

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
BUREAU OF SPECIAL EDUCATION APPEALS**

In Re: Student v. Swampscott Public Schools

BSEA No. 1806246

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 an eight-year-old child with language-based learning disabilities, including dyslexia, who currently attends the Landmark School in Beverly, MA pursuant to a unilateral placement made by Parents in approximately July 2018. On March 30, 2018 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 Swampscott Public Schools (Swampscott, SPS or School) were not reasonably calculated to provide Student with a free, appropriate public education (FAPE). Parents seek an order from the BSEA directing Swampscott 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 May 4, 2018. After several postponements which were requested by the parties and granted for good cause, an eight-day evidentiary hearing was held June 6, 15, 20, 21, July 17, 20, October 3, and October 10, 2018 at the office of the BSEA in Boston, MA. Parents and Swampscott were represented by counsel. Both 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 October 31, 2018 to submit written closing arguments, and the record closed on that day. The record in this case consists of Parents’ Exhibits P-1 through P-76, School’s Exhibits S-1 through S-151, as well as witness testimony recorded electronically by the Hearing Officer and stenographically by certified court reporters. Those present for all or part of the proceeding were:

Mother

Father

Robert Kemper Ph.D.

Karl Pulkkinen

Kathleen Babcock

Jay Flannery

Rena Mello

Martha Raymond

Psycholinguistic Evaluator

Public School Liaison, Landmark School

Elementary Head /Academic Advisor, Landmark School

Director, Summer at Landmark, Landmark School

Elementary Team Chair, Swampscott Public Schools (SPS)

Director of Student Support Services, SPS

Sharon Santry	Special Education Teacher, SPS
Beth Speciale	Special Education Teacher, SPS
Mary Jane Spencer	Special Education Teacher, SPS
Donna Kielty	Second Grade Teacher, SPS
Catherine Kalpin	School Adjustment Counselor, SPS
Maureen Altobelli	Speech/Language Therapist, SPS
Jennifer Hunt	Principal, Clarke Elementary School, SPS
Robbin Hoggard	Teacher, SPS
Karen Bengner, Esq.	Counsel for Parents
Mary Ellen Sowyrda, Esq.	Counsel for Swampscott Public Schools
Beth Sherwood, Esq.	Counsel for Swampscott Public Schools
Jocelyn Simpson	Observer, BSEA
Sarah Joor	Observer, BSEA
Sara Berman	BSEA Hearing Officer
Carol Kusinitz	Court Reporter
Jane Williamson	Court Reporter
Anne Bohan	Court Reporter

ISSUES PRESENTED

The issues for hearing were the following:

1. Whether the IEP and placement offered by Swampscott for the period from March 20, 2018 to March 19, 2019 were reasonably calculated to provide Student with a free, appropriate public education in the least restrictive environment (FAPE); 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 July 2018 through March 2019.

2. Whether the IEPs and placements that Swampscott offered and/or provided for the following periods were reasonably calculated to provide the Student with a free, appropriate public education (FAPE) in the least restrictive environment: June 2017-June 2018; September 7, 2017-September 6, 2018; September 9, 2017-September 8, 2018; November 28, 2017-November 27, 2018; if not, whether Student is entitled to compensatory services for those time periods.

POSITION OF PARENTS

Student has severe dyslexia and dysgraphia with an underlying “double-deficit” phonological processing disorder. These disabilities place Student at high risk for failure to develop reading, spelling and writing skills commensurate with her age, grade, and cognitive ability. Throughout Student’s enrollment in SPS, the district has refused to acknowledge the severity of Student’s disabilities and has failed to provide her with the intensive instruction, appropriate methodologies and closely matched peers that she needs to acquire literacy. As a result, Student has failed to make effective progress in her areas of need, and has even regressed in some areas. Faced with the inadequate and inappropriate services offered by Swampscott, Parents were justified in unilaterally

placing Student in the Landmark School, which is a state-approved, well-established, highly specialized school that is designed and equipped to meet the needs of children like Student.

POSITION OF SCHOOL

At all relevant times, Swampscott has provided Student with appropriate services and placements, adjusting and increasing services to meet her evolving needs and incorporating virtually all of the services, methodologies, and interventions that were recommended by Parents' private evaluator. These included individual and small group instruction in phonological processing, reading, writing, spelling and math, placement in a small language-based classroom for core academic subjects, and support within the general education classroom for science and social studies as well as speech/language therapy, and school social work services as needed. Student has benefited from the services provided, making measurable progress in all identified areas of need, while also actively participating in her general education classroom and wider school community. The Landmark School is far too restrictive as a placement for Student who has made and can continue to make effective progress within the language based program as well as in the general education setting with the supports provided by Swampscott.

SUMMARY OF THE EVIDENCE

1. Student is an 8-year-old child with disabilities who is a resident of Swampscott. Student's eligibility for special education and related services from the Swampscott Public Schools pursuant to the IDEA and MGL c. 71B is not in dispute.
2. The parties generally agree that that Student has many strengths. She is a bright, caring, imaginative, fun-loving and well-behaved child with many interests who makes friends easily and gets along well with other children and adults. Student has good social and conversational skills, understands spoken language well, follows school and classroom routines easily, and has no difficulties with attention or self-regulation. She is conscientious and eager to learn. (Father, Kielty, Santry, Spencer, Kemper, Kalpin)
3. The parties further agree that Student has a documented language-based learning disability, characterized as dyslexia and dysgraphia. Student's skills in reading, spelling, and writing are substantially lower than what would be expected in light of her age, grade, and cognitive ability. (Kemper, Santry, Spencer)
4. Student attended a private general education school for kindergarten (2015-2016) and first grade (2016-2017) where she received no specialized services. (Father, Spencer) During Student's first grade year, Parents became concerned about Student's difficulty in developing early reading and writing skills, and in a letter dated March 28, 2017,

Parents referred Student to SPS for an initial special education evaluation. The letter stated, in part, that Student's private school educators and Parents suspected that Student "has a specific, neurologically-based learning disability due to her noted difficulties in accurate and/or fluent word recognition, poor spelling and decoding abilities (dyslexia/dysgraphia), and requested comprehensive testing of Student's phonological processing and rapid automatic naming abilities via the Comprehensive Test of Phonological Processing (CTOPP). (P-6) Upon receipt of Parents' consent, Swampscott conducted psychological and educational assessments in April and May 2017. Student was in the first grade at her private school when the evaluation was conducted. (S-31-34)

5. The psychological assessment, conducted by school psychologist Sara Landergan on April 28 and May 17, 2017, consisted of the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V) and Wide Range Assessment of Memory and Learning-Second Edition (WRAML-2). On the WISC-V, Student achieved "Low-Average" scores in the Verbal Comprehension and Fluid Reasoning Indices, "Average" scores in Visual Spatial and Processing Speed indices and "Borderline" scores in the Working Memory Index. There were significant discrepancies among subtests comprising each of these indices. The WRAML-2 yielded "Low Average" scores in verbal and visual memory and "Average" scores in attention and concentration. (S-32)
6. Ms. Landergan recommended several strategies and accommodations for Student, including, for example, use of models and examples for teaching new information, pairing verbal and visual information, chunking and repeating instructions and information, use of multiple choice format, and manipulatives for mathematics. (S-32)
7. The educational assessment was conducted by a Swampscott special educator, Jennifer Biron, on April 28 and May 17, 2017 and consisted of the reading, writing, math, and oral language subtests of the Wechsler Individual Achievement Test-Third Edition (WIAT-III) as well as the CTOPP. (S-33)
8. Overall, the WIAT-III revealed that Student had generally weaker, "Below Average" skills in basic reading, math, and writing skills and stronger, solidly "Average" skills in oral language (both comprehension and expression), although there were some discrepancies within each category. (S-33)
9. Specifically, on the Reading section Student scored in the "Below Average" to the lower end of the "Average" range in the seven component subtests. Her strongest

(“Average”) scores were in the “Comprehension” and “Oral Reading Fluency” subtests. (S-33)

10. The evaluator stated that these test scores indicated that “[Student] is not yet fluent in identifying letters in the alphabet out of order and is inconsistent in identifying blends and digraphs, and their sounds. She is an emergent reader, as demonstrated by her ability to read a short passage; however, she has not yet developed the ability to decode nonsense words...indicating that she has yet to develop the ability to decode unfamiliar words...Sight word recognition was inconsistent. It is evident, by comments that [Student] made...that [Student] is not a confident reader and does not enjoy reading, which could be connected to the difficulty she has when reading aloud...and being able to make meaning of the passage.” (S-33)
11. Student’s skills in the Mathematics and Math Fluency Subtests of the WIAT-III were both “Below Average,” in the 9th and 14th percentiles, respectively. Within those two categories, Student achieved “Average” scores in Math Problem Solving and Subtraction Fluency, and “Below Average” scores in Addition Fluency and Numerical Operations. She worked slowly and often counted on her fingers. (S-33)
12. Student also achieved a “Below Average” (8th percentile) composite score on the Written Expression Skills subtest of the WIAT-III, which measures the ability to build and combine sentences. On the other hand, Student scored solidly “Average” (50th percentile) in the Oral Language Skills portion of the WIAT-III, which included seven subtests measuring skills in listening/comprehension and oral expression. (S-33)
13. On the CTOPP, which measures phonological processing skills, Student’s composite scores were “Below Average” (12th percentile) for Phonological Awareness and “Average” for Phonological Memory (68th percentile) as well as for Rapid Symbolic and Nonsymbolic Naming (45th and 37th percentiles, respectively). Within these categories, Student scored in the upper portion of the “Below Average” range in the categories of Elision, Blending Words, and Sound Matching; “Above Average” for Memory for Digits, and “Average” for Nonword Repetition and for Rapid Naming of Digits, Letters, Colors, and Objects. She scored “Below Average” in Blending Nonwords. (S-33)
14. The educational evaluation concluded with a list of recommendations including daily practice of sight words and math facts, frequent teacher check-ins to ensure compre-

hension and “small group teaching and re-teaching surrounding phonics instruction and written language.” (S-33)

15. On May 4, 2017, Ms. Rena Mello, Swampscott’s Elementary Team Chair, conducted an observation of Student at her private school. Ms. Mello reported that Student was in a classroom of 19 students in grades 1 through 3, with two teachers. Student was working at a table in a group of four first-graders. She worked steadily and methodically on writing a story, followed class routines, and seemed attentive and engaged during the period of observation. (S-33)

16. On June 7, 2017, the Swampscott Team convened a meeting to consider the evaluations. Both Parents attended the meeting and submitted a written statement of their concerns, which reported that Student was “painfully aware” of her academic struggles, that she compared herself unfavorably to classmates, and cried at night to her Parents and called herself “stupid” because she “can’t read.” Parents felt that Student was experiencing anxiety related to her schoolwork, and would continue to do so without appropriate educational programming. Parents stated that in their view, Student needed a “science-based academic program for dyslexic students,” and that neither Student’s private school nor the Swampscott Public Schools was equipped to provide appropriate services for Student. Finally, Parents stated that they believed Student needed additional formal testing to generate enough data to enable SPS to develop an appropriate IEP. (P-7)

17. During the June 7 meeting, Swampscott determined that Student was eligible for special education on the basis of specific learning disability affecting reading, written language and math. On June 19, 2017, Swampscott proposed both an IEP covering the period from June 5, 2017 to June 4, 2018 and an extended evaluation to take place during the first eight weeks of the 2017-2018 school year. (P-8, P-9)

18. The proposed IEP incorporated the Parents’ Statement of Concerns referred to above and proposed a partial inclusion placement at the Clarke Elementary School in Swampscott for Student’s second grade year (2017-2018). The proposed IEP included four goals: a decoding/encoding goal addressing decoding and encoding closed one-syllable words and identification of sight words; a reading goal focusing on fluency and comprehension; a written language goal to teach Student to write a simple story with complete sentences and correct capitalization and punctuation; and a math goal addressing addition/subtraction facts, telling time, identifying money, use of graphs and charts, and solving word problems. The service delivery grid called for 1x15 minutes/week of consultation services in Grid A, no services in Grid B, and the following services in Grid C: decoding/encoding, 5x30 minutes/5 days; reading, 3x30

minutes/5 days; written language, 3x30 minutes/5 days; and math, 3x30 minutes/5 days. The IEP also provided for Extended School Year (ESY) services during July and August 2017 consisting of 2x45 minutes/4 days each of reading and math for a period of five weeks. (P-8, S-13)

19. The Extended Evaluation Form attached to the IEP proposed a speech/language evaluation as well as additional testing by the school psychologist and special educator to assess Student's executive functioning as well as to more closely examine Student's reading and writing skills. A Team meeting was proposed for October 4, 2017 to review the results of the extended evaluation. (P-9)

20. At the June 2017 Team meeting, Parents had requested placement at a substantially-separate school for children with language-based learning disabilities. The N-1 Form accompanying the IEP explicitly rejected Parents' request, stating that in Swampscott's view, Student could make effective progress in the partial inclusion program proposed by the District. (P-9)

21. On June 29, 2017, Parents sent Swampscott a "Conditional Acceptance"¹ of the proposed IEP as follows: "For implementation purposes, we conditionally accept the IEP and conditionally accept the IEP Placement...however, we reject the sufficiency of the program." Parents accepted the ESY services for July 10 – August 10, 2017. Parents also accepted the proposed Extended Evaluation, but informed Swampscott that they had already arranged for a private evaluation by a private psycholinguistic specialist, Dr. Robert Kemper over the summer, and wished to have Dr. Kemper's evaluation reviewed at the planned October Team meeting. (P-11)

22. From July 10 through August 2, 2017, Student attended two, 45-minute sessions per week of ESY reading services as stipulated in her IEP. Instruction was provided by Ms. Mary Jane Spencer, who is a special education teacher employed by Swampscott. (P-12, S-31, Spencer)

23. Ms. Spencer has been employed by Swampscott as a resource room special education teacher for 34 years. She holds a Master's degree in special education and is certified by DESE in moderate special needs. Ms. Spencer is a certified Wilson instructor, DIBELS administrator and DIBELS trainer, has been formally trained in Project Read, and completed LiPS² training in November 2017. (Spencer)

¹Parents initially had rejected the proposed placement. (P-9)

²LiPS stands for the Lindamood Phoneme Sequencing Program, which is a sequential, multi-sensory program designed to remediate deficits in phonemic awareness. (Kemper)

24. During the ESY program, Ms. Spencer addressed sound-symbol association, short vowel discrimination, word families, identifying sounds within a word, oral reading fluency, sight word vocabulary and rhyming. Ms. Spencer observed that Student had weaknesses in phonemic awareness, sight word vocabulary, decoding and fluency. Ms. Spencer testified that Student was motivated and hard-working during the ESY sessions; nonetheless, Ms. Spencer recognized quickly that Student was “a severely dyslexic, reading disabled girl,” who could not yet access the Wilson instruction that had been planned for the ESY program, and who needed specialized services. After noting Student’s low skill level and speaking with her former private school teacher, Ms. Spencer concluded that Student had received neither specialized services nor any formal reading program during Kindergarten and first grade in private school; rather, she had listened to and discussed stories that were read to her. (P-12, S-31, Spencer)
25. Student’s summer reading instruction conflicted with her camp schedule, and Parents had to pull her out of camp mid-morning, deliver her to the ESY program, and then return her to camp afterwards. Parents asked the School if Student’s instruction time could be rescheduled, but were told that this could not happen. In a letter dated August 7, 2017 to Martha Raymond, Swampscott’s Director of Student Support Services, Parents reported that Student experienced “shame, confusion, and embarrassment” when she had to leave camp mid-morning, and then explain her absence to friends. Before one of the sessions Father had to carry Student to the car, kicking, screaming, and saying that her reading instruction was “for babies,” and “stupid.” After this incident, which occurred during the fourth week of the five-week ESY session, Parents discontinued the ESY services “to prevent further social/emotional upset” for Student. (Father, P-13) Ms. Spencer did not observe Student to be in distress when she met with her, however, stating that Student had a “positive attitude” despite having to attend school during the summer. Ms. Spencer did not observe Student’s behavior before she arrived at or after she left their sessions. (Spencer)
26. There is no dispute that due to a scheduling error by Swampscott, Student did not receive the math ESY services provided in her IEP and that Swampscott later offered compensatory math services to Parents to make up for the missed sessions. (Father, Raymond, P-11)
27. On August 16, 2017, Dr. Robert Kemper, Ph.D., CCC/SLP, conducted a private psycholinguistic evaluation of Student. (P-3) Dr. Kemper holds a Master’s degree and Ph.D. in speech/language pathology with a specialization in disorders of reading and writing. Dr. Kemper’s private practice has focused almost exclusively on evaluating children with language-based learning disabilities, including children diagnosed with

or suspected of having dyslexia and/or dysgraphia. He has over 30 years of experience in conducting such evaluations. (Kemper, P-4)

28. Dr. Kemper's evaluation consisted of the following standardized tests of Student's oral and written language skills (reading and written expression): the Peabody Picture Vocabulary Test-4 (PPVT-4), the Expressive Vocabulary Test-2 (EVT-2), the Oral and Written Language Scales-II (OWLS-II), the Understanding Spoken Paragraphs section of the Clinical Evaluation of Language Fundamentals-5 (CELF-5), the Test of Word Reading Efficiency-2 (TOWRE-2), the Slosson Oral Reading Test (SORT-R3), Test of Written Spelling-5 (TOWS-5) and the CTOPP-2. (Kemper, P-3)

29. Student's score on the PPVT-4, which required her to select one of four pictures corresponding to an orally-presented word, was "Average" (53rd percentile). Her score on the EVT, which required her to give a one-word response to a question based on a picture was at the lower end of the "Average" range (32nd percentile). Dr. Kemper stated that the discrepancy between scores on the PPVT-4 and EVT-2 indicated word retrieval difficulty. Student's scores on the oral language portions of the OWLS-II were "Average" (34th percentile) in Listening Comprehension and "Below-Average-Poor" (7th percentile) for "Oral Expression," which assessed her ability to formulate oral responses to questions. Her overall score on this portion of the OWLS-II was "Below Average" (9th percentile). Student's score on the Understanding Spoken Paragraphs section of the CELF-5 was "Average" (63rd percentile). (Kemper, P-3)

30. On the TOWRE-2, which measures the ability to read and pronounce words and non-words, Student achieved a composite Total Word Reading Efficiency of "Below Average-Poor" (3rd percentile) based on scores of "Below Average-Poor" on Sight Word Efficiency (6th percentile) and "Below Average-Very Poor (1st percentile) on Phonemic Decoding Efficiency. Student was able to recognize or decode 12 of 23 words presented but was unable to correctly decode any of the non-words, including basic syllable types. On the SORT-R3, Student was able to recognize or decode 15 words, which translated into a "Below Average" score for her age (14th percentile) and grade (9th percentile). (Kemper, P-3)

31. On the Written Language Composite, comprising a Reading Comprehension (RC) and Written Expression (WE) components, Student scored "Below Average-Very Poor" (below the 1st percentile). The RC and WE scores fell at the 3rd and below the first percentiles, respectively. Similarly, Student's spelling scores on the TOWS-5 were "Below Average-Very Poor" at below the 1st percentile. On the WE portion of the TOWRE-II and the TOWS-5, Student was unable to spell words like "milk," "yes," or "green." (Kemper, P-3)

32. Student's scores on the CTOPP-2 were "Below Average-Very Poor" (2nd percentile) in Phonological Awareness, "Average" in Phonological Memory, and "Below Average" in Rapid Symbolic Naming (16th percentile). Dr. Kemper stated that the CTOPP-2 showed Student to have a "double deficit" phonological processing disorder, with depressed scores in Phonological Awareness and Rapid Symbolic Naming, which placed her "at the highest risk for failure to develop competent and expected reading/spelling skills." (Kemper, P-3)
33. Dr. Kemper concluded that based on testing, Student met the criteria for diagnoses of dyslexia, exacerbated by the "double deficit" phonological processing disorder referred to above, as well as of dysgraphia (a severe disorder of written expression). He also diagnosed her with a "specific language impairment" that was primarily expressive in nature and affected her ability to convey her thoughts both orally and, especially, in writing. (Kemper, P-3)
34. His report recommended that Student be provided with (1) a daily individual tutorial in reading, spelling, and written language, delivered by a teacher with training, certification, and experience in reading approaches that utilize Orton-Gillingham principles such as the Wilson Reading Program; (2) intensive training in LiPS to address phonological processing weaknesses and provide a foundation for code-based reading instruction; (3) direct individual or small-group speech/language therapy. (Kemper, P-3)
35. Dr. Kemper's additional recommendations included Project Read to support reading comprehension, access to books in an accessible format, and systematic teaching of writing in conjunction with oral language development. Dr. Kemper further recommended structure and routine in Student's instruction, use of multisensory language-based strategies across all settings, and modified language input. He also recommended additional evaluations in the areas of occupational therapy (OT) and assistive technology (AT). (Kemper, P-3)
36. Regarding placement, Dr. Kemper's report stated that "[b]ecause of the severe nature of [Student's] disability, and her knowledge of what is expected of her and what she is able to do academically, it is strongly recommended that [Student's] special education services be provided within...a substantially separate educational program... housed within...a school that is designed specially to meet the needs of students, such as [Student] who demonstrate severe language-based learning disabilities." Dr. Kemper's initial evaluation, report, and recommendations were made before Student had entered school in Swampscott. (P-3, Kemper)
37. Student began attending the second grade at the Clarke Elementary School in Swampscott on or about August 29, 2017 pursuant to the conditionally-accepted IEP issued in June 2017. She was assigned to the general education second grade class taught by Donna Kielty. For the first four months of the 2017-2018 school year, Student attended this general education classroom for morning activities, science, social studies

and math, as well as recess, lunch, and “specials” (art, music, gym and technology). She received specialized, pull-out individual or small group instruction in phonics, reading and written language from Mary Jane Spencer as well as in-class support and pull-out math instruction from an Education Support Professional (ESP), Catherine Quinn. (Kielty, Spencer)

38. Immediately after Student began second grade, Parents became concerned because on her first day at her new school, Student was presented with a word search activity and a writing exercise that she was unable to complete because she was not able to read or write. Additionally, she was initially given unmodified classroom and homework assignments that she was unable to complete because she was unable to read or write. Student’s IEP was not fully implemented for at least two of the first five days of school. (Father, Kielty) On September 6, 2017, Mother sent an email to Martha Raymond, Swampscott’s Director of Student Support Services, reporting that Student was feeling hopeless and depressed about school and, on one occasion, had to be physically carried to the car to get there. Mother requested an immediate, emergency Team meeting to address these issues. (P-14)
39. In response to Mother’s request, the Team convened on September 7, 2017 and, on the same day, proposed an amendment to the IEP of June 19, 2017. The amended IEP, covering June 7, 2017 to June 6, 2018, provided for “modified classwork and homework as needed (PLEP-A),” access to the school adjustment counselor as needed (“additional information”), and an offer of compensatory services to make up for ESY math instruction that was not provided during the prior summer as well as for reading, written language, and math instruction that was not provided during the first two days of school. Finally, the IEP of September 9, 2017 proposed ESY services in math and reading during the summer of 2018. The N-1 form accompanying the proposed amendment indicated that Parents had rejected Student’s partial-inclusion placement at Clarke Elementary School, and had stated that Student required placement at the Landmark School. Swampscott rejected Parent’s request for Landmark. (P-15; S-8, 9, 10, 11) On October 7, 2017, Parents rejected the proposed IEP as amended as well as the proposed placement. (P-16)
40. During September 2017, Swampscott completed its extended evaluation of Student as agreed the previous June. This evaluation consisted of assessments in the areas of speech/language, executive functioning, reading, and written language.
41. The speech-language assessment was conducted by Maureen Altobelli, CCC-SLP and consisted of a review of Dr. Kemper’s evaluation report (which Swampscott had received but not yet reviewed at a Team meeting), an observation of Student in class, and standardized testing with the Comprehensive Assessment of Spoken Language-Second Edition (CASL-2). Ms. Altobelli observed that Student was able to listen attentively to a story and answer true-false questions, and to write a short sentence with much teacher help. On the CASL-2, which is an assessment of oral language ability, Student scored “Average” or “Above Average” in multiple subtests of receptive and expressive language and comprehension, with the exception of “Below Aver-

age” scores in “Grammaticality Judgment” and “Antonyms.” Her composite scores for “Expressive Language,” “Lexical/Semantic,” and “Syntactic” indices were all “Average.” (S-28)

42. Ms. Altobelli concluded that Student had average to above-average ability to understand, evaluate, and recall spoken information in the classroom, including following directions and absorbing new information. She demonstrated average expressive language skills, including the ability to make inferences and use figurative language. She needed continued growth regarding antonyms and grammar. (S-28)
43. Swampscott assessed Student’s executive functioning skills with the Parent and Teacher forms of the Behavior Rating Inventory of Executive Function (BRIEF). Student’s skills all fell in the “At Expected Level” range, with the exception of a “Clinically Significant” score in “Organization of Materials.” The evaluator recommended strategies to help Student with organization, such as clear expectations for tasks, consistent routines, preview and review of information, support with organization of materials, and breaking down multi-step activities into chunks. (S-30)
44. Student’s reading teacher, Mary Jane Spencer, conducted four assessments targeting literacy skills: the Word Identification and Spelling Test (WIST), the Gray Oral Reading Test-Fifth Edition (GORT-5), the Test of Early Written Language-Third Edition (TEWL-3), and the Benchmark Assessment System (BAS). On the WIST, which measures word identification and spelling, Student scored in the “Poor” to “Very Poor” range on all subtests, corresponding from the fourth to less than the first percentile. On the GORT-5, scored “Below Average” in Rate and Fluency, “Poor” in Accuracy, and “Average” (25th percentile) in Comprehension. On the TEWL-3, Student scored within the “Below Average” range (12th percentile). (She scored in the “Average” range (68th percentile) in the Basic Writing subtest of the TEWL; however, this subtest simply required her to perform tasks such as pointing to the title of a story or the closing and greeting of a friendly letter.) On the Contextual Writing subtest, where Student was required to spontaneously produce a written story in response to a picture, Student scored in the “Very Poor” range (below the 1st percentile), as she was unable to write a simple story with a beginning, middle and end. (S-29, Spencer)
41. On the BAS, which is designed to determine a child’s independent and instructional reading levels, Student was able to read a story at a Level B. To meet the BAS benchmark for the beginning of second grade a student would be expected to read stories at Level J/K. (S-29, Spencer)
42. On September 18, 2018, Dr. Kemper observed Student in Ms. Kielty’s general education classroom as well as in her pullout reading instruction with Ms. Spencer. Dr. Kemper testified that according to Ms. Spencer, Student was unable to access Wilson Reading; therefore, Ms. Spencer was using an “eclectic” and “linguistic” approach to assist Student, which Dr. Kemper felt was insufficient. He testified that Student’s needs were “beyond Ms. Spencer’s skill set.” (P-2, Kemper, Spencer)

43. A Team meeting was held on September 19, 2017 to review the school-based evaluations referred to above as well as Dr. Kemper's evaluation report and report of his observation. Parents attended the meeting, accompanied by their attorney and Dr. Kemper. Dr. Kemper stated that he believed that Student's placement was inappropriate given the severity of her needs, and that she needed to be in a separate, specialized day school such as Landmark to make effective progress. School-based Team members agreed with Dr. Kemper's evaluation results but disagreed with his recommendation for an outside placement. (Kemper, Spencer, Father, P-22)
44. On September 25, 2017, Swampscott issued a proposed IEP containing essentially the same goals and benchmarks in decoding/encoding, reading, written language, and math as the IEP issued in June 2017 and amended on September 7, 2017. The IEP issued on September 25 added a goal in expressive language focusing on synonyms/antonyms and oral expression/sentence production. The service delivery grid contained 1x15 minutes/week each of consultation from the speech/language therapist and special education teacher in Grid A, and 5x30 minutes/week of inclusion support in Grid B. Grid C stipulated 5x60 minutes/week of a 1:1 reading tutorial, 5x30 minutes/week of written language instruction, and 1x30 minutes/week of speech/language therapy. The IEP also provided for the same ESY services as its predecessor (4x45 minutes per week, each, of reading and math instruction). (P-17, S-6)
45. The N-1 form accompanying the IEP stated that Student would have access to the School Adjustment Counselor as needed based on Parents' voiced concerns about Student's emotional distress about her struggles in reading and writing. (S-5) Parents' and Dr. Kemper's view, stated at the Team meeting, was that Student did not need counseling; rather, they felt she needed a different educational placement. (Father, Kemper) The N-1 form also stated that the School had proposed 6 hours of compensatory services corresponding to missed services during summer 2017 and the first two days of the school year. (S-5)
46. On September 26, 2017, Parents filed a request for hearing with the BSEA (BSEA No. 1802986) in which they requested, inter alia, an order directing Swampscott to fund Student's placement at a private school such as Landmark or Carroll. Parents withdrew this hearing request without prejudice on December 5, 2017. (P-45)
47. On October 17, 2017 Parents conditionally accepted the IEP for purposes of implementation, with the understanding that the individual and small group structured instruction in decoding/encoding and phonemic awareness referred to the LiPS program and that Student would be receiving LiPS instruction. Parents rejected the sufficiency of the IEP services and placement as well as the omission of Dr. Kemper's testing results in the "Key Evaluation Summary." (P-25, P-46)
48. On November 6, 2017, Swampscott's occupational therapist, Sarah Patane, MS, OTR/L, conducted an occupational therapy (OT) evaluation to assess Student's skills related to handwriting. Her performance on tests of her postural control and fine mo-

tor, visual motor, and visual perceptual skills was age-appropriate. She had mild difficulty with motor planning and handwriting that did not appear to affect her academic progress. (S-27)

49. On the same date as the OT evaluation, November 6, 2017, Student underwent an assistive technology (AT) evaluation conducted by Swampscott's AT consultant, She recommended a trial of having Student use a mobile device such as an I-Pad as well as tools such as text-to-speech and word prediction applications to digital text. (S-26)

45. On or about November 17, 2017, Swampscott's school psychologist, Jenna Morin, conducted a psychological evaluation to supplement prior evaluations conducted by the School and by Dr. Kemper and to focus on Student's social, emotional and behavioral skills. The evaluation consisted of a record review and the Parent and Teacher Rating Scales of the Behavior Assessment System for Children-Third Edition (BASC-3). The Parent Rating Scale showed age-appropriate, "Average" ratings in all social, emotional, and behavioral domains. The Teacher Rating Scale showed "At Risk" and "Clinically significant" ratings for "anxiety" and "learning problems," respectively; otherwise, scores were "Average." The psychologist made general recommendations for encouraging Student, helping her with self-advocacy, breaking down large assignments, and possibly modifying the volume of her workload. (S-25)

46. On November 13, 2017, Dr. Kemper conducted an abbreviated re-evaluation to assess Student's progress since his prior evaluation of August 2017. Dr. Kemper re-administered the PPVT-4 and the EVT-2 to assess Student's progress in oral language abilities. On the PPVT-4, Student's score increased from 101 in mid-August 2017 to 109 three months later, representing an increase from the 53rd to the 73rd percentile. On the EVT-2, Student's score increased from the 32nd to the 39th percentile. Dr. Kemper concluded that the increases in scores over time were not statistically significant, and that her scores in both tests were essentially the same over the three months in question. (P-2, Kemper)

48. Dr. Kemper also re-administered the TOWRE-2. Student's Total Word Reading Efficiency score remained in the "Below Average-Poor" range (3rd percentile), the same as in August 2017. Similarly, Student's scores in the SORT-3, which measured her ability to read single words, remained in the "Below Average" range, at the 12th percentile for her grade and the 11th percentile for her age. Student was able to recognize a total of 17 words (from an expected 62 words for her grade and 72 for her age), which reflected her lack of "basic underpinning skills" in decoding and word recognition. (P-2, Kemper)

49. On the OWLS-II, Student achieved the same "Below Average-Very Poor" score range as she had in August; however, she had shown some slight improvement in the "Written Expression" subtest, moving from less than the 0.1 percentile to the 0.1 percentile. Student's updated spelling scores as measured on the TOWS-5 was essentially the same "Below Average-Very Poor" (less than the 1st percentile) as it had been in August 2017. (P-2, Kemper)

50. Based on the scores achieved in the updated evaluation, Dr. Kemper concluded that “there is no evidence of effective progress” since August 2017, and that it “is extremely critical that Student be placed in an alternative education setting as soon as possible.” (P-2, Kemper)
51. On November 21, 2017 the Team convened to discuss the results of the extended evaluation as well as Student’s classroom performance to date. On November 28, 2018 Swampscott proposed an IEP with similar goals as the prior IEP, but with a change in placement to a substantially separate language-based classroom (LBLC) within Student’s elementary school for reading, written language, and math. The IEP also called for weekly speech/language therapy and ESY services in reading and math. Student would remain in Ms. Kielty’s second grade classroom for the remaining academic subjects, non-academic activities and “specials.” (S-3, P-24) On January 4, 2018, Parents rejected the proposed IEP and placement. (P-24A)
54. On January 12, 2018, at Parents’ request, Swampscott proposed an extended evaluation consisting of an eight-week placement in the LBLC program referred to above. Parents accepted the proposed eight-week placement on January 22, 2018. (S-2, Father, Raymond, Mello)
55. Between the beginning of the 2017-2018 school year and approximately October 17, 2017, Student’s day was divided between second grade classroom and individual or small group pull-out instruction in reading, written expression and math. Beginning on or shortly after October 17, 2017, when Parents conditionally accepted the IEP issued on September 19, Student began receiving additional services in the form of 30 minutes per week of speech therapy from Ms. Altobelli and LiPS instruction from Beth Speciale, as special education teacher. On or about January 24, 2018, Student entered the LBLC classroom for instruction in reading (including decoding/encoding and LiPS), written expression, and math. She continued to attend the general education second grade class for science, social studies, non-academic activities, and “specials.” (Santry)
56. In January 2018, the LBLC classroom consisted of seven students (including Student) in grades 2 through 4. Student was the only second-grader. The other students all had language-based learning disabilities affecting reading and/or written expression. One or two children were also classified as having disabilities in the area of communication. All had at least average intelligence and none presented with behavioral issues that disrupted the classroom environment. (Santry, P-145) The lead teacher was Sharon Santry, who has six years of experience as a special education teacher and ten years of prior experience as an Education Support Professional (ESP). Ms. Santry holds a Master’s degree in special education and is licensed in moderate disabilities, grades Pre-K through 8 and elementary education, grades 1 through 6. She also holds certifications³ in Wilson and DIBELS and has completed training in LiPS. There also

³These certifications are issued by the companies that produce Wilson and DIBELS to professionals who complete the requisite training in those programs, and not by the Department of Elementary and Secondary

was an ESP assigned to the LBLC classroom, Ms. Terri Gadman, who is a high school graduate and who has worked in the LBLC with Ms. Santry for several years. (Santry, Hunt)

57. After moving into the LBLC program, Student continued to start and end each day in Ms. Kielty's classroom as she had done since the beginning of the school year, and moved between that classroom and the LBLC class approximately three times per day, spending approximately 210 minutes per day in the latter classroom. Within the LBLC class, Ms. Santry worked with Student in a daily, 60 minute, 1:1 tutorial in reading, two, 45-minute individual or small group ELA lessons and 60 minutes of individual or small group math instruction. Student attended morning meeting, science, social studies, lunch, recess and "specials" with her general education class. (Santry, Kielty)
57. The 1:1 reading tutorial focused on decoding and encoding using LiPS and Wilson methodologies. The two daily ELA lessons consisted of work on a variety of skills including reading and listening comprehension, reading fluency, spelling, written expression, and phonics awareness, using programs such as Lexia, Framing Your Thoughts, and Read Live. In math, Student used Touch Math for computation. Ms. Santry used a multi-sensory approach to teach topics such as money and geometry concepts. (Santry)
58. While Ms. Santry delivered virtually all of Student's instruction in LiPS, and designed and planned the lessons in ELA and math, many of those ELA and math lessons were implemented by the ESP, Terri Gadman. (Santry)
59. Pursuant to Grid A of the IEP, Ms. Santry and Ms. Kielty consulted with each other daily regarding Student's programming, and regularly collaborated to coordinate instruction between the two classrooms and ensure that Student was accessing general education content. For example, Ms. Santry would pre-teach vocabulary that would be used in an upcoming general education science lesson, or work with Student on a written assignment that was part of a general education activity. Catherine Quinn, an ESP assigned to the general education classroom, assisted Student with generalizing strategies learned in the LBLC to the second grade classroom. Many of Student's written assignments in the general education classroom were scribed for Student; Swampscott viewed this scribing as general education accommodation. (Santry, Kielty)
60. According to Ms. Santry and Ms. Kielty, Student was an active, engaged, attentive and enthusiastic participant in both of their classrooms. She volunteered to answer questions and participated in discussions in both settings and was proud of her work. Ms. Santry described Student as a "sponge" who absorbed information quickly, retained it, and applied it to new tasks without the need for re-teaching. (Santry, Kielty)

Education (DESE), which issues educator's licenses.

61. At the beginning of the 2017-2018 school year, Parents informed School staff that Student was suffering emotionally as a result of her placement in what Parents and Dr. Kemper viewed as an inappropriate setting. Parents communicated to the School that Student cried at home about the fact that she could not read and did not feel as though she belonged at the Clarke School, and was reluctant to attend school. In response, the Clarke School social worker, Catherine Kalpin, included Student in daily “Lunch Group,” which was an informal group of about four to five children who met at lunchtime to build social connections and help new students integrate into the school. The Lunch Group was a general education service that was available to children with and without IEPs. Student participated in the group until approximately January 2018, when she told Ms. Kalpin that she would prefer to stop attending the group so that she could have lunch with a larger group of friends. (Kalpin)
62. Ms. Kalpin also began providing Student with counseling for approximately 30 minutes per week in October, 2017, pursuant to the conditionally-accepted IEP issued on September 20, 2017, which called for “as needed” access to the school adjustment counselor. Ms. Kalpin worked with Student on issues of self-awareness. She observed that over time, Student’s self-confidence increased, she began to perceive herself as a reader, and was very excited about her learning. These individual meetings ended after the Team meeting of March 2018, discussed below, because Student appeared happy and well-adjusted in school and because Parents wanted the services to end. (Kalpin)
63. During March 2018, Student underwent formal and informal assessments of her progress. Ms. Santry administered the WADE (to measure her decoding/encoding progress in the Wilson program), the BAS (to assess her ability to access texts at particular levels of difficulty), and also tracked her progress in LiPS and Read Naturally/Read Live. According to the WADE, Student had increased her ability to name or identify the following: consonant sounds to 22 of 24 (from 16/24 in July 2017 and 21/24 in November 2017); digraphs/trigraphs (from 2/9 in July and November 2017 to 5/9 in March 2018); vowel sounds (from 3/56 in July 2017 to 8/56 in November 2017 and 17/56 in March 2018); Total Real Words Read (from 0/10 in July 2017 to 1/10 in November 2017 to 8/10 in March 2018); Total Nonsense Words Read⁴ (from 0 in July 2017 to 3 each in November 2017 and March 2018); Spelling Real Words (from 0 in July 2017 to 3 each in November 2017 and March 2018); Reading Sight Words (from 9/23 in July 2017 to 11/24 and 25/38 in November 2017 and March 2018, respectively); and Spelling Sight Words (from 5/16 in November 2017 to 6/16 and 7/15 in November 2017 and March 2018, respectively. (S-44, Santry)
64. On the BAS, Student’s Independent Level moved from A to F between September 2017 and March 2018 and her Instructional Level moved from B to G in the same time period, with an accuracy level of 91% and excellent comprehension. On the BAS High Frequency Words Assessment, she progressed from 58/75 words in November 2017 to 68/75 words in March 2018. She was able to follow the predictable

⁴The record did not indicate how many nonsense words were actually presented to Student.

pattern of text when reading, and used pictures to help her decode unfamiliar words. She was improving her oral reading fluency. Additionally, Student was making progress in writing using graphic organizers, templates, and word processing programs. (S-1, S-44, Santry)

65. On March 9, 2018 Dr. Kemper conducted a Psycholinguistic Re-evaluation by re-administering the following tests given in November 2017: the TOWRE-2, Form B, the SORT-R3, the OWLS-II Reading Comprehension and Written Expression Scales, and the Test of Written Spelling-Fifth Edition (TWS-5), Form B, and the CTOPP-2. (Kemper, P-1)
66. On the TOWRE-2, Student's scores were the same or slightly lower than they had been in November 2017. Standard scores in Sight Word Efficiency were 81 (10th percentile) in both November 2017 and March 2018. In Phonemic Decoding Efficiency the scores were 68 and 66 (1st percentile) in November and March, respectively. In Total Word Reading Efficiency, the scores were 73 in November 2017 and 72 in March 2018 (3rd percentile). All scores fell in the "Below Average-Poor" range in all three measures. Student was able to recognize 7 more words in March than in the previous November but this did not affect the test score. She was able to correctly decode only one non-word.
67. On the SORT-3, Student's standard score for her grade fell slightly from 81 in November 2017 to 79 in March 2018 (10th percentile). Her standard score for age rose slightly from 80 to 86 (19th percentile). According to Dr. Kemper, this did not represent a statistically significant difference from prior testing. (Kemper, P-1)
68. Student's scores on the OWLS-II remained in the "Below Average-Poor or "Very Poor" range between November 2017 and March 2018. Standard scores in reading comprehension, written expression, and the composite of those two scores fell, respectively from 73 to 71; from 51 to 40 and from 61 to 54. Scores on the TOWS-5 similarly showed spelling performance that was essentially the same as in November 2017. (Kemper, P-1)
69. Similarly, Student's scores on the CTOPP-2 changed little between August 2017, when Dr. Kemper first administered the test, and March 2018, approximately seven months later. The composite standard score in Phonological Awareness increased from 63 to 67, from below the 1st percentile to the 1st percentile. In Phonological memory, the standard score dropped from 95 to 85. Rapid Symbolic Naming scores dropped from 85 to 82. All composite scores were deemed "Below Average" or, in the case of Phonological Awareness, "Below Average-Very Poor." (Kemper, P-1)
70. Dr. Kemper testified that overall, Student had made little or no statistically significant or meaningful progress in the skills needed for acquiring literacy and that some skills, especially in writing, had decreased between November and March 2018. He attributed a small increase in Student's sight word recognition to her having memorized additional familiar words based on their shape, noting that Student had strong visual

memory skills and a typically-developing vocabulary, but emphasized that she had not yet learned to decode real or nonsense words. (Kemper)

71. Dr. Kemper conducted three observations of Student's placements in Swampscott. In September 2017, he observed Student in a tutorial session with Ms. Spencer. He testified that Ms. Spencer knew that Student's dyslexia was severe and was using an inappropriate "linguistic" methodology to assist her because she did not appear to have any other methodologies available. In approximately November 2017, before Dr. Kemper observed the LBLC classroom to assess its potential appropriateness for Student. (Student had not yet begun to attend the program). Dr. Kemper observed that the proposed peers were older than Student. He testified that based on the children's appearances and demeanor, he assumed that they were of lower intelligence than Student but learned after examining redacted IEPs of these students that this was not the case; the children were of at least average intelligence. Dr. Kemper further testified that he observed Ms. Santry delivering a lesson from Framing Your Thoughts, and was positively impressed with her instruction. During the November 2017 Team meeting which ultimately resulted in Student's LBLC placement, Dr. Kemper opined that the LBLC class would be inappropriate, because they were older than Student, further, they didn't appear "bright" because they were not asking questions or interacting much in the classroom (but on the other hand, were able to read and write at a higher level than Student). He further stated that Ms. Kielty's second grade classroom, which he also had observed, was inappropriate for Student because the other students were all able to read and write; therefore, Student would be unable to access the curriculum without accommodations. (Kemper)
72. In March 2018 Dr. Kemper again observed the LBLC classroom, this time with Student in attendance. Ms. Santry was reading a Dr. Seuss book to the class and asking questions. Student raised her hand and answered every question, but her classmates did not participate. Dr. Kemper questioned the appropriateness of the lesson for the fourth graders in the class.⁵ Student then "read" a Dr. Seuss book aloud to the class, with fluency, expression and confidence. Dr. Kemper learned from Parents that Student had listened to her family members read this book to her many times and had memorized it. (Kemper, Father)
73. On March 9, 2018, Swampscott issued its second quarterly progress report for Student. The report indicated that Student was "making progress" in all identified goals. For example, the report stated that with respect to her reading goal, Student had increased her ability to read words in an online fluency program from 41 to 54 words per minute; that she had increased her ability to retell stories, identify the title, characters and main events, and to answer questions about text. Regarding her goal in decoding/encoding, Student had achieved several phonemic awareness (LiPS) benchmarks and was progressing in reading targeted sight words. In math, Student had achieved her IEP goal in addition, and was "progressing" in subtraction, time-telling, solving word problems, and money skills. Student was "progressing" towards meeting her expressive language goal. (P-54)

⁵Dr. Kemper's observation happened to coincide with Dr. Seuss Week. (Mello)

74. Meanwhile, Parents applied for Student's admission to the Landmark School. On March 12, 2018, Landmark administered several standardized tests to Student as part of the application process. The tests and scores were as follows:

- ! Lindamood Auditory Conceptualization Test (LAC-3): Standard score (SS) 91, 27th percentile;
- ! Gray Oral Reading Test-5 (GORT-5): Rate, SS=7, 16th percentile; Accuracy, SS= 7, 16th percentile; Fluency, SS=6, 9th percentile.
- ! Woodcock Reading Mastery Tests-3rd Edition (WRMT-3): Word Identification and Word Attack: SS= 77 (for both), 7th percentile (for both)
- ! Landmark Informal Writing Sample (LMK Wrtg): Sentence writing level
- ! Berea Visual-Motor Gestalt (BEREA): Did not get gestalt of many figures
- ! the Detroit Test of Learning Aptitude (DTLA-2): Word sequence, below average; Oral Directions, average.

(P-64, Pullkinen)

75. In a letter dated March 14, 2018, the Landmark School accepted Student to its 2018 summer program as well as to its elementary school program for 2018-2019. (P-67)

76. On March 20, 2018 the Team convened to review the results of Student's extended evaluation pursuant to the conditionally accepted IEP issued in November 2017. The meeting was facilitated by the BSEA Mediation Coordinator. Parents, Dr. Kemper, Student's teachers and service providers from Swampscott and counsel for Parents and Swampscott attended the meeting. The Team reviewed Dr. Kemper's March 2019 report and progress reports from School personnel. In sum, Dr. Kemper and Parents felt that Student was not making effective progress, that she in fact had regressed, and needed an outside placement. School personnel indicated that Student was making progress with services provided in the LBLC program, that she was functioning well socially in the general education classroom and accessing curriculum with support, and that the services and placement continued to be appropriate for Student. (P-64)

77. At this Team meeting, Parents stated that they would conditionally accept an IEP for the LBLC partial inclusion program, while continuing to reject its sufficiency. Additionally, they conditionally accepted the IEP dated November 20, 2017⁶ while rejecting its sufficiency. They reported Student's acceptance at Landmark, and stated their intention to unilaterally place Student at the Landmark School for the summer program in 2018 as well as for the 2018-2019 school year, to seek reimbursement from Swampscott for this placement, and to proceed to a hearing at the BSEA in an effort to secure such reimbursement. In a letter dated March 23, 2018 Parents memorialized their intention to unilaterally place Student at Landmark and seek reimbursement for the foregoing time periods. (P-63)

⁶They had not formally responded to the November IEP; rather, Parents had agreed to the extended evaluation based on that IEP.

78. On April 2, 2018 Swampscott issued an IEP covering the period from March 20, 2018 to March 19, 2019. This IEP called for a continuation of services in reading, written language, and math in the LBLC classroom, and inclusion support in other subjects in the general education setting. The proposed IEP also called for ESY services in reading, written language and math during summer 2019. The IEP contained the same goals in phonological awareness/decoding, reading, written language, math, and expressive language, as the IEP issued in November 2017, with updated benchmarks. The service delivery grid proposed the following: in Grid A, 1x15 minutes/5 days, each of consultation among general and special educators and the speech/language pathologist; in Grid B, 3x30 minutes/5 days of inclusion support; and, in Grid C, 5x60 minutes/5 days of 1:1 reading tutorial; 5x90minutes/5 days of ELA; 5x60 minutes/5 days of math; and 1x30 minutes/5 days of speech/language therapy. The IEP also proposed approximately 4 weeks of ESY services consisting of 4x90 minutes/4 days of reading and 2x45 minutes/4 days of math. (S-1)
79. On April 30, 2018, Parents rejected the above-referenced IEP and placement based on inappropriateness and insufficiency, but accepted both for purposes of implementation of services only. (P-68)
80. Student attended the summer program at Landmark five days per week for 24 days between July 2 to August 3, 2018. Her day comprised a morning academic program consisting of two, 55-minute classes in language structure and language arts, a 55-minute 1:1 tutorial, and a 25-minute recess break, and an afternoon program consisting of recreational activities. Except for the 1:1 tutorial, the academic classes consisted of six children (including Student) and one teacher, who held a Master's degree and initial DESE licensure. Student was grouped with peers who were similar to her in age and skill level. Some of the peers had diagnoses of ADHD, but did not require additional management or services during the summer program. The summer language arts class was thematically based, and students worked on developing written stories from oral expression, using sentence and paragraph frames to assist with organization. In the 1:1 tutorial, Student worked on decoding/encoding, phonemic awareness with LiPS, and fluency. The Landmark summer program is not approved by DESE to receive public funding; however, some school districts do refer students to that program. (Flannery, P-151)
81. Student began attending the Landmark School Elementary program in or about September 2018. The Landmark School ("Landmark") is a DESE-approved private day and residential⁷ school that exclusively serves children with language-based learning disabilities, including dyslexia, in elementary, middle, and high school programs. Landmark accepted Student into its elementary program because based on a review of testing by Swampscott and Dr. Kemper, prior IEPs, and its own screening process, Student fit the profile of children whom Landmark is able to serve, that is, children with at least average intelligence whose primary special need is a language-based learning disability affecting reading, writing and spelling. While some students also

⁷Residential services are offered only at the high school level. (Pulkkinen)

have been diagnosed with ADHD, they do not present with disruptive behaviors. (Pullkinen)

82. As of the first day of hearing in this matter,⁸ Student's program at Landmark was expected to consist of a daily all-school meeting followed by a 1:1 tutorial focused on reading and spelling (including LiPS), a small group math class, alternating gym and elective (such as art or woodworking), small group enrichment class (including relaxation, keyboarding, social-emotional groups, music and projects), small-group science and social studies, and oral expression/literature, which is intended as a bridge to written expression. Classes consist of no more than eight students with one teacher. Within each grade, students are grouped with others with similar skill levels for each class. A speech therapist is available to consult with teachers or, on occasion, to work with individual students as appropriate. Science and social studies are used as vehicles for teaching study skills. (Pulkinen, Babcock)
83. As of the conclusion of the hearing in this matter, Student had attended the Landmark summer program for approximately 24 days and the day school program for approximately one month. The parties did not present evidence on Student's adjustment to or progress in her 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 her 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 her potential, she 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.*,

⁸The first day of hearing was June 6, 2018, before the beginning of the 2017-2018 school year. There is no evidence in the record as to whether any changes were made in Student's programming after the academic year had begun.

supra, 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). In certain cases, such as the instant case, parents may be entitled to reimbursement from their school district for "self-help," *i.e.*, for the expenses incurred by unilaterally placing a child in a private school, if the parents can demonstrate that (1) the public school failed to offer the child an appropriate program and (2) that the placement provided by the parent is appropriate. *Florence County School District Four v. Carter*, 510 US 7, 13 (1993).

FAPE entails both a substantive component, as described above, and procedural protections for students with disabilities and their parents. 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. In the instant case 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 Swampscott 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.⁹

1. Parents must prove that the IEP and placement offered for the period from March 20, 2018 to March 19, 2019 was inappropriate such that Parents were justified in placing Student at Landmark in July 2018.
2. If Parents meet this burden, they must demonstrate that the Landmark placement was appropriate such that they are entitled to reimbursement for the period from July 2018 to March 19, 2019, when the last proffered IEP expires.
3. Parents must show that the IEPs that Swampscott offered and/or provided for the following periods were inappropriate such that Parents are entitled to compensatory services: June 2017-June 2018; September 7, 2017-

⁹*Schaffer v. Weast*, 546 U.S. 49, 44 (2005)

September 6, 2018; September 9, 2017-September 8, 2018; November 28, 2017-November 27, 2018.

The parties substantially agree that Student has many significant language-based learning disabilities, including dyslexia and dysgraphia, which make it difficult for her to acquire basic literacy skills that are commensurate with her cognitive ability, age or grade level. The parties also agree that Student needs an intensive, cohesive, language-based program that provides specialized instruction in all aspects of literacy acquisition, including but not limited to phonemic awareness, decoding/encoding, written expression, and fluency, and which implements language-based strategies across the curriculum.

The only dispute in this matter is as to the setting in which services should be delivered. Swampscott asserts that Student can be served in the partial inclusion program at the Clarke School, consisting of specialized services within the LBLC, coupled with inclusion support in a general education classroom. Parents argue that Student's dyslexia and dysgraphia are so severe that they cannot be remediated in Swampscott's program, and must be addressed at a separate school such as Landmark, which only serves students with language-based learning disabilities. Parents further contend that they have tried the District's program in good faith, and that Student not only has not progressed, she has "flat-lined" or regressed in acquiring literacy. They rely on Dr. Kemper's testing as well as his view that Swampscott's providers, in particular Ms. Santry (and previously, Ms. Spencer), lack the experience and expertise needed to meet Student's needs. Parents also argue that Swampscott has either deliberately or mistakenly misrepresented Student's progress. Parents have asserted, for example, that teachers have inflated test scores, exaggerated Student's performance with on-line instructional programs, scribed written assignments without permission and/or presented scribed materials as having been written by Student, and the like.

The record establishes that Student is a motivated, hard-working child who has average cognitive ability. She presents with a significant language-based learning disability, encompassing "double-deficit" dyslexia and dysgraphia as well as some related difficulties with expressive language. Her disabilities which severely impair her ability to learn to read, write and spell. Unlike many students with language-based learning disabilities, however, Student has virtually no secondary social/emotional, attentional, or behavioral challenges. In fact, the record is replete with evidence of Student's solid social and conversational skills, cooperative behavior, and emotional stability, as well as good "student skills" such as attention, adaptability, organization, motivation, and engagement. Teachers describe her as a "sponge," who readily absorbs information, retains it, and applies it to new situations. Clearly, in light of this profile, achieving literacy is a goal for Student that is "appropriately ambitious in light of [her] circumstances." *Andrew F., supra.*

Parents recognized Student's struggles with early reading and writing tasks in approximately mid-first grade, when Student was in private school, and appropriately referred her for an initial evaluation by Swampscott. From that time forward, Swampscott has consistently and timely assessed and attempted to meet Student's needs as they have become evident through multiple evaluations and day-to-day experience in

school, and has responded promptly to Parents' concerns during the course of the single school year that Student spent in the District. Specifically, Swampscott conducted an initial evaluation in June 2017, while Student was still enrolled in private school, determined her to be eligible, and offered summer services for summer 2017. Due to an administrative error, Student did not receive the summer math services called for in her initial IEP, but the School offered compensatory services. At the beginning of the 2017-2018 school year, Parents raised concerns about classroom activities that Student was unable to access because of her disability, and SPS convened a Team meeting within one day to attempt to address those concerns.

As the 2017-2018 school year progressed, either at Parents' request or on its own initiative, Swampscott conducted additional evaluations, reviewed the private evaluations of Dr. Kemper, and convened several Team meetings to adjust Student's IEP in response to new information about her needs. Of note, Swampscott adopted many if not most of Dr. Kemper's recommendations, including but not limited to the following: intensive daily 1:1 or very small group tutorials in phonemic awareness (using the LiPS program) decoding and encoding using a structured, sequential system; fluency, oral and written expression, and math. Indeed, probably the only recommendation that Swampscott did not adopt was Dr. Kemper's recommendation for a substantially separate day school placement.

From approximately September 2017 through most of January 2018, services were delivered under a pull-out model, where Student worked on reading and writing-related skills (including LiPS) in individual or very small group sessions with a special educator (Ms. Spencer and Ms. Speciale), remaining in Ms. Kielty's second grade with inclusion support for social studies, science, and non-academics. In mid-November 2017, in response to concerns about Student's progress raised by Parents and Dr. Kemper, Swampscott offered more intensive services in the form of placement in the LBLC with Ms. Santry for literacy-related instruction and math coupled with continued supported inclusion in Ms. Kielty's second grade and weekly speech/language therapy. Student entered this placement in late January of 2018 and attended until the end of the school year. When, at the beginning of the 2017-2018 school year, Parents stated that Student was suffering emotionally as a result of a placement that they felt was not meeting her needs, Swampscott offered school social work services via Ms. Kalpin. When Parents asked to have those services discontinued, Swampscott did so, noting that Student presented as happy and well-adjusted in school.

Parents, for their part, accepted the services offered by Swampscott. Although they fundamentally disagreed from the outset that SPS could offer Student a FAPE, and had many disagreements along the way regarding details of Student's service delivery, they allowed Student to participate fully in the programs and services offered to her. This is not a case where a school district failed to take reasonable steps to respond to a child's unique needs as they evolved, or where parents failed or refused to allow their child to benefit from the services offered, even though they believed them to be insufficient.

The fundamental question in this case is whether Parents have met their burden of demonstrating that Swampscott's IEPs and services failed to provide Student with a

FAPE. The answer is complicated to determine in this case. On one hand, the overwhelming weight of the evidence is that Swampscott developed five successive IEPs that responded to Student's special needs, increasing services as the extent of those needs became clearer. The IEPs and placements were driven by both school-based testing and Dr. Kemper's evaluations and incorporated recommendations by all evaluators. On the other hand, the parties fundamentally disagree as to whether the services that Swampscott provided actually enabled Student to make progress that was reasonably commensurate with her abilities.

The School argues that Student did, in fact, make measurable progress in all areas of need, and relies on observations of Student by teachers and Dr. Kemper, informal or curriculum-based assessments such as the BAS, work samples, assessments of progress in programs such as LiPS or Read Live, and similar measures. The record shows that after arriving in Swampscott as a non-reader, Student appeared to make some slow gains by these measures. She acquired some phonemic awareness skills through LiPS instruction, progressed from being unable to blend syllables or recognize vowels, to being able to identify some syllable types and digraphs, and from being able to read only at a mid-kindergarten level when she entered SPS in August 2017 to being able to read a Grade 1-level text by January 2018. During 2017-2018 Student acquired knowledge of word sounds and recognized increasing numbers of sight words. She was taking steps towards applying newly-acquired skills. There is no dispute that with support, Student acquired new math skills. With accommodations for her reading and writing deficits, there was no evidence that Student could not absorb second-grade content in science and social studies.¹⁰ Finally, Student was proud of her work and began to perceive of herself as "a reader."

Parents argue, on the other hand, that any progress asserted by the School was either insufficient or illusory. Parents point formal assessments, including standardized tests such as those administered by Dr. Kemper. And Dr. Kemper's testing with instruments such as the CTOPP, the TOWL-II, and the like indicate virtually no statistically significant progress in the areas measured between August 2017 and March 2018. According to the test results, whatever skills that Student may have acquired as observed by teachers or captured by informal assessments were not reflected in the standardized testing. Unfortunately, the record contains no information about a reasonable time line for expecting newly acquired skills to boost standardized test scores, which presumably are normed on national samples of disabled and non-disabled children.

Similarly there is no credible, reliable information in the record about how much growth in standardized test scores during the time period in question would be required to demonstrate "effective progress" for this unique Student. When asked this question during the hearing, Dr. Kemper testified that he would expect to see one year's growth in one year's time. He provided no information about the basis for this answer, and did not link this answer to Student's particular circumstances. Rather, he simply reiterated his

¹⁰School witnesses presented much evidence about Student's high level of classroom engagement and happy involvement in her school community; however, I note that Student does not have special needs in the areas of social/emotional functioning or in general comprehension of orally-presented grade level content.

belief that children like Student needed to be educated in specialized schools for dyslexic children; therefore, I do not find his statement to be persuasive. Another unanswered question is the effect of Student's having had no special education services (and, apparently, little formal reading instruction) prior to second grade. There is no evidence on the record as to whether such lack of prior exposure to services would have any effect on this particular Student's rate of progress (as opposed to her starting point or baseline) once specialized instruction and services did become available.

Additionally, neither Dr. Kemper nor any other witness for Parents was able to point to specific deficiencies in Swampscott's program to which to attribute the absence of progress as measured by standardized tests. Again, Dr. Kemper stated the general opinion that children with severe dyslexia such as Student need early remediation in a specialized school setting, potentially transferring back to public school as competent readers in the fourth or fifth grade. Otherwise, he stated, such children will continue to fall behind and develop secondary emotional difficulties. Swampscott, he argued, is simply too small a district to adequately serve Student. He testified that certain individual teachers and staff had too little training and/or experience in LiPS, Wilson or other methodologies, and too little expertise with children whose dyslexia was as severe as Student's, but was unable to point to specific errors by, for example, Ms. Santry in her work with Student. He stated that Student spent excessive instructional time with an ESP, Terri Gadman, but never observed Ms. Gadman working with Student and, again, could not establish a nexus between the reported skills of Ms. Gadman and Student's progress or lack thereof. Dr. Kemper noted that Student appeared to be memorizing sight words and books rather than learning to decode them, but again did not point to a particular deficiency in the program that was responsible if, indeed, this was the case. In general, while I credit Dr. Kemper's objective evaluation results as well as his specific instructional recommendations (*e.g.*, for LiPS), I find that his unshakeable conviction that Student can only be educated at a school such as Landmark, which opinion was formulated before Student even entered Swampscott, is not persuasive, because it tends to reflect his general educational philosophy rather than an analysis of how SPS was or was not meeting Student's unique needs. Finally, there is no evidence on the record regarding Student's progress at Landmark. Indeed, Student had only been attending Landmark for approximately one month at the conclusion of the hearing (not including the summer program) which is too little time for any assessment of her progress or lack thereof in that placement.

After a careful review of the record and arguments in this case, I find that Parents have not met their burden of persuasion that the successive IEPs and placements at issue in this case were inappropriate. While Parents' concern about the absence of statistically significant progress on standardized testing is understandable, they have not presented persuasive evidence as to what Student's progress should have been on such testing during the time period at issue, nor have they demonstrated that the unchanged standardized test results were caused by defects in Swampscott's services. Moreover, the record does contain evidence that Student made slow gains in literacy-related skills during her single school year in Swampscott, and Parents have not shown that this skill acquisition would have proceeded more quickly in a different setting. While this is a

close case, Parents have not presented enough evidence to meet their burden under *Schaffer v. Weast, supra*.

CONCLUSION AND ORDER

Based on the foregoing, I conclude as follows regarding the issues for hearing:

1. The IEP and placement offered by Swampscott for the period from March 20, 2018 to March 19, 2019 were reasonably calculated to provide Student with a free, appropriate public education in the least restrictive environment. Therefore, Parents are not entitled to reimbursement for the costs incurred by their unilateral placement of Student at the Landmark School for the time period from July 2018 through March 2019, and I need not reach the question of 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 July 2018 through March 2019.
2. The IEPs and placements that Swampscott offered and/or provided for the following periods were reasonably calculated to provide the Student with a free, appropriate public education (FAPE) in the least restrictive environment: June 2017-June 2018; September 7, 2017-September 6, 2018; September 9, 2017-September 8, 2018; November 28, 2017-November 27, 2018. Moreover, since Parents have demonstrated no procedural violations that deprived Student of a FAPE or prevented Parents from meaningfully participating in the process of developing Student's IEP, Parents are not entitled to compensatory services.¹¹

Notwithstanding the above, Student's progress in this matter must be monitored closely and should be assessed again, with formal instruments, after Student has received most of an additional school year of specialized programming. Therefore, Swampscott is ORDERED, with Parental consent, to re-evaluate Student with the same or equivalent standardized instruments used by Swampscott and Dr. Kemper during the period addressed in this Decision, and shall complete such re-evaluation and convene a Team meeting prior to expiration of the IEP covering March 20, 2018 to March 19, 2019.

By the Hearing Officer,

¹¹20 USC §1415(f)(3)(E)(i); 34 CFR 300.513(a)(2); *See also, e.g., Board of Education of Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176, at 405-406 (1982); *Murphy v. Timberlane Regional School Dist.*, 22 F.3d 1186, 1196 (1st Cir. 1994), quoting *Roland M. v. Concord School Committee*, 910 F.2d 983, 994 (1st Cir. 1990); In *In Re Framingham Public Schools and Quin*, 22 MSER 137 at 142 (Reichbach, 2016), and cases cited therein. In any event, compensatory service is not generally available as a remedy for an IEP that is subsequently determined to be substantively inappropriate in the absence of procedural violations. *See Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13 (1st Cir. 2006

Sara Berman

Dated: December 10, 2018

