COMMONWEALTH OF MASSACHUSETTS
SPECIAL EDUCATION APPEALS

In Re: Abington Public Schools    BSEA #11-5932

CORRECTED DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act (“IDEA”, 20 USC Sec. 1400 et seq.; 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.

The Parent filed an initial hearing request on March 9, 2011. The matter was continued several times for good cause, at the request of one or both parties, to enable the parties to clarify issues and attempt resolution without going to a hearing. A pre-hearing conference was held on May 23, 2011, and the hearing took place on June 27, 2011.

At the hearing, the Parent alleged that the IEP issued by the Abington Public Schools for the period from June 2011 to June 2012 was not reasonably calculated to provide the Student with a free, appropriate public education (FAPE) because it provided for Student’s reading and math services to be delivered within the general classroom rather than on a pullout model. Parent sought an order from the BSEA directing Abington to provide these services outside of the general education classroom, as well as to provide Student with after-school tutoring at the Sylvan Learning Center during the 2011-2012 school year. (Abington already had agreed to fund the Sylvan services during summer 2011)¹

Those present for all or part of the proceeding were:

Student’s Mother
Student’s Aunt
Dr. Dympna Thomas        Asst. Supt., Pupil Personnel Services, Abington P.S.

Mary Ellen Sowyrda, Esq.   Attorney for Abington Public Schools

The official record of the hearing consists of Parent’s Exhibits P-1 through P-50, and several hours of tape-recorded testimony and argument. The School did not file documentary exhibits, relying instead on those submitted by the Parent. The parties waived written closing arguments and the record closed on June 27, 2011.

¹ In her initial hearing request, Parent alleged that the Abington Public Schools (School or Abington) had failed to comply with a settlement agreement that the parties had executed in February 2011. Parent subsequently received permission to amend her hearing request on two occasions, and, by the time the hearing took place, the sole issues were the setting in which reading and math services should be delivered, as well as whether Abington should be ordered to fund the Sylvan Learning Center services after the summer of 2011.
ISSUES PRESENTED

The issues in dispute are the following:

1. Whether Abington’s IEP and placement for the period from June 2011 through June 2012, which calls for reading, writing and math services to be delivered in the general education classroom, is reasonably calculated to provide the Student with FAPE, or whether these services must be delivered using a pullout model;

2. Whether the BSEA should order Abington to fund after-school tutoring at the Sylvan Learning Center during 2011-2012, or whether the TEAM should make that determination after the start of the school year.

POSITION OF PARENT

Student has a learning disability that affects her reading, writing, and math skills. Student has not made effective progress in the past with an inclusion model for delivery of services in these areas; rather, she needs to receive these services in a pullout setting, as recommended by Children’s Hospital and agreed to by the parties during the second portion of the 2010-2011 school year. The proposed IEP, which eliminates the pullout services (except for Study Skills) and returns to the inclusion model for service delivery, is not calculated to provide the Student with FAPE, as it will not provide her with the intensity of service that she needs. Further, Student will need after-school tutoring at the Sylvan Learning Center, which the School is funding during the summer of 2011, to close the gap between her peers and herself in her areas of disability. The School must not be allowed to wait until the start of the upcoming school year to determine if it will continue this service or make adjustments to Student’s IEP.

POSITION OF ABINGTON PUBLIC SCHOOLS

The Student is an intelligent child who will make effective progress in an inclusion setting and does not require removal from the general classroom to receive services in her areas of need. If Student did not make as much progress as she could have in the past, it is because she was absent for prolonged periods. The pullout model requested by the Parent is too restrictive for Student, and would deprive her of access to grade-level content, which she is able to comprehend at an age-appropriate level. In any event, the relevant pull-out classrooms at the high school level are designed for students who are more seriously disabled than is Student.

The School will consider funding the after-school tutoring requested by the Parent for 2011-2012, provided the Student attends the Sylvan program regularly during the 2011 summer session and makes progress there. A BSEA order requiring Abington to provide these services prospectively, would be premature without this information gleaned from the summer services.
FINDINGS OF FACT

1. Student is fourteen years old, and will enter ninth grade in September 2011. Student’s eligibility for special education and related services from the Abington Public Schools is not in dispute.

2. The parties agree on Student’s profile as a very pleasant, friendly, enthusiastic and motivated teenaged girl. Student has solidly average cognitive ability. The parties also agree that Student has specific learning disabilities in the areas of basic reading (decoding, encoding and independent comprehension), written expression, math problem solving, and math concepts, which affect her ability to meet grade-level academic demands without supports. (P-50) According to an August, 2010 neuropsychological assessment conducted by Children’s Hospital as part of a comprehensive independent evaluation, which neither party disputes, Student’s learning difficulties stem from weaknesses in integration of information, working memory and word retrieval. (P-8) Student has received special education services from Abington since first grade. (P-8)

Evaluations

3. Student’s most recent school-based evaluation took place in March and April of 2010, when Student was in seventh grade. This evaluation comprised standardized cognitive and achievement testing. The psychological assessment, consisting of the WISC-IV, yielded solidly average scores in verbal comprehension, perceptual reasoning, and processing speed, and a low average score in working memory. (P-8A)

4. On the School’s educational achievement evaluation, consisting of the WIAT, most of Student’s scores in reading, math, and written language were significantly lower than the “average” scores that would be expected in light of her cognitive ability. Specifically, her score in Word Reading was “Borderline.” Her scores in Pseudo-word Decoding, Numerical Operations, Math Reasoning, Spelling, and Written Expression were all “Low Average.” The only “Average” scores were in Listening Comprehension and Oral Expression. (P-8A).

5. The school evaluators concluded that Student has a specific learning disability in the areas of basic reading skills, written expression, math problem solving and math calculations. Although the test results in reading and writing skills were consistent with results of prior testing, the diagnosis of math weaknesses was new. The evaluator concluded that Student was struggling to meet the increased demands of math at the middle school level. (P-8A).

6. In August 2010, Student underwent an independent evaluation at the Learning Disabilities Program of Children’s Hospital Boston. This evaluation consisted of assessments in math and oral and written language, as well as neurological and neuropsychological evaluations, and a psychological screening to assess social-
emotional functioning. Additionally, the Children’s Hospital evaluators interviewed Student and Parent, reviewed prior school-based testing, and reviewed the results of parent and teacher questionnaires. (P-7A)

7. The Children’s Hospital evaluators found that Student had average cognitive potential and no significant emotional or behavioral problems. Like previous evaluators, they also found that she had a “neuropsychologically mediated learning disability” which has interfered with her achievement in reading, writing, and math. More specifically, Student “struggle[d] to independently manage and derive meaning from complex and/or unfamiliar information.” When faced with such information, Student had difficulty seeing the “big picture,” and relating back to previously learned material. This difficulty, in turn, led to problems with writing in an organized manner, in reading, and in math. (P-7A).

8. Additionally, the Children’s Hospital report stated that Student had weaknesses with working memory and word retrieval that interfered with her math and oral and written language performance. To understand complex academic information, Student was found to need structured, sequential presentation of material. With such presentation, Student was able to comprehend complex material. (P-7A)

9. As for specific levels of academic achievement, Children’s Hospital found that Student’s decoding skills clustered at the late third to early fourth grade levels (as she was entering eighth grade). Student was not successful with implementing decoding strategies, which the evaluators found “arresting” because Student had had services related to decoding and encoding since first grade. Reading comprehension abilities were also delayed, at a third or fourth grade level. Math skills ranged from mid-fourth to early fifth grade level. (P-7A-7C)

10. The Children’s Hospital team recommended that Student’s IEP be “comprehensively revised” to provide “direct and comprehensive” special education services in reading, writing, and math, both within and outside of the general classroom. Math instruction should be “personalized,” with both support and remediation. Reading and writing instruction should include strategies for word retrieval, the use of several approaches for “advanced” decoding and encoding, work to improve reading fluency, direct instruction to improve comprehension, and direct instruction in spelling using a systematic, sequential approach. (P-7B, C)

11. Additionally, the Children’s Hospital evaluators recommended teacher consultation with a speech-language pathologist to improve word retrieval and language formulation, special education support in science and social studies, explicit instruction in metacognitive strategies for all core subjects, as well as direct instruction in organizing and managing her workload, personalized assistance with MCAS preparation, scaffolding strategies, and a system for monitoring Student’s progress on an ongoing basis. (Id.)
12. As stated above, Student has received special education services since first grade which focused primarily on reading issues.

13. Student’s IEP for mid-fifth grade to mid-sixth grade, covering the period from January 2008 through January 2009, designated reading as the single goal focus. The specific annual goal was for Student to improve decoding, encoding and oral reading skills. Benchmarks included recognition of 40 “developmentally appropriate” sight words, decoding and encoding words with certain spelling patterns, and application of previously learned phonetic rules to text. Student’s “present level of educational performance” indicated that Student could read and recognize high frequency words within text, decode words with a cvc pattern, and decode one to two-syllable words. Student was more successful decoding words in isolation than within text. (P-6)

14. The IEP referred to above provided for 5x30 minutes per week of “Decoding/Encoding” in Grid C, and 5x60 minutes per week of ELA academic support in Grid B. Parents accepted this IEP in full. (P-6)

15. The IEP for mid-sixth grade to mid-seventh grade, covering the period from January 28, 2009 to January 28, 2010, was similar to its predecessor. Like the prior IEP, this IEP contained a single goal focus, reading. As of January 2009, Student reportedly could read and recognize 67 high-frequency words at her developmental level. Her DIBELS oral reading fluency results were at a low fifth grade level. Student continued to struggle with recognizing high frequency words in text. The IEP goal was identical to the goal in the prior IEP. Specific benchmarks included recognition of 80 “developmentally appropriate” sight words with 90% accuracy, decoding and encoding words in isolation containing many of the same letter patterns as in the prior IEP “with 90% accuracy,” and applying learned phonetic rules to improve oral reading fluency with 80% accuracy.2

16. This IEP ended Grid C services in decoding-encoding in June 2009, at the end of sixth grade, moving these services to Grid B for the first half of seventh grade. The IEP added “Academic Support—ELA” to Grid C for the beginning of seventh grade.

17. The final IEP progress report for sixth grade, issued in June 2009, indicated that Student had reached her goal of 90% accuracy in recognizing and reading sight words, but needed to “slow down and focus” on phonetic rules when reading for fluency to ensure accuracy.

18. In late January, 2010, Abington issued an IEP covering January 2010 through January 2011, corresponding with the second portion of seventh grade and first half of eighth grade. Like the prior IEP, this IEP contained a single goal focus, in reading, and the

2 Student’s IEPs use the term “developmental level” to describe sight words and similar material, but neither the IEPs nor other documents or testimony in the record define this term or otherwise specify the level of difficulty of the work Student was expected to master.
PLEP, annual goal, and benchmarks were nearly identical to those in the predecessor IEP. The service delivery grid provided for 6x49 minutes per cycle of ELA in Grid B. Grid C indicated that Student’s pull-out services would be 3x49 minutes per cycle of decoding/encoding instruction from the literacy specialist, and 6x49 minutes per cycle of academic support. (P-4)

19. The January 2010 IEP was the first in the record that Parent did not fully accept. Parent partially rejected this IEP in April 2010, stating that she was concerned that Student (1) had been working on the same reading goal since 2008; (2) remained at the early fifth grade level in reading (according to the DIBELS assessment); and (3) had no writing or math goals despite discussion of difficulties in this area at the January 2010 TEAM meeting. (P-5) Parent specifically rejected Academic Support, asserting that it was not designed to specifically meet Student’s needs and had not been helpful in the past, as well as MCAS accommodations, because Parent wanted the MCAS scores to reflect Student’s actual functional level without such accommodations. (P-4)

20. Progress reports for the 2009 – 2010 school year were issued in December 2009, April 2010, and June 2010. These reports stated generally that Student was making progress on her reading goal, improving her decoding and encoding, and doing well with comprehension. In April 2010, Student was able read “72 silent words with 90% accuracy.” The report did not indicate the level or complexity of these words, or whether Student read them in isolation or within text. (P-15) The report for June 2010 stated generally that Student was “slowly but surely” improving her decoding and encoding. (P-15)

21. The progress report for December 2009 indicated that Student’s “biggest issue that significantly impairs her grades is her laziness [sic] when it comes to writing papers or other assignments. [Student] needs to learn to take advantage of support given to her.” The teacher who wrote the comment did not elaborate further, and the IEP issued in January 2010 did not address writing. (P-4)

22. Student’s MCAS scores for grades 4, 5, and 6 all were in the “needs improvement” range for ELA, math, and Science/technology. (P-4)

23. As stated above, in March 2010, at the request of Parent, Abington conducted a re-evaluation of Student consisting of psychological and educational assessments, and, in August 2010, Children’s Hospital conducted a multidisciplinary independent evaluation. The TEAM convened to consider these evaluations on November 15, 2010. Team meeting notes indicate that Student was struggling in math. She had difficulty with solving multi-step problems independently and retaining concepts from one day to the next. Her grade average was 48 of a possible 100. (P-20) The notes further indicate that Student had “shown improvement” in reading. In writing, Student could complete a graphic organizer, but had difficulty using the organizer to formulate a paragraph. In ELA, Student earned a grade of 51, which was an
improvement over the prior grade of 34. School members of the TEAM commented that Student should come after school for extra help. (P-25)

24. Pursuant to the November 2010 meeting, Abington issued an IEP which stated Student had specific learning disabilities in written expression and math as well as in reading.

25. This IEP continued the reading goal from prior IEPs, indicating that Student was now reading at a sixth grade level as measured by the DIBELS (sixth grade is the ceiling for the test), was able to decode and encode 80% of the suggested sight words from the Wilson reading program, and could understand grade-level text with frequent breaks for reflection. The specific reading benchmark called for Student to continue work on decoding and oral fluency. (P-2)

26. The IEP added goals in writing, math and reading comprehension. The writing goal provided for Student to improve her essay writing with the support of graphic organizers, editing checklists, and lists of transition words, with the overall goal of improving her grade from “does not meet expectations” to “approaches expectations.”

27. The math goal indicated that Student could read and write numerals for fractions, identify fractional relationships using concrete models, and perform some operations with fractions. (P-2) The annual goal was for Student to improve her grade on grade-level math problems from the lower end of “approaches expectations” to the lower end of “meets expectations.” Specific objectives were for Student to correctly solve grade level math problems, including problems with positive and negative integers and decimals using the four operations. (P-2)

28. The reading comprehension goal was for Student to incorporate comprehension strategies. (P-2)

29. The IEP service delivery grid provided for 6x49 minutes/cycle, each, in ELA and math in Grid B, and 3x49 minutes/cycle, each of decoding/encoding and academic support in Grid C.

30. On January 3, 2011, Parent rejected the IEP and placement in full. In a written attachment to the rejected IEP, Parent stated her concern that Student had not made meaningful progress in decoding/encoding, and that her math and reading comprehension skills had declined. Parent further wrote that the IEP was not calculated to provide Student with FAPE in the decoding/encoding, reading comprehension, written language and math; did not consider the Children’s Hospital recommendations, did not provide accommodations in science or social studies, contained misleading information, and did not indicate how Student’s progress would be evaluated. (P-2)

31. Parent requested a BSEA hearing to address the rejected IEP. (BSEA No. 11-4080). On or about February 28, 2011, the parties resolved this appeal with a settlement
agreement ("Agreement"). Pursuant to this Agreement, on March 15, 2011 Abington issued a proposed IEP which added 6x49 minutes/cycle, each of small group math and ELA services in Grid C, among other things. (P-1)

32. Parent rejected this proposed IEP and placement in full, stating that among other things, the School denied the Parent the opportunity to participate in formulating the IEP, that the IEP contained inaccurate statements regarding Student’s attendance and performance levels, and that the IEP did not contain appropriate goals, objectives, or criteria for measuring progress. (P-1)

33. To provide some context, during March of 2011, Student allegedly was the subject of personal and cyber-bullying by three or more fellow students at her middle school. (The alleged bullying actually had started considerably earlier, but concerns seem to have peaked in the spring of 2011). The Parent felt that the School’s response to the allegations was insufficient, and on or about March 4, 2011 removed Student from school. Student returned to school on or about April 1, 2011, after the Parent’s concerns had been resolved, and began participating in the small group services that had been offered. ³ The parties do not dispute that Student derived benefit from the small group services.

Program Proposed by the School

34. The TEAM reconvened on June 13, 2011 and issued a proposed IEP running from June 13, 2011 to June 12, 2012, corresponding to Student’s freshman year in high school. (P-50) This IEP provides for 40 hours, each, of ELA and math instruction at the Sylvan Learning Center during the summer of 2011, as well as transportation. For ninth grade, the IEP proposes 5x49 minutes per week of Academic Support in Grid C, and 5x49 minutes per week, each, of math and ELA support in the general classroom, in Grid B, as well as various accommodations, and a proposal to reconvene the TEAM in September 2011. Parent accepted the summer services and rejected the remainder of the IEP. (P-50)

35. According to Dr. Dympna Thomas, Abington’s Assistant Superintendent for Pupil Personnel Services, the proposed IEP, which provides Student’s math and ELA services within a general classroom that is co-taught by a regular and special education teacher, is appropriate because Student is an intelligent young woman who understands grade level material; therefore, she needs to be instructed by teachers who are certified in the content area of each course. (Thomas)

36. At the high school level in Abington, pullout ELA and math classes are taught by teachers who are certified in special education but not necessarily in the content areas. The classes and are designed for students who are more disabled and less capable than Student. If Student were placed in sub-separate classes for core subjects, she would lose the access to grade-level curriculum that she needs in order to graduate from high school. (Thomas)

³ The School does not agree that it’s response to Parent’s and Student’s concerns were inadequate.
37. On the other hand, with the proposed IEP, Student would be in relatively small, (14 to 22 students) co-taught lower-level classes where she could access grade-level curriculum with support, both within the classes themselves and in her Academic Support class. The regular and special education teachers who would be involved with Student meet and collaborate regularly. (Thomas)

38. Dr. Thomas acknowledged that there are significant gaps in Student’s skills in core subjects, and, further, that she has not passed all her classes. She attributes these gaps to Student’s attendance\(^4\) and failure to attend voluntary before and after-school help sessions. Dr. Thomas opined that if regular attendance in her co-taught classes does not enable Student to close these gaps, Abington will provide her with after-school tutoring at Sylvan (if she attends regularly and makes progress over the summer of 2011) and/or make other changes to Student’s IEP. Student is more appropriately placed in lower level co-taught regular classes (which tend to be small, with other students having similar profiles), and getting special education support within those classes, reinforced in her Academic Support class. (Thomas)

39. Other than Dr. Thomas, who stated that she is familiar with Student and with the programming offered at the high school, there were no teachers or other witnesses affiliated with the program proposed for Student, and no documentary evidence relative to the proposed program.

40. Finally, Dr. Thomas testified that the relationship between the School and Parent has been contentious, that the School has made many offers in an effort to reach closure on Student’s programming, including various reading methodologies and public and private out-of-district placements, but that Parents have not accepted these offers. The School is anxious to resolve the issues regarding Student’s placement so that it can provide her with the services she needs. (Thomas)

**FINDINGS AND CONCLUSIONS**

After reviewing the record, I conclude that the Parent has met her burden of demonstrating that the most recent IEP issued by Abington is inappropriate. The overwhelming weight of uncontested evidence shows that the proposed IEP and placement fail to provide the Student with the intensive, individualized remedial instruction that she clearly needs to fill the undisputed gaps in her skills and enable her to make effective progress consistent with her potential. My reasoning follows.

A comprehensive evaluation by Children’s Hospital in August 2010 revealed that Student had significant, disability-related delays in reading, written language, and math. At the time of the evaluation, Student was an entering eighth-grader, with normal intelligence, whose decoding skills clustered at the late third to early fourth grade levels, despite several years of services related to decoding/encoding. Student’s reading

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\(^4\) According to Dr. Thomas, Student attended 140 of 180 days during 2010-2011.
comprehension skills were at a third or fourth grade level, and math skills ranged from mid-fourth to early fifth grade level. In sum, Student was performing at nearly five grade levels behind her grade placement in some areas, and, in her strongest areas, was still functioning about three grade levels below her placement. The report strongly recommended a revamping of Student’s IEP to make the services in her areas of weakness more intensive, comprehensive, and individualized so as to remediate her skill deficiencies. The report further recommended explicit teaching of metacognitive skills to enable Student to learn and perform effectively despite her difficulties with memory, word retrieval and organization.

Nothing on the record indicates that the School opposed any of the findings or recommendations of the Children’s Hospital team. Indeed, the School takes the position that the Children’s Hospital evaluation is consistent with its own reports, and claims that its proposed IEPs and services have been consistent with the Children’s Hospital recommendations. Moreover, the School’s documents state that the Student made progress when provided with small-group reading, writing and math as recommended by Children’s Hospital.

Further, the School has offered no expert reports, evaluations, or other data to indicate that after a few weeks with the small group services recommended by Children’s (which started in early April of 2011), that Student has somehow closed the gaps in her skills in reading, math and writing. On the contrary, Dr. Thomas testified that Student still has these gaps, and was not passing all of her courses, but attributes any lags in progress to Student’s absenteeism and/or failure to avail herself of extra help before and after school during eighth grade. Should these problems persist into ninth grade, even with improved attendance, Dr. Thomas’ solution was to offer the possibility of revising the IEP and/or continuing to fund supplemental tutoring at the Sylvan Learning Center.

Once again, the School has offered no evaluations or other documentation to substantiate its claim regarding the impact of Student’s absences. On the other hand, the uncontested Children’s Hospital report, as well as the School’s own evaluations, describe longstanding skill deficiencies despite years of special education services. The Children’s Hospital report unequivocally recommends “ramping up” the intensity and individualization of Student’s services, and the School not only has provided no evidence to counter this recommendation—it has effectively endorsed it.

Finally, the School argues that Student is too bright and capable to receive services in a pullout setting, and that she will receive the support she needs in small, co-taught classes. More specifically, Dr. Thomas testified that Student is capable of mastering grade level course content, and, at the high school level, requires teachers who are certified in content areas in order to have access to grade level curriculum. Dr. Thomas further testified, candidly, that Abington’s pullout services in Student’s areas of need, within the high school, are not taught or co-taught by teachers with the requisite content area certification. Rather, the teachers who provide these separate services are certified in special education, but not necessarily in the relevant high school content areas. The inescapable conclusion, then, is that the proposed elimination of Grid C math,
ELA, and writing for 2011-2012 is driven by the School’s personnel resources at the high school level, at least in part.

Of course, this is an impermissible basis for reducing the intensity of Student’s instruction. There is no dispute that Student can comprehend grade-level concepts, and must have meaningful access to the general curriculum. But there also is no dispute that Student continues to need intensive, individualized instruction and remediation in core skill areas. And the School has offered no evidence other than Dr. Thomas’ assertions that Student would, in fact, receive such intervention under the service delivery model in the School’s proposed IEP, particularly in the context of a class with 14 to 22 students. The School offered no testimony, for example, from any teachers or other high school personnel who could describe the program proposed for Student, or discuss how Student’s needs could be met.

Based on the foregoing, I conclude that Parent has met her burden of demonstrating that Abington’s proposed IEP running from June 2011 to June 2012 is not reasonably calculated to provide the Student with FAPE. The Parent has demonstrated that her requested program, which includes pullout services for math, reading/ELA and writing, and otherwise is consistent with the Children’s Hospital report, is appropriate.

The overwhelming weight of the evidence indicates that Student continues to need individualized, intensive, and comprehensive remediation in several aspects of reading (e.g., decoding, encoding, comprehension and fluency), written expression, and math in order to make effective progress, and that Student did make progress with such services during the short amount of time that she received them in eighth grade. Further, the uncontested evidence shows that Student also needs explicit instruction in metacognitive and organizational strategies, and support in courses such as social studies and science. The Parent seeks an order for such an IEP and placement.

The School has provided insufficient credible evidence for me to be persuaded that its proposed IEP will meet Student’s needs. (Indeed, the School has suggested reviewing Student’s situation early in the 2011-2012 school year, and supplementing services if warranted.) Further, the School has made clear that under its current staffing patterns, it cannot provide Student with intensive remediation outside of the general classroom without compromising her access to grade level content.

This situation does not relieve the School of its responsibility to provide Student with what she needs to receive FAPE. Abington must provide the Student with an IEP and placement which implements the recommendations of the Children’s Hospital report, including but not limited to intensive, individualized remediation in all aspects of reading, written expression, and math, designed to help Student close the gaps in her skills and knowledge, delivered in an individual/tutorial or small group format outside of the general classroom; explicit and individually tailored instruction in metacognitive strategies, organization, test-taking, and the like, and support and assistance with applying learned strategies and skills to courses such as science and social studies. These services must be provided in a manner that compromises neither the intensity required
nor Student’s access to grade level curricular content. If such a program cannot be delivered within the confines of a normal school day, then Abington shall provide extended school day services, either in-house or off site, with transportation if necessary.

If Abington cannot provide these services within the high school as currently staffed, then it shall locate or create an appropriate program for Student which does meet the criteria.

While the Parent has met her burden of proving that the proposed IEP is inappropriate, she has not demonstrated that the after-school tutoring at the Sylvan Learning Center is appropriate for 2011-2012. The Parent has provided no evidence about the content or methodologies used by Sylvan or the qualifications of its teaching staff that would inform me of Sylvan’s adequacy or appropriateness for Student in light of her profile. In so concluding, however, I do not determine that Sylvan is inappropriate, or that the School may not offer Sylvan as an option during 2011-2012 to supplement services during the regular school day.

ORDER

The Abington Public Schools shall locate or create a program for Student consistent with this Decision for the 2011-2012 school year.

By the Hearing Officer:

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Sara Berman      Date:  August 5, 2011

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Sara Berman      Date of corrections: August 29, 2011