

**STATE OF MAINE**  
**SPECIAL EDUCATION DUE PROCESS HEARING**

**May 26, 2009**

**09.041H— Yarmouth School Department v. Parent and Parent**

**REPRESENTING THE FAMILY:           Richard O’Meara, Esq.**

**REPRESENTING THE DISTRICT:       Eric Herlan, Esq., and Melissa Cilley, Esq.**

**HEARING OFFICER:                   Shari Broder, Esq.**

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This hearing was held and this decision issued pursuant to Title 20-A, MRSA, 7202 et. seq., and 20 U.S.C. §1415 et. seq., and accompanying regulations. The hearing was held on March 18, 23, 27 and 30, 2009, and April 1, 10, 13, 14 and 15, 2009, in Portland and Yarmouth, Maine. Those present for the entire proceeding were the mother and father<sup>1</sup>, Attorney O’Meara, Jane Golding, Yarmouth Director of Instructional Support, Attorneys Herlan and Cilley, and the undersigned hearing officer. Testifying at the hearing were:

The Mother	
Elizabeth Kalil, CCC-SLP	Speech-Language Therapist
Jillian Bergeron, OTR/L	Occupational Therapist
Marcia Hunter, Ph.D.	Neuropsychological Evaluator
Victoria Papageorge, M.A.	Literacy and Math Evaluator
Lori Coffin, CCC-SLP	Literacy Consultant and Speech-Language Therapist
Barbara Melnick	Director, Aucocisco School
Kathy Condon	Teacher, Aucocisco School
Melissa Cusano	Friend of the Family
Mary Jo Laniewski, M.D.	Friend of the Family
Julie Olsen	Instructional Strategist, Yarmouth Schools
Karen Rusinek	Special Education Teacher, Yarmouth Schools
Valle Gooch	Special Education Teacher, Yarmouth Schools
Jane Golding	Director of Instructional Support, Yarmouth Schools
Suzanne Jones	Psychological Service Provider
Judith Kimball, Ph.D., OTR/L	Occupational Therapy Consultant

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<sup>1</sup> The father was present for most, but not all, of the proceeding.

All testimony was taken under oath.

**I. PROCEDURAL BACKGROUND:**

The Yarmouth School Department (henceforth “District” or “Yarmouth”) requested a due process hearing on January 6, 2009 regarding the Student, whose date of birth is xx/xx/xxxx. The District requested an extension of the hearing date to March, and the Parents (referred to as “Parents” or “Family”) requested that the prehearing date be extended as well. Without objection, the Hearing Officer granted both requests, and the prehearing conference was held on February 26, 2009 at the offices of Drummond Woodsum in Portland, Maine. Participating in the conference were: the mother, the father; Richard O’Meara, Esq., counsel to the Parents, Jane Golding, director of instructional support, Yarmouth School Department; Julie Olsen, Yarmouth instructional strategist; Eric Herlan, Esq., and Melissa Cilley, Esq., counsel to the District; Shari Broder, Esq., Hearing Officer; and Sheila Mayberry, Esq., observer. Documents and witness lists were exchanged in a timely manner. The Parents submitted approximately 3020 pages of exhibits (herein referenced as P-#), and the District submitted approximately 2900 pages of exhibits (herein referenced as S-#).

The hearing took place over the course of nine days. In light of the large amount of testimonial and documentary evidence, both parties requested to keep the hearing record open until May 6, 2009 to allow the parties to prepare and submit posthearing memoranda. The District submitted a 57-page memorandum and 14-page appendix. The Parents submitted an 89-page final argument. The record closed upon receipt of these documents on May 6. The parties further agreed that the hearing officer’s decision would be due on May 26, 2009.

## **II. ISSUES:**

1. Did the Student's IEPs and placements during her xx through xx grade years (2005-06, 2006-07, and 2007-08) fail to provide the Student with a free appropriate public education (FAPE)? If so, what remedy is appropriate?
2. Were the IEPs developed for the 2008 extended school year (ESY) program and the 2008-09 school year reasonably calculated to provide FAPE to the Student in the least restrictive environment?
3. If not, is the family entitled to reimbursement of costs for the Student's unilateral placement at the Aucocisco School during the summer of 2008 and 2008-09 school year? (The notice issue is subsumed in this.)
4. Is the Student entitled to continue her placement at the Aucocisco School at the District's expense?

## **III FINDINGS OF FACT**

1. The Student is xx years old (DOB: xx/xx/xxxx), and lives with her parents and sister in Yarmouth, Maine. She is currently eligible for special educational as a student with multiple disabilities with Speech/Language (Sp/L) and Other Health Impairments/Dyspraxia. [S-14]  
The Student's combination of disabilities is very complex and the professionals who have evaluated and treated the Student agree that she is unique and particularly challenging to understand.
2. Dyspraxia is a developmental coordination disorder causing difficulty with non-habitual motor acts and motor planning. [Testimony of J. Kimball] The automatic processing centers of the brain are not working well, making it necessary to relearn things more often and with more difficulty. [Testimony of J. Kimball] One can have dyspraxia with normal cognitive ability, as it is unrelated to intelligence, and it is seen in all levels of intelligence. [Testimony of J. Kimball]

3. As a result of her disabilities, the Student has significant educational needs in the areas of decoding, encoding, reading comprehension, written expression, handwriting, mathematics, and social skills.
4. Despite her disabilities, the Student has a remarkable inner strength, a resilience and love of learning, sense of humor and tremendous work ethic that helps her to continue to strive and succeed. [Testimony of Mother, J. Kimball, S. Jones, J. Olsen, L. Coffin and others]
5. The Student had her first Sp/L evaluation in December 2000, when she was xx, due to her persistent “lack of spoken words.” [P-1-4] A follow-up evaluation done in May 2001 found that the Student’s “social language skills are judged as low average,” while her expressive language skills were 8 to 11 months behind. [P 5-8] This evaluation resulted in a referral to Child Development Services (CDS).
6. The Student began receiving special education services through CDS when she was xx
- 7.. At that time, she began receiving two hours per week of Sp/L therapy and one hour per week of occupational therapy (OT), due to her “decreased awareness of oral input.” [P-13] Northeast Hearing & Speech (“Northeast”) provided speech and language therapy. Elizabeth Kalil has provided speech therapy to the Student since the fall of 2001, and Ms. Kalil considered the Student the most unique child with whom she has ever worked. [Testimony of L. Kalil] Ms. Kalil diagnosed the Student with apraxia of speech, and felt that she exhibited all three forms of apraxia: verbal, oral and limb. The Student also began attending xx two mornings per week at the mainstream Songbird xxxx. [P-30]
8. By the time the Student reached her xx birthday, she had completed several Sp/L evaluations [P-5, P-409] two occupational therapy evaluations [P-13, P-227], one physical therapy evaluation [P-26], and two administrations of the Mullen Scales of Early Learning. An

evaluation by the Tufts Floating Hospital in January 2002 found that the Student had a language delay with features of verbal apraxia. [S-1651n] The Student also had a neuropsychological evaluation by Dr. Ellen Popenoe at age xx. [S-1600] In January 2002, she had a developmental evaluation with Carol Hubbard, M.D. [P-45] At the time, the Student was almost xx years old, and had a vocabulary of less than ten words. Dr. Hubbard did not think the Student had Pervasive Developmental Disorder (PDD), and believed that the Student had much more cognitive capacity that she was able to express. [Testimony of Mother, P-51] She recommended a developmental xx program with inclusion in a mainstream xx for language modeling and peer direction. [P-51]

9. At an Early Childhood Team (ECT) meeting on January 30, 2002, the Student's IFSP was amended to add three hours per day of developmental therapy, three days per week. [P-56] The Student received these services at Woodford's Early Childhood Program. The Student continued to attend the mainstream program at Songbird two days each week.
10. The Student began seeing Jack Mann, M.D., a pediatrician who specialized in working with children exhibiting developmental and behavioral delays. Dr. Mann referred the Family to Susan Partridge for family support and therapy. The Student began therapy visits with Dr. Partridge in January 2002. [P-42]
11. In late 2002, the Student began receiving occupational therapy services from Jillian ("Jill") Bergeron of the Pediatric Development Center, initially through the Woodfords xx, but Ms. Bergeron also provided services privately contracted by the Family. Ms. Bergeron has worked with the Student for seven years, and felt the Student was the most complex child with whom she had ever worked. [Testimony of J. Bergeron] Over the years, she has seen the Student at least two hours each week, and sometimes three hours. Ms. Bergeron works with the Student

on fine motor skills, including difficulty with grasping writing implements, visual perceptual needs, visual motor development, motor planning, self-regulation, bilateral integration, strength and postural stability. Although the Student is able to make slow but steady progress, she needs sensory input to become more regulated and able to learn and integrate new skills. [Testimony of J. Bergeron, J. Kimball] In other words, the Student needs to maintain a certain level of arousal to be at a good place for learning. [*see also* P-406]

12. At Dr. Hubbard's suggestion, the Mother called Jane Golding, Yarmouth's director of instructional support, on January 6, 2003, to request a meeting with her to learn more about the way special education was delivered in Yarmouth. [P-137] The Mother anticipated discussing her daughter's rare and complex disabilities, qualifications of specialists, and the types of programming offered. [Testimony of Mother, P-137] Ms. Golding thought the call was premature, and was reluctant to discuss specifics about programming for a student who would not be entering school for over a year and a half. She said she would meet with the Mother the summer before the Student was entering school. The call did not meet the Mother's expectations, and she felt that Ms. Golding was evasive and defensive. Ms. Golding followed up two days later with a letter acknowledging the Mother's hard work to see that the Student's needs were met, and that the District looked forward to working with the Family in the future. [P-139] She also provided the Mother with some special education reference material.

13. A Northeast progress report dated March 2003 noted that this was the first time the Student had shown consistent generalization of skills across settings, but that the gap between her current level of development and chronological age was significant. [P-216, 219] A Woodfords progress report from June 2003 noted that if the Student did not consistently perform a skill she had learned, she would lose that skill. [P-220] Other providers have experienced the same

problem with the Student's learning, and this has presented a constant challenge for her teachers and therapists.

14. On November 18, 2003, the Mother met with Rowe School principal Larry Frazier to discuss the Student's transition to xx. [P-264] The Mother had educated herself very well about the Student's needs, and was a very intelligent advocate for her daughter. She felt that Mr. Frazier was polite, but defensive and evasive. [P-264] The Mother asked what types of programming options were available, and how Yarmouth delivered the services, to which Mr. Frazier replied that children spend as much of the day as possible in their regular classrooms, and are pulled out to work in the resource room when necessary. [P-264] The Mother asked very specific questions about the xx program and the delivery of services, and Mr. Frazier gave her general answers, saying he could not get into specifics of programming or supports that would be available to the Student.
15. Around this time, Dr. Partridge's notes mention the Student's anxiety problems, including a significant increase in fears and panic attacks. [P-276]
16. In March 2004, the Parents had some discussions with the District about programming for the Student. The Parents submitted a four-page statement of concerns about the Student's needs. [S-1623-1626] Additionally, Dr. Partridge wrote a letter to the District dated April 2, 2004, sharing her concerns about the Student. She observed that the Student exhibited "atypical, extreme and frequent anxieties that inhibit her learning of appropriate, age-expected social behaviors." [S-1636] She shared her diagnosis of generalized anxiety disorder, and opined that the Student was not ready for xx, "even considering further growth and services through the summer." [S-1636] Dr. Partridge thought the Student would be overwhelmed with any xx program, and that too much stress of that kind would be detrimental in many ways. [S-1636]

After the Student's visit with Dr. Mann on September 30, 2004, he wrote that the Student "continues to be approximately 12 months behind her peers in her development." [P-395] He also observed that the Student's therapist and teacher noted difficulty with focus and attention. [P-395] Ultimately, in consultation with the Student's doctors and other health professionals, the Parents decided that the Student was not ready for xx, and that they would privately provide for her educational needs during the 2004-05 school year.

17. For the 2004-05 school year, the Parents placed the Student in the Stepping Stones xx. In addition to her xx, the Student continued to receive OT from Ms. Bergeron two or three times each week, and Sp/L services from Ms. Kalil twice each week. [P-394, 398, 400] Both Ms. Kalil and Ms. Bergeron consulted with Stepping Stones staff regularly to ensure consistency and carryover of therapeutic goals. [Testimony of Mother] The Parents were very conscientious about working with the Student on skills she was learning in her therapies, and were dedicated to seeing her succeed. The Student also participated in therapeutic horseback riding, music, gymnastics and therapeutic swimming lessons. [P-388]
18. In February 2005, the Student was referred to Yarmouth's Pupil Evaluation Team (PET). Both Ms. Bergeron and Ms. Kalil urged the Parents to pursue a public school education for the Student at the Rowe School, a xx-xx public school in Yarmouth.
19. Ms. Kalil conducted Sp/L testing in April 2005, which produced standard scores below those the Student had achieved in prior testing, though no regression in her raw scores. [P-405] Auditory Comprehension dropped from a standard score of 83 to a standard score of 71, even though her raw scores rose in both areas of testing. [P-409] Ms. Kalil explained that the standard scores were lower because more was expected of a xx year old, and the tests assumed



a child who was xx would be in xx, therefore having experiences the Student had not yet had.

[P-405]

20. The IEP team met on May 17 and June 13, 2005 to develop an IEP for the Student's xx year. [S-1585-1586, S-1547-1548] In attendance were both the District's Sp/L and occupational therapists, as well as those hired privately by the Parents. [S-1585] Ms. Kotkas, the District's Sp/L therapist, had an opportunity to speak with Ms. Kalil, and was excited to learn from her. [Testimony of L. Kalil] Ms. Kotkas did not have much experience with apraxia, and looked to Ms. Kalil for the best way to work with the Student. [Testimony of L. Kalil] The Student was identified as eligible for special education as a student with a speech and language disability. At the June 13 meeting, the Mother expressed concern about maintaining communication between members of the team, in addition to home-school communication, and the team discussed using a day sheet. [S-1547] Changes suggested by the Parents were incorporated in the IEP, and all members of the IEP team were in agreement with the goals and objectives as presented. [S-1547] Concerned that the District's Sp/L therapist had no expertise in apraxia of speech, the Family decided to continue to have Ms. Kalil provide Sp/L therapy privately once a week after school, and informed the IEP team of their plans. [P-429] The District Sp/L therapist, Karen Kotkas, was very interested in working with Ms. Kalil, and attended several of the Student's Sp/L therapy sessions. [P-429] The Family also decided to continue private OT with Ms. Bergeron for two hours each week. [P-429] The Student was no longer being seen for counseling by Susan Partridge, although the Mother had a number of conversations with Dr. Partridge when the Student started school. [Testimony of Mother]
21. The Student's xx program consisted of a full day, with special education services in the morning, and regular xx in the afternoon. Her program consisted of the following:

12.5 hours per week of 1:1 direct instruction with special education teacher Valle Gooch or Julie Olsen;

17.5 hours per week of support through an educational technician (“ed tech”), including adaptive gym and art;

2.5 hours per week of Sp/L services; and

2.5 hours per week of OT services.

[S-1571] The Family’s private OT and Sp/L therapists reviewed the Student’s proposed goals at the IEP meeting. [S-1587] Speech and language goals addressed expressive language, language processing, receptive language, and articulation. [S-1555-1562 and 1585] OT goals addressed the Student’s needs in the areas of fine motor/visual perceptual skills, motor planning/bilateral integration, postural control/motor endurance, and sensory processing/self-regulation. [S-1547, 1585, 1563-1569]

21. On August 8, 2005, the Mother wrote a three-page letter to Valle Gooch, the Student’s special education teacher, pointing out that she did not feel the IEP accurately reflected certain aspects of the discussions at the IEP team meetings the previous spring. [S-1544-1546] Specifically, at the meeting, the team discussed providing three forty-minute individual speech sessions, and one thirty-minute session with no more than one other student each week. [S-1544] The Mother wanted the IEP worded exactly the same way, and she wanted more detail about the three sessions being one-to-one. [S-1544] She also wanted the Student’s OT services to be similarly detailed, and for specifics about home-school communication. [S-1545] The Mother was very emphatic that “it is absolutely essential, if not critical, that the strategies and methods used to teach [the Student] literacy and math skills in the special education classroom be communicated and reinforced in the general education classroom, in her Sp/L session, in OT and at home” for the Student to learn and not

be confused.” [S-1545] Consequently, the IEP team met on September 15, 2005, and determined that there would be weekly meetings with a Parent as well as an informational sheet that went home daily, with space for parent comments. [S-1537, 1539] The IEP was also amended to add the specifics about Sp/L and OT services that the Mother requested. [S-1537] That month, the Student saw Dr. Hubbard, who applauded the Family “for their staunch advocacy on her behalf and for arranging really quite an intensive program of services through the school.” [P-429]

22. In xx, the Student’s special education teachers were Julie Olsen and Valle Gooch, and Mary Wood was the regular education teacher. Both Ms. Olsen and Ms. Gooch had considerable experience working with children with special needs, and both have master’s degrees in special education. Both special education teachers observed the Student in her xx setting before she began xx. [Testimony of J. Olsen] The Student received some of her services in the regular classroom, some in the OT room, and others in the Learning Center, which was a non-mainstream resource room setting. [Testimony of J. Olsen] The Student’s providers spoke daily with one another, and observed each other working with the Student. [Testimony of J. Olsen] The Mother communicated with the staff regularly by telephone and e-mail, and did not hesitate to share any concerns she might have with them in a timely manner. [Testimony of J. Olsen]

23. On the day before the IEP team meeting scheduled for December 20, 2005, District Sp/L therapist Ms. Kotkas corresponded with Ms. Kalil about the Student’s progress. [P-559] Ms. Kotkas expressed how much she had enjoyed working with both the Student and the Mother, who she thought was a “wonderful Mom.” Ms. Kalil said she was “really pleased with how [the Student] is doing – both with speech and overall.” [P-559] She mentioned how she had

set up a pretty intensive home program that the Family had been “fantastic” about carrying through, and Ms. Kalil thought this was making a big difference. [P-559]

24. The IEP team met and revised the Student’s OT goals and objectives to reflect the progress she had made. [Testimony of J. Olsen, S-1587] The team also agreed: (1) that the Student did not need OT during adaptive physical education, and therefore reduced the amount of in-classroom OT services by 30 minutes each week; (2) to change the 1:1 student/teacher ratio during OT in the special education setting to two sessions of 1:1 and one session of 1:2 for 30 minutes each week; and change weekly meetings between home and school to biweekly. [S-1517, 1587] The Parents concurred with these changes.
25. In December 2005, Dr. Popenoe completed a neuropsychological evaluation of the Student.<sup>2</sup> [S-328-339] In her report, Dr. Popenoe made a provision diagnosis of mild mental retardation, as well as diagnoses of developmental coordination disorder and mixed receptive expressive language disorder. [S-338] The Parents were shocked at the mental retardation diagnosis, although they thought the Student had significant learning disabilities. [Testimony of Mother] District officials and the Parents agreed that the mental retardation diagnosis was inconsistent with their experience with the Student. [Testimony of Mother] The report contained recommendations, with which the parents concurred. [S-338-339, Testimony of Mother] Dr. Popenoe noted that the Student would “be slow to develop academic skills, and will have difficulty generalizing from one concept or setting to another, as her teachers have noted.” [S-338] It was important to make the abstract concrete, and not assume the Student would generalize information from one situation to the next. [S-338] Dr. Popenoe recommended experiential learning, including the use of manipulatives in math. [S-338] She

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<sup>2</sup> The draft had a handwritten note on the front page stating “will add adaptive behavior,” but this apparently was never done. [P-566]

thought the Student was at the pre-reading and pre-math stages. Additionally, she recommended intensive intervention from a Sp/L pathologist with experience in apraxia, and noted that because the Student had cognitive disabilities, her progress would be slow. [S-338] In addition to activities with mainstream peers, the Student would benefit from the opportunity to build peer relationships with children who have disabilities similar to her, to give her the experience of excelling. [S-338] Dr. Popenoe recommended using the services of Candace Bray, Sc.D., an educational consultant. [Testimony of Mother]

26. Soon after receiving Dr. Popenoe's report, the Family contacted Lori Coffin, a Sp/L pathologist with a masters of education, and considerable experience with a variety of reading programs. [Testimony of L. Coffin] The Family contracted with Ms. Coffin to provide literacy services three times a week for an hour each session. Ms. Coffin was using the Wilson reading program, but was also trained in LiPS, which was very good for the Student because of her apraxia. [Testimony of L. Coffin] She established ten short-term goals for the Student, with the long-term goal of improving encoding and decoding skills to be able to decode up to five sounds in vc or cvc words by April 2007. [P-670]

27. In February of 2006, the Family went to the Bahamas because the Student was promised that if she learned how to swim in the deep end of the pool, she could swim with dolphins. [Testimony of Mother] Upon exiting the airplane in the Bahamas, the Mother fell and broke bones in both legs. When the Family returned from their trip, the Mother was available less frequently for meetings with the Student's educators and therapists, due to her injury. [Testimony of Mother]

28. On April 27, 2006, Ms. Coffin administered several tests to the Student. [P-666] She was encouraged to see how the Student had progressed over the past year in the areas of language

and reading. [P-668] Ms. Coffin noted that the Student's unique learning style required an intensive, integrative and multisensory approach to all areas of academics, but that her prognosis appeared excellent. [P-668-9] The next day, Ms. Coffin e-mailed Dr. Bray about the testing and her first week working with the Student. [P-672] She attached the Student's draft IEP goals from Yarmouth, noting that her goals were a bit more aggressive than the District's. She was surprised that the Student surpassed her expectations, and was doing very well. [P-672] The Student made steady gains in decoding, but although her comprehension was much slower, which was typical of children with language disabilities, she was improving in that area as well. [Testimony of L. Coffin]

29. As the District was preparing to review the Student's IEP, Sherry Lapointe, the District OT, contacted Jill Bergeron, the Family's private OT, for input on goals for the Student. [S-1466b]
30. During xx, the Student made progress in almost every area of study, met approximately 75% of her goals, and made progress in almost all of her other goals. [S-1763-1831, Testimony of J. Olsen] She benefitted from and enjoyed being with her nondisabled peers. [Testimony of J. Olsen]
31. On May 15, 2006, the Mother and Ms. Gooch agreed to extend the IEP to June 1, 2006, as the Parents were unable to attend the annual review IEP meeting scheduled for May 1, due to illness. [S-1442]
32. On May 24, 2006, Ms. Coffin corresponded with Dr. Bray about her initial meeting with Julie Olsen and Valle Gooch. She felt that these teachers were reserved and defensive, and were not employing some of the effective strategies Ms. Coffin had been using with the Student. [P-737] Since she began working with the Student five weeks earlier, she saw

considerable improvement in the Student's reading skills. Ms. Coffin thought the District's goals were conservative, and its approach was different from her own. She noted that the District insisted on using the SPIRE reading program, while she used Wilson. Ms. Gooch and Ms. Olsen agreed to meet with Ms. Coffin in August to draft goals for the Student that were more advanced than the current ones. [P-737]

33. On May 25, 2006, Jill Bergeron reported on the Student's OT progress. She had been working with the Student two times a week, and saw nice progress with writing, although the Student continued to wrap her finger around the pencil. The Student had made "great gains" but continued to demonstrate delays requiring therapy. [P-752] Ms. Bergeron said that "slow and steady" are great gains for the Student. [Testimony of J. Bergeron]

34. At the IEP meeting on June 1, 2006, the Parents distributed a five-page document enumerating their concerns about the Student's education. [P-802-806] These included the following concerns: (1) the lack of effective communication between team members and with the Mother; (2) the District's lack of openness regarding the qualifications of personnel working with the Student; (3) due to the concern about the qualifications of District personnel, the Family felt it was necessary to retain their own qualified therapists so the Student could make appropriate progress in her school program; (4) the Student was not making meaningful progress with SPIRE, and only began making real progress after Ms. Coffin was hired; (5) whether the Everyday Math methodology was appropriate for the Student; and whether the proposed 2.5 hour per week reduction in direct instruction time was appropriate; (6) whether the people hired to work with the Student in her extended school year program (ESY) were qualified, based upon the information the Parents had, as the ed tech had never worked with the Student before, and the Sp/L therapist did not have a

master's degree; and (7) whether ESY services were adequate. [P-802-806] Regarding the proposed ESY services, the Parents did not agree with the goal of maintaining the Student's current level of performance, or that this was limited to six weeks of services. [P-806] Yarmouth offered 85 hours of direct instruction, 7.5 hours of Sp/L services, and 7.5 hours of OT. [Testimony of J. Olsen, V. Gooch] Consequently, the Parents elected to decline these services and provide the Student with their own 10-week summer program consisting of continued services with the private therapists who had been working with the Student, which they felt would go beyond maintenance of skills, and remediate the Student's academic deficits. [P-806] The Parents believed the Student was capable of more than the District's personnel were willing to pursue, and chose "to pursue alternative methods in order to ensure she has every opportunity to be educationally successful." [P-806] At the meeting, the Mother asked the team to consider changing the Student's disability category from Sp/L to multi-handicapped (Sp/L and OHI/dyspraxia), and the team agreed. [S-1385] They also agreed not to develop speech/language goals that day because the current therapist, Mrs. Kotkas, was retiring, and the goals would be developed after her replacement was hired. [S-1385] The team, which included Ms. Coffin, agreed upon literacy and math goals as drafted. [S-1385] The Student's math goal was comprised of seven specific skill objectives aligned with the Yarmouth xx grade continuum and Maine Learning Results. [S-1232-34] They also updated the Student's present levels of performance to reflect the progress she had made since she began working with Ms. Coffin, and agreed to reconvene in early September to update the goals again, after the Student had completed summer tutoring, as the Mother thought it was likely that the Student would meet the IEP goals over the summer. [S-1385-1386]



35. On June 6, 2006, the Parents had a meeting with Ken Murphy, Superintendent of Schools, Jane Golding, and Catherine Glaude, school principal, which the Parents requested to find a way to improve their relationship with the District. The Mother felt that she was encountering nothing but barriers and obstacles in her interactions with District personnel. [P-842] At the start of the school year, the Mother offered to volunteer in the school, but the xx teacher did not use volunteers, and the special services teachers thought it would violate the confidentiality of the students. She discussed other ways in which she felt unwelcome at the Student's school. [P-842-844] The Mother felt that the Student had made little meaningful progress in reading and math, and was behind her peers academically. She discussed the progress the Student had made since working with Ms. Coffin and using LiPS and Wilson, and did not understand why the District steadfastly refused to change their program. [P-845] The Mother also explained that she did not believe Everyday Math was an effective program for teaching the Student, as there was too much language and it was too abstract. [P-845] She felt that the District was set in its ways, and was not interested in designing a program that would meet the Student's needs. Although the Mother was frustrated about the meeting, Principal Glaude shared with her staff the Mother's concerns about improving communication and collaboration with the Mother. [S-1373]
36. The Family designed and implemented an ambitious 10-week summer program for the Student which included the following each week: three hours of literacy instruction with Lori Coffin, Sp/L therapy for three hours with Liz Kalil, plus an hour of co-treat most weeks, three hours of OT with Jill Bergeron, writing instruction in the Let's Print program, four hours of Saxon math tutoring with Ted Dalton and one hour of Everyday Math with Michelle Libby, a Yarmouth ed tech. [Testimony of Mother, L. Kalil, J. Bergeron]

37. In July 2006, Dr. Bray first observed the Student in her summer program. Following the observation, Dr. Bray e-mailed the Mother about what a wonderful child the Student was, and how she “marveled at her work and responses and great questions!” [P-908] The Mother was very excited at the prospect of Dr. Bray seeing the potential the Mother believed the Student had. The Mother added that she would not “write this child off” because of administrative burdens, bureaucratic policies, or the District’s inflexibilities. [P-908] She added that hopefully Dr. Bray now understood why the Mother was “so committed to doing whatever it takes to give [the Student] the education she so desperately needs, deserves and is entitled to.” [P-908]
38. During the summer of 2006, Yarmouth’s new Sp/L therapist, Susan Blethen, worked with Ms. Coffin and Ms. Kalil in drafting Sp/L goals for the Student. [S-1345] Ms. Kalil told the Mother that she and Ms. Coffin had a very productive meeting with Ms. Blethen on July 31, and that she was comfortable with Ms. Blethen working with the Student at school. [P-917] Both Ms. Kalil and Ms. Coffin “felt the goals on the IEP were very encompassing of all of the areas that need to be covered.” [P-917] Ms. Kalil also mentioned that the three of them agreed about the need for communication between themselves. The Mother made a number of requests that the District contract with Ms. Coffin to provide literacy instruction for the Student, as Ms. Coffin helped the Student make impressive gains in the few months they had worked together. Also that summer, Ms. Gooch observed the Student at her home being tutored in math by Ted Dalton, and spoke with Mr. Dalton about the Student’s math goals. [Testimony of V. Gooch, S-1337]
39. Lori Coffin prepared a report of the Student’s progress in literacy dated September 10, 2006. [S-1293-1295] She reported on the Student’s current abilities, and said she was

demonstrating skills around the xx grade level. [S-1294] Ms. Coffin cautioned, however, that at the pace of a typical classroom, the Student might fall behind because her rate of learning is much slower than that of typical peers. [S-1294] She concluded that the Student had benefited from the methodologies Ms. Coffin had been using, and that she should continue to receive one-on-one therapy using the Wilson Reading System, with supporting materials from LiPS, Merrell Readers and SPIRE. [S-1284]

40. On September 11, 2006, the IEP team met and added the new Sp/L goals to the IEP. [S-1281, 1286] The Mother asked that the Student be given homework each night. She also asked that specific methodologies be listed for literacy instruction. Ms. Coffin recommended continuing to instruct the Student using the Wilson Reading System supported by LiPS, Merrell Readers and SPIRE. [S-1282] Although Ms. Golding would not agree to include specific methodologies in the IEP, she said they could be included in the minutes. The Mother objected to this as a violation of the Student's rights. [S-1282] Yarmouth also agreed to contract with Ms. Coffin for three hours per week of literacy instruction for the Student, and this contract was attached to the IEP. [Testimony of L. Coffin, S-1284a-b, 1286] The Student's literacy and math goals and objectives were updated to reflect the progress the Student made during the summer. [S-1286]

41. The IEP team met again on September 15, 2006 to revisit the Student's IEP with input from Kim Wing and Jill Bergeron, her private OT providers, and her Yarmouth OT, Sherry Lapointe. The team, including Ms. Wing, who thought the goals looked great, agreed to the OT goals and objectives. [S-1271] Ms. Wing and Ms. Lapointe also drafted a handwriting protocol, which was included in the IEP. [S-1270, 1275a] The team agreed to all of the goals

and objectives, except that the Mother objected to the supplemental aides and services section because she wanted specific methodologies listed. [S-1272]

42. The Student's IEP for most of the first semester of xx grade included on a weekly basis: (1) 11 hours of direct instruction with a special educator, including three hours of co-instruction with Ms. Coffin; (2) OT of 35 minutes of one-to-one therapy, 45 minutes of two-to-two therapy as a co-treat with Sp/L and a peer, 40 minutes in art class, and 30 minutes in the regular classroom; (3) 2 40-minute sessions of Sp/L one-to-one, 45 minutes of two-to-two as a co-treat with OT and a peer, and 30 minutes in the regular classroom; and (4) 14 hours of mainstream support each week with an ed tech. [S-1260] Ms. Coffin was very comfortable with the interventions the District was using with the Student, as the literacy methods seemed properly oriented for the Student's needs, although she would have like to have seen an additional three hours of instruction, rather than three hours of co-teaching with Valle Gooch. [Testimony of L. Coffin] Ms. Gooch was very responsive to Ms. Coffin's suggestions, and began using LiPS techniques. [Testimony of L. Coffin] The Student made steady gains in decoding, but her comprehension was a lot slower, which was typical of a child with language disabilities. [Testimony of L. Coffin] She also did very well in the regular classroom with Raelene Bean as her teacher. Ms. Bean was a wonderful teacher who the Student loved. [Testimony of Mother]
43. The family continued to contract for private services, including four hours per week of Saxon math tutoring with Ted Dalton, two to three hours per week of Sp/L with Liz Kalil, and two hours per week of OT with Jill Bergeron. [Testimony of Mother]
44. In November 2006, the Student changed OT providers in school, and Todd Metcalf became her new OT. [S-1225, P-1120]

45. On December 11, 2006, the IEP team met to review the Student's program. [P-1192, S-1215]

Dr. Bray was in attendance. Although she had been the Family's private consultant, Yarmouth agreed to contract with her as a consultant for the District to help develop the Student's program and make recommendations. [Testimony of J. Olsen, S-1215] Dr. Bray commented that the collaborative model "has been amazing" for the Student and has had a huge impact on her. [P-1194] Ms. Gooch proposed renewing Ms. Coffin's contract for three more months, and to review the Student's needs again at that time. [P-1192] The Mother objected to this, and requested that the contract be renewed until the end of the school year, with an opportunity to decide in three months whether to discontinue it. [P-1193] The District agreed to this. [P-1193, S-1215] The team updated math objectives to reflect current instruction and grade level expectations. Dr. Bray suggested making a math notebook/reference with visuals to support the Student's learning. [S-1215, P-1201] The team also agreed to have the school nurse develop a health plan with special educators and the Parents to determine when the Student is ill, as the Student was unable to accurately report how she was feeling. [P-1203, S-1216] Ms. Blethen's time working with the Student in the classroom was increased by 15 minutes, and a 60-minute Sp/L co-treat during literacy was also added to the IEP. [S-1213] Thirty minutes of classroom OT support was changed to 30 minutes of one-to-one OT therapy. [S-1213]

46. In January 2007, Dr. Bray began observing the Student and making recommendations for learning strategies. [S-1179-1182] She visited both the Yarmouth Elementary School ("YES"), where the Student would attend xx grade in the fall, and the Rowe School in March. [S-1170] Following this visit, Dr. Bray noted that reading was going well, and the Student was increasing her comprehension. [S-1162]

47. In her March 2007 report, Ms. Kalil noted that the Student continued to make great progress.

[S-1173] The Student's overall intelligibility was improving greatly, and she was using her speech and language skills in social situations. [S-1173] Ms. Kalil felt, however, the Student remained a mystery, who continued to surprise and baffle her. [Testimony of L. Kalil] The Student began taking medication for attention deficit hyperactivity disorder (ADHD) in March 2007. [P-1293] This had a positive impact upon her learning, and her language and articulation skills increased noticeably. [Testimony of Mother, S-1157]

48. On April 4, 2007, the IEP team met to discuss the Student's progress. [S-1157-1158, P-1372-1381] The team agreed that the Student's medication has had a positive effect on the Student's progress in all areas. [S-1157] They also discussed the Student's transition to YES for xx grade in the fall. [S-1157-1158] Catherine Glaude, the principal, said that "for all kids it's a really tough transition." [P-1379] The Mother questioned whether the Student's speech-language goals should be pared down to focus on fewer areas and possibly make better progress in attaining goals. [S-1157] She also asked for hard data to discuss math progress before summer vacation and determine which xx grade skills were not secure, and which xx grade skills required preteaching. [S-1157]

49. On May 2, 2007, Dr. Bray sent an e-mail to Lori Coffin with some planning issues. She said, "I do think this has been a good year with lots of great teaching all around. You have been such a gift to this little girl . . ." [P-1407] Ms. Coffin replied that the Student was doing well, and that her decoding and fluency skills were at grade level, although the latter could vary, and that her conversation skills had improved dramatically. [P-1407] The Student's comprehension skills, however, remained well below grade level. [P-1407] Ms. Coffin noted that it was a typical pattern of two steps forward and one step back, with the Student

improving, then regressing a bit when a new concept was taught and confused with earlier concepts. [P-1407] Ms. Bergeron described the Student's xx grade year as maintaining slow and steady progress, and never huge growth. [Testimony of J. Bergeron]

50. The IEP team met again on May 18, 2007, and decided to extend the current IEP to the fall. [S-1154] They discussed the successful communication during xx grade, and the Mother complimented the District for choosing Raelene Bean as the Student's teacher, as she did a great job. [P-2905] The team agreed the new annual review would be held by October 16, 2007. [S-1154] The Mother consented to the following evaluations: (1) Sp/L evaluation to be completed by Mrs. Blethen, with input from the Student's private therapists before administering; (2) OT evaluation; (3) processing evaluations to supplement/support the Sp/L evaluations, to be conducted by Suzanne Jones, Yarmouth's psychological services provider, with input from the Mother before testing; (4) classroom observation; (5) achievement evaluation; and (6) cognitive evaluation. [S-1154] In response to the Mother's concern about using age level scores when the Student started school a year later, Julie Olsen offered to report both age and grade level scores, although Ms. Jones said that cognitive evaluations were reported by age. [S-1155] The Mother asked to have Mr. Metcalf continue as the Student's OT in xx grade. [S-1155] Ms. Gooch said this was not an IEP team decision, but that Mr. Metcalf was hired because there were not enough OT services in the District. [S-1155] The team reviewed draft Sp/L goals for xx grade, created collaboratively by Ms. Blethen, Ms. Coffin and Ms. Kalil. [S-1155] The team also agreed to add a social skills goal and ESY goals. [S-1156] The Mother disagreed with the ESY goal that the Student would maintain June skill levels over the summer, as she thought the goal should be to increase skills. [S-1155] She was very concerned that the Student would regress with only six weeks

of summer services. [P-2905] The District agreed to the Mother's request for literacy support for 18 hours with Ms. Coffin to help the transition process to YES. [S-1155] The team agreed that ESY services for six weeks would consist of a total of 18 hours of literacy, 7.5 hours of OT and 7.5 hours of Sp/L. [S-1156] The Family rejected the additional 67 hours of direct academic instruction offered by the District for the Student's ESY programming, and elected to privately provide math tutoring and additional Sp/L and OT for the entire ten weeks of summer. [S-1156, Testimony of Mother] Regarding xx grade, the Mother also discussed her preference that the Student not go to music class or library, as she needed more time than the average child to learn the basics. [P-2901] Ms. Coffin suggested that music might be beneficial to support reading fluency and to have shared experiences with her classmates. [S-1155] Additionally, from an OT perspective, music is very effective for students with attention and vestibular problems like this Student. [Testimony of J. Kimball] There was discussion about the Student only attending music once each week, instead of the usual twice-weekly classes. [Testimony of Mother] The music teacher was uncomfortable with this, as she was concerned that the Student would not be able to keep up with the work. [Testimony of Mother]

51. Lori Coffin reported on the Student's progress on August 21, 2007. [S-1123-1126] She noted that the Student always gives 100% effort, and has excellent support at home provided by both parents. [S-1123] Although the Student's progress with encoding was slow and steady, she continued to improve those skills. [S-1122, testimony of L. Coffin] Karen Rusinek, the Student's special education teacher, was in contact with Ms. Coffin throughout the summer, and observed Ms. Coffin working with the Student. Ms. Rusinek demonstrated excellent knowledge of programs necessary to enhance the student's learning needs, including



knowledge of Wilson, SPIRE, LiPS, Seeing Stars and Visualizing and Verbalizing (V&V) reading programs, and Ms. Coffin was confident this teacher had the necessary skills to help the Student progress. [S-1125] Ms. Coffin recommended that the Student continue to receive direct, multi-sensory reading and spelling therapy as prescribed in her IEP in a one-on-one or small group setting five hours weekly. [S-1126] She also recommended that the Student's teachers, therapists and family share information weekly regarding current vocabulary and concepts being used, and that the Student continue to use a rules notebook that she had for referencing current concepts and vocabulary for all areas of academics. [S-1126]

52. Carol Garneau tutored the Student in math during the summer, using the xx grade Everyday Math program, and incorporating her knowledge of Saxon Math into her lessons. [S-1121] Although the Student did well overall, Ms. Garneau felt that the Student needed to experience math in many situations while still getting extra practice time in order to maintain her skills. [S-1122] Ms. Garneau wrote in her August 23, 2007 report, "Staying in the classroom for her regular math time would, in my opinion, expose her to the teaching of new skills and to the interaction with typical classmates in games and center activities." Ms. Garneau also felt that the Student would need the consistent help of an ed tech, as well as 30-45 minutes per day in the resource room for individual teaching. [S-1122]

53. In August 2007, the Mother requested a special meeting before the start of xx grade to discuss the Student's math program. [P-1564] This meeting took place on August 23 with the Student's xx and xx grade regular and special education teachers, as well as Carol Garneau and the parents. [P-1571] The Mother had been concerned about the appropriateness of Everyday Math for the Student's learning style, particularly the language used. [P-1578] She asked the group whether anyone thought the Student was not capable of doing the xx grade

Everyday Math curriculum. [P-1571] Ms. Garneau responded that there were pieces of the program that would be very difficult for the Student, but given practice time and lots of teaching time, she would be able to do most of the skills. [P-1572] Multiplication and division would be challenging. [P-1572] Ms. Gooch said that during xx grade, the Student could meet most of the expectations consistently. [P-1573] She could not say, however, whether the Student would be able to complete the entire xx grade math curriculum. [P-1573] Ms. Garneau remarked that the Student “is just the sweetest little girl on the face of this world” but will not verbalize frustration or tell you she doesn’t get it. [P-1575] On the other hand, she thought that the way Everyday Math introduced a new skill and reviewed other skills within a lesson might be better than the Saxon method of doing a lot of skills in the same lesson, although her knowledge of Saxon was based on the xx grade and not the xx grade level. [P-1577] Ms. Garneau was confident that the math program planned for the Student, which involved 40 minutes of direct instruction and one hour in the mainstream class, would work. [P-1581, 1583, 1584] She did assume, however, that the Parents would “do outside things on top of that,” and emphasized the need for “consistency with the language piece.” [P-1583, 1587] At the conclusion of the meeting, the Mother was agreeable to the proposed math program for xx grade. She was pleased that the Student could access math both in the mainstream classroom and with direct instruction on a pullout basis.

[Testimony of J. Olsen]

54. The following week, on August 29, the IEP team met. Ms. Olsen proposed reducing the Student’s direct instruction from 11 hours per week to 8 hours and 20 minutes so the Student could access a full hour of in-class math instruction each day, as was discussed at the meeting the prior week. [S-1116] She also proposed that the Student’s rehabilitation

assistance time be increased to 16 hours and 40 minutes per week so that an ed tech would be available to the Student during mainstream math class. The team agreed to these proposals.

[S-1116] To address the Mother's concern about the Student's difficulty identifying illness and injury, the team also agreed to have an ed tech on the playground with the Student, and to alert all xx grade staff at YES about the Student's challenges in this regard. [S-1116]

55. The Student began xx grade on September 4, 2007 with Jen Kugler as her mainstream classroom teacher. The Student wanted to stay in Ms. Kugler's class all day, as she did not like to be pulled out for direct instruction. [Testimony of Mother] Ms. Kugler was an excellent teacher who was committed to helping the Student as much as possible, and the Student was responsive to her. [Testimony of L. Coffin] Because it was disruptive to the Student not to have her schedule "set in stone," the Mother was concerned that the Student's schedule was not firm at the beginning of the school year, and that it was tweaked throughout September. [Testimony of Mother] The Mother also asked that the Student be placed in a class with both of her closest friends, but only one of the friends was in the Student's class. [Testimony of Mother, P-1620] This disappointed the Mother greatly, and she contacted Adele Brainard, the guidance counselor, to express her concerns. [P-1620] Ms. Brainard explained the complexity of determining class placement for all of the children at the school, but the Mother felt that due to the Student's disabilities, she should not be treated like every other child, as making friends was more difficult for her. [P-1620] The Mother also explained that the Student's friend in class was also friends with another classmate who had no interest in the Student, and this resulted in the Student being left out. [Testimony of Mother, P-1620-1621] Because OT Todd Metcalf only worked in Yarmouth two days per week, the Student's OT was on two consecutive days. [S-1089, P-1607, P-2967, Testimony of Mother] This

concerned the Mother, as did the fact that the Student's Sp/L therapy was on Tuesday and Thursday, as she thought the therapies would be more effective if spread out through the week. [Testimony of Mother, P-2967]

56. On September 21, 2007, Jill Bergeron performed an OT evaluation of the Student. [S-1044-1049] Ms. Bergeron concluded that the Student made progress in a number of areas, such as improved body awareness, touch perception, and vestibular processing. [S-1049] Despite all the sensory integration the Student was receiving, it did not seem to be "sticking."

[Testimony of J. Kimball] Ms. Bergeron reinforced how extremely useful vestibular input was to alert and regulate the Student, and that this was even more beneficial when paired with another type of sensory input. [S-1048] Ms. Bergeron found that although the Student occasionally regressed and had difficulty generalizing skills, her progress was slow and steady, and she needed continued private therapy, practice, and repetition to work on foundational areas. [Testimony of J. Bergeron] Ms. Bergeron did not think that more was necessarily better with OT. [Testimony of J. Bergeron]

57. District OT Todd Metcalf also conducted a triennial evaluation of the Student. [S-1032-1038] Although the Student worked hard during the testing, her scores were quite low. [S-1036] Mr. Metcalf said the scores "reflect significant challenges in the areas of visual perception and fine motor, but they are only part of the story and do not necessarily fully reflect her academic performance," but show that these are significant areas of need for the Student. [S-1036, 1037a] Mr. Metcalf listed seven areas of need to be addressed at school. [S-1038]

58. In September 2007, Susan Blethen resigned, and the District hired Lori Coffin to be the Student's speech and language therapist. [S-1039, P-1632] Around that time, Ms. Coffin

corresponded with Liz Kalil about the change in the former's role, and remarked that overall, the Student was doing very well. [P-1632] Ms. Coffin then did a speech and language updated evaluation of the Student on September 26, 2007. [S-1025-1029] She noted that the Student "has strong support both at school and at home for all areas of her academic and social learning. [The Student] has made steady progress in all targeted goal areas with a number of supports both in an [sic] out of school." [S-1025] Although Ms. Coffin observed the Student both in and out of her classroom three times, she did not conduct formal tests, as both her school and private Sp/L therapists administered recent formal evaluations, the results of which Ms. Coffin considered in her report. [S-1025] Ms. Coffin recommended implementing new goals and objectives, and focusing on the three distinct areas of articulation, pragmatics and expressive language. [S-1028] She proposed some changes to the Student's schedule, resulting in a reduction of 20 minutes from her total speech time. [P-1656] Ms. Coffin thought the others who were working with the Student had an excellent approach, and great communication with Ms. Coffin about the Student. [Testimony of L. Coffin] The Mother told Ms. Coffin that she trusted her judgment on designing the Student's speech program, and was okay with whatever Ms. Coffin thought was best. [P-1656] Ms. Coffin recommended retaining Ms. Kalil until at least the spring to allow the student to continue to focus at home on what they were doing in school to promote carryover and generalization. [P-1657]

59. The IEP team met on August 11, 2007 to review the Sp/L and OT evaluations. [S-1006] Because the Mother was a cancer survivor and had recently learned she needed to receive treatment for possible breast cancer, she hired Lou McIntosh and Beth Briley<sup>3</sup> of Merrywing

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<sup>3</sup> Ms. Briley was formerly known as Beth Crowell.

Corporation to assist her in advocating for the Student, and they attended this meeting and most future IEP team meetings. [Testimony of Mother, S-1006] The Mother reported that the Student told her she was not getting help from the ed tech, and that the Student feels she needs help during silent reading and math. [S-1007] Ms. Coffin shared that the ed tech and the rest of the education team filled out very accurate representations of the Student on the Clinical Evaluation of Language Fundamentals (CELF) pragmatic profile. [S-1007] There was discussion about the Student's speech and language needs, and her OT needs. [S-1007]

60. The IEP team met again on October 16, 2007 to discuss the Mother's concerns about the Everyday Math program. [S-981] Once again, the Mother questioned whether it was an appropriate program for a student with her daughter's disabilities. [S-982] She wanted to see research about the program, particularly with respect to children with disabilities, but also represented that other states had pulled out of the program because it was not successful. [S-982, Testimony of Mother] The Mother reported that the Student found Saxon math easiest because it was one step at a time. [S-983] Mrs. Clark, the Student's math teacher, acknowledged that tasks needed to be broken down for the Student to be successful, and this was being done. [S-983] Mrs. Kugler, the classroom teacher, reported that the Student did very well on her unit one math assessment. [S-983] Ms. Golding asked the Mother if she would like YES to stop teaching Everyday Math and begin teaching Saxon math. [S-983] The Mother did not request this, but questioned whether the Student should be taught math in the mainstream classroom at all. [S-984, P-1684, Testimony of J. Olsen] Mrs. Rusinek added that they were doing a lot of preteaching and giving the Student multiple opportunities to practice, and had not hit any areas that the Student is unable to complete. [S-983] The District did not feel it was spending too much time modifying for the Student. [S-983] Ms.

Rusinek added that if they come to a place of the Everyday Math program that is not working, she would pull from another math program to supplement the Student's instruction so the Student will be successful. [S-984] Principal Sherry observed the Student the previous day, and she was very successful during a math game. [S-984]

61. The IEP team met for the third time that month two days later, on October 18, to develop the Student's IEP. [S-973] The Mother shared the goals the Student wanted for herself: (1) to talk and be understood by her friends; (2) to be in Mrs. Kugler's class; (3) to make friends and be included with her friends; (4) to stay in Yarmouth for school; and (5) to have more help during reading and math. [S-973] Ms. Brainard and Mrs. Kugler said they would talk with the Student about what she meant by wanting more help in math. [S-973] The team discussed the Student's handwriting. Mr. Metcalf noted that the Student had made a lot of progress in her ability to write, and Mrs. Kugler pointed out that the Student speeds through her writing, which does impact it. [S-973] The Mother inquired about the use of assistive technology, and Mr. Metcalf suggested that they look at the Student's progress in May to determine whether she needs to be taught to use a keyboard. [S-973] Ms. Coffin proposed an articulation goal and a pragmatic goal, to which the team agreed. [S-973]

62. The District hired Judith Kimball, a specialist in sensory integration, to consult about the Student's needs. Ms. Kimball has been a professor at the University of New England for 28 years, and the founder of the OT program there. [Testimony of J. Kimball] Ms. Bergeron was one of her students. [Testimony of J. Kimball] Ms. Kimball first observed the Student in October 2007. The team met with Ms. Kimball on October 24 to discuss treatment ideas and follow-up recommendations.

63. The team met again the next day, October 25, for a consult with Dr. Bray. [S-948] Dr. Bray had observed the Student in Wilson reading that morning. [S-949] The Student read with good expression and enthusiasm. [S-949] Dr. Bray also observed some number set/math work, and noted that the Student was making progress in math. [S-949] During her observation, the Student was glowing and demonstrated great confidence. [S-950] Dr. Bray was pleased with the Student's progress. [S-950] The Mother mentioned that the Student was anxious about silent reading time, but Dr. Bray felt that the Student should be reading alone at this point. [S-949] The team agreed that the Student would access between 40 minutes per day to 1 hour and 55 minutes per day of pull out math instruction, depending upon what is being taught in the classroom on a given day. [S-949] Dr. Bray noticed that the pragmatics goals in the Student's IEP were focused on the behavior aspects of pragmatics, and that some of the weaknesses in speech acts found in the CELF were not incorporated in this goal. [S-950] She recommended returning to the Sp/L assessment to look at these speech acts to work on with the Student, and said she would discuss with Ms. Coffin teaching these speech acts and rules. [S-950] Ms. Coffin saw the Student making progress in social pragmatics and relationships with her peers. [Testimony of L. Coffin] Articulation did not improve as fast as other areas. [Testimony of L. Coffin]

64. The team met on October 29, 2007 for the Student's annual review, and to complete her IEP. [S-931a] The Student attended this meeting, and told the team how she never gives up, is kind to everyone, and always does her best. [S-931b] She said she likes reading and writing, and her writing instruction is just about right. [P-1703] The Student added that she needed help with math, and has trouble understanding what is going on, although she likes being in Ms. Kugler's room for math, as she teaches the right way, and it makes sense. [P-1703] She



was very positive about all of her educators, except Mrs. Clark, who did not know how to teach her the right way. [P-1703] She felt that she was getting help, and that things were going well. [P-1704] Ms. Coffin proposed articulation, social pragmatics and vocabulary goals, to which the team agreed. [S-931B] Ms. Rusinek will keep a list of vocabulary the Student is using. [S-931b] Ms. Brainard proposed a social skills goal that would be in collaboration with Ms. Coffin's social pragmatics goal. The team agreed to this, as well as the other goals proposed by other team members for the Student. [S-931c] There was discussion, however, of what the term "secure" meant in measuring the Everyday Math goals [P-1710] The Mother defined it as "anybody should be able to see [the Student] demonstrate the skill at any time." Mr. Sherry's definition was "the ability to transfer skills from situation to situation." Ms. Rusinek defined it as "the ability to perform the skill over time without the need for additional direct instruction." Ms. Rusinek agreed to write a definition. [S-931c] There was also discussion about the Student's need for frequent motor breaks and sensory input. [P-1710-1711] Mr. Metcalf said he could create a list of different possibilities, and see what worked for the Student. [P-1711] As a result of these changes, the Student's IEP included: (1) 5 hours of literacy direct instruction with Ms. Rusinek; (2) 1:1 direct instruction for math, ranging from 40 minutes per day to 1 hour and 50 minutes per day, depending on the skill being worked on in the mainstream classroom; (3) 21 hours of ed tech support in the mainstream; (4) Sp/L of 20 minutes per week two-on-one co-treat with OT, 30 minutes per week two-on-one co-treat during literacy instruction, 2 hours per week one-on-one therapy, and 30 minutes per week group therapy in a social pragmatics group; (5) OT of 20 minutes per week two-on-one co-treat with Sp/L therapist, 45 minutes per week OT in art class, and 85 minutes per week one-on-one therapy; and (6) 25 minutes per week social work services

in the general education setting. [S-927-928] There were also consultation services of 15 minutes per week each for the Sp/L therapist and the regular educator, and the OT and the regular educator, as well as 25 minutes per week with the social worker and regular educator. [S-927]

65. On November 2, 2007, Lori Coffin shared her proposed lesson plans for a unit on disability with Ms. Kugler, Ms. Brainard, and the Mother. [P-1746] The Mother replied, “I LOVE these ideas – you moved this conversation to a level I could only hope for. I hope the school is responsive to your suggestions. I love having you on [the Student’s] team. For the first time since I started in yarmouth [sic], I really feel like we can see some real progress in skill development.” [P-1746] Ms. Coffin was providing direct services to the Student in five different areas, and met with the classroom teacher weekly to discuss upcoming vocabulary and help the Student generalize skills. [Testimony of L. Coffin] She also met with the OT weekly, shared goals they were working on and created activities for generalization carryover. [Testimony of L. Coffin]

66. Because the Mother did not want the Student to know she was having surgery for possible breast cancer, the Mother elected to have the surgery in Seattle, where her sister practiced medicine. [Testimony of Mother] The Mother left for Seattle on November 4, 2007, and was gone for a week. [Testimony of Mother] While she was away, the Student had a difficult time. Ms. Bergeron knew the Student read her mother’s emotions very well, and that she would be out of sorts if the Mother were away for a period of time. [Testimony of J. Bergeron] Ms. Bergeron and Ms. Kalil noticed a significant decline in the Student’s skills while the Mother was away, and thought the Student was extremely anxious, had a hard time attending, and appeared very dazed. [Testimony of J. Bergeron, L. Kalil, P-1815] They

thought the Student's appearance was disheveled, and she was much more emotional.

[Testimony of J. Bergeron] Ms. Kalil hoped that when the Mother returned, she'd see improvement, but she did not. [Testimony of L. Kalil] Ms. Kalil e-mailed the Mother on November 12, saying that the Student had a really tough week while the Mother was gone. Ms. Kalil noticed it a little on Monday, and saw it significantly on Wednesday. Ms. Kalil and Ms. Bergeron both reported periodically seeing regression in the Student with skills they thought she had mastered. [Testimony of J. Bergeron, P-404] In fact, she was experiencing the most significant regression Ms. Kalil had seen in a long while. [P-1771, 1815] The Student also routinely had difficulty generalizing skills she has learned. [Testimony of J. Bergeron] Ms. Bergeron mentioned these observations to the Father on Friday, but he had not seen any big changes in the Student. [P-1771] Ms. Kalil corresponded with Julie Olsen about this, and asked to observe the Student in school, which Ms. Olsen welcomed. [S-870] Ms. Olsen remarked that "we have seen some great progress in all areas of [the Student's] education and school day." [S-870]

67. Ms. Bergeron continued to see signs of anxiety in the Student. [P-1817] She and Ms. Kalil observed the Student in school for two and one-half hours on January 11, 2008. The Student wanted to be around her peers, and was interested in what they were doing. [Testimony of J. Bergeron] Both Ms. Kalil and Ms. Bergeron were very impressed with the classroom teacher, Jen Kugler, and thought she was excellent. [Testimony of L. Kalil, J. Bergeron] Ms. Kalil thought Ms. Kugler created a very supportive environment, and Ms. Bergeron thought she catered to the Student's needs the best she could. [Testimony of J. Bergeron, L. Kalil] Ms. Bergeron noticed some things that concerned her, such as the Student's pants being too low on her body, and food on her face. [Testimony of J. Bergeron, P-1830] The Student also

had some difficulty with cognitive activities. She would raise her hand to answer a question, but did not have an appropriate answer. [Testimony of J. Bergeron] Ms. Bergeron was concerned about whether the Student was getting much from her program at this point, and whether the program was still appropriate for her. [Testimony of J. Bergeron] Ms. Kalil guessed that the vocabulary used in class was going right over the Student's head.

[Testimony of L. Kalil]

68. Ms. Bergeron had been a big proponent for the Student attending public school. [Testimony of J. Bergeron] In xx grade, Ms. Bergeron did not think public school was inappropriate, but became concerned that it was now inappropriate. [Testimony of J. Bergeron] Ms. Kalil thought the Student was in the best mainstream academic environment she could ask for, but was struggling. [Testimony of L. Kalil] Ms. Kalil also questioned whether this was "the most appropriate setting," as the Student could not make the progress that was expected.

[Testimony of L. Kalil] At that point, Ms. Kalil thought the Student needed a change.

[Testimony of L. Kalil]

69. Although Lori Coffin thought the Student's progress was appropriate through the first half of xx grade, and saw progress in social pragmatics, relationships with peers, and apraxia, she thought the Student was becoming overwhelmed in the spring of 2008, and school was more challenging. [Testimony of L. Coffin] The staff was using the right approach to support the Student's learning, but Ms. Coffin began wondering whether the program was moving at a rate that was too difficult for the Student, particularly in the regular classroom. [Testimony of L. Coffin] Although the Student sometimes struggled, she would master many of the requirements, but Ms. Coffin felt it was unrealistic to expect the Student to keep up with her nondisabled peers. [Testimony of L. Coffin] She thought the curriculum was too difficult for

the Student, and that a different model of instruction might be helpful. [Testimony of L. Coffin] Ms. Coffin asked Ms. Rusinek whether it was possible in Yarmouth to have art and gym in the mainstream for social interaction, but receive other academic instruction in smaller classes. [Testimony of L. Coffin] Ms. Rusinek said that Yarmouth did not offer that model. [Testimony of L. Coffin]

70. Friends of the family also noticed that the Student appeared anxious and was perseverating on things outside of school in December of 2007. [Testimony of M. Cusano, M.J. Laniewski] Although the Student had been anxious in the past, it had been mild and manageable. [Testimony of M. Cusano] This persisted into the spring, although by summer, the Student seemed more relaxed and engaged. [Testimony of M. Cusano, M.J. Laniewski] The Mother spoke with Dr. Partridge on the telephone about the Student, but did not bring her to anyone for therapy. [Testimony of Mother]

71. On March 5, 2008, Ms. Kalil sent an e-mail to the Mother about both a meeting Ms. Kalil had with Lori Coffin, and a discussion with Jill Bergeron. [P-1860] She reported that Ms. Coffin shared many of Ms. Kalil's and Ms. Bergeron's concerns about whether the Student was benefitting very much from her mainstream classroom time, and whether it was continuing to meet the Student's needs. Ms. Kalil reported that the three of them felt the Student would benefit more from a smaller, more specialized class with more individualized attention. [P-1860] Ms. Kalil did not think Yarmouth offered this option.

72. In March 2008, Dr. Kimball talked with Ms. Bergeron, observed the Student in school with Mr. Metcalf, and met with the Student. Based upon this consult, the team determined that it was in the Student's best interest to not participate in general education classroom cursive lessons, but to continue her work on printing and keyboarding. [S-758] In April, the IEP team

also agreed to extend the Student's IEP annual review from May 18, 2008 to a date after the end of the year math assessment had been given to all xx graders and scored. [S-724]

73. At a March 20, 2008 meeting with the Mother, Dr. Bray, Ms. Olsen, Ms. Golding, and Ms. Rusinek, the Mother told Dr. Bray that the District requested her consent for cognitive testing of the Student for her triennial review. [P-1874] Dr. Bray told the Mother that cognitive testing was not appropriate for the Student, as the tests would, at best, tell them what they already know, and would not demonstrate the Student's ability. [P-1874] Dr. Bray then asked the District why these tests were needed. District personnel responded that it would not affect the Student's eligibility for special education, but would be used to inform instructional practices. [P-1874] Dr. Bray then acknowledged that getting some baseline testing in certain areas where they know they have worked with the Student would be beneficial, but made some suggestions, including: (1) that the Student be given additional time, as it takes the Student time to get going and access the information she has acquired, and she would not be able to demonstrate that accurately within standard time limits; (2) the Weschler Individual Achievement Test (WIAT-IV) should be given for reading and math only; (3) the Woodcock-Johnson test could be used for assessing the Student's writing and spelling ability. [P-1874] Dr. Bray also suggested looking at subsections of a variety of tests, and choosing the most appropriate ones that would demonstrate the Student's abilities. Ms. Golding and Ms. Olsen agreed with this approach. [P-1874]

74. The District began gathering information to prepare the Student's IEP for xx grade. In May of 2008, the Mother corresponded with the District about its willingness to eliminate the Everyday Math curriculum for the Student and replace it with another form of math instruction designed to meet the Student's learning style. [S-653] Ms. Golding said this

would involve using a variety of methodologies, depending upon the math strand being taught, including Saxon math, and the Mother agreed with this concept. [S-650, 653]

Because the Student needed more time to practice and process math skills, not all xx grade skills were listed in the Student's draft IEP. [S-650] Although the District reported that the Student had achieved 17 of 19 secure indicators in the xx grade math program [S-640, Testimony of J. Olsen], she still needed to work on subtraction and multiplication facts, so division was not included in the proposed IEP. [S-650]

75. On June 3, 2008, the IEP team met to discuss the draft IEP for xx grade. The Student's private providers were there, as well as District staff and the Parents' advocates. [P-1969, S-647] The Mother mentioned her concern that the Student was not making appropriate progress on her IEP goals, there were areas of regression, she was seeing anxiety-based behaviors, and the Student was struggling socially. [P-1969-1970] Ms. Coffin felt that the Student's speech had "dropped back some" in social settings, but she still did okay in structured one-to-one settings. [P-1970-1971] Ms. Kalil said that the Student's awareness of peers had grown a lot in the past year, and it was natural for her to look to peers. [P-1972] She added that she struggled with how adult-directed the Student was. [P-1972] The Mother, however, was concerned about peer influences when she observed the Student no longer looking to adults for cues, but instead was relying on her peers. [P-1934] Ms. Bergeron observed that Mr. Metcalf was very appropriately working on many different skills with the Student. [P-1973] Ms. Bergeron's biggest area of concern for the Student was self-regulation and the need to provide consistent sensory input. [P-1973] Mr. Metcalf announced that Judy Kimball was coming the following week to consult. The Mother thought they needed to "beef up" the Student's OT goals. [P-1973] There was a lengthy discussion about math,

about the Student's progress and whether she would be able to succeed in the xx grade math program. Mrs. Rusinek thought the Student had made huge progress this year, especially in the area of number sense, and she expected the Student to do well in grade xx. [S-642] Mr. Dalton was glad to see that the IEP included some math vocabulary, and thought the Student was capable of getting her math facts down. [P-1975] He thought the Student could acquire the skills to return to mainstream math, and she has the xx grade indicators. [P-1977]

76. On June 4, 2008, Dr. Bray e-mailed Julie Olsen, the Mother, and Suzanne Jones, stating that she thought they were not going to do cognitive testing at that point, but focus on academic pieces that help them have a baseline and help inform instruction. [P-2037] She reiterated how the impact of the Student's apraxia underestimated her abilities in many areas. [P-2037] When making these statements, however, she was unaware, that the District did not have a cognitive profile of the Student in her file. [S-504] The previous day, Dr. Bray told the Mother that the Student "made a lot of progress over the years, but I don't think that will be captured on a WISC." [P-1967]

77. The IEP team continued its discussions about the Student's educational program on June 5 and June 17. At the June 5 meeting, they began discussing ESY services. The District recommended six weeks of service, including 2 hours per week of Sp/L therapy, 75 minutes per week of OT, and 12 hours per week of literacy and math instruction. [S-624] The District staff proposed math and literacy goals for the Student's IEP. The math instruction was outlined as the entire math block for xx graders. [S-625] In response to the Mother's question about the Student's present DRA reading level, she was told the Student was reading a level 24 with 97% accuracy, and 88 words per minute with 70% comprehension. [S-625] The Mother was not satisfied with the math or literacy goals as written. [S-625] She did not think



the program was appropriate because the Student was not able to keep up at the same level as her peers. [S-627]

78. The team met with Dr. Kimball on June 12, and discussed the Student's sensory motor breaks. Among other things, Dr. Kimball recommended scheduling motor breaks where they occur naturally in the Student's schedule, and she provided specific ideas. [S-602]

79. At the June 17 meeting, an OT goal was added around sensory processing. [S-590] The Mother asked why the Student had not made the gains in her comprehension skills at the same rate as her peers. [S-588] Ms. Rusinek explained that the vocabulary in the text impacted the Student's comprehension skills, and that she did not have a wealth of background knowledge, which impacted her ability to comprehend some texts. [S-588] Dr. Bray encouraged the team to set realistic goals for the Student. [S-588] She noted that there were multiple variables that impacted the Student's abilities to comprehend more complex texts, and that it was important to make comprehension a target of the Student's literacy program next year. [S-588] In response to the Mother's question about whether the literacy goal was appropriate, Dr. Bray said that it addressed a range of reading comprehension strategies, and suggested adding to the goal that the Student will actively use her comprehension strategies. She emphasized that working on these strategies was the most important thing for the Student. [S-588] Ms. Rusinek said the strategies supported the goals as drafted on the IEP. [S-588] Additionally, Dr. Bray and Ms. Rusinek thought it was a reasonable goal for the Student to comprehend at an independent xx grade level by June 2009. [S-589] Ms. Rusinek added that the Student was making nice gains in her writing, and Dr. Bray said she loved the way the writing goal was written. [S-589] The Mother again expressed her concern that the Student was not at the same level as her peers, and wanted to

know the long-term impact of the Student making only one year's growth in xx grade. [S-589] Dr. Bray asked to have input on the pragmatic speech and language goal, and the word finding objective. [S-590] She also noted that her services did not appear in the IEP, but Ms. Golding said not to worry, she was in there. [P-2077] The team agreed to include 100 minutes per week of articulation therapy, but to put off discussion of other speech and language goals until Ms. Coffin was present. [S-591-592] Additionally, although Ms. Brainard felt the Student had achieved her social skills goals, the Mother disagreed, based upon her own observations, and felt these needs still should be addressed. [P-2078] The team then resumed its discussion of ESY services from the previous meeting. The District recommended two hours per week of speech/language therapy, 75 minutes per week of OT, and 12 hours per week of literacy and math instruction for six weeks beginning on July 7, 2008 and ending on August 14, 2008. [S-591] The Mother rejected these services, as she felt they were inappropriate for the Student, and announced that she was going to unilaterally place the Student in what she felt was an appropriate program, and reserved her right to reimbursement of the cost. [S-591]

80. On June 25, 2008, the District sent the Parents a revised IEP proposal. [S-513, P-2080] The Parents responded with a five-page statement of concerns. [S-351-355] Among the many concerns were: (1) reduced expectations for the Student below what her peers were expected to learn; (2) the Student appears to need an extended day to keep up with her peers; (3) the Student is not secure in some skills and has regressed in others; and (4) the Student is not generalizing some of the skills the District says are "secure" to outside environments. [S-351-355] The Parents felt that with proper integration, methodology and instructional time, the Student could make reasonable progress within a standard school day.

81. The District mailed the parents a third IEP draft on June 25, and the team met again on June 30. Modifications were made to the Student's Sp/L and OT goals in response to the Parents' concerns. [S-501] Although the Parents objected to the math and literacy goals, and wanted more direct instruction time, this was not changed. Continuing the discussion about the evaluations requested by the District, Dr. Bray recommended some achievement assessments, to which the Mother agreed. [S-503] Specifically, she agreed to the WIAT for math and reading, Woodcock Johnson writing subtest, Comprehensive Test of Phonological Processing (CTOPP), and an informal assessment of "Words Their Way" to assess spelling. [S-503] Dr. Bray, however, felt that the Wechsler Intelligence Scale for Children (WISC-IV) should be given in a standardized way and then test the limits to gain valuable information about the Student. [S-503] She and Ms. Jones thought the Wide Range Assessment of Memory and Learning (WRAML-2) would be helpful to better understand the Student's verbal and visual memory. [S-504] On August 8, 2008, after five months of discussions about which tests were necessary, the Parents signed the consent to evaluate form. [S-321-325] They clarified that they were only consenting to certain tests discussed in detail at several of the IEP team meetings. [S-321] At this point, the IEP team would not have the benefits of the testing information for planning the Student's xx grade program.

82. On July 8, 2008, Dr. Bray sent an e-mail to Jane Golding and Karen Rusinek stating that given all the Student's literacy objectives, the five to six hours of instruction was "not nearly enough time to work on the various aspects that need attention." [S-496] Ms. Rusinek replied that it was a balancing act between providing the Student with enough time for literacy and having her access classroom activities which also build her vocabulary and knowledge. [S-495] Ms. Rusinek wanted to start with the time she recommended on the IEP,

and review the situation in November, at which time they could make changes if necessary.

[S-495] The District sent the Parents a fourth draft of the IEP on July 15, a 65-page document, and the team met again on July 22. [S-414a] This IEP contained: (1) 6 1/3 hours of direct literacy instruction; (2) 6 ¼ hours per week of direct instruction in math; (3) 5 hours per week of speech and language therapy, broken into 2 hours of direct instruction including vocabulary, story retelling, word finding and articulation, 100 minutes of direct instruction for apraxia, a 20 minute co-treat with the OT, 30 minutes of a pragmatic/social skills group, and 30 minutes of co-treating during literacy instruction; (4) 2 ½ hours per week of OT, broken into 40 minutes in art class, 75 minutes of direct instruction spread out in three 25-minute segments, 15 minutes of direct instruction in the mainstream, and 20 minutes of co-treat with the Sp/L therapist; (5) 17 ½ hours per week of rehabilitation assistance consisting of ed tech assistance in the mainstream classroom; and (6) consultation services consisting of 4.5 hours per week of Sp/L therapist, 15 minutes per week of OT, and 20 minutes per week of combined OT and Sp/L therapist consult. [S-409-410] Dr. Bray was very impressed with the work that had been done on the speech and language goals, and Ms. Coffin reviewed them, as well as the rubrics that would be used to assess them. [S-414b] There was agreement about the appropriateness of these goals. [S-414b & c] There was a lot of Sp/L service which Ms. Coffin felt would be appropriate and helpful for the Student. [Testimony of L. Coffin] Although Ms. Coffin wanted the Student to remain in Yarmouth for the social benefits, and the opportunity to foster social skills in an environment with her peers, she thought the mainstream piece would be too much for her in regular academic classes. [Testimony of L. Coffin] The Parents felt that many of their concerns in the statement they prepared for the June 30 IEP meeting were not listened to or addressed, and it was apparent that there would

not be consensus on the proposed IEP. [S-414d] Some particular concerns related to the District's failure to specify math methodology, not having the Student's schedule set on the first day of school, and scheduling the Student's hardest academic areas at the end of the day, when she does not learn as well. [S-414c-d]

83. For the summer of 2008, the Family placed the Student at the Aucocisco School Summer Intensive Program, which ran from the first week of July to the first Thursday in August, five days each week for three hours each day. [Testimony of B. Melnick] Aucocisco is certified as a special purpose day school. [Testimony of B. Melnick] Teachers generally have dual certifications in special education and a subject area. [Testimony of B. Melnick] Aucocisco usually does intensive remedial work for children for an average of two to three years with the intent of getting children into a more mainstream setting once their skills have improved. [Testimony of B. Melnick] The program is broken down into one hour each of math, reading and writing. Additionally, the Parents contracted for an additional half-hour for V&V. [Testimony of Mother] The Student also attended one week of the Backstage Program, which focused on social skills development, and met from 12:30 to 3:30 p.m. five days a week. [Testimony of Mother] The Student loved this program, as she loved acting and was very engaged in the group. [Testimony of Mother, K. Condon] The Student loved one of the teachers, Kathy Condon. [Testimony of Mother] Ms. Condon saw the Student make progress in the brief work they did over the summer, and thought she would be a good candidate for the day school during the regular school year. [Testimony of K. Condon] In addition to attending Aucocisco's programs, the Parents privately provided the Student with four hours per week of direct Sp/L services for nine weeks of the summer, and three hours of OT.

[Testimony of Mother] Ms. Rusinek asked the Mother for permission to observe the Student at Aucocisco. [P-2418]

84. Liz Kalil, who worked in the Aucocisco program part time as a speech and language therapist, observed the Student frequently in her summer program. [Testimony of L. Kalil] She was amazed at the progress the Student made, and observed her maintaining conversations with peers, and raising her hand and answering questions. [Testimony of L. Kalil] In her private OT therapy, Jill Bergeron began to focus intensely on handwriting, and immediately began seeing the Student improve, making slow and steady progress again. [Testimony of J. Bergeron]

85. On August 4, 2008, Ms. Golding informed the Mother that Lori Coffin would not be returning in the fall, as she was pursuing a Ph.D. [P-2418, Testimony of L. Coffin] The Mother was upset and shocked by this news. [Testimony of Mother] Ms. Golding reported that Priscilla Vandermast, a speech therapist with experience working with students with apraxia, would work with the Student and her team. [P-2418] On August 13, Jen Kugler announced that she was leaving to take a job in Kennebunk developing and implementing an elementary Spanish program there. [P-2502] The Mother was concerned that everyone except Karen Rusinek would be new, and would not understand the Student. [Testimony of Mother] Although the Mother struggled with her decision about whether to return the Student to Yarmouth, Ms. Kugler's departure was the last straw. [Testimony of Mother]

86. On August 15, 2008, the Parents sent notice to Yarmouth that the proposed 2008-09 IEP and placement for the Student would not appropriately meet her needs, and that they would be placing her at the Aucocisco School for the coming school year. [S-319] The letter added that the Student would also be receiving extended school day services encompassing integrated

private therapies and social group experiences through Northeast Hearing & Speech and the Pediatric Development Center, as well as the Aucocisco Backstage Program. [S-319-320]

The Parents said that they would be requesting reimbursement from the District for the Student's unilateral placement, as well as compensation for what they believed was inappropriate programming for the past three years. [S-319] The Parents submitted an application and entered into a \$26,250 enrollment contract with the school on August 26, 2008, at which time they paid a nonrefundable deposit of \$2625, and agreed to pay charges for the full academic year. [P-2506-2508]

87. During the summer of 2008, the Parents hired Victoria Papageorge of Hyperion Learning Services to assess the Student's proposed math program for xx grade, and to perform a math evaluation of the Student. [Testimony of V. Papageorge] Ms. Papageorge has a master's degree in education, and training in many reading programs. [Testimony of V. Papageorge] She has attended many written language workshops, including some taught by Candace Bray, and has used various math programs. [Testimony of V. Papageorge] Ms. Papageorge observed the Student at Aucocisco on August 4, 2008. [S-161] She felt the Student did not have the prerequisite skills in math, and was having difficulty with addition and subtraction, particularly carrying and borrowing. [Testimony of V. Papageorge] She did not have a good sense of place value or number sense. [Testimony of V. Papageorge] Ms. Papageorge thought the Student needed to explore math on a very concrete level, using appropriate manipulatives. [Testimony of V. Papageorge] The Parents also asked Ms. Papageorge to look at Yarmouth's proposed IEP, and Ms. Papageorge observed xx grade regular education classes at YES in the fall without the Student present.<sup>4</sup> She conducted a math evaluation of

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<sup>4</sup> The Student was attending Aucocisco School at the time, but Ms. Papageorge observed a typical Yarmouth xx grade class. Ms. Papageorge was also concerned that there was no current academic testing, just informal

the Student in mid-September 2008 using Key Math, and reviewed the Student's files.

[Testimony of V. Papageorge] Ms. Papageorge concluded that the Student was functioning significantly below the average range in the area of mathematics, and was in the extremely low range as of her last neuropsychological examination in 2006. [Testimony of V.

Papageorge, S-157] She recommended remedial instruction in mathematics, on a one-to-one basis five days a week for one-hour sessions. [Testimony of V. Papageorge, S-158] She also recommended using the Sharma method, with preteaching, teaching, reteaching and reinforcement. [Testimony of V. Papageorge] Ms. Papageorge also said the Student could be expected to experience some regression. She did not think the Everyday Math program was good for the Student, and was not the methodology she would use. [Testimony of V. Papageorge]

88. Dr. Kimball consulted with Yarmouth about the Student on four occasions during the 2007-08 school year, and thought that the Student had the most unusual profile she had seen in over 40 years of practice. [Testimony of J. Kimball] She was impressed with the intensity of the work Yarmouth was doing with the Student, and saw that the Student was progressing. [Testimony of J. Kimball] She believed that, not only was Yarmouth's program appropriate, but it went above and beyond what normally would be done. [Testimony of J. Kimball] Schools are not required to do the best practice, but Yarmouth was doing so in the field of OT. [Testimony of J. Kimball] Dr. Kimball has several children she sees at Aucocisco, and thinks it has excellent teachers, but is not the right placement for the Student because they could not provide the intensity of OT services needed throughout the day. [Testimony of J. Kimball] Additionally, there is no music, which is helpful for children with OT needs.

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screenings. The School wanted to do academic testing, but this was delayed from March until September, due to the dispute between the School and the Parents about what testing was appropriate, discussed above.



[Testimony of J. Kimball] Because the Student can struggle with social cues as part of her dyspraxia, being at a school that has mostly high school age students and mostly boys was not a good fit for her socially. [Testimony of J. Kimball] Regarding the Student's anxiety, Dr. Kimball's experience was that it was common to hear about anxiety in children like the Student who have sensory problems. Anxiety relates to sensory problems, and OTs work on reducing anxiety through sensory and motor input. [Testimony of J. Kimball]

89. On September 25, 29 and October 7, 2008, Suzanne Jones performed a psychoeducational evaluation of the Student which included a student interview and classroom observation, records review, and administration of portions of the WISC-IV, WRAML-2, Developmental Neuropsychological Assessment (NEPSY II) subtests, and Achenbach behavior checklists. [S-133] Supportive motor breaks were scheduled into the testing blocks. [S-295-300] On September 29, 2008 and October 2, 2008, Julie Olsen administered the WIAT-II math and reading subtests, psychoeducational battery, and the Woodcock-Johnson writing subtests. [S-274-282] Testing showed that the Student made terrific progress over three years.

[Testimony of S. Jones] In numerical operations, the Student maintained her level of performance, appropriately increasing with age, but the other measures of math reasoning, word reading, and math composite, the Student showed significant, meaningful progress.

[Testimony of S. Jones] The Student exceeded what Ms. Jones would have expected in her performance. On the WISC-IV, the Student scored in the low average to average range in verbal comprehension, the extremely low to borderline range in perceptual reasoning and working memory, and the borderline to low average range in processing speed. [S-139]

These scores explain that the Student will learn more slowly than her nondisabled peers.

[Testimony of J. Kimball, S-338] Due to her disability, even with the best accommodations,

it would be unfair to expect the Student to keep up with her same age peers in math and reading comprehension. [Testimony of J. Kimball] The scores on the Student's achievement tests in 2008 were a little higher than the cognitive testing, and higher than her raw abilities would suggest, which may be explained by the Student's excellent work ethic. [Testimony of J. Kimball] This testing showed that the Student was performing in the average range (age and low average (grade) for the reading composite score, and in the below average range (age and grade) for the math composite score. [S-130] Achenbach checklists completed by the xx grade classroom teacher, Sp/L clinician, OT and special educator in the school setting revealed a mild level of anxiety, although the Parents' reporting yielded a significant (clinical) level of anxiety for the Student. [S-128, 143]

90. The Student began attending school at Aucocisco on September 3, 2008. [Testimony of Mother, B. Melnick] Aucocisco placed the Student in its lower school with Kathy Condon as her classroom teacher. She was in a combined lower and middle school class of six or seven children in which she was the only girl and the only xx grader. [Testimony of K. Condon, B. Melnick] The Student reported positive feelings about Aucocisco, although she complained that she did not have any friends in her class, just middle school boys, and she had a hard time leaving her friends in Yarmouth. [S-128, 129, Testimony of J. Olsen]

As the year progressed, Ms. Condon gained students, so the class was divided around Christmas, after which time the class was comprised of five lower school students.

[Testimony of K. Condon] In mid-February, a xx-grade girl was added to the class, so there were now two girls and three boys. [Testimony of K. Condon]

91. When the Student first arrived in Ms. Condon's class, she had a "deer in the headlights" look. [Testimony of K. Condon, B. Melnick] She was sad to change schools and be away from her

friends. [Testimony of Mother] She received her schedule on the second day, and was very happy not to be pulled out of class for direct instruction. [Testimony of Mother] By the Christmas break, however, the Student had relaxed, and stopped rubbing her face, which she did when she was anxious. [Testimony of K. Condon] Educationally, the Student's reading comprehension was quite impaired. [Testimony of K. Condon] Ms. Condon had never taught a student with such severe articulation problems, but Ms. Kalil e-mailed her the words she was working on so Ms. Condon could do them with her as well. [Testimony of K. Condon] As in all of her classes in the past, the Student was very motivated, worked hard, and wanted to please her teacher. In math, she appeared to have certain knowledge one day, but not the next. Although she had some concepts, nothing seemed solid for her. [Testimony of K. Condon]

92. The Student attended class at Aucocisco from 8:15 a.m. to 2:45 p.m. Monday through Friday,<sup>5</sup> except that she was released at 1:00 p.m. on Wednesdays. [P-2966] Her schedule consisted of: (1) 2 45-minute literature classes each day four days each week, with one focusing on reading and vocabulary, and the other more on comprehension skills and projects; (2) phonology for 45 minutes each day, 2 of which included Sp/L therapy<sup>6</sup>; (3) 75 minutes of math 4 days a week, which included foundational skills, Sharma and Saxon-based methodologies, with Mr. Dalton, who was new to the faculty that year, teaching the Saxon piece; (4) writing 4 days a week for 45 minutes per day<sup>7</sup>, 2 days of which focus on mechanics and composition, and 2 focus on forms of writing and poetry; (5) fluency for one-half hour 4 days a week; and (6) Lexia reading for 45 minutes four days a week. [P-2966] V&V is

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<sup>5</sup> On Fridays, the Student arrives 20 minutes late due to private speech and OT therapy.

<sup>6</sup> This is with Liz Kalil at an additional cost to the Family, as described below.

<sup>7</sup> Because the Student arrives late on Fridays, she has only 25 minutes of writing, rather than 45.

incorporated into many of the math and language arts classes. [P-2966] On Wednesdays, the Student did not have academics, but had special subjects consisting of 45 minutes of Backstage, 45 minutes of handwriting, and 45 minutes of art, as well as one-half hour of club meetings and one-half hour of advisor lunch with Ms. Condon. [P-2966, Testimony of B. Melnick] There is no OT as part of the regular program. [Testimony of B. Melnick] The Student receives OT three times each week, two of which are co-treats with Sp/L therapy on Friday mornings and for an hour after school on Mondays, plus an hour of OT without Sp/L, none of which is at Aucocisco. [Testimony of B. Melnick, P-2966] Ms. Bergeron, who is providing the OT, does not regularly co-treat with any of the providers at Aucocisco, although she works there with other students. [Testimony of J. Bergeron] The Student has speech therapy for 15 minutes on Monday and Wednesday with Liz Kalil through a contract with Northeast Hearing and Speech, at an additional cost to the Family. [Testimony of B. Melnick] The Family also contracts privately for an hour of Sp/L therapy after school on Thursdays. [P-2966] There are no regularly scheduled team meetings that include all of the Student's teachers and therapists.

93. The Student enjoys attending Aucocisco, and rated it a "10" in describing how much she liked it. [S-269] Since attending Aucocisco, Ms. Condon has seen improvement in the Student's number sense, and her written language has improved tremendously. [Testimony of K. Condon] Although the Student is progressing in reading, she still needs direct instruction when reading for comprehension. [Testimony of K. Condon] According to Ms. Condon, the Student's "processing speed is slower than they'd like to see." [Testimony of K. Condon] Ms. Bergeron and Ms. Kalil have also observed that the Student has been very successful at Aucocisco, and now has a lot more good days than in the past, so she can build skills a lot

faster. [Testimony of J. Bergeron] Her progress has been slow but steady, without consistent regression, and her peer interactions have increased. [Testimony of L. Kalil] Ms. Bergeron has seen the Student six or seven times at school, and noticed that the Student is much more aware and attentive during class time, and has seen a dramatic increase in her self-confidence. [Testimony of J. Bergeron]

94. In addition to her school activities, the Student is involved in the Jump Rope Club and Cup Stacking team in Yarmouth, takes piano lessons, and has played soccer and basketball through the local community services program. [Testimony of Mother] The Mother makes an effort to keep the Student well connected socially with her friends. [Testimony of Mother]

95. On October 23, 2008, Yarmouth sent the Parents a draft IEP, with revisions based on the information provided by the evaluations. [S-182-251] The IEP team met on October 28 to review all of the Student's recent evaluations performed by Ms. Papageorge and Yarmouth staff. [S-127-132] In attendance were various members of the Yarmouth faculty and administration, the Parents, their advocates Lou McIntosh and Beth Briley, Barbara Melnick of Aucocisco and Ms. Papageorge. [S-132]

96. The team, including both parent advocates and Ms. Melnick, met again on November 18 to review another draft IEP for the Student. [S-5] This included the following services: (1) just under 14 hours of one-to-one instruction with Ms. Rusinek weekly, including all math instruction; (2) 6 hours and 35 minutes of Sp/L therapy weekly, plus 50 minutes of Sp/L therapy in the general education setting; (3) 2 hours and 10 minutes of OT therapy weekly, plus 2 hours and 30 minutes of OT therapy in the general education setting, to integrate OT support throughout the Student's school day and week, and to allow Mr. Metcalf to collaborate with all members of the Student's team; (4) 8 hours and 50 minutes of ed tech

support; and (5) consultation time of 4.5 hours a month for the Sp/L therapist in the general education setting, 15 minutes per week for the OT in the general education setting, 20 minutes per week for the OT and Sp/L therapist in the special education setting, and two hours a month of social worker consultation. [S-5, 11, 62] Ms. Golding asked the team if there was consensus on the IEP, and the Mother and Mr. McIntosh said they did not agree with it. [S-3] Ms. Golding said she thought it was an appropriate IEP and encouraged the parents to reconsider re-entry to the Yarmouth Schools for the Student. [S-3]

97. In December 2008, Ms. Papageorge did a literacy evaluation of the Student. [Testimony of V. Papageorge] The Student had good phonological awareness and long-term retrieval. Her basic reading skills were in the 22<sup>nd</sup> percentile. [Testimony of V. Papageorge] Ms. Papageorge felt the Student definitely benefitted from a very specific, structured methodology, but needed additional work in some areas, particularly word comprehension. [Testimony of V. Papageorge] Written language continued to be another area of significant deficit. [Testimony of V. Papageorge] Ms. Papageorge thought the Student's placement at Aucocisco was appropriate for her, due to the complexity of her learning disability and the need for preteaching, reteaching, teaching to mastery, and the continual integration of programming across the curriculum. [Testimony of V. Papageorge]
98. The Parents sought advice from Marcia Hunter, Ph.D., a clinical psychologist, about the Student and how to pull together all of her assessments. [Testimony of M. Hunter] Dr. Hunter first met with the parents during July of 2008. She spoke with teachers and practitioners, and did formal testing, including integrated WISC-IV subtests. [Testimony of M. Hunter] Dr. Hunter saw the Student five times between January 19, 2009 and March 6, 2009, and diagnosed her with PDD, NOS. [Testimony of M. Hunter] As of the hearing, Dr.

Hunter had not yet prepared a formal report. It was her opinion that the Student should be at Aucocisco, as it is best that she be in a smaller classroom environment. [Testimony of M. Hunter]

#### **IV. DISCUSSION AND CONCLUSIONS**

##### **A. Brief summary of the position of the parents:**

The Family seeks to recover the costs incurred for the Student's attendance at the Aucocisco School's summer program in 2008, and for her attendance at Aucocisco during the 2008-09 school year. Based upon the evidence, the hearing officer should also establish that the Student is entitled to remain in this placement.

The fact that the Student may have made some progress in some subject areas in Yarmouth does not mean that her program or placement there was appropriate. She received an extremely high level of privately funded services, designed to fill gaping holes in Yarmouth's programming. This was not an effort to maximize the Student's potential, but to ensure that her basic educational needs were appropriately addressed. These services would not have been necessary, had her school program been appropriate. Where it can be shown that the Student's progress was due even in part to instruction such as this outside of school, the value of the Student's progress as evidence that the school district has provided the Student with an appropriate education is diminished. Even with these services, the Student failed to master basic foundational skills needed for further advancement by the end of xx grade. With the rise in her anxiety and emotionality in reaction to her inappropriate xx grade program, and the increasing demands of xx grade, there was no way that "more of the same" programming at Yarmouth would have been appropriate during 2008-09.

As a matter of law, parents are only required to select a unilateral placement capable of providing their child with some of the special education benefits that the public school placement is unable to provide. It does not need to be the least restrictive setting. The Family's selection of Aucocisco not only meets this liberal standard, but it is the least restrictive placement in which the Student can receive meaningful educational benefit.

For the purposes of determining the Parents' entitlement to reimbursement for the Student's private school placement, the hearing officer's role is only to determine whether the proposed IEP provided a FAPE at the time offered, as written, to the family prior to its decision to place the child unilaterally, and not to assess what programming the school district later offered or might have provided, had the unilateral placement not occurred. Therefore, the hearing officer must focus on the August 2008 IEP. On many levels, the District's proposed IEP in August 2008 did not offer FAPE. The placement was inappropriate because it would be emotionally harmful to the child, and was not reasonably calculated to address all of her educational needs. It lacked measurable annual goals, and represented an abandonment of the goal of providing the Student with academic challenges on par with her grade peers. It contained inadequate intensity of services to address the Student's needs in the areas of literacy instruction and related services. Additionally, the District continued its unsupportable legal position of refusing to discuss research-based methodologies or to specify methodologies in the IEP.

The Parents' hand-delivered notice letter of August 15, 2008 met the notice requirements of the IDEA, as it preceded the Student's withdrawal from the Yarmouth Schools and commencement of services at Aucocisco by more than ten business days.



An award of compensatory education, which may include reimbursement of the Family's private school tuition, is a proper award when a school district's failure to implement an IEP causes educational harm.

**B. Brief summary of the position of the District:**

In determining whether the Student's IEPs have provided her with educational benefits, we do not look at the actual outcome of each IEP at the end of the day, but at the reasonable calculations at the beginning of the day. The Supreme Court has ruled that no IEP is a guarantee of success, but the FAPE duty is met as long as the IEP was reasonably calculated to provide educational benefits at its inception. The law emphasizes appropriate, rather than ideal, education. A disabled child's development is measured with respect to her abilities, not in relation to the rest of the nondisabled class. An out of district placement is right only when it is not possible for the child to receive "some educational benefits" in the local public school, even if the child may feel better in a private school because she is able to exceed the performance of other disabled children.

In reviewing the evidence, the hearing officer will find that almost all of the testimony supported the Student's programming and placement decisions for xx and xx grade. The Student's programming was developed through an extensive team process, and was accepted by all involved. The Family had considerable input and influence on the Student's IEP. The District measured the Student's progress, and this is quantifiable from the evidence presented. Regarding xx and xx grade, the evidence supports a conclusion that the IEPs and placement were reasonably calculated at their inception to provide the Student with educational benefits. Although the Parents may argue that the Student's success was the result of private therapists and tutors, courts and hearing officers have almost always refused to find public school

programming inappropriate based upon the argument that the educational benefits must be due to supports the child received outside of school. There is no evidence from any providers, witness or expert that this was the case here. In fact, Yarmouth has gone the extra mile in this case, providing superb educational programming and documenting well the benefits the Student received from that programming.

To establish entitlement to reimbursement, the Family must show that the District's program was inappropriate, and the Student's unilateral placement at Aucocisco School was an appropriate placement under the IDEA. Although Ms. Condon's programming at Aucocisco is not meaningfully different from Ms. Rusinek's at Yarmouth, the Aucocisco program falls short in other respects, including the lack of any OT services, and the lack of integration effort that the family insisted was so central to the Student's program in Yarmouth. The program is also overly restrictive, and the Student effectively has no female peers or friends there.

The Family failed to meet its notice requirement for tuition reimbursement, as their letter was dated and received on August 15, 2008, yet the Student was withdrawn from Yarmouth less than ten business days later, as the Family signed a contract to have the Student attend Aucocisco on August 26. The First Circuit has made it clear that reimbursement for private unilateral placements is not a proper compensatory education order in any event.

Lastly, Yarmouth always offered the Student an ESY program that was reasonably calculated to prevent any regression that could not be easily recouped. This is what the law requires of ESY programs. The Family, however, rejected this programming because they wanted services that would keep advancing the Student, which is not the goal or purpose of ESY.

### **C. Burden of Proof:**

In order to decide any of the issues in this case, it is first necessary to determine which party has the burden of proof. As the Supreme Court held in *Schaffer v. Weast*, “we will conclude that the burden of persuasion lies where it usually falls, upon the party seeking relief.” 546 U.S. 49 (2005). The Court acknowledged that the rule applies with equal effect to school districts.

The District raised the following issues for hearing: (1) whether the IEP developed for the Student’s 2008-09 school year is reasonably calculated to provide her with educational benefits in the least restrictive environment; (2) if not, whether the Aucocisco placement is inappropriate; (3) whether the Family gave adequate notice of the Aucocisco placement; and (4) whether its offer of ESY programming for the summer of 2008 met Maine’s requirements for ESY services. The Family, on the other hand, raised the issues of whether the Student’s earlier IEPs, from xx through xx grade, were reasonably calculated to provide her with a free appropriate public education, and if not, what remedy would be available. In accordance with *Schaffer v. Weast*, each party has the burden of persuasion on the issues that party has raised.

### **D. Standard for a Free Appropriate Public Education**

Every student who is eligible for special education services is entitled under state and federal law to receive a "free and appropriate public education ... designed to meet their unique needs and prepare them for employment and independent living." 20 USC 1400(d)(1)(A). The hearing officer must examine whether the Student’s educational program contained in her IEP was “reasonably calculated to enable the student to receive educational benefit.” *Board of Educ. v. Rowley*, 458 U.S. 176, 207 (1982). The First Circuit elaborated that the student’s educational program must guarantee “a reasonable probability of educational benefits with sufficient

supportive services at public expense.” See *G.D. v. Westmoreland School Dist.*, 930 F.2d 942, 948 (1st Cir. 1991). In *Town of Burlington v. Department of Education*, the First Circuit explained that an appropriate education must be directed toward the achievement of effective results – demonstrable improvement in the educational and personal skills identified as special needs – as a consequence of implementing the proposed IEP. 736 F.2d 773, 788 (1<sup>st</sup> Cir. 1984), *aff’d*, 471 U.S. 359 (1985). The educational benefit must be meaningful and real, not trivial or *de minimus* in nature. As the First Circuit stated in *Lenn v. Portland School Comm.*, the law does not

promise perfect solutions to the vexing problems posed by the existence of learning disabilities in children and adolescents. The Act sets more modest goals: it emphasizes an appropriate, rather than an ideal, education; it requires an adequate, rather than an optimal, IEP. Appropriateness and adequacy are terms of moderation. It follows that, although an IEP must afford some educational benefit to the handicapped child, the benefit conferred need not reach the highest attainable level or even the level needed to maximize the child’s potential.

998 F.2d 1083, 1086 (1st Cir. 1993). In *Roland M. v. Concord School Comm* the First Circuit described the goal as to provide the student with “demonstrable” benefits. *Roland M.* 910 F.2d 983, 991 (1st Cir. 1990). As the First Circuit explained,

The issue is not whether the IEP was prescient enough to achieve perfect academic results, but whether it was "reasonably calculated" to provide an "appropriate education" as defined in federal and state law . . . For one thing, actions of school systems cannot, as appellants would have it, be judged exclusively in hindsight. An IEP is a snapshot, not a retrospective. In striving for "appropriateness," an IEP must take into account what was, and was not objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated. See 34 C.F.R. Pt. 300, App. C, Question 38.

*Id.*

“Education” has a broad meaning under the IDEA, and is not limited to academic progress, as the IDEA requires the IEP team to consider the “academic, development, and functional needs of the child.” 20 U.S.C. §1414(d)(3)(9)(A). Accordingly, the IEP must be designed as a package

to target “all of a child’s special needs . . . whether they be academic, physical, emotional, or social.” *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1089 (1<sup>st</sup> Cir. 1993). The law is also clear that special education programming must be delivered in the least restrictive environment. 20 U.S.C. § 1412(a)(5); Maine Unified Special Education Regulations (MUSER) §X(2)(B). What is least restrictive depends upon an individual’s needs. The goal is to educate the Student, whenever possible, with nondisabled students, and as close as possible to the child’s home. MUSER §X(2)(B). An out-of-district placement is only appropriate when the District is unable to provide the Student with FAPE. “Parental preference alone cannot be the basis for compelling school districts to provide a certain educational plan for a handicapped child.” *Brougham v. Town of Yarmouth*, 823 F. Supp. 9 (D. ME 1993).

#### **E. The xx and xx Grade IEPs (2005-06 and 2006-07)**

Before any discussions about the Student’s programming, it is useful to discuss the general landscape that is the background of this dispute. Some things were not in controversy. Everyone enthusiastically agreed that the Student was a very likeable, hardworking girl who never gave up, despite her challenges. Everyone who worked with her or knew her thought very highly of her, and admired her many qualities. There was also no dispute that, although all students with disabilities are unique, this particular child’s disability profile was unusually complex and distinctive.

Before the Student even arrived in xx, the Parents learned everything they could about the Student’s disabilities, and had developed ideas about the type of programming they wanted for their child. They were already very committed to providing the best possible education for their daughter, took her to a variety of specialists, and hired speech and occupational therapists of their choosing who worked very well with the Student. They placed her in excellent xx

programs. So before the Student entered the Yarmouth school system, her parents were used to selecting precisely the services they believed the Student needed, with providers they liked and trusted.

Two and one-half years before the Student actually entered the Yarmouth schools and 20 months before the Parents originally anticipated the Student would begin attending public school, the Mother contacted Jane Golding, Yarmouth's director of instructional support. Unfortunately, this relationship got off to a poor start. The Mother had expectations of a conversation about the Student's rare and complex disabilities, what type of educational program she might expect, and the qualifications of Yarmouth's specialists. Ms. Golding, on the other hand, thought the contact was premature, and was not prepared to discuss the education of a student about whom she had no knowledge.

The Mother, a very intelligent woman and tireless advocate for the Student, wanted the Student to have every advantage, and to be able to learn at the rate of her nondisabled peers. Although the Parents argued that they were not seeking to maximize the Student's abilities, it was apparent that this was precisely what they wanted -- the best possible program for the Student, and they were staunch advocates for the same.<sup>8</sup> The Mother's level of commitment and effort on the Student's behalf is admirable and unsurpassed. Yarmouth had a reputation of being one of the best school departments in Maine, and was confident it could educate the Student within the model it employed for students with special needs, and that it knew what it was doing. This dynamic increased the tension between the Parents and the District from the beginning.

From the outset, the Parents were willing to provide additional services to give their daughter the level of services necessary to meet their expectations and standards. This

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<sup>8</sup> Lori Coffin and other witnesses testified to this, and it was contained in Dr. Hubbard's report on P-429 [Fact #21]

complicates the analysis of this situation, as it can be difficult to tease away the benefits of the additional services provided by the Parents at their own expense from the benefits of the programming provided by the public school to determine whether the Student received FAPE.

Did the Student's xx program provide her with FAPE? The record supports a conclusion that the IEP was both reasonably calculated to provide the Student with educational benefits, and she did benefit from her Yarmouth xx year. Although Yarmouth offered a half-day xx program, the Student's IEP provided a full day of instruction and therapy. [Fact #20] When the program was developed, with the input from the Family's private therapists, the entire IEP team was in agreement with the goals, objectives, and levels of services in the IEP. Dr. Hubbard applauded the Family's efforts in arranging such an intensive program of services through the District. [Fact #21] The Mother had very definite ideas of exactly what the Student needed, but did not ask the District to provide the additional Sp/L and OT services the Family chose to retain on its own. While Yarmouth had definite ideas of how to educate the Student, it tried to be open to the Parents' suggestions and requests, and implemented many of them in an effort to satisfy the Parents and address their concerns. [E.g., Fact #21] Although there was some tension between the Mother and the administration, the Mother got along well with the Student's teachers, and thought they were doing a good job. As Dr. Popenoe warned, the Student's progress in developing academic skills was slow, but there was consistent evidence from a variety of educators and therapists that she made good measurable progress, and met approximately 75% of her goals. [Facts #23, 24, 30, 33] The record shows that the Student made considerable progress in xx, beyond the level required of the FAPE standard.

The next question is whether this was due to the Parents' decision to retain the services of Liz Kalil and Jill Bergeron, even though the Student was receiving Sp/L and OT at school, and

their decision to hire Lori Coffin in April of 2006. Although the Student was making some progress in reading, there is no doubt that once Ms. Coffin began tutoring the Student, her progress increased markedly, and certainly, some of the Student's progress in speech and OT must be attributed to private therapy. The issue is, however, whether the IEP as drafted was reasonably calculated to provide the Student with meaningful educational benefit. *Adams v. State of Oregon*, 195 F. 3d 1141 (9<sup>th</sup> Cir. 1999) The evidence in the record supports a conclusion that it was. While this is sufficient to end the inquiry about whether the Student received FAPE in xx, there was also evidence that the Student made considerable educational progress throughout xx, although it was not possible, with respect to goals in OT and Sp/L, to separate which progress was attributable to the services the Student received under the IEP and which was attributable to the private therapists, especially since there was some coordination between what the Student was learning in home and at school. The situation can best be summed up as Yarmouth's wide array of services was the cake, and the Family's private therapy was the icing on it.

The Student's xx grade year was even more successful. The Mother thought the Student's classroom teacher, Raelene Bean, was a wonderful teacher and did a great job. [Facts #42, 50] Yarmouth agreed to contract with Dr. Bray, who had recently become the Family's educational consultant, to make recommendations for learning strategies. [Facts #45, 46] Dr. Bray had input in the Student's xx grade IEP, and thought the collaborative model Yarmouth was using was "amazing" for the Student, and that she had a great year. [Fact #45, 49] Additionally, Yarmouth responded to the success the Student had in reading with Lori Coffin by contracting with her to be the Student's literacy teacher at school. [Facts #40, 45] The process for developing the IEP was collaborative and commendable, with input from private providers and Dr. Bray, and the whole team concurred with it. The evidence was overwhelming that it was reasonably



calculated to provide the Student with educational benefit. And the Student received considerable educational benefit as well. Despite all of the expert opinions that the Student would be slow to develop academic skills, and that it was unrealistic to expect her to keep up with her nondisabled peers, the Student's decoding and fluency skills were at grade level, which was a tribute to the talents of her teachers and the strength of her educational program. [Fact #50] Although the Student did not reach that level of achievement in all areas, she was progressing well overall.

The Mother did object to a portion of the xx grade IEP because she wanted it to include specific methodologies in literacy, and Ms. Golding would not agree to that, even though the District was willing to use the specific methodologies requested.<sup>9</sup> Contrary to the Parents' assertion, the weight of authority is that school districts have broad discretion in deciding which methodologies to use, and the IDEA does not require IEPs to contain specific methodologies, as long as the district is providing a basic floor of opportunity to receive educational benefit. *E.g.*, *M.M. and B.M. ex rel. C.M. v. School Bd. of Miami-Dade County, Fla.*, 45 IDELR 1 (11<sup>th</sup> Cir. 2006); *Lachman v. Illinois Bd. of Educ.*, 441 IDELR 156 (7<sup>th</sup> Cir. 1988) ("Rowley and its progeny leave no doubt that parents, no matter how well-motivated, do not have a right under the [statute] to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child.") There is also authority that if parents insist upon a particular methodology in the IEP, they bear the burden of proving that their preferred method is the only one that would ensure the student FAPE. *Miller ex rel. S.M. v. Board of Educ. of the Albuquerque Pub. Schs.*, 46 IDELR 162 (D.N.M. 2006) The

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<sup>9</sup> As noted in Fact #40, Ms. Golding included these details in the IEP meeting minutes.

Parents have not done that. The fact that the District would not list specific methodologies has no bearing on whether the IEP was appropriate.

#### **F. The xx Grade IEP (2007-08)**

In developing the Student's xx grade IEP, the Yarmouth staff again sought input from the Student's private therapists, and observed her working with them. There was an extensive team process over the course of many meetings to draft the IEP, including six meetings in the month of October 2007. In addition to continuing to have Dr. Bray's expertise and ideas about learning strategies, the District hired Judith Kimball, a sensory integration specialist, to consult about the Student's needs, and the team met with her to discuss her recommendations. [Fact #63] There was considerable discussion about the Student's math placement, but there was support for starting the school year with a full hour of math in the mainstream classroom each day, and 40 minutes of direct instruction. The Parents had a great deal of input, and ultimately there was consensus on the Student's xx grade program. The Student's private math tutor supported the math programming as well, and she also supported continuing some instruction in Everyday Math. Everyone who worked with the Student considered her a mystery from a learning perspective, making it more difficult to plan for her than most students. Based upon the planning process, and what the educators, experts and therapists knew about the Student, this IEP was "reasonably calculated" to provide the Student with FAPE. It is difficult to imagine what more the team could have done to improve the process.

Going into the fall, there was evidence that the Student's program was going well. On November 2, the Mother told Lori Coffin how much she loved her proposed lesson plan for a unit on disability, and how she could finally see some real progress in skill development. [Fact #65] The rest of the team thought the Student's program was going well, too. She had an

excellent classroom teacher. [Fact #67] During the second week in November, however, when the Mother was away for a week for health reasons, the Student's private therapists noticed that she was having a very difficult time, becoming anxious and regressing. Not everyone observed this. From the perspective of Ms. Kalil and Ms. Bergeron, the Student's problems did not resolve when her mother returned.

Does this undermine the District's position that the IEP was appropriate? Although it is unclear whether the Student began struggling in some settings because of the Mother's absence, or because parts of her program began moving at a rate that became too difficult for her, this was unpredictable. This does not undermine the strong evidence in the record that, using the "objectively reasonable" standard in *Roland M.*, the IEP at its inception was reasonably calculated to provide the Student with meaningful educational benefit. From a legal perspective, the discussion does not need to go any further. Nonetheless, there was sufficient evidence in the record to support a conclusion that, not only was the program reasonably calculated to provide the Student with FAPE, but she actually made progress and received FAPE in xx grade.<sup>10</sup>

#### **G. Extended School Year Program for 2008**

The Maine regulations require school units to provide ESY services when such services are necessary for the provision of FAPE to the child. MUSER X.2(7). One of the requirements for ESY eligibility in Maine is that the services are necessary to prevent the student from losing previously mastered skills that she is unlikely to recoup in a reasonable amount of time. The Parents, however, did not agree with the goal of maintaining the Student's current level of performance. They wanted the Student's summer program to allow her to keep advancing, and even "close the gap" with her nondisabled peers. Consequently, they rejected the District's offer

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<sup>10</sup> See, e.g., Facts #58, 61, 64, 65, 66, 75, 76, 88, and 89.

of ESY services in favor of the Aucocisco summer intensive program. While it is the Parents' prerogative to choose summer programming that will help the Student get ahead, this is not required under the IDEA in Maine. The Parents presented no evidence that the District's program would not meet the Maine standard, and they made no argument about the inadequacy of the District's ESY offer in their closing argument. The District, on the other hand, introduced evidence that its program addressed all of the Student's areas of need, that its providers were qualified, and that the services would allow the Student to avoid losing previously mastered skills. Consequently, it meets the requirements of Maine law, and the Parents are not entitled to reimbursement for their placement of the Student in Aucocisco's summer programs.

#### **H. xx Grade IEP (2008-09)**

Whether the District's proposed xx grade IEP was reasonably calculated to provide the Student with FAPE is the most complex issue in this hearing. Like the Student's IEP the previous year, this IEP was the product of a great deal of work and collaboration among the Parents, teachers, therapists and consultants. Yarmouth's effort to develop the Student's IEP was substantial, with a good deal of time spent trying to address the Parents' concerns. Although the Parents felt that the District was not listening to their concerns, the evidence shows that Yarmouth made a lot of changes in response to them. In fact, although the District and Parents did not always agree, the District very often approved the Parents' requests during the Student's three years in the Yarmouth schools. The Parents raised the question of which of the proposed IEPs should be considered in determining whether FAPE was offered, the July 2008 IEP or the November 2008 one? The IEP was amended in November to take into consideration the results of testing and evaluations performed in September and October, as well as Ms. Papageorge's evaluation. It is unfortunate that the IEP team did not have the benefit of the District's testing

information in June and July, due to a disagreement between the District and Family about what testing was appropriate. Nonetheless, the IEP proposed in July must be analyzed, as it was upon this proposal that the Parents based their placement decision for xx grade.

There was agreement within the team about many of the goals and services in the IEP. There was consensus that the OT goals and services, which included sensory processing goals and scheduled motor breaks, were appropriate. Dr. Kimball correctly observed that not only was the Student's program appropriate, but that Yarmouth went beyond what school districts normally did for this Student. [Fact #89] Dr. Bray was impressed with the Student's speech and language goals, and the team agreed that these were appropriate as well. Additionally, the team agreed to eliminate Everyday Math from the Student's program, and to make changes to the Student's math program to better address her weaknesses. It became apparent towards the end of xx grade that the Student needed more direct instruction time, and given the impact of the Student's disability on her ability to learn math, removing her from the mainstream math class was an improvement. Although the Parents did not agree with the Student's math goals, her private tutor thought the Student was capable of achieving them, and applauded the addition of math vocabulary in the IEP. [Fact #75] The amount of direct math instruction comported with Ms. Papageorge's opinion, although she did not agree with the methodology. [Fact #87] The Parents objected to the lack of specific methodologies in math and literacy in the IEP, but as discussed earlier, the District did not have to include specific methodologies in the IEP.<sup>11</sup>

Dr. Bray encouraged setting realistic goals. The Parents' expectation that the Student should make gains in her comprehension and math skills at the same rate as her peers, however,

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<sup>11</sup> See discussion of the Student's xx grade program regarding methodologies and the IDEA.

was not realistic.<sup>12</sup> Lori Coffin, whose knowledge of the Student's disability and needs was extensive, believed this [Fact #69], and both Dr. Popenoe and Dr. Kimball did as well.

[Facts#25, 88] In fact, Dr. Kimball thought it was unfair to expect the Student to keep up with her nondisabled peers. [Fact #88] There is no doubt that the Parents have very high standards and expectations for their daughter's education, but the FAPE standard does not require the level of programming that they expect.

Dr. Bray felt the reading goal addressed the need for a range of reading comprehension strategies, and applauded the writing goal. [Fact #79] On the other hand, she was concerned that the amount of direct instruction in literacy was "not nearly enough time to work on the various aspects that need attention."<sup>13</sup> [Fact #82] To address the Student's needs, however, her literacy direct instruction time was increased from 5 hours in xx grade to 6 1/3 hours in the proposed xx grade IEP, so that she would still have some time to access classroom activities that would build her vocabulary and knowledge. [Fact #82] The Parents were concerned that the Student would achieve only one year's growth in xx grade, but this amount of educational benefit surely fulfills the FAPE standard of meaningful benefit, as FAPE does not require the District to "close the gap."

It also bears mentioning, as Dr. Bray noted, that the District's collaboration efforts, which were so important to the Parents, were very strong. [Fact #45]

The concerns of Lori Coffin, Liz Kalil and Jill Bergeron about the Student's anxiety and ability to keep up with the mainstream instruction merit serious consideration. All of these professionals worked with the Student for many years, and knew her well, and their concerns cannot be taken lightly. Although no doubt the Student was experiencing some anxiety, Dr.

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<sup>12</sup> This is true of arguments the Parents made in previous years about the failure of the Student's program because it did not allow her to progress at the same rate as her nondisabled peers, or close the gap.

<sup>13</sup> Ms. Papageorge also testified that the proposed IEP did not provide enough time for literacy instruction.

Kimball pointed out that this was common in children like the Student who have sensory problems. [Fact #89] The Student's teachers and therapists at school rated her anxiety in the mild range, and although the Parents were very proactive about supporting the Student in every possible way, they did not take her to see Dr. Partridge or another psychotherapist. [Facts #19, 88] Additionally, with the high level of OT services offered in the 2008-09 IEP, including the new OT sensory processing goal, this could be expected to reduce the Student's anxiety.

The three therapists also were concerned about whether the Student was benefitting from her time in the mainstream classroom. As noted above, providing services to help reduce anxiety would allow the Student to benefit more from her mainstream programming. Additionally, the July xx grade IEP reduced the Student's mainstream time by about one-fifth over the xx grade level.<sup>14</sup> By spending more time in direct instruction, it was reasonable to expect the Student to fare better in the time she spent in mainstream classes. Ms. Kalil "struggled with how adult- directed the Student was," and noted that her awareness of peers had grown a lot in the past year. [Fact #75] This makes having some time in the mainstream classroom particularly important, and gives the Student the opportunity to develop relationships with her classmates that she would not have in a school in which she had no peers.

It is, of course, not necessary to compare the Student's program in Yarmouth with Aucocisco to determine whether Yarmouth's IEP meets the FAPE standard. What does bear mentioning is that, even at Aucocisco, the Parents had to provide extensive support outside of the regular school day to meet their expectations of what constituted an appropriate education. They had very definite ideas about what the Student's education should look like, and despite their position to the contrary, there is no doubt that they were attempting to maximize the Student's

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<sup>14</sup> The November IEP reduced mainstream time even more.

educational progress. As noted above, their commitment and effort are amazing and commendable, but what they are seeking is beyond what the IDEA requires of a school district.

The IEP team took steps to address the concerns of Parents, teachers and therapists in drafting the xx grade IEP. Looking at the high level of services, support, and input of experts, this IEP was reasonably calculated to provide the Student with meaningful educational benefit in the least restrictive environment.

The District, having received the evaluations conducted by its staff and Ms. Papageorge, revisited the proposed IEP, and made some changes in response to the evaluation results. As was apparent from the District's actions in the past, it was always open to reviewing the Student's program and considering changes that would help the Student succeed.

As the IEP developed for the 2008-09 school year was reasonably calculated to provide FAPE to the Student in the least restrictive environment, the Family is not entitled to reimbursement of costs for the Student's unilateral placement at the Aucocisco School.

## **V. ORDER**

After consideration of the evidence presented during this due process hearing, the hearing officer orders as follows:

1. The District's IEPs and placements for the 2005-06, 2006-07, and 2007-08 school years were reasonably calculated to provide the student with a free, appropriate public education in the least restrictive environment, and did provide the Student with FAPE.
2. The District's ESY program for the summer of 2008 meets the FAPE requirement for such services under Maine law.
3. The District's proposed IEP for the 2008-09 school year was reasonably calculated to provide FAPE to the Student in the least restrictive environment. Therefore, the Family is not



entitled to reimbursement of costs for the Student's unilateral placement at the Aucocisco School.

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SHARI B. BRODER. ESQ.  
Hearing Officer