

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

In re: Uma<sup>1</sup>

BSEA #2103885

**DECISION**

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

A hearing was held on March 8, 12, 15 and 24, 2021, before Hearing Officer Amy Reichbach. 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. Those present for all or part of the proceedings, all of whom agreed to participate virtually, were:

Mother	
Father	
Lynn Catarius	Director of Student Services, Amesbury Public Schools (APS)
Katherine Gately	Special Education Team Facilitator, Amesbury Middle School (AMS)
Shannon Kennedy Blanchet	Speech and Language Pathologist, APS
Cathryn Mamakos	Special Education Teacher, APS
Melanie Nazarian	Parents’ Advocate
Robin Ratigan	Occupational Therapist, APS
Lygia Soares	Executive Director, Merrimac Heights Academy
Sean Goguen, Esq.	Attorney for Parents
Katie Meinelt, Esq.	Attorney for District
Alina Kantor Nir, Esq.	Hearing Officer, BSEA (observer)
Harper Weissburg	Legal Intern, BSEA
Carol Kusinitz	Court Reporter

The official record of the hearing consists of documents submitted by the Parents and marked as Exhibits P-1 to P-14; documents submitted by Amesbury Public Schools and marked as Exhibits S-1 to S-35<sup>2</sup>; approximately three and a half days of oral testimony and argument;

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<sup>1</sup> “Uma” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

<sup>2</sup> A stipulation regarding mediation between the parties, which took place on August 18, 2020, was substituted on the final day of Hearing for the mediation agreement itself, which had been submitted as Exhibit S-17. Exhibits P-14, S-35, and S-36, were admitted on the final day of hearing, after I requested that the parties submit these redacted peer, and proposed peer, Individualized Education Programs (IEPs) and Behavior Support Plans (BSPs) pursuant to my authority under Bureau of Special Education Appeals (BSEA) *Hearing Rules IX (B)(5)* (Hearing Officer shall

and a four-volume transcript produced by the court reporter. At the request of the parties the case was continued to April 23, 2021 for submission of closing arguments.<sup>3</sup> The parties' closing arguments were received and the record closed on that date.

## INTRODUCTION

On November 20, 2020, Parents filed a *Hearing Request* against Amesbury Public Schools (Amesbury, or the District) alleging that the Individualized Education Program (IEP) proposed by Amesbury for Uma the period from May 21, 2020 to May 20, 2021 was not reasonably calculated to provide her with a free appropriate public education (FAPE). They requested that the BSEA order the District to reimburse them for tuition, transportation, and other costs related to their unilateral placement of Uma at Merrimac Heights Academy (MHA), which had occurred on or about November 5, 2020,<sup>4</sup> as well as for their placement of her in MHA's summer program for the summer of 2020.

The hearing was scheduled for December 28, 2020. On December 8, 2020, the District filed its *Response*, arguing that its most recently proposed IEP was reasonably calculated to provide Uma with a FAPE in the least restrictive environment and that MHA is overly restrictive and not appropriate for her. On December 10, 2020, Amesbury filed an assented-to request to postpone the Hearing to March 1, 5, and 8, 2020, to permit the parties to work together toward resolution, and on the same day I issued an Order allowing that request for good cause.

On January 20, 2021, Amesbury requested further postponement of the Hearing to permit the District to conduct its three-year reevaluation, due March 26, 2021, and update the IEP prior to the Hearing. The District noted that Parents had not assented. On January 29, 2021, Parents filed a written objection, asserting that any information gleaned from Amesbury's three-year reevaluation would not be relevant to the issues at Hearing, given that the contested IEP was rejected in the fall of 2020 and would expire on May 20, 2021. Moreover, Parents indicated that due to their unilateral placement of Uma, a delay in hearing dates would cause them an undue and unsustainable financial burden. After giving Parent's opposition "serious consideration" under Bureau of Special Education Appeals (BSEA) *Hearing Rule III(A)(2)*, on February 2, 2021, I denied Amesbury's request. I later allowed a joint request for a one-week postponement.

The issues for hearing were delineated as follows:

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have the duty to conduct a fair hearing, ensure an orderly presentation of the evidence and issues, and, in furtherance of these duties, may "[a]ssist all those present in making a full statement of the facts in order to bring out all the information necessary to decide the issues involved") and IX(C)(1) ("At the hearing, the Hearing Officer may permit or request the introduction of additional documentary evidence where no prejudice would result to either party"). The parties were given written notice of this request on March 15, 2021 and were permitted to call and/or recall witnesses to discuss the three new exhibits on March 25, 2021.

<sup>3</sup> On March 25, 2020, after some discussion, I instructed the parties that they could jointly submit a stipulation clarifying which students at Merrimac Heights Academy (MHA), as presented through redacted IEPs, attended which classes and programs with Uma. On or about April 6, 2021, Counsel for Parents informed me that the parties had been unable to agree to such a stipulation, and as such, no further evidence was admitted.

<sup>4</sup> Uma was placed by Amesbury Public Schools (Amesbury or the District) at MHA from the beginning of the 2020-2021 school year through November 4, 2020, pursuant to an agreement reached through mediation.

Whether the IEP proposed for Uma for the period from May 21, 2020 to May 20, 2021, is reasonably calculated to provide her with a free appropriate public education (FAPE) in the least restrictive environment (LRE).

If the answer is no, whether MHA is an appropriate placement for her, thus entitling Parents to public funding of her placement there during the 2020-2021 school year and/or summer of 2020.<sup>5</sup>

For the reasons below, I conclude that the IEP proposed for Uma for the period from May 21, 2020 to May 20, 2021 was not reasonably calculated to provide her with a FAPE. I further find that MHA was appropriate for Uma, and as such, Parents are entitled to reimbursement for Uma's attendance there from November 5, 2020 through the end of the 2020-2021 school year. I also find that although MHA was appropriate for Uma during the summer of 2020, neither party treated Parents' placement of her there for the summer as a unilateral placement; in fact, Parents communicated that they were not seeking public funding for her attendance. As such, they are not entitled to reimbursement for MHA's summer program.

## FINDINGS OF FACT

1. Uma is fifteen years old and resides in Amesbury, Massachusetts. Parents, who are divorced, share physical and legal custody of Uma. She spends equal time with her mother and her father. (P-1; Mother, I: 18) Uma is upbeat, enthusiastic, caring, kind, flexible, sensitive, conscientious, friendly, and empathetic. She is communicative and resilient, loves to learn, and enjoys socializing with others. Uma has a great sense of humor and a wide variety of age-appropriate interests, including gymnastics, music (especially the Beatles), dance, drama, reading, and skiing. She has expressed an interest in boys, including male students at her school, and in celebrities. She participates in swim team, yoga, and Hebrew school with neurotypical peers. Uma enjoys Hebrew school, where she currently assists with a class for younger students. She can read and speak Hebrew, celebrated her Bat Mitzvah in September 2019, and sometimes reads at services. Uma has participated in a performing arts program, cheerleading (with typical and special needs peers), and Special Olympics skiing, where she has earned four medals. (P-1, P-2, P-3, P-9, P-13; Mother, I: 19-26, 80; Gately, II: 270, 273-74; Ratigan, III: 43-44; Mamakos, III: 80; Kennedy Blanchet, III: 145-46) Uma's cognitive weaknesses make it difficult for her to access grade-level curriculum. (Kenney Blanchet, III: 146) She processes information slowly, which impacts her ability to produce written work, and she can be distracted easily. (Mother, I: 73; Ratigan, III: 43) Uma experiences more difficulty with abstract concepts, particularly when the pace increases. (Ratigan, III: 45-46) Faced with something meaningful and familiar, Uma is able to perform fairly long sequences of tasks independently, but it may take much review and repetition for her to get to a point where she feels independent and confident. (Ratigan, III: 44; Mamakos, III: 80-81) Although verbal skills are a relative strength, there is a disparity between

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<sup>5</sup> This issue was framed, initially, as whether MHA is an appropriate placement for Uma, thus entitling Parents to public funding of her placement there for the period beginning in the summer 2020 through the end of the IEP period. As discussed in the body of the decision, the parties agreed that notice as to unilateral placement was different for the summer than it was for the school year; for this reason, I have separated the issues in this decision.

her and her neurotypical peers; it can be difficult for her to connect with them. (Kennedy Blanchet, III: 146)

2. Uma's medical history includes prematurity, Down Syndrome, hypothyroidism, and developmental delays. Although her early milestones emerged within expected parameters, as she aged, her developmental trajectory began to deviate from that of her neurotypical peers. Uma received Early Intervention services until age three, at which time she was found eligible for special education and transitioned to an integrated preschool program. Uma qualifies for an IEP under the intellectual disability category (primary) and a communication disability (secondary). Uma has participated in weekly or biweekly individual art therapy/mental health counseling for ten years to help manage her vulnerabilities and work on issues such as self-esteem, self-expression, and social skills. (P-1; P-6)

3. Uma made progress and functioned well overall through elementary school with the support of a one-to-one aide in the inclusion setting and pullout for math and English Language Arts (ELA), though at times she had difficulty with the modified general education curriculum. (P-1)

4. Uma transitioned to Amesbury Middle School (AMS) for fifth grade in the 2017-2018 school year, where she was placed in a partial inclusion program with special education support. She attended science, social studies, and electives in the inclusion setting with a one-to-one aide. Uma received small group ELA and math instruction (where she was paired with one other student) in the Learning Center, where she also participated in a support period called Curriculum Enrichment (CE). Mother reported that this program generally worked well for Uma, but at times the modified general education curriculum was either too challenging or too simple for her. At this time, Uma was friendly with a student who was very kind to her, but that student left the school at the end of the year. (P-2, P-3, P-6; Mother, I: 31-32, 45-46)

5. As the Learning Center teacher, Cathy Mamakos coordinated Uma's IEP and taught her ELA, math, and CE in fifth grade. She also conducted Uma's educational evaluation in fifth grade, taught Uma's math and CE periods for half of sixth grade, taught her in the Extended School Year (ESY) program for the summer between sixth and seventh grade, and attended Uma's Team meetings. Ms. Mamakos has a Master's degree in intensive special needs, is certified in intensive special needs, grades K through 12, and has taught special education to fifth through eighth graders at AMS for twenty years. Uma developed a strong connection with Ms. Mamakos, a hard-working teacher who cares deeply about her students. (P-21 S-2, S-22; Mamakos, III: 76-79, 117-18; Gately, II: 289-90)

6. In November and December of 2017, Amesbury completed its three-year evaluation of Uma. Her full-scale IQ was below the first percentile and her intellectual abilities fell within the extremely low to borderline range. Adaptive behavior scales indicated a personal strength in social skills and weaknesses in conceptual and practical abilities, and testing demonstrated that she would need the most support around community use and functional academics. Academic testing results ranged from the very low to the below average range. Uma's physical therapy (PT) evaluation showed good foundational gross motor skills and the ability to navigate her school independently and participate in physical education with minor modifications. Her

occupational therapy (OT) evaluation showed that she possessed the fine motor skills necessary to complete most self-care tasks and activities associated with the academic setting when provided extra time. Testing revealed areas of strength in functional daily living skills and functional use of school-based materials and computers. Uma received consistently below average scores on her speech and language evaluation, with relative strengths in word problem-solving abilities. Her social skills were a clear strength. (P-4; S-21, S-22, S-23, S-24, S-25; Mamakos, III: 79)

7. In September 2018, Uma began sixth grade in the same inclusion program, which Mother described as a hybrid, or a “blend of small special ed[ucation] and general ed[ucation].” (Mother, I: 28) Uma did well in her Learning Center classes, where she was engaged and attentive, even when students were meeting in several small groups at the same time. (Mamakos, III: 102) Her assignments were modified significantly. (Gately, II: 276) Things were generally going well, as she enjoyed school at this time and felt she was a member of the school community. Uma maintained one friendship with a male peer with whom she had been in classes since first grade.<sup>6</sup> (P-5; S-6; Mother, I: 29-31, 39-40, 43-45)

Following an assistive technology (AT) evaluation, Uma’s Team convened in October and ten hours per year of AT consultation was added to the A-grid of her IEP. (P-8; S-20)

8. In sixth grade, as in fifth, Uma received speech and language services twice a week from Shannon Kennedy Blanchet. Ms. Kennedy Blanchet has a Master of Science in Communication Sciences and Disorders. She participated in a year-long interdisciplinary educational and advocacy training program in neurodevelopmental disabilities and autism, and she is licensed through the Massachusetts Department of Elementary and Secondary Education as a speech-language pathologist (SLP) and by the American Speech-Language Hearing Association. Ms. Kennedy Blanchet has been in Amesbury for six years, servicing and treating students, conducting evaluations, consulting with staff, and supervising a speech language pathology assistant. (S-2; Kennedy Blanchet, III: 143-45) The speech and language services she provided Uma in sixth grade focused on conversational skills and personal safety, building in the Social Thinking Curriculum and Circles of Friends to assist her in understanding various relationships. Often, she worked with a small group of students who had similar interests and required similar interventions and who were supportive of each other. (Kennedy Blanchet, III: 147-50)

9. Amesbury occupational therapist Robin Ratigan worked with Uma during her time at AMS. Ms. Ratigan has a bachelor’s degree in occupational therapy and holds both National certification by the Occupational Therapy Association and Massachusetts and New Hampshire licenses in occupational therapy. Before joining the District five years ago, Ms. Ratigan worked in a variety of capacities at Franciscan Children’s Hospital and North Shore Children’s Hospital. Among other things, she provided direct treatment, worked on multidisciplinary evaluation teams, including cognitive behavioral, school function, computer access, and augmentative communication teams. She also worked in a New Hampshire school district and maintained a

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<sup>6</sup> Although at times Amesbury staff, including Ms. Gately and Dr. Catarius, referred to this as a friendship, at Hearing Mother testified that their relationship was a friendship in elementary school, but by middle school their connection consisted of the other student being kind to and looking out for Uma. (Mother, I: 44-45; Gately, II: 303; Catarius, III: 232-33, 247-48)

private practice. As an occupational therapist at AMS, Ms. Ratigan evaluated Uma in fifth grade, provided her direct treatment for three years, and attended her Team meetings. (S-2; S-23; Ratigan, III: 39-43, 46)

10. In August 2018, Dr. Lynn Catarius was hired as Amesbury's Director of Student Services/Special Education. Dr. Catarius has a doctorate in school psychology and is licensed in Massachusetts, all levels, as a School Psychologist, a Special Education Administrator, and a Superintendent/Assistant Superintendent. Prior to Amesbury, Dr. Catarius worked for over twenty years in several school districts in a variety of capacities, including school psychologist, Director of Assessment and Accountability, Assistant Director of Assessment, Data, and Curriculum Design, and Director of Special Education. (S-2; Catarius, III: 187, 190-91)

11. Mother approached Dr. Catarius at a SEPAC meeting shortly after she was hired and mentioned some concerns about special education programming within the District. Dr. Catarius then met with Mother to discuss her vision for Uma and her transition to middle school. Mother was particularly concerned about the social aspect of middle school. She believed Uma was okay academically, but social interactions were becoming more challenging as her friendships from elementary school were falling away. Among other things, Mother asked Dr. Catarius to observe a program in another town with which she was familiar to learn about a leadership program that paired non-disabled students with students in a life skills classroom. Based on this conversation, Dr. Catarius offered to spend a full school day shadowing Uma in October. During that day, Dr. Catarius noted that Uma was very independent in navigating the school, and she was friendly with neurotypical students. However, her interactions with them were limited in the hallways and practically nonexistent in classes, where she sat in the back of the room with a paraprofessional and one other student doing work that was different from that of her classmates. This work did not appear to be a good fit for her; the content did not lend itself well for her to participate in meaningful ways academically, so she engaged in tasks that were too low level. Dr. Catarius believed that this model was isolating for Uma. As this observation revealed some significant gaps, it ultimately served as the impetus for the creation of Amesbury's middle school Life Skills Program. In the course of deciding to create a new program, Dr. Catarius and Ms. Mamakos visited the life skills program Mother had mentioned. (S-3; Mother, I: 87-88; Gately, II: 276-79; Catarius, III: 192-98, 255)

12. Dr. Catarius asked Katherine Gately to assist her in creating the Life Skills Program.<sup>7</sup> Ms. Gately has a Master's degree in education, moderate special needs, as well as a Master's degree in intensive special needs and a graduate certificate in behavior interventions for autism. She holds current certifications in moderate special needs, grades 5 through 12; severe disabilities, all levels; and special education administration. She is currently in her fourth year as a Special Education Facilitator at AMS. Prior to Amesbury, Ms. Gately taught in both moderate special education and intensive special needs life skills settings. In one of her previous districts, Ms. Gately worked with an occupational therapist, a speech and language pathologist (SLP), and a board-certified behavior therapist (BCBA) to develop a life skills program that provided students with individual academic supports, prevocational experiences, and opportunities to

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<sup>7</sup> Dr. Catarius had developed similar programming in one of her previous positions, where she engaged an expert to consult about programming to address academic, social, and prevocational/vocational skills, and the generalization of those skills to alternate settings. (Catarius, III: 198-99)

generalize skills. She also developed a social pragmatics program. (S-2; Gately, II: 263-69, III: 8) Ms. Gately began working directly with Uma as her Team chair in the fall of 2018. (Gately, II: 271-72)

13. Dr. Catarius and Ms. Gately worked with building administration and Ms. Mamakos, as well as Ms. Kennedy Blanchet, a BCBA, a physical therapist, and an occupational therapist to create a program with the overarching goals of functional academics, prevocational experiences, and generalized skill areas for socialization. The program included a monthly OT consult to the program to assist all students in achieving independence. Academics were to be individualized for each student, incorporating thematic units and multilayered, flexible curricula including the Unique Curriculum, News-2-You, and Stages Math. (Gately, II: 278-83; Mamakos, III: 81-82) This group of professionals then created a brochure and a frequently asked questions sheet to present to the parents of the five or six students for whom they would propose the new program. All of these students had an intellectual disability, and many had several other disabilities as well; all of them had connections to the Learning Center. Because Ms. Mamakos would become the teacher for the Life Skills Program, she would no longer teach math or CE in the Learning Center. (S-5; Gately, II: 284, 286-87; Mamakos, III: 77)

14. A Team meeting took place on December 12, 2018 to discuss Dr. Catarius' impressions following her observation of Uma and review the newly developed Life Skills Program, which Amesbury presented to Parents as its proposal for the remainder of the 2018-2019 school year. The Life Skills Program was slated to open for the second semester on or about January 29, 2019 as a self-contained placement for students with an intellectual disability or dual diagnosis who need opportunities to develop functional academic and life skills, with the ultimate outcome of transitioning into the high school Life Skills Program and then adulthood within the community. Instruction was to be delivered primarily through the Unique Curriculum, which was developed for students with complex learning needs, including Autism Spectrum Disorder (ASD). Life skills to be taught included personal hygiene/personal care, health (in a developmentally appropriate manner), cooking/kitchen safety, community outing/travel safety, personal relationships/social skills, pre-vocational skills/school-based jobs, following a step-by-step visual schedule/task analysis, and the like. (P-5, P-8, P-11; S-4; S-5; Mother, I: 32, 34, 89)

Amesbury staff explained to Parents that the Life Skills Program had been designed to provide students with a space to build academic and social skills that they could begin generalizing across settings in which they could have opportunities to succeed, including music and art classes with non-disabled peers, lunch, recess, and after-school activities. (Catarius, III: 201-03) The structure of the program would enable Uma to connect her academics to functional skills for daily living. Ms. Kennedy Blanchet, who worked with students across the building in various academic settings, was particularly worried about Uma's ability to access academics, which became more challenging in seventh grade. She believed Uma would continue to grow, and that her personality would continue to shine, if she were placed with students with whom she had previously been serviced; those students would be joining the Life Skills Program when it began. (P-8, Ratigan, III: 52-53; Kennedy Blanchet, III: 150-51)

Parents were concerned about structure and content of the Life Skills Program, which they believed would interfere with Uma's ability to be a full member of her community. Mother, in

particular, did not like the idea of a self-contained classroom. Moreover, Parents believed Uma's functioning in some of the skill areas to be covered in the Life Skills Program (i.e. self-care and cooking) was adequate and she should be focusing on academics in school. Parents were also concerned about a mid-year shift potentially overwhelming Uma. Mother did, however, support the idea that Uma could focus on life skills during her summer program. (P-5, P-8; S-4; Mother, I: 27-31, 34-36, 89-92; Gately, II: 288-89)

15. Parents did not agree to the Life Skills Program for Uma for the remainder of sixth grade, though Mother did visit the classroom and correspond with Dr. Catarius, Ms. Gately, and Ms. Mamakos as Parents considered their options for both sixth and seventh grade. The Team met again in January to discuss changes to Uma's schedule necessitated by Ms. Mamakos' assignment to the Life Skills Program. Because Parents had rejected the Life Skills Program for Uma, she remained in inclusion science and social studies with the support of an aide and small group ELA and math. Although she was no longer in Ms. Mamakos' classes, Uma maintained a connection with her former teacher. Parents expressed appreciation for the professionalism of Amesbury staff, whom they felt valued and respected their input. (P-5, P-8; Mother, I: 32-34, 89-94; Gately, II: 290)

16. For the remainder of sixth grade year, Uma experienced difficulty in her academic general education classes, where she was struggling to keep up and frequently felt like she was behind. She felt overwhelmed, lost, and frustrated. (Ratigan, III: 50-51) Parents reported that Uma's general education teachers were extremely talented and worked hard to ensure that Uma could access the material, but modifying the curriculum was a challenge. Uma was also struggling socially, as at times other students were unkind to her during lunch. (Mother, I: 46)

17. Uma's Team convened for her annual review on March 27, 2019. Parents continued to reject the Life Skills Program, so the Team developed a partial inclusion IEP for the period from March 27, 2019 to March 26, 2020 (2019-2020 IEP with goals in reading comprehension, written language, communication/social pragmatics, and mathematics. In addition to special instruction in ELA and math, academic support periods, and paraprofessional support in inclusion classes, the IEP included OT (pull-out and push-in), small group speech/language, and consults by the physical therapist, assistive technology specialist, and occupational therapist. The IEP also proposed a six-week ESY program. (S-10) Team members discussed Uma's progress and their shared desire to promote her ability to navigate classes, materials, and assignments more independently. The Team also agreed that Uma would meet with the school adjustment counselor to establish rapport, and that after 6 to 8 visits, the Team would make a recommendation as to how this service should continue. (P-4, P-8)

At this time, Parents informed the District that they would be obtaining a private neuropsychological evaluation of Uma, and the Team agreed to reconvene when Amesbury received the results to discuss placement for seventh grade. Following this meeting, Mother emailed the Team to express her gratitude for the Team's understanding of Uma and its goal for her to achieve more independence. (P-4; S-7; Mother, I: 94-95)

18. Shortly after the Team meeting, Mother wrote a "vision statement" for Uma, which was incorporated into her IEP. In it, Mother expressed her desire for, among other things, Uma to



participate in meaningful academic and social experiences, with strategies in place to keep expectations high and help her manage challenges; have the same experiences and opportunities that typical students have, including participating on sports teams and student government and attending dances; and be on track to attend Inclusive Concurrent Enrollment and a modified college program. (P-5; S-10; Mother, I: 48-49)

19. In the meantime, on March 22, 2019, Dr. Kay Seligsohn, PhD, completed a neuropsychological assessment of Uma at Parents' request. Dr. Seligsohn administered questionnaires to Parents and teachers. Parents reported that Uma was making progress in her school program, and that she had good friends she saw on the weekends. Uma's teachers reported that she was functioning at or slightly below grade level in science, somewhat below grade level in ELA, and far below grade level in math; that she was attentive and hard-working in class; that she handled changes and transitions with success; and that she served as a positive role model for classmates. Uma's test scores demonstrated a relative cognitive strength in verbal reasoning and auditory working memory and weaknesses in nonverbal problem-solving, visual working memory, and cognitive efficiency. She displayed reduced adaptive or daily living skills, with strengths in social interaction and communication skills (both at the 8-year level) and weaknesses in community and personal living skills (6-year level) and motor skills (5-year level). Dr. Seligsohn diagnosed Uma with a mild Intellectual Disability and noted that she needs "specific training in personal care, communication, and community skills to achieve any level of functional independence in the future." (P-3; S-8, S-9; Mother, I: 96)

Overall, Dr. Seligsohn concluded that Uma should continue to engage with academic learning in a rigorous manner, and that her goals should include functional academics, particularly functional literacy and basic mathematics skills. Although Dr. Seligsohn found that Uma "does require a school program that provides intensive life skills training alongside appropriate academic skills" in a substantially separate classroom for children with Mild Intellectual Disability, she stated specifically that "[p]rimary placement in a life skills program would not be appropriate." Dr. Seligsohn recommended full-year services consisting of a personalized instruction program based upon an intensely integrated, interactive spoken and written language program applied across the curriculum, focused on Uma's specific social and language needs and accommodating for her slow rate of processing and production of information. Furthermore, Dr. Seligsohn recommended that adaptive or daily living skills be taught explicitly in an extended day format with peers engaging at Uma's level. (P-3; S-9; Mother, I: 97-98)

20. In April, Parents spoke with Dr. Seligsohn about her recommendations and about Amesbury's proposal for a Life Skills program. Dr. Seligsohn told them that Uma had full potential to learn academic skills, and that she did not belong in a life skills program because she had many years of academic learning ahead. (Mother, I: 55-56) Around this time, Mother contacted MHA, because she felt it was time to explore other placement options for Uma. She had initially approached MHA while Uma was in elementary school, but it did not accept students before the sixth grade. (Mother, I: 69-72)

21. Parents shared Dr. Seligsohn's evaluation with Uma's Team, which convened on June 5, 2019 to review it. Amesbury staff members found odd Dr. Seligsohn's statement that primary placement in a life skills program would not be appropriate for Uma, given that the remainder of

her recommendations for individualized programming, intensive integration of spoken and written language across the curriculum, functional academics, adaptive and daily living skills, and a prevocational/vocational component, essentially described AMS' Life Skills Program. According to Ms. Gately, the Life Skills Program provides students with individualized academics that are sufficiently rigorous to align with Dr. Seligsohn's recommendations for Uma. School-based Team members asserted that Dr. Seligsohn's evaluation, together with their own observations, supported a transition to the Life Skills Program, which would provide her with opportunities to be with peers with more similar learning styles and to participate in functional academic instruction more tailored to her specific needs. Parents, on the other hand, expressed their desire for Uma to continue receiving academic instruction in the general education setting. Mother shared that she was exploring other educational opportunities for Uma. The Team also discussed extended school year services (ESY) and recommended the District's Life Skills ESY Program. Mother questioned whether this program would be robust enough for Uma. Following the meeting, the Team proposed an Amendment to the 2019-2020 IEP that incorporated information from Dr. Seligsohn's evaluation, added a functional academic goal, and proposed placement in the Life Skills program for seventh grade, beginning August 28, 2018. (P-5, P-8, S-10; Mother, I: 98-99; Gately, II: 290-95; Catarius, III: 200-01)

22. At some point in May, Parents applied to MHA for admission and Uma was accepted on June 10, 2019. She did not enroll there, however, for the 2019-2020 school year. (P-7; Soares, II: 171-72, 209-10, 212-13)

23. Mother contacted the Team by email on June 13, 2019, stating that she was "blindsided" that the Team had recommended a Life Skills Program for Uma. She disagreed with the Team's interpretation of Dr. Seligsohn's evaluation, which she believed endorsed either out-of-district placement or meaningful improvements to her inclusion program, and questioned whether the District's ESY program would be robust enough for Uma. She indicated that she would reject any amendment to Uma's IEP that proposed the Life Skills Program. The same day, Father contacted the Team indicating that he planned to accept the Amendment placing Uma in the AMS Life Skills program for seventh grade, which he did on or about June 20, 2019. He indicated that this acceptance was "based on the stated goal of participating in general education activities with typically developing peers and the stated goal in the IEP meeting by those involved to maximize these opportunities." (P-10; S-10, S-11, S-12; Mother, I: 101; Gately, II: 295-96)

24. Approximately a week later, Father rescinded his acceptance, explaining in an updated response that he had changed his mind and believed more quantifiable goals were required. He stated that Uma should participate in all science labs and projects and all social studies core projects, and that she should receive the remainder of her instruction through a modified curriculum. Shortly thereafter, on or about July 1, 2019, Mother rejected the portions of the proposed Amendment placing Uma in the Life Skills Program, requested a Team meeting to discuss her rejection, and indicated her wish to "continue developing the inclusion setting for" Uma. She accepted ESY services, though she did not believe they would be adequate, and expressed concern about the District's lack of responsiveness to her questions about those services. (S-10; Mother, I: 51-52, 100-102; Gately, II: 297-300)

25. Uma participated in the AMS ESY Life Skills Program. She responded well to the Unique Curriculum, which is utilized in the Life Skills Program year-round, and to the peer cohort. (Mamakos, III: 132-33)

26. District personnel were concerned about Parents' rejection of the Life Skills Program, which they continued to believe matched both Dr. Seligsohn's report and recommendations and their own experience with Uma. Ms. Gately attempted to schedule a meeting with Parents at the beginning of the school year to discuss their rejection of the proposed amendment to the 2019-2020 IEP, but it took several months to find a date on which they were both available. The Team convened on November 15, 2019. Parents expressed their desire to maintain Uma's placement in a meaningful inclusion program that allows her to continue to grow socially. The Team discussed the increased demands of the seventh-grade curriculum, Uma's struggles with inferential thinking and reading comprehension, and her need for a structured environment focused on concrete problems and additional time to formulate ideas. Although school-based Team members continued to recommend the Life Skills Program, Parents would not agree to such a placement. Following this meeting, the Team issued a further Amendment that, among other things, summarized Uma's progress (and lack thereof) at the beginning of seventh grade and reiterated Amesbury staff members' recommendation for a Life Skills Program. This Amendment was reissued a week later with corrections. (P-8; S-13; Gately, II: 301-06; Catarius, III: 200-01)

27. On January 7, 2020, Mother formally accepted the proposed Amendment in part, rejected it in part, and requested a meeting. Specifically, Mother requested some changes to, and rejected omissions in, PLEP B and Current Performance Levels/Measurable Annual Goals. Under Service Delivery, she accepted inclusion support but rejected the omission of one-to-one inclusion support by a special education paraprofessional across all academic areas. She exercised her right to stay-put to that service. On February 24, 2020, Father also submitted a response to the proposed Amendment, rejecting the Team's recommendation for Life Skills and requesting that the IEP focus on fostering independent work in the classroom. (S-13)

In the meantime, Uma experienced difficulties across multiple areas in seventh grade during the 2019-2020 school year. Although at times teachers reported that she was doing well, overall she was less engaged in school and did not maintain any friendships. Uma shared with her occupational therapist that she could not keep up with the work and was aware that she was not connecting with her peers in the general education setting, where she needed so much help that she was one-to-one with the teacher or the paraprofessional nearly all of the time, which isolated her. She began receiving speech and language services with other peers in the inclusion setting, and she had more difficulty connecting with them. Even in her special education classes, she was not understanding math concepts and teachers shared that they were having difficulty modifying the curriculum for her. When the schedule of a student who had been kind to her changed, Uma assumed it was because the student did not like her. She became upset about other students' behaviors in class and developed a stutter. Uma reported to her private therapist that she found unstructured times of the school day, including lunch, challenging; she would eat together with other girls her age but did not know what to say to them. She expressed connecting with some of her peers in the classroom setting but questioned where she fit in. By December, Uma was showing signs of increased distress. She was stressed, became short-tempered with staff, and

started to chew on her pencils and eat erasers. Uma expressed at school that she was afraid of eighth grade, and that she was going to hang herself. She also posted inappropriate comments about another student in a Google chat, and began asking other students for food from their hot lunches and eating food from the garbage. Uma's teachers were heartbroken about these changes and worried about Uma. School staff, including Uma's case manager and special education math teacher Elissa Firmes, discussed these concerns with Mother. Mother was also expressing concerns to school staff about Uma's lack of social connections outside of school with her classmates. (P-5; P-6; Mother, I: 56-69, 84-85; Gately, II: 303-06; Ratigan, III: 55-57; Kennedy Blanchet, III: 151-53; Catarius, III: 248-49)

In January or February 2020, Dr. Catarius accompanied Father and Parents' advocate, Melanie Nazarian,<sup>8</sup> on an observation of Uma in her inclusion science class and pull-out ELA class. Uma was able to answer comprehension questions about a story that was being read aloud, but could not complete a writing task independently. Dr. Catarius, Father, and Ms. Nazarian noted that her one-to-one paraprofessional was with Uma all the time, and no meaningful interactions with non-disabled peers were taking place. They all agreed that this arrangement felt too restrictive for Uma, who is a social person. (Catarius, III: 204-06, 257-58)

In February, Ms. Firmes referred Uma to the school adjustment counselor, as she seemed increasingly overwhelmed. Mother communicated her concerns to the school adjustment counselor, who suggested that Uma join a group after a few more individual sessions. During COVID-related school closures in the spring, Uma continued to meet with the school adjustment counselor to discuss social issues, among other things. (P-5; P-6; Mother, I: 63-64)

Throughout the 2019-2020 school year Team meetings, school staff shared their growing concerns about Uma's increasing distress. Parents responded that if Uma had more talented, skilled, one-to-one services, integration across settings would work better for her, as it had in the past. Her teachers disagreed; they believed the academics had become too advanced for her. (Ratigan, III: 58)

28. Despite these difficulties, Uma displayed some strengths at AMS. She was able to navigate the school independently between classes and run errands for teachers. She attended several electives independently, including chorus, art, and physical education. She enjoyed participating in these classes, which were a highlight of her day. For more academic classes such as computer, a paraprofessional would attend in the event she needed assistance. Uma also went to lunch on her own, as she had a group of girls with whom she would sit. (Gately, II: 311-12, Ratigan: III: 44-45; Mamakos, III: 93-95, 102)

29. Uma's Annual Review was scheduled for March 17, 2020 but was rescheduled, at Parents' request, to March 23, 2020 (P-8) The meeting was then postponed to May in light of the COVID-19 pandemic. (Gately, II: 306)

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<sup>8</sup> Around the beginning of 2020, Parents contacted advocate Melanie Nazarian, as they were feeling overwhelmed and wanted help aligning themselves in their vision for Uma. (Mother, I: 74)

30. Uma's Team convened on May 21, 2020 for her annual review. Teachers and service providers reported that she was making effective progress in all areas relative to her goals and benchmarks.<sup>9</sup> Uma's OT reported that she has many of the skills needed for acceptance to a modified college program, but she should continue to work on general executive functioning skills and developing independence in managing her own assignments and moving between locations in the school setting. Ms. Nazarian acknowledged that inclusion was not working for Uma, but expressed Parents' unwillingness to place her in the Life Skills Program. Parents shared their concerns about the transition to high school, Uma's difficulty establishing meaningful friendships, and their belief that inclusion was no longer working. They also wondered how remote learning would look in the fall. (P-4, P-8; S-14, S-27, S-28; Gately, II: 306-07, III: 14-15, 32-33)

On June 1, 2020, Amesbury proposed an IEP for the period from May 21, 2020 to May 20, 2021 (2020-2021 IEP) with goals in reading comprehension, written language, math, communication/social pragmatics, functional academics, and work habits/organization. The IEP proposed placement in a partial inclusion program with the following services: A-grid consults in PT (1 x 15 minutes/month) and AT (1 x 600 minutes/year); B-grid inclusion supports (12 x 58 minutes per 6-day cycle); and C-grid ELA and math (6 x 58 minutes per cycle each), small group speech/language (2 x 30 minutes per cycle) and OT (1 x 15 minutes per week). The IEP also proposed the Life Skills summer program at AMS. (P-4, P-8; S-14; Gately, II: 306-07, III: 14-15)

31. At some point during the school year, Parents informed Amesbury that Uma would participate that summer in the District's in-person ESY Life Skills Program, comprised of four half-days per week focused on academic support and social opportunities such as field trips. (Mother, I: 105-06; Gately, III: 36-38) On or about June 1, 2020, however, MHA Executive Director Dr. Lygia Soares contacted Parents to inquire whether they were still interested in placing Uma at MHA. Parents asked Dr. Soares about private pay options for MHA's summer program. On June 25, 2020, Parents enrolled Uma in the program, which Dr. Soares understood would be a private placement. (S-29, S-30; Mother, I: 106-07; Soares, II: 213-15)

32. At the end of June, Parents notified Amesbury that they were sending Uma to ESY at MHA instead of Amesbury, due to the District's remote status, as MHA would be offering individualized instruction outside for six weeks. According to Mother, Parents viewed the summer program as an opportunity to see whether MHA would be a good option for Uma. At the time they emailed Amesbury about their plan, Parents did not request that the District fund this program or notify the District that they would be seeking reimbursement for it. In fact, they did not intend to seek public funding for the MHA ESY program. (P-10; S-30; Mother, I: 76, 110-12; Catarius, III: 206-08, 219-20) Mother testified at Hearing that Parents did not request that the District pay for the summer program because they were "just trying it out" and did not know whether MHA would be a good fit for Uma. (Mother, I: 114-15)

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<sup>9</sup> Progress reports issued at the end of the school year indicate that Uma was attending classes and services remotely during COVID-19, completing assignments, participating, and making progress in ELA, OT, and speech and language. She participated only minimally in math activities, and as such, her teacher could not measure her progress toward IEP goals and objectives. According to her February math progress report, Uma was continuing to develop her number sense skills while being exposed to "a very modified level of grade seven curriculum." (S-16)

33. Amesbury has placed several students at MHA, including one current student. All of them have fallen in the average to low average range academically but struggled with the demands of a larger school setting given their social/emotional needs. Dr. Catarius was surprised to hear that Parents elected to place Uma at MHA for the summer, as Uma did not fit what Dr. Catarius knew of the school's student profiles. (Catarius, III: 208-09, 258)

34. On July 22, 2020, Mother partially accepted the 2020-2021 IEP. She accepted an ESY program but rejected the ESY placement in the Life Skills Program. In addition to requesting small corrections, she rejected the proposed reduction in direct OT services and exercised stay put to 2 x 15 minutes/week. Mother indicated her disagreement with the statement that Uma's teachers and service providers felt she was making effective progress in all areas and with the language describing the Functional Life Skills Program as appropriate for Uma. She requested additional information about data collection as well and requested a meeting. Mother consented to placement in a partial inclusion program. (P-4; S-14)

35. MHA was founded by Dr. Soares, who has a Master's degree and a Ph.D. in speech-language pathology. Prior to founding MHA, she worked as an SLP at a local hospital, then completed a postdoctoral fellowship in neuropsychology. In the early 1990s, she worked at a different hospital to develop a cognitive rehabilitation program for adults with traumatic brain injuries, strokes, and/or dementia. After Dr. Soares became the parent of a child with significant learning challenges and an intellectual disability, and could not find an out-of-district placement for her daughter that had strong programming in academics, life skills, and vocational/prevocational skills, she decided to start MHA. MHA opened in 2014 and in 2016 was approved by the Department of Elementary and Secondary Education as a Chapter 766 school. (P-7; Soares, II: 159-61, 170)

36. MHA is a private nonprofit day school for students aged 11 to 22 with complex learning, language, and social challenges who are functioning below grade-level. According to MHA's brochure, the school provides students with "individualized and direct language-based instruction," hands-on activities, and real-life experiences; teaches essential life skills; engages students in transition focused activities in preparation for college and careers; and includes a commercial kitchen, woodshop, auto bay, thrift store, and café. (S-26; Soares, II: 216-17)

37. MHA's student profiles include cognitive, intellectual, and developmental disabilities as well as neurological deficits. Students with autism spectrum disorder who meet other criteria may also attend. All students admitted to MHA must have a desire to learn. MHA does not admit students with significant behavioral problems, though one current student has a social/emotional diagnosis. (S-26; Soares, II: 165-66, 196-98) Dr. Soares describes MHA as developed around a foundational triangle of speech and language, occupational, and social supports that are cohesively delivered across the day in the classroom, during lunch, and in small groups. (P-1)

MHA employs 12 staff members, including two Massachusetts-certified special education teachers, a reading specialist, two assistants, an occupational therapist, one full-time SLP, an additional SLP who consults for the social skills groups, a counselor, an Education Director, and an Executive Assistant, in addition to Dr. Soares. (Soares, I: 195-96) The MHA brochure created

and/or updated in summer or fall 2020 lists an enrollment of 13 students, but only eight students, including Uma, are currently enrolled. (P-1; S-26)

Although the MHA brochure states that students are grouped by age, but also by learning style and needs, Dr. Soares testified that students are grouped by ability (as reflected in their IEPs, neuropsychological evaluations, observations, and diagnostic interventions), rather than by age or grade. Groups are dynamic, based on individual students' needs. Teachers' instruction is driven by students' levels. (S-26; Soares, II: 191-93)

Both Dr. Soares and Dr. Tubbs<sup>10</sup> referred to MHA as a language-based program. According to Dr. Soares, although only half of MHA's current students have been diagnosed with language-based learning disabilities, the school employs a language-based approach, including structured programs such as Orton-Gillingham and Lindamood-Bell. The Education Director, who previously worked at Learning Skills Academy, is highly trained in language instruction and provides monthly professional development for MHA teachers. The reading specialist is also an SLP trained in Orton-Gillingham and Lindamood-Bell, and she will be trained in the LiPS program prior to the end of this school year. MHA teachers have attended internal professional development sessions to learn how to utilize strategies in their classrooms, but they have not participated in external trainings or certifications. (Soares, II: 236-41) Most MHA students receive individual reading instruction with the reading specialist for decoding and/or reading comprehension. (Soares, II: 173) The reading specialist collaborates with teachers to ensure that these strategies are employed across different subject areas. (Soares, I: 178-79)

MHA encourages independence through OT, speech, and life skills programming that includes, as appropriate, having students prepare their lunches from raw ingredients sent by their parents. Dr. Soares aims to develop a residential program at MHA; in the meantime, the school incorporates a building that is like a home in that it permits students, in non-COVID times, to do laundry, make beds, and learn how to otherwise manage their home environment. Also during non-COVID times, students performed chores, such as cleaning and sweeping, in the cafeteria. (Soares, II: 161-63) MHA utilizes the Social Thinking Curriculum to build social skills throughout the day; all students attend a social group and all teachers and service providers facilitate generalization across the curriculum, with the goal of teaching students to generalize outside of school. In non-COVID times, MHA integrates community outings connected to thematic curriculum (i.e. to the Maparium in Boston, an overnight trip to Cape Cod) and/or program needs (i.e. a trip to the grocery store), which promotes generalization of academic, social, and life skills. Communication with parents about the school's expectations of students on these trips promotes further generalization. Pre-COVID, MHA operated a thrift store on campus as part of students' prevocational learning. The store is highly supported through students' participation in speech and/or OT; they get to practice social greetings and conversational skills in a supported environment. (Soares, II: 166-70, 181-83)

38. Dr. Soares is familiar with Uma, whom she describes as engaging and easy to engage, as they speak daily in the hallway and when Dr. Soares has lunch with students twice a week. Together, they discuss food and age-appropriate television shows such as Vampire Diaries. (Soares, II: 170-71) Dr. Soares believes Uma is a good fit cognitively for the students at MHA,

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<sup>10</sup> Dr. Tubbs conducted an updated neuropsychological evaluation of Uma in the fall of 2020, *infra*.

particularly with the group she is paired with, which is comprised of a 14 year old, a 17 year old, and Uma. (Soares, II: 172) Uma is the first student with Down Syndrome to attend MHA. (Soares, II: 236)

39. During the 24-day in-person summer program at MHA, Uma participated in 45-minute reading and math tutorials and a writing class four times a week. She participated in 45-minute classes in physical fitness, gardening, theater and performance, technology, summer science, and community service two times a week. Uma was engaged and excited about what she was learning. She made friends within her first two weeks there, forming what Mother described as her first true friendship. (P-2, P-7; S-26; Mother, I: 76-77)

40. In the meantime, on or about June 2, 2020, Parents reached out to Massachusetts General Hospital (MGH) to inquire about an updated neuropsychological evaluation of Uma in connection with their work with Ms. Nazarian regarding her school placement. In response to MGH's inquiry, Mother stated that she was not aware of a clinical need for Uma's testing. As Dr. Seligsohn was unavailable for an extended time, Parents looked elsewhere and ultimately, they contracted with Dr. Rebecca Tubbs to conduct the reevaluation. (S-15; Mother, I: 75-76, 107-10)

41. Dr. Tubbs has a Master's degree in counseling psychology with a clinical subspecialty in assessment and a Doctorate in clinical psychology. In the course of her training, she completed several neuropsychology internships at local hospitals, primarily with children. Since 2010, she has focused on evaluating children as a pediatric neuropsychologist at the Integrated Center for Child Development, the Child Development Network, Child and Family Psychological Services, and in private practice. She has conducted hundreds of neuropsychological assessments, some of which have included program or school observations. Dr. Tubbs has also been retained by school districts to conduct program observations and provide diagnostic clarity and interventions, primarily for children with behavioral issues. (P-1; Tubbs, II: 5-16)

42. Dr. Tubbs conducted her evaluation on July 21, August 11, and October 2, 2020.<sup>11</sup> At Parents' request, she observed Uma at MHA on July 28 and October 2, 2020. Dr. Tubbs conducted clinical interviews with Uma and her mother, reviewed her medical and educational records, administered questionnaires to Parents and a teacher at MHA, and observed Uma's behavior and performance on a variety of standardized assessments. She did not receive a completed questionnaire from Father, though a questionnaire was made available to him, nor did she solicit information about Uma from the teachers or service providers who had worked with her at AMS. Mother reported that Uma exhibited difficulties with fine motor coordination, stereotyped facial and hand movements, difficulty understanding social cues, intense interests, and cognitive disabilities. She expressed concern about Uma's limited social opportunities in school, reporting that Uma had not had a genuine friendship since elementary school, that her classmates in special education classes were very different from her, that she had been treated unkindly by other students, and that she was likely picking up some inappropriate language from some of the "more behavioral" students with whom she had been grouped. Uma's teacher at MHA indicated a high level of academic concern and moderate behavioral, social, and emotional

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<sup>11</sup> Although Dr. Tubbs' report lists all of these dates, according to both the report itself and her testimony, Dr. Tubbs did not meet with Uma to conduct testing until October 2, 2020.



concern. She noted significant difficulties in reading, decoding and comprehension, spelling, putting her thoughts into writing, math, general learning, expressive and receptive language, sitting posture, gross motor skills, and emotional control. Dr. Tubbs noted that Uma was friendly, transitioned easily to testing, and displayed an impressive work ethic. She was an effective conversationalist who exhibited a nice ability to sustain social discourse through active listening, asking relevant follow up questions, and making appropriate comments. (P-1; Tubbs, II: 105-07, 123)

43. Dr. Tubbs observed Uma at MHA on July 28, 2021, prior to her neuropsychological assessment and approximately two weeks after Uma began attending MHA's summer program. She observed again for a shorter time on October 2, 2021, the day she conducted testing. Over the course of her two visits, Dr. Tubbs observed Uma during academic instruction, lunch, theater/performance class, physical education, and "Fun Friday." She also met with Dr. Soares. (P-1; Tubbs, II: 81-82)

When Dr. Tubbs observed Uma at MHA in July, eight students were participating in the summer program. Uma was grouped with two other girls, one of whom was absent that day. During her first observation, Dr. Tubbs did not engage specifically with Uma, but she did observe her to demonstrate excellent social conversation skills, as she was gregarious and engaging. For small group math instruction, Uma received one-to-one instruction with the teaching assistant (TA) while the special education teacher moved between the two girls, who were at different levels. With prompting, Uma was able to correct some of her errors, but became confused while working on a whiteboard so manipulatives were reintroduced. Afterward, each student was given a math worksheet individualized to her skill level; Uma's was shorter and focused on addition. After they completed their worksheets, Uma and the other student chatted while waiting for their next class. During reading class, Uma worked individually with the teacher while her classmate read; she demonstrated slow processing speed but was able to provide relevant responses. At one point, she had difficulty responding to a question and was directed to look in the book. Instead, she tuned out, closing her eyes and making chewing-like movements. When the teacher returned, she stated that she was confused, but was able to locate the answer once her teacher re-oriented her to the task. She was able to stay on-task, reading quietly aloud to herself while the teacher worked with her classmate. For small-group science, led by the TA because the teacher was out sick, Uma and her classmate worked on the life cycle of the butterfly. Both students needed some assistance loading the presentation on their laptops; Uma offered verbal assistance to her classmate, which was well-received. The girls took turns reading aloud, then discussed what they had learned. In small group ELA/writing, Uma and her classmate were introduced to a new poetry genre, which they discussed with the teacher. At some point, Uma's attention began to flag; she demonstrated significant eye fluttering, hand posturing, chewing movements, teeth clacking, and yawning, and was not participating in the lesson. She did respond when her name was called but did not typically have an answer. Ultimately she was able to get back on track. In both reading and science, Uma and her classmate were asked to clap out syllables. During outdoor lunch, students and several staff members ate together in a large circle on the grass. Uma was very chatty, soliciting others in conversation as well as making commentary or laughing when appropriate. Uma had difficulty making up riddles; some peers told her that what she shared was not a riddle, but she "took this in stride, as there was no unkindness or attempts to shut her down." During theater/performance, Uma was very excited to work on a play. She was

dramatic and engaged throughout the class. At one point, a student from another class came to the doorway; he asked them to turn the music down, but also indicated that the song they were playing made him sad because of an association with a friend. Uma apologized and appeared distraught by the exchange. The TA and Uma's classmate responded to her distress and assisted her in effectively processing the experience. (P-1; Tubbs, II: 46-49, 131-33)

44. In October, Dr. Tubbs observed Uma in gym, at lunch, and during "Fun Friday." Unlike her visit to MHA over the summer, Dr. Tubbs did not observe any academic classes. Dr. Tubbs noted that Uma was engaged in gym, playing basketball with another girl and a staff member. Though she initially wanted to eat lunch outside, when she learned that everyone else planned to eat inside, she joined them and sat near a teacher and another student. She was attentive to conversation around her while eating, adding comments and laughing appropriately; although adults were present, they did not have to facilitate conversation among the students. During "Fun Friday," Uma engaged with the classmate previously identified as her close friend, as well as a staff member. She was animated, energetic, and chatty, and she worked with her friend in a complimentary and collaborative manner. At Hearing, Dr. Tubbs testified that Uma was entirely independent during lunch and transitions between testing and her school day. She required no prompting through the routines. (P-1; Tubbs, II: 45, 50-52, 82-83)

45. In the section of her report regarding her observation of Uma at MHA, Dr. Tubbs described Uma's transition to middle school as resulting "in a child who has been isolated and maltreated by peers as well as instructionally overwhelmed in the inclusion setting, even with significant modifications to the curriculum and the provision of 1:1 paraprofessional support." She concluded that this was "a poor outcome for a child who is so socially driven, internally motivated to succeed, and such a hard worker." She stated that Uma is capable of making deep connections with others, "but she has been deprived of meaningful and consistent opportunities to develop and hone these capacities, leaving her isolated and marginalized." In formulating these conclusions, Dr. Tubbs spoke with Mother and MHA teachers and reviewed Uma's prior IEPs and Dr. Seligsohn's assessment. She did not speak with anyone at AMS about Uma; at Hearing, she explained that she could not talk to every person who had ever been involved with her patients, as this was neither possible nor affordable for parents.<sup>12</sup> (P-1; Tubbs, II: 106, 108-11, 114) She elaborated on her beliefs about Uma's experiences through testimony, positing that Uma "is a child who has never really been able to connect with anyone, hasn't been able to connect with her neurotypical peers because the pace was too fast, the linguistics were too complicated, the thinking, problem-solving was too savvy. . . Similarly, she's had difficulty connecting with the special needs kids. Her mother said that [Uma] [has been in special education classes with] some kids that are essentially lower functioning than her in ways – like, for example, language or social bearing – so that makes it hard for [Uma] to have these balanced relationships." (P-1; Tubbs, II: 53, 72) Although her report was critical of Uma's participation in general education classes and Dr. Tubbs testified that she knew Amesbury had been proposing something different for some time and that Uma's Team did not believe general education

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<sup>12</sup> At some point, Mother reached out to Dr. Catarius to inform her that Dr. Tubbs would be observing Uma at MHA and asked Dr. Catarius to speak with Dr. Tubbs about that observation. Dr. Catarius and Dr. Tubbs had a five-minute telephone conversation during which the latter shared with the former her observation from July. Dr. Tubbs did not ask any questions about Amesbury's program or what the District was proposing for Uma, nor did she ask for Dr. Catarius' input. (Catarius, III: 216)

classes were appropriate for Uma, her report omitted that information. At Hearing, Dr. Tubbs acknowledged that such omission from her summary of Uma's educational history was an oversight. (Tubbs, II: 114-15)

Dr. Catarius viewed Dr. Tubbs' description of Uma as isolated and marginalized as inaccurate, though she acknowledged that the Team shared some of Dr. Tubbs' concerns about Uma's placement outside of Life Skills in seventh grade. (Catarius, III: 217-18, 245)

Based on her observation, Dr. Tubbs determined that MHA employs a language-based approach, with integration and active targeting of listening, speaking, writing, and reading. At Hearing, she testified that language-based instruction is explicit, direct, and evidence-based. Dr. Tubbs described MHA as reflecting robust, individualized programming designed to promote the growth of the whole student and indicated that Uma was receiving work tailored to her specific level of functioning, delivered in a meaningful, accessible, forward-looking, appropriately challenging manner. She noted that the characteristics that make Uma charming, including her unguarded, caring nature, also make her socially and emotionally vulnerable. At MHA Uma was able to process the experience of unconsciously hurting a peer in a rich and meaningful manner. She also had the opportunity to participate in activities she loves and has developed "genuine, reciprocal friendships with her classmates." (P-1; Tubbs, II: 38-44) Although she had never seen Uma interact with neurotypical peers, Dr. Tubbs opined that her slow pace would prevent her from participating meaningfully in performing arts, theater, and athletics with them. (P-1; Tubbs, II: 116-17) Dr. Tubbs' report notes that Uma had, prior to COVID, met her friend from MHA for picnics and other leisure activities on the weekends, though Uma actually had not attended MHA before COVID. (Tubbs, II: 118-19)

In testing, Uma demonstrated unevenly developed intellectual functioning, with individual performances spanning from Deficient to Borderline and aggregate performances consistently within the Deficient range. Her adaptive functioning was also variable. Uma exhibited substantial deficits in reading, writing, and mathematics, with the bulk of her performance spanning the mid-first to early third-grade level of functioning. She had solidly average expressive vocabulary skills, but notably less developed receptive vocabulary skills. She demonstrated difficulty formulating language to respond to a question and organizing and presenting things in a fluid manner commensurate with some of her higher-level skills. Her language profile, which includes stronger social conversational skills, may lead others to overestimate her abilities. Given her difficulties with integration and organization of visual spatial information, she is more focused on details and may have difficulty understanding the larger picture and interpreting the environment. Uma's social problem-solving skills were significantly reduced, ranging from below the six-year level to the early seven-year level. Even so, she is capable of deep connections and relationships with others. Moreover, Uma has a great capacity for learning, as she is motivated, invested in her learning, capable of self-monitoring and correcting mistakes, and responsive to instruction. (P-1; Tubbs, II: 18-24, 28-35)

Dr. Tubbs' testing of Uma revealed better-developed verbal capacities and better performance on familiar, untimed tasks that are highly structured, have minimal written and/or expressive language demands, and provide her with a model/framework to guide her output. (P-1)

Dr. Tubbs diagnosed Uma with Intellectual Disability-Mild; Other Specified Neurodevelopmental Disorder (secondary to the sequelae of Down Syndrome, an imbalanced neurocognitive profile, and widespread executive dysfunction); Developmental Coordination Disorder-Dyspraxia; Language Disorder; and Specific Learning Disorders with Impairments in Reading, Written Expression, and Mathematics. (P-1; Tubbs, II: 26-28)

46. In her report, Dr. Tubbs recommended a comprehensive, unified approach to remediation with programming that targets skill development in a structured, sequential manner and access to integrated technological supports. She opined that Uma's programming should focus on academic achievement, not just functional academics, and personal development. Dr. Tubbs stated that placement in a highly specialized program specifically designed for children with complex neurodevelopmental presentations would enable her to foster deep, genuine relationships with like peers while simultaneously receiving intensive academic and executive supports across the curriculum. Further, she recommended that social skills development be built into Uma's programming, with rigorous scaffolds and supports for the development of social functioning and peer relationships throughout the day and across all settings. Dr. Tubbs emphasized that Uma will not be able to advance or refine her social functioning in the absence of an appropriate peer group amongst whom she can consistently practice these skills, and as such, "a series of push-in and pullout services delivered primarily within a generalized special education life skills program is not sufficient to her needs (*sic*)." At Hearing, Dr. Tubbs elaborated on the importance of an appropriate peer cohort to support Uma's ability to learn vicariously from others, serve as a role model and leader for her peers, and consistently practice her learning and social skills throughout the day. (P-1; Tubbs, II: 45-46, 84-86)

Specifically, Dr. Tubbs recommended placement in a specialized setting with an increased degree of programmatic intensity to manage the multidimensional and interrelated nature of Uma's challenges; rigorous supports for cognitive inefficiency and slow processing speed; placement with a cohort of like peers; classes of 3-5 students with a low student to teacher ratio and additional personnel to provide support, cuing, and individualized help/instruction as needed; systematic use of critical thinking/problem-solving curriculum; and extra time, among other accommodations, including multiple learning opportunities, pre-teaching and review, repetition, multi-sensory instruction at a slower pace, visual formats, paired pictorial and verbal directions, and language-based instruction. She also recommended one-to-one speech and language therapy with a certified speech pathologist and one-to-one OT, each for at least 2 x 30 minutes per week; daily intensive, individualized reading instruction for at least 45 minutes; individualized math instruction to support skill development; individualized writing instruction; and participation in a social skills group and a group comprised of girls only to discuss puberty, sexuality, dating, and basic social safety skills; direct supports and strategies for managing executive deficits; and year-round educational programming. (P-1)

47. Dr. Tubbs reviewed the sanitized IEPs of other MHA students and testified at Hearing that she believed the students with whom Uma is grouped form an appropriate cohort for her. They share social/emotional similarities, as they are there because they have had social and emotional difficulties such as isolation, bullying, and unkind treatment at school, as well as learning issues. Being with this cohort allows Uma to advance and refine her social skills through genuine experiences with others operating at a similar level. Developing balanced and

meaningful relationships with her peers will allow her to be socially and emotionally comfortable, which will then facilitate her engagement with the educational process. (Tubbs, II: 52, 54-59)

48. Unlike Dr. Tubbs, Ms. Kennedy Blanchet, who provided speech and language services to Uma in fifth, sixth, and seventh grade and works with the Life Skills Program, is not of the opinion that Uma requires a language-based program. Rather, she endorsed the use of language-based methodology such as repetition, visuals, models, and text-to-self connections, which, she indicated, are all part of the Life Skills Program. (Kennedy Blanchet, III: 181-82)

49. Parents participated in mediation with Amesbury on August 18, 2020. At the time, the District's plan was to bring students attending substantially separate programs, including Life Skills, back to in-person learning four half-days a week beginning September 21, 2020. (S-17; Catarius, III: 211)

Pursuant to the mediation, Uma was placed at MHA by the District at the beginning of the 2020-2021 school year for an "extended evaluation" that ended on November 4, 2020. (P-1, P-2; S-17; Soares, II: 199; Catarius, III: 209-11, 250-51)

50. In early October 2020, Dr. Catarius observed Uma at MHA in her one-to-one reading class, where her teacher was using Visualizing and Verbalizing Level 3; in her one-on-one math class where the teacher was working with her on single digit addition and subtraction, and in science class, where she was working with one other student on a hibernation project that required her to select an animal that hibernates and provide specified information about that animal. Dr. Catarius noted that although this is early elementary school science content, Uma required the teacher's assistance full-time to participate, whereas her peer engaged more independently for up to 17 minutes at a time. By the end of the class period, Uma had completed two of four tasks, while the other student had finished all four. Dr. Catarius did not see Uma interact with any peers during her visit. (Catarius, III: 211-14)

A week later, on October 15, 2020 Dr. Catarius returned to MHA, where she was scheduled to observe Uma during social studies for a whole-school book reading. When she arrived, Dr. Soares told her that the schedule had been changed and instead, she would observe a whole group vocabulary-building activity. The students split up into two groups and each read a Halloween-themed play that incorporated the vocabulary they were learning. (Catarius, III: 214-15)

Based on her observations, Dr. Catarius concluded that the content of Uma's instruction at MHA was probably at an appropriate level. She was surprised, however, to see Uma one-on-one with adults for so much instruction given Parents' emphasis, to that point, on the importance of inclusion, access to non-disabled peers, and social interaction in general. (Catarius, III: 213, 215-16)

51. Uma's Team convened on October 29, 2020 to review Dr. Tubbs' evaluation. The Team also considered Dr. Seligsohn's previous evaluation, which included similar assessment results, as well as input from the MHA teacher and service providers, Parents, and a letter submitted by

Uma's private therapist. The Team updated the 2020-2021 IEP to reflect services and goals recommended by Dr. Tubbs. As amended, the IEP included a summary of Dr. Tubbs' testing, updated math, writing, reading, speech, and functional life skills goals, and updated accommodations. Specifically, the Team modified delivery of speech services<sup>13</sup> and added daily reading, as well as daily typing and a consult to facilitate generalization in connection with OT services. Goals included reading, written language, communication, mathematics, life skills, work habits/organization, and social pragmatics. The service delivery grid was amended to provide for the following services from October 29, 2020 to May 20, 2021:

A grid consults: OT and PT (1x 15 minutes monthly); AT (1 x 600 minutes per year)  
B grid inclusion supports: 8 x 45 minutes per 6-day cycle, provided by a paraprofessional  
C grid: reading, math, and writing (5 x 45 minutes weekly each); OT (1 x 15 minutes weekly); typing (5 x 15 minutes weekly);<sup>14</sup> individual speech and language (1 x 30 minutes per cycle); and small group speech and language (1 x 30 minutes per cycle).

As such, the 2020-2021 IEP, as amended, called for the majority of Uma's services to be provided in a substantially separate setting. (P-4, P-8; S-18; Gately, II: 307-09; Catarius, III: 217)

As memorialized in the N1 generated on November 3, 2020, the Team recommended that Uma return to AMS beginning on November 5, 2020. School-based Team members believed Uma could receive the recommended services in the Life Skills Program, which they viewed as sufficiently rigorous; based in individualized, tiered, structured, cohesive curricula that, among other things, facilitates independence, critical thinking, problem-solving, and self-advocacy skills in a language-rich environment; and comprised of like peers who are socially engaged and motivated to learn. (P-4, P-8; Gately, II: 309-15, III: 16-17; Ratigan, III: 64-65)

52. Parents disagreed with the proposed placement and services, and on November 3, 2020, notified Amesbury in writing that beginning on November 5, 2020, at the conclusion of Uma's extended evaluation period, they would be placing her unilaterally at MHA and would seek reimbursement for this placement. (P-10; Gately, III: 33-34; Catarius, III: 220) On or about November 18, 2020, they formally rejected the 2020-2021 IEP, as amended on November 3, 2020. (P-4)

53. Due to COVID-19, for the 2020-2021 school year, the AMS Life Skills Program currently operates in-person four days a week, with a fifth day of asynchronous activities. Physically, it is comprised of a small classroom area where each student has her own desk and area and a second, attached room that provides students with access to stoves, microwaves, a refrigerator, a washer and dryer, and a dishwasher. The Life Skills Program is self-contained;

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<sup>13</sup> Dr. Tubbs had recommended that speech and language services be delivered for Uma in a one-to-one setting, 2 x 30 minutes per week. Although Ms. Kennedy Blanchet disagreed, as she believed working on social skills and language skills individually would not support Uma's generalization and progress toward Parent's goal for her to be socially connected, she testified that in an effort to "meet in the middle," at this point the Team proposed 1 x 30 minutes of individual and 1 x 30 minutes of small group speech and language services. (P-1; Kennedy Blanchet, III: 155)

<sup>14</sup> The IEP proposed (P-4; S-18) reflects OT 1 x 15 minutes per week. (P-4; S-18) Contemporaneous notes taken by Uma's Team Facilitator Katherine Gately, as well as her testimony, reflect 2 x 15 minutes per week due to stay put, as well as 15 minutes daily of typing. (P-8; S-18; Gately, II: 308)

students receive all of their academics (ELA, math, science, and social studies) within the program, but they participate in electives (art, music, computer, technical education, etc.) and lunch with neurotypical peers. Life Skills academics are organized into thematic units and based on the Unique Curriculum and News-2-You, with supplementary materials from grade level teachers; a schoolwide problem-solving-based math program; and a typing program. The Life Skills Program provides targeted academic instruction at each student's skill level that is connected to real-life tasks and experiences; constant instruction in social skills, both direct and in the moment, as well as functional adaptive and vocational skills; and integrated opportunities. Students are divided into two or three small groups by skill and ability level after themes and activities are provided at various levels, i.e. in words only or words paired with pictures. (P-2, P-11; S-19, S-33; Gately, II: 319-20, III: 30; Ratigan, III: 59-61; Mamakos, III: 83-88, 95-99, 119; Kennedy Blanchet, III: 155-57)

The Life Skills Program is staffed by Ms. Mamakos, who plans lessons for all student groupings and rotates among the groups, and three paraprofessionals. One is a program paraprofessional and the other two are assigned to particular students. An occupational therapist, a physical therapist, and an SLP all provide ongoing consultation to the program in addition to services for students, which occur either within the Life Skills Program classrooms or in the specialists' areas. Vision, mobility, BCBA, ATT, and augmentative communication specialists are also involved. The schedule provides for daily blocks of ELA activities (45 minutes), math (1 hour), science/social studies (55 minutes), vocational skills/activities of daily living (30 minutes) lunch/recess (40 minutes) and two 40-minute electives, in addition to morning meeting/schedule review, mask break/snack, bathroom/locker break. The electives are general education classes available to all students in the building. Students also have inclusion opportunities with field trips, including overnights, and clubs such as the Rock Club, theater production, and chorus, though these were limited during the pandemic. (P-11; S-19; Gately, II: 318-21, 324-25, III: 29-30; Ratigan, III: 59; Mamakos, III: 82-84, 120-21, IV: 51) The Life Skills Program incorporates social activities such as a Super Bowl party, a school election, and, in non-COVID times, prevocational activities such as a cookie cart; students made cookies following a recipe, then marketed and sold them to fund community outings such as shopping for snacks or personal hygiene items. Within the building, students also complete copy jobs, recycle, and deliver supplies and prepackaged meals to teachers and classrooms. In the community, they participate in programs with social service organizations assembling holiday baskets, doing food drives, mailings, etc. During COVID, students participate in structured activities, such as playing games, during mask breaks, and the SLP works with students to generalize social skills. Emotional supports within the program include the availability of the school adjustment counselor and/or guidance counselor, as needed, in addition to the social thinking curriculum and weekly classes with the BCBA for all students together. (Gately, II: 293, 316-17, 321-24; Mamakos, III: 85-86, 90-92) Reverse inclusion with neurotypical students had been planned for spring 2020 but has not yet begun due to the pandemic. (P-2)

54. During the 2020-2021 school year, five students attend the Life Skills Program in person, and a sixth is participating remotely. Students with whom Uma was grouped for academic instruction in the Learning Center and/or speech and language services in fifth and sixth grade are among them. Two of the current students have Down Syndrome. Two are unable to read. Current Life Skills students' diagnoses include autism, attention deficit hyperactivity disorder

(ADHD), developmental delay, and intellectual, health, physical, sensory, neurological, and communication disabilities. According to Ms. Mamakos, the current Life Skills students comprise an appropriate cohort for Uma. Academically, Uma would fall in the top half to third of the class. For math, ELA, science, and social studies, she would likely be placed with three other students; a sixth grader, a seventh grader, and an eighth grader, two of whom are male and the third of whom is remote. Uma would probably be toward the lower end of that grouping academically, though she would be toward the higher end in her academic independence. The IEP of one of these students notes difficulty sustaining attention and engaging with other students. Socially and vocationally, Uma would also fall in the middle; she would be with students from whom she could learn and students who could learn from her about different interests. Ms. Gately, who chairs Team meetings for all Life Skills Program students, agrees that they are an appropriate peer group for Uma. Some students would be ahead of her academically and some behind; she would likely be in the middle for math and the higher grouping for writing. Ms. Ratigan, who provides OT services for all Life Skills students in the classroom in addition to direct services on their IEPs, opined that Uma would be in the middle both socially and academically, toward the higher end as to the latter. Ms. Kennedy Blanchet estimated that Uma would be right in the middle in math, but for ELA, reading, writing, and social skills she would be in the higher two thirds. She would fit with the group in terms of her conversational skills as well; some students are able to stay on topic more easily, but another eighth grader, like Uma, still needs some support to go beyond a couple of reciprocal comments. Uma could serve as a model for some of the younger students in the class who need assistance in using expected language in social exchanges. Given the flexibility and staffing ratios in the program, if necessary, Uma could receive instruction (i.e., in math) one-on-one. (S-34; Gately, II: 286-87, 327; Ratigan, III: 61-62; Mamakos, III: 82, 88-90, 125, IV: 26-30, 42; Kennedy Blanchet, III: 148-49, 151, 158; Catarius, III: 233-34)

55. Ms. Mamakos testified that one eighth grade student, in particular, would be an appropriate peer match and likely friend for Uma; she is an eager learner who is also interested in music, as well as dance, current events, and drawing. This student would be grouped with Uma academically, though she has been attending school remotely for the 2020-2021 school year. She was previously in elective classes with Uma at AMS, but it is unclear whether they were ever in academic classes together. Ms. Mamakos also noted that two students, neither of whom would be grouped with Uma academically, would be good matches for her in terms of social and social pragmatics skills: a sixth grader who is an eager learner and active and independent in what he does, and a fifth grader who is kind and loving and interested in the arts and hands-on activities. Ms. Mamakos opined that Uma and the second student could be friends if they were in class together. She acknowledged, however, that despite some shared diagnoses they differ in both age and interests; this student is 11 years old and loves princesses. Moreover, her IEP suggests that she is far less independent than Uma. These same two students would also be matched well with Uma for vocational and life skills. One is more independent and can perform jobs in the school, such as copying, alone or with an appropriate peer; the other is less independent but able to perform many of the vocational skills. Ms. Mamakos described one of the remaining students as someone for whom Uma would be a social role model, and one who could perform that function for Uma. The former student, an eighth grader who has one-to-one support, is still learning letters, colors, and numbers. (S-34; Mamakos, IV: 30-36, 39, 43-44)



56. A BCBA consults to the Life Skills Program monthly and teaches weekly lessons focused on social communication to assist students in developing and generalizing social skills. As part of Life Skills programming, each student who attends school in person has a Behavior Support Plan (BSP), created by the BCBA, that addresses social skills deficits by assisting students in developing more expected behaviors, appropriate social skills for the classroom setting, and skills for independence. These are not, however, formal behavior plans such as those based on functional behavior assessments for students with behaviors that interfere with other students' learning. Life Skills students are not violent or aggressive, do not require physical restraints, and have not engaged in outbursts or property destruction. The BSPs for Life Skills students are intended to help students decrease challenging behaviors in the classroom, such as interrupting or leaving the classroom, and replace them with appropriate, functional positive behaviors, such as raising a hand and asking for help. The perceived non-compliant behavior to be addressed includes unexpected comments, such as declarations that a student cannot, or does not, want to do something, rather than the expected comment of asking for help. (S-35; Mamakos, III: 111-12, 125-30, IV: 8-13; Kennedy Blanchet, III: 158-63; Catarius, III: 231)

For example, several current students' BSPs target non-compliance in the form of verbal and/or physical refusal to comply with an adult directive. For different students this typically manifests as not answering a question right away; looking up at the ceiling while the teacher is providing instruction; saying they cannot hear the teacher; commenting that they are bored; whining that they do not want to do a particular activity; or responding "no, I'm not going to do it" or turning away, then doing it independently when the teacher walks away. Another targeted behavior is inappropriate socialization, which manifests for current Life Skills students as muttering under the breath; giggling or laughing at an inappropriate time; interrupting others rather than waiting their turn; expressing in an inappropriate manner that someone is bothering them; or approaching others too close and too quickly. Yet another targeted behavior for several students, elopement, manifests as walking away from someone speaking to them, walking into the adjoining classroom, or going to a locker right outside the classroom without permission. (S-35; Mamakos, IV: 13-25)

57. On January 28, 2021, Dr. Tubbs, accompanied by Dr. Catarius, observed the AMS Life Skills Program at Parents' request, across several contexts: the classroom, a copy center, lunch, recess, and gym. The program comprised six students ranging from fifth through eighth grades; one eighth grader was fully remote.

Based upon her observation, Dr. Tubbs concluded that the Life Skills cohort differed significantly from Uma's cohort at MHA. Her report stated that the former are "highly diverse in terms of their social capacities, communication skills, kinesis, independence, and achievement." She described them as immature for their age and noted that they were still developing prerequisite skills for effective learning that were well-established for Uma, including active listening, following directions, self-advocacy, independence, self-determination, and self-regulation. Instruction functioned on two or three highly disparate levels across all tasks, with notable differences in pacing and skill levels even amongst students grouped together. She concluded that the "disjointed nature of the students and the intensity of their individual needs has led to a highly fragmented program comprised of individualized pullout therapies, highly dissimilar instruction levels, overworked teacher/aides, and good deal of lost time, waiting for

those who were less proficient, dysregulated, and/or disengaged.” Dr. Tubbs commented on the fact that of the five in-school students, one is functionally non-verbal and another has reduced communication skills; and three students exhibit mild behavior problems that disrupted instruction and required ongoing management. Overall, she described the students in the Life Skills Program as requiring a very high level of physical assistance with basic classroom skills, struggling to engage in whole group learning, unable to paraphrase lessons, and unable to follow directions without a high level of prompting and repetition. She hypothesized that the level of negative behaviors and poor engagement of some students would be stressful and anxiety-provoking for Uma. (P-2; Tubbs, II: 59-69)

Dr. Tubbs opined that with respect to social and interpersonal development, the Life Skills students functioned at a much lower level than Uma, who has age-appropriate interests, such as boys, dating, and interpersonal relationships. Though the remote peer was presented as a good social match for her, Dr. Tubbs remarked that it was unclear when she would return to school. She also expressed concern about five of the six students having behavior plans, as she observed a significant level of mild behavioral disruptions. Moreover, she did not observe any meaningful interactions among the students, though they did have great interactions and relationships with the teachers. Dr. Tubbs commended Life Skills Program staff as incredible, loving, dedicated, hard-working, and genuine, but she concluded that the Life Skills Program, including the peer cohort, does not meet Uma’s needs. (P-2; Tubbs, II: 66-70, 77, 129, 148) Asked whether Amesbury could modify the Life Skills Program such that it would meet Uma’s needs, Dr. Tubbs testified that the peer cohort would have to shift, and that the instructional methodology would have to be more language-based. (Tubbs, II: 142-43)

58. Amesbury staff disagreed with Dr. Tubbs’ characterizations and conclusions regarding the Life Skills Program. Ms. Mamakos acknowledged that the day of Dr. Tubbs’ observation was busy; one student who was hesitant to join due to the presence of visitors and placed himself in the adjoining room, which required staff to go back and forth to engage him; it was snowing, which excited the students; and there were connectivity issues for a short time with the remote student. Ms. Mamakos did not view these as behavioral issues. She described her students as active, engaged, familiar with and responsive to expectations, and working all day on social and communication skills to enable them to increase their independence. AMS staff suggested that Dr. Tubbs tended to lump students together in her Observation Report rather than looking at them as individuals; focused more on students with motor challenges, and less on the students with whom Uma would be grouped; and mischaracterized their behavior.<sup>15</sup> Program staff, including Ms. Mamakos and Ms. Ratigan, disputed Dr. Tubbs’ use of the words “whiny” and “oppositional” to describe mild behaviors and non-compliance that Ms. Kennedy Blanchet described as emotional, rather than behavioral. Ms. Mamakos disagreed with Dr. Tubbs’ conclusion that the Life Skills students were “notably dissimilar to” Uma. From her time with Uma, up to and including observations of her at MHA in October 2020 and February 2021, Ms. Mamakos concluded that Uma was working on active listening, direction-following, self-advocacy, independence, self-determination, and self-regulation skills, as were other Life Skills

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<sup>15</sup> For example, Dr. Tubbs characterized a student as disruptive because he kept asking about another student, to whom he is socially/emotionally attached. Ms. Kennedy Blanchet explained that the staff viewed this as the student demonstrating anxiety because his friend was not present, rather than disruptive, non-compliant behavior. (Kennedy Blanchet, III: 164-65)

students, some of whom are higher functioning than Uma and some of whom are lower functioning. Similarly, Ms. Kennedy Blanchet testified that although Uma may appear socially appropriate, she has not in fact mastered many of the skills Dr. Tubbs suggested she possessed. For example, Uma has a difficult time reading non-verbal cues, commenting on-topic, etc. and as such, would benefit from continuing Social Thinking instruction within the Life Skills Program. (P-1, P-2; Ratigan, III: 65-66; Mamakos, III: 99-106; Kennedy Blanchet, III: 164, 166-68, 182-83; Catarius, III: 223-26)

59. During the 2020-2021 school year, in addition to Uma, MHA enrolled seven in-person students, consisting of three boys and four girls. Three of the other students are in eighth grade, two of whom are female. Three of the eighth graders – including Uma – have cognitive challenges, though Uma is the only one diagnosed with an intellectual disability, and three, again including Uma, have been diagnosed with a communication disorder. One student's IEP describes her as a social, pleasant, open person who demonstrates empathy and wants to do well in school, though her attention is often dysregulated. Another, who has been diagnosed with an emotional disability, enjoys watching *Monster High* and *Teen Beach Movie*. The third eighth grader is described as inquisitive and an extremely hard worker who navigates the school independently. Although Dr. Soares testified that one of the other eight graders has an intellectual disability, this student's IEP lists diagnoses of language disorder, developmental coordination disorder, and specific learning disorders in written expression, reading, and math. (P-13; Soares, II: 217, 219-21, 242)

Of the four remaining students, three are 18 years old, and one is nearly 21. Their IEPs note a range of disabilities and weaknesses that include medical impairments, neurological disabilities, autism, executive function, verbal processing, emotional regulation, anxiety, developmental delays, and social struggles. One student previously carried a diagnosis of Mild Intellectual Disability, but that student's IEP suggested the student did not currently meet the criteria for that diagnosis. All of the students are together for lunch, play practice, and daily read-aloud activities. One older student overlaps with Uma's cohort for some purposes, including counseling; this student has a medical condition and associated learning disabilities, among other things, and possesses overall borderline cognitive skills. (P-1, P-14; Tubbs, II: 95; Soares, II: 177, 219-21, 232-35, 242)

In the fall semester, Uma attended the following 45-minute classes four to five times a week: math tutorial, reading tutorial, biology: ecology, social science, physical fitness, and independent learning plan (independent work supervised by a teacher). She attended the following 45-minute classes twice a week: OT, speech/language therapy, writing, and read aloud. She participated in a 45-minute entrepreneurship class three times a week and attended one 45-minute class per week in each of the following: counseling, healthy relationship, technology, recreation education, and transition. (P-7; Soares, II: 224-25, 242-44, 223-25)

Uma currently receives writing and social studies instruction in a small group with two other students. One of the students in her writing group has a social/emotional disability and is taught grade-level content. Uma is paired with one other student for biology. She has Spanish once a week with a peer and once a week individually with a teacher. She participates in a girls' group counseling session with three other girls, including one who is 18, and speech and language once

a week in a social skills group led by the speech pathologist. The social skills group is based on the Social Thinking Curriculum, and students appear to have generalized lessons from the group regarding appropriate greetings and conversational skills to lunchtime communications. In addition, Uma receives individual counseling and attends individual speech and language services once a week. Uma receives one-to-one reading instruction. Although she participated in small group math over the summer, during the fall, and through the time of the hearing, Uma began receiving one-to-one direct math instruction to develop foundational skills given her skills deficit. No peers are in the classroom with her during either period. Between math, reading, speech, OT, and counseling, Uma is in academic or related services in a one-to-one setting approximately 43% of her school day. (P-1; Tubbs, II: 138, 155; Soares, II: 169-70, 173-76, 179, 189, 198-99, 221-25, 229-35)

60. Because older students were unable to participate in internships due to COVID-19, in the fall semester, MHA offered a class that allowed students to create their own small-scale businesses. Although some of the work was at a higher level than Uma's, she was engaged in the production part of one project through measuring and assembly. (Soares, II: 189-90)

61. Uma loves MHA, which she describes as a community. She is proud of her understanding of math facts and concepts; her teachers have seen significant growth in this area. Uma has improved from writing two to three simple, incomplete sentences in response to a writing prompt in September to writing six to eight sentences using grammatical rules and self-correcting for errors, by March. Her reading comprehension has improved, and she is incorporating vocabulary words in her writing and in conversations at home. Uma is able to identify some more complex emotions in her work with the SLP, but she is not generalizing this much yet. She is following directions well, including those involving multiple steps. Uma is participating in a play at MHA. She enjoys performing arts, lunch, physical fitness, and schoolwide book reading activities. She shares details with her parents about school activities. Though she is challenged at MHA and works hard, Uma no longer struggles with homework. (P-7; Mother, I: 81-83, 86, 113; Soares, II: 174-75, 179-80, 183-85, 200-06)

62. Uma has also grown socially at MHA. She appears to have made friends and connected with peers quickly, and she has also formed trusting relationships with her teachers. She attends all of her small group instruction with the girl she considers her best friend. Like Uma, this student is social, pleasant, and open, and wants to do well in school. Also like Uma, her academic skills are all significantly below age or grade expectations. Her attention is often dysregulated, and she may disengage during class discussions and need redirection. Uma and her friend speak during school and by telephone, text, and/or Facetime almost every day at home about boys, television shows, music videos, and what it is like to have divorced parents. During the warmer months, they spent time together in person after school. (P-2, P-6, P-7, P-14; Mother, I: 76-79; Soares, II: 207-08)

63. Dr. Tubbs testified at Hearing that MHA is appropriate for Uma because of the language-based programming, the cohesiveness of the peer cohort, and the reflectiveness and responsiveness of the programming, which meets each student's individual needs without the need for a designated aide sitting and working with someone exclusively all day long. (Tubbs, II: 78-79)

Dr. Tubbs further testified that she reviewed the IEPs of all MHA students. Although the IEP of the student with an emotional disability describes her as oppositional and disrespectful, noting that once said student is dysregulated she becomes loud, rude, and obnoxious, Dr. Tubbs expressed no concerns about her, or about any of the other students, as peers for Uma. Dr. Tubbs testified that she did not believe this student was in any classes with Uma, based on her review of the IEPs several days earlier, though later she acknowledged that during the spring semester they were in writing, Spanish, and counseling together. She also testified at one point that she is aware all MHA students participate together in play practice, read aloud, and lunch, but moments later testified that she was not aware Uma was grouped with the older students for these activities. In contrast to the concern she expressed about the range of students from fifth to eighth grade in the AMS Life Skills Program, Dr. Tubbs was not concerned that Uma interacted with students at MHA ranging from eight grade to the post-secondary level, three of whom were 18 and one of whom was almost 21. She acknowledged that when she wrote in her neuropsychological report that Uma's naiveté, unguarded nature, strong social drive, and reduced language/communication skills make her more vulnerable to manipulation and victimization, she was unaware that some students at MHA were up to five years older than Uma. Even so, Dr. Tubbs was comfortable with this range because the students were developmentally similar and Dr. Soares had shared with her that she works diligently and carefully to develop a firm, consistent, social/emotional foundation at MHA. (P-14; Tubbs, II: 94-99, 103-04, 146-47, 152-56)

Dr. Tubbs also acknowledged that she was not aware that, unlike the summer program, where she received math, reading, science and ELA in small groups, Uma currently receives – and has received in both fall and spring semesters – her instruction in math (45 minutes daily) and reading (45 minutes daily), one-to-one with a teacher with no peers in the classroom. At Hearing, Dr. Tubbs acknowledged that during these periods Uma would not have the opportunity to learn from, or practice social skills with, her peers. (Tubbs, II: 82-83, 86-88, 92-94) Nevertheless, she testified that she was not surprised Uma would need one-to-one instruction in math, which is an area of vulnerability for her, and that MHA could still meet her needs, as Uma could access appropriate peers outside of the classroom during activities such as lunch and gym. (Tubbs, II: 139-41)

64. Ms. Mamakos observed Uma at MHA at some point during the 2020-20201 school year in her reading, math, and writing classes and at lunch. During reading class, Uma worked one-on-one with a teacher, reading a story and answering questions in a workbook and sharing a document where the teacher prompted Uma with a sentence starter, which she would finish. In math, which was also one-to-one with a teacher, Uma worked on basic math facts, both addition and subtraction. The teacher was reading from a teacher manual and instructing Uma to work on a worksheet on her desk and some problems projected on the whiteboard. In small group writing, one peer was absent, so Uma was with one other student. They reviewed vocabulary and discussed an assignment that would transition them from writing sentences and paragraphs to writing an essay. Uma dominated the conversation during class. Ms. Mamakos testified that the skill level of Uma's reading work at MHA was similar to the work she had done in the past at AMS, and that the math focused on the same skills she had targeted with Uma in the fifth and sixth grades. Ms. Mamakos was surprised to see Uma participating in one-to-one academic

instruction and was also surprised that Uma was working on the same foundational skills she had worked on with her two to three years earlier. Ms. Mamakos described the MHA work samples she observed and reviewed prior to the hearing as comparable to, or lower than, the work she does with students in the Life Skills Program. She acknowledged, however, that Uma requires a lot of review and repetition. During lunch, Ms. Mamakos observed Uma to sit at one end of a long table and a staff member sat at the other. Uma interacted with peers while waiting in line to use the microwave, but afterward she interacted with Ms. Mamakos, a teacher, and another staff member only. (Mamakos, III: 106-110, 114-15)

65. Dr. Catarius observed Uma at MHA again in February 2021. Uma greeted Dr. Catarius, who then observed her one-to-one math class. The teacher stated they would be working on three-digit addition and subtraction but spent the first half hour of the class on single-digit equations. At some point, the teacher read a story problem to Uma that involved setting up and solving a three-digit addition problem. After two corrections she was able to solve the problem. Dr. Catarius estimated that this work was at first or second grade level. Dr. Catarius observed Uma in writing class next, with two other students, working on a lesson involving transition words. Uma was not able to identify these words or provide them independently. One student, who appeared to be at a higher level, was in and out of class frequently. Dr. Catarius then observed Uma matching vocabulary words with definitions, but she was not able to see whether her answers were correct. Dr. Catarius did not see Uma interact with any peers in these settings. At lunch, however, Uma talked with another student, likely her friend, while they were both heating their lunches, and then they helped each other carry food to the table. Once they were at the table, however, they were not seated near each other. Four adults sat at the table, and all of Uma's interactions for the remainder of the period were with, or guided by, adults. Following lunch, Dr. Catarius observed Uma in Science class. Although her schedule said Biology, the lesson was focused on an ecosystem. Dr. Catarius estimated that the activity was likely at a third-grade level. (Catarius, III: 328-43)

66. Amesbury staff testified that it would not be appropriate for Uma to spend so much of her day alone in a room with a teacher, because she loves interacting with people, and because she is capable of navigating a school with neurotypical peers. Such an isolated setting would not allow her to expand her skills through spontaneous learning from peers, nor would it assist her in developing independence, self-confidence, and problem-solving skills and preparing for life in the world. Furthermore, working with both students she can learn from and those for whom she can be a support and role model will help her to feel valued and supported. (Gately, II: 330; Ratigan, III: 66-67; Kennedy Blanchet, III: 158, 172; Catarius, III: 258-59)

67. Ms. Ratigan, who worked with Uma at AMS for three years, currently services the AMS Life Skills Program, where she spends approximately 30-90 minutes one day a week. At Hearing, Ms. Ratigan testified that she views Uma as an integral, active member of her community who could participate in community activities such as art, yoga, and chorus; attend a modified college program; and work in a setting that capitalized on her friendly personality and permitted her to follow a routine, such as a library, bookstore, or bakery. (Ratigan, III: 46-48) According to Ms. Ratigan, the Life Skills Program would enable Uma to build on established self-care skills to develop further healthy habits such as stress and time management and build

on established kitchen skills to learn how to store food, plan meals, etc. as she continued to develop the ability to navigate her community. (Ratigan, III: 53-55, 59)

68. Ms. Mamakos agrees that the Life Skills Program is appropriate for Uma, that it would allow her to make progress academically, socially, vocationally, and in her levels of confidence and independence. (Mamakos, III: 93, 115-16, IV: 36-38) Both Dr. Catarius and Ms. Kennedy Blanchet are of the opinion that the inclusion opportunities Uma would be able to access as part of the Life Skills Program are appropriate – and important – for her. (Kennedy Blanchet, III: 169-71; Catarius, III: 203-04; 243-44) These opportunities would differ from her inclusion program in the seventh grade because the Life Skills Program would provide additional supports to assist her in generalizing social skills at lunch, recess, and in elective classes. (Catarius, III: 256-57, 263-64)

## DISCUSSION

It is not disputed that Uma is a student with a disability who is entitled to special education services under state and federal law. To determine whether Parents are entitled to a decision in their favor, I must consider relevant substantive and procedural legal standards governing special education. As the moving party in this matter, Parents bear the burden of proof.<sup>16</sup> To prevail, they must establish by a preponderance of the evidence that the IEP proposed by Amesbury for the period from May 21, 2020 to May 20, 2021, as amended on or about October 29, 2020, was not reasonably calculated to provide Uma with a free appropriate education (FAPE) in the least restrictive environment (LRE). If I find in Parents' favor on the first question, I must determine whether they are entitled to reimbursement for their unilateral placement of Uma at Merrimac Heights Academy (MHA) on November 5, 2020 and/or for their placement of her in MHA's 2020 summer program.

I address the delineated issues below.

### I. *Legal Standards for Free Appropriate Public Education and Unilateral Placement*

#### A. FAPE

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE].”<sup>17</sup> FAPE is delivered primarily through a child's IEP, which must be tailored to meet a child's unique needs after careful consideration of the child's present levels of academic achievement and functional performance, disability, and potential for growth.<sup>18</sup> As summarized by the United States Supreme Court in *Endrew F. v. Douglas County School District*, the IEP must “describe how the child's disability affects the child's involvement and progress in the general education curriculum, and set out measurable annual goals, including academic and functional goals, along with a description of how the

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<sup>16</sup> See *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

<sup>17</sup> 20 U.S.C. §1400 (d)(1)(A).

<sup>18</sup> *Endrew F. v. Douglas Cty. Reg'l Sch. Dist.*, 137 S. Ct. 988, 999 (2017); *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012).

child's progress toward meeting those goals will be gauged.”<sup>19</sup> “To meet its substantive obligation under the IDEA, a [district] must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.”<sup>20</sup> The goals of all students should be “appropriately ambitious . . . just as advancement from grade to grade is appropriately ambitious for most students in a regular classroom.”<sup>21</sup>

Similarly, Massachusetts FAPE standards require that an IEP be “reasonably calculated to confer a meaningful educational benefit in light of the child's circumstances,”<sup>22</sup> and designed to permit the student to make “effective progress.”<sup>23</sup> Evaluating an IEP requires viewing it as a “a snapshot, not a retrospective. In striving for ‘appropriateness, an IEP must take into account what was . . . objectively reasonable . . . at the time the IEP was promulgated.’”<sup>24</sup>

Under state and federal special education law, a school district has an obligation to provide the services that comprise FAPE in the least restrictive environment that will “accommodate the child's legitimate needs.”<sup>25</sup> For most children, a FAPE “will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade.”<sup>26</sup> However, “the benefits to be gained from mainstreaming must be weighed against the educational improvements that could be attained in a more restrictive (that is, non-mainstream) environment.”<sup>27</sup>

I measure the IEP proposed for Uma for the period from May 21, 2020 to May 20, 2021 against these standards. If I determine that it was not reasonably calculated to provide her with a FAPE, I turn to standards governing unilateral placement to determine whether Parents are entitled to reimbursement.

## B. Unilateral Placement

Reimbursement is an equitable remedy to which parents may be entitled under the IDEA for unilaterally placing a student in private school without the school district's consent or referral.<sup>28</sup> Section 1412 provides that a Hearing Officer may order reimbursement for the cost of that placement if she finds that a district had not made FAPE available to the child in a timely manner prior to the parents' unilateral placement.<sup>29</sup> Hearing Officers and courts have interpreted section 1412 to allow reimbursement for a unilateral placement when: (1) the school district had not made a free appropriate public education available to the student prior to that enrollment; and

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<sup>19</sup> 137 S. Ct. at 994 (internal quotation marks omitted), citing 20 U.S.C. §§1414(d)(1)(A)(i)(I)-(III).

<sup>20</sup> *Andrew F.*, 137 S. Ct. at 999.

<sup>21</sup> *Id.* at 1000.

<sup>22</sup> *C.D. v. Natick Pub. Sch. Dist.*, 924 F.3d 621, 624-25 (1st Cir. 2019) (cert denied).

<sup>23</sup> 603 CMR 28.05(4)(b) (IEP must be “designed to enable the student to progress effectively in the content areas of the general curriculum”).

<sup>24</sup> *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990) (internal quotations and citations omitted).

<sup>25</sup> *C.G. ex rel. A.S. v. Five Town Comty. Sch. Dist.*, 513 F.3d 279, 285 (1st Cir. 2008); see 20 USC §1412(a)(5)(A); 34 CFR 300.114(a)(2)(i); MGL c 71 B, §§ 2, 3; 603 CMR 28.06(2)(c).

<sup>26</sup> *Andrew F.*, 137 S. Ct. at 1000.

<sup>27</sup> *C.D.*, 924 F.3d at 631 (quoting *Roland M.*, 920 F.2d at 993).

<sup>28</sup> See 20 U.S.C. 1412(a)(10)(C)(ii); *Sch. Union No. 27 v Ms. C.*, 518 F.3rd 31, 34-35 (1st Cir. 2008); *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 31 (1st Cir. 2006).

<sup>29</sup> See 20 U.S.C. 1412(a)(10)(C)(ii).



(2) the private school placement was appropriate.<sup>30</sup> Unlike an IEP proposed by a school district, a unilateral private school placement need not meet all of the requirements of FAPE to be appropriate.<sup>31</sup> Where parents have rejected an inappropriate IEP and placed their child unilaterally, to qualify for reimbursement the private placement must only “offer at least some element of special education services in which the public school placement was deficient.”<sup>32</sup> The reasonableness of the private placement will depend upon the nexus between the special education required and the special education provided, such that a unilateral placement is only appropriate if it provides an education “*specifically* designed to meet the *unique* needs” of the child.<sup>33</sup>

Even where parents have established that a district failed to offer a FAPE and that they selected a placement that was appropriate for their child, the IDEA allows a Hearing Officer to reduce or deny reimbursement due to parents’ failure to provide appropriate notice of their intent to place the child unilaterally.<sup>34</sup> Notice is considered adequate if it is given either in writing ten business days prior to the removal of the child from the public school, or during the most recent IEP meeting held prior to the removal.<sup>35</sup> It must include a rejection of the placement proposed by the school district and a statement of both parents’ concerns, and their intent to enroll their child in a private school at public expense.<sup>36</sup> The purpose of the notice requirement is to ensure that a school district has the opportunity, before the child is removed, to consider and respond to parents’ concerns in a meaningful way.<sup>37</sup>

In this matter, Parents bear the burden of proving both that the school district’s proposed IEP did not provide a FAPE and that the private placement was appropriate for the student.<sup>38</sup>

## II. *Application of Legal Standards*

### A. Although Parents Did Not Establish That the Proposed Services Were Not Appropriate, They Demonstrated that Placement in the Life Skills Program Was Not Reasonably Calculated to Provide Uma with a FAPE Owing to an Inappropriate Cohort

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<sup>30</sup> See 20 U.S.C. 1412(a)(10)(C)(ii); *Sch. Comm. of Burlington v. Dept. of Educ.*, 471 U.S. 359, 369-70 (1985); *Schoenfeld v. Parkway Sch. Dist.*, 138 F.3d 379, 382 (8th Cir. 1998) (“Reimbursement for private education costs is appropriate only when public school placement under an individual education plan (IEP) violates IDEA because a child’s needs are not met”); *In re: Medfield Public Schools*, 13 MSER 365, 371 (Crane 2007).

<sup>31</sup> See *Mr. I. v. Maine Sch. Admin. Dist. No. 55*, 480 F.3d 1, 23-24 (1st Cir. 2007); *Frank G. v. Bd. of Educ.*, 459 F.3d 356, 364-65 (2nd Cir. 2006).

<sup>32</sup> *Mr. I.*, 480 F.3d at 23-24.

<sup>33</sup> *Gagliardo v. Arlington Cent. Sch. Dist.*, 489 F.3d 105, 115 (2d Cir. 2007) (emphasis in the original) (citing *Frank G.*, 459 F.3d at 365 (internal quotation marks and citations omitted); see *Mr. I.*, 480 F.3d at 24).

<sup>34</sup> See 20 U.S.C. 1412(a)(10)(C)(iii).

<sup>35</sup> 20 U.S.C. 1412(a)(10)(C)(iii).

<sup>36</sup> *Id.*

<sup>37</sup> See *Greenland Sch. Dist. v. Amy N.*, 358 F.3d 150, 160 (1st Cir. 2004) (abrogated on other grounds by *Forest Grove v. T.A.*, 557 U.S. 230 (2009)).

<sup>38</sup> See *Schaeffer*, 546 U.S. at 62 (holding that the burden of proof in an administrative hearing challenging an IEP falls on the party seeking relief).

Although Parents expressed concern during Uma's sixth and seventh grade years about what they perceived as a lack of rigor in the Life Skills curriculum, the evidence does not bear that out. Assessments conducted by Amesbury, Dr. Seligsohn, and Dr. Tubbs, in addition to the testimony of Ms. Mamakos, Ms. Ratigan, Dr. Soares, and Dr. Tubbs all reveal substantial deficits in Uma's reading, writing, and mathematics skills and the need for structure, scaffolding, and significant supports to capitalize on her motivation and interest in learning. Ms. Mamakos' and Ms. Gately's testimony regarding the curriculum and methodology utilized in the Life Skills Program, including flexibility and individualization to meet students' needs, demonstrates that these are an appropriate fit for Uma and that they worked well for her the summer between sixth and seventh grades. Parents, on the other hand, offered Dr. Tubbs' report and testimony regarding her program observation and Uma's experiences at AMS. I do not credit Dr. Tubbs' description of Uma's experiences at AMS, as she did not speak with AMS staff. Moreover, her assessment of Uma's academic abilities, as they manifest in a classroom setting, was based on two visits to MHA, in contrast to the many hours Ms. Mamakos, Ms. Kennedy Blanchet, and Ms. Ratigan spent working with Uma directly over a three-year period. Dr. Tubbs' characterizations of the Life Skills students notwithstanding, neither her report nor her testimony persuades me that the content of the lessons in the Life Skills Program was inappropriate for Uma. Furthermore, the testimony of Ms. Mamakos, Dr. Catarius, Dr. Soares, and Dr. Tubbs suggests that Uma was working on topics and skills at MHA that did not differ significantly from those taught in Life Skills.

Multiple Amesbury witnesses testified about the incorporation of adaptive and prevocational/vocational skills into the Life Skills Program. Although Dr. Tubbs described Uma as well-established in her active listening, direction-following, self-advocacy, independence, self-determination, and self-regulation skills, and significantly advanced in comparison with the students in the Life Skills Program, her assessment of students' relative skill levels was based on limited exposure to them. I credit the testimony of Ms. Mamakos, Ms. Kennedy Blanchet, and Ms. Ratigan that Uma was still working on these skills. Moreover, standardized testing also showed adaptive skill deficits. As such, it appears that generally, Uma would benefit from many of the Life Skills Program's pre-vocational activities.<sup>39</sup> Testimony offered by Dr. Catarius, Ms. Gately, Ms. Kennedy Blanchet, and Ms. Mamakos about social skills instruction, integrated throughout the Life Skills Program with a focus on social thinking and generalization, suggests that it is also appropriate to meet Uma's needs as they were described by Dr. Tubbs,<sup>40</sup> Dr. Seligsohn, Parents, and Amesbury educators. Although Dr. Tubbs emphasized that she believed the existence of Behavior Support Plans and mild disruptive or non-compliant behaviors made the Life Skills Program inappropriate for Uma, I find Amesbury staff's descriptions of Life Skills students, their behaviors, and their BSPs, particularly those of Ms. Mamakos and Ms. Kennedy Blanchet, persuasive.

Missing from Amesbury's Life Skills Program, however, is an appropriate peer cohort with whom Uma may practice her developing skills. Evaluations conducted by Dr. Tubbs and

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<sup>39</sup> It is difficult to determine, however, whether the more limited opportunities available during COVID-19 would have been sufficiently challenging given Uma's relative independence, which permitted her to navigate the school, run errands for teachers, and participate independently in arts-based electives by seventh grade.

<sup>40</sup> I do credit the results of Dr. Tubbs' standardized testing, which were consistent with prior testing and adopted by Uma's Team.

Dr. Seligsohn, as well as testimony offered by Mother, Dr. Tubbs, Dr. Catarius, Ms. Gately, Dr. Soares, Ms. Mamakos, and Ms. Kennedy Blanchet all emphasize the importance to Uma of opportunities to generalize social skills by interacting with peers across multiple settings. As described by nearly every witness, Uma is extremely social. She enjoys engaging with others and benefits from these interactions. She has crushes on boys, talks on the telephone with a friend, and watches television shows appropriate for her age. Although I credit the testimony of Amesbury's staff, even accepting their testimony as true, the evidence does not suggest that Uma would have had the opportunity to explore these interests in meaningful ways with current Life Skills students, some of whom were in Uma's Learning Center and/or speech and language pull-outs during her first two years at AMS when she did not have true friends. By the time Parents rejected the 2020-2021 IEP and placed Uma unilaterally at MHA for the school year, Amesbury and Parents were aware that the one other eighth grader in the Life Skills Program – one of the students described by Ms. Mamakos as a good peer match and likely friend for Uma – would remain remote. With the exception of the remote student, the students Ms. Mamakos explained would be paired with Uma for academic instruction are not the students she described as appropriate social matches. One of the students proposed as an appropriate peer match is a fifth grader, who is interested in princesses and less independent than Uma. Parents' evidence, including Mother's testimony and that of Dr. Soares, demonstrates that Uma is capable of forming deep bonds when paired with a student of a similar age, with similar skills and interests. Ms. Mamkos, Ms. Kennedy Blanchet, and Ms. Ratigan testified to the social skills instruction delivered within the Life Skills Program, but the District offered no testimony about spontaneous social interactions among Life Skills students that could have engaged Uma in this way.

Although the Life Skills Program appears to be appropriate for Uma in many respects, Parents have proven, by a preponderance of the evidence, that given Uma's profile, she requires opportunities to form meaningful connections with peers in order to receive a FAPE, and that she would not have had access to these opportunities in the Life Skills Program between November 5, 2020 and the end of the 2020-2021 school year.

B. Parents Are Entitled to Reimbursement for their Unilateral Placement of Uma at MHA for the 2020-2021 School Year Beginning November 5, 2020

Testimony provided by Dr. Soares, Mother, Dr. Catarius, and Ms. Mamakos, in addition to documentary evidence, suggests that the MHA curriculum is appropriate for Uma. Academics are individualized, challenging, and supported; Uma feels good about the progress she is making. Although vocational/pre-vocational opportunities have been limited this year due to COVID-19, social skills instruction at MHA, as in the Life Skills Program, has focused on social thinking. At MHA, in addition to schoolwide book readings, lunch, and other activities, Uma participates in theater and counseling groups (including a girls' group) that foster generalization of social skills. Like the Life Skills students, MHA students have a variety of disabilities; more students at MHA have been diagnosed with communication disabilities, as has Uma. Though many of the students are older than she, and she requires additional academic support (including one-to-one instruction), Uma appears to have found her place socially at MHA. She has developed her first true friendship, a relationship that goes beyond the walls of school independent of adult intervention.

MHA is not without its limitations. It is not clear to me that MHA is, in fact, a language-based program, but the evidence did not establish that Uma needs one.<sup>41</sup> Moreover, I am unpersuaded by Dr. Tubbs' opinion that the age range of Uma's MHA cohort has no bearing on the program's appropriateness for Uma, given her emphasis on this issue as one of the factors rendering the Life Skills Program inappropriate. Moreover, I note that Dr. Tubbs' testimony regarding Uma's exposure to and interactions with other MHA students was internally inconsistent and as such, I ascribe it little evidentiary weight. I also find concerning the amount of time Uma spends one-to-one at MHA. All witnesses agreed that Uma must be part of a community where she can learn vicariously from and with appropriate peers. Yet the uncontroverted testimony suggests that between academic instruction and related services, Uma is with one adult for upwards of 40% of her day. Furthermore, at MHA she has no interactions with typical peers. Although Dr. Tubbs testified that Uma would not be able to interact with neurotypical peers in activities such as theater or art, her testimony was undermined by Uma's own experience, as documented in Parents' exhibits and the testimony of Mother and Ms. Ratigan.<sup>42</sup> As such, I find that MHA falls short of offering Uma an education that meets all of her needs. However, given the degree to which Uma is able to interact with peers in the nearly 60% of her time she is paired with one or more other students, and/or participates in whole-school activities, and given the relationships she has developed at MHA, I find that what MHA provides meets the reimbursement standard for unilateral placement.<sup>43</sup> As such, even though MHA may not provide Uma with a FAPE in the LRE, the higher standard required of an IEP, the nexus between the special education required and the special education provided is satisfied, and Parents are entitled to reimbursement.<sup>44,45</sup>

C. Parents Are Not Entitled to Reimbursement for Uma's Attendance at MHA's 2020 Summer Program

The uncontroverted evidence demonstrates that Parents failed to provide the requisite notice of their intent to place Uma in MHA's summer program and seek public funding for that placement. Not only did they fail to communicate such intent to Amesbury, but they did not even formulate that intention themselves. As such, the District had no meaningful opportunity to consider Parents' concerns, which appeared to focus on the lack of in-person programming, before Uma was removed from the District's ESY program. For these reasons, Parents are not entitled to reimbursement for their placement of Uma at MHA for the summer of 2020.

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<sup>41</sup> I did not find Dr. Tubbs' testimony on either point persuasive.

<sup>42</sup> It is true that Uma struggled with typical peers, particularly in seventh grade, but at that time she was not participating in the Life Skills Program, which incorporated both skill-building and support for social skills development.

<sup>43</sup> See *Gagliardo*, 489 F.3d at 115; *Mr. I.*, 480 F.3d at 23-24.

<sup>44</sup> See *Mr. I.*, 480 F.3d at 23-24.

<sup>45</sup> I encourage MHA to incorporate programming allowing Uma to receive more of her academic instruction with her peers, and providing her, through post-COVID-19 pre-vocational activities, with additional opportunities to interact with neurotypical peers and others.

## CONCLUSION

After reviewing the record in its entirety, I conclude that Parents have proven that the IEP proposed for Uma for the period from May 21, 2020 to May 20, 2021, as amended on or about October 29, 2020, was not reasonably calculated to provide her with a FAPE. Parents are entitled to reimbursement for Uma's tuition and associated costs from November 5, 2020 through the end of the 2020-2021 school year. They are not entitled to reimbursement for the summer of 2020.

## ORDER

Amesbury Public Schools is hereby directed to reimburse Parents for costs associated with Uma's attendance at Merrimac Heights Academy during the 2020-2021 school year.

By the Hearing Officer:

/s/ Amy M. Reichbach

Dated: June 3, 2021