

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

DECISION

STUDENT v. IPSWICH PUBLIC SCHOOLS

BSEA # 23-01247

BEFORE

HEARING OFFICER

ALINA KANTOR NIR

SEAN GOGUEN, ATTORNEY FOR THE PARENTS

COLBY BRUNT, ATTORNEY FOR THE SCHOOL

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

In Re: Student v. Ipswich Public Schools

BSEA #23-01247

DECISION

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

A hearing was held via a virtual platform on March 7 and 8, 2023 before Hearing Officer Alina Kantor Nir. Both parties were represented by counsel. Those present for all or part of the proceedings, all of whom agreed to participate virtually, were:

Mother

Sean Goguen

Cathy Mason, M.Ed.

Matthew Taffel

Colby Brunt

Amy Smith

Jacqueline Potter

Amy Whynott

Kevin Murphy

Melissa Fleet, M.Ed.

Alex Loos

Attorney for Parents

Education Specialist

Assistant Director, Windham Woods School (Windham Woods)

Attorney for Ipswich Public Schools (Ipswich or the District)

Reading Specialist, Ipswich

Middle School Program Manager, Ipswich

Special Education Liaison, Ipswich

Middle School Humanities Teacher, Ipswich

Independent Evaluator

Court Reporter

The official record of the hearing consists of documents submitted by Parents and marked as Exhibits P-1 to P-13; documents submitted by Ipswich and marked as Exhibits S-1 to S-36¹; approximately two days of oral testimony and argument; and a two-volume transcript produced by a court reporter. A transcript of the proceedings was sent to the Parties, and pursuant to a joint extension request which was allowed by the Hearing Officer, the record remained open until April 28, 2023 for submission of written closing arguments, and the record closed on that date.

ISSUES IN DISPUTE:

The following issues are in dispute:

¹ By agreement of the parties and with the Hearing Officer's permission, S-36 was admitted into the record on March 24, 2023, having been submitted via email.

1. Whether the Individualized Education Program (IEP) dated October 25, 2021 to October 24, 2022 (as revised in June 2022), proposing an in-District placement denied Student a free, appropriate public education (FAPE) in the least restrictive environment (LRE)²?
2. If the answer to (1) is affirmative, then whether Windham Woods is an appropriate placement for Student, thus entitling Parents to reimbursement and funding for Student's placement at Windham Woods, including but not limited to tuition (both academic year and summer), transportation and all other costs related to her placement there, as well as for all costs of ancillary or supplemental educational services that have been and/or will be provided to Student, and all other related costs?

FACTUAL FINDINGS:

1. Student is a resident of Ipswich, Massachusetts, who is eligible for special education and related services pursuant to the disability category Specific Learning Disability. She is currently in the seventh grade, attending Windham Woods in Windham, New Hampshire, an unapproved special education school, where she was unilaterally placed by Parents in August 2022. (Mother, Potter, P-6) Student last attended the Ipswich Public Schools' full inclusion program at Ipswich Middle School during the 2021-2022 school year pursuant to a partially rejected IEP. (Mother, Potter, P-6)
2. Student is motivated, hardworking, and social. (Mother, Smith, Whynott) She would like to attend a four-year college and pursue a career in law, medicine, or software engineering. Student continues to maintain friendships with Ipswich peers and plays on Ipswich's lacrosse team. (Mother)
3. Student began attending the Ipswich Public Schools in kindergarten. In first grade, Student struggled to learn to read and received extra reading instruction. In second grade, Parents requested special education testing, and Student was found eligible in December 2017 pursuant to the disability category Specific Learning Disability. (Mother)³
4. The initial evaluation in 2017 revealed variability in Student's cognitive abilities. On the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V), Student demonstrated high average abilities in the Verbal Comprehension, Visual Spatial, and Processing Speed domains but low average ability in the Working Memory domain. On the Wechsler Individual Achievement Test – Third Edition (WIAT-III), Student scored in the average range on the Mathematics subtest. However, she scored in the below average range on Total Reading and Basic Reading (SS= 80), Comprehension and Fluency (SS=82), Early Reading Skills (SS=84), Word Reading (SS=79), Pseudoword Decoding (SS=80), and Oral Reading Fluency (SS=84) subtests. On the Comprehensive Test of Phonological Processing, Second Edition (CTOPP-2), Student scored in the below average range on the Phonological Awareness (SS=82), Phonological Memory (SS=85), and Rapid Naming (SS=85) indices. (P-9)

² Although there was another IEP proposed by the District in October 2022, that IEP, which I will refer to as the 7th Grade IEP, is not at issue in this Hearing.

³ Mother testified that Student's first IEP was implemented in November 2018. The reason for the delay between the finding of eligibility and the implementation of the first IEP is unclear from the record.

5. During the 2020-2021 school year, Student attended fifth grade at the Paul F. Doyon Memorial School in Ipswich, Massachusetts pursuant to a fully accepted IEP dated October 26, 2020 to October 25, 2021 (5th Grade IEP). Student participated in a full inclusion program. The IEP included goals in the areas of Reading/Spelling, Written Language, and Executive Functioning/Self Advocacy. Services included the following: B Grid: Written Language, 5x30 minutes/week, Humanities with special education teacher, 5x40 minutes/week, Science with special education teaching assistant (TA), 5x40 minutes/week; C Grid: Reading/Spelling, 3x30 minutes/week, Reading Fluency, 3x20 minutes/week, and Academic Support, 3x40 minutes/week. This reflected 550 minutes per week of B Grid services and 270 minutes per week of C Grid services (for a total of 820 minutes of special education services per week). (P-10c) Parents assumed Student was approximately one year behind her peers in reading. (Mother) Student also participated in Extended School Year services (ESY) (2x60 minutes/week, 4 weeks). (Mother, Potter, S-14, S-15).
6. In fifth grade, Student began to resent being pulled out of class for reading services. She felt anxious about being “singled out” for pull-out reading services and was “increasingly aware” of her disability. (Mother, P-1b) According to Mother, during the 2021-2022 school year, Student began to “white knuckle” her way through the school day, “releasing tension” at home. She was argumentative and tearful. Student reported that although there was additional staff in her classrooms, the special education teacher was often “busy” when Student asked her for help. Parents felt that Student was increasingly anxious about school, becoming especially upset when assignments were modified for her or when she missed class content due to pull-out sessions. (Mother, P-1b) At home, she was reluctant to read. Still, Parents assumed that Student was “closing the gap between her and her peers,” as teachers reported good progress on her IEP goals and objectives. (Mother)
7. On the Spring 2021 MCAS, Student scored 471 (Partially Meeting Expectations) in English Language Arts (ELA) and 509 (Meeting Expectations) in Mathematics. (S-17)
8. The Team convened on May 3, 2021 to discuss Student’s transition to Ipswich Middle School. At that meeting, Parents reported that Student’s reading fluency had improved. They requested remote ESY services for the summer so Student could participate in a planned family vacation. (Potter, P-10e, S-13) However, due to a “misunderstanding,” Student only attended a few days of ESY 2021. (Mother)⁴
9. During the 2020-2021 school year, Student made excellent progress on her IEP goals, meeting nearly all of her reading, written language, and executive functioning/self-advocacy objectives. (S-17, S-22)
10. In October 2021, as part of Student’s three-year re-evaluation, Student underwent a psychoeducational evaluation with Jennifer Reimold.⁵ (Potter, Mother, P-6, P-10d, S-12, S-15) In addition to an observation and file review, Ms. Reimold administered the WISC-V, Wechsler Individual Achievement Test – Fourth Edition (WIAT-IV), Behavior Assessment System for Children, Third Edition (BASC-3), Behavior Rating Inventory for Executive Function, Second Edition (BRIEF-2), Continuous Performance Test, Third Edition (CPT-3). The WISC-V revealed average cognitive skills except that Student’s working memory skills were in the low average range. On the Mathematics

⁴ Parents had assumed that Student would be able to attend via Zoom and had made summer plans.

⁵ Ms. Reimold did not testify at Hearing.

portion of the WIAT-IV, Student scored in the high average range on the Math Problem Solving Skills subtest and in the average range on the Numerical Operations subtest. However, Student demonstrated significant weaknesses in her literacy skills. On the Written Expression Composite of the WIAT-IV, Student scored in the low range; she scored in the below average range on the Sentence Composition (SS=79) and Spelling (SS=74) subtests and in the low range on the Essay Composition (SS=60) subtest. On the Reading Composite portion of the WIAT-IV, Student's scores varied; on the Reading Comprehension subtest, she scored in the average range. However, on the Word Reading (SS=73), Oral Reading Fluency (SS=82), Decoding Fluency (SS=77), and Orthographic Choice (SS=83) subtests, she scored in the below average range. On the Pseudoword Decoding (SS=65) and Phonemic Proficiency (SS=69) subtests, she scored in the low range. Moreover, Student's scores were notable for difficulty with sustained attention and vigilance. Rating scales demonstrated some signs of anxiety. Ms. Reimold proposed accommodations for attention, retention of information, and executive functioning. She suggested that Student get to know her guidance counselor to learn strategies to address her anxiety and self-confidence. Ms. Reimold also recommended specialized reading and writing instruction. (P-5, S-16)

11. Jacqueline Potter completed the Educational Assessment A for Student's 2021 re-evaluation. Ms. Potter is the current Special Education Program Manager at Ipswich Middle School. In that capacity, she leads IEP Team meetings and oversees the middle school's special education programming. Ms. Potter has a master's degree in education. She holds several licenses from the Department of Elementary and Secondary Education (DESE) and has previously worked as a special education teacher. She has never worked directly with Student. (Potter, S-28)
12. The Team convened on October 25, 2021 to discuss the re-evaluation. (Potter, P-6, P-10d, S-12, S-15) Parents reported that Student was anxious about school.⁶ Teachers reported that Student was motivated and willing to ask for and accept help. They did not express any social/emotional concerns. (P-6, S-12) The Team determined that Student continued to be eligible for special education. Due to concerns about Student's low literacy scores, the Team agreed to increase her pull-out services. (Potter, P-6, S-12)
13. On November 4⁷, 2021, the District proposed an IEP with full inclusion placement for the period October 25, 2021 to October 24, 2022⁸ (6th Grade IEP or the IEP). (Potter, P-6, S-11) Several accommodations were proposed, including, but not limited to, copies of notes, modeling, breakdown of assignments, multisensory approach to reading and phonics, fluency practice, access to books on tape and assistive technology, previewing, reviewing, modeling and repetition, small group instruction, as needed, visuals, read aloud of content area texts, word banks for writing assignments, graphic organizers for writing tasks, extended time, teaching how to approach complex tasks, checklists, and use of technology to increase written output. The 6th Grade IEP proposed goals in the areas of Reading/Spelling (recognizing sounds in isolation, decoding words containing 6 syllable types, encoding, improving instructional reading level) and Written Language

⁶ Parents also expressed concern that Student's reading services decreased with her transition to middle school. (P-6, S-12) The basis for Parents' concern is unclear from the record.

⁷ Some exhibits refer to the issuance date as November 5, 2021. (S-11)

⁸ The IEP at issue was revised several times during the 2022-2023 school year prior to Parents' unilateral placement. For ease of reference, I will refer to this IEP, as revised, as the 6th Grade IEP.

(utilizing graphic organizer for organization and theme development, sentence revision, editing for punctuation and sentence structure). Services were proposed as follows: B Grid: Humanities with special education teacher, 5x40 minutes/week, and Science with special education TA, 5x40 minutes/week; C Grid: Reading/Writing, 3x30 minutes/week, and Decoding/Encoding/Fluency, 3x30 minutes/week. As proposed in November 2021, the 6th Grade IEP reflected 400 minutes per week of B Grid services and 180 minutes of C Grid services (excluding summer services) (for a total of 580 minutes of special education services per week). (P-10c) ESY was also proposed (2x60minutes/week, summer). (Potter, S-11)

14. On December 9, 2021, Parents partially rejected the 6th Grade IEP. According to Parents, Student made “little to no progress” in many areas of her reading and written expression skills. They “invoked Stay Put” to the 5th Grade IEP’s Executive Functioning/Self Advocacy Goal. They also requested “Reading/Spelling services using a rules-based phonics program with a special education teacher certified in that program” (5x30 minutes/week); Reading Fluency services “using a systemic, evidence-based program with a special education teacher” (3x20 minutes/week); and Academic Support with a special education teacher (3x40 minutes/week). Parents rejected the full inclusion placement, seeking instead placement in a language-based classroom for all content areas. (Potter, P-6, S-11)
15. Student’s sixth grade Humanities class was co-taught by Amy Smith, Amy Whynott, and Kevin Murphy, who have worked together for many years. They share planning time and meet frequently to discuss their lessons. (Smith, Murphy, Whynott, S-27)
16. Amy Smith has been working as a reading specialist in Ipswich for twenty years and previously worked in other public school districts in similar capacities. Ms. Smith has a master’s degree in education and an advanced degree in literacy. She is a DESE licensed reading specialist. (Smith, S-28) During the 2021-2022 school year, Ms. Smith provided Student with C Grid reading services which included Wilson Reading and “other reading programs,” such as the LiPS Vowel Circle. She also delivered Student’s B Grid services in the Humanities class. (Smith, S-27)
17. Ms. Whynott is a special education teacher at Ipswich Middle School. During Student’s sixth grade year, she co-taught Student’s Humanities and Math classes. Ms. Whynott has been co-teaching the Humanities and Math classes for 8 years. Ms. Whynott is licensed through the DESE in moderate special needs. She has completed several “Landmark graduate level classes,” including 70 of the 100 hours required to become certified in Orton Gillingham. (Whynott, S-28) In addition to providing Student’s Humanities B Grid services⁹, Ms. Whynott delivered Student’s Academic Support and Reading Fluency services, ensuring continuous “carryover” from those services into the general education classrooms. (Whynott, S-27) To support Student’s reading fluency, Ms. Whynott utilized the ReadLive program. In Academic Support¹⁰, Ms. Whynott previewed and reviewed content and vocabulary and helped Student with writing. Student did not require any support with organization. (Whynott)

⁹ Ms. Whynott was also the co-teacher in Student’s Math class. Following revisions to the 6th Grade IEP discussed *infra*, Ms. Whynott also provided Student with B Grid Math services. (Whynott)

¹⁰ Reading Fluency services were provided during Student’s Academic Support period. (Whynott, S-27)

18. Student participated in Mr. Murphy's Humanities co-taught class three times per week and in Jenn Couto's¹¹ co-taught Humanities class twice per week. (Murphy) There were approximately 20 students in the sixth grade Humanities class. (Smith) Student was pulled out during the geography portion of the class for reading services, but she was not responsible for content relayed during that part of class. (Whynott)
19. Mr. Murphy has been teaching in Ipswich for twenty-seven years, the last five of which have been in the co-taught Humanities class. He has a master's degree in technology education and a DESE license in middle school humanities. (Murphy, S-28) Ms. Couto is an experienced, DESE licensed Humanities teacher. She also worked as a Tutorial Teacher at the Landmark Summer Program from 2011 to 2014 and is trained in the LiPS program. (S-28)
20. Ms. Smith, Mr. Murphy, and Ms. Whynott testified that instruction in the Humanities class is "seamless." Class often includes a slideshow where one of the three instructors "models the instructions," ensuring that each lesson is both verbal and visual. (Smith, Whynott, Murphy)
21. For writing instruction, Ms. Smith, Mr. Murphy, and Ms. Whynott utilize the Framing Your Thoughts program. (Smith, Whynott, Murphy) Framing Your Thoughts is a research-based writing program that is highly templated and scaffolded. It is prescriptive and formulaic, teaching students the type of language they need for expository, informative, persuasive, and narrative writing. The program offers "lots of opportunities for feedback and practice." (Smith) According to Ms. Smith, "no specific reading program is used per se" other than Lexia, but Ms. Smith "brings reading strategies" into the classroom. (Smith) Students "preview and review every day," and there is "substantial scaffolding" involved in all classwork. (Smith, Murphy)
22. Mr. Murphy testified that during group work students are grouped with similar peers. (Murphy)
23. Student's Science class was supported by a Teaching Assistant (TA). Ms. Whynott testified that she and the TA discussed Student's needs daily; content and vocabulary for Science class were previewed and reviewed during Academic Support. (Whynott, S-27)
24. Ms. Whynott testified that math is a great strength for Student. (Whynott, S-27) According to Mother, Student found math in 6th grade "too easy." Although Student was "gifted in math," she was "always [] placed in a Math class with other students with IEPs because that was the class with the co-teacher. [Student] would be ready to move on before the rest of her classmates." (P-11)
25. Student's teachers testified that they had no concerns regarding Student's ability to access the curriculum in the general education classes; there was significant "carryover" from Student's C Grid services to her full inclusion classes which, in addition to the general education teacher, were staffed by the reading specialist and special educator who were responsible for Student's academic support and reading tutorials. (Smith, Whynott, Murphy, Potter)
26. According to school staff, in the Humanities class, Student was "generally" engaged and did not require much redirection. She was "very willing" to accept help and was extremely well organized with her materials which, according to Ms. Whynott, is a "big deal" in sixth grade. (Smith, Murphy, Whynott, Fleet) In Math class, Student was a risk taker. In Science class, Student "did great" with the hands-on learning and was able to

¹¹ Ms. Couto did not testify at Hearing.

- “use her tools and strategies when filling out lab reports.” Student had access to vocabulary which she previewed and reviewed along with the material. Notes were provided so that Student could “just listen” and not use cognitive energy for writing. (Whynott)
27. According to District staff, language-based principles were applied in all of Student’s classes. In addition to the Framing Your Thoughts program utilized for writing, these strategies included modeling, breaking down of assignments and information into “microunits,” reviewing, and previewing. (Whynott, Smith, Murphy, Potter)
 28. On December 21, 2021, the IEP Team convened to discuss the rejected portions of the 6th Grade IEP. According to Ms. Potter, Parents “wanted [Student’s] elementary school services back” because they “did not fully understand” what co-taught Humanities “looks like.” Because the District wanted to “work with the family,” the Team proposed to increase Decoding/Encoding to 5x30 minutes/week, Reading Fluency to 3x15 minutes/week, and Academic Support to 3x25minutes/week.¹² (Potter, P-10c, S-9, S-10) This reflected 400 minutes per week of B Grid services and 270 minutes per week of C Grid services (total of 670 minutes per week). (P-10c)
 29. On January 11, 2022, Parents again partially rejected the 6th Grade IEP, requesting a “cohesive, substantially separate, language-based program across contents areas.” (Potter, S-8, S-9) The District rejected this option, asserting that Student’s program was appropriate because Student’s language-based support had been increased to provide her with daily instruction in structured phonics and an additional 45 minutes per week of reading fluency using ReadNaturally.¹³ Student was also accessing additional language-based supports through the Framing Your Thoughts, Lexia, and Wilson programs. The District anticipated that with Student participating in ESY, Student would make solid gains. Student was also receiving co-teaching support in Humanities and Mathematics. This provided for consistency in teaching and facilitated the application of learned strategies. This support was being provided for Student in a cohort of like peers. All of Student’s teachers had received professional development training in supports and strategies for addressing the needs of dyslexic students. (Smith, Whynott, Potter, Murphy, S-7)
 30. The Team convened on April 28, 2022 to review the results of the privately obtained neuropsychological evaluation conducted by Dr. Amanda Ward in February 2022.¹⁴ (Potter) According to Mother, Parents sought Dr. Ward’s help because Student’s IEPs were “very similar, but the results of the three-year re-evaluation showed a very wide gap between Student’s ability and her skills.” Parents did not feel “equipped” to determine what services and supports Student required. They wanted “independent” advice regarding Student’s needs. (Mother)
 31. Dr. Ward reviewed Student’s previous testing and educational history and conducted a clinical interview of Student. She also provided Parents and Student’s teachers with

¹² This change was made to accommodate explicit fluency practice. (Potter, P-10c, S-9, S-10)

¹³ ReadLive is the online version of ReadNaturally. Ms. Whynott testified that she utilized the online version with Student. (Whynott)

¹⁴ Dr. Ward practices with Dr. Ellen Braaten, Ph.D., and Associates. (P-1b) She is a highly trained neuropsychologist. (P-1a) Dr. Ward did not testify at Hearing.

- several rating scales¹⁵ and administered numerous formal testing instruments.¹⁶ Dr. Ward did not observe Student in her educational setting. (P-1b, S-32)
32. Student's cognitive profile was assessed by Dr. Ward using the DAS-II which revealed high average verbal abilities and average nonverbal reasoning, spatial and general conceptual abilities. Student also scored in the average range on the working memory and processing speed composites. Dr. Ward's findings were in line with previous WISC-V results except that Student's working memory abilities on the DAS-II appeared to be stronger than previously assessed. (P-1b, S-32)
 33. Language functioning was assessed using the CELF-5. Here, Student scored in the average range in phonological awareness but in the low average range in phonological memory and in the very low range in rapid symbolic naming/orthographic recognition. According to Dr. Ward, although Student had developed adequate phonological awareness, other aspects of her phonological processing remained far below what might be expected based on her strong verbal aptitude. These weaknesses made it harder for her to make gains via typical reading instruction. On the D-KEFS Verbal Fluency subtest, Student scored in the low average range, suggesting phonological and executive weaknesses. (P-1b, S-32)
 34. Dr. Ward concluded that while Student's verbal reasoning, vocabulary and language comprehension skills were at or above age expectation, she exhibited "weaknesses within aspects of foundational skills that underlie language-based academics." In addition, she showed some weaknesses in attention/executive functioning. (P-1b, S-32)
 35. Dr. Ward assessed Student's academic skills using the WJ-IV, TOWRE-2, TOWL-4, and GORT-5. Consistent with the 2021 school evaluation, Student continued to show significant vulnerabilities within her language-based academic profile. On the WJ-IV Reading, Student scored in the very low range on Letter-Word Identification (SS=76), Word Attack (SS=72) and Sentence Reading Fluency (SS=79). On the TOWRE-2, she scored in the low average range in Sight Word Efficiency (SS=80) but in the extremely low range on Phonemic Decoding Efficiency (SS=68). On the GORT-5, Student scored in the average range on the Reading Comprehension subtest but in the low average range on the Oral Reading Rate, Oral Reading Accuracy, and Oral Reading Fluency (SS=6, on each) subtests. To Dr. Ward, this suggested that Student was devoting much of her energy to applying learned phonics skills during integrated reading tasks, which undermined her fluency and left her with fewer resources to ensure the accuracy of her work. (P-1b, S-32)
 36. On the Writing portion of the WJ-IV, Student scored in the extremely low range on the Spelling (SS=57) subtest and in the low average range on the Sentence Writing Fluency

¹⁵ These included the ADHD Checklist from the NICHQ Vanderbilt Assessment Scale, Beck Youth Inventories, Second edition (BY-2), Selected Subtests, Behavior Assessment System for Children (BASC-3), BRIEF-2, and Teacher Questionnaire. (P-1b)

¹⁶ These included the following: Boston Naming Test, Second Edition (BNT-2), California Verbal Learning Test, Children's Edition (CVLT-C), Clinical Evaluation of Language Fundamentals, Fifth Edition (CELF-5), Selected Subtests, Comprehensive Test of Phonological Processing, Second Edition (CTOPP-2), Selected Subtests, Delis Kaplan Executive Function System (D-KEFS), Selected Subtests, Differential Ability Scales, Second Edition (DAS-II), School-Age Record Form, Gray Oral Reading Tests, Fifth Edition (GORT-5), Form A, Rey Complex Figure Test (RCFT), Test of Written Language, Fourth Edition (TOWL-4), Selected Subtests, Test of Word Reading Efficiency, Second Edition (TOWRE-2), Selected Subtests, and Woodcock-Johnson IV Tests of Achievement (WJ-IV), Selected Subtests. (P-1b)

- (SS=86) subtest. On the TOWL-4, she scored in the low average range on the Contextual Conventions (SS=6) subtest but in the average range on the Story Composition subtest. While Student demonstrated age-appropriate abilities to develop a logical story, her ability to apply the rules of spelling and mechanics in her writing was far below age expectations. (P-1b, S-32)
37. Student demonstrated strengths in aspects of math, scoring in the average range on the Calculation subtest of the WJ-IV and in the high average range on the Applied Problems subtest. Yet her Math Facts Fluency score was in the very low range (SS=76), which Dr. Ward noted was a “frequent occurrence with language-based learning difficulties.” (P-1b, S-32)
38. According to Dr. Ward, Student had not made effective progress with her then-current services. She continued to show “significant vulnerabilities within her language based academic profile” and performed “below age, grade, and aptitude expectations on tests of reading foundations.... These difficulties persist[ed] despite consistent interventions.” Student met the criteria for a language-based learning disability, specific learning disorder with impairment in reading and written expression (Developmental Dyslexia). Student also met the criteria for ADHD-Inattentive Type and demonstrated ongoing weaknesses with aspects of her executive function skills, necessitating positive behavior strategies and accommodations in the classroom to promote attention. While Student’s anxiety symptoms did not warrant a social-emotional diagnosis, it was important to provide her with appropriate academic interventions to “buffer” future emotional challenges. (P-1b, S-32)
39. Dr. Ward recommended that Student be placed in an intensive, substantially separate program for individuals with language-based learning disorders/dyslexia with peers of average intellectual functioning. Specifically,

“this substantially separate school program should infuse multi-sensory phonics based literacy instruction and support across all content areas and settings (i.e., even in math, science and social studies instruction as reading demands increase in middle school and into high school). Additionally, this classroom should include no more than approximately 8 students, and instruction should continue into the summer months and be a continuation of the language-based programming provided during the school year.”

Dr. Ward also recommended intensive specialized reading instruction 45-60 minutes daily, comprised of 1:1 reading tutoring from a teacher certified in an evidence-based reading program, such as Wilson; intensive exposure and drills of orthographic principles to increase reading and reading fluency using a program such as RAVE-O or Read Naturally; writing instruction focusing on grammar and mechanics three to five times per week; instruction in problem solving “given [Student’s] weakness in [M]ath fluency and language-based challenges”; instruction in academic strategies and study skills; and ESY programming. (P-1b, S-32)

40. Parents began looking for a private, out-of-district placement for Student in the spring of 2022. Neither Carroll School nor Landmark School had any availability. Parents’ educational advocate recommended that Parents consider Windham Woods School, which they did. (Mother)

41. In response to Dr. Ward's recommendations, on April 28, 2022, Ipswich revised the 6th Grade IEP, incorporating changes "to promote more consistency," including accommodations and push-in Math services (5x40 minutes/week).¹⁷ (Potter, S-36) The Team also proposed that the then-current Decoding/Encoding/Fluency services (5x30 minutes/week) would be increased to 5x40 minutes/week beginning September 2022 and that a reading tutorial would be held in lieu of a Related Arts class. (S-36) With these changes, the IEP proposed the following services: B Grid: Humanities, 5x40 minutes/week, Math, 5x40 minutes/week, and Science, 5x40 minutes/week; C Grid: Decoding/Encoding, 5x30 minutes/week (5x40 beginning September 2022), Reading Fluency, 3x15 minutes/week, and Academic Support, 3x25minutes/week. (S-36) Student would thus receive 600 minutes per week of B Grid services and 320 minutes per week of C Grid services (for a total of 920 minutes of special education services per week). (P-10c) Additional ESY services were also proposed (an increase from 2x45 to 3x60 minutes/week). (Potter, S-36)
42. In May 2022, Cathy Mason conducted an educational assessment and classroom observation of Student on behalf of Parents to see how Student was responding to her then-current interventions. She observed Student in her Reading tutorial and Humanities class. Ms. Mason has a master's degree in education and is an education specialist, having served as such for approximately thirty years. In her role, both in private practice and at Tufts Medical Center (currently known as Tufts Medicine), she conducts assessments of students with learning and developmental challenges. Ms. Mason conducts approximately 180 academic evaluations and approximately 30 to 50 observations per year. She has also consulted to school districts, providing in-service trainings or extended consultations. In the past, she led tutorials for students with language-based learning disabilities and worked at several programs including those at St. Ann's Home and Northshore Consortium. (Mason, P-2a)
43. Prior to her observation of Student, Ms. Mason reviewed Student's educational records and prior assessment results. She also administered the Kaufman Test of Educational Achievement, Second Edition (KTEA-II, Brief). Ms. Mason testified that she evaluated Student in order to "get to know her" and to "affirm" that her perception of Student's strengths and weaknesses was similar to that of previous assessments. (Mason) On the Reading subtest of the KTEA-II, Student scored in the 16th percentile (SS=85). Student's reading comprehension was relatively strong, but Ms. Mason testified that the comprehension portion of the KTEA-II was not timed, and timing "could be hard" for Student as it would force Student to "sacrifice accuracy for finishing an assignment or the other way around." Ms. Mason also testified that because Student has strong oral and reasoning skills and an intact cognitive profile, she could "pull-out comprehension," but Ms. Mason also predicted that "eventually" Student's comprehension would be impacted by reading accuracy. (Mason, S-33, P-2b) On the Writing Subtest of the KTEA-II, Student scored in the 3rd percentile (SS=71). Student's spelling was very weak, reflecting her low literacy level and underlying dyslexia. (Mason, S-33, P-2b)
44. According to Ms. Mason, although Student has been receiving special education services for years, "she continue[d] to perform far below age, grade and aptitude expectations per results from both school re-evaluation in October 2021 and outside

¹⁷ Student was already attending the co-taught Math class, but the Team wanted to reflect the service in the IEP to ensure that this continued into the next year. (Potter)

neuropsychological evaluation.” Student’s reading and written language skills were “well below average and grade level” (2nd to 3rd grade level) and “of a very serious concern” considering “the increasingly complex cross-curricular demands of middle school.” Student “need[ed] [] highly intensive [intervention] in order that she make effective progress and begin to close her achievement gap. Without solid, well mastered literacy skills, [Student was] at ever-increasing risk for academic frustration, failure, anxiety and curtailing of future educational and vocation aspirations.” Ms. Mason agreed

“with [the] recent recommendations for full-time, language based placement to facilitate the opportunity for [Student] to overlearn skills and concepts to the point of automaticity, offer the provision of research-validated, multisensory instruction that taps visual, auditory and kinesthetic-tactile pathways of learning to maximize learning, opportunity to address language goals and opportunity to benefit from the social dynamic of interacting in a small group....[T]he current program [did] not meet [Student’s] learning, language, and academic needs. [It was] a partial inclusion program that provide[d] a combination of supported general education instruction and curriculum and some specialized, small group/1:1 instruction. The program lack[ed] cohesion and explicit instruction in language strategies and skills across all settings.”

(Mason, S-33, P-2b)

45. Ms. Mason opined that “the Wilson program was not being delivered with fidelity” at Ipswich Middle School as Student was not receiving 90-minute daily lessons. (Mason, S-33, P-2b) Ms. Mason incorrectly noted in her report that at the time of the observation Student was receiving reading services 3x30, but, in fact, she was then receiving pull-out services 5x30. (S-9)
46. According to Ms. Mason the 6th Grade IEP was inappropriate because it did not offer the scope, depth, intensity, and full cohesive method of instruction that Student required. Student required intensive remediation “in the context of a cohesive, intensive and well-integrated program with a community of peers and staff with extensive training and expertise in working with students having language learning disabilities rather than an inclusion program with a relatively large class delivered at a pace and with literacy demands designed for typically achieving 6th graders.” General education was “insufficient” for Student in terms of how content was presented, paced, and practiced, and how feedback was provided. (Mason, P-2b, S-33) For instance, Student’s Humanities class “was too large and diverse”¹⁸ for Student to receive language-based instruction. (Mason) Ms. Mason did not review peer IEPs. (Mason)
47. Ms. Mason testified that the high teacher-to-student ratio in Student’s classes did not render the program language based,” as staff presence did not necessarily translate into language-based instruction. For instance, she did not observe structured literacy strategies and skills being reinforced in the class, and Student received no feedback from staff. In addition, the texts in the Humanities class were significantly above Student’s reading level, and information was not broken down or paced in a “structured way.”

¹⁸ Ms. Mason defined a diverse classroom as one that is not limited to students with language-based learning disabilities. (Mason)

Although Student was attentive in class, it was unclear what she “got” from the lesson. (Mason)

48. According to Ms. Mason, Student’s 6th Grade IEP provided an insufficient number of benchmarks, and those included were neither “specific” nor were they “written to develop mastery.” Furthermore, there were no benchmarks for fluency or comprehension. (Mason, P-2b, S-33) This witness testified that because Student was so far behind, she needed constant reinforcement across the curriculum, which she could not receive in inclusion classes. In Ms. Mason’s opinion, Student “has the potential to get there,” and she could “close the gap” with more intensive instruction, “but it will take a long time.” (Mason)
49. Ms. Mason agreed with Dr. Ward’s recommendation for a substantially separate language-based program for Student, including “consistent, explicit, systematic, and redundant instruction with continual practice and reinforcement of skills and strategies for basic skills development, generalization, and mastery.” (Mason, P-2b, S-33) Ms. Mason defined a substantially separate language-based program is a small program “based on the special characteristics of students who have language impairments.” The program is scientifically-based, diagnostic and prescriptive and must be delivered in a small group setting, providing students with a consistent framework.¹⁹ (Mason) Opining that Student’s “significant literacy needs had not progressed effectively” in elementary and middle school, Ms. Mason also recommended 2-3 hours/day of “scientifically validated structured literacy instruction for all ELA instruction implemented with consistency and fidelity across the curriculum.” (Mason, P-2b, S-33)
50. On May 19, 2022, the District proposed, and Parents consented to an observation of Student to be conducted by an outside consultant. (Potter, S-6) Ms. Potter contacted Melissa Fleet to conduct the observation. Ms. Fleet has observed the Ipswich Middle school program in the past and like the program. (Potter, Fleet) According to Ms. Potter, the Team was open to making changes and improvements. (Potter)
51. Melissa Fleet, M.Ed., is a certified special education teacher who taught in the public schools for twenty-six years. She is currently the owner of Fleet Learning LLC which she started eleven years ago. Ms. Fleet holds a DESE license in special education and has twenty-two years of experience as a Wilson Reading Dyslexia Therapist. Ms. Fleet is also trained in other reading programs such as “all the Landmark writing and reading programs,” the Lindamood-Bell LiPS program, the Lindamood-Bell Visualizing and Verbalizing program, Orton Gillingham, Project Read, Thinking Maps, and Keys to Literacy. In the past six years, she has conducted independent evaluations on behalf of twelve school districts.²⁰ Ms. Fleet has also conducted approximately 120 evaluations and 120 private observations on behalf of parents. Ten percent of Ms. Fleet’s work is

¹⁹ According to Ms. Mason, in a substantially separate language-based classroom, teachers pre-teach, preview, and review vocabulary. Then when vocabulary words are encountered in class, teaching staff must “break them down” in the same manner taught during the reading tutorial; this helps students remember the words, and it “also reinforces the skills that they are [learning] [during] the specialized kind of [direct] instruction they are receiving.” (Mason) Ms. Mason opined that although previewing and reviewing “could be done as a pull-out” such as in an academic support class, it would be “difficult to do,” and it is “not the same” as having it done “in the moment.” Also, in an academic support class, the “teacher is bouncing around from kid to kid,” and the students are “diverse.” (Mason)

²⁰ Ms. Fleet testified that although she has been working in private practice for 11 years, she has only been keeping specific data for the past 6 years. As such, the reported numbers are limited to that time period. (Fleet)

- with school districts, and ninety percent of her time is spent conducting evaluations on behalf of parents and students. Ms. Fleet has no current contract with Ipswich. (Fleet, S-31)
52. On June 7, 2022, Ms. Fleet observed Student at Ipswich Middle School in her reading tutorial and general education classes. She found Ms. Smith to be a “highly skilled Wilson Reading teacher” who delivered a “very structured lesson.” During the observation, Student was working on Step 9 of the Wilson Program. Ms. Fleet disagreed with Ms. Mason’s assertion that Ms. Smith did not implement the Wilson program with fidelity; as a certified Wilson Reading Therapist, she opined that the Wilson Reading Program recommends that at least two lessons occur in a week for a total of 180 minutes. The program can be implemented in three thirty minutes lessons. Ms. Fleet did not have the opportunity to observe Student’s fluency lesson but testified that the ReadNaturally/ReadLive program that Ms. Whynott was utilizing is a “fabulous, highly recommended research-based program for students with language-based” disabilities. (Fleet, S-18, S-27, S-28, S-29)
53. Ms. Fleet also described Student’s Humanities teachers as “highly skilled.” She observed them implementing the Framing Your Thoughts program and Lexia Power during the poetry lesson. The teachers provided feedback to students, read aloud to the class, and discussed the syllables of words, which was a “carryover” from Student’s reading tutorial. They worked well together, and the instruction was “seamless.” (Fleet, S-18, S-27, S-28, S-29)
54. Ms. Fleet testified that she considered the Humanities class to be language-based because there was a small student-to-teacher ratio, and staff implemented language-based programs such as Framing Your Thoughts and Lexia. Moreover, content was previewed and reviewed during academic support, and there was carryover of strategies from Student’s reading tutorial. “[M]ost importantly,” the program was “cohesive” because those who worked in the general education classroom also provided Student with C Grid services. Student could access the Humanities lesson because she was able to preview and review key vocabulary before class; the materials were broken down; and there was very little independent work assigned. Student did not raise her hand in class, but, for the most part, she “did what she was expected to do.” She appeared neither anxious nor uncomfortable in class. (Fleet)
55. Ms. Fleet also observed Student’s Math class, which was co-taught by the general education teacher and Ms. Whynott. The general education teacher provided the instruction, and Ms. Whynott “moved around” the class. The lesson was an engaging step by step project, and the handout was broken down with visuals and questions. There were 14 students in the class. Student was attentive, engaged, and asked questions as needed. Ms. Fleet observed that Student has above average math skills and was able to access the general education curriculum. (Fleet, S-18, S-27, S-28, S-29)
56. Ms. Fleet observed Student’s Science class which was staffed by a regular education teacher and a paraprofessional. The teacher read all text aloud; although she had students take notes, she also provided them with “specific details to copy.” The pace of the class was appropriate, and the teacher provided appropriate questioning. The paraprofessional “circulated” and “checked in” with the students. There were 14 students in the class. Student was engaged; she participated and answered questions correctly. Student previewed and reviewed key science terms and vocabulary during Academic Support

- class. During science, Ms. Fleet observed Student participating in the hands-on lab. Ms. Fleet was not concerned that Framing Your Thoughts was not utilized in science class since students do not write “in the same way” in science as they do in Humanities, and the latter utilized Framing Your Thoughts. In her view, Student was able to access the Science curriculum. (Fleet, S-18, S-27, S-28, S-29)
57. Ms. Fleet did not speak to Student or Parents as part of her evaluation, nor did she conduct any of her own testing as this was not requested of her. (Fleet)
58. Ms. Fleet “commended” Ipswich’s “cohesive” language-based program and testified that Student could access the general education curriculum in all her classes. (Fleet, S-18, S-27, S-28, S-29) According to Ms. Fleet, the program she observed at Ipswich Middle School was a language-based program because Student received 1:1 reading instruction²¹ with a highly qualified reading specialist.²² In addition, Student received Reading Fluency and Academic Support services for previewing and reviewing vocabulary and content. There were three teachers in the Humanities class utilizing language-based programs for reading and writing. With Academic Support services and the push-in services of the special educator and paraprofessional in Math and Science, respectively, Student was able to access the general education curriculum. Even though the program was not substantially separate, it was appropriate for Student as it addressed all of her special education needs. (Fleet)
59. Although Ms. Fleet noted that at times, Student seemed distracted or inattentive, she had no concerns regarding the “totality of Student’s engagement” in any of her classes. (Fleet)
60. Following her observation, Ms. Fleet made several recommendations including an Assistive Technology Evaluation to explore Chromebook extensions, the use of audiobooks, a reading fluency objective (cwpm), an academic support goal to target executive functioning skills, and counseling services to address Student’s anxiety. Ms. Fleet also recommended that the Team explore “various strategies [to help Student] sustain attention and “highly recommended” that Student attend ESY. (Fleet, S-18, S-27, S-28, S-29)
61. Ms. Fleet testified that Student’s progress was evidenced by the improvement in her standard scores in areas of decoding. Specifically, Student’s KTEA-II Brief Word Reading score (SS=85) shows progress compared to earlier testing on the WJ-IV Letter Word Identification score (SS=76) and on the WIAT-IV Word Reading score (SS=73). (Fleet, S-18, S-27, S-28, S-29) Ms. Fleet testified that although these scores are derived from three different tests, they “measure the same skills,” making comparison of scores possible. (Fleet)
62. During the 2021-2022 school year, Student made progress on her IEP goals and across all her objectives. Her grades were in the A and B range. (S-19, S-20, S-21, S-22, S-23, S-24) Student’s June 2022 Progress Report showed progress using concrete measures of progress through the specialized programs utilized, such as Lexia and Wilson. While encoding and decoding continued to be difficult for Student, there was a lot of scaffolding in her inclusion classes. (Potter, Smith, S-19, S-20) For example, when

²¹ When Ms. Fleet observed Student, she was receiving 5x30 minutes/week of Decoding/Encoding. This was increased to 5x40 minutes/week in June 2022. (Potter)

²² Ms. Fleet testified that “having a good reading teacher is the key component to a language-based program”. (Fleet)

- Student entered sixth grade, she was on the 6th step of the Wilson Reading Program but needed a review. By June 2022, she was on step 9. By the end of ESY, she completed step 9.5. (Smith, S-23) In addition, Ms. Smith noted that Student's self-esteem and confidence increased throughout the year. (Smith) Ms. Whynott also testified that Student made progress on the fluency ReadLive program, as in May 2022, Student was at level 4 with a "cold read" of 100 wcpm and a "hot read" of 135 wcpm with 95% accuracy in answering comprehension questions. (Whynott, S-1) Mr. Murphy testified that Student's written output increased throughout the 2021-2022 school year. (Murphy)
63. Student's 2022 MCAS scores were 443 in ELA (Not Meeting Expectations) and 500 in Math (Meeting Expectations). (S-1)
 64. The Team convened on June 17, 2022 to review Ms. Mason's and Ms. Fleet's respective reports. (Potter, P-10b, S-3, S-4, S-5) Ms. Fleet's recommendations were incorporated in the IEP.²³ (Fleet) As a result of the meeting, the Team revised the IEP by adding a reading fluency benchmark to the Reading Goal; adding a Social Emotional Goal and corresponding counseling service (2x15min/week) to address Student's anxiety; increasing the Grid B Humanities service to 5x70min/week²⁴; and increasing the reading service to 5x40min/week. The Team rejected Parents' request for a substantially separate language-based program for Student on the grounds that Student was an active participant in class and in the life of the school; she consistently did well academically, receiving As and Bs; she benefitted from Ipswich's strong Math and Science curriculum; and she demonstrated progress based on assessment data and teacher feedback. The Team considered an Executive Function Goal but concluded that, as Student was organized and did not struggle with work initiation or completion, her needs could be met through accommodations and general education instruction. In addition, executive function skills were embedded in the writing goal. The revised 6th Grade IEP reflected the following services: With these changes, the IEP proposed the following services: B Grid: Humanities, 5x70 minutes/week, Math, 5x40 minutes/week, and Science, 5x40 minutes/week; C Grid: Decoding/Encoding, 5x40 minutes/week, Reading Fluency, 3x15 minutes/week, Academic Support, 3x25minutes/week, and Counseling 2x15 minutes/week (for a total of 1030 minutes of composite Grid B and C services per week). (Potter, S-3, S-4, S-5)
 65. Ms. Fleet testified that Student's program for 2022-2023 was appropriate. (Fleet)
 66. Ms. Smith testified that she supported the increase in Student's C Grid reading services from 3x30 minutes/week to 5x30 minutes/week to 5x40 minutes/week, because Student needed "ample time to practice reading skills and receive consistent feedback." Because Wilson is a prescriptive program, it was important to "keep the momentum going" with practice. (Smith)
 67. According to Ms. Smith, Student's 6th Grade IEP, as revised in June 2022, was appropriate. Student's classes were "set up for success" with relationship building, self-reflection, visuals to support auditory instruction, "microunits" for information,

²³ Ms. Fleet testified that the Team rejected her recommendation for an assistive technology evaluation, because the chrome extensions which Ms. Fleet had suggested were already available to all students at Ipswich. (Fleet)

²⁴ Because Humanities and Geography were presented in the same block, Student was not receiving push-in services during the entirety of the block; instead, she was pulled out for C-Grid reading services during the Geography portion. For the 2022-2023 school year, however, the Team intended that Student be pulled out during a Related Arts class. Hence, push-in services in Humanities were increased to reflect the full block. (S-27, S-29)

- directions and projects, pre-teaching/previewing and reviewing, and multisensory strategies. The program also offered Student rigor in Math and Science. She went on to testify that the Ipswich program is not a substantially separate language-based program because “the student numbers are not small,” but “the curriculum is presented in language-based principles and teaching style.” Moreover, Ms. Smith opined that Student did not require a substantially separate language-based program. Although she required reading and writing supports, it was appropriate for Student to be in class with students “with different makeup” with sufficient rigor to be challenged. (Smith)
68. According to Ms. Potter, Student’s 6th Grade IEP, as revised in June 2022, was appropriate. Student received services to address her needs, and she was exposed to and participated in the general education classroom where she received “seamless instruction.” To the extent that a language-based classroom requires a small group of students, Ipswich does not have such a program. Nevertheless, Student’s Humanities class had a small student-to-teacher ratio, and language-based practices were implemented across all content. Such practices included modeling, reviewing, and previewing. At Ipswich, Student had opportunities for “immediate feedback “as well as for “taking in information and sharing information.” She was instructed by highly qualified teachers, all of whom had received professional development in the area of language-based instruction with workshops from Landmark School. (Potter)
 69. In June 2022, Student was accepted to Windham Woods. She was initially upset and did not want to leave Ipswich Middle School. (Mother)
 70. Student attended only 7 days of the 2022 Ipswich ESY program. (S-23)
 71. In August 2022, Parents rejected the 6th Grade IEP, as revised, and unilaterally placed Student at Windham Woods. (Potter, Mother, P-7, S-3)
 72. Matthew Taffel is the Assistant Head of Windham Woods. He has served in this role for five years since the inception of the school. Previously Mr. Taffel taught middle school Math and ELA at Landmark School. During his tenure at Landmark School, he provided two to four reading tutorials daily. Mr. Taffel has a master’s degree in special education. Although he was licensed to teach Math in Massachusetts, he is uncertain whether his license is still “valid.” Following his tenure at Landmark, Mr. Taffel taught Math in several public-school districts in Massachusetts. During this time, he provided private reading tutorials. Mr. Taffel testified that in the public schools he could not address the needs of his students in general education classrooms in the same way that he could at Landmark even with paraprofessionals or co-teachers in the classroom. (Taffel)
 73. There are 155 students at Windham Woods, one third of whom are publicly funded, and, of those 50 students are from Massachusetts. Windham Woods serves students with mild to moderate learning challenges in math, reading, or written expression. The school also serves students with non-verbal learning disorders, executive function skill deficits or anxiety. “Intentionally,” Windham Woods is not a chapter 766 approved program as the founders of the program did not want it to be Landmark School but rather a program for students “who could not get into Landmark” and for those who have “competing challenges.” The school is guided by the Common Core and follows the Massachusetts, rather than the New Hampshire, Curriculum Frameworks but “the pace and the depth and the breadth that [Windham Woods pursues] nowhere near covers what [they] would need to do if [the school were] 766 approved.” A “huge mission” of the school is to train its teachers. All teachers participate in 2 weeks of training prior to the school year as

well as in professional development once per month. Teachers also engage in biweekly staff meetings that are “academically focused.” All teachers are trained on the Landmark Writing Process. (Taffel)

74. At Windham Woods, the maximum number of students per class is eleven. (Taffel)²⁵

75. Windham Woods is “a more hands-on, dynamic educational setting” where

“each child’s ... academic and social needs are addressed. With the cooperation of students, parents, and faculty, an Individualized Learning Plan (ILP) is developed. The ILP provides valuable insight for Windham Woods School’s faculty as they prepare to individualize curriculum and enhance lessons to meet the needs of each student. [Students who apply to Windham Woods] often experience fatigue and frustration in traditional academic settings. They may fall behind in class, lack confidence, motivation, and have difficulty maintaining meaningful connections with peers.”

(Taffel, S-35) According to Mr. Taffel, an ILP is a “shorter version of an IEP and [is] more specific to Windham Woods.” (Taffel, P-11)

76. Windham Woods does not develop IEPs for students. For students who are publicly funded, IEPs developed by their school districts are “upheld.” There are no pull-out services at Windham Woods. Students on IEPs who require specific services receive them as push-in supports. (Taffel)

77. Windham Woods is “not entirely” a language-based program nor does the school’s website represent it as such. Not every student who attends Windham Woods has language-based needs. Mr. Taffel opined that a “range of learning abilities in groupings works best,” and if Windham Woods did not have such a range, it “would be Landmark.” (Taffel)

78. Students with behavioral difficulties are denied admission to Windham Woods. However, there are students with attention issues, and maladaptive behaviors do occur. (Taffel)

79. Windham Woods employs “best practices in language-based instruction.” According to Mr. Taffel, this means that, in the classroom, teachers address expressive and receptive language, speaking and listening, presenting information, and comprehension. There are also many opportunities and supports for students to speak, listen, read, and produce written language effectively. (Taffel)

80. Not all teaching staff at Windham Woods are formally trained or licensed teachers. For instance, Student’s current Humanities teacher is in his early twenties and does not have a teaching degree or a teaching license. He was hired as a long-term substitute. (Taffel)

81. At Windham Woods, Student’s classes include Advisory at the beginning and end of the school day, Humanities (which incorporates ELA), Engagement, Communication and Organization (ECO), Pre-Algebra, Science, Physical Education, Art, and Music. She also participates in a reading tutorial. ECO is the “most flexible block.” It “bends in the direction of the students” and deals with any issues that arise in the context of the school. In ECO, students work on social skills, executive functioning skills and social

²⁵ Ms. Potter testified that this student-to-teacher ratio would be out of compliance for a 766 approved out-of-district private program in Massachusetts. (Potter)

- emotional learning. (Taffel) According to Mr. Taffel, Student receives language-based instruction in all academic subjects. This means that the same writing program is used across the curriculum, and the same approach is utilized when Student writes in ELA as in Science. In class, there is “not much language coming from the teacher.” The teacher is “mobile,” moving around the classroom and working with students. Students work on similar assignments, but they are “differently templated.” (Taffel)
82. According to Mr. Taffel, when a new student begins at Windham Woods, she is initially grouped with peers “based on the admission process.” However, the first month of school is “fluid” as groupings are adjusted. Students are grouped not by grade level but rather based on needs, challenges, and abilities. Windham Woods has “different cohorts and tracks” to address different needs. Students who do not require as much scaffolding would not be placed in the same classes as students who do. In Student’s case, she is grouped with students who require language-based programming. Student is mostly grouped with 7th and 8th grade students, but there are some 6th and 9th grade students in her groupings as well. (Taffel)
 83. Since beginning at Windham Woods, Student has changed classes three times because she had “hit the ceiling” in her Math, Humanities, and Reading classes. Specifically, in Humanities, “the group of students she was with did not have the same [language-based] needs as she,” and “the amount of socializing that was happening in the classroom was not allowing the students to learn appropriately.” In Math, Student’s “abilities clearly were above the needs of the other students in that class.” In the Reading tutorial, she was “moved up” because “one of the pitfalls of doing group work is that students accelerate at different levels.” (Taffel, Mother) Mr. Taffel reported that at Windham Woods, Student “often needs help ... self-starting.” (Taffel)
 84. Mr. Taffel testified that there are no 1:1 reading tutorials at Windham Woods. Student’s reading tutorial currently includes two students.²⁶ Student’s reading instructor is not a certified reading teacher, but she holds a DESE license in moderate special needs. (Taffel)
 85. At Windham Woods, Parents are provided with progress reports three times per year. (Taffel, P-12a and b, S-34) According to Mr. Taffel, Student has made progress at Windham Woods both in her decoding and in her ReadLive data. (Taffel, P-12a and b, S-34) Mr. Taffel testified that although Student’s April 2022 progress report from Ipswich indicated her benchmark reading was at a level 4, it was 3.5 on Windham Woods’s benchmark assessment. Windham Woods’ benchmark data was not shared with Ipswich because although its in-house benchmark assessments are “standardized”, Windham Woods “tweak[s] them to fit the profiles” of students making the assessments “not standardized.” Mr. Taffel testified that Windham Woods’s scores on benchmark assessments must be “interpreted” within “context.” (Taffel)
 86. On October 18, 2022, the Team convened for an annual IEP meeting. The Team proposed to maintain the goal areas of Reading, Writing, and Social Emotional skills and to maintain the service delivery save for an increase from 3x60 minutes/week to 3x90 minutes/week of ESY.²⁷ (Potter, P-8, P-10a, S-1, S-2)

²⁶ Initially, there were three students in Student’s reading tutorial. (Taffel)

²⁷ Subsequently, Ipswich proposed, and Parents rejected in full, an IEP and a full inclusion placement at Ipswich Middle School dated October 18, 2022 to October 17, 2023. This IEP included goals in the areas of

87. On December 6, 2022, Ms. Potter and Ms. Smith observed Student at Windham Woods. They first observed Student in Advisory class, where there was no instruction, and students did not respond to the teacher's direction to put their phones away and stand for the Pledge of Allegiance. Ms. Potter and Ms. Smith also observed Student's Humanities and ECO classes. In both, Student worked independently. The Humanities teacher did not "circulate." He provided no "instruction" and could not "control" the class, which was "disorganized." When asked, the teacher could not identify the programs utilized in class. In ECO, there was a lot of "down time with no instruction." The ECO teacher did not "float around." According to Ms. Smith, neither the Humanities nor the ECO class was language-based. There were no routines or breakdown of tasks. Ms. Potter testified that the Windham Woods program lacked structure and consistency. (Smith, Potter, P-4, S-1, S-25, S-26)
88. In February 2023, Ms. Mason observed Student at Windham Woods to determine how she was responding to the program. (P-3) She concluded that Student's unique learning needs were being addressed appropriately at Windham Woods as it offered her "an intensive, cohesive, cross curricular method of instruction globally and specifically and language-based strategies." Specifically, Student's program

"was structured with a clear instructional philosophy and goals, and the major tenets of language-based instruction were in place. These included instruction and class discussion that were teacher-directed and continued encouragement for student responses to elicit elaboration and understanding. Students were active participants in the learning process with teachers ensuring that each student was comprehending and interacting with the material, rather than passively trying to memorize it. This was especially evident in Reading which was highly individualized. [I]n the observed settings, the program provided individualized explicit instruction. Class size was small enough for teachers to interact with and monitor student progress and understanding."

According to Ms. Mason, Student received daily instruction in reading and written language using methodologies specifically designed for students with dyslexia, and written strategies were reinforced in content area classes. Instruction was diagnostic and prescriptive and based on student entry level performance and skills. (Mason, P-3)

89. On cross examination, Ms. Mason testified that the staff she spoke with at Windham Woods "described language-based instruction," and she was "told that reading skills were integrated across the curriculum." Although Ms. Mason did not observe the teacher providing instruction or directions, she testified that "from what she could tell" and from

Reading/Spelling (decoding, encoding, responding accurately to text, reading fluency), Written Language (drafting five paragraph essay, including transitional words and phrases in composition, proofreading, and revising written work), and Social-Emotional (identifying responses and appropriate coping strategies, understanding learning style). The following services were proposed: A Grid: Consultation, 2x15min/month; B Grid: Humanities, 5x70 min/week, Science, 5x40min/week, Math, 5x40min/week; C Grid: Fluency, 3x15min/week, Decoding/Encoding/Fluency, 5x40min/week, Reading/Writing, 3x90min/week (five weeks, summer), Academic Support, 3x25min/week, Counseling, 2x15min/week. Extended school year services were proposed to prevent regression in skills. (Potter, P-8, S-1) The 5x70 minutes/week of push-in Humanities services reflect the fact that Student would be pulled out of Related Arts (i.e., electives) rather than from geography class for reading services. (Potter, S-29)

- “what she was told,” materials and information were broken down for students. Ms. Mason did not know whether Windham Woods “advertises” as a language-based school, but she “met with someone [at Windham Woods] who described their program, and she described language-based instruction.” Ms. Mason did not, in fact, observe any instruction in the Humanities class, as it had already been provided “and they moved beyond that” by the time of her observation, but she observed the teacher “checking in with students as they worked on the next phase.” Ms. Mason did not review Student’s work product. (Mason)
90. Nor did Ms. Mason observe any instruction in the ECO class, and, as such, she could not “draw conclusions regarding [said class].” Ms. Mason testified that she observed the students “working in a serious manner,” and “the teacher was talking actively” to students, “discussing their work with them,” which Ms. Mason interpreted to mean that “students were active participants in the learning process with the teachers” and that they were “comprehending and interacting with the material.” According to Ms. Mason, during both the Humanities and ECO classes, students worked independently on their computers to complete the assignments,” but there was “ongoing teacher feedback and check-ins.” (Mason)
 91. Ms. Mason testified that although Windham Woods “[did] not meet all [of Ms. Mason’s recommendations,] it [came] close.” For instance, Ms. Mason recommended 2-3 hours per day of reading instruction, and, at Windham Woods, Student participates in a 50-minute reading tutorial, a 50-minute Humanities block, and then, based on what “she was told,” reading and writing are reinforced across the curriculum. Ms. Mason opined that Windham Woods is appropriate for Student “at this time,” because it provides her with intensive instruction based on her profile in small classes and across the curriculum. The small class size was important for Student, because “she would get lost otherwise.” (Mason)
 92. Ms. Mason testified that she does not know whether staff at Windham Woods are licensed. She did not review the profiles of Student’s peers. (Mason)
 93. Ms. Smith has concerns regarding Student’s reported progress at Windham Woods. She would have liked to see more progress in her reading skills, but, at the same time, Ms. Smith acknowledged that “these are skills that take time for mastery.” (Smith)
 94. Ms. Fleet testified that she is familiar with Windham Woods, having visited it seven or eight times since 2019. She has even recommended it as a placement for some students. She does not believe it is appropriate for Student as it is “not a program for students with ... straight language-based disabilities.” Student’s profile is not consistent with the profile of students attending Windham Woods. According to Ms. Fleet, of most Windham Woods students demonstrate weaknesses in nonverbal language, social skills, and/or math. Moreover, approximately twenty percent of the student body has an autism spectrum disorder diagnosis. Ms. Fleet expressed concern that Student is not receiving 1:1 reading instruction which is “highly recommended for students with dyslexia.” In addition, the focus on social skills in the ECO class does not serve Student’s needs. Student is above average in Math and Science; she can and should access the general education Massachusetts curriculum. (Fleet)
 95. According to Parents, Student is a lot less anxious about school and schoolwork at Windham Woods, because she “gets support if she asks.” She is not anxious about students “moving ahead of her.” Nor does Student try to hide her disabilities. (Mother,

P-3) Student does not have daily outbursts at home as she did when attending Ipswich. She feels that she is “smarter” than her peers at Windham Woods and is happy with everything she can accomplish. She has started reading aloud during family outings and activities. (Mother)

DISCUSSION:

A. Legal Standards:

1. Free Appropriate Public Education in the Least Restrictive Environment

The Individuals with Disabilities Education Act (IDEA) was enacted "to ensure that all children with disabilities have available to them a free appropriate public education" (FAPE).²⁸ To provide a student with a FAPE, a school district must follow identification, evaluation, program design, and implementation practices that ensure that each student with a disability receives an IEP that is: custom tailored to the student's unique learning needs; "reasonably calculated to confer a meaningful educational benefit"; and ensures access to and participation in the general education setting and curriculum as appropriate for that student so as "to enable the student to progress effectively in the content areas of the general curriculum."²⁹ Under state and federal special education law, a school district has an obligation to provide the services that comprise FAPE in the "least restrictive environment."³⁰ This means that to the maximum extent appropriate, a student must be educated with other students who do not have disabilities, and that "removal . . . from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services, cannot be achieved satisfactorily."³¹ "The goal, then, is to find the least restrictive educational environment that will accommodate the child's legitimate needs."³²

An IEP must be individually tailored for the student for whom it is created.³³ When developing the IEP, the Team must consider parental concerns; the student's strengths, disabilities, recent evaluations, and present level of achievement; the academic, developmental, and functional needs of the child; and the child's potential for growth.³⁴ Evaluating an IEP requires viewing it

²⁸ Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 (d)(1)(A).

²⁹ See 20 USC §1401 (9), (26), (29); 603 CMR 28.05(4)(b); *C.D. v. Natick Pub. Sch. Dist.*, No. 18-1794, at 4 (1st Cir. 2019) (quoting *Fry v. Napoleon Community Schools*, 137 S. Ct. 743, 748-749 (2017)); *Sebastian M. v. King Philip Reg'l Sch. Dist.*, 685 F.3d 84, 84 (1st Cir. 2012); *Lessard v. Wilton Lyndeborough Cooperative Sch. Dist.*, 518 F. 3d 18 (1st Cir. 2008); *C.G. v. Five Town Comty. Sch. Dist.*, 513 F. 3d 279 (1st Cir. 2008); *In Re: Chicopee Public Schools*, BSEA # 1307346 (Byrne, 2013).

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

³¹ 20 U.S.C. 1412(a)(5)(A); *C.D.*, 924 F. 3d at 631 (internal citations omitted).

³² *C.G.*, 513 F.3d at 285.

³³ *Andrew F. v. Douglas Cty. Reg'l Sch. Dist.*, 137 S. Ct. 988, 1001 (2017).

³⁴ 34 CFR §300.324(a)(i-v); *Andrew F.*, 137 S. Ct. at 999; *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012); *N. Reading Sch. Comm. v. Bureau of Special Educ. Appeals*, 480 F. Supp. 2d 479, 489 (D. Mass. 2007) ("The First Circuit has characterized the federal floor, which defines the minimum that must be offered to all handicapped children, as providing a *meaningful*, beneficial educational opportunity, and that court has stated that a handicapped child's educational program must be reasonably calculated to provide *effective results* and *demonstrable improvement* in the various educational and personal skills identified as special needs") (internal citations and quotations omitted).

as a "a snapshot, not a retrospective. In striving for 'appropriateness,' an IEP must take into account what was . . . objectively reasonable . . . at the time the IEP was promulgated."³⁵

At the same time, a FAPE does not require a school district to provide special education and related services that will maximize a student's educational potential.³⁶ In *Endrew F.*, the Supreme Court explained that appropriate progress will look different depending on the student.³⁷ An individual analysis of a student's progress in his/her areas of need is key.³⁸ The educational services provided to a student, therefore, 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."³⁹ Although parental participation in the planning, development, delivery, and monitoring of special education services is central in IDEA, MGL c. 71B, and corresponding regulations,⁴⁰ school districts are obligated to propose what they believe to be FAPE in the LRE, "whether or not the parents are in agreement."⁴¹

2. Reimbursement for Private Placement

When parents elect to place a student unilaterally in a private school notwithstanding the availability of a FAPE through the school district, parents retain responsibility for the cost of that education.⁴² However, parents who enroll a student in a private school without the consent of or referral by the school district may obtain reimbursement if a hearing officer finds both that the school district "had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate" for the student.⁴³

Parents are entitled to reimbursement for a private placement if (1) the school district's proposed placement violated the IDEA, (2) the parent's alternative private placement was appropriate, and (3) equitable considerations favor reimbursement.⁴⁴ In other words, parents may be entitled to

³⁵ *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990).

³⁶ *Bd. of Educ. v. Rowley*, 458 U.S. 176, 197, n.21 (1982) ("Whatever Congress meant by an 'appropriate' education, it is clear that it did not mean a potential-maximizing education"); see *N. Reading Sch. Comm.*, 480 F. Supp. 2d at 488 ("The focus of inquiry under 20 U.S.C. § 1415(e)(i) must recognize the IDEA's modest goal of an appropriate, rather than an ideal, education").

³⁷ *Endrew F.*, 137 S. Ct. at 992; see 603 CMR 28.02(17).

³⁸ *Endrew F.*, 137 S. Ct. at 1001 ("The nature of the IEP process, from the initial consultation through state administrative proceedings, ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child's IEP should pursue"); see *K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 809 (8th Cir. 2011) (explaining that the court would not compare the student to her nondisabled peers since the key question was whether the student made gains in her areas of need).

³⁹ *G.D. Westmoreland Sch. Dist.*, 930 F.2d 942, 948-949 (1st Cir. 1991).

⁴⁰ *Rowley*, 458 U.S. at 208 ("Congress sought to protect individual children by providing for parental involvement . . . in the formulation of the child's individual educational program").

⁴¹ *In Re: Natick Public Schools*, BSEA #11-3131 (Crane, 2011).

⁴² See 34 CFR §300.148.

⁴³ 34 CFR §300.148(c). See 20 USC §1412(a)(10)(C)(ii); see also *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 243 (2009) (explaining that §1415(i)(2)(C)(iii) authorizes "reimbursement when a school district fails to provide a FAPE and a child's private school placement is appropriate").

⁴⁴ See *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 14 (1993) (parents are entitled to reimbursement only if federal court concludes public placement violated IDEA and private placement was proper, and the court is to consider all factors in fashioning equitable relief); *Sch. Comm. of Town of Burlington v. Dep't of Educ.*, 471 U.S.

reimbursement for their unilateral placement if, after demonstrating that the district's proposed IEP and placement were not appropriate, they demonstrate that their chosen placement was appropriately responsive to the student's needs. To be reimbursed, parents' chosen placement need not meet state standards for special education schools, provided that the school chosen by the parents is "otherwise proper" under the IDEA or "appropriately responsive to [the child's] special needs."⁴⁵ Hence, the review of the private placement "is more informal than review of the original IEP: a private placement need not meet the IDEA requirement for a FAPE."⁴⁶

Although evidence of a child's success at the unilateral placement is relevant to the court's review, such evidence does not itself demonstrate that a private placement was appropriate; rather the Hearing Officer must assess the "totality of the circumstances," and the parents "need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction."⁴⁷

3. Burden of Persuasion

In a due process proceeding, the burden of proof is on the moving party.⁴⁸ If the evidence is closely balanced, the moving party will not prevail.⁴⁹ In the instant case, as the moving party challenging the IEP that Ipswich proposed for sixth grade and seeking public funding for their unilateral placement at Windham Woods, Parents bear this burden. That is, in order to prevail, Parents first must prove, by a preponderance of the evidence, that for the period for which they seek reimbursement, Ipswich's IEP was not reasonably calculated to provide Student with a FAPE.⁵⁰ If Parents meet this burden, they must then prove that Windham Woods was appropriate for Student for seventh grade. However, Parents are not held to the same standard as Ipswich and need only demonstrate that Windham Woods was responsive to Student's special needs, so that she could benefit educationally.⁵¹

349 (1985) (parents may be reimbursed for private special education if court ultimately determines private placement was proper).

⁴⁵ *Florence Cnty. Sch. Dist. Four*, 510 U.S. at 14; see *Matthew J. v. Mass. Dep't. of Educ.*, 988 F. Supp. 380, 391 (1998).

⁴⁶ *H.W. v. New York State Educ. Dep't*, No. CV 13-3873 SIL, 2015 WL 1509509, at *19 (E.D.N.Y. Mar. 31, 2015); see *Florence Cnty. Sch. Dist. Four*, 510 U.S. at 14–15 ("Nor do we believe that reimbursement is necessarily barred by a private school's failure to meet state education standards. . . . Indeed, the school district's emphasis on state standards is somewhat ironic. . . . [It] hardly seems consistent with the Act's goals to forbid parents from educating their child at a school that provides an appropriate education simply because that school lacks the stamp of approval of the same public school system that failed to meet the child's needs in the first place") (internal citations and quotations omitted).

⁴⁷ *H.W.*, 2015 WL 1509509, at *19; see *Frank G. v. Bd. of Educ. of Hyde Park*, 459 F.3d 356, 364 (2d Cir. 2006) ("No one factor is necessarily dispositive in determining whether parents' unilateral placement is reasonably calculated to enable the child to receive educational benefits. Grades, test scores, and regular advancement may constitute evidence that a child is receiving educational benefit, but courts assessing the propriety of a unilateral placement consider the totality of the circumstances in determining whether that placement reasonably serves a child's individual needs") (internal citations and quotations omitted).

⁴⁸ *Schaffer v. Weast*, 546 U.S. 49, 62 (2008).

⁴⁹ *Id.* (places the burden of proof in an administrative hearing on the party seeking relief).

⁵⁰ *Id.*

⁵¹ *Florence Cnty. Sch. Dist. Four*, 510 U.S. at 13; *Doe v. West Boylston Sch. Comm.*, 28 IDELR 1182 (D. Mass., 1998); *In Re Gill-Montague RSD*, BSEA #01-1222 (Crane, 2001).

B. Application of Legal Standards:

It is not disputed that Student is a student with a disability who is entitled to special education services under state and federal law. The fundamental issues in dispute are set out above.

Based upon two days of testimony, extensive exhibits introduced into evidence, thoughtful arguments of counsel, and a review of the applicable law, I conclude that Parents did not meet their burden to demonstrate that Ipswich's IEP for the relevant time period was not reasonably calculated to provide Student with a FAPE in the LRE. As such, I need not address the question whether Windham Woods is appropriately responsive to Student's special needs.⁵² My reasoning follows.

As noted *supra*, my analysis turns on whether the 6th Grade IEP proposed prior to Parents' unilateral placement in August 2022 was reasonably calculated to provide Student with a FAPE in the LRE, based on the information then available regarding Student's needs, skill level, and progress. In November 2021, when the 6th Grade IEP was initially proposed, the Team had available to it information relative to Student's progress from the previous school year as well as evaluative data from the October 2021 three-year re-evaluation.⁵³

According to Student's fifth grade progress reports and report cards, Student made progress during the 2020-2021 school year, meeting most of her goals and objectives.⁵⁴ Nevertheless, Student's MCAS scores confirmed difficulties in ELA, which, the District's 2021 psychoeducational evaluation reinforced; specifically, the re-evaluation demonstrated that despite average, and, in some areas, above average cognitive abilities as well as average to high average math abilities, Student had significant literacy skill deficits, with scores in the below average and low ranges.

Recommendations made by the 2021 psychoeducational evaluation were incorporated into the 6th Grade IEP in November 2021. In addition, the 6th Grade IEP targeted Student's skill deficits by addressing the areas of Reading/Spelling (recognizing sounds in isolation, decoding words containing six syllable types, encoding, improving instructional reading level) and Written Language (utilizing graphic organizer for organization and theme development, sentence revision, editing for punctuation and sentence structure). To support Student's language-based needs, the Team proposed that Student receive forty minutes of daily support with a special educator in Humanities class, forty minutes of support by a paraprofessional in Science class, pull-out reading/writing instruction triweekly for thirty minutes, and triweekly sessions of thirty minutes targeting decoding, encoding, and fluency. The services offered in this IEP, however, represented a decrease from that of the fifth grade IEP, the former offering 820 minutes weekly

⁵² See *Florence Cnty. Sch. Dist. Four*, 510 U.S. at 14; *Matthew J.*, 988 F. Supp. at 391.

⁵³ See *Student v. Shrewsbury Public Schools*, BSEA #02-2613 (Figueroa, 2003) (finding that "the programs and services offered by Shrewsbury must be reviewed in accordance with the totality of the information available to the Team through evaluative material, Student's progress, performance and the recommendations of the service providers").

⁵⁴ According to Ms. Smith, Student did require a "review" of previously learned Wilson reading strategies when she entered sixth grade, which may have resulted from Student's failure to attend ESY during the summer between fifth and sixth grades.

to the November 2021 IEP's 580 minutes. It is unclear why, and highly baffling, that the District reduced the total number of minutes of service to Student in November. However, even if Student's 6th Grade IEP as developed in November 2021 was "initially deficient" for its failure to increase reading and writing services commensurate with her concerning literacy scores, my focus in this Decision is "upon the educational program which finally emerge[d] from the administrative process, not the IEP as originally proposed,"⁵⁵ as Ipswich consistently increased services in response to evaluations and reports.⁵⁶

By June 2022, at the time of Student's unilateral placement, the then-current revised IEP incorporated Ms. Fleet's recommendations for additional goal areas and benchmarks, increased service time in Humanities to 5x70 minutes per week, and added a Social/Emotional Goal with corresponding counseling services. This reflected 750 minutes per week of B Grid services and 350 minutes per week of C Grid services, for a total of 1100 service minutes per week, an increase of 180 minutes per week from the previous proposal.

The Team continued to reject Dr. Ward's and Ms. Mason's recommendations for a substantially separate language-based program. Based on the evidence presented at Hearing, I find that Parents have failed to demonstrate that Student requires substantially separate language-based program in order to receive a FAPE.⁵⁷ Specifically, Parents did not meet their burden to show that Student failed to make meaningful progress in her areas of greatest weakness pursuant to the most recently implemented IEP. Though by no means "closing the gap," Student was making

⁵⁵ *Douglas W. & Susan W. v. Greenfield Pub. Sch.*, 164 F. Supp. 2d 157, 166 (D. Mass. 2001) (citing *Roland M.*, 910 F.2d at 988).

⁵⁶ For instance, in December 2021, the District proposed to increase Decoding/Encoding to 5x30 minutes/week, Reading Fluency to 3x15 minutes/week, and Academic Support to 3x25 minutes/week. Student's services after this time thereby consisted of 400 minutes per week of B Grid services and 270 minutes per week of C Grid services, for total of 670 service minutes per week, an increase of 90 minutes per week. Then, in April 2022, the Team considered the results of Dr. Ward's neuropsychological report which confirmed, for the most part, the results of Ipswich's evaluation results relative to Student's low literacy skills. Dr. Ward concluded that Student had not made effective progress in Ipswich as she continued to perform "below age, grade, and aptitude expectations on tests of reading foundations," including decoding, encoding and fluency, and that these "difficulties persist[ed] despite consistent interventions." Dr. Ward recommended, in part, "intensive substantially separate programming for individuals with language-based learning disorders/dyslexia" (i.e., language-based classroom setting) with peers of average intellectual functioning with multi-sensory phonics-based literacy instruction and support across all content areas and settings; daily 45-minute reading instruction; daily writing instruction; and instruction in Math problem solving. Incorporating most of Dr. Ward's recommendations, the 6th Grade IEP proposed at the end of April included additional push-in services with the special education teacher for Math (5x40), additional Decoding/Encoding/Fluency to begin September 2022 (5x30 to 5x40), and increased ESY services to promote consistency. This reflected 600 minutes per week of B Grid services and 320 minutes per week of C Grid services, for a total of 920 service minutes per week, an increase of 250 minutes per week from the District's prior proposal.

⁵⁷ See, e.g., *K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 805–06 (8th Cir. 2011) (finding that because "the IDEA requires only that an IEP team 'consider,' not 'incorporate,'" the recommendations of outside evaluations when developing an IEP, where the Team made "significant change[s] to add [] support to K.E.'s IEP because it was one of the recommendations [made] in [that] outside evaluation," the Team clearly "considered Dr. Ziegler's evaluation" even if it did not "incorporate into K.E.'s IEPs all of the recommendations that Dr.'s Miller and Ziegler offered in their respective evaluations") (internal citations and quotation omitted); *Central Bucks Sch. Dist.*, 1430, 104 LRP 3247 (SEA PA, 2003) (finding that before the district removed a student to a more restrictive setting, the district should assess whether "efforts have been expended and the student's program and curriculum have been modified in line with [the recommended] supplemental aids and services, [such that it is] time to assess the student's progress and ascertain whether it is meaningful").

slow gains during this school year.⁵⁸ Ms. Fleet's testimony regarding Student's progress on formal testing during the 2021-2022 school year was persuasive. Specifically, Ms. Fleet testified that the improvement in standard decoding scores as demonstrated by Student's score on the KTEA-II Brief Word Reading compared with prior scores on the WJ-IV Letter Word Identification in February 2022 and the WIAT-IV Word Reading in October 2021 evidenced Student's progress.⁵⁹ The testimony of Student's teachers and service providers regarding progress was supported by the measures of progress embedded into the Wilson Reading and ReadLive programs, which were endorsed by Parents' own independent evaluators. In addition, Student's report cards demonstrate mastery of the general education material presented in Student's inclusion classes.⁶⁰ Therefore, the available evaluative data suggests that Student was on a positive trajectory in terms of progress.⁶¹

⁵⁸ See *Colonial Sch. Dist. v. G.K.*, No. CV 17-3377, 2018 WL 2010915, at *15 (E.D. Pa. Apr. 30, 2018), *aff'd*, 763 F. App'x 192 (3d Cir. 2019) (discouraging courts from "consider[ing] G.K.'s imperfect progress [as] a valid basis for relief"); *Ruffin v. Houston Indep. Sch. Dist.*, 459 F. App'x 358, 363 (5th Cir. 2012) ("Although L.F. consistently performed at least one grade level below her peers, the IEP listed goals, specific objectives, and evaluation methods that required L.F. to improve. L.F.'s teachers testified at the administrative hearing that L.F. had shown improvement. The record indicates that L.F. passed each of her classes and was promoted to the next grade level....The district court did not clearly err in determining that the IEP provided positive academic and non-academic benefits"); *High v. Exeter Twp. Sch. Dist.*, No. CIV.A.09-2202, 2010 WL 363832, at *5 (E.D. Pa. Feb. 1, 2010) (where parents argued that student's "progress was not meaningful and the school should have done more to close the reading gap between Stephanie and her peers," the court concluded that while it "recognizes [that] every parent wants his or her child reading on grade level, [] parents could not have reasonably expected the District to close a six-year gap in her reading ability in one year. Furthermore, the IDEA does not require such a demanding result from public schools").

Although Student's MCAS scores were not meeting expectations, this is only one factor for the undersigned Hearing Officer to consider when determining whether Ipswich offered Student a FAPE, and Student's failure to meet expectations on state assessments does not, in and of itself, render the IEP inappropriate. See *Leighty v. Laurel Sch. Dist.*, 457 F. Supp. 2d 546, 561 (W.D. Pa. 2006) (the IDEA "does not require that FAPE determinations be based on the results of [state or district] assessments, nor does it require that the IEP's prepared for disabled children be designed specifically to enhance their scores on standardized tests").

⁵⁹ Parents argued that Ms. Fleet compared individual scores on three completely different testing protocols and thus her conclusion was not valid. However, absent contradictory testimony from Parents' experts, I find Ms. Fleet's testimony persuasive that the three test results referenced by her "measure the same skills," making comparison meaningful. Parents further argued that Ms. Fleet's claim that Student's KTEA-3 score of 85 represented progress in her decoding skills was not credible because the KTEA-3 score included a comprehension component, which was Student's strength, but again presented no contradictory expert testimony.

⁶⁰ See *Dedham Public Schools*, BSEA # 00-3591 (Crane, 2001) (finding that Student's "grades [that] year (A's and B's) appear[ed] to reflect his academic achievements and progress" where the "testimony from the School staff indicate[d] that Student [had] been successful [that] year in all aspects of his curriculum[, and the] classwork, homework assignments, quizzes and tests provided Student in the inclusion classes [were] identical to those provided to his regular education peers"); *E.D. v. Colonial Sch. Dist.*, No. CV 09-4837, 2017 WL 1207919, at *11 (E.D. Pa. Mar. 31, 2017) ("To ascertain whether a disabled child received a meaningful educational benefit, we look to regular examinations, grades, and advancing from grade to grade as important factors in measuring the educational benefit received by the disabled student").

⁶¹ See *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 248 (5th Cir.1997) (internal citation omitted), cert. denied, 522 U.S. 1047, 118 S.Ct. 690, 139 L.Ed.2d 636 (1998) ("An appropriate public education under IDEA is one that is "likely to produce progress, not regression."); *Pembroke Pub. Sch.*, BSEA # 10-1097 (Berman 2010) (the record was "simply too thin to determine whether Student ha[d] made meaningful progress in his areas of greatest weakness pursuant to the most recent IEP; therefore, absent evidence that he did not make such progress, the School must prevail. ... This lack of evidence renders the Parent[s] unable to effectively challenge the IEP...").

No evidence was offered to demonstrate that such progress was insufficient or not “effective” in light of Student’s cognitive functioning.⁶² Dr. Ward’s report was completed in February 2022. As Dr. Ward did not testify at Hearing, I did not have the benefit of her opinion regarding whether the more intense mix of services offered to Student in December 2021, April 2022, and June 2022 (as compared to the services provided in fifth grade)⁶³ could have been appropriate to remediate Student’s reading and writing skills so as to allow her to access grade level curriculum in inclusion classes.⁶⁴ Ms. Mason too offered no testimony relative to Student’s progress over the 2021-2022 school year save to confirm that Student continued to be behind. Although in May 2022 Ms. Mason opined that Student’s “limited” IEP goals were “not written to develop mastery” as they “set out low levels of achievement [] and failed to provide sufficient instruction and intensity to close her achievement gap,” Ms. Mason offered no input as to what the appropriate level of mastery or achievement should be. Moreover, Ms. Mason testified that reading remediation is a slow and lengthy journey, and, here, insufficient time had elapsed to assess the true impact of the increase in services.⁶⁵

In stressing that Student was “so far behind” that effective progress was predicated on placement in a substantially separate language based program, Ms. Mason relied solely on the results of three standardized assessments completed within a period of less than 12-months and disregarded other evidence of progress under the 6th Grade IEP.⁶⁶ She did not explain why the

⁶² See *Endrew F.*, 137 S. Ct. at 999 (“To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances”); *Norristown Area Sch. Dist. v. Frank*, No. CV 13-5612, 2014 WL 11370484, at *10 (E.D. Pa. June 18, 2014), *aff’d sub nom. Norristown Area Sch. Dist. v. F.C.*, 636 F. App’x 857 (3d Cir. 2016) (where the Parents argued that the “objective measures of math progress demonstrated that the District denied Frankie a FAPE in math during his second-grade year,” the court “disagree[d]” and found that the “IDEA guarantees Frankie instruction reasonably calculated to enable him to receive meaningful educational benefits, not a certain amount of progress on standardized math assessments”).

⁶³ Even if I accept that Student’s progress was insufficient in fifth grade, the IEP developed during the 2021-2022 school year is not at issue here, and the IEP here under review was more robust.

⁶⁴ When Dr. Ward assessed Student in February 2022, Student had only been receiving the intensified services of her 6th Grade IEP for two months.

⁶⁵ See *M.C. v. Cent. Reg’l Sch. Dist.*, 81 F.3d 389, 397 (3d Cir. 1996) *cert. denied*, 519 U.S. 866 (1996) (“The school district, however, may not be able to act immediately to correct an inappropriate IEP; it may require some time to respond to a complex problem. Thus, our holding can be summarized as follows: a school district that knows or should know that a child has an inappropriate IEP or is not receiving more than a de minimis educational benefit must correct the situation. If it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem”); *In re: Student with a Disability*, 2019-0115, 119 LRP 30359 (SEA DC, 2019) (agreeing with school district that “Student’s IEP team appropriately revised the IEP at the March 27, 2019 IEP team meeting, with increased special education time outside of general education, and that there ha[d] not been enough time to assess if these revision [would] work such as to warrant moving Student to an even more restrictive setting”); *District of Columbia Public Schools*, 114 LRP 17709 (SEA DC, 2014) (“DCPS should have been afforded a reasonable period of time to assess the new IEP’s effectiveness”); *District of Columbia Public Schools*, 110 LRP 34319 (SEA DC 2009) (“when the herein Complaint was filed, the IEP had been implemented for approximately two months, not enough time to assess progress”).

⁶⁶ See *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1155 (10th Cir. 2008) (“[IDEA] does not require that States do whatever is necessary to ensure that all students achieve a particular standardized level of ability and knowledge. Rather, it much more modestly calls for the creation of individualized programs reasonably calculated to

degree of progress Student made on her IEP goals and objectives during the 2021-2022 school year was not meaningful or why the measures of Student's success on the research-based programs utilized by Ipswich during 6th grade (i.e., Framing Your Thoughts, Wilson, and ReadLive) should be dismissed.⁶⁷

I note also that the degree of progress made, in and of itself, is not determinative of whether an IEP was reasonably calculated to provide meaningful benefit at the time of its development.⁶⁸ After all, “the standard for evaluating IEPs is not retrospective.”⁶⁹ As stated by the Ninth Circuit,

“[i]nstead of asking whether the [IEP] was adequate in light of the [Student's] progress, [the Hearing Officer] should ask[] the more pertinent question of whether the [IEP] was appropriately designed and implemented so as to convey [Student] with a meaningful benefit. We do not judge an [IEP] in hindsight; rather, we look to the [IEP's] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer [Student] with a meaningful benefit.... In striving for ‘appropriateness,’ an IEP must take into account what was, and what was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted.”⁷⁰

enable the student to make some progress towards the goals within that program”); *Bolton Public Schools*, BSEA # 94-0625 (Byrne, 1994) (“The difficulty here may be with the word ‘satisfactory’ which can mean different things to different people. In this decision ‘satisfactory’ means consistent with the student's potential, the goals established by the special education team and/or the regular education standards. It does not mean achievement at grade level per se, nor does it mean ‘A’s on a report card or even no failing grades, nor does it mean no disciplinary reports, nor does it mean access to higher ‘level’ high school courses or even to a college preparatory high school ‘track’”); *Lakeville Public Schools*, 90-0001, 16 IDELR 826 (SEA MA, Erlichman, 1990) (rejecting the evaluator’s reliance on “results obtained at her most recent evaluation to conclude that effective progress has not been made over the course of the year, and that Amie therefore requires a change of placement,” the Hearing Officer found that “[w]ithout dismissing the value of standardized test scores as a factor in ascertaining progress, the limitations inherent in the exclusive use of such scores as the basis for educational conclusions must be noted. [N]o gain was evidenced on the standardized reading inventory measuring comprehension. Such data might well raise serious concerns were it not for the existence of other probative information regarding Amie's academic status” (i.e., teacher assessments)).

⁶⁷ Diminishing her credibility further was Ms. Mason’s testimony that Student was making progress at Windham Woods; Ms. Mason relied on the same measures of progress when discussing Student’s performance at Windham Woods that she had dismissed when reviewing Student’s performance at Ipswich.

⁶⁸ *C.K., v. Bd. Of Ed. Of Sylvania City Sch. Dist.*, 81 IDELR 212 (6th Cir. 2022) (because “*Andrew F.* discourages outcome-driven standards generally, and specifically warns that grade-level advancement may not be an appropriate goal for all children, a school cannot [be ordered] to provide C.K. a final educational outcome: that the school fully remediate C.K.'s ongoing two-year grade level reading deficit”); *Houston Independent School Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir.2000) (“a disabled child's development should be measured not by his relation to the rest of the class, but rather with respect to the individual student”); *James D. v. Bd. of Educ.*, 642 F. Supp. 2d 804, 829 (N.D. Ill. 2009) (concluding that Sarah's WIAT II scores did “not necessarily show a lack of individual progress” because “it is equally possible that Sarah did progress, but that her percentile score dropped nonetheless because she progressed at a slower rate than her non-disabled peers. Therefore, at most, Sarah's declining percentile score shows that she was not progressing as fast as her peers”).

⁶⁹ *S.H. v. Fairfax County Bd. of Educ.*, 112 LRP 32415 (E.D. Va. 06/19/12).

⁷⁰ *J.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 439 (9th Cir. 2010), *affirming and re-publishing J.W. v. Fresno Unified Sch. Dist.*, 611 F.Supp.2d 1097 (E.D. Cal. 2009) (quoting *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1314 (9th Cir. 1987)).

Here, Ms. Smith and Ms. Whynott persuasively explained how the 6th Grade IEP's "goals and goal achieving methods at the time the plan was implemented ... were reasonably calculated to confer [Student] with a meaningful benefit."⁷¹ During the 2021-2022 school year, Student accessed daily structured phonics and fluency instruction using programs recommended for students with dyslexia and endorsed by Parents' own experts. These services were provided by a highly qualified and experienced reading specialist and a similarly highly qualified and experienced special education teacher whose background includes significant Orton-Gillingham reading tutorial experience. Student also accessed language-based support in general education classes provided both by a highly qualified special educator and a highly qualified and experienced reading specialist in Humanities, the same special educator in Math⁷², and a paraprofessional in Science. In addition to the specialized literacy training and experience of Ms. Smith and the special education experience and the language-based coursework completed by Ms. Whynott, all of Student's teachers had received professional development training in supports and strategies for addressing the needs of dyslexic students.

Although District witnesses acknowledged that Ipswich's program is not a language-based program "per se," because it does not provide a small classroom setting, I am not persuaded that small classes are necessary for Student to receive a FAPE in light of the significant accommodations and cohesive push-in and pull-out services provided in the 6th Grade IEP.⁷³ In reaching this conclusion, I rely greatly on the testimony of Student's teachers, as they have extensive knowledge of Student in a variety of settings, and their testimony was corroborated by Ms. Fleet's observations. To the extent that Dr. Ward and Ms. Mason described the program necessary for Student as "intensive," "with peers of average intellectual functioning with multi-sensory phonics-based literacy instruction and support across all content areas and settings," Student's program satisfies such criteria. No probative evidence was presented to demonstrate that Student was not accessing (or could not access) the general education classroom curriculum in inclusion classes. Dr. Ward had not observed Student in her educational setting. Moreover, Student's excellent grades reflect mastery of the material, and her teachers testified that they had no concerns about Student accessing the curriculum in each class due to the push-in supports and pull-out services she received, the carryover between the B Grid and C Grid services, and the consistent use of research-based programs for students with language based learning challenges, such as Wilson, parts of LiPS, Lexia, Framing Your Thoughts, and ReadLive. I found Ms. Smith's and Ms. Whynott's testimony especially persuasive and credible in light of their close academic relationship with Student; each spent considerable time with her not only in weekly pull-out sessions but also in the general education classrooms. Similarly, Ms. Fleet testified that she had no concerns about Student's ability to access the general education curriculum in Humanities, Math and Science for the same reasons articulated by Ms. Smith and Ms. Whynott

⁷¹ *J.W.*, 626 F.3d at 439.

⁷² This service was not formally incorporated into the IEP until after the Team reviewed Dr. Ward's assessment report. Still, Student was attending the co-taught Math class since the beginning of the 2021-2022 school year.

⁷³ See *Munir v. Pottsville Area Sch. Dist.*, 723 F.3d 423, 434 (3d Cir. 2013) (where in "designing O.M.'s IEPs, the School District took into account Wediko's evaluation of O.M. and 'incorporated virtually all of the Wediko recommendations,' the Circuit Court found that the District Court correctly "recognized that smaller classes and more emotional support might 'contribute to [O.M.'s] ability to learn more easily' [but] determined that neither was necessary to ensure that O.M. received meaningful educational benefits").

(i.e., highly skilled push-in support and “seamless” instruction in inclusion, use of language-based strategies, carryover between C Grid and B Grid services, and Student’s average cognitive, reading comprehension and mathematical abilities). Ms. Fleet testified that she did not have any concerns regarding the “totality of Student’s engagement” in any of her classes and affirmed that the District’s program was “cohesive” and appropriate for Student as it addressed all her disability related needs.

Although Ms. Fleet had not evaluated Student, her testimony warrants substantial weight for several reasons. First, Ms. Fleet observed Student in the school setting, having reviewed her educational records, including her most recent testing which had been completed within the same academic year. She has extensive training and experience as a special educator, and she provided a balanced assessment of Student’s program. Specifically, in addition to highlighting the strengths of the Ipswich’s program, Ms. Fleet made several recommendations for improvement, including the addition of a fluency objective and an academic support goal to Student’s IEP. In addition, Ms. Fleet’s private practice leans heavily in favor of evaluating students on behalf of parents rather than on behalf of school districts.⁷⁴

In contrast, despite Ms. Mason’s extensive experience evaluating students and conducting program observations, her testimony was conclusory and unpersuasive. For instance, she testified that based on Student’s literacy scores, Student “could not” access inclusion classrooms, but she did not reconcile this conclusion with Student’s observed participation and excellent grades which suggested otherwise. Observing that the text presented in the Humanities class was above Student’s reading level, Ms. Mason failed to note the numerous accommodations offered to Student in the class pursuant to her IEP which, according to Ms. Whynott, Ms. Smith, and Ms. Fleet, allowed Student to access such text. For instance, Ms. Whynott regularly reviewed material with Student in academic support, but Ms. Mason did not note that in her report or testimony (despite its notation on the IEP both in PLEP A as an accommodation and in Grid C as a service); she presumed that content was inaccessible to Student without inquiring whether Student had been pre-taught any of the content or vocabulary.

I found Ms. Mason’s opinion that “the Wilson program was not being delivered with fidelity” at Ipswich Middle School especially disingenuous. Ms. Mason indicated that a Wilson lesson should last 90 minutes and that “full lessons must occur daily.” However, more persuasive was the consistent testimony of Ms. Fleet and Ms. Smith, both experienced Wilson Program Therapists, that 90 minutes need not be delivered at one time. Ms. Mason also noted incorrectly in her report that at the time of her observation Student was receiving reading services 3x30 minutes/week, but, in fact, she was receiving daily pull-out services (5x30). And while Ms. Mason also testified that Student was not receiving research-based writing instruction, Framing Your Thoughts, the program utilized by Ipswich in the Humanities class, was recommended by Dr. Ward and is indicated for students with dyslexia.

⁷⁴ Ms. Fleet’s testimony relative to Windham Woods’ appropriateness was also unbiased, thereby adding to the credibility of her overall testimony. She testified that, having visited Windham Woods 7 or 8 times, she was familiar with the program, and has even recommended it for some students. Still, she testified that it was not appropriate for Student.

Ms. Mason's credibility was further diminished because, to a large extent, she based her conclusion that Windham Woods met Student's needs not on her observations but rather on what she "was told." Specifically, she assumed that the students at Windham Woods share a language-based disability as a diagnosis, but she did not review students' IEPs, and, in fact, Mr. Taffel testified that not all Windham Woods students have a language-based disorder. Many have nonverbal language disabilities or other diagnosis. In addition, Ms. Mason only observed Student working independently during her observation at Windham Woods and did not observe any "instruction" but nevertheless concluded that Windham Woods utilizes language-based strategies across settings. Her testimony attempting to support her report's conclusion that "instruction and class discussion ... were teacher-directed and continued encouragement for student responses to elicit elaboration and understanding" or that students "were active participants in the learning process with teachers ensuring that each student was comprehending and interacting with the material, rather than passively trying to memorize it" was unpersuasive. Rather than observing language-based instruction in any of Student's Windham Woods classes, she testified that she "was told" such strategies were utilized and carried over across the curriculum. Moreover, although Ms. Mason emphasized the importance of "extensive training and expertise in working with students having language learning disabilities," she did not question Windham Woods about the lack of qualifications of its tutorial staff.

Because Parents did not meet their burden to show that Ipswich's IEP for the relevant time period was not reasonably calculated to provide Student with a FAPE in the LRE, I need not address the question of whether Windham Woods is "appropriately responsive to [Student's] special needs."⁷⁵

ORDER:

The IEP developed by Ipswich for Student during the relevant time periods was reasonably calculated to provide a free, appropriate public education to Student in the least restrictive setting. Parents are not entitled to reimbursement for expenses incurred for Student's placements at Windham Woods, nor for other expenses incurred during said time.

So Ordered,
By the Hearing Officer,

/s/ Alina Kantor Nir

Alina Kantor Nir, Hearing Officer
May 4, 2023

⁷⁵ *Florence Cnty. Sch. Dist. Four*, 510 U.S. at 14; *Matthew J. v. Mass. Dep't. of Educ., et al.*, 988 F. Supp. 380, 391 (1998).

COMMONWEALTH OF MASSACHUSETTS
BUREAU OF SPECIAL EDUCATION APPEALS

EFFECT OF BUREAU DECISION AND RIGHTS OF APPEAL

Effect of the Decision

20 U.S.C. s. 1415(i)(1)(B) requires that a decision of the Bureau of Special Education Appeals be final and subject to no further agency review. Accordingly, the Bureau cannot permit motions to reconsider or to re-open a Bureau decision once it is issued. Bureau decisions are final decisions subject only to judicial review.

Except as set forth below, the final decision of the Bureau must be implemented immediately. Pursuant to M.G.L. c. 30A, s. 14(3), appeal of the decision does not operate as a stay. Rather, a party seeking to stay the decision of the Bureau must obtain such stay from the court having jurisdiction over the party's appeal.

Under the provisions of 20 U.S.C. s. 1415(j), "unless the State or local education agency and the parents otherwise agree, the child shall remain in the then-current educational placement," during the pendency of any judicial appeal of the Bureau decision, unless the child is seeking initial admission to a public school, in which case "with the consent of the parents, the child shall be placed in the public school program." Therefore, where the Bureau has ordered the public school to place the child in a new placement, and the parents or guardian agree with that order, the public school shall immediately implement the placement ordered by the Bureau. *School Committee of Burlington v. Massachusetts Department of Education*, 471 U.S. 359 (1985). Otherwise, a party seeking to change the child's placement during the pendency of judicial proceedings must seek a preliminary injunction ordering such a change in placement from the court having jurisdiction over the appeal. *Honig v. Doe*, 484 U.S. 305 (1988); *Doe v. Brookline*, 722 F.2d 910 (1st Cir. 1983).

Compliance

A party contending that a Bureau of Special Education Appeals decision is not being implemented may file a motion with the Bureau of Special Education Appeals contending that the decision is not being implemented and setting out the areas of non-compliance. The Hearing Officer may convene a hearing at which the scope of the inquiry shall be limited to the facts on the issue of compliance, facts of such a nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Elementary and Secondary Education or other office for appropriate enforcement action. 603 CMR 28.08(6)(b).

Rights of Appeal

Any party aggrieved by a decision of the Bureau of Special Education Appeals may file a complaint in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts, for review of the Bureau decision. 20 U.S.C. s. 1415(i)(2). An appeal of a Bureau decision to state superior court or to federal district court must be filed within ninety (90) days from the date of the decision. 20 U.S.C. s. 1415(i)(2)(B).

Confidentiality

In order to preserve the confidentiality of the student involved in these proceedings, when an appeal is taken to superior court or to federal district court, the parties are strongly urged to file the complaint without identifying the true name of the parents or the child, and to move that all exhibits, including the transcript of the hearing before the Bureau of Special Education Appeals, be impounded by the court. See *Webster Grove School District v. Pulitzer Publishing Company*, 898 F.2d 1371 (8th. Cir. 1990). If the appealing party does not seek to impound the documents, the Bureau of Special Education Appeals, through the Attorney General's Office, may move to impound the documents.

Record of the Hearing

The Bureau of Special Education Appeals will provide an electronic verbatim record of the hearing to any party, free of charge, upon receipt of a written request. Pursuant to federal law, upon receipt of a written request from any party, the Bureau of Special Education Appeals will arrange for and provide a certified written transcription of the entire proceedings by a certified court reporter, free of charge.