

**STATE OF MAINE  
SPECIAL EDUCATION DUE PROCESS HEARING**

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Parent	)	Decision and Order
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v.	)	
	)	
Maine School Administrative District No. 60	)	
	)	
	)	

A hearing was held and this decision was issued pursuant to Title 20-A, MRSA §7202 et. seq., and 20 U.S.C. §1415 et seq., and accompanying regulations. The hearing took place on October 17 and 19, 2018 in York, Maine. Those present for the proceeding included [REDACTED] (“Mother”); [REDACTED] (“Father”) (together, as “Parents”); Susan Macri, Special Education Director for the District; Isabel Ekman, Esq., Counsel for the District; and the undersigned hearing officer. Testifying at the hearing were:

1. The Mother
2. Susan Farid, LCSW – District’s contracted social worker, Sweetser
3. Andrew Elwell – Case Manager and Special Education Teacher, Mary Hurd Academy
4. Susan Macri – Director of Special Education
5. [REDACTED] (“Student”)

**I. PROCEDURAL BACKGROUND**

On April 25, 2018, the parties and the Maine School Administrative District No. 60 (“District”) entered into a signed Settlement Agreement to settle the allegations raised by the Parents’ expedited due process hearing in case number 18.087X.<sup>1</sup> On July 31, 2018, the Maine

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<sup>1</sup> Expedited Due Process case number 18.087X, filed with the Maine Department of Education. The Parents 1) challenged a manifestation determination regarding the Student’s suspension; 2) alleged a failure to implement his

Department of Education (“MDOE”) issued a report resolving allegations submitted by the Parents for a complaint investigation in MDOE Case Number 18.112C, filed against the District in mid-June 2018. (S-158). While many of the allegations had been resolved in the prior Settlement Agreement signed on April 25, 2018, the complaint investigator found that the District failed to properly notify the Parents of their right to request a hearing to challenge the refusal to amend the Student’s psychological evaluation. (July 31, 2018 Report). (S-162-163). The two other allegations were found to lack merit. (S-161-162).

On August 8, 2018, the Parents filed a *pro se* due process hearing request (“Hearing Request”) on behalf of their son, the Student, alleging that the District violated the Individuals with Disabilities Education Act (“IDEA”) by denying the Student a free appropriate public education (“FAPE”). (See Hearing Request).

On August 21, 2018, the District filed an “Objection to Sufficiency of Hearing Request and Partial Motion to Dismiss.” On August 28, 2018, an order was issued dismissing all the allegations that were resolved pursuant to the signed Settlement Agreement, signed on April 25, 2018<sup>2</sup>. The sufficiency challenge was denied.

A prehearing conference was held on September 11, 2018, at the York District Courthouse in York, Maine to refine all the outstanding issues included in the Parents’ Hearing Request. Those present at the conference included the Parents; [REDACTED], the Mother’s long-term domestic partner; Susan Macri, Special Education Director for the District; Isabel Ekman, Esq., attorney for the District; and Sheila Mayberry, the Hearing Officer. The Parents requested to amend the Hearing Request, which was unopposed by the District. The prehearing was adjourned.

On September 18, 2018, the Parents filed an Amended Due Process Hearing Request. A second prehearing conference was held on October 9, 2018, with the same participants and at the

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IEP; 3) alleged an inappropriate placement; and 4) alleged violations of the Student’s civil rights. (See District’s Motion to Dismiss in this matter. A settlement agreement was reached on all issues on April 25, 2018. *Id.*, P-217.

<sup>2</sup> The Order incorrectly identified the date of the Settlement Agreement as April 11, 2018, which was corrected at the initial prehearing conference on September 22, 2018 and on the first day of hearing.

same location as the September 11, 2018 prehearing conference. The Amended Hearing Request continued to allege many allegations that were included in the Settlement Agreement in Case No. 18.087<sup>3</sup>. Based upon a review of these allegations, the Hearing Officer dismissed those that were the subject of the earlier Settlement Agreement and dismissed in the Order, dated August 28, 2018, granting the District's Partial Motion to Dismiss.

At the prehearing, the Parents notified the Hearing Officer that they were withdrawing an allegation that the District failed to offer supplemental aids to help with the Student's coping skills because they revisited the issue and decided that the District had included appropriate language in the IEP to provide these supplemental aids.<sup>4</sup>

Documents and witness lists were submitted in a timely manner. The Parents submitted approximately 220 pages of exhibits (herein referenced as P-#), and the District submitted approximately 237 pages of exhibits (herein referenced as S-#, and appendices S-A-# through S-G-#).<sup>5</sup>

The record was kept open to allow the parties to prepare and submit post-hearing briefs. The District submitted a 15-page brief and the Mother submitted a 14-page brief. The record closed on November 21, 2018.

## **II. ISSUES TO BE RESOLVED**

1. Did the Student's IEP, dated April 25, 2018, violate the IDEA because it did not include technologies for speech, language, math, organizational tools; or an accommodation for a learning center?
2. Did the District fail to meet its IDEA obligations to notify the Parent of changes to the Student's IEP between August 22, 2016 and August 8, 2018?
3. Did the District fail to include an appropriate transition plan into the Student's current IEP?
4. Was the Student's Math goal in his current IEP appropriate?

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<sup>3</sup> *Id.*

<sup>4</sup> The Parents also requested to have the hearing open to the public, which was granted. The District requested that the hearing take place at the York District Court House due to potential security issues.

<sup>5</sup> Transcript page citations are referred to as Name Tr. #).

5. If the answer to any of these questions is yes, what, if anything, would be an appropriate remedy?

#### Motion For Judgment As A Matter of Law Granted on Issues 2 and 4

On October 17, 2018, after the Parents rested their case, the District moved for a directed verdict. (Tr. 136). It argued that the Parents had not presented credible evidence to sustain their burden to prove any of the allegations. The Motion was granted on issues 2 and 4. With respect to Issue 2, I found that the Parents failed to prove that they had not been notified of IEP meetings since August 22, 2016. The Mother testified on cross-examination that she was notified either in writing or by telephone about all of the scheduled IEP meetings or she could not remember receiving notices of IEP meetings that she attended. (Mother Tr. 101-110). The record included all Advance Written Notices and Written Notices, which indicated that they were sent to the Parents. Therefore, I found that the District had not violated its due process notification requirements..

With respect to Issue 4, I found that the Parents failed to provide evidence that the Student's IEP math goal was inappropriate. Other than the Mother's testimony of her opinion that the math goal as written did not make sense and therefore she believed it was inappropriate, no additional credible documentary or testimonial evidence was offered to indicate why it was inappropriate. A parent's unqualified belief that a student's IEP is inappropriate, without additional credible evidence, is insufficient to find that it was in fact inappropriate. (*Mr. G. and Ms. K v. Timberlane Reg'l Sch. Dist.*, 2007 WL 54819, at \*10, 47 IDELR 5 (D.N.H 2007). Assertions about the inadequacy of a student's program or placement must be supported by authority to support the parent's subjective opinions. *Ms. S. v. Reg'l Sch. Unit 72*, No.2:13-CV-453-JDL, 2015 WL 1486757 AT \*21 (D. Me. 2015).

With respect to allegations numbers 1 and 3, I found that there were some significant facts in dispute that warranted further hearing on those specific issues and denied the motion with respect to those issues. However, the Parents withdrew their allegation that the Student needed accommodations of speech. (Mother Tr. 139).

### III. FINDINGS OF FACT

1. The Student is 17 years old (born [REDACTED]) (Hearing Request). He lives with his Mother, Father, the Mother's Domestic Partner, and younger male sibling in North Berwick, Maine. (S-1, S-102). Since the Family resides within the District's jurisdiction, the District has educational responsibility for the Student.
2. The Student attended Sanford High School (SHS), Sanford, Maine, up through the 2015-2016 school year (9<sup>th</sup> grade). (S-20).
3. While at SHS, the Student had an IEP with an effective date of April 20, 2016. (S-20). It indicated that he was eligible for special education and related services under the Other Health Impairment category, which impacted his learning across all settings. (S-23, S-171). His psychoeducational evaluation performed in 2015 indicated that his full-scale score on the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-IV) was in the "average" range at 91. (S-75). Other scores included verbal comprehension: 91; perceptual reasoning: 115; working memory: 77; and processing speed: 85. (S-75). At that time, his diagnosis was Attention Deficit Hyperactivity Disorder ("ADHD"). (S-75).
4. While attending SHS, the Student's IEP included two math goals and one social goal. (S-24-25). He received five hours of social work services during the year. (S-27). He was with his non-disabled peers 62% of the time during school. (S-28). His post-graduation plans included higher education and work in pharmacy. (S-29).
5. The Student's family moved to North Berwick, Maine sometime in April 2016. (S-32, P-16).
6. The IEP Team at SHS convened on April 13, 2016 for the Student's annual review. (P-109). The Family had just moved to North Berwick and neither Parent was in attendance. (P-109, 110, 112). The Student's teachers reported his failing grades and disruptive behavior for the third quarter. (P-110). While he had "some good reading skills" and "solid skills in Math when he able to focus and do the work," his lack of focus and inability to complete assignments were of great concern. *Id.* He often needed redirection and reteaching. *Id.* At that time, it was noted that the Student wanted to be a scientist, go to college, and live independently. *Id.* His IEP called for resource room support, special instruction in math, and classroom accommodations. (P-111).
7. On September 14, 2016, the Student was admitted to Spring Harbor Hospital for mental health treatment due to threats to harm himself, assaulting and threatening his mother, and causing property damage at home. (S-11-12, S-104, S-B-4).<sup>6</sup> Upon release from the hospital on September 23, 2016, his primary diagnosis was disruptive mood dysregulation disorder with the following secondary diagnoses: ADHD, Combined presentation; intermittent explosive disorder; reactive detachment disorder. (S-15, S-104). He continued therapy and medication after his release from the hospital up until December 2, 2016. (S-104). However, there has been an ongoing concern about the impact of ongoing abuse and domestic violence in the home. (Farid Tr. 18, 23, Mother Tr. 72, S-104-106, Appendix S-B).

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<sup>6</sup> Earlier, the Student received a crisis assessment on April 1, 2016, due to his threats to harm himself and aggressive behavior towards his mother over a two-week period of time. (S-11, S-104).

8. The Student started his 10<sup>th</sup> grade year (2016-2017) in September, 2016, at Nobel High School (NHS) after his stay at the hospital. (S-25). His IEP, which was effective as of April 20, 2016, was carried over from SHS. (S-20).
9. An IEP Team meeting was convened on September 28, 2016. (S-31). . The Written Notice from that meeting indicated that the Student’s IEP would be amended to address the Student’s needs in algebra and geometry, and his coping skills. (S-32). The IEP Team stated that while his behavior was unremarkable at school, his ADHD required him to be in a special education setting in order to make progress in his educational goals. Social work services were included in the IEP as well. (S-32, 33). The Written Notice indicated that his Other Health Impairment (“OHI”) designation for special education eligibility included diagnoses of ADHD and Mood Disorder. (S-33).
10. By February 2017, the Student was partially meeting his one math goal and meeting another. (P-29). He was also meeting his functional goal of using positive coping strategies. *Id.* It was also noted that he was passing all of his academic courses. *Id.*
11. The IEP Team was convened on April 4, 2017 for the Student’s annual IEP review and planning for post-secondary goals and transition services. (S-38). At that time, the Student was meeting all of his IEP goals. (P-29). His teachers reported that he continued to need specialized instruction in math “to fill in missing gaps.” (S-40). The IEP Team agreed to write goals for math, writing, and social work (coping skills). (S-39). In addition, it was agreed that the Student would have access to the District’s Learning Center, graphic organizers, and extra time for assessments. (S-39). With respect to the Student’s post-graduation interests, the Team acknowledged that his areas of interest included pharmacy and nuclear engineering. (S-39). The Team noted that the Student worked hard; was attentive during class; communicated and participated in class well; and advocated for himself. (S-40). It was further noted that he was one of the nicest students they had that year. (S-40).
12. The effective dates of the Student’s new IEP ran from April 14, 2017 through April 13, 2018. (S-42). It included two math goals, one writing goal, and one functional performance goal to strengthen his coping skills. (S-46-47). His social work services decreased from five hours to three hours during the school year. (S-50). The percentage of time he was with his non-disabled peers increased from 62% to 75%. (S-50). The plan was to increase this to 98% in September 2017, the fall of the Student’s senior year. (S-50).
13. The IEP, dated April 14, 2017, included accommodations, one of which was to have access to the “Learning Center.” (S-42). It is a supported study hall where students can receive additional, direct academic support in a quiet environment. (Elwell Tr. 215).
14. By June 2017, the Student was meeting all of his IEP goals. (P-29).
15. On February 13 and 14, 2018, the Student engaged in emails between himself and the District’s staff who reported that he was using rude and vulgar language. (S-B-11).
16. On February 14, 2018, the Student was suspended from school following the Mother’s report to school staff members that the Student was in an agitated state and threatened to hurt people if she did not pick him up from school that day. (S-101, S-B-11, P-90-92). The District’s staff reported the Mother’s statements to the Police of their concern about the Student’s mental health status. (S-B-11). Based upon the Mother’s concerns and behavior exhibited in the Student’s texts to

staff, a decision was made by the District to suspend the Student for 10 days pending a risk assessment. (S-B-11, P-68). Prior to that time the Student did not have disruptive behavior at school. (Farid Tr. 23, Mother Tr. 72-73).

17. On February 16, 2018, a manifestation determination meeting was held with the Student's IEP Team. (S-54). The IEP Team concluded that his conduct was neither caused by, nor directly and substantially related to, the Student's ADHD. (S-58). It agreed to perform a risk assessment, and that until that was completed, the Student needed to stay out of the building to assure his safety and that of others. (S-58).
18. As a result of the manifestation determination, the Student's IEP was changed to reflect that he would be receiving "off-site" tutoring for 9 hours per week from February 16, 2018 to June 30, 2018, until a threat assessment could be made for further decision-making about his placement. (S-67, S-88). The Mother rejected the tutoring, stating that the Student felt like he was being targeted by the District. (S-95, P-100).
19. On February 28, 2108, the Student was issued a Criminal Trespass Notice from the North Berwick Police Department ordering him not to enter or be on the NHS property. (P-96).
20. The Student's triennial report was due in the spring of 2018. (S-94-95). As part of the reevaluation, a psychoeducational evaluation was completed by the District's psychologist, Christine McLennan, M.S., NCSP on January 8, 2018, and submitted on February 16, 2018. (S-74). In summary, Ms. McLennan reported that the Student was "above average" in the Cognitive Assessment System ("CAS") for "planning index," and "below average" for the "attention index" score. (S-82). Ms. McLennan believed that these scores were not consistent with a student with ADHD who was normed on this test. (S-77).
21. Ms. McLennan also reported, based upon teacher's rating scales<sup>7</sup>, that the Student had "At-Risk" scores in Learning Problems; School Problems; Adaptability; Social Skills; Study Skills; and Adaptive Skills. (S-79, 82). Two teachers rated him either "At Risk" or "Clinically Significant" for Depression. (S-79). She reported that the Mother's rating scale<sup>8</sup> indicated results that were "Clinically Significant" in all areas except for Attention and Functional Communication, which were rated as "At Risk." (S-79).
22. The Student's own rating scale<sup>9</sup> results were found to be in the "Clinically Significant" range for "Relations with Parents," and was in the "At-Risk" range for "Interpersonal Relations, Self-Reliance, and Personal Adjustment." (S-82).
23. Based upon the above results, Ms. McLennan recommended that the IEP Team consider methods to improve attention and reinforce learning, using various methods. (S-82).
24. The IEP Team met on March 16, 2018, for the Student's triennial evaluation. (S-94). While the academic evaluations were not all completed, the IEP Team agreed to wait to make determinations on eligibility and IEP goals until the Mother submitted the evaluation from Spring

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<sup>7</sup> As reported in the Behavior Assessment System for children – Second Edition (BASC-3).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

Harbor Hospital, where the Student was evaluated in 2016. (S-95). The Mother, who participated by telephone, continued to reject the tutoring being offered to the Student. (S-95)<sup>10</sup>.

25. As part of the Student triennial evaluation, a Woodcock Johnson IV test of academic achievement evaluation was performed on March 27, 2018. (S-97). The results indicated that the Student scored in the average ranges in four categories: Broad Reading; Broad Written Language; Academic Skills; and Academic Fluency. (S-99). He scored in the “low average” range in Broad Math. (S-98). He scored in the “low” range in the math calculation subcategory. *Id.* He also scored in the “low average” range in Academic Applications. (S-99). Mr. LeBlanc reported that while the Student could work through “real world” math problems and work with math concepts, he struggled with the pen and paper exercises of the test. He suggested that teachers provide the Student with a calculator to assist with his calculation and fluency difficulties. (S-100).
26. A psychological evaluation was performed by Dr. Joseph F. Wojcik, Ph.D. on March 12 and 21, 2018, based upon the IEP Team’s recommendation for a threat assessment. (S-101). In summary, Dr. Wojcik believed that the Student was at a “high risk for engaging in aggressive behavior in the school environment.” His diagnoses included disruptive mood dysregulation disorder; ADHD, combined presentation; intermittent explosive disorder; and reactive attachment disorder. (S-111). He recommended that the Student should be “in a place to protect against engaging in aggressive behaviors.” (S-111). He recommended that the Student be under close supervision, with a member of the school staff within earshot and at arm’s-length at all times. (S-111). He recommended that, due to his large stature, multiple staff members should be present in case the Student were to become aggressive. He also urged that staff make sure that he was not carrying weapons. (S-111, 112). Dr. Wojcik recommended that the Student continue to receive mental health treatment but his prognosis was guarded because of the Student’s resistance to several treatment opportunities offered to him. (S-112).
27. An IEP meeting was convened on March 30, 2018, to continue the Student’ triennial evaluation and to review additional assessments. (S-116). The IEP Team decided that, based upon review of the 2016 Spring Harbor evaluation and diagnoses, as well as Dr. Wojcik’s opinion that the Student was at a “high risk” for engaging in aggressive behavior in the school environment, citing his multiple diagnoses and demonstrated inappropriate types of behaviors, the Student would be transferred to the Mary Hurd Academy (“MHA”), a special purpose private school. (S-117, P-212).
28. The IEP Team has never suspected a speech or language disability. (Macri Tr. 256, 257). The Mother does not suspect a speech disability. (Mother Tr. 139).
29. The Parents disagreed with this placement and therefore the IEP Team concluded that the Student would continue to receive tutoring in a setting outside of NHS, due to the restraining order issued against the Student. (S-117, P-212).

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<sup>10</sup> The Mother could not attend in person due to a restraining Criminal Trespass Notice issued to her, prohibiting her from entering NHS. (P-94). This was amended to exclude prescheduled meetings or appointments designated by District officials. (P-215).



30. The Written Notice of the IEP meeting held on March 30, 2018 indicated that the Mother believed that 1) the manifestation determination was done improperly; 2) Dr. Wojcik's evaluation was inaccurate; 3) the Student would be in violation of the court's restraining order if he passed in work to the tutor; 4) he did not have appropriate supports and accommodations in place; 5) his age needed to be corrected on this IEP; 6) too much tutorial and downtime was a trigger for the Student; and 7) that the Student still had the same areas of weaknesses. (S-118).
31. The Student's new IEP became effective on March 30, 2018. (S-120). Special factors included the need for positive behavioral interventions. (S-121). His eligibility category changed from OHI to Emotional Disturbance. (S-120). It noted that his areas of weakness in math included math calculation and math facts fluency. (S-124). His IEP included one math goal which stated: "By March 2018, (the Student) will demonstrate an understanding of properties of functions (i.e. slope, evaluation, and solutions), properly set up the equation, and correctly solve the equations, as measured by his test/quiz grade in Infinite Campus and observation." (S-124).
32. The IEP math goal specifically stated that the Student would need tools such as a calculator. (S-124).
33. The IEP also included one functional goal, which stated: "By March 2019, given social work services and a small structured setting, (the Student) will independently access appropriate coping strategies (i.e. asking for help, accepting help, taking space and breaks) when frustrated on 9 out of 10 occasions as measured by daily documentation and teacher observation." (S-125). The functional performance section of the IEP specifically noted that the Student was motivated to learn; that he had a "strong intelligence;" and that he works hard when he builds relationships with teachers. (S-124).
34. The IEP included several accommodations and supports, including: ensuring understanding of directions; seating off to the side away from peers; assistance with task initiation; paraphrasing and emphasizing important information; graphic organizers to help with writing revisions for full credit; access to the Learning Center; motor breaks; use of fidgets; small group setting, if requested; and revisions for full credit. (S-126). It also included a Positive Behavior Support System, social work services, and extended year services. (S-126-127). The IEP indicated that he would be spending zero percent of the time with non-disabled peers because he would be attending MHA. (S-128).
35. The IEP included information regarding the Student's transition planning. It stated his interest in exploring and attending a four-year college for nuclear engineering or pharmacy. (S-129, 130). It also indicated that he would be completing 50 hours of community service to satisfy the graduation requirement. (S-131).
36. On April 25, 2018, the Parents and the District were able to resolve a separate due process hearing, MDOE Case Number 18.087X, through mediation. (S-158).
37. The Student began attending MHA on April 30, 2018 after missing his start date of April 10, 2018. (S-152).
38. MHA is a special-purpose school focused on experiential learning and positive behavioral interventions. (Elwell Tr. 202). It has a very low student-to-staff ratio, with a total of 32 students to 11 staff members, or a 3:1 ratio. *Id.*

39. MHA provides academic support in the form of specially-designed instruction and related services, but also provides students with significant social and emotional support. (Elwell Tr. 198). Programming provides students with work experience and community service opportunities, including working in a thrift store and the North Berwick Food Pantry, where students can gain job skills by helping with the Pantry's day-to-day operations. (Elwell Tr.198-199).
40. MHA is housed in a former elementary school. (Elwell Tr. 198). It has four special education classrooms; two quiet rooms that are available for students to take breaks, work one-on-one with staff, or work in a small group; an art room; consumer science room; and conference rooms. (Elwell Tr.199).
41. At MHA, the students receive academics in the morning and have the afternoons to attend Experiential Learning Opportunities (“ELOs”). *Id.* ELOs can include recreational opportunities, field trips tied to the curriculum or, in the Student's case, college tours. (Elwell Tr. 217, 222). Students who have not completed their classwork, or who exhibit unsafe or inappropriate behaviors, are required to attend academic support during the afternoon instead of attending ELOs. (Elwell Tr. 200). Academic support is essentially a guided study hall time where students can work on projects they have not yet finished, with the assistance of special education teachers. *Id.*
42. Although any student can attend academic support, the Student does not utilize this program as he completes all of his academic work and does not require additional support. (Elwell Tr. 202). MHA also provides two positive behavior support systems for all students. (Elwell Tr. 204-205). The first behavioral support system is a token economy system, which is implemented throughout the day. *Id.* Students earn points for exhibiting positive behavior, which they can use to purchase food or other items at the school store. (Elwell Tr. 205).
43. The second behavioral support system is a three-tiered “Level” system (Elwell Tr. 205). Students who are respectful, complete their work, help peers resolve conflicts, help their peers and the community, and generally go "above and beyond" are at Level 3. *Id.* Level 1 is for students who exhibit negative behaviors such as swearing or failing to complete tasks. *Id.* The Student has been a Level 3 student throughout most of his time at MHA. (S-152-153; Elwell Tr. 209-210).
44. Students at MHA also have access to significant organizational tools, graphic organizers, academic support blocks, and assistive technologies such as speech-to-text and text-to-speech software and calculators as a matter of course. (Elwell Tr. 210-212, 214-215).
45. Students at MHA are provided job coaching and placement, if they choose to access these services, through the Waban Project, a social services organization designed to help clients explore employment opportunities. (Elwell Tr. 219). Although the Student has had the opportunity to access this service, he has declined to utilize it. *Id.*
46. At the time the Student began attending MHA, the MHA staff implemented the IEP in effect at NHS, which was dated March 30, 2018. (S-120, Elwell Tr.). In addition to the supports included in the IEP (S-126), MHA also provided supports and accommodations imbedded into its programming. (Elwell Tr. 200, 210-212, 214-215). He has access to a “quiet room” that can be used at any time and is also available for extra academic support. (Elwell 199-200). He has

accommodations in each class, including calculators and math manipulatives, organizational tools, such as use of a binder system for each class and use of graphic organizers. (Elwell Tr. 200, 210-212, 214-215).

47. An IEP meeting was convened on June 14, 2018 in order to correct and update the Student's IEP. (S-135).<sup>11</sup> The IEP was corrected to reflect that the Student was placed at MHA, as a special purpose setting. (S-137). The IEP was also amended to delete the NHS "Learning Center" as an accommodation because it was replaced with the MHA placement. (S-136). Additional accommodations were added, which included: access to coping skills, prompting attendance, preferential seating, motor breaks, and the choice to not eat foods he does not want. (S-136).
48. The math goal in the IEP was amended to state "By March 2019, given specialized instruction in math, (the Student) will be able to write a function that describes a relationship between two quantities with 90% accuracy as measured by collected work samples." (S-143). The functional goal remained the same. (S-144).
49. Additional accommodations added to the IEP included prompts to attend; access coping skills; small group setting if requested; a positive behavior support system; healthy food choices. (S-145-146). Social work services were offered and transportation to MHA was offered. (S-147). Extended school year services were also included (S-147). The IEP indicated that he would be able to take part in electives or extracurricular activities at NHS if his academic and behavior were "up to standards." (S-148). The Student's Transition Plan remained the same. (S-149).
50. On September 27, 2018, the parties held a resolution session in an attempt to resolve the issues of this Amended Hearing Request. (S-166). As a result of the meeting, the Student's IEP was amended. (S-167, S171-183). Specifically, the decision was made to remove "Emotional Disability" as a qualifying category for the purposes of eligibility to receive special education and related services, because the Team determined that the Student's anxiety had decreased and no longer interfered with his ability to access his education, However, his ADHD continued to interfere with his ability to achieve adequate progress in math calculation. Therefore, the Team decided to keep the OHI designation. (S-167).
51. The IEP Team decided that adding a calculator, math manipulatives, and organizational tools for accommodations was appropriate. The Written Notice indicated that these additional accommodations resolved the Parents' concern that the Student needed assistive technologies as an accommodation. (S-167, 169).
52. The IEP Team included access to music, walks, quiet space, and "verbal self-advocacy to a staff member" as additional coping strategies. *Id.*
53. The IEP team added 45 minutes per week for math instruction. *Id.* The Written Notice stated that this additional time addressed the Parents' issue that access to a resource room had been removed from the Student's IEP. (S-167, 169).
54. The IEP Team amended the language in the IEP regarding the Student's transition plan to state "After graduation, (the Student) will attend a four-year college. He has expressed an interest in

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<sup>11</sup> The Mother was unable to attend although she did receive the Advanced Written Notice about the meeting. (Mother Tr. 107).

Nuclear engineering.” (S-167). The Written Notice stated that the change was made because the Mother questioned whether becoming a nuclear engineer was an appropriate goal. *Id.*

55. The IEP Team learned from the MHA staff at the September 27, 2018 resolution session that the Student was successfully completing his work and attending classes; that he participated in ELO’s; and that he was using his coping strategies for anxiety and working on increasing his ability to self-advocate with school staff. (S-168). The Team reviewed MHA’s “Level” system and was informed that the Student was consistently on Level 3. (S-169).
56. The Parents chose not to sign a statement indicating that their concerns were addressed. The Mother indicated that she might sign the IEP and the Father stated that he needed time to think about the results of the meeting. (S-168). The Mother did not respond to an email sent by Ms. Macri, the District’s Director of special education, outlining the agreed-upon changes. (S-A-24-25, Macri Tr. 50).
57. The Mother is neither a qualified teacher nor does she have experience in the field of education. (Mother Tr. 35, 50). She has not observed the Student at MHA. (Mother Tr. 57).
58. The Amended IEP was issued on October 4, 2018. It included the items discussed at the Resolution Session. Specifically, the qualifying disability category was changed to OHI. (S-171). Also, access to a calculator, math manipulatives and organizational tools, and access to a quiet setting if requested were added accommodations in the IEP. (S-177). The IEP included a statement that a positive behavioral support system was in place, and that one-on-one support in math would be provided. (S-178). Extended year services were also included. (S-179). While transportation was also provided in the IEP, the IEP team agreed to pay the Parents for transporting the Student. (S-179, 168).
59. Since being at MHA, the Student has achieved progress on his math goal and has average scores on his assessments. (Elwell Tr. 226-228, 239-241). While he has some weaknesses and is anxious when being assessed, his scores on the STAR Math assessment have shown average progress. (Elwell Tr. 240). Based upon his academic progress, the Student is able to graduate from high school with an NHS diploma in December 2018. (Elwell Tr. 221, 247-248, and Macri Tr. 265). He could choose to continue his studies through the spring. (Elwell Tr. 248, Macri Tr. 265).
60. The Student’s transition planning progressed while he has been at MHA. He visited York County Community College and will be visiting Southern Maine Community College. (Elwell Tr. 112, and Student Tr. 134). The Student has requested to do his senior project on nuclear engineering. (Elwell Tr. 218). Mr. Elwell, the Student’s lead teacher, credibly testified that the Student is able and bright and could study and be successful in the nuclear engineering or pharmacy fields. (Elwell Tr. 217). The Student could have access to a job coaching services through a contracted service MHA provides through Waban, a job coaching service, however the District believes he is capable and does not need the service. (Elwell Tr. 219). The District believes that the Student is highly capable of obtaining employment and may not need job coaching. (Macri Tr. 261).
61. The Student’s case manager has interviewed him and he has taken the “AIR self-assessment.” (Elwell Tr. 217; Macri Tr. 258). The self-assessment informs both interest and aptitude, which helps formulate plans for post-graduation. (Macri Tr. 258).

62. The Student also participates in weekly ELOs in the community. This include volunteering, (i.e. landscaping, working in the food pantry or thrift shop) or participating in outdoor activities, such as hiking. (Elwell Tr. 198).
63. The Student has been placed at Level 3 in MHA’s positive behavior support plan since May 4, 2018, three days from his start date at MHA. (S-152, Elwell Tr. 209). He has been a “model” student. He completes his work, is very well organized, has positive peer relationships, and has positive interactions on a daily basis. (Elwell Tr. 209, 212, 221). He has been a positive member of the school. (Elwell Tr. 210).

#### **IV. LEGAL FRAMEWORK**

##### The IDEA

Every student who is eligible for special education services is entitled under state and federal law to receive a "free and appropriate public education ... designed to meet their unique needs and prepare them for employment and independent living." 20 USC 1400(d)(1)(A). An IEP is the centerpiece of the IDEA’s education delivery system for disabled children. *Honig v. Doe*, 484 U.S. 305, 311 (1988). The hearing officer must examine whether the Student's educational program contained in his IEP was "reasonably calculated to enable the student to receive educational benefit." *Board of Educ. v. Rowley*, 458 U.S. 176, 207 (1982).

The Supreme Court addressed the “more difficult problem” left open in *Rowley* of establishing a legal test for substantive appropriateness of IEPs. *Andrew F.*, 137 S. Ct. at 993, 998. In *Andrew F., id.*, the Court explained that an IEP must be “reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances” and that “a student’s . . . educational programming must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” *Andrew F., id.*, 137 S. Ct. at 1000 (2017). The Court directed that “[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” *Id.* at 1001.

The Court in *Andrew F.* also explained that the "reasonably calculated" standard means that crafting an appropriate program of education requiring “prospective judgment” is a “fact

intensive exercise” that must be “informed not only by the expertise of school officials, but also by the input of the child’s parents.” *Id.* at 999.

### Burden of Proof

The burden of proof on each of the issues raised by the Parents rests with the Parents. *See D.B. ex rel. Elizabeth v. Esposito*, 675 F.3d 26, 35 (1st Cir. 2012); *see also Schaffer v. Weast*, 546 U.S. 49, 58 (2005). That is, the Parents must prove by a preponderance of the evidence that the Student’s IEPs from April 25, 2018 to the present violate the IDEA for failing to include assistive technologies, organizational tools, or a “learning center.” The Parents must also prove, by a preponderance of the evidence, that the Student’s IEPs from April 25, 2018 to the present failed to include an appropriate transition plan.

## **V. ISSUES**

1. Did the Student’s IEP, from April 25, 2018, violate the IDEA because it did not include technologies for speech, language, math, organizational tools; or an accommodation for a learning center?

Each IEP is required to contain “a statement of the special education and related services and supplementary aids and services... that will be provided for the child” so that the child can “advance appropriately toward attaining the annual goals,” “be involved in and make progress in the general education curriculum,” and “be educated and participate with” other disabled and nondisabled peers. 20 U.S.C. §1414(d)(1)(A)(IV); 34 C.F.R. § 300.320. As with all components of an IEP, a child’s related services and supplementary aids must be designed to meet the child’s needs that “result from the child’s disability to enable the child to...make progress in the general education curriculum.” *See generally*, MUSER IX.3.A.(1)(b); 20 U.S.C. §§ 1401(26), (29); (related services are the “support services required to assist a child ... to benefit from [their specially designed] instruction.”). *Andrew F., supra* at 994.

Under the Maine Unified Special Education Regulations (MUSER), an “assistive technology device” is defined as “any item, piece of equipment or product system...that is used to increase, maintain, or improve functional capabilities of a child with a disability.” MUSER XI

at pg. 135. The provision of assistive technology is considered a “related service” required to assist students with disabilities to benefit from special education. MUSER XI.

### Parents’ Position

The Parents alleged that the IEPs created on or after April 25, 2018 did not include assistive technology to accommodate the Student’s needs in speech, language and math. However, the Mother clarified at the hearing that the Student does not have a speech disability. She clarified that she believes his area of need included accommodations for math calculation because he has had difficulty in performing paper and pencil math calculations. The Parents argued that progress on the Students math goals “went down or stayed the same,” citing testimony by Mr. Elwell about the Student’s math assessments scores. (Parents’ brief). They contend that the Student should have had assistive technologies, such as a calculator and organizational tools, included in his IEP as a specific accommodation.

### The District’s Position

The District argues as an initial matter that without any qualifications or credentials, the Mother’s testimony is insufficient to meet the burden of proof in order to find a violation of the IDEA. It asserts that the issues cannot proceed to a substantive review without first finding that the Parents have met their burden of proof. It claims that since the Parents have not presented either testimonial or documentary evidence to support their allegations, findings should be made for the District that no violations of the IDEA has occurred. Citing *Mr. G and Ms. K v. Timberlane Reg’l Sch. Dist.*, 2007 WL 54819, at \*10, (parents’ opinion on the student’s progress insufficient to credibly assess progress without additional evidence.)

In the alternative, the District argues that the IEP Team agreed to include calculators, math manipulatives, and organizational tools in the IEP dated October 4, 2018, when the parties met for a resolution session in the matter. It asserts that while the IEP Team did not believe it was required to include these accommodations in order for the Student to receive a FAPE. It did so because calculators, math manipulatives, and organizational tools are supplied to students regardless of whether they have an IEP. It believed that the parties could avoid litigation on this point and agreed to add them to the IEP document.

The District also asserts that the Student is accessing an organizational system in place at MHA, which is a school-wide protocol. It noted that each student has a binder for each class that contains their work, task list, and notebook. The Student uses the binders from the beginning until the end of class. They are used to help him organize his thoughts in a visual manner, including for math problems and writing prompts. The District states that this organizational system is described in the IEP under accommodations as “organizational tools” and “graphic organizers.”

The District also argues that it removed the “learning center” accommodation from Student’s amended IEP, dated March 30, 2018, because he had been transferred to MHA, and the entire MHA program accomplishes the need for which the learning center was offered at NHS. The District described a learning center at NHS as a classroom where students could go to receive extra help with academic work. It essentially considered it a guided study hall for special education students. The District asserts that because MHA is a special purpose school, its resources for individualized instruction in a small group setting or one-on-one setting are imbedded in the entire curriculum. Small spaces are available for a student and teacher to use for individualized instruction if needed. The District also emphasizes that students have a daily block of time to receive individualized academic support, which is mandatory for students who do not complete assignments. The District asserts that while the Student has that time and space available to him whenever he needs it, he always completes his assignments, and therefore is not required to attend that block of time for academic support.

### Findings and Conclusions

I find that the Parents did not meet their burden to prove that the District failed to provide the Student with a FAPE with respect to the provision of assistive technology, organizational tools, and a “Learning Center.”

### Assistive Technology for Math Calculation

At all material times, the Student’s IEP included the use of a calculator. The IEP dated March 30, 2018, and amendments to it, all included a calculator either as part of the Student’s



math goal language or as an accommodation. (S-124, S-143, S-177). I also find that the District included math manipulatives in the IEP, amended on October 4, 2018. (S-177).

### Organizational Tools

I find that at all material times, the Student's IEP has included organizational tools, including graphic organizers, as an accommodation. The IEP dated March 30, 2018 included graphic organizers as an accommodation (S-126 S-145, S-177). I also find that the Student is accessing the imbedded accommodations at MHA, including the school-wide protocol of using organizational binders for each class.

### "Learning Center"

I find that the District did not fail to provide the Student with a FAPE by removing the "learning center" accommodation from the Student's IEP dated March 30, 2018.

The Student has access to instructional support at MHA in the same manner as he would have received it in the Learning Center at NHS. As a special-purpose private school, MHA is designed and approved to provide special education services to all of its students. MUSER II.39. Many accommodations and other related services are imbedded in its programming, including extra academic instruction in a self-contained setting if desired or required. This happens in either the classroom or in another room dedicated to more quiet and intensive extra help. Furthermore, I find that the Student has been able to complete his assignments at MHA and has made good progress toward his IEP goals. Therefore, the need for more a self-contained setting for individualized support is unnecessary at this point in time. Therefore, I find that the District did not violate the Student's IEP by deleting the "learning center" from his IEP.

### Conclusions

Based upon the above, I find that the Parents have not met their burden in proving that the District failed to provide a FAPE to the Student based upon the allegation that it did not provide appropriate accommodations or related services.

2. Did the District fail to include an appropriate transition plan into the Student's current IEP?

The IDEA requires that all IEPs include transition planning for post-secondary life. 34 CFR 300.43; 20 USC 1414(d)(1)(A)(VIII), and 34 CFR 300.320(b)(1)(2)(3); 20 USC 1414(d)(6); MUSER VI.1.C.3. Under the IDEA, "transition services" mean:

[A] coordinated set of activities for a child with a disability that 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 post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- is based upon the individual child's needs, considering the child's strengths, preferences, and interests;
- and includes instruction, related services, community experiences, the development of employment and other post school adult living objectives, and if appropriate, acquisition of daily living skills and provision of a functional vocational assessment.

Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education. 34 CFR 300.43.

Beginning no later than 9th grade, the IEP Team must start a transition plan and update it annually. It must include:

- appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;
- transition services, including courses of study (such as participation in advanced placement courses, a vocational education program, or adult education program) needed to assist the student in reaching those goals;
- and beginning not later than 1 year before the student reaches the age of majority under State law, a statement that the child has been informed of the child's rights under IDEA, if any, that will transfer to the child on reaching the age of majority under 20 USC 1415(m) of IDEA. [20 USC 1414(d)(1)(A)(VIII) and 34 CFR 300.320(b)]

A failure to perform age-appropriate transition assessments or to develop postsecondary goals violates the IDEA. *Carrie I. v. Department of Education, State of Hawaii*, 869 F.Supp.2d 1225, 1244-45 (D. Haw. 2012); *Dracut v. Bureau of Special Education Appeals*, 737 F. Supp.2d

35, 50-51 (D. Mass. 2010); *East Penn School District, Plaintiff v. Scott B., et al., Defendants*, 29 IDELR 1058, 29 LRP 5231 (E.D. Pa 1999), aff'd 213 F.3d 628 (3d Cir. 2000).

### Parents' Position

The Parents allege that the Student's IEP does not include an appropriate transition plan. They argue that while the Student has been interested in the field of pharmacy and nuclear engineering over the years, it is unrealistic that he will achieve success in either of these fields. They assert that more appropriate goals would be to enroll at Kings College, a technical school, and take a business math class to improve his work-related math. (Parents' brief). They assert that a statement of proper post-secondary goals should read: "After graduation, (the Student) will work 20 plus hours a week at the local grocery store and [be] provided temporary supports through Vocational Rehabilitation." *Id.* The Parents state that he has not taken his SAT and argue that the Student has not had a course of study that relates to his interests in nuclear engineering or pharmacy. They believe that his math skills are under par for these professions. They also believe that since he lacks self-organization and life skills at home, that he would be more suited to a skilled vocational career.

The Parents argue that the Student has not been engaged in any community experiences. They do not believe that the ELOs, which include going out to eat, going to the beach, or hiking, provide the life skills that they believe he needs.

### The District's Position

The District argues that the Student's success at MHA indicates that he would be capable of going to a four-year college and has the ability to work in either the field of pharmacy or nuclear engineering. The District asserts that the Student's course of study in high school provides him with the prerequisites he needs to study in either field. It notes that he has already toured York County Community College and met with staff in the admissions office. He is also scheduled to tour Southern Maine Community College. It points out that MHA will be helping the Student with the admissions process and student loan applications. It asserts that the ELO program at MHA has allowed the Student to obtain "real-life" experiences that he will need in all

aspects of post-graduation life and notes that he will be engaging in a senior project focused on nuclear engineering.

The District asserts that the Student could obtain job coaching services through the Waban Project if he chooses to find a job rather than attend college. He also receives social thinking skills through MHA and has been successful at Level 3 in the positive behavior support program. The District asserts that his success is evidence that he has learned important life skills such as work completion, promptness, respect, and how to stay on task. The work opportunities he has had while at MHA have included working in the thrift shop and food bank operated by the community at MHA. The District states that based upon his program and transition plan, the Student will be ready to move on successfully after graduation.

### Analysis

I find that the Student's transition plan is appropriate. The Student's IEP transition plan indicates that he has taken the "AIR Self-Assessment" and has had a student interview about his post-secondary interests. His IEPs have consistently indicated that he intends to go to a four-year college, and he has an interest in nuclear engineering. His regular course of study through high school has included a senior project focused on nuclear engineering. His teacher unequivocally stated that these prerequisites allow him to be ready to graduate from high school and attend college. During his senior year, the Student has started to explore local community colleges and their programming to determine which is the best fit for him. The MHA staff will be assisting him with college applications and student loan applications. It also has a job coaching service if, in fact, the Student needs it for purpose of job hunting.

With respect to life experience, the Student will participate in 50 hours of community services within his community. He has already worked in the food pantry attached to MHA and the thrift shop.

I find that Mr. Elwell's testimony was credible in his assessment that the Student has the skills and ability to obtain his post-secondary goals. He unequivocally stated that the Student is bright and, while he needs specialized instruction in math, his recent progress in math has been satisfactory.

The Student has remained at Level 3 in the MHA's school-wide positive behavior support plan. He has been a model student in all respects and is eligible to graduate a semester early if he chooses to.

I find that the record is insufficient to substantiate the Mother's testimony that the Student does not have the ability to reach his goals. While the Parents are concerned about the Student's seeming lack of life skills at home, this is insufficient to find that the transition plan in his IEP is legally inappropriate. Since he has been at MHA, the Student has been organized at school with the aid of organizational tools such as academic binders and graphic organizers.

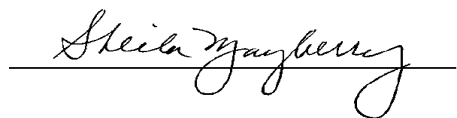
The Mother lacks the qualifications to make informed judgments regarding educational determinations. Her opinion that the Student lacks sufficient math skills is also not informed by qualified experts or teachers.

Based upon the transition planning as written in the IEP and the credible testimony of how it is being implemented by MHA, I find that the Student has an appropriate transition plan, which is being appropriately implemented by the District through MHA.

## **VI. REMEDY**

Based on the fact that no violations of the IDEA were found, no remedy is warranted. I find that the Student has been successful at MHA and is on track to graduate in December 2018. This hearing officer is hopeful that the Student's success at MHA can and will carry him into adulthood.

It is so Ordered.

A handwritten signature in cursive script, reading "Sheila Mayberry", is written over a horizontal line.

Sheila Mayberry, Hearing Officer  
December 2, 2018