

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Canton Board of Education

Appearing on behalf of the Student:

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Appearing on behalf of the Board:

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Appearing before:

Attorney Ann F. Bird  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Did the Canton Board of Education (Board) offer the Student a free appropriate public education for the 2014-2015, 2015-2016 and/or 2016-2017 School Year, including the 2015 and 2016 Extended School Years?

a) If the Board did not offer the Student a free appropriate public education for the 2014-2015, 2015-2016 and/or 2016-2017 School Year, including the 2015 and 2016 Extended School Years, did the Student require a residential placement?

b) If the Board did not offer the Student a free appropriate public education for the 2014-2015, 2015-2016 and/or 2016-2017 School Year, including the 2015 and 2016 Extended School Years, and the Student did require a residential placement, is the Middlebridge School (Middlebridge) appropriate?

c) If the Board did not offer the Student a free appropriate public education for the 2014-2015, 2015-2016 and/or 2016-2017 School Year, including the 2015 and 2016 Extended School Years, and the Student did require a residential placement and the Middlebridge was appropriate, should the Student be placed at Middlebridge and/or reimbursed for the expense of the Middlebridge placement?

d) If the Board did not offer the Student a free appropriate public education for the 2014-2015, 2015-2016 and/or 2016-2017 School Year, including the 2015 and 2016 Extended School Years, and the Student did not require a residential placement and Middlebridge day program was appropriate, should the Student be placed at Middlebridge for the day program and/or reimbursed for the expense of the Middlebridge day program placement?

2. If the Board did not offer the Student a free appropriate public education for the 2014-2015, 2015-2016 and/or 2016-2017 School Year, including the 2015 and 2016 Extended School Years, and the Student did not require a residential placement or Middlebridge was not appropriate as a day program or a residential program, is the Student entitled to compensatory education services?
3. Did the Board violate the Student's rights under Section 504 of the Rehabilitation Act?
  - a) If so, what is an appropriate remedy?

**PROCEDURAL HISTORY:**

The Student filed this request for special education due process hearing on September 16, 2016. The Impartial Hearing Officer was appointed to hear the case on September 19, 2016. A prehearing conference was held on October 12, 2016. Attorney Courtney Spencer appeared on behalf of the Student and Attorney Michael McKeon appeared on behalf of the Board.

The deadline for issuing the final decision was initially established to be December 26, 2016 and an evidentiary hearing was scheduled for December 14, 2016. Subsequently, evidentiary hearing dates of February 2, 2017 and February 3, 2017 were added. On December 8, 2016, the Student requested that the hearing date of December 14, 2016 be cancelled due to health problems. The Board consented and the request was granted.

On December 21, 2016, the Student requested an extension of the deadline for issuing the final decision as a result of a health problem. The Board of Education did not object to the request and it was granted. On January 17, 2017 and February 16, 2017 the Student requested further extensions of the deadline for issuing the final decision in order to accommodate the hearing schedule. The Board did not object, and the requests were granted. On March 15, 2017, the Board requested a further extension of the deadline for issuing the final decision in order to accommodate the hearing schedule. The Student did not object and the request was granted.

On April 7, 2017, the first evidentiary hearing was convened. At that time, the Student requested a further extension of the deadline for issuing the final decision in order to accommodate the hearing schedule. The Board consented to the request and it was granted. On May 17, 2017, June 7, 2017, July 7, 2017, July 31, 2017 and August 30, 2017 the Student requested further extensions of the deadline for issuing the final decision in order to accommodate the hearing schedule. The Board consented to the requests and they were granted. On September 15, 2017, the Board requested a final extension of the deadline to accommodate the briefing schedule. The Student did not object to the request and it was granted.

Evidentiary hearings were conducted on April 7, 2017, May 16, 2017, June 16, 2017, July 7, 2017, July 11, 2017 and July 12, 2017.

The following witnesses testified:

Student's Mother  
Perri Murdica, Ed.D  
Christina Ciocca, Ph.D  
Dan Levantahl  
Sara Callahan  
Amy Nadeau  
Christina Olsen  
Vicki Holbrook Duran  
Helen Farmer  
Elizabeth Zagata

Hearing Officer Exhibits HO 1 through HO 4 were entered as full exhibits. Student Exhibits P 1 through P 95 were entered as full exhibits. Finally, Board Exhibits B 1 through B 56 were entered as full exhibits.

All motions and objections not previously ruled upon, if any, are hereby overruled.

To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340 (S.D. Tex. 1993); *SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985).

### **SUMMARY:**

The Student challenged the procedural and substantive propriety of the Individualized Education Programs (IEPs) that were offered to her by the Board for her seventh, eighth and ninth grade years. The Student was unilaterally placed in a private residential school in another state for her ninth grade year, and sought reimbursement for the expense of the unilateral placement as well as a compensatory education remedy for the alleged failure of the Board to offer a free appropriate public education (FAPE).

The Hearing Officer concluded that the Student's seventh and eighth grade IEPs were appropriate, but that the ninth grade IEP did not offer FAPE. The Student did not, however, require a residential placement and her unilateral placement was not appropriate as a day program. A compensatory education remedy was awarded.

### **STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) Section 10-76h and related regulations, the Individuals with Disabilities Education Act (IDEA), 20 United States Code (U.S.C.) Sections 1400 *et seq.*, and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. Sections 4-176e to 4-178 inclusive, Section 4-181a and Section 4-186.

**FINDINGS OF FACT:**

After considering all the evidence submitted by the parties, including documentary evidence and the testimony of witnesses, I find the following facts:

1. The Student was born on August 23, 2001, and is now sixteen years of age. (Exhibit B 12 (B \_\_\_); Testimony of Mother (T \_\_\_\_))
2. The Student received early intervention services due to developmental delays beginning at age two in New Jersey. Her family moved to Canton, Connecticut and the Student transitioned to a preschool special education program provided by the Board at age five. (P 2; T Mother) She received special education support as well as occupational therapy and speech-language therapy throughout her elementary and intermediate school years in Canton under the category of Specific Learning Disability. (T Mother; B 11; B 12; B 14)
3. The Student is sweet, compliant, hard working, and shy. She loves to sing and has a good sense of humor. (T Mother; T Nadeau, T Holbrook Duran; T Olsen; B 14)
4. The Student's cognitive profile is complex. She demonstrates relative strengths in verbal modalities and relative weakness in the nonverbal areas, including visual-spatial and visual-motor functions. She exhibits weak language skills and struggles with reading comprehension, writing and mathematics. Some of her motor skill development is delayed, and she has a poor working memory and slow processing speed. (T Mother; T Ciocca; T Nadeau; T Olsen; T Holbrook Duran; P 10; B 6; B 12; B 14; B 16; B 17; B 18; B 34; B 38; B 42)
5. An important hallmark of Student's cognitive profile is that her performance on standardized tests as well as in the classroom is consistently inconsistent. Her disability is such that functioning in any particular academic skill will vary from day to day and situation to situation. Something she understands on one occasion will be lost on the next occasion, and vice versa. (T Olsen; T Nadeau; T Ciocca; T Levanthal; B 14; B 25)
6. As the Student completed her sixth grade year at the Board's intermediate school, her parents suggested - and the school team agreed - that a neuropsychological evaluation should be conducted to better understand her disability. (B 12) As a result, a neuropsychological evaluation of the Student was conducted in September 2014, at the beginning of seventh grade, by Dr. Jessica Lord-Bean, a private practitioner in Glastonbury, CT. The report of that evaluation was received in November 2014 and reviewed at a PPT meeting on December 8, 2014 (Lord-Bean Report). (B 14) Dr. Lord-Bean also wrote an addendum in September 2015 to further explain her findings. (B 25)
7. Dr. Lord-Bean's tests of the student's intellectual functioning produced significantly lower scores across the board than had an assessment performed by the school psychologist in 2013. On the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV), Lord-Bean found a Full Scale IQ of 74, down from 87; a Verbal Composite Index of 87, down from 98; and a Perceptual Reasoning Index of 79, down from 86. The Student tested as having a significantly

weaker working memory of 68 versus 97 and a relatively better - but still poor - processing speed of 80 versus 78<sup>1</sup>. (B 14; B 25)

8. In her report Dr. Lord-Bean explained this difference by pointing to a theme that would be echoed by subsequent evaluators and educators, that the Student's complicated cognitive profile renders her performance consistently inconsistent:

It is important to keep in mind that students with [the Student's] profile often exhibit inconsistencies in their abilities from day to day and context to context, including their performance on standardized tests. Therefore, it will be important to continue to gather both qualitative and quantitative data on her functioning to gain a comprehensive picture of [her] relative strengths and weaknesses to help guide programming going forward.

(B 25)

9. Dr. Lord-Bean also found significant weaknesses in motor sequencing, motor dexterity and fluency, visual motor integration, motor-free visual-perception skills, visual scanning and sequencing, visual memory, and executive functioning. On the other hand, the Student exhibited average verbal memory skills. (B 14)

10. Dr. Lord-Bean offered the following diagnoses of the Student:

Borderline Intellectual Ability  
Specific Learning Disorder in reading and mathematics  
Developmental Coordination Disorder  
Language Disorder  
Weaknesses in sustained attention/focus

(B 14)

11. Notably, Dr. Lord-Bean made no reference to anxiety or social skill deficits. (B 14; B 25) To the contrary, she described the Student as a "happy, social child" who has friends and seems to get along well with peers. (B 14)

12. Upon review of the Lord-Bean Report, the Student's planning and placement team (PPT) changed the Student's identification category from "Specific Learning Disability" to "Multiple Disabilities." (B 15; T Mother)

13. The PPT also adjusted the Student's goals and objectives for speech-language therapy for the seventh grade and returned occupational therapy to her program. (B 15; B 18)

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<sup>1</sup> Eighteen months later, in February 2016, Dr. Ciocca again administered the WISC-IV and found a Full Scale IQ of 73 with a Verbal Composite Index of 86, Fluid Reasoning of 76, Working Memory of 72, and Processing Speed of 72. (B 42)

14. The Student’s IEP for the seventh grade had the Student attending supported mainstream classes<sup>2</sup> for English and Science as well as electives such as chorus, and receiving special education and related services in small self contained environments as follows:

Academic Skills	.75 hours per day
Resource Room	.75 hours per day
Math instruction	.75 hours per day
Speech/Language Therapy	.75 hours per week
Occupational Therapy	.75 hours per week
Total Instruction	11.25 hours per week
Total related services	1.50 hours per week

(B 12; B 15; B 18)

15. This represented an increase in instructional time of .42 hours per week over the year before. (B 11; B 12; B 15; B 18)

16. The Student’s time for occupational therapy was also reduced from the year before because she had progressed beyond the need for a small group exercise class. (T Farmer; B 11; B 12; B 18)

17. The Student was also offered tutoring in mathematics for 2 hours per week for five weeks during the summer as an Extended Year Program for the 2014 School Year. (B 12)

18. The Student’s PPT identified the following areas of “Need/Concern” in the Present Levels of Performance section of her IEP: Academic/Cognitive Language Arts for reading and writing, Academic/Cognitive for mathematics, Communication, and Fine and Gross Motor skills. (B 12)

19. Notably, the Student’s Behavioral/Social/Emotional level of performance was identified in her IEP as “Age Appropriate” at that time. A Behavior Assessment System for Children (BASC) administered in June 2012 revealed that the Student did not experience significant internalizing behaviors such as anxiety or depression at that time. (B 7; P 15) The IEP also noted that although the Student tended to withdraw socially, she readily adapted to changes in her environment and demonstrated good social skills. (B 12)

20. Despite the Age Appropriate notation in the Behavior/Social/Emotional area, the school psychologist added an informal social skills group to the Student’s milieu at the end of 2014. The group was not a special education service and was not included in the IEP. (B 15; P 30a; T Nadeau)

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<sup>2</sup> These classes were supported by a paraprofessional to work with the special education students. (T Olsen)

21. The instructional and related services offered in the Student's IEP targeted each of the areas of Need/Concern identified in the Present Levels of Performance section of her IEP. (B 12)
22. The Student was also provided a set of Annual Goals and Objectives and Modifications and Accommodations<sup>3</sup> for seventh grade that targeted each of the areas of Need/Concern identified in the Present Levels of Performance section of her IEP. (B 12) These goals and objectives are set forth in detail in Addendum 1.
23. At the Student's annual review in March 2015, the PPT reported annual progress on these annual goals and objectives. (B 18) These reports are set forth in detail in Addendum 1.
24. The IEP contemplated that progress on the Student's annual goals for reading, writing and mathematics would be measured by scores on the same standardized test of achievement - the Woodcock Johnson Test of Achievement III (WJ III) which would be administered before and after instruction. (B 12; B 15; B 18)
25. Level scores on standardized tests in successive years, including the Woodcock Johnson Test of Achievement, demonstrate that the tested subject has achieved expected growth in the tested skill relative to peers of the same age group. (B 3; B 34; B 25; T

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<sup>3</sup> The following Program Accommodations and Modifications were included in the Student's IEP for seventh, eighth and ninth grade in all classes and sites:

Materials/Books/Equipment: calculator, enlarged materials, manipulatives,  
*assistive technology: none required*

Tests/Quizzes/Assessments: alternative tests, extra time-tests, projects/written work, opportunity to revise test/quiz for credit, orally read tests/directions, prior notice on all assessments (ie: quizzes, test) test study guide, use of note cards for tests/quizzes, word bank

Grading: no spelling penalty unless opportunity to edit

Organization: templates for written work

Environment: preferential seating, structured routine

Behavioral Interventions and Support: daily feedback to student, positive reinforcement

Instructional Strategies: check work in progress, concrete examples, extra drill/practice, have student restate information, highlight key words, immediate feedback, multi-sensory approach, provide models, provide student with vocabulary word bank, review directions, support auditory presentations with visuals, use manipulatives

Other: colored overlay or highlighter strip for written materials; fewer problems per page

(B 18; B 39; B 49) (emphasis added)

Murdica) Likewise, higher standardized scores over time generally reflect that the subject exhibited greater than expected development in the particular area, and lower scores reflect less growth compared to same aged peers. (*Id.*) A reduction in a standardized score does not necessarily indicate that the subject has regressed in the tested skill. (B 25)

26. The Student's progress on her annual goals and objectives for reading comprehension, writing and mathematics in the seventh grade was significant. The PPT reported that the Student Mastered most of her objectives and made Satisfactory progress on the remainder on the basis of her performance on the WJ III as well as curricular based assessments. Most scores for reading comprehension, writing and mathematics on the WJ III improved, and those that did not were nearly level over the assessment period. (See Addendum 4<sup>4</sup>; B 12; B 18)

27. The student also Mastered her goal for reading fluency as measured by a Direct Reading Assessment. At the time of her annual review in February 2015, she was reading late fifth grade text at a rate of 121 words per minute, with 99% accuracy. (B 18; T Zagata)

28. The Student's progress on her goals for Communication and Motor Skills was less impressive, but still showed improvement overall. Progress on the Student's annual goal for Communication was to be measured with therapeutic materials as well as standardized tests including the Comprehensive Test of Spoken Language (CASL), Word Test 2, Listening Comprehension Test – Adolescent and Comprehensive Test of Phonological Processing 2. (Addendum 1; B 18) Unfortunately, standardized testing completed in the seventh grade did not include the same test that was used in the sixth grade, the Clinical Evaluation of Language Fundamentals 4. (B 6) Despite this complication, a rough comparison of results for receptive and expressive language in the sixth and seventh grades reflects general growth in these areas. (B 6; B 16; B 18; Addendum 5; T Holbrook Duran)

29. Moreover, the Student's speech-language therapist testified credibly that the Student made Satisfactory progress on her Communication goal, having Mastered one objective and Satisfactorily performed the remaining four objectives in this area. (Addendum 1; B 18; T Holbrook Duran)

30. The Student's annual goals for Motor Skills were designed to be measured by standardized testing as well as therapeutic materials. The Student's occupational therapist reported that the Student did not make appropriate progress on her goal for improvement in visual-motor coordination and visual-perceptual activities, although there was some growth. She did, however, make satisfactory progress in her goal for motor planning. (Addendum 1; B 38; T Farmer)

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<sup>4</sup> Addendum 4, Addendum 5 and Addendum 6 show the Student's scores on those subtests and composites of standardized tests that were administered during the relevant time where the *same subtest or composite* score for the same standardized test is available for comparison. In addition, those scores for subtests and composites on the WJ IV are provided in Addendum 4 where the subtest or composite bears the same or a very similar title to a subtest or composite of the WJ III.



31. Standardized testing of motor skills and visual perception skills completed in the sixth and eighth grades, however, showed growth in almost all areas of motor and visual perception skills tested over the two-year span. (B 5; B 38; Addendum 6)
32. The Student also progressed in the general curriculum, as reflected on her seventh grade report card with all A's and B's. (B 22)
33. The Student's IEP for the eighth grade continued to identify the same areas of need in the Present Levels of Performance section as were noted for the seventh grade year: Academic/Cognitive Language Arts for reading and writing, Academic/Cognitive for mathematics, Communication and Fine and Gross Motor skills. (B 18; B 39)
34. In addition, a new area of need was identified for the Behavioral/Social/Emotional area, which stated: "Anxiety, struggles to participate in class, low self-advocacy skills". The IEP noted that the "[d]ue to [the Student's] limited self-advocacy and participation in class, accommodations and support are needed in order for her to be successful in the classroom". (B 18)
35. The basis for the Behavioral/Social/Emotional area of need in the eighth grade IEP was the subject of controversy in the evidence. Testing administered in June 2012 showed no internalizing behaviors such as anxiety or depression. (B 7; P 15) That testing was performed because the Student's fourth grade special education teacher "suspected" anxiety that might impact performance, and her mother agreed. (P 13) The testing that was performed, however, revealed that the Student did not have an anxiety problem, and the PPT continued to describe the Student's Behavioral/Social/Emotional area as "Age Appropriate" without providing services. (B 7; B 11; B 12; B 13; B 15; B 18; B 26)
36. The Student's mother testified in this case that the Student experienced severe anxiety while at school on a daily basis and that anxiety lead the Student to refuse to attend school or to complete assignments on occasion. She said that the Student was exhausted each day after school and would not attend a service day experience because she was not paired with a friend, and would not go on a class trip. She also refused to stay for the party after the eighth grade graduation ceremony and missed a chorus concert. (T Mother; P 79)
37. On the other hand, the school staff testified credibly that they did not observe anxiety at school beyond that experienced by other middle school students. They saw the Student as a shy but happy girl who enjoyed school, but was reserved and would not volunteer in at least her mainstream English class from fear of making a mistake. (T Olsen; T Holbrook Duran; T Nadeau; T Farmer) Despite the controversy, the PPT did identify anxiety as an area of concern in the eighth and ninth grade IEPs, and included an annual goal and counseling services to her program. (B 39; B 49)
38. In the eighth grade, the Student again participated in the mainstream for supported English and Science classes and electives, and received special education and related services in self contained small group environments as follows:

Academic Skills	.75 hours per day
Resource Room	.75 hours per day
Math instruction	.75 hours per day
Language Therapy	.75 hours per week
Occupational Therapy	.75 hours per week
Counseling	.50 hours per week
Total Instruction	11.25 hours per week
Total Related Services	2.00 hours per week

(B 18)

39. This represented a slight increase in related service time of .50 hours per week as compared to the year before due to the addition of counseling with the school psychologist to support the Student’s Behavioral/Social/Emotional area of concern. (B 18)

40. The Student was also offered tutoring for 3 hours per week and language therapy for 1 hour per week for five weeks during the summer as an Extended Year Program for the 2015 School Year. (B 18)

41. The Student’s IEP for the eighth grade also included six new Annual<sup>5</sup> Goals and Objectives, and a new annual goal for the Social/Behavior realm. These are set forth in detail in Appendix 2. (B 39)

42. A new goal and objectives for the newly identified area of concern in the Behavior/Social/Emotional area, Goal # 5, stated as follows:

- [Student] will participate in counseling to gain a better understanding of her learning profile resulting in the mastery of the following objectives
- Objective # 1 [Student will be able to name three strengths and three weaknesses and explain how they impact her life.
- Objective # 2 [Student] will be able to name three healthy coping strategies that would help her alleviate anxiety or stress levels.
- Objective # 3 [Student] will independently participate at least one time weekly in each academic class. CLOP one time weekly with pre-established and rehearsed questions
- Objective # 4 [Student] will request assistance in all classes from teachers and paraprofessionals when needed. CLOP: 35% of the time

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<sup>5</sup> Although some goals and objectives used repetitious language as compared to the prior year, they incorporated new expected levels of achievement and were, therefore, new goals. Only portions of the Student’s Communication goal were not new. Two objectives (No. 3 and 4), were continued from the year before, as they had been introduced late in the year, on December 8, 2014. One objective (No. 2) was repeated with a reduced focus, and one objective (No. 1) was new. (T Holbrook Duran)

(Exhibit B 39)

43. The new goal and objectives for the Behavior/Social/Emotional area were reasonably designed to address the area of concern regarding the Student's refusal to volunteer<sup>6</sup> in class that was observed in the school setting as well as the anxiety noted by the Student's Mother.

44. The Student's special education teacher also introduced an informal plan to support the Student's self confidence and reduce fear of volunteering in class by preplanning and previewing opportunities for class participation in the Student's English class. (B 15; T Olsen)

45. The Student also continued to participate in the mainstream intervention social skills group initiated by the school psychologist during the seventh grade. (T Nadeau)

46. The Student's Annual Goals and Objectives, Modifications and Accommodations and instructional and related services for eighth grade appropriately targeted each of the areas of Need/Concern identified in the Present Levels of Performance section of her IEP and were reasonably calculated to enable the Student to receive educational benefit. (B 39) These goals and objectives are set forth in detail in Addendum 2.

47. A PPT meeting was convened on September 28, 2015 at the beginning of eighth grade, to discuss a variety of issues. Among these was the Student's request for an independent neuropsychological evaluation. The Board engaged Dr. Christina Ciocca of Glastonbury CT to provide an independent neuropsychological evaluation pursuant to this request. (B 26; P 40)

48. The PPT also discussed the Student's reading performance at the September 28, 2015 meeting. The Student had been instructed with a Wilson reading program in fifth and sixth grades. Wilson is a multimodal, empirically driven system for reading instruction that focuses on decoding and encoding. The program was delivered by a Wilson Certified practitioner, and was successfully completed at the end of sixth grade. (T Zagata).

49. During the seventh grade, the Student Mastered her goal and objective for reading fluency (B18) and had a standard score of 100, or Average as compared to same age peers, on the WJ III. (B 12) Also in the seventh grade, the Student was instructed with the Read Live program, another structured, empirically driven program that focuses on reading comprehension as well as fluency. Read Live was discontinued in the seventh grade, as it was not producing progress in reading comprehension. (T Olsen)

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<sup>6</sup> As the Student's special education teacher testified, the problem was not actually participation in class as a general matter, as the Student did participate in classroom activities. The problem was her willingness to volunteer to ask or answer questions in class. (T Olsen)

50. At the September 25, 2015 meeting, the PPT decided to engage a reading specialist to assess the Student and recommend appropriate interventions. (B 26) As a result, reading specialist Kristina Cimini assessed the Student's reading skills in early October 2015. Cimini found that the Student's reading fluency and accuracy were relatively strong, while her reading comprehension was relatively weak. Cimini recommended, and the school team agreed, to focus on teaching the Student strategies to improve her reading comprehension in her academic skills and resource classrooms, rather than implementing another structured reading program. (B 27; P 44; T Olsen)

51. At the Student's annual review in February 2016, the PPT reported annual progress on her eighth grade goals and objectives. (B 39) These are set forth in Addendum 2.

52. Measurement of the Student's progress on goals and objectives in reading, writing and mathematics for the eighth grade was complicated by the fact that the Woodcock Johnson Test of Achievement – the designated assessment tool for progress on these goals - was updated from the third to the fourth edition during the period in question. It was no longer appropriate to administer the WJ III. (T Murdica)

53. Accordingly, the school team substituted the Fourth Edition of the Woodcock Johnson Test of Achievement (WJ IV), which was completed as part of the annual review, as one tool for evaluation of the Student's progress on her annual academic goals and objectives. (T Murdica; B 34; B 39)

54. Unfortunately, direct comparison of scores on the WJ III and WJ IV is not possible because the updated version changed the composition of subtests and the results were normed differently. In general, test subjects scored lower on the WJ IV than on the WJ III across the board. (T Murdica; T Zagata; T Olsen)

55. Added to this complication, of course, was the fact that the Student's performance on all assessments has historically been inconsistent. (See Findings of Fact (FF) 5 and 8)

56. Despite these confounding factors, the school team identified the Student's progress on her reading comprehension goal and objectives (Goal No. 1) as Satisfactory, as she Mastered objectives one and two and made Satisfactory progress on objective three. The school team based this conclusion on results of the WJ IV as well as on curricular assessments. (T Olsen)

57. Although the Student's score on the WJ IV on the Passage Comprehension subtest was 86 as compared to 95 on the WJ III subtest of the same name, her score on the Basic Reading Composite (90) on the WJ IV held steady as compared to the Broad Reading subtest on the WJ III. Her scores for Fluency remained high on both administrations, at 99. (B 18; B 34; 39; Addendum 2; Addendum 4)

58. The Student's lower score on the WJ IV for Passage Comprehension could have been due to changes in the test design and norming or her characteristic inconsistency of performance.

59. The Student's scores on other standardized tests of reading improved over the same period of time. Her score on the Word Reading subtest of the Weschler Individual Achievement Test III (WIAT III), improved from 80 on a test administered in 2014, to 89 on Dr. Ciocca's administration of the same subtest in February 2016. (B 14; B 42; Addendum 4)

60. Similarly, the Student's scores for Comprehension and Reading Quotient on the Grey Oral Reading Test Fifth Edition (GORT 5) as administered by Dr. Ciocca in 2016 showed improvement over a 2015 administration of the same test. (B 18; B 42; Addendum 4)

61. Under all of the circumstances, the PPT's conclusion that the Student achieved Satisfactory performance of Goal No. 1 and improved in the area of reading comprehension was supported by the evidence in this case.

62. The same problem with assessment of progress on Goal No. 2 for writing persisted with the unavailability of the WJ III for comparison. The Board did not administer any tests of writing from the WJ IV for the annual review, so comparison of Woodcock Johnson Test of Achievement results was not possible. (B 34)

63. The PPT did have available, however, results from the Test of Written Language 4 (TOWL 4) that had been administered in January 2016 and again by Dr. Ciocca in February 2016. These TOWL 4 results produced scores in the Average range for Contrived Writing, Spontaneous Writing and Overall Writing, suggesting that the Student was making appropriate progress in these areas in relation to peers of the same age. (B 34; B 42; Addendum 4) Again, the PPT's conclusion that the Student achieved Satisfactory performance of Goal No. 2 was supported by the evidence.

64. Assessment of progress on Goal No. 3 for mathematics in the eighth grade was also complicated by unavailability of the WJ III for comparison. Here, comparison of scores on the WJ IV administered in January 2016 to earlier WJ III scores revealed declines in Calculations from 94 to 78 and in Applied Problems from 75 to 65. These declines, as noted earlier, could have been due to changes in the test design and norming of the WJ IV. They also could reflect the inconsistency of the Student's performance due to her complex cognitive profile.

65. In any event, the PPT noted Satisfactory performance of Goal No. 3 on the basis of curricular based assessments in mathematics. (T Olsen; B 39) Although Goal No. 3 as written, does not contemplate use of curricular based assessments for progress monitoring, the tool that was designated, the WJ III, was no longer available. Under the circumstances, the PPT's reliance on curricular measures was reasonable and appropriate.

66. The Board's special education teacher testified credibly that the Student progressed in her objectives for mathematics on curricular based measurements. She did not, however, produce any raw data to support this conclusion. (T Olsen) The absence of data presented at the hearing

does not prove that the teacher never collected data.

67. The PPT's conclusion that the Student made Satisfactory progress in Goal No. 3 is somewhat bolstered by the Student's improved performance on the Math Problem Solving subtest – from 75 to 78 - of the WIAT III as administered by Dr. Ciocca in February 2016 as compared to her score on the same subtest in September 2014. Of course, the Student's score on the Numerical Operation subtest of the same tests declined from 85 to 78 during that time. (B 14; B 42; Addendum 4)

68. As a whole, the evidence presented at the hearing was inconclusive as to whether the Student actually progressed in Goal No. 3 during the eighth grade.

69. The PPT also noted progress for Goal No. 4, Communication, as Mastered, with Mastery of one objective and Satisfactory performance of the remaining objectives. As written, progress monitoring for Goal No. 4 was to be based on clinical performance. The Student's speech-language therapist testified credibly as to the Student's performance on these goals as reported in the IEP. (T Holbrook Duran) The therapist also measured the Student's progress in these same areas on standardized assessments that were administered for annual reviews. A comparison of results on these standardized assessments conducted during the seventh and eighth grades show growth in development of expressive and receptive language skills. (B 16; B 37; Addendum 5; T Holbrook Duran)

70. Given all of this information, the PPT had adequate evidence to conclude that the Student progressed in her Communication Goal No. 4 during the eighth grade.

71. Progress on Goal No. 5 for Social/Behavioral skills was rated as Satisfactory as well, based on Mastery of Objective Nos. 1 (naming strengths and weaknesses) and 2 (naming coping strategies) with improvement in Objective Nos. 3 and 5 for class participation and self advocacy. The Student continued to refuse to volunteer in her English class, but did volunteer in other classes. No raw data was offered to support the conclusions regarding improvement in class participation or self advocacy, but the school psychologist's testimony that the Student could name strengths and weakness and coping strategies adequately supports the conclusion of Satisfactory performance of Goal No. 5. (Addendum 2; B 39; T Nadeau)

72. The PPT also reported that the Student made Satisfactory progress in Goal No. 6 in Gross/Fine Motor skills. As with her Communication goal, this goal was written with progress monitoring to be based on clinical performance. The occupational therapist measured the Student's progress and reported that the Student was able to perform a relaxation exercise for a couple of minutes and could play jacks and follow a dance video with assistance. (Addendum 2; B 39; T Farmer)

73. The Student's occupational therapist also administered standardized assessments of the student's motor skill development as part of the annual review process in the sixth and eighth grades. Comparison of standardized assessment results for motor skills show

growth in most of the areas examined. (B 38; Addendum 6) The PPT had substantial evidence to support its conclusion that the Student achieved progress on Goal No. 6.

74. Goal No. 7 for Gross/Fine Motor skills was to improve visual perception skills by independently building a model and organizing information. The Student could not perform the first objective but Mastered the second. Standardized tests of visual perception skills administered in the sixth and eighth grades also demonstrated progress in many areas of visual perception. (B 38; Addendum 6; T Farmer) Again, the evidence supported the PPT's conclusion that the Student made Satisfactory progress on Goal No. 7 in the eighth grade.

75. In addition, the Student progressed in the general curriculum, as reflected on her eighth grade report card with all A's and B's. (B 46)

76. The Student's PPT did not receive Dr. Ciocca's Report of her Neuropsychological Evaluation (Ciocca Report) until May 23, 2016, very near the end of the eighth grade year. The PPT reviewed the Ciocca Report promptly after receipt, at a meeting on June 3, 2016. (B 43)

77. As noted in her report and during her testimony, Dr. Ciocca reviewed relevant school records, interviewed the Student and her mother and administered a variety of tests in January, February and March 2016. The Student was compliant and worked hard during these sessions and did not exhibit "palpable anxiety." Dr. Ciocca did not communicate with school staff or observe the Student at school in connection with this work. (B 42; T Ciocca; T Murdica)

78. The Ciocca Report identifies what she describes as a complex and multifaceted profile of the Student marked by:

[L]ateralizing findings suggestive of right hemisphere dysfunction or Nonverbal learning disorder with associated weaknesses in visual sustained attention, visual memory, visual motor integration, complex motor and visual associations, executive functioning, social/pragmatic functioning and aspects of academic functioning, especially reading comprehension, mathematics and science.

(B 42)

79. Dr. Ciocca found, as had Dr. Lord-Bean and the teachers, that the Student's test performance is inconsistent, in that she does relatively better or poorer on tests of the same skills at different times. As an example, Dr. Ciocca noted that the Student scored higher in working memory when tested by Dr. Ciocca than she had when tested by Dr. Lord-Bean. (B 42; T Ciocca)

80. The Ciocca Report lists the following diagnoses for the Student:

Nonverbal Learning Disorder

Pragmatic (Social) Communication Disorder  
Other Specified Neurodevelopmental Disorder (Executive Dysfunction, Working Memory, Processing Speed, Sensory/Visuomotor/Perceptual Deficits)  
Specific Learning Disorder With impairment in Mathematics: Accurate calculation and accurate math reasoning  
Specific Learning Disorder With impairment in reading: Reading Comprehension  
Unspecified Anxiety Disorder

(B 42)

81. The Ciocca Report makes several recommendations for the Student's program, including most notably that she be educated in a small, self contained, learning environment where the pace of instruction can be managed and direct interventions can be provided to the Student in the moment throughout the day by individuals who have specialized knowledge of nonverbal learning disorders. (B 42; T Ciocca)

82. As Dr. Ciocca also elaborated in her testimony, the Student's learning environment should include peers with disabilities similar to the Student's deficits so that the Student can experience success relative to her peers, thereby building self-esteem and reducing anxiety. (B 42; T Ciocca) Dr. Ciocca opines that, due to the intensity of the Student's needs and the multifaceted nature of her disability, instructional services and interventions must be provided in a residential setting such as that offered at Franklin Academy in Connecticut or Middlebridge in Rhode Island. (B 42; T Ciocca)

83. Dr. Ciocca also recommended that the Student and her family participate in individual and group psychotherapy and that the family pursue a psychiatric consultation for the Student. (B 42) The Student's family did not pursue either of these suggestions. (T Mother)

84. Finally, Dr. Ciocca recommended, as had Dr. Lord-Bean, that the school perform a technology evaluation. (B 14; B 42)

85. The PPT discussed and considered all aspects of the Ciocca Report during the PPT meeting of June 3, 2016. (T Murdica) Although they did not articulate it at the meeting, several members of the school staff disagreed with the Ciocca Report's diagnoses and educational recommendations, including the diagnoses of Nonverbal Learning Disorder, Unspecified Anxiety Disorder and Pragmatic Social Communication Disorder, as well as the recommendations for an assistive technology evaluation and a segregated, residential placement. (T Murdica; T Olsen; T Farmer; T Nadeau; T Zagata)

86. As noted above, Dr. Ciocca testified that the Student suffers from an Unspecified Anxiety Disorder. This conclusion was based on interviews of the Student and her mother<sup>7</sup> as well as

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<sup>7</sup> The Student reported that she has no acute emotional symptoms, and her mother told Dr. Ciocca only that the Student: "Can get anxious. Some test anxiety. Hard time adapting to change." (B 42)



administration of the Million Adolescent Personality Inventory. The narrative description of the Student's psychological profile contained in the Ciocca Report, however, does not include any assessment suggesting that the Student actually suffers from anxiety. Dr. Ciocca wrote in this regard that the Student is:

Naïve with a propensity to focus on fantasy and how she would like things to be rather than reality. . . . She lacked self-esteem and was dependent on others. Underlying anxiety and possible depression *could be present* depending on the current circumstances. Academic failure or fear of being ridiculed likely perpetuated her distancing maneuvers and caused her to revert and rely upon her fantasy.

(B 42; emphasis added)

87. The evidence as a whole did not support Dr. Ciocca's diagnosis that the Student suffers from an anxiety disorder. To the contrary, the testimony and exhibits presented in the case demonstrated that any anxiety the Student does experience is typical of her age group and is not so severe as to impact access to her education. (FF 11; FF 35-37)

88. Some members of the school team also disagreed with Dr. Ciocca's diagnosis of a Nonverbal Learning Disorder. (T Murdica; T Holbrook Duran) As Dr. Ciocca elaborated in her testimony, the diagnoses of nonverbal learning disorder encompasses the various subdiagnoses that Dr. Ciocca listed below it – pragmatic social communication disorder, neurodevelopmental deficits, specific learning disorders and anxiety. As Dr. Ciocca testified, individuals with a nonverbal learning disorder typically experience weaknesses in right hemisphere and frontal lobe functions that are reflected in visual-spatial disability, relatively stronger verbal skills, and executive function deficits. Such individuals often exhibit poor reading comprehension, poor mathematics skills, poor science skills, poor writing, poor social skills, anxiety and a reserved affect. Although “nonverbal learning disability” is not itself included in the Diagnostic and Statistic Manual V (the “bible” of disorders recognized by the psychiatric and psychological community) each of the Student's subdiagnoses are listed there. (B 42; T Ciocca)

89. Part of the school team's dispute with the nonverbal learning disorder diagnosis was its disagreement that the Student experiences significant anxiety at school, as discussed above. Another aspect of the dispute, however, focused on whether the Student has a pragmatic social communication disorder and/or associated social skill deficits. A hallmark of the pragmatic social communication disorder, which is similar to autism, is that the individual reads social cues incorrectly and as a result, has difficulty establishing and maintaining social relationships. (T Ciocca)

90. The Student's speech-language therapist has over thirty years of professional experience, is familiar with nonverbal learning disorder, and has worked with the Student for four consecutive school years. She fervently disagreed with Dr. Ciocca's diagnoses of a pragmatic social communication disorder. She testified credibly that she observed no evidence of pragmatic social communication deficits or poor social skills in the Student's performance or

behavior at school over the several years they worked together. She also did not see a basis for this diagnosis in Dr. Ciocca's evaluation results. (T Holbrook Duran)

91. Indeed, several school staff members who worked with the Student for a number of years testified that she has good social skills, has successful friendships and is able to establish and maintain social relationships. Staff testified that the Student was always accompanied by friends in the hallways and lunchroom at school and never complained of social problems. (T Zagata; T Olsen; T Farmer; T Nadeau) The school psychologist reported that the Student and several of her friends often congregated in her office area during breaks in the school day and talked about socializing on social media after school. (T Nadeau)

92. There was only one isolated incident of a disciplinary concern, when the Student was suspended for a few days for harassing another student, apparently having been manipulated by peers to post something inappropriate on social media. (P 37; B 21) There was no evidence of a pattern of misconduct related to social problems, and the Student was not excluded from school for disciplinary or other reasons aside from the one incident. (P 73)

93. It is significant that although she reported other concerns, the Student's mother never complained that she lacked friends or social skills in the many e-mails she sent to school staff. (P 17; P 18; P 20 – 26; P 30a; P 32 – 36; P 41- 53 P 55 – 60; P 63 – 72; P 77 – 79). In fact, when she wrote to say that the Student refused to attend the class service day, the Mother mentioned that the Student was upset because "none of her friends" were scheduled for the same group. (P 79) Neither were social skill problems or social communication deficits mentioned in any of the PPT meeting minutes in evidence before Dr. Ciocca's report was issued. (B 7; B 10; B 11; B 12; B 15; B 18; B 19; B 26; B 39)

94. Although the Student's social performance may not be what her mother would like, the evidence as a whole certainly did not establish that the Student suffers from a pragmatic social communication disorder or social skills deficits that are of sufficient severity to impact her ability to access educational services or require reference in her IEP.

95. The Ciocca Report and the Lord-Bean Report both recommended that an evaluation be performed to ascertain whether technology tools might be appropriate for the Student's use in school. (B 14; B 42) The Student's PPT did not agree with this recommendation. (T Farmer; T Murdica; B 18; B 39; B 49)

96. The Student used and had available various technological tools that were provided to all of the Board's students outside of the special education process. (T Farmer; T Olsen) In addition, the Student's PPT, including her occupational therapist, who is on the Board's assistive technology team and has specialized knowledge in this area, consistently concluded that she was making adequate progress on her goals and objectives and in the general curriculum and that specialized assistive technology was not required as part of her program. (T Farmer; FF )

97. In addition to discussing the Ciocca Report and recommendations at the PPT meeting on June 3, 2016, the PPT reviewed and again<sup>8</sup> proposed its IEP for the Student’s ninth grade year at Canton High School. (B 43; B 49)

98. The proposed ninth grade IEP identified the same areas of concern in the Present Levels of Performance section as were noted for the two earlier grades. The proposed IEP also continued to recommend a similar instructional and related service delivery model for ninth grade as was used in middle school:

Language Arts Instruction	.80 hours per day
Study Skills Support <sup>9</sup>	.80 hours per day
Occupational Therapy	.50 hours per week
Speech-Language Therapy	.75 hours per week
Counseling	.50 hours per week
Total Instruction	8.00 hours per week
Total Services	1.75 hours per week

(B 49)

99. The proposed IEP continued to include speech-language therapy, as this continued to be a necessary part of her program in order to provide FAPE. (T Holbrook Duran)

100. The ninth grade IEP represented a reduction in instruction time from 11.20 hours per week to 8 hours per week, or 28%, as compared to the year before due to elimination of a daily period of specialized instruction in mathematics. (B 49)

101. The PPT recommended that, instead of the daily period of specialized instruction in mathematics, the Student would be placed in a mainstream Algebra 1A class for students struggling with mathematics in the ninth grade. That class was co-taught by a special education teacher and a mainstream teacher and followed a much slower pace than the typical mainstream class, covering only one half the year’s curriculum. It had only thirteen students as compared to the typical general education class size of up to eighteen students. It also had the students using calculators to free them from the drudgery of performing math calculations and began with a review of many of the concepts taught in the eighth grade. (T Murdica; B 43)

102. In deciding to reduce the Student’s specialized instruction in mathematics in the ninth grade, the PPT apparently did not consider the recent evaluation of the Student’s mathematics achievement on standardized scores or her demonstrated need for support in the area of mathematics. Instead, the PPT focused on the availability of an Algebra 1A course in the high school that did not include small group specialized instruction. If the

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<sup>8</sup> The same IEP had also been proposed before the Ciocca Report was received. (B 39)

<sup>9</sup> This was the high school’s label for the resource room. (T Olsen)

PPT had focused on the Student's need as opposed to the availability of the class, it would not have eliminated this service, at least without further assessment.

103. Related service time was also reduced some what for occupational therapy in the ninth grade because the Student achieved an average range of performance for some of her gross motor and visual perceptual skills (B 38; B 44; T Farmer)

104. The proposed annual goals and objectives for the ninth grade are set forth in full in Addendum 3.

105. The Student was also offered tutoring for 2.4 hours per week and speech-language pathology for 1 hour per week for five weeks during the summer as an Extended Year Program for the 2016 School Year. (B 43)

106. The Student's Annual Goals and Objectives, Modifications and Accommodations and related services for eighth grade appropriately targeted each of the areas of Need/Concern identified in the Present Levels of Performance section of her IEP and were reasonably calculated to enable the Student to receive educational benefit. (B 39) The proposed specialized instructional service for the eighth grade, however, did not appropriately target the area of need with respect to mathematics and was not reasonably calculated to enable the Student to receive educational benefit in that area.

107. At the June 3, 2016 PPT, the Student's parents rejected the proposed IEP for the ninth grade and requested that the PPT place the Student at a private school, mentioning White Oak, Franklin Academy and Middlebridge as options. The Board staff considered, but disagreed with, the recommendation for a private school placement, reasoning that an appropriate program and placement, including implementation of many of the Ciocca Report recommendations, could be provided at Canton High School for the ninth grade. (B 43; B 49; T Murdica) Canton High School is the Student's local public high school and would be the least restrictive environment for her program. (T Murdica)

108. The Student's parents indicated that they would unilaterally place the Student in a private school and seek reimbursement for the expense of the placement from the Board. (B 49)

109. The Student was unilaterally placed as a residential student at Middlebridge in Rhode Island for the 2016-17 School Year. Middlebridge is a private residential and day school of 75 students that focuses on educating individuals with language disabilities, social pragmatic communication disabilities and nonverbal learning disabilities. All of Middlebridge's students are disabled. (T Levanthal; P 86)

110. Middlebridge's class sizes are small, averaging only five students. Classes are grouped according to cognitive profile. Each student receives an extended instructional period for language arts instruction as well as social pragmatic communication skill development each day. The program embeds and incorporates interventions for social skill development and other student needs in all aspects of both the day and residential programs, so that appropriate instruction can be provided consistently and in the moment,

throughout each student's daily experience. The program is highly structured, intensely supervised and very predictable. (T Levanthal; P 86)

111. Middlebridge does not require professional education certification of its staff and is not, therefore, an "approved" special education program under Rhode Island or Connecticut law. It does not offer speech-language therapy or occupational therapy and does not have a student chorus. Middlebridge does, however, maintain that all professional staff is trained in addressing the needs of students with nonverbal learning disabilities. (T Levanthal)

112. The Student is reportedly doing well at Middlebridge. She does not receive psychotherapeutic counseling, speech-language therapy or occupational therapy. She is happy and has friends, but is still timid and will not volunteer in class. (T Levanthal; T Mother; P 81; P 85)

### **CONCLUSIONS OF LAW AND DISCUSSION:**

#### **A. Free Appropriate Public Education for the 2014-2015, 2015-2016 and/or 2016-2017 School Years**

1. The overriding goal of the Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 *et seq* (IDEA) is to open the door of public education to students with disabilities by requiring school systems to offer them a free appropriate public education (FAPE). *Board of Education v. Rowley*, 458 U.S. 176, 192 (1982) (*Rowley*).
2. In *Rowley*, the United States Supreme Court set out a two-part test for determining whether a local board of education has offered FAPE in compliance with IDEA. The first part of the test is whether there has been compliance with the procedural requirements of IDEA, and the second part is whether the student's IEP is reasonably calculated to enable the student to receive educational benefit in light of the student's individual circumstances. *Id.* at 206-207. *See also*, *Endrew F. v. Douglas City School District*, 580 U.S. \_\_, \_\_ (2017); *Cerra v. Pawling Cent. Sch. Dist.* 427 F.3d 186, 191 (2d Cir. 2005); *M.S. v. Board of Education of the City School District of the City of Yonkers*, 231 F.3d 96, 103 (2d Cir. 2000).
3. Significantly, IDEA also demands that each student's program be implemented in the least restrictive environment, so that children with disabilities are educated in integrated settings with non-disabled peers "[t]o the maximum extent appropriate." 34 C.F.R. Section 300.550(b); *Walczak v. Florida Union Free School District*, 142 F.3d 119, 122 (2d Cir. 1998).
4. The sufficiency of an IEP under IDEA is assessed in light of information available at the time the IEP is developed; it is not judged in hindsight. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). "An IEP is a snapshot, not a retrospective." *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1036 (3rd Cir. 1993). It must be viewed in terms of what was objectively reasonable when the IEP was developed. *Id.*
5. The Board here had the burden to prove by a preponderance of the evidence that the IEPs it offered to the Student were both substantively appropriate and in compliance with IDEA's procedural requirements. Regulations of Connecticut State Agencies (R.S.C.A.) Section 10-76h-

14(a); *Walczak v. Florida Union Free School District*, 142 F.3d 119, 122 (2d Cir. 1998).

6. The first prong of the *Rowley* inquiry, whether the Board complied with IDEA's procedural mandates, is a critical one. As the Supreme Court said in *Rowley*, Congress based IDEA on the "conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP." *Rowley* at 206. The procedural requirements of IDEA are designed to guarantee that the education of each student with a disability is individually tailored to meet that student's unique needs and abilities and to safeguard against arbitrary or erroneous decision-making. 20 U.S.C. Sections 1412(1) and 1415(a)-(e); *Daniel R.R. v. State Board of Education*, 874 F.2d 1036, 1039, and 1041 (5th Cir. 1989).

7. From a procedural standpoint, each IEP must include: (a) a statement of the student's present level of performance in each area of disability as determined through periodic assessments; (b) a statement of measurable annual goals, including academic and functional goals, that are designed to meet each of the student's educational needs resulting from the disability; and (c) a statement of the special education and related services to be provided in order to enable the student to attain his or her goals and to progress in the general education curriculum. 20 U.S.C. Section 1414(d)(1)(A); 34 C.F.R. Section 300.320.

8. While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied FAPE. Mere technical violations will not render an IEP invalid. *Amanda J. v. Clark County School District*, 267 F.3d 877, 892 (9th Cir. 2001). In matters alleging a procedural violation, a due process hearing officer may find that a student did not receive a FAPE only if the procedural violation did one of the following: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. 34 C.F.R. Section 300.513(a)(2); *L.M. v. Capistrano Unified School District*, 556 F.3d 900, 909 (9<sup>th</sup> Cir. 2008).

9. The Student argues that the Board failed to fulfill several procedural demands and thereby deprived her of FAPE. First, the Student claims that the Board failed to conduct an assistive technology assessment.

10. The Student's PPT considered the recommendations of Dr. Ciocca and Dr. Lord-Bean, but did not agree that an assistive technology evaluation was appropriate for the Student. The PPT consistently indicated that specialized assistive technology was not required as part of her program. (FF 95-96) In so doing, the PPT followed the *Connecticut Assistive Technology Guidelines for Ages 3-21*, Connecticut State Department of Education, CT SDE website (modified 2014) (Guidelines).

11. As the Guidelines state, the first inquiry in consideration whether assistive technology should be included in a student's IEP is: "Is the student making adequate progress on IEP goals/objectives through task modifications or accommodations, skill remediation and/or other interventions?" If so, the PPT need not take any further steps in this regard, including performing an assistive technology evaluation. If not, the PPT would next consider whether assistive technology might be "necessary to meet [identified] specific IEP goals" in a particular

way and if so, whether further information, such as an assessment, might be needed. *Id.*

12. The Student's PPT properly considered that because the Student was making adequate progress on her goals and objectives as well as in the general curriculum, neither assistive technology nor an evaluation of assistive technology was necessary. (FF 95-96) Significantly, neither Dr. Lord-Bean nor Dr. Ciocca indicated that the Student was not making adequate progress in her IEP goals and objectives. Neither did Dr. Lord-Bean, Dr. Ciocca or the Student in its case identify any particular goals or objectives for which assistive technology might be needed.

13. Under the circumstances, the Board did not commit a procedural violation by deciding that an assistive technology evaluation was not necessary for the Student.

14. The Student next claims that the Board failed to appropriately assess or address the Student's social/emotional functioning from 2012 until the eighth grade, in 2016.

15. A Board's failure to accurately assess and address a student's disability or area of need in the Present Levels of Performance portion of an IEP has been specifically recognized as a procedural violation of IDEA when the failure impedes the child's right to a FAPE, the parent's opportunity to participate in the decision-making process, or educational benefits. 20 U.S.C. Section 1414(d)(1)(A); 34 C.F.R. Section 300.320; *RR v. Wallingford Board of Education*, 101 L.R.P. 196 (D. Conn 2001); *Newtown Public Schools*, 107 L.R.P. 59412 (CT SEA 2007).

16. An assessment of the Student in 2012 revealed that she exhibited no anxiety or depression. (FF 35) In the subsequent years that are relevant to this case, the school staff that worked with the Student on a daily basis credibly testified that they did not observe an unusual level anxiety beyond that experienced by her peers. They described her as a happy, shy child who enjoyed school. Dr. Lord-Bean also described her as a "happy, social child". (FF 19, 35, 37)

17. Even Dr. Ciocca saw no palpable anxiety in the several days she tested the Student in 2016. Indeed, when Dr. Ciocca administered testing of her psychological functioning anxiety was identified not as an actual problem, but only one that "could be present" depending on unspecified circumstances. The Student's family did not feel it necessary to pursue a psychiatric consultation or psychotherapy. (FF 77, 83)

18. Under the circumstances, the evidence demonstrated that while the Student's anxiety, if any, was not sufficient to require further evaluation or services in order for the Student to receive FAPE. The Board's failure to differently or further assess or address anxiety as an area of concern did not result in a denial of FAPE. (FF 86 – 87)

19. Similarly, the evidence did not support the Student's claim that she experienced social skill deficits. The school witnesses testified credibly that the Student exhibited good social skills and had successful social relationships at school. She was not excluded for disciplinary or other reasons and was not impeded in access to her education by social problems. (FF 19, 89 - 94) Failure to assess or address social problems as an area of concern did not result in denial of FAPE.

20. The Student also argues that the Board denied parental participation in the decision making process by failing to address parent concerns. The evidence does not support this claim. Contrary to the Student's suggestion, the Board did address the parental concern about the Student's reading program. The PPT agreed to engage a reading specialist, who assessed the Student and made recommendations early in the eighth grade. The specialist recommended against introduction of another systematic, structured reading program because the Student's fluency skills were already strong. Instead, she recommended that the teachers focus on reading comprehension strategies during the academic skills and resource classes. (FF 48 - 50) The parental concern was not ignored.

21. The PPT also responded to the parent's reports that the Student was experiencing anxiety at school, even though the school staff disagreed. The school team added services in the form of an informal social group in seventh grade and then counseling with the school psychologist in the eighth and ninth grades in response to the parent's reported concern. (FF 34, 39, 41)

22. Similarly, the Board did not ignore the recommendations of the Ciocca report. The PPT reviewed the Ciocca Report and discussed its recommendations. It felt many recommendations were appropriate but had already been implemented, such as engaging a reading specialist. It disagreed with others. (FF 48 – 50, 85, 88)The PPT's failure to adopt all of the parent's suggestions does not prove that it impeded parental participation.

23. The Student also argues that the Board committed a procedural violation by denying parent participation with respect to the placement decision for the ninth grade. In this regard, the PPT recommended a program and placement for the ninth grade at Canton High School at the Student's eighth grade annual review. It was not until the PPT meeting on June 3, 2016 that the Student's parents requested a private school placement. The PPT considered the request, but did not agree. (FF 97)

24. The fact that the Board did not agree with or accept the Student's parents' or Dr. Ciocca's recommendation for a private school placement does not establish that the Board deprived the parents of a meaningful opportunity to participate in the placement decision. *Luo v. Baldwin Union Free School District*, 67 I.D.E.L.R. 15 (E.D.N.Y. 2016) *aff'd* 69 IDELR 88 (2d Cir. 2017). In the absence of a consensus among PPT members, as in this case, the Board is responsible for the choice of a special education placement, not the parents. *Letter to Richards*, 55 I.D.E.L.R. 107 (January 7, 2010).

25. The Student also argues that the Board violated her procedural rights by failing to collect data to assess progress on goals and objectives. The evidence reflects, however, that the Student's PPT collected a great deal of data to support its progress reports in the seventh and eighth grades. This included scores on standardized tests such as the Woodcock Johnson Test of Achievement III and IV, the Weschler Individual Achievement Test, the Grey Oral Reading Test, the Test of Written Language, the Comprehensive Test of Spoken Language, the Word Test, the Listening Comprehension Test, the Comprehensive Test of Phonological Processing, the Clinical Evaluation of Language Fundamentals, the Bruininks-Oseretsky Test of Motor Proficiency, and the Test of Visual Perception Skills, as well as curricular based materials and



clinical observations (FF 28 – 31, 49, 56 - 74)

26. Where data was not collected to measure objectives, the objectives were so simple that data collection was not necessary to support the measurement, such as the objective to name three strategies. (FF 71)

27. It is true that the Board's witnesses did not produce raw data collected as part of their assessments at the hearing of this matter. The Student's special education teacher testified, for instance, that the Student progressed in her mathematics objectives as reflected on curricular based measurements, but did not bring the raw data or other primary sources to support this testimony at the hearing. (FF 66)

28. It is not appropriate to draw an inference that school staff did not collect data for progress monitoring from their failure to produce raw data at the hearing. Teachers are not required to retain or disclose raw assessment data, because such records are excluded from the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232g(b). Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record are not educational records. *See Deer Park Cmty. City Schs.*, 116 L.R.P. 1361 (SEA OH 12/11/15) (speech-language therapist's data used for IEP progress monitoring were not educational records subject to disclosure to parent); *Ann Arbor Pub. Schs.*, 115 L.R.P. 6219 (SEA MI 2015) (same for special education teacher's records of progress monitoring).

29. The Board did not violate the Student's procedural rights under IDEA or deprive her of FAPE by failing to retain or disclose raw data collected for progress monitoring.

The Student also argues that the Board committed a procedural violation by failing to convene PPT meetings to review the Student's IEP when she was not making progress in her program. A board must respond to a student's failure to make expected progress by reviewing and revising the IEP as appropriate. 34 C.F.R. Section 300.303(a); 34 C.F.R. Section 300.324(b); *O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233*, 144 F.3d 692, 702 (10th Cir. 1998).

30. The evidence demonstrated that the Student did made progress in most of her goals and objectives during the years in question. (FF 28- 31, 56 – 57) Even though the hearing evidence did not corroborate the progress report for mathematics in the eighth grade, the Student's progress was reviewed periodically and there was evidence that the Student was advancing. (FF 64 - 67)

31. Finally, the Student argues that the Board committed a procedural violation by failing to identify the Student's nonverbal learning disability. While it is true that the PPT did not apply the label of "nonverbal learning disability" to the Student, it did identify and address most of the various deficits that Dr. Ciocca testified make up a nonverbal learning disability. (FF 4)

32. Moreover, the evidence as a whole supported the PPT's view that the Student does not suffer from either a pragmatic social communication disorder or an anxiety disorder of sufficient severity to impact her access to educational services or require reference in her IEP. (FF 11, 35 – 37, 89 – 94) The failure to identify a nonverbal learning disorder or to address it in the IEP was

not a denial of FAPE.

33. The Board did, however, commit a procedural violation that deprived the Student of FAPE when it eliminated specialized instruction in mathematics from her ninth grade IEP. The PPT's proposed IEP for the ninth grade eliminated the daily period of specialized instruction in mathematics that the Student had received in the seventh and eighth grades in favor of a mainstream Algebra 1A class. This change resulted in a 28 percent reduction in service time for specialized instruction in support of the Student's academic needs. (FF 100 – 102)

34. In developing her ninth grade IEP, the S's PPT was required to take into account the Student's strengths, the results of her most recent evaluations, and her academic, developmental and functional needs. 34 C.F.R. Section 300.324(a). The evidence demonstrated, however, that the PPT did not adequately consider the Student's recent evaluation of mathematics achievement or her academic need for mathematics instruction when it decided to eliminate the daily period of specialized instruction in mathematics for the ninth grade. (FF 102)

35. Under the circumstances, the PPT was obligated to either examine this area further or refrain from reducing her services. 34 C.F.R. Section 300.324(a); 34 C.F.R. Section 300.303(a). The PPT's failure to base its decision to substantially reduce the Student's instructional program on appropriate assessment of her needs would have resulted in a significant decline in educational services for the Student had she continued in the Board's school. As a result, the violation resulted in a denial of FAPE for the 2016-2017 School Year.

36. By contrast, the evidence established that the Board's 2014- 2016 and 2015-2016 IEPs adequately fulfilled IDEA's procedural requirements. Those IEPs were developed by the Student's PPT based on reasonably appropriate assessments of the Student's strengths, weaknesses and levels of performance in all areas of disability and addressed all areas of disability through appropriate instructional and related services with measureable goals and objectives.

37. The second inquiry under *Rowley* is whether the Student's IEPs satisfied IDEA's substantive requirement that they be reasonably calculated to allow the Student to make appropriate progress in light of her individual circumstances. *Rowley* at 206-207; *Andrew F. v. Douglas City School District*, 580 U.S. \_\_\_, \_\_\_ (2017).

38. FAPE under the IDEA does not implicate a "potential-maximizing education." *Rowley* at p. 197, fn. 21. Instead, the IEP must be one that "confers some educational benefit upon the handicapped child." *Id.* at p. 200.

39. The Student argues that the Board failed to demonstrate by a preponderance of the evidence that the IEPs in question met the substantive requirement of IDEA. In this regard, the Student claims that she did not make progress in her goals and objectives during the seventh and eighth grades and that none of the IEPs were reasonably calculated to enable her to make appropriate progress in light of her circumstances.

40. Although the complex nature of the Student's profile and the inconsistency of her performance complicate the analysis of her progress, the Board did show that the Student's

academic achievement in reading, writing and mathematics as well as her communication and motor skill development improved overall during the seventh and eighth grades. (FF 28 – 31, 56 - 74)

41. This conclusion holds true even if the Student did not progress in her goals and objectives for mathematics or motor development in every grade, as FAPE does not require that a student improve in every area of her IEP. *Leighty v. Laurel School District*, 457 F.Supp.2d 546, 554 (W.D. PA 2006).

42. Moreover, because the Student did not require a goal and objectives or services in the Behavioral/Social/Emotional realm in order to receive FAPE, as her anxiety did not impact access to her educational services and she did not have significant social skill deficits, substantive analysis of that area is not necessary.

43. The seventh and eighth grade IEPs were reasonably calculated to and did enable the Student to make appropriate progress and met the substantive requirements as well as the procedural requirements for FAPE. As noted, the ninth grade IEP did not offer the Student FAPE.

44. The Student's request for due process also alleges that the Student was not offered FAPE for the 2015 and 2016 Extended School Years. Although the Student fleetingly refers to extended year services in her brief, this claim was not developed in the evidence or the argument in this case. Extended school year services must be provided only if they are necessary for the provision of FAPE. 34 C.F.R. Section 300.106. Typically, in order to establish the need for extended year services, there must be a showing that the student will suffer significant regression without such services. *Cordrey v. R.J. Euckert*, 917 F.2d 1460, 1471-2 (6th Cir. 1990).

45. There was no evidence that the Student was expected to suffer regression or that she required extended year services in 2015 or 2016 in order to receive FAPE. For these reasons, the Student's claims with respect to Extended Year Services are denied.

## **B. Residential Placement for the 2016-2017 School Year**

46. Having concluded that the Board did not offer the Student FAPE for the ninth grade year, the inquiry turns to whether the Student required a residential placement in order to receive FAPE that year.

47. When a residential program is necessary for a student to receive educational benefit from his or her program, a residential program, including non-medical care and room and board, must be provided by the school district at no cost to the student. 34 C.F.R. Section 300.104; *Mrs. B v. Milford Public Schools*, 103 F.3d 1114, 1122 (2d Cir. 1997).

48. The Student argues that the multifaceted and complex nature of her cognitive profile, including her nonverbal learning disorder and pragmatic social communication disorder, render a residential placement necessary for the Student to receive educational benefit. The evidence does not support this claim. First, while complex, the Student's cognitive profile does not

include a significant pragmatic social communication disorder or a nonverbal learning disability. (FF 11, 35 – 37, 89 – 94) Second, the Student received educational benefit in the seventh and eighth grades in a public day school program provided by the Board. (FF 28 – 31, 56 – 74)

49. It is reasonable to conclude that the Student would have received educational benefit in the ninth grade if the quantity and quality of the instructional and related services provided in the earlier grades had been sustained. Unfortunately, the Board's proposed IEP for the ninth grade did not offer the specialized instruction in mathematics that she Student requires. That defect, however, does not suggest that a residential placement is necessary in order to provide FAPE.

50. Given that the Student does not require a residential placement, it is not necessary to consider whether Middlebridge is appropriate as a residential placement or whether the Student should be placed there or reimbursed for the expense or her residential placement there.

### C. Unilateral Placement at Middlebridge Day Program

51. Parents who believe that a board of education has failed to provide their child with a FAPE as required under the IDEA may unilaterally place the child in a private school at the parents' expense and later seek tuition reimbursement from the school district in a claim for due process. 20 U.S.C. Section 1400(d)(1)(A); 34 C.F.R. Section 300.148; *Burlington School Comm. v. Dep't of Educ.*, 471 U.S. 359, 374 (1985); *M.H. v. New York City Dep't of Educ.*, 685 F.3d 217 (2d Cir. 2012); *Frank G. v. Bd. of Educ. of Hyde Park*, 459 F.3d 356, 363 (2d Cir. 2006).

52. Tuition reimbursement should be awarded if: 1) the board of education fails to establish that the student's IEP provided FAPE; 2) the student establishes that the unilateral placement it selected is appropriate; and 3) the equities<sup>10</sup> favor the student. 20 U.S.C. Section 1400(d)(1)(A); 34 C.F.R. Section 300.148; *Burlington School Comm. v. Dep't of Educ.*, 471 U.S. 359, 374 (1985).

53. A Student seeking reimbursement bears the burden of proof that the private placement is appropriate. R.C.S.A. Section 10-76h-14(c); *Frank G. v. Bd. of Educ. of Hyde Park*, 459 F.3d 356, 364 (2d Cir. 2006). Whether a private placement is appropriate "turns on whether [the] placement . . . is 'reasonably calculated to enable the child to receive educational benefits.'" *Frank G. v. Bd. of Educ. of Hyde Park*, 459 F.3d 356, 364 (2d Cir. 2006) (quoting *Rowley*, 458 U.S. at 207). "No one factor is necessarily dispositive" to this inquiry, and tribunals typically consider the totality of the circumstances in determining whether the unilateral placement "reasonably serves a child's individual needs." *Id.*

54. A parent's unilateral placement need not meet all of the standards that are generally applicable to public school placements. It needs only be reasonably calculated to provide educational benefit. *School Committee of Burlington v. Department of Education*, 471 U.S. 359, 369 (1985); *Draper v. Atlanta Independent School System*, 518 F.3d 1275, 1286 (11<sup>th</sup> Cir. 2008);

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<sup>10</sup> The equities factor is not relevant in this case.

*Frank G. v. Board of Education of Hyde Park*, 459 F.3d 356, 367 (2d Cir. 2006); *Warren G. by and Through Tom G v. Cumberland City School District*, 190 F.3d 80, 84 (3d Cir. 1999)

55. The parents' placement need not, for instance, be approved by the state, employ certified special education instructors or offer every special service necessary to maximize the child's potential. *Florence County v. Carter*, 510 U.S. 7 (1993); *Frank G. v. Bd. of Educ. of Hyde Park*, 459 F.3d 356, 365 (2d Cir. 2006); *M.S. ex rel. S.S. v. Board of Educ. of the City School Dist. of the City of Yonkers*, 231 F.3d 96, 105 (2d Cir. 2000) ("The test for parents' private placement is not perfection.")

56. On the other hand, and although private schools are not required to mainstream students with nondisabled peers (*M.S. ex rel. S.S. v. Board of Educ. of the City School Dist. of the City of Yonkers*, 231 F.3d 96 (2d Cir. 2000)) placements should be in the least restrictive environment capable of meeting the Student's needs. *Walczak v Florida Union Free School District*, 142 F.3d 119, 132 (2d Cir. 1999). Residential schools are more restrictive than day schools. *Id.*; *Todd D. v. Andrews*, 17 I.D.E.L.R. 986 (11th Cir. 1991) The law prefers that students be educated in day schools and reside at home with their parents. *Walczak v Florida Union Free School District*, 142 F.3d 119, 132 (2d Cir. 1999). Connecticut law also holds that private schools in Connecticut should be selected if at all possible. C.G.S. Section 10-176d(f).

57. The Student did not meet her burden to establish that Middlebridge is an appropriate program. Middlebridge is located in another state. Its residential students are all disabled and have little or no access to nondisabled peers at school or even in their home communities. This extreme level of restriction is not necessary to meet the Student's needs. In addition, the fact that Middlebridge does not require its professional staff to satisfy state requirements for professional certification, although not disqualifying in itself, weighs against propriety of the placement. Finally, the fact that Middlebridge does not offer the Student the services of a certified speech-language therapist or occupational therapist weighs against the conclusion that it is an appropriate school. (FF 111 - 112)

58. Administrative hearing officers and courts have rejected unilateral private placements as inappropriate for similar reasons. *See e.g. Lauren P. v. Wissahickon School District*, 310 F. App'x 552 (3d Cir. 2009 unpublished) (unilateral placement failed to address student's primary behavioral difficulties); *Mr. and Mrs. I v. Maine School Admin. Dist. No. 55*, 47 I.D.E.L.R. 121 (1<sup>st</sup> Cir. 2007) (unilateral placement did not offer special instruction recommended by the experts); *Ward v. Board of Educ. of the Middletown*, 63 I.D.E.L.R. 121 (2d Cir. 2014 unpublished) (placement did not address behavior deficits or provide specialized instruction in math); *N.M. v State of Hawaii Dep't of Educ.*, 60 I.D.E.L.R. 181 (9<sup>th</sup> Cir. 2013 unpublished) (unilateral placement did not address need for social interaction and group instruction).

59. Middlebridge is not an appropriate placement for the Student as a day student. She should not be placed there and is not entitled to reimbursement for the expenses of her matriculation there.

#### **D. Compensatory Education Remedy**

60. The Student also seeks a compensatory education award in this case. Impartial Hearing Officers have broad discretion to fashion appropriate remedies in due process cases, including to award compensatory education as an equitable remedy for denial of FAPE. *Draper v. Atlanta Independent School System*, 518 F.3d 1275, 1285 (11<sup>th</sup> Cir. 2008); *M.C. ex rel J.C. v. Central Regional School District*, 81 F3d 389, 397 (3d Cir. 1996); *Reid ex rel. Reid v. District of Columbia*, 401 F. 3d 516, 523 (D.C. Cir. 2005).

61. Compensatory education should be designed as a "replacement of educational services the child should have received in the first place" and should "elevate [the Student] to the position he would have occupied absent the school board's failures." *Reid ex rel. Reid v. District of Columbia*, 401 F. 3d 516, 518, 524-27 (D.C. Cir. 2005) An award of compensatory services is not based on an established logarithm, but instead on equitable considerations. *Reid ex rel. Reid v. District of Columbia*, 401 F. 3d 516, 524 (D.C. Cir. 2005) Equitable factors are generally relevant to the calculation of remedies in special education cases. *C.L. v. Scarsdale Union Free School District*, 744 F.3d 826 (2d Cir. 2014)

62. The Student is entitled to compensatory education services as a remedy for the failure of the Board to offer daily specialized instruction in mathematics for the ninth grade. In accordance with the successful pattern developed from the seventh and eighth grades, specialized instruction should have been offered to match the service provided for language arts instruction, or .80 hours per day while school was in session. (FF 98)

63. As a compensatory remedy, the Board must provide the Student with a school year's worth of specialized instruction in mathematics at the rate of .80 hours for each day that school was in session during the 2016-2017 School Year.

#### **E. Section 504 of the Rehabilitation Act**

64. The Student's request for due process also claims that the Board violated Section 504 of the Rehabilitation Act, 29 U.S.C. Section 794(a) (Section 504) and that a remedy should be imposed accordingly. Section 504 prohibits discrimination based on disability in programs and activities that are funded by the federal government. Under Section 504, a public school system must provide a "free appropriate public education" to qualified disabled students. 34 C.F.R. Section 104.33(a); *Mark H. V. Lemahieu*, 513 F.2d 922, 936-37 (9<sup>th</sup> Cir. 2008)

65. I was appointed under the authority of R.C.S.A. Sections 10-76h-1 *et seq* and 34 C.F.R. Sections 300.500 *et seq* to hear and decide due process complaints relating to the identification, evaluation or educational placement of children with disabilities or the provision of a free appropriate public education for children with disabilities under IDEA and Connecticut special education law. My jurisdiction does not include the determination of legal claims under Section 504.

66. Nonetheless, even if I did have jurisdiction under Section 504, the claim would require dismissal. The Student's case under Section 504 would require a showing that the Student's educational needs were not met as adequately as are the needs of non-disabled students. *Mark H. V. Lemahieu*, 513 F.2d 922, 936-37 (9<sup>th</sup> Cir. 2008). To find a violation of this obligation would

thus require a comparative analysis of how well the Board provides for disabled versus nondisabled students. There was no evidence presented in this hearing upon which to form any conclusions in this regard. Accordingly, the Section 504 claim is dismissed.

**FINAL DECISION AND ORDER:**

The Board provided the Student a free appropriate public education for the 2014-2015 and 2015-2016 School Years.

The Board did not offer the Student a free appropriate public education for the 2016-2017 School Year.

The Student does not require a residential placement, and Middlebridge School is not appropriate as a day placement.

The Student is entitled to compensatory education services in the form of specialized instruction in mathematics at the rate of .80 hours for each day that school was in session during the 2016-2017 School Year.

Addendum 17<sup>th</sup> Grade Goals, Objectives and Progress  
(Progress in CAPS)Academic/Cognitive

## Goal # 1

[Student] will demonstrate one year's growth in mathematical concepts reasoning and computation necessary to develop problem-solving skills as measured by WJIII Achievement tests: Current Level of Performance (CLOP): Broad Math 78, Calculations 93, Applied Problems 75, Fluency 75, grade equivalent 3.0

MASTERED. CLOP WJII Broad Math 89, Calculations 94, Applied Problems 91, Fluency 85

Objective # 1 [Student] will demonstrate understanding of math concepts by solving word problems as presented in the alternative math curriculum. Current level of performance (CLOP) WJIII Applied Problems 75; grade equivalent 3.0

MASTERED. CLOP 82% success in completing word problems

Objective # 2 [Student] will demonstrate understanding of math concepts by solving computation as presented in the alternative math curriculum. CLOP Unit

Assessments: 94%, 91%, 77%, 92%, 77%, 100%

MASTERED. CLOP 76% successful with computation with fractions, decimals and percents

Goal # 2 [Student] will demonstrate one year's growth in reading comprehension skills, necessary to read for information and understanding as measured by the WJIII tests. CLPO: Level P (mid 3d grade), DRP 50 (goal 55 given 5<sup>th</sup> grade level)

WJIII Broad Reading 91, Word Identification 90, Fluency 100, Passage Comprehension 91, Modified Reading Unit Assessments (goal = 3) 2.5, 3, 4, 3, 4

MASTERED. CLOP WJIII Broad Reading 90; Word Identification 92, Fluency 99, Passage Comprehension 95

Objective # 1 [Student] will demonstrate comprehension of 4<sup>th</sup> grade text by determining a theme or central idea. CLOP Modified Reading Unit assessments (goal=3) 2.5, 3, 4, 3, 4

MASTERED. CLOP 84% successful in identifying main theme in 4<sup>th</sup> grade text as of November 2014

Objective # 2 [Student] will demonstrate comprehension of 4<sup>th</sup> grade text by citing textual evidence to support inferences drawn from the text. CLOP Reading unit assessments (goal=3) 2.5, 3, 4, 3, 4

MASTERED. CLOP 85% successful

Objective # 3 [Student] will demonstrate comprehension of 4<sup>th</sup> grade text by writing a summary with important details. CLOP Reading unit assessments (goal=3) 2.5, 3, 4, 3, 4

MASTERED. 86% successful

Objective # 4 Given a grade 6 DRP, [Student] will indicate the correct choice by using strategies taught (process of elimination, syntax/structure, reading ahead, and



meaning) with 90% accuracy. CLOP 5<sup>th</sup> Grade DRP 50 (goal=55)  
 MASTERED. Consistently scores 57 or higher on modified DRP

#### Goal # 3

[Student] will complete grade level writing assignments with accommodations as measured by the following objectives: WJIII Writing Sample 97, Writing Fluency 92, Writing unit assessments (goal=3) 2.1, 3

SATISFACTORY. CLOP WJIII Writing Sample 96, Fluency 91

Objective # 1 When given a writing assignment, a model and accommodations, [Student] will add appropriate details and elaboration to her writing. CLOP Personal Narrative 2.5, Persuasive Essay 3

MASTERED. CLOP Consistently scores in B or higher range

Objective # 2 When given a writing assignment, a model and accommodations, [Student] will include a clear sense of order. CLOP Personal narrative 2.5, Persuasive Essay 3

MASTERED. CLOP Consistently scores in B or higher range on writing

Objective # 3 When given a writing assignment, a model and accommodations, [Student] will demonstrate the ability to correct her written work by revising, editing and rewriting. CLOP Personal narrative 2.5, Persuasive Essay 3

MASTERED. CLOP 87% successful with correcting her work with verbal reminder and list of items to correct

Objective # 4 When given an on-demand, [Student] will complete an organizer as a pre-writing tool, write the directions, introduce the piece clearly, include a clear sense of order, use specific details and provide a clear conclusion. CLOP 1.5, 1.4

SATISFACTORY. CLOP D, C- AND C

### Reading Fluency

#### Goal # 4

[Student] will strengthen her reading fluency as measured through a DRA reading assessment. CLOP fifth grade test – 102 wpm at 94% accuracy

MASTERED. 2/2015 Annual Review – [Student] has met this objective.

On a late 5<sup>th</sup> grade text, she read 121 words per minute with 99% accuracy

Objective # 1 [Student] will increase her reading fluency from the current 102 words per minute with 94% accuracy on a beginning 5<sup>th</sup> grade text to 105 words per minute with 96% or higher accuracy

MASTERED. 2/2015 Annual Review – [Student] is currently reading a late 5<sup>th</sup> grade text with 121 words per minute with 99% accuracy

### Communication

#### Goal # 5

[Student] will demonstrate appropriate receptive and expressive communication skills as measured by the following objectives

SATISFACTORY. CLOP See report dated 2/9/15 (Exhibit B 16)

Objective # 1 When presented with clinician selected materials, [Student] will independently formulate both orally and during written tasks complex grammatical sentences for 20 items per task over 3 consecutive sessions. CLOP 85%

MASTERED. CLOP Mastered including editing skills

Objective # 2 When presented with clinician selected materials [Student] will complete a variety of verbal reasoning tasks. 20 items each over 3 consecutive sessions. CLOP 83%

SATISFACTORY. CLOP Identifying nonsensical information embedded in text 74 (Word Test-A)

Objective # 3 When presented with short passages of 5+ paragraphs in length, [Student] will answer literal and inferential questions, 20 items each, over 3 consecutive sessions. CLOP 80%

SATISFACTORY. CLOP Mastered for literal questions; listening for details (LCT-A 88)

Objective # 4 Added 12/8/14 [Student] will demonstrate the ability to provide multiple meaning, antonym and synonym definitions when presented with 10 items per session with overall 80% accuracy. CLOP CASL Antonyms 70, Synonyms 97, TLC-E Ambiguous Sentences 5

SATISFACTORY. CLOP Mastered for synonyms; Antonyms (Word Test-A 75), multiple meanings (Word Test-A 85), defining vocabulary words (Word Test-A 81)

Objective # 5 Added 12/8/14 [Student] will demonstrate the ability to name 3 word retrieval strategies during a session 90% of the time. CLOP not established

SATISFACTORY. CLOP One strategy (to visualize)

### Gross/Fine Motor

#### Goal # 6

[Student] will demonstrate an improvement visual-motor coordination and visual-perceptual activities needed to participate in educational activities

OTHER. CLOP [Student] does better but did not meet objectives

Objective # 1 [Student] will increase her spatial awareness by copying complex designs on a 25 dot grid and identifying the next design in a complex pattern, improving from beginning Level G of SASP and score of 9 on SASP test

UNSATISFACTORY. CLOP 8 on SASP test

Objective # 2 [Student] will copy 3 dimensional overlapping shapes (ex. overlapping rings) with 1 cue, improving from only being able to complete 3-D box.

SATISFACTORY. CLOP [Student] needs weekly practice and cuing to draw 3 dimensional shapes

Objective # 3 [Student] will demonstrate accurate angle size and touch points when copying complex shapes, improving from being able to copy one shape inside of another.

SATISFACTORY. CLOP 50% accuracy with rotated shapes, good with embedded shapes and touch points

Objective # 4 Given a multi step project to assemble from a visual model (ex. Craft, tangram, stick building) [Student] will identify an additional appropriate strategy when her first strategy does not work, improving from being able to identify only one strategy.

SATISFACTORY. CLOP [Student] able to identify, use and determine alternate strategy when given pre-made visual model

Objective # 5 [Student] will be able to identify the different shape/design when given 5 complex choices, having a score of 7 or better on the spatial relations subtest on TVPS 3<sup>rd</sup> edition. Current baseline not established

UNSATISFACTORY. CLOP TVPS-3 Spatial Relations subtest raw score 6, scale score 2

Objective # 6 [Student] will demonstrate improvement on her visual memory, improving to scale score of 5 on Visual Memory subtest of the TVPS – ed edition. Current baseline not established

UNSATISFACTORY. CLOP TVPS-3 Visual Memory subtest raw score 8, scale score 3

Goal # 7

[Student will] improve in her motor planning ability to participate in classroom and physical education type activities.

SATISFACTORY.

Objective # 1 [Student] will complete 10 repetitions of a bilateral coordination activity (ex. Opposite arm/leg jumps in place) that is unfamiliar to her, improving from completing familiar coordination activities (ex. Lifting opposite arm/leg).

SATISFACTORY. CLOP [Student] did 10 repetitions of less familiar task in 1 of 3 trials

Objective # 2 [Student] will be able to demonstrate her ability to complete total body relaxation and deep breathing for 5 minutes, improving from 3 minutes.

NOT INTRODUCED

(B 18)

Addendum 28<sup>th</sup> Grade Goals, Objectives and Progress  
(Progress in CAPS)

## Goal # 1

[Student] will demonstrate a year's growth in her reading skills as measured by the WJIII. CLOP Broad reading 90, word identification 92, Fluency 99, Passage Comprehension 95, Word Attack 95, Spelling of Sounds 94

SATISFACTORY. WJ IV (1/16) Basic Reading Skills 90, Word attack 101, Reading Fluency 99, Oral Reading 96, sentence Reading Fluency 102, Reading Comprehension 87, Reading Vocabulary 88

Objective # 1 When reading a book/passage at the 5<sup>th</sup> grade level, [Student] will demonstrate comprehension by citing textual evidence to support inferences from the text. CLOP 86% at 4<sup>th</sup> grade text

MASTERED. CLOP with support [Student] was able to cite textual evidence of a 6<sup>th</sup> grade level text during Academic Skills. She is currently working on her culminating presentation to demonstrate understanding of the material. [Student] is able to cite text evidence in class, with support to understand grade level reading with 90% accuracy

Objective # 2 When reading a book/passage at the 5<sup>th</sup> grade level, [Student] will demonstrate comprehension by answering multiple choice and short answer questions in response to the passage. CLOP 80% successful at the 4<sup>th</sup> grade level

MASTERED. Our final unit assessment for the nonfiction text read during Academic Skills is in progress. In resource room, using 6<sup>th</sup> grade test, [Student] was able to accurately respond to multiple choice questions with 88% accuracy

Objective # 3 [Student] will develop strategies to assist her in increasing her comprehension and understanding of materials she reads (sticky notes, highlighting, etc). CLOP no data

SATISFACTORY. [Student] used highlighting techniques, a graphic organizer, "notes" feature in e-reader and kept a running outline in a google doc with the main idea and details of the texts read in class

## Goal # 2

[Student] will demonstrate a year's growth in her writing skills as measured by progress on the WJ Achievement Test. CLOP writing samples 96, writing fluency 91, spelling 90

SATISFACTORY. Text of Written Language, 4<sup>th</sup> Edition (TOWL-4) Contrived Writing 104, Spontaneous Writing 99, Overall Writing 103

Objective # 1 Given a model, [Student] will include details and elaboration in her writing to support opinions and claims. CLOP 70%

SATISFACTORY. [Student] is using text evidence to support her writing 80% of the time

Objective # 2 Given a model, [Student] will write an essay with a clear sense of order. CLOP 70%

OTHER. [Student] was 76% successful writing an essay with a sense of order and 70% for novel response essay. She is currently finishing a summary presentation for nonfiction book read in Academic Skills class

Objective # 3 When presented with an in-class essay and a model, [Student] will complete an organizer, write to the directions, use a clear sense of order, support her reasons with details and elaboration and provide a conclusion. CLOP 62%

SATISFACTORY. [Student] is currently finishing a summary presentation for nonfiction book read in Academic Skills class

### Goal # 3

[Student] will demonstrate one year's growth in mathematics as measured by the WJ Achievement Tests. CLOP Broad Math 89, Calculations 94, Applied Problems 91, Fluency 85

SATISFACTORY. Winter SMI-360 (below basic); WJ-IV Math Calculation Skills 78, Calculation subtest 78, Math Facts Fluency 79, Applied Problems 65, Number Matrices 73

Objective # 1 [Student] will be able to solve 2 step word problems, with varying operations. CLOP 82% success with known operations

MASTERED. 6/20/15 – [Student] is able to solve two-step word problems with 87% accuracy.

Objective # 2 [Student] will strengthen her ability to perform basic math facts, of varying operations, in a 1 minute time period. CLOP 25 in 1 minute

SATISFACTORY. 100% mastery for addition facts and 48% for subtraction facts (up from 26%)

Objective # 3 With each unit presented, [Student] will increase her ability to use her math skills in “real life” scenarios. CLOP 50% successful

SATISFACTORY. Quiz 80%, interim unit assessment 86%, final unit assessment 73%

## Communication

### Goal # 4

[Student] will demonstrate adequate receptive and expressive language skills as indicated by mastery of the following objectives.

SATISFACTORY

Objective # 1 When presented with clinician selected materials, [Student] will identify nonsensical information that is embedded in sentences or text and she will also explain information presented in text including identifying problems and determining solutions over 3 consecutive sessions with 80% accuracy. CLOP 60%

SATISFACTORY. 70% accuracy

Objective # 2 When presented with short passages of 5+ paragraphs in length, [Student] will answer inferential questions as well as identify 3-5 important details from a passage that has been read to her over 3 consecutive sessions, with 90% accuracy. CLOP 75% for comprehension and details

SATISFACTORY. 75% accuracy; CASL inference subtest 70% in November 2015

Objective # 3 [Student] will demonstrate the ability to provide multiple meaning, antonym and word definitions when presented with 10 items per session with overall 80% accuracy. CLOP 50% for multiple meanings, antonyms and definitions  
 SATISFACTORY. CLOP multiple meanings 80%, antonyms 79%, definitions 80%

Objective # 4 [Student] will demonstrate the ability to name 3 word retrieval strategies that she uses during a session 90% of the time. CLOP able to identify “visualizing” as a strategy  
 MASTERED<sup>11</sup>. CLOP [Student] is able to name 3 strategies

### Social/Behavioral

#### Goal # 5

[Student] will participate in counseling to gain a better understanding of her learning profile resulting in the mastery of the following objectives  
 SATISFACTORY

Objective # 1 [Student] will be able to name three strengths and three weaknesses and explain how they impact her life.

MASTERED. As of November 2015 [Student] openly shares discusses areas of strengths and weaknesses and how they impact her

Objective # 2 [Student] will be able to name three healthy coping strategies that would help her alleviate anxiety or stress levels.

MASTERED. April 2015 [Student] listed . . . three coping strategies. We will continue to work adding additional strategies

Objective # 3 [Student] will independently participate at least one time weekly in each academic class. CLOP one time weekly with pre-established and rehearsed questions

SATISFACTORY. November 2015: [Student] has stated that she participates in classes she is most comfortable in. She . . will not volunteer in one particular class because of the makeup of that class. January 2015: [Student] continues to participate in classes she has participated all along; however, she struggles to participate in new situations or English, a class she has made up her mind that she does not want to participate in

Objective # 4 [Student] will request assistance in all classes from teachers and paraprofessionals when needed. CLOP: 35% of the time  
 SATISFACTORY. CLOP 75%

### Gross/Fine Motor

#### Goal # 6

[Student] will actively participate in various motor games with improved coordination and ability to complete the given skills, as measured by meeting the following objectives:

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<sup>11</sup> The IEP’s identification of progress on this objective as Satisfactory was a typographical error. The objective was actually Mastered. (T Holbrook Duran)

SATISFACTORY.

Objective # 1 [Student] will participate and complete various motor ball skills games with a peer with good sequencing and improved skill. CLOP game of jacks played with inconsistent performance.

SATISFACTORY. [Student] can follow given strategies but needs review of those strategies on a regular basis

Objective # 2 [Student] will be able to complete relaxation exercises independently.

MASTERED. [Student] can sustain . . . relaxation [exercises she has written/illustrated] for a couple minutes only

Objective # 3 [Student] will complete multi step movement sequences (ex. dance steps, yoga) with at least 4 step sequences following a visual model. CLOP struggles with 4 step coordination exercise

SATISFACTORY Once [Student] has seen the video/demonstration 2-3 times combined with verbal cues, she is able to follow the movement and dance steps

Goal # 7

[Student] will demonstrate improvement in functional use of visual perception skills as measured by meeting the following objectives

SATISFACTORY

Objective # 1 Modified 3/26/15: [Student] will construct (draw, build, etc) from a [sic] actual model presented with minimal assistance (assist with 25% of the steps) and cues, improving from fluctuations needing from cues up to moderate assistance (assist with 50% of the steps)

UNSATISFACTORY. [Student] continues to need assistance to learn new tasks

Objective # 2 Modified 3/26/15: [Student] will independently organize information to be neat, sequences and all fit on a given page, improving from needing assistance to establish a plan to spatially organize the information

MASTERED

(B 39)

Addendum 39<sup>th</sup> Grade Goals and ObjectivesAcademic/Cognitive

## Goal # 1

[Student] will strengthen her reading skills as measured by her progress on the WJ Achievement Tests. CLOP Letter Word Identification 83; Word Attack 101, Reading Fluency 99, Oral Reading 96, Sentence Reading Fluency 102, Passage Comprehension 86, Reading Recall 85 Reading Vocabulary 88, and as indicated by a year's growth in her reading skills from the current 7<sup>th</sup> Grade to an 8<sup>th</sup>

Objective # 1 [Student] will demonstrate comprehension of 7<sup>th</sup> grade text by citing textual evidence to support inference from text. CLOP 90% at 6<sup>th</sup> grade text

Objective # 2 [Student] will demonstrate comprehension of 7<sup>th</sup> grade text by answering short answer and multiple choice questions. CLOP 88% successful at the 6<sup>th</sup> grade level

Objective # 3 [Student] will demonstrate comprehension of modified grade level content area (science) material by independently taking notes and orally summarizing what she has read. CLOP 43% successful

## Goal # 2

[Student] will strengthen her ability to write an essay with text evidence. CLOP requires substantial assistance to write 4 paragraph essay with evidence

Objective # 1 [Student] will write a four paragraph essay, citing text evidence to support her thesis and reasons. CLOP 35%

Objective # 2 [Student] will use quotation marks appropriately, including punctuation and paragraphs. CLOP does not use quotation marks

## Goal # 3

[Student] will strengthen her math problem solving and calculations abilities. CLOP WJIV Calculations 78, Math Facts Fluency 79, Applied Problems 65, Number Matrices 73

Objective # 1 [Student] will be achieve a minimum of 80% on classroom assessments. CLOP 79%

Objective # 2 [Student] will be able to solve two step algebraic equations. CLOP no data

Objective # 3 [Student] will be able to solve 2 step word problems, with varying unknown operations. CLOP 73% successful

Objective # 4 [Student] will be able to solve addition and subtraction problems with positive and negative integers. CLOP no data

Objective # 5 [Student] will be able to solve addition and subtraction problems with positive and negative integers. CLOP no data

Objective # 6 [Student] will be able to translate algebraic phrases into algebraic expressions (ex a number added to 36). CLOP no data



Communication

## Goal # 4

[Student] will demonstrate adequate receptive and expressive language skills as indicated by mastery of the following objectives:

Objective # 1 When presented with clinician selected materials, [Student] will identify nonsensical information that is embedded in sentences or text and she will also explain information presented in text including identifying problems and determining solutions over 3 consecutive sessions with 90% accuracy. CLOP 70%

Objective # 2 When presented with short passages of 5+ paragraphs in length, [Student] will answer inferential questions as well as identify the main idea and 3 relevant details from a passage that has been read to her over 3 consecutive sessions, with 90% accuracy. CLOP 75% for comprehension and main idea

Objective # 3 [Student] will demonstrate the ability to provide an antonym and word definitions when presented with 10 items per session with overall 90% accuracy. CLOP 80%

Objective # 4 [Student] will demonstrate an understanding of non-literal language as embedded in sentences when provided with clinician selected materials with 90 accuracy over 3 consecutive sessions.

Objective # 5 [Student] will demonstrate an understanding of figurative language, eg., “its up in the air” when presented with clinician selected materials over 3 consecutive sessions. CLOP 75%

Objective # 6 [Student] will demonstrate the ability to make inferences, including for location, actions, feelings and problem solution when presented with clinician selected materials over 3 consecutive sessions. CLOP 75%

Social/Behavioral

## Goal # 5

[Student] will participate in counseling to enhance self-advocacy skills

Objective # 1 [Student] will request assistance in all classes from teachers and paraprofessionals when needed. CLOP 70 % of the time

Objective # 2 [Student] will identify three strengths and weaknesses in her learning skills.

Gross/Fine Motor

## Goal # 6

[Student] will demonstrate improved functional motor planning, visual motor and visual perception skills by meeting the following objectives:

Objective # 1 Following visual and verbal directions (ex. Utube video) [Student] will complete spatial organization/visual motor tasks (ex construct, braid hair, functional tasks, draw, build, etc) presented with extra assist and cues for half the steps, improve from needing these directions and moderate assist with actual model

Objective # 2 [Student] will complete novel motor coordination activities with review of the task 2 times only, improving from 3 + trials and verbal directions throughout for these.

(B 49)

## Addendum 4

Comparison of Standardized Academic Achievement Testing  
of same subtest or composite

## Woodcock-Johnson Test of Achievement (WJ)

	WJ III 3/2014 (B 12)	WJ III 2/2015 (B 18)	WJ IV 1/2016 (B 34)
Broad Reading	91	90	90 Basic Reading Composite
Word Identification	90	92	N/A
Fluency	100	99	99 Reading Fluency Composite
Passage Comprehension	91	95	86
Writing Sample	97	99	N/A
Writing Fluency	92	91	N/A
Broad Math	78	89	N/A
Calculations	93	94	78 Calculation Skills Composite
Applied Problems	75	75	65

## Weschler Individual Achievement Test – III (WIAT III)

	9/2014 (B 14)	2/2016 (B 42)
Word Reading	80	89
Spelling	70	75
Math Problem Solving	75	78
Numerical Operations	85	78

## Grey Oral Reading Test Fifth Edition (GORT 5)

	2/2015 (B 18)	2/2016 (B 42)
Reading rate	8	9
Reading accuracy	8	8
Fluency	8	8
Comprehension	5	6
Reading Quotient	81	84

## Test Of Written Language 4 (TOWL 4)

	1/2016 (B 34)	2/2016 (B 42)
Contrived Writing	104	89
Spontaneous Writing	99	99
Overall Writing	103	91

## Addendum 5

Comparison of Standardized Testing of Communication  
of same subtest or composite

## Clinical Evaluation of Language Fundamentals-4 (CELF-4) 3/2013 (B – 6)

Core Language Index	79
Receptive Language Index	70
Expressive Language Index	87
Language Memory	80

Comprehensive Test of Spoken Language (CASL)	2/2015 (B 16) <sup>12</sup>	2/2016 (B 37)
Antonyms	70	86
Synonyms	97	94
Word Test 2	82	88
Associations	93	96
Synonyms	93	97
Semantic Absurdities	74	72
Antonyms	75	79
Definitions	81	87
Flexible Word Usage	85	99
Listening Comprehension Test – Adolescent	100	92
Main Idea	102	88
Details	88	89
Reasoning	110	101
Vocabulary	104	96
Understanding Messages	94	92
Comprehensive Test of Phonological Processing 2		
Phonological Awareness	75	84
Phonological Memory	85	70
Rapid Symbolic Naming	101	95

<sup>12</sup> This test was administered in October 2014. (B 16)

## Addendum 6

Comparison of Standardized Testing of Motor Proficiency  
And Visual Perception  
of same subtest or composite

	2/2013 (B 38)	2/2016 (B 38)
<u>Bruininks-Oseretsky Test of Motor Proficiency (BOT 2)</u>	Point Score Average is 40 - 60	
Fine Motor Control	30	33
Fine Motor Precision	26	26
Fine Motor Integration	32	32
Manual Dexterity	26	33
Body Coordination	33	56
Body Coordination	16	24
Balance	31	34
<u>Test of Visual Perception Skills - 3</u>		
	Scaled Score Average is 85 - 115	
Index Scores		
Overall Visual Perception	75	76
Basic Processes	66	74
Complex Processes	85	78
	Scaled Score Average is 7 - 13	
Perceptual Skill		
Visual Discrimination	3	9
Visual Memory	0	1
Visual Spatial Relations	5	7
Visual Form Constancy	5	2
Visual Sequential Memory	8	7
Visual Figure Ground	9	7
Visual Closure	5	4