

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

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

**BSEA No. 2100891**

**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 an eleven-year-old sixth grader with disabilities who currently attends the Willow Hill School in Sudbury, MA pursuant to a unilateral placement made by Parents in or about August 2020. On July 31, 2021, Parents filed a hearing request with the Bureau of Special Education Appeals (BSEA) in which they alleged that the Concord Public Schools (Concord, CPS, or School) had failed to offer Student a free, appropriate public education (FAPE) for the 2020-2021 school year. Parents sought an order from the BSEA directing Concord to prospectively place Student at the Willow Hill School for the 2020-2021 school year. In or about August 2020, after notice to Concord, Parents unilaterally placed Student at the Willow Hill School and requested reimbursement for the costs of this placement from Concord. On February 11, 2021, Parents filed an amended hearing request to incorporate an IEP covering December 2020 to December 2021, and to request an order that Concord prospectively place Student at Willow Hill or “other appropriate DESE approved private day school” for the 2020-2021 and 2021-2022 school years.

Upon receipt of Parents’ hearing request, the BSEA scheduled an initial hearing date of September 4, 2020. At the request of the parties, the hearing was postponed on several occasions for good cause. A pre-hearing conference took place on October 8, 2020. The hearing was held on March 8, 9, 10, 11, and 15, 2021.<sup>1</sup> In compliance with the Commonwealth’s directive that the BSEA hold no in-person hearings during the current pandemic, and with the consent of both parties, the hearing took place via Zoom videoconference. 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 March 24, 2021 to submit written closing arguments. On that day, written closing arguments were received and the record closed.

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<sup>1</sup> This matter, originally assigned to hearing officer Amy Reichbach, was administratively transferred twice: to hearing officer Catherine Putney-Yaceshyn in November 2020 and to the undersigned hearing officer on February 25, 2021.

The record in this case consists of Parents' Exhibits P-1 through P-94, School's Exhibits S-1 through S-25, as well as stenographically-recorded witness testimony and argument of counsel. Those present for all or part of the proceeding were the following:

Student's Mother	
Student's Father	
Michael Aboulafia	Psychologist, Willard Elementary School, CPS
Dr. Karen Kiley-Brabeck	Private Neuropsychologist
Laura Brande	Team Chair, Concord Middle School (CMS)
Matthew Cadigan	School psychologist, CMS
Justin Cameron	Principal, CMS
Selene Gisholt	Clinician, Community Therapeutic Day School (CTDS)
Katherine Grotenstein	Counselor, ACCESS program, CMS
Ruth Grube	Director of Student Services, CPS
Mark Hall	Director of Education, Willow Hill School
Nancy Lankford	Occupational Therapist, Case Manager, Willard Elementary School
Matthew Lucey	Principal, Willard Elementary School, CPS
Jennifer O'Rourke	ASPIRE Program, Mass. General Hospital
Andrew Petzold-Eley	Teacher, Student's Advisor, Willow Hill School
Erika Reale	Lead Teacher, ACCESS Program, CMS
Kimberly Rivers-Wright	Fifth grade teacher, Willard Elementary School
Timothy Ryan	Speech/Language Therapist, CMS
Rachel Wolf	Speech/Language Therapist, Willard Elementary School
Michelle Moor	Attorney for Parents
Jaki Fishkin	Attorney for Parents
Caitlin Leach Mulrooney	Attorney for Concord Public Schools
Marianne Peters	Attorney for Concord Public Schools
Sara Berman	BSEA Hearing Officer
Jane M. Werner	Court Reporter

### **ISSUES PRESENTED**

The issues to be decided are the following:

1. Whether the IEPs and services offered by Concord for the 2020-2021 school year were reasonably calculated to provide Student with a free, appropriate public education (FAPE) for the period spanning August 2020 through June 2021;
2. If not, whether the Parents' chosen unilateral placement at the Willow Hill School is appropriate such that Parents are entitled to reimbursement for the cost of said placement;
3. Whether the IEPs proposed by Concord to cover the period from September 2021 through June 2022 are reasonably calculated to provide Student with FAPE in the least restrictive environment;

4. If not, whether the IEPs and/or placement can be modified to provide FAPE;
5. If not, whether Concord must place Student at Willow Hill School or another approved out-of-district placement in order to provide him with FAPE.

### **POSITION OF PARENTS**

While Student has an extremely strong cognitive and academic profile, he also has severely impaired social skills, anxiety, and sensory challenges associated with his diagnoses of high-functioning autism (HFA) and ADHD, such that he is often functionally unable to interact with other people. Consequently, Concord has defined FAPE for Student as entailing acquisition of skills in non-academic areas such as social interaction and emotional self-regulation, and his IEPs have reflected this determination. Although Concord provided services and accommodations for Student within an inclusion setting, Student has not progressed in his identified area of need since 2017. Within his elementary school, Student was socially isolated, and was unable to make a single friend at school. He was geographically present in school, but not truly engaged in his educational experience. Because of his sensory issues and anxiety, Student was unable to fully access the school cafeteria, music, gym or Spanish classes and often could not go on field trips. He required a 1:1 aide to navigate most of his school day. Student felt sad, lonely, anxious, “different,” and stigmatized in the elementary school.

Parents’ neuropsychologist as well as specialists retained by Concord have made clear that Student cannot make effective progress in his area of need within an inclusion setting. Rather, he requires placement in a specialized program for students with HFA or similar profiles, with a small group of peers with comparable intellectual ability and social skills needs. Instead of offering such a placement for sixth and seventh grade, Concord proposed a middle-school version of the supported inclusion programming in which Student had failed to progress in elementary school. The proposed middle school program lacked an appropriate peer cohort and would continue the potentially stigmatizing use of a dedicated aide, all within a busy middle school setting that would exacerbate Student’s sensory challenges and anxiety.

Faced with Concord’s inappropriate proposed IEPs, Parents were justified in unilaterally placing Student at Willow Hill School. Although Willow Hill is not formally designated as a therapeutic school as initially recommended by Parents’ expert, it nonetheless meets Student’s social/emotional needs by providing him with the small classes, reduced sensory input, appropriate peers, and in-the-moment social skills interventions that he requires to receive a FAPE. Student can fully access all aspects of the school experience without an aide and has made notable academic, social and emotional progress.

### **POSITION OF SCHOOL**

Contrary to Parents’ claim, Student made effective academic, social and emotional progress within his elementary school program in Concord. Student met his social communication benchmarks and objectives, and his goals progressed along with

his skills. Student has developed solid foundational social pragmatic skills and was working on generalizing those skills across settings at the time he left CPS. Having or not having a friend in school is not a component of a FAPE determination, and as long as Student received instruction in skills necessary to have meaningful connections with others, which Concord provided, then FAPE was provided. Further, Concord successfully accommodated Student's anxiety, sensory needs, and emotional regulation challenges in elementary school. Parents have not proved that Concord could not continue to accommodate these needs and challenges in the proposed middle school program. Further, Student's disability is not so severe or pervasive that he cannot be educated in a public school with appropriate supports. Student has derived benefit from being educated with his typically developing peers in elementary school. He would have continued to do so in CPS' proposed middle school program.

Lastly, Willow Hill is not an appropriate placement for Student. Parents' expert recommended that Student be placed in a therapeutic setting; however, Willow Hill acknowledges that it is not a therapeutic school and does not offer the clinical components that Parents' expert believed Student required. Moreover, Student does not seem to have progressed at Willow Hill. Skills which Parents point to as representing progress are neither new nor attributable to his current placement. Rather, they are skills that he previously had demonstrated when he attended school in Concord. Student has not clearly formed genuine friendships at Willow Hill. He continues to demonstrate the types of behaviors for which he was receiving services within CPS. Any services that Willow Hill may be providing also are available within Concord.

## **SUMMARY OF THE EVIDENCE**

### **Student Profile**

1. Student is an 11-year-old child with disabilities who is a resident of Concord. Student's eligibility for special education and related services from the Concord Public Schools pursuant to the IDEA and MGL c. 71B is not in dispute. Student attended the Willard Elementary School in Concord in kindergarten (2014-2015), attended private school for first grade (2015-2016), then returned to Willard for grades two (2016-2017) through five (2019-2020). In August 2020, Parents unilaterally placed Student in the Willow Hill School, which is a private, DESE-approved special education day school in Sudbury, MA. Student has attended Willow Hill from that time to the present. (Mother, P-2)
2. Student is a kind, curious, hard-working, determined child. He is highly intelligent, with cognitive scores ranging from the "high average" to "superior" range, excellent problem-solving abilities, and solid academic skills. He is very interested in, and knowledgeable about, math and various aspects of computer technology and enjoys solving challenging problems and doing projects related to his areas of interest. Student also enjoys reading and video games. (Mother, O'Rourke, Gisholt, Kiley-Brabeck, Rivera-Wright, P-19,

3. The parties do not dispute Student's disability profile. Student was diagnosed with Pervasive Developmental Disorder NOS (PDD/NOS) at the age of 2, and autism spectrum disorder (ASD) at 4 years of age. Student's ASD is categorized as "high functioning autism" (HFA) or "high cognitive autism."<sup>2</sup> Student subsequently received a diagnosis of ADHD. (Mother, Kiley-Brabeck, P-19, P-20)
4. As a result of his ASD diagnosis, Student has serious, longstanding difficulties with socialization, emotional self-regulation, and executive functioning. Student also has sensory challenges, and finds it difficult to tolerate environments with noise (including student conversations during group work in the classroom, which Student calls "chatter"), a high level of visual stimulation, movement of other people, or strong odors (such as food smells in a school cafeteria). Student's ability to socialize with peers is impeded by his tendency to be rigid, self-directed, and a "rule follower." He struggles to understand others' perspectives and has impaired social communication skills. (Mother, Lankford, Gisholt, Kiley-Brabeck)
5. Additionally, Student has great difficulty recognizing faces of peers and adults, including those who are very familiar. For example, at the beginning of fifth grade, Student could only recognize three classmates, even though nearly all of the children in the classroom either had been in his class for the previous three grades or lived in his neighborhood and should have been familiar to him. On one occasion he did not recognize a clinician whom he knew well because she changed her hairstyle. (Gisholt) On another, he failed to recognize his mother for the same reason. Student's difficulty with visually identifying others further impedes his ability to form relationships with peers, as he does not recognize their faces. He uses other cues to recognize people with some success if he sees the people regularly. Finally, at least partially resulting from the previously described difficulties, Student has significant anxiety in multiple settings. He worries about displeasing or disappointing others. He is vulnerable to having a negative view of others' motivations. He is increasingly aware of feeling "different," and has voiced that because he is "different," he is "bad" and should be punished. When anxious or overwhelmed, Student can become dysregulated, which over the years has taken the form of silliness and off-task behavior, as well as, more recently, tearfulness and loud repetition of negative statements about himself or others. (Mother, Lankford, Gisholt, Kiley-Brabeck, P-20)
6. Student's anxiety and reduced interpersonal skills are manifested at home and contribute to serious conflict with his younger sibling. During fourth and fifth grade, Student's ability to self-regulate at school improved, but he continued to "fall apart" at home, often because of events that happened during the school day. (Mother, Aboulafia, Gisholt)

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<sup>2</sup> Under former nomenclature, Student's diagnosis would have been Asperger's Syndrome. For purposes of this Decision, the terms "HFA" or "ASD" will be used as appropriate for the context. (P-17)

7. Despite his difficulties with social communication, Student is socially motivated and longs for friendships with peers. He has reported feeling lonely, isolated and distressed as a result of not having friends. He is most likely to have some success with peers who share his cognitive strengths and interests. (Mother, Gisholt, Kiley-Brabeck, O'Rourke, Cadigan, Aboulafia)

#### **Chronology Grades K-4 (2014-2015 through 2018-2019)**

8. Student received Early Intervention services as an infant and toddler, attended Concord's integrated preschool, and entered kindergarten in the Concord Public Schools with an IEP. Student struggled with the sensory and social demands of kindergarten, so Parents placed him in a private school for first grade, where he was in a smaller general education setting with an aide. While attending the private school, Student received weekly (OT) and physical therapy (PT) from Concord as well as private speech/language therapy. Student was not very successful in first grade at the private school and so Parents returned him to CPS for second grade (2016-2017 school year), believing that Student would be better served in an inclusion placement in his neighborhood school, with special education supports and accommodations. (Mother, P-19)
9. In the fall of 2016, Student entered second grade at the Willard Elementary School in a full-inclusion classroom with a 1:1 aide (also referred to as a "therapeutic tutor"). In addition, Concord provided Student with clinical support from Selene Gisholt, a licensed mental health counselor employed by Community Therapeutic Day Schools (CTDS) in Lexington.<sup>3</sup> At that time, CPS contracted with CTDS to provide inclusion support services to several students within the district. (Mother, Gisholt)
10. Concord retained Ms. Gisholt to provide "wrap around" services to Student, which included the initial training and supervision of his 1:1 aide, individual counseling, regular communication with Parents to bridge home and school concerns, and meeting with and supporting Student's school-based providers. Ms. Gisholt provided these services throughout Student's tenure at the Willard School, from grades 2 through 5, including during the summers as a component of Student's ESY program. (Mother, Gisholt)
11. Student's aide/therapeutic tutor, Ms. Stephanie Lane, also worked with Student from grades 2 through 5. Ms. Lane developed a trusting relationship with Student and helped him access the inclusion setting by anticipating his needs in various situations, previewing unexpected changes and reviewing them with Student, modifying the environment or activities to make them accessible, facilitating peer interactions,

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<sup>3</sup> Ms. Gisholt has a Master's degree in expressive arts therapy and has 25 years of experience working with children with neurodevelopmental disabilities. Her services include individual and family counseling as well as inclusion support and consultation to school districts. (Gisholt)

supporting Student for events such as assemblies and field trips, and, generally, serving as a “bridge” connecting Student with peers, teachers, and his environment. Ms. Lane also supported Student’s executive functioning by helping him organize his belongings and cuing him to stay on task during academic periods. Ms. Lane was universally described as highly skilled and compassionate, with a deep and intuitive understanding of Student’s strengths and vulnerabilities. While she always was present to support Student as needed, she was able to step back when he could perform independently. Like Ms. Gisholt, Ms. Lane worked with Student from grades 2 through 5. (Gisholt, Mother, Rivers)

12. In addition to the services of Ms. Gisholt and Ms. Lane, CPS funded Student’s participation in a weekly after-school social skills group operated by ASPIRE, which is affiliated with Massachusetts General Hospital (MGH). ASPIRE serves children such as Student who have difficulties with social interaction owing to ASD or similar challenges. ASPIRE uses small, interest based, adult-facilitated activity groups to foster social interaction around areas of mutual interest, with in-the-moment coaching and feedback. Student has participated in a cooking group and an engineering group with a cohort of about 4 boys with similar cognitive profiles, interests, and challenges. CPS also funded the ASPIRE summer camp, which served as part of Student’s Extended School Year (ESY) during the summers of 2017, 2018, and 2019. (O’Rourke)
13. In January 2017, CPS issued an IEP covering January 2017-January 2018, corresponding to mid-second to mid-third grade. This IEP noted Parents’ concerns with Student’s anxiety in high-intensity sensory situations, difficulty with emotional dysregulation (resulting in silly or off task behavior), reduced ability to recognize faces, negativity, and difficulty with relationships. The IEP documented Student’s very high cognitive ability and solid academic skills, as well as his significant deficits in social communication. It included goals and extensive accommodations to address sensory, social/emotional, gross and fine motor, and classroom participation issues, all within the context of a full-inclusion placement in a general education classroom, supported by the therapeutic tutor and Ms. Gisholt. (P-2)
14. The service delivery grid included the following: Grid A, weekly consultation from an occupational therapist (OT), school psychologist, speech/language pathologist, and “therapeutic staff” (referring to Ms. Gisholt); Grid B, full-time therapeutic tutor plus push-in services from the school psychologist and speech/language pathologist; Grid C, OT, PT, and counseling (from Ms. Gisholt). The IEP also provided for ESY services to address social skills (ASPIRE camp plus counseling from Ms. Gisholt). Parents accepted this IEP and placement in full. (P-2, Mother)
15. The Progress Report issued in June 2017 indicated that Student had made progress on most or all IEP benchmarks and was on track for achieving IEP goals. (P-15)

16. In November 2017, when Student had begun third grade at the Willard School pursuant to the above-described IEP, he underwent a neurodevelopmental evaluation by Lou Eckart, Ph.D. Dr. Eckart, who had been following Student since the age of 2, administered a battery of standardized cognitive and academic assessments as well as parent and teacher rating scales. Based on the testing, clinical observation, and an interview with Parent, Dr. Eckart concluded that Student continued to present with Asperger's syndrome (now called High Functioning or High Cognitive Autism). She further concluded that Student's cognitive abilities were, in general, well above average to superior, especially in the verbal domain. His academic skills were correspondingly very strong, most notably in reading, although he had slightly weaker performance with written production. He earned below average scores in visual memory, however, especially in a test of memory for faces, and mild weaknesses in executive functioning and auditory attention. Rating scales completed by Parents and Student's third-grade teacher revealed that Student's most significant areas of concern were difficulties with social skills, rigid thinking and behavior, and ability to complete routine tasks. (P-19)
17. Dr. Eckart concluded that Student was "making progress in his social skills and adaptability at his own rate," would continue to need support for developing those skills with peers, and could be "very successful in school" with "the appropriate supports and accommodations." Dr. Eckart's report contained several pages of recommended services and accommodations, including helping Student engage with peers via high-interest activities with children who have similar cognitive and academic strengths. Other recommendations were for therapeutic aide support during recess and physical education, and various classroom accommodations such as check-ins, preview of transitions, etc. Most of Dr. Eckart's recommendations were already contained in Student's IEP. (P-19)
18. The Team convened on December 2017 to consider Dr. Eckart's evaluation as well as school-based psychological, speech/language, OT, and PT assessments, and to issue an IEP for December 2017-December 2018 (mid-third to mid-fourth grades). This IEP contained multiple statements regarding Student's social/emotional vulnerabilities. For example, the statement of Parents' concerns focused on Student's emotional well-being, including a generally negative view of the world and himself, "cognitive distortions" that reduced his self-esteem, emotional dysregulation, and the lack of an "academic and social peer group."

According to Parents, Student was not invited to birthday parties or playdates, had few and transient in-class friendships, and was sad about his isolation. Parents stated that Student was anxious in many of his specials, such as Spanish, music, and PE, as well as well as recess (where he usually was alone) and lunch in the cafeteria. Student was becoming dysregulated at home and expressing school refusal on days when he was scheduled for anxiety-producing activities. (P-3)

19. The school-based Team's Vision Statement called for Student to develop his social skills and "gain skills to develop and sustain a friendship," as well as to improve his flexibility and his sense of himself. The school-based psychological evaluation noted that Student was "feeling the impact of not having solid or meaningful friendships." The speech-language evaluation report stated that Student had generally strong basic language skills, but weaknesses in social communication, including Theory of Mind (understanding what others may think or feel), social problem solving, perspective taking, and reciprocal conversation. (P-3)
20. The IEP for December 2017 to December 2018 called for a full-inclusion placement with pullout counseling and speech/language therapy. It contained goals in Classroom Participation, Pragmatic Language, Counseling, and Language Comprehension. Benchmarks within these goals focused on skills such as engaging in group academic work with one or 2 peers, engaging in reciprocal social interactions, compromising, identifying his state of emotional regulation using the Zones of Regulation program, conversing about non-preferred subjects, reading non-verbal cues, social problem solving, and identifying cognitive distortions. The IEP contained numerous accommodations for Student's sensory and attentional needs.

Under "Additional information," the IEP provided for a photo book of classmates' faces to aid in recognition of peers, lunch bunches or alternative locations for lunch, an alternative to Spanish class, and regular home-school communication. The service delivery grid was similar to the grid in the predecessor IEP, and included clinical consultation from Selene Gisholt, a full-time therapeutic tutor, weekly individual therapy from Ms. Gisholt, counseling from the school psychologist, and speech/language therapy, as well as ESY services (ASPIRE summer camp and individual therapy from Ms. Gisholt). Concord continued to fund the ASPIRE after school and summer programs. Parents accepted the IEP and placement in full on January 10, 2018. (P-3)

According to the Progress Report issued in June 2018, at the end of third grade, Student had made some progress towards meeting his objectives in reciprocal conversation, identification of his emotional state, and self-regulation. He made attempts to play with others at recess and eating lunch with a peer. (P-16)

21. Concord issued the IEP for December 2018-December 2019 on December 21, 2018. Parents' concerns were essentially the same as in the prior two IEPs, including that Student "continues to have no academic and social peer group at school," was not invited to birthday parties or playdates, and tended to play alone at recess "which he often dreads." Student was sad about his isolation. Student had formed a friendship with a peer his ASPIRE group, however, which had a "wonderful effect on [Student's] mood." The Student Strengths and Key Evaluation Results Summary stated that Student had a "passion for coding" and he "enjoyed sharing his knowledge and creativity with his teacher and classmates." He played board and card games

with peers during indoor recess. Student had several classmates “in his academic peer group” which “makes partner work easier than it has been in past years.” These peers “understand his social limits and respond with supportive kindness.” (P-4)

22. The Team Vision echoed that of prior IEPs, *i.e.*, for Student to improve his social skills and gain skills to develop and sustain a friendship. The goals and benchmarks in the IEP were similar to those in its predecessors, as were accommodations, service delivery grid, and “Additional Information.” Concord continued to fund the services of Ms. Gisholt as well as the ASPIRE after school program. The IEP included ESY services consisting of the ASPIRE summer camp and therapy from Selene Gisholt. Parents accepted the IEP and placement in full on December 27, 2018. (P-4)
23. On April 10, 2019, during the spring of Student’s fourth grade year, the Team convened to refine Student’s writing objectives. At that meeting, the school-based Team members suggested changing Student’s therapeutic tutor from Stephanie Lane to another individual in order to acclimate him to working with someone new while still in the familiar setting of the Willard School. Parents did not agree, so no change was made. Mother also reported on Student’s facial recognition difficulties, and the Team discussed preparing a “face book” for fifth grade, as well as name tags. Mother mentioned that she was exploring potential private school placements for Student in sixth grade. An IEP amendment augmenting Student’s writing benchmarks was issued on April 12, 2018, and Parents accepted the amendment in full. (P-5)
24. The progress report issued in June 2019 indicated that Student continued to make progress towards his IEP goals and was on track to achieve them by the conclusion of the IEP period. (Lankford, P-17)

### **Fifth Grade**

25. On September 25, 2019, the Team convened to discuss Student’s transition into fifth grade. According to the N-1 form issued after the meeting, Parents felt that Student had transitioned well, and liked the structured classroom of his teacher, Ms. Kim Rivers. Parent also reported that Student reported feeling “different,” and could not relate to peers. He worried about bullying in middle school. Student’s teacher reported that Student was doing well. The speech/language therapist noted that Student had made daily lunch plans, including one day in the cafeteria with her, but stated that he did not want to make conversation. School psychologist Michael Aboulafia reported that Student’s counseling goal was to make a friend. Finally, the Team discussed Student’s anxiety around music class, where he is bothered by other students’ chatting and not following rules. (P-5)
26. In November 2019, Student’s occupational therapist (OT), Nancy Lankford, conducted a sensory profile evaluation to assess Student’s ability to modulate sensory input. The evaluation, which consisted of questionnaires completed by Parents and

Student's classroom teacher, was consistent with prior assessments and revealed that Student continued to struggle with auditory and tactile sensitivities and vestibular processing, that he tended to withdraw from active environments with groups of people, and that he found flexibility, adaptation and social engagement to be emotionally challenging. The evaluation also noted Student's continued sensitivity to smells. Ms. Lankford recommended various accommodations and supports for the school setting, such as alternative seating arrangements, use of headphones, a quiet area of the classroom for independent work, opportunities for movement, and allowing Student to avoid crowded hallways by arriving or leaving slightly earlier than others. (P-54, Lankford)

27. On December 11, 2019 (mid-fifth grade), the Team convened for Student's annual review and addressed Student's progress as well as the sensory profile referred to above. The School-based Team members suggested discontinuing Ms. Gisholt's consultative services, which CPS staff felt were unnecessary. Parents disagreed, and CPS ultimately agreed to continue Ms. Gisholt's individual therapy for Student and Parent consultation through the end of fifth grade. School-based Team members opined that Student was doing well in fifth grade and progressing in his goal areas. (S-1-D; Gisholt, Mother, Aboulafia, Lankford, Kiley-Brabeck)

On or about December 20, 2019, Concord issued an IEP covering December 11, 2019 to December 10, 2020, corresponding to the second half of fifth grade and the first half of sixth grade. The Parent Concerns statement echoed those of prior IEPs, emphasizing Student's reduced social skills, continued lack of true friends at Willard, isolation, feelings of "difference," anxiety, emotional dysregulation, and sensory sensitivity, his continued need for much adult support and the resulting negative impact on his self-esteem. On the other hand, Student's teacher reported that Student was doing well in the general education classroom, meeting fifth grade benchmarks with accommodations and supports. The IEP noted progress in executive functioning (organization of schoolwork), use of social language in a structured setting as well as in some unstructured settings, and continued struggles with perseverance over small problems. (S-1-D)

28. The IEP contained goals in executive functioning, social language, and counseling, as well as many accommodations that were similar to those in prior IEPs. The service delivery grid provided for 2x30 minutes per month of consultation services to the Team and 1x30 minutes per week of Parent consultation in Grid A; continuation of the full-time therapeutic tutor as well as push-in speech/language and counseling in Grid B; and 30 minutes per week, each of pull-out speech/language and counseling in Grid C. The IEP also provided for ESY services and the parties agreed that Concord would continue to offer the ASPIRE summer program. On January 9, 2020, Parents rejected any reduction in Selene Gisholt's services and asserted "stay put" rights both to those services and the Aspire summer program. (S-1-D)

29. Meanwhile, in November 2019, Student underwent a private neuropsychological and educational evaluation by Karen Kiley-Brabeck, Ph.D. Dr. Kiley-Brabeck is a licensed psychologist and pediatric neuropsychologist with approximately 20 years of experience conducting neuropsychological assessments of children in a variety of settings. For the past 6 years, Dr. Kiley-Brabeck has operated a private practice, where she evaluates children and teens, attends IEP meetings, observes classrooms, and does parent education. She has conducted evaluations at the request of both parents and school districts. Over the course of her career, she has evaluated between 1100 and 1200 children and has conducted between 200 and 300 program observations. (Kiley-Brabeck, P-20)
30. Dr. Kiley-Brabeck's evaluation consisted of a review of Student's history, clinical interview with Mother, telephone conversation with Selene Gisholt, clinical observation of Student, and formal testing.<sup>4</sup> With respect to the clinical observation, Dr. Kiley-Brabeck noted that Student walked around the room to visually scan the space before testing began, had diminished eye-contact, and did not orient his body towards the examiner. When stressed, he engaged in rocking, pulling his eyelashes, and licking his fingers. He did not participate in reciprocal or social conversation, saying "let's get back to work" when the examiner attempted small talk. He reportedly became dysregulated at home after each of the two testing sessions, repeating angry, self-deprecating statements to Parents and his sibling. (Kiley-Brabeck, P-21)
31. Testing with the WISC-V yielded high scores. Verbal comprehension, visual-spatial, and fluid reasoning indices were in the 96<sup>th</sup>, 82<sup>nd</sup>, and 79<sup>th</sup> percentiles, respectively. Student scored in the 82<sup>nd</sup> percentile for processing speed. Working memory was slightly weaker, but still solidly average, in the 68<sup>th</sup> percentile. Student achieved similar scores on academic testing with the WIAT-III, demonstrating well-above-average to "superior" reading and math abilities, and somewhat weaker written expression skills. Language and verbal learning skills were also very strong. However, relative weaknesses in certain subtests indicated Student's struggle with cognitive rigidity. (Kiley-Brabeck, P-21)
32. In contrast to Student's cognitive and academic skills, his ability to recognize faces and understand others' thoughts, ideas and feelings were low. On the NEPSY-II subtests of Affect Recognition, Memory for Faces, and Theory of Mind, he scored in the 25<sup>th</sup> (low average), 5<sup>th</sup> (borderline) and below the 2<sup>nd</sup> percentiles, respectively. Dr. Kiley Brabeck testified that the discrepancy between his cognitive/academic scores

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<sup>4</sup> While Dr. Kiley-Brabeck discussed Student with Parents and Selene Gisholt, she did not speak directly with his teacher, Ms. Rivers, or other Concord providers, although Ms. Rivers did complete a BRIEF rating scale for Student. Dr. Kiley-Brabeck scheduled an observation of Student at the Willard Elementary School but had to cancel due to illness. Attempts to reschedule were unsuccessful because of the pandemic and ensuing school closures. (Kiley-Brabeck)

and those achieved on the NEPSY-II indicated Student's profound difficulty with skills needed for social communication, despite very strong basic language skills. His scores on a test of pragmatic language and social problem solving were in the 10<sup>th</sup> percentile, and Dr. Kiley-Brabeck believed his performance would be even poorer in a real-life situation (as opposed to the structured testing format). He could not easily engage in reciprocal conversation and did not understand how others might interpret his curt responses to questions. (Kiley-Brabeck, P-21)

33. Based on testing, clinical observation, Parents' and Ms. Rivers' responses to the BRIEF rating scale, and collateral reports from Ms. Gisholt and Parents, Dr. Kiley-Brabeck found that Student exhibited cognitive rigidity, difficulty with changing set, and a tendency to become dysregulated. The emotional dysregulation had improved somewhat since his 2017 evaluation but was still problematic. Student experienced cognitive distortions and "extreme, negative thought processes" which would lead to dysregulation, and took the form of silliness, off-task behavior, tearfulness, or perseverative repetition of negative, self-deprecating language.

Such dysregulation could occur after minor incidents where Student perceived he or another child had done something "wrong," for which he—or the other child—deserved punishment such as "jail." He needed external support after becoming dysregulated. Dr. Kiley-Brabeck further commented on Student's difficulty recognizing and remembering faces, which she felt would be problematic in the middle school setting where he would be encountering different teachers, and possibly different classmates, for his various classes. (Kiley-Brabeck, P-21)

34. Dr. Kiley-Brabeck concluded that Student had become "increasingly isolated" in his mainstream educational environment, and "does not have a peer group with whom he can socialize." He had not developed foundational social skills (such as consistent eye contact). In her view, the accommodations that Concord had provided (therapeutic aide, alternatives for eating in the cafeteria, being allowed to come to classes early, accommodations in music and P.E., taking Spanish via DuoLingo instead of with his class) were serving to isolate [Student] from his peers. "Accommodations are being offered for his challenges, but he is not developing the skills to overcome these critical difficulties." (Kiley-Brabeck, P-21)

35. Accordingly, Dr. Kiley-Brabeck recommended placing Student in a substantially separate, therapeutic, small-group program "with social and clinical supports infused throughout the day." She opined that classes should have no more than 6 to 8 students, and that Student should be with the same classmates all day, every day, to provide opportunities for social relationships in light of his facial recognition weaknesses. The learning environment needed to be quiet and predictable with as few transitions as possible and reduced sensory input (noise, crowds, smells, etc.) so that Student would not need to miss instructional time because of inability to participate in classes or activities due to his sensory or self-regulatory challenges. An

appropriate program would provide explicit social skills instruction in a small group, coupled with opportunities to practice and generalize learned skills throughout the day, individual in-school therapy by a doctoral-level provider experienced with youth having profiles like Student's, and ongoing clinical support throughout the day. Finally, Student would need an enriched curriculum to foster his intellectual talents and keep him engaged in the educational process. (Kiley-Brabeck, P-21)

36. On February 5, 2020, the Team convened to discuss Parents' partial rejection of the December 2019 IEP as well as to review Dr. Kiley-Brabeck's report. The CMS Team Chair, Laura Brande, attended the meeting to provide information about the middle school. During the meeting Dr. Kiley-Brabeck elaborated on her test findings, emphasizing her concerns about Student's cognitive distortions, negative thought processes, and deficient social communication skills, as well as elevated scores for anxiety and depression on the BASC. The Team discussed these issues, but deferred discussion of her recommendations for middle school, stating that the appropriate time to address middle school was the spring. School providers stated that the report failed to offer a clear picture of Student's success at Willard over the years and especially in fifth grade in terms of his ability to access the curriculum as well as his progress in working with peers on class projects. The Team invited Dr. Kiley-Brabeck to observe Student at Willard. As stated above, the observation was scheduled but cancelled due to illness. (S-1-C, Rivers)
37. School-based Team members also stated that they would propose terminating both Ms. Gisholt's services and ASPIRE from Student's program, reasoning that those services could be provided "in-house." Ms. Gisholt was advised of this plan the day before the Team meeting, and Parents were informed one hour before the meeting. Parents objected to this proposed change, stating that no evidence had been presented indicating that the change would benefit Student. Ultimately, the Team agreed to maintain the services through the end of fifth grade.<sup>5</sup> (Mother, Gisholt, Lankford, Aboulafia)
38. On February 7, 2020, Concord issued an IEP covering December 2019 to December 2020 (mid-fifth grade to mid-sixth grade). In the Parent Concerns section, Parents reiterated essentially the same concerns about Student's social-emotional skills and the gap between those skills and his cognitive functioning that they had raised in prior IEPs. Parents referred to Student having no true friends at Willard, to his having no cohort and being isolated in that setting, and his feeling of being different. Parents stated that Student kept his emotions contained at school but at home was alternately sad and angry about his isolation and said he was "bad." Additional concerns were Student's reduced ability to recognize faces, need for adult facilitation of social interaction and emotional self-management, anxiety, excess sensory stimulation at

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<sup>5</sup> Concord was planning to reduce CTDS services to all CPS students who were receiving them. (Gisholt, Lankford, Mother) Concord had also proposed eliminating CTDS services to Student's sibling, and Parents did not object because they felt that CPS had offered a reasonable basis for doing so. (Mother)

school, and transition to middle school. Parents stated that Student’s “social-emotional growth requires a small consistent cohort” for practicing social skills throughout the day. The Team’s Vision Statement was for Student to improve self-understanding and self-advocacy, to improve social-emotional skills including flexibility, develop peer relationships, and transition successfully to middle school. Student’s teacher reported that Student was doing well in fifth grade due to a structured, predictable classroom and daily presence of the 1:1 therapeutic tutor. He was meeting grade level academic standards and accessing the curriculum with support. Group and partner projects were “a challenge.” (S-1-C)

39. As with prior IEPs, the IEP generated in February 2020 contained goals in executive functioning, social language, and counseling, as well as multiple accommodations to address attentional, executive functioning, sensory, and social-emotional needs. Examples of these accommodations included teacher check-ins during anxiety-provoking situations, a written daily schedule, an end locker, seating away from distractions, graphic organizers, modeling/facilitating conversation and play, encouraging Student to orient his body towards a conversation, movement breaks, pre-warning of loud noises, and seating at the end of a row or back of room during assemblies. The service delivery grid consisted of 30 minutes/week each of internal Team consultation and Team consultation with Parents (eliminating Ms. Gisholt’s consultation role and reducing her time with Parents) in Grid A, a full-time therapeutic tutor and 20 minutes/week each of push-in speech/language and counseling services in Grid B, and 30 minutes/week each of speech/language therapy and counseling in Grid C. The IEP provided for ESY service, which would be ASPIRE unless another program was identified. (S-1-C)
40. Under “Additional Information,” the IEP provided for regular Parent-School communication, visuals for face/name recognition of peers (books of names/photos for reference, name tags, etc.), lunch bunch opportunities, an alternative for Spanish class such as DuoLingo, and challenge work when appropriate to increase motivation. Referring to ASPIRE, the IEP stated that CPS would fund a mutually agreed upon social skills group for spring 2020. Ms. Gisholt’s services, consisting of after school therapy for Student and weekly home consultation, would continue to the last day of sixth grade. The middle school team would provide these supports beginning in sixth grade. (S-1-C)
41. Parents partially rejected this IEP on March 5, 2020, specifically objecting to any reduction or material change in Student’s services from his current program, including direct therapeutic support and consultation from Ms. Gisholt and asserting “stay put” rights. (S-1-C)

### **Middle School Transition Planning**

42. During fourth grade, Parents requested the Team to begin discussing Student’s transition to middle school but were told that such discussion could not happen until spring of fifth grade. During the spring of that fourth grade school year (2019), Mother had a conversation about her concerns with the former<sup>6</sup> Director of Student Services, who encouraged Parents to “hang in there” for one more year at Willard, noting that “options open up for placement for middle school,” and mentioning New England Academy as an example. (Mother)
43. During fourth and fifth grade, Parents were concerned about Student’s increasing self-awareness, which was leading to a corresponding increase in his awareness of “difference,” sense of isolation, and sadness. At home, Student often expressed distress at being “different,” stating that difference was “bad.” (Mother)
44. The Willard Team members began connecting with CMS staff in anticipation of Student’s transition to middle school in approximately October 2019, when Nancy Lankford, Student’s OT and case manager, contacted Laura Brande, the Team chair for CMS. (P-62) On January 27, 2020 the Willard Team visited CMS and the ACCESS Program<sup>7</sup> to view it as a possible placement for Student. On January 30, 2020, Ms. Brande, the CMS Team Chair, observed Student at Willard. Rachel Wolf, Student’s speech/language therapist at Willard, met with Tim Ryan, the SLP at CMS, who assured her that he would be able to implement the goals that Ms. Wolf planned to propose. (Rivers, Brande)
45. On February 13, 2020, after the Team meeting of February 5, 2020, and again on March 6, 2020, Parents met with CMS Principal Justin Cameron. Mr. Cameron informed Parents that he was not sure if there was an appropriate peer cohort for Student at CMS but would investigate. Parents mentioned an inclusion program for students with ASD called NEST, which would require small peer groupings and teacher training. Mr. Cameron approached the CPS Superintendent of Schools about funding for this program, but the superintendent declined to authorize it. (Mother, Cameron)
46. During the spring of 2020, Willard and CMS staff had meetings among various staff members to share knowledge about Student. Parents were not aware of these meetings. (P-68)
47. In mid-March of 2020, Concord Public Schools, like virtually all Massachusetts schools, closed because of the pandemic, and subsequently began providing on-line educational services. Parents and Ms. Gisholt observed that Student became much calmer after the shutdown. He said he didn’t miss anyone from the Willard School.

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<sup>6</sup> The current Director of Student Services, Ruth Grube, began serving in that position during the summer of 2019.

<sup>7</sup> ACCESS is a special education program located at CMS which Concord proposed for Student for sixth and seventh grade. It will be discussed in further detail, *infra*.

When remote learning started, Student preferred asynchronous learning because he could work independently. He attended the classroom remote meetings but needed Parents' help to stay engaged. When the class had social time together, he was uninvolved with the discussion. (Mother, Gisholt)

48. On May 27, 2020, the Team convened remotely to discuss Student's transition to middle school and to amend his IEP accordingly. In addition to Parents and the Willard Team members, the middle school Team chair and principal, as well as the Director of Student Services, Ruth Grube, attended the meeting.

The Team proposed placing Student in the ACCESS program at CMS for sixth grade. The N-1 form accompanying the IEP described ACCESS as "a therapeutic program for students with social/emotional needs that require direct instruction and overall support in a range of social skills and emotional regulation." Program staff would consist of a special education teacher, tutors, a counselor and a BCBA as needed. ACCESS students divide their time between the therapeutic classroom, where they work on specific skills pursuant to their IEPs, and the general education setting, where they apply the skills they have learned. ACCESS staff communicate with general education teachers about student performance and needs. The Team anticipated that Student would spend one period per day in the ACCESS classroom, and the remainder of his time in the general education setting. He would continue to have a full-time therapeutic tutor.

Parents objected to the ACCESS program, believing it would not provide him with the consistency of peer interactions that he needed. Rather, they felt he needed a program with a small cohort of peers with similar interests and challenges in order to make social connections. (P-1-B)

49. The IEP amendment in fact proposed Student's placement in the ACCESS program for one period per day. On June 24, 2020, Parents partially rejected the proposed amendment, continuing their objection to any reduction or elimination of Ms. Gisholt's services, reduction of Grid B speech/language and counseling services (from 30 to 20 minutes/cycle), and omission of certain ASD-related language. Parents also refused the proposed placement. (P-1-B, Mother)

50. By letter dated August 12, 2020, Parents notified Concord that they intended to place Student at the Willow Hill School in Sudbury, MA and that they were seeking CPS funding for this placement. (Mother, Brande, S-13)

### **Witness Testimony Regarding Student's Progress**

51. The parties and their respective witnesses had divergent views as to Student's progress, particularly during fourth and fifth grades, as well as to the appropriateness of the proposed placement at CMS.
52. Ms. Gisholt testified that Student's profile evolved somewhat over time. His self-regulation at school improved between second and fifth grade, but that the "most pressing concerns...over the fifth grade year was his total lack of significant peer relationships with kids at school" ; this despite many efforts from the Team over the years, including lunch bunches with different attendees and configurations, pairing Student with "really nice kids" in his classroom with comparable intellectual abilities, a Dungeons and Dragons after-school club, and Math Olympiad in fifth grade. Ms. Gisholt believed that a number of factors contributed to Student's difficulty with peer involvement, including his combination of ASD, sensory challenges and high intellect coupled with very specific interests that other children might not be able to relate to. (Gisholt)
53. Ms. Gisholt stated that for fifth grade, "we had it as good as it could get...as far as an inclusion program," in that Student had an excellent, seasoned teacher, a warm but structured classroom, the same highly skilled aide for four years, several team members who knew him well, and nice classmates, but he still did not have a friend or even the beginning of a friendship with anyone. She stated that while Student had learned to generalize some self-regulation skills so that he could behave appropriately in most public settings, he had not been able to translate the social communication skills that he was working on at ASPIRE, or with his private or school-based speech/language therapist, into building relationships with classmates. Although he had moments of social success (for example, with Math Olympiad, Dungeons and Dragons, and presenting projects to his class), she felt he did not have the skills needed to navigate the CMS program as described by the TEAM, given the new teachers, more complex schedule, class changes and the like, inherent in middle school. (Gisholt)
54. Ms. Gisholt had not observed Student in his classroom since second grade but felt that she had sufficient knowledge of Student's functioning from her individual meetings with him, with Parents, and her regular consultations with the TEAM. (Gisholt)
55. Jennifer O'Rourke is the Assistant Program Manager for Child Services for the ASPIRE program operated by the Lurie Center for Autism at Massachusetts General Hospital.<sup>8</sup> Ms. O'Rourke testified that based on her observations of Student in that program, he required a very small group of familiar peers with similar skills, interests, and cognitive ability, and in the moment feedback, to learn and practice social interaction skills. He had made progress during his time at ASPIRE in the areas of

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<sup>8</sup> Ms. O'Rourke has a Master's degree in Applied Behavior Analysis and several years of experience working with inclusion programs in various school settings. (P-31)

social communication, including developing a friendship with one child. Ms. O'Rourke had not observed Student in the classroom, and was not familiar with services he had received at Willard, so she could not determine how much of his progress in his ASPIRE group was attributable to that program and how much was the result of school-based services. (O'Rourke, P-32-35)

56. Nancy Lankford was Student's occupational therapist (through third grade) and case manager for his entire tenure at the Willard School. She conducted comprehensive OT evaluations of Student in kindergarten and third grade, and a sensory profile in fifth grade. Ms. Lankford testified that Student made progress in sensory integration and motor planning, but only mild improvement in his sensory modulation. He also progressed in self-regulation; with support, he was able to use strategies from the Alert and Zones of Regulation curricula, especially in fourth and fifth grade. As his ability to self-regulate improved, Student needed less support from his therapeutic tutor. Ms. Lankford testified that Student struggled with activities such as recess, music, Spanish and P.E. classes, as well as field trips. Accommodations to support his participation included pairing him with select peers for recess, giving him a role such as scorekeeper for PE, allowing him to take Spanish via DuoLingo (an online course), previewing the plans for each music class, and finding alternative activities if Student found particular field trips too anxiety-provoking. (Lankford)
57. Kim Rivers, Student's fifth grade teacher, has 20 years of teaching experience. Student was one of 19 children in her classroom. Ms. Rivers testified that her classroom is structured and predictable; for example, she posts a daily schedule on the board each morning so that the class knows what to expect that day. When asked to describe Student's progress during fifth grade, Ms. Rivers testified that academically he performed very well, in the same manner as his typical peers. He was a strong math student. He struggled somewhat with writing but responded to the EmPower program. He also had some difficulty with executive functioning (as did others in the class) but Ms. Rivers did not need to provide him with much help in this area, partially because "Stephanie [his aide] was there all the time," and partially because Ms. Rivers had established a class-wide organizational system of color-coded folders and the like to support all of the students with executive functioning. (Rivers)
58. Ms. Rivers testified that Student needed more in the moment social support than his classmates; however, he participated appropriately during whole class instruction (e.g., raising his hand and contributing to discussions), and actively participated in small group work, with the help of his aide. Ms. Rivers provided Student with additional, high interest, challenging academic activities to help keep him engaged in class. For example, on a few occasions, instead of doing the usual spelling assignment, which involved choosing an activity from a list (something which made Student anxious), Student created his own activity—such as a game—using technology. He shared the activity with his classmates, who were impressed and

drawn to him, as well as with adults in the building. Ms. Rivers testified that Student was well-liked and respected by his peers. (Rivers)

59. Ms. Rivers worked with Student to accommodate his sensory needs with movement breaks, fidgets, and the like. She testified that she was experienced with providing such accommodations, and that Student was not the only child in the class who needed them. She also addressed his difficulty with transitions by having him come to class slightly early. When he made negative statements, such as the day was going to be terrible because he had music class that day, Ms. Rivers would use humor to try to help him reframe his viewpoint. With respect to music, Ms. Rivers and the aide arranged to have Student come to class early, preview the lesson, speak with the teacher, and settle in before the other students arrived. Parent, at one point, wanted Student to skip music class rather than endure the discomfort it brought him, but Ms. Rivers felt that the school should provide accommodations and help him adapt and develop coping skills while accessing all of his classes. For the most part, Student transitioned between activities with the rest of his class, with the accommodation of being the first in line or, for assemblies, sitting at the end of the row. During recess, Student either used the swings or walked around “having some downtime.” A few times, Ms. Rivers persuaded him to join a game of foursquare. (Rivers)
60. Student became upset or dysregulated a few times during the school year, but recovered with help and missed very little instruction. When asked if Student made progress with his social skills, Ms. Rivers mentioned the spelling activity referred to above, as well as Student’s participation in a large group project making parachutes and in a group of about five students producing a class newsletter. He would make spontaneous comments to peers about whatever they were working on. (Rivers)
61. Ms. Rivers consulted regularly with members of Student’s Team and maintained regular communication with Parents. She testified that working together, she, the remainder of the Team and Parents were able to support Student so that he could access his education. Additionally, she testified that his classmates knew him well, were aware of his challenges, and accommodated them in their interactions. (Rivers)
62. Michael Aboulafia was the school psychologist who provided Student’s in-school counseling services during fifth grade, meeting with him approximately 30 minutes per week each for pullout counseling and in-class support. Mr. Aboulafia worked with Student on developing social and conversational skills, primarily using the Social Thinking curriculum developed by Michele Garcia Winner. He felt that Student made progress with this curriculum. During the fall of 2019, Student invited Mr. Aboulafia to eat lunch with him approximately once per week at a table outside of the cafeteria. Student invited one or two peers to join them on several occasions. Student was able to converse about games and play Jenga during these lunches. On cross examination, Mr. Aboulafia testified that Student had been inviting peers to lunch since second grade. (Aboulafia)

63. On numerous occasions, when Parent emailed the school to notify staff that Student had had a difficult (anxious or dysregulated) morning, Mr. Aboulafia would look in on Student's classroom and find that he nearly always appeared regulated and involved in his schoolwork. He then would relay his findings to Parents. (Aboulafia) Mother testified that on those occasions, Student was not actually "fine," as he would speak of his continuing distress when he came home. (Mother)
64. Mr. Aboulafia acknowledged that the benchmarks for Student's IEP goal of social skills development called for him to demonstrate certain skills (such as reciprocal conversation, perspective taking, sharing airtime) in 3 of 5 opportunities, and that these benchmarks had not changed in several years. He testified that he expected slow progress in this area given Student's ASD diagnosis, and that the fact that Student had not achieved his goal of developing a friendship did not mean that he was not progressing. (Aboulafia)
65. Rachel Wolf is a Master's level speech/language pathologist at the Willard School. She provided services to Student from mid-fourth grade through the end of his fifth grade year, consisting of 30 minutes per week of pullout speech/language therapy and 20 minutes/week of Grid B push-in services. Ms. Wolf testified that she worked with Student on developing and generalizing foundational social skills, such as being geographically present with another person, active listening, and the like. She stated that Student frequently was able to understand and recite the social skills concepts within the speech therapy session, but needed practice and support to generalize them to natural settings. (Wolf)
66. Ms. Wolf testified that for a time, the push-in services consisted of her joining Student and some peers for lunch at a "quiet" table outside of the cafeteria. Student had requested this arrangement and had worked with Ms. Wolf on planning it. (Wolf)
67. Ms. Wolf further testified that she believed Student made progress during fifth grade in developing his foundational social skills. (Wolf)

### **Placement Proposed by Concord**

68. Concord proposed placing Student in the ACCESS program at CMS for sixth and seventh grades. As stated above, ACCESS consists of a substantially separate classroom which serves as a daily resource for students with a variety of social/emotional, mental health or behavioral challenges. If he had attended ACCESS, Student would have spent one period per day in the ACCESS classroom and the remainder of his time in general education sixth grade classes. Within the separate classroom, Student would receive instruction and support for his areas of need from a special education lead teacher, Erica Reale, supported by one or more

therapeutic tutors (all of whom have at least a bachelor's degree and who are trained by the lead teacher regarding each student's IEP), as well as a counselor and BCBA. There would be daily consultation between ACCESS staff and general education teachers as well as regular contact with parents. (Reale, Brande, S-9)

69. Per his IEP, Student would continue to have a therapeutic tutor throughout his school day in general education classes. The tutor, who likely would have worked with Student during sixth grade, has a Master's degree in special education and has behavior technician training. The tutor would probably serve one other child in addition to Student, and would fade her involvement as Student's skills increased. It was not uncommon for CMS students to have tutor support in the general education classroom. (Brande, S-25-A)
70. Pullout and push-in counseling services would have been provided by School Adjustment Counselor Katie Grotenstein or school psychologist Matthew Cadigan. Ms. Grotenstein has extensive experience working with children who have ASD, significant sensory needs, and anxiety. (Grotenstein)
71. At the time Student's sixth grade IEP was developed, there were no other sixth graders enrolled in ACCESS. Concord anticipated that he would receive individual, direct instruction in the ACCESS classroom. (Mother, Brande, Reale)
72. All of the Concord witnesses from CMS (Brande, Reale, Cadigan, Ryan, Grotenstein) testified that they believed the ACCESS program would meet Student's needs, as did Student's Team members from Willard, who previously had toured CMS in anticipation of Student's transition. (Rivers, Aboulafia, Wolf, Lankford)
73. On November 3, 2020, Dr. Kiley-Brabeck conducted a virtual observation of Concord's proposed placement for Student. Because there were no sixth graders enrolled in ACCESS at the time, she observed the seventh grade therapeutic classroom as well as an ELA class. After observation, Dr. Kiley-Brabeck concluded that the program would not be appropriate for Student who, she believes, needs social/emotional and communication instruction embedded throughout the day, and there was no apparent structure for generalization of skills taught in the ACCESS room to the general education setting. Dr. Kiley-Brabeck also was concerned that the continued use of a therapeutic aide or tutor would hinder Student's growth towards independence and also would be stigmatizing at the middle school level. Finally, Dr. Kiley Brabeck was concerned about a lack of information about certain specifics of Student's program, such as the type of social skills instruction to be used, the profiles of the peer cohort, how transitions and the cafeteria would be handled, and the like. (Kiley-Brabeck, P-23)

### **Placement Chosen by Parents**

74. Student has been attending the Willow Hill School in Sudbury MA since the beginning of the 2020-2021 school year pursuant to Parents' unilateral placement.
75. Willow Hill is a DESE-approved private day school in Sudbury, MA that serves approximately 66 students in grades 6 through 12. Students have average to above-average cognitive abilities and present with diagnoses of language-based or non-verbal learning disabilities, ADHD, or Asperger's syndrome/ASD. Approximately 60% of the students have social skills deficits of some type. (Hall, P-40)
76. The student to staff ratio is approximately 1:3. Willow Hill follows the Massachusetts Curriculum Frameworks and publicly funded students must earn 100 course credits and pass the MCAS exam. The school's website states that Willow Hill uses a multi-sensory approach, and that executive functioning skills and social pragmatics are infused into the curriculum. Willow Hill is not a therapeutic school. It does not have on-site clinical staff, speech/language pathologists, occupational therapists or a BCBA. It (Hall, P-40)
77. Willow Hill offers small classes of six to eight students who, at the middle school level, travel as a single cohort except for breaks, lunch, and Friday electives. All staff, including support personnel such as maintenance workers, are trained in social thinking. For students with sensory or social emotional issues, the school's small size results in a calm environment as well as the ability of staff to intervene in the moment if a student is having difficulty. (Hall)
78. The middle school component of Willow Hill serves 21 students, grouped in cohorts of seven children with one teacher per group. All middle schoolers take a weekly social skills class run by the school counselor, who also is available for individual or small group intervention as needed. In addition, on Fridays there are electives that also are vehicles for teaching social skills, and during unstructured times, teachers work with students informally on such skills. (Hall)
79. Student is in a cohort of 7 boys at Willow Hill. All of the boys in the group have average to above-average cognitive ability. Student's social skills are somewhat lower than most of the boys in his group. According to Mark Hall, Director of Education at Willow Hill, Student has progressed in that setting in that he is now able to transition from place to place with his group. Mr. Hall testified that Student seemed happy at Willow Hill. (Hall)
80. Andrew Petzold-Eley is Student's advisor and English teacher at Willow Hill. Mr. Petzold-Eley has been teaching at Willow Hill for 10 years. He has a master's degree in education. Mr. Petzold-Eley testified that he meets with Student weekly in a small advisory group of 3 peers to process social successes and mishaps of the previous week as well as to work on planning and organization for the upcoming week.

Additionally, social skills instruction is infused throughout the day, through in the moment interventions. Mr. Petzold-Eley testified that Student had made “fantastic strides” in his social skills development, including in “reading the room,” improving his ability to listen to what peers are discussing and then adding a comment related to what the peers are discussing, and using greetings. His grades have been A’s and B’s. (Petzold-Eley)

81. Dr. Kiley-Brabeck observed Student at Willow Hill on November 9, 2020 and February 11, 2021. In November she observed Student during two classes (science and composition) and a mask break. She noted that Student seemed to be receiving infused executive functioning and social skills support, that he appeared to feel safe and comfortable, that he was managing his school day without an aide, and that he was showing some social behaviors such as holding doors and spontaneously greeting adults and peers.<sup>9</sup> She opined that the small class size, consistent peer grouping throughout the day and quiet atmosphere would enable Student to progress. On the other hand, she was concerned about the absence of a clinical component and the fact that Student seemed to have a lower level of social skills than his classmates. (Kiley-Brabeck, P-24)
82. After her second observation in February 2021, Dr. Kiley-Brabeck no longer had reservations, noting that Student was noticeably more comfortable, animated and engaged after 6 months at Willow Hill than he had been in November. He did not display any atypical behavior and seemed to navigate the school independently. Dr. Kiley-Brabeck testified that although Willow Hill was not a therapeutic school of the type she originally had recommended, it met Student’s needs by virtue of its small size, calm atmosphere, consistent well-matched peer cohort, and embedded social skills and executive functioning instruction and support. (Kiley-Brabeck, P-27)
83. Mother testified that since his enrollment at Willow Hill, Student has become happier and more relaxed. He has participated in group activities with classmates such as hockey and writing a school play, in which he wanted to act—both of which were new activities for him. He also has participated in a weekly informal virtual group play date of boys to play Among Us. (Mother facilitated organizing the group with some other parents of Willow Hill students). (Mother) During his three-year evaluation by CPS, Student told school psychologist Matthew Cadigan that he enjoyed Willow Hill and found the small school less stressful than Willard. (Cadigan)
84. Student also was observed at Willow Hill via Zoom for one hour on February 24, 2021 by three CMS staff (Laura Brande, Erika Reale, and Katie Grotenstein) as well as Student’s former speech/language therapist from Willard (Rachel Wolf). The Concord group observed a literature class, transition to mask break, and transition to

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<sup>9</sup> Concord asserts, however, that Student held doors and greeted people at Willard. (Rivers)

the next class. The observation report, written collectively, noted that Student spoke over the teacher during the lesson, did not take out his materials when other students did so, and generally was not attending to the teacher in the same manner as the other children, although he was on task. He needed prompting from the teacher to stay on topic. He was slower than his classmates in packing up and transitioning out of the classroom. During mask break, Student walked in circles by himself and did not engage with peers. (S-8-B)

85. As of the hearing dates, Student was attending Willow Hill.

### 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>10</sup> Student’s IEP, which is “the primary vehicle for delivery of FAPE, *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 *Endrew 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. *Endrew 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, *Endrew 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

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<sup>10</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)

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, parents 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 placements offered by Concord, Parents bear this burden. That is, in order to prevail on their claim for reimbursement for the 2020-2021 school year, Parents must prove, by a preponderance of the evidence, that the amended IEP and placement offered by Concord in May 2020 for Student’s sixth grade year was inappropriate such that Parents were justified in placing Student at Willow Hill. If Parents prevail on this point, they may be entitled to reimbursement only if they also demonstrate, by a preponderance of the evidence, that Willow 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.

For Parents to prevail on their claim for prospective placement at Willow Hill for 2021-2022, they must prove that the IEP and placement offered in December 2020 covering December 2020-December 2021 was not appropriate and that Willow Hill was appropriate.<sup>11</sup>

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<sup>11</sup> Based on the parties’ agreement at the start of the hearing, the sixth grade year, 2020-2021, will be treated as a single year despite the fact that it is the subject of two successive IEPs, and the unilateral placement/reimbursement standard will apply. Similarly, the 2021-2022 school year (seventh grade) will be treated a single unit, for which Parents seek prospective relief

In the instant case, the parties agree, and the record establishes, that Student has a complex profile. He has cognitive abilities that are well-above average, and most of his core academic abilities are very strong as well. He has strong interests in, and advanced knowledge of, esoteric subjects (such as computer operating systems and cybersecurity). He is curious and determined. On the other hand, consistent with his ASD diagnosis, Student has significant deficits in social communication, major sensory challenges, anxiety, difficulty recognizing faces, and attentional and executive functioning weaknesses. Although he wants to connect with peers, and would like to have friends, he struggles with reciprocal conversation, and with understanding another person's perspective and/or interests. Student finds transitions and changes in routine to be challenging and, at times, anxiety-provoking. Environments with high sensory stimulation such as noise, crowding, and smells can be overwhelming to Student and also create significant anxiety.

Finally, Student is prone to cognitive rigidity and distortions as well as a negative view of his world. If he thinks that he has made a mistake or is being reprimanded, he will perceive that he is "bad" and needs to be punished and may become emotionally dysregulated as a result. Student compartmentalizes or internalizes his emotional reactions, so that even if he self-regulates in school after an upsetting event, he may continue to feel and express distress at home. Student's constellation of challenges, coupled with his highly developed intellect and interests not necessarily shared by other children his age, have made it difficult for him to form friendships. There is no dispute that Student wanted to have at least one friendship at the Willard School for years but has been unable to develop one. It also is clear that to the extent he did have relationships with peers, they were short-lived, and usually focused on a discrete activity such as the newsletter referenced above.

There also is no dispute that during Student's five years at the Willard School, Concord invested an impressive amount of resources to support him in a full inclusion, general education setting. From second through fifth grades, Student had the same 1:1 aide or "therapeutic tutor" who accompanied him throughout the school day, both cuing/prompting/reassuring Student and working with other staff to make the mainstream accessible to Student. Student, Parents, and staff had four years' worth of "wrap around" assistance from Selene Gisholt, a clinician with experience in supporting children with ASD in inclusion settings, who trained Student's aide, counseled Student and Parents, and served as a bridge between home and school. Concord funded the ASPIRE program after school and during summers to provide Student with opportunities to learn and practice social skills with a small group of compatible peers. Concord provided push-in and pull-out related services, including speech/language therapy and counseling, and, when Student was younger, occupational and physical therapies. Parents and Concord had a highly collaborative relationship, regularly sharing information and concerns. Lastly, the parties do not dispute that during his time at the Willard School, Student accessed the academic curriculum, and developed his self-regulation skills.

Rather, the controversy in this case is whether Concord's proposed middle school placement, which was based on a supported inclusion model similar to Student's

elementary program, was reasonably calculated to provide Student with FAPE in his area of most urgent need—social skills—that is, the ability to develop, forge and maintain social relationships; or whether, as Parents contend, Student requires a specialized, substantially separate setting with a small, consistent cohort of peers with similar profiles and consistent, embedded instruction in his areas of need. Simply put, Parents assert that Student needed a different educational environment and approach to effectively address his areas of need, and the School argued that Student was progressing at a rate to be expected in these areas given his profile. After a careful review of the evidence produced at the hearing, as well as the arguments of the parties, I conclude that Parents have met their burden with respect to both sixth grade (2020-2021) and seventh grade (2021-2022), and that the record does not support the School’s position. My reasoning follows.

Dr. Karen Kiley-Brabeck wrote a comprehensive report detailing Student’s areas of strength and weakness. Drawing upon a variety of sources—including review of records, clinical observation, testing, interviews with Parents and Selene Gisholt, and Parent and teacher rating scales—Dr. Kiley-Brabeck noted the stark contrast between Student’s excellent intellectual and academic skills and the “profound” deficits in his ability to make meaningful social connections. She also remarked, with concern, about Student’s anxiety, rigidity and tendency to extreme, negative cognitive distortions which caused him great emotional distress. Importantly, she found that despite his many years with much support at the Willard School, he had become “increasingly isolated” in his mainstream educational environment, and “does not have a peer group with whom he can socialize, had not developed foundational social skills (such as consistent eye contact), and that his many accommodations were serving to isolate him from his peers. (See Paragraph 34, above).

Based on the objective findings in her report, I found Dr. Kiley-Brabeck’s conclusion—that by fifth grade, Student needed a smaller, more cohesive environment, a consistent cohort of similar peers, and embedded social skills instruction throughout the day to make effective progress in his identified areas of need—to be well-supported. I also found her testimony to be candid and persuasive.

I also credit the testimony of Selene Gisholt. Ms. Gisholt is trained and experienced in supporting children with disabilities, including children on the autism spectrum, in inclusion settings. CPS retained her for that purpose with respect to Student and others within Concord. Towards that end, Ms. Gisholt trained Student’s therapeutic tutor and provided her initial supervision. For four years, she worked closely with Student, the Willard School Team, as well as Parents. Based on her day-to-day experience, she was familiar not only with Student’s needs, but with the environment, staff, and resources at the Willard School.<sup>12</sup>

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<sup>12</sup> The School points out that Ms. Gisholt did not observe Student in his classroom after second grade; however, I am persuaded that she had a good grasp of his performance and needs based on her weekly contact with the Team, including his teacher, Kim Rivers, as well as with Student and Parents.

Ms. Gisholt presented a balanced view of Student's progress. By way of example, on the one hand she clearly acknowledged that he had improved in his ability to self-regulate, particularly in public settings. However, she also noted that he had been unable to generalize the skills learned at ASPIRE or in his pull-out speech/language or counseling sessions, so that by fifth grade, he still had a "total lack of significant peer relationships with kids at school." Ms. Gisholt did not fault CPS, noting the many efforts that staff had made to help Student build social connections, and stating that Student's inclusion program at Willard was "as good as it could get". However, given his unique profile, it was her opinion that the inclusion model would not be appropriate for him for sixth grade. I credit Ms. Gisholt's expert testimony because it was fair, candid, temperate, and grounded in longstanding knowledge of Student and his needs.

I also credit the testimony of Jennifer O'Rourke of the ASPIRE program. Ms. O'Rourke testified that with much prompting and support, Student was able to make social progress, including towards making a friend, within a very small group of boys with similar interests, cognitive abilities, and social skills profiles.

Finally, I credit the testimony of Mother, who also presented a thorough and nuanced picture of Student, particularly with respect to his emotional life. It was clear from her testimony that she held no animosity towards CPS; on the contrary, she frequently expressed appreciation for Concord's commitment to Student, and Concord witnesses pointed out that the Parent/School relationship was mutually respectful and collaborative, and that Parents were transparent about Student's challenges at home.

It also was clear that Parents did not hold a bias in favor of private over public schools. They returned Student to Concord after his first grade private school placement was not working out, and did not appear even to consider an outside placement until Student approached middle school age. Lastly, there is nothing in the record that would lead me to believe Mother was exaggerating the emotional distress that Student displayed at home. I credit and give significant weight to Mother's testimony about Student's anxiety, sensory challenges, and sadness about feeling isolated at the Willard School, and that Student paid an emotional price for his continued presence there. I also credit her testimony regarding the positive change in Student's presentation and demeanor after he enrolled at Willow Hill.

There is nothing in the testimony or documentary evidence presented by the School that truly undermines the position of Parents. The School's witnesses essentially agreed that while Student had made some improvement in his social skills and his ability to connect with others, he had not formed significant peer relationships. For example, Ms. Rivers testified that Student had instances of social success (*e.g.*, when presenting a project to the class or participating in the class newsletter), and that peers admired

Student's intellect and creativity. These situations did not evolve into friendships, however.<sup>13</sup>

Moreover, School testimony also underscored the importance of Student's therapeutic tutor, who mediated many of Student's interactions with peers, adults, his schoolwork, and the environment, as well as the many accommodations (*e.g.*, Spanish class via DuoLingo, lunch outside of the cafeteria) that were necessary to enable Student to even be present in the school setting. School witnesses did not address how the need to, in effect, insulate Student from elements of the mainstream environment that simply were too stressful for him (*e.g.*, the cafeteria or Spanish class) impeded his ability to practice and generalize skills taught in speech/language therapy or counseling.<sup>14</sup>

It is clear from the record that the program proposed by Concord for sixth grade does not meet the criteria set forth by Dr. Kiley-Brabeck, whose opinion I have found to be credible and persuasive for the reasons previously enumerated. As stated above, the ACCESS program proposed by Concord consisted of full-inclusion classes supplemented by one period per day in a specialized classroom designed to support students with social-emotional challenges. Student would also continue to have a therapeutic tutor (which may have been shared with another child) as well as related services (speech/language and counseling) both within and outside of the classroom, and an array of accommodations. Although the ACCESS room was staffed with a special education teacher, tutors, a BCBA, and a counselor, who reportedly maintained contact with classroom teachers, the fact is that Student would be in ACCESS only one period per day.

Thus, Concord's program as a whole would not provide the coherent environment, in-the-moment interventions, small, consistent peer cohort, and embedded social teaching throughout the day that was recommended by Dr. Kiley-Brabeck. In fact, the program, situated as it is in a middle school where students change classes and teachers throughout the day, would necessarily be even more fragmented than Student's Willard placement, where he was in a single classroom, with a single group of classmates, for all subjects (other than specials) and experienced significant social challenges, secondary emotional issues and ineffective progress. Further, at the time in question, there were no other sixth graders enrolled in ACCESS, so Student would have been alone when he was in the ACCESS room. While, as Concord witnesses opined, this situation would afford Student individualized instruction, it also would deprive him of the opportunity to practice taught skills with similar peers, and it is unclear how the arrangement would serve to help him generalize skills. Faced with an IEP and placement in May 2020 that did not conform to the recommendations of Dr. Kiley-Brabeck, Parents were justified in rejecting the

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<sup>13</sup> With respect to peer relationships, Ms. Rivers testified that classmates knew Student well, were aware of his challenges, and made allowances for him. This statement does not describe truly reciprocal peer relationships.

<sup>14</sup> Rachel Wolf and Michael Aboulafia testified about how Student at times invited them to lunch with a few peers; however, Student had been doing this since second grade.

proposed IEP and refusing the placement in the ACCESS program at Concord Middle School.

My conclusions with respect to the appropriateness of Concord's proposed programming for sixth and seventh grade does not turn on the single metric of whether Student was able to make a friend at the Willard School. Rather, I look to the totality of Student's circumstances, including his significant, persistent sensory sensitivities, his deficient social communication skills, his cognitive rigidity and distortions, his difficulty in understanding others' motives and viewpoints, or even recognizing their faces. I also look to his pervasive anxiety, some of which may stem from the foregoing challenges, which resulted in a need for significant modification in daily activities and the assistance of an aide for Student to attend school, and which, taken together, impeded the goal of forming meaningful, reciprocal relationships.

Lastly, I note Mother's testimony about Student's increased awareness of, and distress about, his "difference," including his voiced perception that difference was "bad," his sense of isolation at the Willard School, and his resulting sadness. Based on the entirety of the record, I find that Concord's proposed programs for sixth and seventh grade would not provide the low-sensory environment, embedded in the moment social communication instruction, or small, consistent peer cohort to enable Student to generalize social communication skills. Indeed, as was the case at Willard, Student would require a dedicated aide to access the middle school environment; and, it is unclear how Student would eventually function without such support in a setting such as CMS which, even more so than the elementary school, would likely be overly taxing in light of his sensory, emotional, and social challenges unless he had an aide to mediate and modify his environment.

Student is entitled to an educational program that is "reasonably calculated to enable [him] to make progress appropriate in light of [his] circumstances." *C.D. v. Natick*, 18-1794 at 4, *supra*, quoting *Andrew F. v. Douglas County School District RE-1*, *supra*, at 137 S. Ct. 1001 (2017). The above-listed challenges are a major portion of Student's "circumstances," and I have taken them into account in reaching my conclusion.

Finally, I note that notwithstanding the LRE mandate of the IDEA and state special education statute, "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), *supra*. In the instant case, a primary "educational improvement" for Student would be the development and generalization of skills to form meaningful relationships with others. Based on the record, at this point in Student's educational career, Concord's proposed IEPs and placements for sixth and seventh grade would not likely enable Student to make meaningful progress in this area.

### **Appropriateness of Willow Hill for Sixth Grade**

Whether Parents are entitled to reimbursement for the costs of Student's unilateral placement depends on whether Willow Hill is appropriate, *i.e.*, whether it is "appropriately responsive to [the child's] special needs." *Matthew J. v. Massachusetts Department of Education, et al.*, 988 F. Supp. 380, 391 (1998); *Florence County District Four, et al. v. Shannon Carter, et al.*, 510 U.S. 7, 14 (1993). The record shows that Willow Hill is a specialized private school serving middle-school and high school children who have at least average intelligence and who also have learning disabilities, ADHD, and/or ASD. Willow Hill is approved by DESE to accept public funding from school districts and follows the Massachusetts Curriculum Frameworks. It is a small school, serving only 66 students. The record establishes that a number of Willow Hill students have difficulty with social communication, and instruction in this area is embedded in the curriculum. All staff are trained in social thinking. The record further shows that the school atmosphere is calm and quiet. Middle schoolers such as Student are grouped into small, carefully matched cohorts that are together for all classes except for electives.

The testimony of Mother, Dr. Kiley-Brabeck, Mark Hall, and Andrew Petzold-Eley establishes that Student has done well at Willow Hill. He has been calmer and happier at when at home, home and appears to enjoy school. He is able to navigate his school day relatively independently, without an aide. He has benefited from in-the-moment social interventions. Student has become more socially engaged, playing hockey, working on the school play, and participating in an after-school video game group with classmates. While Willow Hill is not a therapeutic school as originally recommended by Dr. Kiley-Brabeck, she determined, after observing Student there in February 2021, that it nonetheless meets Student's needs.

Based on the foregoing, I find that Willow Hill was an appropriate placement for Student for the 2020-2021 school year, such that Parents are entitled to reimbursement for the costs incurred for that placement.

### **Appropriateness of the Seventh Grade IEP**

The IEP for the 2021-2022 school year (seventh grade), proposed in December 2020 after Student's three-year re-evaluation, is similar to the sixth grade IEP, with updated goals and benchmarks and increased Grid B and Grid C counseling and speech/language services. The proposed placement continues to be the ACCESS program at CMS. I find that this proposed IEP and placement are inappropriate because, like the IEP and placement proposed for sixth grade, they do not offer Student the educational environment and peer grouping that he needs in order to receive FAPE, that is, a cohesive program with social skills instruction infused throughout the curriculum within a small, consistent group of peers with similar and/or compatible intellectual and social functioning. This conclusion is supported by Dr. Kiley-Brabeck's observation of the seventh-grade ACCESS classroom, where she was unable to determine, among other things, how Student would be taught to generalize any lessons taught in that room to the general education setting. Additionally, it is unclear from the record whether there would be appropriate peers for Student in the ACCESS classroom.

I further find, as discussed above, that Willow Hill is an appropriate placement for Student in seventh grade, based on its ability to provide Student with the programmatic elements that he needs to receive FAPE and his apparent success at Willow Hill during sixth grade.

### CONCLUSION AND ORDER

Based on the foregoing, the IEPs and corresponding placements for Student issued in December 2019 and May 2020 were not reasonably calculated to provide Student with a free, appropriate public education. With respect to the 2020-2021 school year, upon presentation by Parents of satisfactory documentation of expenditures, Concord is directed to reimburse Parents for the cost of the Willow Hill placement for that time period.

Concord is further directed to issue an IEP designating the Willow Hill School in Sudbury, MA as Student's placement for the 2021-2022 school year and to fund said placement, including transportation, for that period.

Finally, by finding that Parents prevail in this matter, I in no way intend to disparage or diminish Concord's efforts on behalf of Student. As stated earlier, Concord demonstrated its commitment to Student by devoting substantial expertise, creativity and resources to educating him within the inclusion setting. Concord staff members who testified were forthright, candid, sophisticated, and obviously invested in Student. This simply is a case where the supported inclusion model was no longer appropriately serving Student, who needed and needs a more specialized setting at this point in his educational career.

By the Hearing Officer,

*/s/ Sara Berman*

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Sara Berman

Dated: May 3, 2021



