

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

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re:    Student v. Holliston Public Schools**

**BSEA No. 1910125**

**DECISION**

This decision is issued pursuant to the Individuals with Disabilities Education Act or IDEA (20 USC Sec. 1400 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 USC Sec. 794); the Massachusetts special education statute or “Chapter 766” (MGL c. 71B), the Massachusetts Administrative Procedures Act (MGL c. 30A) and the regulations promulgated under these statutes.

The Student in the instant case is a fourteen-year-old child with several disabilities affecting learning and attention who currently attends the Eagle Hill School in Hardwick, MA pursuant to a unilateral placement made by Parents<sup>1</sup> in August 2018. On May 3, 2019, Parents filed a hearing request with the Bureau of Special Education Appeals (BSEA) in which they alleged that previous and then-current Individual Education Programs (IEPs) and corresponding placements proposed by the Holliston Public Schools (Holliston, HPS, or School) were not reasonably calculated to provide Student with a free, appropriate public education (FAPE). Parents sought an order from the BSEA directing Holliston to reimburse them for the expenses they incurred in placing Student at Eagle Hill during the summer of 2018 and the 2018-2019 school year, as well as to determine that Eagle Hill was Student’s “stay put” placement.<sup>2</sup> On June 28, 2019, Parents filed an amended hearing request to incorporate an IEP issued on June 4, 2019, and to request an order that Holliston reimburse them for expenses incurred and/or paid for the Eagle Hill placement during the 2019-2020 school year.

Upon receipt of Parents’ hearing request, the BSEA scheduled an initial hearing date of June 4, 2019. At the request of the parties, the hearing was postponed for good cause on two occasions, and was held on September 18 and 20 and October 2, 3, 7, and 18, 2019 at the office of Catuogno Court Reporting in Worcester, MA. Both parties were represented by counsel and had an opportunity to examine and cross-examine witnesses as well as to submit documentary evidence for consideration by the Hearing Officer. The parties requested and were granted a postponement until November 20, 2019 to submit written closing arguments. On that day, written closing arguments were received and the record closed.

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<sup>1</sup> Student lives with his father. In 2018, Father delegated educational decision-making authority to Student’s aunt (“Aunt”). For the sake of brevity, Father and Aunt will be referred to as “Parents” unless otherwise required by context.

<sup>2</sup> Student attends Eagle Hill’s optional residential program; however, Parents are seeking reimbursement and prospective funding solely for the day portion of Student’s placement.

The record in this case consists of Parents' Exhibits P-1 through P-34, School's Exhibits S-1 through S-50, as well as approximately 30 hours of electronically and stenographically recorded witness testimony and argument of counsel. Those present for all or part of the proceeding were the following:

Father

Aunt/Educational Decision Maker

Kim Bedard	Middle School Special Education Teacher, HPS
Meg Camire	Director of Student Services, HPS
Kelly Camp	Student Services Administrator, Middle School
Roberta Green	Neuropsychologist
Kelley Malloy	Grade 7 English Teacher, HPS
Lisa Mazzola	High School Special Education Teacher, HPS
Lauren Morton	High School Special Education Teacher, HPS
John Powers	Guidance Counselor, HPS
Jessica Smith	School Psychologist, HPS
Naami Turk	Consulting Clinical Psychologist, HPS
Claire Thompson	Attorney for Parent
Katie Meinelt	Attorney for Holliston
Sara Berman	BSEA Hearing Officer
Christine M. LoSchiavo	Court Reporter

### **ISSUES PRESENTED**

The issues for hearing were the following:

1. Whether Holliston's proposed IEPs for the following periods were reasonably calculated to provide Student with a free, appropriate public education (FAPE).
  - a. June 2018 to June 2019 (6/13/18-6/12/19)
  - b. December 2018 to June 2019 (12/6/18-6/12/19)
  - c. June 2019 to June 2020 (6/4/19-6/3/20)
2. If not, whether the Eagle Hill School day program, in which Parent unilaterally placed Student in August 2018, is appropriate pursuant to federal and state law relative to such unilateral placements;
3. If Eagle Hill School is appropriate, whether Parent is entitled to reimbursement from Holliston for the costs paid and/or incurred by them for Student's placement at the Eagle Hill School day program for the summer of 2018, the 2018-2019 school year, and any portion of the 2019-2020 school year.

### **POSITION OF PARENTS**

Student has a significant neurological disability as well as ADHD which cause him to be tremendously distractible in the school setting. To make effective educational progress, Student needs specialized instruction in small classes of 6 to 8 students throughout his school day, to minimize distractions while allowing teachers to deliver instruction at a slow pace and to continuously engage Student in learning. During the relevant time period Holliston placed Student in inclusion classrooms with 18 or more students for most of his school day, and provided only one period per day of academic support in a small-group, education classroom. Because of his disability, Student was distracted, disengaged, and “lost” in the inclusion classrooms, and did not have meaningful access to the curriculum. Most actual instruction was confined to his one period per day of academic support.

As a result of Holliston’s inappropriate placements, Student failed to make effective progress during grades six and seven. In seventh grade, Student’s grades fell, he engaged in disruptive behavior, he made little progress on his IEP goals or core academic skills, his IQ score declined, he became unhappy with school, and he expressed a desire to drop out as soon as possible. Parents began raising concerns about Student’s progress in the early spring of seventh grade; however, Holliston never advised the family that the Team could develop a different type of programming for Student within the District, or that it could refer the family to a state-approved public or private day school. Rater, despite Student’s lack of progress, the School proposed a nearly identical IEP and placement for Student for eighth grade. Neither a revised IEP issued in the middle of Student’s eighth grade year nor the IEP proposed for ninth grade provided for the small classes with instruction tailored for Student’s unique profile.

Faced with Holliston’s failure to provide appropriate services to Student during sixth and seventh grade, Parents were justified in rejecting the proposed eighth grade IEP as well as successor IEPs and unilaterally placing Student at the Eagle Hill School. Eagle Hill has provided Student with the small classes and slower-paced, tailored instruction that Student needs in order to learn. Student is happy at Eagle Hill and has made meaningful educational progress. Although Eagle Hill is an unapproved program, it meets Student’s special educational needs.

### **POSITION OF SCHOOL**

Contrary to Parents’ claim, Student was making effective progress in seventh grade, pursuant to a fully-accepted and implemented IEP. During his seventh grade year, Student matured and became more invested in his learning. Student was accessing the seventh grade curriculum in his inclusion classes by utilizing the strategies and accommodations available under his IEP with increasing independence, and was making progress on his IEP goals and benchmarks. His grades were commensurate with his ability. The behavioral issues that concerned Parents at the start of seventh grade were minor and fairly typical for boys of Student’s age, and improved as the year progressed. The IEP and placement that Holliston proposed in June 2018 for eighth grade was appropriate in light of the progress that Student had made in seventh grade, and in December 2018, Holliston revised the eighth grade IEP to reflect many of the recommendations of Parents’ neuropsychologist, Dr. Roberta Green. Similarly, the IEP for ninth grade (2019-2020) was appropriate.

Parents initially placed Student at Eagle Hill for non-educational reasons,. They did not raise concerns or objections to Holliston’s IEPs until after they had decided to place Student at Eagle Hill. They did not rely on any expert evaluation when they decided to place Student at Eagle Hill. They rejected Holliston’s offer of additional school-based assessments and their private neuropsychologist, Dr. Roberta Green, did not evaluate Student until after he had begun attending Eagle Hill. Parents failed to give timely notice to Holliston of their intent to place Student in the Eagle Hill summer program. They presented no expert evidence to the Team or at hearing that Student required small, substantially separate classes for all subjects, let alone an out-of-district placement. The evaluation and testimony of their expert, Dr. Green, did not support such placement and was unreliable for multiple reasons. Moreover, Parents refused to allow Holliston personnel to observe Student at Eagle Hill, despite their pursuit of funding from the District for Student’s placement there.

Finally, Eagle Hill School is not appropriate for Student. It holds no state approval to provide special education services to publicly-funded students. It does not accept funding directly from school districts, does not comply with federal or state special education laws, and does not follow the Massachusetts curriculum frameworks. Additionally, Eagle Hill has not articulated how it provides specialized instruction that targets Student’s special education needs or how it measures his progress. Eagle Hill is overly restrictive for Student, who derived academic and social benefit from his participation in his well-supported inclusion classes and the wider middle school community.

### **SUMMARY OF THE EVIDENCE**

1. Student is a 15-year-old child with disabilities who is a resident of Holliston. Student’s eligibility for special education and related services from the Holliston Public Schools pursuant to the IDEA and MGL c. 71B is not in dispute. Student attended the Holliston Public Schools from Kindergarten through the 2017-2018 school year (seventh grade). In July 2018, Parents unilaterally placed Student in the Eagle Hill School, and Student has attended Eagle Hill as a residential student from that time to the present. (Camp, Parent, Geary)
2. Student is a kindhearted, friendly, and fun-loving teenager with a good sense of humor. When he attended school in Holliston, he was popular with peers and got along well with adults. He enjoys music and sports, and was motivated to do well academically. During his last year in Holliston Public Schools (seventh grade), he enjoyed hands-on activities in Science as well as debates and discussions in Social Studies and played on his middle school football team. As of seventh grade, he was diligent about completing homework and classwork. (S-21, Bedard)
3. Student has a longstanding, well-documented history of learning challenges. The categorization of Student’s disability profile has evolved over his school years. In first grade, Holliston designated him as having a “developmental delay” based on his difficulty with acquiring reading and writing skills. (S-34). In 2015, when Student was in fourth grade,

Holliston changed his disability category to a “specific learning disability” affecting reading, writing and math. In 2017, Parents notified the School that Student had been diagnosed with ADHD. (Camp) In December 2018, following an independent evaluation that Parents obtained from Dr. Roberta Green, Holliston changed Student’s disability category from “specific learning disability” to “health” and “neurological,” with weaknesses in retrieval, fluid reasoning, reading comprehension, and visual memory. Student’s intellectual abilities are not accurately reflected in standardized IQ scores. Specifically, testing in 2015 yielded cognitive scores in the “low average range,” which declined to the “very low” range in 2018. On the other hand, scores on standardized academic achievement tests conducted in 2018 fell generally in the “average” range, and Student has never presented as a child with significantly below-average cognition. Regardless of labels and test scores, however, there is no dispute that Student’s disabilities have impacted his educational progress. He is highly distractible and struggles with sustained attention, as well as with executive functioning, reading comprehension, written expression, and math. (Bedard, Malloy, Green, Smith)

4. Student was initially referred for special education in first grade to address issues with reading, writing, attention and memory and has been served on IEPs from Holliston since that time. Beginning with Student’s first IEP until the end of seventh grade in June 2018, all of Student’s IEPs, which called for inclusion placements with push-in and pull-out services and accommodations, were fully accepted by Parents. (Camp)
5. In February 2015, when Student was in fourth grade, Holliston conducted a three-year re-evaluation consisting of psychological, academic, speech/language, and occupational therapy (OT) assessments. (S-30, 34, 35, 36). At that time, Student’s IEP called for placement in a general fourth grade classroom with in-class support for reading, writing, and communication. He also received pull-out services in academic support, OT, and speech/language therapy. (S-34).
6. The psychological assessment was conducted by Jessica Kalmanowitz Smith, and consisted of the Wechsler Intelligence Scale for Children, 4<sup>th</sup> Edition (WISC-IV) and Wide-Range Assessment of Memory and Learning, 2<sup>nd</sup> Edition (WRAML-2). Student’s scores in the WISC-IV fell in the “low average” range overall, comprising scores that were “low average” for verbal comprehension, and “average” for perceptual reasoning, working memory and processing speed. (Smith, S-30) The WRAML-2 yielded scores that were “average” for verbal memory and “low average” for visual memory. Ms. Smith noted that Student had stronger ability to process verbal than visual information, and might initially struggle to process, store, and retrieve new information. She recommended several accommodations and strategies, including having Student read passages more than once to aid future recall, providing models for assignments, creating a structured classroom environment, using graphic organizers for writing, teaching organizational strategies, and providing frequent feedback, positive reinforcement and breaks. (Smith, S-30)

7. The Academic Learning Assessment consisted of multiple standardized reading and writing tests<sup>3</sup> as well as tests of spelling and math.<sup>4</sup> Student achieved “average” scores on all reading tests with the exception of “below average” comprehension scores during oral reading on the GORT-4. On the other hand, his silent reading comprehension, where he could look back at text to find answers to questions, was “average.” Similarly, Student’s writing and spelling skills ranged from “low average” to “average,” and he produced a well-organized essay. In math, Student achieved “average” fluency and calculation scores, but “below average” scores in math problem solving. The evaluator observed that during testing, Student worked very hard on some test items, but on other tests, he “struggled to keep his head up, seemed sluggish, and rushed through his work,” As a result, Student’s test scores might underestimate his abilities. The evaluator also noted that according to Student’s classroom teacher, “[a]t times, [Student] can have a difficult time focusing in a whole group setting and can socialize a bit too much. [Student] also seems to be ‘thinking about other things’ at times and can be overly tired, which affects his ability to focus in school. When he is like this, we tend to see more inconsistent work production and quality.” (S-34)
8. Student had been receiving OT services in early elementary school to address visual-motor integration weaknesses affecting handwriting. Testing in 2015 showed that Student had made “significant improvement” and achieved “average” or “above” average” scores in several tests of visual-perceptual, copying, and typing skills. His only low score was a “very poor” in eye-hand coordination. The evaluator recommended accommodations such as movement/heavy work breaks and reminders to slow down. (S-36)
9. Similarly, Student’s speech/language assessment showed that Student had made progress since first grade. He achieved “average” scores in almost all measures of receptive and expressive language skills. The evaluator noted that Student had some trouble maintaining his attention and alertness for the duration of testing and got bored with easier tasks, but had developed some strategies to keep himself focused such as using a fidget ball and changing position. (S-36)
10. The IEP issued after the February 2015 re-evaluation (February 2015-February 2016) is not in evidence but is not in dispute in this matter.
11. On February 24, 2016, Holliston convened an annual review Team meeting and issued an IEP covering February 24, 2016 to February 9, 2017, corresponding to mid-fifth to mid-sixth grade. The Student Strengths and Key Evaluation Results Summary described Student as “endearing,” hard-working, athletic, social, thoughtful, and caring. He was “enthusiastic”

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<sup>3</sup> Gray Diagnostic Reading Tests-2 (GDRT-2), Test of Word Reading Efficiency-2 (TOWRE-2), Gray Oral Reading Tests-4 (GORT-4), Test of Silent Word Reading Efficiency (TOSWRE-2), Gray Silent Reading Test (GRST), Writing Process Test (WPT).

<sup>4</sup> Spelling, Math Problem Solving, and Numerical Operations portions of the Wechsler Individual Achievement Tests-3 (WIAT-3)

about completing tasks that interested him, but needed teacher reminders to stay focused on tasks that he found difficult. Team Vision Statement for Student was for him to continue improving his language, reading comprehension, math and writing skills, take more ownership of his work, persevere through difficult tasks, and keep up his motivation. PLEP A of this IEP noted that Student had “significant weaknesses in his visual memory” as well as weak visual organization skills and difficulty with processing, storing and retrieving visual information, especially in math. These deficits affected Student’s reading, spelling, and math skills; Student “benefits from repetition, visual references, and multiple exposures to new material.” (S-40)

12. The IEP continued to have goals in reading, and written language and added a math goal. The portion of the IEP entitled “Present Level of Educational Performance –A (“PLEP-A”) stated that, using a DRA Level 40 (late fourth grade level) text, Student scored in the “advanced” range<sup>5</sup> for reading fluency, and the “independent” range for reading comprehension. His reading goal was to apply learned strategies for fluency, literal, and inferential comprehension to learned text, with 85%-95% accuracy and increasing independence. Benchmarks associated with this goal addressed fluency, predicting, identification of main idea, and making inferences using grade-level text. (S-40)
13. Student’s goal in writing was to use a graphic organizer to compose an organized, multi-paragraph essay that included a main idea and supporting details and that earned an “average” score on grade-level rubrics. Benchmarks included use of graphic organizers to generate sequentially organized paragraphs and generation of details to support main ideas. (S-40)
14. The math goal called for Student to identify strategies for solving multi-step problems and answer open response questions with 85%-95% accuracy. The associated benchmarks addressed calculations using 4 operations with whole numbers, decimals and fractions, two-step word problems, and writing responses to open-ended questions on how to solve a math problem. (S-40)
15. The service delivery grid called for the following in Grid B: literature and language arts, 5 x 60 minutes per 5-day cycle of services from a special educator or paraprofessional for the remainder of fifth grade, and 5 x 50 minutes per cycle for the first part of sixth grade; math, 5 x 55 minutes of services per cycle. In Grid C, Student would receive academic support, 5 x 30 minutes per cycle for fifth grade, and 5 x 42 minutes per cycle for sixth grade. The placement designation was “full inclusion.” (S-40)
16. Under “Nonparticipation Justification,” the IEP stated that Student “performs best in quiet setting without distractions because of his difficulty focusing on a lesson in a large group

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<sup>5</sup> The record does not indicate whether this Current Performance Level was assessed after the three-year re-evaluation in February 2015 or at a later date.

setting. The direct instruction he receives outside the classroom will help him with accessing the general education curriculum.” (S-40)

17. Parent consented to the placement on February 25, 2016 and accepted the IEP in full on March 6, 2016. This fully-accepted IEP was in place during the remainder of Student’s fifth grade year, and from September to February of sixth grade. Student transitioned to the Robert Adams Middle School at the beginning of sixth grade, in or about September 2016. (S-40) Pursuant to the accepted IEP, he was enrolled in inclusion classes for English, math, science and social studies, each of which consisted of 21 to 23 students, six to eight of whom had IEPs or §504 plans. The inclusion classes were taught by a general education teacher plus a special educator or a paraprofessional. Additionally, Student received one period per day of small-group academic support in a substantially separate classroom, taught by a special education teacher. (Bedard, P-31)
18. On December 2, 2016, (mid-sixth grade), Holliston issued a progress report based on the above IEP. According to this report, Student had achieved or nearly achieved reading benchmarks in fluency, predicting, identifying the main idea, inferencing and summarizing. A DIBELS assessment showed that he could read sixth grade level text at an average speed of 138 words/minute. The report stated that Student was expected to attain his fluency and comprehension goal. The progress report for written language indicated that Student was working on benchmarks in generating ideas, organization, voice/word choice, sentence fluency and conventions, but needed varying degrees of teacher support throughout the writing process for tasks such as writing down complete thoughts, making revisions, and completing graphic organizers. The report stated that Student was expected to “attain many of the benchmarks in this goal within the specified time.” In math, Student had come close to achieving benchmarks in calculation, fractions/decimals, word problems and open responses, and was expected to achieve his math goal. (P-14)
19. Holliston issued its final progress report based on the IEP of February 2016-February 2017 on March 21, 2017.<sup>6</sup> As of this report, Student had increased his speed in reading sixth grade text from 138 to 150 words per minute as measured by the DIBELS, and had achieved his fluency benchmark. There was no change from the previous progress report in the other reading benchmarks or in the benchmarks for written language or math. (P-14)
20. On March 1, 2017, Holliston conducted an annual review and issued an IEP covering March 1, 2017 to February 28, 2018. The Team considered the information about Student’s progress referenced above. As with the prior IEP, this IEP stated that Student had a specific learning disability affecting basic reading, reading fluency, reading comprehension and math problem solving. The Student Strengths and Key Evaluation Results Summary stated that while Student was energetic, had strengths in hands-on activities, and worked well with

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<sup>6</sup> The information contained in this report had been gathered by March 1, 2017, and was presented by the Team at the meeting held on that day. The report itself was issued on March 21.

peers, he “requires consistent redirection to maintain focus, as he can be easily distracted both internally and externally,” was able to ask for clarification, but could “rely heavily on adult support to complete work.” (S-41)

21. PLEP A reported that Student’s learning challenges, especially his weaknesses in visual memory, impacted his progress across the curriculum, affecting his reading and spelling skills, especially as content became more complex. He “can fatigue quickly, lose interest/motivation and his comprehension can be greatly impacted.” While Student could make inferences and generalizations and express himself well in class discussions, he struggled to express himself in written form. Student’s visual memory weaknesses impacted his math abilities as well. Accommodations for Student’s areas of weakness included limiting the amount of information presented at one time, highlighting, previewing and reviewing new information, extra time to process verbal information, clear behavioral expectations for the classroom and movement breaks. (S-41)
22. As with the predecessor IEP, the IEP issued in March 2017 contained goals in reading, written language and math. The annual reading goal called for Student to demonstrate fluency and comprehension by reading a sixth-grade level text at the rate of 130 words per minute with 98% accuracy and to score at least 80% in comprehension questions in 4 of 5 opportunities.<sup>7</sup> Reading benchmarks included maintaining the aforementioned fluency level as well as using pre-reading and active reading strategies to answer literal and inferential comprehension questions. (S-41)
23. In the area of written language, Student was able to use graphic organizers to generate essays but needed much teacher support at all stages of drafting and editing. The written language goal was for Student to “demonstrate comprehension across grade-level curriculum” by answering an open response question including a claim and textual evidence to support the claim, with proper organization and grammar, and 2 or fewer teacher prompts. Benchmarks included using graphic organizers for brainstorming claims and supporting details, writing first drafts, using transition words, using text-to-speech software for revising and editing drafts, and achieving grades of 80% or higher. (S-41)
24. Student’s math goal appears similar to the prior goal and called for Student to read, analyze and solve word problems. The associated benchmarks addressed translating the vocabulary in word problems into mathematical terms in order to solve the problem, and solving multi-digit problems using fractions and decimals, all with 80% accuracy. (S-41).

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<sup>7</sup> In the predecessor IEP, Student reportedly could fluently read and comprehend DRA Level 40 text, corresponding to late 4<sup>th</sup> grade level. According to the “Current Performance Level” section of the March 2017 IEP, issued one year later, Student could read at a 4<sup>th</sup> grade level as measured by a computerized fluency program. The record does not fully explain how to measure whether or not Student had made progress in fluency and comprehension over the relevant time period because there is no explanation whether there is any correlation between the two different assessments used.

25. The service delivery grid provided the following: in Grid B, 5x50 minutes/cycle of inclusion support in English and math from March 1, 2016 to August 28, 2017, sixth grade) and added 5x30 minutes/cycle of such support in science and social studies from August 28, 2017 to February 28, 2018. (seventh grade). In Grid C, the IEP provided for 5x41 minutes/cycle of academic support by a special educator or paraprofessional for the duration of the IEP. (S-41)
26. In the section entitled “Nonparticipation Justification,” the IEP stated: [Student] requires specialized instruction in a distraction-free environment” to allow for repeated practice and structured opportunities to learn...skills in reading, writing, and math. This instruction is required for [Student] to improve his ability to...independently access the curriculum.” Parent accepted the IEP and placement in full on May 7, 2017, and implementation of revised benchmarks began as of that date. (S-41, P-15)
27. On June 19, 2017, the end of Student’s sixth grade year, Holliston issued a progress report. In Reading, Student appeared to have achieved the fluency benchmark. Regarding comprehension, the report stated that Student would only implement pre-reading and active reading strategies if guided by a teacher, but would not do so independently. He was more successful answering comprehension questions in a multiple choice format than he was in answering open-ended questions. The teacher who authored the report stated that Student’s “ability to express...comprehension...is highly dependent upon his level of energy, focus, and willingness to learn.” (P-15) In the goal area of writing, Student was able to orally generate a claim with some supporting details during the brainstorming stage, but needed the teacher to write down these thoughts. He understood the curriculum and could produce quality written work, but “requires *significant* support to express his understanding in written form.” (P-15, emphasis in original). In math, Student was close to achieving benchmarks. The report stated that as with reading, Student’s progress was “highly dependent upon his level of energy, focus, and willingness to learn. (P-15).
28. Student’s final grades for sixth grade were the following: English, C-; Math, D+; Science, C; and Social Studies, C+. Teachers commented that Student had the ability to do well in class but that his performance suffered because of his distractibility, lack of focus, low level of work production and lack of independence. The math teacher reported that Student “shut down” at the end of the school year and “wouldn’t produce much work.” In science, Student had “increased difficulty completing his work independently” and “needed more guidance” with assignments during the final school term. (P-14)
29. Student began seventh grade in September 2017 pursuant to the fully accepted IEP covering March 1, 2017 through February 28, 2018. His class schedule consisted of inclusion English, math, science and social studies, and general education “specials” (Music, Wellness, and Technical Education). Similar to sixth grade, Student also participated in five, 41-minute periods of academic support (“support”) per six-day cycle. The support class constituted Student’s only substantially-separate Grid C service. In addition to the support class,

Student's schedule included four class periods per cycle of "skills block," a general education study period where all students could start homework or get help on assignments. (S-12, Bedard)

30. The class sizes for Student's core academic courses were the following: English and Science, 18 students; Math, 14 students; and Social Studies, 22 students. Of the total number of students in each classroom, approximately seven were on IEPs or §504 plans. Two professionals staffed each academic class: a general education teacher plus a special educator, Ms. Kimberly Bedard, in English and Science, and a general education teacher plus a paraprofessional in Math and Social Studies. (Bedard, Malloy, P-30)
31. Ms. Bedard, who was one of two special education liaisons assigned to the seventh grade at Student's middle school, was responsible for overseeing implementation of Student's IEP across all school settings.<sup>8</sup> Ms. Bedard initially acquired background information about Student during his sixth grade year, when sixth and seventh grade teams collaborated to assign students to inclusion classes for the following year. Subsequently, Ms. Bedard worked with Student on a daily basis throughout the 2017-2018 school year. She provided support to Student (and other students on IEPs) in inclusion English and Science classes. With the assistance of two paraprofessionals,<sup>9</sup> she taught his daily Support class, and was available to assist with homework during the daily Skills block. In addition to providing direct instruction to Student, Ms. Bedard monitored Student's progress through daily informal conversations and regular meetings with all of his teachers and paraprofessional as well as tracking his grades and assignments through the School's on-line grade portal. (Bedard)
32. As was the case in sixth grade, the format of Student's classes allowed for a flexible combination of whole-class and small group instruction. For example, Student's general education English teacher, Ms. Kelley Malloy, might present a lesson to the entire class. Ms. Malloy and Ms. Bedard might then break the class into smaller groups to work on a concept or skill. Ms. Bedard would frequently work with students on IEPs, including Student, either in the main classroom or the nearby special education classroom to ensure comprehension of the curriculum or help students get started on an assignment. In the support class, Ms. Bedard and/or a paraprofessional worked with Student individually or in a small group to work on skills and concepts from the inclusion classes, in order to ensure access to the curriculum. (Bedard, Malloy)

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<sup>8</sup> Ms. Bedard holds a Master's degree and Massachusetts licenses in elementary education, grades 1 through 6 and in special education, grades N through 9. Ms. Bedard has held her current position as Holliston's seventh grade special education liaison for the past nine years, preceded by eight years as a special education paraprofessional. (Bedard)

<sup>9</sup>Ms. Cheryl Nickerson, who was the paraprofessional assigned to Student's math class, has a Bachelor's degree as well as course work in early childhood education. The second paraprofessional, Ms. Susan Lynch, who worked in Student's social studies class, has a Master's degree in counseling and psychology and holds state licenses as a social worker, teacher and guidance counselor. (Bedard, S-3)

33. According to Ms. Bedard, Student made effective progress on his special education goals and benchmarks during seventh grade. She testified that in English, Student had achieved his benchmark in reading fluency and was using a computer program to maintain his fluency level. Ms. Bedard and Ms. Malloy, the seventh grade general education English teacher, testified that using the supports and strategies provided by Student's IEP, he was able to read and comprehend the seventh grade literature curriculum, which included increasingly complex materials over the course of the school year, and demonstrated his progress with comprehension both through class discussions and through improved performance on quizzes. (Malloy) Student understood and was able to discuss abstract literary concepts such as symbolism. According to both teachers, Student also made progress on his writing goal, in that he improved his ability to put his ideas into an organized, grammatically correct essay form, and was using the strategies he had been taught with increasing independence. Ms. Bedard and Ms. Malloy believed that Student ranked in the "beginning of the middle" of his inclusion English class. (Bedard, Malloy) Ms. Bedard further testified that Student made progress in math, science and social studies in that he was able to access the curriculum with modifications and support. (Bedard)
34. Ms. Bedard testified that Student also progressed in his ability to self-regulate in the classroom. Specifically, at the start of seventh grade, Student would sometimes behave disruptively within or outside of the classroom (e.g., in the cafeteria), but that this behavior, which was never serious or particularly unusual for a seventh-grade boy, diminished as the year progressed. Similarly, Ms. Bedard stated that while at the beginning of seventh grade, Student would call out in class and complain that work was "too hard," he increased his willingness and ability to initiate work on assignments, as well as to complete assignments independently, using strategies he had been taught. (Bedard)
35. Both Ms. Bedard and Ms. Malloy believed that Student was appropriately placed in inclusion classes. They both testified that Student was motivated to conform to the higher expectations of his inclusion classes, both academically and behaviorally. Most of his "calling out" took place in his Support class. In general, Ms. Bedard and Ms. Malloy believed that during seventh grade, Student grew in maturity, independence, and self-confidence. (Bedard, Malloy)
36. The final progress report for the IEP covering February 2017 to February 2018 was issued on March 19, 2018. This progress report stated that in reading, Student was maintaining fluency of at least 130 words per minute with 98% accuracy when reading a sixth grade text. He was answering literal comprehension questions in 4 of 5 opportunities with 75% accuracy. He performed better on multiple choice comprehension tests than on open responses and was using test taking strategies. In written language, Student had met two of four benchmarks (using graphic organizer for brainstorming and using transition words) and was expected to meet his IEP goal in this area. In math, Student also had met two of four benchmarks (choosing the correct operations in a multi-step word problem by using a reference sheet and solving multi-digit problems with decimals using all four operations). (P-15)

37. Student's final grades for seventh grade were as follows: English, C; Math, D-, Science, C-, and Social Studies, C-. The English teacher, Ms. Malloy, commented that "Given the structures put in place, [Student's] sentences are more fluid, punctuated properly, and cohesive. While he struggles to see more abstract themes, symbols and meanings in higher levels of text independently, with practice and discussion he can make sense of the information."<sup>10</sup> Student's math teacher commented that Student "[h]as difficulty applying mathematical procedures consistently/accurately. Solves problems with assistance. Shows an understanding of concepts, but with assistance." The science teacher commented that "[o]ver the course of the year, [Student] showed an ability to produce better quality work as distractions<sup>11</sup> were minimized." (P-14) Ms. Bedard and Ms. Malloy testified that Student's grades were only one data point for assessing his progress, that Student's having the same or even a lower grade in each successive term could represent progress because the curriculum became more difficult as the year progressed, and that Student's "C" grades in English, Science, and Social Studies were "average" and were satisfactory grades that reflected Student's abilities. (Bedard, Malloy)
38. Student had two recorded disciplinary incidents during sixth grade and five in seventh grade which involved Student disrupting class, by talking, joking, refusing to work, playing music, etc., as well as Student and others refusing to clean their cafeteria table. (S-10, P-16) In addition to the recorded incidents, Student appeared to have ongoing issues with calling out and/or excessive socializing in class. (S-18) Holliston addressed these issues by imposing in-school consequences, communicating with Parents, having Student meet with the guidance counselor and/or the assistant principal, and separating students who misbehaved together. The record contains no evidence of suspensions and no suggestion that Student needed a formal behavior plan. Holliston staff felt that Student's behavior improved over time, and was not particularly unusual for a seventh grade boy. (Bedard, Powers)
39. In approximately February or March 2018, Aunt became involved with Student's education. After reviewing Student's report cards, Aunt became concerned about Student's grades and his educational progress in general, including his reported statements to family members that he was unhappy at school and wanted to drop out as soon as possible. Aunt first shared her concerns with Holliston on March 6, 2018, via a telephone conversation with Ms. Kelly Camp, the Student Services Administrator (SSA) and Team chair for the Robert Adams Middle School, and Mr. John Powers, who was Student's guidance counselor in sixth and seventh grade. (Aunt, Camp, Powers, S-14)
40. During this initial conversation, Aunt discussed the family's concerns about Student's grades and learning challenges. She also told Ms. Camp and Mr. Powers that she wanted to place Student in a boarding school because she felt that he was not getting enough after-school

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<sup>10</sup> Cf. testimony of Ms. Bedard to the effect that Student understood abstract concepts encountered in literature.

<sup>11</sup> At least some of the "distraction" referred to here improved when another student was transferred out of Student's classes during 2017-2018. (Bedard, Malloy, S-18)

supervision at home to enforce homework completion,<sup>12</sup> and because she believed he was hanging around after school with older teens who were a bad influence on him. (Aunt, Powers, Camp)

41. During this conversation, Aunt did not tell Ms. Camp or Mr. Powers that Parents were dissatisfied with Holliston's programming. Aunt testified that at that time, she and Father believed that Holliston had done all that could be done for Student, and had no knowledge of Student's rights under special education law or that Parents could request Holliston to explore additional or different services for Student. Parents came to believe that the only option that could address their concerns would be a private school placement for Student. (Aunt)
42. Additionally, Ms. Camp did not volunteer any information about additional or different services that might be available for Student; she testified that this was because Student was due for a three-year re-evaluation and needed updated assessments to determine if he needed any change in his programming. Aunt offered to ensure that Father signed a re-evaluation consent form, which had been sent to him multiple times since November 2017, and he consented to the re-evaluation on March 16, 2018. At some point during this period, Father designated Aunt as Student's educational decision maker. (Camp, Aunt, S-14)
43. Meanwhile, in late winter or early spring of 2018, Aunt, believing Student needed to be in a different school, conducted a Google search for Massachusetts schools for children with ADHD and learning challenges. She targeted schools serving grades 8 through 12, which provided both small classes and after-school support for homework. The Eagle Hill School appeared to meet these criteria. After reviewing written information and completing a visit with Student, Parents determined that Eagle Hill would be a good fit for Student because of its small classes, apparent student engagement in learning, and after-school homework support. (Aunt)
44. Parents completed an on-line application to Eagle Hill on April 24, 2018. On April 10, 2018, Parents requested assistance from Ms. Camp and Mr. Powers in obtaining letters of recommendation from Student's teachers supporting his Eagle Hill application, and on April 27 and 30, 2018, Student's math and English teachers provided such letters. (S-37) At no time during this application process did Parents inform Holliston that they were dissatisfied with Student's IEP or services, or that they would be seeking public funding for Student's Eagle Hill placement. Student's three-year re-evaluation had not been completed at this point, and Student was attending school under a fully-accepted IEP. (Aunt, Camp, Powers)
45. Student's three-year re-evaluation, comprising psychological and academic assessments, took place in between March and June 2018. In May 2018, the psychological evaluation,

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<sup>12</sup> Aunt testified that she later learned that her initial view regarding supervision was mistaken. (Aunt) The record shows that Student consistently completed most homework and classwork in seventh grade. (Bedard)

consisting of the WISC-V, selected subtests of the WRAML-2, and teacher and self-report forms of the BRIEF-2<sup>13</sup> and BASC-3<sup>14</sup>, was conducted by Jessica Kalmanowitz Smith, who had also evaluated Student in 2012 and 2015. (Smith, S-29)

46. On the WISC-V, Student achieved scores in the “Low Average” range on the Verbal Comprehension, Visual-Spatial, Working Memory, and Processing Speed indices and in the “Very Low” range (scaled score 74, 4<sup>th</sup> percentile) in Fluid Reasoning. The resulting full-scale IQ (FSIQ) score was in the “Very Low” category (scaled score, 76, 5<sup>th</sup> percentile). Student’s FSIQ had dropped by approximately 11 points since his previous evaluation in 2015, when it had measured in the “Low Average” range. (S-29. Smith, Green) Student’s score on the Visual Memory Index of the WRAML was also in the “Very Low” range, which was consistent with testing in 2015. On the BRIEF, teacher responses suggested executive functioning challenges. Responses on the BASC were all within normal limits with the exception of a “Clinically Significant” rating for Attention and “At Risk” ratings for Study Skills and Functional Communication. (S-29)
47. Ms. Smith’s evaluation concluded that Student’s profile had remained “fairly static” between 2015 and 2018 and would likely remain unchanged going forward. She further concluded that while Student had low average verbal comprehension, visual- spatial, working memory and processing speed skills, he had significant vulnerabilities in fluid reasoning and visual memory, as well as mild weaknesses in executive functioning and attention, all of which would likely affect Student’s ability to keep up with academic demands, maintain good study habits, and seek information independently. She recommended several accommodations, such as extra time to complete work, graphic organizers for writing, breaking down tasks to smaller chunks, repetition of new information, and providing explicit expectations for work completion. (Smith, S-29)
48. Ms. Smith testified that the 11 point drop in Student’s FSIQ between 2015 and 2018 was not statistically significant. She further testified that the test results from 2015 and 2018 could not be compared directly because Student had been administered two different versions of the test: the WISC-IV in 2015 and the WISC-V in 2018. Ms. Smith stated that after noting that many of Student’s subtest scores had not changed since 2015, after reviewing Student’s grades which were consistent with his abilities, or higher than would be expected in light of his cognitive profile, after speaking to teachers, and observing his behavior, she observed no “red flags” that would warrant further investigation of the change in test scores between 2015 and 2018. (Smith)
49. Student’s special education liaison, Ms. Bedard, conducted Student’s academic learning assessment on five dates between March 22 and April 25, 2018. The assessment consisted of four standardized tests: the Wechsler Individual Achievement Test, Third Edition

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<sup>13</sup> Behavior Rating Inventory of Executive Function, 2<sup>nd</sup> Edition

<sup>14</sup> Behavior Assessment System for Children, 3<sup>rd</sup> Edition.

(WIAT-III), the essay portion of the Test of Written Expression (TOWE), the Test of Reading Comprehension (TORC), and the Comprehensive Mathematical Ability Test (CMAT). (P-13, Bedard)

50. On the WIAT-III, Student achieved “Average” scores in all measures of his listening, oral expression, reading, writing, and math skills. The TOWE required Student to compose an essay using a story starter. He wrote a basic, logical short story that related to the prompt, but contained mechanical errors and showed that he needed to work on editing for spelling and punctuation. He scored in the “Average” range (32<sup>nd</sup> percentile) on the TOWE. On the TORC, Student earned an overall score in the “Below Average” range (16<sup>th</sup> percentile), having achieved “average” scores on the Sentence Completion, Paragraph Construction, and Text Comprehension subtests and “Below Average” and “Poor” scores on subtests of Relational Vocabulary and Contextual Fluency, respectively. On the CMAT, Student achieved a composite score in the “Average” range; most subtests were “Average,” and some were either “Above” or “Below” average. He demonstrated “solid basic calculation...and mathematical reasoning skills,” as well as the ability to apply information taught in school to test questions. (P-13, Bedard)
51. Based on the assessment results, Ms. Bedard recommended supports such as graphic organizers, exemplars of completed work, editing checklists, teacher check-ins, staying after school for extra help, preview and review of information and extra time on assessments. (P-13, Bedard)
52. On May 23, 2018, Student’s classroom teachers completed Team Meeting Input Sheets summarizing each teacher’s view of Student’s strengths, areas of most improvement, concerns, and needed accommodations. The math teacher noted that Student was kind and well-liked, desired to do well in school, and responded well to support offered. She further stated that Student has “shown social, emotional, and academic growth, “has curbed some of his immature behaviors and is less likely to act out to get attention from his peers.” The teacher’s chief concern was that Student “exhibits very little independence in math class—he needs a lot of hand-holding. He has great difficulty persevering through problems he finds difficult...[Student] often appears tired, and this impacts his readiness to learn, his attentiveness...and his attention to detail...[Student] is able to access the curriculum, but only with assistance.” The math teacher recommended a small group, separate setting for assessments, extra time for assessments, clarification of directions, and assistance with working on math problems in both the classroom and academic support. (S-18)
53. Student’s English teacher, Ms. Malloy, described Student as well-intentioned, and noted that his behavior had been “significantly more manageable” over the previous two or three months, “likely a direct result of other distracting students moving out of the class.” By the day of the report, Student was more focused, but “more sullen/low energy.” Ms. Malloy recommended check-ins for understanding, breaks, extended time and a separate setting for tests, and preferential seating. (S-18, Malloy)

54. The social studies teacher reported that Student was “fun,” “engaging,” and at times “very thoughtful.” He had shown progress in participating in class discussions as well as on his performance on tests. The teacher’s concerns were that Student struggled with reading comprehension and fluency, and so needed individual attention from the paraprofessional with complex texts. Student was distractible but improving in this area. Recommended supports included seating away from distractions, exemplars for written work, repetition and “continual attention” during class, vocabulary strategies, and previews of upcoming work. (S-18)
55. On June 13, 2018, the Team convened to consider the results of the three-year evaluation. By this time, Parents had retained counsel, and attorneys for both Parents and Holliston attended the Team meeting. At the meeting, Student’s teachers reported that Student had shown significant growth, particularly in his maturity, investment in academics, behavior, and independence. (Bedard, Malloy, Camp) On the other hand, Parents expressed dissatisfaction with Student’s progress, stating that he had not advanced in his areas of weakness despite being on an IEP since first grade. Parents also stated that Student reported feeling sad and defeated about school. Parents were concerned about the drop in Student’s IQ score since 2015 and with his grades and MCAS scores<sup>15</sup> Parents felt that Student should have had counseling<sup>16</sup> and executive functioning goals in his IEP. Parents reported that they would be rejecting the 2018-2019 IEP and seeking reimbursement for their unilateral placement of Student at Eagle Hill, which had accepted Student in May 2018. (S-18, Camp)
56. On June 21, 2018, Holliston proposed an IEP for Student covering the period from June 13, 2018 to June 12, 2019. Similar to prior IEPs, this IEP stated that Student presented with a specific learning disability affecting reading comprehension, written expression, and math reasoning. PLEP A of the IEP noted that Student’s weaknesses in visual memory, as well as his tendency to fatigue quickly, affected his reading comprehension with complex text, his ability to put his ideas into written form, and to process and retrieve new math concepts. Additionally, Student presented with “significant attentional difficulties across content areas as well as a high need for movement,” and, at times, “low internal motivation.” (S-18)
57. Similar to its predecessors, the June 2018 IEP contained goals in reading comprehension, written language, and math, but also contained two new goals, in executive functioning and coping skills, and, as well, provided for Extended School Year (ESY) services in language arts and math. (S-18)

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<sup>15</sup> Student’s MCAS scores for both ELA and Math were in the “Needs Improvement” range in grades 3, 4, and 5 and in the “Partially Meeting Expectations” range in grades 6 and 7. He received a “Warning” score in the Science and Technology/Engineering test in grade 6. (S-4)

<sup>16</sup> At this Team meeting, Parents reported that Student had a “challenging family background” warranting counseling. Both parties have alluded to this issue; however, neither party developed this assertion on the record, either through testimony or documentary evidence.

58. The “Current Performance Level” section of the reading comprehension goal indicated that Student had improved his reading skills, was productive in inclusion English class, and responsible about completing homework and classwork. He was implementing pre-reading and comprehension strategies with seventh grade-level text. The new goal was for Student to answer recall and inferential questions about 8<sup>th</sup> grade level text as well as identify main ideas and supporting details with 75% accuracy. (S-18)
59. The “Current Performance Level” for written language stated that Student understood how to write a complete sentence and could write a two-paragraph essay. He was working on adding supporting details and citing textual evidence for main ideas. He required graphic organizers and checklists to produce and edit his work. The written language goal was for Student to produce a well-developed five paragraph composition with only two check-ins. (S-18)
60. The “Current Performance Level” in math reported that Student struggled to persevere through challenging problems, and relied heavily on teacher support to initiate difficult tasks. His problem solving accuracy was in the 60% to 65% range. The math goal and associated benchmarks were for Student to more independently translate word problems into algebraic expressions, solve multi-digit and multi-step calculations with decimals, fractions, and negative numbers, and evaluate algebraic expressions, all with 75% accuracy. (S-18)
61. The executive functioning “Current Performance Level” noted that Student already completed homework and used agendas and calendars to plan and organize work and prepare for tests, but struggled to “persevere through challenging assignments.” Student’s goal in this area was to increase his independence with planning, organizing and completing assignments. (S-18)
62. Student’s counseling goal was for Student to manage stress during the school day by using self-advocacy and self-regulation strategies. The goal noted that primary support for Student’s emotional needs should be provided outside of school, with school-based counseling as a secondary support. (S-18)
63. The service delivery grid called for the following in Grid B: 6x55 minutes/6 day cycle each in social studies, language arts, math, and science. Grid C services consisted of 5x42 minutes/cycle of academic support, and 1x30 minutes/cycle of counseling. Grid B and C academic support services were to be provided by a “Special Educator or Para”. Grid C also listed ESY services in language arts and math for 2x60 minutes/week for 5 weeks between July 9 and August 9, 2018. (S-18)
64. In the “Nonparticipation Justification” section, the IEP stated, as had prior IEPs, that Student “requires specialized instruction in a distraction-free environment” for “repeated practice” to learn skills and strategies and to improve his independent access to grade-level curriculum.

Additionally, Student “requires 1:1 structured counseling” to develop skills to manage stress “or other complications from his challenging home life.” (S-18)

65. Attached to the proposed IEP was a Transition Planning Form (TPF) which indicated that Student was interested in attending college after high school graduation. The Action Plan in the TPF was for Student to explore post-secondary options as he proceeded through high school. (S-18)
66. In response to Parents’ concerns about Student’s progress, executive functioning, and emotional status, at the time it issued the IEP, Holliston also proposed conducting additional reading, social emotional, and cognitive assessments as well as a home assessment. (S-18, Camp, Turk) Parents declined to provide consent because they felt that the District should have done these assessments earlier and because they no longer trusted that Holliston was acting in Student’s interest. (S-18, Aunt)
67. In a letter dated July 16, 2018, Parents rejected the proposed IEP and placement, stated that Student would be enrolled in Eagle Hill School for the summer of 2018 as well as the 2018-2019 school year, and requested reimbursement of Parents for all tuition and costs incurred for this placement. The letter outlined multiple areas of concern and dissatisfaction on the part of Parents, including the District’s alleged failure to address ongoing issues with Student’s executive functioning and social/emotional status until Parents raised them at the June 2018 Team meeting.<sup>17</sup>
68. Student enrolled in the Eagle Hill School as a residential student in or about July 2018 for the summer program. He already had started the summer program as of the date of Parents’ letter of July 16, referenced above. Student continued at Eagle Hill for the 2018-2019 (eighth grade) and 2019-2020 (ninth grade) school years. (Aunt, Stone, Geary)
69. Meanwhile, on August 19, 2018, Parents requested a publicly-funded independent neuropsychological evaluation by Dr. Roberta Green. In a letter dated August 24, 2018, Holliston agreed to fund the evaluation at state-approved rates. (S-20)
70. Roberta Green, Ed.D. holds a Doctorate in educational psychology and a Master’s degree in clinical psychology. She is a Massachusetts-certified school psychologist and a Diplomate of the American Board of School Neuropsychology. Dr. Green holds a certificate in cross-battery assessment<sup>18</sup> and is a clinical service provider for ADHD. Dr. Green has over

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<sup>17</sup>The parties had agreed that the Team meeting of June 13, 2018 did not address all issues raised by Parents. Holliston had offered to conduct a follow-up meeting in before the end of the school year or over the summer. Parents declined this offer. (Camp, Aunt, S-19)

<sup>18</sup> Cross-battery assessment is an approach which uses software to synthesize and interpret scores from multiple different test instruments. This approach may provide a more complete picture of a child’s strengths, weaknesses, and general functioning than any one test instrument. The assessment produces a “facilitating cognitive composite” and an “inhibiting cognitive composite;” i.e., traits that, respectively, support and interfere with learning. (Green)

20 years of experience as a school psychologist and has consulted with over 15 school districts in Massachusetts as well as Vermont. In that role, she has assisted districts in developing IEPs, has trained staff, reviewed and conducted neuropsychological assessments of students, and helped districts with program development. Dr. Green testified that as of the date of hearing, she had performed approximately 150 to 200 neuropsychological assessments. (Green, P-1)

71. Dr. Green conducted a neuropsychological evaluation of Student in November 2018, while he was attending Eagle Hill. Her evaluation consisted of a review of prior testing and other school records as well as administration of eleven standardized tests and rating scales, and observation of Student during testing and in one of his classes at Eagle Hill. Unlike Ms. Smith, Holliston's school psychologist, Dr. Green viewed the drop in Student's IQ scores between 2015 and 2018 as potentially indicating a lack of progress in skill acquisition. Through the neuropsychological evaluation she also sought to explore the apparent discrepancy between Student's low FSIQ and generally average academic testing and the fact that he did not present as a child with low cognitive abilities. (S-30, Green)
72. The test instruments that Dr. Green administered were the BASC-3, the Bender-Gestalt Test of Visual-Motor Integration, Second Edition (Bender-II), the Delis-Kaplan Executive Function System (D-KEFS), Feifer Assessment of Mathematics (FAM), Feifer Assessment of Reading (FAR), Rey-Osterreith Complex Figure Test (Rey-Osterreith), Test of Everyday Attention for Children—Second Edition (TEA-CH2), Test of Written Language-Fourth Edition (TOWL-4), WISC-V Integrated,<sup>19</sup> the Woodcock-Johnson-IV, Tests of Cognitive Abilities (WJ-IV COG) and Oral Language (WJ-IV OL). The standardized tests were analyzed using the methodologies of cross-battery assessment (XBA) to develop a composite picture of Student's strengths and weaknesses. According to Dr. Green, use of XBA was appropriate because Student's scores on the various tests showed a variable pattern of strengths and weaknesses that were "not easily represented" by any one measure such as a full-scale IQ score.
73. After implementing XBA methodology, Dr. Green concluded that Student's "FCC" or Facilitating Cognitive Composite fell at the 25<sup>th</sup> percentile, and included strengths in crystallized intelligence, short term memory, visual and auditory processing and processing speed. His "ICC," or Inhibiting Cognitive Composite included fluid reasoning and long-term storage and retrieval, and fell at the 2<sup>nd</sup> percentile. Dr. Green opined that the difference between the two composites was significant and impacted Student's ability to recall information and demonstrate knowledge. He needed explicit instruction in linking new information to previously-learned material as well as metacognitive instruction in how to do this independently. Dr. Green also reported that Student had weaknesses in language

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<sup>19</sup> The WISC-V-Integrated differs from the standard WISC-V because it is structured in a multiple choice format . (Green)

comprehension, portions of reading comprehension, following directions, and sustained attention. (S-30, Green)

74. Dr. Green concluded that there was little evidence that Student had a specific learning disability at the time of her testing, “and it is likely that this is the result of the intensive remedial work that has been done with the basic skills in decoding, encoding, and calculation.” Rather, Dr. Green felt that Student’s profile met criteria for health (ADHD) and neurological impairments due to his difficulties with sustained attention, storage and retrieval, language comprehension, and fluid reasoning. (S-30, Green).
75. Dr. Green decided not to administer social/emotional rating scales to Student because of his difficulty with language (the student portion of the BASC rating scales contains 150 questions). Instead, she interviewed him informally about how he felt about family, friends and school. Student reported some difficulty with attention, but no anxiety or sadness. (Green)
76. As stated above, Dr. Green’s evaluation also included an observation of Student in his language arts class at Eagle Hill. She noted that the teacher reviewed the prior day’s instruction and summarized that day’s lesson at the end of class. The teacher used strategies such as guided questioning, thinking aloud, brainstorming, and explicit instruction. Student was focused on the teacher, raised his hand on occasion, responded appropriately, and behaved similarly to his peers. (S-30)
77. Based on her evaluation, Dr. Green made multiple recommendations in her report, including explicit instruction linking visual to verbal memory, pairing instruction with modeling and student activities, small group learning with implementation of strategies across the curriculum, explicit and organized presentation of instruction, direct instruction in morphemes, metacognitive strategies, and higher order thinking skills, and pre-teaching of vocabulary. She also provided recommendations for Student such as taking movement breaks, reading daily, and asking for clarification or help when needed. (Green, S-30)
78. In her testimony, Dr. Green stated that Student needed specialized instruction in small groups across all settings, with little distraction, and information provided to him at a slow pace, with several different methods of presentation, in small chunks with opportunities for repetition of each chunk. She further testified that instruction should “constantly encourage both visual and verbal thinking,” and that the teacher should “preview, teach and review” at frequent intervals during each lesson. She testified that it would be difficult to provide the amount of repetitive instruction that Student needed in a single period of academic support. Additionally, she did not believe that the slow-paced and repetitive instruction that Student required could easily be delivered within an inclusion classroom of 15 or more students. She testified that it would be difficult for a teacher to meet Student’s needs while also addressing the needs of students who could learn at a faster pace, with more complex language. She qualified her testimony, however, by stating that such a classroom might be appropriate if it

could be broken into smaller groups, depending on the structure of the class and the teacher's approach. (Green)

79. On December 6, 2018, the Team convened to consider Dr. Green's evaluation as well as input from Eagle Hill staff. Parents and Dr. Green attended the meeting, at which both Parents and Holliston were represented by counsel. At the Team meeting, Dr. Green stated that she had no opinion on the appropriateness of the eighth grade program described in Student's prior then-current IEP because she had not observed it. She also stated that while Student needed to be educated in small groups, a larger inclusion class might be appropriate if it could be broken into smaller groups. (Green, Smith, Camp, Morton) After reviewing Dr. Green's report and considering her input at this meeting, the Team decided to change Student's primary disability category to Health (ADHD) and his secondary disability to "Neurological (storage and retrieval, language comprehension, fluid reasoning), to place Student in a substantially-separate, small group class for English, and to place him in a co-taught math class. (S-21, Camp)
80. On December 19, 2018, Holliston issued an IEP covering the period from December 6, 2018 to June 12, 2019, corresponding to the remainder of eighth grade. Like the IEP issued in June 2018, this IEP contained 5 goals, in reading comprehension, written language, math, executive functioning, and coping skills, and provided for ESY services in language arts and math. As referenced above, however, the December 2018 IEP changed Student's disability category from "Specific Learning Disability" to "Health (ADHD)" and "Neurological," changed his placement in English from an inclusion class to a substantially-separate, GRID-C class, and changed his math class from an inclusion setting to a co-taught Grid B math skills class.<sup>20</sup> The Nonparticipation Justification portion of the IEP stated that "[Student] requires small group English for specialized instruction, at an appropriate pace, to develop literacy skills. This instruction is required for [Student] to improve his ability to independently access the grade level curriculum." (S-21)
81. Additionally, at Dr. Green's recommendation, this IEP added some accommodations and made adjustments to the goals and benchmarks developed for the prior IEP in June 2018. Specifically, the reading comprehension and written language goals were revised to reflect that they were to be applied across the curriculum and the benchmarks associated with the executive functioning goal were made more detailed. Additionally, references to fading prompts were deleted in light of Dr. Green's recommendation that Student receive as much prompting assistance as he needed. (S-21, Camp)
82. The student to staff ratio and number of students on IEPs for each of Student's proposed eighth grade classes were as follows: small group English, 4:1, all 4 students on IEPs;

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<sup>20</sup> The substantially-separate English class would follow the same curriculum as inclusion English but would be taught at a slower pace with embedded strategies. The co-taught math class would be led by a general education teacher and special educator, in contrast to the inclusion class, which might be taught by a general education teacher and paraprofessional. (Camp, Morton)

co-taught math, 16:2, 4 students on IEPs; science, 22:2, 7 students on IEPs, one student on a §504 plan; and social studies, 22:2, 8 students on IEPs, 2 on §504 plans. (S-50)

83. Parents rejected the proposed IEP and placement on February 27, 2019 pending an observation of the program by Dr. Green. (S-21)
84. On April 3, 2019, Dr. Green observed the classes proposed for Student in the IEP issued in December 2018. Accompanying her as a co-observer was Dr. Naami Turk, a psychologist who serves as a consultant to Holliston as well as Kelly Camp, the Student Services Administrator for the middle school. Dr. Green, Dr. Turk and Ms. Camp observed the academic support class, as well as co-taught math and inclusion science and social studies. They did not observe the small group English class because it was in the same time slot as co-taught math. Had Student been attending the middle school for eighth grade, the School would have adjusted the schedule to eliminate this scheduling conflict. (Green, Turk, Camp, Morton, Powers)
85. Dr. Green testified that the academic support class provided a well-run, distraction free environment. On the other hand, she felt that the inclusion classes were well-taught but would not be appropriate for Student because “it would have been hard for him to sustain his attention given the pace of the instruction and his language comprehension, his concept formations, and how well he encoded new information into that long-term memory...It was not appropriate to meet [Student’s] needs despite the fact that it was a good, solid inclusion program...[Student’s] needs are atypical...and they’re unusual and the particular composition doesn’t lend itself for [Student] to be able to access the curriculum in larger groups...” She further testified that “in a smaller class there are more opportunities for... coaching” in Student’s areas of need such as fluid reasoning, language comprehension, and long-term storage and retrieval. Dr. Green did not differentiate between the inclusion-model science and social studies classes and the co-taught math skills class. (Green)
86. At Parents’ request, Dr. Green did not write a report summarizing her observation, contrary to her usual practice of providing a post-observation report to parents and school districts, and did not communicate further with Holliston about her observation or any other matter until the hearing. (Green, Turk, Camp, S-24)
87. During April 2019, Holliston proposed having Dr. Turk conduct a clinical interview of Student and observe him at Eagle Hill. In an email to Parents’ counsel dated April 26, 2019, Holliston’s attorney stated that this proposal was “an effort to get some firsthand information about Eagle Hill and see how it is supporting Student. As you know, it is an unapproved program, so it’s important for my client to learn more about the program and feel comfortable with it. Once that is complete, Holliston will reconsider the family’s settlement offer.” (S-24)

88. Parents, through counsel, declined this request on grounds that Parents and Dr. Green felt that Student was “emotionally fragile” and sensitive about his “negative experiences” in the Holliston Public Schools, and that he should not be interviewed by anyone who did not have a long-term therapeutic relationship with him. (S-24, Green, Aunt) Further, Parents did not wish to have Dr. Turk observe Student at Eagle Hill because he might possibly recognize her as being from Holliston even though he had never met her. (Aunt, Green) Parents did not object to someone from Holliston observing programming at Eagle Hill, as long as they did not involve Student in their observations. (S-24, Aunt)
89. Parents filed their hearing request in this matter on April 30, 2019 seeking reimbursement for the costs of Student’s Eagle Hill placement for summer 2018 and the 2018-2019 school year. While responding to a discovery request in that matter, Dr. Green discovered that she had made errors in scoring the testing she had conducted with Student. She reviewed and corrected the errors and sent an amended report to Parents and Holliston. At the request of the School, Dr. Green sent the parties a second amended report, highlighting her changes. (Green, S-32, S-33) Dr. Green testified that the scoring errors did not affect her general formulation regarding Student’s needs, nor did it change her recommendations. Dr. Smith and Dr. Turk testified that the errors were significant enough to invalidate the entire report. (Smith, Turk)
90. On June 4, 2019, Holliston conducted an annual review Team meeting. In attendance, either in person or by phone, were Parents, a representative from Eagle Hill (Eric Stone), the middle school eighth grade team, a special educator from Holliston High School (Lisa Mazzola), and counsel for both parties. Parents neither invited Student to the Team meeting nor allowed anyone from Holliston to speak with him about his educational needs or, more specifically, his Transition Plan. (S-25, Camp)
91. Because Student had not been in Holliston for eighth grade, the Team developed an IEP based on Student’s progress during seventh grade as well as input from Parents and Eagle Hill. Eagle Hill provided general information to the effect that Student had made a good adjustment to Eagle Hill and was doing well, and described some of the topics that Student was addressing in his classes but no specific data or benchmarks. Dr. Green neither attended this Team meeting nor provided input based on her observation in April 2018. Neither Dr. Green nor Parents observed the proposed high school program. (Camp, Mazzola)
92. On June 18, 2019 the Team proposed an IEP for June 4, 2019 to June 3, 2020 (ninth grade). Like its predecessor, this IEP contained goals in reading comprehension, math, executive functioning, and counseling. The service delivery grid for ninth grade reflected that Student would be placed in co-taught classes for language arts and math, led by a general education teacher, special education teacher, and at least one paraprofessional. Science and social studies classes would be taught by a general education teacher supported by either a special educator or a paraprofessional. All classes were designed to be broken into smaller groups, and with embedded executive functioning instruction. The High School team determined

Student's class placement, particularly in English, by using a matrix that analyzed test scores and other factors to determine the appropriate level of instruction. If Student were to return to Holliston High School, he would be able to change his class placement according to his needs at the time. (S-25, Mazzola)

93. Parents rejected the proposed IEP and placement in full on July 2, 2019. Student has continued to attend Eagle Hill at Parents' expense.
94. Parents seek reimbursement for expenses they have paid or incurred for the day school portion of Student's placement at the Eagle Hill School for the summer session of 2018 and for the 2018-2019 and 2019-2020 school years.
95. Background information about Eagle Hill was provided by Eric Stone, who is the school's Dean of Education as well as a teacher. Mr. Stone holds a Master's degree in curriculum and instruction and a CAGS in educational leadership, as well as Massachusetts certification to teach grades 9 through 12. Mr. Stone testified that Eagle Hill is a private day and residential school in Hardwick, MA serving students in grades 8 through 12. Founded in 1967, Eagle Hill serves students with average to above-average intelligence coupled with a variety of learning challenges including specific learning disabilities, nonverbal learning disorders, ADHD, and executive functioning weaknesses. The school does not serve students with primary emotional or behavioral disabilities. (Stone)
96. Eagle Hill is accredited by the New England Association of Schools and Colleges. It has chosen not to pursue approval as a special education school from the Massachusetts Department of Elementary and Secondary Education (DESE), however, because "there were too many strings attached to what the state wanted..." (Stone) Specifically, Eagle Hill administrators wanted the ability to "get rid of...a student that's causing difficulties" without restrictions imposed by the "stay put" requirement, to have full control over school curriculum and teacher qualifications, and to avoid having teachers spend excessive time attending IEP meetings. (Stone)
97. Eagle Hill does not accept public funding directly from school districts and does not contract with school districts. Parents are responsible for students' Eagle Hill tuition. Public funding occurs only when a school district reimburses parents pursuant to a private agreement. Eagle Hill neither drafts IEPs nor implements IEPs from students' home districts. Mr. Stone attends IEP meetings when this is required by the private agreement between a parent and a school district but the school does not implement that IEP or rely on it to develop the student's programming.<sup>21</sup> Student progress is tracked anecdotally as well as via assignments and classroom tests and quizzes, but not with standardized instruments. The Eagle Hill curriculum does not follow the Massachusetts curriculum frameworks. Rather, teachers have

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<sup>21</sup> Mr. Stone testified that "I don't think you need an IEP to teach you how to teach a kid...in class." (Stone)

significant autonomy to develop their own curricula based on the needs and interests of the students in their classes as well as to use any methodology (such as Framing Your Thoughts for writing) that they find effective with a particular student. Eagle Hill does not require Massachusetts certification or a Master's degree for its teachers. As of the date of hearing, approximately 12 percent of Eagle Hill teachers were certified in special education and approximately 73 percent held Master's degrees. Teachers are required to participate in an initial 40-hour training block when first hired as well as regular on-campus professional development. (Stone)

98. Eagle Hill classes generally contain 5 to 6 students taught by one teacher. Students are homogeneously grouped by skill level. The school year is divided into 9 terms, each consisting of 6 course "blocks." Classes are followed by after-school activities and a structured evening study hall, both of which are available for day students as well as boarders. Teachers are available after school for extra help. Student's eighth grade classes included math, science, "Global Perspectives," "Biography" and "Grammar and Writing Workshop" as well as short courses such as "The Novella" and art classes. (Stone, Geary, P-24)
99. Eagle Hill staff and Parents felt that Student was successful at Eagle Hill. He adjusted well, made friends, took on leadership roles, and built connections with staff. Teachers commented that Student was an enthusiastic participant in his classes, completed classwork and homework, and was increasing his independence in weaker areas such as writing. Student's final grades for eighth grade were in the A-B range.<sup>22</sup> (Geary, P-24)

### **DISCUSSION**

There is no dispute that Student is a school-aged child with a disability who at all relevant times was eligible for special education and related services pursuant to the IDEA, 20 USC Section 1400, *et seq.*, and the Massachusetts special education statute, M.G.L. c. 71B ("Chapter 766"). Student was and is entitled, therefore, to a free appropriate public education (FAPE), which "comprises 'special education and related services' --both 'instruction' tailored to meet a child's 'unique needs' and sufficient 'supportive services' to permit the child to benefit from that instruction." *C.D. v. Natick Public School District, et al.*, No. 18-1794, at 4 (1<sup>st</sup> Cir. 2019), quoting *Fry v. Napoleon Community Schools*, 137 S. Ct. 743, 748-749 (2017); and 20 USC §1401 (9), (26), (29).<sup>23</sup> Student's IEP, which is "the primary vehicle for delivery of FAPE,

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<sup>22</sup> Ninth grade reports and grades were not in evidence at the hearing, which concluded early in the school year, October 2019.

<sup>23</sup> In *C.D.*, the First Circuit reiterated its conceptualization of FAPE set forth in earlier cases as educational programming that is tailored to a child's unique needs and potential, and designed to provide "'effective results' and 'demonstrable improvement' in the educational and personal skills identified as special needs." 34 C.F.R. 300.300(3)(ii); *Burlington II, supra*; *Lenn v. Portland School Committee*, 998 F.2d 1083 (1<sup>st</sup> Cir. 1993); *D.B. v. Esposito*, 675 F.3d 26, 34 (1<sup>st</sup> Cir. 2012)

*C.D. v. Natick*, 18-1794 at 4, quoting *D. B. v. Esposito*, 675 F. 3d 26, 34 (1<sup>st</sup> Cir. 2012), must be “reasonably calculated to enable [him] to make progress appropriate in light of [his] circumstances.” *C.D. v. Natick*, 18-1794 at 4, quoting *Andrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988, 1001 (2017).

While Student is not entitled to an educational program that maximizes his potential, he is entitled to one which is capable of providing not merely trivial benefit, but “meaningful” educational benefit. *C.D. v. Natick*, 18-1794 at 12-13; *D.B. v. Esposito*, 675 F.3d at 34-35; *Johnson v. Boston Public Schools*, 906 F.3d 182 (1<sup>st</sup> Cir. 2018). See also, *Bd. of Education of the Hendrick Hudson Central School District v. Rowley*, 458 US 176, 201 (1982); *Town of Burlington v. Dept. of Education (“Burlington II”)*, 736 F.2d 773, 789 (1<sup>st</sup> Cir. 1984). Whether educational benefit is “meaningful” must be determined in the context of a student’s potential to learn. *Andrew F.* 137 S. Ct. at 1000, *Rowley*, 458 US at 202; *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F3d 18, 29 (1<sup>st</sup> Cir. 2008); *D.B. v. Esposito*, 675 F.3d at 34-35. Within the context of each child’s unique profile, a disabled child’s goals should be “appropriately ambitious in light of [the child’s] circumstances, *Andrew F.* 137 S. Ct. at 1001; *C.D. v. Natick*, 18-1794 at 14. Finally, eligible children must be educated in the least restrictive environment (LRE) consistent with an appropriate program; that is, students should be placed in more restrictive environments, such as private day or residential schools, only when the nature or severity of the child’s disability is such that the child cannot receive FAPE in a less restrictive setting. On the other hand, “the desirability of mainstreaming must be weighed in concert with the Act’s mandate for educational improvement.” *C.D. v. Natick*, 18-1794 at 5-6, quoting *Roland M. v. Concord School Committee*, 910 F.2d 983 (1st Cir. 1990).

The IDEA allows parents to seek reimbursement from a school district for the costs of a unilateral placement made in response to the district’s failure to make a timely offer of an appropriate IEP. 20 USC §1412(C)(a)(ii); *School Committee of Burlington, Mass. v. Mass. Department of Education*, 471 U.S. 359, 373-374 (1985) To prevail at a due process hearing on a reimbursement claim, a parent first must prove that the IEP that was proposed at the time of the unilateral placement was not reasonably calculated to provide the child with a FAPE, taking into account the information available to the Team at the time the IEP was developed. *Roland M. v. Concord School Committee*, 910 F.2d 983, 992 (1990). If the parents prove that the proffered IEP was not appropriate, they may be entitled to reimbursement if they can demonstrate that their chosen placement was appropriate. Parents’ chosen placement need not meet state standards for special education schools for the parents to qualify for reimbursement, provided that the school chosen by the parents is “otherwise proper” under the IDEA, *Florence County District Four, et al. v. Shannon Carter, et al.*, 510 U.S. 7, 14 (1993), that is, “appropriately responsive to [the child’s] special needs.” *Matthew J. v. Massachusetts Department of Education, et al.*, 988 F. Supp. 380, 391 (1998).

In a due process proceeding to determine whether a school district has offered or provided FAPE to an eligible child, the burden of proof is on the party seeking to challenge the *status quo*. In the instant case, as the moving party challenging the pertinent IEPs and placement offered by Holliston, Parents bear this burden. That is, in order to prevail, Parents must prove, by a preponderance of the evidence, that the IEPs and placements offered by Holliston in June

and December 2018 as well as in June 2019 were inappropriate such that Parents were justified in initiating and maintaining Student's unilateral Eagle Hill placement. If Parents prevail on this point, they may be entitled to reimbursement only if they also demonstrate, by a preponderance of the evidence, that Eagle Hill was responsive to Student's special needs. *Schaffer v. Weast*, 546 U.S. 49 (2005); *Florence County*, 510 US at 14; *Burlington*, 471 US at 373-374; Matthew J., 988 F. Supp at 391.

In the instant case, the parties agree, and the record establishes, that Student has ADHD as well as a neurological impairment that substantially impede Student's sustained attention, storage and retrieval, language comprehension, and fluid reasoning. The parties further agree that Student's cognitive profile is complex, in that he has some areas of ability in the low-average to average range and others that are "very low." As a result of his disabilities, Student struggles with reading comprehension, especially with complex text. He expresses himself well in class discussions, but has great difficulty putting his ideas in writing. In math, he has solid basic computation skills, but much weaker skills in translating word problems into mathematical expressions. In all subject areas, Student is distractible, finds learning to be effortful, fatigues easily, has trouble initiating work and persevering through difficult tasks, and requires frequent 1:1 attention from teachers for prompting and redirection. Student needs direct instruction across all content areas in strategies for executive functioning, for active reading and for written expression as well as opportunities for repetition and reinforcement of information in a distraction-free environment.

The parties' dispute centers on whether Student can make effective progress within full-inclusion or partial-inclusion settings, as proposed by Holliston, or whether, as Parents argue, he needs to be educated in small, substantially separate classes of 6 or fewer students. Parents contend that in light of Holliston's failure to offer such a setting for Student, they were justified in unilaterally placing Student at Eagle Hill, which, they assert, provides small classes and instruction tailored to Student's needs.

After a careful review of the evidence produced at the hearing as well as the arguments of the parties, I conclude that Parents have not met their burden with respect to any of the three IEPs at issue. My reasoning follows.

### **IEP Issued in June 2018**

The first IEP that Parents rejected during Student's school career in Holliston was issued at the end of seventh grade in June 2018, for eighth grade. The June 2018 IEP, covering the period of June 2018-2019 which was Student's eighth grade year, was similar to Student's seventh grade IEPs. Therefore, to determine the appropriateness of the June 2018 IEP, I must first examine whether Student made effective progress in seventh grade. Holliston asserts that Student made slow, steady progress consistent with his abilities in that year, pursuant to fully-accepted IEPs. I find that the record supports the School's position. Kimberly Bedard and Kelley Malloy, both of whom worked with Student on a daily basis throughout the 2017-2018 school year, testified credibly that Student progressed in his reading fluency and comprehension, written expression and math skills. Ms. Malloy testified that as the year progressed, Student read increasingly complex literature in English class, and was growing in his ability to understand

abstract concepts. His written language improved, as did his math skills. Ms. Bedard and Ms. Malloy also pointed out that Student matured as a learner during that period. He reliably completed homework and in-class assignments, and his behavior improved. Importantly, he was increasingly independent in applying the strategies he had been taught to assignments.

The testimony of Ms. Bedard and Ms. Malloy is supported by progress reports, which showed that Student was meeting benchmarks within his IEP goals, as well as by work samples, grades, which, except for math, were consistently in the “C” range, and contemporaneous teacher comments on report cards. Finally, I credit the testimony of School witnesses that Student was benefiting from the inclusion setting. Ms. Bedard stated that Student rose to the challenge of his inclusion classes, joining in discussions and modeling appropriate behavior. She and Ms. Malloy testified that he fell “at the beginning of the middle” of his English class in terms of general performance. Student needed a great deal of support, both within his inclusion classrooms and in his academic support class, but this was to be expected in light of his profile, and Holliston provided that support in a flexible manner.

Finally, the three-year re-evaluation, which Holliston performed in the spring of 2018, yielded average scores in most academic testing, indicating that Student had progressed since his previous re-evaluation in 2015. Parents were understandably concerned that Student’s FSIQ had dropped by 11 points between 2015 and 2018. I am persuaded by the testimony of Ms. Smith and Dr. Turk, however, that this decrease in scores did not necessarily indicate that Student was not receiving appropriate instruction or was not making effective progress. Ms. Smith and Dr. Turk noted that the decrease was not statistically significant, that the scores on the WISC-IV, administered in 2015, and the WISC-V, given in 2018, were not precisely comparable, that Student’s standardized achievement scores remained strong, and he was progressing in the classroom both academically and socially.

Having found that Student made effective progress during seventh grade, I find further that the substantially-similar IEP issued in June 2018 was appropriate. This IEP incorporated recommendations from the three-year re-evaluation. Additionally, in response to Parents’ expressed concerns about Student’s executive functioning skills and emotional status (which Parents had not previously raised with the School and which School personnel had never identified as an issue), Holliston added to his eighth grade IEP explicit goals in executive functioning and coping skills as well as 30 minutes of counseling per week. Further, Holliston proposed conducting additional assessments to address these issues as well as the drop in Student’s FSIQ scores, but Parents rejected this offer. Parents presented the June 2018 Team with no outside evaluations or anything other than their own impressions<sup>24</sup> to suggest that Student had not made effective progress in seventh grade, or that he needed additional or different services or a different placement, for eighth grade, and then rejected the School’s offer to further explore their concerns with additional assessments. In light of the foregoing, I find

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<sup>24</sup> Aunt testified that when she first became involved in Student’s education, she reviewed Student’s school records with an acquaintance who happened to be a special education director in another district. The acquaintance told Aunt that Student’s IEP was not specific enough, and that Student did not appear to be making progress. This individual was not named, did not produce a written report, did not attend Team meetings and did not appear or testify at the hearing. While I conclude that the acquaintance may have given Parents information and support, I cannot give any evidentiary weight to her opinions as reported by Aunt.

that the IEP issued in June 2018 was reasonably calculated to provide Student with a FAPE, based on the information available to the Team at that time.

### **IEP Issued in December 2018**

In December 2018, the Team reviewed the independent evaluation of Dr. Roberta Green and issued an IEP that incorporated many of her recommendations. The Team changed Student's disability category to reflect Dr. Green's diagnostic impressions, added accommodations, made adjustments to goals and benchmarks, and offered to place Student in a small, substantially separate English class and fully co-taught math class in place of the inclusion settings provided in previous IEPs.

Parents provided no persuasive information to the Team suggesting that the proposed IEP was not appropriate. Eagle Hill staff participated in the meeting, but the information they provided was very general, and was not helpful in formulating goals or accommodations. Dr. Green attended the December 2018 meeting and told the Team that Student needed to be educated in small groups, but did not state, at that time, that he needed to be in substantially separate settings for all classes as opposed to small groups within the inclusion classroom. Further, Dr. Green declined to comment on the appropriateness of the proposed eighth grade program because she had not yet observed it. She did observe the program in April 2019, but at the family's request, she did not provide the Team with a report or feedback of any kind; thus, the Team had no opportunity to consider or respond to Dr. Green's impression of the program. I find that the IEP of December 2018 was reasonably calculated to provide Student with FAPE. Parents have not proven otherwise.

### **IEP Issued in June 2019**

The Team had little current information about Student when it convened to develop the IEP for ninth grade in June 2019 because Student had been attending Eagle Hill since July of 2018. Eagle Hill presented general information to the Team about Student's adjustment and the subjects he was taking, but little or no data about his progress. Holliston had attempted to have Dr. Turk interview Student and observe Eagle Hill, but Parents refused permission to do so. The record shows that Holliston analyzed the data it did have about Student in order to propose a ninth grade IEP for Student, and Parents presented the Team with no evaluation or other information that would support a different IEP or placement than the one proposed. In fact, by refusing to allow Dr. Turk to meet with Student and observe his program at Eagle Hill, Parents precluded the Holliston from obtaining current information about Student that might have led it to propose different services or placement in June 2019. I find that this IEP was reasonably calculated to provide Student with FAPE in light of the limited information available to the Team at the time, and that said IEP can readily be adjusted as needed if Student were to return to Holliston.

### **Appropriateness of Eagle Hill**

Having determined that Parents failed to demonstrate, by a preponderance of the evidence, that any of the three IEPs at issue were inappropriate, I need not reach the question as

to whether Eagle Hill is an appropriate placement for Student. While I do not second-guess Parents' decision to choose a school placement that they believe will serve Student's best interests, they have not met the criteria for securing public funding for that placement.

### **CONCLUSION AND ORDER**

Based on the foregoing, the IEPs and corresponding placements for Student issued in June 2018, December 2018 and June 2019 were reasonably calculated to provide Student with a free, appropriate public education; therefore, Parents are not entitled to reimbursement for expenses incurred for Student's placement at Eagle Hill.

By the Hearing Officer,

Dated: December 30, 2019

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Sara Berman