

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

In Re: Student v.
Belmont Public Schools

BSEA # 1305177

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.

On February 1, 2013 Parents requested a Hearing in the above-referenced matter. Postponements of the original Hearing date were granted and the matter was finally scheduled for Hearing in May 2013. On May 8, 2013, the matter was administratively re-assigned to Hearing Officer Rosa I. Figueroa. The Hearing was held on May 9 and 10, 2013, at DALA/BSEA, One Congress St., Boston, Massachusetts before Hearing Officer Rosa I. Figueroa. Those present for all or part of the proceedings were:

Student's father	
Student's mother	
James Baron, Esq.	Attorney for Parents
Amy Marcille	Private Occupational Therapist
Anita Pliner	Neuropsychologist
Bonnie Ravo	Private Speech and Language Pathologist
Colby Brunt, Esq.	Attorney for Belmont Public Schools
Katie Meinelt	Attorney for Belmont Public Schools (Observing)
Ken Kramer	Director of Student Services, Belmont Public Schools
Julia Huestis	Math Teacher, Belmont Public Schools
Shoha Reginald	Science Teacher, Belmont Public Schools
David Learner	School Psychologist, Belmont Public Schools
Lianne Carroll McCann	Speech and Language Pathologist, Belmont Public Schools
Beverly Cadorette	Special Educator, Belmont Public Schools
Lauren K. Mamon	Speech and Language Pathologist, Belmont Public Schools
Adam C. Niles	English Teacher, Belmont Public Schools
Louisa Popkin	Autism Inclusion Specialist, Belmont Public Schools
Mary Jane Weinstein	Assistant Director of Student Services, Belmont Public Schools
Jeremy Brooks, Psy.D.	Psychologist, Independent Observer for Belmont Public Schools
Lori-Jean Mason	Guidance Counselor, Barrington Public Schools
Jane Williamson	Court Reporter, Doris Wong Court Reporting Services

The official record of the hearing consists of documents submitted by Parents marked as exhibits PE-1 through PE-41, and documents submitted by Belmont Public Schools (Belmont) marked as exhibits SE-1 through SE-28; recorded oral testimony and written closing arguments. The Parties written closing arguments were received on June 13, 2013. The record closed on that date.

HEARING ISSUES:

1. Whether Student is a child with a disability as defined by 20 U.S.C. §1401(3) and 603 CMR 28.02(7)
2. Whether Student has failed to make meaningful academic, cognitive, social, emotional and or behavioral progress since January 2011.
3. Whether Student requires special education and related services in order to make meaningful educational progress, including academic, social, and/or emotional progress.
4. Whether Student should be eligible for an IEP.
5. Whether Belmont should be ordered to write an IEP for Student that is reasonably calculated to offer Student a Free, Appropriate Public Education (FAPE) in the least restrictive environment consistent with state and federal law?
6. If Belmont is ordered to write an IEP for Student, whether the IEP should include the recommendations listed in Student's school and independent evaluations.

POSITIONS OF THE PARTIES:

Parents' Position:

Parents challenge Belmont's finding that Student is not eligible to receive special education services. They assert that Student carries multiple diagnoses to wit, Autism Spectrum Disorder, Attention Deficit Hyperactivity Disorder (ADHD), Mathematic Disorder and Written Language Disorder, all of which impact his academic and social functioning. Student also has modulation, sensory processing, expressive and pragmatic language disorders. According to Parents, the Individual Curriculum Accommodation Plan (ICAP) developed by Belmont is insufficient to service Student and appropriately address his disabilities effectively. Parents further raise concern about the lack of protection and accountability provided by the ICAP. Parents further dispute Belmont's assertion that Student is making effective progress, arguing that any academic progress is mostly the result of the numerous hours spent by Mother and Student's sibling working with him. Relying on their privately retained evaluators testing and observations, Parents also dispute Student's effective progress in the social and pragmatic areas.

Parents assert that Student qualifies for and requires an Individualized Educational Plan (IEP) that provides him specialized instruction, social pragmatics services, and occupational, speech and language therapies. Parents request that Belmont be ordered to offer Student an IEP.

Belmont's Position:

Belmont states that in school, Student does not present in the manner described by Parents. While it does not dispute that Student has been diagnosed with Autism, it does not agree that Student has Autism, and sees Student's weaknesses to be in the areas of organization and social pragmatics.

According to Belmont, Student's deficits are minor and his needs can be appropriately accommodated through the host of accommodations available through the District Wide Curriculum Accommodation Plan available to all regular education students. Belmont in fact drafted an ICAP which it began to implement in January 2013 and which, according to Belmont, is sufficient to meet Student's needs. Belmont sees Student as much more capable than Parents do, and asserts that he is making effective academic and social progress in his current regular education program.

Belmont sees no basis to place Student on an IEP and therefore, found him ineligible to receive special education services.

FINDINGS OF FACT:

1. At the time of the Hearing Student was a seventh grade, thirteen and a half year old resident of Belmont, Massachusetts, who has been diagnosed with Autism, Attention Deficit Hyperactivity Disorder- Inattentive type (ADHD), Disorder of Written Expression and Mathematics Disorder (PE-1). He has significant difficulty with executive functions, especially with organizational issues, attention and transitions. He also has difficulties with math, written output, and is easily distracted (Parent). He is a very respectful child who wants to learn and be social. He is an avid reader of factual books, enjoys martial arts, swimming and Japanese comic books (PE-40; Mother).
2. Student also has strengths especially in his cognitive abilities. He possesses above average verbal skills, at least average nonverbal skills and has a very good memory (SE-10). According to Mother, Student has great difficulty initiating and maintaining friendships but he has been able to remain exposed to same age peers by staying close to his sibling and his sibling's friends (Mother).
3. According to Mother, at approximately two and a half years of age Student went through a period of approximately forty days during which he did not speak, started walking on his toes, flapped his hands and had difficulty relating to others. After that period, Mother reported that Student lost skills which he began to recover slowly thereafter (PE-20; Mother).
4. Student attended Kindergarten to sixth grade in Barrington, Rhode Island. According to Mother, when in the fourth grade, Student was bullied and punched by a group of boys in school. As a result of that experience, he requested to attend martial arts classes which he still attends to date (Mother). In 2012 the family moved to Massachusetts and Student began attending the Cheney Middle School in Belmont on or about September 2012 (Mother).

5. In December of 2008, Parents pursued a private evaluation of Student with Rowland Barrett, Ph.D., at Bradley Hospital. Student received an Axis I diagnosis of Atypical Pervasive Development Disorder Full Syndrome (Asperger's Syndrome); with Axis I Rule Outs for Dyssomnia, Chronic Motor Tic Disorder and ADHD-Inattentive type (PE-22; PE-33; Mother). At the time, Dr. Rowland's formulation of Student described him as

... a very intelligent, bilingual..., 9-3/12 year old boy, who presents with a life long history of behavior characteristic of Asperger's syndrome, including a marked social impairment (poor contact, immature, poor social pragmatics, pedantic speech, difficulty deciphering social cues, difficulty initiating and maintaining friendships, lack of reciprocal friendships, poor executive function), cognitive and behavioral rigidity (transitions poorly, monitors automobile fuel gauge and speedometer, bed time ritual with stuffed animals), restricted and abnormally intense areas of interest (science, science facts), stereotyped acts (hand flapping, toe walking, disassembling objects), perceptual hypersensitivity (olfactory), and dysprosody (longstanding bookish–intelligent–adult– like speech) (SE-33).

Dr. Rowland recommended that Student be placed on an IEP or 504 plan that contained objectives that targeted social pragmatics delivered by a speech therapist, and social goals for the classroom to be addressed by the teacher (with the speech therapist and the school psychologist) as well as accommodations for homework completion, test-taking and learning style. A full neuropsychological evaluation was also recommended (PE-33).

6. Parents referred Student for a special education evaluation with the Barrington School District (Barrington). Student was evaluated in April 2009 (PE-28; PE-29; PE-29; PE-30; PE-31; PE-32). The Barrington Team first met on May 14, 2009, however, no determination was reached since the results of a private neuropsychological evaluation were pending (PE-27).
7. In May 2009, Dr. Jeffrey Napolitano conducted a neuropsychological evaluation. Dr. Napolitano found that given Student's solid average intelligence with superior abstract verbal reasoning and general knowledge, significant discrepancies in some of his testing scores suggested "that inattention, internal distractibility, and / or expressive language weaknesses interfered with [Student's] ability to respond to questions" requiring more elaborated verbal responses (PE-26). Dr. Napolitano found that Student presented with Attention Deficit Hyperactivity Disorder (ADHD), Combined Type, Disorder of Written Expression and a Mathematics Disorder. He also found psychosocial problems, deficits related to the social environment, and educational problems (i.e. academic problems). His recommendations for Student included participation in a structured classroom where expectations were clear and consistent and where the teachers were flexible in their demands; intensive tutoring for mathematics and written language by a special education teacher who could also monitor and provide appropriate interventions for issues with attention and organization; preferential seating, frequent feedback, frequent breaks, consistency in scheduling, and access to a quiet study area free from visual and auditory distractions; multi-step instruction should be broken

down, instructions and complex procedures should be repeated; work product should be adjusted so that he can complete it during regular class time; homework assignments should be written for him rather than having him copy them; a note-taker should be assigned to him in each class; instruction in keyboarding skills and access to computers; provision of extra time for tests with built in breaks in a separate or small group setting (PE-26).

8. The Barrington Team ultimately found Student ineligible to receive special education services (PE-25). Student however, received accommodations via an Intervention Plan because “his lack of focus and preparation [was] hindering [his] ability to perform successfully”. In class “he had difficulty concentrating on [the] task at hand and easily [got] distracted, often times sitting and doing nothing”, to help him improve his mathematics concepts and applications, and to help him “learn and generalize concepts from his social cognition curriculum” (PE-10; PE-11; PE-24; SE-16; SE-17; SE-18; SE-19). According to Parents, the general education modifications to address organization and planning provided in Barrington were insufficient to address Student’s needs and Mother had to continue to work extensively with Student in the home (PE-40; Mother). On January 25, 2012, Student was discharged from the Intervention Plan because he was receiving good grades (SE-16; Mother).
9. On December 13, 2011, while Student was in the sixth grade at the Barrington Middle School in Rhode Island, Parents sent a letter to the school seeking a one-to-one aide for Student in the classroom to help him stay on task and not fall behind. They also requested that Student be helped to complete most of his homework in school (SE-21).
10. Student underwent a private Occupational Therapy Evaluation with Amy Marcille, OTR/L (PE-35), and a Speech and Language evaluation with Bonnie Ravo, M.S., CCC-SLP (PE-36), on April 11, and May 4, 2012 (PE-22).
11. Ms. Marcille administered the The Beery-Buktenica Developmental Test of Visual-Motor Integration (VMI); the Beery VMI Developmental Test of Motor Coordination; the Test of Visual-Perceptual Skills (non-motor) Revised (Gardner, 1996)(TVPS); Test of Handwriting Skills-Revised, Cursive and Manuscript (2007), Sensory Profile, Caregiver Questionnaire (Dunn, 1999); Adolescent/ Adult Sensory Profile (Dunn, 2002); and she conducted a parent interview, and made clinical observations including observing Student in school (PE-22). Ms. Marcille found that most of Student’s scores fell within the average range except for the motor coordination subtest of the VMI and the Parent’s sensory profile which showed moderate sensory processing and modulation deficits that impacted Student’s performance across settings. According to Ms. Marcille, Student had “significant deficits in sensory processing especially with filtering auditory and visual input in order to attend to the task” before him. This would clearly impact Student’s performance in the classroom where he would have to “filter out the teacher’s discussion with other groups of children ...movement of the teacher while monitoring small group work, and students moving from one area to another” (PE-22). Ms. Marcille explained that Student

... is able to process in one mode at a time. For example he can listen **OR** produce a motor response **OR** attend to social cues, write **OR** respond to a question, etc. This was clearly the most challenging aspect of understanding and completing a class assignment within the provided timeframe. Despite preferential seating, extra support from the teacher to orient to the correct page and being given direct language such as “you need to look for an evaluation/ synthesis question” [Student] continued to lag behind his peers and was not able to finish his assignment within a given time frame. Difficulty in multisensory processing significantly impacts [Student’s] ability to sustain attention, particularly in a large group setting. Auditory and visual distractions were also seen to be somewhat problematic in the one-to-one, structured setting when one of the examiner’s would get up and move to a different area to retrieve materials or while one examiner had a conversation with his mother in the adjoining room that could be viewed through a large window.

...[Student’s] own responses on the Sensory Profile Self- Questionnaire also support his difficulty [with multisensory processing]. He reported that he *almost always* becomes frustrated when trying to find something in a crowded drawer or messy room, *almost always* misses the street, building, or room signs when trying to go somewhere new, and is *almost always* distracted if there is a lot of noise around (PE-22).

Student was noted to regulate his arousal level and organization behavior by using strategies such as bouncing his knee, tapping his hands, drumming a pencil, crackling his knuckles or fidgeting. On the Adult/ Adolescent Sensory Profile scale, he placed in the More than Most People category of Sensation Avoiding. He also presented with sensory defensiveness particularly in response to tactile input. According to Ms. Marcille, Student’s sensory processing dysfunction and modulation deficits appear to impact his performance across all settings (SE-12).

12. Visual perceptual skills were found to be an area of strength for Student whose skills in this regard compared to those of an adult (PE-22). Student’s visual motor skills, were an area of weakness which caused frustration. Ms. Marcille noted that the discrepancy between Student’s motor and non-motor skills was significant even when the composite score fell within the average range. Motor planning (praxis) was within normal limits as Student was able to plan, sequence, and execute tasks without evidencing any difficulty, he however had slight low muscle tone throughout his trunk and in the upper extremities. Regarding fine motor skills and hand writing, Ms. Marcille noticed that Student fatigued easily when writing, in her opinion, likely a result of decreased hand strength. In this respect, Student reported that when he took a lot of notes his hand hurt and he fell behind. Student explained that he often relieves the pain by cracking the knuckles. Student displayed age-appropriate, independent in activities of daily living. Ms. Marcille concluded that Student evidenced visual motor, fine motor, endurance and strength challenges (PE-22). She recommended a

short course of outpatient occupational therapy services, and occupational therapy consultation in school to monitor Student's sensory needs, make recommendations for computer and technological instruction, and for implementation of teaching modifications as needed. Participation in recreational and structure movement activities was also recommended to increase proximal and distal stability, build endurance and upper body strength, and improve postural control (PE-22). Mother testified that Student became engaged in martial arts. Ms. Marcille also recommended the use of assistive technology and access to a computer to facilitate written output. Lastly, she recommended a physical therapy evaluation to address Student's lack of proximal stability, reduced postural control and endurance for physical activity (PE-22; Marcille).

13. Bonnie Ravo, CCC-SLP, conducted the speech and language portion of the evaluation (PE-22). She administered the Test of Language Competence-Expanded (TLC-E), the Peabody Picture Vocabulary Test –Fourth Edition (PPVT4), the Damico Clinical Discourse Analysis (CDA), Pragmatic Rating Scale (PRS), Expressive One-Word Picture Vocabulary Test (EOWPVT), Social Skills Rating System (SSRS), and she conducted a record review, a clinical observation and a parent interview. On the TLC-E, which measures comprehension of metalinguistic language in the areas of syntax, semantics and pragmatics, Student's overall language fell within the eight (8) years and eight (8) months range (Student was 12 years six months at the time of this evaluation). His receptive language skills fell in the low average range but were influenced by Student's above average knowledge of figurative language. He had difficulty with portions of the test assessing language processing. "Auditory input appeared to interfere with his ability to formulate a response" and he appeared to be aware of this difficulty so he checked and rechecked what the clinician stated to him. Ms. Ravo noted the importance of providing Student with visual support anytime information was presented to him orally. On the PPVT4, which assesses receptive vocabulary, Student demonstrated superior aptitude with a percentile rank of 90, which placed him in the high average score range, at the equivalent age of 17.2 for single word reception. On the Expressive Communication subtests of the TLC-E which measures oral expression abilities in the areas of syntax, semantics and pragmatics, he was noted to present with a significant weakness in language formulation. He had considerable difficulty using words in a "semantically and syntactically appropriate context". His utterances were marked by frequent pauses, hesitations and revisions and he struggled with integrating the appropriate contextual cues when producing socially appropriate responses. He appeared to be aware of his difficulties when manipulating vocabulary stored in his short term memory to produce novel utterances, causing him to shift in his seat or rub his head. Ms. Ravo opined that Student presented with an expressive language disorder which warranted intervention (SE-22).
14. Ms. Ravo explained that the EOWPVT sought to evaluate Student's ability to produce standard English vocabulary for labeling actions, objects and concepts. In this area Student scored in the high average range with a percentile rank of 73 and an age equivalency of 14.9 years, although he struggled with identification of why words were similar and he was unable to identify common attributes. He also stumbled in trying to demonstrate knowledge of the function of an object, the semantic class relationships and the part to whole relationship. Student's informal narrative was further assessed using a picture book. He was

unable to retell events due to social misinterpretations and he “failed to connect the contextual cues in order to understand the setting presented” (PE-22). According to Ms. Ravo, Student should be employing language that was more sophisticated to describe, explain and connect the events and the characters in the pictures to clarify the subject’s intent. According to Ms. Ravo, Student, who is greatly motivated to be social, would have a difficult time clarifying his intent to a social partner. Based on the CDA results, Ms. Ravo opined that Student presented mild deficits in discourse with respect to quantity, relation, quality and manner. He also demonstrated poor topic maintenance, did not recognize or respond to the discourse’s appropriateness, missed opportunities to seek additional information from the individual with whom he was communicating and demonstrated cognitively rigid patterns. Once he initiated discourse, especially if it was a preferred topic, he had great difficulty stopping even when he was cued by the clinicians. This in turn was seen to impact the cadence of discourse. His need to seek clarification for receptive processing also impacted the flow of his conversation. The PRS also demonstrated the presence of a pragmatic language disorder in Student as he demonstrated great difficulty expressing his thoughts and intent to a play partner, and was unable to use non-verbal cues to “check-in” and seek confirmation or clarification from a partner during play. He also did not use his gaze to confirm his partner’s readiness for play. In providing an example, Ms. Ravo noted that

During a ball toss activity, [Student] was seen to hit one clinician with the ball on several successive trials. The clinician was seen to shake her head “no” to indicate that she was not ready, and [Student] continued to toss the ball. On the 6th trial, he was observed to shake his head “yes” and to throw the ball again at the clinician whose arms were by her side, and who was continuously shaking her head “no”. [Student] demonstrated significant difficulty in negotiation skills. During this play task, he was seen to abandon the play partner and to throw the ball to the alternate clinician with no language to signal his intent to engage her. While [Student] was able to make use of gestures such as a shrug, isolated finger point, and head shakes, his use of gaze, body orientation, and reception of other’s non-verbal language is significantly impacting his ability to be a mature social partner. Care should be given to not assume his understanding of social situations... Higher level language forms should be targeted for remediation (PE-22).

In the SSRS Mother reported that Student fidgets and moves excessively, is easily distracted, appears lonely, at times has low self-esteem, and is easily embarrassed. Overall the scores in this assessment fell in the average range. While Ms. Ravo did not administer a formal articulation test, she noted that Student had great difficulty maintaining appropriate breathing levels for speech, presented postural weakness and his intelligibility was affected when his rate of speech increased (PE-22).

15. Ms. Ravo recommended that Student receive accommodations in the classroom and at home to address his multi-sensory processing issues, as well as instruction and remediation services that targeted higher level language forms (PE-22).
16. On cross-examination Ms. Ravo conceded that she had made a mathematical error in scoring the TLC, but after figuring the correct score at Hearing, Ms. Ravo testified that Student's score would have still fallen within the below average range (Ravo).
17. Ms. Ravo observed Student in his school program in Rhode Island, noting that Student required numerous prompts, redirection, appear distracted, required assistance with organization and task initiation and also with transitions. During lunch, Student was observed at the same table as his sibling and five other sixth graders from their social studies class. School staff reported that Student, his brother and the other peers always sat in the same place (PE-22; Ravo).
18. Student's final grades in sixth grade, the 2011-2012 school year, at Barrington, Rhode Island were:

Math	C
Language Arts	B-
Science	B
Social Studies	B-
Physical Education	A+
Health	B
Keyboarding	A-
Keyboarding	A+
Music	B+
Wood Lab	A
Robotics	A (SE-23).

19. On the 2008, 2009, 2010 and 2011 New England Common Assessment Program (NECAP) Student scored in the Proficient or Proficient with distinction range in all areas (SE-22).
20. On June 6, 2012, Ms. Marcille recommended that Student receive occupational therapy services, school services and supports, and a referral for physical therapy (PE-21).
21. Student's psychiatrist, Dr. Ali Eslami, evaluated Student on July 25, 2012 (PE-20; PE-34). At the time of the evaluation Mother was reporting that Student had become more introverted, irritable, had periods of diminished interest in preferred activities and motivation, and showed signs of hopelessness which symptoms abated somewhat during the weekends. During the week, Student looked exhausted upon returning from school. Student was taking 10mg of *Focalin XR* although some afternoons he required an additional 5mg of *Focalin*. He also took 3mg of *Melatonin* at bedtime and Omega-3 1000 mg. Student did not take the stimulant medication on the weekends or during the holidays (PE-20).

22. During his interview, Dr. Eslami noted that Student answered questions hesitantly but remained focused. When engaging in conversations of interest to him Student's vocal rate increased, and rather than "talk with" his listener in a more reciprocal manner, he "talked at" the other person. Student's speech used language in an odd fashion that appeared "bookish" and it had a monotonic, pedantic quality. He missed social cues, he changed facial expression minimally, inconsistently matching his internal state, and his social overtures missed integration of gaze. Student repeatedly inquired about his performance during testing and was noted to use bodily movements, such as shifting in his seat or tapping with his fingers, perhaps in an effort to remain organized. During testing Student was reported to be attentive, cooperative and polite. Dr. Eslami's testing included the Autism Diagnostic Interview-Revised (ADI-R) which measures qualitative impairments in social interaction, communication, repetitive behaviors, and stereotyped patterns and abnormality of development evident at or before 36 months; Autism Diagnostic Observation Schedule (ADOS) Module 3, a measure of communication, Reciprocal social, stereotyped behaviors and restricted, Imagination/creativity, and communication and social interaction (PE-20).
23. Dr. Eslami found that Student presented mild signs of anxiety during the evaluation and that when engaging in creative or make-belief actions, his play became "scripted" and he needed prompting from the examiner to move along. Based on the history and evaluation, Dr. Eslami found that Student met the criteria for autism. In his report, he noted that Student continued to have problems with some basic academic concepts, socializing with peers and with fine motor skills (when printing) all of which were impacting Student's self-esteem and adaptive functioning. Dr. Eslami's final diagnoses based on the DSM-IV were:

Axis I:	Autism ADHD Inattentive Type Learning Disorder Rule out Anxiety NOS Rule out Depression NOS
Axis II:	Deferred
Axis III:	Noncontributory
Axis IV:	Moderate; Primary Support, Education, Interpersonal Relationships (PE-20).
Axis V:	Current GAF 45-50

Dr. Eslami recommended: continuation of the medication; a cue card/ written script program to help Student develop his conversational skills; a functional behavioral assessment to address Student's silly and/ or disruptive and/or perseverative behaviors at home and in school; priming lessons and visual re-enforcers/ schedules for new tasks; assistance with organizational issues and transitions; assistive technology software to address his math and writing deficits; and, direct instruction and interventions to address Student's social pragmatic issues. Dr. Eslami further recommended that Student be enrolled in a program or school for children with high functioning autism, and he also recommended that Student receive the aforementioned services through an IEP (PE-20).

24. On September 20, 2012, a few weeks after starting school in Belmont, Massachusetts, Parents referred Student for a special education evaluation, and consented to Belmont's proposed evaluations with the understanding that she would be notified before Student were pulled out of class for an evaluation and with the proviso that Belmont did not duplicate any of the tests previously administered (SE-1; PE-17).
25. On October 18, 2012, Belmont forwarded to Parents a Team meeting invitation for December 4, 2012 (SE-2).
26. Belmont conducted an achievement evaluation to assess Student's learning, reading, writing, and math abilities; an educational evaluation; a psychological assessment; a speech and language and social pragmatics evaluation; an occupational therapy evaluation; and an observation of Student. The teacher observation report notes that Student required reminders to be able to transition from one activity to the next in class and states that his writing could benefit from greater explanation of his ideas (SE-8; PE-14). Student's school progress assessment was completed by Carla Harding (SE-8; PE-14).
27. Shoba Reginald, Student's science teacher, noted that he "came across as very scattered brained and confused" but then did well on his quizzes. He arrived late to this class for over one month at the beginning of the school year stating that he had gone to the wrong class, and he even sat in the wrong class for a good length of time before realizing that he was supposed to be elsewhere (SE-8; PE-14). Ms. Reginald testified that her class was a combination of lecture with some writing and lab activities. She opined that Student transitioned well between activities and that since he sat very close to her, if he was having a difficult time getting started with something, such as a quiet writing piece, she could tap on his desk and redirect him when he was off-task in part because he was so eager to please adults (Reginald). Student's English teacher, Ms. Niles offered similar testimony regarding redirection of Student when distracted (Ms. Niles).
28. Ms. Sanchez, the Spanish teacher, also mentioned that at times Student was late to class and forgot his materials and stressed the need to improve his organizational skills. His social studies teacher complimented his knowledge of world geography but stressed the need for assistance with organizational skills and noted that Student required additional time to organize his papers and equipment. The mathematics teacher, Julia Huestis, noted Student's weaknesses as follows

...he has a hard time focusing. He rarely can stay focused on the material being presented or work that he has to do. He gets distracted by others and can also distract other students. He is not a good advocate for himself as he rarely asks questions. He seems to have trouble recognizing what he is having trouble with or that he is having trouble (SE-8; PE-14).

Ms. Huestis noted the benefits of preferential seating, regular check-ins during her class, strategically choosing a partner for him to work with who is not a friend, ensuring that he understands and knows what the assignment is and where he should start, what he is

specifically expected to do and other similar reminders. All of the teachers noted that Student is a polite, responsible hard working child who was motivated to do well, and who responded well to prompting when distracted (SE-8; PE-14).

29. Ms. Huestis testified that during the second semester, she spoke to Student about changing his seat because he was getting very distracted in his seat close to his buddies and Student opted to stay in the same seat but agreed to pay attention. According to her, he was motivated to stay in that seat and he was able to remain more attentive and was getting more work done (Huestis).
30. The pragmatics profile completed by Student's teachers note a marking of 2 ("sometimes") for the following behaviors: showing appropriate sense of humor during communication situations; asks for/ responds to requests for clarification during conversations; tell/ understands jokes/ stories that are appropriate to the situation; gives/ asks for the time of events; reminds others/ responds to reminders appropriately; responds appropriately when asked to change his/ her actions by (accepting/rejecting); at times he did not read facial cues, body language or tone of voice accurately; did not consistently demonstrated appropriate use of nonverbal support regarding facial cues, body language, voice intonation, appropriately expressing messages nonverbally, using nonverbal cues appropriate to the situation, presenting matching nonverbal and verbal messages and reading the social situation (script) correctly and behaving /responding appropriately (SE-14).
31. Belmont's achievement testing was conducted by Beverly Cadorette on October 13, 2012. She is also Student's Learning Skills Teacher. Ms. Cadorette administered the WIAT-III in a quiet room with minimal distractions and noted that Student was "very talkative before and even during the testing session" often engaging the tester in conversation (SE-3; PE-16). She found that Student scored solidly within the average and high average ranges on all subtests and composite scores for reading, mathematics, and for written and oral language skills (SE-3; PE-16).
32. On October 22, 2012, Louisa Popkin, the Autism Inclusion Specialist in Belmont, conducted a twenty (20) minute science classroom observation of Student and later on November 1, 2012 she observed Student during English class (SE-4; PE-18). During the science class, he appeared to follow the teacher as she moved around the room. Twice during that time he looked away to another part of the room but redirected himself back to looking at the teacher. He copied information from the board twice although there were four opportunities to do so, and at the conclusion of the observation Ms. Popkin noted that Student's notes were incomplete. He was later observed walking to his locker at the end of the class and interacting with one other student as he walked to his next class. During the English class observation Student was noted talking to one of his neighbors as the teacher was passing out papers. He talked to his peers again and looked at them when they were talking. Later when he was awaiting instructions from the teacher, he was observed to play with his paper and pencil and then looked at the teacher when she was giving the next set of instructions. He was observed raising his hand and participating in class, and also talking to his peers while

the teacher was talking at other times. At least on two occasions, he was able to redirect himself and pay attention to the teacher. Ms. Popkin noted that

When asked to put the handout in his binder, [Student] did not put it in his binder. He started to read and doodle as the teacher provided the next set of directions. He looked at the story as his teacher read it. The students were then asked to talk to one another about the first part of the story. [Student] looked at his partner who was talking; however, he did not write any notes. He looked at the story again as his teacher continued to read. [Student] raised his hand to participate when asked to make a connection to the story although his teacher did not call on him. He started to talk to his neighbor as he waited for the next step and he redirected his attention to the board when his teacher started writing. [Student] was then asked to talk with his peers about the main character. [Student] talked to his peers; however, he did not record any information. [Student] continued to read as the other student were preparing to leave. He stopped reading and put the handout in the pockets of his binder before he left (SE-4; PE-18).

In her report Ms. Popkin stated that Student behaved appropriately in class and she stated that he had made connections with his peers and that he was easily redirected. She testified to having no concerns regarding Student's social development (Popkin). In her report, she recommended that Student be provided:

- ... explicit directions about the expectations for recording information from the board and taking notes.
- ... explicit directions for materials and provide an additional prompt if [Student] does not follow these directions.
- Monitor [Student's] attention during instruction and provide additional opportunities for him to participate to help him sustain his attention.
- ... a specific time to review concepts and assignments with teachers on an as needed basis.
- ... a specific time to organize his binder with a teacher (SE-4; PE-18).

33. An observation of the ELA class done a few months later on April 26, 2013, by Ms. Popkin, shows a somewhat different child than the one reflected in her report. On direct examination Ms. Popkin provided a positive description of her observations of Student. However, during cross-examination her testimony regarding the notes she took during her April 26, 2013 observation, portray a student who was very easily distracted by external and internal stimuli, who was much more off task than is reflected in her report of fall 2012, who required numerous redirection from the teacher and the aide, who did not copy everything that he was supposed to copy from the board, made noises during class, and did not know where to sit in his math class (even though it was April). Ms. Popkin testified that she does not provide any instruction for Student, that she does not meet with him or otherwise provide any services, nor has she talked to Student. Her impressions are based on her observation of Student and the Team's reports only (Popkin).

34. Lauren Kaufman Mamon, MS, CCC-SLP, performed Student's speech and language evaluation on behalf of Belmont in October and November 2012. (SE-5; PE-13). She administered the Clinical Evaluation of Language Fundamentals-4 (CELF-4), the Peabody Picture Vocabulary Test 4 (PPVT-4), the Expressive Vocabulary Test (EVT), the Test of Narrative Language (TNL), the Test of Language Competence-Expanded (TLC) and the Test of Pragmatic Language (TOPL-2). According to her, Student's scores fell in the average range except that in the CELF-4 his scores were more variable as he showed a great deal of scatter. While in most subtests of the CELF-4 Student scored within the average range, in word classes expressive and receptive, sentence assembly and familiar sequences his scores fell below the average range. A significant difference was also noted between his language content scores and his memory index score. The Index Comparison score placed Student's abilities in the below average range for working memory (SE-5; PE-13; Mamon).
35. Ms. Mamon noted Student's strengths in the areas of formulating sentences, defining words, memory for sentences and numbers, his knowledge of relationships within sentences and his ability to answer questions from stories (SE-5). In contrast, Student's skills relating to "his ability to make associations between words and to state why the relationship exists, and his ability to formulate word and word combinations into grammatically, syntactically, and semantically correct sentences" was much weaker. He also had difficulty regarding his ability to "quickly and accurately state familiar sequences of information" (SE-5; PE-13).
36. Regarding Student's behaviors during the evaluation, Ms. Mamon noted that

Some of [Student's] behaviors during the administration of the CELF – 4 were significant. While repeating back sentence in the Recalling Sentences subtest he spoke very quickly, causing him to make errors as he rushed to get his answers out. He often knew an answer was not exact, however, even when given a prompt to slow down, he rushed to get answers out. In addition, on the Sentence Assembly subtest, [Student] struggled to produce sentences. On this task, the student is required to create two different sentences for each given group of words. On #1, [Student] easily created two correct sentences. On #'s 2-4, he created one sentence easily, but was slow to produce a second sentence. With a bit of time he was able to do so. For #5, he was unable to create any response. Number 6 he attempted one response, which had words in incorrect order. Numbers 7-9, he was able to produce one correct sentence but not a second one. For all stimuli he was very slow with lots of [stopping] and starting. He often knew when he was making a syntax or semantic error so he often tried to go back and change it (SE-5; PE-13).

Student's teachers reported many pragmatic language skills strengths, with weaknesses noted in "telling and understanding jokes, showing an appropriate sense of humor, giving/asking for time off events, and reminding others/ responding to reminders appropriately. Many other pragmatic social skills were found to be emerging (SE-5). Ms. Mamon noted a discrepancy between how the science teacher and the language teacher viewed Student's communication skills. While the science teacher opined that Student had difficulty "with

reading and interpreting facial cues, body language and tone of voice, as well as expressing messages non-verbally, and matching his nonverbal and verbal languages”, the language arts teacher opined that Student’s skills were stronger (SE-5; PE-13).

37. On the TNL Student did well when he was asked to listen to a story and then respond to questions and retell the story, however, when he was asked to create his own story from a set of five pictures after listening to a model provided by the examiner, his story left out numerous important elements and details that were reflected in the picture, and while he was able to get the basic details of the story his version lacked a clear beginning, middle and ending. He did better with his last trial where he was asked to look at a single picture, listen to the examiner tell an original story and then choose a different picture and create his own story (SE-5; PE-13).
38. In the TOPL-2, which measures a person’s ability to use and understand language in social situations, Student demonstrated weaknesses in his knowledge of audience (the ability to adapt communication patterns depending on the individual to whom one is speaking), purpose (the goal of the communication act and the method one uses to express the idea/information) and topic (referring to management of the topic and the ability to modify it as needed). Ms. Mamon noted strengths regarding visual-gestural cues, language abstraction and physical context (SE-5; PE-13).
39. In analyzing conversational and language narrative skills, Ms. Mamon asked Student to share a favorite book. After speaking for approximately five minutes and twenty seconds without showing signs of ending the story, he was given prompts to wrap it up, to which he responded. Ms. Mamon noted that
- ...he most likely would have continued, however he was given prompts to wrap up the summary. And his story did get more interesting, easier to follow, and had excellent details, it was at times very hard to follow without a good frame of reference. In addition especially when sharing the longer narrative, Student spoke too quickly, which reduced his overall intelligibility. However, he was very excited to share the book, which increased his inflections, making it overall very interesting. Nevertheless, Student did not seem to take perspective about whether his listener understood or could follow his story. Student was always very happy and very patient about going back to explain when something was not clear to the examiner.
- ... At times his rate was too quick causing a reduction in intelligibility (SE-5; PE-13).
40. Ms. Mamon also observed Student in his science class, Student’s preferred subject, and testified that he seemed to be comfortable with the class and with his peers “displaying good eye contact, body orientation, topic maintenance, and he seemed to understand the classroom and social rules of the lesson and his peers” (SE-5; PE-13; Mamon). She also noted that he chatted comfortably with a peer and contributed to the class on two occasions (*Id.*).

41. At Hearing, Ms. Mamon conceded that she made scoring errors on the TLC since at least four or five items were marked incorrectly. She also admitted that even when Bonnie Ravo had administered the TLC six month earlier, she saw no problem administering the test again (Mamon). Bonnie Ravo testified that the TLC should not have been administered because there would have been a “practice effect” rendering the second test scores less reliable (Ravo).
42. Ms. Mamon testified that in the test of Pragmatic Language, Student did not pick up sarcasm. Also, when measuring Student’s conversation and language skills, Ms. Mamon could not understand some of the technical language used by Student and noted that Student did not read the social cues she was giving regarding her lack of understanding, leading her to conclude that he did not take the perspective of the listener which she had to agree, was an indicator of the presence of a social language disorder (Mamon).
43. On November 9, 2012, Ms. Mamon forwarded an email to Dr. David Learner, Belmont’s school psychologist and Elizabeth Mancuso (the individual who conducted Student’s psychological testing under the supervision of Dr. Learner) stating
- Are you testing [Ststudent]? I would be interested in your impressions. I am not seeing a kid with major disability. There are definite weaknesses and some anxiety. Mom is SUPER anxious. If you are testing him can you ask him to share a favorite book, movie, etc. I got major verbal diarrhea. Overall formulated well, just went on and on and on and on, with no sense that he was going too long. Wasn’t sure if he did not have a sense or was just really excited to be able to share the book. Also, even though he [has a sibling] I sensed a lot of loneliness. He didn’t have a lot to share about friends or outside interests (except for Kung Fu 4x/week).
P.S. and if you aren’t testing him, don’t you think you would find him clinically interesting? ;))) (PE-38).
44. Belmont’s psychological evaluation was performed by Elizabeth Mancuso, M.A., under the supervision of David G. Learner, Ph.D., on October 31, November 2, November 7 and November 14, 2012 (SE-6; PE-12). Dr. Learner explained that in addition to administering the testing, Ms. Mancuso drafted the report which, as her supervisor, he later reviewed (SE-36; Learner). The tests administered were: the Wechsler Intelligence Scale for Children, 4th edition (WISC-IV); the Wide Range Assessment of Memory and Learning, 2nd edition (WRAML-2); Rey Complex Figure; Delis-Kaplan Executive Function System (D-KEFS): selected subtests; Conners’ Continuous Performance Test II (CPT II); the Behavior Assessment System for Children, 2nd edition (BASC-2): teacher form; Behavior Rating Inventory of Executive Function: parent form; Beck Youth Inventories; and the Informal Social Interview (SE-6; PE-12).
45. On the WISC Student obtained a full scale IQ score of 94 with Verbal Comprehension at 116/86%; Perceptual Reasoning at 94/ 34%; Working Memory at 80/90% and Processing Speed at 83/ 13%. On the WRAML Student scored in the average range for verbal memory,

visual memory and attention/concentration, and his scores in the Rey Complex Figure also fell in the average range. A discrepancy was noted however in the KEFS in which Student scored above-average in all areas except for number-letter switching in which he scored in the below average range (SE-6; PE-12).

46. According to Dr. Learner and Ms. Mancuso, Student would have challenges with tasks requiring mental control, speed and visual scanning for information, as well as with “banter” and “give and take”. Per parental report, Student also had vulnerabilities with executive functioning and attention (SE-6; PE-12).

47. Dr. Learner and Ms. Mancuso noted Student’s vulnerabilities with tasks requiring mental control, speed and visually scanning for information, and while his sustained attention appeared alright, it was very variable for rote recall of information (SE-6; PE-12). They explained that in the regular classroom Student

... may be sensitive to the speed in which information is presented and he may have difficulty quickly switching between bodies of information. In addition, [Student] may have difficulty holding information in mind while working on a task, and he will benefit from external guidelines, such as checklists and examples, and from information that is presented in an organized manner.

His vulnerabilities with that pace and switching are relevant in social situations, as well. He may have difficulty following the “banter” and “give and take” in conversation with his peers. His difficulty efficiently capturing the “big picture” in social situations and gauging social nuance may be vulnerable as well, as he does always appear to appreciate the subtleties of social context. His vulnerabilities in social situations is also relevant in class as one of his teacher’s ratings places him “at-risk” with regard to social behavior.

The results of rating scales completed by his mother and teacher suggest [Student] is experiencing difficulty with tasks subsumed under attention and executive function. These include sustaining attention, inhibiting his behavior, shifting from one task to the next, planning, solving problems, and simultaneously attending to multiple pieces of information. From an emotional standpoint [Student] appears to be doing well and there are no significant concerns, compared to previous years where he appeared more anxious (SE-6; PE-12).

48. Dr. Learner testified that when comparing the reports of previous evaluations of Student and looking at the results and observations of Ms. Mancuso, things did not “add up” to him. He observed Student in March 2013 in class and during unstructured times. He testified that Student followed things along in class fairly well, initiated interactions with other students, both in class as well as in the hallway and during lunch. In the classroom, Dr. Learner observed that Student was off task at times, requiring redirection by the teacher but he

responded to prompts when they were given to him. Student was also slow to transition between activities. Dr. Learner opined that overall Student was “right in the mix”. He opined that rather than autism, the overriding features impacting Student’s performance in school was “his inattention, his difficulty regulating attention, the executive vulnerabilities that often go with that, compounded by slow processing speed” (Learner).

49. Dr. Learner and Ms. Mancuso recommended regular education classroom accommodations for Student including: provision of structure, predictability and a clearly defined schedule; preparation for transitions; provision of prompts and reminders to help keep him on task; and built in check-ins to ensure that he has written down his homework assignments correctly in his assignment book. Additional recommendations to support his writing production included: provision of organized outlines, visual handouts and displays; use of graphic organizers to help provide a structure for written tasks; and allow access to a computer whenever possible and for frequent breaks to help muscle fatigue during long writing assignments. Additional occupational therapy recommendations were made as part of the school based team evaluation (SE-6; PE-12).
50. Two additional recommendations were made to Parents: 1) that Parents contact Daniel Rosen, M.D in Wellesley, MA who could provide expert consultation to families with children on the autism spectrum; and 2) that Parents contact the Asperger’s Association of New England in Watertown, MA which provided informal seminars, consultation, social groups, and support groups to families with children on the autism spectrum. Lastly, it was recommended that Parents locate a venue

Where [Student could] meet other individuals his age and begin to engage with a peer group in areas of personal interest. This [could] also include after school clubs at school (SE-6; PE-12)

51. Dr. Learner testified that the ICAP appropriately met Student’s needs but suggested schedule changes such as moving his academic classes to the morning, for example math, which is a least favorite subject for Student (and was taking place in the afternoon during the 2012-2013 school year) as Student was “pretty inattentive in such a heavy duty class at the end of the day...” (Learner).
52. An Occupational Therapy evaluation to assess Student’s fine motor and visual perceptual abilities was performed by Jennifer Calden, OTR/L (SE-7; SE-15). She administered the Test of Perceptual Skills (non-motor) 3rd edition and the Developmental Test of Visual Motor Integration (VMI) in which Student demonstrated visual motor integration abilities in the average range with excellent skills in the visual perception area.¹ When asked to write letters on a line he was able to complete the task except that he wrote all of the basement letters (g, j, p, q, y) below the writing line and he mixed capital letters in his paragraphs. He also demonstrated solidly average skills in the areas of visual memory, visual spatial

¹ Ms. Calden made a calculation error on the motor coordination supplement test which did not cause a substantial change in Student’s ultimate score.

relationships, visual form constancy, visual figure ground, and visual closure, with a reduced score on the visual sequential memory subtest. Overall, he demonstrated average fine motor and visual motor skills but he scored in the low average range on the motor subtest. Ms. Calden concluded that Student did not require special occupational therapy instruction but recommended that Student be allowed to complete written tasks untimed and that writing assignments be broken-up to ensure that he understood them. She also recommended the use of graphic organizers and that he be given an editing checklist (SE-7; PE-15).

53. Student's Team convened to review the results of the Belmont evaluations on December 4, 2012. Belmont personnel attended the meeting, as well as Parents and Student's private psychiatrist, Dr. Eslami, who discussed Student's diagnoses including Autism Spectrum Disorder (SE-10; PE-9).

54. The Team found that although there were reports of inefficiency attributed to processing speed difficulties and inattentiveness, since Student was making effective academic and social progress, he was not eligible to receive special education services. According to the Team, since in school Student was not displaying some of the symptoms associated with his autism diagnosis which had been reported by Parent, and since in the opinion of the school personnel, these symptoms were not interfering with Student's ability to make progress, specifically designed instruction to address those issues was not recommended. The N2 specifically states:

...in the school setting [Student] generally demonstrates age appropriate social, interpersonal and academic skills. At times he may persevere on topics of interest, but he does respond to redirection. Given [Student] is making effective progress it was determined that he does not require specially designed instruction (SE-10; PE-9).

55. The Team did not engage in discussions regarding unusual responses, resistance to environmental changes, resistance in daily routines, the need to engage in repetitive or stereotypical movement while conducting the eligibility criteria related to Student's autism diagnosis because they had not observed those in school. However, all of Student's teachers noted his distractibility and lack of focus (SE-10; PE-9; Mamon, Cadorette, Popkin, Reginald).

56. The Team recognized that at times Student perseverated on topics of interest but he responded well to redirection. They also acknowledged Student's relative weaknesses in pragmatic and organizational skills and recommended that he receive specific accommodations through a District Wide Curriculum Accommodation Plan (DCAP) (SE-12). The accommodations were listed in a document referred to as an Individual Curriculum Accommodation Plan (ICAP) which was then distributed to his teachers and service providers (SE-10; SE-11; SE-12).

57. At the Team, Ms. Mamon recommended that Student receive short-term speech and language intervention to boost some of his weaker areas. She opined that “a little short-term [speech and language] intervention would go a long way to help [Student]” (Mamon).
58. Parents submitted a list of specific suggestions: to support Student academically; provide teachers with information that could assist them understand and service Student better; suggested multiple choice format for test-taking as well as decreased written demands and access to computers whenever possible; assist with organizational skills, a second set of books for the home; and suggested assistance for socially supporting Student who according to Parents had great difficulties maintaining friends, and sometimes making friends (SE-9).
59. Parents reported that homework was very difficult and that they spent several hours working with Student on his homework. They also reported self-esteem issues (PE-23; Mother).
60. Belmont’s ICAP for Student, dated December 7, 2012, offered the following accommodations (SE-11).
- After school tutoring for organization/ homework support.
 - Learning Center two days per week during [Student’s] “Targeted Learning” block to help both in organizing Student and in getting his homework completed.
 - Setting aside a time at the end of the day where [Student] will write himself and his mother an email detailing the homework for that date. If necessary [Student] can scan the documents he needs at that time.
 - Checklists to help [Student] organize himself. The Inclusion Specialist will be available for consultation in developing checklists as appropriate.
 - Social skills (pragmatics) group.
 - Reduction of homework if needed (reduce the number of homework problems i.e., 20 to 10).
 - Opportunity for [Student] to request extended time for projects as necessary.
 - Provision of exemplars and models so that [Student] better understands what is expected of him.
 - Extra time on testing/ assignments (SE-11).
61. The ICAP lists parental concerns, Student’s seventh grade teacher reports and the results/ reports of the evaluations conducted by Belmont and by Parents’ experts as the reason for placing Student on an ICAP (SE-11).
62. Following the Team meeting Beverly Cadorette, Student’s Learning Skills teacher, communicated with Parents on December 19, 2012, to let them know that several accommodations would be implemented following the winter break. Ms. Cadorette would meet with Student in the Learning Center, twice per week, on days 3 and 4 of their six day schedule, for academic support as well as after school on Monday, Tuesday and Thursday;

Student would receive one hour per week tutoring; and he would join Lianne McCann's group for social pragmatics (PE-7; PE-19). Mr. Niles, the English teacher, would use the last five minutes of the day to help Student organize himself and send emails to the home detailing his outstanding homework for that evening (PE-7).

63. According to Ms. Cadorette, the time in the Learning Center provided Student a quiet place to work. He fit well with the other students in the Learning Center all of whom were on IEPs. There were usually between one and up to three other male, seventh grade students there during Student's Learning Center time with her. She allowed Student to return to targeted learning if and when he had completed his language-based and organization work. Ms. Cadorette mostly helps Student with homework and organization of materials in preparation for homework. She testified that Student's distractibility varied from day to day. She also stated that she shares the Learning Center with a second special education teacher and explained that when the other teacher is there with her group, she would try to go elsewhere with her group. On the day of Dr. Eslami's observation, both teachers were in the room with approximately 12 or 13 people in the room because it was one of the MCAS days and there was nowhere else to go in the school (Cadorette).
64. To assist with organizational issues regarding homework, Louisa Popkin and Beverly Cadorette developed a checklist which stated

Before I leave school,

EVERY DAY

- I will check my binder and ask myself the following questions
- ☐ are my papers in the right section of the binder?
 - ☐ is my unfinished homework in the left pocket of my folder?
 - ☐ are my current finished assignments to come back to school in the right pocket of my folder?
 - ☐ did I e-mail my homework assignments to my mother and myself?

MONDAY, TUESDAYS AND THURSDAYS

- ☐ did I go to Mrs. Cadorette's classroom for homework help?
- ☐ did I check in with Mrs. Cadorette even if I do not need help?

When I am at home,

- ☐ I will do my ELA homework first.
- ☐ I will take a break
- ☐ I will do my math homework next
- ☐ I can stop after 30 minutes of work.
- ☐ I will do my Spanish homework next.
- ☐ I will take a break.

- ___ I will do my Science homework next.
- ___ I will do my Social Studies homework last. (I can stop after thirty minutes of work.) (SE-15; Cadorette).

65. Ms. Cadorette testified that homework completion continues to be difficult for Student, but noticed some improvement after March 7, 2013 when Student began to meet with her after-school and with the implementation of the checklist and tutoring. Ms. Cadorette testified that Student works independently during this period and is very redirectable and capable of sustaining his attention through completion of a task if he is motivated by the activity (SE-15; Cadorette).
66. Lianne McCann, Belmont's speech and language pathologist who has had experience working with students on the autism spectrum, was assigned to work with Student to address his use of social language as part of his ICAP. She testified that her work with Student focused on the amount of information Student provided and on topic relevance. Starting in January 2013, Ms. McCann met with Student once every six day cycle for fifty minutes in a small group setting comprised of three other male students, two of whom were learning disabled and one of whom had Asperger's Disorder (McCann). She testified that Student met all of the lesson's objectives and was very receptive to the strategies and ideas discussed in the group which, he readily implemented. Ms. McCann opined that Student was the highest functioning one in his social skills group and stated that given his growth, she anticipated dropping him from the group for the next school year (McCann).
67. Ms. McCann testified that she observed Student during unstructured time such as in the hallways and during lunch and stated that he appeared comfortable and that he chatted and interacted socially with other students (Ms. McCann).
68. Adam Niles, Student's English teacher, testified that Student's weaknesses could be seen in grammar, spelling and sentence construction. He also testified to Student's strengths and stated that he had seen growth since the beginning of the school year. Dr. Niles also praised Student's final draft of his essay on an admirable person (SE-24), although he admitted that Student had worked on various drafts, had received assistance from Ms. Cadorette and did not know that Mother had also worked with Student at home for several hours on this project (Niles).
69. Student's grades for the first, second and third quarters were:

World Geography	B+	A-	A
Spanish	B	B-	C+
Science 7	A+	A-	A-
English 7	B-	B-	B+
Learning Center 7			
Math 7 COM	B+	B	C
Targeted Learning			
Art 7	A+	A	A

Physical Education 7	A+	A+	A+
Tech Education7	A	A	
Health			B- (SE-13; SE-27).

Student's homework grade is notably lower than his in-class work and quiz scores in most subjects (SE-27).

70. According to the Belmont teachers, Student was making academic progress and socially he was demonstrating age-appropriate interpersonal skills (SE-10; SE-24; SE-25; Reginald, Niles, McCann, Cadorette).
71. Dr. Ali Eslami, MD, Ph.D., observed Student in his ELA, targeted learning, math and during lunch, on March 18, 2013 (PE-1). Dr. Learner accompanied Dr. Eslami during his observation. Dr. Eslami noted that during the first five minutes of the class Student looked around aimlessly without interacting with peers, eventually pulling out a book and reading it. He ignored the teacher's clear and explicit instructions until the teacher approached his table, repeated the instructions to Student and helped him prepare his paperwork. Once she moved away, Student returned to the book he was reading. He repeated this behavior numerous times during the forty-five minute class, returning to reading his book every time the teacher instructed the class to switch tasks, and requiring the teacher to personally cue him back to task. According to Dr. Eslami, Student appeared to be absent as if in his own world, at times tapping the table or his head rhythmically with his fingers. He also noted that Student's response to getting a B on an assignment seemed incongruent even to the neighbor to whom he showed the paper. Overall he found the teacher and the class to be organized, and stated that she used appropriate teaching techniques even when Student appeared to be oblivious to the instruction. During lunch, Student tagged along his sibling, sitting at the end of a table with his sibling and some common friends. After lunch he followed his brother to the courtyard where the same group played football for about ten minutes. They then went to the next block which was targeted learning. Initially he went to the wrong classroom, which the observer learned, Student frequently did, and the teacher directed him to the correct room. Once at targeted learning, it took him approximately five minute to settle in and he required the teacher's assistance to prepare his work. The teacher described Student's performance in this class as variable but on the day of the observation, he was able to stay focused on his work for about ten minutes, completing some of the work because "it was quite an easy assignment" according to the teacher (PE-1). Math was the last subject observed. Student was particularly distracted during this class looking aimlessly around the room, trying to chat with students around him and even standing up to engage another student sitting further away. When others were copying what was on the white board or were answering questions, Student was tapping his fingers not paying attention. He required frequent redirection which the teacher was able to provide because he was seated in front of her. Another time while the teacher was providing him with an explanation to his question, Student had his head down on the desk lifting it occasionally. At one point he blurted a funny comment. Dr. Eslami noted that even though Student asked a few questions, he appeared not to pay attention to the answers. During the final part of the class, students were to find their group to work on fractions and Student was the only individual unable to find his group until his sibling

notified the teacher that Student required assistance. Once in his small group, Student did not work on his assignment and instead appeared to be distracting the other students in his group. He disregarded the teacher's instructions and appeared to be more interested in the pencil in his hand. The teacher's multiple attempts to redirect him proved fruitless in this class (PE-1).

72. Dr. Eslami noted that Student's inattention and distractibility were debilitating even when Student was "optimally medicated" (PE-1). He also identified boredom and zoning out as two additional impairments. He noted that while Student could be quite focused on certain activities, like reading his book during ELA, he could also wander aimlessly around, as observed during math; Student could also be totally distracted and mused by a computer monitor, as observed during targeted learning. According to Dr. Eslami, the aforementioned interfered with Student's ability to totally and effectively participate in the observed activities during the day, during which he was able to sustain attention for a maximum of ten minutes in the less structured setting of targeted learning. When he made a contribution or asked a question in class, he did not raise his hand and wait to be called, or ask permission; he simply blurted out the statements most of which were not about the class material or subject. Dr. Eslami found the fidgeting, leaving his seat, distracting behaviors and not waiting for his turn to be behaviors that interfered with Student's ability to access his education. Student's presented a flat, subdued general mood except when a comment struck him as funny. Dr. Eslami also noted social skills deficits such as

...no ability to process or benefit from paralinguistic signs, such as change in the tone or volume of the voice, was unable to read his teachers' body language or understand their facial expressions. Also, he was not able to figure out that some of his teachers comments were meant only for him... "I don't want to hear any more chatter from that corner" referring only to [Student] (PE-1).

Dr. Eslami also noted that he did not observe any meaningful exchanges with peers or anything that resembled friendships except that he associated with his sibling's friends and exchanged some funny comments. He opined that: not paying attention to nonverbal cues, lack of understanding of implicit rules, impaired participation in cooperative exchange with peers and poor interaction with his peers were observed behaviors that had to be addressed (PE-1).

73. Dr. Eslami did not recommend any major adjustments in the medication doses, as he opined that Student was deriving "optimal benefits out of pharmacotherapy" (PE-1). He recommended a one-to-one aide to assist Student in the classroom; direct instruction with a qualified and experienced special educator with formal training addressing the needs of autistic children; specialized speech and language therapy to focus on pragmatics of language and decoding paralinguistic cues; occupational therapy to help him make sense and integrate the information received through his senses; and counseling. Assistance should also be provided to help him navigate the classroom and interact better with others. Were Belmont

unable to support these recommendations, then Student should attend a specialized school for high functioning children on the spectrum (PE-1).

74. Throughout this year, Student has had difficulty completing or turning in his homework, following rules in his Spanish, Science, Math and English classes (PE-1; PE-2; PE-3; PE-4). In the home, homework completion was extremely difficult to the point where Mother asked for homework demands to be reduced and sought teacher assistance (verbally and through emails) especially during the month of March 2013 (PE-5; PE-6; PE-8).
75. Dr. Learner testified that he had made an informal observation of Student in his science class (a preferred subject for Student). On March 18, 2013, Dr. Learner observed Student in ELA, at lunch, recess, targeted learning and math. Dr. Learner found Student to present better than expected. He noted that Student initiated interactions, appeared to work well with his science partner and appeared to follow the lesson and discussion as well as the class routine albeit with some distraction and off task behaviors (Learner). During lunch time he noted that Student had one very short interaction with a student sitting across from him and made one other statement to a different child before going to recess during which he was observed playing football with other students for approximately ten minutes. After lunch Student was observed in targeted learning where he was observed wondering around the room. According to his teacher, Student's behavior during this period was variable from day to day. In math, which occurred at the end of the day, Student appeared to be quite inattentive (Learner).
76. As noted above, written notes of Dr. Learner's observation with Dr. Eslami, however, depict a student who was very inattentive and distracted in all observed classes (English, targeted learning and math). Student read a book during most of his English class, requiring promptings to initiate work, or stop reading the book, all of which were to no avail. According to Dr. Learner, Student would stop the behavior for a few seconds but once the teacher went on to do something else he resumed what he was doing again and again. While in class, he was slow to respond to prompts and the redirection (which occurred every five minutes or so) did not last long. He tapped the book he was not supposed to be reading with his finger, looked off, was inattentive and had to be instructed to write down his answers. He left the class to go to the bathroom while important information regarding MCAS was imparted and upon returning made critical comments about the bathroom escort. At the end of the class he was slow to transition to the next class (PE-38). Dr. Learner's notes corroborate that Student sat with his sibling and their friends at lunch, that Student was sitting at the end of the table and mostly listened to the conversation, initiating conversation briefly with one other student, before they all went to play football together. In targeted learning he was also quite distracted, zoning in and out except when he worked directly with the teacher and when he worked independently on a science assignment. His teacher commented that a typical day was very varied for Student. Math occurred at the end of the day and in this class Student was also quite inattentive. He required numerous prompts for redirection, as he talked to other students, tapped his pencil on the desk as if it were a rhythmic drum. When he became involved in the class discussion, he did not raise his hand and later made some bad "Pi" jokes. He had to be prompted to write and to get started with

the math problems, but most of the time he was off-task, fooling around and socializing instead of working (PE-38).

77. Dr. Learner (supervisor of Ms. Mancuso who tested Student on behalf of Belmont) explained that in presentation, most of Student's difficulties are caused by ADHD. Student's speed of processing is an issue, he is not an efficient scanner of information, has difficulty switching from two bodies of information. He also had difficulties with attention and with impulsivity. In interpersonal relationships, Dr. Learner found that Student did not complement others all of the time and that he made inappropriate comments in class and overall had difficulty regulating himself in class. Dr. Learner however, concluded that Student's overall issues were benign and required only accommodations. He testified that he has seen Student interact with male peers, and at least one female peer, in a playful, age appropriate manner (Learner).
78. Dr. Jeremy Brooks, Psy.D. (CV at SE-20), was retained by Belmont to observe Student, meet with the teachers and provide insight regarding the case. In his practice, Dr. Brooks works with children and families and also consults to school districts in Massachusetts. Prior to his two day observation of Student he learned from the teachers that Student's weaknesses were mostly related to his executive functioning issues including difficulty initiating tasks, sustaining attention and shifting sets (Brooks). In summarizing his observations, Dr. Brooks testified that Student appeared quite happy; appeared skilled when viewed at the gym and was observed to high five other students with whom he was playing at gym. Dr. Brooks noted that Student was skilled in the gym, was not bothered by the size of the class, or the noise level, and did not appear fatigued or to experience any fine or gross motor coordination issues. Student seemed to have a group of friends when he was viewed with and without his sibling and was engaged with these students in a goofy but supportive sort of way. In the classroom, he was an active participant, raising his hand and making appropriate contributions (Brooks).
79. Dr. Brooks and Ms. Reginald testified that they observed Student at a school assembly, noting how impressed they had been by Student's participation and appropriate contributions during the meeting regarding cyber bullying (Brooks, Reginald).
80. Dr. Brooks found Student to be an active and engaged child in all of the situations observed, who clearly demonstrated challenges in the area of executive functioning, especially with attention, and who demonstrated resistance to non-preferred activities such as writing and math. He recommended interventions such as preferential seating, check-ins for homework, and cueing, as he saw Student's executive functioning and attentional deficits as Student's primary impairments (Brooks).
81. Anita Pliner, PhD., JD (PE-41), conducted a neuropsychological evaluation of Student at Parents' request on April 3 and 10, 2013, and an observation of Student in his program in Belmont on April 26, 2013 (PE-40). Dr. Pliner administered selected subtests of the Wechsler Intelligence Scale for Children (Word Reasoning, Arithmetic and Digit Span); the Wechsler Intelligence Scale for Children- Integrated (Elithorn Mazes, Span Board); the

California Verbal Learning Test- Children; the Children's Memory Scale- Stories; the Delis Kaplan Executive Function System (selected subtests); Tower of London: 2nd Edition; the Test of Written Language III (selected subtests); the Gates MacGinite Reading Test Level 7-9 Form T; the Central Nervous System- Vital Signs; the NEPSY: Affect Recognition; the Kaufman-Assessment Battery for Children (Gestalt Closure, Hand Movements); and the Diagnostic Assessment of Nonverbal Abilities. She also conducted an interview of Parent and reviewed previous evaluations (PE-40).

82. Dr. Pliner noted that during the evaluation Student misinterpreted idioms during conversation taking them quite literally. She noted that his eye contact fluctuated in that he either avoided eye contact completely or maintained excellent eye contact without an apparent pattern. His demeanor was animated and his speech followed a bookish, pedantic style. While cooperative, Student required frequent redirection during the exam as he could not modulate his attention in a consistent manner, he got off-topic easily or made tangential comments. When printing, Student's penmanship was not neat and difficult to decipher at times. Dr. Pliner found that her evaluation was a valid estimate of Student's neurocognitive abilities (SE-40; Pliner).
83. Since Student had recently been administered the WISC IV, Dr. Pliner used the WISC III and chose selected subtests not previously used. In these subtests Student obtained the following standard scores (SS) and percentiles (%tile): Word reasoning SS 07 and 16%tile; Arithmetic SS 09 and %tile 37; Digit Span Forward SS 04 and %tile 02; Digit Span Backward SS 09 and %tile 37; Elithorn Mazes SS 10 and %tile 50; Spatial Span Forward SS 07 and %tile 16. Student's verbal language assessments placed him in the solidly average range for fluency, articulation and age appropriate vocabulary. He had no word retrieval difficulties. Consistent with Ms. Ravo's evaluation, Student's ability to solve verbal riddles was very low average showing Student's difficulties understanding figurative language and idioms in everyday conversation. A written story created by Student was adequate but lacked basic organization. Student's ability to identify objects pictured in incomplete drawings also presented a challenge, placing him in the very low average range. He also had difficulty identifying negative emotions (such as anger, disgust and sadness) in a social perception assessment, earning him a score in the below average range. Social cognition and theory of mind (the ability to take another person's perspective) was assessed through Parental questionnaire, consultation with Dr. Eslami and school observation, with a resultant finding that Student appears to assume that other people know what his experiences and thoughts are even when he has not shared the experience and the individuals were not with him at the time. In this regard, Dr. Eslami reported great inconsistencies in Student's behavior which responded to how well Student's sibling and mother had rehearsed the particular situation with him. Student also demonstrated some executive functioning difficulties and required assistance to execute a task effectively. In this area Student manifested deficits in his "ability to inhibit his responses, inconsistent ability to sustain the attention, a response inhibition, relative weak working memory skills/ planning and initiation skills" (PE-40). Student was able to organize meaningful information appropriately but his organization/integration skills wavered with more difficult tasks, especially those involving written expression. Despite being medicated, Student had a very difficult time modulating his

attention throughout the evaluation and was pulled away from the evaluation by both internal and external stimuli (e.g., the sound of a car horn in the distance despite closed windows). Student was impulsive and had a difficult time inhibiting his behavioral responses across all settings. He interrupted the speaker, fiddled with items. However, on a computerized continuous performance task he was able to maintain his focus and on a shifting attention computer task he performed in the average range. Initiation of novel thinking that required effort was a weakness as seen at home where he has a great deal of difficulty initiating and completing homework and in school where he had to be directed and redirected by teachers to initiate and complete tasks. Visual working memory was also an area of weakness for Student. On the subtests of the Test of Written Language III Student scored within the average range in all subtests except the contextual conventions (involving grammar, spelling and punctuation) in which he displayed significant difficulty scoring in the below average range, but overall, he was found to be functioning appropriately at grade level. His reading comprehension was found to be above age and grade level (PE-40).

84. Dr. Pliner observed Student in Belmont on April 26, 2013. She was accompanied on this observation by Louisa Popkin, Belmont's Autism Inclusion Specialist. During the English class observation, Dr. Pliner noted that Student (who was sitting in the second row) was fiddling with his eye glasses, looking away from the teacher. Approximately twenty five students attended this class. Despite numerous re-direction from his teacher, Student remained minimally on task, instead yawning, initiating conversation with his neighbor and tapping his fingers on the desk. He was given a handout but did not do the assigned work unless he was receiving one-to-one contact attention from the teacher. During lunch he was observed to sit at the end of a table with his sibling and other boys making a handful of occasional comments to his brother and two other boys. The group of boys then went to recess and engaged in touch football. Student appeared to be having a good time but Dr. Pliner noted that "while the other boys appeared athletic, [Student] demonstrated an awkward ability to run and keep up... it was not clear the degree of reciprocity there was" (PE-40; Pliner). After that, he went to check in with his math teacher and proceeded to targeted learning where the teacher met him at the door and sent him to the Learning Center where he was actually scheduled to be. Once there, he failed to engage in any activity until the teacher came over to him. At that time, there were approximately four or five students in the Learning Center. When the teacher proceeded to work with a different student, Student was off task again. Math followed the Learning Center session. Student sat in the very back of the class and demonstrated significant difficulty getting started with the warm-up exercise which he failed to complete, instead rolling the paper up into a tube. The teacher gave him another exercise paper and he did the same. He then asked a student near him if he liked sushi. The teacher then gave a quiz to the class, and Student sat for several minutes not initiating work until the teacher individually directed him to do so. He was one of the last two students to complete the quiz and submit the paper (PE-40; Pliner).
85. Dr. Pliner opined that Student required an IEP to address his impairments. She specifically recommended that Student be provided concrete, precise and predictable daily routines with explicit instructions in school and at home. In school, she recommended assigning a one-to-one aide to help keep Student on track in class and to assist him with transitions within the

classroom and between classes. She also recommended that a speech and language therapist and a mental health professional with experience working with children like Student provide him social pragmatics interventions, including provision of scripts to teach him the foundation for social interaction and offer him the opportunity to teach/rehearse appropriate behaviors. To address Student's written expression difficulties, Dr. Pliner recommended twice per week, pull out services with a special education teacher, to focus on organization and integration of skills. She also recommended individual or small group therapy/ counseling focused on developing "explicit instructions regarding how to 'read' his audience" (PE-40).

86. Dr. Pliner explained that Student needed to gain better awareness of his thinking and learning style. Student would also require three times per week instruction in organizational and study strategies targeted toward: planning and prioritizing work, note-taking techniques, test-taking/ preparation skills, and how to target/ engage in multi-step activities. (PE-40).
87. She also recommended numerous accommodations to address Student's executive functioning issues, such as: to teach him a system to check his work; a grade or points system; preferential seating near the center of instruction to decrease inattentiveness and facilitate redirection and cueing; check-ins at the end of the day; extended time for completion of assignment and during test taking; reduction of the quantity of homework; completion of homework in school; implementation/ use of a daily planner (Student needed to be taught to set aside at least fifteen minutes at night to plan for the next day) (PE-40). Lastly, Dr. Pliner recommended daily exercise to ameliorate ADHD symptoms, software-based working memory training to address visual working memory issues, and encouraged activities that would help Student develop his personal interests and creativity (*Id.*).
88. At the time of the Hearing, Dr. Pliner, opined that the one-to-one assistance for Student would only be necessary during transitions between classrooms, as based on her observation of Student in April 2013, (three quarters into the school year) Student went to the learning skills classroom rather than the learning center where he was supposed to be (Pliner). According to Belmont, the six day schedule was confusing to many middle school students.
89. Mother noted that at home, while doing homework, Student engages in some unusual repetitive movements such as finger tapping, frequent grimacing, rolling on the floor and making verbal noises as if he were playing a drum. He is easily distracted and it takes many hours for him to complete his homework (PE-8; PE-40; Mother).

CONCLUSIONS OF LAW:

Student's eligibility to receive special education services is at the heart of the dispute. The Parties do not dispute that Student has been diagnosed with Autism Spectrum Disorder, ADHD, a Mathematics Disorder, written, expressive and pragmatic language disorders, and a sensory processing and modulating disorder. Belmont agrees that Student presents with an underlying disability but does not concede the nature of the disability, and especially denies

that Student's presentation is consistent with a diagnosis of Autism. As such, Belmont denies that Student is an individual with a disability falling within the purview of the Individuals with Disabilities Education Act² (IDEA) and the state special education statute³, and asserts that Student is not entitled to a free, appropriate public education (FAPE).⁴

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 needs⁵ in a way "reasonably calculated to confer a meaningful educational benefit"⁶ to the student.⁷ Additionally, said program and services must be delivered in the least restrictive environment appropriate to meet the student's needs.⁸ 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.⁹ Educational progress is then measured in relation to the

² 20 USC 1400 *et seq.*

³ MGL c. 71B.

⁴ MGL c. 71B, §§1 (definition of FAPE), 2, 3.

⁵ 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").

⁶ See *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) where the court explicitly adopted the meaningful benefit standard.

⁷ *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.").

⁸ 20 USC 1412 (a)(5)(A).

⁹ MGL c. 69, s. 1 ("paramount goal of the commonwealth to provide a public education system of sufficient quality to extend to all children the opportunity to reach their full potential. . ."); MGL c. 71B, s. 1 ("special education" defined to mean "...educational programs and assignments . . . designed to develop the educational potential of children with disabilities . . ."); 603 CMR 28.01(3) (identifying the purpose of the state special education regulations as "to ensure that eligible Massachusetts students receive special education services designed to develop the student's individual educational potential. . ."). See also Mass. Department of Education's Administrative Advisory SPED 2002-1: Guidance on the change in special education standard of service from "maximum possible development" to "free appropriate public education" ("FAPE"), effective January 1, 2002, 7 MSER Quarterly Reports 1 (2001) (appearing at www.doe.mass.edu/sped) (Massachusetts Education Reform Act "underscores the Commonwealth's commitment to assist all students to reach their full educational potential").

potential of the particular student.¹⁰ At the same time, the IDEA does not require the school district to provide what is best for the student.¹¹

As the party challenging the adequacy of Student's proposed IEP, Parents carry the burden of persuasion pursuant to *Shaffer 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.¹²

In rendering my decision, I rely on the facts recited in the Facts section of this decision and incorporate them by reference to avoid restating them except where necessary. Upon consideration of the evidence, the applicable legal standards and the arguments offered by the Parties in the instant case, I conclude that Student is correctly placed within the Belmont Public Schools but that he is eligible to receive special education and related services through an appropriate individualized educational program. In this regard, Parents met their burden of persuasion pursuant to *Shaffer*. My reasoning follows.

This is an unusual case. Student has been diagnosed with high functioning autism, and given his mother's description of his presentation as a toddler (when he lost previously learned skills such as language and ability to move), his progress has been remarkable. To a great extent, Student owes these gains to his unique familial situation, including a sibling, relentless in their support of Student. While Student has made undeniable gains, he continues to face challenges in areas where his disabilities are preventing him from making meaningful, effective progress. However, he possesses numerous strengths and is able to learn, retain and implement what he learns and does not present in the manner most commonly associated with children carrying a diagnosis of autism. It is likely for this reason, that Belmont has resisted recognizing the full extent of Student's disabilities and designing an appropriate program for him.

I first turn to the question of whether Student is a child with a disability as defined by 20 U.S.C. §1401(3) and 603 CMR 28.02(7).

20 U.S.C. §1401(3)¹³ establishes two prongs in determining whether a student falls within the definition of "a child with a disability" within the meaning of the federal law and

¹⁰ *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.").

¹¹ 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.")

¹² *Shaffer v. Weast*, 126 S.Ct. 528 (2005) places the burden of proof in an administrative hearing on the party seeking relief.

¹³ "(3) Child with a disability. (A) In general. The term child with a disability means a child—

regulations. The first prong is whether the student carries a diagnosis/ disability among those defined under the statute/ regulations that qualifies him/ her; the second prong is whether as a result of said disability the student requires special education and related services.

M.G.L.c.71B¹⁴ and the pertinent regulation 603 CMR 28.02 (7)¹⁵, offer a similar definition of a child with a disability. However, in defining “eligible student”, the Massachusetts Special Education Regulation provides

Eligible student shall mean a person aged three through 21 who has not attained a high school diploma or its equivalent, who has been determined by a Team to have a disability(ies), and as a consequence is unable to progress effectively in the general education program without specially designed instruction or is unable to access the general curriculum without a related service. [Emphasis supplied] An eligible student shall have the right to receive special education and any related services that are necessary for the student to benefit from special education or that are necessary for the student to access the general curriculum. In determining eligibility, the school district must

-
- (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance referred to in this title [20 USCS§§ 1400 et seq.] as ‘emotional disturbance’, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
 - (ii) who by reason thereof, needs special education and related services....” 20 U.S.C. §1401(3).

¹⁴ A child with a disability is “a school age child in a public or non-public school setting who, because of a disability consisting of a developmental delay or any intellectual, sensory, neurological, emotional, communication, physical, specific learning or health impairment or combination thereof, is unable to progress effectively in a regular education and requires special education services, including a school age child who requires only a related service or related services if said service or services are required to ensure access of the child with a disability to the general education curriculum....” M.G.L.c.71B§1.

¹⁵ “(7) Disability shall mean one or more of the following impairments:

- (a) *Autism*- A developmental disability significantly affecting verbal and nonverbal communication and social interaction. The term shall have the meaning given it in federal law at 34 CFR §300.8(c)(1)....
- (e) *Neurological Impairment*- The capacity of the nervous system is limited or impaired with difficulties exhibited in one or more of the following areas: the use of memory, the control and use of cognitive functioning, sensory and motor skills, speech, language, organizational skills, information processing, affect, social skills, or basic life functions. The term includes students who have received a traumatic brain injury....
- (g) *Communication Impairment*- The capacity to use expressive and/ or receptive language is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: speech, such as articulation and/ or voice;; of conveying, understanding, or using spoken, written, or symbolic language. The term may include a student with impaired articulation, stuttering, language impairment, or a voice impairment if such impairment adversely affects the student’s educational performance....
- (i) *Health impairment*- a chronic or acute health problem such that the physiological capacity to function is significantly limited or impaired and results in one or more of the following: limited strength, vitality, 1 or alertness including a heightened alertness to environmental stimuli resulting in limited alertness with respect to the educational. The term shall include health impairments due to asthma, attention deficit disorder or attention deficit with hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia, if such health impairment adversely affects a student’s educational performance.” 603 CMR 28.02 (7).

thoroughly evaluate and provide a narrative description of the student's educational and developmental potential. 603 CMR 28.02(9).

Massachusetts further defines "to progress effectively in the general education program" as being able 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 student and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district. The general education program includes preschool and early childhood programs offered by the district, academic and non-academic offerings of the district, and vocational programs and activities. 603 CMR 28.02(17).

Therefore, under Massachusetts law, the analysis involves additional inquiry, requiring the Team considering eligibility to ascertain whether: a) the student is making effective progress within the context of general education; b) if not, is the lack of effective progress related to the identified qualifying disability; and c) if so, does the student require specially designed instruction to be able to progress effectively in the general education program, **or** related services to access the general education curriculum. 603 CMR 28.02(9) and (1).

In the instant case Student has been given numerous diagnoses including autism¹⁶, ADHD, mathematics disorder, written, expressive and pragmatic language disorders, and sensory processing and modulating disorders. These diagnoses have been given or confirmed by Dr. Eslami, Dr. Pliner, Ms. Ravo and Ms. Marcille within the last year and a half. The aforementioned diagnoses are qualifying disabilities under both the federal and the state standards. As such Student carries one or more diagnoses that meet the first prong of the inquiry and Belmont does not dispute that Student carries an underlying disability, albeit not autism. The evidence however, is persuasive that Student does have autism, even if mild in presentation, in addition to the other enumerated diagnoses. In this regard, the testimony offered by Dr. Pliner, Ms. Ravo, Ms. Marcille and Mother is persuasive (see also PE-1; PE-22; PE-26; PE-33; PE-40). Belmont is correct that carrying a diagnosis as a "label" does not automatically qualify a student for special education services. Rather, it is the impact that diagnosis has on the child's ability to access his education and what services that child requires, that are controlling.

The second prong of the standard requires a determination as to whether, as a result of the disability (ies), Student requires special education and/ or related services. In order to

¹⁶ "A developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences." 34 CFR 300.8(c)(1); see also 603 CMR 28.02(7)(a).

receive special education services in Massachusetts, Student must be: a) unable to make effective progress in the general education program with or without the specially designed instruction, or b) unable to access the general education curriculum without the related service. Belmont states that Student is making effective progress in the academic and social/emotional realms and is therefore, not entitled to special education services. To the extent that the testimony of Parents and Belmont's witnesses diverged, I credit the testimony of Parents' witnesses and also rely on Belmont's teachers and service providers written impressions and their testimony regarding their notes during observations.

The evidence shows that Student has average to above-average cognitive abilities and there is no dispute that academically, he is doing well and is getting good grades (PE-40; SE-3; SE-27; SE-28). As discussed below, Student nevertheless requires specially designed instruction to address his social and communication skills. The First Circuit Court explained in *Mr. I. ex rel. L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1, 17 (1st Cir. 2007), that the IDEA entitles eligible students to services that "target 'all of [their] special needs,' whether they be academic, physical, emotional or social." *Id.* at 5 (quoting *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1089 (1st Cir. 1993) (quoting *Town of Burlington v. Dep't of Educ.*, 736 F.2d 773, 788 (1st Cir. 1984)). The Court further explained in *Mr. I.* that the IDEA does not require that the particular disability adversely impact the student's educational performance to a specific degree, it simply requires that the student's educational performance be adversely impacted. Furthermore, in *Mr. I.* the Court stated

... extra instructional offerings such as social-skills and pragmatic-language instruction are 'specially designed instruction' to ensure [LI's] 'access ... to the general curriculum.' ... Directly teaching social-skills and pragmatic language to LI amounts to adapting the content of the usual instruction to address her unique needs to ensure that she meets state educational standards... *Id.* at 20-21.

The Court in *Mr. I.* found that the services offered by the school district under its non-special education plan of services amounted to special education within the meaning of federal and state law.

In addition to arguing "*Mr. I.*" as a basis for the relief sought, Parents also relied on *In Re: Uxbridge Public Schools*, 16 MSER 388 (2010), a case in which a student diagnosed with PDD-NOS with solidly average skills, who did well academically without special education or related services, but was challenged in the social realm and had pragmatic language deficits, was found eligible to receive special education services. The Hearing Officer in the *Uxbridge* decision relied on the testimony of the independent neuropsychologist who explained the difficulties that the student was having recognizing facial expression of other children and matching the underlying emotion with body language, and recognizing the perspective of others. The student in *Uxbridge* also had difficulty with pragmatic language, especially in recognizing non-verbal cues, staying on topic in conversation and engaging in reciprocal conversation. The neuropsychologist in that case explained that while the student appeared to do well "on the surface," the student was missing the more subtle aspects of

socialization¹⁷, and these communication deficits were associated with the PDD-NOS diagnosis. *Id.* at 394-396.

In the instant case, the evidence is convincing that Student presents with executive functioning issues and social pragmatic issues secondary to autism and ADHD. He also struggles with math, and his writing is impacted by his visual motor skill deficits. He also presents with sensory processing issues (Marcille, Ravo, Pliner). At the outset I note that according to Student's treating psychiatrist, Dr. Eslami, Student is optimally medicated (PE-1).

Belmont's teachers and evaluators testified that Student was doing well socially, academically and with his pragmatic language skills, and stated that they saw minimal issues with Student's behavior. They all testified to how polite, and cooperative Student was, and how easy it was to re-direct him when he was distracted, especially if he was motivated to be cooperative (Reginald, Niles, Huestis). According to Ms. Huestis, while Student appears interested in class, his demeanor is flat (Huestis).

Ms. Mamon noted strengths in certain speech and language areas, but she also noted weaknesses in Student's "knowledge of word classes both receptively and expressively, his ability to assemble sentences into semantically and syntactically correct forms, and his ability to quickly and accurately produce familiar sequences of information" (SE-5). Student also presented deficiencies in narrative formulation as well as with the subtleties of language pragmatics (SE-5; Mamon).

Ms. Marcille recommended occupational therapy based on her findings of Student's trunk weaknesses which impacted his postural control and endurance. Endurance for physical activity was also poor. She found that Student presented with a moderate sensory processing and modulation disorder, explaining that it is difficult for him to filter or tune out background noise. Handwriting was difficult and slow, and basement letters (g, j, p, q, y) were not properly placed below the writing line. Student had an inefficient pencil grasp and decreased hand strength (Marcille). She explained that he is unable to ignore unimportant sensory experiences because he registers all information at the time, which would make the classroom experience challenging for him, with the result that he would likely be very distracted. She opined that Student could only process one mode of information at a time and has been observed to engage in self-regulation techniques such as tapping or fidgeting in his programs in Rhode Island and in Belmont (PE-1; PE-40; Pliner, Popkin, Learner). Ms. Marcille explained the benefits of providing students a short course of occupational therapy early on. She recommended that Student receive occupational therapy services to address his handwriting, visual motor deficits, self-regulation deficits and postural control (Marcille).

¹⁷ "It would be easy for a regular education teacher, who is working with a relatively large number of students, to conclude that student has no noticeable deficiencies even in the area of social skills. But ... if a person with a specialized training dissects the exchanges that were happening between student and his peers, it becomes clear that he's missing some of the more subtle yet important aspects of socialization skills." *Uxbridge*, at 401-402.

Ms. Ravo opined that Student presented strengths in the areas of receptive vocabulary knowledge, figurative language, expressive vocabulary knowledge, and in pragmatic skills involving: attention to speakers, avoiding conflict, answering the phone, controlling his temper, requesting permission, and cooperating with others. Marked weaknesses were found in the areas of language formulation in which Student presented frequent hesitations, pauses and revisions, informal narratives, he failed to use correct syntax and semantics, he made grammatical errors, had difficulties with discourse and social pragmatic language regarding quality, relation, quantity and manner¹⁸ (PE-22). Ms. Ravo noted that Student's message was quite frequently inaccurate because he used the wrong pronoun. He also had difficulty with his knowledge of word relationships and how those words go together (PE-22).

Ms. Ravo noted that in conversation Student did not notice when to let others take turns. He spoke as if lecturing the listener, did not recognize gaze and shifting or nonverbal communication when Ms. Ravo attempted to indicate that she was looking for more information. Student could not understand rising intonation and did not know when the topic should be changed. In addition to topic maintenance causing a problem, student used very rapid speech when excited about a topic making it difficult for others to understand him (Ravo).

Ms. Mamon noted the same type of the issues during her testing, later stating in an email that she had gotten "major verbal diarrhea" (Mamon; PE-38). Ms. Ravo also stated that during the evaluation Student asked many questions when he became anxious but she noted that his questions were geared toward behavior and body regulation as opposed to asking for the sake of seeking additional information about a topic. She also noted that Student would repeat the last word of any question in an attempt to give himself additional processing time, a tool which Ms. Ravo found to be "quite ingenious" (Ravo).

Ms. Ravo also noted Student's difficulties with negotiation, explaining that she had found communicative breakdowns which caused great frustration to Student. Her comments regarding Student's inability to read nonverbal cues during a ball toss exercise was very telling as to the types of difficulties Student encounters. Most concerning was the fact that Student was 12.6 months old at the time of her evaluation. Also Student's inability to read nonverbal communication resulted in his use of the wrong booklet to complete a quiz causing him frustration that he was unable to voice. Instead, he engaged in repetitive behaviors such as shrugging or tapping. Ms. Ravo found that Student's expressive language skills were approximately four years behind same age peers (PE-22; Ravo).

¹⁸ Regarding the Oral Expression: Recreation Speech Acts subtest, Ms. Ravo testified that when it "came time to process information – take in what I told him –hold it in his short-term memory and then formulate a response and give it back in a syntactically and grammatically correct way, he was only better than 2% of his peers... When it came time for him to look at the information, take in the context cues, make sure that it was appropriate to the social situation and then use the information grammatically correct, socially acceptable and give us the sentence of that made sense, he could only do it at the second percentile... He would kind of miss, what was the gist, what were they thinking. And he could say something that didn't make sense to the picture. " (Ravo).

Ms. Ravo opined that Belmont's ICAP was insufficient to meet his needs because it failed to address Student's metalinguistic and metacognition issues. She recommended speech and language therapy provided by a speech and language pathologist who possessed knowledge of autism spectrum disorders. According to Ms. Ravo, Student also needs instruction regarding relationships between words so as to be able to describe and explain the semantic relationships between them. Because of Student's expressive formulation disorder, she recommended the use of technology to help him communicate his thoughts.

Both Ms. Ravo and Ms. Marcille were impressive. They came across as knowledgeable, experienced individuals whose testimony was genuine and candid. Most notable was Ms. Ravo's reaction when confronted with a scoring mistake. She appeared genuinely troubled and somewhat in disbelief that she had made the mistake, but she conceded the mistake and demonstrated much concern over the impact it could have on the Hearing. She testified that she was horrified to have made a mathematical error and stated how embarrassed she felt. She appeared upset and even stated that she was probably not going to be able to sleep over her mistake. She testified persuasively however, that despite her error, she was still seeing the underlying deficits in Student. In contrast, Ms. Mamon's reaction was dismissive when confronted with numerous other mathematical errors, the practice effect impact of having used portions of the same test Student had taken a few months earlier, or misleading the reader when discussing the results of the TNL in which she scored Student in the 84th percentile, later admitting that the test was normed to age 11.11 when Student was 13 years old at the time of her evaluation (Mamon; PE-22). Ms. Mamon also conceded that she did not use a timer on portions of the evaluation where the test specifically required that the test taker not spend more than 60 seconds. Ms. Mamon attempted to minimize the issue and disregarded the significance of the implications.¹⁹ For these reason I find her to be unreliable and do not credit her views regarding the extent of Student's deficits or her recommendations.

Ms. Marcille, who was also a credible witness, noted relevant flaws in Belmont's occupational therapy evaluation. Ms. Marcille testified that Ms. Calden had made a mistake when calculating Student's visual perceptual score and stated that the actual score was closer to the score Student had earned when evaluated by Ms. Marcille six month earlier. She also raised concern over Ms. Calden's failure to observe Student in the classroom, a critical step in the evaluation process pursuant to the *Guidelines for Provision of Occupational Therapy Services in Massachusetts Association for Occupational Therapy School Special Interest Group Task Force* (PE-37; Marcille). As such, I credit Ms. Marcille's testimony and conclusions.

Dr. Pliner found Student to be intriguing, with many strengths but also weaknesses in his ability to adapt to school and to his social life, and he articulated little self-awareness of

¹⁹ Ms. Mamon explained that her use of the statement "major diarrhea of the mouth" in her email to Dr. Learner was meant simply as a comment because she found it clinically significant that a psychiatrist had given Student a diagnosis of autism but she was not seeing it in his presentation. She testified that since she valued Dr. Learner's skill set, she thought he would find Student an interesting case. Ms. Mamon's explanation came across as an attempt to soften the impact of her original statement, and was simply not convincing.

those challenges (PE-40). Dr. Pliner also found deficits with working memory and planning. She explained that children on the spectrum could “hyper focus” and intensely sustain their attention (*Id.*). Regarding Student’s executive functioning she noted weaknesses with planning, organization, initiation of tasks, attention, impulsivity, and also deficits in writing and with working memory (PE-40; Pliner). When telling a story, he left out important elements and his stories lacked a clear beginning, middle and end (Pliner).

Dr. Pliner also noted organizational problems in testing and during her observation. Student’s teachers documented in mid-October 2012 that Student arrived late and would forget his materials, sat in other classes for an extended period of time before realizing that he was in the wrong class, and had a difficult time focusing (PE-14; Reginald). He also had a difficult time advocating for himself was easily distracted and rarely asked questions in class (PE-14).

Dr. Pliner observed Student’s difficulty with distractibility and staying on task in class, when she observed him in Belmont in April 2013. She noted that Student remained off-task until he was re-directed by the teacher; Student would redirect himself, and immediately thereafter be off task again (Pliner). Ms. Popkin also had noted Student’s distractibility issues in her notes of the observation of April 26, 2013²⁰ with Dr. Pliner (Popkin).

Student was also noted to be slow to transition in class and between classes (PE-14; Pliner, Learner, Brooks). According to Mother, Student’s executive functioning and attentional issues impact his functioning in the home as she spends between four and six hours each night, prompting him and redirecting him to complete his homework (Mother).

Dr. Brooks, Belmont’s expert, testified that based on his observation of Student in 2013, he opined that in presentation most of the concerns that needed to be addressed were related to Student’s executive functioning and ADHD related issues. He especially noted Student’s difficulties with task initiation and shifting sets. He recommended placing Student at the front of the class where teachers could cue him and redirect him, and also recommended

²⁰ Ms. Popkin documented the following instances of distraction in a twenty four minute span (between 11:52 a.m. and 12:16 p.m.) during her observation of Student in the English class: talked to a student about an athlete; made another comment to the student after the other student started to work; doodled on paper; doodled again at the bottom of a piece of paper; turned around when a student behind him got up; drew on a piece of paper again; turned around and talked to the student behind him; again talked to a peer; drew on his hand; turned around to talk to the student behind him; played with his desk leg; and imitated shooting a gun (Popkin). Ms. Popkin’s notes further noted that during an 18 minute period in math Student: asked a neighbor “do you liked sushi?”; turned to a peer and talked about how other students were dressed; talked to a student who arrived late to class; talked to a student about whether they were adopted; laughed; talked about sleep; got a pencil; talked with three other students about some pictures; tried to make a joke; talked to the student next to him; played with a piece of paper; did not look at the board; talked to a neighbor again; folded a piece of paper; folded piece of paper again; talked to a peer; walked to the front of the classroom; took some paper; made a paper telescope; put the telescope to his eye; stopped at a peer’s desk on the way back to his desk; made a noise; started to take a quiz, but then played with a pencil and paper; started to work again, but then looked at a peer; and drew on paper roll and played with paper (Popkin). These observations were similar to those documented earlier by Dr. Learner noting that Student had “lost his attention – looking off (head in hand the whole time)...fiddling w/sweatshirt string...yawning, stretching...not listening to other students’ questions...tapping book w/fingers...fiddling with book cover” (PE-38; Learner).

assistance with writing the correct homework assignment (Brooks). In addition to these accommodations, Dr. Pliner opined that Student required three times per week, direct special education services delivered by a special education teacher to address Student's organizational and executive functioning issues. The instruction should target basic study skills, organizational strategies and note-taking. She also recommended twice per week instruction with a special education teacher to assist with written output (Pliner).

Dr. Pliner and Ms. Ravo's testimony support a finding that Student has difficulty understanding social pragmatics including body language, non-verbal cues and negative emotions, as well as recognizing and taking the perspective of others (Pliner, Ravo, Mother). He also has demonstrated difficulty staying on topic, and engaging in reciprocal and flexible conversation in which he is called to take multiple turns (Pliner, Ravo).

In his April 2012 report, Dr. Eslami noted that Student often talked at (as opposed to talked with) his listener, that he missed social cues, offered minimal facial expression changes, and appeared "bookish" (PE-20). Dr. Pliner raised a similar concern testifying that she had actually been shocked by Student's low performance on the CNS, and what a difficult time Student had reading people's emotions in the pictures, especially when called to identify emotions such as sadness or disgust (Pliner). Belmont's Speech and Language Pathologist documented her conclusion that she sensed a great deal of loneliness in Student despite his having a sibling (PE-38).

Dr. Eslami made numerous recommendations to address Student's social deficits. He opined that Student required assistance with understanding and explaining difficult social situations and required instruction on how to approach individuals and groups. He also recommended instruction on how to appropriately interact with peers in structured situations, identification of social conventions and after a difficult situation, Student should be provided with a "social autopsy" of the situation (PE-20). In light of the recommendations made by Ms. Ravo, Ms. Marcille and Dr. Pliner, as well as the written recommendations made by Dr. Eslami, it is concerning that Belmont not only disputes the diagnosis of autism but indeed is planning on dropping Student from the social skills (pragmatics) group (McCann).

Parents asserted that at the December 4, 2012 Team meeting Belmont did not dispute the diagnosis of autism given by Dr. Eslami who was present at the meeting. The Team however, failed to engage in a discussion regarding the impact that such a diagnosis had on Student or how to address Student's deficits as a result of this diagnosis.

M.G.L. c. 71B §3 lists the procedures required to be followed by the Team when it becomes aware that a student has been diagnosed with autism. Specifically, the statute provides that

Whenever an evaluation indicates that a child has a disability on the autism spectrum... as defined in the most recent edition of the diagnostic and statistical Manual of the American Psychiatric Association, the individualized education program (IEP) team... shall consider and shall specifically address the following: the verbal and

nonverbal communication needs of the child; the need to develop social interactions skills and proficiencies; the skills and proficiencies needed to avoid and respond to bullying, harassments or teasing; the needs resulting from the child's unusual responses to sensory experiences; the needs resulting from resistance to environmental change or change in daily routines; the needs resulting from engagement in repetitive activities and stereotyped movements; the need for any positive behavioral interventions, strategies, and supports to address any behavioral difficulties resulting from autism spectrum disorder; and all other needs resulting from the child's disability that impact progress in the general curriculum, including social and emotional development. M.G.L. c. 71B §3.

On cross examination it was clear that the Team did not discuss Student's engagement in repetitive activities, stereotyped movements, resistance to environmental changes, and the impact of changes in daily routines, even though the Belmont service providers, evaluators and teachers testified as to observations of some form of manifestation of same, as discussed in the Facts section of this Decision (Mamon, Popkin, McCann). Belmont's witnesses conceded that no meaningful discussion regarding the diagnosis of autism ensued because the Belmont Team did not see its manifestation.

The evidence is persuasive that Student has made progress, but said progress is not meaningful progress in his greatest areas of need: the social, emotional and behavioral realms. With Belmont's and Parents' support, Student is doing well academically (SE-23). He is able to learn and indeed in the context of social development has learned some responses appropriate to certain social situations, but his progress is not enough. Student's responses are not consistently used in the appropriate context and he continues to miss the more subtle aspects of communication (PE-39; PE-40; PE-22). His skills allow him to get by and since he is a polite, affable, respectful, compliant child, it is understandable how some of his more subtle deficiencies, which are actually impacting his growth, may be overlooked. The totality of the evidence suggests that Student is appropriately placed in public school and that a public school placement is the least restrictive environment for him, as it provides him with a natural environment in which to learn, practice and develop age appropriate, socialization and language skills (albeit with appropriate interventions) while keeping Student close to his sibling. Exposure to typically developing peers has clearly benefitted Student in terms of his intellectual and academic development. Nonetheless, he needs the benefits of a more structured, consistent support system (within the public school) in order to avail himself of a meaningful education that appropriately addresses all of his areas of need.

Student also requires the accountability protections afforded IDEA eligible students. That is, the goals and objectives of the IEP will require teachers and service providers to gather data which must be reflected in quarterly reports to ascertain Student's progress with the services provided. The goal is to help him internalize the tools that will allow him to be a self-reliant, independent individual at the end of his entitlement.

It is unclear how many of the relationships Student allegedly is forging in school carry over outside school hours, without his sibling's involvement, bringing into question his true ability to make and maintain friendships separate from his sibling. While there was ample testimony by Belmont's witnesses as to how well he is doing, this testimony is not persuasive when taking into account their own questioning of how lonely Student felt (Mamon, Mother). Student wants to be a sociable child and tries his best to be, albeit not always at the right time, in the right forum or in the most appropriate manner. He clearly presents with strengths but as Parents correctly argue, he requires specialized instruction to address his attentional and organizational issues resulting from the ADHD, as well as his social and communication deficits resulting from autism, in addition to accommodations. Dr. Pliner, Ms. Ravo and Ms. Marcille are persuasive in their opinion that the services in the ICAP, although well intended, are insufficient to meet Student's disabilities and that instead of an ICAP, Student's weaknesses are more properly addressed through an IEP.

According to Belmont, the ICAP offered to Student was sufficient to address all of his needs within the context of regular education. The evidence however is persuasive that the ICAP interventions were insufficient to effectively address Student's attentional issues within the classroom, his executive functioning/ organizational issues and social pragmatic issues even when he received A's and B's, as discussed herein. Belmont's argument, that it has fulfilled its responsibility toward Student though it's DWCAP²¹, is not persuasive.

I therefore find that Student requires special education and related services in addition to accommodations in order to make effective meaningful progress in all of his areas of need as described above. He is eligible for an IEP and Belmont shall therefore draft an IEP that is reasonably calculated to offer Student a FAPE and which reflects the recommendations made at Hearing by Parents' evaluators, except as follows.

In her report, Dr. Pliner recommended a one-to-one aide to help Student stay focused in class and to assist with transitions in the classroom and between classrooms. At Hearing, she changed this recommendation and testified that Student only required the one-to-one assistance between classes to ensure that he went where he was supposed to and arrived there on time. Given Belmont's six day cycle schedule, Student should receive assistance in the form of a cue or reminder, or any other manner in which the Team deems appropriate, in order to help him with the difficulties that the six day schedule poses for him. He does not

²¹ M.G.L.c.71 §38Q½ establishes the following requirement for school districts in Massachusetts:

A school district shall adopt and implement a curriculum accommodation plan to assist principals in ensuring that all efforts have been made to meet students' needs in regular education. The plan shall be designed to assist the regular classroom teacher in analyzing and accommodating diverse learning styles of all children in the regular classroom and in providing appropriate services and support within the regular education program including, but not limited to, direct and systematic instruction in reading and provision of services to address the needs of children whose behavior may interfere with learning, or who do not qualify for special education services under chapter 71 B. The curriculum accommodation plan shall include provisions including teacher monitoring and collaboration and parental involvement.

require assignment of a one-to-one aide however. Such a service would unnecessarily stigmatize Student who has otherwise demonstrated an interest in appearing like any other typical student.

Parents have met their burden of persuasion pursuant to *Shaffer*, that Student is eligible to receive special education and related services through an IEP that is reasonably calculated to offer Student a FAPE in the least restrictive environment.

ORDER:

1. Student is appropriately placed within the public school setting and is entitled to an IEP. Belmont shall convene the Team to draft an IEP that addresses Student's behavioral/ attentional, social pragmatic, executive functioning, emotional needs, and occupational therapy needs.
2. Student does not require the services of a one-to-one aide.

By the Hearing Officer,

Rosa I. Figueroa
Dated: July 15, 2013

July 15, 2013

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

BELMONT PUBLIC SCHOOLS

BSEA # 1305177

BEFORE

**ROSA I. FIGUEROA
HEARING OFFICER**

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