

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

BUREAU OF SPECIAL EDUCATION APPEALS

In Re: Student v. Andover Public Schools

BSEA No. 1805127

DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act or 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), the Massachusetts Administrative Procedures Act (MGL c. 30A) and the regulations promulgated under these statutes.

The Student in the instant case is a nine-year-old child with language-based learning disabilities who currently attends the Landmark School in Beverly, MA pursuant to a unilateral placement made by Parents in August 2017. On December 15, 2017, Parents filed a hearing request with the Bureau of Special Education Appeals (BSEA) in which they alleged that previous and then-current Individual Education Programs (IEPs) and corresponding placements proposed by the Andover Public Schools (Andover, APS, or School) were not reasonably calculated to provide Student with a free, appropriate public education (FAPE). Parents seek an order from the BSEA directing Andover to reimburse them for the expenses they incurred in placing Student at Landmark as well as to fund Student’s Landmark placement prospectively.

Upon receipt of Parents’ hearing request, the BSEA scheduled an initial hearing date of January 19, 2018 and assigned this matter to Hearing Officer Rosa Figueroa. On January 9, 2018, Hearing Officer Figueroa issued an order granting the parties’ joint request to postpone the hearing until May 22, 23, and 24, 2018. On May 9, 2018, the BSEA Director administratively reassigned this matter to the undersigned Hearing Officer.

An evidentiary hearing was held as previously scheduled on May 22, 23 and 24, 2018 at the office of the BSEA in Boston, MA. Both Parents and Andover were represented by counsel. All parties had an opportunity to examine and cross-examine witnesses as well as submit documentary evidence for consideration by the Hearing Officer. The parties requested and were granted a postponement until May 30, 2018 to present oral closing arguments, and the record closed on that day.

The record in this case consists of Parents’ Exhibits P-1 through P-47, School’s Exhibits S-1 through S-62, as well as witness testimony and argument of counsel recorded electronically by the Hearing Officer and stenographically by certified court reporters.

Those present for all or part of the proceeding were:

Parents

Karen Kiley-Brabeck	Psychologist, consulting to Parents
Melinda Macht-Greenberg	Psychologist, consulting to Parents
Karl Pulkkinen	Public School Liaison, Landmark School
Kathleen Babcock	Academic Advisor, Landmark School
Laura Hill	Reading Teacher, Andover Public Schools (APS)
Mary Gorman	Special Education Teacher, APS
Helen Waller	First Grade Teacher, APS
Caitlyn Queenin	Team Chair, APS
Christina Fichera	Special Education Teacher, APS
Maryrose Meehan	Third Grade Teacher, APS
Felicia Lazarakis-Roumeliotis	Second Grade Teacher, APS
Cordelia Brown	Speech/Language Pathologist, APS
Ryan Fielding	Neuropsychologist, APS
Barbara J. Cataldo	Consultant, APS
Angelique DeCoste	Elementary Special Education Program Head, APS
Sara Stetson	Director of Student Services, APS
Nancy Koch	Assistant Director of Student Services, APS
Lillian Wong, Esq.	Counsel for Parents
Amy M. Rogers, Esq.	Counsel for Andover Public Schools
Kristin Wesolaski, Esq.	Counsel for Andover Public Schools
Sara Berman	BSEA Hearing Officer
Jill Kourafas	Court Reporter
Alexander Loos	Court Reporter
Anne Bohan	Court Reporter

ISSUES PRESENTED

By agreement of the parties, the issues for hearing were the following:

1. Whether the IEPs and placement that Andover offered in June of 2017 for the 2017-2018 school year (second grade) were reasonably calculated to provide the Student with a free, appropriate public education (FAPE).
2. If not, whether the placement chosen by the Parents at the Landmark School was appropriate such that the Parents are entitled to reimbursement for the time period from August 2017 through June 2018.
3. Whether the IEPs and placement that Andover has offered covering the time period from June 2018 through November 18, 2018 are reasonably calculated to provide the Student with FAPE.
4. If not, whether the Parents are entitled to prospective funding for Landmark School.

POSITION OF PARENTS

Student has a severe language-based learning disability (dyslexia). Despite tremendous dedication and effort by Andover staff, collaboration and support from Parents, and persistence and hard work by Student, Student has not made effective progress in acquiring literacy skills during his three years in the district. In June 2017 Andover proposed its district-wide language-based program for Student's second grade year, recognizing the magnitude of Student's needs. At that time, however, Andover had not yet developed a second grade class within the proposed program for Parents to observe or consider. For this reason, Parents were justified in unilaterally placing Student at Landmark. Moreover, the second grade program that Andover did establish for the 2017-2018 school year was not appropriate for Student at that time, and the third grade program will not be appropriate for him for the portion of third grade addressed in this matter because it is not the fully self-contained, cohesive, intensive program with closely matched peers that Student needs in order to make effective progress. On the other hand, the Landmark School is an approved, well-established, highly specialized school that is designed and equipped to meet the needs of children like Student, and is highly appropriate for Student, who already has begun to make progress since enrolling there.

POSITION OF SCHOOL

Andover's proposed language-based program would have provided and can provide Student with all of the language-based interventions and instruction that he were recommended by his evaluators and which he needs in order to make effective progress. All special and general education staff involved with the program are trained in language-based strategies. The program was carefully designed and developed to meet the needs of children with profiles similar to Student, with input from experts in the field of dyslexia and language-based learning disabilities including Landmark. In fact, APS regularly consults with Landmark Outreach and has imported numerous Landmark School features into its language-based program. Student could and can make effective progress in his areas of disability in the Andover program, while still accessing the general education environment and curriculum. Although there was no second grade class for Parents to observe during the early summer of 2017, Parents knew that Andover was committed to forming and staffing such a class, which indeed was available at the start of the 2017-2018 school year. Thus Parents were not justified in placing Student at Landmark in August 2017, and are not entitled to reimbursement. Further, Landmark is overly restrictive for Student, who can make effective progress within the general education setting with the supports provided in the language-based program.

SUMMARY OF THE EVIDENCE

1. Student is a 9-year-old child with disabilities who is a resident of Andover. Student's eligibility for special education and related services from the Andover Public Schools pursuant to the IDEA and MGL c. 71B is not in dispute.

2. The parties substantially agree on Student's profile as an intelligent, creative, funny, hard-working, resilient, and social child with many interests. Both Parents and Andover staff have commented on Student's determination and willingness to persevere with challenging or frustrating tasks. (Parent, Kiley-Braeback, Hill, Gorman, Babcock)
3. The parties further agree that Student has a longstanding diagnosis of a language-based learning disability which has significantly impacted his progress in reading, spelling, writing and math. Student's skills in these areas are substantially below age and grade-level expectations, despite his average to above-average cognitive abilities. (Parent, Hill, DeCoste)
4. Parents were concerned about Student's language development and self-regulation skills beginning when Student was an infant and toddler, and secured Early Intervention (EI) services for him between the ages of approximately 13 to 30 months. In or about October 2012, when Student was approximately 3.5 years old, Andover conducted its initial evaluation of Student and found him eligible for special education. Andover developed an IEP providing for speech and language therapy, occupational therapy (OT), and Adaptive Physical Education (APE). Beginning in approximately January 2013, Andover amended Student's IEP to add four afternoons per week of its integrated preschool program, which Student attended after completing mornings in a private preschool. (Parent)
5. Student attended his first year of Kindergarten (hereafter "K-1") during the 2014-2015 school year, in his neighborhood elementary school in Andover. His IEP, which Parents had accepted in full, called for placement in a full-day,¹ full-inclusion classroom supplemented with 2x30 minutes/week each of speech/language therapy and OT as well as adaptive physical education (APE). Services focused on objectives in speech/language, social pragmatics, and fine and sensory motor skills. (Parent, P-4)
6. Parent² testified that Student's K-1 teachers and related service providers put tremendous effort into supporting Student's development as well as communicating and collaborating with Parents. Despite this support, however, Student struggled with as-

¹ At the time in question, Andover only provided half-days of Kindergarten to general education students and charged tuition for full days. Because Student's Team deemed full days to be necessary to provide FAPE, Student attended full days without tuition pursuant to his IEP.

² Parent is an experienced public school teacher and certified general education reading specialist, employed as such in a different district. (Parent)

pects of K-1. In January of 2015, the teacher informed Parents that Student's DI-BELS scores did not meet the benchmark, and that the School would begin providing Student with 3x30 minutes per week of 1:1 assistance with the reading specialist. The reading specialist worked with Student on sight words and phonics, and provided activities to work on at home. Student became extremely frustrated when working at home, increasing Parents' concerns. Student ended K-1 reading at a level "B" of the Fountas and Pinnell text leveling system, corresponding with approximately a mid-Kindergarten level. (Parent)

7. In or about May 2015, Parents obtained a private neuropsychological evaluation of Student by Nancy Sullivan, Ph.D. at Boston Children's Hospital (BCH). Dr. Sullivan diagnosed Student with ADHD-Combined Type,³ with related challenges in emotional and behavioral regulation, Developmental Motor Coordination Disorder, and a Learning Disorder in Mathematics, all in the context of solidly average or above-average intellectual functioning, albeit with relative weaknesses (but still in the average range) in processing speed and working memory. The evaluator recommended speech-language services, a social skills group, and a variety of accommodations and strategies to assist with attention. (Parent, P-5, S-15) Andover convened a Team meeting to discuss the BCH evaluation towards the end of K-1. At that time, Parents requested to have Student repeat Kindergarten the following year because they felt he had not made sufficient progress in reading and could not print legibly. (Parent)
8. In October 2015, shortly after Student entered his second year of Kindergarten (K-2), Andover conducted a three year re-evaluation of Student consisting OT, physical therapy (PT), academic, psycho-educational, and speech/language assessments. (P-2, 3, 4, 5) The psycho-educational assessment consisted of interviews with Parents and Student, a review of prior evaluations including the recent BCH evaluation, and administration of the Wide Range Assessment of Memory and Learning (WRAML-2) and the Behavior Assessment for Children (BASC-2); the latter indicated no significant findings for the school setting. (P-5)
9. The WRAML revealed that Student's memory score was in the "low average" range (12th percentile), significantly lower than his "average" to "high average" (63rd percentile) thinking and reasoning abilities. The evaluator recommended numerous accommodations, including multi-sensory instruction, teaching explicit memory strategies, providing visual cues to reinforce auditory instruction, preferential seating, breaking down larger assignments into smaller components, and modeling social language. (P-5)

³ Parent testified that Student began taking medication for the ADHD in July of 2015, which resulted in considerable improvement in his ADHD symptoms. (Parent)

10. The speech-language assessment consisted of the Peabody Picture Vocabulary Test (PPVT-4), Expressive Vocabulary Test (EVT-2), the Clinical Evaluation of Language Fundamentals (CELF-5), Test of Narrative Language (TNL) and Social Skills Improvement System (SSIS). The CELF-5 indicated high-average overall language skills. Other tests, however, showed relative weaknesses (although still within the average range) in Student's ability to formulate a narrative, understand linguistic concepts, and follow multi-step directions. Student's overall social skills measured in the 62nd percentile in the school setting, but in the 14th percentile at home. The speech-language pathologist recommended accommodations such as breaking down directions, repetition, and providing visual cues for directions, as well as continued speech/language therapy to address social communication and receptive language skills (P-3)

11. The OT evaluation resulted in average scores in fine motor precision, manual dexterity, visual motor integration, visual perceptual skills, and sensory processing. The evaluator observed that Student's printing was "developing" and that, due to letter reversals, Student would benefit from visual models when writing. (P-2)

12. Student's academic assessment, conducted by the K-2 special education teacher Mary Gorman, consisted of the Test of Early Reading Ability (TERA-3), Test of Early Written Language (TEWL-2), Test of Early Mathematics Ability (TEMA-3), and Key Math 3. Student scored in the "Average" range in all skills measured by these assessments. The evaluation report indicated "strong gains" in the areas of math. (P-4, Gorman)

13. On December 8, 2015, after a Team meeting to consider the evaluations, Andover proposed an IEP covering the period from December 3, 2015 to December 2, 2016. This IEP contained a speech and language goal addressing following multi-step directions, understanding linguistic concepts, and improving memory; an occupational therapy goal focusing on written output and self-regulation; and a social pragmatic goal to improve Student's social communication skills. (P-6) The service delivery grid included classroom assistant support 5x60/5 days and OT services 1x30/5 days in Grid B, as well as speech/language services 1x30/5 days in Grid C. Parents accepted the proposed IEP and full inclusion K-2 placement on December 8, 2015, and Student completed the 2015-2016 school year in that placement. (Parent, P-6).

14. Parent worked with Student at home on reading skills during K-2 and became concerned that certain skills appeared to be regressing. After informal meetings between

Parent, Student's teachers, and the elementary school's reading specialist, Andover convened a Team meeting on March 2, 2016 to discuss Student's progress. On March 8, 2016, Andover issued a proposed amendment to Student's IEP adding a literacy goal and math goal, and adjusting the service delivery grid accordingly to add 5x30 minutes/5 days of math support in Grid B and 3x30 minutes/week of small group reading instruction in Grid C. The amendment also added ESY services to in reading and math, and instituted regular communication between teachers and Parents. According to the N-1 form accompanying the proposed amendment, the additional goals and services were necessary because "[a]ccording to curriculum-based assessments, [Student's] rate of progress in the area of literacy has not been sufficient." (P-7) Despite the additional services, Parents believed that Student's math and literacy progress was insufficient in K-2 based, in part, on Student's final report card, which showed lower "grades" in several English language arts and math skill areas than he had achieved at the end of K-1, a year earlier. (Parent, P-8).

15. Based on the report card, Parents hired a private Orton-Gillingham (O-G) tutor who worked with Student 60 minutes per day, four days per week during the summer of 2016 to prepare Student to start O-G services in first grade pursuant to his IEP. The tutoring was in lieu of having Student attend the ESY program set forth in his IEP. (Parent)
16. Student entered first grade in his neighborhood elementary school in or about September 2016, in an inclusion first grade classroom. Student's general education teacher, Helen Waller, is certified both in elementary education and as a reading specialist. Student's Grid B supports in math, writing and, after March or April 2017, in reading fluency, were provided by Mary Gorman, who is a special education teacher. Student's Grid C specialized reading instruction was provided by Laura Hill, a certified special education teacher with a Certificate of Completion in Orton-Gillingham Level 1 Practicum--Fieldwork and Seminars. Ms. Hill provided Student with O-G instruction either 1:1 or with one or 2 other students. (Waller, Gorman, Hill, P-8)
17. Ms. Hill assessed Student's progress by collecting daily data during reading and spelling lessons in the form of a dictation. Ms. Hill used this data to drive instruction and measure progress within the O-G approach. (Hill, S-58, 59). In addition, Ms. Hill conducted various curriculum-based screening instruments to track progress in particular skills over intervals. (Hill, S-21, 22, 23)
20. One such assessment, the DIBELS Next, showed that Student made a slight amount of progress between K-2 and the end of first grade (May 2017) in "Nonsense Word Fluency-- Correct Letter Sounds" and "Whole Words Read" and a very slight amount

of progress in “Oral Reading Fluency—Words Correct” and “Accuracy.” All data points showing progress were below the applicable grade level benchmark. (S-21) Ms. Hill testified that because the text used in the DIBELS was “uncontrolled” that is, it used letter combinations that Student had not yet been taught in O-G, it was a less accurate measure of Student’s progress than O-G progress tracking, which tested Student only on materials which he had been explicitly taught. (Hill)

21. Parents had been optimistic about Student’s first grade placement because they understood that his teachers had excellent credentials and reputations, but Student began to struggle with homework early in the school year, and by mid-year would make statements to Parents such as “I hate myself,” “I can’t do it” and “I’m stupid.” (Parent)

22. The Team convened on November 20, 2016 for Student’s annual review. The Team discussed Student’s progress, including a Curriculum Based Measurements Progress Report by Ms. Hill, showed Student had made progress in phonemic awareness, word reading and spelling skills between February 2016 (mid-K-2) and November 2016 (early first grade). Ms. Hill felt that Student was progressing in his ability to sound out words and needed to develop his ability to blend sounds together to develop automaticity. (Hill, S-22) Parent shared her concerns that Student had dyslexia, based on her own professional experience as a reading specialist, Student’s continued struggles with reading, and what Parent viewed as little progress, despite integrated preschool, two years of kindergarten and many interventions from skilled professionals. (Parent) Parents requested an independent evaluation at school expense to assess Student for dyslexia. The School agreed, but persuaded Parents to allow a school-based evaluation first. Ultimately, however, in January 2017, Parents declined that offer and, later that year, obtained an independent evaluation from Dr. Karen Kiley-Brabeck, as well as a private speech/language assessment by Beth Arinsberg, both to be discussed, *infra*. (Parent, P-10, DeCoste)

23. Shortly after the November Team meeting, the School proposed an IEP covering the period November 30, 2016 – November 29, 2017, corresponding to the remainder of first grade and the first quarter of second grade. This IEP reflected Parents’ expressed concerns about development of Student’s literacy skills, including both decoding-encoding and comprehension, about what Student was missing during pull-out sessions, and whether Student was dyslexic. (Parent, P-9) The proposed IEP continued previous goals in speech-language, OT, social pragmatics,⁴ reading/decoding, and math, and added a goal in spelling. At the suggestion of Ms. Hall, Student’s reading teacher, Grid C reading services were increased from 5x30 minutes/5 days to 5x45 minutes/5 days. The IEP specified that for reading, Student required a “systematic

⁴ By agreement, the social pragmatics goal was moved to Grid A and ultimately dropped as no longer needed. (P-9)

explicit, multi-sensory, reading and spelling approach with a scope and sequence tailored to his needs.” Parents fully accepted this IEP and placement. (P-9)

24. Student continued in first grade pursuant to the accepted IEP for the remainder of the 2016-2017 school year. In March 2017, the Team convened to discuss Parents’ continued concerns about Student’s progress with literacy. At that meeting, Parents asked Angela DeCoste, the Elementary Program Head for Special Education, about the district-wide program for students with language-based learning disabilities.⁵ Ms. DeCoste responded that the language-based program started in third grade and told them that APS was considering adding a second grade, but had not yet done so. (Parent, DeCoste)

25. Subsequent to the March 2017 meeting, Andover proposed an amendment to the IEP adding 15 minutes/day/5 days of fluency instruction from Ms. Gorman. On April 11, 2018, Parents accepted the IEP for implementation purposes (including the additional fluency services) but rejected the proposed placement as insufficiently intensive to meet Student’s needs. This was the first time Parents ever rejected an IEP proposed by Andover. (Parent, Gorman, S-30, P-18)

26. Andover personnel who worked with Student during first grade testified that he made progress during that year. Ms. Waller, Student’s dually-certified classroom teacher, testified that Student fit in well in her class, and “seemed typical,” with a great sense of humor and many friends. The Grid B support he received in math from Ms. Gorman appeared to Ms. Waller to be given only “as needed,” and not constantly since the classroom was equipped with many supports such as number lines and manipulatives. Student fully participated in other classroom activities such as science, social studies, Morning Meeting, and Read Aloud with no need for support. (Waller)

27. Mary Gorman testified that she provided Student with inclusion support in math, and, after November 2016, with fluency instruction. The math support consisted of collaboration with Ms. Waller to provide the visual supports referred to above (e.g. number lines and manipulatives) as well as preferential seating and help with organizational tasks such as assembling his materials. Ms. Gorman testified that Student had acquired many “student skills” that were taught to the entire classroom such as “whole body listening” and “reading the room” for cues on what his next task would be. She believed that with the supports provided, Student was able to access the general education math curriculum. For fluency instruction, Student used a program where he

⁵ This district-wide language-based program formerly was known as LEAP. Now it is called the “Language Based Program.” (Stetson)

read separate words aloud, then combined them into phrases. Student was “diligent” with the program, following every instruction given him. (Gorman)

28. Ms. Hill testified that Student made slow, steady progress with decoding skills. (Hill)
29. As stated above, in January 2017 Parents retained Dr. Karen Kiley-Brabeck to conduct a neuropsychological evaluation of Student. Dr. Kiley-Brabeck is a licensed psychologist and pediatric neuropsychologist in private practice who has approximately twelve years of experience conducting evaluations and providing clinical services for children with a variety of disabilities. In her current practice, Dr. Kiley-Brabeck evaluates children with a range of challenges, conducts school-based observations, and collaborates with parents and schools on implementing IEP and school-based programming for individual children. (Kiley-Brabeck, P-14)
30. Dr. Kiley-Brabeck’s evaluation took place over several days between late February and early April 2017 and consisted of record reviews, clinical interviews with Parents and Student, review of questionnaires submitted to Parents and teachers, standardized testing of Student, and a feedback meeting upon completion of testing. (Kiley-Brabeck, S-17)
31. Dr. Kiley-Brabeck’s cognitive testing of Student with the WISC-V yielded scores in the average to high-average range, at the 77th percentile overall. (Kiley-Brabeck, S-17)
32. Academic achievement was measured with the Gray Oral Reading Test—Fifth Edition (GORT-5) and the Wechsler Individual Achievement Test—Third Edition (WIAT-III). Student’s overall score on the GORT-5 was in the 4th percentile based on age. Rate, accuracy, and fluency were in the 1st, 2nd, and 1st percentiles, respectively. Comprehension scores were higher (16th percentile) because Student was able to use his intellectual ability to fill in information and derive meaning from text. (Kiley-Brabeck, S-17,).
33. On the WIAT-III, Student’s scores were normed on the basis of his grade (1st) rather than his age because he had repeated Kindergarten, and thus were higher in terms of percentiles than they would have been with age-based norms. Student’s Basic Reading Composite score was “below average” in the 14th percentile. As with the GORT-5, Student had difficulty decoding and encoding, and had trouble spelling phonetically. His handwriting was difficult to read and he reversed some letters and numbers. Student’s Math Composite and Math Fluency Composite were in the average range for first grade, but Dr. Kiley-Brabeck noted that with the WIAT-III, the examiner reads the math problems aloud to the student, and no reading is required. On WIAT-III subtests of single-word expressive and receptive vocabulary, Student scored well

above average for his grade. Dr. Kiley-Brabeck had concerns, however, about Student's ability to orally communicate his ideas and to organize and formulate his expressive language based on his performance on portions of the WIAT-III as well as on the California Verbal Learning Test (CVLT-C), which indicated difficulty in word-finding and retrieval, contextualization, and discrimination of relevant information while reading and listening. (Kiley-Brabeck, S-17)

34. To assess Student's phonological processing skills, Dr. Kiley-Brabeck administered the Comprehensive Test of Phonological Processing (CTOPP), which she described as a challenging test for Student. The CTOPP showed phonological memory and rapid naming skills within normal limits; however, his phonological awareness—*i.e.*, his awareness of and ability to access the sound structure of oral language—was below average (18th percentile) and below expectations in light of his cognitive ability. During the administration of this test, Dr. Kiley-Brabeck believed that Student was mishearing sounds and had difficulty distinguishing and repeating them. Her report stated that “[Student] will need explicit instruction...to improve his phonological awareness skill with application to reading and spelling” since the ability to “manipulate sounds is the foundation of decoding and encoding skills,” and is the “building block of sound-symbol associations.” (S-17)
35. Based on her evaluation, Dr. Kiley-Brabeck diagnosed Student with a Language Based Learning Disability/Dyslexia and ADHD, characterized by reading and spelling skills well below grade level and intellectual ability, below-average phonological awareness (which impaired his ability to decode and encode words) and difficulties with word/information retrieval, expressive communication, and verbal learning ability. (Kiley-Brabeck, S-17)
36. Dr. Kiley-Brabeck recommended an intensive, substantially-separate language-based program characterized by small class size (6-8 students) with peers with similar cognitive potential and without emotional or behavioral disabilities that would affect the classroom environment; language-based programming across Student's day and infused into all subjects, with opportunities to generalize and practice literacy skills; and instruction from teachers experienced in providing such programming, rather than aides. Although Student had achieved “average” scores for his grade level on math skills that were assessed via an oral question-answer format, Dr. Kiley-Brabeck felt that he should receive math instruction in a language-based classroom because of the heavy language demands of many elementary math curricula. (Kiley-Brabeck)
37. To address reading, spelling, and phonological processing challenges, Dr. Kiley-Brabeck stated that Student needed intensive, direct, small-group instruction for at least 60 minutes per day, focused on phonological processing and early reading and spelling skills, using an empirically validated reading program such as O-G or Wilson, as well as a fluency program such as Read Naturally or Great Leaps. Additionally, Dr. Kiley-Brabeck stated that Student needed to learn phonological awareness skills with the LiPS program, “as the foundational piece for developing his decoding and encoding,” taught 1:1 by a certified LiPS instructor. Finally, Dr. Kiley-Brabeck

recommended memory training exercises and both direct and consultative speech and language services. (Kiley-Brabeck, S-17)

38. Dr. Kiley-Brabeck testified that to be appropriate for Student, a program would have to operate “seamlessly,” implementing the language-based strategies and methodologies in all settings, “with fidelity,” and be taught by teachers who were familiar and skilled with such instruction. (Kiley-Brabeck)
39. Pursuant to Dr. Kiley-Brabeck’s recommendation, Parents obtained a private speech and language evaluation from Beth Arinsburg, a licensed speech/language pathologist. After reviewing records, interviewing Parents and Student, and conducting standardized testing, Ms. Arinsburg concluded that while Student’s overall language skills were well-developed, he had areas of relative weakness with expressive formulation, *i.e.*, generating oral and written narratives. The story he wrote for the Test of Written Language (TOWL) was so short that it could not be scored, contained no contextual conventions, and was logical but immature in its construction. Parent was unable to read the story because of poor handwriting, misspellings, and the like. (Parent) Ms. Arinsburg also found relative weaknesses in Student’s “integrative language skills,” *i.e.*, his ability to make inferences from pictures or auditory information, and his short-term auditory recall. (P-15)
40. Ms. Arinsburg made multiple recommendations for Student’s programming, including explicit instruction on how to organize his spoken language; tools such as Story Grammar Marker and the Visualizing and Verbalizing program; teaching of strategies to make inferences and to recall auditory information; and explicit instruction in how to organize written work. Ms. Arinsburg recommended that Student receive at least 60 minutes per week of direct, individual speech/language therapy. (P-15)
41. From approximately December 2016 forward, while Student was attending first grade in Andover, Parents were investigating several potential intensive summer programs, including the one operated by the Landmark School. They completed the application process for the Landmark summer program during January of 2017. Parent testified that the Landmark representative told Parents that the application process was the same for the summer and fall programs, and advised them to indicate on the application form that they were interested in both. Parents followed this advice, although at the time, they did not plan or intend to send Student to Landmark for the school year. (Parent)
42. Student’s Landmark admission testing was completed on February 23, 2017. The tests administered included the Peabody Picture Vocabulary Test-4 (PPVT-4), the Lindamood Auditory Conceptualization Test-3 (LAC-3), the Woodcock Reading Mastery Tests-III (WRMT-III), the GORT-5, the “Automated Series” test; the Berea Visual-Motor Gestalt test (BEREA), and the Detroit Test of Learning Aptitude-2 (DTLA-2) (P-11)

43. Student achieved scores in the 90th and 53rd percentile, respectively on the PPVT-4 and LAC-3. On the WRMT-III, Student scored in the 2nd percentile for Word Identification and 27th percentile for Word Attack. On the GORT-5, Student scored in the 2nd percentile for rate, 16th percentile for accuracy, and 9th percentile for fluency. Results of the BEREAS indicated that Student was “able to see gestalt” of designs but lacked spatial organization and planning. The DTLA-2 scores revealed high average to average rote auditory memory, auditory sequencing, and sensory integration. (P-11)

44. On or about April 10, 2017 Parents signed an enrollment agreement and sent a deposit to the Landmark School for enrollment in the elementary program for 2017-2018. Parent testified that they did so because at a feedback meeting in early April 2018, Dr. Kiley-Brabeck had told them that Student would need a substantially-separate language-based program. At that time, Parents did not know whether Andover’s language-based program would have a second grade classroom available in time for Student’s second grade year. In light of this uncertainty, they felt they needed to reserve a spot at Landmark in case they needed it. Additionally, they were awaiting Dr. Kiley-Brabeck’s written report, which they wanted to review with the Team before deciding how to proceed. (Parent, S-56)

45. On June 1, 2017, the Team convened to consider the reports of Dr. Kiley-Brabeck and Ms. Arinsburg as well as the QRI Reading Inventory that Ms. Hill had conducted on the day of the meeting. The QRI indicated that Student was reading texts classified at Fountas and Pinnell Level E, which corresponds to first grade-level text according to the Fountas and Pinnell text leveling system. Parent continued to be concerned with the discrepancy between the School’s report of progress based on its own testing and her observation that Student could not generalize what he had learned in school. Student could not read simple words in his environment such as the word “dog” or simple messages from classmates in birthday cards. This was particularly concerning in light of the amount and intensity of services Student had been receiving since Kindergarten. (Parent)

46. At the June 1 meeting, Angelique DeCoste informed Parents that Andover intended to offer Student a placement in the language-based program. At the time of the Team meeting, the language-based program still had not formed a second grade class; however, Ms. DeCoste reported that such a class would be created for the 2017-2018 school year. Parents were told that the planned program would serve approximately seven second and third graders with average to above-average intellectual ability coupled with language-based learning disabilities such as dyslexia. The program would have two classroom teachers and three assistants. Students would be included in a “partner” general education second grade classroom for science and social studies. As of the June 1 Team meeting, there was no definite second-grade cohort in existence because Ms. DeCoste did not know how many students who had been offered this program would actually enroll. There was no written program description avail-

able but Ms. DeCoste assured Parents that they would receive one by the end of the school year. (Parent, DeCoste)

47. On June 9, 2017, APS issued a proposed IEP covering the period from June 1, 2017 to November 29, 2017. This IEP contained essentially the same goals, benchmarks, and accommodations (with minor changes) as the prior IEP, but proposed a change in placement to the above-described partial-inclusion language-based program at the Bancroft School. (P-17)
48. The service delivery grid proposed the following: Grid A--1x15 minutes/30 days of social skills consultation by the speech/language therapist; Grid B— OT/COTA support (for writing), 1x30 minutes/5 days; “classroom support” from an assistant, 5x60 minutes/5 days; “language based class” support in science, social studies and math from a special education teacher/assistant, 5x45 minutes/5 days each; and in Grid C— speech/language services from a speech/language pathologist, 1x30 minutes/5 days; OT services from an OT/COTA, 1x 30 minutes/5 days; language-based class ELA 5x105 minutes/5 days. The IEP also offered summer ESY programming in reading and math., 4x180 minutes/5 days for approximately one month. The IEP continued Student’s then-current first grade pullout reading and fluency instruction through the end of the 2016-2017 school year. (P-17)
49. Andover offered Parents the opportunity to observe the existing fourth and fifth grade language-based classrooms, and Parents visited the program on June 16, 2017, accompanied by their advocate, Sue Terezakis, as well as by Ms. DeCoste and Barbara Cataldo, who was a private consultant retained by Andover. (DeCoste) Parents observed an O-G lesson being given to two fourth-grade students by Christine Fichera, who was slated to be the special education teacher for the 2/3 program for 2017-2018. Parents also observed part of a fourth grade inclusion science class consisting of a total of 18 students. Parents’ advocate asked follow-up questions of staff later in the summer of 2017. (Parents, S-57)
50. On July 21, 2017, Parents rejected the proposed IEP and placement. In an accompanying letter to Team chair Caitlyn Queenan, Parents stated that while the entire Team was in agreement that a change in placement was needed for Student, “[a]fter observing the LEAP program we are not convinced that it is appropriate for [Student]. There are many unknowns and unanswered questions for us to feel comfortable with moving him.” Specifically, Parents stated that they had requested but not received a program description, information about staff training and consultants, curriculum and methodology, and the proposed peer group. Parents further objected that the program was in its infancy, that they were unable to observe a second grade class because it did not exist; that they were unable to observe the potential peer grouping, and that the language-based teacher was not sufficiently trained or experienced.⁶ Parents requested APS to “support us in locating an appropriate placement...that reflects the recommendations of Dr. Karen Kiley-Brabek for the 2017-2018 school year.” (S-31)

⁶ Parents did not cite evidence to support this claim about the teacher’s training or experience.

51. In a letter dated August 8, 2017, which was addressed to Dr. Sara Stetson, Andover's Director of Student Services, Parents notified Andover that they were unilaterally placing Student in the Landmark School in Beverly, MA for the 2017-2018 school year. On August 9, 2017, Dr. Stetson responded to Parents with a letter declining to fund Student's Landmark placement, and offering to conduct observations of Student at Landmark. (P-18)
52. Student received private O-G tutoring at Parents' expense during the summer of 2017 from the same individual who had tutored him previously, and entered the Landmark School as a second grader in September 2017. (Parent, Babcock)
53. Parent testified repeatedly that she respected the skill and devotion shown to Student by his teachers in Andover, was highly ambivalent about her decision to reject the IEP and placement proposed by Andover, and did not want to remove him from his neighborhood school or home district unless it was necessary. Ultimately, Parents' decision was based on Parents' concern that there were "so many unknowns" with the language-based program, as well the summer O-G tutor's report that Student had not progressed much since the prior summer. Parents' letter stated that Student needed a school "such as Landmark, that had everything set...had a program description...we knew what to expect, we knew that they were very well-known for their work with children with dyslexia." Parent testified that Student had made a good adjustment to his Landmark placement. Parents observed that Student was more relaxed and confident about school and did homework independently. Other parents in the community approached Student's father and commented on Student's increased confidence. (Parent)
54. The program proposed for Student in Andover's June 2017 IEP is a new combined second/third-grade classroom that is part of the district-wide elementary language based program located in the Bancroft elementary school. The addition of this grade level arose from what Dr. Stetson⁷ described as Andover's infusion of significant resources to improve the district's ability to address the literacy needs of struggling students, including those with language-based learning disabilities. Andover has obtained input in this effort from a variety of outside consultants and resources, including the Landmark Outreach Program, Tufts University, the Commonwealth Learning Center, and Children's Hospital among others. (Stetson)
55. In pertinent part, Andover's initiative has included training and professional development for general and special education teachers in identification, assessment, and intervention for students who have or might have language-based learning disabilities, as well as implementing validated language-based methodologies and strategies such as O-G, Wilson, LiPs, and Story Grammar Marker in both general and special education settings. Andover sought input from Andover parents through workshops, meet-

⁷In her role as Director of Student Services, Dr. Stetson has been responsible for overseeing much of Andover' language-based program development. Dr. Stetson has had extensive involvement with research and teaching strategies for students with dyslexia. Dr. Stetson has never met or evaluated Student, has not observed him and was not involved in developing his IEPs.

ings, and surveys and posted information about program development on the APS website during the 2016-2017 school year. (Stetson, S-32-33)

56. During the 2016-2017 school year, APS worked on expanding the elementary level district-wide language-based program, which formerly served grades 3 through 5, to include second graders in a combined grade 2/3 program. Angelique DeCoste oversaw much of this expansion by assisting with hiring the speech pathologist and special education teacher for the second/third grade classroom and arranging for staff training and professional development courses. When developing the program, APS consulted with Ann Larsen from the Landmark Outreach Program as well as Lisa Brooks from the Commonwealth Learning Center for guidance on instructional models, strategies, and techniques, as well as the format of how the program would be run and has continued periodic consultation with these individuals. Ann Larsen has assisted with development of executive functioning, ELA, and specialized reading instruction and has trained special and general education staff in language-based strategies for the inclusion classrooms. Ms. Brooks provided LiPS training to staff in the grade 2/3 program and as well as staff coaching in both LiPS and O-G.⁸ Ms. DeCoste testified that because the Bancroft staff members all have been trained with the same techniques and methodologies, by Landmark Outreach and other consultants, the Bancroft School program provides students with cohesive programming and consistent approaches by all providers. (DeCoste)
57. The elementary program at the Bancroft follows a partial inclusion model. For the grade 2/3 program, there is one special education teacher for both grades, two instructional assistants (one for each grade level), and a full-time speech/language pathologist who also works with fourth and fifth graders. Both grades are served in a single language-based classroom for their substantially-separate instructional blocks in ELA and other language-related curriculum. For the inclusion portions of the day, which encompass math, science and social studies in addition to morning meeting, Open Circle, and similar activities, there are two partner general education classrooms, one for second grade and one for third grade. (DeCoste)
58. Students enter the Bancroft language-based program via a centralized process in which a group of staff and consultants reviews profiles of students receiving specialized reading services in their neighborhood schools to determine if any is appropriate for the more specialized program. In Student's case, a screening group consisting of Ms. DeCoste, Ann Larsen, Dr. Stetson and the speech/language therapist from the language based program met in January 2017 and reviewed the profiles of all first graders receiving specialized reading services in their neighborhood schools. Student was among those whose profile was reviewed. (DeCoste)
59. After this review, the group identified children—including Student—whose profiles indicated that the language-based program might be appropriate for them. Student's

⁸ Neither Ms. Larsen nor Ms. Brooks testified at the hearing or submitted reports or other documents. Andover's contract with Ms. Larsen stipulates that neither she nor any other Landmark Outreach representative would participate in litigation in which the Landmark School might be involved.

profile was similar to that of other children for whom the language-based program was proposed, in that he had average to above average cognitive abilities coupled with challenges in reading and language that were similar, although not identical to those of the proposed peers, as well as an absence of emotional or behavioral challenges. Ms. DeCoste deferred presenting Student's potential appropriateness for the district-wise program to Student's Team chair until June 2017 because the Team was awaiting the results of Dr. Kiley-Brabeck's evaluation. (DeCoste)

60. Student's rejected IEP for November 2017-November 2018, issued in June 2017, called for ELA, speech/language therapy and OT to be provided in the separate language-based classroom. Had Student attended the program for second grade during 2017-2018, his special education teacher would have been Ms. Christina Fichera. Ms. Fichera is Massachusetts-certified in general and special education and as a reading specialist. She also has completed certification programs⁹ in Orton-Gillingham Level I, Read Naturally, Story Grammar Marker, Wilson, LiPS and Framing Your Thoughts (a writing program), and has attended training with Ann Larsen of Landmark Outreach on language-based classrooms. (Fichera)
61. Ms. Fichera delivered specialized instruction in the grade 2/3 language-based classroom for the ELA block and also for co-teaching math, science and social studies in the partner general education classrooms. During 2017-2018, Ms. Fichera had 3 second-graders and 3 third-graders in her language-based classroom. (Fichera)
62. The ELA block consisted of one hour of O-G and fluency instruction, followed by 45 minutes of writing instruction. The O-G and fluency segments of the class consisted of students rotating through four different stations or centers. The first, or "lesson" station was taught by Ms. Fichera or Ms. Brown, the speech/language pathologist, and entailed work on letter-sound correspondence, using O-G techniques, as well as a sound blending and phonemic awareness activity. Each aspect of the lesson was geared to the level of the individual student. The second station was a practice or "application" station, led by Ms. Fichera (for new concepts) or the instructional assistant (for review) where the students reviewed concepts in a multi-sensory format or game. This was followed by a dictation and progress-charting section. The last station was for fluency, where students reviewed sight words and used Read Naturally. Ms. Fichera tracked progress according to O-G and Read Naturally protocols. Certain students in the program used LiPS for the first part of the school year, and LiPS instruction was incorporated into the station format. The writing instruction was literature-based, supported by Story Grammar Marker and Framing Your Thoughts. Students used a binder system for organization and checklists for writing and editing, both of which were suggested by Landmark Outreach. (Fichera)
63. During 2017-2018 Ms. Fichera co-taught math and science in the general education second grade partner classroom, along with the second grade teacher, Ms. Felicia Lazarakis-Roumeliotis, and the language-based assistant. The class contained ap-

⁹ These are certificates issued by the programs themselves or by private organizations, not to be confused with Massachusetts teacher certifications.

proximately 20 students, including the three second-grade students from the language-based class. Math started with a whole-class 15-minute lesson presented orally by the teacher, followed by four stations, two of which were taught either by Ms. Fichera or the assistant. The tasks at the math stations were differentiated according to the skill levels of the students, with reading and written language demands reduced as needed for language-based students. During 2017-2018, none of the language-based students other than Student had C-grid math. (Fichera, Lazarakis-Roumeliotis) APS would provide math instruction for Student in the language-based classroom if required by his IEP. (DeCoste, Setson) Similar approaches were used for science and social studies, with reduction in language demands and implementation of language based strategies for students in the language-based classroom. (Fichera, Lazarakis-Roumeliotis)

64. Cordelia Brown is the certified speech-language pathologist assigned to the language-based program. Ms. Brown is certified in Lips, has been trained in Framing Your thoughts and Story Grammar Marker, and is undergoing O-G training. Ms. Brown testified that she has in-depth knowledge of phonology and language acquisition as it relates to the underlying skills in reading, writing, speaking and listening, and as such is able to provide targeted individualized instruction as well as help students generalize skills. (Brown)
65. Ms. Brown provided direct speech and language services for students in the 2/3 language based classroom. She provided LiPS instruction to some students in that program during the first half of the 2017-2018 school year, at which point those students had completed LiPS and moved on to O-G. In addition, Ms. Brown collaborated with Ms. Fichera in planning lessons that work on oral expression and writing skills. (Brown) Ms. Brown and the third-grade partner teacher, Maryrose Meehan, co-taught 3rd grade science and social studies during 2017-2018 using language-based strategies throughout the lessons. Usually, Ms. Meehan presented the content, and Ms. Brown assisted students with organization. (Brown, Meehan)
66. In approximately February 2018, Parents retained Melinda Macht-Greenberg, Ph.D. to observe Andover's program as well as to observe Student in his Landmark placement. Dr. Macht-Greenberg is a psychologist with approximately 28 years of experience who operates a private practice in Bedford, MA. Her professional background and experience includes providing psychological services to children and adolescents, as well as teaching graduate-level courses in evaluation and school-based observation of children. She has co-authored publications for teachers on classroom management. As one component of her private practice, Dr. Macht-Greenberg consults with families of children with disabilities regarding appropriate educational services, and, in that capacity, has many years of experience in observing classrooms. (Macht-Greenberg, P-29)
67. Dr. Macht-Greenberg observed Andover's proposed language-based program on March 26, 2018. Prior to conducting her observations, Dr. Macht-Greenberg interviewed Parents and reviewed Student's prior evaluations and IEPs. Additionally, she

had observed Student in his Landmark School placement a few days earlier, on March 29, 2018. (Macht-Greenberg, P-28).

68. Dr. Macht-Greenberg's spent an entire school day, from approximately 8:45 AM to 2:45 PM, observing Andover's proposed second-grade language-based program. She observed the math, science and "read aloud" blocks in the general education classroom as well as the ELA block delivered in the language-based classroom. (Macht-Greenberg, P-28)
69. Based on her review of Student's prior evaluations and her observation of him at Landmark a few days earlier, Dr. Macht-Greenberg concluded that the proposed language-based program was not appropriate for Student, particularly with respect to the inclusion portion of the day. (Macht-Greenberg)
70. Specifically, Dr. Macht-Greenberg stated that while Student required a comprehensive, small-group program in which language-based methodologies were used for all classes, using a slow pace of instruction with frequent preview and repetition of material, "language-based teaching is not effectively employed in the general education classes offered at the Bancroft School..." (P-29) Dr. Macht-Greenberg stated that the instruction in the general education classroom was too complex and fast-paced for Student, that she did not observe language-based strategies to be employed consistently in the inclusion class, that the class size was too large (20 to 23 students), there was too much visual clutter in the classroom, not all of the instruction was delivered by special educators, language-based peers appeared to be working at a higher level than Student, and there were too few adequately credentialed instructors available for the third graders. In general, she believed that the language-based strategies taught in the substantially separate classroom were not cohesively carried over into the general education classroom. While the program as a whole might be appropriate for children with "mild to moderate" language-based disabilities, and Dr. Macht-Greenberg had worked with other children who succeeded in the program, she believed it was not adequate for Student, who presented with "significant impairment."¹⁰ (P-29, Macht-Greenberg)
71. Andover also conducted observations of Student at Landmark as well as of the Bancroft language-based program without Student present, using its consultant, Barbara Cataldo, Ed.D. Dr. Cataldo holds a graduate degree in reading and a doctorate in educational leadership, and holds Massachusetts certifications as a superintendent and reading specialist as well as in general education and moderate special needs. Since approximately 1982, she has worked in teaching and administrative positions, such as special education director and superintendent, in approximately 5 public school districts in Massachusetts. Dr. Cataldo has developed public school language-

¹⁰ On cross examination, Dr. Macht-Greenberg testified that while she observed indicia of language-based instruction in the general education classroom, such as the rope with beads used for Story Grammar Marker, she had not been directly told what those items were or how they might be used and did not wish to make assumptions. (Macht-Greenberg). Similarly, she acknowledged that while the language-based peers seemed to be reading on a more advanced level than Student, their redacted IEPs indicated that their literacy skill levels were similar to Student's. (Macht-Greenberg.)

based learning disabilities programs and has trained teachers in Wilson Reading. She is slated to serve as the Director for the Boston College Campus School. Dr. Cataldo also does consulting work for school districts. (Cataldo, S-14)

72. In or about June 2017, Andover retained Dr. Cataldo to co-observe the Bancroft language-based program with Parents. Dr. Cataldo accompanied Parents and their advocate when they spoke to Ms. Fichera and when they observed the fourth grade general education science class. (Cataldo)
73. In or about March 2018, Andover again approached Dr. Cataldo and requested that she observe Student in his Landmark placement as well as the APS language-based program. Dr. Cataldo knew that she would be asked to give an opinion in the pending litigation. (Cataldo)
74. To prepare for her observation, Dr. Cataldo reviewed Student's educational records, including private and School-based evaluations, progress reports, IEPs, and work samples. Based on her review of these materials as well as her observation of Student at Landmark, Dr. Cataldo concurred with evaluators that Student was a bright child with dyslexia, some ADHD issues that interfered with his ability to focus, difficulties with fluency, and "dealing with pace, processing speed." (Cataldo)
75. Dr. Cataldo conducted her observation of the Bancroft School program on April 5, 2018, and spent the entire day there. She observed the grade 2/3 language-based class, second grade inclusion read-aloud, math and science classes, and the third grade inclusion math class. Dr. Cataldo concluded that the substantially-separate grade 2/3 classroom was truly language-based, as she observed the teacher using multi-sensory instruction with a variety of methodologies including O-G and Wilson and tools such as Story Grammar Marker, teaching executive functioning skills and checking in with students frequently to ensure that they understood and correctly completed tasks. She commented that all instruction was done by the teacher, Ms. Fichera, and not the assistant, which she stated was important for Student since Dr. Kiley-Brabeck had recommended that all instruction be delivered by certified teachers. (Cataldo)
76. In the inclusion classes, Dr. Cataldo concluded that there was adequate language-based support, noting established routines that were familiar to the students, visual cues to support lessons, and that adults in the classroom circulated among the small groups of students to ensure that they were on task and understanding the lessons. Dr. Cataldo felt that overall, both the inclusion and language-based classrooms were paced slowly enough to allow teachers to ensure that students were understanding and completing lessons. (Cataldo, S-19)
77. As stated above, Student has been attending the Landmark Elementary School located in Beverly, MA since September 2017, pursuant to Parents' unilateral placement. Landmark is a Chapter 766 approved private school, which exclusively serves children who have at least average intellectual ability coupled with language-based learning disabilities, including dyslexia, which impede their ability to acquire skills in

reading, writing, and spelling and expressive language commensurate with their cognitive abilities. Landmark does not serve children with serious emotional or behavioral disabilities or with autism spectrum disorder. (Pulkkinen, Babcock)

78. Students in the Landmark Elementary program receive a daily 1:1 reading tutorial and classes of no more than eight students in math, language arts, oral expression, literature, social studies and science, as well as physical education and electives such as art and woodworking. (Pulkkinen) Class groupings are formed based on a combination of age, grade, and skill levels. Student was in one “core” classroom for all academic subjects except for math; he was in a separate small-group math class for that subject. Each subject period was 47 minutes long. Student did not receive individual speech/language therapy or OT because these services were imbedded in the literacy tutorial and cursive writing program, respectively. (Pulkkinen, Babcock)
79. Student’s 1:1 tutorial was taught by Elizabeth Rozeski, who began teaching at Landmark in 2017. Ms. Rozeski is not certified in Massachusetts, but has a waiver from DESE; however, she does hold early childhood and elementary general and special education certifications from New York. (Babcock, P-22) In Student’s tutorial he received instruction in phonemic awareness using LiPS, where he was working on tracking two-syllable words, identifying syllable and phoneme changes, but was not close to independently reading or spelling the two-syllable words. He also worked on decoding and fluency instruction through Read Naturally and Fry sight word lists. If Student completes the LiPS program, his successor programming in literacy would depend on his needs at the time, e.g., for decoding, fluency, or comprehension, and would not necessarily be a decoding program. Landmark does not use O-G instruction. (Babcock)
80. Student’s teacher for math, oral expression/literature, language arts, enrichment, and social studies and science was Meg Arnio, who holds a Massachusetts certification in moderate special needs/Pre-K-8. (P-22) With the exception of math class, where Student is one of 4 students, Student has the same 5 classmates for each subject.
81. Student’s math instruction at Landmark included the integration of language skills. Language Arts /written expression and addressed oral language and storytelling as a precursor to writing, cursive writing, basic parts of speech, and word retrieval. Science and Social Studies focused on study skills as well as content. (Babcock)
82. Student’s most recent Landmark progress report issued in March 2018, stated that in his reading tutorial he is tracking multi-syllable words, reading high frequency site words from Fry’s list with frequent practice and review, and reading at the 1st grade level of Read Naturally; in math had learned to read and write numbers up to the thousands place using-base 10 and could solve addition and subtraction problems that were read to him, can subtract within 10 using drawings or objects, can add 2-digit numbers with one re-grouping step, can subtract after it has been modeled. Ms. Babcock testified that Student’s writing had significantly improved in legibility with the use of cursive writing. (P- 27, Babcock)

83. Both Melinda Macht-Greenberg and Barbara Cataldo observed Student in his Landmark placement on March 19 and May 5, 2018, respectively, each for a full day. Dr. Macht-Greenberg observed that the tutorial that divided instruction into “microunits,” small class size, the slow pace of instruction, absence of visual distractions in the classrooms, reduced language load, multisensory instruction, the focus on oral expression, reading and writing, and the use of models and kinesthetic activities throughout the day, all were appropriate for Student. Dr. Macht-Greenberg also noted that Student appeared compatible with his peers at Landmark. (Macht-Greenberg, P-29)
84. Dr. Cataldo’s observations of the Landmark program were similar to Dr. Macht-Greenberg’s, in that she noted the small class size, use of visual cues, reduced distractions in the classrooms, and multisensory strategies. While Dr. Cataldo did not explicitly find Landmark to be inappropriate for Student, she stated unequivocally that the Andover program could meet his needs in his areas of disability and had the advantage of enabling him to access general education content in his inclusion classes. (Cataldo, S-20)
85. In April 2018, Andover had Ryan Fielding, Psy.D. conduct a neuropsychological evaluation of Student. Dr. Fielding is the clinical director for the Andover Public Schools, and as such is responsible for oversight of all psychological and behavioral services and personnel for the district, as well as for providing neuropsychological assessments of students. Dr. Fielding also is employed on a part-time basis by the Neurodevelopmental Center at Massachusetts General Hospital. The evaluation consisted of a review of prior testing, interview with Parent and Student, and administration of a battery of standardized tests to Student and rating scales to Parents and teachers. Student achieved average-range scores on tests of cognitive abilities. Receptive and expressive language, phonological and phonemic awareness, phonological memory, and higher level language-based problem solving all were in the average range, as were his skills in the areas of nonverbal and visual-spatial reasoning. Student’s sensory motor skills were average, with the exception of language-based written output, which was laborious for Student. (Fielding, S-18)
87. Student struggled in the areas of selective and sustained attention. His working memory, planning and organizational skills were strong, but weaker when he had to produce a written product. (Fielding, S-18)
88. Academic testing revealed generally average math skills when normed according to his grade, but lowered fluency because of visual scanning errors (*e.g.*, misreading operational signs). In the areas of reading and literacy, Student had well-developed skills for associating sounds with symbols, with the exception of certain vowel sounds. Student had average skills for decoding certain pseudowords, but low skills for fluency of decoding real words. Student had poor reading comprehension resulting from his fluency weaknesses. More specifically, his scores on the GORT-5 were

below the first percentile for rate; in the second percentile for accuracy and fluency, and the fifth percentile for comprehension. (Fielding, S-18)

89. Student's area of greatest weakness indentified by Dr. Fielding was in producing written language, including spelling, grammar, and writing fluency. Dr. Fielding observed that Student's ability to speak his ideas aloud far outstripped his ability to reduce these ideas to writing. (Fielding, S-18)
90. Dr. Fielding compared his testing with comparable testing by Dr. Kiley-Brabeck the previous year (2017) and concluded that Student's word reading, pseudoword reading, and fluency had not progressed much in the previous year. (Fielding, S-18)
91. Dr. Fielding concluded that Student had age-appropriate ability to comprehend information but difficulty with fluent output, which Dr. Fielding attributed to weaknesses with attention and processing speed as well as aspects of language. He recommended continued language-based interventions. (Fielding)
92. On November 26, 2017 the Team convened to develop an IEP for the remainder of the 2017-18 school year (second grade) and the first quarter of 2018-19 (third grade). Landmark staff Karl Pullkinen and Kathleen Babcock attended by phone. Dr. Fielding did not attend the meeting. The Team reviewed progress reports from Landmark. On November 30, 2017 the Team proposed an IEP covering November 20, 2017 to November 19, 2018 that had goals in speech/language (improving oral and written narrative skills), OT (improving printing), reading/decoding (reading specific types of two-syllable words), math (mastering second-grade math concepts and skills), spelling (of specific closed and two-syllable words), and writing (generating a three to five-sentence paragraph). (S-32)
93. The service delivery grid was similar to the grid in the previous IEP, except that math had been moved from Grid B to Grid C. The IEP called for continued placement in the language-based program at the Bancroft School with ELA and literacy (as well as OT and speech/language services) in the separate language based classroom, and science and social studies in the "partner" general education classroom. (S-32)
94. On December 19, 2017 Parents rejected the proposed IEP and placement, and reiterated their request for funding of the Landmark placement.

DISCUSSION

There is no dispute that Student is a school-aged child with a disability who at all relevant times was eligible for special education and related services pursuant to the IDEA, 20 USC Section 1400, *et seq.*, and the Massachusetts special education statute, M.G.L. c. 71B ("Chapter 766"). Student was and is entitled, therefore, to a free appropriate public education (FAPE), that is, to a program and services that are tailored to his unique needs and potential, and is designed to provide 'effective results' and 'demonstrable improvement' in the educational and personal skills identified as special

needs.” 34 C.F.R. 300.300(3)(ii); *North Reading School Committee v. BSEA*, 480 F. Supp. 2d 489 (D. Mass. 2007); citing *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir. 1993).

While Student is not entitled to an educational program that maximizes his potential, he is entitled to one which is capable of providing not merely trivial benefit, but “meaningful” educational benefit. See *Andrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (March 22, 2017), *Bd. of Education of the Hendrick Hudson Central School District v. Rowley*, 458 US 176, 201 (1982), *Town of Burlington v. Dept. of Education*, 736 F.2d 773, 789 (1st Cir. 1984); 675 F.3d 26, 34 (1st Cir. 2012); *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2014) Whether educational benefit is “meaningful” must be determined in the context of a student’s potential to learn. *Rowley*, *supra*, at 202, *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F3d 18, 29 (1st Cir. 2008); *D.B. v. Esposito*, *supra*. As the U.S. Supreme court recently held in *Andrew F.* at 69 IDELR 174, a disabled child’s goals should be “appropriately ambitious in light of [his or her] circumstances, *Id.* Finally, eligible children must be educated 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. On the other hand, the opportunity to be educated with non-disabled students does not cure a program that otherwise is inappropriate. *School Committee of Town of Burlington v. Dept. of Education of Mass.*, 471 U.S. 359 (1985).

FAPE entails both a substantive component, as described above, and procedural protections for students with disabilities and their parent. These protections are intended to support the parent-school collaboration envisioned by federal and state special education statutes by ensuring that parents have full and meaningful opportunities to participate in the Team process. Parents in the instant case have alleged no procedural violations by Andover, and it is clear from the record that Parents have been active participants in developing and monitoring Student’s educational programming; therefore, the procedural component of FAPE need not be discussed further.

In a due process proceeding to determine whether a school district has offered or provided FAPE to an eligible child, the burden of proof is on the party seeking to challenge the status quo. In the instant case, as the moving party challenging the pertinent IEPs and placement offered by Andover for the period at issue, Parents bear this burden. That is, in order to prevail, Parents must prove the following by a preponderance of the evidence, first, that the IEP and placement offered in June 2017 was inappropriate and/or unavailable such that Parents were justified in placing Student at Landmark in August or September 2017; second, that the Landmark placement was appropriate and Parents are entitled to reimbursement for the period from August to November 2017; and, third, that the IEP and placement proposed in November 2017 was inappropriate and Parents proposed placement at Landmark is appropriate such that Andover should be required to fund that placement prospectively, until November 2018. *Schaffer v. Weast*, 546 U.S. 49, 44 (2005)

The parties substantially agree that Student's significant language-based learning disabilities make it very difficult for him to acquire basic literacy skills that are commensurate with his cognitive ability, age or grade level, and that Student's progress has been slow and laborious despite increasing interventions since preschool. The parties also agree that Student needs an intensive, coherent language-based program that provides specialized instruction in all aspects of literacy acquisition, including phonemic awareness, decoding/encoding, written expression, comprehension, and fluency, and implements language-based strategies across the curriculum.

The only dispute is the setting in which services should be delivered. Andover asserts that Student can be served in its district-wide language-based partial inclusion program at the Bancroft School. Parents argue that the inclusion portions of the program are too fast-paced and not sufficiently infused with language-based strategies to enable Student to progress effectively. Parents, citing a 2009 decision by this hearing officer,¹¹ also argue that they were justified in unilaterally placing Student at Landmark at the beginning of the 2017-2018 school year because there was no second grade cohort in existence, and no second grade classroom available to observe when Andover offered the Bancroft placement in June 2017.¹²

The instant matter is distinguishable from *Natick*. In that case, the school district was unable to provide the parent with any concrete information about how its proposed community-based transition program would meet the student's unique needs or implement critical portions of his IEP. Moreover, the purchased curriculum had not been individualized for the student, and key program components (*e.g.*, job placements) did not exist. *Id.*, p. 56. Here, unlike *Natick*, Andover added a second grade cohort to an elementary language-based program that had been in existence for a number of years. Although Parents were not able to see a second-grade class in June 2017, they had been offered an IEP which stated clearly how the placement would address Student's needs, were able to observe fourth grade classes utilizing at least some of the staff who would be teaching the second grade, and had access to staff members who would be able to provide additional information. Moreover, in contrast to the situation described in *Natick*, nothing in the record indicates that Andover would be unable to deliver the services called for in Student's IEP.

In these circumstances, any claim for reimbursement by the Parents hinges not on alleged unavailability of a placement, because a placement was, in fact, available in a timely manner, but on whether the IEPs and placements offered in June 2017 and November 2017 for the 2017-2018 school year and first quarter of the 2018-2019 school years were appropriate for Student. Based on a careful review of the evidence, including three days of testimony and a voluminous documentary record, I conclude that they were not. My reasoning follows.

¹¹ *In Re Natick Public Schools*, 16 MSER 47 (2009).

¹² Parents may be reimbursed for the costs of a unilateral placement of an eligible child if the school district has failed to make a timely offer of an appropriate IEP and placement and the placement selected by the parents is responsive to the child's special needs. *Florence county District Four, et al. v. Shannon Carter, et al.*, 510 U.S. 103 (1993)

The record establishes that Student is a motivated, hard-working child who has at least average intelligence and no major social, emotional or behavioral challenges. For Student, achieving literacy is, therefore, a goal that is “appropriately ambitious in light of [his] circumstances.” *Andrew, supra*. Student’s constellation of disabilities, which includes a language-based learning disability (dyslexia) as well as challenges with attention, executive functioning, and processing speed, have posed a formidable barrier to achieving this goal. To their credit, both Parents and Andover recognized Student’s challenges early in his educational career, and have collaborated to address his needs as they have evolved. Andover provided Student with specialized preschool followed by two years of full-day Kindergarten in which he received speech/language and OT services in K-1, and additional supports in math and literacy in K-2. For first grade, Andover provided Student with a co-taught classroom with an experienced general education teacher who also was a reading specialist (Ms. Waller), a certified special education co-teacher (Ms. Gorman), and daily pull-out instruction with a special education teacher who also was qualified in the Orton-Gillingham approach. Andover adjusted the IEP as the first grade year progressed to increase the amount of O-G tutoring as well as to add fluency instruction. Parents provided Student with O-G tutoring over the summer months between K-2 and first grade and again after first grade. Parents secured outside evaluations from Children’s Hospital, Dr. Kiley-Brabeck, and Ms. Arinsburg, and Andover duly considered these evaluations and incorporated many findings into IEPs. Parent, who is an experienced reading specialist herself, had no complaints about the quality of services that Andover provided, and commented repeatedly that the professionals who worked with Student were caring, dedicated, and highly skilled.

Despite all of the assistance that Student received in K-1, K-2 and first grade, his progress in learning the basic mechanics of reading, spelling and writing was halting and seemingly infinitesimal. Based on this experience, as well as the clear recommendations of Dr. Kiley-Brabeck for an intensive, cohesive, self-contained language-based program, Andover offered the language-based program at the Bancroft School. This program contains most of the elements recommended by Dr. Kiley-Brabeck and endorsed by both parties, including systematic instruction in phonemic awareness, decoding, encoding, fluency, and written expression using programs such as LiPS, O-G, Read Naturally and Story Grammar Marker, and use of language-based strategies in both the separate classroom and the co-taught science, social studies and math classrooms. And, in fact, it appears that the separate language-based classroom itself would have been appropriate for Student in second grade and the first quarter of third grade. The language-based teacher, Christina Fichera, testified persuasively that her classroom would be capable of meeting Student’s needs and there is no evidence in the record to the contrary.

Unfortunately, the Bancroft program is structured so that Student would only spend 105 minutes per day in that language-based classroom, and the remainder of the day in the co-taught partner second grade and third grade classrooms. While acknowledging that all teachers involved in the Bancroft program have been trained by Landmark Outreach and others, and crediting testimony from Andover staff and Dr. Barbara Cataldo that language-based strategies have been imported to the partner second and third grade classrooms, the overall weight of the testimony and documents persuades

me that the sheer number of students in each classroom (approximately 20), rotation of these 20 students through multiple centers within the classroom during many of the lessons, and pace and complexity of instruction make this portion of the program inappropriate for Student.¹³

In reaching this conclusion, I rely on the reports and testimony of Dr. Kiley-Brabeck and Dr. Macht-Greenberg. After extensive testing of Student, Dr. Kiley-Brabeck made clear recommendations for a small (6-8 students), intensive, cohesive program in which language-based approaches were infused into curriculum areas “seamlessly” and with fidelity. Dr. Macht-Greenberg, who had reviewed Student’s prior evaluations and observed Student at Landmark before observing the Bancroft program, testified persuasively that contrary to Dr. Kiley-Brabeck’s recommendations, the instruction in the inclusion classroom was too fast-paced for Student, who works extremely slowly, has relative weaknesses with processing speed, and has attentional challenges. Additionally, she concluded that the classroom contained too many students and that language-based strategies in the classroom were not being implemented consistently. I credit the reports and testimony of both of these witnesses. Both are experienced psychologists who either evaluated Student (Kiley-Brabeck) or reviewed evaluations by a fellow psychologist (Macht-Greenberg). Both are experienced in observing classrooms; Dr. Macht-Greenberg has authored publications on classroom management. On the other hand, the testimony of Dr. Cataldo was not persuasive as to the appropriateness of the Andover program for Student as she did not address how Student, with his slow rate of work, low level of reading and writing ability, and distractibility, could keep up with the demands of the inclusion classroom. Similarly, although Student’s first grade teachers, Ms. Waller and Ms. Gorman, testified that Student functioned in the general education classroom in that grade, I cannot infer that he would be able to “keep up” with the second and third grade inclusion content classes. In any event, the time spent in the inclusion setting in second and third grade would be time lost from remediation during a critical window for acquiring literacy.

The proposed third grade placement, the first quarter of which is covered by the November 2017 IEP, appears substantially similar to the second grade placement. Language-based services would continue in the same substantially separate grade 2/3 classroom as for second grade, and, as with second grade, Parents have not shown that these services would be inappropriate for Student, or could not be adjusted as needed to make them appropriate. The problematic inclusion portion for science and social studies would remain, however.

Ultimately, while Andover has committed an impressive amount of resources to developing and improving its district-wide language-based program at the Bancroft School, that program is not fully appropriate for Student at this time. Student had the benefit of skilled and devoted in-class and pull-out support in Kindergarten and first

¹³The IEP issued in November 2017, which covered the last three quarters of second grade and first quarter of third grade, called for moving Student’s math instruction to the language-based classroom. Such relocation would solve the problems with the inclusion classes outlined above; however, at least in second grade, all other students participated in inclusion math, which would have left Student without peers for math

grade, but his progress was such that the Team agreed he needed more intensive programming. Despite the higher level of resources (such as Landmark Outreach) available to the Bancroft program, service delivery is not sufficiently integrated across content areas and is not cohesive enough to meet Student's needs.

Student's placement at Landmark was and is appropriate for Student for the time periods at issue in this hearing. There is no dispute that Landmark is an approved, well-established school that specializes in educating children with language-based learning disabilities. As observed by both Dr. Macht-Greenberg and Dr. Cataldo, and as documented in Landmark's progress reports, Student appears to be benefiting from the slow, methodical pace of instruction, small classes, reduced distractions, and consistent language-based approach that he is receiving at Landmark.

Finally, I note that Andover's program could be appropriate for Student in the near future if either (1) Andover expands the self-contained portion of the language-based classroom to encompass all of the other core subjects,¹⁴ or (2) Student makes sufficient progress with basic reading and writing skills to benefit from the inclusion portion of the program without losing necessary remediation time.

CONCLUSION AND ORDER

Based on the foregoing, the IEPs and corresponding placements for Student covering June 2017 to November 2017 and November 2017 to November 2018 were not reasonably calculated to provide Student with a free, appropriate public education; therefore, upon receipt of appropriate documentation from Parents, Andover shall reimburse Parents for the cost of Student's placement at the Landmark School from June 2017 to June 2018. Additionally, Andover also shall issue an IEP or amendment either providing for an in-district substantially-separate language-based program for all academic content areas or calling for Student's placement at the Landmark School for the period from June 2018 to November 18, 2018.

By the Hearing Officer,

Dated: July 9, 2018

Sara Berman

¹⁴ See, for example, *In Re Lauren & Hampden-Wilbraham R.S.D.*, BSEA No. 150285 (Reichbach, 2015). In that case, the hearing officer found that a program still in the planning stage might be appropriate for the student in the future, if the plans come to fruition. Similarly, changes to Andover's program consistent with Student's needs as outlined in this *Decision* might render it appropriate in the future.

