

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

**Student v. Nashoba Regional School District**

**BSEA # 1909691**

**DECISION**

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

**PROCEDURAL HISTORY**

Parents filed a request for hearing on April 23, 2019. The hearing was scheduled for May 28, 2019. The Parties' joint request to postpone the Hearing until October 2 and 4, 2019 was allowed on May 13, 2019. A Pre-Hearing Conference was held on June 18, 2019. The Hearing was held on October 2 and 4, 2019 at the office of Catuogno Court Reporting, Worcester, MA. The Parties' request to postpone the closing of the record in order to submit written closing arguments by October 25, 2019 was allowed. The Parties submitted their closing arguments on October 25, 2019 and the record closed on that date.

Those present for all or part of the hearing were:

Mother	
Father	
Mary Coakley-Welch	Parents' Neuropsychologist
Amy Davis	Principal, Learning Prep School
Rose Quinn	Reading Teacher, Learning Prep School
Lillian Wong	Parents' Attorney
Joan DeAngelis	Director of Pupil Personnel Services, Nashoba Regional School District
Jennifer Ssonko	School Psychologist/Team Chair, Nashoba Regional School District
Craig Murphy	School's Consulting Psychologist
Michael Hambelton	Special Education Teacher, Nashoba Regional School District
Katie Giannetti	Special Education Teacher, Nashoba Regional School District
Caitlin Paulin	Speech Language Pathologist, Nashoba Regional School District
Barri Godbout	Occupational Therapist, Nashoba Regional School District
Elizabeth Sherwood	Attorney, Nashoba Regional School District
Kristen Edwards	Court Reporter

Lisa Regensburger  
Catherine Putney-Yaceshyn

Court Reporter  
Hearing Officer

The official record of this hearing consists of Parents' exhibits marked P-1 through P-29 and Nashoba Regional School District's exhibits marked S-1 through S-50 and approximately 15 hours of recorded oral testimony.

### **ISSUES**

1. Whether the IEP proposed by Nashoba Regional School District for the 2019-2020 school year is reasonably calculated to provide the student with a free appropriate public education in the least restrictive environment.
2. If not, whether Learning Prep, where Student has been unilaterally placed by his parents, provides him with a free appropriate public education in the least restrictive environment.

### **SUMMARY OF THE EVIDENCE**

1. The student (hereinafter, "Student") is twelve years old and resides within the Nashoba Regional School District (hereinafter, "Nashoba"). His diagnoses include Other Specified Neurodevelopmental Disorder; Attention Deficit Hyperactivity Disorder (ADHD) Inattentive type, severe degree; specific learning disability in reading; specific learning disability in written expression; specific learning disability math; and dysgraphia. He has a complex profile with many academic, executive function, and social-emotional needs. He has variable attention and vulnerability to anxiety. (P-16)
2. Student takes Adderall for his severe ADHD. His psychiatrist, Dr. Brownlow, has adjusted his medication over the years since Student was diagnosed by his pediatrician. She diagnosed him with depression at the end of Student's third grade and prescribed an antidepressant which he continues to take to date. (Mother)
3. Student struggled at school significantly toward the end of the third grade and throughout fourth grade. At the beginning of fourth grade he seemed overwhelmed and asked his mother why he was so dumb and why his brain was so small. At the suggestion of Student's psychiatrist, who noted that Student was experiencing academic challenges, loneliness, depression, and anxiety at school, Parents had Student evaluated by neuropsychologist, Mary Coakley-Welch. (Mother)
4. Mary Coakley-Welch, Ph.D., conducted a neuropsychological evaluation of Student on September 16, 21, 27, 30, and October 14, 2016. She noted his prior diagnosis of ADHD and further diagnosed him with Other Specified Neurodevelopmental Disorder, a learning disability in reading, a learning disability in written expression, a learning disability in math, and dysgraphia. She made a number of recommendations including placement in an academic setting with small classes, the availability of individual attention, peers with similar learning needs and intensive academic remediation for basic skills and instructional

methods integrated across the curriculum. She noted that instruction needed to be delivered at a pace that would allow him to learn, and that frequent repetition and review, as well as executive functioning/study skills strategies had to be integrated throughout the day. She recommended remedial reading in a structured, systematic, multisensory, phonics-based program four to five times per week for one hour, specialized math instruction, and specialized instruction in written expression, in addition to appropriate assistive technology. She further recommended continued instruction in self-regulation, as well as individual counseling, occupational therapy, and speech therapy. Dr. Coakley-Welch noted Student's need for social skills programming within his school day given his lack of friends and his difficulty in reading social cues. She further made a number of recommendations for accommodations. (P-1, Coakley-Welch)

5. On March 24, 2017 (Student's fourth grade), Melinda Macht-Greenberg, Ph.D, conducted a program observation of Student in his program at Center School, Stow, MA at Parents' request. She also reviewed records and conducted a parent interview. She noted that Student's learning challenges were taking a toll on him emotionally. Parents noted that Student was frequently sad, had only one friend at school, and tried very hard academically without feeling successful. Dr. Macht-Greenburg observed Student for what appears to have been an entire school day at his partial inclusion program. She noted that while in the general education setting, Student required a great amount of paraprofessional support and the paraprofessional often appeared to be doing Student's work for him. She observed Student to become visibly overwhelmed, stressed and anxious with his head in his hands at times during his general education classes. Dr. Macht-Greenburg noted that he was visibly more relaxed in his special education, small group, math class. He had difficulty working independently in music class and appeared sad and tearful at the beginning of his speech language session immediately following music class. During a general education lesson in social studies, Student appeared to have missed the entire point of the lesson on the Great Lakes, stating, after the lesson, that he learned about a river. (P-2)

Dr. Macht-Greenberg opined that it was evident that Student was struggling in the general education setting. He appeared visibly overwhelmed and was observed to have difficulty following the lessons. She noted that presentation of large amounts of verbal information provided in the general education classes was not appropriate for Student. She concluded that Student benefits from small group special education classes, and is unable to adequately access material in the general education setting. She found that the pace of instruction and expectations for reading and written output in the general education setting were beyond Student's capacity. She recommended that Student's program be comprehensive and integrated with small groups and language-based teaching methodologies throughout his day. She suggested that he be grouped with students with a similar learning profile. (P-2)

6. Dr. Macht-Greenberg observed Student at Learning Prep on October 20 and 30, 2017, Student's fifth grade. She concluded that he was engaged in learning and social opportunities, was eager to participate and often called out answers. She noted that because all classes were small group special education classes, Student could work with peers at his

level and practice the same skills multiple times until achieving mastery. She recommended that Student continue his placement at Learning Prep. (P-4)

7. Student's last accepted IEP for the period from November 26, 2018 through November 25, 2019 was written by Learning Prep School, where Student was placed during the 2017-2018 and 2018-2019 school years pursuant to a settlement agreement with Nashoba. The IEP noted that Student's specific learning disability in reading, written expression, and math impact his ability to access and make progress in grade level curriculum. It noted his difficulty sustaining and manipulating information and retaining and accessing information in the long term. It described his struggle to process information in a timely and efficient manner and his significant deficits in visual-spatial processing which impact his ability to visualize abstract mathematical concepts. Further, the IEP reported Student's difficulty with executive functioning, such as initiating tasks and organizing materials, impacting his ability to independently complete classwork. It noted his challenges with social pragmatics and interactions with peers throughout the day. It described his ADHD as impacting attention to task, instruction in the classroom, and ability to follow multi-step directions and classroom routines. The IEP contained goals in decoding/encoding; reading comprehension; mathematics; receptive/expressive language; written language; motor; and social/emotional. (S-5, P-6)

The IEP included a number of accommodations including: allowing extra time to process information; repeating and clarifying clear concise directions; repeated readings of content material to assist fluency, memory and understanding; previewing vocabulary and concepts; and summarizing lesson content. With respect to content, the IEP noted that all curriculum is modified to consider pace, multi-sensory, language deficits, etc. Language based curriculum was to be provided in all content areas and curriculum content and materials were to be modified to student's instructional level. (S-5, P-6)

As Student was placed in a private special education day school, all his services were in the C grid and consisted of reading/language arts 10 x 43 minutes per cycle; speech language therapy 3 x 43 minutes per cycle; math 3 x 43 minutes per cycle; science 5 x 43 minutes per cycle; social studies 5 x 43 minutes per cycle; occupational therapy 2 x 43 minutes per cycle; counseling 1 x 43 minutes per cycle; and health/student issues 1 x 43 minutes per cycle. Parents accepted the IEP on December 12, 2018. (S-5, P-6)

8. Learning Prep serves students with "complex learning profiles including dyslexia, anxiety, expressive/receptive language issues, autism spectrum disorder, limited social pragmatics, and executive functioning challenges." (P-23) There are students with nonverbal learning disabilities, ADHD, language based learning disabilities, specific learning disabilities in reading, writing, and math. None of the students has a primary emotional disability. Some have secondary diagnoses of anxiety. (Davis) Learning Prep utilizes a language-based approach and provides social coaching. Students are grouped by academic skill level and services in speech language, counseling, and occupational therapy are integrated. Learning Prep uses the Social Thinking curriculum throughout the day. (P-23)

9. Amy Davis is the principal of the elementary/middle school at Learning Prep, which includes grades two through eight. There are currently sixty-four students enrolled in the elementary/middle school, twelve in the elementary program and 52 in the middle school (grades six-eight). Students' cognitive profiles range from average to below average. In addition to the academic teachers, there are four reading teachers, one reading specialist, seven speech and language pathologists, four counselors, and four occupational therapists. There is a dean of students who functions as a student support person, providing peer mediation and breaks from class as needed. All of the classrooms are language-based. Teachers follow a similar routine. Preview and review of material and scaffolding occur throughout the classes. The teacher typically reads the content to make it accessible to students with reading difficulties and so students do not have to read grade-level content in science and social studies. Visuals are used and paired with verbal directions. Thinking Maps are used throughout the entire school to help students break down their thought process. To assist students with executive functioning difficulties, homeroom meets at the beginning and end of each day. It provides a time for students to get organized with some adult support. Additionally, a binder system is used throughout the school day which requires all students to organize their materials in the same manner. Every person working with a student throughout the day knows that certain items go in each folder and it is reinforced by all staff. Each class has a set of iPads and an assistive technology specialist consults as needed. (Davis)

Classes at Learning Prep have a maximum of eight students and one teacher, although many classes have only six students. Each class is forty-three minutes long. Reading and math classes are grouped homogeneously. Language Arts classes consist of decoding and encoding using the Wilson program. Enrichment classes provide structured social skills support and allow students to have some fun, have a snack, and hear a daily bulletin. One of Student's enrichment classes is fables. A speech language pathologist teaches it and students talk about the moral/lessons of the fables. All students have a supported study hall as an enrichment period. Student takes a board game class with a speech language pathologist which provides structured socialization. Science and social studies classes teach a modified grade level curriculum and the content is used to develop students' written language skills. Reading comprehension class teaches students global reading skills such as finding the main idea and making inferences. Student's occupational therapy is provided by the work center/occupational therapy class. He and a small group perform jobs around the school such as mail and copying. Students are required to plan and complete the tasks together. Health and student issues is taught by a counselor, and in addition to the health curriculum, students receive direct instruction in social thinking. It functions as a social skills group. (Davis)

Student has a goal sheet on which he receives feedback after every class. Parents are able to review sheets and Student's counselor gets copies of each day's sheet. During his weekly counseling session, the counselor reviews the sheets with Student. Student also receives weekly "RAPP" grades which assess him in responsibility, attitude, participation, and progress. (Davis)

Ms. Davis has known Student since he started at Learning Prep in the fifth grade. She described him as eager to learn and hard-working. She has noted a significant increase in his self-esteem and emerging self-advocacy skills while at Learning Prep. He continues to have social challenges and misinterprets situations. Attention and focus remain significant challenges for him, as does math. She believes Learning Prep can meet Student's needs. In Ms. Davis' opinion a key component to Student's success is his feeling comfortable in his learning environment. Although he has emerging self-advocacy skills, he still does not always let teachers know if he has missed something in class. She would question whether he could participate in a class of over twenty students or if the material could be sufficiently broken down for him to enable him to understand and retain it. (Davis)

10. Rose Quinn is certified as a teacher of students with moderate disabilities K through eight. She teaches language arts and reading comprehension and is the reading department head at Learning Prep. Ms. Quinn taught Student during his fifth and sixth grades. She described him as eager to learn and very curious and has seen his confidence as a student grow at Learning Prep. She noted that executive functioning, organization and attention are challenges for him and that he requires frequent check-ins and monitoring. With respect to writing, Student has many ideas and will write a great deal, but requires help filtering what he has written and ensuring he has answered the question posed. She recalled that Student made progress during fifth grade in making on-topic connections, being able to slow down and reread text to find information. She testified that Student initially had some anxiety around reading, but eventually began to ask to borrow books and to read for pleasure. She further stated that Student is very social and wants to be a good friend. He can be a bit sensitive and needs support in working through conflicts. Ms. Quinn reported that Student has a "really nice" group of friends at Learning Prep with whom he sits at lunch. She finds that Student's attention is a big issue for him. (Quinn)

Ms. Quinn stated that Student came to Learning Prep with an instructional reading level of "O", mid-third grade. She recently tested him at a level "U", which is mid-fifth grade level. She explained that Student receives direct instruction in writing during science and social studies classes, which is where he learns about topic sentences and how to add supporting details. Ms. Quinn uses the same tools in her class when Student is required to write an open-ended writing question about a book they are reading. The same thinking maps are used in all classes to plan writing. She also noted that she uses a number of manipulatives in her class. (Quinn)

11. Upon reviewing teachers' credentials on the Massachusetts Department of Elementary and Secondary Education's Public Lookup for Educator License website, I take administrative notice of the following: Student's Learning Prep science teacher for the 2018-2019 school year, Taylor Bouyer, is licensed for grades 1-6 and in moderate disabilities pre-K through eighth grade. Marla Jacobs, Student's Learning Prep social studies teacher for the 2018-2019 school year has a professional status license in special needs pre-K through 9 and early childhood with and without disabilities K-3. Roberta Hugus, Student's science teacher for the 2019-2020 school year is certified in elementary 1-6 and moderate disabilities pre-K-8. Susanne Summers, Student's social studies teacher for the 2018-2019 school year is certified

in history 5-8 and 8-12. (See Massachusetts Department of Elementary and Secondary Education's Public Lookup for Educator License website.)

12. Jennifer Ssonko, a school psychologist at Nashoba and Student's Team Chairperson, conducted a psychoeducational evaluation of Student on February 11 and 12, 2019, as part of his three-year evaluation<sup>1</sup>. Ms. Ssonko noted Student's significant challenges in visual and auditory working memory, quantitative and fluid reasoning, processing speed, (particularly for tasks requiring rapid sequencing or set-shifting, inhibition, and planning and organization for open ended tasks). She noted that "Student presents with global executive functioning deficits across home and school environments." Additionally, she found that "attention appears to impact him the most across settings, along with other areas of externalizing and internalizing problems, most commonly in academic areas that are challenging for him, such as math and science." Ms. Ssonko indicated that Student appears to lack age appropriate adaptive skills, impacting his independence, managing routines, and his emotional responses to stressful situations.

Ms. Ssonko made a number of recommendations, including providing extended time for completion of assignments and activities and focusing on quality over quantity. She suggested providing Student with frequent and structured feedback to help guide his initiation of tasks and problem-solving approach. She noted that teachers should focus on essential information only, highlight critical vocabulary, and modify the amount of items presented to Student at once. She recommended the use of graphic organizers and providing frequent check-ins during open-ended tasks such as writing. She endorsed the use of multimodal learning opportunities such as manipulatives in math. She suggested a "focus on essential language when providing instruction – making sure [Student] can either summarize or repeat back the information in smaller chunks to check for understanding and attention to the instruction." She further recommended support from a school counselor to focus on building social problem solving skills and coping strategies. (S-23, P-10)

13. Ms. Ssonko observed Student at Learning Prep in his reading comprehension, math, and speech and language classes on February 4, 2019. There were seven students including Student in both reading comprehension and math. In reading comprehension Student participated more than the other students and had some great insights. Student required several check-ins from the teacher to ensure he was attending. He also required some cues to stop scratching his head. He required several reminders to follow the instructions. During math class Student required a total of twelve prompts for attention. He seemed to struggle with the concepts and fidgeted and picked at his wrist. The teacher informed Ms. Ssonko that Student's math class would be changed to a class earlier in the day with a smaller group of peers because of his significant difficulty engaging. During speech language therapy, Student was engaged and his attention was steady. He was not observed to be picking at his wrist. (S-5, P-10)
14. Katherine Giannetti, M.Ed., Special Education Teacher, Nashoba, conducted academic achievement testing of Student on February 2019 and wrote a report dated March 7, 2019.

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<sup>1</sup> Ms. Ssonko administered the WISC-V, D-KEFS, BASC-3 (parent and teacher scales), BRIEF-2 (parent, teacher and self-report) and conducted a classroom observation and records review. (S-23)

She administered the WIAT-III. Student's oral language score was in the below average range as was his listening comprehension. His oral expression was in the average range. Most of his reading scores were within the average range, with the exception of reading comprehension, which was in the below average range. His written expression could not be scored, because he "did not hit prerequisites for scoring", and the written expression and total achievement composite scores could not be calculated. His sentence composition score was in the low range. His mathematics and math fluency scores were in the low range, with math problem solving, subtraction, and multiplication in the low range, addition in the below average range, and numerical operations in the very low range. Ms. Giannetti made a number of recommendations including pairing visual supports with auditory instruction; repeating and rephrasing directions; providing written copies of directions for assignments; and providing copies of teacher notes. She recommended direct instruction in reading comprehension and written expression and small group math instruction utilizing cue cards, reference sheets and graphic organizers. (P-8)

15. Ms. Giannetti testified that she would not recommend an out-of-district placement for Student based on his reading scores. She noted that Student made progress during the past three years in reading, a little bit of progress in writing, and math stayed the same. (Giannetti)
16. Caitlin Paulin, M.S., CCC-SLP, Nashoba, conducted a speech and language evaluation<sup>2</sup> on February 11 and 12, 2019 as part of Student's three-year evaluation. Student scored in the average range in the Expressive Vocabulary and Peabody Picture Vocabulary Tests. The majority of his scores on the CELF-5, including word classes; following directions; recalling sentences; understanding spoken paragraphs; sentence assembly; and semantic relationships were in the below average range. He scored in the average range in formulated sentences and sentence assembly. Ms. Paulin's report stated that Student's score on the Recalling Sentences subtest indicated he "has difficulty recalling sentences with various concepts, which are necessary to achieve academic success within the classroom setting." She noted that Student's score of 6 (below average range) on the Understanding Spoken Paragraphs sub-test "suggest that his ability to understand stories, descriptions of actions, events, or opinions, and instructional materials across academic subjects is at risk." (P-9)

On the CELF-5, Composites, Student scored in the below average range in core language; receptive language index; language content index; and language memory index. His expressive language index was in the average range. Ms. Paulin wrote that Student's Core Language Score "indicates that he will have difficulty accessing the curriculum inside the classroom related to using and understanding grammatically correct sentences, recalling information, as well as formulating compound and complex sentences." His Receptive Language Index "indicates that [Student] has difficulty understanding what is being asked of him inside the classroom setting." His below average score on the Language Memory index indicates Student has "difficulty applying, recalling, and manipulating information presented to him." Student's weakest subtest on the CELF-5 was Following Directions. The test highlighted Student's "difficulty interpreting, recalling, and executing spoken directions of increasing length and complexity." On the CASL-2 Student performed in

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<sup>2</sup> Ms. Paulin administered the EVT-2A; PPVT-4B; CELF-5 (selected subtests); and the CASL-2 (selected subtests).

the average range on receptive vocabulary, synonyms, grammaticality judgment; and pragmatic language. He scored below average on expressive vocabulary; grammatical morphemes; sentence comprehension; nonliteral language; meaning from context; inference; and double meaning. (P-9)

Ms. Paulin made a number of recommendations including: allowing extra time for Student to respond; providing redirection and check-ins to ensure Student is ready for new information; providing repetition and breakdown of instructions; accompanying verbal information with visual information; rewording instructions and/or prompts; allowing additional time for assessments and projects, utilizing graphic organizers and sentence starters; using chunking; previewing and reviewing vocabulary and concepts; and providing additional explanations of definitions to ensure understanding. (P-9)

17. Ms. Paulin noted that during her evaluation providing Student with visual cues and repetition helped him. She testified that within the classroom if he is presented with something once and it is not repeated or he is not able to go back and look at it again, it would be very difficult for him. She also noted that his attention was impacted when there were no visuals. (Paulin)

This witness stated that Student has made slow progress during the past two academic years, but is still below average in many of his language skills. Ms. Paulin described the ways that she currently works with students from the Middle Connections program (the program proposed for Student) including providing review of topics in science and social studies, re-teaching difficult lessons, providing visual supports, and helping to create mnemonic devices for remembering concepts. Ms. Paulin also works with the occupational therapist and school counselor to address social skills, sensory strategies and strategies for dealing with anxiety. She agreed with Dr. Coakley-Welch's recommendations with respect to Student's language needs and was confident that she could provide Student with those services. (Paulin)

18. The Team convened for an annual review meeting on March 20, 2019 and proposed a partial inclusion program within the Middle Connections Program at Hale Middle School for Student. The IEP contained goals in mathematics, written language, reading, study skills, communication, social/emotional, and sensory/fine motor. The service delivery grid included program coordination for 30 minutes per month and parent consult for 30 minutes per month in the A Grid and B grid academic support with a special educator or paraprofessional 6 x 25 minutes per cycle for science and social studies and 2 x 25 minutes per cycle for health, art, music, tech, and physical education. The C grid contained the following: mathematics with the special education teacher 6 x 45 minutes per cycle; academic support with the special education teacher 3 x 45 minutes per cycle; English language arts with the special education teacher/reading specialist 6 x 45 minutes per cycle; speech and language with a speech language pathologist 3 x 45 minutes per cycle; social/emotional with a school psychologist 1 x 65 minutes per cycle; and occupational therapy 1 x 45 minutes per cycle. The grid also proposed extended year services consisting of academics for 390 minutes per week for six weeks; communication with a speech

language pathologist 1 x 45 minutes per week and social skills with a counselor 1 x 45 minutes per week. (S-3, P-17)

19. The Middle Connections Program is designed to address communication, language, academics, and social skills. It serves students at the middle school level who are identified with autism spectrum disorder and/or neurological disabilities, who present with challenges in social thinking, self-awareness, sensory and emotional regulation and resulting anxiety. There is a class-wide social program to help students develop social skills. The program brochure states that the program includes core classes (math, ELA, social studies and science) in addition to life skills (social, behavior, and vocational.) The brochure further states each student will have an individualized “FAIR” plan, with the goal of providing consistent responses to expected and unexpected behaviors and ensuring a balance between newly taught behaviors being reinforced more often than unexpected behaviors. Data collection is an essential component of the program. Data is collected daily on each student’s behavior and social goals. The goal is to shape students in developing new skills that will translate to less restrictive settings. The brochure states that students are integrated into the general education classroom as appropriate based on their ability to socially navigate and demonstrate social emotional regulation in the inclusion classroom. The program staff include special education teachers, occupational therapists, speech and language pathologists, physical therapists, school adjustment counselors, school psychologists, guidance counselors, a board certified behavior analyst, and paraprofessionals. (S-1)
20. Michael Hambelton is the special education teacher in the Middle Connections Program. He has a Master’s degree in moderate disabilities 5-8, has an initial license in moderate disabilities 5-12 (obtained on May 17, 2019), and a provisional license in history 5-12 (obtained on October 4, 2017)<sup>3</sup>. He currently teaches small group math to the sixth, seventh, and eighth grade students in the program; ELA to the sixth and seventh graders; and academic support to the sixth and seventh graders. Many of his current students have autism, attention difficulties, ADHD, neurological disorders (such as epilepsy), difficulties with social skills, communication, and sensory input, and general anxiety. None of his students has a specific learning disability in reading, writing, or math. (Hambelton)

Mr. Hambelton utilizes multimodal teaching including auditory, visual and sensory. He finds it beneficial to provide his students with multiple ways to process language demands. He uses a lot of manipulatives in math, such as a place value chart; blocks; fraction tiles; and spinners. In ELA he uses task cards and graphic organizers. (Hambelton) His students attend inclusion science and social studies classes that are taught by general education teachers who are not certified in special education. (DeAngelis) He collaborates with the general education teachers regarding what is being taught, and works closely with them to ensure they are adapting and modifying their lessons for his students. They jointly determine what the essential learning objectives are for each unit and build supports to allow his students to master those objectives. He previews and re-teaches vocabulary and concepts and uses models and different visuals to re-enforce concepts. Unlike his small group ELA

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<sup>3</sup> I take administrative notice of his licenses from the Massachusetts Department of Elementary and Secondary Education’s Public Lookup for Educator License website because there was no testimony provided regarding Mr. Hambelton’s licensure.

and math classes, he cannot control the pace of the science and social studies classes, so he uses academic support periods to ensure that his students have an understanding of the concepts. He works with the speech language pathologist to modify the science and social studies vocabulary and reviews material with his students before their quizzes in science and social studies. Sometimes the speech language pathologist provides students with preview and review before and after classes. (Hambelton)

Mr. Hambelton uses routines to ensure students know what to expect throughout the day and to reduce anxiety. He uses relaxation techniques such as balloon breathing. He provides executive functioning support as do instructional assistants, service providers and inclusion teachers. Lexile levels are adjusted for his students in the inclusion setting. Some of his students receive reading services within his classroom. The occupational therapist and counselor come into the classroom and work on students' social needs. Teachers and providers use the same language when speaking to students. (Hambelton)

The Middle Connections classroom has an instructional assistant for each grade level. (Hambelton) None of the assistants has a special education degree or certification. (S-50) The assistants accompany students to their inclusion science and social studies classes and are present when Mr. Hambelton is teaching small group math, ELA, and academic support. During inclusion classes the assistants make sure students are engaged, take data, help facilitate the lesson, and assist students as needed. The assistants are also present during academic support periods. There are times that students tell Mr. Hambelton after a social studies or science class that they did not understand the lesson. In those cases, he will spend an academic support period re-teaching the lesson. It is easier for him to check for understanding in the small group setting and to make sure all students are grasping each concept before moving on than it is for the general education teachers. There are also times when the instructional assistants tell Mr. Hambelton that a lesson had a lot of language or there were a lot of steps to instructions provided. In that case, he will review the lesson during academic support time and check for understanding. (Hambelton)

Sometimes Mr. Hambelton teaches more than one class at the same time. For example, there are times that he has both a sixth grade and seventh grade ELA class at the same time. He explained that during those times students can be working on the same skills, using materials geared to their appropriate grade level. He also utilizes his instructional assistants during that time and they can work individually with students as needed. Additionally, there are times that he has both a math class and an academic support class at the same time. At those times he instructs his assistants to work with students on academic support and he provides a lesson to his math students. When he completes the math lesson, the students work independently with support from the assistants while Mr. Hambelton checks in with the academic support students. (Hambelton)

Mr. Hambelton believes he could meet Student's needs within the Middle Connections Program. He testified that Student would neither be the lowest nor highest functioning student in the class. (Hambelton)

21. Joan DeAngelis has been the Director of Pupil Personnel Services for Nashoba for the past four years. She helped to create the Middle Connections Program to address students with needs in the areas of communication, language, academics and social skills. In her opinion, students with deficits in reading, writing, executive functioning, organization, and math deficits benefit from a holistic approach, integrating speech, social skills, counseling, direct services in reading, writing, math, and academic support. The Middle Connections Program also provides a BCBA to collect data and target individual areas of need. (DeAngelis)

Ms. DeAngelis testified that Student has not excelled at Learning Prep, noting that no progress has been indicated in math since he has begun there. She is concerned that there is a lack of multimodal instruction and not enough visual and manipulative support. She thinks it is important for Student be instructed by special education teachers because of their specialized training. She is concerned that Student engages in scratching and picking his head and would recommend that the BCBA evaluate him if he returned to Nashoba. There was no recommendation for Student to receive BCBA services at any time including the September 30, 2019 Team meeting. (DeAngelis)

Ms. DeAngelis has never observed Student in either school setting. She has never observed at Learning Prep and has not observed either the current Middle Connections inclusion science or social studies classrooms. (DeAngelis)

This witness testified that the Middle Connections staff could provide a better program for Student than the one he is currently receiving at Learning Prep because they are highly qualified and use a multimodal approach. Based upon the observations done by Ms. Ssonko and Dr. Murphy, she does not think that Learning Prep uses a multi-modal approach. In her view, Nashoba is the least restrictive environment for Student as it provides him the benefit of being in his home community, not having a lengthy daily commute, and the opportunity to be integrated with typical peers. He would also have access to after school activities at Nashoba. (DeAngelis)

22. Parents rejected the IEP and placement on July 18, 2019. In their response, they stated “Student requires placement in a highly specialized substantially separate language-based program in order to make progress. He cannot access the curriculum and make effective progress in a partial inclusion program like the one proposed.” Parents unilaterally placed Student at Learning Prep for the 2019-2020 school year where he had previously been placed by Nashoba pursuant to a settlement agreement. (S-4, P-17, Mother)
23. Dr. Coakley-Welch conducted a second neuropsychological evaluation of Student on April 26, 29, and May 13, 2019. Parents sought the evaluation to obtain an updated picture of Student’s profile and recommendations to assist with educational planning. Dr. Coakley-Welch reviewed report cards issued since the time of Student’s last evaluation, IEPs, and evaluations that had been done since her last evaluation. She reviewed the district’s March 2019 testing and did not repeat testing in reasoning or general cognitive/intellectual functioning since the district’s testing included those areas. She asked teachers to fill out forms about Student’s performance including an open-ended questionnaire about his strengths and any concerns. His Learning Prep teachers noted the following concerns:

problems with focusing, and following directions; needing a lot of guidance for multistep directions, being off task and impulsive; getting anxious and having trouble processing information. His counselor noted difficulty with social problem solving, perspective taking, flexible thinking and impulse control as contributing to social concerns. Dr. Coakley-Welch also spoke to Student's psychiatrist and psychotherapist. (Coakley-Welch, P-15)

Dr. Coakley-Welch noted that as in prior testing, there were inconsistencies in Student's attention, memory, and executive functions. He again had somewhat better auditory verbal attention and memory and relatively weaker visual attention and memory, but still had vulnerabilities taking in auditory input. He continued to show significant difficulties with attention even with prompting. Student was not able to take in details accurately and repeat them back. This difficulty was sometimes at the sound level and sometimes at the meaning level. There was some growth in his visual, motor and organization, but it was still far below the level at which it should be. His memory was very limited. In reviewing the District's psychological testing, Dr. Coakley-Welch noted his verbal comprehension abilities were low, his visual spatial abilities were low and his fluid reasoning was very low. His working memory was very low and his processing speed was low. She noted that Student's general knowledge score, while still below average had improved significantly since she last tested him. Dr. Coakley-Welch found significant growth in Student's reading skills since her prior evaluation. She noted that although he scored in the average range in the area of reading comprehension, he was tested at the fourth and fifth grade level in that area due the high number of errors he made when reading grade-level (sixth grade) text. Student's written language was below average overall. She noted that he could write good sentences, but had difficulty responding to prompts. She concluded that his basic sentence writing sentence skill had improved since she previously assessed him, but he struggled with higher level content. Dr. Coakley-Welch testified that math remained an area of deficit for Student. She noted some improvement in his prior testing in that he made fewer guesses than he previously had and went through each question more carefully. (Coakley-Welch, P-15)

Dr. Coakley-Welch found that Student's diagnostic picture was the same as it had been in the past, although there were some qualitative improvements. However, he continued to struggle with spatial organization, spatial integration, and had inconsistencies with language processing. He continued to have difficulty with sustained attention and working memory. She noted that conceptual reasoning is an area of weakness and predicted that would continue to be a struggle for him.

Dr. Coakley-Welch recommended a substantially separate placement for all of Student's instruction. She explained that he needs language-based instruction where new terms are explained and reading and writing skills are integrated throughout the day. She stated that he requires small classes because he struggles with attention and needs prompts at times. He needs to be able to seek clarification and to have information re-explained because his working memory and language processing remain very weak. He needs immediate check-in, repetition and clarification that one cannot get in a classroom with 23 students. He needs to be placed with students at his academic level because his skills are so discrepant. (Coakley-Welch, P-15)

Dr. Coakley-Welch observed the Hale Middle School Connections Program on June 4, 2019. She was permitted to observe for two hours and observed part of the inclusion science class and the Connections math class.<sup>4</sup> She noted that there were 23 students in the inclusion science classroom. There was a general education teacher and two assistants. The teacher talked a lot and asked a lot of questions. As she observed, she thought about Student's language level and working memory and did not see how Student would be able to keep up with the instruction. As noted in her neuropsychological report, Student could not even repeat sentences verbatim at an average level and could not take in information at the paragraph level. She recalled reading Dr. Macht-Greenburg's report of a prior observation of Student when he became overwhelmed by the general education classroom and put his head down. She predicted that in the general education science class Student would become overwhelmed and no longer available for learning. She could not envision him receiving any benefit from sitting in the class that she observed. She noted Student's prior difficulty in the general education setting and stated that his language processing and attention are the same as they were when he was last in the district. The general education setting was not appropriate for him before and remained so, according to Dr. Coakley-Welch. She stated that Student is not able to integrate information easily and carry it from one setting to another. He requires immediate clarification and reinforcement of content and strategies. (Coakley-Welch, P-18)

Dr. Coakley-Welch also observed Student's math class, in which there were three students, one teacher, and an instructional assistant, the students were learning grade-level material. She noted that the teacher was wonderful: dynamic and energetic, very patient with the students, and very clear. The students were mostly engaged, although one student wandered and chatted a lot. The classroom was large and there was an area off to the side where students could take a break. One student went to the break area and rolled around on the floor and made some singing noises. She was concerned that the math content was beyond Student's ability. She was further concerned that the environment would be too distracting for Student. She noted some concerns regarding peers. First, she thought Nashoba did not offer a sufficient pool of peers with whom he could work on his social skills. Second, she noted that the program is designed for students who can learn with support in a general education classroom, and Student cannot. Thus, she did not think the Nashoba program would provide an appropriate peer group. (Coakley-Welch, P-18)

Dr. Coakley-Welch observed at Learning Prep on June 5, 2019. She observed Student's math, ELA, enrichment, social studies, and science classes. She noted that he was very engaged in all of his classes. All of his classes were small and there was lots of participation from the students. Student participated and volunteered answers in his classes. His math class had four students and one teacher. His ELA class had six students and his science class had six students and one visitor. His social studies class had five students and one teacher. The class was reviewing both content and how to write a five paragraph essay. Student was engaged in the process. Dr. Coakley-Welch noted that Student seemed to

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<sup>4</sup> She was supposed to observe the ELA class, however the students were working on editing a prior writing assignment and the school psychologist and teacher suggested that they meet during that time to discuss the program. (Coakley-Welch)

struggle with providing information to answer a question and Learning Prep teachers were able to walk him through what he was trying to say. Dr. Coakley-Welch observed Student picking his scalp a bit during class. She thought it was a symptom of anxiety and that he did it when he felt stressed. She noted that he sometimes rubbed his pencil against his hair as well, but that seemed more of a habit than a manifestation of anxiety. She talked to Student's counselor, who noted that Student's scalp picking was more evident last year than this year and was not a problem from the teachers' perspective. (Coakley-Welch, P-18)

Dr. Coakley-Welch recommended that Student continue to attend Learning Prep rather than the Middle Connections Program. (Coakley-Welch)

24. Craig Murphy, Ph.D., consulting psychologist, Nashoba, conducted a review of selected records and observed portions of Student's program at Learning Prep and portions of the Middle Connections Program at Nashoba's request. He reviewed Student's most recent IEP, Dr. Coakley-Welch's 2019 neuropsychological evaluation; and the brochure of the Middle Connections Program. He did not speak to Parents. He has never met Student and does not know him. He visited Learning Prep on September 18, 2019 and observed Student's math, language arts, enrichment, and science classes. He noted that Student appeared to struggle during math class and required 1:1 attention from the teacher at times. He noted that Student struggled to keep up with the group and apologized to the teacher, which Dr. Murphy attributed to anxiety. In language arts, the teacher checked in with Student several times. Student appeared distracted and scratched at his scalp fairly intensely. Dr. Murphy noted that Student appeared to be more capable in language arts class than math and that he participated and responded at a consistent level with his classmates. During Student's science class, Student raised his hand at the beginning of class and apologized to his classmates about an incident that had occurred during class the previous day. Another student suggested that the classmates also apologize to Student and a third student offered an apology for something he had said. The students were working with worms and Student appeared distracted by them. He needed a number of reminders to clean up his area at the end of class. (Murphy, S-49, S-2)

Dr. Murphy observed the Middle Connections Program at Hale Middle School on September 23, 2019 for approximately three hours and fifteen minutes. He did not observe either the science or social studies inclusion classes. Dr. Murphy observed a lesson on place value in math in which the teacher, Mr. Hambelton, used a place value flip chart. Mr. Hambelton then taught a lesson on word problems using different colored pens to identify different information from the problems. After whole group instruction, the teacher and educational assistants worked individually with students. Dr. Murphy also observed Mr. Hambelton's English Language Arts class. He noted that class began with Mr. Hambelton doing some "balloon breathing" with students to get them ready for learning. (S-49, Murphy)

Dr. Murphy agreed with the majority of Dr. Coakley-Welch's recommendations for Student. He noted that Student appeared to benefit from a small classroom environment, especially for his core academic instruction, which he defined as reading, writing, and math. He recommended that a small classroom environment, free of distractions, with highly

structured instruction would continue to be important for Student. He further stated that a small teacher to student ratio with a combination of tutorial and therapeutic interventions would be helpful. He disagreed with Dr. Coakley-Welch's opinion that the Middle Connections Program focused primarily on behavior and social skills. He also took exception to her description of the general education classrooms at Middle Connections, despite the fact that he did not observe the inclusion classrooms. Dr. Murphy acknowledged that Student has a complex learning profile which would be difficult to accommodate in both learning environments. He concluded that Student's educational and social needs could likely be met by both Learning Prep and Middle Connections. He noted that Learning Prep's strengths included small group classrooms throughout the school day and the fact that Student had made substantial progress in reading since his previous evaluation in 2016. He noted some concerns about Learning Prep including: variability in teacher expertise/experience; a lack of technology and educational materials; and lack of social-emotional support to manage Student's anxiety. He found the strengths of the Middle Connections Program to be: a special education teacher who can oversee Student's entire program and collaborate with all of his teachers daily; qualified experts to provide counseling and social pragmatics; and daily exposure to same-aged peers from his neighborhood community. He noted his concerns with the Middle Connections Program: uncertainty as to how Student will fit into the small group of students in the program; and how Student will navigate the larger school community including his mainstream classes. (Murphy, S-49)

25. The Team reconvened on June 14, 2019, to review Dr. Coakley-Welch's updated evaluation. (P-17) The Team indicated that most of her recommendations, including suggested accommodations, were already in the proposed IEP. The Team disagreed with Dr. Coakley-Welch's recommendation that Student be placed in a substantially separate setting for all academic classes. Some revisions were made to Student's reading goals and the service delivery grid was updated to include the reading specialist in small group English language arts. The Additional Information section was amended to reflect the reading specialist pushing into the current small group ELA 2 x 45 minutes per cycle to support carryover and accuracy in decoding and encoding skills. The Grid does not appear to have been modified. (P-17, S-4) Parents rejected the IEP on July 18, 2019, writing "[Student] requires placement in a highly specialized, substantially separate language based program in order to make progress. He cannot access the curriculum and make effective progress in a partial inclusion program like the one proposed." (P-17, S-4)

## **FINDINGS AND CONCLUSION:**

Student is an individual with a disability, falling within the purview of the Individuals with Disabilities Education Act (IDEA)<sup>5</sup> and the state special education statute.<sup>6</sup> As such, he is

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<sup>5</sup> 20 USC 1400 *et seq.*

<sup>6</sup> MGL c. 71B.

entitled to a free appropriate public education (FAPE). Neither his status nor his entitlement is in dispute.

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education, employment and independent living.”<sup>7</sup> FAPE must be provided in the least restrictive environment. Least restrictive environment means that, “to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”<sup>8</sup>

Student’s right to a FAPE is assured through the development and implementation of an individualized education program (“IEP”).<sup>9</sup> An IEP must be custom-tailored to address a student’s “unique” educational needs in a way reasonably calculated to enable him to receive educational benefits.<sup>10</sup> For an IEP to provide a FAPE, it must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”<sup>11</sup> A student is not entitled to the maximum educational benefit possible.<sup>12</sup> Similarly, the educational services need not be, “the only appropriate choice, or the choice of certain selected experts, or the child’s parents’ first choice, or even the best choice.”<sup>13</sup> The IDEA further requires that special education and related services be designed to result in progress that is “effective.”<sup>14</sup> Further, a student’s level of progress must be judged with respect to the educational potential of the child.<sup>15</sup>

Massachusetts special education regulations provide that specially designed instruction and related services described within the IEP must be sufficient to “enable the student to progress effectively in the content areas of the general curriculum.”<sup>16</sup> Massachusetts also requires that the special education services be designed to develop a student’s educational potential.<sup>17</sup>

An IEP is a snapshot; therefore, the IEP must take into account what was, and was not objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.<sup>18</sup> An IEP is not judged in hindsight; its reasonableness is evaluated in light of the

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<sup>7</sup> 20 USC 1400(d)(1)(A). See also 20 USC 1412(a)(1)(A); *Mr. I ex. Rel. L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1 (1st Cir. 2007)

<sup>8</sup> 20 USC 1412(a)(5). See also 20 USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c)

<sup>9</sup> 20 USC 1414(d)(1)(A)(i)(I)-(III); *Honig v. Doe*, 484 U.S. 305 (1988); *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982)

<sup>10</sup> *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir.1993)

<sup>11</sup> *Andrew F. v. Douglas County. Sch. Dist.*, 580 U.S. \_\_\_ (2017)

<sup>12</sup> *Rowley*, 458 U.S. at 197

<sup>13</sup> *G.D. Westmoreland Sch. Dist.*, 930 F.2d 942 (1st Cir. 1991)

<sup>14</sup> 20 USC 1400(d)(4); *North Reading School Committee v. Bureau of Special Education Appeals*, 480 F. Supp.2d 479 (D. Mass. 2007)(the educational program must be reasonably calculated to provide effective results and demonstrable improvement in the various educational and personal skills identified as "special needs")

<sup>15</sup> *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F.3d 18 (1st Cir. 2008)

<sup>16</sup> 603 CMR 28.05(4)(b)

<sup>17</sup> MGL c.71B; 603 CMR 28.01(3)

<sup>18</sup> *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983 (1st Cir. 1990)

information available at the time it was promulgated.<sup>19</sup> The critical inquiry is whether a proposed IEP is adequate and appropriate for a particular child at a given point in time.<sup>20</sup>

The IDEA requires that “to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. See 20 USC 1412(a)(5); 20 USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c)

The burden of persuasion in an administrative hearing challenging an IEP is placed upon the party seeking relief. *Shaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 534, 537 (2005) In this case, Parents are the party seeking relief, and as such has the burden of persuading the Hearing Officer of its position.

With the foregoing legal framework in mind, I turn to the issues before me. The first issue is whether IEP proposed by Nashoba for the 2019-2020 school year was reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

There is little dispute with respect to Student’s profile and areas of need. The only area of disagreement regarding Student’s diagnoses was with respect to Dr. Coakley-White’s diagnosis of Other Specified Neurodevelopmental Disorder. Although Dr. Murphy had some issues with that diagnosis, I found Dr. Coakley-Welch to be more credible in this regard as she had more experience with Student and hence more knowledge of Student’s profile and history than Dr. Murphy. Therefore, I credit her testimony regarding Student’s diagnoses. Further, that diagnosis did not make any significant difference with respect to the services proposed for Student, and Dr. Coakley-Welch explained that she used it to better explain Student’s profile and difficulty with spatial organization. (Coakley-Welch) That aside, there was general agreement between the Parties regarding Student’s areas of weakness and even substantial agreement regarding the services he required.

The primary area of disagreement is whether Student’s needs can be met within the Middle Connections Program, a partial inclusion program, or whether Student requires a substantially separate environment for all of his academic classes, as offered by Learning Prep. Nashoba’s proposed IEP provides that Student receive math and English language arts, in a small substantially separate classroom with a special education teacher, and receive science and social studies instruction in a large, general education classroom with support from a paraprofessional. It further proposes academic support periods with the special education teacher to pre-teach, re-teach, and reinforce what is presented in the general education setting. It provides for speech language services 3 x 45 minutes per week to address Student’s communication goal and to provide pre-teaching and re-teaching content from the science and social studies classes. Both

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<sup>19</sup> *Id.*

<sup>20</sup> *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir. 1993)

Middle Connections and Learning Prep provide similar levels of social skills support, both embed social skills across the program, and provide similar levels of occupational therapy support.

Parents rely upon Dr. Coakley-Welch's opinion to support their contention that Student requires small, language based, special education classes for all of his academic subjects. I found Dr. Coakley-Welch to be a very credible witness. In addition to conducting her own testing, she reviewed records from Student's previous school district, Nashoba, and Learning Prep and conducted a Parent interview. She sought input from Student's teachers and requested that they answer open-ended questions regarding Student's strengths and weaknesses. Consequently, her opinion utilized all the information that was available to her and she was able to present a complete picture of Student. In fact, Dr. Coakley-Welch's testing results were remarkably similar to the district's results and Nashoba did not dispute her results.

Dr. Coakley-Welch's basis for recommending a substantially separate classroom for all academics was persuasive in light of observations made by Student's teachers and evaluators in different settings. Most teachers and evaluators who have worked with Student have noted that he has a great deal of difficulty maintaining attention across settings. Even within small classes of seven or fewer students, Student often had difficulty maintaining attention. This was despite taking medication for ADHD and with dosage adjustments as needed.

Also notable in both Dr. Coakley-Welch's initial and Nashoba's more recent testing, is Student's very low score in working memory and low score in processing speed. Dr. Coakley credibly testified, after having observed the science classroom of the Middle Connection's general education classes, that she did not see how Student would benefit from being in that class with 23 other students and a general education teacher. She stated that the pace would be far too fast for Student and that he would not be able to get the immediate clarification and reinforcement of content and strategies that he requires. She was concerned that given Student's language level and working memory, he would simply not be able to keep up with the instruction. Further, she referenced Dr. Macht-Greenberg's prior observations of Student becoming overwhelmed and shutting down in the general education setting and worried Student would react similarly again. Although Student's anxiety has improved since he has been at Learning Prep, it still manifests itself in the classroom, as noted by both Dr. Coakley-Welch and Dr. Murphy.

Nashoba did not present any credible evidence to show that Student would be able to access the curriculum in the general education setting. It is striking that Nashoba's own testing concluded that Student's attention appears to impact him greatly in academic areas that are difficult for him such as science and math. (P-10, S-23) Despite this finding, Nashoba proposed an inclusion setting for Student's science and social studies classes. The District's consulting psychologist, Dr. Murphy, observed part of the Middle Connections Program, but he did not observe either the general education science or social studies classes (the major point of contention in this case) which diminished the value of his observations and testimony in determining which program would provide Student with a free appropriate public education. Further, Dr. Murphy had read only the most recently proposed IEP, Dr. Coakley-Welch's most recent report and the Middle Connections brochure and had not spoken to Parents. Further, in his report, he stated that Student's educational and social needs could likely be met in *both* programs, Learning Prep and Middle Connections. Due to the limited information Dr. Murphy had about Student, the fact

that he had not observed the general education science or social studies classes, and the fact that he did not reach a definite conclusion as to which of the programs would provide Student with a free appropriate public education, I did not rely upon Dr. Murphy's testimony.

It is notable that if Student were to participate in the Middle Connections Program he would be required to attend the science and social studies inclusion classes without any direct, in-the-moment special education supports. The teachers of both of the inclusion classes are general education teachers and the instructional assistants who accompany students to these classes are neither special education teachers or certified educators. There would be nobody available to provide in the moment modifications as needed. As Dr. Coakley-Welch convincingly testified, the pace and content in the general education setting would be far beyond Student's level. Mr. Hamblton acknowledged the difference between the general education and his special education classroom multiple times during his testimony, stating that he could control the pace and re-teach concepts within his classroom until he determines that students have mastered the material. I was persuaded by Dr. Coakley-Welch's testimony that Student requires a small, language based setting for all academics given his processing speed, working memory, learning disabilities and anxiety. Based upon the preponderance of the credible evidence, I find that Student's need for language based instruction, a slow pace, and repetition cannot be met in the Middle Connections inclusion science and social studies classes.

Having determined that Nashoba's IEP for the period from 2019-2020 is not reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment, I turn to the appropriateness of Learning Prep for Student.

Under 34 CFR §300.148(c), if the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the State educational agency and local educational agencies. See *Florence County School Dist. Four v. Carter*, 510 U. S. 7 (1993).

In order to be considered appropriate for purposes of reimbursement, a private placement need not provide every recommended special education service, "[n]or must the placement meet every last one of the child's special education needs."<sup>21</sup> "But the reasonableness of the private placement [for purposes of reimbursement] necessarily depends on the nexus between the special education required and the special education provided."<sup>22</sup>

In this case, I have determined that Student requires a small, language-based, substantially separate setting with similar peers. Learning Prep provides such a setting. As stated above, the Middle Connections and Learning Prep programs provide many similar services. However, only

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<sup>21</sup> *Mr. I. ex rel. L.I. v. Maine School Admin.*, Dist. No. 55, 480 F.3d 1, 25 (1<sup>st</sup> Cir. 2007).

<sup>22</sup> *Id.*

Learning Prep is able to provide Student with a small, substantially separate setting for all of his academic classes.

Nashoba has argued that Student has not made sufficient progress within the Learning Prep program to warrant continued placement there. When considering the appropriateness of the private school, the First Circuit does not necessarily consider evidence of educational progress to be persuasive that a private, unilateral placement is appropriate.<sup>23</sup> The court has focused more on the appropriateness of the services provided to the student in light of the recommendations of the educational experts.<sup>24</sup> Therefore, although evidence of progress is not necessary for Parents to prevail, it bears noting that there was no evidence in the record as to Student's expected rate of progress. Further, both Rose Quinn and Amy Davis noted several areas of progress that Student has made during his time at Learning Prep. Both Ms. Quinn and Ms. Davis noted that Student's self-esteem and ability to maintain friendships had improved. Further, Ms. Quinn noted improvement in Student's ability to make on-topic connections in reading and to slow down and re-read to find information. Dr. Coakley-Welch noted that Student's general knowledge had increased greatly between the time that she initially evaluated him and her most recent evaluation. (Quinn, Davis, Coakley-Welch)

The weight of the credible evidence supports the conclusion that Nashoba did not offer Student a free appropriate public education in the least restrictive environment and that Learning Prep does provide such a placement. Therefore, Parents are entitled to reimbursement for Student's placement at Learning Prep for the 2019-2020 school year, including transportation expenses.

It should be noted that although I have found the Middle Connections Program to be inappropriate for Student, this should not be viewed as reflecting negatively on the program. I was impressed by Mr. Hambelton's enthusiasm, his knowledge regarding special education strategies and modifications and his obvious dedication to his students. Similarly, I found Ms. Paulin to be dedicated and knowledgeable. The program appears to provide appropriate services for the students it was designed to serve, but Student's needs cannot appropriately be met there.

Finally, there was testimony regarding Student's slow progress in math, even while at Learning Prep. Both Nashoba and Learning Prep shall monitor Student's math progress and determine whether further assessments should be done in this area. Likewise, Nashoba raised concerns about Student picking at his scalp. Learning Prep did not view it as a concern, as they noted that it did not seem to distract him from learning, and had diminished

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<sup>23</sup> See *Rafferty v. Cranston Public School Committee*, 315 F.3d 21 (1<sup>st</sup> Cir. 2002) (even if the child makes academic progress at the private school, "that fact does not establish that such a placement comprises the requisite adequate and appropriate education").

<sup>24</sup> See *Mr. I. v. Maine School Administrative District No. 55*, 480 F.3d 1, 25 (1<sup>st</sup> Cir. 2007) (private school was not appropriate since this school, "where [student] has remained for more than two full academic years, simply does not provide the special education services that [student's] mental health professionals have prescribed").

since last year. If Nashoba continues to be concerned, an evaluation should be scheduled by the District to assess the behavior.

**ORDER**

Based upon the foregoing, I find that the IEP proposed by the Nashoba Regional School District for the 2019-2020 school year was not reasonably calculated to provide Student with a free and appropriate public education in the least restrictive environment. I further find that Learning Prep does provide Student with a free and appropriate public education and thus, Nashoba shall reimburse Parents for the costs of Student's attendance at Learning Prep, inclusive of transportation, for the 2019-2020 school year.

By the Hearing Officer,

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Catherine M. Putney-Yaceshyn

Dated: December 4, 2019