

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

In re: Percy¹

BSEA #1905348

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 on March 15, 18, 25, and 26, 2019 before Hearing Officer Amy Reichbach. Those present for all or part of the proceedings were:

Student's Mother	
Student's Father	
Amy Bright	Assistant Superintendent for Elementary Education, Framingham Public Schools (FPS)
Ramón Colón	School Psychologist, FPS
Mariann DeAraujo	Guidance Counselor, McCarthy Elementary School
Sivan Rose Elefson	Student's Private Therapist
Allison Schettini Evans	Pediatric Neuropsychologist
Jeffrey Holzer	Special Educator Inclusionist, Fuller Middle School
Natalia Kierul	Team Evaluation Coordinator, ² Fuller Middle School
Michelle Masella	Special Education Teacher, McCarthy Elementary School
Laura Spear	Director of Special Education, FPS
Nancy Shor	Former Team Evaluation Coordinator, McCarthy Elementary School
Philip Benjamin	Attorney for Framingham
Constance Hilton	Attorney for Parents
Kristen Edwards	Court Reporter
Carol Kusnitz	Court Reporter
Jennifer Desmond	BSEA Intern

The official record of the hearing consists of documents submitted by Framingham Public Schools and marked as Exhibits S-1 to S-28; documents submitted by the Parents and marked as Exhibits P-1 to P-48; and a four volume transcript produced by a court reporter following approximately four days of testimony and oral argument. As requested by the parties, the record

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

²Parties used the term "Team Evaluation Coordinator" and "Team Evaluation Chair" interchangeably.

was held open until April 24, 2018 for submission of written closing arguments. Closing arguments were received and the record closed on that date.

INTRODUCTION

On December 20, 2018, Percy's Parents filed a *Hearing Request* against Framingham Public Schools ("Framingham," or "the District") asserting that Framingham's Individualized Education Programs ("IEPs") for Percy for fifth grade (2017-2018 school year) and sixth grade (2018-2019 school year) were not reasonably calculated to provide her with a free appropriate public education ("FAPE"); that Framingham had failed to fully implement her fifth grade IEP; and that Willow Hill School ("Willow Hill"), where Parents had unilaterally placed Percy at the beginning of sixth grade, is appropriate for Percy. Parents sought reimbursement from Framingham for their expenses related to Percy's placement at Willow Hill; prospective placement of Percy at Willow Hill; and compensatory services. On March 5, 2019, Parents filed an *Amended Hearing Request*, which added to the initial complaint IEPs proposed by Framingham for the period from January 2019 to February 2020.

For the reasons below, I find that the IEPs proposed by Framingham for Percy for fifth, sixth, and seventh grades (through February 2020) were and are reasonably calculated to provide her with a FAPE. As such, I need not consider whether Willow Hill is appropriate for her. As Parents have not met their burden to prove that Framingham failed to provide specific services for Percy in fifth grade, I need not consider compensatory services.

ISSUES

1. Whether the IEPs proposed by Framingham for Percy for the 2017-2018 school year (fifth grade) were reasonably calculated to provide her with a provide a free appropriate public education (FAPE) in the least restrictive environment (LRE);
2. Whether Framingham failed to fully implement Percy's IEPs during the 2017-2018 school year;
3. Whether the IEPs proposed by Framingham for Percy for the 2018-2019 school year (sixth grade), which include portions of the IEP dated January 24, 2018 to January 23, 2019, as amended in April 2018; portions of the IEP dated January 11, 2019 to January 10, 2020; and portions of the IEP dated February 14, 2019 to February 13, 2020, were reasonably calculated to provide her with a FAPE in the LRE;
4. If the answer to (3), above, is no, whether Willow Hill is an appropriate placement for Percy, such that Parents are entitled to reimbursement from Framingham for their expenses related to her placement there;
5. Whether the IEPs proposed by Framingham for Percy for 2019-2020 school year, through February 13, 2020, which include portions of the IEP dated January 11, 2019 to January 10, 2020, and portions of the IEP dated February 14, 2019 to February 13, 2020, are reasonably calculated to provide Percy with a FAPE in the LRE;

6. If the answer to (5), above, is no, whether the most recent IEP, dated February 14, 2019 to February 14, 2020, can be modified to provide Percy with a FAPE in the LRE, or whether Parents are entitled to prospective placement of Percy at Willow Hill through February 14, 2020;
7. Whether Framingham is responsible for providing any compensatory services for Percy.

FINDINGS OF FACT

1. Percy, who is twelve years old, resides with her parents and her fifteen year-old sister in Framingham, Massachusetts. (Mother, I: 23-24) She is currently in sixth grade at the Willow Hill School in Sudbury, where she was placed by her parents unilaterally after attending the Framingham Public Schools from kindergarten through fifth grade. (Mother, I: 26) Percy is sweet, socially motivated, caring, hardworking, and artistic. She enjoys drawing, dancing, and singing. Percy is sensitive about social dynamics; over the years she has described as bullying several incidents where she feels excluded from, pushed out of, or not invited to join, a friendship group.³ Percy has “always had strong opinions about girls that she really wanted to be friends with.” (P-3, P-21; Mother, I: 24; Evans, II: 98, 103, 181, 185)
2. Percy presents with variability in her cognitive and learning profile. Her diagnoses include dyslexia, mixed receptive and expressive language disorder, and an unspecified neurodevelopmental disorder characterized by diffuse vulnerabilities in aspects of executive functioning and memory. Additional concerns related to performance anxiety, social functioning, and math performance have been indicated. Due to Percy’s vulnerabilities in language processing and formulation, she becomes overwhelmed by complex language and struggles with organizing information independently. (P-21; S-1, S-11) No formal diagnosis of a social/emotional disability has ever been made by, or communicated to, Framingham. (Colón, III: 57-58; Shor, III: 227-28, 255-56)
3. Percy, who has a late summer birthday, started kindergarten at the age of six (6), as Parents chose to have her complete an extra year of preschool given her young age and concerns associated with her language skills. (P-3; P-21; Mother, I: 26-27) A speech and language evaluation was completed at this time, but she was not found eligible for special education. (S-11) At the end of kindergarten, however, Percy was found eligible on the basis of a Specific Learning Disability.⁴ At this time, she was working at or near grade level in most academic areas, although her Comprehensive Test of Phonological

³Much testimony addressed Percy’s and her mother’s belief that she was experiencing bullying, primarily through “being purposely excluded from,” or not included in, friendship groups. Percy’s Team discussed these concerns multiple times and included the standard statement regarding vulnerability to bullying on her Individualized Education Programs (IEPs). No formal complaints of bullying were ever filed on Percy’s behalf. (Evans, II: 185-88; Shor, III: 245-47)

⁴Although Percy’s Individualized Education Program IEP lists a Specific Learning Disability in reading as the basis for her eligibility, her mother reported to an evaluator that she had initially qualified for an IEP on the basis of a Communication Disability. (P-21)

Processing (C-TOPP) scores demonstrated deficits in phonemic awareness, phonological memory, and rapid naming, consistent with a specific learning disability in the area of reading/decoding. Percy's Team noted that her "social-emotional and behavioral functioning in the classroom is a strength." (P-2; Mother, I: 28)

4. Percy's first IEP, for the remainder of kindergarten and first grade, was dated June 5, 2013 to June 4, 2014 and accepted by Parents on June 28, 2013. This IEP included goals in reading, communication, mathematics, and written language; placed Percy in a full inclusion program at the Miriam F. McCarthy Elementary School ("McCarthy"); and provided for pull-outs for specialized reading instruction, speech/language therapy, and math instruction. (P-2, P-3; Mother, I: 28-29)
5. In August and September 2013, Kelly Lowery, Psy.D., performed an independent neuropsychological examination of Percy at Parents' request. On the Weschler Intelligence Scale for Children (WISC)-IV, Percy scored within the average range on the Verbal Comprehension Index, Perceptual Reasoning Index, and General Ability Index. She scored in the low average range on the Working Memory Index and Processing Speed Index. (P-3) Parent and teacher reports raised no clinically significant concerns regarding Percy's social/emotional functioning; according to her teachers, Percy was "friendly to everyone" and "attempt[ed] to solve problems with peers in ways beyond her years." (P-3) Percy presented with a language-based learning disability impacting all aspects of written language (reading, spelling, written expression), as well as spoken language; math weakness; and vulnerability to performance-related anxiety. Following her observation of Percy in various settings, Dr. Lowery supported an inclusion placement but warned that the pacing of language and instruction in this setting has the potential to impact Percy's ability to make meaningful progress. (P-3)
6. Percy's Team convened in December 2013 to discuss Dr. Lowery's report. At the time, the Team added benchmarks to both reading and writing goals, added writing support outside the classroom, and proposed additional testing in Academics and Occupational Therapy. Parents accepted the IEP amendment on January 6, 2014. (P-4) The Team met again in February to revise Percy's reading and writing benchmarks, as she had met the previous ones. Parents accepted this amendment on May 7, 2014. (P-5)
7. Percy's mother was concerned about Percy socially as early as first grade, because "there were some children in the classroom that had latched onto [Percy], were very possessive of her. [Percy] didn't feel comfortable with that." (Mother, I: 29-30)
8. Percy's IEPs for second grade, which included portions of an IEP dated May 8, 2014 to May 7, 2015, as amended in October 2014 and February 2015, and portions of an IEP dated April 28, 2015 to April 27, 2016, continued her placement in a full inclusion program staffed by a general educator, a special educator, and a special education assistant teacher. Percy received pull-out instruction for reading, speech/language, math, and written language. (P-6, P-8, P-9, P-10) During the year, the Team increased small group direct math instruction and changed the service providers for reading comprehension to include special educator/assistant and general educator, to reflect that

she received these services in the general education classroom rather than resource room pull-out. (P-8) Percy's second grade IEP also called for a weekly "Lunch Bunch" group with the school social worker or guidance counselor, which aimed to help engage her with social interactions and broaden her friendship circle. (P-6, P-10; Mother, I: 27-29)

9. On November 20, 2014, Cheryl Edwards, AuD conducted an auditory processing evaluation of Percy at Boston Children's Hospital. Dr. Edwards concluded that Percy presented with an auditory processing disorder, which caused her to miss information at a rate greater "than would be expected for a child her age when the information is presented in competition/background noise." As a result, she might miss or mishear portions of information presented orally in the classroom, and find tasks particularly challenging when they are presented quickly, in a complex manner, and/or without context. Dr. Edwards recommended several accommodations, including the use of a classroom amplification system. (P-7; Mother, I: 31)

Following the Team meeting in February 2015 to discuss the evaluation, the Team amended Percy's IEP to add accommodations to increase auditory access and attention within the classroom, including a trial period with an amplification system. Parents accepted this amendment on March 20, 2015. (P-9)

10. During Percy's Annual Review, which took place through two meetings in April 2015, the Team decided to have Percy finish second grade in the inclusion setting, with opportunities for pull-out support as needed, but to switch to a Partial Inclusion "pull out/inclusion resource support setting" for third grade. This change was set forth in the portions of the IEP dated April 28, 2015 to April 27, 2016, that went into effect on August 26, 2015. The Team felt that although Percy had been making progress in the inclusion setting, due to her specific learning disability and her audiological processing deficits, "she would have better access to the curriculum in the least restrictive environment in a resource room pull-out and inclusion services rather than a full-inclusion classroom." The Team also proposed pull-out instruction with a speech pathologist and an extended school year to prevent substantial regression of learned skills. Observations from teachers and the district auditory specialist suggested that Percy's difficulty with attention was not due to the lack of auditory access, and as such the Team recommended discontinuation of the use of the sound amplification system. (P-10)
11. McCarthy Guidance Counselor Mariann DeAraujo first became involved with Percy, at Parents' request, around this time. Ms. DeAraujo has a master's degree in clinical social work, is licensed as a school adjustment counselor and school social worker, and has worked as a school counselor at the McCarthy school for twenty-two (22) years. Percy's mother contacted Ms. DeAraujo toward the end of Percy's second grade year and asked her to check in with Percy because she was concerned that Percy and a particular friend were no longer getting along. Ms. DeAraujo was able to process the situation with Percy to resolve the conflict successfully. Following this incident, Percy began attending Lunch

Bunch with Ms. DeAraujo;⁵ she continued to do so through fifth grade. During Lunch Bunch, Percy would bring friends with her to Ms. DeAraujo's office and they would engage in different activities, from talking about television shows to performing skits to sharing stories. At times Percy was invited by other students to participate in their Lunch Bunch. Percy developed a good, trusting relationship with Ms. DeAraujo over the years.⁶ She appeared happy to see, and engaged with, Ms. DeAraujo during Lunch Bunch and individual check-ins. (DeAraujo, IV: 34-38, 41-44, 56-57; Shor, III: 201-02)

At the Annual Review in April, Percy's Team determined that she would continue attending Lunch Bunch through the end of the year, focusing on relaxation strategies and techniques to help ease her anxiety surrounding social situations and academics, and that Mother would meet with the guidance counselor before the end of the school year to develop a plan for supporting Percy effectively in third grade. When they met, Mother and Ms. DeAraujo determined that Percy would participate in Lunch Bunch weekly, half of the time with Ms. DeAraujo only and the other half with friends. The goal was for Percy "to be able to talk about what she worries about regarding friendships." (P-10)

12. Although in June 2015, Parents had accepted Framingham's proposed IEP for the period from April 28, 2015 to April 27, 2016, they wrote to Team Evaluation Coordinator Nancy Shor on September 21, 2015 to express their disagreement with the implementation of the IEP because Percy appeared to be receiving most of her services in the general education classroom. (P-11; Mother, I: 38) Following a Team meeting in October to discuss the use of an amplification system on a trial basis, as well as parent concerns, Percy's Team proposed "changing [Percy]'s academic service delivery in reading comprehension, math and writing from pull-out services with opportunities for inclusion, to inclusion services with opportunities for pull-out in order to provide her with the least restrictive environment in order to make effective progress." The District proposed that Percy remain in a pull-out setting for phonics and fluency reading instruction. Framingham did not provide a rationale for its change in recommendation from partial to full inclusion as the least restrictive environment appropriate for Percy. Parents accepted this amendment on October 20, 2015. (P-12; Mother, I: 37)
13. In February 2016, while Percy was in third grade, Framingham conducted her three-year reevaluation. (P-13) Percy generally presented as cheerful, energetic, and motivated. She scored in the average range in several categories on the psychological evaluation, but displayed clinically significant weaknesses in working memory and organization of materials, which negatively affected her ability to manage and organize her thinking for effective task completion. The evaluator concluded that Percy "continues to present with significant phonological processing weaknesses, consistent with the presence of a language-based learning disability." On rating scales of her social, emotional, and behavioral functioning, Percy's mother indicated generally average and expected behaviors at home with the exception of frequent complaints about not having friends,

⁵Mother testified that Percy began Lunch Bunch in first grade, but there is no mention of it in Percy's IEPs for first grade. The service appears to have begun when Percy was in second grade. (P-2, P-4, P-5, P-6; Parent, I: 27-29)

⁶Although Percy's private therapist Sivan Rose Elefson testified that Ms. DeAraujo did not understand Percy and had, in fact, called her an "entitled child," (Elefson, III: 69, 74-79, 104) I find Ms. DeAraujo's description of her positive relationship with Percy to be credible and supported by the evidence.

which contributed to an elevated depression score. At home and school, Percy also showed an at-risk level of attention problems, affecting her ability to maintain focus, follow directions, and complete tasks independently. (P-13B) Percy's overall academic skills were in the average to lower end of average range. (P-13C) She scored within the low average to high average range on the speech and language evaluation. (P-13D) Percy's third grade teacher reported that she had improved in her reading and writing, but had difficulty attending to tasks and consistently needed to have directions repeated. She also needed constant teacher support due to lack of self-confidence. (P-13A)

14. Following a meeting to discuss the three-year reevaluation, Percy's Team proposed an IEP for the remainder of third grade and part of fourth grade (February 29, 2016 to February 28, 2017) that continued her placement in the inclusion program to address her primary Specific Learning Disability and her secondary Neurological Disability. The IEP continued her goals in reading, phonics, writing, and math; removed her speech and language goal and direct services in that area, but added a consult between the speech pathologist and general education teacher to assist Percy in generalizing skills she had obtained; and added a new goal in Study Skills to address her weaknesses in executive functioning. Parents rejected the discontinuation of speech and language services, but accepted the remainder of the IEP and placement, and requested that the Team reconvene before the end of the school year to discuss Percy's transition to fourth grade. (P-14; Shor, III: 193-96)
15. By the end of third grade, Parents were reporting to Framingham that Percy displayed increased anxiety and was experiencing difficulty identifying positive aspects of her school day when she got home. Mother spoke with Ms. DeAraujo about her concerns regarding Percy's happiness and ability to connect with other students many times over the years. She worried that Percy did not feel accepted at school and would cry at home after school. She believed Percy "felt she could not keep up with the other kids, that she didn't feel accepted. She didn't have any friends. She didn't feel liked or cared for there," during third grade and throughout her time at the McCarthy. (Mother, I: 40-41) Percy's mother believed that she liked going to Lunch Bunch, but that sometimes she was a little frustrated "that there was arguing about who was going." Percy chose who came with her to each session, but at times this decision caused her stress. (Mother, I: 39)
16. On May 4, 2016, the Team reconvened to discuss the possibility of adding a social goal, at Parents' request, on the basis of these concerns. People who worked with Percy at school were not seeing what Parents reported; she appeared happy and displayed appropriate social skills and understandings of social situations. The Team viewed Percy's social anxieties as "related to working out the social nuances of friendships that are part of child development rather than a social-related disability preventing her from making and maintaining friendships." The Team rejected Parents' request as school personnel felt Percy's needs could be met through general education services and, as such, did not require "individual, specialized services and instruction." The Team did, however, propose sensory tools as an accommodation to help alleviate some of Percy's school-related anxieties, and amended the IEP to include a weekly social assignment for Lunch Bunch that would enable Percy to share positive things about her school day and

social interactions with Parents. The Team also removed the speech and language consult from the IEP while Percy continued to receive direct services pursuant to stay-put. Parents accepted this amendment. (P-15; Mother, I: 126-27; Shor, III: 193-98, 200-201; DeAraujo, IV: 40-41)

17. During Percy's third and fourth grade years, Ms. DeAraujo also saw her when she went into her classes to provide social/emotional lessons based on the Second Step curriculum, GoZen, and other sources. These sessions addressed a range of topics, such as naming feelings, calming down from uncomfortable feelings, understanding differences, solving problems, etc. Fourth graders also learned about anxiety. (DeAraujo, IV: 66-68)
18. On Partnership for Assessment of Readiness for College and Careers (PARCC) testing completed during third grade, Percy received scores in the "Partially Meeting Expectations" range for both English Language Arts and Math. (P-21)
19. Although the Team proposed extended school year (ESY) services for Percy for the summer due to the substantial risk of regression, Parents elected not to have her participate. (Mother, I: 141, 152-54; Shor, III: 205-06)
20. In June and July 2016, Sherri Miller, M.Ed., CCC-SLP performed a speech and language evaluation of Percy. Percy's scores ranged from below average to average, though she "used an incredible amount of effort, repetitions, extra time, and corrections to get to that point." Ms. Miller confirmed a mixed receptive and expressive language processing disorder, in addition to noting Percy's diagnoses of dyslexia, auditory processing disorder, and executive function skill disorder. She observed that Percy experiences challenges in processing what she hears, memory and executive skills, following lengthy and complex directions, reading (decoding) and encoding (spelling and written language), along with narration and social skills. Ms. Miller suggested that the explicit teaching Percy was receiving for reading, writing, and math be delivered for language processing, understanding of complex language, and narration skills as well. She recommended direct speech and language therapy once per week, and cautioned that Percy may require more assistance with the increase in language demands. (P-16) Ms. Miller also noted that Percy reported to her that she did not have many friends, was being bullied at school, and wanted to change schools because "the girls can be so mean." (P-16; Mother, I: 41-42)
21. After Percy's Team met on October 26, 2016 to review Ms. Miller's evaluation, her IEP was amended to include speech and language services once a week for thirty minutes in the general education classroom during her reading or writing block to assist her in generalizing to an academic setting the skills she had demonstrated in a pull-out setting. The Team also proposed observation and consultation by an audiologist to ensure that classroom accommodations met Percy's needs, and, at Parents' request, a weekly communication log to be sent home with Percy documenting service delivery. (P-17; Shor, III: 199-201)
22. Following the annual review that took place February 16 and March 2, 2017, Percy's Team proposed an IEP for the period from February 16, 2017 to February 15, 2018, part

of fourth grade and part of fifth grade. The IEP provided for one thirty (30) minute period per week of speech/language in the general education classroom, one thirty (30) minute period per week of study strategies, also in the general education classroom, and specialized instruction in reading, written language, and math in the general education classroom, with opportunities for pull-out as needed. It also included pull-out reading services, forty minutes per day, five days per week (5x40). (P-18) The Team agreed Percy would continue Lunch Bunch as well, as Parent believed it beneficial for her and Percy wanted to continue to attend. (DeAraujo, IV: 47-49; Shor, III: 202-03)

23. On April 11, 2017, Parents accepted the IEP in part, rejecting it insofar as it failed to include a change to Orton-Gillingham reading instruction from the Wilson Reading Program, omitted after school or additional in-school tutoring in reading, and failed to reflect a recommendation from the Team meeting that Percy would receive an additional thirty minutes of reading comprehension during “intervention time” on Fridays. They accepted continued placement in a full inclusion program. (P-18; Shor, III: 206-07) The Team met again on May 1, 2017 to discuss rejected portions of the IEP. (P-19; Shor, III: 207-08) Following this meeting, Percy’s Team proposed an amended IEP, which added an accommodation, at parent request, of a “How To” sheet to be sent home with Percy’s homework to explain new mathematical concepts, in order to assist her in remembering what and how things were taught and to guide Parents in supporting her with her homework. (P-20; Masella, III: 144-45; Shor, 208-09) Although Framingham proposed extended school year services to prevent substantial regression and Parents agreed that Percy required ESY services, they believed the services proposed by Framingham were not appropriate and, as such, rejected them and sent Percy to day camp instead to give her a break. (Mother, I: 76, 141, 152-54; Evans, II: 170; Shor, III: 205-06)
24. Parents found the “How To” guide helpful, as Percy continued to struggle with homework and was not able to complete it independently. (Mother, I: 71-72) Mother believed Percy was falling further and further behind academically in fourth grade. Moreover she believed Percy’s social and emotional state was deteriorating, such that she told her mother she did not want to go to McCarthy anymore, that she hated it there, that she “didn’t feel liked or cared for there,” and that she wanted to switch schools. (Mother, I: 43-44)
25. During fourth grade, Percy talked with Ms. DeAraujo about having had a best friend who lived near her before she moved, and about other friends who all attended a different elementary school in Framingham that she wished she could attend with them. Although she may not have had a “best friend” at school, Percy did appear to have school friends with whom she spent recess and lunch. She was seen talking and laughing with them. She was able to name them and identify them as good friends, but she wanted to have a best friend at school. (DeAraujo, IV: 44-45)
26. On June 8, 2017, Allison Schettini Evans, Ph.D. performed a comprehensive neuropsychological evaluation of Percy at Parents’ request. (P-21; Evans, II: 96) Dr. Evans is a pediatric neuropsychologist and is licensed as a clinical psychologist in both Massachusetts and Rhode Island. She has conducted nearly one thousand

neuropsychological evaluations since 2006. (P-42B; Evans, II: 92-95). Percy's testing included a battery of neuropsychological/psychological and academic measures.⁷ Dr. Evans testified that she would have evaluated Percy between 10:00 AM and 3:00 PM and that she may have brought her back on a second day to finish up, without noting this on her report. (Evans, II: 159) It is possible that testing in such a condensed period of time may have had an effect on memory and executive functioning due to testing fatigue. (Colón, III: 42-43)

Cognitively, Percy showed some scatter, with intact skills in a number of areas within the expected range for her age. These include verbal comprehension and verbal reasoning abilities; appreciating reasoning underlying social rules and norms; aspects of visual processing; visual motor integration; and attention to visual detail. Significant variability was observed in her memory and executive skills. (P-21; Evans, II: 99-100)

Academically, Percy scored well below the expected range for her age in almost all domains, including reading comprehension, oral reading fluency, math problem solving, written expression, spelling, and math fluency. (Evans, II: 106) Dr. Evans described Percy's language-based learning challenges as "persistent," observing that the gains she had made in both reading and writing are "minimal" and "the gap between she and same age peers has widened." Dr. Evans concluded that Percy learns information best when language processing demands are reduced, and when she is given time between learning tasks and cues to enhance retrieval. She is able to sustain her attention for extended period of time when processing demands are not too complex. (P-21; Evans, II: 99-100)

Dr. Evans' report also addressed Percy's social/emotional functioning, including her uncertainty and anxiety with regard to peer relationships. Dr. Evans based this part of her report on information provided in Percy's school record; information received from Parents and from teachers as part of questionnaires; and Percy's clinical interviews and assessments. Mother reported that Percy has, at times, been close with the same girl Parents believe excludes or taunts her sometimes, and this relationship causes her much strife.⁸ According to teachers, Percy "seems to need constant reassurance that she belongs to a certain peer group," and often "focuses so much on her peer relationships, which ultimately dictates whether she is having a 'good or bad' day." She has a strong desire to fit in and be accepted by certain individuals, often misperceives social situations, and feels left out of activities. Percy is afraid to feel "different" from her peers, which may, at

⁷ Specifically, Dr. Evans administered the Parent, Teacher, and Self-rating portions of the Behavior Assessment System for Children, Third Edition (BASC-3); the Weschler Intelligence Scale for Children, fifth Edition (WISC-V); the NEPSY-II, select subtests; the Hooper Test of Visual Organization; the Beery-Buktenica Developmental Test of Visual Motor Integration, 6th Edition (BEERY VMI); the Rey Osterrieth Complex Figure test; the Grooved Pegboard Test; the California Verbal Learning Test – Children's Version; the Weschler Individual Achievement Test – III (WIAT-III), select subtests; and the Gray Oral Reading Tests – Fifth Edition (GORT-V), in addition to conducting a Parent Interview, a Record Review, and the Behavior Rating Inventory of Executive Function-Second Edition (BRIEF-2). (P-21)

⁸ Mother testified at length about the relationship between Percy and this other student, stating that she was concerned that the other student was dependent on Percy in kindergarten and that over the years the other student would tell students she was talking to, not to talk to Percy. Several times, Mother brought her concerns to school personnel and requested that the two students not be in class together. (Mother, I: 65-70) Ms. DeAraujo, a guidance counselor at McCarthy, viewed Percy as socially hypervigilant, particularly as to this student, whom Percy perceived "as the most popular child in [the] school and wanted to be around her." (DeAraujo, IV: 94)

times, cause her not to use the strategies she has been taught to help herself or make academics easier. One teacher reported that Percy “has matured over the year and she appears more at ease with herself, [but she] puts a lot of pressure on herself to succeed socially and otherwise.” At the same time, teachers described Percy as very social, outgoing, empathetic, willing to be partners with any classmate, and not afraid of speaking out in class and participating in all activities. Dr. Evans concluded, based on data from parents and teachers that while Percy is “very socially motivated, she often was misperceiving social events” and really struggled with “staying involved in the social network around her. That drove a lot of her anxiety, but the anxiety also made her ability to navigate the social piece more challenging.” (P-21; Evans, II: 102-03)

Overall, Dr. Evans described Percy as presenting with a “complex interplay of vulnerabilities,” such that despite her “nice skills in isolation, her diffuse challenges are significantly undermining her ability to access these strengths [and] contributing to increased adaptive, social, emotional, and learning difficulties.” Dr. Evans acknowledged that Percy’s “challenges are difficult to quantify in a diagnostic manner because of the interrelated nature of her deficits,” but provided the following diagnoses: Dyslexia; Disorder of Written Expression; Communication Disorder, characterized by vulnerabilities in receptive language, expressive language, and pragmatic language; Unspecified Neurodevelopmental Disorder, characterized by diffuse vulnerabilities in aspects of executive functioning and memory as related to other difficulties; and Mathematics Learning Disorder, specific deficits in applied problem solving.” According to Dr. Evans, Percy’s “challenges are highly interrelated and difficulties in one area certainly undermine her performance in another.” (P-21; Evans, II: 98)

Asked to define “meaningful progress” for Percy, Dr. Evans testified that academically, she would “expect for her to make gains each year and for her gains to be commensurate with her verbal capacity.” She cautioned, however, that focusing on gains in one skill set would give an incomplete picture, as “[y]ou have to look at her ability to engage in the learning process overall and be engaged not only in her reading instructional time but in the classroom and in her confidence and in her ability to access the curriculum.” (Evans, II: 108-09) She concluded that Percy’s current placement in an inclusion classroom was not meeting her needs, as she was struggling in all academic areas and “overwhelmed in school and in the classroom given the given the language, learning and social demands, which is resulting in a great deal of executive dysfunction and emotional distress.” According to Dr. Evans, the fact of Percy’s extensive accommodations suggested that her classroom wasn’t appropriate. Instead, she recommended a small language-based classroom for “cognitively capable students with complex language processing and formulation challenges as well as language-based learning needs,” with instruction provided by appropriately trained special educators. She testified that Percy requires that instruction be provided at a slower pace with more scaffolding and structure, and with opportunities for previewing and reviewing information to help with consolidation of new learning skills. Dr. Evans concluded that with “greater structure, reduced distraction, more processing support, and an appropriate peer group, she will be less overwhelmed, more capable of demonstrating her strengths, and more responsive to the supports she is receiving.” (P-21; Evans, II: 109-111; Mother, I: 73-74)

27. On the fourth grade Massachusetts Comprehensive Assessment System (MCAS) examinations, Percy scored “Not Meeting Expectations” in English Language Arts and “Partially Meeting Expectations” in Math. (P-22)
28. Parents believe Framingham did not consistently provide the services in Percy’s IEP in fourth and fifth grade. (Mother, I: 91-92) Through the weekly service delivery log, Mother learned that Percy had missed at least some pull-outs for phonics, Lunch Bunch, math and writing services due to a student or teacher absence, MCAS testing, Team meetings, assemblies, or scheduling changes. (Mother, I: 89, 91; Masella, III: 148; Shor, III: 253) When this occurred, efforts were made to make up missed sessions, and these were also recorded on the log provided to Parents. (Masella, III: 148-49) At hearing, Mother testified at one point that she did not notify the Team chair or teacher when she noticed that services had been missed. (Mother, I: 141-142) She also testified that she did, in fact, bring her concerns to Percy’s Team, but recalls neither specifically what she said nor how the District responded. (Mother, I: 97-99) Due to the speech pathologist being out on sick leave at some point during Percy’s fourth grade year, the District provided compensatory speech and language services to Percy when she was in fifth grade. (Shor, III: 253-54)
29. In August 2017, just before she began fifth grade, Percy began seeing Sivan Elefson, LMHC, R-DMT, of Peaceful Soul Counseling, every other week for private psychotherapy, using primarily expressive modalities. (Elefson, III: 61-64; Mother, I: 56) Ms. Elefson is a licensed mental health counselor and registered dance movement therapist. She has a Master’s degree in expressive therapies and mental health counseling, and has provided clinical services to youth and families in a variety of settings. (P-42A; Elefson, III: 60-63) Percy works with Ms. Elefson to process themes of self-exploration, self-esteem, identity, and how she relates to others through visual art therapy, movement exploration, cognitive behavioral therapy, and solution-focused therapy. (P-27, P-32; Mother, I: 56; Elefson, III: 61-64). She also consults with Percy’s parents on a fairly regular basis. (Elefson, III: 65, 88-89) Ms. Elefson describes Percy as fragile and very concerned with her peers. Essentially, she “often would feel that she needed to give of herself to no end, and would often describe that . . . there was very little reciprocity.” Percy appears to have expressed unhappiness and anxiety through drawings and written statements in connection with therapy. (P-44; Elefson, III: 66, 103, 106) According to Ms. Elefson, she was aware while seeing Percy that Parents had the possibility of outside placement on their mind, but she was not aware “that it was something that they were particularly pursuing at any point in time.” (Elefson, III: 100)
30. Ms. Elefson conducted an initial diagnostic evaluation of Percy in or about August 2017 and diagnosed her with generalized anxiety disorder, based primarily on her social anxiety with respect to peer interactions and performance anxiety regarding school work. (Elefson, III: 67-68, 87) Although Ms. Elefson believes it would be important for this information to be included on Percy’s IEP, she did not include the diagnosis in her letters dated January 10, 2018, April 10, 2018, or February 28, 2019. This diagnosis does not appear anywhere in the record. (P-27, P-32, P-41; Elefson, III: 87-88,108)

31. Ms. Elefson views Percy as isolated in school, with significant social/peer relationship and emotional issues, including significant anxiety, which are interrelated and impact her academic performance. Her opinions regarding Percy's school functioning are based on student and parent reports; she did not connect with Percy's guidance counselor until after she had written her first letter to the school on January 10, 2018. (P-27; P-32; Elefson, III: 68-69, 73, 88)
32. Michelle Masella served as the inclusion teacher in Percy's English Language Arts (ELA) and math classes and provided pull-out services for Wilson Reading and additional math when she was in fifth grade. Ms. Masella has a master's degree in special education and has Massachusetts licenses in elementary education and special education, Pre-K-to-8 and grades 5 through 12. She is also certified in the Wilson Reading Program and trained in Orton-Gillingham, Project Read, and Visualizing and Verbalizing. (Masella, III: 121-23) As the inclusion teacher for Percy's classes, Ms. Masella worked with the general educator to present modifications or accommodations to the curriculum for the seven to ten students on IEPs in each ELA and math class. She also engaged in re-teaching and parallel teaching, which permitted her to provide additional scaffolds and modifications for students. (Masella, III: 123-25) As there were two separate sections of inclusion ELA and two separate sections of inclusion math, Ms. Masella would alternate between classrooms; when she was not present in Percy's class, the paraprofessional she supervised was there to implement the modifications and accommodations. (Masella, III: 165-66, 186-87; Shor, III: 219) Ms. Masella paid a lot of attention to Percy when she was in fifth grade, not because she was particularly at risk, but because Parents had expressed concerns about her social/emotional functioning. (Masella, III: 149-50; Shor, III: 232-34; DeAraujo, IV: 70)
33. During the 2017-2018 school year, Percy did not like being pulled out of her general education classes to receive services. She felt disjointed from her peers when this happened, and she wanted to be like the other kids. (Elefson, III: 66) Parents communicated this to Ms. Masella and to Ms. Shor, and believed that Percy also told school staff members how she felt as she learned to advocate for herself. Her mother was also concerned that she was missing science classes when she was pulled out for phonics. (Mother, I: 48-51) Parents mentioned this to the Team in the winter, at which point changes were made such that content words were incorporated into spelling, and the speech pathologist pushed in with science content. (Masella, III: 146-47, 189-99) When Framingham tried to reduce pull-outs, specifically by removing Wilson Reading services, Parents rejected this change and, in fact, requested additional pull-outs for math and writing. (P-24, P-28; Mother, I: 131-132, 144; Masella, III: 190; Shor, III: 217-18)
34. According to her teacher, Percy's fifth grade classmates were an appropriate peer group for her cognitively, academically, and socially. (Masella, II: 160) They included a "very nice group of girls," with whom Percy appeared to engage most of the time. To the extent friendship groups appeared to shift for Percy, they did so for her classmates as well. (Masella, III: 160) At the beginning of fifth grade, Percy was happy, social, friendly, and outgoing. She appeared comfortable at school, joking and giggling with other students

during transition times, and did not display heightened anxiety. Her interactions with peers appeared typical. (Masella, III: 130, 150-51; DeAraujo, IV: 44-45, 83)

35. School personnel noticed a change in Percy's social/emotional presentation during the winter of her fifth grade year; she had low affect, seemed sadder, and did not have the same "skip in her step." This went on for a period of time, and Ms. DeAraujo viewed it as a "notable change." (P-34; Masella, III: 151-52; DeAraujo, IV: 51) At this point, Percy was differentiating between her friends at school she could socialize with and deeper, more trustworthy friendships, and spoke with Ms. DeAraujo about how she was sick and tired of not having her best friend at school. She shared with Ms. DeAraujo that her parents had tried to get her transferred to Hemenway Elementary School, also in Framingham, to be with her friends, but it did not work. (DeAraujo, IV: 45, 101-02)
36. At some point in the spring, Ms. DeAraujo began checking in with Percy on a daily basis at her mother's request. By this time, her affect was back to being lighter and happier. She was more "smiley," more social, and engaging in conversations with her peers. At some time between March and the end of April vacation Percy told Ms. DeAraujo that her parents would be sending her to private school and she did not want to go. She brought this up several times with Ms. DeAraujo and continued to talk about it as fifth graders discussed middle school during Lunch Bunch. After April vacation, Percy seemed much better, and was excited about many things. She told Ms. DeAraujo about a sleep over with a friend, birthday parties, the talent show, and other social events. (P-34; DeAraujo, IV: 49-55, 58-59, 61; Masella, III: 150-52; Shor, III: 239-41)
37. According to several McCarthy staff members, and Percy's own therapist, emotional ups and downs such as Percy's are typical of her age group, particularly as fifth grade students are aware that they will be moving on from elementary school and, by spring, become anxious about where they will be in school the following year. This sometimes leads to increased peer conflict, in addition to the difficulties involved in negotiating friend groups that are common among students this age. Percy's teacher was not concerned about her being socially isolated. Ms. Elefson acknowledged that if Percy had been aware she would be changing schools that would be a contributing factor to her anxiety. (Elefson, III: 99, 102-03, 105; Masella, III: 150-52, 154-55; Shor, III: 239-41; DeAraujo, IV: 57-59, 82-83)
38. As Ms. DeAraujo was not pushed in to fifth grade classes for social/emotional learning, she continued to work with Percy during their one-on-one counseling sessions on coping strategies using a strengths-based approach. (DeAraujo, IV: 68-69) Percy did not speak with Ms. DeAraujo about academic performance as anxiety provoking; she said only that she did not like Wilson Reading, as it was boring and she did not understand why she still had to go. After working with Percy for three years, Ms. DeAraujo viewed her anxiety as "very much focused on her perception of being popular and being socially accepted by some children." Percy demonstrated "social hypervigilance about being in a certain group and feeling wanted in that group." (DeAraujo, IV: 68-69, 76, 96-97)

39. Parents, however, saw Percy differently. According to them, during fifth grade Percy continued to experience academic difficulties and emotional and social issues. She reported to her mother that she felt she was being bullied at school, by which she meant she was always being left out and ostracized from the group, and did not feel cared for, and she had great anxiety about it. Percy did not want to go back to school, and her mother considered homeschooling. (Mother, I: 60-62) Percy told her therapist that she felt her teachers, her peers, and the guidance counselor didn't understand her, and she felt out of place. (Elefson, III: 69) Moreover she expressed to Ms. Elefson that she felt her peers were problematic in connection with Lunch Bunch, such that "the ones she really wanted to be included with but also didn't, were manipulating her and . . . asking her to invite her to the Lunch Bunch or they wouldn't be her friend. . . They would ask her to bring food items so the peers could enjoy them and not [Percy]." Although peer groups may shift among girls Percy's age, Percy "never felt like she was . . . part of the peer group where she was actually included. She always felt, for lack of a better term, sort of the victim in the group . . . like she was the one giving and giving and giving, with little to no reciprocity." (Elefson, III: 75, 113)
40. Percy's Team convened approximately eight times during her fifth grade year to discuss outside evaluations, rejected IEPs, MCAS accommodations, Parents' concerns, and the like. Mother also spoke with Ms. Shor in her office approximately five or six times. (Shor, III: 231-33, IV: 17-19, 21-29) At Team meetings, Parents often questioned Percy's test results, disagreed with her teachers' reports of positive aspects of her school performance and peer relationships, and seemed to be minimizing Percy's progress. (Masella, III: 153; Shor, III: 234-37; DeAraujo, IV: 70-71)
41. On September 20, 2017, Percy's Team met to review Dr. Evans' report, which highlighted "language-based weaknesses, resulting in challenges in accessing the reading, writing and math curriculums, and social/emotional challenges, resulting in low self-perception and misinterpretation of social situations." Dr. Evans attended the meeting. (P-24; Mother, I: 75) The Team also took note of Percy's teachers' ratings of her on the BASC and added a counseling goal, with a corresponding weekly thirty-minute session with Ms. DeAraujo. Although students with counseling goals do not typically attend Lunch Bunch as well, in this case both Percy and her mother thought Lunch Bunch was beneficial and helpful for her, and Percy communicated to Ms. DeAraujo that she enjoyed it and wanted to continue. From this point forward, Percy saw Ms. DeAraujo every week for counseling, and every other week for Lunch Bunch. The Team also proposed a monthly thirty-minute consult with all service providers; added preview and review to math and reading comprehension benchmarks; updated phonics benchmarks; raised the accuracy expectation across all goals and benchmarks; and added study and memory strategies to the IEP. In light of Dr. Evans' recommendation for a substantially separate language-based program, the Team considered McCarthy's substantially separate program for students with language and learning difficulties. The Team indicated that it did not believe this program would be a good fit for Percy because students in the cohort were functioning at a level significantly below Percy academically, but deferred a final decision regarding the program until after Dr. Evans' scheduled

observation. (P-24; Mother, I: 78; Evans, II: 113-14; Shor, III: 211-212, IV: 6-7, DeAraujo, IV: 46-49, 73)

42. On September 27, 2017, Dr. Evans observed Percy in her program at the McCarthy Elementary School, both in an inclusion setting with seventeen students, a general education teacher, and a special education teacher; and during her 1:1 phonics pull-out with a special education teacher. Dr. Evans observed that “Percy appeared accepted by the peers in her regular education classroom[,] . . . overtly appeared comfortable with expectations and with receiving the additional support provided. She seemed to benefit from (and need) the small group push-in programming . . . as well as the pull out support services for reading.” Dr. Evans cautioned that due to Percy’s history and test results, her quiet compliance in class did not necessarily indicate she fully understood the content. Moreover Dr. Evans critiqued Percy’s program because it did not “provide the accommodation, intervention, and scaffolding that she requires *across* the day and *across* the curriculum,” and she felt the pace and complexity for all subjects were too much for Percy to manage independently. (P-23; Evans, II: 114-16)
43. Although Parents had never looked at, or requested placement in, a Framingham substantially separate classroom, Dr. Evans also observed the substantially separate program at the McCarthy. She agreed with the Team that the instructional level was too low for Percy and the peers inappropriate. (P-23; Mother, I: 143-144; Evans, II: 116; Shor, III: 259-60)
44. On October 25, 2017, the Team met to review Dr. Evans’ observation. The Team proposed changes to Percy’s phonics goal and curriculum modifications, and added an objective to her math goal. Framingham also agreed to provide after school tutoring two hours per week, for six weeks, for specific reading instruction to help address Percy’s weaknesses in reading comprehension and fluency. Percy received this service from November 2017 to January 2018. (P-24; Mother, I: 52-55; Masella, III: 133-34; Shor, III: 213-16)
45. Parents accepted in part the IEP for the period from February 16, 2017 to February 15, 2018, as amended October 25, 2017. They rejected it insofar as it omitted certain phonics and written language benchmarks, included Teaching Assistant as a service provider, and omitted pull-out written language and math instruction. (P-24; Mother, I: 79; Shor, III: 216-17)
46. On November 30, 2017, Karen Clarke, MS, OTR/L, performed an Assistive Technology Evaluation of Percy. She noted that based on progress reports, Percy is making effective progress in her current setting, and that she benefits from the range of support built in to her academic day. Ms. Clark recommended that the Team consider how to best support greater independence given Percy’s desire to reduce her need for adult intervention. (P-25)
47. The Team met on December 6, 2017 to discuss this evaluation and rejected portions of the IEP. The Team recommended additional technology supports and added benchmarks

to Percy's phonics and writing goals. The Team also formalized pull-outs for writing and math, adding forty minutes (4x10) of weekly pull-out for math focused on preview of the day's lesson or new vocabulary, or review of homework, and amending the language from "opportunities for pull-out" during the four, forty-five minute (4x45) weekly blocks of inclusion support for writing to provide half of the support (2x45) through pull-outs and half of it (2x45) in the general education classroom. A further Team meeting was scheduled for January 24, 2018 to discuss the effectiveness of the after school tutoring. (P-26; Masella, III: 140-41; Shor, III: 220-22) On January 5, 2019, Parents accepted the revised IEP in part and rejected it in part. They accepted revisions to goals and services, including pull-outs and after school tutoring, though noting they didn't believe the revisions were adequate; requested that all special education services be provided by special education teachers; and rejected placement in a full inclusion program. (P-26; Shor, III: 222-23)

48. By December 2017, Parents were considering schools outside of Framingham Public Schools for Percy, including several private special education schools and a charter school. Dr. Evans had recommended the Willow Hill School. Parents looked at the Carroll School, Landmark, and Willow Hill. Percy's application was rejected by the Carroll School and by Landmark. Parents submitted an application for Percy to Willow Hill on or about January 4, 2018, and she was accepted there. (S-16; Mother, I: 82-83, 118-119; Evans, II: 156-57) Parents also visited both Fuller and Walsh Middle Schools in Framingham and the charter school in Framingham. (Mother, I: 99-100, 120-21)
49. Dr. Evans has a close relationship with the Willow Hill School. She is very familiar with Willow Hill, as she has visited to observe the school generally, and has had conversations with teachers, their director of admissions, and other learning staff about the programs they offer. "A lot of other students" she has evaluated have applied to, and/or attended, Willow Hill, which she describes as a school for kids with complex learning presentations. In fact, she speaks with Willow Hill throughout the year about students who might be applying, "if they're maybe in fourth grade, I'll talk to them, is this an appropriate candidate for your school in two years." Dr. Evans has observed three or four students other than Percy at Willow Hill. She testified at hearing that she recommended that Percy not remain in the Framingham Public Schools and that she suggested that Parents look at several schools, but could not recall any other than Willow Hill. (Evans, II: 131-33, 157, 165, 177)
50. Parents did not include a diagnosis of general anxiety disorder on the application to Willow Hill; they wrote that Percy had been diagnosed with dyslexia and "currently sees Sivan Elefson at Peaceful Soul Counseling in Framingham for anxiety relating to her learning disability." Percy interviewed at Willow Hill on January 9, 2018. (S-16; Mother, I: 119-20)
51. On January 24, 2018, the Team met for Percy's Annual Review. Parents expressed concerns that Percy's program was not meeting her needs and that her anxiety and other emotional issues were increasing. In support of their position, Ms. Elefson submitted a letter dated January 10, 2018, documenting Percy's significant social/peer relationship

issues and emotional issues. At the time she wrote the letter, she had not spoken with anyone at the McCarthy. (P-27; Elefson, III: 90) Specifically, Ms. Elefson asserted that Percy expresses “a significant amount of anxiety and worry specifically around her academic performance and how it relates to her peer/social engagement.” She explained that although some of Percy’s accommodations, such as pull-outs, may be “well-intentioned and reasonable in principle, [they] are not showing their efficacy” because Percy struggled with seeing herself as different and “less than” her peers, and felt exhausted upon returning home from school because of how hard she was working. According to Ms. Elefson, Percy was experiencing “triggers” throughout the day, which were impacting her “in a very significant way, both at school and at home.” For example, Percy was having trouble staying in her own room through the night and instead was sleeping “in bed with her parents which is problematic both for the type of sleep the family is getting, as well as the challenge it creates with [Percy]’s ability to function at school.”⁹ Ms. Elefson concluded, “it is apparent that [Percy]’s experiences at school as a whole have negatively impacted her functionality to a point where she is beginning to feel hopeless that anything will ever change.” (P-27; Elefson, III: 70-72)

At the meeting Ms. Masella recommended discontinuation of pull-out reading services, as Percy had demonstrated mastery of relevant Wilson Reading standards and appeared bored. Ms. Masella believed that the academic content she was missing in the classroom would be more beneficial to her than continued reading pull-outs.

52. The Team changed some of Percy’s goals and services in the IEP it proposed for the period from January 24, 2018 to January 23, 2019, which covered part of fifth grade and part of sixth grade. The IEP included services in Study Strategies, Math, Reading, Written Language, Speech, and Counseling, to take place in an inclusion setting with some pull-out services in Math (4x10), Writing (2x45), and Reading (4x30). The Team indicated that Percy would be placed at the Fuller Middle School for sixth grade. (P-28; Masella, III: 134-39; Shor, III: 224-26, 256-57)
53. By letter dated February 13, 2018, Parents rejected the IEP and placement in a full inclusion program. (P-28) They rejected deletion of the phonics goal and invoked their right to stay-put to that goal. They also rejected the proposed reduction of reading pull-out services from five, forty-five minute sessions per week (5x45) to four, thirty minute sessions per week (4x30) and invoked her right to stay put for the eighty (80) minutes of pull-out reading special education services. Parents continued to reject the designation of “Assistant Teacher” and “General Educator” as providers of special education services in the inclusion classroom. Parents also wrote that they agreed that Percy requires ESY services, but rejected the proposed ESY services as inadequate and inappropriate. (P-28, P-30; Mother, I: 144-45; Masella, III: 137-39, 163; Shor, III: 226-27)
54. At some point around February 2018, Ms. Elefson spoke with Ms. DeAraujo for the first time about Percy. Ms. Elefson did not tell Ms. DeAraujo that she had diagnosed Percy with generalized anxiety. Ms. DeAraujo would not have agreed that Percy displayed high

⁹ Percy told Ms. DeAraujo that she would sleep with her parents because she was worried about people breaking into her house because it was so big, and her bedroom felt too far away from her parents. (DeAraujo, IV: 57)

level anxiety related to school, and she saw no signs of school avoidance in Percy. (Elefson, III: 76-78; DeAraujo, IV: 63-65, 69-73)

55. The Team met again on March 28, 2018 to discuss rejected portions of the IEP. It proposed changing the name of one goal. (P-30; Shor, III: 228) The Team also met the previous day, on March 27, 2018, to discuss Percy's transition to middle school. Percy's Team Evaluation Coordinator, special educator, regular educator, speech pathologist, mother, and advocate were present, along with a middle school representative. Ms. DeAraujo was unable to attend, but she submitted a written statement regarding Percy. At that point, she was checking in with Percy daily, per Mother's request. She noted that since January 2018, she had observed Percy, who was usually bubbly and smiling, looking sad and less energetic. She stated that although the social problems Percy would come to her with were "typical fifth grade girl problems," she was concerned that Percy had expressed feeling lonely at school. Though she could identify girls as school friends, she did not trust that they were "truly her friends." (P-29, P-30; Shor, III: 230-31; DeAraujo, IV: 51-53)

At that time, the Team proposed a note-taking accommodation and outlined changes that would be made to the IEP when Percy transitioned to the middle school, on or about August 29, 2018. Her proposed sixth grade service delivery grid included B-grid Academics (2x270) and Speech and Language (1x45) per six-day cycle; Reading (3x45) and Guided Academics (1x270) per six day cycle in the C-grid; and a monthly thirty (30) minute consultation by related service providers. The IEP does not specify in which inclusion classes Percy's academic and speech and language services would be provided. The Team clarified that Guided Academics, which meets for one block a day in a small group setting, "will be added to help [Percy] learn strategies to effectively navigate all academic subjects. (P-30; Kierul, II: 23, 26-27, 31-33)

56. On April 9, 2018, Dr. Evans conducted a consultation and update regarding Percy. She summarized Parents' concerns, reviewed Percy's Assistive Technology Evaluation, proposed IEPs, and the January 2018 letter from Ms. Elefson; had teachers complete questionnaires; and administered a condensed battery over two hours to update aspects of academic, language, and emotional functioning. Percy was described by her teachers as a kind sweet, helpful, and motivated girl who wants to do well, gets along with peers and teachers, and can be inattentive and very impulsive in the classroom. Percy was administered the Test of Narrative Language – Second Edition (TNL-2), on which she scored in the average range on several aspects and told stories that were notable for "simplistic causal relationships, minimal dialogue, pronoun confusion, and some awkward sentences." Her Phonological Awareness on the CTOPP-2 fell in the low average range. Dr. Evans also administered the Woodcock Johnson IV Tests of Academic Achievement (WJ-IV), the Test of Word Reading Efficiency (TOWRE), the GORT-5, the BRIEF-2, and the BASC-3. Testing showed that Percy was continuing to build on sight word reading skills and pace of reading (in some cases, her reading pace fell within the expected range for her age), and showed some growth in her applied problem solving abilities. Various reading deficits remained present, including fundamental deficits in reading comprehension skills, and she also showed significant deficits in written

expression. Subjectively, Percy still struggled with processing language and with oral narration, requiring considerable repetition and clarification in order to process instruction; with scaffolding, support, and examples for each tasks, she was able to understand expectations. Her executive functioning abilities ranged widely. Dr. Evans noted that ongoing concern about her emotional and adaptive skills remained present, as Percy struggled to understand herself as a learner, Percy felt she needed help in school, but did not feel the help she was getting was “overly beneficial” to her. She expressed feeling different from peers and confused about friendships and her place in social relationships. In fact, Dr. Evans “felt like her social and emotional wellbeing was deteriorating more than improving, her own perceptions of herself, her sense of adequacy, her overall social stress anxiety, interpersonal relations and self-reliance were all concerning.” Teacher reports varied, with most endorsing at least at-risk concerns on overall learning problems, some adaptive functioning, some study skills, and functional communication. Dr. Evans concluded that Percy was not making meaningful progress in several academic, adaptive, and language skill areas, and that she required placement in a program with a small student to teacher ratio, supportive and individualized, strong educational program with other students who have similar cognitive, language, and learning profiles. Dr. Evans also stated that Percy requires “targeted, specific, empirically supported interventions for specific skill deficits.” (P-31; Evans, II: 117-123, 161)

Although she had recommended that Percy apply to Willow Hill, spoken with the school on her behalf in the process of determining whether it was a good fit, and been in communication with Percy’s family between her observation at the McCarthy in September and the update she submitted in April, Dr. Evans testified at hearing that she was unaware at the time of the April 9, 2019 update that Parents had applied to Willow Hill. (Evans, II: 156-57, 161-63)

57. In a letter dated April 10, 2018 Ms. Elefson asserted that Percy’s school challenges continue to affect her on a global level, including “her ability to manage her functionality academically, socially, and physically as it impacts her sleep and at times appetite.” She continued to “exhibit worry and stress around her academic performance and how it relates to her peer/social engagement.” Mother had reported that Percy felt a need to protect herself and feel secure as she struggled with anxiousness depressed mood, and issues related to sleep. She concluded said that Percy’s condition had not improved but instead worsened, such that her “negative experiences throughout her time at school have a significant impact into [her] functionality as a whole.” (P-32; Elefson, III: 72-73)
58. Toward the end of the school year, Ms. Elefson spoke with Ms. DeAraujo again. Ms. DeAraujo reported to Ms. Elefson that she was seeing Percy interact more with her peers than in the past. Ms. Elefson, however, was not seeing an improvement in Percy, and felt that school services were not effective as Percy’s symptoms persisted. At this time, Ms. Elefson told Ms. DeAraujo that Percy could not go to Fuller Middle School because it was not the right place for her. (Elefson, III: 78-79, 92; DeAraujo, IV: 64-65)
59. Like Ms. Evans, Ms. Elefson testified that she did not talk about the possibility of attending Willow Hill, or any other different school, with Percy. (Elefson, III: 79) In fact,

despite seeing Percy every other week and discussing school and peer challenges, she testified that she never discussed changing schools with Percy, was not aware at any time during Percy's fifth grade year that Percy would be attending Willow Hill, and did not find out this information until the summer of 2018. (Elefson, III: 85-86, 98, 105, 108)

60. The Team convened on May 14, 2018 to review Dr. Evans' evaluation. Dr. Evans attended, and she continued to reiterate that Percy needed a small language-based learning disabilities classroom. Dr. Evans testified that at this time, she still did not know that Percy had been accepted to Willow Hill or even whether the family had applied. The Team rejected Parents' request for specialized placement. Parents again reported that Percy's mood at home was marked by overall sadness, which they felt was a direct result of her school performance and perception of herself as a learner. Ms. DeAraujo reported that Percy's mood had lifted in school since the winter, such that she appeared happier and was talking more about positive peer relationships. (P-33; P-34; Evans, II: 166; Shor, III: 229-30; DeAraujo, IV: 61-62)
61. Dr. Evans wrote another letter regarding Percy following this IEP meeting in which she focused on the similarities between her data and the school's test results. She expressed concern that the school's data focused solely on reading, identified reading skills well below grade level expectations, and showed a growing gap between Percy and her same age peers. She noted that testing demonstrated growth in isolated skills, but no cohesive pattern of growth that would demonstrate effective progress. In fact, she believed Percy "has not made effective progress in her language processing, language formulation, written expression, executive functioning, or social and emotional skills." (P-33; Evans, II: 125-26)
62. During the meeting on May 14, 2018, Parents shared that they had decided to send Percy to Willow Hill. (Mother, I: 85-87) Mother testified that at this time, Percy was not aware of this decision. (Mother, I: 87) According to Mother, one morning Percy told her that Ms. Araujo had mentioned that she would be going to Willow Hill the following year. (Mother, I: 88) It appears, however, that no one at school actually shared this information with Percy – who had visited and interviewed with Willow Hill in January. (Shor, III: 238-39; DeAraujo, IV: 59-61)
63. By letter dated June 5, 2018, Parents partially accepted, and partially rejected, the proposed IEP for Percy for the period from January 24, 2017 to January 23, 2018, as amended April 2018; rejected placement in a full inclusion program; and informed Framingham formally of their intention to place Percy unilaterally at Willow Hill. They requested that the District fund the placement and provide related transportation. (P-35; Mother, I: 98-99; Shor, III: 231)
64. Although Framingham does not contest that Percy has been performing below grade level, the District believes that she has been making considerable growth over the years. (Bright, II: 217; Masella, III: 156-59) Framingham utilizes several measures to monitor student, school, and district performance. These include, among others, the i-Ready diagnostic assessment in reading and math for students in kindergarten through eighth

grade and the Benchmark Assessment System (BAS, also known as Fountas and Pinnell) for kindergarten through fifth grade. (Bright, II: 194, 239) Framingham utilizes the i-Ready because of its ability, as an adaptive assessment, to predict performance on standards-based tests such as MCAS and PARCC, and because of its ability to provide an instructional component in addition to the diagnostic. The diagnostic drills down to individual needs of every student in multiple domains in reading and math; the instructional online component is matched to the individual profile that emerges from the diagnostic. (Bright, II: 194-96, 204, 217-19) The BAS is used by teachers to assess reading comprehension and fluency, and to monitor progress by instructional text reading level. This helps them to scaffold and support a student in the mastery of skills so they can progress to the next level. (Bright II: 202-204; Masella, III: 174)

65. During fifth grade, Percy made progress in reading fluency and writing, as demonstrated on the i-Ready and the BAS.¹⁰ Specifically as to reading, on the BAS she progressed from Level O to Level R, which is one year's progress, though she was still behind, as Level O is the fifth month of the third grade year and level R is mid-fourth grade level. (S-24; Bright, II: 202-03, 212; Masella, III: 156) On the i-Ready, between October 2017 and January 2018, she demonstrated a full year's growth in half a year, though her scores then dipped during the time she appeared to be emotionally down. (S-18, S-19, S-20, S-24; Bright, II: 197-200) Percy's scores demonstrated growth in other areas as well, including the Math i-Ready (S-21, S-22, S-23, S-24; Bright, II: 205, 207, 214-15) Even so, Percy tested at least two grade levels behind in reading during each i-Ready administration during fifth grade. (S-20, S-23, S-24; Bright, II: 231-233)
66. Percy also demonstrated growth on the MCAS. On the ELA MCAS, her score increased from 467 in spring 2017 to 485 in spring 2018, with a growth percentile in the eighty-second (82nd) percentile. (S-24; Bright, II: 204-05) Her MCAS writing sample showed that she had effectively internalized the writing structure taught in class. (Masella, III: 155-59) On the math MCAS, Percy remained at partially meeting expectations from the spring of 2017 to the spring of 2018. (S-25, S-25; Bright, II: 205) She earned a Proficient score on the Science MCAS, which assesses content and skills as well as reading and retention of information over a period of time. (S-24, S-25; Bright, II: 205-06)
67. Although the Team recommended ESY services for Percy to prevent regression, Parents sent her to sleepaway camp to "give her a break" from the school environment, where she struggled. (Mother, I: 141, 152-54)

Proposed Program at Fuller Middle School

68. Based on her proposed IEP, Percy would have attended Fuller Middle School ("Fuller") for sixth grade. Two guidance counselors work with all students at the Fuller, whereas the one school social worker provides counseling for the special education students only. There is one school psychologist and one reading teacher. Approximately forty-five to

¹⁰ Parents suspected that Percy had been coached by Framingham personnel in order to inflate her scores. Although Framingham denies these allegations, Percy's fifth grade teacher had a different service provider administer the Benchmark Assessment to assuage her concerns. (Masella, III: 140; Shor, III: 234-36)

fifty students in the sixth grade at Fuller are on IEPs, and of them approximately thirty-three are in the inclusion program. The sixth grade is divided into two teams, each with teachers for the core subjects of language arts, math, science and social studies. One special education teacher is on each team. Some students have foreign language, while others receive guided support during that time. Every day, students participate in a WIN (“What I Need”) block. Four days of every six focus on language arts or math, depending on each student’s needs, and two days of six focus on social/emotional learning in which students utilize a restorative practice approach and explore topics such as kindness, perseverance, self-advocacy, and self-regulation. (Kierul, II: 14-17, 19; Holzer, IV: 106-107, 114-117) In the Fuller inclusion program, Percy would have access to typical peers throughout the program, which would benefit her as it allows for heterogeneous grouping, reciprocal teaching, and “productive struggle” for students like Percy who have motivation and drive. (Holzer, IV: 155-57, 162)

69. Percy would have been on the Opal team, which currently consists of fifty-four (54) students, divided into three sections for ELA, science, and social studies, and four sections for math. Two sections of ELA and two sections of math are inclusion. Seventeen (17) students on the Opal team are on IEPs. Opal is staffed by general education teachers, a special educator, and paraeducators. (P-46; Kierul, II: 29; Holzer, IV: 112, 177-78) All of Percy’s inclusion classes would have consisted of between 16 and 24 students. (Kierul, II: 28, 50-51) Her ELA and math classes would have been co-taught by a general education teacher and a special education inclusionist; her science and social studies classes would have been staffed by a teacher and a paraeducator, though the paraeducator would not be assigned to work directly with her. (Holzer, IV: 112-13, 182, 188-89) All of the general education teachers on Opal are licensed appropriately, at the provisional or professional level. The speech and language pathologist, Wilson Reading teacher, school social worker, and guidance counselor all have appropriate licenses as well. (S-14; Spear, IV: 244-46)
70. Percy’s sixth grade special education inclusionist would have been Jeffrey Holzer, who has a master’s degree in education and is dually certified in moderate disabilities, grades 5 through 12, and middle and high school English. He has been teaching for nineteen (19) years and has consistently earned exemplary ratings. (Holzer, IV: 103-04)
71. Fuller’s inclusion program relies on close collaboration between the general educators and the special educator, who co-plan lessons, taking into account accommodations on students’ IEPs as well as classroom performance, to ensure that students receive the modifications and specialized instruction they require. (Kierul, II: 29; Holzer, IV: 112-15) Mr. Holzer’s methodology includes co-teaching, parallel teaching, and station work, and allows for adjustments based upon students’ current performance and changing needs. (Holzer, IV: 107-112) Mr. Holzer also collaborates with the classroom teacher and the paraeducators who are present in one of the science sections and one of the social studies sections, to ensure that accommodations and supports are utilized appropriately. (Holzer, IV: 119-24, 188-89, 190-94) If a student like Percy were to need additional supports for science or social studies, she could work with a paraeducator who could provide her with re-teaching, repetition, and review during school, or with Mr. Holzer

who could do so during lunch or after school. Percy would also be able to receive social/emotional supports, if needed in addition to the counseling sessions on her IEP, through lunch groups and/or check-ins and check-outs with a trusted adult. (Holzer, IV: 191-92, 196-97)

72. A key component of the inclusion program is Guided Academics, which is provided in a small group of approximately eight (8) students that are fairly homogenous in their goals for reading, writing, and math. Two paraeducators, along with Mr. Holzer, deliver guided academics in a fluid, collaborative manner, based on students' academic needs. At times students work on reading comprehension through a computer program, which permits Mr. Holzer to recognize the need for, and deliver, targeted instruction in reading comprehension for students who are experiencing difficulty. Guided academics may also support students in science and social studies when needed, by, for example, focusing on acquisition of specialized vocabulary. (Holzer, 119-24, 190-93)
73. The seventeen (17) students in the inclusion program on the Opal team present with a variety of emotional, neurological, health, communication, and specific learning disabilities, including autism and post-traumatic stress disorder. Approximately five have language-based learning disorders. Their goals are in communication, mathematics, reading, written language, organization, emotional regulation, social skills, and the like, with services such as speech and language, decoding/encoding, guided academics, counseling, and extended school year outside the general education setting.¹¹ (P-46; Kierul, II: 53-80; Holzer, IV: 195) Percy's scores on MCAS and other assessments utilized by Framingham place her squarely within the cohort of students on IEPs in the proposed inclusion program at Fuller, with MCAS scores within the middle to upper middle range, (S-13; Bright, II: 214-15, 221-22; Spear, IV: 239-42)
74. Although there are substantially separate programs at Fuller, one serves students with intellectual impairments and the other serves students with autism spectrum disorder; no one has recommended either of these programs for Percy. (Kierul, II: 52)
75. When Dr. Evans observed Framingham's proposed program for Percy at Fuller Middle School on October 16, 2018, specifically the general education ELA class, Guided Academics, and the WIN block, she concluded that the program is not appropriate for Percy. Although she reported co-teaching in ELA utilizing a graphic organizer, she stated that she did not see scaffolding. She described Guided Academics as students working independently rather than as a comprehensive instructional approach, and she criticized the WIN block because although students sat in a circle discussing things they were nervous or excited about, no social skills curriculum was in evidence. Overall, Dr. Evans concluded, in her November 7, 2018 report following her observation of Willow Hill the same day, that at Fuller the classes were too big, students were expected to work too independently, and this would not be the "cohesive program" Percy requires. (P-43; Evans, II: 140-48, 168-69)

¹¹ In some instances, it is difficult to tell what services a student is receiving during the current academic year, as fifth grade IEPs, rather than sixth grade IEPs, were provided. This could be because proposed IEPs have not been accepted. (P-46; Kierul, II: 76-77)

Willow Hill School

76. Percy began attending Willow Hill on or about August 29, 2018. (P-40A; Mother, I: 103)
77. Willow Hill is an approved private special education day school designed to serve middle and high school students with average to above average intellectual capabilities and diagnoses of language-based learning disabilities, nonverbal learning disabilities, Attention Deficit Hyperactivity Disorder, and autism spectrum disorder. (P-48A; S-17; Evans, II: 133; Kierul, IV: 203) As of 2015, on a form that expires on August 31, 2019, Willow Hill is approved for fifty-six (56) students. Although Dr. Evans indicated that there are between eight and ten sixth graders currently at Willow Hill, Percy's class may be as small as six. Willow Hill operates ten (10) months a year and does not offer a summer program. (P-48A; S-17; Evans, II: 133, 173-74; Kierul, IV: 203, 229-30; Spear, IV 269)
78. At Willow Hill, Percy attends small classes of six to eight students for academics, including Geography, Literature, Composition, Math, and Science, as well as for Art, Theater/Music, Physical Education, Social Skills, and Technology. She also receives a tutorial with two other students four days per week focusing on executive function, reading, and math skills, as well as one reading tutorial period per week and one period per week with her advisor. At the beginning of the year, Percy had an elective on Fridays, but as she was struggling with composition and literacy, her schedule starting at the end of November provided for a reading tutoring with one other student during that period on Fridays. One of Parents' primary reasons for placing Percy at Willow Hill is her anxiety, and Dr. Evans recommended check-ins with a guidance counselor to help Percy with social/emotional challenges, but counseling does not appear on her schedule. Although she has an "advisor/advisee" block on her schedule, the person assigned to this time does not appear to be licensed as a guidance counselor or school adjustment counselor. (P-40A, P-40D; Mother, I: 104-106, 124-25; Evans, II: 139; Kierul, IV: 212-13; Spear, IV: 256) According to Dr. Evans, Percy's ELA teacher is also the director of learning services and the counselor on staff. (Evans, II: 138)
79. At Willow Hill, Percy has made gain in courses with special education services and supports. She did well in her first semester courses and her Star Reading report demonstrates progress in reading between October 2018 and January 2019, though she is still "on watch." (P-40B, P-40C; S-11; Bright, II: 22-21) Percy's mother reports that she is motivated and engaged, and when she comes home she knows how to do her homework, though she "still has a lot of challenges in this area . . . still struggles [and] has issues academically." In the classroom, she is doing well but they are working on her challenges. (Mother, I: 105-106)
80. According to Parents, Percy is happier at Willow Hill and is doing better socially and emotionally. She goes to school without hesitation and feels loved and accepted, rather than "bullied and tormented." She "feels that they can teach her the way that she needs to be taught," even though she still struggles academically. (I: 106-107) Percy's therapist

testified that Percy's anxiety is still present, but not as prevalent. She is optimistic and more comfortable asking for help in class, as all students there have learning challenges. (Elefson, II: 80-81) Even so, on the rating scales they completed for Framingham's psychological evaluation in early 2019, Parents rated Percy as "clinically significant" for depression and "at-risk" for anxiety, as they had on the ratings they completed for Dr. Evans in June 2017. Her teachers at Willow Hill rated her as "at-risk" for anxiety and depression. (S-11; Colón, II: 294-95, III: 8-9)

81. It took Percy some time to settle in to her new school but by early 2019 she was happy and doing well. Because the school is so small, with approximately six students in sixth grade, it is a bit of a challenge for Percy to make friends. (S-11; Elefson, III: 83, 117) In fact, she was looking to connect with older students, but was rebuffed several times. When she attempted to engage a high school student she viewed as having similar challenges and interests to hers, the school felt it was not appropriate for them to interact because of the age discrepancy. Her counselor said that Percy understood, but recognizes that this kind of situation could hurt her social/emotional wellbeing. (Elefson, III: 83-84, 107, 116-17; Colón, II: 288-89)
82. Dr. Evans observed Percy at Willow Hill on November 7, 2018 in her ELA and science classes. She spoke with school staff about Percy, her program, and her progress. Willow Hill personnel reported to her that Percy's classmates have neurocognitive profiles similar to hers. Percy was hardworking and engaged, and benefited from graphic organizers and scaffolding. In ELA, she asked more questions than any other student in the class regarding her assignment and received, in return, individualized support; she also required "quite a bit" of scaffolding in science. Dr. Evans concluded that the school is providing Percy with the specialized program she requires. Dr. Evans did not provide a report of her observation to Percy's Team at this time; the report submitted as part of Parents' evidence is not a complete report of her observation at Willow Hill. (P-43; Evans, II: 134-37, 169, 179) Dr. Evans considers Percy's program at Willow Hill to be "language-based," consistent with her recommendations. (Evans, II: 188)
83. Ramón Colón, who conducted testing of Percy for Framingham in early 2019, observed Percy at Willow Hill in her ELA class around the same time. Percy was focused, on-task, and highly engaged. He noted a small student-to-teacher ratio, with students in close proximity to the teacher, as well as guided discussions, notes, and organizers. (S-11; Colón, II: 289, III: 20-22)

Proposed IEP for 2019-2020

84. Parents filed the *Hearing Request* in the instant matter on December 20, 2018. (P-1)
85. On January 11, 2019, Framingham convened an Annual Review for Percy, after which the Team proposed an IEP, and full inclusion placement, for the period from January 11, 2019 to January 10, 2020 ("2019-2020 IEP version 1"), which includes part of sixth grade and part of seventh grade. Services in the general education classroom include Speech/Language (1x45), to support objectives in reading, writing, and study skills; and

Academics (2x270), to be provided by Special Educator/General Educator/Assistant Teacher, per six day cycle. Part C services include small group Guided Academics (4x45), Reading (2x45 per six day cycle), and Counseling (1x30), per six day cycle, as well as ESY (5x180 per week). This IEP contemplates that Percy's pull-out reading instruction would occur during what would otherwise be the small group Guided Academics period, such that she would not be removed from her inclusion classes. The IEP also provides for one monthly thirty (30) minute consult among related service providers. The proposed IEP reflects a decrease in direct reading services from the services proposed for Percy at Fuller in the previous IEP, from three forty-five minute periods (3x45) to two forty-five minute periods (2x45). The Team proposed this change on the basis of progress reports from Willow Hill, in addition to trying to arrange supports in such a way that Percy "will not feel different." To support Percy's social/emotional needs, the proposed IEP also includes Lunch Bunch with a related service provider – the speech and language pathologist, the guidance counselor, or the social worker, to be determined based on the most appropriate group for Percy upon enrollment at Fuller. (P-37; Kierul, II: 18, 34-35, 38-46, 71)

86. By letter dated February 4, 2019, Parents rejected this IEP and reiterated their request for funding and transportation, as well as reimbursement of expenses, associated with their placement of Percy at Willow Hill. (P-37)
87. In January and February 2019, Framingham performed a three-year reevaluation of Percy. (P-38; Kierul, II: 46) Framingham school psychologist Ramón Colón, who has a master's degree and a Certificate of Advanced Graduate Studies in school psychology and is licensed by the Massachusetts Department of Elementary and Secondary Education as a psychologist, conducted the psychological evaluation on January 29 and February 5, 2019.¹² He administered the evaluation over two days, with breaks between the days, to avoid testing fatigue. (S-15; Colón, II: 260-61, III: 17-20) Similar to previous testing of Percy, Mr. Colón found some variability in Percy's cognitive profile, with areas of strength and weakness. She scored within the average range on the Verbal Comprehension Index, with little variability between subtests, as well as on visual-spatial processing, and certain mathematical concepts such as matrix reasoning. In other areas she scored below the normal limit. Mr. Colón found that when items involved a number or quantitative reasoning, Percy struggled. She performed within normal limits on tasks involving visual working memory, but there was a normative weakness within auditory working memory as well as fluid reasoning, and she fell well below average range on processing speed, though her performance was highly accurate. Percy performed well on sentence recall, a task that requires high levels of language processing. On the NEPSY, Mr. Colón, found many areas of strength; Percy scored within the average range for executive functioning, as well as auditory attention and response. In contrast, Dr. Evans' 2017 testing demonstrated a dip between auditory attention and response. Here, however, on a complex cognitive assessment of her ability to inhibit responses, Percy scored within

¹²Mr. Colón conducted the BECK Youth Inventories for Children and Adolescents – Second Edition (BYI-II), the BASC-3, a student interview, the Multidimensional Anxiety Scale for Children – Second Edition (MASC-2), the NEPSY – Second Edition (NEPSY-II), the Process Assessment of the Learner – Diagnostic Assessment for Reading and Writing – Second Edition (Pal-II), the WISC-V, and the WISC-V-Integrated, and reviewed student records. (S-11)

normal limits, and actually got better as the test progressed. She scored solidly average in phonological processing, and she fell within one standard deviation of the mean on a test of working memory. (S-11; P-21; Colón, II: 265-284, III: 33-37) Mr. Colón noted some similarities between his testing and Dr. Evans' and some differences, particularly as to executive functioning; Percy scored solidly in the average range on his testing in this area. (Colón, II: 184-85)

88. Based on previous concerns, Mr. Colón expanded the social/emotional profile. He noted variability between behavioral concerns at home and at school. Parents reported significant behavioral concerns in the area of depression, with some concerns in the areas of anxiety and attention problems. Teachers mentioned similar concerns, but not at the clinically significant level; they rated Percy as at-risk for anxiety, depression, learning problems, and functional communication. Percy's self-report was average in every area, though above average in self-concept, or "how she identifies herself as a learner." Percy spoke of peer concerns at her previous school, where sometimes "they won't look at her, that sometimes . . . they were giving her looks," and she felt this was bullying. Mr. Colón noted that this broader definition of bullying, which appeared to include drama among peers, was typical of students her age, as was her description of some of her peer issues. (S-11; Colón, II: 285-87, 290, III: 8-9, 38-40, 58) Percy said she was happy at Willow Hill and had friends, but because her class was so small, she was seeking older students (including those in high school) to engage with. These older students were not interested in engaging with her and kind of "shooed" her away. (Colón, II: 287-89) On the Multidimensional Anxiety Scale for Children – Second Edition (MASC-2), Percy scored in the high average range, but within normal limits, on separation anxiety/phobias and humanization rejection, and overall within the average range. (Colón, II: 291-92) On the parent report, Percy scored high on anxiety and was considered at-risk in several other areas. Parents also rated her as within the clinically significant range for depression and at-risk for attention problems. (Colón, II: 293-95) BASC-3 scores were similar, between Evans' 2018 testing and Colón 2019 testing, for depression and anxiety; had increased in attention problems; and decreased on social skills, leadership, and functional communication. (Colón, II: 295-300)
89. Mr. Colón concluded that an inclusion setting in a Framingham middle school would be appropriate for Percy, if the recommended accommodations – such as an emphasis on the growth mindset; academic support in the form of review, preview, and additional time; consistent descriptive verbalization of mathematical concepts; supports for short-term memory and processing speed; strategies for classroom engagement, including teacher check-ins, advance organizers, physical proximity to teachers, etc.; and social/emotional supports – are administered with fidelity. (S-11; Colón, III: 28)
90. Jeffrey Holzer administered the WIAT-III on three separate dates in January and February 2019. (P-38D; Holzer, IV: 143-44) Mr. Holzer noted that his results were similar to Dr. Evans', except that Dr. Evans referenced age equivalence, whereas he referenced grade equivalence. Percy showed some areas of strength, including oral expression and fluency, and some areas of weakness, including decoding and oral reading accuracy. Mr. Holzer concluded that Percy performed in the average range on all tests

except the Sentence Composition composite, Pseudoword Decoding, Spelling, Math Fluency Subtraction, Oral Discourse Comprehension, and Sentence Repetition, where she earned below average scores. Although she scored in the 39th percentile for reading comprehension, in January of sixth grade, her grade equivalent was a 4.7. For numerical operations, which Mr. Holzer also reported as in the average range, her grade equivalent was also 4.7. (P-38D; Holzer, IV: 125-43, 170-74, 185)

91. On February 14, 2019, the Team met to consider the District's evaluations and reports from Willow Hill, then proposed an IEP for the period from February 14, 2019 to February 13, 2020 (2019-2020 IEP version 2), part of sixth grade and part of seventh grade. The Team added a goal for decoding/encoding/fluency, and services remained the same as those proposed in the 2019-2020 IEP version 1. The IEP calls for academic support in the inclusion setting (2x270 minutes per six day cycle), placing Mr. Holzer in Percy's math and ELA classes every day. The IEP does not specify in which class Percy would receive speech and language services, but it would likely be in science given all of the specialized vocabulary. Percy would have had Guided Academics four times per six day cycle, for forty-five minutes each (4x45), which would allow for Wilson Reading to take place the other two times (2x45 per six day cycle), such that she would not be pulled out from a content class or a special. The Team recommended restoring Wilson instruction because some of Percy's scores during the reevaluation indicated weaknesses in decoding and fluency.

Even though her social/emotional functioning at school was not at the clinically significant level, the Team was concerned that Percy was at-risk in several areas, including anxiety, depression, learning problems, and functional communication, which could impact her ability to demonstrate what she knows in the classroom. As such, Percy would also have had a thirty (30) minute counseling session every six days and access to a weekly Lunch Bunch with a related service provider, as well as access to the related service providers as needed, access to the sensory room, and reminders to use self-regulation strategies and identify safe adults. The Team proposed ESY services for four weeks, five days a week for three hours, focusing on her IEP goals for reading, writing, and math. The Team also proposed a monthly consult among service providers.

Percy's IEP includes accommodations in the classroom environment such as minimizing background noise, access to sensory tools for anxiety, flexible seating, encouragement to ask for support or clarification, positive reinforcement, use of relaxation strategies and techniques to cope with anxiety, frequent breaks, and access to small group instruction as needed. Accommodations in presentation, response, and timing include preview of new information; visuals with auditory information; repetition of student questions and answers; chunking, repeating, reviewing, and practicing directions and content; frequent check-ins; explicit teaching, modeling, and practicing of learning and study strategies; multi-modal instruction; graphic organizers; skeletal notes; untimed tests, assignments, and assessments, and the like. These accommodations, particularly breaking down complex information, breaks, frequent check-ins, modeling, etc. align easily with Mr. Holzer's approach to teaching in the inclusion classroom. (S-1; P-39; Kierul, II: 18, 47-51, IV: 208-11; Holzer, IV: 145-52)

92. On February 28, 2019, Ms. Elefson drafted another letter regarding Percy, describing her “challenges that have been specifically identified as occurring at school [as continuing] to affect her on a global level[, continuing] to affect her ability to manage her functionality socially, and still somewhat physically as it continues to impact her sleep and at times appetite.” Ms. Elefson reported that social and physical functioning had improved somewhat since the beginning of the school year, but “still impact her negatively.” (P-41; Elefson, III: 81-83)
93. By letter dated March 4, 2019, Parents rejected February 14, 2019 to February 13, 2020 IEP and placement, and reiterated their request for reimbursement and placement of Percy at Willow Hill. (P-39; Mother, I: 101-02)

DISCUSSION

It is not disputed that Percy is a student with a disability who is entitled to special education services under state and federal law. At issue here is whether the IEPs developed for Percy for her fifth, sixth, and part of seventh grade school years provide her with a FAPE; whether she is owed compensatory services; and whether Parents are entitled to reimbursement for, and/or prospective placement of, Percy at the Willow Hill School.

A. Legal Standards: Free Appropriate Education, Least Restrictive Environment, and Reimbursement for Unilateral Placement

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).¹³ FAPE is delivered primarily through a child’s individualized education program (IEP), which must be tailored to meet a child’s unique needs after careful consideration of the child’s present levels of achievement, disability, and potential for growth.¹⁴ “To meet its substantive obligation under the IDEA, a [district] must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”¹⁵ Similarly, Massachusetts FAPE standards require that an IEP be “reasonably calculated to confer a meaningful educational benefit in light of the child’s circumstances,”¹⁶ and designed to permit the student to make “effective progress.”¹⁷

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.”¹⁸ This means that to the maximum extent appropriate, a student must be educated with other students who do not

¹³ 20 U.S.C. § 1400 (d)(1)(A).

¹⁴ *Andrew F. v. Douglas Cty. Reg’l Sch. Dist.*, 137 S. Ct. 988, 999 (2017); *D.B. ex rel. Elizabeth B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012).

¹⁵ *Andrew F.*, 137 S. Ct. at 999.

¹⁶ *C.D. v. Natick Pub. Sch. Dist.*, 2019 U.S. App. LEXIS 15165 at *13, ___ F.3d ___ (1st Cir. 2019).

¹⁷ 603 CMR 28.05(4)(b) (IEP must be “designed to enable the student to progress effectively in the content areas of the general curriculum”).

¹⁸ 20 USC § 1412(a)(5)(A); 34 CFR 300.114(a)(2)(i); MGL c 71 B, §§ 2, 3; 603 CMR 28.06(2)(c).

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.”¹⁹ “The goal, then, is to find the least restrictive educational environment that will accommodate the child’s legitimate needs.”²⁰ For most children, a FAPE “will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade.”²¹ Removing a child from the mainstream setting is permissible when “any marginal benefits received from mainstreaming are far outweighed by the benefits gained from services which could not feasibly be provided in the non-segregated setting . . .”²²

Finally, “[a]n IEP is 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.”²³ The same is true for amendments to an IEP.

Under the IDEA, a parent may be entitled to reimbursement for unilaterally placing a student in private school without the District’s consent or referral.²⁴ Section 1412 provides that a Hearing Officer may order reimbursement for the cost of that placement if the Hearing Officer finds that a District had not made FAPE available to the child in a timely manner prior to the parent’s unilateral placement.²⁵ Hearing Officers and courts have interpreted section 1412 to allow reimbursement for a unilateral placement when 1) the school district had not made a free appropriate public education available to the student prior to that enrollment, and 2) the private school placement was appropriate.²⁶ The Parents bear the burden of proving that the school district’s proposed IEP did not provide a FAPE.²⁷

B. Framingham Public Schools’ IEPs and Amendments Thereto for Percy for Fifth Grade Were Reasonably Calculated to Provide Her with a FAPE

As described above, Percy presents with variability in her cognitive and learning profile. Her diagnoses include dyslexia, mixed receptive and expressive language disorder, and an unspecified neurodevelopmental disorder characterized by diffuse vulnerabilities in aspects of executive functioning and memory. She demonstrates vulnerabilities in language processing and formulation, and although no formal diagnosis of a social/emotional disability has ever been made by, or communicated to, Framingham, Percy displays anxiety related to school, particularly with respect to peer relationships and friendship groups.

¹⁹ 20 USC 1412(a)(5)(A).

²⁰ *C.G. ex rel. A.S. v. Five Town Comty. Sch. Dist.*, 513 F.3d 279, 285 (1st Cir. 2008).

²¹ *Andrew F.*, 137 S. Ct. at 1000.

²² *Pachl v. Seagren*, 453 F.3d 1064, 1068 (8th Cir. 2006) (internal citation omitted).

²³ *Roland M., v. Concord Sch. Comm.*, 910 F.2d, 983, 992 (1990) (internal quotations and citations omitted).

²⁴ 20 U.S.C. 1412(a)(10)(C)(ii).

²⁵ See *id.*

²⁶ See 20 U.S.C. 1412(a)(10)(C)(ii); *Sch. Comm. of Burlington v. Dept. of Educ.*, 471 U.S. 359, 369 (1985); *Schoenfeld v. Parkway Sch. Dist.*, 138 F.3d 379, 382 (8th Cir. 1998) (“Reimbursement for private education costs is appropriate only when public school placement under an individual education plan (IEP) violates IDEA because a child’s needs are not met”); *In re: Medfield Public Schools*, 13 MSER 365, 371 (Crane 2007).

²⁷ See *Schaeffer v. West*, 546 U.S. 49, 62 (2005) (holding that the burden of proof in an administrative hearing challenging an IEP falls on the party seeking relief).

Framingham proposed an IEP on February 16, 2017, which was in effect, as amended, during Percy's fifth grade year from September 2017 through February 15, 2018. It provided for specialized instruction in reading, written language, and math in the general education classroom, with opportunities for pull-outs as needed; push-ins to the general education classroom (1x30 each) for speech and language and study strategies; and pull-out reading services (5x40). Percy also received Lunch Bunch, and her IEP called for extended school year services. This IEP was amended in May to add an accommodation regarding math homework.

When the school year began, Percy received inclusion support for ELA and math classes, as well as pull-out Wilson Reading services, from an experienced qualified special education teacher who worked closely with Percy's general educator to ensure that she received appropriate modifications and accommodations. To the extent Percy's inclusion support may have been provided by an assistant teacher at times, there is no evidence in the record regarding the impact on her.

Over the summer preceding Percy's fifth grade year, Dr. Evans conducted a comprehensive neuropsychological evaluation, which showed intact skills in a number of areas; significant variability in her memory and executive skills; and below average academic scores in reading, writing, and math. Percy also demonstrated a fear of being perceived as different and a strong desire to be accepted by certain individuals. Dr. Evans described Percy as presenting with persistent language-based learning challenges and a "complex interplay" of interrelated disabilities that, together, significantly undermined her ability to access her strengths. Moreover, Dr. Evans reported that Percy was overwhelmed in school given the language, learning, and social demands and recommended that instruction be delivered at a slower pace with more scaffolding and structure, opportunities for previewing and reviewing information, reduced language processing demands, time between learning tasks, and cues to enhance retrieval. She recommended that this occur in a substantially separate language-based program.

After convening in September to review Dr. Evans' report, the Team added counseling to Percy's IEP to address her social/emotional challenges and a monthly consult with all service providers. The Team also incorporated some of Dr. Evans' recommendations; preview and review were added to math and reading comprehension benchmarks, and study and memory strategies were added to the IEP. The Team met again in October to review Dr. Evans' observation of Percy at McCarthy, at which time changes were made to goals and objectives. Framingham also agreed to provide after school tutoring to address Percy's weaknesses in reading comprehension and fluency, but did not agree to additional pull-out written language and math instruction. By this time, Percy was expressing (and Parents were communicating) that Percy did not want to be pulled out of general education classes to receive services. Parents accepted in part this revised IEP for the period from February 16, 2017 to February 15, 2018, as amended October 25, 2017.

Following a meeting in December 2017 to discuss, among other things, rejected portions of the near-expired IEP, the Team added pull-outs for writing and math, as requested by Parents. By the time the Team convened again at the end of January, Parents had applied to the Willow Hill School, which had been recommended by their evaluator, and Percy had interviewed and been accepted.

Around this time, Percy experienced a shift in her social/emotional presentation. She seemed sad, and she expressed her wish to have closer friends at school. She told her guidance counselor, with whom she had been meeting regularly for several years, that her parents were sending her to private school and she did not want to go. By April, however, Percy seemed to return to her happy, lighter self. McCarthy personnel were not particularly troubled by what they saw, as they viewed these emotional ups and downs as typical of children her age.

The Team met January 24, 2018 for Percy's Annual Review. The IEP proposed for the period from January 24, 2018 to January 23, 2019 involved parts of fifth grade and parts of sixth grade. I discuss only the fifth grade portion here. The IEP proposed for the remainder of fifth grade (January 24, 2018 through approximately August 2018) remained largely the same as the one before it, as amended. Parents rejected deletion of the phonics goal; reduction of reading pull-out services (which had been recommended by Percy's teacher); placement in a full inclusion program; and the designation of "Assistant Teacher" and "General Educator" as providers of special education services in the inclusion classroom. Percy's Team convened in March to discuss rejected portions of the IEP, and again in May to discuss Dr. Evans' updated evaluation, which had been conducted in April.

As described above, it is clear that Framingham was, and remained, responsive to concerns raised by Parents and through evaluations. When it appeared that Percy required more than "opportunities for pull-out," the Team formalized pull-outs for writing and math. Sensitive to Percy's desire to remain in class, the District provided after-school tutoring. McCarthy personnel did not witness the level of social/emotional distress being reported by Percy's parents and private therapist, but the Team increased support through a counseling goal and service and informal check-ins with Ms. DeAraujo. Although Percy remained below grade level in reading and math and continued to struggle academically, she was making progress "appropriate in light of [her] circumstances."²⁸ Parents have not established that Framingham failed to offer Percy an IEP reasonably calculated to confer a meaningful educational benefit."²⁹

Although Parents asserted that Framingham failed to provide some of Percy's IEP services during her fifth grade year, they submitted no evidence to support Mother's testimony at hearing, which itself lacked specificity. As such, they have not met their burden to establish that they are entitled to compensatory services.

C. Framingham Public Schools' IEPs and Amendments Thereto for Percy for Sixth Grade Were, and Are, Reasonably Calculated to Provide Her with FAPE

The IEP proposed in January 2018 for the period from January 24, 2018 to January 23, 2019 included approximately five months of sixth grade for Percy. This IEP contemplated a flexible inclusion program that included co-taught daily ELA and math classes, push-in speech/language support, and one period per day of either small group academic support or reading instruction delivered by a special educator. As described above, the Fuller Middle

²⁸ *Andrew F.*, 137 S. Ct. at 999.

²⁹ *C.D.*, 2019 U.S. App. LEXIS 15165 at *13.

School inclusion program would provide Percy with the kind of targeted, specific, empirically supported interventions for her specific skill deficits that Dr. Evans recommends. Moreover the instructional methodologies of co-taught classes would allow for delivery of instruction at a slower pace with more scaffolding and structure, opportunities for previewing and reviewing information, reduced language processing demands, time between learning tasks, and cues to enhance retrieval as recommended by Dr. Evans. Mr. Holzer would work with Percy's science and social studies teachers to ensure implementation of these accommodations, and Guided Academics would provide opportunities for review, preview, and additional support. Finally, the program includes two WIN blocks per cycle focused on social/emotional learning, which in combination with counseling would support Percy in her social/emotional challenges.

Percy's Team convened for her Annual Review, after which it proposed 2019-2020 IEP version 1, for the period from January 11, 2019 to January 10, 2020, the remainder of sixth grade and approximately five months of seventh grade. This IEP decreased pull-out reading services. Following Percy's three-year reevaluation, the Team reconvened and proposed 2019-2020 IEP version 2, which also covered parts of sixth and seventh grade. Given the results of Percy's evaluations, the Team added a goal for decoding/encoding/fluency and proposed reinstatement of Wilson Reading instruction. The Team also clarified that Percy would have access to a weekly Lunch Bunch, access to related service providers as needed, access to the sensory room, and reminders to use self-regulation strategies.

Given Percy's cognitive and learning profile, I conclude that a FAPE for her, like most children, involves "integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade."³⁰ The flexible inclusion program proposed for her at Fuller Middle School, with appropriate supports, services, modifications, and accommodations, is the least restrictive environment in which she can make effective progress. For these reasons, I find that Framingham's 2019-2020 IEPs, are "reasonably calculated to enable [Percy] to make progress appropriate in light of [her] circumstances."³¹

Because Parents have not established that Framingham failed to offer Percy an IEP for sixth grade reasonably calculated to confer a meaningful educational benefit,³² I need not consider whether Willow Hill is appropriate for her.

To the extent Parents seek prospective placement of Percy for the period of the most recently proposed IEP, the evidence supports my conclusion that the IEP proposed by Framingham for the period from February 14, 2019 to February 13, 2020 is reasonably calculated to confer a meaningful educational benefit in light of [her] circumstances,³³ and designed to permit Percy to make "effective progress."³⁴

CONCLUSION

³⁰ *Andrew F.*, 137 S. Ct. at 1000.

³¹ *Id.* at 999.

³² *C.D.*, 2019 U.S. App. LEXIS 15165 at *13.

³³ *Id.*

³⁴ 603 CMR 28.05(4)(b)w3.

The IEPs proposed by Framingham for Percy for the 2017-2018, 2018-2019, and 2019-2020 school year (through February 13, 2020) were, and are, reasonably calculated to provide Percy with a free appropriate public education in the least restrictive environment. Parents have not met their burden to prove otherwise. Parents have not met their burden to prove that Framingham failed to fully implement Percy's IEPs during the 2017-2018 school year, and/or that Framingham is responsible for providing any compensatory services.

ORDER

Parents are not entitled to compensatory relief or reimbursement for their unilateral placement of Percy at the Willow Hill School, nor are they entitled to prospective placement there.

By the Hearing Officer:

Amy M. Reichbach
Dated: June 3, 2019