

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

In Re: Student v.
Medford Public Schools

BSEA # 13-0006

DECISION

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

Parents requested a Hearing in the above-referenced matter on July 3, 2012. Following a request for postponement by Medford Public Schools, a Pre-Hearing Conference and new Hearing dates were established on July 27, 2012 and revised on September 14, 2012 at the request of the Parties. The Hearing was held on September 27, 28 and October 3, 2012, at the Bureau of Special Education Appeals, One Congress St., Boston, Massachusetts before Hearing Officer Rosa I. Figueroa. Those present for all or part of the proceedings were:

Student's mother	
Student's father	
Ruth Diaz, Esq.	Parent's Attorney
Daniel S. Perlman	Observer
Kristin Russell, M.D.	Child Psychiatrist, Massachusetts General Hospital
Kathryn Hewett, Ph.D.	Clinical Psychologist, Neuropsychologist
Maureen K. Riley	Professor of Assessment and Curriculum Development Instruction, Director LD/ ADD Academic Support Program Lesley University
Alisia St. Florian, Esq.	Attorney for Medford Public Schools
Kathleen Medaglio	Director of Pupil Services, Medford Public Schools
Ben Halpern-Meekin	Moderate Special Needs Teacher, Andrews Middle School, Medford Public Schools
Bernard Picanzo	School Psychologist, Andrews Middle School, Medford Public Schools
Eleanor Levy	Special Education Teacher, Andrews Middle School, Medford Public Schools
Leigh Kelley	Speech and Language Pathologist, Andrews Middle School, Medford Public Schools
Luella Benn	Education Team Leader, Andrews Middle School, Medford Public Schools

Cheryl Maioco	Education Team Leader, Brooks School, Medford Public Schools
Cheryl Gregg-Desautels	Counselor, Social Thinking Program Coordinator, Learning Prep School
Joan E. Foster	Chief Operating Officer, Learning Prep School
Jane M. Williamson,	Court Reporter, Doris Wong Associates, Inc.

The official record of the hearing consists of documents submitted by Parent and marked as exhibits PE-1 through PE-50, and those submitted by Medford Public Schools (Medford) marked as exhibits SE-1 through SE-36; recorded oral testimony and written closing arguments. The Parties' closing arguments were received on October 30, 2012¹ and the record closed on that date.

HEARING ISSUES:

1. Whether the IEP promulgated by Medford for the period covering July 1, 2012 through June 30, 2013, calling for placement of Student at the Andrews Middle School in Medford, MA was reasonably calculated to offer Student a Free, Appropriate Public Education (FAPE) in the least restrictive environment consistent with state and federal law?
2. Whether the IEP promulgated by Medford for the period covering September 24, 2012 through September 23, 2013, calling for placement of Student at the Andrews Middle School in Medford, MA is reasonably calculated to offer Student FAPE in the least restrictive environment consistent with state and federal law? If not,
3. Whether Student is entitled to public funding for an out-of-district day placement at the Learning Prep School (LPS)?

POSITIONS OF THE PARTIES:

Parents' Position:

Parents state that Medford's proposed language-based program at the Andrews School is inappropriate to meet the needs of Student, who is an extremely complex and fragile child. They assert that the program at Andrews is not much different from the program Student experienced at the Brooks School in Medford during which Student became extremely emotionally distraught.

They assert that Student requires an integrated program that offers a rich educational experience in a highly therapeutic environment. She requires that the curriculum be organized at a conceptual level of understanding with instruction that is engaging and relevant. She also needs consistent scaffolding of material to help her organize her fund of

¹ The date for submitting closing arguments had been set for October 29, 2012, however, due to the agency's closing as a result of inclement weather caused by Hurricane Sandy, the deadline was extended to October 30, 2012, the date by which both, Medford's and Parents closing arguments were received.

knowledge so that she can feel smart. Parents further assert that Student requires the same level of structure and support to address her social/ emotional issues; and that this structure and support needs to be integrated throughout the day across all settings so that she can maintain the emotional equilibrium she requires in order to learn.

Parents state that at LPS Student is being provided the level of structure and educational program that she requires to learn, and that she has made meaningful effective progress in all of her areas of difficulty.

As such, Parents argue Student is entitled to public funding for attendance at LPS. They seek both, tuition and transportation reimbursement for their unilateral placement of Student at LPS.

Medford's Position:

Medford does not dispute that Student is eligible to receive special education as a result of a language-based learning disability that affects her performance across all areas of the curriculum. Medford also agrees that Student presents with anxiety disorder, executive functioning issues and that she has difficulties with social pragmatics. It further agrees that she requires a small-group, language-based program for sixth grade.

However, Medford disputes that in order to receive a FAPE Student requires placement at LPS, and instead argues that Student can be appropriately served in the language-based program at the Andrews Middle School in Medford.

According to Medford, the Andrews program, located within a middle school building, can offer the level of structure and specialized instruction Student needs, delivered by an extremely well trained and properly credentialed staff. This program also offers Student the ability to partake of more opportunities for interacting with a variety of students including typically developing peers by participating in supported inclusion classes and specials, and when she is ready, in certain inclusion academic courses. Furthermore, Medford argues that the peers in the proposed substantially-separate program offer an appropriate cohort for Student.

Medford asserts that LPS is overly restrictive for Student and disputes that she has made as much improvement there as Parents claim. As such, Medford argues that Student is not entitled to public funding for placement at LPS.

FINDINGS OF FACT:

1. Student is a twelve-year-old resident of Medford, Massachusetts, who has been diagnosed with Generalized Anxiety Disorder, Social Phobia, Attention Deficit Hyperactivity Disorder (ADHD) Inattentive Type, a mixed Receptive and Expressive Language Disorder, a Reading and Written Expression Disorder (PE-6a; PE-6b). Student also has issues with sensorimotor

integration and spatial/ perceptual orientation (PE-11; PE-12a; PE-50). She possesses low average to average cognitive abilities and has been described as having a curious mind and a quick wit (Father, Hewett). She has also been described as a sweet, hard-working individual (Father). She is social and very much wants to make friends (Father, Hewett Gregg-Desautels). She currently has some typically developing friends in her community, has taken dance lessons, has participated in activity-oriented summer camps, and enjoys dancing, hiking, ice-skating, roller-skating, and likes to show her dog in dog-shows (SE-31; Father, Hewett).

2. Kathryn Hewett, Ph.D., has an M.Ed. in child and Family Development and an M.S. and Ph.D. in Clinical Psychology (Child and Adult Treatment & Assessment). She received training in administering neuropsychological, psychological, and behavioral evaluations at the Yale Department of Psychology, the Yale Child Study Center, Judge Baker Guidance Clinic, and children's Hospital Boston Department of Neuropsychology. She has had a private evaluation practice since 1987 specializing in child, adolescent, and young adults with neuro-cognitive and neuro-developmental disorders, learning disabilities, and complex learning and emotional conditions (PE-1).
3. Dr. Hewett has evaluated Student four times since she initially tested her in 2009. During that time Dr. Hewett has found stability in Student's overall neuropsychological profile and great variation in her ability to demonstrate knowledge and to manage her thoughts, perceptions, and behavior. She reported that Student has sensory integration and processing difficulties as well as motor and visual-motor coordination difficulties. She reported that Student has a significant language-based learning disability in the context of average to above average reasoning abilities. She referenced Student's deficits in attention and executive control. Lastly, she explained that Student has difficulties with emotional and social functioning (PE-2).
4. Dr. Hewett's May 2009 evaluation had also noted Student's significant difficulties with attention, executive control, and personal and social anxiety (Hewitt). Dr. Hewett explained that Student was impacted by her disabilities at two levels:
 - a) cognitive and sensorimotor, in which she has trouble performing the simultaneous operations required to acquire, organize, and produce information.
 - b) emotional and self-regulatory in which she becomes overwhelmed with pervasive the anxiety and unable to manage her anxiety or cognitive sensorimotor demands (PE-11).
5. Dr. Hewett noted that Student's diagnosis of PDD (NOS: atypical) has been confirmed and "disconfirmed" by various evaluators. Based upon Student's recent testing, consultation with treating psychiatrists and teachers, and her observation of Student at LPS, Dr. Hewett concluded that Student does not meet the criteria for PDD or any diagnosis on the autism spectrum (PE-2).

6. Kristin Russell, M.D. currently practices Child and Adolescent Psychiatry Service in Boston, Massachusetts. She received her medical degree in 1999 and received postdoctoral training in adult psychiatry and child and adult psychiatry from 2004 through 2009. She has authored a number of articles and taught medical students and residents. She is licensed as a physician in Massachusetts and is certified by the American Board of Psychiatry and Neurology (PE-1).
7. Dr. Russell provided Student play therapy sessions and periodic parent guidance sessions, and wrote a summary dated June 1, 2009. She noted Student's then-current diagnoses to include generalized anxiety disorder, social phobia, ADHD, inattentive type, disorder of reading, disorder of written expression, and mixed receptive expressive language disorder. Dr. Russell explained that Student has a significant anxiety disorder that manifests in many ways including perseveration about separation and bodily injury, avoidance of unfamiliar situations, and irritability. She noted a cyclical effect of her anxiety disorder, leading to increased anxiety about her academic abilities and decreased self-esteem. She concluded that without a significant change in her educational environment, Student would likely not continue to make emotional progress (P-6).
8. When Student's Team met in June of 2009, Dr. Russell described the difficulties Student was experiencing regulating her anxiety due to a great extent to Student's insecurities about her academic abilities and poor school performance (Russell). Student was experiencing great difficulty processing the information in her school placement which left her exhausted and demoralized. This in turn had a cyclical effect on Student's anxiety disorder, leading to increased anxiety about her academic abilities and decreased self-fifth esteem. In the face of academic challenges she could not meet, Student became moody, she would act silly, and or made excuses to avoid going to school (Russell).
9. During the summer of 2009, Parents enrolled Student in a five-week, language-based/ activities summer program at the Carroll School which proved beneficial for Student (Father).
10. After having repeated second grade, Student attended third grade at the Brooks Elementary School in Medford for the 2009-2010 school year (SE-11; SE-25).
11. Medford conducted Student's three year re-evaluation in late 2009/ early 2010 which included an educational, speech and language, occupational therapy and psychological evaluations and Student's classroom teachers completed the BASC (SE-17; SE-18; SE-19; SE-20).
12. Laurene Trio, M.Ed, performed the educational evaluation on November 13, 2009 (SE-18). She administered tests from the Woodcock-Johnson III Test of Achievement finding that Student's reading and basic reading skills to fall in the below average range, and found reading to be an area of difficulty. Student's math and math calculation skills, as well as her written language skills, fell in the average range (SE-18).

13. Donna Sarmanian, M.S. CCC-SLP, conducted the speech and language re-evaluation on December 2, 4 and 17, 2009 (SE-19). The evaluator noted that Student had demonstrated progress toward her objectives. While acknowledging that she needed assistance when asked, she was not requesting repetition or clarification independently and her eye-contact was inconsistent. Regarding receptive language skills, Student showed understanding of vocabulary and was able to follow oral directions with respect to a variety of language concepts, work relationships and was able to make inferences. This indicated to Ms. Sarmanian that Student would be able to understand the language used in the classroom, follow instructions, and make connections between concepts. She benefitted from pre-viewing of material. Student however, struggled with pragmatic judgment, comprehending nonliteral language such as figurative speech, sarcasm and indirect requests. Ms. Sarmanian recommended numerous classroom accommodations including but not limited to the use of graphic organizers and story grammar markers (SE-19).

14. Medford's occupational therapy evaluation was conducted by Charlotte Heim, MA OTR/L (SE-20). Ms. Heim noted Student's diagnoses including disorder of coordination, disorder of reading, disorder of written expression, mixed receptive-expressive language disorder, ADHD (inattentive type), and general anxiety. She reported that Student had been discharged from occupational therapy services in the fall of 2009. Ms. Heim's evaluation showed that Student was meeting classroom expectations in all occupational therapy related areas including neuromuscular skills, fine motor skills, written output, visual-motor and visual- perceptual skills (SE-20).

15. Loren Gomez, M.A., C.A.G.S., School Psychologist in Medford, conducted a psychological evaluation of Student on January 7, 2010. She found Student's cognitive skills to fall within the low average range, noting that Student's ability to express what she knew was significantly limited. Parents and teachers noted that Student showed positive behavior skills and that her expression of feelings and ideas appeared to be appropriate for her age. The report also noted that Student's

Social and adaptive skills are at risk in the classroom, as she often will refuse to talk. [Student's] anxiety disorder makes it very difficult for her to take academic risks in school (SE-17).

Ms. Gomez made recommendations for in-class strategies to address Student's difficulties including working memory issues attributed to her Attention Deficit Disorder (SE-17).

16. On January 27, 2010, Susan Gambale, Orton-Gillingham Reading Therapist, wrote that Student was attending four, forty-five minute sessions per week of Orton-Gillingham (SE-18). She had completed level 1 and was beginning level 2. Ms. Gambale compared Student's beginning of the year test results in fluency and comprehension to the results of the testing done in January 2010, noting that Student had gained one year in her comprehension score in a short period of time, but her fluency score still fell below the average range (SE-18).

17. Medford's progress reports noted that Student had made effective progress toward her IEP goals and objectives in identified areas of need (SE-22; SE-25). In May 2010, however, Parents received an email from Ms. Gambale, Student's Orton-Gillingham service provider sharing her concerns regarding Student's difficulties staying on task, inattention and task avoidance² (PE-19; Father).
18. Maureen Riley received her Ed.M. from the Harvard Graduate School of Education. She is an Associate Professor and the Director of Academic Support Services at Lesley University. Her past experience includes Project Director at the Education Development Center, Inc. in Newton, Massachusetts and the Director of Education at the Gifford School and Day Center for approximately twelve years (PE-1). Over the past several years, Ms. Riley has observed Student and has advised Parents on what she believes to be the appropriate curriculum, program and placement for Student. She has known Parents for several years, starting when Mother was enrolled in a program at Lesley University, and has not charged the family for any of her services over the years (Riley, Father).
19. Maureen K. Riley, M.Ed., observed Student at the Brooks School in Medford from 8:30 a.m. until 1:00 p.m. on June 7, 2010. She noted that the curriculum observed involved mostly lower order cognition including memory of phonemes, memorizing math facts, and "choral recitation" of calendar information. Ms. Riley's report does not contain much analysis of her findings and conclusions. She notes that there was minimal peer interaction observed and notes that the teacher was pleasant, positive and calm. She describes the Orton-Gillingham instruction in a detailed paragraph and included several pages of notes from her observation (PE-8).
20. Displeased with the program offered by Medford, Parents contacted Dr. Hewett again and requested that she conduct another evaluation (Father, Hewett). Dr. Hewett conducted the evaluation in June 2010. Dr. Hewett's November 2010 report, noted results were similar to those obtained during her 2009 evaluation. She did however, note differences such as less anxiety, and stated that Student had made real progress in her ability to talk, and respond to questions (as had been demonstrated in the comprehension subtest addressing social reasoning and what students understand about the real world). The increased scores demonstrated that Student was capable of higher thinking. She did not conduct an observation of Student at the Brook School and instead relied on the information provided by

² "...I wanted to take a few minutes to give you some feedback on [Student]. I know at the meeting you had mentioned having [Student] either tested or having her on medication for ADD/ADHD. I was wondering if anything has come about since. I am a bit concerned about [Student]'s inability to sit still when she is working. She seems to fidget and has the need to take hold of things around her and play with them (her hair, animal bands on her wrist, pater, etc.). She loses her place at times when reading, and tries to avoid doing her work by talking about things not pertaining to school. So, quite often she needs to be re-directed, as you may already know. My concern is that she is doing this in a one to one situation and I'm sure this is part of the reason she is not comprehending what she reads. She's doing well with the decoding and encoding and she is learning to read with some expression. All a plus. I'm working on a chapter book with her right now. "Anne of Green Gables". We are breaking it down chapter by chapter, She reads a page, I read a page. She takes a few notes, and then writes about it in her own words and draws a picture. I hope to get some feedback from you on this matter...." (PE-19).

Ms. Riley concerning her observation in Medford (Hewett). Parents did not share the results of this evaluation with Medford until the Parties prepared for Hearing in 2012 (Medaglio).

21. Dr. Hewett reviewed Student's proposed IEP for the 2010-2011 school year finding that although all of the goals (when viewed separately) addressed every area of Student's disability, she opined that the program was not integrated enough and did not offer the structure and scaffolding needed by Student even if the individual pieces of the program were appropriate (Hewett). She testified that the level of structure and integration of services required by Student could be met at LPS (Hewett).
22. Student attended extended school year programming in Medford during the summer of 2010. She attended eight out of twelve Orton-Gillingham sessions between August 2 and 6, 2010, which sessions focused on comprehension skills (SE-24).
23. Student was offered placement at the substantially-separate, language-based classroom at the Brooks Elementary School in Medford for grade 4, the 2010-2011 school year under an accepted IEP (Father). Parents however, placed her at LPS for the 2010-2011 school year (PE-18; Father). This placement was funded by Medford pursuant to a settlement agreement between the Parties (Father).
24. Joan Foster is the Chief Operating Officer at Learning Prep School (LPS). She has worked there since 1970 in various other positions including Interim Executive Director, Administrator of Special Education, School Psychologist, Educational Facilitator, Elementary School Supervisor, Speech and Language Department Supervisor, Reading Department "EMS", Speech and Language Pathologist, and Clinical Diagnostician. She is certified in Massachusetts as an Administrator of Special Education, School Psychologist, Speech and Language Therapist, in Elementary Education, Learning Disabilities, and in Middle School Education. Ms. Foster has her Certificate of Clinical Competence with the American Speech-Language-Hearing Association (PE-1). At the Hearing, Ms. Foster provided a general overview of LPS.
25. LPS is a Chapter 766 Massachusetts approved special education school that provides services for students ages 8-22 years old, in grades three through high school. The majority of students have significant language/learning processing issues. Many also have difficulties in social skill development or have emotional concerns stemming from their learning issues. Some students have specific reading and writing impairments. Many LPS students have limited self-advocacy skills and problem solving abilities. LPS has worked with Students diagnosed with PDD-NOS, Aspergers Syndrome and Non-Verbal Learning Disabilities. Some students have deficits related to sensory-motor, fine or gross motor skills and anxiety issues (P-13).
26. LPS is a language-based program. All language is simplified, staff post and discuss class schedule and provide lesson summaries at the end of lessons, and content is reviewed and reinforced. Additionally vocabulary and concepts are pre-taught and drilled, presentation of information is paced to allow for "wait time." Teachers gain students' attention before

giving information or instructions. The staff checks frequently with students to ensure comprehension and connects previously learned information to current material. Classes are highly structured and consistent routines and language is provided across all settings. Concrete materials and hands on activities are used. Visual displays and materials are provided frequently. There is consistent predictability across all learning environments. Finally, staff model effective work and social strategies for students (P-13).

27. The classes at LPS incorporated basic skills, repetition and practice, and lessons are presented in a variety of modalities. LPS has implemented the use of Thinking Maps (eight maps that correspond with a fundamental thinking processes) used at LPS' to teach Student how to organize behavior, thoughts, information, content and writing so as to promote independence (Hewett, Foster, Riley).³
28. LPS provides on-site therapeutic services including speech and language therapy, one on one counseling, and occupational therapy. The staff is trained in "best practices", strategies and programs across all departments to assist students. All staff is trained in social skills and is trained in the CPI method of de-escalating student behavior. Thinking Maps, "a more focused and specialized set of strategies than traditional 'graphic organizers'" are used at LPS. There is a no tolerance policy for teasing, name-calling or belittling students. The "Core Value" of safe learning environment is utilized throughout the program. Students are not pulled-out of classes to receive therapies. All therapies are scheduled at their own predictable time in the student's individualized schedule (PE-13).
29. LPS follows the Massachusetts Frameworks Curriculum, modified to the instructional level of its students. Ninety-eight of the two hundred sixty-eight students at LPS are publicly funded. Students at LPS take the MCAS examinations consistent with the mandates of the Department of Elementary and Secondary Education (PE-13; Foster, Medaglio).
30. The profiles and performance levels of LPS students is obtained from the independent evaluations obtained by parents as LPS does not evaluate students directly (Foster).
31. According to Father, within six weeks of the placement at LPS Student's Obsessive Compulsive Disorder (OCD) (perseverating with even numbers, washing hands repetitively and obsessive germ concerns) disappeared and a few months later she stopped wetting her bed. She also became more independent with homework, stopped crying when returning from school, and was trying to develop friendships (Father).
32. On January 23, 2011, Student's Team met at the Brooks Elementary School (Brooks) in Medford. Parents reported that Student was making "fabulous" progress at LPS and requested funding for transportation, which request Medford denied (SE-15).

³ Dr. Hewett supported the use of Thinking Maps as this is the type of higher order organizing tool that can benefit Student (Hewett).

33. Medford proposed an IEP covering the period from January 20, 2011 to January 20, 2012, offering Student placement at the substantially-separate, language-based program at Brooks, and an extended school year program also at Brooks (SE-15).
34. On February 22, 2011, Parents rejected the proposed January 20, 2011 to January 20, 2012 IEP and placement in full, and requested that Student remain at LPS (SE-16).
35. Ms. Riley observed Student at LPS on June 10, 2011 from 9:00 a.m. until 2:00 p.m. She wrote a report of her findings in which she described the curriculum, the instruction, her observations, a summary of Student's academic participation and social behavior, and an analysis of Student's demonstrated intelligence and abilities. She noted that Student consistently participated socially with girls her age. She noted examples of Student answering questions correctly and participating appropriately in class (PE-8).
36. In an e-mail dated June 22, 2011 sent to Parents and their attorney, Ms. Riley indicated her impression of LPS after completing her June 10, 2011 observation. She stated that there was a striking contrast between LPS and Brooks. She noted that LPS' academic program was at a decidedly higher level of instruction throughout the day, that Student was an active participant and that the level of the class was at Student's "instructional growth" level. Ms. Riley noted that Student's peers were appropriate both socially and academically. She observed that Student had friends who sought her out in between classes, at lunch, and in the playground. She contrasted her observations of Student at LPS with her observations of Student in Medford where she was distracted and relatively isolated (PE-8).
37. Roberta Buratti-Aikey, M.Ed. administered a reading evaluation to Student⁴ on June 25, 2011. Student demonstrated significant strengths in phonological awareness and phonological memory and weakness in rapid naming. The results on the TOWRE indicate that Student may encounter challenges when faced with new words, especially multi-syllabic and unfamiliar words. The GORT-4 score indicated that Student's reading rate was in the low average range. Student scored in the average range in the comprehension section of the GORT-4. Student's DIBEL results placed her in the "At Risk" category, which is the same level she achieved at the end of the previous academic year. On the DRA Student read a level 34, grade 3 text with 96% accuracy at a rate of 64 words per minute. Ms. Aikey-Burratti noted that Student had demonstrated a solid grasp of phonological and other concrete language skills during the year. However, at the fourth grade level, she had not yet acquired the higher-order strategies and skills to read for meaning independently or to synthesize and describe what she had read (PE-7).

⁴ The evaluation included the comprehensive Test of Phonological Processing (CTOPP), the Test of Word Reading Efficiency (TOWRE), the Dynamic Basic Indicators of Early Literacy Skills, 6th Ed. (DIBELS), the Gray Oral Reading Tests (GORT-4), the Developmental Reading Assessment (DRA), and the Test of Written Language (TOWL-3) (PE-7).

38. Ms. Buratti-Aikey recommended that Student participate in reading fluency drills to increase her speed and accuracy rate. She also recommended that Student have opportunities to read text at her independent and instructional level each day with guided support from a reading teacher. Ms. Buratti-Aikey made a number of recommendations to assist Student in reading comprehension (PE-7).
39. In June 2011, Parents filed a Hearing Request seeking public funding for placement of Student at LPS for the 2011-2012 school year, Student's fifth grade, along with transportation (Father). The Parties entered into an agreement and Medford funded Student's placement at LPS that year (*Id.*).
40. During the summer of 2011, Student returned to the Brooks School to participate in an extended school year program with her former teacher and peers. Laura Vitagliano was Student's teacher at the summer program. She noted that Student had attended five out of eight scheduled sessions, to work on reading skills, and had required assistance with reading comprehension (SE-21).
41. According to Parents, within a few weeks of participating in the summer program, Student's OCD symptoms became full-blown and she began bed wetting once again. Concerned about the possible long term harm this could cause, Parents withdrew her from the summer program (Father).
42. Dr. Hewett conducted updated neuropsychological assessments of Student on June 25, 2011 and July 14, 2011. At the time of this evaluation she did not perform a school observation of Student at LPS (instead relying again on the report of the observation conducted by Ms. Riley) nor did she perform a social/ emotional assessment during her updated evaluation in 2011 (Hewett).
43. Dr. Hewett noted that the 2011 evaluation results paralleled the previous evaluation. She reported that Student steadily, but gradually improved in some weaker domains and made progress behaviorally, socially and with emotional regulation. She noted improvement in integration and production. Parents reported to Dr. Hewett that Student's school avoidance behaviors had disappeared and her negative comments about herself diminished. Dr. Hewett reported that Student had begun to experience social success that year, but that she remained very much at risk for social/emotional distress and academic struggles. She noted that Student continued to meet criteria for the same three neurodevelopmental and emotional disorders: coordination and sensory integration, ADHD, and anxiety. Additionally, Student's language learning disorder continued to impair her progress with classroom attention, higher-order reading comprehension, verbal organization, and math. Student showed excellent progress on limited tests of written expression, so Dr. Hewett dropped her previous diagnosis of Disorder of Written Expression. Dr. Hewett opined that Student met the criteria for a mild Pervasive Developmental Disorder (PE-9). She also noted that Student was still struggling with medication trials/ adjustments.

44. Dr. Hewett testified that she did not observe that Student had made progress in reading although Student had been at LPS that year. She further testified that she had found the same kinds of inconsistencies in 2011 that she had found in 2010 (Hewett).
45. Dr. Hewett made a number of recommendations, including continuing psychiatric treatment, coordinating treatment with in-school services, and providing parents with support. She again recommended “academic instruction that will help her develop and integrate her intellectual strengths and curiosity about a range of subjects.” Dr. Hewett recommended that Student be placed at the LPS or a similarly intensive integrated day program. She opined that it was crucial for Student to continue in a program that integrated social and emotional pragmatics with counseling and classroom curriculum (PE-9).
46. Student attended LPS for fifth grade, the 2011-2012 school year (Father).
47. A Notice of Proposed School District Action (N1) dated August 23, 2011, reflects Medford’s commitment to fund Student’s LPS placement for the period from September 1, 2011 to June 30, 2012 pursuant to a settlement agreement between the Parties (SE-13). The N1 also states that Student will participate in an extended school year program in Medford, and that she would be expected to take the fifth grade MCAS. The Team would also meet with LPS staff in mid-April 2012 to discuss Student’s progress (*Id.*; SE-14).
48. During the first semester of Student’s fifth grade (2011-2012) the LPS staff became concerned about Student. According to Cheryl Gregg-Desautels, Student’s counselor at LPS, Student was struggling with behaviors such as non-compliance and being disengaged from the instruction/ activities (such as putting her head down on her desk), had difficulty identifying or labeling her feelings, and appeared more negative than before (Gregg-Desautels). In response to Student’s difficulties, her LPS counselor stayed in contact with Student’s Parents weekly and communicated with her psychiatrist monthly to problems-solve and identify ways in which to support Student. Student was the subjects of at least three staff meetings during which her teachers and service providers discussed her progress. The LPS Dean of Students and Student’s counselor made daily “check-ins” with Student. They implemented the “daily goal sheet” used to help students at LPS focus on academic and social challenges as a positive feedback goal sheet in which her teachers offered her positive feedback on a daily basis. Student was also provided with three nurse passes per week which she could use at her discretion when she needed a break. Teachers monitored Student’s behaviors in class and when they saw her put her head down on the desk, they helped Student identify her needs. With these interventions in place and the positive effects of Zoloft, Student’s difficulties ameliorated and by January 2012 she appeared to have bounced back to normal (Gregg-Desautels). Thereafter, Student appeared to have a good semester showing academic improvement and increased ability to sustain positive attitudes and behaviors in class. She became more engaged in counseling and began to take greater responsibility for her own learning (PE-9; PE-17a; Foster).
49. Ms. Gregg-Desautels attributed Student’s difficulties in 2011 to three different occurrences. First, some of Student’s friends at LPS went on to middle school and they no longer shared

the same lunch period. Second, Dr. Lovass initiated a trial of medication. He placed Student on two different trials of ADHD medications, neither of which offered any benefit to Student according to Parents and LPS staff. A trial of Zoloft (anxiety medication), however, helped to control Student's anxiety. To date, Student continues to take 100 mg of Zoloft daily (Father; Gregg-Desautels). Third, Ms. Gregg-Desautels attributed hormonal changes from the onset of puberty to have played a role (Gregg-Desautels).

50. On January 25, 2012, Student's Team met at LPS to Amend Student's IEP to reflect her then current performance levels, goals and objectives, and Student's weekly schedule was attached (SE-7; SE-8; SE-9; SE-10; SE-11). Although Student was in fifth grade, the IEP reflects that Student's classroom instructional level was at the late third (3rd) early fourth (4th) grade level. It reports that Student's independent reading level was at the late second (2nd) to early third (3rd) grade level and states that in June 2011, Student had completed Step 5.3 of the Wilson Scope and Sequence program (SE-7). In math, Student was working at the third (3rd) grade level (SE-12). The Key evaluation Results Summary states that Student's performance in reading and basic reading skills falls in the low average range; in the average range in math and math calculations, and in the average range in written language. It further notes Student's difficulties understanding that language is not always interpreted in a literal manner, or its use to express feelings. Student was described as an active participant in small group classes although she appears to be hesitant to take risks because of her fear of being incorrect. The IEP notes that according to Student's independent evaluation results, despite her numerous diagnoses, Student should be able to proceed to higher education and career training, as well as independent adult living (SE-7).
51. The IEP also reflects one fifteen-minute consultation session per month with the speech pathologist and one thirty-minute consultation session per month with the school psychologist (SE-7).
52. On February 13, 2012, Parents consented in full to the IEP and placement at LPS (SE-7; SE-11).
53. Cheryl Maiocco, Student's elementary school Educational Team Leader in Medford, conducted an observation of Student during art class at LPS on February 13, 2012. She noted that Student was happy, on task, very interested in the lesson and noted that she asked many questions. Student was friendly to her classmates and appeared to be comfortable with them (SE-26).
54. Student's Team convened again at LPS on April 9, 2012. LPS provided progress reports describing Student's goals, her then current levels of performance, and discussed her progress. Notably, LPS questioned Student's PDD diagnosis (SE-3). The Team concluded that given Student's progress, Medford would no longer support her placement at LPS for the following year and instead offered Student participation in a substantially-separate, language-based classroom at the Andrews Middle School in Medford (SE-2). Parents disagreed with this determination and requested that Student continue her publicly funded placement at LPS (SE-2; Father).

55. The Notice of Proposed School District Action (N1) issued by Medford on April 13, 2012, proposed drafting of an IEP that covered the period from July 1, 2012 through June 30, 2013 (SE-2). Based on a five-day cycle, the IEP offered Student: three, forty-eight minutes sessions of speech and language services; five, forty-eight minute sessions of science; five, forty-eight minute sessions of math; five, forty-eight minute sessions of reading; five, forty-eight minute sessions of language arts; five, forty-eight minute sessions of social studies; and, two, forty-eight minute counseling sessions, all of which would be delivered in a substantially-separate setting. The IEP listed numerous accommodations for state or district wide assessments. This IEP offered no extended year services, transportation or consultation services (SE-4).

56. The additional information section of the IEP stated that

Due to the student's decreased social skills, the Team has indicated that [her] disability has affected social skills development, which would make the student vulnerable to bullying, harassment, or teasing. This IEP includes services and focused benchmarks intended to address the skills and proficiencies that will be needed to avoid and respond to potential bullying, harassment, or teasing.

Items discussed as part of this team meeting included: 1) verbal and non verbal communication needs; 2) the need to develop social interactions skills and proficiencies; 3) the needs resulting from unusual responses to sensory experiences; 4) the needs resulting from resistance to environmental changes or changes in daily routines; 5) the needs resulting from engagement in repetitive activities and stereotyped movements; 6) the need for any positive behavioral interventions, strategies, and supports to address any behavioral difficulties resulting from ASD; 7) potential for bullying, teasing, harassment, and self-advocacy; 8) other needs resulting from the disability that impact progress in the general curriculum (SE-4).

57. Parents partially rejected this IEP and refused the placement decision on April 27, 2012. Specifically, Parents rejected the determination to discontinue Student's placement at LPS and rejected portions of the service delivery grid that did not conform to the LPS IEP grid (SE-4). Parent also rejected the primary disability category of "health" because it failed to describe Student's primary disabilities as a "language-based learning disability with emotional influences" (SE-4). Parents also raised concern over Medford's decision to place Student back with the same peer group that they considered to have been emotionally destructive in the past (SE-5).

58. A description of the Andrews Middle School program proposed for Student explains that

...the program is designed to support student movement from the sub separate classroom into highly staffed general education classrooms. The program

proposed is a sub-separate class. However, at some point during quarter 3-4, the special education teacher co-teaches several science and social studies units with a general education teacher. Some of the students from the sub-separate classroom typically continue in the general education classroom for the remainder of the year.⁵ Others who continue to require a small group science or social studies class would remain in the sub-separate classroom for these courses. Student movement from the sub-separate classroom to the general education classroom for science and social studies has been highly successful using this model. It is important to note that, despite the intentionally designed fluidity and flexibility of this program, should a student continue to need the supports of the sub-separate classroom for all of their academic subjects throughout the course of the entire school year, this would be provided (SE-6).

As a language-based program, it utilizes and is based on many of the methodologies that the LPS program is based on. Focus is on learning content and strategies, not just memorizing. (Opportunities for success, multi-sensory instruction, breakdown of units and provide clear guidelines/ expected outcomes, ensure automatization through practice and review, provided models, increased Student involvement.) Unlike what Dr. Hewett writes, the peers in the program have similar learning profiles and therefore present as an appropriate peer grouping. Students are able to be integrated with typically developing peers during non-academic and, eventually, academic times, as they are able, which is a positive attribute of Medford's program which LPS, by definition cannot offer (SE-6)⁶.

59. David Lovas, M.D. wrote a letter dated May 31, 2012. He stated that he had been working with Student since July 2010 and reviewed her diagnoses. He stated that upon her being placed at Learning Prep school he observed remarkable improvement in Student's symptoms, including a resolution of her obsessive compulsive disorder. He noted that her mood and self-esteem improved and she started reading independently, and stated that as Student's anxiety decreased, she began engaging more socially. Despite her improvements, he noted that Student continues to experience significant difficulties. She has been diagnosed with ADHD, inattentive type and is being treated with medication and therapy. He noted that she continues to require the behavioral and educational services provided by Learning Prep. He concluded that without the specialized support of her placement at Learning Prep, Student is at very high risk for worsening emotional disturbance, and will be unable to make academic progress. He believes that Learning Prep is the least restrictive setting that will reduce her risk for recurrent depression, recurrent obsessive compulsive disorder and loss of academic, social and emotional function (P-6).

⁵ See also SE-27 showing progress of students previously enrolled in this program as they move to a less restrictive environment.

⁶ Mr. Picanzo, school psychologist at the Andrews Middle School, had not seen this document although it purportedly was a description of the Andrews Middle School program (Picanzo).

60. Student's 2012 fifth grade MCAS results were as follow: 216/ Warning in English/ Language Arts, 214/ Warning in Math, and 226/ Needs Improvement in Science (SE-36).
61. Dr. Hewett observed the Andrews Middle School program on June 25, 2012 for approximately ninety minutes. The Special Education Team Leader and lead classroom teacher provided Dr. Hewett descriptions of the program and informed her that all of the students shared a primary diagnosis of language-based learning disability as well as related issues of developmental delays, inattention, and speech disorder. In addition to the classroom teacher, there was a language-based paraprofessional in the classroom during the observation (PE-5).
62. Dr. Hewett found the Andrews Middle School program to be inappropriate for Student for several reasons. She noted that there was a lot of information presented, but it was presented mostly verbally and without connections drawn to and among the disconnected information. She noted a lack of high-order instruction and no evidence of graphic organizers or thinking tools in use. Also, most materials were print-based and there was no word processing or computer-based material or activities in the classroom (PE-5). Dr. Hewett noted that all activities were led and controlled by the teacher, which allowed for no independent or self-directed learning. She did not observe any "real engagement" or "active learning" (PE-5).
63. Dr. Hewett noted that there was no integration of social skills to the classroom setting. Similarly, she noted that there was no indication that individual counseling sessions are coordinated at all with the desired behavior or adjustment within the classroom. Additionally, she did not observe integration between individual speech and language services and the classroom. Dr. Hewett concluded that the educational and social experience proposed for Student at Andrews Middle School is more fragmented than a single self-contained program in the private school and also more stigmatizing, and thus more isolating for Student than a specialized and truly integrated environment (PE-5).
64. On July 3, 2012, Parents filed a Hearing Request with the BSEA seeking a determination that Medford's proposed IEP and placement were inappropriate, and seeking public funding for their unilateral placement of Student at LPS, including transportation. The Parties then participated in a resolution meeting on July 12, 2012 (SE-1).
65. On July 16, 2012, Medford forwarded to Parents a Resolution Meeting Summary and Consent to Evaluate Student Form, seeking to evaluate Student in the following areas: speech and language; educational; observation; psychological; and, a home assessment (SE-1). Medford explained that Student was due for her three year reevaluation on January 27, 2013, and advancing the evaluations would provide the Team valuable information that would further the Parties discussions regarding placement. The Summary also noted that Student had completed elementary school and stated Medford's opinion that transitioning her back into Medford now that she was starting middle school would be a more natural progression (SE-1).

66. Student attended a social/activities type camp, run by the Boys and Girls club during the summer of 2012 (SE-31; Father).
67. Student started the 2012-2013 school year at LPS (Father).
68. On September 10, 2012, Leigh Kelley, MS, CCC-SLP, Medford Public Schools, conducted a speech and language re-evaluation and observation of Student at LPS (SE-28). Ms. Kelley noted that at LPS Student was receiving speech and language services three times per week. Student was described as cooperative and attentive during the testing, and was able to follow one to four step directions and comprehend single word vocabulary. She could make some appropriate inferences and predictions when information was presented verbally. Ms. Kelley found that on formal testing, Student's receptive language skills ranged between low average and high average while her expressive language fell in the average range, noting that syntax and grammar skills were areas of strength (SE-28).
69. Ms. Kelley found that Student's pragmatic language skills fell between the moderately low and the low average range, noting Student's difficulties comprehending nonliteral language, and her diminished judgment regarding the appropriateness of the language she hears and its appropriate use in different environments. Ms. Kelley explained that these were higher level language skills that were challenging to Student but were critical to interactions in a classroom-based learning community. Ms. Kelley noted that Student would benefit from explicit teaching of social conventions given her continued display of reduced social skills (SE-28). While Student's written language skills fell in the low average to average range, showing average ability to write a story (using correct spelling punctuation and grammatical conventions) it lacked quality of composition. Student's stories lacked mature vocabulary, an intriguing plot, a strong beginning or energy level, and consisted of mostly simple sentences that lacked a variety of conjunctions, and contained a capitalization mistake (SE-28).
70. Ms. Kelley made numerous recommendations including explicit teaching and opportunities to practice social conventions and appropriate language with adults and peers; provision of positive reinforcement; encouragement for use of compensatory strategies to ease comprehension and processing (such as visualization and verbal rehearsal); allowance of extended time to organize and formulate oral and written responses; use of strategies for work retrieval; provision of graphic organizers and guidelines to organize written work; asking open ended questions and providing verbal cues to facilitate organization and elaboration of oral and written language; and assistance with comprehension of higher-level material and figurative language (SE-28).
71. A psychological assessment was conducted by Bernard James Picanzo, Ed. S., certified school psychologist, Medford Public Schools, on September 11, 2012. Mr. Picanzo also observed Student during a social studies class and lunch at LPS. He found Student's cognitive ability to fall in the low average range. Her overall visual-spatial reasoning and processing abilities, as well as her verbal comprehension abilities fell within the low average range, while working memory abilities fell solidly in the average range and were therefore

considered a relative strength for Student. Test results suggested that Student may have difficulty organizing complex tasks and would benefit from clear, explicit, step by step instructions. No clinically significant areas of concern were noted by LPS' teachers in terms of Student's social/ emotional function, except that they raised a mild to moderate concern in areas involving sadness, stress, withdrawal, adaptability to changes and ability to communicate effectively (SE-29).

72. Mr. Picanzo recommended that Student receive counseling, social skills training, frequent monitoring of emotional functioning, outlines of classroom lectures, and support with her understanding of "why" questions. He also recommended creation of "an atmosphere for intervention in which mistakes are okay and judgments about performance are withheld" and stated that the results of his evaluation would be discussed with Student's Team (SE-29).
73. On September 12, 2012 Dr. Hewett spent five hours at LPS during which time she observed Student in homeroom, math, science, language arts, speech/language, and lunch and spent ninety minutes administering neuropsychological tests. The tests she administered included the WISC IV (Comprehension subtest), Boston Naming Test (for "limit-testing"), the Beery-Buktenica Visual Motor Integration Test (3 measures), a grooved pegboard, the DK-EFS Trailmaking, the Nepsy II (Speeded Naming and Theory of Mind.) Dr. Hewett interviewed Parents and teachers, the principal, and guidance counselor at Learning Prep (PE-2).
74. Dr. Hewett made detailed recommendations for Student's educational program. To accommodate Student's sensory needs, she recommended consistent opportunities for rest breaks and sensory diet activities. She noted the importance of integrating strategies into the program with academic and social activities throughout the program so that Student perceives them "as normative, rather than provided because of her special deficits." She also opined that Student requires a program in which all teachers and unstructured periods use similar and consistent methods for sensory modulation and support her use of them for herself. To address Student's motor and visual coordination deficits she recommended multi-sensory instruction across content areas. She also recommended providing Student with challenging higher-order content and varied tasks to maintain her interest. To address her language based learning disability, Dr. Hewett recommended a language-based program that integrates instructional concepts, methods, and strategies across all content areas and supporting services. To address Student's attentional needs Dr. Hewett recommended that her program offer variety within a highly predictable setting. She recommended that the program address Student's attentional and executive control difficulties within the context of her overall academic and social-emotional program. Finally, to address Student's social emotional needs, Dr. Hewett recommended that the program provide a variety of situations in which Student can experience age appropriate social emotional challenges and experience success. In addition to continuing Student's individual counseling and social group, Dr. Hewett opined that Student requires explicit training and daily practice to develop self-awareness and communication skills. She recommended that Student's services be integrated and consistently practiced and modeled in every part of her program and stated that consistent emotional support would be key to Student's program (PE-2).

75. Dr. Hewett emphasized the importance that Student's program feel "normal rather than special" to Student. She stated that Student is unusually sensitive to feelings that she may be different or inferior, and when she feels that way she can become overwhelmed emotionally. When she is overwhelmed emotionally, she shuts down cognitively and cannot be reengaged in learning until she has recovered emotionally (PE-2).
76. Dr. Hewett conducted another observation of the language-based program at the Andrews Middle School on September 13, 2012, the day after she observed LPS. There were four students present, the lead classroom teacher (Ms. Levy), a paraprofessional/Orton-Gillingham instructor, a student's specialized aide, and the special education evaluation team leader for the Andrews School. All students report to a different homeroom before coming to the language-based classroom where they spend the majority of the day. All students are out of the classroom for two periods per day when they have one of the following classes: gym, art, music, math lab, guidance, introductory foreign language, or specialized reading instruction. Dr. Hewett observed portions of the program including language arts, science, math, and lunch, from 8:40 a.m. until 11:45 a.m. (PE-3).
77. Dr. Hewett found some aspects of the program to be appropriate for Student. She noted that the teacher and aides were skilled, experienced, responsive and created a positive environment for learning. She noted that instructional techniques were "best, but traditional" practices. However, she noted that the program lacked some of the elements she deemed most important for Student. She found the program lacked challenging education content and integration of higher order and basic skills. She also noted that the peers were not appropriate for Student due to their small number (four students on the day of her observation) and their divergent profiles. She noted that it was clear that two of the other students would require significant time and resources to be meaningfully included in the instructional and social environment of the classroom. Dr. Hewett found that the quality of student language and discussion were significantly limited. She found very little higher order content introduced, and when higher order questions were posed, students could not respond to them meaningfully. Additionally, Dr. Hewett found that there were limited references to core strategies or techniques as to approaching tasks other than those introduced by the student's texts. She also noted a lack of use of technology in the classroom (PE-3).
78. Dr. Hewett observed no evidence that individual students were familiar with their own needs for sensory soothing techniques and no sensory materials were used during classes. Similarly, she noted there was no evidence that students were capable of using strategies to monitor or manage their own behavior. Dr. Hewett did not believe that the program could meet Student's social emotional needs. She noted Student's need and capacity to learn from those around her. She did not believe the peers in the program would provide appropriate models for Student's social development. Additionally, Dr. Hewett opined that Student's placement in the substantially separate classroom would mark her as inferior and disabled in her own mind. Further, she did not observe integration of speech language, counseling, and social skills into the classroom (PE-3).

79. Luella Benn, Student's Evaluation Team Leader in Medford, accompanied Ms. Hewett during her observation on September 13, 2012 (SE-30). Ms. Benn noted that the classroom was staffed by a special education teacher, a classroom paraprofessional, and a second paraprofessional (assigned to one of the four children in that class). Four students between the ages of eleven and twelve, all sixth graders, were present. Students in this class transition from one subject to another when the bell rings for all of the children in middle school (SE-30).
80. Ms. Benn noted that when students in this class appeared distracted they were discretely cued by the teacher or paraprofessional, by, for example, placing a hand on the student's shoulder. Students in Ms. Levy's classroom meet with their homeroom peers before lunch and are walked to lunch by the homeroom teachers. Their lockers are located in the same area as the rest of their middle school peers. Ms. Benn noted that during lunch, three of the four students in Ms. Levy's class sat together at the end of a table with about twelve other sixth graders, and the fourth student joined them later and sat at an adjacent table (SE-30).
81. Student's home assessment was conducted on September 14, 2012, by Lucinda Riggini-Jay, RN in Medford. Parents shared Student's issues with anxiety for which she had been taking Zoloft. Parents noted that Student had become more social with peers at LPS and also had friends in her Medford community (SE-31).
82. An educational assessment was conducted by Ben Halpern-Meeken, Special Needs Teacher, Medford Public Schools, on September 18, 2012 (SE-32; SE-33). Mr. Halpern-Meeken also observed Student during her Wilson reading decoding class, one of the two periods of English language arts classes she receives daily at LPS (SE-34). His evaluation sought to ascertain what Student's then current strengths and weaknesses were, and what educational interventions would be most effective for her. He noted that Student was engaged and cooperative, seeming completely at ease with the evaluator. During the testing she was reluctant to attempt questions that she perceived to be too difficult (SE-33).
83. Student's test results in the Woodcock Johnson III Tests of Achievement⁷ (W-J III), fell in the low average to average range. She demonstrated knowledge of decoding, phonics rules, and its proper application. Reading decoding was found to be a relative strength especially when decoding text or meaning and comprehension at a concrete level. Consistent with previous evaluations, Student evidenced difficulty on tests requiring higher order thinking skills. She also struggled with reading comprehension, and with the non-literal items on the writing samples test and with the analogies portion of the reading vocabulary test. Mr. Halpern-Meeken compared the results of his testing to Student's MCAS test results finding that Student "struggled to identify the main idea, infer meaning from details, understand alternative perspectives, and analyze information" (SE-33). He also noted Student's difficulties in tests requiring higher order math skills. Most notable was Student's apparent

⁷ Mr. Halpern-Meeken administered the Letter/Word Identification; Reading Fluency; Calculation; Math Fluency; Spelling; Writing Fluency; Passage Comprehension; Applied Problems; Writing Samples; Word Attack; Story Recall; Understanding Directions; Picture Vocabulary; and the Reading Vocabulary test of the W-J III (SE-32).

gaps in knowledge and math skills in the broad math cluster. He opined, that some of the test results could have been skewed downward by Student's reluctance to persevere on tasks she found difficult or boring (SE-33).

84. Mr. Halpern-Meecken recommended that Student be placed in a small-group, language-based classroom "capable of supporting an integrated curriculum focused on teaching modified, grade-level content through adaptive means" (SE-33). He stressed that she should be taught to her current level of need and assisted in closing her academic gaps in content and knowledge, especially around math. He further recommend additional goals, to wit:
- a. A new reading goal should focus on inferring, characterizing, identifying personality traits of characters, summarizing, predicting, and recognizing and using sensory language.
 - b. A math goal written to take grade six standards into account while addressing gaps in problem-solving skills, gaps in knowledge around calculating with decimals and fractions, comparing and ordering decimals and fractions, use of formulas in solving problems, and using equations and model real-life events.
 - c. A new writing goal focused on meeting grade six standards by producing three written paragraphs. New objectives should focus on addressing areas of need around content of writing, rather than only the amount of writing.
 - d. Adjustments to the social/ emotional goal to address [Student's] lack of perseverance when a task is perceived as hard or boring (SE-33).

Numerous accommodations were also recommended, including but not limited to: frequent check-ins, modeling of activities, use of checklists, graphic organizers and place markers, access to a computer for lengthy written assignments, frequent breaks, clarification of test directions, use of humor and praise to guide Student during her work, etc. (SE-33).

85. Student's Team met again on September 25, 2012, in Medford to discuss the results of Dr. Hewett's Review and Evaluation of Education Placement Reports dated September 18 and September 19, 2012, and the Report of LPS Middle School dated September 19, 2012. As a result of this Team meeting, Medford revised the proposed IEP issued in June 2012, but continued to offer Student an in-house, substantially-separate language-based program at the Andrews Middle School (SE-36).
86. The new IEP, which covered the period September 24, 2012 through September 23, 2013, proposed to address Student's social/ emotional needs, communication issues, speech/ language deficits, counseling and assistive technology needs and notes that due to Student's processing deficits, she can become overwhelmed by academic and social situations. Similarly, her "reduced academic confidence results in limited risk-taking in learning and social situations" making her vulnerable to harassment, teasing and/ or bullying (SE-36).
87. The Service Delivery Grid in the September 2012 IEP offered one fifteen minute session per five day cycle of consultation between the speech and language therapist, the counselor and the special education teacher as well as a fifteen minute consultation session between Parent

and the counselor per five day cycle (SE-36). It also offered the following C grid direct services in a substantially-separate setting, per five day cycle: three, forty-five minute sessions of speech and language by the speech and language provider; five, forty-five minute sessions of English language arts by the special education teacher; five, forty-five minute sessions of science by the special education teacher; five, forty-five minute sessions of math by the special education teacher; five, forty-five minute sessions of reading instruction by the special education teacher; five, forty-five minute sessions of social studies by the special education teacher; one, forty-five minute counseling session; and one, forty-five minute social skills group session (SE-36). The IEP offered numerous other accommodations to wit

- Frequent Breaks: The test is administered in short periods with frequent breaks (1).
- Familiar Test Administrator: If the test is administered by a test administrator familiar to the student (7).
- Test Directions: The test and administrator clarifies general administration instructions. No portion of the test items themselves (e.g., the introduction to or reading selection) made you read or signed (10).
- Test administrator reads test aloud (except ELA reading comprehension test): test administrator reads entire test session word-for-word exactly as written (16a).
- The student uses a graphic organizer, checklist, individualized mathematic school reference sheet, or abacus (20).
- Word processor: The student uses a word processor, Alpha-smart, or similar electronic keyboard to type the ELA composition and/ or answers to open-response questions (23).
- Clear, concise directions for each task, using modeling, etc. Ensure comprehension of directions/ process by asking student to paraphrase and/ or restate in own words.
- Frequent teacher checks to ensure comprehension of directions/ process.
- Use of visual cues and graphic organizers when possible, especially for written work.
- Close activities with a summary and review of lesson content.
- Facilitate access to prior knowledge, vocabulary, content structure, key concepts, etc.
- Break down complex tasks into smaller units.
- Stress quality of work over quantity.
- Teach use of various learning tools: outlines, graphic organizers, diagrams, etc.
- Guided discussions to enhance processing of essential content.
- Provide increased repetition and opportunity for practice of learned skills.
- Reduce excess visual/ auditory distractions.

- Simplify directions/ reduce length of assignments, as necessary.
- When assigning long/ term papers or projects, provide model of completed product.
- Pre-teach vocabulary. Connect the new vocabulary/ concepts/ material to prior knowledge (SE-36).

88. The methodology described in this IEP to deliver the instruction is

Small group instruction for major academic courses (ELA, math, science, social studies, reading), with 1:1 instructional opportunities as needed. Grade level content divided into manageable units of study. Consistency in instructional style and language across all curriculum areas. Systematic and cumulative focus on the learning of content, as well as regular review and the teaching of strategies for aid in the recall of previously learned information. Specialized instructional methods, materials and critical pedagogy are to be used to address the specific learning needs of each student. A balanced multi-sensory learning experience provides for the direct teaching of concepts with continuous student-teacher interaction. Provide increased a opportunities to experience academic success, while also encouraging learning risks. Provided clear guidelines and defined expected outcomes picked (models) while teaching to apply organizational strategies. Modeling, rule-based reading and writing programs, graphic organizers and writing templates are used to address student's academic, executive functioning and organizational skill development is provided. Access to classroom-based and or lab based technology to utilize AT programs. An emphasis on non-verbal pragmatic language and mentoring of social interactions is enmeshed into all aspects of learning to help students develop the skills necessary for effective social interactions. Opportunities for integration with typically developing peers during related arts and, eventually, content courses, as determined by Team members in concert with parents/ guardians (SE-36).

89. Extended school year services were found to be necessary and as such, the IEP offered a six-hour per week, four week program structured to offer Student reading, writing, and math services so as to prevent regression and or loss of learned skills (SE-36).

CONCLUSIONS OF LAW:

The Parties do not dispute that Student is an individual with a disability falling within the purview of the Individuals with Disabilities Education Act⁸ (IDEA) and the state special

⁸ 20 USC 1400 *et seq.*

education statute⁹. Student presents with ADHD, a Receptive and Expressive Language Disorder, a Reading and Written Expression Disorder, and Generalized Anxiety Disorder. As such, Student is entitled to a free, appropriate public education (FAPE).¹⁰

The dispute involves whether the IEPs and placements offered by Medford in July 2012 and for the period from September 2012 through September 2013, offer Student a FAPE in the least restrictive environment, and, if not, whether Parents are entitled to reimbursement for their unilateral placement of Student at LPS. In rendering my decision, I rely on the facts recited in the Facts section of this decision and incorporate them by reference to avoid restating them except where necessary.

The IDEA and the Massachusetts special education law, as well as the regulations promulgated under those acts, mandate that school districts offer eligible students a FAPE. A FAPE requires that a student's individualized education program (IEP) be tailored to address the student's unique needs¹¹ in a way "reasonably calculated to confer a meaningful educational benefit"¹² to the student.¹³ Additionally, said program and services must be delivered in the least restrictive environment appropriate to meet the student's needs.¹⁴ Under the aforementioned standards, public schools must offer eligible students a special education program and services specifically designed for each student so as to develop that particular individual's educational potential.¹⁵ Educational progress is then measured in

⁹ MGL c. 71B.

¹⁰ MGL c. 71B, §§1 (definition of FAPE), 2, 3.

¹¹ E.g., 20 USC 1400(d)(1)(A) (purpose of the federal law is to ensure that children with disabilities have FAPE that "emphasizes special education and related services designed to meet their unique needs . . ."); 20 USC 1401(29) ("special education" defined to mean "specially designed instruction . . . to meet the unique needs of a child with a disability . . ."); *Honig v. DOE*, 484 U.S. 305, 311 (1988) (FAPE must be tailored "to each child's unique needs").

¹² See *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) where the court explicitly adopted the meaningful benefit standard.

¹³ *Sebastian M. v. King Philip Regional School Dist.*, 685 F.3d 79, 84 (1st Cir. 2012) ("the IEP must be custom-tailored to suit a particular child"); *Mr. I. ex rel L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1, 4-5, 20 (1st Cir. 2007) (stating that FAPE must include "specially designed instruction . . . [t]o address the unique needs of the child that result from the child's disability") (quoting 34 C.F.R. 300.39(b)(3)). See also *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir. 1993) (program must be "reasonably calculated to provide 'effective results' and 'demonstrable improvement' in the various 'educational and personal skills identified as special needs'"); *Roland v. Concord School Committee*, 910 F.2d 983 (1st Cir. 1990) ("Congress indubitably desired 'effective results' and 'demonstrable improvement' for the Act's beneficiaries"); *Burlington v. Department of Education*, 736 F.2d 773, 788 (1st Cir. 1984) ("objective of the federal floor, then, is the achievement of effective results--demonstrable improvement in the educational and personal skills identified as special needs--as a consequence of implementing the proposed IEP"); 603 CMR 28.05(4)(b) (Student's IEP must be "designed to enable the student to progress effectively in the content areas of the general curriculum"); 603 CMR 28.02(18) ("*Progress effectively in the general education program* shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the child, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district.").

¹⁴ 20 USC 1412 (a)(5)(A).

¹⁵ MGL c. 69, s. 1 ("paramount goal of the commonwealth to provide a public education system of sufficient quality to extend to all children the opportunity to reach their full potential..."); MGL c. 71B, s. 1 ("special education" defined to mean "...educational programs and assignments . . . designed to develop the educational potential of children with disabilities . . ."); 603 CMR 28.01(3) (identifying the purpose of the state special education

relation to the potential of the particular student.¹⁶ At the same time, the IDEA does not require the school district to provide what is best for the student.¹⁷

As the party challenging the adequacy of Student's proposed IEP, Parents carry the burden of persuasion pursuant to *Schaffer v. Weast*, 126 S.Ct. 528 (2005), and must prove their case by a preponderance of the evidence. Also, pursuant to *Shaffer*, if the evidence is closely balanced, the moving party, that is Parents, will lose.¹⁸

Upon consideration of the evidence, the applicable legal standards and the arguments offered by the Parties in the instant case, I conclude that the IEP offered by Medford is reasonably calculated to meet Student's needs. Parents have not met their burden of persuasion pursuant to *Shaffer* and therefore, they are not entitled to reimbursement for their unilateral placement of Student at LPS for the period from September 2012 through September 2013. Student's transition back into Medford shall be carefully orchestrated with Parents, Medford's counselor and psychologist, and Student's psychiatrist in light of Student's serious emotional issues. Her transition back into Medford, shall include introduction to her proposed counselor, introduction to her new teacher and service providers, and a building orientation, as well as any other intervention to which the Parties agree. My reasoning follows.

At issue are the two IEPs proposed by Medford for Student: the IEP covering the period from July 1, 2012 through June 30, 2013(SE-4; SE-3), and the IEP covering the period from September 24, 2012 through September 23, 2013 (SE-36; SE-35). Both of these IEPs have been rejected by Parents in favor of unilateral placement of Student at LPS, where she has been placed since September 2010, her fourth grade. Medford has funded Student's LPS placement during the fourth and fifth grades, but now asserts that Student is able to participate and make effective progress in the proposed Medford program at the Andrews Middle School for the 2012-2013 school year.

Both of the aforementioned IEPs offer Student placement in a substantially-separate classroom for all core courses (English language arts, math, science, reading and social

regulations as "to ensure that eligible Massachusetts students receive special education services designed to develop the student's individual educational potential..."). See also Mass. Department of Education's Administrative Advisory SPED 2002-1: Guidance on the change in special education standard of service from "maximum possible development" to "free appropriate public education" ("FAPE"), effective January 1, 2002, 7 MSER Quarterly Reports 1 (2001) (appearing at www.doe.mass.edu/sped) (Massachusetts Education Reform Act "underscores the Commonwealth's commitment to assist all students to reach their full educational potential").

¹⁶ *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 199, 202 (court declined to set out a bright-line rule for what satisfies a FAPE, noting that children have different abilities and are therefore capable of different achievements; court adopted an approach that takes into account the potential of the disabled student). See also *Lessard v. Wilton Lyndeborough Cooperative School Dist.*, 518 F.3d 18, 29 (1st Cir. 2008), and *D.B. v. Esposito*, 675 F.3d at 36 ("In most cases, an assessment of a child's potential will be a useful tool for evaluating the adequacy of his or her IEP.").

¹⁷ E.g. *Lt. T.B. ex rel. N.B. v. Warwick Sch. Com.*, 361 F.3d 80, 83 (1st Cir. 2004) ("IDEA does not require a public school to provide what is best for a special needs child, only that it provide an IEP that is 'reasonably calculated' to provide an 'appropriate' education as defined in federal and state law.")

¹⁸ *Schaffer v. Weast*, 126 S.Ct. 528 (2005) places the burden of proof in an administrative hearing on the party seeking relief.

studies), speech and language services three times per week for forty-eight minutes each, and counseling services twice per week for forty-eight minutes each (SE-4; SE-36).

1. Academic Issues

Parents contend that Medford's substantially-separate program at the Andrews Middle School is inappropriate to meet Student's unique needs. In order to evaluate the merits of their position I begin by looking at the recommendations made by Parents own experts for Student, examine Student's progress and current performance, and evaluate the program proposed by Medford in that light.

While both Parties agree that Student is of average cognitive ability, Medford sees her abilities in the low end of the average range with significant variability within the Verbal Comprehension Index, while Parents view her as falling within the average to above-average range (SE-36; Hewett). Both Parties agree that Student's cognitive profile is not significantly interfering with her academic progress and instead find executive functioning deficits and language-based learning disabilities to be the interfering factors. They agree that Student presents with visual-motor integration difficulties and social emotional issues.

The bulk of Parents' case relied on the findings, recommendations and opinions of Dr. Hewett, their independent neuropsychologist. Dr. Russell, Student's former psychiatrist, addressed Student's psychological needs and Father, an engineer, provided the family's perspective. Ms. Riley's contributions bore little relevance to the case. As such, I begin with the findings, observations and recommendations provided by Dr. Hewett.

Dr. Hewett's recommendations for Student have remained constant since her first evaluation in 2009. That is, she has consistently recommended that Student be placed in a small, structured, substantially-separate, comprehensive language-based program, which is academically stimulating for Student, delivered in multiple modalities (multi-sensory) to support Student's visual motor processing issues, taught by teachers who are able to provide consistency across all settings. She also recommended participation in an environment where teachers and students are highly engaged. Instruction should be delivered in an environment that combines instruction, social and language pragmatics and emotional skill building, and must be individualized. Student must also receive speech and language services, remedial reading services, occupational therapy and counseling. Dr. Hewett recommended Student's participation in a comprehensive program that provides an environment where content and method are integrated. She also recommended participation in a summer program which provided opportunities for language enrichment (PE-11; Hewett).

Dr. Hewett found it essential that Student's curriculum be organized around her conceptual level of understanding. She recommended that the instruction be integrated so as to support her memory through meaningful information with consistent scaffolding and spiraling. She noted that Student's overall functioning is directly related to the particular task and her familiarity/ comfort with those around her (Hewett).

Dr. Hewett's also noted Student's growth factor in comparing her to other children with similar profiles commenting on Student's 78 percentile score in the MCAS science exam, showing Student's tremendous improvement in this area (Foster; Hewett). She attributed this improvement to the education Student received at LPS, and contrasted Student's test scores to the scores reflected in the IEPs of the cohorts in the proposed classroom in Medford (PE-25; Hewett, Levy). In her June 2011 neuropsychological evaluation, Dr. Hewett had noted Student's progress in two challenging areas, integration and production. She stated that Student had consolidated strengths and improved in areas where she had previously demonstrated weaknesses.¹⁹ She noted that Student was very positive about her experience at LPS and had begun to experience success with social interactions (PE-9; Hewett).

The evidence shows that there is little discrepancy between Dr. Hewett's testing of 2011 and assessment of 2012 and the testing conducted by Medford in September 2012, in terms of Student's cognitive ability, and the presence of a language-based reading disability, coupled with anxiety. Of interest is that none of the witnesses who evaluated Student in 2012 noticed any significant anxiety during testing even when some of the evaluators were not known to Student. Similarly, the witnesses did not remark on any significant anxiety symptoms during observations of Student at LPS. (Dr. Hewett even remarked in her LPS observation report and in testimony how calm and resiliently Student had been able to handle the extra demands of starting school, participating in testing and being observed by a variety of people, something Dr. Hewett found surprising (PE-4; Hewett)).

According to Dr. Hewett, in terms of academic, intellectual and social development, Student fell in the middle when compared to her cohorts at LPS. She further found that the profiles of the cohorts complimented Student's profile. Dr. Hewett however, recommended that Student be exposed to a variety of peers with different profiles but who were intellectually and socially comparable to Student, and further that she have the opportunity to emulate the behaviors of appropriate peer models, while feeling that she could be a leader among her peers other times (PE-4).

To address Student's attentional needs, Dr. Hewett recommended a program that offered variety within a highly predictable setting. She also recommended that Student's attentional and executive control difficulties be addressed within the context of her overall academic and social-emotional program (PE-2). She also made recommendations regarding Student's emotional and social needs, noting that the emphasis of Student's program at LPS was on helping her "develop skills and confidence to a level that she can begin to maintain her emotional equilibrium independently" (PE-4).

Dr. Hewett's objections to Medford's program were the lack of integration of higher order organization concepts and basic skills; insufficient teacher-student engagement with teacher

¹⁹ A reading assessment conducted by Ms. Aikey-Burratti in June 2011 offered additional insight showing that Student's phonological and concrete language skills were solid, but that she had not yet internalized the strategies necessary to read for meaning or to synthesize and to describe what she read (PE-7).

modeling or opportunities to apply a core of learning and self-regulation strategies with the instruction; a limiting classroom composition with little opportunity for Student to develop relationships with intellectual and/ or social peers; lack of collaborative learning between students; and lack of integration of academic and social/ emotional skills (Hewett). Her opinion was based on her limited observations of the Andrews Middle School program proposed for Student in June and September 2012 (Hewett).

Dr. Hewett concluded that the programs offered by Medford were inappropriate to meet Student's needs since 2009 but she did not observe the program again after her initial observation until 2012, instead relying on the observations conducted by Ms. Riley (Hewett). She testified that Student would not feel comfortable in the Medford setting, and would have difficulties feeling that she was part of a group so as to avail herself of the instruction provided even if the instruction was perfect (Hewett). She further stated that while Student looked "cool" at LPS, she would not look "cool" in Ms. Levy's classroom (Hewett). I note that Student was attending LPS when Dr. Hewett observed the proposed program at the Andrews Middle School and therefore, her opinion is not informed by having observed Student in the context of the proposed program.

Dr. Hewett opined that the program lacked challenging educational content and integration of higher order and basic skills, and found that the small number of peers in the class would not be appropriate for Student (Hewett). She explained that Student possessed a great deal of knowledge but that it was very difficult for her to access it, which made her feel "stupid". When she felt "stupid" she withdrew beginning to spiral downward. As such, she required an organizing structure for higher order thinking to acquire academic knowledge as well as to acquire social/ emotional strategies (Hewett).

In cross-examination, Dr. Hewett was asked how the Medford program differed from a program she testified to having helped develop in Ayer, which she qualified as successful. She was unable to expound on the subject (Dr. Hewett).

Dr. Hewett found some aspects of the Medford program to be appropriate for Student. Specifically, she found that the teacher and aides were skilled, experienced, responsive, and were able to create a positive environment for learning. She further noted that instructional techniques were "best, but traditional" practices, although she conceded that she was not an educator (Hewett).

Medford disputed Dr. Hewett's recommendations and assessment of its program, noting inconsistencies such as her testimony that Student was still working on basic skills and unable to perform higher order thinking tasks, while simultaneously recommending that the instruction provide Student with higher order thinking tasks with scaffolding. Dr. Hewett testified that in her opinion Student would be bored in Ms. Levy's class, but found that Student presented with the same profile she had since 2009, that is, that she could do some basic skills well but not others, and some higher order thinking tasks but not others (Hewett).

Another of Parents' witnesses, Ms. Riley, had not observed Student at LPS in over a year and has never observed the Andrews Middle School program. As such, her contributions were quite limited and not relevant.²⁰

Medford stressed Student's progress and readiness to participate in a more natural and inclusive environment hence its recommendation, in June and September 2012, that Student return to Medford (SE-3; SE-36).

As discussed below, a close look at Medford's proposed language-based program shows that it in fact comports with the educational recommendations made by Dr. Hewett as described *supra*.

Kathleen Medaglio, Director of Pupil Services in Medford, explained that the Andrews Middle School had been specifically designated to provide an enriched educational environment for disabled students. Ms. Medaglio is very familiar with the special education programs in Medford and specifically with Ms. Levy's classroom and the progress her students have made in accessing more inclusion classes as they progress to higher grades (Medaglio). She explained that the social skills curriculum used by Medford is the Second Step program adding that Medford has also used Michelle Garcia's Social Thinking approach.

The proposed substantially-separate classroom at the Andrews Middle school is taught by Ms. Levy, a Massachusetts licensed, special education teacher with 24 years of experience as a special education teacher in Medford (Levy). She described the physical layout of her classroom and explained her approaches in creating a supportive, trusting, classroom environment, something that is also fostered by her full time Orton-Gillingham certified aide (Levy).

In describing the program, she explained that all the students in her substantially-separate classroom report to their regular education homeroom when they first arrive, before lunch, and before leaving school in the afternoon. She teaches students in her class the same grade level curriculum to which mainstream students are exposed, but modified, with tasks broken down into smaller pieces. This approach allows students in her class to transition into mainstream classes as time progresses. Ms. Levy uses visual aids, and offers multi-modal

²⁰ Additionally, Medford noted that Ms. Riley had not been fully compensated for the work she did for Student, explaining that Mother and Ms. Riley knew each other when Mother completed her graduate work at Lesley University. Father testified that Parents had not compensated Ms. Riley for the work she had done on behalf of the family and only partially compensated Dr. Hewett (Father). Dr. Hewett was introduced to the family because she is a close friend of Ms. Riley and they have collaborated in the past (Father). Given their close ties to the family, Medford argued that they would have supported Parental preference independently of the merits of Medford's program. Regarding Ms. Riley, Medford further argued that she has never evaluated Student. She also had not met with Student formally in over a year. Rather, she relied on Dr. Hewett's 2012 observations of the Andrews Middle School program to discredit the proposed program. When asked on cross-examination about this, she replied that "children did not change all that much in two years", a statement that was contradicted by the evidence especially in regard to Student's social and emotional progress (Riley).

instruction. Her class is on the same schedule as the rest of the school and her students move from one lesson to another when the bell rings as the rest of the school does (Levy).

Ms. Levy discussed the close relation and consultation that exists between herself and the other professionals in the building. She specifically discussed the science lab attended by her students in an inclusion model and described some of the modalities used in that context, for example, film viewing, and a questions and answers trivia-like game. She explained that in addition to pre and post-teaching in her classroom, she assists students during science lab. Ms. Levy remains aligned with the regular education teachers and the mainstream instruction to ensure that her students do not lose vital information in subject areas (Levy).

Ms. Levy's expertise, knowledge, compassion and capability became evident during her credible and compelling testimony. In short, she was impressive and persuasive that she is able to provide appropriate special education instruction and programming to Student (Levy).

Medford's witnesses also provided a comparison between the Medford and LPS programs based on recent observations and their own personal knowledge. In addition, they offered sound recommendations, to a large extent consistent with Student's current program at LPS, which they testified could be provided in Medford (Levy, Kelley, Picanzo, Halpern-Meekin, Benn, Medaglio).

Ms. Kelley, a licensed speech and language pathologist in Medford, who observed Student at LPS and evaluated her in September of 2012, opined that the strategies required by Student would be appropriately implemented in Ms. Levy's class. She had observed Ms. Levy breaking information down, offering repetition, previewing questions, allowing extra time to formulate answers, asking inferential questions and scaffolding (Kelley).

Mr. Picanzo, the school psychologist at Andrews Middle School, is familiar with Ms. Levy's classroom because he has observed students in that classroom and has also consulted with Ms. Levy (his office and Ms. Levy's classroom are located on the same floor at the Andrews Middle School). He explained that there are two guidance counselors and two school psychologists available to assist students and consult with the staff as necessary.

Mr. Picanzo observed Student at LPS in February of 2012, and later conducted her three year re-evaluation on September 11, 2012. He testified that Ms. Levy's classroom and the LPS classrooms observed by him were very similar in terms of teaching styles. Such as the organizational structure, graphic organizers, diverse instructional tools, multi-model instruction, etc. (Picanzo).

Mr. Picanzo testified that Student had scored differently on some cognitive subtests he administered as compared to those administered by Dr. Hewett, stating that his scores were

considered to be more reliable (Picanzo).²¹ Mr. Picanzo noted that in his test, Student did not evidence any significant weaknesses within the cognitive portion. Similarly, the higher scores achieved by Student in the areas of visual-motor perception and integration were a valid snapshot of her current abilities. He concluded that Student did not present with cognitive weaknesses that would impact her academic success, but noted that Student's executive functioning weaknesses do in fact impact her performance (Picanzo). He also testified about a theory of mind component which was not currently being addressed with Student and recommended that she receive counseling services focused on her emotions as linked to her executive functioning weaknesses (*Id.*).

Mr. Halpern-Meekin, the sixth grade moderate special needs inclusion teacher at the Andrews Middle School, evaluated Student in September 2012 and also observed her at LPS. Mr. Halpern-Meekin has direct familiarity with Ms. Levy's classroom. Based on the results of the Woodcock-Johnson, he opined that Student presented with strong overall core skills of analytical comprehension and basic math ability specifically in computation, while her higher order, critical thinking skills were an area of weakness. He agreed with Dr. Hewett that Student required a small group, language-based program that use multiple modalities of learning, with modified grade level curriculum. He testified that Ms. Levy's classroom offered specialized instruction with the types of techniques and strategies that he recommended for Student, and concluded that Ms. Levy's classroom and overall program could meet Student's needs (Halpern-Meekin). Mr. Halpern-Meekin found the Medford program to be more appropriate than LPS for Student because of educational gaps which emerged in Student's content of knowledge which he attributed to the below grade level instruction being delivered at LPS (Halpern-Meekin).

Ms. Luella Benn, Medford's educational team leader, observed Student at LPS in February of 2012, and commented on some of the challenges Student experienced with one of her classmates in speech class, who was very distractible and unfocused while working on pragmatics. Ms. Benn is very familiar with Ms. Levy's classroom as she has been the chairperson at IEP meetings for several students in that class. Ms. Benn testified that Student could benefit from Ms. Levy's classroom in Medford. She also testified as to the services provided in general education at the Andrews Middle School, and discussed the services offered by the guidance department which would also be available to Student. She explained that the Andrews Middle School also has an actual art studio which Ms. Levy's students access for art class with other regular education students. In her opinion, the Medford program was better suited to meet Student's needs than LPS (Benn).

Neither of LPS' witnesses (Ms. Foster or Ms. Gregg-Desautel) offered any evidence as to Medford's proposed program. Ms. Riley opined that Student would not be ready to return to Medford for several years, but her testimony had more to do with her position on curriculum (Riley). Dr. Russell, who had been Student's psychiatrist in 2009 and then met with Student

²¹ "... there's a saying in psychometrics that you can fake bad, but you can't fake good. And that is even more true in the comprehension subtests... So, that been said, she did not fake good on those areas with Dr. Hewett." (Picanzo).

and her Parents in preparation for hearing, discussed Student's emotional needs mostly based on the reports of Parents and Student's current reports, and testified that she was uncomfortable in making educational recommendations for Student (Russell). In contrast, Ms. Kelley, Ms. Benn, Mr. Picanzo and Mr. Halpern-Meekin observed Student at LPS and were all familiar with Ms. Levy's class. I find their testimony to be credible and reliable regarding the educational appropriateness of Medford's program, and specifically Ms. Levy's classroom, for Student.

2. Emotional Issues

Student's emotional issues have been documented since she was first evaluated at MGH in April 2007 at four years of age. MGH's Child Psychiatry Initial Evaluation was obtained due to parental concerns regarding Student's social/ emotional anxiety and difficulties learning. The evaluation noted "symptoms from the anxiety spectrum that included panic episodes and elements of the social phobia and generalized anxiety" (PE-6). Student's behavioral dysregulation and difficulties with social relations also raised a question as to whether she presented with Pervasive Development Disorder (PDD), a diagnosis which was later questioned and ruled out (PE-6; Hewett).

Student also underwent a comprehensive neuropsychological evaluation at MGH's Psychology Assessment Center in April 2007, resulting in a recommendation for placement of Student in a small, highly-structured classroom with predictable routines designed to address the needs of children with language-based learning disabilities. The program should also provide pragmatics language and social skills instruction, and address Student's emotional regulation issues. MGH also recommended speech and language therapy, as well as the continuation of services then currently provided (PE-12a).

Since her initial evaluation at MGH, Student has continued to receive psychiatric services at MGH Child and Adolescent Psychiatric Services, including play therapy and medication trials. Most recently, Student has experienced success with 100 mg daily of *Zoloft*.

Student's history is indicative of great difficulty handling transitions or changes. In 2010, when her combined third and fourth grade class was split into two groups and Student was transferred into a new third grade class, Student began to display Obsessive Compulsive Disorder symptoms (OCD) such as engaging in excessive hand-washing rituals, concerns about germs and she perseverated on numbers. She also began to wet her bed at night (Father). In the classroom, she exhibited avoidant behaviors, appeared very anxious at times, would become nonverbal or would stare blankly (PE-30). Her one-to-one reading tutor reported that Student was unable to sit still while working, was losing her place when reading, talked about unrelated matters, and required frequent redirection (PE-19).

During another evaluation conducted by Dr. Hewett in 2010, Student became very emotionally upset during a story-telling task. She withdrew, turned away from the evaluator and laid-down on the floor unresponsive to questions (Hewett). Even after a break and engaging in tasks in which Student had scored well in the past, Student had difficulty

responding to the questions (Id.). Dr. Hewett concluded that this was quantitative evidence that when Student became emotionally disrupted, she could not access, produce or organize what she knew, even in a one-to-one session with someone she knew. Dr. Hewett opined that when Student encountered upsetting emotional situations in school, she was unable to access her fund of knowledge or the lesson presented and remained unable to access the instruction until her emotional arousal was reduced and the issue was resolved in Student's mind (Hewett).

Dr. Hewett recommended that Student's program provide a variety of situations in which Student could experience age-appropriate social emotional challenges and that she experience success. In addition to continuing Student's individual counseling and social group, Dr. Hewett opined that Student required explicit training and daily practice to develop self-awareness and communication skills. Services should be integrated and consistently practiced and modeled throughout the school day and stressed the need for consistent emotional support (PE-2).

In May 2012, Dr. Lovass, Student's psychiatrist at MGH, wrote a letter stating that when he first met Student in July 2010, she presented with OCD and severely diminished self-esteem (PE-6a). He noted that at the time, Student

...had difficulties making friends and socializing with peers her age. She felt "stupid", and had pulled away from important age-appropriate learning objectives, such as reading, due to her sense of incompetence. This sense of incompetence also resulted in a depressed, dejected mood and heightened anxiety (PE-6a).

However, following Student's placement at LPS, he noted marked improvement in her symptomatology

...including a resolution of her obsessive-compulsive disorder. Her mood improved and she started feeling good about herself, spontaneously stating "I'm smart", and even started reading on her own. She started engaging more socially, and became less anxious (PE-6a).

Father corroborated Student's improvement after placement at LPS. He testified that a couple of months after Student's transfer from the Brooks School in Medford to LPS, her OCD, crying spells and bed-wetting issues disappeared and she became more independent with homework, and was once again willing to read to Parents (Father).

In his May 2012 letter, Dr. Lovas noted that in the right program, where Student's emotional/social needs were appropriately addressed, Student is able to access her education. Dr. Lovas' letter does not mention the positive effects of *Zoloft* on reducing Student's anxiety.

In contrast, Student's symptomatology resurfaced during the summer of 2011 while she participated in an eight-week extended school year program with her former Brooks School

teacher and peers. According to Father, by the third or fourth week, Student began to wet her bed again, and her OCD symptoms were full-blown. Parents became concerned about the possible long-term damage to their daughter and they withdrew Student from the summer program (Father).

Student's tenure at LPS has not been completely devoid of problems. The record reflects that Student's emotional issues have also been prevalent at LPS. Specifically, during the period between October and December 2011 or January 2012 (Student's fifth grade), Ms. Gregg-Desautel testified that Student appeared to be having a difficult time and the LPS staff was concerned about her (Gregg-Desautel). Student was struggling with behaviors such as non-compliance and being disengaged from the instruction/ activities (such as putting her head down on her desk), she appeared sad, had difficulty identifying or labeling her feelings, and presented as more negative than before (Gregg-Desautel). According to Ms. Gregg-Desautel, it was difficult to understand the complexities of Student's thoughts and feelings and how they affected Student's attitude, her mood and her ability to participate in school (Gregg-Desautel; Foster).

In response to Student's difficulties, her LPS counselor stayed in contact with Student's Parents weekly and communicated with her psychiatrist monthly to problem-solve and identify ways in which to support Student, and her program was tweaked accordingly.²² With these interventions and the positive effects of *Zoloft*,²³ Student's difficulties ameliorated, and by January 2012 she appeared to bounce back to normal (Gregg-Desautels). Thereafter, Student seemed to have a good semester showing academic improvement and increased ability to sustain positive attitudes and behaviors in class. She became more engaged in counseling and began to take greater responsibility for her own learning (PE-9; PE-17a; Foster).

Ms. Gregg-Desautels described Student's tenure at LPS as a bit of a "roller-coaster", not consistent. At the time of the Hearing she was seen as more independent, and was learning to connect to peers at a deeper level. However, her emotional difficulties and their impact on her becoming available for learning was evidenced during the observation of Medford staff at LPS, during which Student was having a very difficult time during science class after a

²² Student was the subjects of at least three staff meetings during which her teachers and service providers discussed her progress. The LPS Dean of Students and Student's counselor made daily "check-ins" with Student. They implemented the "daily goal sheet" used to help students at LPS focus on academic and social challenges as a positive feedback goal sheet in which her teachers offered her positive feedback on a daily basis. Since the beginning of the semester, Student was making numerous visits to the nurse's office instead of asking for breaks, she was therefore provided with three nurse passes per week which she could use at her discretion when she needed a break. Teachers monitored Student's behaviors in class and when they saw her put her head down on the desk, they helped Student identify her needs. She also engaged in peer mediation meetings with the counselor (Gregg-Desautels). Ms. Foster stressed the need for immediate intervention when Student begins to show signs of "slopping down" or becoming disengaged. Ms. Foster noted that Student's emotional state needs to be addressed before she is able to learn (Foster).

²³ Both Father and Ms. Gregg-Desautels testified to having noted improvement regarding Student's affect, anxiety and demeanor when once she was stabilized on 100 mg per day of *Zoloft* (Father, Gregg-Desautels). In contrast, no improvement was noted with any of the ADHD medication trials (Father).

misunderstanding with some peers during lunch. When she has a difficulty, she seems to ruminate over the problem, unable to move forward, and holding grudges (Gregg-Desautels).

It is clear that Student requires a great deal of structure with significant social, emotional and academic supports to help her prevent becoming flooded and anxious. Without these supports in place, she becomes demoralized, shuts down, becomes avoidant and her psychiatric symptoms reappear. Parents are correct that in order for Student to make educational progress, she needs an environment that helps her maintain her emotional equilibrium (PE-6 a and b; PE-11; Russell).

Regarding an immediate transition into Medford, Dr. Hewett and Dr. Russell opined that Student was not ready academically, socially or emotionally, to participate in inclusion. According to Dr. Russell, Student was so vulnerable in terms of her self-esteem, that being in the mainstream and realizing that she is not as capable as her typically developing peers would demoralize her. Dr. Hewett's opined that Student would not be able to watch a film and take notes simultaneously as she watched other children do in the social studies block. Also, she would likely feel upset if she did not come up with the correct answer during the question and answer, trivia-like game situation, even if she could pass (Levy). Once Student is back in Medford, her tolerance level will dictate the amount of inclusion she can handle.

In response, Medford argued that since Dr. Russell treated Student between April 2008 and the winter of 2010, she could only offer testimony about Student's psychiatric state and care at the time she provided treatment. Thereafter she had only seen Student twice in September 2012 in preparation for her testimony at hearing.²⁴ It is important to note that Dr. Russell testified that the high level of anxiety and self-esteem issues she had noted while treating Student between 2008 and 2010 seemed to have improved when she saw her again in 2012.

Dr. Russell's expectations of Student's capabilities however, seemed to be less hopeful than Student has demonstrated in actuality. She testified that she would be surprised if Student could have successful social interactions with typically developing peers, but the evidence shows that Student participates in community activities and that she has had relatively positive experiences at a summer camp (Russell, Father, Hewett). Dr. Russell further testified that she didn't know whether Student was capable of making lasting friendships with her peers or anyone else at this time. This testimony is also contrary to other more reliable evidence provided by Father, Ms. Gregg-Desautels and Dr. Hewett, who have actually seen Student interact with peers at LPS and elsewhere and who testified that Student was beginning to have friends and had play dates outside about once or twice per month (Father, Ms. Gregg-Desautel, and Dr. Hewett).

Crucial to Student's emotional stability is the fact that she has benefitted from the anxiety medication she began to take in the winter of 2012, after an admittedly difficult start of the

²⁴ When asked in cross examination why she had seen Student in September 2012, Dr. Russell stated "I think as part, I was subpoenaed to come today, and I wanted to have more of a ground to be able to discuss [Student] today" (Russell).

year at LPS (Father, Gregg-Desautels). Father testified that Student's improvement was noticeable both at home and in school. At home, Student is calmer and appears to have gained self-confidence. She has friends and play dates once or twice per month, although she is still seen as emotionally fragile. No improvements were noticed however, after trials of ADHD medications (Father).

Medford argued that the types of counseling and supportive services that Student was receiving at LPS, to which Ms. Gregg-Desautels (Student's counselor at LPS during 2011-2012) testified, could be provided at Medford to the same or a greater extent (Medaglio, Picanzo, Levy, Benn).

The evidence demonstrates that currently, the social/ emotional domain is the area in which Student is most vulnerable. She has made some improvements but will need additional time to solidify the skills and coping mechanisms that will help her maintain the emotional equilibrium she requires to remain available to receive and participate in her education (Hewett, Russell, Father). I find however, that it is not necessary for Student to remain at LPS in order to achieve this goal. I further find that the staff in Medford is qualified and able to provide Student the intervention and support she will need to achieve her social/ emotional goal.

3. Peers

Based on her September 13, 2012, observation, Dr. Hewett opined that the small number of students in the substantially-separate classroom in Medford, as well as their divergent profiles, rendered the peer group inappropriate for Student (PE-3; PE-25; Hewett). In her opinion, Student would likely be bored with the level of instruction, and the need to manage other students would distract her. She remarked that while the lunch room was active and loud, the students in the substantially-separate program seemed isolated; they sat together at a table and did not speak to other typically developing peers, nor did any of those students speak with them. Dr. Hewett opined that it would be difficult for Student to manage the transition from the contained classroom to more inclusionary settings, and stated that during the inclusion opportunities, Student would compare herself to others negatively, realize her own deficiencies and become anxious, demoralized, withdrawn and oppositional. These behaviors in turn would have a negative impact on Student's ability to learn. In sum, Dr. Hewett found that the experience would be intellectually limiting and emotionally devastating for Student (PE-3; Hewett).

She testified that in contrast, at LPS Student's classes while small, varied in size, and her groupings were comprised of twelve different children offering opportunities for a variety of social relationships (Hewett). Students are grouped according to their instructional level and need rather than grade, but are selected from among middle school age students (Foster).

Dr. Hewett noted that the mix of social peers operated as scaffolding for Student, to be able to learn how to solve problems that may arise with different people. At LPS, Student looked

very typical among a variety of children that presented a mix of typical and atypical behaviors, something she did not believe would be the case at Medford (PE-4; Hewett).

Parent argued that these peers were not an intellectually appropriate group of students with whom Student could experience social relationships; their needs were too divergent and they were not sufficiently independent. (According to Dr. Hewett, one of the students had significant language issues, a second student displayed low skills, a high level of impulsivity, and significant difficulties sustaining attention. According to Ms. Levy, the reason was the student had not taken his ADHD medication that morning.) A third student presented with severe hearing loss, and had significant expressive language disabilities. That student requires a one-to-one American Sign Language aide (Hewett, Levy). However, that student uses an FM system and would otherwise be a good match for social pragmatics work with Student (Levy). According to Dr. Hewett, given the peer group, higher-order instruction was not possible in this classroom and it lacked the integrated supports Student required for social learning (P-3; Hewett). Dr. Hewett noted that there was much more individualization provided in this classroom than she had observed in the previous classroom, but opined that Student would be bored with the level of instruction (Hewett).

Ms. Levy disagreed and opined that Student would fit well with the other four children in her classroom as they all present with language-based learning difficulties. She testified that Student's needs are similar to those of her current students, all of whom require modified grade level instruction (Levy).

Ms. Medaglio, opined that the profiles of Student's peers at LPS were similar to that of the students in Ms. Levy's classroom in Medford. She noted that two of Student's peers at LPS presented with cognitive limitations and significant problems with communication, five other students are on the spectrum for Aspergers, PDD NOS autism (Medaglio).

In weighing the arguments proffered by both Parties, I find Parents' argument insufficient to demonstrate that the peers in Medford would be inappropriate. I find Ms. Levy's testimony to be more persuasive as to the peers strengths and weaknesses as she has first-hand knowledge of them having worked in an educational setting with them on a daily basis. Furthermore, while a highly qualified professional, Dr. Hewett is not a teacher and her only knowledge of the Medford program is based on her two observations in 2012 (Hewett).

In addition, in Medford Student would have access to typically developing peers, which she lacks at LPS. Access to these peers, when appropriate, will provide her an opportunity to model appropriate social behaviors. Furthermore, the qualifications and expertise of the teachers and service providers responsible for Student's education in Medford render them appropriate to meet Student's needs.

4. LPS

LPS is a private Massachusetts special education approved school which offers language-based instruction to students with significant language-based learning disabilities including

language processing issues. Many students at LPS have difficulties in social skill development or have emotional concerns stemming from their learning issues; and many have limited self-advocacy skills and problem solving abilities (PE-13; Foster, Gregg-Desautel).

LPS works with students diagnosed with PDD-NOS, Aspergers and Non-Verbal Learning Disabilities. Some students have deficits related to sensory-motor, fine or gross motor and some present with secondary emotional problems and anxiety issues. LPS provides a highly structured nurturing and supportive environment. Instruction is delivered in small groups of approximately six to eight students based on skill level and the similarity of their profiles and lessons are presented using multi-sensory approaches (*Id.*; see Facts # 24, 25, 26, 27, 28, 29, 30).

The instruction at LPS is designed to provide a great deal of consistency across classrooms and teachers who communicate with each other daily. Students receive a great deal of positive reinforcement for their accomplishments (Hewett). Dr. Hewett remarked that there was also a great deal of integration of social/ emotional supports and that the structured environment promoted independence in students who are encouraged to interact with each other in a socially appropriate manner. Students are closely monitored and problems are solved in the moment (Hewett).

At present, there are 268 students at LPS, 30 of whom are in sixth grade. Ninety-nine percent (99%) of those students have a counselor assigned to them. Student's classes varied in size and number of students. Her instruction occurred with different groupings comprised of twelve different children, increasing Student's opportunities for social relationships albeit in small groups of students with similar instructional levels and need (Foster).

Additionally, Student's counselor and the Dean of Students at LPS are able to respond to Student immediately when she becomes emotionally disrupted and the classroom teacher cannot handle it. Student benefits from the daily "check-ins" to monitor her mood and affect. Also, the staff at LPS keeps contact with Student's outside therapist, as well as all LPS service providers both informally and during periodic "staffings" (Gregg-Desautels, Foster). To resolve social interaction issues, Student is encouraged to participate in mediation monitored by her counselor, to teach her how to resolve issues with her peers and promote self-advocacy skills. Student has availed herself of this process several times as she continues to have difficulties resolving her own social issues. She also benefitted from participation with three other students in a Michelle Garcia Winner Social Thinking pilot program which met weekly between January and May 2011, to develop more effective social skills and appropriate common language (Gregg-Desautels). The counselors at LPS are also responsible for teaching the small group health and student issues classes (Gregg-Desautels).

Student receives weekly one-to-one counseling services to focus on self-awareness, positive strategies to manage negative feelings, and social/emotional issues. Student also receives speech and language services three times per week to work on social skills training,

processing and recalling complex language and expanding expressive (written and oral) language skills (Foster, Gregg-Desautels).

On September 12, 2012, Dr. Hewett observed Student in her LPS program for approximately five hours during homeroom, math, science, language arts (Wilson review), speech and language, and lunch. She noted that although her observation occurred on the same week that Student was being tested by Medford, Student was positive; she knew where she was going and what was expected of her. Student was observed to be very independent at LPS. In math she understood the higher order pre-algebra lesson demonstrating mastery of the vocabulary, operations and the generalizations necessary to solve problems (Id.).

Dr. Hewett found LPS to be an appropriate placement for Student that met her very complex needs, and one where she was making effective educational and social/ emotional progress as corroborated by her observation and the updated evaluation performed on September 12, 2012. According to Dr. Hewett, while Student's neuropsychological profile has remained stable, Student demonstrated progress with sensory integration, was able make inferences about simple stories and could use higher order thinking within the structure of LPS. She also appeared to have consolidated higher order thinking (PE-2; Hewett). While she found LPS to be appropriate, she conceded that she lacked familiarity with Student's IEP at LPS and therefore had based her opinion on what she thought Student was receiving there (Hewett).

According to Dr. Hewett and Ms. Riley, Student's peers at LPS are socially and academically appropriate for her. At LPS Student enjoys a socially rich life. She is academically engaged and an active participant in the classroom (Riley, Hewett).

Student, however, continued to demonstrate difficulties with many other areas of her profile at LPS. While she was better able to manage herself, she could still become flooded, and when she felt overwhelmed she was prone to meltdowns. She was still impulsive and disorganized by time pressure. Big, complicated, noisy environments could be difficult for her and her visual-motor integration was still below average. She had difficulty integrating visual information and thinking about working on a higher order project. She continued to experience difficulties putting information together unless she had a model to look at (such as a Thinking Map) and a structure for remembering it, and required extra time to process information (Gregg-Desautels, Hewett, Foster).

Parents argued that at LPS the program is designed in such a way that the staff is able to respond immediately to Student's needs and address them so as to help Student re-engage in her program when she begins to exhibit signs of distress (Foster, Gregg-Desautels). The evidence shows that Medford's program is equally capable of providing immediate interventions if needed either by Ms. Levy or a counselor (Levy, Picanzo, Halpern-Meekin).

The evidence supports a finding that LPS is an appropriate program that has met Student's needs and has provided the type of nurturing environment that has allowed Student to flourish, especially with respect to her social/ emotional needs. It is clear that Student has formed significant trusting relationships with the staff and that she has finally begun to internalize strategies essential to her educational progress such as self-advocacy skills. From an educational standpoint, Student is already prepared for a transition back into Medford. At present, she is able to follow her schedule at LPS independently, can navigate the school on her own, has become more positive about her abilities and her school performance, and is improving in her ability to identify and label feelings and use strategies to manage her feelings. She is now beginning to solidify these strategies and is finally beginning to show some progress in this area although inconsistently (Gregg-Desautels).

5. Conclusion

The evidence is persuasive that the lesson construction, student composition, organization and methodologies used at LPS and in Medford are similar (Medaglio, Picanzo). Moreover, after having heard and observed Medford's witnesses at Hearing, the totality of the evidence is convincing that Student's academic needs can and will be appropriately and effectively served in Ms. Levy's classroom, in Medford. Not only was Ms. Levy impressive but the program (including related services) as a whole, is run by qualified, experienced individuals who are in continuous communication with each other. Moreover, since students receive all of their academic instruction from the same teacher, there is consistency of delivery of instruction and vocabulary throughout the curriculum (Levy, Medaglio). Additionally, students in Ms. Levy's class have similar, though not identical, language needs as does Student (Medaglio). Ms. Levy promotes a safe and secure environment in her class. She speaks slowly, breaks down instruction that requires multi-step directions, uses repetition, preview and review of material, multi-modal approaches, multi-sensory instruction, encouragement and positive reinforcement, scaffolding, graphic organizers, and she collaborates with the counselors, school psychologist, speech and language provider, occupational therapist, and the regular education teachers (Levy, Kelley, Benn, Halpern-Meekin, Picanzo). Ms. Levy is Level I Wilson certified and she uses some of the Wilson techniques in her classroom (Levy). Ms. Kelley uses visualizing for speech and language which she conducts in Ms. Levy's class. Ms. Levy is sometimes present during speech and language. She also works on vocabulary in class and meets with students individually if needed (Kelley, Levy). An occupational therapist also comes into Ms. Levy's class and helps students with assistive technology (Levy). Overall the program is run in a more natural environment where Student would have opportunities for practice and instruction of social skills with typically developing peers (Medaglio).

Medford, as LPS, has used Social Thinking approaches. According to Mr. Halpern-Meekin, peer mediation facilitated by teachers is also available at Medford. In Medford, students are routinely encouraged to bring forth their complaints and counselors routinely approach students to see how they are doing. Bullying is not acceptable (Halpern-Meekin).

The evidence is persuasive that Medford is capable of meeting all of Student's needs and can do so in a more natural environment. Ms. Medaglio discussed the dangers for Student of feeling typical in a school that is not typical and it provided Student a false sense of what is typical (Medaglio). While Medford's September 2012 IEP is appropriate to meet Student's needs, it should articulate the recommendations made by Mr. Picanzo and Mr. Halpern-Meekin regarding social/ emotional interventions available in Medford to further assist Student during the transition period and thereafter. Student's unique emotional vulnerabilities and extreme difficulty with transitions must be carefully managed during her transition back to Medford. The staff must establish a protocol to provide immediate response when Student begins to show signs of distress, and she must be provided frequent check-ins with the counselor. Student's gains and progress during her tenure at LPS will enable her to transition back into Medford as she continues to be provided strategies that foster independent learning with access to a more natural setting.

Medford's IEP social/ emotional goal currently addresses Student's ability to identify her strengths and weaknesses, the causes of her stress, address social emotional terms and definition, and address Student's tendency to identify tasks as too hard or boring (SE-36). As recommended by Ms. Gregg-Desautels, this goal should be expanded to address Student's work regarding labeling and recognition of emotions, and increasing tolerance for frustration (especially in regard to non-preferred activities), as well as continue her work on self-advocacy skills, all of which can happen in Medford.

Similarly, interventions that have proven effective for Student, such as peer mediation must continue to be used as a tool to help Student solve problems with peers as it is clear that she benefits from problem-solving models like this (Foster, Picanzo). Mr. Picanzo and Mr. Halpern-Meekin testified that these are interventions offered in Medford. Ms. Levy further testified to the interventions she uses with her students when an emotional or social need must be addressed in the moment. Additionally, she needs to continue her work with acquiring the appropriate vocabulary to use as part of addressing her social skills issues which can also be provided in Medford (Foster, Picanzo, Kelley, Levy). Opportunities to learn and practice social skills with adult supervision (to address her language processing and social skills difficulties) will continue to be essential and can be/ and is provided by individuals like Ms. Kelley, Ms. Levy and/ or Mr. Picanzo (Gregg-Desautels).

Medford has placed students at LPS in the past and has had extensive experience transitioning students back into the district and the anxiety that re-integration can cause to anyone and especially, to someone like Student (Medaglio). As explained by Ms. Medaglio, re-integration will be a process and it should be expected that Student will require assistance, support, coordination and cooperation from the adults around her including Parents, teachers, therapists, and service providers. Medford is however, persuasive that the expertise, commitment and quality of the service providers at the Andrews Middle School will be able to address Student's issues as they arise and over time help her become comfortable in her new program (Medaglio). The Andrews Middle School program can meet Student's educational, emotional and social needs, while providing Student access to more exposure to

typically developing students. The evidence is convincing that FAPE can be delivered at the substantially-separate, language-based program at the Andrews Middle School.

The First Circuit Court of Appeals has been clear that provision of FAPE to a student need not be “the only appropriate choice, or the choice of certain selected experts, or the child’s parents’ first choice, or even the best choice”. *GD Westmoreland School District*, 930 F.2d 942, 948 (1st Cir. 1991). As long as the IEP provided to the student is reasonably calculated to confer meaningful educational benefit, it “need not reach the highest attainable level or even the level needed to maximize the child’s potential”²⁵, a standard abandoned in Massachusetts in January 1, 2002.

Furthermore, the Courts have been clear that when parents unilaterally place students in private schools and later seek public funding for said placements, they do so at their own risk.²⁶ In the instant case, Medford has offered Student an appropriate IEP and placement and therefore, is not responsible to reimburse Parents for their unilateral placement of Student at LPS. Parents did not meet their burden of persuasion pursuant to *Shaffer*.

ORDER:

1. The IEP promulgated by Medford for the period from July 1, 2012 through June 30, 2013, with minor modifications, was reasonably calculated to offer Student a FAPE in the least restrictive environment consistent with state and federal law.
2. The IEP promulgated by Medford for the period from September 2012 to September 2013 is reasonably calculated to offer Student a FAPE in the least restrictive environment consistent with state and federal law.
3. Medford shall convene Student’s Team to address Student’s transition back to Medford and establish a protocol to provide her with in the moment supports as needed to address her social/ emotional issues. During this transition period, Medford shall collaborate with Parents, LPS staff and Student’s psychiatrist so as to ease Student’s transition.

By the Hearing Officer,

Rosa I. Figueroa

Dated: December 6, 2012

²⁵ *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1086 (1st Cir. 1993).

²⁶ *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 11-13 (1993); *Sch. Comm. of Burlington v. Dep’t of Educ.*, 471 U.S. 359, 370, 373-74 (1985); *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 31 (1st Cir. 2006).

December 6, 2012

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

MEDFORD PUBLIC SCHOOLS

BSEA # 13-0006

BEFORE

**ROSA I. FIGUEROA
HEARING OFFICER**

**RUTH DIAZ, ESQ., ATTORNEY FOR PARENT
ALISIA ST. FLORIAN, ESQ., ATTORNEY FOR MEDFORD
PUBLIC SCHOOLS**