

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

In Re: Student v.
Bourne Public Schools

BSEA# 2000039

DECISION

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

The BSEA received Parents' Hearing Request in the instant matter on July 15, 2019. At the joint request of the Parties the Hearing was continued to October 2019 via Order issued on August 12, 2019. Thereafter, the matter was administratively reassigned to Hearing Officer Rosa I. Figueroa, Esq., on October 8, 2019.

By agreement of the Parties the Hearing was held on October 16, 18 and 23, 2019, at the offices of DALA/BSEA, 14 Summer St., fourth floor, Malden, Massachusetts, before Hearing Officer Rosa Figueroa. Those present for all or part of the proceedings were:

Father¹

Mother

Sean T. Goguen, Esq.

Attorney for Parents

Dr. Rafael Castro

Neuropsychologist, ICCD

Dr. Diane Stephens

Education Specialist, ICCD

Dr. Michael Walker Shields

Psychologist, Riverview School

Mary Beth Thatcher

Education Coordinator, Riverview School

Andrea Bell, Esq.

Attorney for Bourne Public Schools

Craig Davidson

Director of Special Education Services, Bourne Public Schools

Dr. Karen Postal

Neuropsychologist

Leslie Sullivan

Director of Student Services (Grades 5-12), Bourne Public Schools

Beth Keane

Special Education Teacher, Plymouth Public Schools

The official record of the hearing consists of documents submitted by Parents marked as exhibits PE-1 to PE-19, and Bourne Public Schools (Bourne) marked as exhibits SE-1

¹ Father participated via conference call.

through SE-24²; recorded oral testimony, and oral closing arguments. The record closed on November 6, 2019 upon receipt of the closing arguments.

ISSUES FOR HEARING:

1. Whether Bourne failed to offer Student a free and appropriate public education in the least restrictive setting during the 2017-2018, 2018-2019 and 2019-2020 school years, and the 2018 and 2019 summer programs;
2. Whether Parents are entitled to reimbursement for expenses associated with their unilateral placement of Student at the Riverview School for the 2017-2018, 2018-2019 and 2019-2020 school years, and the 2018 and 2019 summer programs.

POSITIONS OF THE PARTIES:

Parents' Position:

Parents assert that Student had a challenging 2016-2017 school year academically and she had a difficult time making significant connections with students and adults. When Bourne proposed to transfer Student to a partial inclusion program in Bourne, Parents opined this would not be an appropriate program for Student and instead, unilaterally placed her at the Riverview School where she has remained over the past two and a half years.

Parents state that throughout the period from 2017 forward Bourne offered Student inappropriate programs that failed to properly address her needs, and failed to incorporate their experts' recommendations and Parents' input.

As a result, Parents seek reimbursement for their unilateral placement of Student at the Riverview School for the 2017-2018, 2018-2019 and 2019-2020 school years, and the 2018 and 2019 summer programs.

Bourne's Position:

Bourne asserts that the programs offered Student for the 2017-2018, 2018-2019 and 2019-2020 school years were and are appropriate for her and offer her a FAPE in the least restrictive environment.

Bourne further argues that even if its programs were not appropriate, the Riverview School was not an appropriate placement for Student, and therefore, the district is not responsible to reimburse Parents or to continue to fund Student's program there. In this regard Bourne asserts that the Riverview School programs lacked age appropriate peers, were not academically challenging, and that Student regressed while there.

² SE-24, Student's 2017-2018 progress reports, was admitted for limited purposes, relative to goals.

Bourne seeks a finding that its IEPs and proposed placements were appropriate and that the Riverview School's programs were inappropriate and overly restrictive.

FINDINGS OF FACT:

1. Student is a 13 year-old resident of Bourne who has attended the Riverview School (Riverview) during the past two and a half years pursuant to Parents' unilateral placement. She has a history of significant learning and developmental issues (PE-1). Student has been described as wonderful, motivated, friendly and engaging. She has strengths in sports and the arts (PE-2). At present she is an eighth grade, day student at Riverview.
2. Student carries multiple diagnoses including Attention Deficit Hyperactivity Disorder-Combined Type, Reactive Attachment Disorder, Other Specified Neurodevelopmental Disorder (associated with right hemisphere brain weakness, Non-verbal Learning Disability) and specific learning disorder with impairments in reading (Dyslexia), writing and mathematics (Dyscalculia), and Unspecified Anxiety Disorder (PE-5). In the past she also received a diagnosis of Intellectual Disability (mild to moderate) but in 2015, this diagnosis was deferred as some of her abilities then fell in the average range³ (PE-1; PE-2; PE-5; PE-6). Over the years she has had difficulties with sustaining attention, inhibiting impulsive responses, anxiety and restlessness (PE-5).
3. Student also presents with a Reactive Attachment Disorder and has difficulties connecting with people; she is not flexible and wants to control situations. While she tends to get along with younger children and adults, connecting to same age peers or older ones is more challenging (Parent⁴).
4. Student has been found eligible to receive special education services and has received services pursuant to IEPs for the past several years (Parent).
5. Student completed first and second grade (repeating second grade) in Bourne. (SE-8; Parent). At the beginning of third grade Bourne proposed to transfer Student to a substantially separate program in Plymouth Public Schools because Bourne could not meet her needs in district (Parent).

³ "Her memory for both visual and verbal information is significantly impaired as well. Moreover, [Parent's] report on standardized measures of her adaptive/independent skill set suggests extremely low abilities within this area. Collectively, this array of cognitive and adaptive skill weaknesses raises concerns for a more global set of cognitive impairments, although some of her abilities continue to fall within the average range which would contraindicate an *Intellectual Disability at this time*. Therefore, it is the clinical opinion of this writer that a specific diagnosis pertaining to her global cognitive functioning is deferred at this time until [Student] further receives ongoing, intensive and comprehensive treatment. Nevertheless, given her expectations will increase, she should be considered at high risk for meeting criteria for a 'Borderline/Mild' Intellectual Disability in the future, particularly if the appropriate supports and services are not set into place within the home and school settings." (PE-6).

⁴ While there are two parents involved in Student's life, since only one parent testified, "Parent" (instead of Parents) appears throughout the Facts and Conclusion portions of this Decision.

6. A neuropsychological evaluation was conducted by Drew C. Coman, Ph.D., and Nancy Lundy, Ed.D., at Massachusetts General Physicians Organization (MGPO) on March 13, 2014, when Student was eight years old. The evaluators found, when comparing this evaluation to previous psychoeducational testing done in 2012, that Student had not made academic progress, with a decline noted in Student's ability to decode words, spell, apply mathematical reasoning and perform math calculations. The evaluators recommended that Student be provided highly individualized systematic instruction in a very structured special education classroom, with substantial supports when in any mainstream class. Direct service interventions were recommended to address reading, writing and math, and accommodations for general learning classes were also suggested. Study skills consultation from a speech and language therapist, social skills training, guidance counseling support (to address social-emotional needs and behavioral issues), and extended school year services were recommended as well. (PE-5).
7. The following year, on May 7, 2015, Dr. Coman conducted another neuropsychological evaluation (PE-6). Focusing on the results of the WIAT-III Dr. Coman noted mixed findings. Student had evidenced progress in decoding, spelling, sentence combining, math calculation and alphabet writing fluency. In contrast, word reading, math reasoning, sentence building, reading fluency and reading comprehension (per the GORT-5) showed little to no improvement (PE-6). Similarly, no progress was noted in Student's single-word expressive language abilities, phonological awareness, visual-motor integration, executive functioning skills and social functioning per the results on the EVT-2, CTOPP-2, Beery VMI, BRIEF and SRS-2. Student was found to continue to be at risk for an intellectual disability (PE-6).
8. Dr. Coman concluded that Student would require a more intensive academic environment with increased interventions, supports and accommodations in a substantially separate classroom, with a small student to teacher ratio, offering an integrated multi-sensory approach and phonics-based teaching across all areas of the curriculum (PE-6). Reading programming, organizational and studies skills, social skills and behavioral interventions by a BCBA were also recommended, as was participation in an extended school year program (PE-6).
9. During the 2015-2016 school year, Student's third grade, Bourne placed Student in a substantially separate, special education program at Plymouth Public Schools (Plymouth); the Basic Skills program (SE-7; PE-14; Parent, Keane). Her teacher Ms. Keane, was an experienced, Massachusetts certified special education teacher (over 30 years of experience) who worked with students with moderate special needs (Keane). In this program Student received all her core academic instruction in the substantially separate classroom and all specials, recess and lunch in full inclusion settings with paraprofessional support (SE-7; PE-14).
10. Ms. Keane used Zones of Regulation in her class, noting that Student learned how to use this system and get herself to the correct color zone when dysregulated, never having to be removed for a whole class period (Keane). She described Student as extremely

motivated to do well and enthusiastic, but very adult-driven with little interest in other children (*Id.*).

11. While at Plymouth data was collected on behavioral incidents. Ms. Keane testified that Student was not always an accurate reporter (Keane).
12. On December 1 and 15, 2015, Julie Milner-Sears, P.T. conducted a physical therapy evaluation of Student on behalf of Plymouth (SE-7). Student had been observed to trip, fall and frequently bump into things, triggering the Team's referral for a physical therapy evaluation. The evaluation sought to understand Student's motor skills functioning and her ability to navigate the school, playground equipment, sidewalks, and the like, as well as access the physical education curriculum (SE-7). At the time Student reported that she fell frequently and that her right leg "fell asleep" or "felt funny" on occasion (*Id.*). The classroom teacher reported seeing gradual improvement in body space control and balance. (It was noted that in the past Student had worn orthotics). (SE-7)
13. The physical therapy evaluation revealed that with verbal instruction and demonstration Student could demonstrate age-appropriate foundational physical education skills. She demonstrated average strength, speed and agility for her age, but in novel motor planning tasks she demonstrated below average bilateral coordination skills and balance. Her proprioceptive and kinesthetic senses were intact, although with her eyes closed she had some difficulty with joint position awareness and inner ear during balance training, suggesting a "slight delay in either of those systems feedback loops but both were functional for her to avoid falling" during the testing (SE-7). Testing also revealed below grade level expectations in travel and recreational movement (*Id.*), based on which she qualified for physical therapy support in her IEP (SE-7).
14. Dr. Coman conducted another neuropsychological evaluation on May 9, 2016 at Parent's request so as to get an update regarding Student's socio-emotional presentation, neurocognitive functioning and academic progress (SE-8). Student developed rapport with Dr. Coman easily and quickly. He noted that she maintained good social reciprocity and eye contact, but that her social functioning appeared to be below developmental expectations (SE-8).
15. At the time of this evaluation Student was taking *Vyvanse* (40 mg), *Ritalin* (10 mg as needed) and *Intuniv* (3 mg) and her mood, per parent report, was well regulated. Socially, Student was reported to have great difficulty relating to same age peers. In terms of private services, Student had a therapeutic mentor whom she saw once or twice per week, and in-home counseling every other week (*Id.*).
16. Overall, Student's cognitive performance on the WISC was relatively consistent with previous testing, though some progress was noted on her Visual Spatial Integration (VSI), Fluid Reasoning (FRI) and Working Memory (WMI) abilities, while her Processing Speed Index (PSI) remained a relative vulnerability. Student's Full Scale IQ score (75) fell within the borderline range (SE-8). Comparing the 2016 and 2015 WIAT III

evaluation results, Dr. Coman found that while Student continued to perform below age level expectations, she had made adequate progress in several areas such as word reading, spelling and mathematical reasoning and excellent progress in decoding and math calculations. Variable progress was noted in written expression, limited progress in reading fluency and reading comprehension (SE-8).

17. On the verbal fluency subtests of the DKEFS, Student's fluency and word retrieval abilities fell within the average range and reflected good progress when compared to the results of the 2015 test. On the CTOPP-2, good progress was evidenced in the areas of phoneme isolation and in blending words, with limited to no progress in manipulating individual sounds. Student demonstrated marked progress on the Hooper (which measures the ability to pull together visual information) (SE-8). In contrast, testing showed limited to no progress in the area of visual-motor integration. Some improvement was noted in short-recall and retrieval of narrative verbal information, and abstract visual information (SE-8). Limited to no progress was noted in single-word expressive language as per the EVT-2. Dr. Coman noted that despite some good progress phonological processing weaknesses persisted (*Id.*).
18. Dr. Coman found that Student's processing speed was variable and that her working memory abilities fell below expectations. On a test measuring psychomotor processing and visual scanning/ coding, Student performed within the low average range. She demonstrated well-developed problem-solving and thinking flexibility abilities on the WCST-4, and her ability to sustain attention and engagement was greatly improved (SE-8).
19. On the BASC-2 both Parent and teacher reported concerns involving: hyperactivity; aggression, conduct problems, attention problems, social skills, activities of daily living, functional communication, adaptability, leadership and withdrawal (SE-8).
20. Dr. Coman concluded that Student had made clear progress in her overall functioning, but that she also presented "with a markedly uneven cognitive profile comprising various neurocognitive, specific learning, socio-emotional, behavioral, executive and adaptive functioning weaknesses" (SE-8). He opined that Student's previous diagnoses were still relevant and noted that Student would continue to require intensive services and academic supports in the school setting. He recommended that Student be placed in a substantially separate classroom that offered multi-sensory education and a phonics-based teaching approach across all subjects/ curriculum. The classroom should have a small student-to-teacher ratio and Student should be educated with children who presented with similar cognitive, socio-emotional, speech and language, and adaptive skills. He recommended regular consultation by a BCBA and a speech and language therapist, and that both provide direct therapeutic services to the classroom. When in any inclusion setting Student should be supported by a one-to-one certified education teacher/ aide. Student would also require: daily one-to-one reading instruction with a reading specialist using a multi-sensory phonics-based reading program; daily one-to-one multisensory tutoring for spelling, writing and math; twice per week one-to-one speech

and language services; regular social skills training (e.g., once per week participation in a lunch bunch); direct, pull-out occupational therapy twice per week; once per week executive functioning training; three to four times per week life skills/self-help and self-regulation skills training by a BCBA; weekly counseling and monitoring by the school psychologist or counselor; and extended school year services (SE-8). Dr. Coman further recommended that Student be taught keyboarding and be allowed to use a laptop for writing assignments (*Id.*).

21. It was Dr. Coman's additional recommendation that Student receive therapeutic services, including in-home therapy, a therapeutic mentor and intensive care coordination. He found it medically necessary for the Department of Developmental Services (DDS) to become involved and offer Student services. Extracurricular activities designed for children with Student's profile were also recommended. He also made numerous suggestions for Parent to implement in the home (SE-8).
22. Ms. Keane testified that Student had a successful third grade year, resulting in the Team's recommendation for opportunities for inclusion the following year in the STEM inclusion program in Plymouth (Keane). Parent concurred that Student had an academically successful year, but she remained concerned about Student's socio-emotional development and did not support inclusion (SE-8; Keane, Parent).
23. Student's IEP for the 2016-2017 school year (fourth grade) offered her placement in a substantially separate classroom at the Nathaniel Morton Elementary School in Plymouth, Massachusetts (SE-1). At the Team meeting, convened on May 17, 2016, the Team agreed that Student's multiple disabilities impacted her across all academic areas. She presented with impairments in visual perceptual skills, fine motor integration skills, and fine motor precision skills, sensory input sensitivity, critical thinking weaknesses, verbal reasoning and pragmatic language skills deficits which affected interpreting inferential language, processing of social situations, and effective communication across instructional and social contexts. Goals to address reading, occupational therapy, self-regulation/social skills/behavior, executive functioning, mathematics, written language, gross motor skills and speech and language were drafted. The service delivery grid of the IEP offered Student the following: Grid A: twice monthly thirty minute case management consultation; Grid B: daily support in homeroom; four hours per week of academic support support, and thirty minutes per week of occupational therapy. Grid C: one thirty minute social skills session weekly with the counselor; daily reading (seventy-five minute sessions); daily reading, writing and math (60 minutes per session); once weekly physical therapy; twice weekly speech and language therapy and once weekly occupational therapy. (SE-1). This IEP also offered numerous accommodations. It did not offer extended school year services.
24. Parent rejected this IEP and placement on or about May 24, 2016 on the basis that it reflected a significant programmatic change, increasing Student's time in the mainstream. Parent further disagreed with the reduction in reading services, and the fact that the IEP as written indicated that reading, written language and math would be taught by either the

special education teacher or other staff. Parent also questioned whether an aide from the substantially separate classroom would be assisting Student during enrichment. According to Parent, these changes were allegedly based on new information presented at the end of the May 2016 Team meeting (PE-1; PE-15; Parent).

25. According to Ms. Keane, pursuant to the May 2016 IEP, Student would continue to participate in the mainstream for specials with support, and, due to Parent's rejection, an alternative homeroom was provided (Keane).⁵
26. In September of 2016, Emmajean Quinn, M.Ed. Ed.S., Assistive Technology Specialist in Plymouth, conducted an assistive technology evaluation (SE-9). Student reported familiarity with the use of a Kindle and an iPad at home, and her familiarity with the use of the iPad and a computer were observed during the evaluation. Student also reported difficulty with handwriting and with use of the keyboard. In keyboarding she needed prompting for spacing and capitalization. She found the use of speech to text, spellcheck and word prediction tools helpful and the evaluator noted that Student's spelling errors decreased and her production rate increased when using them. Ms. Quinn also found that Student's "writing typically consist[ed] of errors in spelling and conventions/mechanics. It [was] noted that [Student did] have difficulty writing and organizing her thoughts without the use of structural tools, end-product models and teacher assistance" (SE-9).
27. Ms. Quinn recommended that Student's writing be supported through the use of a "word processing tool paired with word prediction, speech to text and text to speech capabilities" (SE-9). Student demonstrated difficulty when reading and comprehending grade level text for which *text to speech tools*, that allowed her to "listen to a variety of text presented in digital format" was recommended. To address her writing difficulties access to a portable word processor with a word prediction tool was recommended. A dedicated iPad with a durable case and headphones was also recommended. Additional recommendations included: a membership in Bookshar.org, and continued use of the accommodations listed in Student's then current IEP (SE-9).
28. Following a reconvening of the Team on November 2, 2016, Parent accepted the IEP Amendment and placement offered on November 7, 2016 (SE-1). The Amendment reflected the Assistive Technology Evaluation recommendations reviewed by the Team (SE-1).
29. In January of 2017, Parent and Ms. Caputo, Director of Special Education and Student Services, Bourne P.S., communicated via email regarding Student transitioning to Bourne. In her email Ms. Caputo sought Parent's availability to participate in a Team meeting in the spring (PE-19).

⁵ Parent had initially opposed Student's partial inclusion for homeroom, social studies and science, but after participating in a BSEA mediation she agreed to Student's participation in social studies and science (Parent, Keane).

30. Student completed fourth grade at the Nathaniel Morton Elementary School despite the initial model-change toward more of an inclusion approach (PE-9; Parent). Concerned about Student's academic and social pragmatics development, Parent remained optimistic that if Student stayed for three years in the same school (while receiving the necessary supports) she would feel more connected to her peers and the adults therein (PE-9; Parent).
31. According to Ms. Keane, Student had a successful fourth grade year, meeting many of the goals and benchmarks in her IEP. She was able to write paragraphs with assistance, increase her reading rate and accuracy, and read fifth grade level passages as leveled by the *Fountas and Pinnell* System. She had opportunities to interact with peers in the special education and the mainstream programs. According to the data collected by the Plymouth staff, Student progressed academically and socially, meeting or progressing toward meeting her goals and benchmarks (SE-1, SE-2; SE-19; SE-20; Keane). Student's executive functioning progress report noted that Student had missed many days of school which "limited her exposure to lessons on self-regulation and planned opportunities to practice", improvement in this area however, was noted (SE-20). Ms. Keane opined that since fourth grade Student was ready for greater supported challenges in mainstream classes (Keane).
32. Parent testified that Student made progress while in Plymouth, however, out of school she had difficulty participating in any activities due to her challenges with peer relationships and difficulties connecting to others (Parent).
33. On May 30, 2017, Student's Team convened at Bourne Middle School to discuss Student's services and placement for the 2017-2018 school year, Student's fifth grade). (PE-8; SE-2). The resulting IEP offered Student placement in a partial inclusion program at Bourne Middle School. The goals in this IEP addressed reading, occupational therapy, self-regulation/social skills/behavior, executive functioning, mathematics, written language, and gross motor skills. The Service Delivery grid proposed the following: Grid A: case management consultation between the special education teacher and the staff every 10 days. Grid B: 30 minutes per 6 day cycle of social skills with the counselor; four hours of academic support per six day cycle and, academic support, for five times ninety minutes. Grid C: one thirty minute social skills session with the counselor; one thirty minute speech and language session per cycle with the speech therapist; two, thirty minute occupational therapy sessions⁶; written language 5 hours per six day cycle; math five hours per six day cycle; reading 5 hours per 6 day cycle and, one twenty minute per s physical therapy session per six day cycle (PE-8; SE-2). This IEP offered Student extended school year services in reading, writing and math in addition to 21 hours per week of social skills camp. Special transportation was also offered (PE-8; SE-2; PE-9).

⁶ Team meeting notes from the May 30, 2017 meeting reflect the occupational therapist's opinion that Student's sensory issues no longer impacted her access to the curriculum. Parent disagreed that Student's need for a sensory diet had faded. Bourne removed this service from the IEP, but continued to offer occupational therapy twice per week for thirty minutes (SE-2).

34. When making the recommendation for Student to transition back to Bourne for fifth grade, Team members took into account that fifth grade would be a transition year for Bourne students moving from elementary to middle school. Since Bourne had substantially separate and partial inclusion programs available at the middle school, Ms. Keane and others on the Team (not Parent) supported the increase in inclusion time for social studies, science and specials in Bourne. After visiting Bourne's Intensive Learning Center 2 (ILC 2) program, Ms. Keane supported transitioning Student there for the remainder of fourth grade and continuing into fifth grade (PE-8; SE-2; Keane).
35. Parent testified that it was her expectation that Student would remain in Plymouth through fifth grade, and not be moved to Bourne (Parent).
36. Parent testified that she had observed the Bourne program and found it was too noisy and had too many transitions and distractions. Parent also opined that the pace of instruction was too fast for Student, who had difficulty following two-step directions (Parent).
37. Student's June 2017 progress reports note that she had met her IEP objectives for asking questions, making comments related to topics being discussed by her peers, using appropriate body language and tone of voice in group activities, following multi-step directions, and responding to inferential and prediction questions regarding social situations given structured activities (SE-11).
38. On June 14, 2017, Bourne filed a Hearing Request with the BSEA, later withdrawing it on or about July 31, 2017 (Administrative Notice of BSEA Hearing Request #1711349).
39. On July 17, 2017, Student was re-evaluated at MGPO by Dr. Timothy Soto (PE-7; SE-10). At this time she was 11 years old and had completed grade 4. Student's cognitive score on the WISC-V and her academic achievement scores on the WIAT III fell in the borderline to low average range. Scores were as follows: WISC-V: low average verbal abilities (SS-84), low average visual spatial abilities (SS- 89), borderline low nonverbal abilities (SS-79), borderline working memory (SS-74) and low average processing speed (SS-86), with a Full Scale IQ in the borderline range (FSIQ- 76) (PE-1; PE-5; PE-6; PE-7). Student's academic skills were in the average range for decoding and word reading skills, borderline for sentence composition and in the low average range for spelling. Student's scores on the adaptive behavior assessments fell in the impaired range. (ABAS-3; GAC- <1st/percentile) (*Id.*).
40. At the time of this evaluation, Parent denied symptoms of anxiety but noted that Student engaged in crying and yelling when caught in a lie, a strategy Student explained she used to get what she wanted (PE-7; SE-10). Dr. Soto noted that on the day of the evaluation Student

...was able to answer many direct questions with fluent speech, and spontaneous reciprocal conversation was within age-based expectation. Speech prosody, rate and volume were adequate with

minimal examiner support. She was cooperative and hard-working throughout the testing session (PE-7; SE-10).

41. Overall, Dr. Soto found results similar to previous evaluations, with performance below grade level in reading fluency, reading comprehension, writing and math, and she demonstrated challenges with hyperactivity, inattention and executive functioning skills. Dr. Soto noted that Student continued to require the same level of supports she had been receiving, with no reduction in services, that is, academic instruction in a substantially separate classroom with like peers, offering: multisensory instruction; the use of a reading program such as Orton-Gillingham or Wilson; writing tutoring; speech and language therapy; occupational therapy; physical therapy; supports to address executive functioning deficits; social supports and interventions (such as the Michelle Garcia Winner *Social Thinking* program); weekly school-based counseling; one-to-one support from a special education teacher or aide during any type of inclusion; and accommodations such as preferential seating, extended time for testing in a distraction free environment and others. Dr. Soto recommended a re-evaluation in two years (PE-7; SE-10).
42. On July 19, 2017, Bourne proposed to conduct updated evaluations of Student over the summer so as to obtain current information. Bourne hoped to convene the Team prior to the beginning of the school year so as to adjust the proposed IEP if/as needed. No response was received from Parent until December 4, 2017 after the District had forwarded three more requests for evaluation (SE-21).
43. Parent visited the Riverview School and endorsed the small, supportive, substantially separate classroom opportunities, a curriculum that would not be overwhelming to Student, the slower pace of instruction and the focus on activities of daily living/ life skills (Parent).
44. On August 11, 2017, Parent wrote to Bourne's Superintendent of Schools, Steven Lamarche, to inform him that Student would be unilaterally placed at the Riverview School (Riverview) in Sandwich, Massachusetts, for the 2017-2018 school year (SE-12). The request was received in Bourne on August 15, 2017 (PE-12). Parent also noted her disagreement with the program proposed by Bourne. Ms. Caputo responded on August 17, 2017 rejecting Parent's request for funding of Riverview and assuring Parent that Student's needs could be met in Bourne Middle School (PE-12).
45. Elaine Lord, Parents' advocate, wrote to Ms. Caputo on November 21, 2017 informing her that she was representing the family and requesting a copy of Student's record (PE-12).
46. Since Riverview does not have an elementary school program, Student was accepted as a sixth grader, although she was actually entering fifth grade. No other fifth grader was accepted and promoted into sixth grade, and there was only one other student in the sixth

grade in 2017-2018 (SE-13). Parent testified that she was not concerned that Student was skipping fifth grade because she had repeated second grade (SE-13; Parent).

47. Riverview is a private, Massachusetts Department of Elementary and Secondary Education approved special education school that offers educational services to middle and high school students, ages 11 to 21, with cognitive, language and learning disorders. The school offers small group instruction with a low student to teacher ratio geared toward “developing student competence and confidence in academic, social and independent living skills” (PE-16; SE-13). The school was founded in 1957 and since 1960 has maintained a long-term relationship with Massachusetts General Hospital. Over the years it also developed programs that foster independent living skills as well as vocationally-based college experiences for students aged 17 to 21 (PE-16).
48. Riverview offers day and residential programs (GROW Residential). The residential program focuses on life skills and self-care instruction (SE-13). Activities such as cooking, music, dance, arts and drama are offered through its after-school programming (*Id.*).
49. At the time of Student’s enrollment in Riverview there were 100 students in the entire student body. Ten of the students were middle school students, and the other 90 were high school students and older. In addition to Student, there was one other sixth grader, three seventh graders and five eighth graders. In some classes Student was placed with students in the seventh, eighth, ninth and tenth grades (SE-13; SE-14; Postal, Keane, Thatcher). Ms. Thatcher, Education Coordinator, Riverview Middle and High School, testified that when Student entered Riverview as a sixth grader there were 2 ninth grade and 2 tenth grade students in her reading and writing class.
50. Student had been taking *Vyvanse* 40 mg for a long period of time. Concerned that she was developing a tolerance her medication was changed to *Stattera* 25 mg. in October 2017 (then increased to 40 mg around Thanksgiving of 2017). Student had a reaction to the higher dose and was taken off medications completely until the middle of January 2018 when she resumed the *Vyvanse* 40 mg. (Parent; SE-13). Parent and Riverview teachers noted that when off the medication, Student had great difficulty concentrating and staying focused.
51. Exhibit PE-9 is a Parent BSEA Hearing Request dated November 13, 2017 seeking reimbursement for unilateral placement of Student (PE-9). Although the document has a generic “Received” stamp on the first page, the BSEA has no record of this case having been received or processed.
52. After receiving consent from Parent in December 2017, Bourne conducted its three year re-evaluation of Student between December 2017 and January 2018. The evaluation included a behavioral assessment, occupational therapy, physical therapy and speech and language evaluations. Bourne also engaged outside contractors to conduct a

neuropsychological evaluation and an assistive technology assessment (SE- 11; SE-12; SE-14; SE-15; SE-16; SE-17; SE-18; SE-21).

53. On December 19, 2017 and January 12, 2018, Elizabeth King, M.S. CCC-SLP conducted the speech and language evaluation (SE-11). The evaluation involved informal speech-language observations, consultation with staff, and administration of the: Peabody Picture Vocabulary Test-4 (PPVT-4); Expressive Vocabulary Test-2 (EVT-2); Clinical Evaluation of Language Fundamentals-5 (CELF-5); Test of Problem Solving-3 (TOPS-3); and, Test of Pragmatic Language-2 (TOPL-2). Student was cooperative during the evaluation but her attention and effort was variable impacting her overall performance. The evaluator noted that during several portions of the test Student appeared distractible and did not seem to put forth her best effort, especially during the TOPL-2 instruments assessing social communication skills. In this latter test, she often responded by saying “I do not know”, before thinking about what was being asked and in the instances when she attempted to respond more directly her responses were “sarcastic, vague or off target” (SE-11).
54. Most of Student’s speech and language test results placed her in the very low range of functioning on receptive, expressive, critical thinking and verbal reasoning skills, with results that demonstrated a significant decrease in performance when compared to those of her previous evaluation (SE-11). Student also demonstrated inconsistent skills across all areas of pragmatic language development per the CELF-4 checklist. Her speech intelligibility was found to be fine at the conversational level and her problem solving abilities per the TOPS-3 were within the average range of functioning, similar to the scores in previous testing (SE-11).
55. Ms. King recommended that Student continue to receive direct speech and language therapy services focusing on development of receptive, expressive language, social communication and critical thinking skills, and consultation between the therapist and staff to ensure carryover and generalization of skills. Accommodations and suggestions for instructional strategies to be used in the classroom setting were also offered, including offering Student opportunities to participate in structured social learning groups to work on pragmatic language and social skills (SE-11).
56. At the time of this evaluation, Student was working toward expanding her pragmatic language skills by using the Michelle Garcia Winner’s Social Thinking approach at Riverview. She was also being exposed to executive functioning and self-regulation strategies in school (SE-11).
57. Bourne’s Physical Therapy evaluation was conducted by John Nathan, DPT, on December 19 and January 8, 2018 at Riverview (SE-12). Mr. Nathan observed Student travel through the school buildings, going up and down staircases and across uneven surfaces throughout the campus, and he had her perform skill activities to measure developmental sequencing skills, strength, range of motion and balance. He also had her sit, stand, walk, climb stairs, run, jump, hop, kick, skip, gallop, catch, kick, throw a ball

and walk on a 3 inch wide balance strip. He was impressed by Student's ability to retrieve a fallen item while easily moving through congested areas, which required her to walk sideways to move past students and desks. Mr. Nathan also had Student do planks, sit-ups, wall slides, bridges, "pencil rolls" and opposite arm and leg lifts, which she completed successfully only requiring coaching in a few areas (SE-12).

58. Mr. Nathan compared Student's performance on the Test of Gross Motor Development second edition (TGMD) administered in 2015 with his evaluation on 2017/ 2018, finding that Student had improved her scores significantly in the area of object control and had maintained her score in locomotor skills. He concluded that Student had met or exceeded her motor skill goals and objectives (as outlined in Plymouth) and no longer needed direct physical therapy services. Moreover, Mr. Nathan opined that because Student was a quick learner for motor skill activities, if any issues arose, these could be easily addressed through demonstration, practice, breaking down the motion components or coaching (SE-12).
59. Ms. Keane conducted a two hour educational observation of Student at Riverview on January 12, 2018 (SE-14). Student was observed during homeroom, transitions, reading and math classes. Ms. Keane noted that Student was aware of her presence and that she was being observed, something that she believed may have impacted Student's behavior. At one point, Student had to be offered an extended break when she became altered. Interestingly, according to her math and reading teachers, Student's behavior was significantly better than normal on the observation day; that is, typically, Student was less attentive and compliant (SE-14).
60. During homeroom Student was appropriate and attentive most of the time. She sought attention from her teacher more than her classmates who appeared to be less capable than she. Toward the end of the period Student became increasingly active, spinning in her chair, making noises, bouncing on an exercise ball and using fidgets. She had to be reminded to take her behavior chart to the next class but it could not be found. During the transition to reading class Student was observed to navigate the crowded hallways independently, appropriately greeting others (SE-14).
61. Student's behavior chart was brought to reading shortly after she entered the room. Ms. Keane noted that the students in this class appeared older and more mature than Student, getting started on the reading assignment and questions independently, while Student continuously asked the teacher for help. As she was re-directed by the teacher, Student's fidgeting and attention seeking behaviors increased. She participated when asked to read a passage aloud (which she read correctly except for one word), but then resumed her off task behaviors and interrupted conversations in excess of 15 times. Student then announced that she could not participate in a lesson review of a book being read by the class because she had not read the chapters. She had difficulty with the assignment despite assistance and remained off task and engaged in distracting behaviors while her classmates worked diligently. She again transitioned well to the next class (math), but

opened the door (instead of waiting outside the room as she had done previously) and interrupted the previous class before it had ended (SE-14).

62. Student began to get ready for math when Ms. Keane reminded her that she had left her behavior chart in the previous class. Student ran out to get it. In this class she also appeared younger and less mature than her peers. The teacher stated that her classmates in math were high school freshman and sophomores. (Student was an 11.11 year old sixth grader, having skipped 5th grade.) The math classmates were less tolerant of Student's behaviors, frequently prompting her to stop. Student complied when asked but later resumed the distracting, fidgeting behaviors. When the math activities ended, the class was informed that they could watch a video selected by Student as she had earned her stars. Despite Student switching the video several times, her classmates remained patient and supportive. When she left the math class she was called back to get her behavior chart which she again had forgotten to retrieve (SE-14).

63. After the observation Ms. Keane raised concerns about Student being placed with much older peers.⁷ She noted that Student had difficulty accessing the reading assignment which appeared to trigger an increase in her off task, distracting behaviors, and wondered why the paraprofessional had not been used to offer Student direct one-to-one instruction with that task; instead, it appeared that Student received little novel instruction. Ms. Keane opined that Student's attention had decreased significantly at the independent and group level, and she interrupted much more frequently (two to three times per minute) (SE-14). Ms. Keane questioned:

- Is the work within her proximal level of learning?
- Does [Student] require more direct, small group instruction?
- Is the behavior plan sufficient to limit these behaviors so that learning could take place?
- Is [Student] invested in her behavior plan? She had to be prompted to take it with her at every transition yet she brought all of her other supplies.
- Is there data supplied by the earning of stars to instruct [Student's] team on how to best meet her behavioral needs?

- Last year, [Student's] greatest area of challenge was applying social and behavioral skills for use with typical peers – how is that need being addressed within this self-contained school setting? (SE-14).

64. Bourne also proposed to conduct a neuropsychological evaluation, inclusive of an observation of Student at Riverview and of the proposed program in Bourne (SE-13). Bourne contracted Dr. Karen Spangenberg Postal, a certified neuropsychologist who

⁷ Dr. Postal's report notes that she discussed with Parent the fact that Student appeared substantially younger than the rest of the students at Riverview and Parent stated that she was unaware of this and that she had been told by the admission staff at Riverview that since the mental age of several of their students was very young, the age match was appropriate (SE-13).

currently teaches at Harvard Medical School. Dr. Postal has been conducting neuropsychological evaluations per the request of Parents and school districts since 1997 (Postal).

65. Dr. Postal evaluated Student at Riverview on January 9 and 11, 2018. She also conducted observations on January 11, 12 and 22, 2018. During the testing, Dr. Postal noted that Student had difficulty attending to task, and that the results of the WISC were discrepant from other recent testing. This caused Dr. Postal to inquire of Riverview staff and Parent, who explained that Student had an ADHD medication change shortly before Dr. Postal's testing, and was in fact off her medication during the evaluation. Further, when Dr. Postal evaluated Student she was also unaware that Student had undergone a neuropsychological evaluation with Dr. Soto the previous summer. Dr. Postal concluded that the result of her testing was not valid. She therefore relied on the results of prior neuropsychological evaluations by Drs. Coman and Soto, school-based assessments of 2012, 2013 and 2014, and her observations (SE-13; SE-22; Postal).
66. According to Dr. Postal, Riverview offers its students a supportive and warm educational environment. She noted that the teaching staff was very capable. Similar to Ms. Keane, Dr. Postal raised concerns about the fact that Student's peers were not at her age or grade level (SE-13). Dr. Postal opined that the lack of age appropriate peers would make it difficult for Student to practice and develop appropriate social pragmatic skills (*Id.*). She noted that during recess, the older high school students gathered to talk outside the lunch area, while Student went to swing by herself on a play structure. (SE-13; Postal).
67. Dr. Postal noted that Student's behavior plan did not appear to be implemented with fidelity across all settings at Riverview. Student had to be prompted to bring the behavior chart from her previous class on several occasions and one teacher did not appear to be following it (SE-13; SE-14; Postal, Keane).
68. Overall, Dr. Postal opined that the Riverview program was good, but it lacked appropriate peers for Student, a major concern given Dr. Soto's opinion that Student needed social skills development through both instruction and practice. At Riverview there was no opportunity for her to do this as students were significantly older and there were no opportunities to interact with neurotypical peers (Postal). Dr. Postal was also adamant in the opinion that there was no way that Student had an intellectual disability unless she had a neurological dysfunction (in terms of a medical disease) (Postal). According to Dr. Postal, it would be impossible for a student with an intellectual disability to score in the average range as she had on the problem solving test that she was given, e.g. Test of Problem Solving and Wisconsin Sorting Test (administered in 2016).
69. Dr. Postal observed the ILC programs in Bourne. She found the educational environment in the ILC 2 proposed for Student to be warm and supportive, and remarked on the strong teaching abilities of the ILC 2 teacher, Jennifer Reilly, who "used effective and engaging teaching techniques, with frequent praise and shaping" (*Id.*). Dr. Postal described a low

student to teacher/adult ratio, noting that the classroom tone was organized, positive and calm. The entire program was populated by middle school students and she found the access to mainstream peers during inclusion opportunities to be advantageous. She described the program as flexible “with the option of small group academic classes with specials and (where appropriate) academics highly supported in mainstream settings” (SE-13). Regarding the mainstream science class she observed (comprising seventeen students with one teacher and an ILC 2 aide) as positive, calm and cheerful. She noted that it

... was taught by a former special education teacher and social worker, with many students on IEPs in the classroom, excellent pre-teaching and re-teaching techniques built into the whole class instruction, considerable support from dedicated aides for the ILC [2] students, and a high level of engagement from the ILC [2] students (SE-13).

Dr. Postal also commented on how supportive the students therein had been of a student who showed less confidence in himself during the class (SE-13; Postal).

70. Dr. Postal opined that Student’s needs would be appropriately met in the ILC 2 and recommended that

- a. Core academic subjects (math, reading and writing) be provided in the small, separate ILC 2 classroom setting.
- b. Science, social studies, and electives in a supported mainstream/inclusion classroom with [Student] accompanied by a 1:1 dedicated ILC 2 aide.
- c. Direct social pragmatics instruction with target pragmatics skills shared weekly with teaching staff so they can reinforce the skills directly as part of [Student’s] behavior plan.
- d. Functional Behavior Assessment in the first two weeks of school to identify any behaviors that might limit [Student’s] academic and social success, with a specific token type behavior plan developed in collaboration with [Student’s] teaching staff and social pragmatics teacher. Thereafter, formal consultation between the district behaviorist and teaching staff every two weeks to ensure that the behavior plan is optimally executed and revised regarding target behaviors and rewards.
- e. Weekly counseling by school psychologist or social worker to support [Student] emotionally and to serve as another social skills coach.
- f. Executive function support including assistance with organization, pre and re teaching techniques, direct instruction in study skills.

- g. Occupational therapy assessment of [Student's] current set of self-care skills, and direct instruction as necessary ([Student's parent] expressed concern that she was not able to engage in basic self-care skills such as dressing herself).
- h. Discussion with [Student's parents] regarding:
 - i. The availability of life skills curriculum at the high school level in Bourne, including shopping, cooking, finances, and vocational skills;
 - ii. How to identify and access town and other resources for adaptive sports and other recreational activities. [Student's parent] indicated that Riverview's afterschool program of adaptive sports and other activities such as choir were very valuable to [Student] (SE-13).

71. Dr. Postal also observed the ILC 1 in Bourne. She noted that the students there were much lower functioning than Student (severely intellectually disabled and non-verbal) and noted that the ILC 1 would not be appropriate for Student academically or socially (SE-13; Postal). Ms. Keane concurred that while the ILC 2 was appropriate for Student the ILC 1 was not (Keane).
72. At Bourne's request, Kristi Voelkerding, Easter Seals, Massachusetts, conducted an assistive technology (AT) evaluation on January 15, 2018 to ascertain if there were assistive technology solutions that would be helpful to Student in the areas of reading and writing (SE-17). It was reported that Student had good keyboarding skills, although she types slowly. Student's handwriting was straight on unlined paper but she made several spelling errors; in contrast she did not make spelling errors when typing (with spell check and grammar check alerts off). Handwriting speed was 13 words per minute (an average sixth grader's rate is between 12 and 17 words per minute). Ms. Voelkerding opined that Student could use a combination of handwriting or typing depending on the task at hand. She noted benefits to typed work such as access to tools and ease of editing (SE-17).
73. Reading in the AT evaluation was measured by using a modified Protocol for Accommodations in Reading (PAR). Ms. Voelkerding noted that Student did not demonstrate improved comprehension when the text was read aloud by the computer while she read along with no visual tracking problems, suggesting that hearing single words would be more beneficial than an all audio text. Ms. Voelkerding found that Student possessed the foundational skills necessary for using any technological device (she was using *Chromebook* at the time of the evaluation). She found that access to tools (e.g., spellcheck and grammar check) and increased motivation were benefits of using technology to complete written work and she noted that typing eliminated letter reversals (SE-17).

74. Student's Behavior Assessment, was performed at Riverview by Bourne's BCBA, Pamela Fasciani, on January 16 and 18, 2018 (SE-15).⁸ The assessment involved "data gathering on behaviors of concern, antecedents and consequences, controlling variables and student strengths" (SE-15). The evaluation involved interviews with Ms. Scudder (teacher), Ms. Murphy (teacher) and Mrs. Richard (advisor), observations and record review. The interviewees stated that Student's work was inconsistent and her performance depended on her mood and behavior on the specific day. They noted that Student's performance was consistently at a third to fourth grade level across all subjects, with math being an area of relative strength and noting that she was a good speller. They further explained that Student needed frequent contact with the classroom teacher for redirection and assistance; most of her behaviors were attention seeking. Student was described as independent across school settings. Although she has the ability to follow directions, she often chooses to disregard them, requiring several prompts to disengage from off-task behaviors, such as walking around the room (SE-15).
75. Ms. Fasciani observed Student during her math class (7 students, 1 male and 6 female), program based learning/ science class (6 students, 4 males and 2 female), lunch (several students, mixed level/ grades), homeroom/reading (five students, 3 male, 2 female) and while waiting to meet with her advisor (SE-15). In all settings she required redirection to task multiple times, as she spoke out of turn, tapped loudly on surfaces, played music loudly on her computer while using headphones, sang, danced, engaged in some non-contextual laughter, spoke out of turn and spoke to other students during class. She was, however, observed to respond to redirection, ask for assistance, accept teacher feedback, and she was able to complete her work (SE-15). Ms. Fasciani noted that Student transitioned independently from one period to the next, could "independently sustain work effort and participate during class in a meaningful manner" noting that when she had to share the teacher's attention or the teacher diverted her attention, Student engaged in problem/ attention seeking behaviors. Ms. Fasciani's findings were consistent with a Functional Behavior Assessment (FBA) that had been conducted by Bourne in November and December of 2014 by Toni Nurse, MS, BCBA (SE-15).
76. Ms. Fasciani recommended programming grounded in principles of ABA and consistent consultation with a BCBA; continued use of enhanced predictability measures; continued social skills training; continued use of non-contingent reinforcement; video modeling; movement breaks; a preference assessment; differential reinforcement of other behavior (DRO); differential reinforcement of alternative Behavior (DRA); extinction for escape maintained behaviors; extinction for attention maintained behavior; clear and consistent rules, expectations and consequences across school settings; and, if possible the use of an appropriate mentor (older student) "for development of age appropriate and expected behaviors through modeling and observational learning" (SE-15). She also suggested that Student be placed on a behavior contract so as to promote accountability over her behaviors in school (*Id.*).

⁸ It appears that Student had just resumed taking her medication at the time of this evaluation.

77. Heather Wenzel-Garte, MS OTR/L, Bourne, performed Student's occupational therapy evaluation on January 17, 2018, at Riverview (SE-16).⁹ She administered the Bruininks-Osteretsky Test of Motor Proficiency (BOT2), the Developmental Test of Visual Perception- Third Edition (DTVP-3), the Wold Sentence Copy, a School Companion Sensory Profile and conducted a clinical observation during Student's ELA class. During the testing Student followed directions, and demonstrated good effort and attention (SE-16).
78. During the observation Student was noted to be engaged during the 40 minute period, asking questions appropriately and working for the length of the period. She used a graphic organizer and her *Chromebook*, navigating the toolbar as needed and typing with both hands (SE-16). Student demonstrated fair upright, functional postural strength when using a table top to work, was able to imitate shift, and could maintain supine flexion for 1 minute. However, she could not correctly maintain the prone extension antigavity posture when lying on her stomach, and had difficulty imitating simple and complex rotation, "all components of in hand manipulation skills" (*Id.*). She evidenced poor organization, pencil grab and handwriting, and she evidenced difficulty with ocular tracking in all planes. Copying was very difficult for Student. Legibility with handwritten samples was fair to poor, and she evidenced letter reversals (SE-3). Student's skill for bimanual coordination, reaching and grasping, was below average. She was unable to tie her shoes, managed snaps with difficulty, adequately zipped, but not buttoned. Ms. Wenzel-Garte noted that Student presented difficulties with visual perception and visual motor integration skills (SE-16).
79. Ms. Wenzel-Garte noted that according to the School Companion Sensory Profile completed by Riverview staff, Student appeared to miss sensory input and as a result is inefficient with performing tasks. She is continuously active and engaged in her environment, almost always singing, humming, whistling and making noises throughout the day, and she seeks movement and fidgeting more than other students. She approaches her teacher excessively, constantly needs to touch surfaces, textures or toys, and touches people to the point of annoying them. Student is distractible and "can be described as over-reactive or dramatic when compared to classmates or peers" (SE-16). It was also noted that Student could be stubborn, ritualistic and uncooperative (SE-16)
80. Ms. Wenzel-Garte opined that Student continued to struggle with handwriting, especially with spatial organization when using unstructured paper sheets, and she noted that Student would continue to benefit from improving her speed in keyboarding skills. Ms. Wenzel-Garte noted that Student would also continue to benefit from strategies to address self-regulation throughout the day, and should work to improve mastery of activities of daily living/self-care (e.g., buttoning, snapping, zipping, and tying her shoes). She recommended that Student receive direct occupational therapy services to address her fine and visual motor skills and activities of daily living. She also recommended consultation to address visual perceptual deficits and self-regulation (SE-16).

⁹ It appears that Student had resumed her medication by the time this evaluation was performed.

81. Christina Caputo, Bourne’s then Director of Special Education, performed an observation of Student at Riverview on January 23, 2018, during Student’s life skills class with her speech and language pathologist. Ms. Caputo noted that there were five students in this group (4 females and 1 male). She noted improved focus and attention during the activities observed (in comparison to previous observations), finding that Student exhibited appropriate behaviors and was supportive and helpful with less capable peers. Ms. Caputo added that while Student had been “compliant and focused on the tasks she was participating in, they did not seem to challenge [Student] in any way. Often [Student] was being asked to not respond so that other students could, and often the other students needed prompting to do so” (SE-18).
82. At Riverview, Student’s relationships with peers were reported as great with some and not so with others. Student has one close male friend. The Riverview staff noted that Student knew how to intentionally escalate individual peer reactions while at the same time demonstrate compassion for other peers who may be feeling upset or ill. She can easily become frustrated and can be bossy. An adult sits with her and her peers during lunch and another adult is present during recess to facilitate appropriate social interactions. Transitions during the school day can be challenging to her. Riverview also reported that Student has had three behavioral plans since the beginning of the school year to address off task behaviors, namely, repetitive tapping on surfaces, talking out in class, taking items that belong to others, engaging in inappropriate interactions with peers and staff and magnitude of reaction to an environmental event (SE-15).
83. Communication between Riverview and home (through a daily communication log) was described as strong (SE-15).
84. The Riverview teachers noted that despite Student having been off her medication she did not lose cognitive ground during the 2017-2018 school year. Ms. Murphy and Ms. Scudder agreed that upon resuming her medication (around January 15, 2018), Student’s attention improved dramatically; she was more engaged and required only one cue per class. Neither teacher knew, when they spoke to Dr. Postal in January of 2018, that Student had not completed fifth grade the year before (SE-13).
85. Student’s Team convened on February 8, 2018, to discuss the result of the school-based evaluations and Dr. Soto’s evaluation (SE-3; SE-8; SE-10).
86. The February 2018 Team proposed an IEP which offered Student partial inclusion in Bourne Middle School’s Intensive Learning Center 2 (ILC 2), with services similar to the previous IEP (SE-3; SE-8; SE-22; Sullivan). This IEP (which covered the period from 2/08/18 to 2/7/19), contained goals to address social skills/behavior, executive functioning, written language, mathematics, reading, occupational therapy, speech and language, and social pragmatics. It offered the following services based on a six day cycle:

Grid A

Speech and language: 1x 15 minutes monthly by the speech therapist.

Behavior: 2 x 60 minutes bi-weekly by the behaviorist.

Grid B

Social Skills: 1 x 30 minutes 1:1 by the counselor

Academic Support: 4 x 60 minutes 1:1 by the special education teacher/staff.

Academic Support: 5 x 90 minutes 1:1 by the special education staff and general education teacher.

Grid C

Social Skills: 1 x 30 minutes by the counselor.

Written language: 5 x 60 minutes by the special education teacher/ staff.

Math: 5 x 60 minutes by the special education teacher/ staff.

Reading: 5 x 60 minutes by the special education teacher/ staff.

Occupational Therapy: 2 x 30 minutes by the occupational therapist.

Speech/language: 2 x 30 minutes by the speech therapist (SE-3).

The IEP also offered Student extended school year services comprising one and a half hours per week each of reading, writing and math (1 x 210), and twenty eight hours per week in a social skills camp (3 x 420) (SE-3; PE-10). Special transportation was also offered. Additionally, because of issues with Student's behavior in school and at home (due to adjustments on her medication and its impact on the school-based evaluations), the Team proposed to conduct an extended evaluation (SE-3; SE-8; SE-22).

87. Under instructional modifications (page 12 of 34), the IEP states that Student will receive the following interventions: “Zones of Regulation, Prosocial Decision Making, Structured language and literacy based activities, Social learning/Communication strategies and resources, Structured keyboarding program, [and] use of Social Thinking programming” (SE-3). The Methodology/ Delivery of Instruction section notes that: additional staffing will be available during all general education periods; speech and language sessions will be delivered in small groups that provide structured strategies and activities; content will be frequently reviewed; there will be opportunities for participation in structured social learning groups; scaffolding to enhance critical thinking and expressive reasoning skills will be provided, as will small group or one-to-one occupational therapy that uses multi-sensory self-regulation strategies, and breaks when Student is transitioning from highly distracting activities to others requiring sustained attention (SE-3).

88. Following the Team meeting in February 2018, Ms. Lord wrote to Ms. Caputo seeking information about the program proposed by Bourne and Ms. Caputo forwarded the information requested on February 13, 2018 (PE-12).
89. Email communication between Karen Paulsen, Executive Assistant in Bourne, and Ms. Lord, dated April 12, 2018, discussed Bourne's request for Parent's provision of a response to the proposed IEP and Extended Evaluation Form previously mailed to Parent on February 20, 2018 (SE-22). The email contained two attachments: the proposed IEP for the period from February 8, 2018 to February 7, 2019 and the Extended Evaluation Form (*Id.*). The eight week Extended Evaluation Form notes that Bourne had not been able to obtain a true measure of Student's then current academic skills because she had been significantly dysregulated during the evaluation owing to being off her medications. Bourne had not been made aware of the medication situation until after the evaluation had been done (SE-22). The District also wanted to perform a home assessment to address Parent's concerns regarding problematic behaviors, difficulties with daily living skills and safety (SE-22). The February 2018 IEP was also mailed to Parent twice. Parent did not respond to the proposal for an extended evaluation, testifying that she had never received it (SE-8; SE-22; Parent).
90. On May 1 and 3, 2018, Lisa Van Luling, Psy.D., NCSP and Rafael Castro, Ph.D. (PE-1A), of the Integrated Center for Child Development (ICCD) conducted a neuropsychological and educational Assessment of Student at Parents' request (SE-1). Dr. Van Luling performed the testing and scoring, and Dr. Castro reviewed the scores (Castro).
91. The evaluation included the Differential Ability Scales- 2nd Edition (DAS-II), Wechsler Individual Achievement Test- 3rd Edition (WIAT-III, selected subtests), Grey Oral Reading Test- 5th Edition (GORT-5), Comprehensive Math Abilities Test (CMAT), Wide Range Assessment of Memory and Learning- 2(WRAML-2, selected subtests), Beery-Buktenica Developmental Test of Visual Motor Integration (VMI), Delis Kaplan Executive Function System (DKEFS, selected subtests), NEPSY-II (selected subtests), RAN/RAS: Rapid Automatized Naming and Rapid Alternating Stimulus Tests, Test of Problem Solving- Third Edition (TOPS-3) and the Vineland Adaptive Behavior Scales- Third Edition (selected domains) (PE-1). The evaluators also reviewed Student's developmental history and educational records, interviewed Parent and conducted clinical observations (*Id.*).
92. Dr. Castro and Dr. van Luling found Student's evaluation results to be consistent with previous assessments, noting skill variability in her cognitive profile. Overall, her scores fell between the lower end of the average range to significantly below age expectations, with verbal skills presenting as a relative strength, and a significant differential between verbal and nonverbal skills. Adaptive skills assessments reflected needs across all areas of self-help, socialization and communication. Student has mastered toileting, showering and dressing skills but still has difficulties expressing her needs and understanding what

is being asked of her. She requires frequent reminders to complete chores independently and safely (PE-1).

93. The Child Behavioral Checklist (CBCL) was completed by Parent, whose responses raised concerns regarding social skills and Student's inability to get along with same-age peers, attention and impulsivity. Parent reported that Student fails to complete tasks very often and can be stubborn and argumentative. Student very much wishes to be social but she struggles to do so appropriately (PE-1). Failure to complete tasks, attention and impulsivity issues were also reported by Ms. Murphy, Student's special education teacher at Riverview (PE-1). Ms. Murphy further noted that Student often displays aggressive behaviors, has difficulties forming social relationships with peers, has mood swings and that she appears anxious, nervous and often seems worried (PE-1). When in a positive mood Student is able to get along with others and be helpful (PE-1).
94. Dr. Castro and Dr. van Luling also assessed Student's socialization skills, finding her skills to fall significantly below age expectations. Student was found to be nurturing to others especially younger children, but has a difficult time making friends with same-age peers as she tends to interrupt others and uses manners inconsistently (PE-1).
95. Dr. Castro and Dr. van Luling found that at the time of their evaluation Student's adaptive functioning and cognitive skills qualified her for an Intellectual Disability (Mild-Moderate) diagnosis. With familiar people, Student was able to follow multi-step directions, communicate her needs and advocate for herself, although her communication was limited by her expressive skills deficits. Her conceptual understanding challenges and intellectual limitations impacted her reading comprehension negatively, despite strong decoding skills. Student was able to write about basic concepts, and her computational and conceptual mathematical skills fell within the very low average range (PE-21).
96. According to Dr. Castro and Dr. van Luling, students with lower nonverbal than verbal skills tend to have executive functioning difficulties, which, in Student's case, manifest as reduced impulse control and attentional challenges, which were observed during testing. They also indicated that in a heavily stimulating environment Student would be overwhelmed (PE-21; Castro).
97. Dr. Castro and Dr. van Luling concluded that at the time of the evaluation Student's needs were significant, noting that she would "require a highly specialized [educational] approach" with intensive supports (PE-1) and recommended a special education residential placement in a setting tailored to meet her social, academic and developmental needs. The comprehensive and specialized instruction should be delivered in a small group setting with like-peers, and should offer opportunities to generalize instruction across settings. The program should also offer intensive remediation of academic skills, life skills instruction and therapeutic interventions (PE-1). Individualized instruction with opportunities for repetition and void of distractions was recommended. Dr. Castro

and Dr. van Luling further recommended provision of occupational therapy, speech and language therapy and social skills work with a school counselor. (PE-1).

98. Although indicating that ideally Student should be with students closer to her in chronological age, Dr. Castro had no reservations with the age difference of peers at Riverview because their abilities were similar. In terms of adaptive functioning, Dr. Castro noted a difference between what Student had the capacity to accomplish and what she could actually do (Castro).
99. During cross-examination, Dr. Castro acknowledged that Student was able to complete the Test of Problem Solving, noting that she scored in the average range of abilities. (Student's WIAT-III scores were also in the average range for essay composition.) (Castro).
100. On May 12, 2018, Student underwent a private audiology/auditory processing evaluation with Gerri Feuer Shubow, M.S., CCC-A, FAAA (PE-3). At the time she was reported to have difficulties with the noise level when in large settings (such as the school cafeteria) and she became distracted by them.
101. While Ms. Shubow found Student to have "normal peripheral hearing sensitivity bilaterally with good single word recognition skills in quiet bilaterally" she was found to present with "significant deficits in all areas of auditory processing" (PE-3). In the Competing Sentence Test, which required Student to listen to two sentences spoken simultaneously on each ear, the expected score was 90% in each ear; Student scored 65% in her right ear and 57.5% in the left. On the Pitch Pattern test, which measures the ability to understand the prosody of speech, Student was expected to get a score of 80%, but she only scored 45% correct. On the Duration Pattern Pest, testing the ability to listen for and process the length of auditory stimuli, Student scored 5% correct answers out of an expected score of 73% (PE-3).
102. Ms. Shubow noted that Student's auditory performance was reduced in both ears. During the test she misheard words when in a degraded listening environment and had difficulty with the accuracy of what she heard when repeating words. She opined that Student would have difficulty listening in large classrooms, noisy settings, lecture-format classes, when listening over a long period of time or when listening to someone who spoke with an accent (PE-3).
103. Ms. Shubow recommended that in the classroom, Student sit with her right ear close to the teacher. Noting Student's challenges in a classroom setting her report states that

[Student's] challenges noted on this testing make listening in a classroom setting more difficult. These difficulties will be harder as [Student] is asked to change classes, move through noisy hallways and settle into different rooms, listen to different teachers

and when there are variations in room acoustics. It takes a greater energy for her to keep herself focused in a noisy setting (SE-3).

She recommended Student's participation in a well-structured, quieter classroom that offered predictable schedules and daily routines and clear and direct instructions with opportunities for previewing information and repetition. Provision of written notes, study guides, summaries, outlines, graphic organizers and handouts of power point presentations were also recommended. Visual information should be accompanied by auditory input. Student should be given preferential seating, be thoughtfully grouped for labs and group projects, be allowed extended time on tests and be tested in a small, quiet environment. Ms. Shubow noted the importance of classroom acoustics, recommended the use of an FM system and that Student be checked for comprehension and encouraged to self-advocate (SE-3).

104. Parent forwarded the two private evaluations to Bourne during the summer of 2018 and Student's Team was convened at the beginning of the 2018-2019 school year to consider the evaluations.¹⁰
105. On July 16, 2018, Parent's Attorney requested a Hearing and noted that if his clients had not already done so, they were rejecting the (February 2018) proposed program and placement (PE-10b). That Hearing Request was dismissed on March 21, 2019 (Administrative Notice of BSEA #1900772).
106. Student's Team convened on September 6, 2018, to review Dr. Castro's and Ms. Shubow's evaluations and their impact on planning for Student's sixth grade in Bourne (SE-4; PE-10a). The Team meeting was chaired by Ms. Leslie Sullivan who is responsible for special education programming at Bourne's middle and high school levels. Ms. Sullivan is trained in school psychology (PE-1; PE-3; SE-4; Sullivan).
107. The IEP Amendment resulting from the September 2018 meeting (covering the period from September 6, 2018 to February 7, 2019), contained goals to address social skills/behavior, executive functioning, written language, mathematics, reading, occupational therapy, speech and language, and social pragmatics in a partial inclusion program in Bourne Middle School. (SE-4; PE-10a). It offered Student numerous accommodations and the following services based on a six day cycle:

Grid A:

[Speech and language]: 1x 15 minutes monthly by the speech therapist

[Behavior]: 2 x 60 minutes bi-weekly by the behaviorist

[Hearing]: 1 x 60 per month by the Hearing Specialist

Grid B:

¹⁰ Elaine Lord, Parent's advocate, forwarded the two evaluations to Ms. Caputo on July 3, 2018 (PE-12).

Social Skills: 1 x 30 minutes 1:1 by the counselor
Social/ Academic: 6 x 45 minutes 1:1 by the
general education teacher/ 1:1 assistant.

Grid C :

Social Skills: 1 x 30 minutes by the counselor.¹¹
Occupational Therapy: 2 x 30 minutes by the
occupational therapist.¹²
Speech/language: 2 x 30 minutes by the speech
therapist
Academics: 6 x 45 minutes science or social studies by
the special education teacher/ staff.
Written language: 6 x 45 minutes by the special
education teacher/ staff.
Math: 6 x 45 minutes by the special education teacher/
staff.
Reading: 6 x 45 minutes by the special education
teacher/ staff (SE-4; PE-10a).

108. Ms. Sullivan testified that science and social studies would be delivered in the ILC 1 and reading, writing and math in the ILC 2 (Sullivan).
109. The IEP also offered Student extended school year services, comprising one and a half hours per week each of reading, writing and math (1 x 210), and twenty eight hours per week in a social skills camp (3 x 420) (SE-4). Special transportation was also offered.
110. The Team disagreed with Dr. Castro's recommendation that Student required residential placement (SE-4; PE-10a).
111. There are two ILC classrooms in Bourne: ILC 1 and ILC 2. The ILC 1 offers services to students who present with intensive needs and complex profiles (more significant intellectual challenges, with significant life skills and adaptive functioning limitations), and who require intensive staff support across settings. The ILC 2 offers support to students with a wide range of learning disabilities who can access instruction at a higher level than students in the ILC 1. Most of the students in ILC 2 are quite independent and do not require an aide when in the inclusion setting. Students can move between the ILC 1 and 2 with ease depending on their needs (PE-2; Sullivan). Ms. Sullivan testified that support services in both ILCs could be delivered on a push in or a pull out model (Sullivan).

¹¹ The Additional Information section of the IEP noted that social skills training would be delivered during lunch or recess through sixth grade so as to "assist with skills training within the natural setting and to assist [Student] in generalizing learned social skills" (SE-4; PE-10a). The IEP further noted that the behavioral support plan would be implemented across settings throughout the school day (SE-4; PE-10a).

¹² The Additional Information section of the IEP noted that occupational therapy services could be delivered in the general education setting "to ensure generalization of skills and to monitor [Student's] implementation of sensory regulation tools" (SE-4).

112. Students in the ILC 2 receive language arts and mathematics in the ILC room and attend inclusion settings for social studies, science, electives and lunch without an aide (PE-2). Ms. Sullivan testified that the ILC 2 is not a resource room but a remedial program for math and English language arts (Sullivan).
113. Students in the ILC 1 receive instruction in all subject areas in the substantially separate classroom, and only access the general education setting for electives and lunch with support of an aide (PE-2; Sullivan). This arrangement may vary somewhat depending on the needs of the students that attend the ILC 1 from one year to the next, but this was the case in 2017-2018 school year (Sullivan).
114. Students in both ILCs are offered the opportunity to sit in smaller areas of the cafeteria or sit with typically developing peers if they so choose. Students in the ILCs are also assigned to a homeroom, which they access at the beginning of the school day as appropriate (*Id.*). The school counselor is very involved in the ILC programs and assists in the application of social skills in the general education setting. Similarly, the occupational therapist often works on application of functional skills in the cafeteria (PE-2; Sullivan).
115. According to Ms. Sullivan, during the 2017-2018 school year the students in the ILC 1 were not appropriate peers for Student (two of the students in the ILC 1 in the 2017-2018 and in the 2018-2019 school years were non-verbal), and the ILC 1 had not been recommended for Student at that time. However, that was not the case during the 2018-2019 school year. She testified that between the two ILCs there were approximately 3 students who would be good peer matches for Student (PE-2; Sullivan). Also, students are often paired with a buddy to help facilitate transition into the program to help them become acquainted with the layout, and these buddies also accompany them to lunch. Ms. Sullivan further explained that there was flexibility¹³ to accommodate students, noting that students flowed successfully between the two ILCs and the inclusion settings (Sullivan). She testified that the paraprofessionals working in the ILCs had worked there for quite some time and were adept at offering support to students in the mainstream without drawing unwanted attention or hovering over. She further testified that she was responsible for their training. In her opinion, Dr. Castro's recommendations could be implemented between the two ILCs in Bourne, especially the ILC 2 (*Id.*).
116. On September 28, 2018, Parent rejected the IEP and placement, noting disagreement with the stated goals and benchmarks, as well as the sufficiency of goals in academic and social/ emotional areas and inaccuracies in the current level of performance. Parent opined that the IEP would be overly restrictive, inappropriate and isolating to Student.

¹³ Ms. Sullivan testified that flexibility was required in Bourne because there was an air force base there that impacted the flow of students in and out of Bourne and special education, so things changed from one year to the next (Sullivan).

However, Parent accepted the proposed occupational therapy and speech and language services (SE-4).

117. Student remained in Riverview for the 2018-2019 school year.
118. Student's September 10, 2018 to June 14, 2019 Riverview IEP (seventh grade) contained goals for written language, mathematics, history/social studies¹⁴, science, social competency, and speech and language (SE-23). This IEP did not contain a goal to address activities of daily living/ life skills (*Id.*). The Current Performance Levels, Reading Goal stated that "by February of 2019, after reading a selection on her instructional reading range (3.0- 4.4), [Student] will be able to orally and/or in writing correctly answer comprehension questions with 80% accuracy with minimal (25% of the time) teacher support in 4 out of 5 consecutive trials" (SE-23). The observations conducted by Bourne in January 2019 noted a much higher level of teacher support than the 25% listed in the Reading goal but, at the time, Student was off her ADHD medications (SE-14; SE-15; SE-23).
119. Dr. Michael Walker Shields, licensed clinical psychologist, was Student's clinical advisor at Riverview as of 2018¹⁵ (PE-18). Dr. Shields indicated that Student's primary challenges at the time they met involved impulsivity, provocation of peers, getting up and walking around in class, gossiping, interpersonal conflicts, and accepting feedback. He further noted Student's issues with anger, fear of closeness and forming friendships. Self-regulation was challenging. He noted that over time Student has begun feeling safe at Riverview, but still needed a great deal of support around peer interactions (Shields).
120. Student initiated the school year as a residential student consistent with Dr. Castro's recommendation, but by the end of October/ beginning of November 2018, Riverview had terminated Student from the residential portion of the program (Parent, Castro, Shields). Dismissal from the residential portion was due to behavioral issues including: meltdowns, outbursts, difficulties with peer interactions and stealing objects (Shields, Castro). Student had great difficulty managing the loose structure of the residences and became easily overwhelmed (PE-2; Shields, Castro). Dr. Shields noted that Student would not be a candidate for residential placement again until the 2020-2021 school year (PE-2; Shields). Parent is not seeking reimbursement for the residential portion of Student's placement in 2018.
121. At Hearing Dr. Castro testified that the day program at Riverview was sufficient for Student now (Castro).
122. Email correspondence between Dr. Shields and Parent dated November 27, 2018 reflects that on that day, Student was in "bright and friendly" spirits. At this point, Student was a day student at Riverview (PE-13). Additional email communication, dated

¹⁴ This goal lists the name of a different student in the Measurable Annual Goal section (SE-23).

¹⁵ Dr. Shields participated in clinical staff meetings during which Student was discussed even earlier.

January 10, 2019, notes that Student had done a fairly good job transitioning back to Riverview after the holiday break when she had been on vacation out of state (PE-12).

123. Dr. Shields opined that Student could be a target as she navigates relationships with same age peers because she still requires guidance and instruction around physical boundaries and touching, and she needs help with regulating impulses (Shields). In his opinion Student needs in the moment intervention to address her social emotional needs and this is provided at Riverview. (She uses Zones of Regulation interventions.) He agreed that Student had difficulty connecting with older students at Riverview (*Id.*).
124. Bourne reconvened Student's Team on January 30, 2019 to conduct its annual review (SE-5; PE-11). The resulting IEP, covering the period from February 8, 2019 to February 7, 2020 proposed to address the same goals and objectives as the previous one (SE-4), and offered Student the same services and partial inclusion placement at Bourne Middle School (SE-5; PE-11).¹⁶
125. Parent rejected the IEP and placement on April 8, 2019 (SE-5; Parent).
126. According to Dr. Castro, inclusion would be inappropriate for Student because she would be vulnerable to overstimulation. He opined that the importance of peer relations could not be underestimated, noting that Student should be exposed to like-peers (Castro).
127. On May 25, 2019, Diane Locatelli Stephens, Ph.D., Educational Specialist at ICCD, conducted an observation of Student at Riverview. She also interviewed teachers and Student's clinical advisor (PE-2). Dr. Locatelli Stephens also reviewed Student's cumulative file and background information and observed the proposed program in Bourne (including both the ILC 1 and 2 programs (PE-2). Prior to working with ICCD, Dr. Locatelli Stephens (CV at PE-2) taught in public schools for two years and served as an administrator (PE-2a; Locatelli Stephens).
128. Dr. Locatelli Stephens observed Student at Riverview for two hours during music, math, lunch and free time. During music, Student was one of seven students participating in a discussion about music and emotions. Student was observed to participate in class, wait her turn patiently and follow instructions, although she did not know the answer to a question, requiring teacher prompting and explanation (PE-2).
129. During lunch Student was observed to sit with a group of girls and they appeared to interact in a reciprocal manner. During free time, Student was observed to chase a boy who asked her to stop. She proceeded to run around the building and then resume

¹⁶ Unlike the previous IEP, however, the Service Delivery Grid on this IEP does not specify what academic areas would be provided during ESY.

chasing the boy. She briefly interacted with a group of students and resumed the chase game with two boys. Student was noticed to smile during most of the period she was outdoors. At the end of the period she transitioned easily to the next class (PE-2).

130. The third period observed by Dr. Locatelli Stephens at Riverview was a multi-grade math class during which the seven students (2 girls and 5 boys) worked independently. Student requested and was given assistance several times. She was observed to be easily distracted by environmental stimuli but was able to redirect herself to the task at hand (PE-2).
131. Dr. Locatelli Stephens discussed Student with Ms. Murphy, Student's teacher, who stated that the day of the observation had been a good day for Student. Ms. Murphy noted that Student sometimes displays excess energy and she can be impulsive, lash out at her peers, have emotional or behavioral meltdowns and can manifest disruptive behaviors (PE-2). Ms. Murphy, who had known Student for two years, noted that Student had made significant progress, was more receptive to guidance and feedback and that she benefitted from, a safe environment, small classrooms where expectations are clear, where the instruction is differentiated to her needs, and with staff who understand her needs (PE-2).
132. Dr. Locatelli Stephens also spoke with Dr. Shields, who indicated that Student had made positive gains during the 2018-2019 school year. Her behavior during the school day had improved and her ability to self-regulate had increased. Student had responded well to the positive behavior supports implemented, including a token economy. She had developed a strong relationship with Ms. Murphy, which Dr. Shields considered to be instrumental in Student's success, and was beginning to make connections with some peers (PE-2; Shields). Dr. Shields further noted that while Student could benefit from residential placement, he did not recommend disrupting her then current emotional stability. He noted that Student benefited from participation in small classes and a supportive peer cohort (PE-2; Shields).
133. Dr. Locatelli Stephens noted that the use of one-to-one support for all inclusion in middle school would be too stigmatizing to Student, who is able to navigate Riverview independently. In her opinion, this was not an appropriate model for Student. She testified that Student required in the moment social/ emotional feedback, opportunities to practice and generalize learned skills, and carry-over during natural contexts throughout the day (*Id.*). At Riverview all students receive social emotional support, so this is normalized and not stigmatizing to any given student. Dr. Locatelli Stephens noted that Student's emotional well-being was instrumental to her ability to access academics and social experiences. She did not support inclusion for Student at this time because of its lack of in the moment feedback. It should be noted that Dr. Locatelli Stephens has never observed Student in any inclusion setting, nor has she ever spoken with Student directly. She obtained information on Student from observation at Riverview and discussions with Dr. Shields and Ms. Murphy. (Locatelli Stephens)

134. On the day of Dr. Locatelli Stephens' Bourne observation, the seventh graders were on a field trip so there were only three sixth grade students present in the ILC 2 whom she observed during the math lesson. She then observed Digital Literacy (an elective which included twelve students, three of whom were from the ILC 1 and accompanied by an aide). Dr. Locatelli Stephens noted that these students worked fairly independently during this period, but did not interact with the rest of the students in the class. Dr. Locatelli Stephens stated that there was a brief interaction between one of the ILC 1 students and another student in the Digital Literacy elective which escalated to yelling, and one student attempted to hit the other but an adult quickly intervened.
135. Dr. Locatelli Stephens indicated that per her observation, there was a "wide range of curriculum-based materials including anchor charts" to help align the ILC 2 curriculum with grade level expectations, with a focus on providing academic support to the ILC 2 students. Dr. Locatelli Stephens spoke with the special education teacher (Ms. Cornell) who offers ILC 2 students two sections of language arts and mathematics per day, and one period of academic support. Dr. Locatelli Stephens noted that the ILC 2 students may present with general anxiety, but not with behavioral or emotional issues. Social skills issues are addressed if they arise but no social skills instruction is offered in the ILC 2. Dr. Locatelli Stephens found the ILC 2 to provide a friendly and structured educational setting (PE-2).
136. In discussing the ILC 1, taught by Ms. Perry, Dr. Locatelli Stephens noted that it has a higher student teacher ratio than the ILC 2, and students receive math, science, social studies and language arts in the substantially separate classroom. Every lesson starts with a warm-up activity and then the students break into small groups, or they work individually with staff at their individual skill level. Students in the ILC 1 are provided individual or shared support when in an inclusion setting (PE-2).
137. Both ILCs offer access to related services including occupational therapy, social skills and speech and language (PE-2).
138. Dr. Locatelli Stephens, opined that Student continued to require the comprehensive, specialized unified programming offered at Riverview, finding the public school's inclusion and general education setting to be inappropriate at this time, as Student becomes "easily overwhelmed by large settings, new situations and increases in demands". Dr. Locatelli Stephens recommended participation in a small, specialized setting that can help reduce Student's anxiety and help her better navigate social interactions. She discouraged the use of a one-to-one aide in the general education environment as stigmatizing, and recommended provision of direct instruction and opportunities to practice learned skills in a safe environment with accepting, like peers. Dr. Locatelli Stephens opined that Student would regress if she returned to Bourne (PE-2).
139. By June 5, 2019, Student continued to have both positive and challenging moments in Riverview, but she was becoming more consistently accepting of staff limits and

redirection. The Riverview staff also noted an increase in Student's ability to bounce back after challenging moments (PE-13).

140. Bourne reconvened the Team on September 13, 2019 to review Dr. Locatelli Stephens' observation report (SE-6). The Team did not change the IEP as a result of the meeting (*Id.*).
141. Ms. Sullivan testified that in Bourne, middle school students are offered opportunities for inclusion during after-school activities through unified sports and art classes in which mainstream and special education students participate together (Sullivan). She stated that staff can also support students with disabilities during other activities that may be of interest to them. She noted that Bourne also offers a Best Buddies type program which matched disabled and non-disabled students for social activities (Sullivan).
142. Mr. Davidson testified that he observed Student in Bourne on three occasions, including during the fall of 2018 back to school night (attended by about 300 people); at a track meet for students in Special Olympics in the spring of 2019 (in which 17 schools and over 500 students participated); and at a high school volley ball game in the fall of 2019 (attended by over 150 people). He observed Student supporting other students and helping them get ready for events during the Special Olympics event, and also saw her teaching another student how to use the bingo cards and move from table to table during the back to school night. He noted that she attended the volley ball game with a friend and handled the whistling and screaming during the game. He testified that Student navigated the environments independently and appropriately (Davidson). Ms. Sullivan also observed Student during the open house, at a volley ball game and at the track meet, and she concurred with Mr. Davidson's observations (Sullivan).
143. In the fall of 2019, Ms. Sullivan observed Student at Riverview. She opined that there was no significant difference between Student's private special education program and the ILC program offered at Bourne (Sullivan). Ms. Sullivan further testified that in 2019 there were two students in the ILC 1 that were higher functioning. They were able to access inclusion social studies and science. She testified that there was a wide range of students in the ILC 1 and opined that Student could be serviced through a combination of both ILCs.
144. Mary Beth Thatcher, Education Coordinator, Riverview Middle and High School, is responsible to ensure that students are placed in appropriate classes. She is also responsible for staff training (Thatcher).
145. Ms. Thatcher explained that when a social *faux pas* occurs at Riverview, the experience is immediately dissected using a social autopsy, and that this occurs all day, across all settings. She opined that although Student had improved in all areas, she still has a difficult time with social awareness, with reading a room and knowing what is appropriate, in shifting gears and with task initiation and sustainability. Ms. Thatcher noted that Student needed to learn to respect ideas even if she disagrees with them, and to

wait her turn. She opined that Student benefitted from being at Riverview because she was there learning to take the perspective of others (Thatcher).

146. Ms. Thatcher testified that at present Student is reading *Fountas and Pinnell* 4.6 grade level and writing paragraphs (with an opening, closing and five supporting details, done in collaboration with other students), while she had previously been writing at the sentence level (Thatcher).
147. Ms. Keane testified that when Student left Plymouth at the end of fourth grade, she was reading fifth grade level passages and writing paragraphs with template support (SE-2; SE-20).
148. Ms. Keane opined that Student had regressed academically while at Riverview. She also testified that during her observation in Riverview Student's behavior plans were not implemented with fidelity across settings (Keane). None of Parent's experts ever observed Student in Plymouth (Keane).
149. Riverview does not offer occupational therapy and the record is unclear as to how speech and language services are delivered.
150. Parent testified that Student participated in Riverview's five and a half week summer programs in 2018 and 2019. She further stated that Student does not do well with anything that is five weeks long. Students at camp were mean to her and she was paired with a counselor to work with younger children (Parent).
151. Exhibit PE-4 is a statement written by Student at Riverview as part of a class assignment, reflecting her views on her three different placements and her preference for Riverview (PE-4). At present, she feels connected to people at Riverview, has developed trust in some of the staff, has at least one friend (a relationship that was fostered by adults in Riverview), is involved in extra-curricular activities (cross-country running and choir), and has received the "student of the week" award at least once (PE-17; Parent, Shields, Thatcher). Dr. Shields opined that cross-country is a great source of self-esteem for Student.
152. Parent remains concerned that Student should become more independent in terms of life skills and activities of daily living. Parent noted that Student has difficulty selecting weather-appropriate clothing, cannot dress independently or tie her shoes efficiently and is unable to tell time (SE-13; Parent).
153. Exhibit SE-24, Student's Riverview progress reports for the 2017-2018 school year, contain no goals relative to activities of daily living. (The Parties stipulated to this fact.)

CONCLUSIONS OF LAW:

Student is an individual with a disability as defined by the Individuals with Disabilities Education Act¹⁷ (IDEA) and the state special education statute¹⁸ (IDEA). Neither her status nor entitlement is in dispute. Rather, the dispute in the instant matter centers on the appropriateness of the programs offered by Bourne since 2017 and, attendantly, whether Bourne bears retroactive and responsibility to fund Student's day placement at Riverview.

The IDEA and the Massachusetts special education statute and regulations mandate that school districts offer eligible students a FAPE. A FAPE requires that a student's individualized education program (IEP) be tailored to address the student's unique needs¹⁹ in a way "reasonably calculated to confer a meaningful educational benefit"²⁰ to the student.²¹ Additionally, said program and services must be delivered in the least restrictive environment appropriate to meet the student's needs.²²

The above standard, adopted in Massachusetts, is aligned with the Supreme Court's decision in *Andrew F. v. Douglas County Sch. Distr.*, 137 S. Ct. 988 (March 22, 2017) requiring that a student's program and placement be "reasonably calculated to enable [the student] to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas County Sch. Distr.*, 137 S. Ct. 988 (March 22, 2017); *D.B. ex rel. Elizabeth B.*, 675 F.3d at 34. In *Andrew F.*, the Court rejected the "merely more than *de minimus*" standard adopted by the Tenth Circuit, a standard that afforded students significantly less than the standard utilized in Massachusetts.

¹⁷ 20 USC 1400 *et seq.*

¹⁸ 20 USC 1400 *et seq.*

¹⁹ E.g., 20 USC 1400(d)(1)(A) (purpose of the federal law is to ensure that children with disabilities have FAPE that "emphasizes special education and related services designed to meet their unique needs . . ."); 20 USC 1401(29) ("special education" defined to mean "specially designed instruction . . . to meet the unique needs of a child with a disability . . ."); *Honig v. DOE*, 484 U.S. 305, 311 (1988) (FAPE must be tailored "to each child's unique needs").

²⁰ See *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) where the court explicitly adopted the meaningful benefit standard.

²¹ *Sebastian M. v. King Philip Regional School Dist.*, 685 F.3d 79, 84 (1st Cir. 2012) ("the IEP must be custom-tailored to suit a particular child"); *Mr. I. ex rel L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1, 4-5, 20 (1st Dir. 2007) (stating that FAPE must include "specially designed instruction . . . [t]o address the unique needs of he child that result from the child's disability") (quoting 34 C.F.R. 300.39(b)(3)). See also *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir. 1993) (program must be "reasonably calculated to provide 'effective results' and 'demonstrable improvement' in the various 'educational and personal skills identified as special needs'"); *Roland v. Concord School Committee*, 910 F.2d 983 (1st Cir. 1990) ("Congress indubitably desired 'effective results' and 'demonstrable improvement' for the Act's beneficiaries"); *Burlington v. Department of Education*, 736 F.2d 773, 788 (1st Cir. 1984) ("objective of the federal floor, then, is the achievement of effective results--demonstrable improvement in the educational and personal skills identified as special needs--as a consequence of implementing the proposed IEP"); 603 CMR 28.05(4)(b) (Student's IEP must be "designed to enable the student to progress effectively in the content areas of the general curriculum"); 603 CMR 28.02(18) ("*Progress effectively in the general education program* shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the child, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district.").

²² 20 USC 1412 (a)(5)(A).

Pursuant to the standard embodied in *Andrew F.*, *supra*, and the standards applied in Massachusetts, public schools must offer eligible students a special education program and services specifically designed for the particular individual to enable development of the student's educational potential.²³ Educational progress is thus measured in relation to the potential of the particular student.²⁴ The IDEA does not however require that school districts provide the best possible program for the student.²⁵

The program and services designed for each student must be delineated in the student's IEP. The IEP is the vehicle by which the school district proposes to educate the student and its adequacy depends on the circumstances of the individual for whom it is created. *Andrew F.*, at 1001. Development of the IEP requires consideration of the student's: strengths, parental concerns, recent evaluations, and the academic, developmental and functional needs of the child. 34 CFR 300.324(a)(i-v). Each IEP must be reviewed no less than once a year, the annual review. At that meeting the Team must consider the information available on the child including progress, lack of expected progress toward goals and the general curriculum, any reevaluation information, information provided by the parents on the child and the anticipated needs of said child. 34 CFR 300.24(b)(ii)(A-E). Consistent with federal law, parental participation is paramount to the Team's determination of the special education to be accorded the disabled child, and hence the parent's input must be considered in the decision-making as part of the totality of the information available to the Team.

Consistent with federal law, Massachusetts requires that the Team consider the requirements of the general education curriculum, the need for specifically designed instruction and/ or related services to allow the student to progress effectively in the content areas of the general education curriculum. Drafting of an IEP therefore, depends on the information available to the Team at the time the IEP is drafted.

²³ MGL c. 69, s. 1 ("paramount goal of the commonwealth to provide a public education system of sufficient quality to extend to all children the opportunity to reach their full potential..."); MGL c. 71B, s. 1 ("special education" defined to mean "...educational programs and assignments . . . designed to develop the educational potential of children with disabilities . . ."); 603 CMR 28.01(3) (identifying the purpose of the state special education regulations as "to ensure that eligible Massachusetts students receive special education services designed to develop the student's individual educational potential..."). See also Mass. Department of Education's Administrative Advisory SPED 2002-1: [Guidance on the change in special education standard of service] from "maximum possible development" to "free appropriate public education" ("FAPE"), effective January 1, 2002, 7 MSER Quarterly Reports 1 (2001) (appearing at www.doe.mass.edu/sped) (Massachusetts Education Reform Act "underscores the Commonwealth's commitment to assist all students to reach their full educational potential").

²⁴ *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 199, 202 (court declined to set out a bright-line rule for what satisfies a FAPE, noting that children have different abilities and are therefore capable of different achievements; court adopted an approach that takes into account the potential of the disabled student). See also *Lessard v. Wilton Lyndeborough Cooperative School Dist.*, 518 F.3d. 18, 29 (1st Cir. 2008), and *D.B. v. Esposito*, 675 F.3d at 36 ("In most cases, an assessment of a child's potential will be a useful tool for evaluating the adequacy of his or her IEP.")

²⁵ E.g. *Lt. T.B. ex rel. N.B. v. Warwick Sch. Com.*, 361 F. 3d 80, 83 (1st Cir. 2004) ("IDEA does not require a public school to provide what is best for a special needs child, only that it provide an IEP that is 'reasonably calculated' to provide an 'appropriate' education as defined in federal and state law.")

The Team is also charged with the responsibility to determine a student’s placement for delivery of the IEP. When considering placement the Massachusetts regulations require that the student be “educated in the school that he or she would attend if the student did not require special education” unless some other arrangement is dictated by the IEP. 603 CMR 28.05(6). As noted *supra*, to the maximum extent appropriate the student must be educated with non-disabled peers and only removed from the general education setting when “the severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily” in the general education setting. 603 CMR 28.06(2)(C).²⁶ In *C.D. v. Natick Public School Dist.*, 924 F. 3d 621, 631 (1st Cir. 1919) (internal citations omitted), citing *Roland M. v. Concord School Committee*, 910 F.2d 983, 992-993 (1st Cir. 1990), the First Circuit noted that in considering the least restrictive environment requirement the court

Weighed this preference for mainstreaming ‘in concert with the’ FAPE mandate... For schools, complying with the two mandates means evaluating potential placements ‘marginal benefits’ and costs and choosing a placement that strikes an appropriate balance between the restrictiveness of the placement and educational progress.

The educational authorities carry the “primary responsibility for formulating the education” to be provided to the disabled student and for selecting the educational method most appropriate to meet the student’s needs. *Lessard v. Wilton-Lyndeborough Coop. Sch. Dist.* (Lessard II), 592 F.3d 267, 270 (1st Cir. 2010)(citations omitted), quoting *Bd. of Educ. v. Rowley*, 458 U.S. 176, 207, 102 S. Ct. 3034, 73 L.Ed. 2d 690 (1982).

In the instant case, Parents carry the burden of persuasion consistent with *Schaffer v. Weast*, 126 S.Ct. 528 (2005). As such, Parents must prove their case by a preponderance of the evidence.

In rendering my decision, I rely on the facts recited in the Facts section of this decision and incorporate them by reference to avoid restating them except where necessary.

Upon consideration of the evidence, the applicable legal standards and the arguments offered by the Parties, I find that Parent has not met the evidentiary burden of persuasion and thus is not entitled to relief. My reasoning follows.

The Parties agree that Student carries diagnoses of Other Specified Neurodevelopmental Disorder (consistent with a Non-verbal Learning Disability/ NLD), Attention Deficit Hyperactivity Disorder- Combined Type (ADHD), Specific Learning Disorder including reading (Dyslexia), writing and mathematics (Dyscalculia), Unspecified Anxiety Disorder and rule out Reactive Attachment Disorder (RAD). Moreover, in 2017 Dr. Soto clarified that Student’s social challenges were associated with her cognitive limitations, RAD, NLD, ADHD, rather than an Autism Spectrum Disorder (PE-1; PE-5; PE-6; PE-7). The Parties do

²⁶ See also 20 USC §1412(a)(5).

not agree that Student carries a diagnosis of Borderline/Mild Intellectual Disability. As stated earlier they also agree that Student is eligible to receive special education services in the least restrictive environment appropriate to meet her needs, consistent with the law.

The dispute begins in 2017 at the time that Bourne proposed to transfer Student to a partial inclusion program at Bourne's Middle School.

I. The 2017-2018 IEP

When Student's Team convened on May 17, 2017, the end of her fourth grade year, it had available Dr. Coman's 2016 neuropsychological evaluation report (which had been completed at the end of Student's third grade), a 2015 physical therapy evaluation, a 2016 assistive technology evaluation, Ms. Keane's input, progress reports, data gathered and information provided by Plymouth staff working with Student in the substantially separate and inclusion settings, and Parent's input (SE-7, SE-8;---- Keane).

During third and fourth grades Student received direct services for reading, writing, math, occupational therapy, social skills and speech and language in the substantially separate classroom under accepted IEPs. (The record shows that Parent had initially rejected the fourth grade IEP but after reaching a compromise at mediation, she ultimately accepted the modified services as described in the Facts section)(Parent, Keane).

In fourth grade (2016-2017) Student participated in a substantially separate classroom in Plymouth where she had some opportunities for mainstreaming with support during specials and a weekly STEM period. Non-disabled students also participated in Student's homeroom in Ms. Keane's room. Ms. Keane, Student's third and fourth grade special education teacher, noted Student's growth (SE-1, SE-2; SE-19; SE-20). Progress was specifically documented in reading, math, and writing. Progress was also documented in Student's social/behavioral goals, including demonstrating appropriate tone of voice, using appropriate body language, and respecting students and adults, which was a very challenging area for Student (Keane). Ms. Keane opined that Student's progress and performance supported additional opportunities for inclusion during fifth grade. Ms. Keane had also observed Bourne's proposed middle school program prior to the May 2017 Team meeting. The record shows that discussions regarding the possibility of Student transferring to Bourne had ensued since at least January despite Parent's disagreement with this possibility (PE-19).

While noting that Student still faced many challenges, Dr. Coman's evaluation describes Student's clear progress within her overall functioning after completing third grade in the substantially separate program in Plymouth. (Facts # 17 to 24).

The record shows that none of Parent's experts observed Student while in third or fourth grades in Plymouth and therefore, there is no additional information to counter the recommendations of those who had worked with Student and/or were present at Student's May 2017 Team meeting.

The proposed IEP, covering the period from May 2017 to May 2018, called for Student to participate in a partial inclusion ILC 2 program at Bourne Middle School, with small group instruction in math, English language arts, occupational therapy, physical therapy, speech and language therapy and social skills. It offered Student inclusion support for science, social studies, social skills in inclusion settings and specials. The Team was cognizant of Student's challenges with peer relationships and difficulties connecting to others, especially same-aged peers. Bourne noted that transitioning Student in fifth grade would be a natural transition given that all of its students transition to the middle school in fifth grade.

According to Ms. Keane, participation in the ILC 2 was appropriate for Student at that time (Keane).

Having observed the proposed program in Bourne, Parent was concerned that Student would have too many transitions during the day. She was also concerned that the program would be too distracting and too noisy for Student who, at the time, was easily overwhelmed by both. Parent further opined that the pace of instruction was too fast for Student who at home was having difficulty following two-step directions (Parent). Parent testified that she was further disappointed that despite her expectation that Student could remain in Plymouth's substantially separate program through the end of fifth grade, Bourne decided to move her back to Bourne during fifth grade.

Parent had Student reevaluated by Dr. Soto in July of 2017. The findings of his neuropsychological evaluation and recommendations were similar to those of Dr. Coman's 2016 evaluation. He too noted Student's progress since the previous evaluation and recommended that Student continue to receive the same level of support and services she had received the previous school year.

On July 19, 2017, Bourne proposed to conduct updated evaluations of Student over the summer so as to obtain current information regarding her functioning prior to her transition into middle school. Bourne hoped to convene the Team prior to the beginning of the school year so as to adjust the proposed IEP as needed, but Parent did not respond to Bourne's request until December 4, 2017, and only after Bourne had forwarded three more requests to evaluate Student (SE-21). Parent's delay in consenting to the Bourne's request for evaluations, which request predated Student's unilateral placement, unnecessarily delayed and prevented Bourne from acquiring information that would have allowed it to tweak (if/as necessary) its program accordingly and ease Student's transition into middle school.

In August 2017 Parent provided Bourne with notice of her intent to unilaterally place Student in Riverview and her desire to have Bourne fund this placement.

I find that given the information available to the Team in May of 2017, it was reasonable for Bourne to offer Student participation in its ILC 2 program for the 2017-2018 school year and that the proffered IEP was appropriate. As such, Parent is not entitled to reimbursement for her unilateral placement of Student at Riverview for 2017-2018.

The record is clear that 2017-2018 was a very difficult year for Student at Riverview, per both Riverview and Bourne witnesses' reports (Shield). As noted above, since Riverview only offers middle school and high school programs, Student was accepted as a sixth grader, skipping fifth grade altogether, and therefore placed in classes with students much older than she. In fact, there was only one other sixth grade student in Riverview at the time of entry and little is known about this peer except that the peer and Student do not appear to have socialized, further contributing to Student's isolation in this program (SE-13).

I would be remiss if I did not note that placement of a fifth grade student in a sixth grade program, particularly one with Student's constellation of significant social as well as other needs, is troubling. Provision of proper supports as recommended by Dr. Coman, Dr. Postal and Dr. Soto, and an appropriate peer group to help develop social skills was paramount to Student's education, and she did not receive them at Riverview during the 2017-2018 school year.

II. The February 2018- to February 2019 IEP

Following receipt of Parent's consent to evaluate in early December 2017, Bourne conducted its three-year re-evaluation between December 2017 and February 2018, while Student was unilaterally placed at Riverview (SE-11; SE-12; SE-14; SE-15; SE-16; SE-17; SE-18; SE-21).

The speech and language evaluation, conducted by Ms. King, found Student's overall language functioning to fall within the low range of abilities with expressive language vocabulary in the lower end of the average range and receptive vocabulary skills in the low range (SE-11). Ms. King noted that Student's deficits supported provision of direct speech and language therapy that focused on development of receptive and expressive language, social communication and critical thinking skills, and consultation between the therapist and the staff to ensure carryover and generalization of skills. She also recommended that Student be offered opportunities to participate in structured social learning groups to work on her social skills and pragmatic language skills (SE-11).

Mr. Nathan's physical therapy evaluation noted improvement, finding that Student met or exceeded her motor skill goals and objectives (as outlined in Plymouth's IEP) and concluding that Student no longer needed physical therapy (SE-12).

Ms. Voelkerding, who conducted the assistive technology (AT) evaluation, opined that Student could use a combination of handwriting or typing depending on the task at hand, and noted the benefits of typing (SE-17).

The occupational therapy evaluation performed by Ms. Wenzel-Garte found Student to continue to present challenges with handwriting, sensory sensitivity, self-regulation and related daily living skills (e.g., handling zippers, buttoning and tying shoes) (SE-16). She recommended that Student receive direct occupational therapy services to address her fine and visual motor skills, activities of daily living, and also recommended consultation to address Student's visual perceptual deficits and self-regulation issues (SE-16).

On January 12, 2018, Ms. Keane performed an observation of Student on behalf of Bourne during homeroom, reading, transitions and math at Riverview. She was told by two of Student's Riverview teachers that Student's presentation on the day of the observation was more attentive and compliant than was typical. In her report, Ms. Keane remarked that Student's presentation suggested a decline in her ability to sustain attention and work for periods of time both independently and in group situations (SE-14).

Ms. Keane testified that at the time Student left Plymouth (the end of fourth grade), she was reading fifth grade level passages and writing paragraphs with support from templates (SE-2; SE-20).²⁷ Ms. Keane also testified that during her observation on January 12, 2017, Student's behavior plans were not implemented with fidelity across settings in Riverview (Keane).

The behavioral assessment completed by Ms. Fasciani noted that Student's high energy, distracting and attention seeking inappropriate behaviors required a great deal of one-to-one teacher support in order for her to stay on task. Ms. Faasciani indicated that during her observation, Student's Riverview behavioral plan appeared to be followed, as Student earned breaks based on work completion and compliance (SE-15). Ms. Fasciani supported continuation of implementation of a behavior plan with extinction for escape and attention maintained behaviors, differentiated reinforcement of other behavior and alternative behavior, consultation by a BCBA, and implementation of a behavior contract to increase Student's accountability for her behavior in school (SE-15).

Dr. Postal, an independent contractor, conducted observations and a neuropsychological evaluation of Student in January 2018.²⁸ In general, she described Riverview as offering a supportive and warm educational environment and found the teaching staff to be capable (Postal).

However, as with others, Dr. Postal too was alarmed by the age difference between Student and her program peers, noting her isolation during unstructured periods (Postal). Of the 100 students attending Riverview at the time, there were no fifth grade students (Student's true educational level), only one sixth grader, three seventh grade and five eight grade students. The other 90 students at Riverview were high school age (or older) (SE-13). Dr. Postal opined that the lack of age appropriate peers would make it difficult for Student to practice and develop appropriate social pragmatic skills. She was struck by the fact that Student sat with an adult and an older student during her lunch observation, and played by herself during recess (*Id.*). In addition, Dr. Postal noted the lack of consistency in the use of Student's behavior plan during her observation.

²⁷ She would later learn that in 2019 Student was accessing the same grade level material at Riverview.

²⁸ Only after having conducted Student's evaluation and observation, did Dr. Postal (and the rest of the Bourne team) learn that Student was off her medications during the period in which the Bourne evaluations were conducted. This rendered her test results invalid and she therefore relied on the test results of the evaluations performed by Dr. Coman and Dr. Soto in rendering her opinion.

Dr. Postal also had an opportunity to observe Bourne's ILC programs, finding the ILC 2 to be an appropriate program for Student and noting that the inclusion setting was impressive (one of the best she had ever seen). She opined that the Bourne partial inclusion program was educationally appropriate for Student, would offer her the opportunities to develop her social skills with same age peers, and was altogether better suited to address her needs than Riverview.

Bourne reconvened Student's Team on February 8, 2019 to review Dr. Soto's and Bourne's evaluations, which were only partially useful in light of the interruption in Student's medication; by then, back on her medication, Student appeared to be on track once again. (Note that in comparison to previous observers, Ms. Caputo noted that Student demonstrated improved focus and attention during her January 23, 2018 observation as by then, Student had resumed taking her medications (SE 18).

The record shows that Dr. Soto's 2017 evaluation recommended substantially separate instruction, with like peers, that offered multi-sensory instruction for reading, writing, math (core academics), and one-to-one support during inclusion opportunities (PE-7; SE-10). He also recommended continuation of speech and language therapy, occupational therapy, physical therapy, social supports and interventions, supports to address executive functioning deficits, a research-based reading program such as Orton-Gillingham or Wilson, counseling and accommodations (*Id.*). Dr. Soto recommended social skills building through practice and instruction. Dr. Postal supported these recommendations.

Bourne amended its IEP to provide one-to-one support in all inclusion settings and increased the provision of speech and language, extended school year programming and added consultation by a behaviorist (SE-8; SE-22). Bourne further recommended an extended evaluation to better understand Student's issues because of the impact that the lack of medication had on its evaluation and to address concerns regarding carryover into the home setting. The IEP and request for extended evaluation were forwarded to Parent twice (in February and April 2018) and to her then advocate, Elaine Lord. Parent however, never responded to Bourne's request for extended evaluation. At Hearing, she testified that she had never received the request for extended evaluation despite Mr. Davidson persuasively testifying that the information was mailed to Parent's correct address and email, as well as to her then advocate Ms. Lord.

Given the information available to the Team from Dr. Soto and Dr. Postal's evaluations, neither of which recommended a setting as restrictive as Riverview (but rather a program and services that could have been implemented in Bourne), as well as the evaluations and observations performed by other Bourne personnel and Riverview staff, I find that the IEP calling for a partial inclusion program in Bourne was appropriate.

Moreover, in light of the circumstances and based on the information available at the time Bourne's offer to conduct an extended evaluation was sound, especially when considering the issues with Student's medication during Bourne's evaluation.

The evidence supports a finding that Bourne's February IEP and offer to conduct an extended evaluation were appropriate. Therefore, it was not responsible to reimburse Parent for Student's unilateral placement in Riverview for the entirety of the 2017-2018 school year.

III. The September 2018 IEP

Parent had Student evaluated in May of 2018, this time by Dr. Castro, who performed a neuropsychological evaluation. I note that Dr. Soto had not recommended another evaluation for two years. At the time of Dr. Castro's evaluation Student was almost finished with her first year at Riverview.

Dr. Castro found Student to be lower functioning than had previous evaluations and noted a decrease in her IQ scores, resulting in his conclusion that Student now presented with an intellectual disability. Based on his findings and experience with children with similar profiles, he recommended residential placement at Riverview.

Dr. Postal however, was persuasive that since up to this point Student had consistently scored within the average to borderline ranges in IQ, and especially because she had demonstrated impressive problem solving abilities, she could not possibly have an intellectual disability unless she had a neurological dysfunction caused by a medical disease (Postal). Moreover, since the alleged drop in IQ apparently occurred after Student had been at Riverview for almost one year, this would only serve to raise concerns about the appropriateness of the Riverview program. (I note that Dr. Soto's evaluation the summer prior to Dr. Castro's evaluation provided WISC scores in the average, low average and borderline ranges).

Unlike Dr. Postal, Dr. Castro did not conduct any observation of Student in any setting. Moreover, no other evaluator or direct service provider ever recommend residential placement for Student. (More importantly, as discussed below, once parent placed Student residentially at Riverview in the fall of 2018, she failed to the point where she was terminated from the residential component within a couple of months.) I therefore find that Dr. Castro's testimony and recommendation for residential placement unsupported by the totality of the record evidence and thus, unreliable. In contrast, I find Dr. Postal's testimony to be credible and reliable.

During the summer of 2018, Parent had Student evaluated by audiologist Ms. Shubow who, based upon the results of her evaluation, opined that Student would encounter difficulty listening in large classrooms, noisy settings, lecture-format classes, or when listening over a long period of time (PE-3).

Ms. Shubow recommended Student's participation in a well-structured, quieter classroom that offered predictable schedules and daily routines. She further recommended other good teaching practices such as clear and direct instructions; opportunities for previewing and repetition; provision of written notes, study guides, summaries, outlines graphic organizers and handouts of power point presentations; multi-sensory presentations; preferential seating;

thoughtful groupings; extended time/quiet environment for tests; testing and the use of an FM system (PE-3).

Parent testified that Student participated in Riverview's summer program during the summer of 2018, noting that Student faced challenges in this setting as she did not do well with five-week programs in general, and indicating that she had socialization issues with peers (Parent).

Bourne convened Student's Team in September of 2018 to discuss Dr. Castro's and Ms. Shubow's evaluations. The Team rejected Dr. Castro's recommendation for residential placement. However, in light of Ms. Shubow's report, Student's IEP was amended to include all of Student's academics (including science and social studies) in the substantially separate classroom and to add consultation by an audiologist. Student would also continue to receive Grid C reading, writing, occupational therapy, social skills group and speech therapy. This IEP also proposed that Student participate in inclusion settings for electives and lunch with one-to-one support for electives (SE-4; PE-10a). (I note that Bourne's offer to conduct an extended evaluation was still outstanding at this time since Parent had never responded to the offer last forwarded to her in April of 2018.)

It became apparent from Ms. Sullivan's testimony that while, pursuant to this amended IEP, the bulk of Student's services Grid C would be delivered through the ILC 2 program, Bourne may have intended to deliver Grid C science and social studies within the ILC 1 setting. Both Dr. Postal and Ms. Keane had found the ILC 1 setting inappropriate for Student, as the peers in that setting were significantly more disabled than she.

Ms. Sullivan testified that the ILC 1 was designed for students with more significant intellectual needs who presented with significant life skills and adaptive functioning limitations. According to Ms. Sullivan, two of the students in the ILC 1 in the 2018- 2019 and in the 2019-2020 school years were non-verbal. In 2019 two other high functioning ILC 1 students were able to attend inclusion social studies and science. Ms. Sullivan testified that support services in both ILCs could be in a push in or a pull out model. She opined that Student could be serviced through a combination of both ILCs.

I find that Ms. Sullivan's position regarding Student attending the ILC 1 for social studies and science is not persuasive as Student would be in a room with non-verbal students for these subjects while the higher functioning students in the ILC 1 would be in the inclusion setting. This arrangement would defeat Student's social skills goals and would render this portion of her placement more restrictive. Thus, while Bourne's Team was responsive to the available data and amended the IEP accordingly, the proposed placement for delivery of social studies and science in the ILC 1 would have been inappropriate.

As foreshadowed above, pursuant to Dr. Castro's recommendation, Parent had placed Student in Riverview's residential program at the beginning of the 2018-2019 school year. Student's residential experience at Riverview was disastrous and she was ultimately dismissed in late October 2018. In the residence, her behavioral issues included meltdowns,

outbursts, difficulties with peer interactions and stealing objects (Shields, Castro). Student however, continued to participate in Riverview's day program and once out of the residence, eventually settled back into the day program. Communication between Dr. Shields and Parent at the end of 2018 and in January 2019 note Student becoming more relaxed and adjusting better to the environment.

Parent is not seeking reimbursement for the residential portion of Student's program, only the day program. However, Parent failed to meet her burden of persuasion with respect to the social, behavioral or academic appropriateness of even the day portion of the Riverview program during the 2018-2019 school year. Based on the testimony offered at Hearing, by the end of the 2018-2019 school year Student was functioning academically at the same level she was when she left Plymouth in 2017. She was starting to demonstrate improvement in self-regulation, self-esteem and development of social skills, with great support from the staff (Shields, Thatcher). Such progress, however, is insufficient to render the Riverview placement appropriate.

Therefore, while the science and social studies ILC 1 component of Bourne's program may not be found appropriate for the period from September 2018 to February 2019, neither can Student's program at Riverview. Thus, Parent is not entitled to reimbursement for her unilateral placement of Student during the life of the IEP ending in February 2019.

IV. IEP dated 2/8/2019 through the beginning of the 2019-2020 school year

Bourne's Team convened on January 30, 2019 to conduct its annual review. At the time, no new evaluative data was available. At Riverview, Student had been dismissed from the residential portion of the program and was still adapting to the day environment. Thus, Bourne offered Student an IEP that provided the same program and placement as the one before.

Thereafter, when the Team reconvened in September 2019, no changes were made to her IEP and placement. Given Ms. Sullivan's testimony regarding the fluidity between the ILC 1 and ILC 2, and the fact that Student's social studies and science classes would be offered in the ILC 1 (the ILC 2 did not offer Grid C science or social studies), this placement was not appropriate for Student.

Both Ms. Thatcher and Dr. Shields testified that Student has made social emotional progress over the past year which should not be underestimated.

Dr. Locatelli-Stephens observed Student at Riverview on May 25, 2019 during what was described by the staff to be a good day for Student. In class she was observed to participate, wait her turn and follow instructions. During lunch she sat with a group of girls interacting in what appeared to be a reciprocal manner (the age of these students is unknown). During recess she was observed to chase a boy who did not wish to engage her and then she ran around the building on her own before resuming a chase game with two boys. Student was

observed to transition easily from recess to her next class. Dr. Locatelli-Stephens noted that Student appeared comfortable and happy in this environment.

In discussions with Ms. Murphy Dr. Locatelli-Stephens learned that Student had progressed with her self-regulation, noting, however, that she could still display impulsivity, lash out at peers, have emotional meltdowns and display disruptive behaviors (PE-2; Locatelli-Stephens). She had just recently begun developing friendships with other students.

The evidence is persuasive that Riverview has provided Student a safe environment in which she has begun to make effective progress in addressing her social and self-regulation issues, and I am persuaded by Dr. Shields that this is an important part of Student's education. However, the evidence is also convincing that Student is not being appropriately challenged academically and that despite the comfort, ease and safety of her Riverview placement, she needs to learn to navigate social situations with same age peers (disabled and non-disabled). This cannot be achieved at Riverview.

Turning to academic progress, while in Plymouth both Dr. Coman and Dr. Soto noted academic progress. Ms. Keane opined that while at Riverview Student had regressed academically. She persuasively testified that Student was accessing fifth grade material/ text and writing paragraphs with the use of templates and support at the end of fourth grade. According to Ms. Thatcher, Student is now, in 2019 reading fifth grade text and writing paragraphs at Riverview. She is reported to have mastered *Fountas and Pennel* benchmarks up to 4.6. (Having been Student's teacher for two years, Ms. Keane was in a better position to assess Student's educational and academic needs than Ms. Locatelli-Stephens who did not observe Student in Plymouth and whose opinions were based on observations at Riverview after Student had been there for close to two years.) It is concerning that after two years at Riverview she has not advanced in either reading or writing.

At Riverview Student was also not being challenged from a social skills standpoint until 2019. The record shows that since Student was in Plymouth, she connected better with adults and younger children, but has consistently evidenced great difficulty connecting to same age peers. This difficulty continued at Riverview where it has taken her two years to develop a connection with her teacher and counselor. Only recently has she begun to develop a friendship with another female close in age, and only after the relationship was fostered by the adults.

Notably, Student was observed during large, unstructured activities at Bourne high school by Mr. Davidson and Ms. Sullivan in the fall of 2018, the spring of 2019 and the fall of 2019. On all three occasions she did not appear to be bothered by the crowds or loud noises, participated appropriately in the activities, independently maneuvered the settings, and was observed helping a friend and sport team mates (Davidson, Sullivan). The aforementioned is strong indication that Student is ready for more social challenges and inclusion than she is being offered at her Riverview placement. (I note that in contrast, Dr. Locatelli-Stephens observed Bourne's programs and found the inclusion component inappropriate for Student given her vulnerability to becoming overwhelmed by large settings, new situations and

increases in demands. Dr. Locatelli-Stephens however, did not observe Student in any of the aforementioned scenarios.)

As noted above, the evidence is persuasive that Student is not being appropriately challenged academically and that despite the comfort, ease and safety of her Riverview placement, she needs to learn to navigate social situations with same age peers (disabled and non-disabled). This cannot be achieved at Riverview. However, consistent with the terms of this Decision, below, a FAPE can be offered to her at Bourne.

Since Student has been out of district for almost three years, Bourne shall conduct an extended evaluation upon Student's return. As Bourne correctly asserts, this will afford the district an opportunity to evaluate and amend its IEP as needed. Upon re-entry, Bourne shall modify Student's program so that all academics are offered with appropriate peers during the extended evaluation period and beyond. Depending on the results of the extended evaluation, Student may be eased into inclusion classrooms if and when appropriate, but not before the extended evaluation period has been completed.

Bourne should be mindful of Student's difficulty with transitions, and given that she would be returning to Bourne mid-year, it is imperative that she be provided the necessary supports to make the transition a successful one. Bourne is cautioned to use support services in the mainstream in a manner that does not stigmatize Student.

Lastly, given that participation in choir and cross-country have proven to be important sources of self-esteem development for Student, she should be offered opportunities to participate in unified sports and/or Special Olympics in Bourne.

Parent has neither met her burden of persuasion that Bourne's program cannot be modified to provide FAPE, nor that Riverview is an appropriate placement for the period from February 2019 to February 2020. As such, Parent is not entitled to reimbursement for her unilateral placement of Student for said period.

Finally, Parent did not meet her burden of persuasion that the Riverview summer programs were appropriate for Student either in 2018 or 2019, and she is therefore not entitled to reimbursement for these placements

ORDER:

1. Parent is not entitled to reimbursement from Bourne for Student's unilateral placements at Riverview for the 2017-2018 and the 2018-2019 school years, and for the period through February of 2020.
2. Parent is not entitled to reimbursement from Bourne for Student's 2018 and 2019 summer programs.
3. Bourne shall reconvene Student's Team and offer Student an IEP and placement that is consistent with the terms of this decision. Upon re-entry Bourne shall perform an extended evaluation and thereafter, amend Student's IEP as appropriate.

By the Hearing Officer,

Rosa I. Figueroa

Dated: December 23, 2019

December 23, 2019

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

BOURNE PUBLIC SCHOOLS

BSEA # 2000039

BEFORE

**ROSA I. FIGUEROA
HEARING OFFICER**

**SEAN GOGUEN ESQ., ATTORNEY FOR PARENTS
ANDREA BELL, ESQ., ATTORNEY FOR
BOURNE PUBLIC SCHOOLS**