

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

In Re: Student v.
Newton Public Schools

BSEA # 1408637

CORRECTED 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.

Parent requested a hearing in the above-referenced matter on May 16, 2014. Thereafter, the matter was continued at the request of the Parties on several occasions. A pre-hearing conference was held on August 25, 2014, after which Hearing dates were again scheduled and continued at the request of the Parties.

On January 20, 2015, the Parties entered a Stipulation of Facts so as to dispense with the testimony of three Newton Public Schools' witnesses. Said Stipulation of Facts has been incorporated into the Facts section of this Decision. The Hearing was held on January 21, 22, 23 and February 4, 2015, before Hearing Officer Rosa Figueroa. Those present for all or part of the proceedings were:

Student's Parent

Ouida C. M. Young, Esq.	Attorney for Newton Public Schools
Jill M. Murray, Esq.	Attorney for Newton Public Schools
Judy Levin-Charns	Assistant Superintendent for Student Services, Newton Public Schools
Tracey Hatch	Assistant Director of Elementary Special Education, Newton Public Schools
Maura McLaughlin Tynes	Director of Elementary Special Education, Newton Public Schools
Kristie Koppenheffer, MD	Pediatrician
Larissa Morlock	Private Psychologist
Marcela Ahlberg	Fifth Grade Teacher, Newton Public Schools
Kimberly Meredith	Fifth Grade Special Education Teacher, Newton Public Schools
Brigitte Mercedes	Neuropsychologist
Jane MacNeil	Sixth Grade Special Education Teacher, Newton Public Schools
Amy L. Geer	Assistant Principal for Student Services, Newton Public Schools
Chuck Bunting	English and Social Studies Teacher, Newton Public Schools
Alissa Talamo	Neuropsychologist
Janelle Bradshaw	Parent's Friend and Educational Advocate

Tierney Leary	Special Education Teacher, Newton Public Schools
Laura Sack	Math and Science Sixth Grade Teacher, Newton Public Schools
Catherine Oliver	Guidance Counselor, Newton Public Schools
Leonard Rappaport, M.D.	Chief Division of Developmental Medicine Clinic, Children's Hospital
Susan Hooper Welch	Literacy Specialist, Newton Public Schools
Carol Kusinitz	Doris O. Wong Associates Inc., Court Reporter
Linda Walsh	Doris O. Wong Associates, Inc., Court Reporter

The official record of the hearing consists of documents submitted by Parent marked as exhibits PE-1 through PE-65, PE-67, PE-70, PE-71 and PE-72¹, and documents submitted by Newton Public schools (Newton) marked as exhibits SE-1 through SE-40² and SE-44 through SE-48; recorded oral testimony, and written closing arguments. Having granted Parent's request for an extension of time to submit written closing arguments (received via email on March 26, 2015), the Parties' written closing arguments were received on April 20, 2015. As such, the record closed on April 20, 2015.

ISSUES FOR HEARING:

1. Whether Newton violated Parent's and Student's procedural due process rights, starting in March of 2012?
2. Whether Student was eligible to receive special education services starting in May 2012?
3. Whether the IEP proposed by Newton for the April 2014- to April 2015 IEP³ was reasonably calculated to offer Student a free, appropriate public education (FAPE), and allowed her to make meaningful effective progress in the least restrictive setting (LRE)? If not;
4. Whether as a result of Newton's procedural and substantive transgressions it is responsible to offer Student compensatory services, that is, fund Student's placement at the Carroll School or at Landmark School starting immediately?

POSITIONS OF THE PARTIES:

Parent's Position:

Parent asserts that Newton should have found Student eligible to receive special education services since 2012 and states that failure to do so prejudiced Student educationally. To this effect, Parent asserts numerous procedural due process violations by Newton which she argues entitle Student to compensatory services and damages as a result of their denial of FAPE. Parent also challenges Newton's assertions that Student was making effective progress as stated by her teachers in third, fourth, fifth and sixth grades. According to

¹ PE-14A was admitted in evidence, PE-66 was excluded, and PE-68, PE-69 were only marked for identification.

² SE-41, SE-42, SE-43 and SE-49 were marked for identification only.

³ This Hearing and Decision does not include Student's IEP for the 2015-2016 school year.

Parent, Student is functioning below her cognitive abilities due to a language learning disorder and ADHD-inattentive type which negatively impact Student's executive functioning and organization skills. Moreover, Parent asserts that Student presents with severe anxiety and depression both of which also impact her school work. She states that Student's dislike of school has increased and Parent does not believe that Newton can continue to meet Student's needs. Parent raised additional peripheral issues regarding failure to provide Student the recommended assistive technology equipment and also, failure to offer extended school year services.

Parent seeks public funding for private placement of Student at the Landmark School or the Carroll School by no later than seventh grade.

Newton's Position:

Newton asserts that Student has been appropriately educated and served in Newton. In contrast to Parent's assertions, it denies the numerous procedural violations and argues that any violation on its part was *de minimus* and did not deny Student a FAPE. The district states that objective testing and evaluation results show that Student has been making effective progress since the second grade. Newton notes that it has at all times been responsive to Student's needs and states that it has offered Student the necessary supports and services whether through RTI, Section 504 accommodations and/or IEPs.

Newton also asserts that it has a wide variety of programs and services in district that can be made available to Student, states that because of her solid intellectual and cognitive capacity, as well as the fact that she can access grade level curriculum successfully, she belongs in the public school. Newton argues that at this point, private placement is overly restrictive for Student.

FINDINGS OF FACT:

The Facts Section in this Decision is divided into two parts; the first part reflects a Stipulation of Facts submitted by the Parties as a joint exhibit, and the second part reflects findings entered by the Hearing Officer. Regarding the Stipulation of Facts, Newton specifically notes that it "agree[s] to the accuracy of the facts and statements attributed to Dr. Luann Keaogh, Katrina Fleming and Elizabeth Backer". Newton however states that it does not agree to the characterization of such facts or statements (made by the three individuals mentioned *supra*), or that such facts or statement constitute procedural or substantive due process errors on its part.⁴ With the aforementioned caveats, I adopt the Stipulation of Facts accordingly and rely on them in rendering this Decision.

⁴ Newton further stated that the "Stipulation of Facts does not apply to any facts or statements pertaining to the Petitioner's request for a publicly funded IEE which was the subject of *In Re: Newton Public Schools*, BSEA # 1300077".

Part I- Stipulation of Facts by the Parties:

A. Request For Core Evaluation in 2012

On March 15, 2012, Parent met with Student's third grade teachers at the Elementary School in Newton MA. Student has historically struggled with various subjects, including reading, writing, and math since transferring to Newton in 2009. On March 15, 2012, during a meeting with Student's teachers, after receiving a self-evaluation from Student and her teachers (see Exhibit A, Student's Self Evaluation), Ms. Backer and Ms. Fleming, Student's Fall 2012 Progress Report (see Exhibit B, Fall Progress Report), and becoming aware on her own that Student failed a mathematical test multiple times in a row, Parent requested a CORE evaluation and an occupational [therapy] evaluation in light of historical writing difficulties.

At the conclusion of the meeting with Student's teachers, Parent received a packet of documents relating to the CORE evaluation request, which was executed and returned on March 15, 2012. On the evening of March 20, 2012, Parent received an Evaluation Consent Form (one page document) ("Consent Form") (see Exhibit C, Consent Form), which was executed and returned on the morning of March 21, 2012, directly to Student's teachers. Parent, then, received an email on March 22, 2012, providing notice of the eligibility meeting, which was solidified on March 26, 2012; the eligibility meeting was scheduled to take place on May 15, 2012, at 8:30am (see Exhibit D, Scheduling of Eligibility Meeting). On May 11, 2012, Parent received an email from Ms. Backer indicating that she would provide the evaluation reports to Parent on Monday morning, May 14, 2012 – less than 24 hours prior to the eligibility meeting. See Exhibit E, May 11, 2012, Email From Ms. Backers Regarding Reports.

At approximately 8:45am on May 14, 2012, Parent received a package of materials from Ms. Backer, which included the following reports: a) Psychological Evaluation (see Exhibit F, Draft Psychological Evaluation), 2) Occupational Therapy Evaluation (see Exhibit G, Occupational Therapy Evaluation, 3) Educational Evaluation (see Exhibit H, Educational Evaluation), and 4) Developmental and Social History (see Exhibit I, Developmental and Social History). Two of the reports which were received on May 14, 2012, were incomplete – the Psychological Evaluation and the Educational Evaluation. Upon receipt of the package, Ms. Backer informed Parent that the Educational Evaluation was incomplete and that she had forgotten to administer an additional math test. She indicated that she would conduct the additional test during the school day – less than 24 hours prior to the eligibility meeting. A few hours later after receiving the package of evaluation, Parent received a phone call from Dr. Keough; she stated that she had just noticed that the psychological report was incomplete and would send a completed supplemental report home with Student. Parent received the supplemental psychological evaluation report at 4pm. See Exhibit J, Supplemental Psychological Evaluation.

After reviewing the evaluation, Parent sent an email to Ms. Backer summarizing some of her concerns regarding missing information in the packet she received. See Exhibit K, May

14, 2012 email to Ms. Backer Regarding Missing Information. Specifically, she pointed out that the Educational Assessment was missing from the packet and information relating to Student's present reading level, level of reading comprehension, fluency rates, and writing level was not included in any of the reports provided. Id. Parent also requested a copy of Student's most recent written work and a copy of an exemplar which was used to grade the written work against. Id. She also requested to see a copy of Student's writing passage, which was produced through the CORE evaluation process and the criteria which was being used to assess the passage. Id. Parent expressed her disappointment with receiving the reports less than 24 hours prior to the eligibility meeting and indicated in the email that she received two incomplete reports. Id. Parent never received a response.

Parent was never provided a copy of the written product nor the criteria used to assess the written product. Instead, she was provided with a sample of Student's finished class work two days following the eligibility meeting, which was attached to the Educational Assessment A and B, which was never provided prior to or during the eligibility meeting. See Exhibit L, Writing Sample. Moreover, even though requested, Parent never received any information regarding the process by which the written product was completed (i.e., brainstorming process, amount of time needed to complete the work, assistance needed to complete the work, etc.). Additionally, Parent never received a copy of the following reports: the classroom observation and school history, Newton also failed to provide Parent a copy of the Procedural Safeguards until the eligibility meeting on May 15, 2012.

Parent received a supplemental Educational Evaluation from Ms. Backer during the eligibility meeting on May 15, 2012. See Exhibit M, Supplemental Educational Evaluation. The report that was provided was not signed by Ms. Backer and the report failed to include key information, including score norms for the mathematical assessment. Id.

B. May 2012 CORE Evaluation Meeting

On May 15, 2012, an eligibility meeting was convened to discuss the results of the evaluations. The following individuals were in attendance at the meeting: 1) Parent, 2) Ms. Backer, 3) Ms. Fleming, 4) Dr. Keough, 5) Dr. Golder, 6) Ms. Nicole Morse (Sylvan Learning Specialist), and 7) Mrs. Janelle Bradshaw (advocate) (collectively, "the Team"). See Exhibit N, Attendance Sheet. During the meeting, the team discussed the Occupational Therapy results. Specifically, Dr. Golder stated that based on her evaluation, Student was not eligible for services. However, she recommended the use of pencil grips and/or easel, the use of a laptop for sustained writing projects, and beneficial software tools. See Exhibit G.

The Team also discussed Student's progress in the 3rd Grade thus far and general observations. Her teachers indicated that Student was progressing in the general classroom setting, provided information regarding Student's benchmark scores in reading, shared a writing sample that was completed in class, and stated that Student generally fell in the "average" category in writing compared to all other third graders at Memorial Spaulding. Her teachers were unable to articulate the benchmarks expected at the beginning of fourth grade nor were they able to articulate the standards in which written work is generally graded

against. [The Team] also briefly discussed challenges associated with Student taking tests under timed restrictions, issues with Student's writing – specifically legibility and the ability to use proper spelling, capitalization, and punctuation. All in all, with the exception of the challenges associated with timed tests and Student's writing challenges, the information presented was inconsistent with information discussed during parent/teacher conferences and general check-ins throughout the school year, including, but not limited to areas associated with automaticity and retention of information, mathematical calculations and difficulty with addition and subtraction, fluency, and reading comprehension. The issues in reading comprehension, fluency, writing and spelling/vocabulary (recognition of site words) were confirmed by Ms. Morse from *Sylvan Learning Center* who had been working with Student since 2010. The ultimate conclusion from Student's teachers was that Student was not eligible for services because of her satisfactory progression in the general educational setting. See Exhibit M. Despite this conclusion, Ms. Backer articulated a number of recommendations for Student, including untimed test taking, use of a keyboard for sustained writing activities, various computer software tools, use of dotted lined paper, use of multisensory strategies in all areas, and the use of graphic organizers. *Id.* (emphasis added).

After Ms. Backer and Ms. Fleming provided information regarding Student's progression in the general classroom setting and the findings of the academic evaluation, Dr. Keough briefly discussed her observations and findings. Although not indicated in the report, Dr. Keough stated that the testing was administered in a one to one setting, like all other tests that were administered. She also indicated that she did not find any issues with Student and found, instead, that Student had a number of strong skills. When asked about social/emotional and executive function[ing] issues that has been observed outside of the school by both Parent and Ms. Morse and identified in the report as concerns from the parent, Dr. Keough responded that there was no concern in either area because it seems as though Student was not exhibiting the same types of behaviors during the school day and seemed to be functioning well during the school day. She also briefly discussed Student's Rey-Osterrieth Complex Figure Test ("Rey") results. The Rey is a neuropsychological assessment which evaluates memory, attention, planning and working memory (executive functions), which requires an examinee to reproduce a complicated line drawing, first by copying it, and then from memory. Dr. Keough also allowed Team members to briefly review Student's drawing which she created as part of the testing. After reviewing her drawings, Mrs. Bradshaw commented that the drawing provided key feedback relating to various areas, including Student's comprehension skills. However, Dr. Keough had difficulty with answering direct questions regarding the Rey and describing the process by which Student completed the testing.

When it was evident that the Team was not in agreement as to whether Student had a disability or not, Parent and Mrs. Bradshaw stated that they wanted documentation that Parent was not in agreement with the position taken by the other Team members and there

was discussion regarding whether an extended evaluation was appropriate.⁵ Parent indicated that a speech and language evaluation should be considered. Additionally, Mrs. Bradshaw and Parent stated that an assistive technology evaluation may be necessary given the recommendations in the reports regarding access to a laptop and various types of software. At the conclusion of the meeting, Parent stated that she wanted an independent evaluation because she disagreed with the “Team” decision that Student did not have a disability and also questioned the validity of the findings, making an independent evaluation necessary.⁶ See Exhibit O, Special Education Eligibility Form and Team Meeting Summary. Additionally, at the conclusion of the meeting, both Parent and Mrs. Bradshaw inquired about Educational Assessment Part A and Part B. In response to this very specific question and despite it being a required element to the CORE evaluation process (as Parent consented to), Ms. Backer stated that NPS was not required to complete this particular assessment because the request for a CORE evaluation came directly from [Parent], and not from the general education teachers. She further stated that if the request came directly from the general education teachers, this assessment would have been completed and submitted to Parent along with the other evaluation reports. It was clear based on this response that Educational Assessment Part A and Part B had not been completed prior to the eligibility meeting on May 15, 2012.

C. Post CORE Evaluation Meeting

Two days after the eligibility meeting, on behalf of Newton, Ms. Backer issued form N2 – Massachusetts DOB/Notice of School District Refusal to Act – Revised 06/11/2011 (“Notice”) on Thursday, May 17, 2012, indicating that the school district did not intend to act because there was a finding of no eligibility. See Exhibit P, May 17, 2012, N2 Notice. The Narrative Description of School District Refusal to Act (“Description”) specified that Newton completed an assessment in the areas of academic, psychological, and occupational therapy and did not find any evidence of a disability that affected Student’s school performance. Included in the same package was a copy of the Educational Assessment Parts A and B, which was dated May 14, 2012, and Student’s in-class writing sample. See Exhibit P, Educational Assessment Parts A and B and Writing Sample. In response, Parent stated that the N2 failed to include information regarding an independent evaluation, speech and language evaluation, and an assistive technology assessment. Parent submitted a letter to Newton on May 22, 2012, June 12, 2012, and June 29, 2012, requesting a publicly funded independent evaluation. See Exhibit Q, Emails Dated May 22, 2012, June 12, 2012, and June 29, 2012. Parent subsequently filed a request for hearing with the Board of Special Education Appeals (“BSEA”), which included a list of due process violations and the denial of a publicly funded independent evaluation. Prior to the hearing, although issues relating to due process violations were presented to the BSEA, the Parties agreed to limit the issue to

⁵ At this point during the meeting, several individuals outside of the Team came into the conference room and requested that the meeting quickly wrap up because it was running later than scheduled, and another meeting was scheduled to start right at 9:30 a.m.

⁶ It should be noted that during the discussion regarding the type of disability at issue here, Mrs. Bradshaw indicated that based on the information presented, it appeared as though Student would fall under the category of “specific learning disability.” The school Team disagreed with this position.

whether Newton was obligated to publicly fund the independent evaluation with the understanding that Parent would not be foreclosed from being heard on the due process issues at a later time. The BSEA issued a decision on February 6, 2013. See Decision from BSEA.⁷

Part II- Findings of Fact by the Hearing Officer:

1. Student is an eleven-year-old sixth grader who resides in Newton, MA. (Parent). She has been described as a sweet, friendly, cooperative shy student, who in the early years aimed to please and was motivated to do well. In the past year, Student has displayed increased anxiety which is impacting her academic performance and life. She also carries a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD), and a specific learning disability (dyslexia). She has a history of irregular eating and sleeping patterns, headaches and stomachaches, and is also experiencing hair loss (PE-14B; Mother).
2. At present, Student receives educational services at Oak Hill Middle School in Newton (SE-13).
3. Student began attending Newton in first grade, 2009. At that time she appeared to be behind her academic peers in literacy and phonics (PE-1I).
4. Beginning in June 2010, Student received between five and ten hours, private weekly support through *Sylvan Learning Center* to address her writing, decoding, reading fluency, and reading comprehension issues (PE-14B; Parent).
5. In second grade (2010-2011), Parent became concerned that fine motor challenges impacted Student's writing and classroom productivity. Parent requested that an occupational therapy (OT) observation of Student take place. Student was observed by Barbara Golder, OTR/L, who later consulted with Student's teacher, Amory Bliss, to address Student's letter formation difficulties and pencil grip. Overall, according to Parent, second grade was a good year for Student (PE-1I; PE-T).
6. Student's 2009 through 2011 (first and second grade) English language arts (ELA) teacher assessments show that while initially performing below benchmark levels in several areas, with monitoring and interventions to address deficits with sight word recognition and decoding of CVC words, Student was able to independently meet performance benchmark criteria by November of her second grade (PE-16B; PE-16C).⁸ At that point she was exited from the intervention group and was provided with reading instruction in a co-taught general education classroom for the remainder of second grade (PE-1Y; PE-14C; PE-2).

⁷ Taking several of the procedural violations into account the BSEA ordered public funding for the independent educational evaluation of Student. See *In Re: Newton Public Schools*, BSEA # 1300077 (Berman, 2013).

⁸ See also Student's work product at PE-17.

7. In third grade, Student participated in a co-taught classroom with 26 students, a full-time general education teacher, a special education teacher, and a classroom intern (PE-1H; PE-1M). Elizabeth Backer and Katrina Flemming were Student's third grade teachers in the co-taught classroom (PE-1H; PE-1M).
8. Third grade Progress reports (2011-2012) show that Student was demonstrating personal and social growth. Academically, Student was demonstrating the targeted degree of proficiency and was found to be making satisfactory progress in ELA, History/Social Studies, Mathematics, Science/Technical Engineering, Music, Art, Physical Science, Physical Education/Health and Wellness, despite reports of weaknesses in writing and math. Student's attendance in third grade was good (PE-14C; PE-16A).
9. In March 2012, Parent referred Student for a special education evaluation which included cognitive, academic and occupational therapy assessments (PE-3). She signed the Evaluation Consent Form on March 21, 2012 (PE-14B; PE-1C; PE-4).
10. The psychological evaluation was performed by LuAnn Keogh, Ph.D., Isabelle Eccies, B.A. and Katelyn Goddard, M.A., in four sessions between April and May 2012 (PE-1F; PE-1J). Student was eight years, nine month old at the time of this evaluation (PE-1F; PE-1J; PE-10A; PE-10B; PE-10C). The Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV), Wide Range Assessment of Learning and Memory-Second Edition (WRAML-2), Achenbach System of Empirically Based Assessment (ASEBA) Parent and Teacher Forms, Behavior Rating Inventory of Executive Functions (BRIEF), a child interview and a review of the educational records all formed part of the psychological evaluation. Portions of the WISC-IV were administered by Dr. Keogh and others by Ms. Goddard, while the WRAML-2 and the Rey Osterrieth were administered by Ms. Eccies but Dr. Keogh reviewed all of the scoring and provided the scoring interpretation (PE-10D). Additionally, Dr. Keogh and Ms. Eccies, were responsible for the Student observation portion of the evaluation (PE-10E). Student displayed good attention, persistence and effort, and appeared motivated to do her best. Student benefitted from multiple exposures to verbal information and from ample time to analyze abstract visual information before being asked to recall it. Overall, Student demonstrated many solid, age appropriate skills. Recommendations included, providing Student with an explanation of her learning style and notes that she would benefit from extra time to process information that required integration of skills and concepts (PE-1F; PE-1J; PE-10A; PE-10B; PE-C).
11. The OT evaluation was conducted by Ms. Golder, on April 12, 2012. She administered the Bruininks-Oseretsky Test of Motor Proficiency-BOT2, teacher questionnaire, Developmental Test of Visual Perception (DTVP-2), Screener of Handwriting Proficiency and performed clinical observations of Student. Student, who had a history of inefficient pencil grip, performed within the average/well above-average range in all of the standardized tests. Because of her pencil grip, the evaluator thought it possible that the quality of her handwriting could diminish on lengthier assignments. While recommendations such as handwriting warm-ups, use of an editing checklist, access to a computer typing program and

use of a computer or laptop for lengthier assignments, were thought to be helpful to Student, OT was not recommended (PE-1G; PE-9)

12. Ms. Backer performed Student's educational evaluation on May 1 and May 10, 2012 (PE-1H; PE-8A; PE-8B). She administered the Wechsler Individual Achievement Test, Third Edition (WIAT III) in which Student scored in the average or superior range for listening comprehension, oral discourse, comprehension, alphabet writing, numerical operations, oral word fluency, and essay; and below average for math fluency: subtraction and sentence repetition. Ms. Backer noted that Student may benefit from untimed testing when assessing her understanding of a skill or concepts, access to a keyboard for sustained writing activities, using dotted lined paper and modeling for letter formation, multisensory strategies, repetition, use of graphic organizers, and nonverbal cues for graphics to address hand writing and punctuation (PE-1H; PE-8; PE-8B; PE-8C; PE-8D).
13. Sally Mazur, LICSW, completed a developmental and social history in April 2012. By parental report, Student had difficulty with sight words and avoided or became frustrated with reading, and with retaining math concepts. The report notes that Student had received early literacy private tutoring services at *Sylvan Learning Center*, which according to Parent, had not been effective (PE-1I; PE-1F; PE-1J). Student had undergone surgical intervention in 2011 to address a "trigger thumb". Parent reported that third grade had been difficult for Student especially around homework completion, and also regarding difficulties with writing, reading and reading comprehension (PE-1I).
14. Ms. Mazur's report states that Student was well adapted socially and made friends easily; she was adapting well to changing family circumstances; and, was involved in competitive gymnastics and dance (PE-1I; PE-7).
15. An email communication between Parent and Ms. Backer dated May 11, 2012, communicated that Student's Team would be held on May 15, 2012 as evaluations would not be ready earlier (PE-1D; PE-5). On May 11, 2012, Parent was notified that the evaluation reports would be ready for her the Monday before the Team meeting (PE-1E). In an email communication from Parent to Ms. Backer dated May 14, 2012, Parent acknowledges receipt of the evaluation reports except for the math assessment by Ms. Backer which had not been completed and would be taking place that day (PE-1K).
16. The 2011-2012 school year, third grade progress reports note that Student was making satisfactory progress and demonstrating the targeted degree of proficiency at mid-year (PE-1). Student's writing samples can be found at PE-1L.
17. Student's eligibility Team meeting convened on May 15, 2012. Present at the meeting were: Parent, Ms. Backer, Ms. Fleming, Ms. Keough, Ms. Golder, Nicole Morse from *Sylvan Learning Center*, and Janelle Bradshaw, a family friend⁹ (PE-1N; PE-6A). The available

⁹ Ms. Bradshaw has worked as project manager at SchoolWorks, LLC since 2013. She is a former Cambridge Public Schools Director of Instructional policy and School Principal. Prior to that, she was a regular education 4th

evaluation report and feedback from the classroom teachers and Parent were discussed. Since the school-based participants opined that Student was making effective progress in school, she was not found eligible to receive special education services (PE-1L; PE-1N; PE-1O; PE-1P; PE-1V; PE-1W; PE-6B; PE-11A; PE-11B; PE-11C).

18. After receiving Newton's Notice of School District Refusal to Act (N2) on May 17, 2012, Parent wrote to Newton on May 22, 2012, requesting an independent educational evaluation, an opportunity for an educational consultant to observe Student in the classroom before the end of that school year, and she further inquired about an assistive technology assessment discussed at the meeting (PE-1Q; PE-P; PE-1R; PE-12A).
19. On May 29, 2012 Newton responded to Parent's May 22, 2012 letter noting receipt of Parent's letter, acknowledging her concerns and offering additional explanations. Newton acknowledged Parent's request for an assistive technology evaluation and explained that Newton's recommendation that Student have access to a computer was a regular education accommodation (PE-1S; PE-12B). Newton further acknowledged that,

... a copy of the Educational Assessment: Parts A and B was received by [Parent] on May 17, 2012. Ms. Backer clarifies that she misunderstood [Parent]'s inquiry on May 15, 2012 regarding the Educational Assessment. When [Parent] asked if there was a general education report, Ms. Backer misunderstood that she was asking for the Educational Assessment A and B. In Ms. Backer's previous district, Educational Assessments A and B were not sent home with the special education records to parents ahead of time and she was not aware that it was the practice in Newton Public Schools to include these assessments in advance of the meeting. The Educational Assessment forms A and B were sent home to the parent (PE-1S; PE-12B)

Newton also proposed to conduct an extended evaluation of Student on May 30, 2012 to further assess Student's writing processing speed and memory, and forwarded an Extended Evaluation Form (PE-1S; PE-12C).

20. Parent wrote to Newton's Superintendent of Schools on June 7, 2012, communicating her dissatisfaction with the Team evaluation process, and requesting a meeting (PE-1W). The same date Ms. Bradshaw conducted an observation of Student in her third grade classroom, however, she noted that a true co-teaching model had not been observed as the general education teacher had been absent on that day (PE-13A). Ms. Bradshaw noted that the co-teaching model was beneficial for Student who displayed distractibility during the observation. She also recommended the use of multi-sensory approaches, repetition, preview and review of material, comprehension strategies and also, access to technology to address handwriting concerns (PE-13A).

and 5th grade teacher in Boston Public Schools. She holds no special education degrees or certification, and has no experience in special education (PE-13A; Bradshaw).

21. On June 11, 2012, Parent renewed her request to receive records regarding Student, highlighting specific records (PE-1Q). Parent wrote to Newton again on June 29, 2012, providing her summary of the Team meeting and also wrote to Ms. Backer raising questions and concerns regarding the meeting (PE-1Q; PE-1W). In her communication to Ms. Backer and Ms. McManus, Parent identified her friend, Janelle Bradshaw, as her “independent educational consultant” (PE-1W).
22. Newton wrote to Parent on June 14, 2012, responding to Parent’s request for neuropsychological evaluation (which evaluation the district had not conducted as part of the initial evaluation), and suggesting that David Gotthelf, Coordinator of Therapeutic Services and neuropsychologist evaluate Student (PE-1U). On June 15, 2012, Newton forwarded the evaluation consent form to Parent (PE-12D).
23. Student obtained a Proficient score (248) in English Language Arts, on the 2012 MCAS, but placed in the Needs Improvement range (score of 238) in Mathematics (PE-38A).
24. Dr. Brigitte Mercedes, neuropsychologist (CV at PE-14A), performed an independent evaluation of Student on June 8 and 14, 2012, the end of Student’s third grade, to obtain a cognitive and academic profile and ascertain Student’s strengths and weaknesses. Student was eight years old at the time of this evaluation. Each of the testing sessions lasted three to four hours in length. Student was compliant and became increasingly more engaged as rapport with the evaluator increased (PE-14B; Mercedes). According to Dr. Mercedes:

[Student’s] activity level and impulse control were generally well-regulated during the evaluation (i.e., structured, one to-one-setting), though she became fidgety and responded impulsively at times. [Student] was alert and able to sustain attention with appropriate breaks to accommodate for snacks and lunch. She initiated conversation appropriately and demonstrated a great sense of humor. [Student] appeared to be at ease and comfortable during the assessment process. Throughout testing, which included a variety of tasks, [Student] responded promptly to the examiner’s requests, and followed directions. At times, she required repetitions and/or clarifications of instructions. On the whole, [Student] exhibited a positive attitude and put forth a consistent level of effort. She remained engaged despite the increasingly challenging nature of the test questions and demonstrated no signs of frustration during testing. When she encountered difficult test items, [Student] attempted to respond but did not hesitate to indicate that she did not know the answer. She was friendly, relaxed, and a pleasure to work with (PE-14B; Mercedes).

As such, the results of the evaluation were deemed to be a valid and accurate reflection of Student’s functioning (PE-14B; Mercedes).

25. Dr. Mercedes evaluation included the Behavior Assessment Scale for Children, Second Edition (BASC-2) including the Structured Developmental History; Behavior Rating

Inventory of Executive Functioning (BRIEF); Conners, Third Edition (Conners-3); Delis-Kaplan Executive Function System (D-KEFS); Gray Oral Reading Test – fourth edition (GORT-4); Multidimensional Anxiety Scale for Children (MASC); NEPSY – II: Developmental Test of Neuropsychological Assessment (NEPSY-II); Neuropsychological Processing Concerns Checklist for School Age Children and Youth (NPCC); Piers Harris Children’s Self Concept Scale, Second Edition (Piers-Harris 2); Woodcock – Johnson III, Test of Achievement –Normative Update (WJ III-ACH NU); Woodcock – Johnson III, Test of Cognitive Abilities –Normative Update (WJ III-COG NU); Wide Range Achievement Test, 4th edition (PE-14B).

26. Student demonstrated well developed metacognitive skills with a slightly higher ability for self-correction and monitoring of responses than other same aged peers, but by Parent report, she displayed significant metacognitive weaknesses outside school. Dr. Mercedes found that Student, presented with attentional issues in the clinically significant range suggesting the presence of ADHD and executive functioning deficits. When comparing Parent and teacher rating scales, regarding attention and executive functioning issues, Parent reported higher concern levels. Visual-spatial, sound discrimination and auditory/phonological processing and oral expression, fell within the average range and were found to be age-appropriate. Student displayed variability in her verbal abilities, ranging from below to superior expectations for her age. She displayed weaknesses in verbal fluency as well as in her ability to retrieve the information. Student’s receptive language skills however, were found to be average (PE-14B; Mercedes).
27. On August 29, 2012, Dr. Kristie A. Koppenheffer, (PE-15A) Student’s primary care pediatrician since 2003, treating Student for back, wrist and ankle injuries sustained as a result of her participation in gymnastics over the years. Dr. Koppenheffer wrote a note raising two potential areas of concern that had been identified by Dr. Mercedes, those where: anxiety disorder NOS, and attention deficit disorder, predominantly Inattentive Type. Dr. Koppenheffer noted that Student’s anxiety was being addressed through outside cognitive behavioral therapy and further noted that Student may require school-based services to address the aforementioned issues (PE-15; Koppenheffer). This letter was not shared with Newton until the exhibits were exchanged prior to Hearing in 2015.
28. Dr. Koppenheffer began noticing changes in Student’s presentation in May 2012, when she had become upset about getting a vaccine. By parental report, Student was not liking school and found academics stressful (Koppenheffer).
29. Student’s Team reconvened on September 6, 2012 to discuss the results of Dr. Mercedes’ evaluation. Present at the meeting were Parent, Ms. Backer, Ms. Golder, Ms. Fleming, Dr. Keough, Liza McManus (school principal), Hillary Sullivan (special education teacher), JoAnne Kazis (fourth grade teacher), Dr. Mercedes, Maura Tynes (Director of Special Education, Elementary School) and Ms. Bradshaw (PE-18A; PE-18C). Parent was handed the Notice of Procedural Safeguards: Parents Rights Brochure at this meeting (PE-18B). Newton proposed to conduct an Assistive Technology Evaluation and provided Parent with an Evaluation Consent Form, which Parent signed on September 10, 2012 (PE-19A). In the

meantime, the Team further agreed to implement classroom accommodations through an ICAP (PE-20). Student's teachers noted that she was making progress and was able to access the curriculum. Dr. Mercedes opined that Student was benefiting from the co-taught classroom and accommodations. She further testified that the Team was receptive to her recommendations (Mercedes). As a result, the Team did not find Student eligible to receive special education services and instead proposed to meet on September 20, 2012 to consider Student's eligibility for a Section 504 plan (SE-20; Tynes¹⁰).

30. The Assistive Technology Assessment was conducted by Karen Janowski, MS Ed, OTL, Assistive Technology Specialist, on October 25, 2012. She recommended that Student have access to a computer for writing activities and use Microsoft Word and Google Docs for spell checks; access to electronic graphic organizers; further discussion regarding development of keyboarding skills and encouraging student to use text-to-speech. Ms. Janowski noted that it may be necessary to modify the recommendations as work demands changed in fifth grade and middle school (PE-22). The result of the Assistive Technology Evaluation was discussed at a Team meeting on November 5, 2012 (PE-23). The Team however, did not find Student eligible to receive special education services but agreed that the evaluation should be discussed at a Section 504 meeting scheduled for November 2012 (PE-24).

31. At the September 20, 2012 meeting, Student was found eligible to receive Section 504 accommodations to address her emotional and health related issues. The resulting Section 504 plan included accommodations for participation in MCAS, school-based organizational skills support, meeting with the social worker, as well as numerous other in-class strategies and accommodations. The group agreed to reconvene six weeks later to assess Student's progress (PE-21A; PE-21B). When the group met on November 20, 2012, they noted that:

[Student] would also benefit from a better understanding of what interferes with her learning so that she can learn about her strengths and weaknesses, feel good about her competencies, and gain confidence in advocating for herself by asking questions and asking for help. [Student] will participate in Just Words spelling intervention (RTI) during fourth grade (PE-21C).

32. A medical report by Dr. Leonard Rappaport, Developmental Medical Center, dated December 24, 2012, notes that although her medical evaluation is normal, Student had suffered headaches for a number of years and recurrent stomachaches. Dr. Rappaport mentions a history of developmental and learning difficulties noting that Student's testing suggests a remediated learning disability that is impacting Student. He opined that Student met criteria for ADHD-predominantly inattentive type, and notes that Parent described a history of anxiety which he could not conclude was Student's primary issue but was contributing to Student's attentional difficulties. He recommended placing Student on a

¹⁰ Maura Tynes was the Director of Elementary Special Education when Student attended fourth grade at Memorial Spaulding Elementary School in September 2012 (Tynes).

medication trial to address attentional issues and restarting her reading supports. His final diagnoses for Student were: 1. ADHD, 2. Anxiety, 3. Dyslexia (PE-29B).

33. During examination at Hearing, Dr. Rappaport agreed that a child may present with a language-based learning disability other than dyslexia. He noted that dyslexia could be remediated through interventions such as Orton-Gillingham or Wilson, but children could still have spelling difficulties. He opined that Student had remediated dyslexia but per the test results he reviewed, she continued to have spelling deficits, although her overall language functioning was very high. Dr. Rappaport testified that although attention medication was prescribed during short periods of time, Student was never placed on anxiety medication during the relevant periods covered by this Decision (Rappaport).
34. At Parent's request, received by the Team on February 4, 2013¹¹, Student's Team reconvened on February 25, 2013 to discuss Dr. Rappaport's report (PE-31A; PE-31B; PE-36B). Upon considering the report, the Team disagreed with Parent that there was evidence of a specific learning disability as claimed by Dr. Rappaport, but agreed to obtain additional information regarding the presence of a reading disorder. As such, Newton issued an Evaluation Consent Form for further testing (PE-31A; PE-31B). Parent signed the consent on March 7, 2013 (PE-31B). This Team once again considered the report of Dr. Mercedes' evaluation, as well as information from previous Newton assessments (PE-30).
35. On March 13, 2013, Susan Hooper Welch, M.Ed., Literacy Specialist, performed academic testing of Student in Newton to gain additional information regarding Student's then current performance in reading and related skills (PE-34). Ms. Hooper Welch testified that she was qualified to conduct the academic testing (Hooper-Welch). Ms. Hooper Welch administered the comprehensive test of Phonological Processing - (CTOPP), Test of Word Reading Efficiency, Form A- (TOWRE), Test of Written Spelling- TWS-3), and the Gray Oral Reading Test, Form B (GORT-4). She noted Student's difficulties in two areas: rapid naming, requiring monitoring and support in the area of reading fluency; and, "weaknesses in the area of spelling unpredictable or 'sight' words" also requiring support and monitoring (PE-34).
36. The Team reconvened on April 29, 2013 to conduct its annual review (PE-36A). The eligibility determination notes that Student had an emotional, a health, and a specific learning disability which impacted her reading fluency, written expression and math fluency and rendered her eligible to receive special education services (PE-35A; PE-35B; PE-35C). This IEP, per the service delivery grid, offered Student services in a co-teaching/integrated classroom inclusive of the following specialized instruction: Grid A: a fifteen minute weekly consultation between the special education teacher and the Team; Grid B: two, 30 minute sessions per week written expression services by the special education teacher; twice per week, 30 minute organization sessions with the school psychologist, and two, 15 minute

¹¹ In light of Dr. Rappaport's findings, Parent requested that the Team immediately consider whether Student should be on an IEP instead of a Section 504 plan and whether Student required additional services. Parent further requested additional information regarding Student's benchmarks starting with the 2011-2012 school year (PE-36B).

mathematics sessions per week; Grid C: Student was offered two, 30 minute sessions per week reading instruction with the special education teacher. These services were designed to address Student's reading fluency, mathematics, written expression and organization goals (PE-36A). The April 2013 Team did not reach a determination that Student presented with a specific learning disability (Hooper Welch). The proposed IEP was forwarded to Parent on or about May 30, 2013 (PE-36A; PE-36C).

37. Sometime in May 2013, Parent partially rejected the proposed IEP, suggesting numerous modifications and requesting a meeting for further discussion. Newton acquiesced and reconvened the Team during the beginning of June 2013 (PE-36C).
38. On or about June 18, 2013, Parent responded to the proposed IEP rejecting the placement and again requesting a meeting to discuss the proposed program and placement. Parent also wished to discuss additional modifications she suggested to the proposed IEP (PE-36A; PE-36C). Specifically, she requested: that the term "specific language disability" be added to the Justification for Nonparticipation section; that accommodations for district and state wide assessments be provided in all academic areas; that Student receive modified content for reading instruction; and that several modifications be made to the Additional Information section of the ensuing IEP, to wit:

[Student] will participate in additional sessions (4 x week) using computer-based reading fluency program related to her reading fluency goal.

[Student] will participate in small group instruction 2 x week (Just Words Program- including a description of the instructional technique, who would deliver the instruction, and how many students are in the group).

[Student] has been a student in a co-teaching program with a special education and regular education teacher for third and fourth grade.

[Student] will be able to meet with the school's social worker 1 x week for ___ amount of time to continue to address her anxiety and her self-image and anxiety in connection with her learning difficulties.

[Student] will be able to come 15 minutes prior to the start of school to assist with anxiety (PE-36A).

Parent also requested that the Service Delivery Grid be modified to reflect under the B Grid that Student meet with the school psychologist for organization twice per week for 30 minutes, and that she meet with the special education teacher fifteen minutes daily or thirty minutes three times per week to work on mathematics; and, under C Grid, that Student receive thirty minutes, four times per week reading instruction with the special education teacher (PE-36A).

39. Student's spring 2013 MCAS report shows that she obtained a Proficient score (240) in Mathematics and a score of 232, in the high Needs Improvement level for English Language Arts (SE-39).

40. Progress Reports for the 2012-2013 school year demonstrate that Student was making satisfactory progress, meeting the targeted degree of proficiency in almost every area (76 areas) with very few areas where she was making progress but not yet meeting expectations (6 areas) (PE-38B).
41. Student's Team convened on September 17, 2013, the beginning of Student's fifth grade, to review the rejected portions of the previous IEP (SE-21; PE-40; Hatch). Present at the Team were Parent, LuAnn Keough (school psychologist), Marcela Ahlberg (fifth grade teacher, CV at SE-37), Kimberly Meredith (special education teacher, CV at SE-36), Katy Dearborn (Team Specialist), Maura Tynes (director of elementary special education, CV at SE-28), and Tracey Hatch (Assistant Director of Elementary Special Education, CV at SE-29) (SE-21). The September 17, 2013 IEP qualified Student under specific learning, health and emotional disabilities and offered a myriad of accommodations in the general education classroom and during MCAS testing (SE-20). Additionally, it offered a fifteen minute weekly consultation between the special education teacher and the IEP Team; four half hour weekly written expression sessions, two half hour organization sessions per week, three 15 minutes mathematic sessions per week, and two half hour reading instruction sessions weekly, to address reading fluency, written expression, mathematics and organization goals (SE-20; PE-40). The additional information section of the IEP contained the following provisions:

[Student] will participate in additional sessions using computer-based reading fluency program related to her reading fluency goal.

[Student] will participate in a general education small group instruction 2 x 30 per week delivered by a literacy interventionist. The instruction is following the "Just Words" program. Just Words is a highly explicit, multisensory decoding and spelling program for students in grades [4-12] and adults who have mild to moderate gaps in their decoding and spelling proficiency but do not require intensive intervention. It provides direct and explicit teaching of how English works for both decoding and spelling automaticity. The program highlights: 1) directed, accelerated pace in a word structure based on the research-validated Wilson Reading System (WRS). 2) emphasis on phonemic awareness, phonics, word study, and spelling. 3) explicit systematic teaching of skills through the six syllable types and common Latin roots. 4) extensive student practice with multiple opportunities for skills development. 5) assessments for monitoring student progress from the program.

[Student] will be able to meet with the school social worker 1 x 30 per week to address her anxiety and her self-image in connection with her learning difficulties. This is a general education support.

[Student] will be able to come 15 minutes prior to the start of school to assist with anxiety. She will be given an early entry pass.

The team will reconvene in January to determine if in-class support is effective. The team will also discuss [Student's] understanding of fractions and how she solves problems.

A divider will be used in class as needed to eliminate distractions.
[Student's] teacher will send home a schedule every Friday via email delineating what services [Student] received for the week¹² (SE-20; PE-40).

This IEP was forwarded to Parent on or about October 24, 2013 (SE-20; PE-40).

42. Student was seen by Dr. Anna Minster, Attending Physician in Neurology at the Pediatric Headache /Waltham Clinic, Children's Hospital, on October 16, 2013, to address complaints of headaches, at times accompanied with nausea, which were occurring about twice per week and varied in length (PE-55A). Student was asked to complete two self-evaluation measures: the Children's Depression Inventory in which she scored 74 falling within the clinically elevated range, and she scored a 78 in the Revised Children's Manifest Anxiety Scale-2, falling within the elevated category for physiological anxiety ("symptoms that may be somatic manifestations of anxiety such as trouble with sleep and fatigue"), worry ("negative reaction to environmental expectations or pressure") and social anxiety ("concerns about interactions with others including worrying about disapproval and negative responses from others") (PE-65). Dr. Minster also performed a medical evaluation (PE-55A).
43. Dr. Minster concluded that Student's headaches "qualified as migraines as well as chronic tension type headaches" and had a significant emotional component. She recommended physical therapy to address mild neck muscle tension and starting her on psycho-stimulants. Student was prescribed daily preventive medication to address the headaches (PE-55A).
44. On October 25, 2013, Parent accepted the IEP as developed and consented to the placement at Memorial Spaulding, noting that the IEP did not include all of the information requested during the meeting and that she disagreed that the services offered were sufficient to address Student's deficits. Parent further reserved her right to address the deficiencies at a later time (SE-22).
45. Alissa Talamo, Ph.D. (CV at PE-41A), conducted a neuropsychological evaluation of Student on October 31, November 4, 6, 13 and 15, 2013, and also observed Student in school on November 20, 2013 (PE-41; Talamo). Dr. Talamo administered the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV), Wechsler Individual Achievement Test-Third Edition (WIAT-III Subtests), Test of Written Language-4th ed. (TOWL-4), Grey Oral Reading Tests-Fifth Edition (GORT-5), Grey Silent Reading Tests (GSRT), Comprehensive Test of Phonological Processing-Second Edition (CTOPP-2), Test of Reading Efficiency-Second Edition (TOWRE-2), Rapid Automatized Naming and Rapid Alternating Stimulus Tests (RAN/RAS), Automatized Series, Boston Naming Test (BNT), Wide Range Assessment of Memory and Learning-Second Edition (WRAML-II Subtests), Beery-Buktenica Test of Visual-Motor Integration (VMI), Rey-Osterrieth Complex Figure Test (ROCFT), Repeated Patterns, Grooved pegboard, Delis-Kaplan Executive Function

¹² Only some of these weekly service delivery sheets were included in the Exhibits at SE-23. Said SE-23 also contained Student's fifth grade schedule. Up

System (D-KEFS Subtests), and the Test of Variables of Attention (TOVA) (PE-41). Dr. Talamo also reviewed the available school-based evaluations of 2012, Dr. Mercedes' neuropsychological evaluation and Student's IEPs (PE-41; Talamo).

46. Student's scores on the WISC-IV, GORT-5, WRAML-II Subtests, CTOPP-2¹³, D-KEFS Subtests¹⁴, and portions of the RAN/RAS (Letters and 2 Set Letters, Numbers, and Colors) and the WIAT-III Subtests (Word reading, Pseudoword Decoding, Numerical Operations, Math Problem Solving, Math Fluency-Addition, Story Construction) fell in the high average and average ranges of performance. Student scored in the low average range of performance on the Grooved Pegboard test, the VMI, sections of the RAN/RAS¹⁵ (Objects, Colors and 3 Set Letters, Numbers and Colors), TOWRE-2¹⁶, GSRT, in the Contextual Conventions of the TOWL-4, and in the Math Fluency Subtraction, Math Fluency Multiplication, Essay Composition and Spelling portions of the WIAT-III (PE-41). Student's scores on the BNT suggested inefficient word retrieval. Student "struggled to integrate the internal structural components within the design" in the ROCFT, and on the Inhibition tasks of the Color-Word Interference Subtest of the D-KEFS she struggled to inhibit impulsive responses placing within the below age expectation level. Her graphomotor control was found to be below age expectations in the Repeated Patterns tasks. Lastly, in the TOVA's Response Time Variability Dr. Talamo noted that Student's performance was "consistent over the entire test", and in the Response Time section Student "was able to respond within expectations and responded very quickly as targets were shown more frequently" (PE-41).
47. Additionally, Dr. Talamo requested that Student's teachers complete the Achenbach Teacher's Report Form (TRF), the Conners 3 Teacher Short Form, and the Behavior Rating Inventory of Executive Function-Teacher Form (BRIEF). Also, Parent completed a developmental questionnaire, the Achenbach Child Behavior Checklist (CBCL), the Conners 3 Parent Short Form and the Behavior Rating Inventory of Executive Function-Parent Form (BRIEF). Both the Parent and Teacher responses to the BRIEF placed Student in the Clinically Significant level for initiating tasks, working memory, planning and organizing, monitoring and organizing of materials. On the Conners 3, Parent reported difficulties with inattention, executive functioning, learning problems, hyperactivity and impulsivity, and teachers noted markedly atypical functioning in the areas of inattention and learning problems/executive functioning (PE-41). The CBCL Parent and teachers reports yielded clinically significant levels of somatic complaints and anxiety, and affective symptoms. Parent also reported attentional difficulties in the borderline range (PE-41).

¹³ Due to significant discrepancies in the index scores a Phonological Awareness Composite score was not reported as it was considered invalid (PE-41).

¹⁴ Student scored in the Superior range in the Number Sequencing and the Letter Sequencing portions of this test (PE-41).

¹⁵ In the Numbers portion of the RAN/RAS Student scored below Age expectations (SE-41).

¹⁶ Dr. Talamo noted that in the Sight Word Efficiency portion of the TOWRE-2 Student "read carefully and this approach reduced the amount of words she could read in 45 seconds; she also read slowly and carefully, limiting her errors but reducing her efficiency" in the Phonemic Decoding Efficiency portion of the test placing her significantly below scores obtained on previous tests (PE-41).

48. Dr. Talamo found Student to be a highly observant child, who appeared invested in doing well and was generally able to meet demands with examiner support, albeit notable difficulties regulating her impulsivity and attention level. She was able to initiate and switch tasks without difficulty, but was noted to become upset if she felt unable to meet task demands. When engaged in a task she was able to sustain focus while she worked, but she was notably fatigued by the end of each session and was allowed to move around when she became fidgety. Her language was organized, she was able to engage appropriately in reciprocal conversation and understood orally presented instructions. Although she was cooperative and followed instructions, at times she “insisted on doing things her own way and was unable to begin the next task until she completed something to her satisfaction” (PE-41; Talamo).
49. According to Dr. Talamo, during testing and in the observation Student displayed numerous strengths albeit her difficulties with attention, inhibiting impulsive responses, executive functioning and efficiency. Student displayed strengths in verbal and nonverbal cognitive abilities, visual –spatial reasoning skills, age appropriate reading comprehension skills and vocabulary, and solid abstract verbal reasoning skills. Math calculation and reasoning skills were found to be at or above grade expectations. In class, Student received appropriate support, guidance and assistance from Ms. Meredith during the in class observation and was receptive to the same. Dr. Talamo noted that Student had access to a computer during the written tasks. She noted that Student was able to be successful during the small group activities and she raised her hand and participated in class. However, Dr. Talamo raised concerns regarding the amount of direct services and redirection to task required by Student from Ms. Meredith during the observation (PE-41; Talamo). Ms. Meredith testified that Dr. Talamo had actually observed one of her direct services in the general education setting services (as per plot B of the grid in Student’s IEP) (Meredith). Dr. Talamo testified that she only observed Student in November 2013 at the beginning of fifth grade, and never observed her thereafter (Talamo). Lastly, she testified that she understood SE-22 to be the operative IEP as accepted by Parent in September 2013 (*Id.*).
50. Dr. Talamo agreed with the diagnoses previously given to Student and recommended that Student receive specialized educational supports and accommodations within the context of an inclusion, co-taught (by a regular and a special education teacher) classroom in Newton for all of her academic classes. She also recommended daily pull-out support for academic strategies interventions (e.g., preview and review of newly presented material). Student would also need to receive specialized instruction to learn compensatory strategies to her address executive functioning, planning and organization deficits. Per Dr. Talamo, Student’s reading fluency deficits should be addressed in a small group setting using components of programs such as RAVE-O; she did not opine that Just Words was effective for someone like Student. Reading speed, word retrieval and automaticity could be addressed through programs such as Read Naturally or Great Leaps. According to Dr. Talamo, Student should also be provided with keyboarding instruction to help her ongoing graphomotor issues and use a word processor for lengthier in-class and homework assignments as well as standardized tests. Dr. Talamo recommended that Student be provided extended school year services to prevent skill regression. Lastly, to address anxiety and ADHD symptoms, Dr.

Talamo recommended the use of cognitive behavioral techniques, communication between Student's outside therapist and school personnel, yoga and/or neurofeedback to help improve self-regulation skills, and consideration of medication. She recommended that Student be re-evaluated in a year (PE-41; Talamo).

51. Dr. Talamo commented that during her observation on November 20, 2013, Kimberly Meredith, Student's integrated classroom special education teacher for all subjects, (certified Wilson instructor) had numerous interactions with Student (PE-41; Talamo). Ms. Meredith testified that Dr. Talamo had observed her provide direct services to Student in the general education setting, accounting for the high level of support provided to Student at that time (Meredith).
52. Ms. Meredith testified that homework was an issue for Student (Meredith, Hatch). Student had reported that she got home late after practice, arrived tired and often with headaches, someone was always making noise in the home, and the baby (her younger sibling) distracted her (Meredith). Student's co-taught regular education teacher, Ms. Ahlberg, also noted Student's difficulties with homework completion. By parental report, math alone was taking Student approximately one hour to complete, when according to Ms. Ahlberg, Student should not be spending more than 45 minutes to complete all of her homework in fifth grade (Ahlberg). Ms. Ahlberg did not opine that math was an issue for Student. She testified that she assisted student in packing her bag so that she would not forget to pack the books she needed for homework, and noted that the classroom accommodations had helped Student feel more confident (Ahlberg). Ms. Ahlberg explained that the only homework accommodation Student received was reduced number of questions or problems, but the material itself did not require modification (and as such had not been) because Student was accessing the regular education curriculum similarly to other fifth grade regular education students (Ahlberg).
53. Ms. Meredith described Student as a sweet, hard-working, respectful child with whom she enjoyed a good relationship, and stated that Student did not shut-down with her. Ms. Meredith noted that Student's distractibility depended on the subject matter; she did not like social studies in fifth grade and writing was an area of difficulty. She explained that Dr. Keogh had worked with Student on organization at the beginning of the school year and further testified that she had not seen substantial regression when Student returned from vacation during the summer of 2013(Meredith).
54. Student's Team was convened on January 17, 2014 (meeting note dated January 25, 2014), to discuss Student's progress (SE-16; Hatch). The math teacher reported increased math fluency and automaticity along with increased confidence. The visual strategy used in spelling was helping Student with visual memory, her spelling as well as stamina for writing was improved, she was reading above benchmark at level V (end of fifth grade), and Read Naturally helped her improve her reading rate. Her comprehension skills were found to be strong and she was using her background knowledge to make connections in social studies and science. Parent however, reported that according to Student's private therapist, Student's stress level had increased. Student was also reporting headaches to Parent on

Mondays, Tuesdays and Wednesdays. Newton's teachers recommended that Student limit her homework to 45 minutes per night (SE-16; Ahlberg, Parent).

55. Sometime in December 2013 or January 2014, Student had participated in a gymnastics competition but had been pretty disappointed with her performance sharing that the competition had not gone as she had wished (Ahlberg).
56. Student's January fifth grade Progress Reports for the 2013-2014 school year show that Student was meeting standards expectations in most areas or making progress toward the standard but not yet meeting the expectation in some. Her report remained mostly unchanged by the end of the school year as per the June Progress Reports (PE-42A).
57. A February 3, 2014 email from teacher to Parent notes that Student had stated that she could get on Google Docs at home most of the time and did not want an *AlphaSmart* (SE-41). However, Parent testified that Student had limited access to the internet at home and stated that she could not share her work computer with Student (Parent).
58. Student's annual review Team meeting took place on February 28, 2014 (SE-13; PE-47; PE-35). Present at the meeting were: Parent, Ms. Meredith (special education teacher), Ms. Ahlberg (fifth grade teacher), Katy Dearborn (Team Specialist), Tracey Hatch (Assistant Director of Elementary Special Education), Luann Keogh and the School Principal (SE-14). The results of Student's fall 2013 neuropsychological evaluation by Dr. Talamo, were discussed at this Team meeting (SE-14; PE-35). The resulting IEP contained goals to address reading fluency, written expression, organization and mathematics. The IEP offered Student participation in a full inclusion, co-taught classroom with the following special education services: a fifteen minute, weekly consultation between the team and the special education teacher; under Grid B, four weekly sessions 45 minutes each written expression, two 30 minute per week organization sessions, and two 30 minutes weekly reading instruction sessions, all of the aforementioned offered by a special education teacher. The IEP also offered four sessions per week of extended school year specialized instruction (240 minutes each) from July 7 to July 31, 2014 (SE-13; PE-47).
59. Student's Team met again on March 14, 2014 in response to Parent's request and to discuss Student's transition into middle school. The meeting participants were Parent, Ms. Meredith (special education teacher), Ms. Ahlberg (fifth grade teacher), Ms. Dearborn (team specialist), Ms. Engelbourg (Assistant Principal for Student Services at Oak Hill Middle School), and Student's grandmother. Newton forwarded the resulting IEP to Parent on March 25, 2014 (SE-3).
60. The extremely detailed IEP, resulting from this Team meeting covered the period from March 14, 2014 to February 28, 2015 and offered Student services for the remainder of her fifth grade and the beginning of sixth grade in the integrated program (with a special education and a general education teacher) in district (SE-1; SE-10; PE-46; PE-48). This IEP contained goals to address reading fluency, written expression, organization, and mathematics. In addition to numerous classroom and MCAS accommodations, the Service

Delivery Grid offered the following services: consultation services by the special education teacher for 15 minutes per five day cycle between March 14, 2014 and June 20, 2014, and one 15 minute session per six day cycle from September 2, 2014 through February 28, 2015 (SE-1). Under Grid B, Student would receive the following services in the general education classroom: four sessions 45 minutes each per five day cycle, written expression by the special education teacher through June 20, 2014; two 30 minute sessions per five day cycle organization by the special education teacher through June 20, 2014; two 30 minute sessions per five day cycle reading instruction by the special education teacher. Starting in September 2014, Student would receive: 50 minutes sessions per six day cycle mathematics by the special education teacher; four 50 minutes sessions per six day cycle English by the special education teacher; three 50 minutes sessions per six day cycle science and three 50 minutes sessions per six day cycle history/social studies by the aide. Under Grid C, Student would receive four 50 minutes sessions per six day cycle of academic strategies with the special education teacher starting in September 2014, and extended school year services at a rate of four, 240 minute sessions of specialized instruction with the special education teacher between July 7 and July 31, 2014¹⁷ (PE-1; PE-46; PE-48; Hatch). Parent rejected this plan on June 20, 2014 and requested a Team meeting (PE-1; PE-46).

61. Kayla McAlister, M.S. Ed., Assistive Technology Specialist (CV at SE-38), conducted an Assistive Technology Consultation of Student on May 8, 2014, to ascertain whether there was a need for Student to have a personal device. At the time, Student was receiving several accommodations which included: typing assignments that were longer than a paragraph, a scribe in content areas, use of a word processor, use of Word without spell check to practice correcting spelling, use of checklists and graphic organizers, multi-sensory instruction for spelling, and Read Naturally for reading fluency. Writing was reported by Ms. Meredith and Ms. Ahlberg to be Student's most challenging area. Ms. Meredith's and Ms. Ahlberg's classroom had access to technology including one SmartBoard, seven laptops, one document camera, and one desktop computer. Ms. McAlister recommended use of audiobooks to assist Student with fatigue and loss of focus while reading longer passages¹⁸, UDL Tech Toolkit Wiki (an online resource), access to a word processor for lengthier writing assignments, and use of Google Docs/Drive. Ms. McAlister noted that Student had access to an AlphaSmart (portable word processor), consistent access to a desktop computer with Internet access and multiple other low-tech solutions, all of which were meeting Student's assistive technology needs. Ms. McAlister recommended a follow up consultation in middle school (SE-12; PE-54).
62. Ms. Hatch explained that Ms. McAlister had conducted an Assistive Technology consultation, not an assessment, and therefore, at the conclusion of her consultation there was no requirement for the Team to convene (Hatch).

¹⁷ The Service Delivery Grid reflects the addition of numerous services to the B grid and the addition of academic strategies to the C grid (PE-48). This IEP reflects the services that Student would receive in middle school (PE-35E).

¹⁸ Student however, read at grade level (SE-12; PE-54).

63. IEP Progress Reports for the end of the 2013-2014 school year note that Student had met her yearly benchmarks for reading fluency, organization, mathematics and was making good progress in the area of written language (SE-17). The fifth grade Progress Reports show that with minimal exceptions, Student was meeting expectations for fifth grade standards (SE-18; SE-19; see also SE-24 containing a math assessment). Also, Student's Read Naturally Software Edition report for the period from September 2, 2013 through May 22, 2014, shows that Student came close to or surpassed the goal during hot timing and cold timing¹⁹ except for one instance (SE-25). While Student would have to continue working toward meeting her IEP goals, she was responding to the interventions (PE-38C).
64. In the spring 2014 MCAS administration, Student obtained a score of 250 placing her in the Proficient level of achievement in her English Language Arts, a score of 260, placing her in the Advanced level in Math, and a score of 246, Proficient level for Science and Technology/Engineering, demonstrating improvement over the previous year's English Language Arts and Mathematics MCAS scores (SE-40).
65. Parent filed a Hearing Request with the BSEA on May 16, 2014, and on August 25, 2014 as a result of a resolution session, consented to placement of student and implementation of the IEP during the pendency of the BSEA proceeding, but rejected Newton's proposed placement, services reserving her right to move forward with the hearing on the suitability of the IEP (SE-2). The Parties' partial agreement during the resolution session called for the following changes to the IEP:

Accommodations under PLEP A

- Change #9 to read "Use of individualized editing checklists and/or use of COPS, CUPS, and ARMS. These checklists will be shared with the middle school."
- Add "Opportunity to take tests in a quiet environment."

Goal #2 written expression

- Add objective "with fading teacher support, [Student] will identify letter reversals and self-correct mistakes when completing a writing assignment 90% of the time."

Service Delivery grid C

- Addition of Math Strategies 2 x 50 minute per 6 day cycle provided by a Special Education Teacher
- Addition of Reading Strategies 2 x 50 minutes per 6 day cycle provided by a Special Education Teacher.

Additional Information

- Add "In September 2014, the Assistive Technology Specialist will consult with [Student] and the Team to determine technological supports that will be needed in middle school."

¹⁹ Student obtained between 80 and 100 percent correct answers in 11 quizzes, 60 in three and 40 in one quiz, with one exception in which she obtained 48 correct answers out of 150 during a cold timing quiz (SE-25).

- Add “The Team will have ongoing communication with [Student] outside providers (i.e. psychologist).”
- Add “[Student] will not take a world language course in middle school (SE-2).”

As a result of the resolution session, the Parties further agreed to reconvene six to eight weeks after the start of the 2014-2015 school year to review and update [Student]’s IEP as needed, and hold the annual review meeting before February 28, 2014 (SE-2).

66. Parent formally rejected the February and March 2014 IEPs and placement, on June 20, 2014, invoking stay-put services and accepting the extended school year program with two caveats: Student would miss the first week, was only available until 11:00 a.m. due to transportation issues but noting that Student was available to receive services on Fridays as opposed to just four days per week. She also requested a meeting with the Team (SE-13; SE-15). This document was received by Newton on June 20, 2014 (SE-16).
67. Dr. Rappaport met with Student and Parent on June 17, 2014. In his letter to Dr. Koppenheffer, also dated June 17th, he notes that the cognitive behavioral therapist does not believe that this intervention was working for Student and reportedly encourage Parent to consider placing Student on anti-anxiety medication. However, since Dr. Rappaport was not convinced that anxiety was the primary issue, and given that it takes longer to stabilize on and take an individual off antianxiety medication, he opined that instead, Student’s attention should be treated with stimulant medication as attentional issues were, in his view, the primary cause of Student’s issues (PE-55B; Rappaport).
68. Student was seen again by Dr. Minster at the Headache Clinic on July 9, 2014 due to increased headaches, reportedly associated with school attendance. Given a normal physical examination, Dr. Minster recommended acupuncture, and continuation of cognitive behavioral therapy to address Student’s generalized anxiety. Concluding that Student’s headaches were emotional in nature, Dr. Minster did not start Student on preventive headache medication. Her report mentions that Student’s therapist was considering a trial of antianxiety medication (PE-55A).
69. Student started sixth grade in the integrated classroom at Oak Hill Middle School in Newton (Parent).
70. On August 25, 2014, Parent rejected portions of Student’s placement noting her disagreement with the placement, the proposed services and reserving her right to move forward with the BSEA Hearing on the issue of appropriateness of Student’s IEP. She agreed however, that the IEP could be implemented during the pendency of the proceedings (PE-50).
71. In August 2014, Student was started on *Concerta* to address her ADHD but the medication was stopped by September 2014 as a result of an increase in Student’s headaches

(Koppenheffer). Dr. Koppenheffer testified that in 2014, Student had also developed insomnia around the same time she had been placed on *Concerta* (Koppenheffer).

72. On October 1, 2014, Parent observed Student during academic strategies at Oak Hill Middle School (Parent).
73. During September and November 2014, Ms. McAlister, conducted another Assistive Technology Consultation for Student. Her report indicated that Student was making progress with the use of an editing checklist to revise her work. Ms. McAlister noted that Ms. MacNeil had three iPads, a desktop computer, and a laptop available to students in her classroom. Additionally, there was an iPad cart and a few laptop carts which staff could reserve and which Mr. Bunting used quite often in his English and social studies classes. Ms. McAlister noted that Student had been very active and involved during an observation on November 6, 2014. Student had been observed to ask questions independently, seek clarification, access the math curriculum and explain concepts to other students. Student also had access to a word processor for lengthier written assignments. Ms. McAlister concluded that Student's access to the technology available in school was meeting her needs (SE-11).
74. At Parent's request, Dr. Mercedes conducted an observation of Student in her English Language Arts (ELA) and math on September 30, 2014 and later observed Student's academic strategies class on October 14, 2014 (PE-66; Mercedes). During ELA Student appeared to be disengaged and lethargic, and was highly dependent on teacher support. Keeping up with the pace of the instruction appeared to be difficult for her and she required prompts and reminders to stay focused, support to get started on her assignments, teacher monitoring to complete her work and repetition of instruction. In math, Student was provided with check-ins to monitor her progress, but she was able to sustain attention and work independently for up to six minutes at a time. According to Dr. Mercedes, math is an area of strength for Student. She noted that the pace of the instruction was reduced during the academic strategies class, and stated that Student was easily redirected by the teacher when she lost her focus or became restless. There were six students and two teachers in academic strategies. Dr. Mercedes further noted that Student accessed the computer at the end of the class to work on the Read Naturally program (PE-66; Mercedes).
75. On or about October 15, 2014, Parent wrote to Katherine Oliver requesting a letter of recommendation for Student's application to Landmark School (SE-27). In her letter Parent noted that Student was in multiple activities as follows:
- [Student] is a gymnast at ... sports academy. She has been a gymnast since the age of two. This year she is currently competing Level 8, which is highly competitive junior Olympic level. She has received many awards throughout the years. Last year, she competed Level 7 and 3rd place all around for your floor routine and 5th [place] all around for bars during the State Competition. She also placed 5th place all around for the combined four events. Her dream is to someday compete in the Olympics.

[Student] loves to sing. This is her second year participating in Treble Singers. [Student] also participated in the chorus at [school]. Last year, [Student] was a part of the orchestra and played the oboe, but she decided to concentrate on singing this year period. [Student] also is a budding chef and aspires to be a world renown chef. [Student] also enjoys dancing. She was a competitive dancer for three years, often placing first place in various competitions. Now she dances for fun.

[Student] also participates in community service. Once a month, she volunteers at a Boston homeless shelter. She (with an older sister) prepares an entire meal for approximately 80 women [sic]. She also helps to serve the food. She engages in conversation with the women, and she thoroughly enjoys giving back and making a difference. [Student] has also participated in community clean-ups in Dorchester and Roxbury and has helped wrapped Christmas gifts for needy children (SE-27; Parent).

76. Student has been a competitive gymnast since the age of 2 competing at the Junior Olympic level (Level 8). She is expected to practice 20 to 24 hours per week. In the past Student has practiced approximately 15 hours per week. Practice time is typically from 3:30 p.m. to 7:30 p.m. on Monday, Tuesday, Thursday and Friday, and there is also practice on Saturday mornings. Parent testified that over the past two to three years Student has become more anxious and has displayed attentional and focus issues which have impacted her performance and have required increased one-to-one support from coaches and Parent. Student loves gymnastics and takes great pleasure and pride in it (Parent).
77. On Wednesdays, immediately after school, Student participates in a one and a half hour chorus practice as part of the Newton All-City Chorus (Parent).
78. Parent testified that during sixth grade her participation in cooking and serving food at the Pine Street Inn decreased. She also testified that Student stopped participating in competitive dancing at the end of the third or fourth grade, and now only danced for fun (Parent).
79. On November 18, 2014, Student suffered an injury to her hand when gym equipment crushed it, breaking several fingers during PE in Newton (Parent).
80. Parent testified that this year (sixth grade), Student has displayed inconsistent desire to go to practice, something Parent attributed to Student's lack of friendships in gymnastics, increased stress level from school and the injury in November 2014. According to Parent, this injury was devastating to Student because she had to relearn all of her skills. Instead of practicing the 15 hours or so that she has practiced in the past, between November 2014 and the first week in January 2015, Student's practices were very inconsistent. She went to practice once or no more than twice per week and at times called Parent to pick her up within two hours of starting, stating that her stomach hurt. Student does not believe that she is smart or that she can be successful in much other than gymnastics (Parent).

81. According to Dr. Koppenheffer, Student is not a competitive child. She further referenced competitive gymnastics and the birth of a third child in Student's home as additional sources of stress in Student's life (Koppenheffer).
82. Teachers noted a shift in Student's mood after the Thanksgiving break. Student's school counselor noted this change during the community meeting, stating that she seemed to withdraw and become quieter (Mercedes).
83. Student's first term report card for the 2014-2015 school year showed passing grades in all courses: A- in English, A in History/Social Studies, B+ in Math 6, B in Science 6, A in Physical Education (PE), A in Chorus 6, and B- in Technology and Engineering (SE-4; SE-6). During this period she also had good attendance (SE-7).
84. Progress reports for the period through December 2014 note that Student was progressing effectively toward meeting her IEP annual goals in reading fluency, written expression, organization, and mathematics (SE-5;PE-51D).
85. Student's Team reconvened on December 9, 2014 to discuss Student's progress (SE-4). In attendance were: Parent, Amy Geer (Assistant Principal for Student Services, CV at SE-30), Katy Oliver (Guidance Counselor, CV at SE-32), Chuck Bunting (English/Social Studies Teacher, CV at SE-34), Lauren Sack (Math/Science Teacher, CV at SE-35), Jane MacNeil (certified special education teacher, CV at SE-31) and Dr. Mercedes, who had conducted an observation of Student in September and October, 2014. Overall, the school-based personnel noted that Student was hard-working, prepared and on-time for class, she used learned strategies, demonstrated leadership in the small group strategy class and noted that math was an area of strength for her. She accessed the numerous supports provided such as graphic organizers, enlarged geography maps, manipulatives and flashcards. Student was using tools such as Read Naturally to help with reading rate and fluency. The participants however, noted that during the previous month (November 2014) Student had appeared less happy, more tired, sad and her facial expression was different, but when confronted by adults in school she stated that she was OK and was not willing to share further or engage in discussions about her feelings. Writing and homework completion continued to be challenging, which was the reason for Student to receive an accommodation which called for her to complete less homework than the assignment called for. No other modification of homework was offered (SE-4). According to Parent, at home, Student was complaining of headaches, stomachaches, appeared stressed, tired and was losing hair. Parent further noted that Student had shared her feelings with her private therapist and Parent was concerned that Student would take her life (SE-4; Parent). During the meeting Dr. Mercedes stated that Student appeared to be more subdued, overwhelmed and less engaged with other students in the larger group though she was much more engaged in the small group strategy class. Dr. Mercedes also wondered about the level of support required by Student in the general education classroom. She testified that Student had been more engaged during the academic strategies and math classes (SE-4; Mercedes).

86. Parent wrote to the Team on December 11, 2014, noting that while teachers reported good academic progress, Student's presentation was noticeably different, more sullen, tired, and that she was feeling less successful. Parent noted that Student's stress level was manifesting with somatic symptoms such as hair loss, stomachaches, headaches, loss of appetite, irritability, comments about suicide, isolation and emotional irritability. Parent opined that Student's placement was overwhelming her and causing her stress because of the amount of support needed for her to be successful.²⁰ Parent requested a change in placement asking the Team to consider the Learning Disabilities Program and requesting that Dr. Mercedes be allowed to observe this program (PE-67; Parent).
87. In an email dated December 23, 2014, Ms. MacNeil noted Student's report of feeling very tired and having gotten little sleep the night before. Parent confirmed in her response that Student was having difficulty sleeping and that her private therapist was helping her with this (SE-26).
88. On January 1, 2015, Student had one dosage on *Ritalin* which was immediately discontinued after Student experienced a panic attack while discussing a return to school with her sister. She was seen at the emergency room and was discharged home the same date (SE-9; PE-64; Koppheffer, Parent).
89. Tierney Leary, Special Education Teacher in Newton's Citywide Learning Disabilities program (LD program) (CV at SE-47), observed Student in her general education classroom with Mr. Bunting on January 6, 2015 (SE-9; Leary). Ms. Leary observed that Student was

...focused, independently followed directions, and raised her hand to participate. She was able to meet task demands independently (SE-9).

Ms. Leary also reviewed Student's fifth grade neuropsychological evaluation and MCAS scores, the sixth grade first term report card, the December 2014 IEP progress reports and the recent Grade 6 Gates Comprehension and Vocabulary test scores. While she agreed that writing was an area of difficulty for Student, she noted that Student was able to decode and comprehend the material at grade level (SE-9; Leary). Additionally, Ms. Leary testified that Student had remained focused and had not needed redirection during a Fountain and Pennell assessment. Without asking for additional time to complete the assessment, she had spelled 64 words correctly out of the 80 words dictated (Leary).

90. Ms. Leary testified that at present, the LD program includes eight students (6 girls and 2 boys) who present with a specific learning disability in reading and writing. She testified that the academic curriculum in her English class is the same as that in Mr. Bunting's however, more scaffolding and breaking down of information was done which she was not sure Student required based on her observation. In contrast, Ms. Leary's LD students would have needed more prompting to complete the same tasks independently (Leary).

²⁰ Parent had also noted that Student had issues with peer relationships and children gathering around her locker, but at Hearing, she conceded that these issues had been caused by a misunderstanding that had been addressed in school and that Student had not been bullied (Parent).

91. The *AIMSweb* Mathematic Improvement Report (which offers a national normed measurement) covering the period from September 6, 2014 through January 6, 2015 placed Student in the average and well above average range of proficiency for Mathematics Concepts and Applications and for Math Computations (SE-44).
92. On January 14, 2015, Dr. Mercedes observed the LD classroom with Ms. Leary. Dr. Mercedes noted that the seven students therein transitioned seamlessly to class, prepared with minimal teacher support and later participated in the ELA discussions appearing highly engaged. There were two teachers, one special educator and an aide. Dr. Mercedes described the teacher as “very skilled” and noted that she provided excellent guidance, scaffolding and strategies to the students, promoting a calm and predictable environment (PE-66; Mercedes). Dr. Mercedes testified that elements of this classroom would be beneficial for Student. She recommended that Student be placed in a classroom with a low student teacher ratio and a similar cohort who shared similar areas of weaknesses as Student, but who did not present with behavioral issues (Mercedes). Ms. Leary testified that her class would not be appropriate for Student whose functioning was at a higher level than her students (Leary).
93. Student’s Team reconvened on January 14, 2015. Present at the meeting were: Parent, Ms. Geer, Katy Oliver (Guidance Counselor), Mr. Bunting, Ms. Sack, Jane MacNeil (Special Education Teacher), Ms. Leary, Jannon McKenna, Ph.D., NCSP (School Psychologist, CV at SE-33), and Dr. Mercedes (SE-9). Dr. Mercedes’ observation of the learning disabilities program on January 9, 2015 was discussed with positive reviews from Dr. Mercedes but leaving her wondering whether Student required such high level of support. Academically, Student was reported to be doing well in class, demonstrating grade level work, doing well on quizzes and tests, helping others in class and taking breaks when needed (SE-9).
94. Mr. Bunting taught Student 6th grade social studies and English Language Arts. He testified that he worked closely with the special education teacher and or her assistant who were in class 4 days during a six day cycle. He described his classroom as structured and opined that the supports therein were appropriate. He incorporated EmPOWER into English and social studies and noted that Student was very involved in both. A great deal of writing occurred in his classes and he clarified that Student used the computer for this. When reviewing her written output, he did not focus on spelling. According to Mr. Bunting, Student was resistant with writing because it was difficult for her. However, she met or exceeded expectations. Mr. Bunting noted that Student required redirection and encouragement on occasion, and stated that Student not always asked for help when she needed it. Homework completion was a challenge and she appeared to be distressed when not able to finish. To help her, a reduced homework accommodation was provided and she was given time during the day to work on homework. This accommodation was offered to other students as well. Mr. Bunting testified that English and social studies were both regular education classes and Student was doing the work and getting passing grades or better in both. Based on her capabilities, Student was making effective progress in his opinion (Bunting).

95. Mr. Bunting explained that Ms. MacNeal worked with Student on reading fluency. Regarding SE-43 (the maps of Europe) assignment and PE-60, he explained that Student did a good job and was trying to get bonus points by completing more than she was required to do (Bunting).
96. Laura Sack taught Student sixth grade math and science. Though a regular education teacher, she too was part of the integrated team. Ms. Sack described Student as sweet, polite, quiet, and productive, although some days she looked stressed. In math, Student did not ask to use a calculator. She too found that homework completion was difficult for Student but noted that since late November 2014, Student had been able to complete her course work. In math, Student raised her hand and did not hesitate to state that she did not understand something. Ms. Sack opined that Student was definitely making effective progress in math with long division, ratios, rates, etc. She found that Student benefited from the supports she was receiving in math (Sack).
97. Ms. Sack explained that science and math were back to back. She stated that Student loved science, she raised her hand in class and answered questions. For writing assignments Ms. Sack used a graphic organizer. She testified that Student had improved on turning in her science work and in this class she had no homework obligation (Sack).
98. Dr. Morlock, Student's private cognitive behavioral therapist, testified that she has been meeting with Student approximately once per week over the prior sixteen months. She noted that anxiety and depressive symptoms were issues often related to ADHD, but she addressed only the anxiety and depression through CBT because psychotherapy is not designed to address ADHD. She described Student as extremely guarded, and noted that her fears included: hating school, test-taking, gymnastic competitions, spiders, friendships, dying, and fear that she will forget how to read. Dr. Morlock opined that Student appreciated their relationship, but noted that therapy was not a place where Student wanted to share her feelings. She testified that Student talked about dreading going to gymnastics because she had no friends there, and desired to switch gyms. Dr. Morlock identified gymnastics as a source of anxiety for Student who believed that other children were better than she and that she was not good enough. Student also struggled in her relationships with family members, except with Parent. Dr. Morlock noted that in January 2015, student was experiencing lots of issues with insomnia. In therapy, Student also discussed concerns that homework was too hard (Morlock).
99. At Hearing, Dr. Morlock agreed that children presented differently in different settings. She opined that eliminating homework was a good idea as long as Student practiced her skills at a different time during the day. She explained that there appeared to be a disconnect between the supports Student was receiving and Student's belief that the supports were helpful. She remarked that Student's anxiety appeared to worsen in September while on the ADHD medication trial, and through December 2014 (Morlock).
100. Dr. Morlock testified that Student was not responding well to CBT. She opined that Student's current placement was having a negative impact on Student's emotional well-being, and as such, recommended a change in educational placement but not to a therapeutic environment because Student's anxiety was situational. She discussed these concerns with Newton's school psychologist and the school counselor during a telephone conference call on January 20, 2015 (Morlock, Oliver). Newton's personnel was concerned about how such a

change in placement would affect Student's self-esteem given that it was solely based on Student's social-emotional presentation. Dr. Mercedes agreed with Dr. Morlock's assessment opining that despite Newton's hesitation, the change was worth the risk (Mercedes).

101. Student's guidance counselor at Oak Hill was Catherine Oliver. Prior to the start of school in September 2014, she met Student and Parent when they toured Oak Hill. She testified that all students at Oak Hill participate in Community meetings (Community) which meet on alternate Fridays and start sometime between the end of September or the beginning of October.²¹ Student is grouped with ten other sixth graders for Community. The groups work on issues such as addressing anxiety through a commitment to mindfulness and engage in activities such as guided imagery or making stress balls. According to Ms. Oliver, Student was an active participant in Community activities (Oliver).
102. Ms. Oliver noticed the mood change in Student starting in November 2014 and noted that upon learning of Parent's allegations regarding suicidal thoughts, Dr. McKenna, the school psychologist, met with Student on December 15, 2014 for approximately 45 minutes. Student reportedly stated that she had never thought of hurting herself, although sometimes she did not wish to be in school. Student denied having told her outside therapist that she wanted to hurt herself (Oliver). She and the school psychologist attempted to reach Dr. Morlock at the end of 2014, but, the latter did not return the call until January 2015. At the time, Newton was concerned about the fact that Student's IEP did not include a social emotional goal and also about Dr. Morlock's recommendation to change student's placement to a program like the LD program in Newton. Ms. Oliver supported a partial shift in Student's schedule, as for example to participate in LD ELA but raised concerns as to how a full shift to the LD program may impact Student and was hesitant of such a move explaining that although Dr. Morlock opined that such a shift was worth the risk, Ms. Oliver was unsure as to whether Dr. Morlock had a full understanding of what moving Student to the LD program would entail.
103. Ms. Oliver further testified that Student believed that she had no friends, but she had been seen playing with other students during recess (Oliver). Ms. Oliver addressed the incident regarding kicking of Student's books by other students congregating around Student's locker noting that Student had misperceived the other children's intentions but the incident was addressed by changing the location of Student's locker. The incident however, had been investigated and had not been found to constitute bullying (Oliver).
104. Jane MacNeil, a certified moderate special needs teacher, was Student's integrated classroom special education teacher. Among other interventions, she is trained in RTI, EMI, mindfulness and relaxation techniques (MacNeil).
105. Ms. MacNeil explained that the integrated model in Newton was designed for students who were generally able to access the regular education curriculum with supports. She or her special education assistant, Susan Cellucci, offered support in the ELA class four days in a six day schedule, and three days in science and social studies. Support is also offered in math, but

²¹ Community does not appear on students' schedules.

not in non-core courses (MacNeil).²² When present in the classroom, Ms. MacNeil and/ or her assistant float around the room assisting students. Those students in need of greater assistance usually go to “extension time” to work on issues, which takes place right after lunch (McNeil). Ms. MacNeil explained that organization was difficult for sixth graders generally, and therefore they all used color binders for the different subjects. She testified that she had observed Student while in Memorial Spaulding in preparation for her transition into middle school (MacNeil).

106. To understand the services offered by Ms. MacNeil to Student, the IEP found at SE-1 must be read in conjunction with SE-2, the June 2014 IEP resulting from the resolution session, which offered Student additional math strategies (2 x 50 per 6 day cycle), and reading strategies (2 x 50 per six day cycle). Ms. MacNeil testified that in ELA Student’s overall performance is typical of a sixth grade student (i.e., she struggled with writing). Student’s performance in ELA fell a little below average but she received in class support, though a variety of tools to address her deficiencies. Ms. MacNeil testified that she had offered to scribe for Student, but Student had declined her offer. According to Ms. MacNeil, Student’s spelling issues were not out of the ordinary for a sixth grader and noted that there was no specialized instruction to address spelling issues. In reading, she noted that Student had no issues with comprehension and that her reading fluency issues were addressed through Read Naturally. Ms. MacNeil opined that Student’s fluency challenges were not impeding her comprehension of what she was reading, and noted that Student has proven that she understood what she had read as she could answer questions about the material. Ms. MacNeil further testified that during academic strategies, Student practiced skills, class material was previewed and reviewed, Student worked on vocabulary and homework assignments were checked. Ms. MacNeil described Student as her “shining star”, “a leader” in math strategies. She noted that Student participated in the general education classroom but was more comfortable in small group discussion. Regarding Dr. Mercedes’ observation in the fall 2014, Ms. MacNeil testified that she was surprised to hear how much time she had spent with Student, and then had realized that the day of the observation had been one of the first times that all the students had been accessing technology with which they were having difficulty. Lastly, she explained that she kept an attendance log, not a service log for the times she worked with Student (MacNeil).

107. Ms. MacNeil testified to seeing a change in Student’s expression and demeanor in around December 2014. She stated that homework was a challenge. When questioned about the impact of the social emotional piece, Ms. MacNeil opined that the current integrated program with services and supports was “a wonderful program” for Student, noting that in it, Student was making effective progress. According to her, Student’s overall performance fell somewhat below her same age peers (SE-4; MacNeil). Regarding the LD program, she noted that Student could access the curriculum in the general education classroom whereas students in the LD program functioned two years below grade level and they did not participate in general education ELA or math (McNeil).

108. The Oak Hill school day starts at 8:00 a.m., but all students are allowed to enter the building earlier (at around 7:45 a.m.) and go to auditorium and cafeteria. Ms. MacNeil was aware of Student’s early start at Memorial Spaulding, noting that this accommodation had been

²² Amy Geer, Assistant Principal for Student Services and inclusion facilitator, testified that Student’s Health instructor was also certified in special education (Geer).

helpful in addressing Student's anxiety (MacNeil). Parent agreed that the early start and homework reduction accommodations had been helpful to Student (Parent).

109. Amy Geer (CV at SE-30) replaced Shari Engleborg as inclusion facilitator at Oak Hill. She testified that within weeks of breaking her fingers, Student's behavior had seemed different and she could not help but wonder about the effect this event had on Student. The December 2014 and January 2015 Teams had discussed the shift in Student's emotional state. Dr. Mercedes had questioned Student's grades in light of increased anxiety which she attributed to the greater effort required by Student to access the regular education curriculum even with accommodations. Ms. Geer testified that shortly after Student's panic attack in January 2015, Student had asked to go home sick on January 13, 2015. Ms. Geer explained that Student's Team discussed and supported a six-week trial shift from Ms. MacNeil to Ms. Leary for instruction in writing and to evaluate how Student was doing in reading and writing (Geer).

110. Dr. Mercedes testified that there was a disconnect between how Student perceives herself and how she performs. Dr. Mercedes agreed that Student feels that she is not smart enough, that others are better than she, and yet, she has to do better than other students. She further agreed that this belief contributes to Student's anxiety (Mercedes). She noted that when she observed Student in December 2014 she had become a different child than the one she had met in 2012. Dr. Mercedes noted that the level of stress Student was experiencing was taking an emotional toll that was unhealthy and this concerned her (Mercedes). She opined that the LD program was a good match for Student in terms of how the class was handled; the class observed was very calm, organized. She observed the use of multisensory strategies and opined that the teacher was very skilled. Dr. Mercedes opined that Student required LD programming for ELA, history, social science, reading and possibly math because of word problems (Mercedes). Ms. Leary, the LD teacher, however opined that the students in her class were different than Student, noting that their academic profiles fell two (2) to three (3) levels below Student's (Leary).

111. Given Parent's report during the January 14, 2015 meeting regarding Student's increased anxiety and recent deterioration in the home, Newton's staff recommended including an additional social/emotional goal in her IEP which included continued check-ins with Student's private mental health provider (Dr. Morlock) and mental health staff (SE-9). While not recommending a programmatic change in placement, Newton

...considered [Student's then] current performance as well as the potential impact that the change in program might have on her level of anxiety and/or self-esteem. The school district recommend[ed] further informal assessments in written language and reading comprehension for a six week trial period. Direct instruction [would] be provided in written language (SE-9).

112. On January 21, 2015, Newton proposed to amend Student's IEP adding a social/emotional goal to support her strategies to address anxiety, and to coordinate in-school and private therapeutic services. A once per six day cycle 25 minute counseling session was added to the IEP. The Amendment also references the October 2013 neuropsychological report's clinically significant finding of anxiety disorder, and notes Parent's statement that

Student's stress level, which Parent believes to be school related, manifested in somatic symptoms in the home (SE-45).

113. Parent is concerned that Student has not had many friends in gymnastics or in school since the third grade (Parent). In addition to academics, she identified additional sources of stress for Student. At home, Student's relationship with a sibling is stressful. Parent also noted that Student had somewhat missed her grandmother when she travelled out of state in December 2014, but opined that Student had been more upset in fifth grade when Parent was absent for two to three weeks due to work commitments. (Parent had been concerned as to how her absence would impact Student given that she is the one who typically helps Student and Student's step-father is not as patient or understanding when helping Student with homework) (Parent).
114. At present, Student does not have access to a computer in the home and she finds going to the library (where she can access a computer and internet) distracting (Parent). Parent would prefer that Student be assigned a dedicated laptop with Word Documents that she could bring home. She did not think that the small screen and keyboard in the *AlphaSmart* made available to Student was helpful because Student fatigued easily and because it did not allow her to see what she has written so Student is not encouraged to review it (Parent).
115. Student has visited the Carroll School (Carroll) and Landmark School (Landmark) and she preferred Landmark. According to Parent, Carroll (Parent's choice), had accepted Student in the past and was considering her for seventh grade (Parent).

CONCLUSIONS OF LAW:

Parent and Newton disagree as to whether Student was an individual with a disability falling within the purview of the Individuals with Disabilities Education Act²³ (IDEA) and the state special education statute²⁴ starting in May 2012. They also disagree as to whether Newton addressed Student's needs appropriately during the periods when Student was eligible to receive special education services via an IEP. Parent argued that Student presented with a disability which went unaddressed for a long period of time harming Student educationally, and that contrary to Newton's assertions, Student did not make effective progress during the relevant time periods. Lastly, Parent argued that Newton's substantive and procedural transgressions were of such magnitude as to warrant awarding compensatory education and damages to Student. Parent seeks public funding for an out-of-district placement for Student.

Newton denied Parent's allegations stating that it has been responsive to Student and her changing needs. Newton also denied procedural and substantive due process violations

²³ 20 USC 1400 *et seq.*

²⁴ MGL c. 71B.

further asserting that it has and can continue to offer Student a free, appropriate public education (FAPE)²⁵ in district.

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 needs²⁶ in a way "reasonably calculated to confer a meaningful educational benefit"²⁷ to the student.²⁸ Additionally, said program and services must be delivered in the least restrictive environment appropriate to meet the student's needs.²⁹ Under these 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.³⁰ Educational progress is then measured in relation to the

²⁵ MGL c. 71B, §§1 (definition of FAPE), 2, 3.

²⁶ 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").

²⁷ See *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) where the court explicitly adopted the meaningful benefit standard.

²⁸ *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.").

²⁹ 20 USC 1412 (a)(5)(A).

³⁰ 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 Elementary and Secondary Education's (then, Department of Education) 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.³¹ At the same time, the IDEA does not require the school district to provide what is best for the student.³²

Consistent with *Schaffer v. Weast*, 126 S.Ct. 528 (2005), the individual challenging the appropriateness of the proposed IEPs and asserting compensatory claims, that is Parent, must prove her case by a preponderance of the evidence. Newton argues that at all times between April 2013 and the present, it offered Student a FAPE.³³ I find that the record contains substantial³⁴ evidence to support Newton's arguments. Parent has failed to meet her burden of persuasion pursuant to *Schaffer* regarding the eligibility and denial of FAPE issues. The evidence is persuasive that while there were in fact certain technical procedural violations committed by Newton in 2012, said violations do not rise to the level of a denial of FAPE to Student, warranting compensatory services. Furthermore, for the time period between September 2012 and February 2015, the evidence supports a finding that Newton did not violate Parent's or Student's due process rights. 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. My reasoning follows:

I. Procedural Challenges:

In addressing claims of procedural violations, 20 USC§(f)(3)(E)(ii) permits the Hearing Officer to find that the procedural inadequacy rose to the level of deprivation of a FAPE only when the alleged procedural violation:

- (I) Impeded the child's right to a free appropriate public education;
- (II) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or
- (III) Caused a deprivation of educational benefits.

In the instant case, Parent's allegations of procedural violations are as follows: 1) she was not provided with a copy of the Procedural Safeguards until the Team meeting on May 15, 2012

³¹ *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.").

³² 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.")

³³ *Schaffer v. Weast*, 126 S.Ct. 528 (2005) places the burden of proof in an administrative hearing on the party seeking relief.

³⁴ "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion.'" *New Boston Garden Corp. v. Assessors of Boston*, 383 Mass. 456, 466, 420 N.E. 2d 298 (1981), quoting from G.L. c. 30A §1. *G.R. ex rel. Staples v. Dep't of Developmental Servs.*, 84 Mass. App. Ct. 791, 794 (2014).

(PE-1 at 5); 2) following parental consent provided on March 21, 2012, Newton failed to complete the required psychological and educational testing by May 9, 2012; 3) Parent was provided the summaries of the school-based evaluation assessments less than 24 hours prior to the eligibility meeting, and an additional report was provided at the beginning of the meeting, in contravention of the “two-days prior” requirement under the Regulations, resulting in depriving the Team of the opportunity to make an informed determination; 4) Newton failed to complete the required assessments, obtain a school history of Student, conduct a classroom observation or produce a report of said observation³⁵, the result of which was vital to the Team’s determination; 5) at the eligibility Team meeting, Newton failed to discuss the educational assessment and/or the other reports; and 6) the 2012 psychological testing was performed by two interns without supervision of a licensed psychologist³⁶, therefore, not performed by a qualified professional (PE-10D).³⁷

Parent argued that the above procedural due process violations denied Student a FAPE. She further asserted that the Team determining eligibility disregarded information which demonstrated Student’s weaknesses in reading comprehension and fluency, writing, and mathematical calculations and fluency. Specifically, Parent points to the September 2011 Universal Assessment, Self-Assessment and Fall Assessment Prompt, the 2012 MCAS, Addition Support and Reading Assessment, the 2011-2012 DRA writing prompts, the March 2012 Gates Test, in addition to other periodic class-based assessments not disclosed to the Team. According to Parent, the content of the aforementioned showed that Student had multiple disabilities and was failing to make effective progress, but the Team found Student ineligible for special education services. Parent argued that Newton’s procedural due process violations were severe enough to warrant an award of compensatory education as well as damages. As later discussed in this section, the credible evidence does not support Parent’s allegations that the Team’s failure to discuss particular assessments resulted in a denial of FAPE to the Student.

Parent further argued that at the May 2012 Team meeting, Newton failed to discuss the specific work that Student was actually able to produce with or without supports in each class, explain what the expected benchmark should be for the start of fourth grade and explain the “standard written work” against which Student’s work should be measured. According to her, these were fatal failures.

Newton responded that the May 15, 2012 Team meeting was attended by both of Student’s third grade co-taught classroom teachers, and also by the school psychologist, OT specialist, a *Sylvan Learning Center* teacher, all of whom had knowledge as to Student’s then current performance level and abilities. Parent and Ms. Bradshaw, Parent’s personal friend, were

³⁵ According to Parent, Newton filed the Educational Assessment Part B: Assessment/Observation Form on or about July 31, 2012 one month following Parent’s initial BSEA Hearing Request (Parent).

³⁶ Parent asserts that documentation later produced by Newton noted that the school psychologist had interpreted and reviewed the scoring of the psychological testing, a statement that Parent also challenges because the psychologist could not have known if the test was administered correctly and appropriately.

³⁷ While most of Parent’s procedural violation allegations occurred in connection with the 2012 eligibility Team process, she claimed additional violations thereafter, none of which is supported by the credible evidence.

also present at the meeting. Student's evaluation results were there discussed and the teachers discussed Student's progress, opining that despite some weaknesses, she was responding to RTI interventions and was making effective progress (see Facts # 8, 10, 11, 12, 13, 14, 16, 17). Moreover, at all times, beginning in 2012 and thereafter, Student's work product was being measured against regular education standards for typically developing third graders. As such, the May 2012 Team did not find Student eligible to receive special education services.

Disagreeing with Newton's finding of no eligibility, Parent requested an independent educational evaluation. Newton did not respond within the five days³⁸ of receipt of Parent's request and later offered an extended evaluation to ascertain whether Student had a disability. On July 6, 2012, Parent filed a Hearing Request with the BSEA which resulted in an Order for full reimbursement of Dr. Mercedes' neuropsychological evaluation as a result of Newton's procedural failure to promptly respond to Parent's request for independent evaluation (and other procedural transgressions). (See *In Re: Newton Public Schools*, BSEA # 1300077 (Berman, 2012)). Given the limited scope of that Decision, it did not however, address the issue of whether Newton's failure to find Student eligible, or other alleged procedural violations, resulted in a denial of FAPE to Student, warranting fashioning of the remedy now sought by Parent.

I first turn to Parent's allegation that Newton's failure to provide her with the Procedural Safeguards until May 15, 2012, was a fatal transgression on Newton's part. Parent is correct that Newton was responsible to provide her with the Notice of Procedural Safeguards when she first referred Student for an evaluation and received the consent form, on or about March 21, 2012. 20 USC §1415 (d)(1) and 34 CFR §504 (a) and (b). She however, received the notice of Procedural Safeguards in mid-May 2012, and six weeks later filed her first Hearing Request with the BSEA. Technically, Newton violated Parent's/ Student's procedural due process rights in this regard, but this transgression in no way denied Student a FAPE as the Notice was provided at the Team meeting on May 15, 2012 when the evaluation results and Student's eligibility were first discussed.³⁹

I next turn to federal and state regulations for guidance regarding Newton's responsibility *vis a vis* the assessments involved in the initial 2012 evaluation.

Consistent with federal and state statutes, 603 CMR 28.04(2) requires a school district to arrange for and conduct evaluations of a student by a multidisciplinary team of properly credentialed professionals within thirty days of the day on which the district received parental consent for the evaluations. Subsections (a) addressing required, and (b) addressing optional assessments state:

³⁸ See 603 CMR 28.04 (5)(d) requiring a school district to either agree to pay for the independent education evaluation or proceed to the Bureau of Special Education Appeals within five school days of receipt of a parent's request for an independent evaluation. See also 34 CFR §300.502.

³⁹ Administrative Notice of *In Re: Newton Public Schools*, BSEA # 1300077 (Berman, 2012) shows on page four of the Decision that Parent attached a copy of the "Parent's Notice of Procedural Safeguards" to her June 12, 2012 letter, confirming that she had indeed received them by that date.

(a) Required Assessments.

1. An assessment in all areas related to the suspected disability.
2. An educational assessment by a representative of the school district, including
 - (i) A history of the student's educational progress in the general curriculum. Such assessment shall include information provide by a teacher(s) with current knowledge regarding the student's specific abilities in relation to learning standards of the Massachusetts Curriculum Frameworks and the district curriculum; and
 - (ii) An assessment of the student's attention skills, participation behaviors, communication skills, memory, and social relations with groups, peers, and adults.
 - (iii) The school district shall also thoroughly evaluate and provide a narrative description of the student's educational and developmental potential.
 - (iv) When a child is being assessed to determine eligibility for services at age three, an observation of the child's interactions in the child's natural environment or early intervention program is strongly encouraged.
 - (v) For children who are receiving early intervention services, school districts are encouraged to use current and appropriate assessments from early intervention teams, whenever possible, to avoid duplicate testing.

(b) Optional Assessments. The Administrator of Special Education may recommend or a parent may request one or more of the following:

1. A comprehensive health assessment by a physician that identifies medical problems or constraints that may affect the student's education. The school nurse may add additional relevant health information from the student's health records.
2. A psychological assessment by a licensed school psychologist, licensed psychologist, or licensed educational psychologist including an individual psychological examination.
3. A home assessment that may be conducted by a nurse, psychologist, social worker, guidance or adjustment counselor, or teacher and includes information on pertinent family history and home situation and may include a home visit, with the agreement of a parent.

(c) Reports of assessment results. Each person conducting an assessment shall summarize in writing the procedures employed, the results, and the diagnostic impression, and shall define in detail and in educationally relevant and common terms, the student's needs, offering explicit means of

meeting them. The assessor may recommend appropriate types of placements, but shall not recommend specific classrooms or schools. Summaries of assessments, shall be completed prior to discussion by the Team and, upon request, shall be made available to the parents at least two days in advance of the Team discussion at the meeting occurring pursuant to 603 CMR 28.05(1). 603 CMR 28.04(2)(c).

The record shows that Student's psychological evaluation was conducted by Ms. Keogh along with Ms. Eccies and Ms. Goddard on April and May of 2012, an OT evaluation by Ms. Golder on April 12, 2012, an educational evaluation by Ms. Backer on May 1 and 10, 2012, and a developmental and social history by Ms. Mazur in April 2012 (Facts # 10, 11, 12, 13, 14, 15). I note that Student was eight years old at the time of this evaluation which meant that Newton could dispense with the observation as well as other optional assessments. The evidence is persuasive that Newton in fact conducted the necessary evaluations, consistent with federal and state law and regulations, in light of Parent's concerns, and its own knowledge of Student.

Parent is correct that she did not receive some of the reports a full two days before the Team meeting and that the math assessment was not performed until May 14, 2012 in contravention of the applicable law and regulations. However, the fact remains that Student was making effective progress in her co-taught classroom with the supports being offered at the time, and therefore, this procedural transgression did not result in a denial of FAPE to Student.

Parent further took issue with the fact that Dr. Keogh, together with Ms. Eccies (who had a Masters degree and was a clinical psychology practicum student under the supervision of Dr. Keogh) and Ms. Goddard (who had a Bachelors degree and was a school psychology intern), had performed the psychological evaluation as opposed to Dr. Keogh alone. The record shows that Dr. Keogh conducted most of the evaluation together with Ms. Eccies and Ms. Goddard and it was she who reviewed and scored the tests. Additionally, Dr. Keogh was responsible for the observation portion of Student's evaluations (Fact # 10; PE-1F; PE-1J; PE-10A; PE-10B; PE-10C; PE-10D; PE-10E). As such, I am not persuaded that the assistance provided by Ms. Goddard and Ms. Eccies invalidated the test results. Therefore, any violation by Newton in this regard was also *de minimus*.

I further find Newton credible in its assertion that although it completed Student's Educational Assessment Parts A and B in a timely fashion, it failed to forward a copy of the Assessments to Parent because of Ms. Backer's lack of familiarity at the time with Newton's *modus operandi*. More importantly, both of Student's teachers in the co-taught classroom were present at the May 2012 Team meeting, they had the opportunity to observe Student's day to day performance since the beginning of the 2011-2012 school year and opined at that meeting that she was making effective educational progress. In this regard, again, Newton's transgression was *de minimus*.

The evidence is persuasive that the Team considered the totality of the information then available to it. Contrary to Parent's and Ms. Bradshaw's position, neither the May 15, 2012 or the September 6, 2012 Teams ignored information that would have rendered Student eligible to receive special education services at that time. In fact, in 2012, Parent's own private evaluator, Dr. Mercedes, supported provision of accommodations based on her evaluation findings and the teachers' reports of Student's progress (Mercedes). At the time, Student had been and continued to participate in a co-taught classroom (by a special education and a regular education teacher), was receiving RTI, supports and would later receive additional accommodations through the Section 504 plan proposed by the fourth grade Team.

Ms. Bradshaw, on whom Mother relied to argue that Student should have been found eligible in 2012, has served as a school principal in Massachusetts. She lacked special education training and experience and is not certified in any area of special education. Her sole experience has been in administration, policy and regular education. As such, I did not find her testimony to be credible or reliable in reaching the conclusions Parent asserted. It is interesting to note that at Hearing, Ms. Bradshaw agreed that Dr. Mercedes' report did not find a specific learning disability in 2012, and that in Massachusetts the first step for addressing academic difficulties is RTI interventions, which Student was receiving. Generally, Ms. Bradshaw also recognized the benefits of the co-teaching model to help students remain in general education classrooms, and specifically opined that this model had been beneficial to Student (PE-13A; Bradshaw).

The evidence is convincing that based on the available information throughout 2012, the Teams then convened reached reasonable conclusions, that is, that despite the presence of ADHD and executive functioning deficits, Student was progressing effectively and was not eligible to receive specially designed instruction through an IEP. On September 20, 2012, approximately four months following the initial eligibility meeting, the Team found Student eligible to receive accommodations through a Section 504 plan while the school-based Team continued to monitor and assess Student's performance to ascertain whether other disabilities were present. The record supports a finding that Newton acted responsibly in continuing to gather information to ascertain whether Student indeed presented with a disability that prevented her from making effective progress in the absence of an IEP, and further continued to convene multiple Teams to discuss Student's changing needs in fourth, fifth, and sixth grades.

The record does not support a finding that other than the initial procedural violations which occurred between March and July 2012, and are here found to be *de minimus*, Newton committed any procedural transgressions during Student's fourth, fifth or sixth grades. As such, I find that Parent has not met her burden of persuasion pursuant to *Schaffer* that procedural violations on Newton's part denied Student a FAPE and warrant an award of compensatory services. I next turn to Parent's substantive allegations.

II. Failure to find Student eligible and denial of FAPE:

Parent's substantive allegations involve the Team's failure to find Student eligible in a timely fashion, challenges as to whether she was making effective progress commensurate with her ability and whether the IEPs offered by Newton were appropriate. At the heart of Parent's dispute is the IEP developed for sixth grade together with the supplemental services added during the Resolution Session held in June 2014 (SE-1; SE-2).

In determining the appropriateness of a Team's determination of eligibility as well as the appropriateness of an IEP, one must objectively look at the information available to the Team at the time the determination is made and/or an IEP drafted. *In Re: Arlington Public Schools*, BSEA #10-1957 (2010); *In Re: Southwick-Tolland Regional School District*, 12 MSER 279, 289 (2006). Parent argues that the May 2012 Team failed to consider the available, relevant information, that it misrepresented Student's progress and did not timely complete assessments, that would have yielded a finding of eligibility. The evidence however shows that Newton conducted and reviewed the school-based evaluations, looked at Student's cognitive abilities, and also considered her reading comprehension/fluency, writing and math skills. Newton had an understanding of Student's educational history, including the private services secured by Parent through *Sylvan Learning Center*, as well as Student's progress from first through third grade. The Team included individuals who possessed then-current information regarding Student's evaluation results and day to day performance in her co-taught classroom; individuals who understood Student's strengths and weaknesses as well as the impact that the RTI interventions had on her performance. The Team was also aware and took into account Student's performance in periodic in-school and state wide assessments, and was able to trace her educational development in conjunction with standards expected of regular education peers. The evidence is convincing that Newton made recommendations based on Student's performance and needs and more importantly, that at all times since 2012, Newton has remained open to information that could have resulted in a different finding and indeed has done so, as discussed below.

The information available to the May 2012 Team included Student's 2009-2012 (first, second and most of third grade) English language arts (ELA) teacher assessments, which showed that while Student's initial performance had fallen below grade expectations in several areas, with regular education interventions and monitoring, she was able to independently meet performance benchmark criteria by November of her second grade. At that point Student was exited from the intervention group and was provided with reading instruction in the co-taught classroom (by a regular and a special education teacher) during the remainder of second and third grades (PE-14C). Third grade Progress Reports (2011-2012) show that Student was demonstrating personal and social growth, was demonstrating the targeted degree of proficiency and was making satisfactory progress in ELA, history/social studies, mathematics, science/technical engineering, music, art, physical science, physical education/health and wellness, as compared against her regular education peers. During this time, Student had good attendance (PE-14C). The evidence is persuasive that the information available to the May 2012 Team simply did not support a finding of eligibility.

Student's IDEA Team and Section 504 Teams convened in September and November 2012, to review the results of Dr. Mercedes' evaluation (PE-14B; Mercedes). Dr. Mercedes' report diagnosed Student with ADHD-attentive type and executive functioning issues, but did not find Student to present with a specific learning disability. She also gave Student a provisional Anxiety Disorder (NOS) diagnosis (based on Parental questionnaires and self-report measures completed by Student) suggesting monitoring of Student's psychological health (PE-14B; Fact # 25). Dr. Mercedes supported provision of accommodations through a Section 504 plan. Dr. Koppenheffer also testified that in 2012 the Section 504 plan was sufficient to provide Student with the accommodations she required. The Team further looked into Student's needs regarding assistive technology and made additional recommendations to support her.

The evidence is convincing that when the Team met in May and November 2012, the services Student was receiving were sufficient to allow Student to progress effectively in the general education environment. In light of said progress, Student's performance in school and on private evaluations, not even Dr. Mercedes' recommended that Student be placed on an IEP (Mercedes).

Later, based on the results of Dr. Mercedes' evaluation, Dr. Rappaport concluded that Student had dyslexia. While Dr. Rappaport explained that he had based this diagnosis on Dr. Mercedes evaluation, he opined that the differential between Student's functional ability and cognitive ability was indicative of a specific learning disability, a diagnosis not reached by Dr. Mercedes in 2012. As Newton correctly argued, it is not surprising that the February 25, 2013 Team concluded that additional information was needed for a finding of specific learning disability, and hence had Ms. Hooper-Welch conduct additional assessments before Student was found eligible under the category of a specific learning disability (PE-34; PE-36A; PE-36C).

At Hearing, Dr. Mercedes offered a balanced, reasonable perspective of Student's functioning starting in 2012. She offered recommendations based on her testing, review of documents, observations of Student in the school setting and during testing, and more recently she observed the LD program. She fairly considered the educational interventions available to Student in Newton and was honest and objective about her assessment of teachers and service providers. As such, I find her testimony to be credible.

Similarly, I found the testimony of Dr. Morlock, Dr. Koppenheffer, Dr. Rappaport and Newton's employees to be candid, credible and reliable, as were the testimony and evaluation reports of Newton Staff.⁴⁰ Regarding Dr. Talamo, I note that her testimony is valuable regarding her evaluation result and observations in 2013 only as she has not seen or evaluated Student after 2013.

⁴⁰ I note that with respect to school history, Drs. Rappaport and Koppenheffer's perspectives were based in large part on parental report and consider their opinions in this regard in such light.

I do not find the testimony offered by Ms. Bradshaw to be persuasive. Ms. Bradshaw is a personal friend of Parent who is not licensed in any area of special education. She has never administered testing and lacks training and experience in special education. Her knowledge of special education comes solely from having attended Team meetings while working at Cambridge Public Schools (Bradshaw). As such, my reliance on her testimony is limited to narrations of her observations, but I do not credit her as an expert and find her opinions to be jaded by her personal relationship with Parent and Student. Therefore, I do not rely on her findings, opinions or conclusions.

Student was first found eligible to receive special education services in April 2013, during fourth grade. Parent partially rejected the proposed IEP in May 2013, making numerous requests for modifications and requesting a meeting to discuss program and placement (PE-36C).

As analyzed in previous BSEA decisions, federal Courts have long held that FAPE is measured by a student's ability to make meaningful effective progress which yields effective results with demonstrable improvement when evaluated in the context of that student's educational potential. See *In Re: Arlington Public Schools*, BSEA # 02-1327 (Crane). Careful review of the evidence shows that in fifth and sixth grades, Student was making meaningful effective progress as measured by objective testing conducted by Newton, MCAS results, the evaluations conducted by Dr. Talamo and Dr. Mercedes (neither of whom recommended out-of-district placement for Student), progress reports, classroom observations and teacher reports.

As such, her performance during fifth (2013-2014) and sixth grades (2014-2015) must be reviewed as well as the rest of the available information to the Team, to ascertain whether Student was making meaningful effective progress in light of the totality of the circumstances in Student's life during the aforementioned time periods.

Comparison of Student's progress reports for the end of fourth grade (2012-2013), when Student was found IDEA eligible (PE-38B; PE-38C), and those for the 2013-2014 school year (PE-42A; SE-17; SE-18; SE-19; PE-38C), MCAS reports⁴¹ (SE-39; SE-40), and other math and reading assessments (SE-24; SE-25) demonstrate the benefits derived by Student from the co-taught model and the additional accommodations and interventions provided in her IEP. Also, teachers in the co-taught and integrated classrooms used multi-sensory interventions within the general education setting which were also beneficial to Student. Newton's fifth and sixth grade teachers all testified that albeit having some challenges, Student was making meaningful effective progress (Ahlberg, Meredith, Tynes, Hatch, Hooper-Welch).⁴²

⁴¹ Compare PE-38A, the 2012 reports with SE-39 and SE-40. In the spring of 2014 Student received proficient scores in her ELA and Science and Technology MCAS, and she scored within the advanced range in Mathematics (SE-17; SE-18; SE-19; SE-40).

⁴² Newton persuasively argued that Student had derived great benefit from the co-taught model and had progressed even during the periods when she was not receiving services under an IEP (PE-32).

Moreover, as information was brought for discussion to the Team in 2013, 2014 and 2015, such information was seriously considered, and at every step of the way resulted in increased services to Student.⁴³ Furthermore, after her initial partial rejection of the IEP in the spring of 2013, on October 25, 2013, Parent accepted the IEP as developed and consented to the proposed placement (SE-22).

The record shows that in the fall of 2013, Dr. Talamo's evaluation found that Student met the definition for language-based learning disability based on Student's written language, word retrieval, rapid reading fluency, and also found written expression deficits. Dr. Talamo recommended the use of EmPOWER and Read Naturally programs. Newton implemented the use of both programs with Student. Dr. Talamo made numerous additional recommendations, but she did not recommend a change in placement. Instead, she recommended that Student remain in her co-taught classroom with additional pull out services (Fact # 50). At the January 17, 2014 progress meeting Student was reported to be reading above benchmark at level V, equivalent to the end of fifth grade. She was using Read Naturally for reading fluency and Just Words, a regular education spelling program (SE-16). Math was described as an area of strength, and as per Student's MCAS results, she demonstrated greater growth in math and ELA than the average Newton student (SE-40).

When the Team met in February of 2014 to discuss Dr. Talamo's report, disagreement ensued regarding the amount of direct services outside the general education setting (including written expression) and the need for extended school year programming. Ultimately, a number of Dr. Talamo's recommendations, including extended school year services, were added to the IEP, even when the fifth grade special education teacher, Ms. Meredith, credibly testified that she had not seen any regression in Student in the fall of 2013 beyond that reasonably expected (Meredith, Hatch).

Similarly, progress reports for the 2014-2015 school year (SE-5), Student's report card (SE-6), the results of the fall 2014 Gates-MacGinitie Reading Test (PE-53A), Mathematics Improvement report (tests September 2014 to January 2015) (SE-44) and the spring 2014 MCAS results (SE-40), all demonstrate that in the integrated classroom with additional supports and interventions, Student was making effective educational progress, commensurate with her abilities, as measured against regular education standards.

The rest of the information available to the Teams convened in 2014, and later, in 2015 (the end of Student's fifth grades and her sixth grade), came from the observation conducted by Dr. Talamo in 2013, and Dr. Mercedes in 2014.⁴⁴ Neither Dr. Mercedes nor Dr. Talamo participated in the meetings convened during the 2013-2014 school year, specifically, the Team meeting in April 2014 or the subsequent resolution session, which gave rise to the IEP which is the subject of the dispute now before me (SE-1; SE-13).⁴⁵ Teams convened later in

⁴³ By way of example, during fifth grade, Student was allowed to enter school fifteen minutes early to help her with anxiety and organization.

⁴⁴ Dr. Mercedes did not conduct any further testing after 2012.

⁴⁵ Newton is correct that many of the exhibits submitted by Parent included work product of the Student, much of which was not placed in meaningful context through the testimony of the witnesses.

sixth grade would have the benefit of Dr. Mercedes, Dr. Morlock, Ms. Oliver, Ms. MacNeil, Mr. Bunting and Ms. Leary's input.

The spring 2014 IEPs (SE-1; SE-13) proposed services in the integrated sixth grade classroom at Oak Hill, with push-in and additional pull-out services. This classroom offered general education instruction (which by all accounts Student can access) by regular education teachers (Mr. Bunting and Ms. Sack) and a special education teacher (Ms. MacNeil) and a special education assistant, similar to the co-taught model in which Student had previously participated. Student received pull-out academic strategies services with Ms. MacNeil. Ms. Oliver met Student for Community Meetings every other Friday and assisted Student with peer and emotional issues, as did the school psychologist. The spring 2014 IEPs, containing Dr. Talamo's recommendations, came into effect during the summer and September 2014.

Dr. Talamo had also identified anxiety as an issue which needed attention, and recommended monitoring and CBT. In 2014, weakness in Student's emotional health came into focus. The record indicates that trials with ADHD medication in August to September 2014 and in January 2015, poor performance and injuries that impacted Student's ability to effectively participate in competitive gymnastics, family dynamics, and school related stress finally took a toll on Student.

At the beginning of the 2014-2015 school year, there was not yet a recommendation for a social/emotional goal for Student and none was in place. The spring 2014 IEP only referenced support by the school's social worker or guidance counselor on an "as needed" basis to address anxiety in the Additional Information section of the IEP (SE-1). At the Resolution Meeting it was agreed that "the Team will have ongoing communication with [Student's] outside providers [the psychologist]" (SE-1; SE-2). Student was able to come into school early but contrary to fifth grade, she could not access her classroom early, which according to Parent was not as helpful (Parent); teachers disagreed.

On November 18, 2014, Student suffered a crush injury to her hand which caused a serious set-back to her competitive gymnastic expectations. According to Parent, Student had to relearn her gymnastic skills (Parent). Parent also testified that during this year Student has displayed inconsistent desire to go to practice. Between November 2014 and the first week in January 2015, Student's practices were very inconsistent, (i.e., less than her usual 15 hours per week) and were often interrupted by Student requesting to go home because she did not feel well. Parent attributed Student's resistance to the injury, Student's lack of friendships at the gym and school related stress. Dr. Morlock opined that Student is not at all a competitive child and yet she has been competing at a very high level in gymnastics. The stress caused by competitive gymnastics cannot be minimized. Similarly, the stress caused by the time demands occasioned by her participation in gymnastics and choir (even if she enjoys these activities) cannot be discounted. One must also question the impact these time constraints had on Student's ability to complete homework.

When the Team met in December 2014, Dr. Mercedes indicated that in light of the reports and her own observation of Student – who appeared to be a different child – she was

concerned that academic demands were taking an emotional toll on her (Mercedes). This prompted Dr. Mercedes to inquire as to the LD program (with Ms. Leary) which she later observed and found appropriate.

In December 2014, Parent also raised concern regarding Student's emotional health as supported by her December 11, 2014 letter (PE-67). Both Dr. Mercedes' concerns and Parent's letter triggered an immediate response from the Team by reconvening on January 14, 2015 to discuss whether the LD program would be a better option for Student. Additionally, the school psychologist and the guidance counselor met with Student on December 15, 2014 to inquire as to whether Student was having thoughts of hurting herself as Parent had asserted in her December letter (Oliver). According to them, Student had denied such thoughts and she also denied having made said statement to her therapist (Oliver).

In January 2015, the school psychologist and guidance counselor were able to speak with Dr. Morlock regarding Student's emotional fragility (Morlock, Oliver).

Dr. Morlock, Student's CBT therapist has worked with Student for over sixteen months. She testified that Student had identified several sources of stress: she was afraid of spiders, feared that she would forget how to read, was afraid of tests, worried about making and keeping friends, struggled with family relationships, worried about dying, hated school and got nervous before gymnastic competitions (Morlock). Additionally, although she enjoys gymnastics, Student's participation in this sport at a competitive level cannot be minimized, especially since she lacks a competitive nature (Koppenherffer). According to Parent, until November 2014 Student had practiced approximately 15 hours per week, getting home late and tired several times per week. Thereafter, her somatic complaints (headaches and stomachaches), had caused her to cut many of her practices short, especially since the fall of 2014 (Parent).

Parent and Dr. Morlock both testified that Student had become more anxious over the past couple of years, and that increased attentional and focus issues had impacted her gymnastics performance, requiring increased one-to-one support from Parent and her coaches (Parent, Morlock).

Adding to Student's stress is her belief that she is not smart, cannot be successful at much other than gymnastics, and that while she should be better than others, others are better than she is (Parent, Morlock, Mercedes). Dr. Rappaport, Dr. Mercedes and Dr. Morlock all spoke of the disconnection between Student's actual abilities and her beliefs about those abilities; she is clearly able to perform much better than she perceives. Lastly, while Dr. Morlock and Dr. Rappaport identified the birth of a third child in the family as a source of stress for Student, at Hearing Parent downplayed the impact of this event explaining that she had assured Student that she would always be her baby (Parent).

Dr. Morlock opined that CBT was not effective for Student, noting that Student was not functioning well emotionally, and she recommended that something be changed (Morlock).

Dr. Mercedes, who reached a similar conclusion also because of Student's emotional fragility, supported Student's participation in the LD program even if only for certain courses (Mercedes). Dr. Mercedes testified that given that Student was making effective progress per teacher account, she could not recommend Student's complete transition into a substantially separate language-based classroom (Mercedes).

Newton was concerned that the LD program may not be appropriate because Student functioned at a higher level than the students in Ms. Leary's LD class. Concerned about the impact that a full transfer to the LD class may have on Student, the January 14, 2015 Team did not support this recommendation. The Team however added a social emotional goal to Student's IEP and agreed to have Ms. Leary provide individual reading and writing to Student over a six week trial period (Leary, Oliver). During that time, Ms. Leary would also evaluate Student's strength and weaknesses.

I further note that information presented at Hearing through the testimony of Dr. Rappaport and Dr. Koppenheffer provided helpful insight to understanding the totality of the circumstances surrounding Student's life leading to her current presentation. This information is also helpful in making future recommendations for Student. The testimony of Dr. Koppenheffer, Student's pediatrician, was helpful in understanding Student's medical history (including asthma, headaches, stomachaches and sports injuries), the ADHD diagnosis and referring Student to specialists to address her anxiety⁴⁶ and ADHD. She noted that Student's presentation over the years had changed, stating that more recently Student appeared shy and less engaged, though she was not clear as to the reason for Student's change, suggesting that it was more complicated than just stress over academic difficulties.⁴⁷ Dr. Koppenheffer recommended and supported treatment of Student's anxiety through CBT. Also, it was she who referred Student to Dr. Rappaport for possible treatment of ADHD through medication.

Dr. Rappaport testified that he had discussed addressing Student's ADHD through medication,⁴⁸ as well as addressing Student's anxiety and dyslexia with Parent. He noted in his June 17, 2014 report that Student's dyslexia had been remediated (PE-29C).

Dr. Rappaport was unable to determine whether Student's anxiety was her primary diagnosis contributing to attentional issues, or whether the anxiety was secondary and caused by

⁴⁶ The record remains unclear as to why Dr. Koppenheffer's letter of August 18, 2012 (PE-15B), noting that she and Dr. Mercedes had identified ADHD and Anxiety Disorder NOS as areas of concern, was not shared with Newton prior to Hearing. The letter was therefore not discussed.

⁴⁷ "There's a lot of a lot going on at this age in terms of social change and physical change and, you know, school becomes more demanding, and so I think there are many possible stressors in a child's life at this age" (Koppenheffer). She also suggested that the birth of a sibling, injuries and participation in competitive sports may be contributing to Student's stress and anxiety (Koppenheffer).

⁴⁸ As discussed earlier, The record shows that Student has had to two attempts at ADHD medication to address attentional issues: one in August 2014 which was stopped by September 2014, and a single dosage on January 1, 2015, both trials having had negative results, including the probability that Student's January 1, 2015 panic attack and visit to the emergency room, may have been at least partially caused by the one dosage of *Ritalin* (Koppenheffer).

Student's ADHD. In his view, ADHD impacts all aspects of an individual's life and is often accompanied by anxiety, depression, difficulty with relationships and poor self-image. He explained that the CBT treatment, which he had recommended, was used to address generalized anxiety noting that he would not have prescribed it to address only school anxiety, and agreeing that Student's anxiety was caused by more than just school (Rappaport). He testified that the reason for seeing Student in June 2014 was to prescribe ADHD medication and explained that he had chosen to start Student on ADHD medication first because the impact of this type of medication was seen quickly, if the medication did not work, it could be stopped quickly, this in contrast to anti-anxiety medication (*Id.*).

In addition, Newton persuasively argued that contrary to Parent's assertions, Student was very much aware of the dispute surrounding her educational placement as she visited both Landmark and Carroll, had conversations with Parent and knew when Dr. Mercedes and Parent observed her that she was the subject of the observation. (This despite Dr. Mercedes statement that she did not think that Student had recognized her.) Additionally, within a two year period, Student has been evaluated multiple times in school and privately, and she has also seen a number of providers outside school (e.g., Rappaport, Morlock, Minster, etc.). The evidence is persuasive that while Student may not know the specifics of this case, she is certainly generally aware that something is transpiring.

Newton argued that some of the information regarding Student's anxiety had not been shared with the district, noting that it would have been helpful in planning for her. Nevertheless, Newton persuasively argued that it addressed Student's issues as they unfolded, holding numerous Team meetings and consistently increasing the level of support offered Student. The evidence is persuasive that the spring 2014 IEPs, combined with the recommendations made by the Team in January 2015, are appropriate to meet Student's needs. Moreover, the information gathered by Ms. Leary (the teacher described by Dr. Mercedes as "highly skilled") during the six week trial period will undoubtedly offer the Team valuable information regarding future planning for Student, whom up to this point has received appropriate services in Newton.

Lastly, there is no basis to conclude that during the time periods covered by this Decision, Student required a dedicated laptop or that Newton failed to provide her with the recommended assistive technology. Both a laptop and an *AlphaSmart* were available to Student in school during the fifth and sixth grades, and the *AlphaSmart* was offered for Student to take home. Parent found the *AlphaSmart* inefficient because of the small screen and she opined that the small keyboard made Student fatigue easily (Parent). Parent further testified that Student had limited access to the internet at home which therefore made the use of a dedicated laptop for the home helpful to support Student's writing, but not to access school work or information via internet. Moreover, Newton argued that Dr. Mercedes had observed that having access to a laptop in Mr. Bunting's sixth grade class had not been helpful in getting Student to start her assignment or produce more sentences, suggesting that access to a laptop alone was insufficient to help Student produce more writing (Mercedes). As such, the evidence is persuasive that at present, Student does not require a dedicated laptop in order to access a FAPE.

For the foregoing reasons, I find that Parent has not met her burden of persuasion pursuant to *Schaffer* that Student: (a) should have been found eligible for special education services since 2012; (b) has been deprived a FAPE; or (c) has not made effective progress while in Newton. As such, there is no basis at this time to grant Parent's request for a publicly funded out-of-district placement for Student.

ORDER:

1. Newton is ordered to convene Student's Team before the end of the 2014-2015 school year to discuss Ms. Leary's findings and recommendations, as well as any additional information available to the Team regarding Student's emotional state. Student's placement recommendations for the 2015-2016 school year shall also be discussed.

By the Hearing Officer,

Rosa I. Figueroa

Dated: June 5, 2015

MEMORANDUM

To: The Parties in BSEA # 1408637
From: Rosa Figueroa, BSEA Hearing Officer
Dated: June 5, 2015
Re: Corrected Decision

Enclosed please find a Corrected Decision which should replace the Decision issued on June 4, 2015. During editing, one sentence was accidentally omitted from the first paragraph on page 44 of the Decision. We apologize for any inconvenience this may cause.

Thank you.

June 4, 2015

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

NEWTON PUBLIC SCHOOLS

BSEA # 1408637

BEFORE

**ROSA I. FIGUEROA
HEARING OFFICER**

**PARENT, PRO-SE
OUIDA YOUNG, ESQ., ATTORNEY FOR
NEWTON PUBLIC SCHOOLS**