

**COMMONWEALTH OF MASSACHUSETTS  
SPECIAL EDUCATION APPEALS**

**In Re: Pembroke Public Schools**

**BSEA #12-0507**

**RULING ON MOTION TO ORDER COMPLIANCE WITH DECISION**

On March 2, 2012, the BSEA issued a final decision (Decision) in the above-entitled matter. The Conclusion and Order in the Decision is reproduced verbatim, below:

Within thirty (30) days from the date of this Decision, the Pembroke Public Schools shall locate or create a public or private educational placement for Student that is a fully-integrated language-based program designed to meet the needs of children with at least average intelligence who have severe dyslexia, and are several years behind their grade level in basic reading and writing skills.

The placement must provide, at a minimum, daily individual Orton-Gillingham tutoring in reading by appropriately qualified staff, as well as corresponding instruction in writing. As in past years, the program shall provide a summer component. Given the Student's skills and interests, the placement should be capable of allowing Student to participate in extracurricular activities such as athletics, if he chooses to do so.

On April 10, 2012, the Parents, through Counsel, filed a Motion to Enforce Decision and Order, pursuant to Rule XV of the BSEA *Hearing Rules*. Parents allege that the Intermediate Language Enhancement Program of the South Shore Educational Collaborative, in which the Pembroke Public Schools (Pembroke or School) offered to place the Student, does not meet the requirements of the Order quoted above. The School opposed the Motion, asserting that the proposed placement at the LEP does, in fact, meet the criteria set forth in the Order of March 2, 2012.

A hearing was held on April 30, 2012 at the office of the BSEA in Malden, MA. Oral closing arguments were presented by telephone on May 2, 2012. The record consists of Parents' Exhibits PC-1 through PC-6; School's Exhibits SC-1 through SC-4, several hours of tape-recorded testimony and argument, and the transcript of the proceedings on April 30, 2012 created by the certified court reporter.

Those present for all or part of the proceeding were:

Parent

Elaine Lord

Susan M. Brefach, Ed.D.

Parent Advocate

Private Psychologist

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| Aron Blidner, Ph.D.   | Secondary Special Ed. Coordinator, Pembroke                                         |
| Michael Murphy        | Asst. Dir. Pupil Personnel Services, Pembroke                                       |
| Laurie Dolan          | Co-Coordinator, Language Enhancement Program, South Shore Educational Collaborative |
| Henry Perrin          | Director, South Shore Educational Collaborative                                     |
| Sean Goguen, Esq.     | Counsel for Parents                                                                 |
| Doris M. Ehrens, Esq. | Counsel for School                                                                  |
| Paula Rivera          | Paralegal for School                                                                |
| Sara Berman           | BSEA Hearing Officer                                                                |
| Laurie Jordan         | Court Reporter                                                                      |

### **ISSUE PRESENTED**

The sole issue for this matter is whether or not the Intermediate Language Enhancement Program (LEP) of the South Shore Educational Collaborative (SSEC) meets the requirements of the Order contained in the BSEA Decision issued on March 2, 2012.

### **POSITION OF PARENT**

The LEP at SSEC does not fulfill the requirements of the Order because it is not a fully-integrated language-based program designed for students with at least average intelligence and severe dyslexia. Rather, the LEP is designed for students with Asperger's Syndrome, non-verbal learning disorders, and similar disabilities who need assistance with comprehension and social interaction. The LEP does not currently provide 1:1 Orton-Gillingham (O-G) instruction to its students, and even if it were to do so for Student alone, it would not be able to integrate O-G strategies across the curriculum. Since the School has not offered an appropriate alternative during the time period allowed for compliance, Student must be placed at the Kildonan School, as requested by the Parents, which is the only available placement capable of meeting Student's needs.

### **POSITION OF SCHOOL**

The LEP proposed by the School is an integrated language-based program that is designed to meet the needs of students with a variety of language-related needs, including students with dyslexia. The program's co-director is O-G certified and both could provide daily O-G tutorials to Student and assist teachers in incorporating these strategies into the classroom. The peer grouping would be appropriate. The LEP program is both consistent with the BSEA Order and appropriate for the Student. On the other hand, the Kildonan program is much too restrictive for the Student, and the Parent has presented insufficient evidence that it would be appropriate.

## FINDINGS OF FACT

1. The entire Decision of March 2, 2012 in this matter is adopted and incorporated by reference in this Ruling.
2. Shortly after issuance of the Decision of March 2, 2012, the Parents and School began searching for a placement within Massachusetts that would meet the requirements of the Order. They primarily searched independently from each other. (Parent, Murphy) Pembroke's Assistant Director of Pupil Personnel Services, Michael Murphy, testified that initially Pembroke considered creating a program for Student. Subsequently, Mr. Murphy explored approximately seven Massachusetts programs, both public and private, as potential placements for Student, but was unable to locate a program that would both be appropriate and have a slot available for the Student. Mr. Murphy testified that "[i]t was very difficult in locating a program that complied with the hearing decision." (Murphy, Tr. p. 95)
3. As stated in the Decision in this matter at Paragraph 83, Carroll, Landmark, and Learning Prep. schools had been investigated previously; however, the confluence of Student's age, severity of his decoding deficits, methodology required, unavailability of an appropriate class grouping, and distance from Student's home made all of these programs inappropriate for one or more reasons. (Decision, Para. 83)
4. Mr. Murphy did have conversations with the LEP Co-coordinator, Laurie Dolan, in which he informed her of the elements of the Order. He testified that Ms. Dolan told him the program would be a good fit and the peers would be appropriate; that O-G tutoring could be put into place for Student. When Mr. Murphy had these conversations with Ms. Dolan, Pembroke had not yet provided Ms. Dolan with any documentation about Student, or with the Decision, and most likely had not explicitly informed her of Student's decoding level. (Murphy)
5. On or about March 22, 2012, the School sent a referral packet on behalf of Student to the LEP at the SSEC in Weymouth.<sup>1</sup> The referral packet contained the following documents: IEP dated May 25, 2011, MCAS test results for Spring 2011; School-generated psychological, educational and reading assessments from May 2009 (4<sup>th</sup> grade), and report cards and MCAS results from the 2007-2008 school year (3<sup>d</sup> grade). The 2011 neuropsychological report of Dr. Susan Brefach, cited to in the Decision of March 12, 2012, was inadvertently omitted, and as of the hearing date, the staff from the LEP had not read this report. The packet also did not contain any other recent test results, evaluation reports, or work samples. The packet did not contain a copy of the Decision in this matter, or any indication of the Order that is at issue here. (PC-3, Murphy, Dolan, Perrin, Blidner)
6. The LEP accepted Student for enrollment on or about April 2, 2012. At that time, no staff person from the LEP had met Student or Parents or reviewed any materials other

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<sup>1</sup> Pembroke also sent a referral packet to the Clearway School. (Murphy) The Parents assert that Clearway would be inappropriate for Student and the School is not continuing to propose it.

than those referred to above. (Perrin, Dolan) The next steps in the process would have been for Student and Parents to visit the program. If the Student were to attend, the LEP would gather additional information about his educational skills and needs in order to plan his programming. (Dolan)

7. On or about April 6, 2012, Parent met with Ms. Dolan, the co-coordinator of the LEP, and Dr. Perrin, who is the Director of the SSEC. Parent discussed Student and his profile and needs. Dr. Perrin testified that he informed Parent that while the LEP could provide O-G tutoring, “that piece about the Orton-Gillingham being interwoven into all of the content area, I did really give an indication that I felt that was an area that we did not specialize in.” (Perrin, Tr. P. 136)
8. Parent testified, and stated in his affidavit (PC-6) that Dr. Perrin told him, during their conversation, that the LEP students were “below average” intellectually. Dr. Perrin testified that he had told Parent that the students probably were “low average to average range.” (Perrin)
9. The Intermediate LEP has been in existence for approximately 17 years. The program is housed in two self-contained classrooms within a public middle school building in Weymouth, MA. According to Ms. Dolan, the LEP should be considered “language based.” She stated that the LEP provides multisensory instruction. The teaching materials used are designed to provide “a highly structured, high interest, low readability approach” so that students can access grade-level curriculum at their individual reading levels. (Dolan)
10. The LEP serves approximately 11 students in grades 7 and 8. In contrast to Dr. Perrin’s representation to the Parents as referred to above, Ms. Dolan testified at the hearing that the students enrolled were generally of average-range intelligence; with a few students falling either above this level or slightly below. Most of the students read at a third to fourth grade level. The LEP is able to serve students with disabilities such as ADHD, Asperger’s Disorder and non-verbal learning disorders. As of the date of the compliance hearing, one eighth grade student had Asperger’s and another had a non-verbal learning disorder. (Dolan)
11. The seventh grade students with whom Student would be grouped generally carry diagnoses of ADHD and/or specific learning disabilities, primarily expressive and receptive language and communication disorders. (Dolan)
12. Some students carry diagnoses of dyslexia.<sup>2</sup> One student has severe dyslexia, and reads at approximately a fourth grade level (in eighth grade); the other dyslexic students are considered to be moderately affected. (Dolan) None of the students has

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<sup>2</sup> The record is not clear on how many students in the LEP have diagnoses of dyslexia. Ms. Dolan testified once that eleven students had this diagnosis, but also that only four students were dyslexic. Since there are only about eleven students in the entire program, I conclude that it is more likely that four is closer to the correct number of dyslexic students enrolled.

decoding problems as severe as Student's. (Perrin) None currently requires O-G instruction, and so this instruction is not currently being provided to any LEP students. Some or all of the dyslexic students may receive Wilson instruction.<sup>3</sup> (Perrin)

13. The staff at the LEP consists of two special education teachers, one of whom is certified in Wilson Reading-Level One; a speech/language pathologist who also is a certified O-G instructor and co-director of the program, and Ms. Dolan, the other co-director, who is a Master's level social worker. Ms. Dolan both oversees the program as a whole and teaches the social skills groups. (Dolan)
14. All LEP students are enrolled in one of two different social skills classes, based on their needs and skill levels. The classes meet approximately daily, and cover topics ranging from dealing with peer pressure and other typical middle school issues to conversational skills such as eye contact and turn taking. (Dolan)
15. If Student were to enroll in the LEP, he could receive daily O-G tutoring from the speech/language pathologist, who also could consult with classroom teachers to integrate O-G strategies into the classroom. Student would be the only student at LEP receiving O-G instruction, or any other individual reading remediation. He might be able to receive his O-G tutoring in the time slot reserved for the social skills class, if he does not need to participate in the latter. (Dolan)
16. On or about April 3, 2012, Dr. Susan Brefach had a telephone conversation with Ms. Dolan to gather information about the LEP. Dr. Brefach testified that "she [Ms. Dolan] told me that there were three seventh graders and seven eighth graders in the program. That cognitively they fell within the low-average range. That primary difficulties included ADHD or ADD, social perceptual difficulties and reading comprehension weaknesses. She said that they did [not] have fluency or decoding problems. That they did not receive direct remedial reading instruction. That there were no Orton- Gillingham certified members who were part of the staff.<sup>4</sup> And that the population participated in social skills training several times per week with the speech and language pathologist and herself to develop more appropriate social and interactional skills...[She said] that their primary disabilities involved a lack of reading comprehension skill." (Brefach, Tr. P. 44-45)
17. Dr. Brefach observed the LEP program on April 25, 2012 for approximately four hours. She observed portions of two reading comprehension classes, a math class, a social skills group, and a science class. In sum, Dr. Brefach concluded that the program would be inappropriate for Student because it was not designed for children with profiles similar to his. She observed that the LEP students were more advanced

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<sup>3</sup> Dr. Perrin testified that if a child's decoding had ever been impaired enough to require O-G, he or she would ideally have received such instruction in elementary school, and made enough progress to benefit from Wilson upon reaching middle school at the LEP. (Perrin)

<sup>4</sup> There is no dispute that in fact, the speech/language pathologist at the LEP is O-G certified. Dr. Brefach, Ms. Dolan, and Dr. Perrin subsequently testified to this effect.

at decoding and writing than Student; on the other hand they were unable to comprehend and draw inferences as well as Student, and the emphasis in classes was on comprehension, which is not an area of weakness for Student. (Brefach)

18. She testified that the materials were not presented in a truly language-based, multisensory format, as required by Student. She further testified that the program had a strong focus on social skills. Specifically, Dr. Brefach observed that there were many posters and signs on the wall concerning appropriate social behavior, including eye contact and tone of voice. Additionally, she observed staff giving consistent positive feedback to students about their behavior. Dr. Brefach stated that Student did not require such reminders and feedback, and that this emphasis was inappropriate for him. (Brefach)
19. Dr. Aron Blidner, Pembroke's Secondary Special Education Coordinator, observed the LEP program on the same day as Dr. Brefach. He concluded that the program was an integrated language-based setting that would be appropriate for Student. In support of this position, Dr. Blidner noted that he had observed that in one of the reading comprehension classes, "[a]s students were talking [about the main character in a story], [the teacher] was writing it up on the thought level [on a Smart Board.] Thus making it visual for students..." (Blidner, Tr. P. 182)
20. Dr. Blidner also noted that in math class, the teacher helped students analyze the instructions for solving problems before doing the actual computation. (Blidner)
21. In general, Dr. Blidner felt that the staff at the LEP would be able to differentiate their teaching to meet the needs of Student just as they would for any other child with language issues who was enrolled in the program. (Blidner)
22. The Parents continue to seek residential placement<sup>5</sup> for Student at Kildonan. Kildonan is described in Paragraphs 80 and 81 of the Decision as follows:

The Parents seek to place Student residentially at the Kildonan School in Amenia, New York. Kildonan is a specialized day and boarding school for children in grades 1 through 12 who have at least average intellectual ability as well as dyslexia. Kildonan is chartered and registered by the New York State Board of Regents and is accredited by the New York State Association of Independent Schools; however, Kildonan is not Chapter 766 approved by Massachusetts.

According to pages from Kildonan's website, there is a discrete middle school component, specifically designed to meet the needs of children in grades six through eight. Central to Kildonan's program is its Language Training program, which provides daily individual

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<sup>5</sup> The residential component would be necessary because of the distance of Kildonan (in New York) from the Parents' home in Pembroke.

reading tutorials, using the Orton-Gillingham approach, reinforced by nightly structured study halls. Language Training teachers must complete at least 70 hours of Orton-Gillingham training, in addition to ongoing training during their employment. Content area subjects at the middle school level are hands-on, multisensory and project based with reduced writing demands while writing skills are being remediated. Math classes are aligned with the sequential approach of the language training... Decision, at Paras. 80, 81.

## **FINDINGS AND CONCLUSIONS**

Based on the testimony and documents presented at the compliance hearing, I conclude that Pembroke has not complied with the Order contained in my Decision of March 2, 2012. The LEP operated by the SSEC is not designed for children with a profile similar to Student's, and would not be an appropriate placement for Student. Rather, the program is designed for children with communication disorders which primarily impair comprehension and social interaction, rather than decoding and encoding. While Ms. Dolan testified that there are dyslexic students within the LEP, none has decoding/encoding deficits as severe as Student's, and none requires O-G remediation. On the other hand, it is clear that Student's comprehension skills and social skills are more advanced than those of the proposed peers at the LEP.

During the compliance hearing, it became clear that the SSEC and the LEP, as represented by Dr. Perrin and Ms. Dolan, took the position that the LEP program could be adapted or differentiated to meet Student's needs (e.g., by providing him with O-G tutoring in lieu of a social skills group). On the other hand, when originally contacted by Parent and Dr. Brefach,<sup>6</sup> these individuals, especially Dr. Perrin, described the LEP student population as one with different characteristics and needs than Student, and the LEP program as one which addressed the needs of those students rather than those of a severely dyslexic child with intact comprehension and social skills, like Student. I conclude that when Dr. Perrin and Ms. Dolan first described their program to Dr. Brefach and Parents, they were candid and disinterested, and probably more accurate in their descriptions than in their later testimony.<sup>7</sup>

While the LEP and SSEC representatives now may sincerely believe that they can make adjustments in the LEP program to make it appropriate for Student, such adjustments would make Student the only one of his peers receiving O-G instruction, or requiring implementation of O-G strategies in the classroom, while receiving

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<sup>6</sup> As previously stated, the referral packet that Dr. Perrin and Ms. Dolan had reviewed did not contain Dr. Brefach's report or any updated test results or progress reports.

<sup>7</sup> I further note that Perrin's and Dolan's original comments to Dr. Brefach and Parents were consistent with the program description on the LEP website, which states that the LEP typically serves students with "Asperger's Syndrome, Non-Verbal Learning Disorders, Dyslexia, ADHD, and Specific Learning Disability." While dyslexia is mentioned, it does not appear to be the program's primary focus.

comprehension instruction, and possibly social skills training, that he does not need.<sup>8</sup> Student is finishing seventh grade with severe deficits in basic decoding and encoding, resulting in severely impaired literacy skills. His programmatic needs are clear and straightforward. It may be that the LEP program could be adapted to meet Student's needs, but Student cannot afford to experiment.

The Parents have requested that Pembroke place Student at the Kildonan School in New York. Based on the evidence presented in the original hearing in this matter, and incorporated into the Decision, Kildonan appears to be an appropriate placement for Student.<sup>9</sup>

### ORDER

Pembroke is hereby ordered to immediately take all necessary steps to fund Student's residential placement (including summer programming) at the Kildonan School, including but not limited to obtaining approval for Kildonan as a sole source placement. Pembroke shall also be responsible for transportation. Pembroke shall immediately draft an IEP to this effect.

While the Parents may elect to have Student begin the placement during the summer of 2012, the effective date of this Order shall be considered May 18, 2012.

By the Hearing Officer:

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Sara Berman

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Date: May 18, 2012

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<sup>8</sup> I further credit Dr. Brefach's testimony over Dr. Blidner's regarding the appropriateness of the LEP program based on their observations. Dr. Brefach has met with and tested Student. Dr. Blidner has not. Further, I note that Dr. Blidner's description of linguistic strategies that he observed at LEP in fact seemed focused on comprehension, not decoding and encoding.

<sup>9</sup> The School requested that I take administrative notice of four court decisions that contain findings and/or rulings disapproving public funding for the Kildonan School: Davis v. Wappinger's Central School District, 431 F. Appx. 12 (2d Cir. 2011) (unpublished); Adrienne and Joshua D. v. Lakeland Central School District, 686 F. Supp. 2d 361 (SD NY 2010); Matrejek v. Brewster Central School District, 471 F. Supp. 2d 415 (S.D. NY 2007); Viola v. Arlington Central School District, 414 F. Supp. 2d 366 (SD NY 2006). It would be inappropriate to adopt or rely on factual findings and conclusions issued by federal courts located in New York, reviewing the decisions of New York hearing officers, during school years spanning the period from 2003 (Viola) through 2008 (Adrienne and Joshua D.)

