

DECISION

This decision is issued pursuant to M.G.L.c. 71B and 30A, 20 U.S.C. §794 and the regulations promulgated under those statutes. A hearing was held on May 29 and 30, and June 13, 2012 at the Department of Elementary and Secondary Education in Malden, MA. Those present for all or parts of the proceedings were:

Mr. V	Parent
Ms. V.	Parent
Rachel Wiseman	Consulting Psychologist
Naami Turk	Consulting Psychologist
Marie Doherty	Adjustment Counselor, Walpole Public Schools
Mary Caine	Special Education Teacher, Walpole Public Schools
Ryan Connors	Special Education Teacher, Walpole Public Schools
Karen Baumgartner	Special Education Teacher, Walpole Public Schools
Courtney Nottebart	Special Education Teacher, Walpole Public Schools
Anne Curley	Job Coach Coordinator, Walpole Public Schools
Linda McKelligan	Director of Student Services, Walpole Public Schools
Carol Peck	Team Chair, Walpole Public Schools
Ron Allen	Director, Ivy Street School
Elaine Lord	Advocate for Parents
Sean Goguen	Attorney for Parents
Mary Joann Reedy	Attorney for Walpole Public Schools
Lindsay Byrne	Hearing Officer, BSEA

The official record of the Hearing consists of documents submitted by the Parents marked P-1 through S-26, and approximately 16 hours of recorded oral testimony and argument. The Student did not attend the Hearing. Before each day of Hearing the Parents moved to sequester all witnesses. There are no BSEA regulations addressing sequestration. The Hearing Officer determined that there were no compelling reasons, nor circumstances unique to this matter, sufficient to overcome past practice and settled expectations permitting all interested and/or affected individuals to participate in special education due process proceedings. Therefore the Parents' Motions to Sequester were DENIED. The Parties elected to present oral closing arguments by telephone after the conclusion of the evidentiary portion of the hearing. Immediately prior to beginning closing arguments the School requested leave to introduce additional evidence, a proposed IEP developed and presented to the Parents after

¹ "Violet" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

the last day of hearing. The School's Motion to Introduce Additional Evidence was DENIED. Oral closing arguments were presented on June 27, 2012 and the record closed on that date.

ISSUES

1. Whether the Individualized Education Plan proposed by Walpole in January 2012 and corrected in March 2012, covering the time period January 2012 to January 2013, is reasonably calculated to ensure that Violet receives a free, appropriate public education? And
2. If not, whether Violet requires a day placement at the Ivy Street School in order to receive a free appropriate public education?

SUMMARY OF THE EVIDENCE

1. Violet is a seventeen year old student who has received special education services through the Walpole Public Schools throughout her school eligibility. Due to a perinatal left hemisphere stroke, complex partial seizures and a right visual field deficit, Violet demonstrates visual spatial challenges, significant processing speed and working memory deficits, weak executive function skills (including organization, initiation, motivation, synthesizing information, integrating details, and frustration tolerance), low average verbal cognitive skills and weaker non-verbal skills, and reduced physical and attentional stamina. Violet moves slowly and startles easily. She is a persistent, hardworking student who relates well to adults and has few peer interactions. (Parent; Wiseman; P-1, S-16)

2. Violet has participated in inclusion special education programs throughout her Walpole School career. Since entering Walpole High School in 2009, Violet's participation in mainstream classes has been gradually reduced. Her mainstream teachers consistently reported that the content was too difficult and the pace too fast for Violet, even with significant adult support and testing and production modifications (S-17; S-19;S-20; P-26; P-27). For example, her Biology teacher wrote in May 2011:

"[Violet] struggles to keep up with the pace of the class and it seems that she is continually trying to catch up...[Violet] has a hard time remembering labs and other activities we have done and it then becomes difficult for her to connect topics and use the labs to reinforce the ideas presented in class." (S-17)

Special education teachers concurred, reporting that Violet demonstrated poor recall of previously "learned" material, weak organizational skills, and difficulty initiating assignments without direct adult assistance. Teachers also consistently reported that while Violet had pleasant interactions with adults, her relations to peers were immature and inappropriate. As a representative example, Violet's Language Inclusion Academic Support Instructor, Ms. Nottebart, reported in November, 2012:

[Violet] does not interact with any other students and prefers to speak with myself... [Violet's] memory and processing are slow and impact her day to day academic function. It appears that she may forget what is being asked of her and needs constant reminders. [Violet] has not been completing her hw (sic) fully or regularly. This is 2fold

(sic). She is not prepared in class and also is missing out on the skill building/reinforcement that hw provides. I am not sure if Violet is not completing her hw because she finds it too difficult or due to other reasons. [Violet] becomes upset when I bring this topic up to her. She may start to engage in self-hurting behaviors- putting her hand/fingers in mouth or scratching her arm/hand... At this time I feel [Violet] is overwhelmed with her course load (S-20; S-25).

Violet's special education English language arts teacher wrote in the spring 2011

She does not demonstrate ability to relate to her peers on an appropriate social-emotional level. She is being given opportunities to work with other students on daily activities where I observe more parallel interaction (S-17; See also: P-26; P-27; S-10).

Teachers reported consistent difficulties with memory, pace, social relations, and assignment completion in regular and special education academic classes, as well as in special education prevocation in the 2009-2010, 2010-2011 and 2011-2012 school years. There were very limited notations indicating progress or superficial success in any domain or setting. (P-26; P-27; S-17; S-18; S-10)

3. In November 2010 Dr. Katrina Boyer of the Epilepsy Program at Children's Hospital Boston, directed a Neuropsychological Assessment of Violet. Dr. Boyer had evaluated Violet previously in 2005 and 2007. (P-4; P-3) The November 2010 Evaluation Report states:

Overall, on the basis of a standardized intellectual battery, verbal comprehension abilities are in the low-average range, whereas visual-spatial analysis and construction skills are in the borderline range. These findings indicate a relatively stable pattern of performance in these abilities over time (stronger verbal skills), although there is some evidence that Violet is not making adequate developmental progress on these domains based on multiple evaluations...

The neuropsychological protocol as a whole highlights a neurobehavioral disorder in the context of complex partial epilepsy and perinatal stroke. This disorder is characterized by relative weaknesses in bilateral fine motor dexterity, visual-spatial analysis and organization, memory and encoding of visual information, processing speed, working memory, social-emotional adjustment, and adaptive functioning. [Violet] has problems synthesizing information, integrating details into more general concepts and relating what she learns in one context to another. These weaknesses are seen in the context of well-developed language based skills, and problem solving skills and nonverbal concept development...

[Violet]'s neuropsychological weaknesses place her at significant risk for continued problems in school, particularly as academic and independent living demands increase. Given her current weaknesses [Violet] would be expected to have increased difficulty with learning new information when presented over a short period of time. She continues to have difficulty synthesizing information and is likely to miss primary concepts and main principals(sic) while focusing on individual details. In addition, weaknesses short-term(sic)(working) memory, the part of the executive function responsible for maintaining information actively in the mind in order to manipulate and/or execute a task, decreases the total amount of information [Violet] can process at

a given time in order to learn it appropriately, and this is further impacted by her relatively slow speed of information processing. Lastly, challenges with visual perception limit her ability to benefit from educational aides such as pictures or outlines presented on the blackboard. As a result of these limitations, [Violet] continues to be at risk of falling further behind her peers as learning requirements as well as demands for self-reliance increase with advancing age and grade level...

[Violet] is the type of student that will benefit greatly from the use of Integrative Learning as part of her academic curriculum. This approach to teaching encourages the students to make connections among experiences outside of the formal classroom (including personal or those of others) to increase understanding of a given area of study, and the expand the individual's points of view...

Because [Violet] has neuropsychological weaknesses specific to working memory, supports that will maximize her learning and retention include presentation of instructions one step or piece at a time... in a well-structured and organized manner... repeat information back to the teacher/aide to ensure appropriate understanding.

Extra opportunities to practice and review new material...

Total amount of information presented at a time is kept relatively simple...

Implement the use (sic) memory strategies...

An educational environment that provides accommodations and modifications for visual deficits...

Extended time to complete work due to difficulties with speed of processing information...

In addition Dr. Boyer recommended continued outpatient therapy, a vocational assessment, and adaptive physical education. (P-2; S-18) Walpole accepted Dr. Boyer's evaluation findings and recommendations and used them to develop subsequent IEPs for Violet. (Turk; Peck)

4. The Team met on March 7, March 15, and again on May 27, 2011 to plan Violet's 2011-2012 11th grade special education program. (S-9; S-8; P-13; S-4; P-12; S-7; S-17). In addition to Dr. Boyer's report the Team considered reports from Violet's then current teachers as well as evaluations in the areas of academic achievement, orientation and mobility, and vocational skills. (S-17; S-19; P-26, P-27) Teachers continued to be concerned about Violet's learning pace and gaps. Her language skills teacher, Ms. Colvario, reported:

Written responses tend to be limited in vocabulary and detail. [Violet]'s handwriting and typing, though correct, are painfully slow and tedious. There is a "disconnect" between [Violet]'s oral and written language. [Violet]'s long and short term memory are areas of need. [Violet] is more comfortable with her interactions with adults. She is less at ease with her peers.

Ms. Nottebart wrote:

[Violet] struggles with higher level concepts. [Her] recall is an area of concern. There are days [she] can recall details about a previous class and others when she struggles with recalling conversations from earlier in the day. (S-17, S-19)

Teacher recommendations for IEP services included: vocabulary lists, graphic organizers, spiraling back, extra time, preferential seating, 1:1, alternate test setting, clarification/help with

directions, calculator, review and repetition. All these accommodations were part of Violet's then current IEP.

For the 2011-2012 school year Walpole proposed continuing a version of the hybrid regular/special education program Violet had previously participated in. Walpole proposed a class schedule consisting of supported regular educational classes in U.S. History, biology and art, along with special education classes in math and language skills with specialized academic support. The proposed IEP included a daily block of prevocational skills/ADL instruction. The proposed IEP included the services of an orientation and mobility specialist for one hour each month. No counseling services were included on the proposed IEP. (S-4, P-12) The Parents accepted the services outlined on the proposed 2011-2012 IEP but disputed their adequacy as well as the placement at Walpole High School. (S-4; Parent) The schedule required room and class changes approximately every 40 minutes. Each day had a different class lineup. (S-23; P-24)

5. In May 2011, at the request of the Parents, Dr. Rachel Wiseman conducted an educational assessment and school observation. Dr. Wiseman has specialized in pediatric neuropsychology since 2002 and has conducted more than 600 evaluations and school observations. Dr. Wiseman administered academic achievement testing, read Violet's school records, including IEPs and teacher progress notes, considered the results of behavior rating scales, and reviewed the previous evaluations conducted by Dr. Boyer. Her assessment results were consistent with those of Dr. Boyer. She found Violet's most significant learning challenges to include extremely slow processing speed, significant working memory deficit, weak executive functioning skills and poor visual-spatial skills. Violet reported to Dr. Wiseman that she was having difficulty keeping up with the pace of her academics and with the mobility and social demands of school. Dr. Wiseman noted that Violet was withdrawing from her previous interests and from self-care activities. Dr. Wiseman observed Violet for about 2 ½ hours in May 2011 at Walpole High School during biology and substantially separate math class. Violet did not interact with anyone and did not volunteer to participate in classroom activities. Social and behavioral support is provided only by adults. (Wiseman; P-1, S-16) The student composition changed from class to class. As the Parents had indicated an interest in enrolling Violet in a specialized program for students with brain injuries Dr. Wiseman also observed a program at the Ivy St. School. (P-1; S-16). In the report issued at the conclusion of her assessment in June, 2011, Dr. Wiseman wrote:

[Violet]'s difficulties in the areas of visual-spatial functioning, processing speed, and working memory, her vulnerable executive function skills (including organization, initiation, motivation, synthesizing information, integrating details, frustration tolerance), and her less mature social and emotional presentation are seen as stemming from her brain injury. As demands for independence and abstraction are inherently increasing with her advancement in school, [Violet] has not been able to keep pace with expectations. Already emotionally vulnerable, her frustration with not being able to keep up and not fitting in with her peers has intensified. Socially isolated, depressed, and no longer wanting to engage in school, Violet is considered at significant risk for withdrawing from school and experiencing further emotional repercussions...

[Violet]'s complex profile of strengths and challenges, her social vulnerabilities, and her emotionally driven difficulties together indicate the need for a highly specialized educational setting which inherently contains the elements to be described below. In the absence of such supports, it can be predicted that [Violet] will not gain the skills she needs to become a contributing member of her community.

[Violet] requires a comprehensive, full day/full year program which is designed for students with neurological conditions....;

Staff must be specifically trained and experienced in working with students with neurologically driven challenges...;

Small class size, no more than eight students, a high degree of structure, reduced number of transitions, consistent schedule, and consistent expectations across staff...;

Supports and services must be woven seamlessly throughout the day....;

Explicit, specialized instruction across domains...;

Training in practical, adaptive skills...social skills, life skills, community based skills...;

Instruction specifically tailored to her needs and delivered by a special educator....

Slower pace of instruction, material presented in smaller chunks, frequent review and repetition, extended time, and accommodations to promote her independence...;

Specific instruction in organizational skills....with consistent demands and expectations related to organization across staff....;

Inclusion is not recommended at this time...;

Peers who she can relate to....;

Extracurricular opportunities....;

Support around self awareness and understanding of her disability specifically as regards self-care, understanding the impact of her challenges on her functioning, and being able to predict and plan for challenging situations....;

Consultation and support related to vision...;

Continued participation in psychotherapy...;

A consistent level of structure and ongoing instruction throughout the year in order to retain information and make progress in her skills. (P-1)

7. The Team met again on October 6, 2011. The Team discussed the congruent findings of Dr Boyer and Dr. Wiseman and the recommendations to include a robust prevocational/life skills component in Violet's educational program. The Team decided to meet again after Walpole's educational consultant, Dr. Naomi Turk, conducted her own review and evaluation of Violet's learning needs. (S-5)

8. The Team met again on November 2, 2011. No action was taken as a result of that Team meeting. (S-3)

9. Ms. V, Violet's parent, testified that the 2011-2012 school year was particularly difficult for Violet. Violet complained that "everything" was "too fast" for her. The class schedule was difficult for Violet to remember and follow. She had no friends and no "fun" activities. The orientation and mobility instructor did not assist her in finding routes around the school. The mainstream history teacher refused to implement the IEP accommodations set out in Violet's

IEP. When the School agreed to substitute a prevocational class for history Violet found it did not meet daily and she often forgot where she was supposed to be. Violet became so stressed she reported feeling suicidal to her outside therapist. (Ms. V)

Dr. Michele Lyons, Violet's private therapist since April, 2010, recommended immediate safety measures which the Parents implemented. On December 5, 2011 Dr. Lyons wrote: [Violet] remains at high risk for a crisis situation and further intervention is needed. [Violet] will function best in a physical environment and program that provides appropriate supports and training to allow her to feel safe and comfortable. In order to accomplish this, she would benefit from an integrated program where she receives daily instruction, training and support in navigating her physical surroundings, practicing vocational skills, using public transportation, and accessing resources. She requires small group placement, minimal change in routines, and much preparation for transitions, particularly in her daily schedule. Additionally, she needs a program that provides her with social interactions and peers while simultaneously integrating life skills training to foster and promote becoming an independent member of the community. It is also of the utmost importance that she receives (sic) therapeutic support, both scheduled and as needed, to assist her with ongoing stress management. If significant changes are not made to her current program, it is highly likely that [Violet] will decompensate and re-enter a crisis situation.

(P-6; P-7; P-8)

10. On December 13, 2011 Dr. Lee, Violet's long-time pediatrician, echoed Dr. Lyons' findings and recommendations. Dr. Lee wrote:

Given the negative impact the stress and anxiety is having on [Violet]'s physical and emotional health it is against medical advice for her to remain in any public school program.

[Violet]'s academic and therapeutic program should be a highly structured and supportive, full day, full year program with no significant changes in staffing, student population, or physical environment during the summer months.

(P-14)

11. Violet did not return to Walpole High School after the winter holiday break. The Parents requested that Walpole provide tutoring at home. Walpole declined. (Parent)

12. The Parents requested a due process hearing at the BSEA on December 12, 2011. The Parties met on January 3, 2012 for a joint Team/resolution meeting. Walpole proposed that its consultant, Dr. Turk, conduct a social/emotional evaluation of Violet and observe the Ivy St. School, the placement requested by the Parents. Walpole specifically rejected the Parents' proposed placement at the Ivy St. School and proposed instead a "hybrid" program at Walpole High School. Under this proposal Violet would attend 4 periods per day in the Career and Education Program: a substantially separate prevocational/vocational program designed to serve the needs of students who will be following an alternative to MCAS high school course. (S-24; P-15) Violet would also attend 3 periods of academic instruction per day in substantially

separate classes: Essentials of biology, language skills and math skills. The IEP did not propose any mainstream or extracurricular courses. It provided for one 30 minute session with a school adjustment counselor every 7 days. (P-5; P-16; S-2)

13. The IEP narrative described the proposed program as “integrated” with minimal transitions in classroom location or routine. (P-5) The proposed schedule, however, indicates significant changes in timing and location of each component each day. (P-5; P-13; P-20). No Walpole witness could describe how the proposed January 2012-January 2013 program was “integrated”. No Walpole staff claimed professional responsibility for ensuring “integration”. None of the proposed service providers met regularly to coordinate their services in general or for any particular student, including Violet. (Baumgartner, Connors, Doherty, Curley, Nottebart)

14. The IEP narrative states that Violet has demonstrated academic progress and a connection to teachers and peers in the substantially separate academic classes. (P-5) The teacher reports and other Walpole evaluative data show only that Violet has demonstrated an ability to respond to and make connections with some adults. (S-17; S-19; S-20; S-12)

15. On February 17, 2012 the Parents accepted the services outlined in the proposed January 2012-January 2013 IEP, but rejected the “sufficiency” of the services and the placement at Walpole High School.

16. On March 6, 2012, Walpole issued a corrected IEP covering the time period 1/3/2012 to 1/3/2013. The changes affected the service delivery grid and incorporated the “eight year plan” under which Violet would be able to earn a high school diploma. Violet had only five years of special education eligibility remaining. (S-2; P-16; Parent)

17. Walpole proposed that its consultant, Dr. Naami Turk, conduct a social/emotional assessment of Violet. The Parents consented on March 12, 2012. (S-1)

18. Dr. Turk conducted the assessment on April 30, 2012 using both standardized assessment tools and a clinical interview. (S-25; S-12) Her results are consistent with earlier evaluations and assessments by Dr. Boyer, Dr. Wiseman, and Dr. Lyons. Dr. Turk found Violet to be guarded, cautious, and resilient. She reported that Violet experiences significant performance and anticipatory anxiety which results in refusals and dependence on adults. To maintain Violet’s emotional equilibrium so that she is available for learning Dr. Turk recommended: regularly scheduled counseling; access to trusted adults as needed; therapeutic team support in school; prevocational training and experiences; academic classes including functional math and literacy; staff familiar with needs of students with brain injuries. (S-12; Turk)

19. Dr. Turk worked with Violet’s therapist Dr. Lyons and with Walpole’s Team Chair, Carol Peck, to develop a plan to transition Violet back to Walpole High School in April 2012. The plan called for : previews of scheduling and course content with Violet; a graduated length of day and of week; identification of a “primary support team” responsible for monitoring Violet’s

progress; checking in with Violet at regularly scheduled times during the school day; and communication with parents. (S-13; Turk) The school team met four times to develop the plan. The meetings did not include the Parents. The Team developed data sheets to collect observations at home and at school. No completed data sheets were in the record and Dr. Turk did not see any. The planning team did not meet after Violet reentered school. (Turk; Nottebart; Peck)

20. At the end of April 2012 Violet reentered the Walpole High School in the “hybrid” program described in the 1/3/2012-1/3/2013 IEP. She quickly adapted to the new routine and classmates. Violet has not demonstrated any significant negative emotional fallout attributable to her return to Walpole High School. (Parent; Nottebart)

21. Courtney Nottebart has been Violet’s Language Inclusion program teacher and IEP liaison since Violet entered the 9th grade. She described Violet has hardworking and capable of learning and mastering mainstream curriculum content with immediate adult support for organization, pacing, and clarification. Violet learns best with hands-on and visual demonstrations. Ms. Nottebart testified that she maintained contact with Violet’s other teachers though there was never any formal mechanism or meeting to ensure communication. (Nottebart)

22. Since 2005 Ryan Connors has been the lead Special Education Teacher in the Career and Education Program that Violet attended between April and June, 2012 in accordance with the accepted services of the proposed 1/3/2102- 1/3/2013 IEP. (S-25) Ms. Connors is responsible for teaching the life skills component of that program, as well as providing academic support. Ms. Connors saw Violet three periods per day. Life skills instruction concentrated on kitchen safety, food safety and organization in a small group of up to 10 students. Academic support consisted of ensuring that Violet knew what work had been assigned in biology, English and math and supervising completion of assignments. Ms. Connors stated that there is no peer crossover among mainstream courses, substantially separate English and Math classes and the vocational/life skills component. The Career and Education Program does not coordinate academics with prevocational training. There is no carryover of instructional content or strategies. There is no opportunity for shared peer work. There are no programmatic or controlled responses when students have emotional or social challenges. There is no direct social therapy in the Career and Education Program. (Connors; See also S-24; S-26; P-15)

23. Ann Curley, the job coach coordinator in the Career and Education Program, is responsible for teaching the foundational skills necessary to secure and maintain community based employment, as well as for supervising student work placements. Ms. Curley emphasizes appropriate social skills by teaching students about voice tone and body language, handling criticism and praise, and providing scripts for situations such as making mistakes or feeling angry. Violet participated in the job skills class during the summer of 2011 for 5 weeks between 8:30 am and 1:30 pm. One day each week was devoted to academic tutoring, one day to a vocational internship and one day to a community field trip. Violet again participated in Ms.

Curley's job skills class from April to June 2012. Ms. Curley is not aware of Violet's academic skills. (Curley)

24. Marie Doherty, a school adjustment counselor at Walpole High School, regularly saw Violet for ½ hour every seven days. Ms. Doherty was aware that Violet was having emotional difficulty before she left school in December 2011. Violet was anxious, frustrated and overwhelmed by her coursework. Violet often ate lunch in Ms. Doherty's office. Ms. Doherty helped develop Violet's reentry plan in the spring 2012. She did not attend any meetings about the plan and did not complete or assist in any data collection. She stated that the teachers didn't complete any behavioral data sheets relating to Violet's return to Walpole High School in the Spring, 2012. (Doherty)

25. Carol Peck is the Head of the Special Education Department at Walpole High School and the Chair for Violet's Team. Ms. Peck did not provide any direct service to Violet, nor did she observe Violet in any classroom setting. Ms. Peck helped develop the "8 year" graduation plan in April, 2012. She did not supervise the implementation of the reentry plan. The transitional/primary support team designated on Violet's written reentry plan did not meet after Violet reentered school in April, 2012. (Peck; see also Nottebart)

Ms. Peck testified that she largely agreed with Dr. Boyer's recommendations as set out in her November 2010 evaluation report. She also stated that she did not agree with Dr. Wiseman's findings, though they mirrored those of Dr. Boyer. In particular Ms. Peck testified that Violet does not need a full day, full year special education program, Violet does not need a consistent daily routine, that Violet "can handle" large classes as shown by her participation in mainstream classes, and she can "do "mainstream content with appropriate supports. (Peck) Ms. Peck's assertions are not connected with any direct professional experience with Violet, nor supported by any evaluative or historical data in the record, nor corroborated by any direct service provider. I therefore do not credit them.

26. None of the teachers, counselors, coaches or other service providers associated with Violet's proposed special education program at Walpole High School has any training specific to delivering educational services to children with brain injuries or visual impairments. None has experience teaching such students or designing educational interventions for them. (Baumgartner, Nottebart, Connors, Doherty, Curley; S-25)

27. Ron Allen, Director of the Ivy Street School, described the program there. The Ivy St. School is a Massachusetts approved full day, full year, private day and residential school designed to serve students with brain injuries and anomalies. There are twenty three students in the school. Eight are day students. All are robust, verbal and mobile, with a variety of cognitive, executive functioning, and emotional sequelae related to their individual brain functioning. As opposed to programs tailored to students with learning disabilities, a brain injury focused program draws on the student's pre-morbid strengths and/or pinpoints the discrete area of injury to create a rehabilitation or work around, or compensatory intervention.

The Ivy St. School currently has 4 self-contained classrooms of about 7 students each, divided according to age, grade, and functional academic level. There is one teacher and one

assistant in each classroom throughout the day. One classroom is geared toward academically capable students who will pass the MCAS and receive regular high school diplomas from their sending school districts. One classroom focuses on functional academics and life skills. The other classrooms provide a mix of the two streams. All students receive direct instruction in, and sheltered and community experiences with, life/community/vocational skills. All students have jobs around the school as well. The school has a social learning curriculum which has a direct instruction component through daily classes, and skills reinforcement by all staff across all settings. Social skills instruction and support emphasizes skills necessary to initiate and maintain healthy relationships, including sexuality education and employment etiquette.

In addition to the classroom teachers and assistants there are 3 licensed independent clinical social workers (“LICSW”) who provide services full time to the school. Each student is assigned to one LICSW who acts as that student’s “case manager” providing 1:1 therapy in addition to coordinating all aspects of the student’s program. The school also has an occupational therapist, a speech/language therapist, a physical therapist, and a registered nurse on staff, consulting psychologists and psychiatrists, and interns in a variety of disciplines, such as expressive arts therapy, who offer courses and services. All staff members are receiving national certification as brain injury specialists. All staff members participate in cross trainings. All staff members are trained to deliver individual interventions and to ensure a consistent therapeutic milieu, using the techniques of cognitive behavioral therapy and dialectical behavior therapy. Each student has a minimum of one individual counseling session each week, with additional scheduled as needed and available at all times. The students also participate in twice weekly group therapy. Family therapy is available if warranted and requested.

The staff develops an individual functional behavioral plan for each student specifically to improve adaptive, social, self-regulatory, and vocational behavior. There is a “mini-team” meeting weekly for each student. The “mini-team” includes, at a minimum, the student’s clinician, teacher, nurse and job coach. There is a full Team monthly for each student to ensure appropriate programming and consistency. The staff also meets monthly for additional school-related trainings.

Dr. Allen testified that he reviewed Violet’s school records and that Ivy Street School’s program and services would be appropriate for her. He explained that anxiety is the most prevalent mental health presentation associated with frontal lobe injury. Anxiety prevents new actions, new learning, expression of learning, and social engagement. He stated that the structure, pace and specific success oriented skills instruction available at Ivy St. School would address Violet’s neurologically-based learning needs across all domains. Violet would likely be placed in the highest functioning academic class geared toward achieving an MCAS linked high school diploma. In addition to academic intervention geared both to Violet’s individual learning style and to the needs of students with brain injuries, Violet would receive social skills instruction and experiences, services specifically targeted to improving her mobility as a visually impaired individual, individual therapy connected to her school environment and individualized social/behavioral/ emotional supports with trained, coordinated staff. (Allen; P-11; P-10; See also testimony of Wiseman)

28. Rachel Wiseman, who had evaluated Violet at the Parents’ request in May 2011, observed both the Walpole High School and Ivy St. School in May and June 2011. She emphasized that

Violet's learning challenges stem from her brain injury and that she requires informed, targeted, consistent interventions to support her academic, social, emotional and vocational growth. In particular Violet requires full year educational programming; consistency of staff, peer group and physical environment; comprehensive, thematic academic, social and vocational instruction; a slow steady pace of instruction and challenge; individualized academics; direct instruction in all areas of need with coordination and reinforcement of curriculum/language/intervention across all settings throughout the day. According to Dr. Wiseman, Violet is capable of learning the mainstream content necessary to pass MCAS and earn a high school diploma as is her goal. She needs modified delivery and pace of instruction to achieve it.

Dr. Wiseman testified that Ivy St. works well with emotionally fragile students and neurologically vulnerable students similar to Violet. The quiet, predictable routine and the consistent staff interventions are designed to support the students' emotional regulation and social-interpersonal effectiveness, thus allowing them to learn new skills. Dr. Wiseman reported that all staff were using the same type of approach and language with the students which she recognized as DBT-based.² She testified that Violet would benefit from this structured, consistent, predictable approach to allow her an opportunity to work in concert with a social group. She noted that the individualized academic instruction in the quiet, emotionally supportive classroom, would allow Violet to progress at her own pace toward acquisition of academic skills necessary for graduation. The full year program minimizes opportunities for regressions, accommodates her significant memory deficits, and ensures steady growth.

Dr. Wiseman also observed Violet in a special education academic class and a prevocational/life skills class at Walpole High School. She noted that there was no carryover of instructional content or technique between the classes. There was no overlap of peers. There was no intervention or instruction in social skills or emotional regulation. Dr. Wiseman had the impression that the academic class was too difficult for Violet and the vocational class too easy. Dr. Wiseman reviewed the proposed 2012-2013 IEP and found it to be inappropriate for Violet. According to Dr. Wiseman it is not a coordinated, comprehensive program designed to meet Violet's needs as a student with a significant brain injury. Among the reasons the Walpole High School program is inadequate is that the service grid sets out ten minutes over the course of seven school days for the special education teacher to consult regarding Violet's programming. That is inadequate for Violet and for an atypical "hybrid" program. The IEP does not offer full year educational programming. The 4 week summer program provides only one hour per week of instruction in each of 4 academic subject areas, far less than Violet needs to maintain her skills. (Wiseman; P-1; see also testimony of Allen; Turk)

29. Dr. Turk, Walpole's consultant psychologist, also viewed components of both the proposed Walpole High School program and the Ivy St. School. She testified that she preferred the Walpole High School program for Violet because the life skills/vocational programs were connected to Violet's home community, giving her greater opportunities for generalization than

² "Dialectical-Behavioral Therapy"

community experiences at Ivy St. School would. She was also under the impression that the student population at Ivy St. was lower functioning than Violet. (Turk)

FINDINGS AND CONCLUSIONS

There is no dispute that Violet is a student with special learning needs as defined by M.G.L. c. 71B and 20 U.S.C. §1401 et seq and is therefore entitled to receive a free, appropriate public education. The issue here is whether Walpole Public Schools has fulfilled its statutory obligation to offer Violet an Individualized Education Program that is carefully and specifically tailored to address her unique learning needs and to confer a meaningful educational benefit to her. 20 U.S.C. § 1400. D.B. v. Esposito, 675 F.3d 26 (1st Cir. 2012); Lessard v. Wilton Lyndeborough Cooperative School District, 528 F.3d 18 (1st Cir. 2008). After careful consideration of the evidentiary record and the thoughtful arguments of counsel for both parties, it is my determination that the Parents have carried their burden of proving that the 2012-2013 Individualized Education Program developed and proposed by Walpole Public Schools in January and March 2012 is not reasonably calculated to ensure that Violet receives a free appropriate public education. Schaffer v. Weast, 546 U.S. 49 (2005) I further find that the Parents have demonstrated through substantial persuasive evidence that the program and services at the Ivy Street School would address all of Violet's identified learning needs and therefore that placement there is reasonably likely to result in meaningful educational benefits to her. My reasoning follows:

The parties agree on the nature and extent of Violet's learning challenges. Walpole Public Schools accepted the findings of Dr. Boyer's three comprehensive evaluations. (P-2; P-3; P-4) These findings were largely confirmed and updated in Dr. Wiseman's May 2011 evaluation. (P-1; S-16). Teacher assessments noted similar learning and behavioral characteristics over time. (S-17; S-19; P-26; P-27) There is no contrary or inconsistent data in the record. Therefore Violet's learning needs can be briefly summarized: Violet requires highly specialized, individually tailored, comprehensive, coordinated instruction within an educational program specifically designed for students with neurological disabilities. She requires full day/full year programming delivered by staff that is trained and experienced in working with students with neurological challenges. Instruction should be explicit, slow-paced, and adapted for Violet's visual needs across all domains: academic, social, practical activity of daily living, behavioral, prevocational, vocational, and community. Themes, content, and techniques of instruction and support should be coordinated and delivered consistently in all settings. Regularly scheduled individual counseling and disability awareness/self advocacy groups are a vital component of an appropriate special education program for Violet. (Wiseman; Parent: P-1; P-3; P-4; P-6; P-14)

The IEP proposed by Walpole in January and March, 2012 is not designed to effectively meet Violet's learning needs as described above or to deliver most of the recommended services. The IEP does not set out a full year program. It offers a school year "hybrid" program and an unconnected 4-5 week summer component. There is no indication in the IEP, nor through the testimony of Walpole's witnesses, that service components within the hybrid program will be coordinated by an individual or a team in order to ensure the consistency of approach and theme that Violet needs in order to learn effectively. In fact the record shows

that even when such a “primary support team” was identified as a critical component of Violet’s reentry program in April 2012 , it never met. The teachers, counselors and coaches at Walpole High School are not specially trained nor experienced in instructing students with neurologically based learning challenges. There is no particular group of peers with similar challenges with whom Violet can learn and practice brain-based therapeutic skills. The IEP does not provide for weekly individual counseling with a therapist trained to work with students with neurological challenges. It does not provide at all for peer group counseling. Given this, I infer that Walpole is not capable of developing or implementing the highly consistent, comprehensive and coordinated special education program recommended by the majority of the evaluators and service providers in the record. Only Ms. Peck’s recommendations differed. I accord them little weight due to her lack of personal and professional contact with Violet. Dr. Turk’s endorsement of the Walpole “hybrid” program was tepid, and based primarily on the advantage of home community access for Violet. Mere access, however is not the point. Successful and meaningful access to community life requires appropriate foundational skills training, training Walpole did not convince me that it could provide to Violet. Rather than true individualization to support Violet’s academic and functional goals consistent with the expert findings and recommendations the Walpole Team endorsed, the proposed 2012-2013 hybrid program appears to reflect an attempt merely to make Violet’s educational program “easier” for her. Based on the foregoing I find that Walpole has not met its duty to develop a 2012-2013 IEP for Violet that would ensure that she receives a free, appropriate public education.

On the other hand, substantial uncontroverted evidence supports the conclusion that the placement proposed by the Parents, the Ivy Street School, is capable of meeting Violet’s identified learning needs and of providing the services, setting and structure recommended by educational and psycho-educational experts. Ivy Street School offers a specialized therapeutic educational program specifically targeted at remediating the skills deficits of students with neurologically based learning challenges and preparing them for independent productive adulthoods. It has a comprehensive, coordinated approach, appropriately trained and certified staff, integrated therapeutic services, and expertise with visual impairments, offered in a full day, year round context. In short, it meets the recommendations of the psychologists, physicians, and teachers who have evaluated and worked with Violet over the course of the past three years. Walpole’s program does not.

ORDER

The 2012-2013 Individualized Education Program proposed by the Walpole Public Schools is not reasonably calculated to provide a free appropriate public education to Violet. The placement proposed by the Parents, the Ivy Street School, is immediately available and capable of delivering all the educational and therapeutic services recommended as necessary for an appropriate educational program for Violet. Therefore Walpole shall, within 30 days, develop an IEP providing for Violet's placement as a day student at the Ivy Street School.

By the Hearing Officer

Dated: July 18, 2012