will inevitably require a transition and his significant struggles with transitions) he should remain at League with the addition of services and supports to enable him to reintegrate into educational programming in the school building and interact with all members of the school community<sup>74</sup>.

I disagree with Ms. White that an outcome that keeps Student at League until he turns 22 is just "kicking the can for nine months", putting on hold any educational or behavioral progress, and is instead just "holding" him. (White, VII, 72 -75). Rather, I find the opposite to be true. The best chance for Student to have educational, behavioral, emotional or social growth during the next ten months is to maintain his placement at League with the additional supports I am ordering.

It is essential that training, supervision and oversight be added to League's current program for Student. In addition to adding consulting support services, additional evaluative information is also required to provide a further data point from which to properly plan for and implement programming. It is vital that all members of the Team direct their attention to transition planning and programming, which are essential for Student to receive a FAPE, and which I have concluded can only happen by Student's remaining at League with the additional services and supports ordered here.

#### **4. Stay-put at League/Emergency Termination.**

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<sup>74</sup> See 20 U.S.C § 1412(a)(5)(A); 34 CFR 300.114(a)(2)(i); M.G.L. c. 71B, §§ 2, 3; 603 CMR 28.06(2)(c).

I also find that League has not met its burden to show that if it were to terminate Student, it would not remain his stay-put.<sup>75</sup> As discussed below, League did not follow the regulatory process for undertaking an emergency termination of Student; and even if had League would nonetheless be Student's stay-put placement.

A. Student's Termination Is a Planned Termination Not an Emergency One.

Although testimony was not consistent among witnesses, I believe all witnesses testified truthfully as to their current recollection of the parties' positions as to the continued appropriateness of League for Student after the May 17, 2021 re-entry meeting and the June 3, 2021 Team meeting. League plausibly left these meetings thinking Parents and Quincy agreed League was not an appropriate place, and that was why everyone also agreed to begin searching for a new program for Student. Parents and the District, on the other hand, plausibly left the meeting thinking League would continue to fully implement Student's IEP as proposed, but that it was possible a decision to terminate would be made in the future. Given this risk, Parents and Quincy agreed to proactively search for alternative placements in May and June 2021. Whether there was an agreement between the parties at that time as to League's inappropriateness for Student, however, is not germane to whether the parties were on notice that League was planning to terminate student.

The paperwork created at or shortly after these meetings confirms that everyone agreed to pursue a search for other placements, and if one was located League would support a transition to the new placement. However, there is no mention of League terminating student in these documents. The first written document specifying League's intent to "terminate" Student was the September 22, 2021 letter Mr. Fuller sent to Parents and Quincy. Thus, I find League did not begin the process of terminating Student from its program as contemplated in the special education regulations until it issued the September 22, 2021 letter.

Further, the September 22, 2021 letter and corresponding September 26, 2021 email to DESE, although clear notification of intent to terminate, do not support termination of Student on an emergency basis. Two types of terminations are available to private special education programs under the regulations – planned and emergency<sup>76</sup>. Both the letter and the email state the termination of Student is a "planned termination". While the letter does in fact reference 603 CMR 28.09(12)(b), the emergency termination provision, that reference, alone, does not convert it into an emergency termination given the remaining information in the letter<sup>77</sup>. The word "emergency" is not used in either notification, instead the term "planned termination" is used. The letter also talks about "*ongoing* safety concerns that impede his educational progress". (L-1). This is far different than Student presenting a "clear and *present* threat to the health and safety of him/herself or others", which is the prerequisite for an emergency termination<sup>78</sup>.

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<sup>75</sup> See *Schaffer*, 126 S.Ct. at 537 (2005).

<sup>76</sup> 603 CMR 18.07(c) and (d); 603 CMR 28.09(12)(b).

<sup>77</sup> This regulation is not referenced in the email to DESE.

<sup>78</sup> 603 CMR 18.07(d) (emphasis added).

Moreover, thirty calendar-days' notice was provided for in that letter, rather than the timeframe contemplated for emergency terminations in 603 CMR 28.09(12)(b)<sup>79</sup>.

Further, I find League failed to comply with the requirements of 603 CMR 28.09(12)(a), which mandates that in situations of serious incidents, the private special education school must "immediately notify" the sending school district, parents and DESE "by telephone and by letter" of the incident. League never provided Quincy with a copy of the May 10, 2021 incident report despite Quincy's request, and there is no evidence that anyone at DESE was contacted by League about either the Finger-Bite Incident or the May 14, 2021 behaviors that led to Student's hospitalization. The regulation pertaining to emergency terminations advises in such cases a school shall follow the procedures required under "603 CMR 28.09(12)". 603 CMR 28.09(12) has two sub parts, (a) and (b). The private special education school, therefore, is obligated to comply with both subparts whenever it is undertaking an emergency termination of a student.

Additionally, in cases of both planned and emergency terminations, the regulations require that the District contact be notified "... immediately if termination or discharge of the student is being discussed<sup>80</sup>." I credit Ms. Graham that neither she nor Ms. Perkins were notified in May 2021 that termination of Student was being discussed. Ms. Graham's email to Ms. Figueiredo on May 16, 2021 specifically sought to clarify League's intention as to Student returning to League upon discharge from the hospital (with the supports Quincy had already agreed to). She specifically requested to be notified if this was not the case. She also offered to provide additional support to Student while Quincy pursued a new placement. I do not find her acknowledgment of Quincy working to identify a new placement to be evidence of Quincy's knowledge that discharge or termination of Student was being discussed. At best, a transition of Student to a new program was being discussed. But transitioning a student to another private special education program is markedly different than discharging or terminating a student. The former contemplates that another program will be identified, accepted, and started before the current program's services end, whereas the later does not necessarily require another program to be in place before the current program's services end<sup>81</sup>.

Ms. Figueiredo's response to Ms. Graham's email was merely to advise she preferred to discuss this with the entire Team. At the reentry meeting on May 17, 2021, the Team discussed what additional supports could be put in place for Student to enable him to return to League. Those additional supports (2:1 staffing; placing student on his own floor residentially; having Student's educational program brought to him in the residence until he stabilizes on his medications and sleep; and providing improved daily communication reports to both Quincy and Parents) were agreed to by both Parents and Quincy, and Student thereafter returned to League upon discharge

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<sup>79</sup> Per Section 5(b) of the Placement Agreement, 30-days' notice is required for all terminations except those occurring "in case of an emergency".

<sup>80</sup> 603 CMR 18.07(a).

<sup>81</sup> This conclusion is further supported by the language in each of the termination procedure regulations. "Planned terminations" require a Team meeting to be convened, after 10 days notice, for the purposes of planning and developing a written termination plan, which plan shall be implemented in "no less than" 30 days, unless the parties agree to an earlier date. 603 CMR 18.07(c)(1) and (4). "Emergency terminations", require a delay of only two school weeks, during which time the District may, but is not required, to convene an 'emergency Team meeting' (without providing 10 days notice)". While the emergency termination may be delayed longer than 2 weeks, that can only occur with the agreement of the district and the private special education school. 603 CMR 28.09(b).

that day. I do not find under these circumstances that Quincy and Parents should have known League was intending to discharge or terminate Student on either an emergency (immediately although it could be delayed for up to two weeks at the request of a District) or planned (within 30 days) basis. Moreover, Student remained at League well beyond either timeframe, without formal notice of the “planned termination” for four more months.

Furthermore, no emergency amounting to a “clear and present threat to the health and safety” of Student or others existed on September 22, 2021<sup>82</sup>. Both the behavioral data and incident reports provided by League demonstrate Student was less behaviorally dysregulated after he was discharged from the hospital. Student’s incident reports in the ten days prior to and including September 22, 2021 did not contain any behavior by Student that would constitute a “clear and present threat to the health and safety” of Student or others. While there were three incident reports involving physical aggression, on September 16, 20 and 22, 2021, respectively, I do not find any of these instances to be dissimilar to behavioral dysregulations Student has had throughout his attendance at League. The physical aggression during these three events consisted of hitting and scratching two staff after being denied a request for a van ride on September 22, 2021; attempting to hit staff, screaming during a van ride and yelling and banging the wall in his bedroom on September 20, 2021; and stomping on a staff’s foot 5 times on September 16, 2021. In all situations, Student ultimately returned to a calm state through the use of various strategies including administration of his Ativan PRN, playing basketball, and going on a van ride.

League staff testified to two behavioral incidents they felt warranted emergency termination. According to Ms. White, Student recently punched a staff member in the face because he got too close to Student. However, a review of the incident report from that situation does not support her testimony, as discussed above. Further, that incident occurred on October 15, 2021, almost a month after the September 22, 2021 termination notice letter was issued. Additionally, Ms. Figueiredo described an incident that occurred on the van on September 8, 2021 where Student aggressed towards staff ultimately breaking his glasses. However, the staff member did not need to seek medical attention for this situation and the incident report notes Student was able to be redirected by the other staff member in the van and return to base-line. As with the incidents that took place later in September, I do not find the September 8, 2021 incident to constitute the type of “clear and present threat to the health and safety of himself or others” that is contemplated by 603 CMR 18.05(7)(d), either.

While these incidents are certainly significant enough to warrant incident reports and are not incidental to the staff on the receiving end, they are not dissimilar from Student’s behavior throughout his time at League. At worst, they evidence Student to be potentially cycling into a period of increased behavioral dysregulation, which League has successfully supported Student through in the past. I do not consider these incidents to warrant a conclusion that an emergency had arisen for which termination could be sought, though. I also find that a planned termination was implemented, despite League’s attempt to characterize it differently in this hearing.

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<sup>82</sup> 603 CMR. 18.07(d).

B. Stay-put Would Apply Even If Student Were Properly Terminated on an Emergency Basis

Even if I were to have concluded that Student was not able to receive a FAPE at League, that transitioning Student to another placement would not deprive Student of a FAPE, and that Student was being properly terminated on an emergency basis, I would nonetheless find that League is Student's stay-put placement.

The issue of whether stay-put applies to private special education schools who are seeking to terminate a student from their program has been resolved differently by the BSEA over the years<sup>83</sup>. What is clear from a review of the cases, is that the decisions are often fact-specific and turn on the unique circumstances of the student and the school. In situations where a student would be left without an appropriate alternate placement, the BSEA has determined that a private school may have stay-put obligations beyond those set forth in the State regulations, even in the case of an emergency termination based on safety concerns<sup>84</sup>. Even when a private special education school has been found to fully follow the required emergency termination procedures, it was still deemed the stay-put placement for a student who had engaged in an unprovoked fight with a peer leading to injuries including a concussion<sup>85</sup>. Importantly at the time of that hearing no appropriate placement had been found, despite exhaustive efforts, in large part due to the fact that that student, similar to Student, here, was nearly 22 and struggled with transitions. *Id.* Thus, the Hearing Officer concluded that “[a]s a matter of public policy, and if the IDEA’s stay put provisions are to have any meaning, the BSEA cannot issue a decision finding that [the s]tudent does not have any placement in which to remain during the pendency of this matter.<sup>86</sup>” The removal of the private school as the stay-put placement would have left the student without any educational placement.

Similarly, in a different case, stay put was applied to a private residential special education program that had been found not to be appropriate for a student, but for which modifications could be made to maintain the student at the program safely until another appropriate program was identified<sup>87</sup>. Again, the fact that student was without any viable alternative educational placement was an important consideration.<sup>88</sup>

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<sup>83</sup> There are no binding judicial opinions on this issue.

<sup>84</sup> *In Re: Belmont Public Schools and Devereaux Advanced Behavioral Health*, BSEA #2103476, 26 MSER 325 (Figuroa, 2020); *Framingham Pub. Schs. and Guild for Hum. Servs., Inc. and the Dep’t of Dev. Servs.*, BSEA #1808824, 24 MSER 286 (Ruling, Putney-Yaceshyn, 2018); see *In Re: Lolani*, BSEA #04-0359, 9 MSER 397 (2003).

<sup>85</sup> *Framingham and Guild and DDS*, BSEA #1808824, 24 MSER 286 (Ruling, Putney-Yaceshyn, 2018).

<sup>86</sup> *Id.* (“... under the unique circumstances of the case, where Student has no other placement available to him and is unable to safely return home, his ‘stay-put’ placement has to be the [private school].”)

<sup>87</sup> *In Re: Belmont and Devereaux*, BSEA #2103476, 26 MSER 325 (Figuroa, 2020).

<sup>88</sup> *Id.*

In contrast, those cases wherein stay-put was found not to apply to the private special education school seeking to terminate a student<sup>89</sup>, involved students who were found to be entitled to a stay-put placement of the same *type*, but not necessarily at the same location<sup>90</sup>. The facts and circumstances of those cases were again pivotal to the ultimate conclusion and are distinguishable from the facts of the instant matter<sup>91</sup>. As was recognized by the Hearing Officer in finding stay-put not to apply to a student’s private special education school, “the specific facts of the particular case guide the determination of whether a student’s specific school placement must be maintained as his or her stay-put placement”<sup>92</sup>.

The facts and circumstances of the present matter necessitate a determination that League is stay-put for Student, even if I were to find that Student was not able to receive a FAPE at League, that Student would not be deprived of a FAPE if he were to leave League, and that League had properly implemented the emergency termination procedures.

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<sup>89</sup> League cites to three (3) prior BSEA decisions; however, one of the decisions actually found stay-put to pertain to the private school. *In Re: Falmouth Public Schools, The Cotting School, and Susan S.*, BSEA # 05-1581, 10 MSER 496 (Ruling, Sherwood, 2004). League appears to rely on dicta in that case that recognizes the public policy impact associated with establishing stay-put rights in private special education schools, discussed *supra*.

<sup>90</sup> *In Re: Dracut Public Schools and Melmark New England*, BSEA #09-1566, 14 MSER 286 (Crane, 2008); See *Georgetown and Landmark*, BSEA #1408733, 20 MSER 169 (Ruling, Oliver, 2014), holding that “[u]nder some circumstances, a student’s stay put placement may be the particular private school to which the student has been placed.... Under other circumstances, a student’s stay put placement may refer to the type of educational program ... rather than the particular school.”

<sup>91</sup> *Georgetown Pub. Schs. and Landmark Sch.*, BSEA #1408733, 20 MSER 169, (Ruling, Oliver, 2014) finding, in a matter involving a violation of a private special education school’s drug policy, that the private special education school was not stay-put for the Student reasoning that the student had been placed at the private special education school under a settlement agreement that included waivers of special education laws, including stay-put and student’s termination was based solely on disciplinary violations which were found to not be a manifestation of student’s disability, and for which he was initially suspended, and ultimately expelled; *Dracut and Melmark*, BSEA #09-1566, 14 MSER 286 (2008) finding, under different circumstances that the private special education school was not stay-put for a student where, at the time of the hearing, the student was in a hospital setting, the private special education school was refusing to accept the student back upon discharge and the parent agreed that Melmark was no longer safe or appropriate for her child.

<sup>92</sup> *Dracut and Melmark*, BSEA #09-1566, 14 MSER 286 (2008). Although the twelve-year old student in that case was also attending a residential educational program for autism and was engaging in behavioral difficulties including self-injurious behaviors, aggression towards others and property destruction, he was significantly more intense than Student is. Moreover, Melmark required and implemented substantially more supports for their student than what League has done. The student attending Melmark engaged in behaviors including tearing and eating his clothing, tearing and eating mattresses, destroying walls and trying to ingest the wall material, breaking windows through plexiglass, banging his head against the ceiling, kicking others, extended periods of crying, exceptional distractibility and screaming, and significant self-injury involving lacerations and bruising. The Melmark student required 1:1 staffing but two or three staff for all transitions including, going to the bathroom, showering and going to a meal. He was hospitalized on an in-patient basis at Bradley Hospital for over two and a half months. He returned from the hospital setting and over the course of the next 11 days, despite having 3 to 4 staff rotated out every 60 minutes, his behaviors intensified in severity and frequency. He engaged in rectal probing using puzzle pieces and small toys, bit staff, increased head banging against walls, glass windows, ceramic sinks and hooks on the back of doors, smeared feces on walls, stepped on feces and walked around, threw feces at others, tried to eat his feces, put his hand down his throat to try to choke himself even after handling his own feces, kicked another student in the head and attempted to punch and spit on others. He also seriously injured 3 staff within this 11 day timespan. Melmark sought an involuntary emergency psychiatric hospitalization of Student ultimately back to Bradley Hospital, and initiated the emergency termination procedures during this second hospitalization, refusing to take Student back upon discharge.

## **ORDER:**

1. League and Quincy shall forthwith contract with a consulting master's level or doctoral level BCBA, funded by Quincy, to provide services initially on a weekly or greater basis, as deemed appropriate by Quincy. The consulting BCBA's contractual duties shall include: reviewing and modifying Student's 2021 Reintegration Plan, BSP, ESP and ERSP as necessary; supporting League in (re)training all staff who work with Student on his behavior plans, behavior modification programs, and consistent data collection methods; consulting at least weekly with Ms. Lussier with regard to Student; and recommending any additional staff supports needed for Student (such as having a registered behavior technician working directly with Student during the school day).
2. League and Quincy shall also forthwith engage Dr. Manea to consult regularly with Student's Team. Any costs associated with this consultation will be funded by Quincy.
3. League and Quincy shall further forthwith contact ICCD, if said agency is amenable, to obtain biweekly, initially, but fading to monthly consultative services to assist in planning and developing programming and interventions for Student until he turns 22, to be funded by Quincy.
4. Quincy will fund any additional staff needed.
5. League will develop a compensatory services plan for Student for the period during which he has not been receiving FAPE, to wit: mid-September, 2021 to the present.
6. The parties shall convene a Team, inclusive of the consulting BCBA, Dr. Manea, the ICCD consultant, Ms. Lussier, Mr. Kamara, and Student's DDS Transition Coordinator, along with any other relevant professionals that can help to provide input to the Team on program modifications and supports to Student both in the residence and in school. The Team will discuss the 2021 Reintegration Plan and modify it as necessary to enable the Student to begin spending at least a portion of his school day within the school building unless the Team, including Team members not employed by League, feel this is not appropriate for Student at this time. The amount of time, staffing, and location within the school building will be determined by the Team, as will the benchmarks for increasing the time in the building. The Team will be guided by the IEE recommendations and those of the ICCD consultant, the BCBA consultant and Ms. Lussier and will consider using current preferred staff initially for this reentry into the school building.
7. The Team shall also develop a long-term plan, with the goal of Student: (a) spending his entire school day in the school building; (b) fading his 2:1 staff support; and (c) reintegrating into a small group classroom environment. The plan should utilize systematic approaches based on data to determine how Student will progress along it. Data will be collected with integrity and any staff member involved in implementing the plan will be trained, and retrained as necessary, on it.



8. Quincy shall forthwith send a consent form to Parents for an FBA. Upon receipt of the Parents' consent, the FBA will be conducted immediately, either by League staff or the consulting BCBA. The Team will reconvene upon completion of the FBA.
9. As compensatory services for its failure to properly monitor Student from mid-September to present, Quincy will convene regular multi-disciplinary meetings consisting at a minimum of Quincy, Parents, Ms. Lussier, and the consulting BCBA, to discuss and monitor the provision of services and programs to Student, including his progress and behavioral, emotional, social, and academic needs. Additionally, the DDS Transition Coordinator will be invited to these meetings. The meetings will initially occur every other week, but can be held monthly at such time that Student returns to the school building for the entire school day.
10. The parties shall continue to engage in outreach to DDS to identify any services and supports that DDS can provide now or as part of a transition plan into the adult services Student will be receiving at age 22.

Respectfully submitted,  
By the Hearing Officer,

/s/ Marguerite M. Mitchell

Marguerite M. Mitchell  
November 18, 2021