

**COMMONWEALTH OF MASSACHUSETTS  
SPECIAL EDUCATION APPEALS**

In Re: Groton-Dunstable Regional School District

BSEA #07-1194

**DECISION**

This decision is issued pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 USC Sec. 1400 et seq., as amended by P.L. 108-446<sup>1</sup>; Section 504 of the Rehabilitation Act of 1973 (29 USC Sec. 794); the Massachusetts special education statute or “Chapter 766,” (MGL c. 71B) and the Massachusetts Administrative Procedures Act (MGL c. 30A), as well as the regulations promulgated under these statutes.

On August 17, 2006, Parents filed a hearing request with the Bureau of Special Education Appeals (BSEA) alleging that the IEP and placement that the Groton-Dunstable Regional School District (Groton-Dunstable or School) provided for the 2005-2006 school year and the amended IEP that Groton-Dunstable proposed for the 2006-2007 school year, did not and would not, respectively, provide Student with the comprehensive language-based programming that the Parents assert Student needs to make meaningful educational progress. Rather, Parents claim that the Learning Prep School (Learning Prep or LPS), where they unilaterally placed Student in or about August 2006, is an appropriate placement for Student.

Parents seek the following relief: <sup>2</sup> (1) reimbursement for tuition, transportation and costs associated with Student’s placement at Learning Prep; (2) prospective funding of all costs of Student’s placement at Learning Prep through the expiration date (September 5, 2007) of Groton-Dunstable’s most recently proposed IEP; (3) reimbursement for independent evaluations requested during the 2005-2006 school year.

A hearing was held on March 27, 28, 29, and April 5 and 13, 2007 at the office of the BSEA in Malden, MA.<sup>3</sup> Each party was represented by counsel and had an

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<sup>1</sup> Individuals with Disabilities Education Improvement Act of 2004, or “IDEA-2004”

<sup>2</sup> In their original hearing request of August 2006, Parents also requested reimbursement for unspecified past and future ancillary or supplemental services, and also made a claim for compensatory services. On March 20, 2007, Parents filed the list of claims stated above after the Hearing Officer directed them to specify the time periods for which they sought relief.

<sup>3</sup> On September 6, 2006, the original Hearing Officer in this case granted the School’s unopposed request to postpone the initial hearing date of September 26, 2006. Between September and November, 2006, the parties were engaged in evaluations and TEAM meetings in an effort to reach resolution of this matter. Pursuant to orders of that Hearing Officer, the parties filed written status reports in September, November and December, 2006 and participated in conference calls, in October and December 2006, to advise the BSEA of the progress of settlement efforts and the need for BSEA involvement. In February 2006, this

opportunity to examine and cross-examine witnesses and submit documents into the record. The record consists of Parents' exhibits Book I, Index 1, documents 1-44; Book I, Index 2, documents 1-36, and Book II, Index 1, documents 1 through 29; School's exhibits S-1 through S-45, approximately 22 hours of tape recorded testimony and the transcript produced by the court reporters. Counsel submitted written closing arguments on May 3 and 4, 2007, and the record closed on May 4, 2007.

Those present for all or part of the proceeding were:

Student's Mother	
Student's Father	
Lisa Shaw, Ph.D.	Private neuropsychologist
Jody Gray	Educational evaluator
Elaine Lord	Educational advocate for Parents
Gerri Shubow	Audiologist
Joan Foster	Supervisor, Speech/language & Curriculum, Learning Prep School
Elaine Yellin	Reading and Language Arts Teacher, Learning Prep School
Lesley Allen	Special Education Team Chair, Groton-Dunstable
Lisamarie Bazzinotti	Special Education Teacher, Groton-Dunstable
Ginny Confer	Title I Reading Specialist, Groton-Dunstable
Marcia Cragg	Teacher, Groton-Dunstable
Joan Endicott	Director of Pupil Personnel Services, Groton-Dunstable
June Grove	Middle School Counselor, Groton-Dunstable
Jane Harmon	Elem. School Counselor, Groton-Dunstable
Phyllis Lane	Sixth Grade Teacher, Groton-Dunstable
Ann Morrison	School Psychologist, Groton-Dunstable
Miranda Patnode	Former Special Education Teacher, Groton-Dunstable
Karen Postal, Ph.D.	Neuropsychologist
Sean Goguen, Esq.	Attorney for Parents
Alisia St. Florian, Esq.	Attorney for Groton-Dunstable
Regina W. Tate, Esq.	Attorney for Groton-Dunstable
Richard Connolly	Director, BSEA (Observer)
Laurie Jordan	Court Reporter
Pauline L. Bailey	Court Reporter

### **ISSUES PRESENTED**

1. Whether the IEP and placement that Groton-Dunstable offered in July 2006 for the 2006-2007 school year were reasonably calculated to provide Student with a free, appropriate public education (FAPE).

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case was reassigned to the current Hearing Officer. A pre-hearing conference was held on March 15, 2007, and the case proceeded to hearing on the dates specified above.

2. Whether the amended IEP and placement that Groton-Dunstable offered in November 2006 for the 2006-2007 school year were reasonably calculated to provide Student with FAPE.
3. If not, whether the placement chosen by Parents at the Learning Prep school was appropriate, such that Parents are entitled to reimbursement.
4. Whether Parents are entitled to be reimbursed for the costs of independent evaluations during the 2006-2007 school year.

### **POSITION OF PARENTS**

Student has a complex profile that includes a seizure disorder and resultant impairment of executive functioning and integration of information, along with a language-based learning disability and central auditory processing deficit. These disabilities affect Student's ability to learn all aspects of the curriculum. To make effective progress, Student needs a small-group, language-based program with similar peers, in which language-based strategies and approaches are fully implemented in all subject areas.

In fifth grade (2005-2006), Student struggled and did not make effective progress in Groton-Dunstable's program, which was an inclusion program with one period per day of Grid C support and an aide in science and social studies. Student also suffered loss of confidence and lowered self-esteem as a result of her academic difficulties.

Despite this lack of progress, of which Groton-Dunstable was aware, the district proposed an IEP in July 2006 for 2006-2007 which essentially replicated the inadequate IEP from fifth grade, only adding Grid B services (an aide) in English and math. In November 2006, after Parents had submitted additional evaluations, Groton-Dunstable offered an amended IEP, which added Grid C services in English and Math; however, the amended IEP also was inappropriate. The peer grouping in the pull-out classes was not compatible with Student's needs, and the program as a whole would not offer the language-based instruction across all academic settings that Student requires to make progress.

Faced with these inappropriate IEPs, Parents were justified in unilaterally placing Student at Learning Prep School in late August 2006, and keeping her there after Groton-Dunstable offered the amended IEP in late November 2006. Learning Prep provides Student with the small-group instruction and integrated language-based approach that will enable her to make effective progress, and she has done well there both academically and emotionally.

### **POSITION OF SCHOOL**

Groton-Dunstable's proposed IEP for the 2006-2007 school year was reasonably calculated to provide Student with a FAPE, and Parents are not entitled to reimbursement for Student's unilateral placement at Learning Prep. First, the psychological and educational evaluations on which Parents relied at hearing to justify their position were

not available to Groton-Dunstable at the time of the June 2006 TEAM meeting that developed the initial IEP for 2006-2007. That IEP was entirely justified by the information available to the TEAM at the time it was written, and the School is not responsible for funding a unilateral placement on the basis of information it receives several months later.

Moreover, in November 2006, the School considered and incorporated many recommendations of Parents' independent evaluators when it offered an amended IEP calling for substantially separate services in English and Math. However, the School never was able to implement this IEP because Parents already had placed Student at LPS and also had rejected this IEP as well as the IEP from June 2006 which had added Grid B services. It would be unfair to order Groton-Dunstable to pay for a unilateral placement when it has been denied an opportunity to implement increased services in a less restrictive environment.

The witness testimony and documents on which Parents have relied at hearing are not persuasive, for many reasons. Among other things, Parents experts have overpathologized Student and failed to adequately consider Student's functioning in Groton-Dunstable's program, or Groton-Dunstable's ability to meet her needs.

In fact, Student made effective progress in Groton-Dunstable's program in the fifth grade, and likely would have made even more progress if the School had had an opportunity to implement the additional services set forth in the rejected IEPs. She does not need the more restrictive setting of Learning Prep.

Finally, Parents have not presented evidence in support of their claim for reimbursement for independent evaluations; therefore, this claim should be denied.

### **FINDINGS OF FACT**

1. Student is a twelve-year-old girl who lives with her family within the Groton-Dunstable RSD. Those who know Student describe her as a bright, caring, polite, hardworking child who is motivated to do well in school. Student gets along well with adults, is particularly kind and supportive to peers, and has a small circle of close friends. Student is active in sports and dance in her home community. (S-1, Mother, Shaw, Confer)
2. Student has had a seizure disorder since she was about two years old. There is no dispute that although her condition is well-controlled with medication, and Student has been seizure free for some time, the disorder has led to neurologically-based learning problems<sup>4</sup> affecting her attention and concentration, executive functioning,

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<sup>4</sup> Parents assert that Student should be formally diagnosed with dyslexia, in addition to her seizure disorder. (P-1-2-8) The School does not contest the existence of a reading or language disorder, or the need for services in this area. (S-1) In any event, the diagnostic category does not dictate the services to which she is entitled. For an eligible child, "the type of disability...shall not define the needs of the student and shall

working memory, reading comprehension and fluency, and math fluency. Student also has a central auditory processing disorder (CAP-D), which interferes with her ability to process auditory information. (Shubow) Student's disabilities have interfered with her academic performance generally. It is difficult for Student to organize information and materials, initiate and complete assignments in a timely manner, work independently, work on more than one task at a time, respond quickly to questions, comprehend and recall material she has read, recall math facts, and answer open-ended or inferential questions. Student tends to work slowly. The parties agree that Student tends to be quiet in class and does not take academic risks without prompting and support. At various times, Student's confidence and self-esteem have been affected by her academic difficulties. (Mother, Shaw, Gray, Cragg, Patnode, S-1)

3. Parents first suspected that Student might have special needs in second grade, when the teacher told them that Student was having trouble with reading. At the teacher's suggestion, Parents had Student tutored in reading over the summer after second grade. (Mother)
4. During the 2003-2004 school year, Student's third grade teacher referred her to the Child Study Team (CST)<sup>5</sup> because the teacher was concerned about Student's ability to "process and follow directions across all areas of the classroom program." (P-I-1-13) Additionally, Parents found that Student was having trouble completing homework without constant supervision from Parents, could not remember and apply concepts learned in class, and seemed distractible. (Mother) In April or May 2004, Parents referred Student for an initial Chapter 766 evaluation. After an evaluation and TEAM meeting, Groton-Dunstable determined that Student was not eligible for special education based on a finding of "no disability." (Mother, P-I-1-7) As suggested by the school psychologist, who found that Student had "apparently fragile self-esteem," and was anxious about school, and because Student told Parents that she felt "dumb," Parents took Student for counseling. (Mother) At the end of third grade, the classroom teacher reported that Student had made progress, but needed to work on reading fluency, needed practice with math, and required support for writing tasks because she seemed confused by the directions for a task. (P-I-1-8)
5. In October 2004, when Student had started fourth grade, Parents provided medical documentation of Student's seizure disorder, and, in November 2004, the TEAM reconvened and issued a §504 plan for Student to address related educational issues. The plan provided for in-class and pull-out sessions with a reading specialist and participation in a small social skills group with the school counselor. The plan also called for accommodations within the general classroom, including use of visual cues, reinforcement of oral directions with written directions and vice versa, reduction of

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in no way limit the services, programs or inclusion opportunities provided to the student." 603 CMR §28.05(2)(a)(1)(ii).

<sup>5</sup> The record does not specify exactly what the CST does, but it appears to be a school-based team of service providers who meet when there are educational concerns, but who do not constitute an IEP team. (P-I-1-13)

the reading levels and length of assignments, teaching of organizational skills, extra time to complete tests and assignments, and various types of peer support. (S-11) Parents informed the School that they wanted the TEAM to reconsider Student's eligibility for special education after Parents had obtained an outside neuropsychological evaluation. (Id)

6. This evaluation was conducted in January 2005, by Hope Schreiber, Psy.D., from Tufts-New England Medical Center. (Mother, P-I-1-21). Dr. Schreiber reviewed medical and recent school records (including reports from testing and the §504 plan), conducted formal testing, and had Parents and teachers complete questionnaires and rating scales. (Id.)
7. Dr. Schreiber concluded that Student has "average general intellectual functioning," but "specific difficulty maintaining concentration when reading, sequencing, switching...between two tasks, and with the learning of visuospatial information," which may affect learning math in the future. Dr. Schreiber noted that Student technically met the criteria for ADHD, but that the same symptoms might be manifestations of her seizure disorder. (Id.)
8. Dr. Schreiber made the following recommendations for additions to Student's existing §504 plan:
  - Participation in "any phonetically-based reading program, " given Student's demonstrated problems with letter substitutions, sequencing, management of syllables.
  - Helping Student develop and apply organizational skills and strategies, exploring with Student the types of strategies that are helpful.
  - Extended time on quizzes and tests given Student's "slow processing speed, slowness in organizing her thoughts, and variable concentration."
  - Reduction of homework load
  - Supportive counseling
9. In follow-up correspondence to Mother dated March 23, 2005, Dr. Schreiber clarified her diagnostic conclusions by stating that Student met the criteria for the Combined Type of ADHD, and "showed a cognitive profile of impaired executive functions consistent with this disorder," as well as a language based learning disorder manifesting in poor phonetic skills, spelling, and sequencing skills, variable grammar; a reading disorder, limited expressive language skills and impaired management of visual-spatial material. Mother forwarded this correspondence to the School. (P-I-2-21).
10. Meanwhile, despite accommodations, Student was having academic difficulties in fourth grade. Early in the year, in October 2004, Parents sent a note to the teacher stating that working at home on long-term assignments was "a nightmare." Student did not know how to start assignments, remember what she had been told to do in school, or understand the directions for the assignment if Parents read them to her. (P-I-1-10)

11. In January 2005, a teacher report form showed Student as “far below grade level” in math, reading, writing, and spelling. In March 2005, the classroom Teacher Report Form indicated that Student had difficulty grasping new concepts, and struggled to complete assignments. Student’s reading was “slow, hesitant, and monotone with long pauses.” Overall, the classroom teacher concluded that Student was “not making significant progress with the fourth grade curriculum.” (P-I-1-27, 28) Teacher comments on Student’s report card indicated that Student had difficulties with grade level curriculum despite “reduced work load, extra time to complete tasks, 1-on-1 help and participation in a twice weekly small reading group.” (P-I-1-44) Student received scores of 220 (“needs improvement”) in the English and Math portions of the MCAS administered in April 2005. (P-I-1-23)
12. In late April 2005, the TEAM convened to consider Dr. Schreiber’s report as well as those of Student’s classroom teacher and reading specialist. As stated above, the classroom teacher reported that Student was not progressing in the general curriculum. The reading specialist reported that based on DRA results, Student had made some progress in reading fluency, but “comprehension is a major concern,” and Student had not made much progress since October 2004. (S-22) When doing written work, Student found it difficult to make inferences, organize her thoughts and explain or elaborate. (P-I-1-30).
13. Groton-Dunstable found Student eligible for special education, and issued a partial IEP running to the end of the fourth grade school year calling for an extended evaluation for the purpose of additional formal testing of reading, writing, spelling and math skills. (P-I-1-31) The partial IEP also noted that the TEAM accepted Dr. Schreiber’s diagnosis of a neurological disability, as well as her recommendation for counseling and teaching of organizational and executive functioning strategies. The TEAM explicitly rejected Dr. Schreiber’s recommendation for a phonetically based reading program. (P-I-1-32) Parents accepted the recommendation for an extended evaluation but left the partial IEP unsigned because of its short duration. Parents preferred to develop a complete IEP for middle school, which was to start the next year, in fifth grade. (Mother, P-I-2-1)
14. As part of the extended evaluation, the School’s Learning Disabilities specialist conducted standardized achievement testing during May 2005, with the following results:
  - Woodcock Reading Mastery Test-Revised: Total Reading Cluster—Average
  - Test of Word Reading Efficiency (TOWRE): Total Word Reading Efficiency—Below average. She performed better when the test was not timed.
  - Test of Written Spelling (TOWS-4): “poor” (standard score 74)
  - Test of Written Language (TOWL)-3: Contrived Writing and certain other subtests—below average. Overall writing—average.
  - District-Wide Writing Prompt: Proficient
  - KeyMath-Revised: Total achievement—average. Difficulty with subtraction, mental computation, and problem solving.

15. Based on the foregoing evaluations, the LD specialist recommended strategies and accommodations to address reading, comprehension, working memory, long-term retrieval, written expression and math. (P-I-1-40)
16. In addition to the tests referred to above, Student was administered the DRA, which is a non-standardized, criterion based instrument used to guide instruction. (P-I-1-40; Cragg) Among other things, the DRA can inform a teacher of the grade level of text that a student can read without difficulty, the student's reading rate and fluency with various levels of text, and specific skill areas where a student has strengths and weaknesses (e.g., punctuation). (Cragg) On the DRA test administered in May 2005, Student read a 4<sup>th</sup> grade text with 97% word accuracy. She read at a slow rate (53 wpm) and had difficulty remembering some strategies that she had been taught in class such as breaking words into syllables. (P-I-1-40) The reading specialist recommended various strategies to develop decoding, fluency, and comprehension, including working on chunking strategies, repeated reading of various types of text (poetry, etc.), listening to others read, discussion of text, etc. (Id.)
17. The TEAM issued its initial proposed IEP in June 2005, which Parents did not sign. Over the course of that summer, Parents and School staff met and/or conversed several times in an attempt to develop an IEP for middle school. (Mother, P-I-2-3)
18. The TEAM convened on September 12, 2005, and issued an IEP for fifth grade. (S-6) This IEP acknowledged a diagnosis of a neurological disability, noted Dr. Schreiber's previous communication that Student also met the criteria for ADHD (combined type), language based learning disability and reading disorder, and stated that Student "requires organizational and executive function strategies." (S-6)
19. The IEP contained three annual goals, in academics (organization and study skills), reading (fluency and comprehension), written language, and math (multi-step word problems, computation.) (S-6) Accommodations included organizational and study skills strategies (making eye contact with speakers, using an agenda book consistently for assignments, using color coding and highlighting; modifying assignments, and the like); working memory strategies (clarifying instruction, visual reinforcement of new instruction, graphic organizers, allowing Student to look back to text for answers to questions), and additional strategies for reading fluency, spelling, writing, and math. (S-6)
20. "Specially designed instruction" included modification of assignments if needed, a small group setting to teach reading, math, and study skills, grading only on work completed, use of graphic organizers, study guides, calculators, spell check, and the like. (S-6)
21. The service delivery grid indicated that Student would receive 15 minutes per week of consultation between the special education teacher, aides, and regular education teachers (Grid A), 5x60 minutes per week each of co-taught science and social studies

(Grid B); and “content reinforcement” with a special education teacher for 45 minutes every other day in a substantially separate classroom (Grid C). (S-6, Morrison)  
Student also was to participate in Title I reading two times per week. (Mother, Confer)

22. On or about October 5, 2005, Parents partially rejected the proposed IEP. Parents accepted the placement and services offered but indicated that they felt the services were inadequate to remediate Student’s math difficulties, or to deliver the specially designed instruction described in the IEP. (S-8) Over the next few months, Parents and School staff met to discuss Student’s progress. (Mother)
23. For fifth grade, pursuant to the partially rejected IEP, Student had all her core subjects—language arts, math, science, social studies-- in the regular education classroom.
24. In language arts, which included reading, literature, and writing, Student was one of approximately 21 students, with one teacher, Ms. Marcia Cragg. Ms. Cragg used a variety of teaching approaches, including whole-group instruction, and breaking the class into small groups, to work on a specific concept or skill. (Cragg)
25. Student was the only student on an IEP in the language arts class. She received the same instructional content as the other students in the class, but used reading material that was less difficult than that used by her peers. (Cragg) Student was quiet and hesitant to speak in class, but grew more willing to volunteer towards the end of the school year. Her quarterly grades were three B’s and one C, with a final grade of B-minus (S-34) These grades were based on the modified reading level referred to above. (Cragg) Ms. Cragg felt that Student made progress in language arts during fifth grade, in that at the beginning of the school year her instructional reading was at a fourth grade level, and by end of the school year, Student’s independent reading was at approximately a fourth grade level, and instructional materials were at a beginning fifth grade level. (Cragg)
26. Student’s social studies class consisted of 25 students, five of whom, including Student, were on IEPs. Ms. Cragg also taught this class, and was assisted by a classroom aide. The aide’s function was to be available to help all of the special education students, either individually or in small groups, with focusing or with understanding the material being taught.
27. Parents had been under the impression that Student would receive help from the aide on a daily basis in social studies and science; however, in fact, the classroom teacher had discretion to decide if a student needed to work with the aide. For the first part of the school year, Student only occasionally did so. Student complained to Parents that she had trouble understanding science and social studies, wanted to be included with the group of children working with the aide, and did not understand why she could not do so. (Mother; P-I-2-18) At a TEAM meeting held in January 2006, Parents requested small-group services from the aides within these classrooms whenever it

was provided. (P-!-2-20) This service began in approximately February 2006.  
(Cragg, Mother)

28. According to Ms. Cragg, the aides were necessary for Student and others on IEPs because the text and curriculum were challenging. In fact, Ms. Cragg found the textbook to be so difficult that she re-wrote much or all of it to make it understandable to the students on IEPs. (Cragg)
29. Ms. Cragg felt that overall, Student made effective progress in social studies, earning a B-minus average for the year. The grade reflected a modified curriculum, as well as Student's work with the aide. (Cragg)
30. Student attended her grid-C service, content reinforcement, on alternate days. Approximately six students, including Student, attended this class, which was taught by a certified special education teacher, Ms. Patnode.<sup>6</sup> (Patnode) Students in the class needed help with a variety of skills, including reading, writing, and math, and also needed some reinforcement of content in their academic subjects. For the most part, the teacher circulated among the students and assisted them as they worked on individual assignments. On occasion, the teacher taught a group lesson if all students had an assignment on a particular topic, or had the students work in small groups. The teacher measured progress of all students in reading and also determined what instruction was needed by means of a "running record." This assessment, administered twice per quarter, consists of the student reading a short story aloud, and then retelling the story, with the teacher noting the student's accuracy, fluency, and recall. (Patnode)
31. Ms. Patnode consulted informally with the Title I reading teacher, Ms. Confer, as well as with the regular education teachers on a regular basis about all students she worked with, including Student. Ms. Patnode also supervised the aides who worked in Student's social studies class. Additionally, Ms. Patnode and the regular education teachers had 90 minutes per day of common planning time to discuss all students whom they had in common. (Patnode, Cragg)
32. Ms. Patnode's impression of Student was that she was quiet and not a risk-taker, but that she made progress in the content reinforcement class as well as her regular classes. Specifically, Ms. Patnode pointed to Student's increased confidence and ability to self-advocate over the course of the school year. In Ms. Patnode's opinion, Student's skill levels placed her generally in the upper third of special education students with whom Ms. Patnode worked. She noted that Student had trouble with math, with inferences, and tasks calling for abstract thinking. (Patnode)
33. During fifth grade, Student received Title I Reading services from Ms Confer, who had selected Student for this services on the basis of her DRA scores for the last quarter of fourth grade, which were below grade level, and her "needs improvement" MCAS language arts score. (Confer) The Title I class met on alternate days. Student

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<sup>6</sup> Ms. Patnode now teaches in another school district

was one of six students in her class. The goal of the class was to improve reading comprehension, and Ms. Confer worked on a variety of skills and strategies to reach this goal, including decoding, word analysis, visualizing, predicting, summarizing, and vocabulary. There was also a writing component. (Confer) Ms. Confer was in regular contact with Ms. Patnode and Ms. Cragg to discuss the progress of students they had in common, including Student, and co-taught a few times in each of their classes. (Confer)

34. Ms. Confer felt that Student made progress in Title I reading during fifth grade, particularly in confidence and participation (although she remained quiet), sight vocabulary, and fluency. (Confer) On the QRI.<sup>7</sup> tests administered in June 2006, Student scored at the “independent” reading level for third grade narrative, and at the “instructional” level on fourth grade narrative. On the DRA, Student achieved an “independent” reading level of fourth grade, and an “instructional” level of early fifth grade. (S-19, Confer)
35. Student’s math teacher was Ms. Osterholtz. Student had difficulty with math from the beginning of the school year, and failed several tests. She had difficulty with multi-step and word problems in particular. Ms. Osterholtz felt that the source of Student’s problems was the amount of complex reading required by the math text. (P-1-2-15; Patnode), and recommended support from Ms. Patnode. In November 2006, the Title I math teacher, Mr. David Ng, conducted an informal math evaluation consisting of readministration of the 2004 math MCAS and an assessment of fifth grade math skills and concepts. (Parents had requested formal math testing, but Groton-Dunstable declined to provide it, offering Mr. Ng.’s evaluation instead) (Mother, Morrison)
36. Mr. Ng concluded that Student understood grade level math concepts but lacked confidence in her abilities. She made careless errors, used her fingers for addition and subtraction, and had weaknesses in math vocabulary. Mr. Ng made several recommendations for teaching strategies, e.g., teaching new material in familiar context, drill with multiplication tables, reminding Student to check for accuracy. (S-24)
37. In November 2005, in an e-mail to Ms. Morrison, Ms. Osterholtz suggested that Student might benefit from a classroom aide in math, as the math program was “extremely language based.” This suggestion was not implemented. (P-I-2-15)
38. In addition to her academic classes, Student was enrolled in a weekly friendship group with Ms. June Grove, the school guidance counsel, for the purpose of providing her with support and helping her adjust to middle school. (Student had been in a similar group the previous year). Student enjoyed and did well in the group, and was

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<sup>7</sup> Like the DRA, the QRI, or Qualitative Reading Inventory, is a non-standardized reading test designed to help teachers determine appropriate reading levels for instruction and assist students in areas of weakness. (Confer)

especially supportive to peers. Student did not mention that she was experiencing particular stresses or problems with her academics. (Grove)

39. Although Student's teachers generally felt that she was making effective progress during fifth grade, Parents disagreed with this conclusion and were dissatisfied with Groton-Dunstable's delivery of accepted services. Mother communicated her concerns throughout the school year via letters and e-mails to teachers and administrators, as well as at regularly scheduled progress meetings. (Mother, Patnode, Morrison, Endicott)
40. There were several categories of concern. One was that Parents believed that Student's IEP was not being fully implemented at the start of the school year; i.e., that she did not receive the Grid B services in social studies and science in the manner they had expected, as stated above, and that she did not receive Grid C services at all until October 17, 2005. (Mother, I-2-10) On October 27, 2005, Mother wrote a letter to this effect to Ann Morrison, who is the Special Education Team Chair for the middle school. (Id.)
41. Ms. Morrison's response was, in essence, that the Grid B services would be delivered as needed, as predetermined by the regular and special education teachers, and that the aides had, in fact, helped Student. (Id) As for the Grid C, content support services, the teacher, Ms. Patnode, was unexpectedly on medical leave for three weeks in October 2005. (Patnode) Several different substitutes provided coverage, and Ms. Patnode stayed in touch with them and with Student's teachers during her absence. (Patnode) Groton-Dunstable provided make-up sessions after Ms. Patnode returned. (P-I-2-10)
42. A second parental concern was the effectiveness of the content reinforcement class. At least at the beginning of the school year (around November 2005), Parents questioned whether the Student was being taught test-taking strategies and skills or was given adequate instructions on how to organize and complete long-term assignments that took her various disabilities into account. Student complained to Parents that the class was "a waste," was not helpful to her, and that she did not like missing art and gym to attend. (Mother, P-I-2-15; P-I-2-21)
43. A third, and major, issue was Student's performance in math. As stated above, Student failed some math tests during the school year, and seemed to be struggling in math. At one point, the math teacher indicated in an internal e-mail to Ms. Morrison that Student might benefit from a paraprofessional in math. In November 2005, Student reported to Parents that she told the math teacher that she understood material even when she did not understand it, and Parents relayed this information to the teacher. (P-I-2-15)
44. Parents found that despite services, Student's problems with homework persisted, especially with long-term assignments and math. Student refused to read at home. Her self-esteem was suffering, and at one point she told Parents she felt like the

“dumbest kid in fifth grade,” and that fifth grade was the worst year of her life.  
(Mother)

45. During the first half of the school year, Parents became increasingly frustrated with what they viewed as Student’s inadequate progress, and inadequate services from Groton-Dunstable. On the other hand, some school staff felt Parents would not give new strategies a chance to work. (Patnode, Morrison)
46. Student’s mid-year progress reports, issued on January 30, 2006, stated the following: (P-I-2-19)
- Academics: Student demonstrates little independence in class; works with aide and specialist on strategies but does not use them on her own, and is shy in the classroom, waiting for the aide to help her rather than asking for help.
  - Reading: Student showed good word reading ability, could answer questions when prompted, had difficulty making judgments and answering questions involving higher-level thinking. She was improving at finding answers to questions in text.
  - Writing: Student used graphic organizers. Her spelling and grammar were on a par with peers. Her ability to write good compositions depended on her interest in and knowledge of the topic.
  - Math: Student needed support and encouragement for word problems; needed to be given specific steps for solving problems. Needed help on basic facts; did well with accommodations.
47. In late March 2006, Parents had Student evaluated by an audiologist, Gerri Shubow. Ms. Shubow determined that Student had normal peripheral hearing, but also had auditory processing deficits in the areas of auditory decoding and auditory integration. As a result, Student mishears in complex settings; i.e., with background noise, information with multiple parts, quick presentation of information, or unfamiliar language. Ms. Shubow recommended numerous accommodations, including repetition of instructions, written copies of assignments, preferential seating, acoustic accommodations to reduce noise, help with self-advocacy, an FM amplification system, and various teaching strategies. She also recommended placing Student in a small, structured classroom setting with students with similar learning styles. (Shubow, P-I-1-22)
48. In April 2006, Student’s progress reports were as follows:
- Academics: Student was learning strategies such as repeating back instructions and highlighting, but was more dependent on aides than at the start of the year.
  - Reading: Student was learning strategies for reading such as visualization, questioning, making connections and inferencing. She read a “level four” passage during a running record at 82 wpm with 98% accuracy, and was able to answer questions including inferential ones. She had difficulty stating any opinions.

- Writing: Her written work was “developing,” spelling was “acceptable as compared to her peers.” While style and quality varied, Student was showing more creativity than in the past.
- Student could solve problems in algorithm form after brief review. She was practicing strategies. With review and reinforcement, she could follow processes and steps. (P-I-2-23)

49. On June 8, 2006, the TEAM convened to consider Ms. Shubow’s evaluation and to discuss Student’s progress. Prior to the meeting, on June 5, 2006, the TEAM chair, Ann Morrison, circulated an e-mail to Student’s teachers requesting them to bring data on Student’s progress to the meeting. With respect to Ms. Shubow’s evaluation, Ms. Morrison wrote “Karen Kaufman<sup>8</sup> will review the independent eval—depending on what she hears you say re [Student’s] progress, she will make recommendations for essentially good teaching practice to address the mild central auditory processing disorder—we do not agree that [Student] needs small group/1:1 instruction or a specialized program. (P-I-2-30)
50. At the June 8 meeting, the School and Parents disagreed on the level of Student’s progress. For the most part, School personnel felt that Student was making effective progress in all fifth grade subjects and also had become more confident during the course of the year. Parents expressed that Student was still spending hours on homework. In an e-mail sent on June 9, 2006, Parents questioned reports of Student’s progress in math. They also questioned whether Student was being allowed to re-take tests and was taking shorter, easier math tests than her non-special education classmates. (P-I-2-30, 32; Morrison)
51. On the same day of the TEAM meeting (June 8, 2006), Parents made a written request for funding for independent educational, speech and language, and neuropsychological evaluations. (P-I-2-32) They reiterated this request in the June 9 e-mail referred to above.
52. In a letter dated June 15, 2006, Groton-Dunstable stated its intent to conduct its own evaluations in the areas identified by the Parents, reconvene the TEAM, and fund independent evaluations if Parents disputed the District’s evaluations. (P-I-2-36) The record does not disclose what took place subsequently.
53. Student’s final progress report for fifth grade, dated June 14, 2006, stated the following (S-29):
- Academics: Student was able to repeat back and explain directions, but continued to be dependent on adult supports in the classroom; was learning strategies such as highlighting, rereading and skimming text; was improving her ability to highlight relevant material.
  - Reading: Student could read orally an estimated 5<sup>th</sup> grade passage fluently at 115 wpm with 99% accuracy. Comprehension strengths included predicting,

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<sup>8</sup> A speech/language therapist employed by Groton-Dunstable.

- identifying concrete information, and understanding important implications. Weaknesses were in summarizing in her own words, understanding the theme.
- Writing: Skills were “continuing to develop.” Student had difficulty expressing herself and this affects written language. She needed graphic organizers because her writing often could be difficult to follow.
  - Mathematics: Student was “doing well” in math, and had improved in problem solving. She needed to work on confidence.
54. Student’s final grades for fifth grade were in the “B” range for all core subjects except for math, where she earned a “C”. Student’s math exam grades were 50 and 51. (S-34) Parents found that through the latter part of fifth grade, Student’s problems persisted with homework, carryover of information or strategies from school to home, or, in math, even from one problem to the next. Student still could not do homework independently. Student was aware that in math, her tests were shorter and easier than those of her classmates. Student had several meltdowns over the course of the year, and experienced stress regarding school. (Mother)
55. On June 21, 2006, another TEAM meeting was held. Subsequently, on July 6, 2006, Groton-Dunstable proposed an amended IEP, which offered Grid B paraprofessional services in language arts and math, 5x60 minutes per week. Parents rejected this amended IEP on August 17, 2006. (S-2)
56. During the summer of 2006, Parents obtained private educational and neuropsychological evaluations.
57. The educational evaluation was conducted by Jody Gray, Ed.M. Ms. Gray reviewed Student’s records and conducted an extensive battery of standardized educational tests. Student’s scores were as follows:
- CTOPP: Phonological awareness: below average; Phonological Memory: Poor, Rapid Naming: Average.
  - Lindamood Auditory Conceptualization Test-3: Below Average
  - Wilson Assessment of Encoding and Decoding (Subtests): Sound-symbol relationship knowledge adequate for consonants, weaker for digraph, trigraph and vowel sounds
  - Test of Word Reading Efficiency (subtests): Average
  - Test of Written Spelling: Below average
  - Gray Oral Reading Test: Oral reading quotient: Very poor.
  - Gray Silent Reading Test: Comprehension: Below average
  - Test of Reading Comprehension: Syntactic similarities: Average (high); Sentence sequencing: Average; Paragraph Reading: Below Average.
  - Test of Written Language: Average
  - Peabody Picture Vocabulary Test-III: Below Average
  - Expressive Vocabulary Test: Below average
  - Test of Mathematical Abilities: Vocabulary, Comprehension, Story Problems—Average; General information, total math quotient: Below average. Ms.. Gray

concluded that Student continued to present with a language-based learning disorder as well as a reading disorder, as previously diagnosed by Dr. Schreiber. She further concluded that Student's previously diagnosed executive functioning difficulties exacerbated her learning disabilities, and also made it difficult for her to integrate strategies she had learned into the academic setting. (P-II-12)

Ms. Gray recommended the following:

- Daily 1:1 instruction in structured programs for phonemic awareness, reading fluency, reading comprehension, writing, and spelling.
- Direct instruction in a multi-sensory math program;
- Direct teaching and modeling of metacognitive strategies throughout each subject.
- Numerous accommodations to be used as temporary means of access to the curriculum until Student's academic deficits are remedied. (P-II-12, Gray)

58. In order to implement the intensive level of services described above, Ms. Gray recommended placing Student in a small (6-8 students) substantially separate language based classroom, with peers having similar profiles. This setting should use multisensory approaches, a spiraling approach, and integration of remedial services with direct teaching of metacognitive strategies. (Gray, P-2-12)

59. In July 2006, Lisa Shaw, Ph.D. conducted a neuropsychological evaluation of Student. After reviewing records and conducting standardized tests, Dr. Shaw concluded that Student has overall average intellectual functioning, but that her seizure disorder has caused a variety of neuropsychological problems, including difficulties with processing visuo-spatial information, with general executive functioning and the ability to integrate information. The result in the school setting has been difficulty with word retrieval, expressive language, problem solving, planning and organization of work. While Dr. Shaw found Student's basic reading ability to be intact, her reading pace was slow and laborious. Overall, Dr. Shaw found that Student performed at a very slow pace. Emotionally, Student expressed increasing frustration and was worried about her academic performance. (P-II-12; Shaw)

60. Dr. Shaw concluded that Student required a "more specialized academic placement" with small classes, where her disabilities could be addressed in a "comprehensive and integrated fashion." (P-II-2; Shaw)

61. Parents did not provide reports from Dr. Shaw or Ms. Gray until approximately November 2006.

62. In August, 2006, after duly notifying Groton-Dunstable, Parents unilaterally enrolled Student in Learning Prep School (Learning Prep or LPS), located in Newton, MA. Student began attending LPS on or about August 31, 2006.

63. On November 28, 2006, after Student had been attending LPS for about three months, Groton-Dunstable convened a TEAM meeting to review the two private evaluations.

The resulting IEP added 5x60 minutes per week, each, of substantially separate language arts and math instruction in Grid C. (S-1, Endicott, Morrison) Parents rejected this IEP in early December 2006. (S-1)

64. After the start of litigation in this matter, Groton-Dunstable contracted with Karen Spangenberg Postal, Ph.D., a private neuropsychologist, for a neuropsychological consultation. This consultation consisted of a review of records, an interview with Student and Parents, brief testing, and observation of Student in her classroom at LPS. (S-14, Postal) In her written report, Dr. Postal concluded, like Dr. Schreiber and Shaw, that Student has a complex learning disorder related to her seizure disorder, that affects her attention, executive functioning, expressive language, reading and math. (Id) Dr. Postal noted that Student had difficulty in consistently performing academically, in that at different times, Student's reading and math scores were "Average," "Low Average" or "Low." (Id.) In her report, Dr. Postal attributed this variability to executive function and attentional weaknesses "exacerbating the underlying academic weaknesses."<sup>9</sup> (Id.)
65. In her report, Dr. Postal recommended a "structured learning environment," with consistent repetition of directions, organizational structures for assignments, solicitation of her answers and opinions, various classroom accommodations, and special education tutoring in language arts and math. (S-14) Dr. Postal testified that Student could function in a mainstream classroom if the accommodations she referred to were in place, and implemented by each teacher in a consistent fashion.<sup>10</sup> (Postal)
66. On March 21, 2007, shortly before the start of the hearing in this matter, Groton-Dunstable convened another TEAM meeting and proposed an amendment to the November 2006 IEP consisting of an FM system and various other additional accommodations and strategies. Parents rejected this proposed IEP. (S-44)

### **Parents' Proposed Program**

67. The Learning Prep School (LPS or Learning Prep) is a Chapter 766-approved private day school located in Newton. Learning Prep specializes in serving elementary, middle, and high school students who have various types of language impairments and language-based learning disabilities. Some students have concurrent diagnoses of other disabilities, including ADHD, seizure disorders, and Asperger's Syndrome. Many students have difficulties with executive functioning and working memory. LPS does not admit students with severe or disruptive behavior problems. (P-II-28; Foster)

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<sup>9</sup> Dr. Postal testified at length to the effect that much of Ms. Gray's and Dr. Shaw's reporting painted a picture of Student as being more severely impaired than the testing actually indicated. However, all three evaluators reached similar conclusions as to Student's profile and to her general educational needs.

<sup>10</sup> Dr. Postal testified that she generally supports mainstreaming of students with disabilities, and that a regular education setting should be able to implement the modifications and accommodations Student needs.

68. According to Joan Foster, who directs elementary school admissions and supervises the reading, speech/language and computer departments at LPS, the curriculum is aligned with the Massachusetts Curriculum Frameworks. The program is language based in that language skills are explicitly taught throughout the curriculum. The programming is integrated in that each teacher uses the same teaching approach and structure, and the same language and organizational tools such as pre-teaching of vocabulary, and use of visual “thinking maps” (a type of detailed graphic organizer) for writing assignments in each subject. Each class is highly routinized. All teachers receive initial and ongoing training in language-based strategies, including use of the “thinking maps.” (Foster)
69. Student is enrolled in reading/language arts (which includes a phonetic component, using elements of Wilson and Orton-Gillingham and meets twice daily) math, science, social studies, speech/language therapy, computers, health and art classes. Academic class assignments were made on the basis of Student’s skill levels and profiles; for example, she was in a reading group made up of other students who struggled with word reading and comprehension. Student also was assigned an individual counselor to assist her with self-confidence and adjusting to her new school. (Foster)
70. In math, Student began in a group working at approximately a fourth grade level. As of the hearing date, Student was working on multiplication of two and three numbers, long division, decimals, and percentages. According to Ms. Foster, she had a “better grip” on math by spring 2007 than at the start of the school year, but was still struggling with math concepts and was not at the top of her class. However, Student was volunteering in class, doing problems on the board, and actively asking the teacher for help if needed. (Foster)
71. Student was not in the fastest-paced science and social studies groups at LPS because her difficulties with working memory and executive function make her require much repetition and breaking down of information. (Foster)
72. Student’s reading and language arts teacher, Ms. Elaine Yellin, found that Student has easily picked up on the strategies taught in class, has made progress in comprehension, has become more confident, and has made friends. Student remains quiet and needs to improve her willingness to take risks, but no longer has an explicit goal sheet in this area in class because she has improved and because, in Ms. Yellin’s view, Student may be participating even when she is quiet. Student’s skill level places her approximately in the middle of her language arts class. (Yellin)
73. Parents find that since starting LPS, Student loves school, has become more organized, and uses the strategies she has been taught to do her homework independently. Student has made some new friends at LPS, but has also maintained her friendships from Groton-Dunstable and has continued her athletic activities in her home town. (Mother)

74. On January 19, 2007, Lisamarie Bazzinotti, M.Ed., a learning disabilities specialist from Groton-Dunstable middle school, observed Student in her reading and science classes at Learning Prep. (S-15) In the reading class, Student was called on to conduct spelling activities in front of the class. She did so for approximately 20 minutes, and Ms. Bazzinotti observed that Student was engaged and able to follow through with the task. In science, Ms. Bazzinotti felt that the lesson was well presented, but that Student's attention was drifting and she was not called on until the end of the class. Ms. Bazzinotti testified that the accommodations and techniques used in the classes she observed could be carried out within the public school setting. (Bazzinotti, S-15)
75. Groton-Dunstable's position is that LPS is too restrictive for Student. The students whom the district does refer to LPS have a greater degree of disability and need than does Student. (Endicott)

### **Program Proposed by the School**

76. Groton-Dunstable's program and services are described paragraph 63, above (presumably, as amended in March 2007). In sum, the program is similar to that provided in fifth grade, with updated and revised goals, benchmarks, and accommodations, and with Grid C services in language arts and math, as well as a six-week summer program. (S-1, Morrison, Endicott, Bazzinotti)
77. The Grid C language arts would be provided by Ms. Bazzinotti, who is a certified special education teacher and learning disabilities specialist with 20 years of experience in Groton-Dunstable. Ms. Bazzinotti also holds certifications in Wilson Reading, Steps I and II, Orton-Gillingham, and Lindamood Bell, and has experience with some other methodologies. (Bazzinotti)
78. The class that Ms. Bazzinotti teaches, in which Student would have been placed for sixth grade, consists of eight students, all of whom need assistance with reading. Three students have learning disabilities, one has a neurological disorder, and two have intellectual impairments. Ms. Bazzinotti uses a variety of methodologies with the students, depending on their needs. Programming is individualized for each student. (Bazzinotti)
79. Student's mainstream classes would be with Ms. Phyllis Lane, the regular education sixth grade teacher. Ms. Bazzinotti communicates on a regular basis with Ms. Lane, with the aides in her class, and the Title I reading teacher to provide continuity. Additionally, the sixth grade team meets on a weekly basis to discuss student progress and needs. However, Ms. Bazzinotti acknowledges that the program is not explicitly integrated or language-based. (Bazzinotti)
80. Ms. Bazzinotti believes after viewing Student at LPS that the Groton-Dunstable program could meet Student's needs. (Bazzinotti)

## **FINDINGS AND CONCLUSIONS**

Based on the evidence at the hearing, I conclude that Groton-Dunstable's IEPs issued in July and November 2006 were not reasonably calculated to provide Student with FAPE. On the other hand the placement at Learning Prep School does provide Student with FAPE. I further find that Parents are entitled to reimbursement for the independent educational evaluation conducted by Ms. Jody Gray, but are not entitled to reimbursement for the neuropsychological assessment performed by Dr. Lisa Shaw. My reasoning follows.

### **Legal Framework**

#### **The FAPE Standard**

There is no dispute that Student is a school-aged child with a disability who is eligible for special education and related services pursuant to the IDEA, 20 USC Section 1400, et seq., and the Massachusetts special education statute, G.L. c. 71B ("Chapter 766"). Therefore, Student is entitled to a free appropriate public education (FAPE) as defined in federal and state law.

The definition of FAPE in Massachusetts has been discussed extensively in prior BSEA decisions and will not be reiterated at length here.<sup>11</sup> In sum, an eligible child, like Student, is entitled to a program and services that are tailored to his or her unique needs and that provide significant, meaningful benefit in light of the child's needs and potential, that is, "'effective results' and 'demonstrable improvement' in the educational and personal skills identified as special needs." 34 C.F.R. 300.300(3)(ii); Lenn v. Portland School Committee, 998 F.2d 1083 (1<sup>st</sup> Cir. 1993), citing Roland M. v. Concord School Committee, 910 F.2d 983 (1<sup>st</sup> Cir. 1990), cert. denied, 499 U.S. 912 (1991)

Education must be provided in the least restrictive environment (LRE) consistent with an appropriate program; that is, students should be placed in more restrictive environments, such as private day or residential schools, only when the nature or severity of the child's disability is such that the child cannot receive FAPE in a less restrictive setting. (Id.) The program need not be perfect, and, in Massachusetts, need no longer provide a student with maximum feasible benefit. In other words, as long as the student is making reasonable, meaningful, demonstrable progress in areas identified as special needs, the program and services may past muster.

Here, the parties agree on Student's general profile, although they disagree on the severity of her needs as well as her progress. The parties do not dispute that Student is a very pleasant, cooperative, empathetic child with average cognitive ability. They also agree that Student has a seizure disorder that has led to neurologically-based deficits in the areas of attention, working memory, executive functioning, and integration of

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<sup>11</sup> See, for example, *Arlington Public Schools*, BSEA No. 02-1327 (Crane, 2002)

information, and also has a language-based learning disability and reading disorder. In school, these deficits impair Student's reading (especially fluency and comprehension) written expression, visuospatial skills, math, attentional and organizational skills. Student also has a mild central auditory processing disorder. She works and processes information very slowly and laboriously. Because of the nature of Student's disability, her performance can be variable. Although standardized tests show that Student has average skill development in many areas, she cannot consistently access or demonstrate these skills in the classroom context or when doing homework and long-term assignments. There is no dispute that Student is very quiet, does not generally take academic risks, and needs to develop her self-advocacy skills. Historically, she has told teachers that she understands concepts or lessons when she does not.

In addition to their agreement on Student's profile, the parties are in general accord that based on information now available to Groton-Dunstable, Student would benefit from substantially separate instruction in language arts and math as proposed in the November 2006 IEP.

The parties' dispute centers first, on whether the July 2006 IEP was appropriate based on the information available to Groton-Dunstable at the time it was developed. Parents contend that even without the reports and recommendations of Dr. Shaw and Ms. Gray, Groton-Dunstable had enough information to determine that at the very least, Student needed substantially separate instruction in language arts and math, such that when the District refused to offer these services, Parents were justified in unilaterally placing Student at LPS. Once Groton-Dunstable had the Shaw and Gray evaluations, it was clear that even with Grid C services, the proffered IEP was inappropriate, justifying Student's continuing at LPS for the remainder of sixth grade.

The School argues, on the other hand, that Student made progress commensurate with her abilities throughout fifth grade, and would have made even more progress in sixth grade if the July 2006 IEP had been implemented. The November 2006 IEP provides for even more services and certainly would have been appropriate for Student.

To determine whether Groton-Dunstable's proposed IEPs were appropriate for Student, it is important to step back, figuratively, and look at the "fit" between Student's profile and the services she has been provided and offered. The record amply demonstrates that Student has tremendous difficulty with remembering, planning, organizing, and integrating information, and that this weakness, in combination with more specific weaknesses in reading, writing, and math, has a pervasive impact on her ability to make academic progress.

While Student has average cognitive ability, and achieves average scores on some educational tests, her disabilities interfere significantly with her application of the skills she has. As a result, Student was not working at the level of her peers at Groton-Dunstable, and needed significant accommodations and modifications to get through the curriculum. Three neuropsychologists, Drs. Schreiber, Shaw, and, the School's expert, Dr. Postal, concluded, in effect, that Student's constellation of disabilities require an

integrated approach to enable her to make meaningful progress. Their reports are supported by evidence of Student's day-to-day experience, i.e., her difficulty in generalizing skills and strategies, even as she has experienced some improvement in specific subject areas (i.e., reading and math).

In sum, because of the pervasive impact of Student's neurological disability, the totality of Student's educational needs is greater than might be expected from looking at any one, discrete skill or subject. It is within this context that I examine the appropriateness of the IEPs offered by Groton-Dunstable, and Parents' claim for reimbursement.

### **Student's Progress in Fifth Grade (2005-2006)**

Reimbursement for "self-help," i.e. public funding for parents' unilateral placement into an educational program (or purchase of educational services) may be available when a school fails to offer or provide appropriate services and the services obtained by the parents are appropriate. School Committee of Town of Burlington v. Dept. of Education of Mass., 471 U.S. 359, 369-70 (1985.) Here, Parents are seeking reimbursement for their unilateral placement of Student at Learning Prep for the 2006-2007 school year. In order to prevail, Parents here must demonstrate first, that the program and services that Groton-Dunstable proposed for 2006-2007 were inappropriate, and, second, that Learning Prep was appropriate.

To determine whether Parents have met their burden of proof, I look first at whether Student made effective progress in fifth grade (2005-2006). Parents are not requesting compensatory relief relative to the 2005-2006 school year. However, the adequacy of programming and Student's progress for that year are relevant to the issue of whether Parents were substantially justified in unilaterally placing Student at LPS when presented with a very similar IEP for the following year. .

There is no dispute that Student made some progress with reading fluency and comprehension, understanding of math concepts, and willingness to participate in class. In her content reinforcement class, she was exposed to various strategies for understanding and organizing her assignments. She received passing grades in her courses.

However, the record shows that Student continued to struggle with the overarching issues of organization, attention and memory, which affected her rate of reading and other work, as well as her ability to understand and complete assignments independently. Student may always have difficulties in these areas as a result of her seizure disorder; however, the record does not indicate that she received systematic instruction in strategies for compensating for or working around these difficulties that she could use in all settings. The record also shows that Student was becoming increasingly dependent upon adults, perhaps indicating that she was not effectively learning how to apply the strategies she was being taught, that she will need more intensive instruction as the curriculum becomes more complex, or both.

Moreover, the School's evidence in support of its theory that Student made gains is difficult to quantify. Student's passing grades were achieved with many accommodations, including reduced workload, reduced reading difficulty, the opportunity to retake exams, and the like. Student is, of course, entitled to accommodations so that she can access the curriculum; however, given the degree of accommodation she was given, grades are not necessarily a reliable indicator of her progress in areas of special need. Quarterly progress reports, for the most part, were general and conclusory, without reference to specific benchmarks that Student had or had not achieved. On the other hand, the progress reports indicate that Student was becoming increasingly dependent upon adults as the school year progressed.

Finally, Mother's uncontradicted testimony indicates that Student's school-related difficulties at home continued through the course of fifth grade. Despite the assistance she was receiving in school, Student continued to have great difficulty doing long-term assignments, had great difficulty applying concepts or strategies she had been taught in school to homework assignments, and, in math, was unable to carry over a concept she had used in one problem to the next. Student had numerous meltdowns at home and was experiencing school related stress.

Student is no longer legally entitled to "maximum feasible benefit." However, she is entitled to services that provide her with benefit that is more than minimal, such that she makes meaningful, measurable gains in areas identified as special needs. Lenn v. Portland School Committee, supra. I find that the gains Student made in fifth grade did not meet the latter standard, and that Groton-Dunstable did not provide a systematic, comprehensive, and integrated approach to her organizational, memory, and executive functioning problems that she requires to make progress in these areas.

### **The IEP of July 2006**

The IEP offered in July 2006 was inappropriate because it did not address Student's need for the integrated approach referred to above. This need was not unknown to Groton-Dunstable during 2005-2006. As early as fourth grade, even before Student had an IEP, teachers felt she had weak organizational skills. Student's initial IEP in fifth grade acknowledged Student's executive functioning and organizational weaknesses based on Dr. Schreiber's report. Student's teachers used informal meetings and their common planning time in an attempt to help Student carry over strategies from one area to the next, in light of her documented weaknesses in executive functioning. Faced with this inappropriate IEP, which did not adequately address needs known to the School at the time, Parents were justified in unilaterally placing Student at LPS.

### **The IEP of November 2006**

In November 2006, after Student had attended LPS for approximately three months, Groton-Dunstable offered an IEP with the Grid C services in language arts and

math that Parents had requested during fifth grade. By this time, the reports of Dr. Shaw and Jody Gray were available to the TEAM. Once again, however, the proposed IEP was inappropriate in light of the clear and strong recommendations of these evaluators for a comprehensive, integrated, language-based program.<sup>12</sup> The teacher for the separate language arts class, Ms. Bazzinotti, clearly has substantial training and experience in teaching reading to students with learning disabilities, and also communicates regularly with her students' other service providers. She acknowledged in her testimony, however, that this communication, together with the work done in her class, does not constitute an integrated, language-based program. Additionally, Groton-Dunstable presented no evidence regarding the separate math class, even though math is an undisputed area of weakness for Student. I find that while the November 2006 IEP would have intensified services to Student, the services would not likely be sufficiently integrated to meet Students' needs.

### **Appropriateness of Program Selected by Parents**

Having found that the program and services offered by Groton-Dunstable were inappropriate, I now must determine whether the placement chosen by the Parents is appropriate. The program need not be perfect, but must be capable of providing the student with FAPE. Matthew J. v. Mass. Dept. of Education, 989 F. Supp. at 387, 27 IDELR 339 at 343-344 (1998), citing Florence County School District Four v. Carter, 510 US 7, 13 (1993); Doe v. West Boylston School Committee, 28 IDELR 1182 (D. Mass., 1998); In Re Gill-Montague RSD, BSEA #01-1222 (Crane, August 2001). Thus, a parent may be reimbursed for the costs of a unilateral placement if that placement is "appropriately responsive to [a student's] special needs;" i.e., so that the student can benefit educationally. Matthew J., 27 IDELR at 344.

The record shows that the Learning Prep School has provided Student with FAPE, and hence was an appropriate setting for Student during 2006-2007. Learning Prep is an established, Chapter 766-approved private day school for students who have language disorders and who may also have additional disabilities such as ADHD and seizure disorders. Course content is aligned with the Massachusetts curriculum frameworks. Student has been placed in small, homogeneously grouped classes based on her skill levels in various subjects. She is functioning in the middle of her peer group, neither the strongest nor weakest student in her classes. Most importantly, LPS has an integrated, uniform, routinized approach to conducting classes, and analyzing and organizing written work and assignments, which directly addresses Student's areas of weakness.<sup>13</sup> According to Mother, she is able to apply the strategies she is learning to homework, which she has begun to do independently. Finally, Student has made a good adjustment to LPS, and has made friends there, while maintaining her friendships in her home

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<sup>12</sup> I found the testimony of these witnesses regarding Student's need for an integrated approach persuasive based on their findings, consistent with that of prior evaluators, that Student had significant weakness in executive functioning.

<sup>13</sup> It is significant that the School's expert, Dr. Postal, reported that Student requires such an approach. Dr. Postal testified that this could be achieved in a public school setting if all teachers employed the necessary strategies. In this case, however, Student needs a far more integrated and comprehensive approach across the curriculum than the School was able to implement in practice.

community. According to Mother, Student is much happier than she was in fifth grade in Groton-Dunstable. Clearly, there is ample evidence that the LPS placement has been appropriate for Student for the 2006-2007 school year, such that Parents are entitled to reimbursement for tuition and transportation from the time of placement to the date of this Decision. For the same reasons, Parents are also entitled to have Groton-Dunstable fund Student's placement and transportation prospectively from the date of this decision until the end of the LPS 2006-2007 academic year.

### **Reimbursement for Independent Evaluations**

In June 2006, Parents requested independent educational, neuropsychological, and speech/language evaluations. Groton-Dunstable replied by asserting its right to conduct its own evaluations in the first instance. Groton-Dunstable had conducted formal educational assessments in May 2005, and never had conducted a neuropsychological evaluation.<sup>14</sup>

Parents are entitled to an independent evaluation at public expense “[u]pon receipt of evaluation results, if a parent disagrees with an initial evaluation or re-evaluation completed by the school district...” 603 CMR §28.04(5). See also 34 CFR §300.502(b). In Massachusetts, the right to a publicly funded independent evaluation extends for 16 months from the date of the evaluation with which the parent disagrees. 603 CMR 28.04(5)(c)6. Upon receipt of a request for an independent evaluation, a school district is obligated to either fund the evaluation, or, within five school days, request a due process hearing with the BSEA to show that the school's evaluation was comprehensive and appropriate. 603 CMR §28.04(5)(d). The school's obligation either to fund the evaluation or proceed to the BSEA is contingent upon the school's right to evaluate the child in the applicable area in the first instance. See *In Re: Abington Public Schools*, BSEA No. 04-3493 (Figueroa, 5/13/04).

Here, Groton-Dunstable had conducted its own educational evaluation fewer than 16 months before the Parents' request for public funding for an independent evaluation. Therefore, the District's obligation was either to fund the independent educational evaluation or, within five school days, proceed to hearing to demonstrate that its own evaluation was appropriate. The District did not request such hearing within the requisite period or subsequently; therefore, under the applicable law, Groton-Dunstable is responsible for funding the independent educational evaluation conducted by Jody Gray, provided Ms. Gray's evaluation meets the criteria set forth in 603 CMR 28.04(5)(a) regarding credentials of the evaluator and allowable rate of payment.

On the other hand, Groton-Dunstable had never conducted its own neuropsychological evaluation of Student, and therefore was under no obligation to either fund an independent evaluation or proceed to hearing until it had done so. Groton-Dunstable is not required to fund the independent neuropsychological evaluation conducted by Dr. Lisa Shaw.

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<sup>14</sup> Parents never obtained a private speech/language assessment.

**ORDER**

Based on the foregoing, the Groton-Dunstable Regional School District shall do the following:

1. Upon receipt of appropriate documentation verifying expenditures, reimburse Parents for tuition payments made to Learning Prep School from the date of Student's enrollment on August 31, 2006 through the date of this Decision.
2. Reimburse Parents for transportation that they provided to Student to and from Learning Prep School according to the requirements of 603 CMR §28:07(6).
3. Draft an IEP calling for Student's placement at Learning Prep School, as well as for round-trip transportation, from the date of this Decision through the end of Learning Prep's 2006-2007 academic year.
4. Upon receipt of documentation of Parents' expenditures, as well any documents necessary to show compliance with 603 CMR §28.04(5)(a), reimburse Parents for allowable out-of-pocket expenses for the educational evaluation conducted by Jody Gray.

By the Hearing Officer,

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Sara Berman

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Dated: May 31, 2007