

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

Student v. Quabbin Regional School District

BSEA # 1902509

DECISION

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

PROCEDURAL HISTORY

Parents filed a request for hearing on October 16, 2018. The hearing was scheduled for November 20, 2018. Parents' request to postpone the Hearing until January was allowed for good cause and the Hearing was scheduled for January 18, 25, and 28, 2019. There was a conference call to resolve the Parties' outstanding discovery dispute on January 7, 2019. Quabbin's request to postpone the first day of hearing because Parents provided their discovery responses late was allowed. The Hearing was held on January 25 and 28, 2019 at the office of Catuogno Court Reporting, Worcester, MA. The Parties' joint request to postpone the closing of the record to submit written closing arguments by February 15, 2019 was allowed. On February 13, 2019 the Parties made a joint request to further postpone the closing of the record until February 19, 2019. Their request was allowed for good cause, both Parties submitted their written closing arguments on February 19, 2019, and the record closed at that time. |

Those present for all or part of the hearing were:

Mother

Father

Kayla Dowd¹

Cheryl Jorgensen

Marcia Grimes

Nicole Cardomone

Faye Rachlin

Jacob Hevenor

Leigh Woodruff

Kristin Campione

Julie Brewer

Danielle Jodrey

Amanda Lambert

Christopher Nosek

Andrea Hughes

Sarah Faucher

Private speech language pathologist

Inclusion consultant

Student's religious education teacher

Attorney for Parents

Attorney (observer) for Parents

Paralegal (observer)for Parents

Attorney (observer)for Parents

Director of Student Services Quabbin Regional Schools

Team chair, Quabbin Regional Schools

Speech language pathologist, Quabbin Regional Schools

Speech language pathologist, Quabbin Regional Schools

Teacher, Quabbin Regional School District

Teacher, Quabbin Regional Schools

Teacher, Quabbin Regional Schools

¹Ms. Dowd testified via speaker phone.

Megan Dunbar	Occupational therapist, Quabbin Regional Schools
Caitlin Foster	Guidance Counselor, Quabbin Regional Schools
Kelsey Porcello	Attorney (observer), Quabbin Regional Schools
Leigh Mello	Attorney, Quabbin Regional Schools
Brenda Ginisi	Court Reporter
Kristen Edwards	Court Reporter
Catherine Putney-Yaceshyn	Hearing Officer

The official record of this hearing consists of Parents' exhibits marked P-A through P-T and Quabbin's exhibits marked S-1 through S-32 and approximately 8 ½ hours of recorded oral testimony.

ISSUES

1. Whether the IEPs proposed for the period from June 2017 through January 0f 2019 were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.
2. Whether Student is entitled to any compensatory education due to the proposal of IEPs that were not reasonably calculated to provide a free appropriate public education in the least restrictive environment.
3. What modifications would be necessary to provide Student with a free appropriate education in the least restrictive environment if I find that the IEPs did not propose FAPE.

SUMMARY OF THE EVIDENCE

1. The student (hereinafter, "Student") is 13-year-old sixth grader who resides within the Quabbin Regional School District (hereinafter, Quabbin). Student has a diagnosis of Down Syndrome and is eligible for special education services under the disability categories of intellectual, communication, and physical. His communication profile is characterized by diagnoses of mixed receptive-expressive language disorder, phonological disorder, and fluency disorder. He is very social and enjoys being around his peers. (S-3, P- C) Student participates in the Create classroom, a substantially separate classroom with eight students, a lead teacher, and two paraprofessionals, for part of his school day. (Faucher) He is included for science, social studies, lunch, specials, and homeroom. (S-3, P-C)
2. Matthew Carter, school psychologist, Quabbin, conducted a psychological evaluation of Student on November 3, 2016. He reviewed Student's records and utilized the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V) and the Adaptive Behavior Assessment System – Third Edition (ABAS-3). Student earned a full scale IQ score of 40, but Mr. Carter noted it was unclear whether the results reflected cognitive development or simply situational and behavioral factors. Student's mother (hereinafter, Mother) and a teacher completed the ABAS questionnaires. Mother reported average scores in

communication, leisure, home living and self-care, and weaknesses in functional academics, self-direction, social interaction, community use, and health and safety. Student's teacher recorded average scores in health and safety and self-care, and weaknesses in communication, functional academics, self-direction, leisure, social interaction, community use, and school living. Mr. Carter noted that Student's results suggested delays in cognitive development, and below average overall intellectual abilities. He noted Student's test scores seem to be confounded by his difficulty participating in a standardized assessment. He recommended that Student's educational program include direct academic instruction and behavioral support aimed at improving his abilities to listen to, understand, and follow directions and remain focused on tasks. He opined that Student's services should focus on improving his academic skills and increasing his independence in the community. He noted that Student was able to perform many adaptive skills with prompting and would benefit from efforts to increase his independence with those skills. (S-17)

3. Karen Melanson, teacher, Quabbin, administered an academic assessment of Student in November 2016². Student's grade equivalent scores ranged from below K.0 to 1.6. He was able to read text level A on the Fountas and Pinnell benchmark. He was working on coin identification, beginning to use Touch Points in math and continuing to work on counting to 100 independently. Ms. Melanson noted that Student works well in a classroom that provides opportunities for small group instruction and supervision. She recommended the use of repetition, routine, and consistent reinforcement to address Student's learning style. (S-18)
4. Arlene Rhodes, M.A., CCC-SLP, a speech language pathologist, Quabbin, evaluated Student on October 5 and 26, 2016³. She reported that Student's scores on all measures fell well below the average range. Ms. Rhodes concluded that Student presents with a speech-language disability characterized by significantly below average vocabulary and language skills. She noted that Student's pragmatic language skills and articulation were below age expectations. She recommended Student continue to receive speech language services and that the sessions focus on continuing to increase his receptive and expressive vocabulary skills and overall language skills, as well as on improving speech intelligibility. She recommended direct speech language therapy and consultation between the therapist and classroom staff. (S-19)
5. Student was assessed by Meagan Dunbar, occupational therapist, Quabbin, on November 15 and 21, 2016⁴. Ms. Dunbar noted areas of weakness in visual-motor, visual-spatial, and

²Ms. Melanson utilized selected assessments from the Brigance Comprehensive Inventory of Basic Skills, Woodcock Reading Mastery Tests-Revised, the Key Math-Revised, benchmark testing and conducted a classroom observation. (S-19)

³Ms. Rhodes administered the Receptive One-Word Picture Vocabulary Test 4 (ROWPVT4), the Expressive One-Word Picture Vocabulary Test (EOWPVT), the Goldman Fristoe Test of Articulation 2 (GFTA2), the Clinical Evaluation of Language Fundamentals – Fifth Edition (CELF-5), and observation, and teacher report.

motor coordination skills. She recommended that Student continue to receive structured occupational therapy services. (S-20)

6. Cynthia Shea conducted a physical therapy evaluation of Student on October 24, 2016. She reported that Student “presents with sufficient balance, range of motion, coordination and strength to enable him to move independently through the positions of the developmental sequence, walk well, run, and perform many age appropriate gross motor skills.” She noted Student presented with lower than average muscle tone in his trunk, below average core strength and limited unilateral balance and coordination skills, resulting in some delays in higher level gross motor skill development. She recommended that Student continue with physical therapy services and receive assistance in physical education class. (S-21)
7. Christine George, MS, BCBA LABA, a behavior consultant, completed a functional behavioral assessment dated November 12, 2016. The purpose of the assessment was to evaluate the function of some of Student’s inappropriate social behavior. Student’s teacher and aide reported that Student could be difficult to redirect during lunch and, at times, during inclusion. Ms. George made recommendations to reduce Student’s targeted behaviors of seeking to gain the attention of peers through inappropriate behavior and delaying doing expected class work or activities. She made a number of additional recommendations including social skills training; recruiting positive peer models; and requiring Student to attempt to sound out words before helping him. (S-23)
8. The Team convened on January 25, 2017 to review the results of Student’s three-year evaluation and proposed a new IEP. The IEP included goals in ELA-reading, vocabulary, mathematics, motor skills, occupational therapy, and communication. The A grid contained a physical therapy consult 1 x 15 minutes per month; an occupational therapy consult 1 x 15 minutes per month, and a speech language consult 1 x 10 minutes per five day cycle. The B Grid included inclusion support 5 x 85 minutes per cycle, occupational therapy 1 x 30 minutes per cycle and communication 1 x 30 minutes per cycle. The C grid contained ELA 5 x 50 minutes per cycle; academics 5 x 175 minutes per cycle; mathematics 5 x 50 minutes per cycle; physical therapy 1 x 30 minutes per cycle; occupational therapy 1 x 30 minutes per cycle; communication 2 x 30 minutes per cycle; ESY academics 4 x 180 minutes per cycle; ESY occupational therapy 1 x 30m minutes per cycle; and ESY communication 1 x 30 minutes per cycle⁵.

The IEP notes that Student requires an individually designed instructional program in order to provide appropriate and meaningful instruction in the curriculum. It proposes that Student participate in the MCAS Alternate Assessment. It states that Student will be instructed in “Project Create” through an individualized instructional program that is

⁴Ms. Dunbar utilized the Beery-Buktenica Developmental Test of Visual-Motor Integration (Beery VMI), the Beery VMI Developmental Test of Visual Perception, and the Beery VMI Developmental Test of Motor Coordination. She also reviewed Student’s records and observed him in the classroom. (S-20)

⁵ESY services were proposed for the period from 7/10/17 – 8/3/17. (S-16)

closely aligned with the Common Core Curriculum with entry points presented at Student's instructional level. The Additional Information section of the IEP states that Student will be included in science/social studies with the second⁶ grade classroom and for all specials (art, music, physical education, and media.) The IEP was mailed to Parents on February 1, March 13, April 19, and June 5, 2017. (S-16)

9. Marie Reilly, M.D., an attending physician of developmental behavioral pediatrics at Boston Children's Hospital, wrote an undated⁷ letter to Quabbin, making educational recommendations in anticipation of an upcoming meeting. She "strongly recommend[ed] that [Student] participate in a partial inclusion program with the continued support of a 1:1 aide in the classroom and individualized learning opportunities." She suggested that he be integrated into activities such as art, music, recess, and lunch and receive push in or pull out services with individual or small group instruction for math, reading and English language arts." She recommended inclusion with support and pre-teaching for science and social studies. Dr. Reilly wrote a second undated⁸ letter to Quabbin in which she made similar recommendations. (S-14)
10. Student's March 23, 2017 progress report shows that he was reading a Level C text with 95% accuracy and excellent comprehension in the Fountas and Pinnell benchmark assessment system. In math he was working on his counting and number recognition skills and could count to 20 with a prompt for 13, 14, and 15. He was using Touch points and visual representations to solve addition and subtraction problems. He was working on identifying coins by name. (S-15)
11. The Team reconvened on June 14, 2017, and proposed a revised IEP for Student. The Team determined that it was appropriate to increase Student's time in the general education classroom and to specifically include him for science, social studies, lunch, recess, homeroom and specials with support. Additionally, the Team proposed a social skills goal and direct services to build upon Student's social skills. The Grid was amended as follows: the former provision for inclusion 5 x 85 was deleted and amended. The amendment provided: inclusion science/social studies 5 x 45 per cycle; specials 5 x 45 per cycle; lunch 5 x 30 per cycle; recess 5 x 30 per cycle; and homeroom 5 x 30 per cycle. Academic services in the C grid were changed from 5 x 175 per cycle to 5 x 130 per cycle. Social skills 1 x 30 per cycle was added to the Grid. The Team rejected the option of Student participating in full inclusion because it determined the full inclusion setting would not provide Student with appropriate support to allow him to access the general curriculum. (S-13)
12. The revised IEP was mailed to Parents on July 7 and August 3, 2017. On August 11, 2017, Mother partially rejected the IEP and rejected the placement. She wrote a detailed

⁶This appears to be a typographical error, as Student was in the fifth grade according to the IEP. (S-16)

⁷The letter has a "print date" of February 12, 2017. (S-14)

⁸The letter has a "print date" of June 15, 2017. (S-14)

letter explaining which portions she was rejecting. Among them, Mother rejected the lack of a 1:1 aide for Student. She requested that Student have a 1:1 trained aide to work with him in all general education settings. She requested that the IEP include specific pre-teaching time for Student's general education classes. Mother requested that the B Grid be clarified to show which type of staff would be delivering the services. She rejected the IEP's references to "behavioral infractions" and requested the use of positive behavior interventions as needed. She rejected the omission of individual speech language services. Mother further rejected the use of the MCAS Alternate Assessment Portfolio and asked that Student work toward a high school diploma. She rejected a number of benchmarks as not being sufficiently challenging for Student. Finally, she requested that a peer mentor be assigned to Student. (S-13)

13. Student did not participate in the proposed extended year services noted in his IEP during the summer of 2017. (S-12)
14. The Team reconvened on September 11, 2017. It reviewed the rejected portions of the IEP and proposed a revised IEP. The Parent Concern section of the IEP was updated and a bullying statement was added to the Additional Information section. Pre-teaching was added to PLEP-A and language was added to the accommodation section to address Parents' concern regarding positive behavioral interventions. A number of goals were updated. A life skills goal was added⁹. An accommodation related to Student's speech services was added to PLEP-B. State and District testing was updated to include accommodations. An academic consultation was added to the A Grid between the general education and special education teachers. The Grid C speech language services were changed from all small group to half small group and half individual. Physical therapy services were moved from the C Grid to the B Grid. Science and social studies times were changed to reflect science 5 x 30 and social studies 5 x 30 instead of 5 x 30 science/social studies. Homeroom was changed from 5 x 30 to 5 x 15 per day.

The Team rejected Parents' request for a 1:1 aide in inclusion settings because the school-based members believed Student's needs were being met by the current delivery of services from two different para professionals. Additionally, the Team rejected Parents' request for a peer mentor, asserting the district could not allocate other "students as services." The Team instead discussed options for Student sitting with different positive role models at lunch. The IEP was mailed to Parents on September 21, October 5, and December 4, 2017. (S-11)

15. Student's December 7, 2017 progress reports shows that he is starting to work on basic fractions with adult support. He was able to identify numbers up to 50 with 80% accuracy. He could rote count up to fifty with 80% accuracy with some help with 12-15. He continued to work on naming coins. (S-9)
16. On January 11, 2018, Mother partially rejected the IEP and rejected the partial inclusion placement. She rejected the absence of a 1:1 aide. She rejected the lack of specificity of

⁹The goal addressed telling time and identifying coins. (S-11)

the amount of time allotted for pre-teaching for science and social studies. She rejected some Benchmarks/Objectives as not being sufficiently challenging for Student and some for not being sufficiently detailed. Mother requested the addition of some benchmarks such as helping Student learn to tie his shoes; learning how to start conversations; and learning how/when to call 9-1-1. She requested that more time be allocated for the consultation between the general and special education teachers. She also requested that the physical therapist, occupational therapist and speech language¹⁰ pathologist all consult with the special and general education teachers. She rejected Student receiving his individual speech service from a speech assistant and requested all services be delivered by a speech language pathologist. Finally, she requested that the daily communication she receives from Student's teacher include detailed information about what Student is working on, so that she could work with him on the same things at home. (S-10)

17. The Team reconvened on January 23, 2018 to review the rejected portions of the IEP. The Team rejected assigning a particular staff person to accompany Student to his inclusion classes. It declined to require consultation between the service providers and the general education teacher, as it found the current consultation model appropriate. The Team rejected Student receiving his occupational therapy services within the general education art class. It rejected having the speech language pathologist provide Student's services as a push-in model and maintained that he required his services to be in a separate setting. The Team reviewed an assistive technology evaluation. Quabbin sent Parents the IEP on January 31, March 20 and April 30, 2018. (S-8)
18. Cheryl Jorgensen, Ph.D., holds a Master's of Public Health degree in addition to her doctorate. She was a faculty member at the Institute on Disability and the Department of Education at the University of New Hampshire from 1985-2011 where she taught many courses in graduate degree programs in the Intellectual and Developmental Disabilities Inclusion Facilitator teacher certification program, and an autism graduate certificate program. She has published numerous research articles and written books about inclusive education for students with significant support needs. She has presented at conferences and workshops and has worked with numerous public schools in New Hampshire and Massachusetts. She has presented at the Massachusetts Down Syndrome Congress conferences and received an award in 2008 from the National Down Syndrome Congress for research on inclusive education for children with Down Syndrome. (P-M, Jorgensen)

Dr. Jorgensen was hired by Quabbin to conduct an independent observation of Student in his educational program, review his records, and make recommendations regarding his inclusion. She reviewed Student's March 2018 progress report, his schedule, three work samples, Dr. Melanson's report, and the IEP for the period from January 25, 2017 through January 24, 2018. (S-11) She spent most of the school day observing Student on May 21, 2018. She began the day observing Student in his Create classroom; observed his general education social studies class; returned to the Create classroom and observed "calendar" and math; observed Student at recess and lunch; observed "read aloud" and writing in the

¹⁰The IEP included consultation between the speech language pathologist and special education teacher, but Mother rejected the amount of time as insufficient. (S-10)

Create classroom; observed art; and observed the beginning of Student's general education science class. She did not observe a general education math or ELA class and did not know how many students were in either class. She did not observe any of Student's speech language therapy sessions. She did not observe a planning session among Student's teachers. (Jorgensen)

After her observation, Dr. Jorgensen recommended that Student be placed in a general education setting for his entire school day. She opined that Student can make meaningful progress on his IEP goals with supplementary aids and services in a general education classroom, and therefore, more "segregated" placements need not be considered. She reported that based upon her observation, the Create classroom functioned like a resource room where students engaged in skill practice. She "did not observe any whole class or small group instruction based on a curriculum with a defined scope and sequence." In the general education setting (of which she observed one period of social studies and the introduction to a science class) she observed small group learning activities "which offer opportunities for [Student] to acquire content knowledge as well as opportunities for him to learn communication, social, organizational, and self-determination skills." (P-M)

Dr. Jorgensen made a number of recommendations for student's program. She recommended that Student begin and end each day in a typical sixth grade classroom and participate in all of his academic subjects in the general education setting, working on his IEP goals and modified general education learning standards. She further recommended that he receive individual instruction for thirty minutes per day in literacy. She suggested that he participate in a weekly "communication circle with a few classmates to focus on Student's language development and "peer mediated strategies for repairing communication breakdowns." She made recommendations for push in speech language, occupational therapy, and physical therapy. Additionally, she made a number of recommendations for supplementary aids including accessible instructional materials, assistive technology, and embedded specialized instruction from special education teachers who "push in" to core academic classes several times per week. She made a number of recommendations to support Student's providers, including one hour per week of common planning time, consultation time, and professional development. Her report included numerous references to articles, her books, examples of adapted texts, and instructional materials. (P-M)

Dr. Jorgensen testified that research shows there is a positive correlation between the amount of time that students with disabilities with profiles similar to Student spend in general education and positive outcomes while students are in school and when they are adults. She believes Student will make more progress in a general education setting with appropriate supports than in a setting in which he receives services primarily with other students with disabilities. (Jorgensen)

During cross-examination, Dr. Jorgensen agreed that her philosophy is that inclusion is about social justice. She also conceded that she had written an open letter to the New York Times in which she stated, "We have reached the tipping point where it is no longer educationally or morally defensible to continue to segregate students with disabilities." Dr.

Jorgensen acknowledged that she began communicating with Mother via e-mail in 2016 in regard to what Mother wanted for Student's educational program. She recalled giving Mother her opinion with respect to Quabbin's implementation of his IEP, "If [Student] is not listening, disrupting, then, clearly they are not doing it well." She acknowledged that she had reached her opinion without any firsthand knowledge of Student and without any input from the district. (Jorgensen)

19. The Team convened on June 20, 2018 to review Dr. Jorgensen's report and recommendations and propose a new IEP. The Team rejected Dr. Jorgensen's recommendation that Student receive all of his services in the general education setting. The school-based Team determined that Student required a program in which he would be placed in the general education setting for science, social studies, specials and homeroom and in a substantially separate setting for math, ELA and life skills. The Team continued to recommend push-in physical therapy and pull-out occupational therapy and speech language services. Mother partially rejected the IEP on August 26, 2018 and sent a letter describing which portions she was rejecting. She did not agree with the Team's decision not to include any of the recommendations of Dr. Cheryl Jorgensen and requested that they be added and implemented. She rejected Student spending most of his school day in a substantially separate classroom and stated that he was not being meaningfully included when in the general education. She stated that she wanted Student placed in full inclusion in a general education setting with appropriate aids and services. She rejected the lack of goals for Student in the general education setting. Mother continued to reject the consultation model between Student's teachers and service providers and requested the inclusion of a "coach" with expertise in including students at weekly consultation meetings. She requested that Student receive literacy instruction with a certified reading specialist and requested a daily visual schedule for Student and Parents. Quabbin sent the IEP to Parents on July 6 and July 18, 2018. (S-7)
20. Student did not participate in Quabbin's proposed summer program during the summer of 2018. (S-6)
21. Kayla Dowd, M.A., CCC-SLP, evaluated Student and spoke with Parents on July 24, 2018 for approximately 2.5 to 3 hours. She has worked at Children's Hospital since completing her education and has never delivered direct services in a school setting. She wrote a report of her conclusions and recommendations that Parents provided to the Team on September 12, 2018. She concluded that Student's communication profile is best characterized by diagnoses of mixed receptive-expressive language disorder (describing Student's receptive language abilities as being severely impaired, yet a relative strength when considering his entire communication profile), phonological disorder, fluency disorder and Down Syndrome. She recommended that Student continue receiving speech language therapy for at least 90 minutes per week across multiple sessions. She stated that it would be important that most of his support be provided on an individual basis using a pull-out model to provide the opportunity for repetitive and drill-based support. She noted that any group therapy should be conducted with only one or two other children working toward the same communication objectives, though conceded that she had never observed

Student's group or individual speech language therapy sessions and has not spoken with his speech language providers at Quabbin.

In addition to her recommendations for Student's direct services, Ms. Dowd found that the objectives in Student's IEP lacked specificity and should specify, for example, what sounds the therapist is working on with Student. She made suggestions regarding speech production, fluency, receptive and expressive language. (See P-J) She recommended collaboration between the speech language pathologist, Student's teachers and his family to encourage carryover from therapy to other settings. (P-J)

22. The Team convened on October 4, 2018. It reviewed Student's progress to date, a Developmental Medicine Note by Jessica Solomon and Nicole Baumer, and a speech language evaluation completed by Kayla Dowd. It also reviewed Parents' rejections of the previously proposed IEP and discussed Dr. Jorgensen's recommendations.

The Team agreed to some revisions. It updated Student's speech and language goal, added accommodations #11-14 to PLEP B and #10-14 to PLEP A. It added a consultation between all service providers (except for the physical therapist) for 30 minutes every three months. An academic goal was added and extended school year speech was proposed for one individual session and one group session per cycle. (S-5)

The Team rejected providing a weekly consultation between service providers as it believed the proposed consultation model appropriately met Student's needs. It rejected changing Student's group speech language session to a smaller group because the speech language pathologist reported he was making effective progress in the proposed model. It rejected Parents' request that Student receive all services in an inclusion setting after considering Student's current ability level, special education needs and his goals and benchmarks. The Team continued to recommend push-in physical therapy and pull-out occupational therapy and speech language services. The Team provided a copy of Student's visual schedule to Parents. The IEP was mailed to Parents on October 15, 2018. (S-5)

23. Amanda Lambert, MA-CCC-SLP, has worked at Quabbin for five years, and for approximately fifteen years, both part-time and full-time in other Massachusetts public school districts. She evaluated Student as part of his three-year evaluation in January 2014 (S-28). She has reviewed the results of his 2016 evaluation by Quabbin and currently provides Student direct speech language services ninety minutes weekly. Ms. Lambert noted similarities in the findings of the 2014 and 2016 evaluations, both finding that Student's expressive and receptive vocabulary were within the significantly below average range as was Student's articulation. She noted that comparing Student's vocabulary skills to those of other students, Student's skills were around the four year-old level. Thus, she explained that Student's vocabulary was significantly below what one would expect his age-peers to be able to understand and express. She noted that his vocabulary skills would make it difficult for him to fully understand what is happening in a classroom and thus, to access the curriculum. (Lambert)

In her therapy with Student, Ms. Lambert currently focuses on articulation through a lot of drill work. She also works on language such as formulating sentences, using correct grammar, using pronouns, and verb usage. She practices some lifeskills such as calling 9-1-1 and ordering from a menu. During group sessions she focuses on pragmatic language and conversing with other students. She embeds articulation within those sessions as well. She is able to observe student generalizing his articulation skills from their individual sessions. (Lambert)

Ms. Lambert noted that Ms. Dowd's evaluation results were similar to her own. She agreed with Ms. Dowd's statement that Student's communication impairments will regularly impact his ability to participate and perform within both social and academic settings. She disagreed with Ms. Dowd's recommendation that Student's group session be limited to one or two other children because she has worked with him in groups of four to seven students and observed him making progress. She has observed him using techniques she has taught him during their individual sessions in the larger group session as well. She did not think it would be appropriate for Student to receive speech language services as a push-in service in a general education setting. It would limit her ability to provide the articulation drill that he requires.

Given his significant expressive and receptive language skill deficits, Ms. Lambert disagreed with Dr. Jorgenen's recommendation that Student should attend sixth grade ELA and math in the general education setting with supplementary services as such a model would not provide the intense work he requires in both ELA and math.

Ms. Lambert opined that the IEPs proposed between June 2017 and January 2019 were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. Given Student's significantly reduced language skills it would be difficult for him to progress in ELA and math if he did not receive intensive direct services. She explained that in science and social studies teachers can choose which concepts Student should focus on. They can choose a reduced number of vocabulary words that would help Student learn the main idea. With ELA and math everything builds upon itself and moving on from one skill to another would be difficult if one had not learned the previous skill. (Lambert)

24. Mother rejected the placement and partially rejected the IEP on November 7, 2018 as explained in her letter of the same date. She continued to reject the portions of the IEP that placed Student in a substantially separate setting. She rejected that some of Ms. Dowd's speech language recommendations were not included in the IEP. She suggested the addition of some communication objectives. She requested literacy instruction by a certified reading specialist. She rejected the lack of consultation between Parents and the speech language pathologist as recommended by Ms. Dowd and lack of a communication log between Parents and the speech language pathologist. She rejected the lack of consultation between all of Student's teachers and service providers and requested a weekly one hour consultation between all staff who work with Student. She rejected the size of the group in Student's group speech language service. Finally, she rejected the fact

that Student is transported to school on a special education van when his IEP does not require specialized transportation. (S-5)

25. The Team convened on November 8, 2018 to review the results of the AAC/AT evaluation. It added a dedicated iPad (for use at school and home) as an accommodation to PLEP-A and an AT consultation to the serve delivery grid. It also added portions of the results of the AAC/AT evaluation and an augmentative communication evaluation. The Team rejected Mother's request to add a specific goal for the use of the iPad until staff had an opportunity to gather baseline data regarding Student's use of the device. The Team suggested discussing a goal at the annual review meeting that was scheduled for January 17, 2019. The proposed IEP was mailed to Parents on November 27, 2018. (S-3)
26. Student's December 7, 2018 progress report shows that he was able to read the first 200 fry sight words with 65% accuracy and spell them with 40% accuracy. He was able to answer who, what, where and why questions to demonstrate his understanding of a text with 65% accuracy. He could identify triangles, quadrilaterals, hexagons and cubes with 70% accuracy. He was able to identify numbers up to 120 with 70% accuracy. (S-2)
27. Mother partially rejected the IEP and described the portions she was rejecting in a letter dated January 7, 2019. She stated that the IEP would not provide Student with FAPE in the LRE and she rejected his placement for any part of the day in a substantially separate setting. She rejected the lack of an accommodation in PLEP-A stating that Student would have accessible instructional materials. She accepted the addition of a dedicated iPad in PLEP A, but wanted it to also be in PLEP-B and requested specific apps be provided. She requested that some of Ms. Dowd's recommendations for accommodations be implemented and requested that objectives be added to Student's communication goals. She requested that the objectives of Student's goals be reviewed at an upcoming Team meeting to discuss how to make them challenging for Student to promote his academic progress. She again requested literacy instruction from a certified reading specialist. She rejected the lack of consultation between Parents and the speech language pathologist and requested a communication log for each speech language session. She again rejected the insufficiency of consultation between all of Student's teachers and providers. She rejected the lack of specificity in the Grids regarding which type of staff person would provide each of Student's services. She rejected the size of the group for Student's group speech and language session. (S-3)
28. Jessica Solomon Sanders, M.D. and Nicole Baumer, M.D., M.Ed., of the Boston Children's Hospital Down Syndrome Program, wrote a letter addressed to Whom it May Concern dated January 14, 2019. The letter states that they were writing to provide their expert opinion regarding appropriate educational programming for Student. They described him as being very engaging and having "wonderful receptive language." The letter notes that Student is very motivated to communicate with others and does very well with emulating others' behaviors and skills. It noted that Student does not have significant behavior problems and that his profile is in line with the type of developmental profile they believe would be best suited for an inclusive environment. The letter states that it "is essential that [Student] has the opportunity to learn with his typically developing peers in

an inclusive educational setting; and he should be a valued member of the inclusive setting.” Dr. Sanders and Dr. Baumer stated that Student requires a highly trained 1:1 paraprofessional to support him in the inclusion setting. They also recommended intensive speech and language therapy and social skills training. They referenced research that has shown that “students with Down Syndrome who are educated in an inclusive classroom made greater gains than their peers in separate classrooms in language, literacy, and social behavior.” They noted that Student did well in an inclusive camp setting over the summer. (P-N)

29. Sarah Faucher is the teacher of Quabbin’s Create program. She has a bachelor’s degree in early childhood special education and is licensed in special education (through eighth grade) and early childhood elementary education. She has provided services to Student since the 2017-2018 school year. She provides his math, reading, vocabulary and life skill services. Although there are eight students in her class, she usually breaks them into even smaller groups. When she instructs Student, she often provides one to one instruction and generally he is instructed with no more than two other students. She noted that Student does not have a 1:1 aide and generally does not require one. He is currently reading at a level E, which correlates to a first grade reading level. He has progressed in reading at a rate of two to three levels per year. Ms. Faucher noted that Student knows his numbers, although he struggles to get through 13, 14, and 15 when counting. She noted that he has progressed in his life skills goal. She described Student as “the life of the party” in the Create classroom and stated that he likes his peers and is well-liked by them. He is particularly close to another student who has a similar diagnosis. She noted that Student does not show any hesitation when entering the Create classroom, but about once or twice per month he shows some hesitation when leaving the classroom for social studies or science.

Ms. Faucher has participated in approximately five team meetings for Student including the June 2018 Team meeting during which Dr. Jorgensen’s evaluation was initially reviewed. She did not agree that full inclusion with appropriate supplementary aids and services would provide Student with a meaningful benefit in the least restrictive environment. She agreed that it was appropriate for Student to participate in general education social studies and science, but not math and ELA, because those involve foundational skills that Student requires to continue learning. She thinks he needs to continue to work on the “building blocks” in math and ELA as he is currently working at the first to second grade level in those subjects. In Ms. Faucher’s opinion the IEPs proposed for the periods from June 2017 through January 2019 have been reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. She opined that the goals were appropriate to his needs and that he can meet them as long as he continues to receive intensive instruction in the Create classroom. (Faucher)

30. Christopher Nosek is Student’s science and social studies teacher. He has a degree in communications and is certified in grades five through eight mathematics. He has worked in Quabbin for ten years. He teaches Student every day in science and three times per week in social studies. (Student has social studies every day, but two days per week it is

taught by Mr. Nosek's sixth grade team mate.) Student is accompanied by a one to one aide (the same aide each day) in his classroom. He stays for the entire forty five minute class.

Mr. Nosek attended Student's October and November 2018 Team meetings. He disagrees with Dr. Jorgensen's recommendation that Student should attend a general education math class with supplemental aids and supports. Student's math IEP goals include counting by fives and tens, identifying triangles and trapezoids and quadrilaterals, and identifying odd and even numbers. In sixth grade, general education math students are working on ratios and proportions, graphing on the coordinate plane, algebraic equations, and finding mean, median and mode. Given the difference between the skills learned in sixth grade general education and what Student is working on, it would be more beneficial for him to spend time working on the skills he is currently learning. He agrees that Student receives meaningful benefit from participating in general education science and social studies because performance on assessments that he and Ms. Faucher have administered to Student reflect that he is learning vocabulary and concepts. The particular science and social studies classes he participates in use a lot of small group activities and work is modified. He explained that by way of example that during a unit on cells the class is learning that all living things have cells. He would want Student to understand that cells are very small and need to be seen with a microscope. Student would learn a few vocabulary words related to cells. The rest of the class would learn more vocabulary regarding the parts of the cell and their particular functions. Mr. Nosek testified further that in science the topics covered are not necessarily connected from unit to unit. It is different from math where one must master fourth grade standards to learn fifth grade standards and fifth grade standards to learn sixth grade standards. (Nosek)

In Mr. Nosek's opinion the IEPs proposed by the Team pursuant to the October and November Team meetings were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. His opinion is based on his experience as a teacher and the reports he has read from Team members who contributed to the IEPs. (Nosek)

31. Mother described Student by stating that he is very social, he loves his family, friends, and pets and loves music. Mother has a bachelor's degree in psychology with a concentration in adolescents and children and worked as a substitute one to one aide in New York for a number of years. Student lived in New York, when he was in pre-school and Kindergarten and he was in a full inclusion setting and Mother testified that she witnessed him flourishing. Student successfully attended a summer camp with typical peers during the past summer. He attends weekly religious education classes with typical peers and he is an altar server at his church. Mother explained that she works on academic skills with Student during the summer, such as having him count, write the date, read and send e-mails. She testified that Student's IEP does not require specialized transportation, but because he participates in the Create classroom a van picks him up and brings him to school. The van ride is approximately forty-five minutes long despite his school being about fifteen minutes away from his home.

Mother testified that Student's typical peers never invite him to hang out or to go to the movies. It is different from New York where Student was included and invited to parties and social activities. Mother stated that she believes he is currently making some progress (after many years during which she does not believe he made progress) in Quabbin, but she knows there is so much more he could be making. She testified that she accepted the proposal to provide Student with a dedicated iPad on January 7, 2019. (Mother)

32. Marcia Grimes testified that she is Student's religious education teacher this year¹¹. Student attends her class for approximately one hour each week, participating in her class of eight students. His attention is great and he participates and behaves well. She thinks he could participate in a general education class based upon her experience working with Student. (Grimes)

FINDINGS AND CONCLUSION:

Student is an individual with a disability, falling within the purview of the Individuals with Disabilities Education Act (IDEA)¹² and the state special education statute.¹³ As such, he is entitled to a free appropriate public education (FAPE). Neither his status nor his entitlement is in dispute.

The IDEA was enacted "to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education, employment and independent living."¹⁴ FAPE must be provided in the least restrictive environment. Least restrictive environment means that, "to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."¹⁵

Student's right to a FAPE is assured through the development and implementation of an individualized education program ("IEP").¹⁶ An IEP must be custom-tailored to address a

11 Ms. Grimes is trained in the Catechesis of the Good Shepard, a Montessori-based religious program with hands-on experiential learning. She took four courses over the course of four summers. (Grimes)

12 20 USC 1400 *et seq.*

13 MGL c. 71B.

14 20 USC 1400(d)(1)(A). See also 20 USC 1412(a)(1)(A); *Mr. I ex. Rel. L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1 (1st Cir. 2007)

15 20 USC 1412(a)(5). See also 20 USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c)

16 20 USC 1414(d)(1)(A)(i)(I)-(III); *Honig v. Doe*, 484 U.S. 305 (1988); *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982)

student's "unique" educational needs in a way reasonably calculated to enable him to receive educational benefits.¹⁷ For an IEP to provide a FAPE, it must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."¹⁸ A student is not entitled to the maximum educational benefit possible.¹⁹ Similarly, the educational services need not be, "the only appropriate choice, or the choice of certain selected experts, or the child's parents' first choice, or even the best choice."²⁰ The IDEA further requires that special education and related services be designed to result in progress that is "effective."²¹ Further, a student's level of progress must be judged with respect to the educational potential of the child.²²

Massachusetts special education regulations provide that specially designed instruction and related services described within the IEP must be sufficient to "enable the student to progress effectively in the content areas of the general curriculum."²³ Massachusetts also requires that the special education services be designed to develop a student's educational potential.²⁴

An IEP is a snapshot; therefore, the IEP must take into account what was, and was not objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.²⁵ An IEP is not judged in hindsight; its reasonableness is evaluated in light of the information available at the time it was promulgated.²⁶ The critical inquiry is whether a proposed IEP is adequate and appropriate for a particular child at a given point in time.²⁷

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

With the foregoing legal framework in mind, I turn to the issues before me. The first issue is whether the IEPs proposed for the period from June 2017 through January of 2019 were reasonably calculated to provide Student with a free appropriate public education in the least

¹⁷ *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir.1993)

¹⁸ *Endrew F. v. Douglas County. Sch. Dist.*, 580 U.S. ___ (2017)

¹⁹ *Rowley*, 458 U.S. at 197

²⁰ *G.D. Westmoreland Sch. Dist.*, 930 F.2d 942 (1st Cir. 1991)

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

²² *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F.3d 18 (1st Cir. 2008)

²³ 603 CMR 28.05(4)(b)

²⁴ MGL c.71B; 603 CMR 28.01(3)

²⁵ *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983 (1st Cir. 1990)

²⁶ *Id.*

²⁷ *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir. 1993)

restrictive environment. Because many of the rejected portions remained the same throughout the different iterations of the IEPs, I will address the IEPs as a unit. It is notable that the Team convened six times between June 2017 and November 2018. Each time an IEP was rejected or the Parents submitted an independent evaluation or report, the Team appropriately convened to review the new information and make amendments or additions to the IEP as deemed appropriate. The credible documentary evidence and testimony show that the Team appropriately considered Student's areas of need, including the areas of ELA/reading, vocabulary mathematics, motor skills, occupational therapy, and communication. The goals appropriately addressed all areas of need that had been identified by evaluators and providers and were modified at times based upon suggestions from both Quabbin providers and outside evaluators. (See descriptions of Team meetings above.) Parents' concerns were also often addressed through modifications to Student's accommodations, goals and services. For instance, when Mother rejected the use of the MCAS alternate assessment and explained that the Parents wanted Student to pursue a high school diploma, the IEP was modified to allow Student to take the MCAS with accommodations. Additionally, when Parents sought the addition of specific goals for Student such as learning to call 9-1-1 and tie his shoes, the Team added the requested goals. When Parents requested that pre-teaching time be added to the IEP, it was added as an accommodation and later added to the Grid.

Although Parents rejected several portions of the IEPs (which will be addressed in more detail below), the primary focus of the evidence and the real crux of this dispute pertains to Student's placement. Parents have consistently requested that Student be placed in the general education setting, with supplementary aids and services, for his entire school day. Quabbin has consistently proposed a placement which would allow Student to receive some of his services within the general education setting with supplementary aids and services and some services in a separate setting.

Under state and federal special education law, a school district has an obligation to provide services in the "least restrictive environment." 20 U.S.C. § 1412(a)(5)(A); Mass. Gen. Laws c. 71B, §§ 2, 3. *See also* 20 U.S.C. §1400(d)(1)(A); 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.114(a)(2)(i); 603 C.M.R. § 28.06(2)(c). The phrase "least restrictive environment" means that, to the maximum extent appropriate, a student must be educated with other students who do not have a disability, 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." Mass. Gen. Laws c. 71B, §§ 2, 3; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c). *See also Burlington v. Mass. Department of Education*, 471 US 359, 369 (1985) (federal statute "contemplates that such education will be provided where possible in regular public schools, with the child participating as much as possible in the same activities as nonhandicapped children"). Where there is tension between the educational services necessary to meet the needs of a child (and to provide him with educational benefit) and the principles of least restrictive environment, "the desirability of mainstreaming must be weighed in concert with the Act's mandate for educational improvement . . . , requir[ing] a balancing of the marginal benefits to be gained or lost on both sides of the maximum benefit/least restrictive fulcrum." *Roland v. Concord School Committee*, 910 F.2d 983 (1st Cir. 1990).

Parents relied primarily upon the recommendation of their evaluator, Dr. Jorgensen, to support their position that Student can and should be educated in the general education setting. I did not

find Dr. Jorgensen to be a credible witness for several reasons. First, she was hired by Quabbin to be an independent evaluator. However, Dr. Jorgensen was not in fact independent, as she had a prior relationship with Parents that she presumably did not disclose prior to conducting her observation. She testified about exchanging a number of emails with Mother regarding Student's participation in the Quabbin program starting in 2016. The emails presented to her during cross examination showed that she had made a determination that Quabbin was not providing Student's services appropriately based upon Mother's emails to her and without speaking to anybody at Quabbin. Additionally, her first-hand knowledge of the Quabbin program was limited to her observation of a portion of a school day (including an observation of only the introduction to Student's science class) and her review of a March 2018 progress report, Student's schedule, three work samples, one evaluation, and one IEP. Lastly, Dr. Jorgensen admitted during her testimony that she viewed inclusion as a social justice issue and she had taken the position that it is not educationally or morally defensible to segregate students with disabilities in an article she wrote for a nationwide publication. (See page 8 above.) Thus, it is difficult to determine whether her recommendations are truly made on the basis of her observation, or her overarching beliefs that inclusion is always preferable without regard to what is necessary for Student. For the following reasons, I did not rely upon Dr. Jorgensen's testimony or report.

With respect to the question of what constitutes the least restrictive environment for Student, I relied heavily upon the testimony of his current service providers. Ms. Faucher, who I found to be credible, has been Student's teacher since the 2017-18 school year and is very familiar with his strengths, weaknesses, and educational needs. She explained that Student has made progress in reading at a rate of two to three levels per year and is currently reading at a first grade level. In math she reported that he knows his numbers, but continues to struggle to get from 13 to 15 when counting. She explained that Student requires substantially separate small classes for math and English language arts because he is still learning foundational skills. She stated that he needs to work on the "building blocks" of math and English language arts and is currently working at the first to second grade level in both of those subjects. She credibly testified that she utilizes the accommodations noted in Student's IEP and that Student is comfortable and making progress within the Create classroom.

Similarly, I relied on the testimony of Christopher Nosek and found him to be credible and knowledgeable of Student and his learning profile. As Student's general education science and (one of his) social studies teachers, he works with Student and observes his progress every day. He was able to explain how he modifies science content to make it accessible to Student and reported that Student was able to make progress in science. He also provided unique insight in his capacity as a math teacher because he is familiar with the sixth grade math curriculum that Student would be expected to learn in a general education math class. I credited his opinion that a general education math class would not be appropriate for Student given his familiarity with Student's current math level, learning style, and his knowledge of the sixth grade math curriculum. I relied on his description of the concepts Student would be expected to learn in the general education and contrasted them with the skills on which Student is currently working. Mr. Nosek was persuasive in his opinion that math is different than social studies and science, in that one has to master fourth grade math standards in order to learn fifth grade standards, and fifth grade math standards in order to learn sixth grade standards. I thus relied on Mr. Nosek's opinion that the IEPs proposed by the Team were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

I credited speech language pathologist, Amanda Lambert's testimony that Student's vocabulary skills were around the four year old level, which would make it difficult for him to understand what is happening in a grade level general education classroom and thus, to access the curriculum. Her results were similar to those of Kayla Dowd, Parents' consulting speech language pathologist. Ms. Lambert was persuasive that given Student's significant expressive and receptive language skill deficits, general education math and English language arts would not provide the intense work he requires in those areas. Although Ms. Lambert's evaluation results were similar to those obtained by Kayla Dowd, Ms. Dowd recommended that Student's group speech language services be delivered in a group of no more than one or two other students. Ms. Lambert disagreed, as she had been successfully providing services to Student in a group of four to seven students. I credited Ms. Lambert's testimony in that regard as Ms. Dowd had never provided services in a school setting and had not consulted with Ms. Lambert to determine what worked for Student. I credited Ms. Lambert's opinion that the speech language services proposed by the IEPs at issue were reasonably calculated to provide Student with a free and appropriate public education in the least restrictive environment. She had evaluated Student and had first-hand knowledge of the progress that he was making. She was able to observe him carrying over skills from their individual sessions into their group sessions. (Lambert)

Although Parents are correct in their assertion that the IDEA favors inclusion when appropriate, the mandate for the least restrictive environment cannot override the requirement that Student benefit from the services. Given that the IDEA's least restrictive environment mandate cannot override the IDEA's free appropriate public education requirement, the end result must be a program and placement that provide the student with a "meaningful" educational benefit, that is, a program and placement that are "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S.Ct. 988 (2017); see also *Bd. Of Ed. Of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *D.B. et al v. Esposito*, 675 F.3d 26 (1st Cir. 2012). I am not persuaded that Student will receive meaningful benefit from his services in the general education for math or ELA. His teachers were persuasive that Student requires intensive services in those areas that are not possible to provide in the general education setting. Mr. Nosek explained that sixth grade general education math students are learning ratios and proportions, graphing on the coordinate plane, algebraic equations, and finding mean, median and mode. Student is learning to count by fives and tens, identify shapes and identify odd and even numbers. Dr. Jorgensen testified that Student could be included in the general education math class by being called upon to identify whether a number is odd or even while the teacher is guiding students through a more complicated math problem. However, requiring Student to sit through an entire math lesson, during which he is not likely to understand all of the grade-level vocabulary used by the teacher and peers (see testimony of Ms. Lambert), simply to have an opportunity to identify whether a number is odd or even does not confer a meaningful educational benefit upon Student. His math instructional time is better used in a classroom where he can work on skills at his own level and progress at his own pace. As Mr. Nosek credibly testified, Student needs to acquire underlying skills in math before he can benefit from grade level instruction. He requires intensive instruction in basic math skills, which he can receive in the Create classroom, before he is exposed to grade level math. Dr. Jurgensen also recommended that Student participate in general education English language arts, where he could be provided with adapted books at his reading level to access novels that are part of the general curriculum. (In addition she recommended that he also participate in a daily literacy class because he is still learning to read

and needs to work on phonemic awareness, phonics, vocabulary, fluency, comprehension, and writing.) Participation in the general education English language arts class in the manner described by Dr. Jorgensen would not be appropriate for Student, rather he would derive educational benefit from focusing on learning to read during the English language arts portion of the Create class.

In balancing the benefits to be gained or lost on both sides of the meaningful benefit/least restrictive environment fulcrum, it is necessary to consider that Student is provided services in the general education setting for a significant part of his day. He is exposed to general education peers during specials, homeroom, lunch, science and social studies. He is only provided services in a separate setting when it is necessary to appropriately address his needs. The evidence is persuasive that Student requires a separate setting for math, and English language arts in order to benefit from the services. The pace of instruction, given his expressive and receptive language challenges, and his current skill levels, would make it is unlikely that he would meaningfully benefit from the instruction in the general education English language arts and math classes where the instruction is fast paced and the content far above his skill level. He is still working on learning basic skills in math and learning to read in English language arts.

With respect to speech language services, both Ms. Lambert and Ms. Dowd recommended services using a pull-out model and found that a push-in model would be stigmatizing and inappropriate. There was no testimony from an occupational therapist with respect to the appropriateness of pull-out versus push-in services. Therefore, Parents did not meet their burden of showing that Student's occupational therapy services should be provided using the push-in model.

Parents, as the moving party, had the burden of showing that the IEPs and placement as proposed by Quabbin did not provide Student with a free appropriate public education in the least restrictive environment. They were not able to meet that burden.

I decline to adopt any of the Proposed Orders in Parents' closing argument, as they have not met their burden of showing that the IEPs as proposed did not provide Student with a free appropriate public education in the least restrictive environment.

ORDER

Based upon the foregoing, I find that the IEPs proposed by Quabbin were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. Therefore, no modifications to the IEP are required.

Student is not entitled to any compensatory services.

By the Hearing Officer,

Catherine M. Putney-Yaceshyn
Dated: March 28, 2019