

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

Student v. Maynard Public Schools

BSEA # 1900813

DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC § 1400 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 USC § 794), the state special education law (MGL ch. 71B), the state Administrative Procedure Act (MGL ch. 30A), and the regulations promulgated under these statutes.

PROCEDURAL HISTORY

Parent filed a request for hearing on August 31, 2018. The hearing was scheduled for October 5, 2018. The School's request to postpone the Hearing was allowed on October 5, 2018, a Pre-Hearing Conference was scheduled for November 15, 2018, and the Hearing was scheduled for December 10 and 11, 2018. The case was re-assigned from Hearing Officer Sara Berman to Hearing Officer Catherine Putney-Yaceshyn on December 7, 2018.

The Hearing was held on December 10, 2018 at Catuogno Court Reporting, Worcester, MA and on December 11, 2018 at the Fowler Elementary School, 3 Tiger Drive, Maynard, Massachusetts. The Parties' request to postpone the closing of the record to submit written closing arguments by January 18, 2019 was allowed. Both Parties submitted their written closing arguments on January 18, 2019 and the record closed at that time.

Those present for all or part of the hearing were:

Mother

Father

Diane Stephens¹

Melissa Orkin

Maria Serpa

Anita Pliner

Diane Locatelli Stephens

Tere Ramos, Esq.

Carol Riccardi-Gahan

Maria Soler

Rosanne Lambert

Chris Kitchell

Roberta Green

Mary Finnegan

David Satin

Parents' consultant

Parents' consultant

Parents' consultant

Parents' neuropsychologist

Parents' consultant

Parents' attorney

Director of Student Services, Maynard Public Schools

Teacher, Maynard Public Schools

Teacher, Maynard Public Schools

Team chair, Maynard Public Schools

Consultant, Maynard Public Schools

Speech language pathologist, Maynard Public Schools

Attorney/observer, Maynard Public Schools

¹Ms. Stephens testified via speaker phone.

Alisia St. Florian
Christine Lo Schiavo
Brenda Ginisi
Catherine Putney-Yaceshyn

Attorney, Maynard Public Schools
Court Reporter
Court Reporter
Hearing Officer

The official record of this hearing consists of Parents' exhibits marked P-1 through P-31² and Maynard's exhibits marked S-1 through S-37 and approximately ten hours of recorded oral testimony.

ISSUES

1. Whether the IEP proposed for Student's 2018-2019 school year was reasonably calculated to provide him with a free appropriate public education in the least restrictive environment.
2. If not, whether Parents are entitled to reimbursement for their unilateral placement of Student at the Carroll School.

SUMMARY OF THE EVIDENCE

1. The student (hereinafter, "Student") is a 12 year old student residing within the Maynard Public School district. He is described as "extremely hardworking, polite and conversant." He has been diagnosed with dyslexia³ and has specific challenges with rapid naming and reading fluency. Student's primary language, as noted in his IEP, is English and he has participated in a Spanish immersion program within the Maynard Public Schools (P-21, S-4)
2. Maynard school psychologist, Amy Schwarz, conducted a psychological evaluation of Student on January 12 and 19, 2016, when he was in the third grade.⁴ She noted that Student saw a therapist outside of school to address social skills and low confidence. She noted that Student speaks some Portuguese, speaks better in Spanish, and the language in which he is most confident speaking and listening is English. On the WISC-V, Student's scores ranged from the average to very high ranges. A full scale IQ could not be

²P-32 was excluded from evidence.

³There is some dispute as to whether Student has been diagnosed with dyslexia. Dr. Green testified that she did not see any formal diagnosis of dyslexia in the documents that she reviewed and believed that other providers referred to Student as having been diagnosed with dyslexia after reading Student's speech language evaluation report from MGH Chelsea Health Care Center dated April 20, 2016. That report states, "[Student] presents with areas of vulnerability in spoken language and notable deficits in written language that are consistent with a language based learning disability and characteristics of dyslexia." Further, he "presents with vulnerability in his comprehension of spoken paragraphs and requires increased time to effectively formulate and express his thoughts orally."

⁴Ms. Schwarz reviewed Student's school records and utilized the WISC-V, NEPSY-II, BASC-2 (Parent, Teacher Rating Scales) and the BRIEF (teacher form).

calculated due to a significant discrepancy between index scores. His verbal comprehension skills were deemed age-appropriate. His visual-spatial skills, (high average range) working memory (high average), and fluid reasoning (very high range) were well developed. His processing speed and verbal comprehension were within the average range. Ms. Schwarz noted that Student's Processing Speed Index score was 26 points lower than his Fluid Reasoning Index score, indicating a relative weakness in processing speed. She recommended an accommodation of extra "think time" when Student was asked to provide a response or perform a task, but noted no significant concerns regarding Student's cognitive abilities.

Ms. Schwarz noted concerns at home regarding social skills, leadership, functional communication, anxiety, and withdrawal. Concerns at school were reported regarding attention, social skills, leadership, and functional communication. Challenges with executive functioning were reported in both settings.

Ms. Schwarz recommended that Student would benefit from lengthier information and directions being broken down into smaller parts. She recommended the use of graphic organizers or a checklist. Further, she recommended providing Student with "think time", frequent teacher check-ins, and maintaining teacher awareness of the pace of instruction. (S-26)

3. Jen Jones, a special education teacher at Maynard, conducted an educational assessment of Student in January 2016 to address Parents' concerns. She noted Student's performance indicated strengths in the areas of reading, mathematics, written expression, and oral language. Student scored in the average range of all of the reading subtests except oral reading fluency, on which he scored in the below average range. On written expression subtests, Student scored in the average range on all subtests except spelling, on which he scored in the low range. He scored in the average range on all oral language subtests.

Ms. Jones recommended that instruction be provided in small chunks; that Student be provided time to process information and to respond; that he be encouraged to use strategies for his decoding and comprehension and that he be encouraged to review his written work for correct sentence structure. (S-27)

4. Maria Soler was Student's teacher in the third and fifth grade in the Spanish immersion program. She has a bachelor's degree and is certified in Spanish for grades five through twelve. She explained that Maynard's Spanish immersion program is one-way immersion, in that students receive instruction in their second language. Ninety percent of the instruction was in Spanish from Kindergarten through second grade and specials were in English. In third grade a reading specialist came to the classroom and provided all students with explicit instruction in spelling and English. (Soler)

Ms. Soler described Student as very hard-working and introverted. She noted that he was very attentive and got along with the other students. He participated in class, but was quiet. He would answer questions when she asked him directly. She did not observe any

signs of anxiety or frustration from Student and does not recall Mother reporting any. (Soler)

In the fifth grade Student received all of his academics in Spanish except for history, which was in English⁵. Ms. Lambert was his special education teacher. She provided him with daily pull-out reading instruction. Student also received Orton-Gillingham tutoring after school from a private tutor⁶. Ms. Soler's only concern about Student's academic performance was his reading fluency. She noted that his comprehension was very good and he participated in class discussions when she asked his opinion. He usually preferred to speak in English. His Spanish speech was more labored. Most of the homework Ms. Soler assigned was reading. She asked students to read from twenty to thirty minutes per night in Spanish. They could listen to books on tape or read. For the last novel the class read Ms. Soler sent Student home with the book and an audiotape. Student was able to discuss the book in class. He was able to keep up with the curriculum in her class. Student participated in class discussions. Early in the year Student was being pulled out during the class' read-aloud time, but his schedule was re-adjusted to allow him to participate in that part of the class. (Soler)

Ms. Soler used different methods of presenting material to her class. She utilized teacher directed instruction, peer interaction and discussions, she did "sketch noting" where students sketched what she was reading to them. In class, Student had access to a computer for writing and access to audio books. (Soler)

During fifth grade Ms. Soler administered the Star assessment to Student three times. The Star Assessment is an untimed, computer based instrument which requires students to read passages and answer reading comprehension questions. It determines students' grade equivalency and their instructional reading level. In September 2017 Student scored at a 5.1 grade equivalency, in January 2018 he scored at a 5.7 grade equivalency, and in May 2018 he scored at a 6.0 grade equivalency. (S-4, pg.5, Soler) Ms. Soler noted that the scores reflected progress and growth. (Soler)

5. Mother testified that although Student speaks some Portuguese at home and participated in the Spanish immersion program in Maynard, he is most comfortable with English. She described the immersion program as being 100 percent Spanish speaking (except for specials) for Kindergarten through second grade, and 50 percent Spanish for third through fifth grade and consisting of Spanish literature and culture from sixth grade on. She noted that Student first showed academic difficulty in first grade when it took him longer than others to complete work. He received Title I services during second and third grade. She became concerned when his teacher reported that he was struggling in both languages and Mother suspected a disability. She requested that Student be evaluated for special education in third grade and he was initially deemed not eligible for an IEP. Mother

⁵Some of the reading and writing components of the curriculum were embedded in the history class. (Soler)

⁶Maynard provided funding for the tutoring after the September 22, 2016 Team meeting. (S-19, P024)

brought Student for a speech language evaluation at Massachusetts General Hospital in April 2016 (See Report at S-37.) and he was found to have dyslexia. He was found eligible by Maynard at the end of third grade. (Mother)

6. The Team met on September 22, 2016 to review a rejected IEP for the period from May 19, 2016 through May 18, 2017 and to review parental input. (S-19, P-24) Maynard proposed a new IEP with goals in decoding, encoding and reading. The grid included pull out reading services with a special education teacher 2 x 45 minutes per week from 5/19/16-5/18/2017 and reading/writing with a special education teacher 2 x 60 minutes per week from 10/17/2016-5/18/2017. (S-19, P-24) The N1 accompanying the IEP indicated that the reading services would address fluency and comprehension and the reading/writing services would be provided “by a person certified in an ‘evidence-based’ reading program for Dyslexic students.” It further stated that the district did not have a staff person certified in Orton Gillingham to provide services to Student and would therefore, pay Student’s current outside provider for 2 x 60 minutes of instruction per week⁷. (S-18)
7. Parents accepted the IEP and full inclusion placement on October 19, 2016, but noted a number of concerns in an accompanying letter. Parents’ letter stated that they believed the IEP should state that Student’s dyslexia impacts him in both Spanish and English. They believed his accommodations should include assistive technology including audiobooks and speech-to-text and text-to-speech programs. They further wished for his accommodations to include extra time for writing tasks. They noted their “major area of concern” was that the IEP did not provide Student with any services in Spanish even though Student was receiving fifty percent of his daily instruction in Spanish. (S-20)
8. Karole Howland, Ph.D., CCC-SLP, conducted a private spoken and written language evaluation of Student on February 2, 2017⁸. Dr. Howland concluded that Student’s listening and reading comprehension were areas of strength within his language profile. Student exhibited above average comprehension of syntactically complex paragraphs and showed strengths in reading comprehension despite his reading fluency issues. His comprehension faltered when he was required to read aloud. Dr. Howland noted that Student had difficulty with many tasks that required expressive formulation which suggested deficits in word retrieval, working memory, planning, and organization of discourse. She noted that his performance was consistent with a diagnosis of Expressive Language Disorder. With respect to Student’s reading, Dr. Howland found that Student demonstrated average performance on measures of decoding when he did not have time constraints. His reading fluency and automaticity were well below the average range. She found it encouraging that Student’s decoding accuracy was so strong, and noted that with

⁷The N1 noted that Student had been making progress with Orton-Gillingham since he began the program in April 2016. (S-18)

⁸Dr. Howland utilized the Test of Integrated Language and Literacy (TILLS); the Peabody Picture Vocabulary Test-IV; the Test of Word Reading Efficiency-2; the Elementary Spelling Inventory; the Gray Oral Reading Test-5; the Qualitative Reading Inventory-2 (using 4th grade narrative passages) and Systematic Analysis of Language Transcripts (SALT)

continued, intensive intervention she would expect Student's automaticity to improve significantly. (P-11, S-25)

Dr. Howland recommended that Student receive speech language therapy for at least 2 sessions per week, along with daily reading/spelling intervention. She suggested that Student's expressive language be accommodated by instruction in the use of graphic organizers and other tools. She recommended continued use of Orton-Gillingham because it has proven to be effective for Student. She further suggested the use of the RAVE-O program and allowing Student to use text-to-speech software. (P-11, S-25)

9. Mother stated that she expected school to get better for Student when he began receiving special education services, but it did not. He continued to struggle and homework was very difficult. Student was missing "social" portions of day because of his pull-out services. Peers were impatient with his slow reading and constantly corrected him, which frustrated him and made him feel badly about himself. He felt self-conscious when the teacher asked him if he needed help. (Mother)
10. The Team reconvened on April 13, 2017 for Student's annual review. (S-17) There was no dispute that Student continued to require specialized instruction to make effective progress. The Team reviewed the speech and language evaluation from Dr. Howland (See ¶ 8.) and discussed Parents' concerns. (S-14) The IEP resulting from this meeting contained goals in the same two areas as the previous IEP. The grid contained pull-out services in "reading/writing" with a special education teacher 2 x 60 minutes per cycle, and "reading" with a special education teacher 4 x 30 minutes per cycle. Parents accepted the services in the IEP, but rejected the sufficiency and appropriateness of the IEP, as they did not believe it met all of Student's needs. (S-15, P-23) Mother wrote a letter dated June 12, 2017, detailing her concerns. She stated that the IEP did not incorporate the results and recommendations of the Boston University speech language evaluation. She listed a number of areas of speech and language need she did not believe were being addressed and restated her belief that Student should be provided with services in Spanish. (S-16) Ms. Gahan, Maynard's Director of Student Services, testified that there was never any report from any outside expert that Student was not making effective progress in the Spanish immersion program. (Gahan)
11. Student attended the Tufts Summer Reading Program at the Center for Reading and Language Research from June until August 2017 when he was a rising fifth grader. During the course of the four week program, he received over 30 hours of reading instruction in both Wilson Reading and the RAVE-O curricula. Melissa Orkin, Ph.D., the Director of the program, supervised graduate students who administered pre and post-testing to Student. At the end of the program Student was able to read 74 words correct per minute at the Fountas & Pinnell Level Q with 98% accuracy. Dr. Orkin made a number of recommendations for classroom accommodations for Student. Among them were: reduced quantity of work in favor of quality as needed; providing extra time on tasks and for processing and sharing verbally; linking new information with previous knowledge; providing frequent review; hands-on activities; providing a variety of ways to demonstrate knowledge; providing books at Student's reading level (which she assessed as

being at the late third to early fourth grade level); and utilizing technology. Her report does not recommend a substantially separate language-based program. (P-11, S-24)

12. Roseanne Lambert was Student's special education teacher during the 2017-2018 school year (Student's fifth grade.) She has a bachelor's degree in elementary and special education, and a Master's degree and a C.A.G.S. in learning disabilities. She has worked in Maynard for 37 years and has taught special education at the fifth grade level for twenty years. During Student's fifth grade, she provided Student with individual pull-out services every day⁹. He worked on comprehension, fluency, and spelling. She assessed Student's progress using the Star program and the DIBELS. She used Great Leaps for fluency and a Readworks for comprehension and writing. She reported that Student made progress in all areas except fluency, his area of greatest need. She noted that his reading was choppy and it fluctuated depending on his interest in what he was reading. She would hope that his fluency in reading English would improve when he was in an English only classroom instead of the Spanish immersion program. (Lambert)

Ms. Lambert and Ms. Soler discussed Student daily. They reviewed his accommodations and talked about what he was doing in class and how else they could meet his needs. Ms. Lambert believes that the accommodations in Student's IEP were provided to him and that he benefitted from them. Ms. Lambert had a friendly relationship with Student and he never expressed feeling anxiety to her. She communicated with Mother mostly by providing progress updates every few months by email or mail. She does not recall Mother contacting her to express concerns about Student's academic progress. (Lambert)

13. The Team reconvened on October 6, 2017 to review the Tufts University Center for Reading and Language evaluation (referenced in ¶ 11) and Massachusetts General Hospital evaluation (See ¶ 8.) The Team added information from the reports to Student's Key Evaluation Results and Summary section of the IEP. The Team discussed the need to include an updated reading goal with a focus on systematic teaching of grammar and syntax. Mary Finnegan, a certified speech language pathologist in Maynard, with a Master's degree in speech language pathology, a C.A.G.S in communication science disorders, and Orton-Gillingham certification, presented the Massachusetts General report (S-37). The Team proposed adding an expressive language goal written by Ms. Finnegan and including speech language services in the service delivery grid. (S-8) The Team proposed an IEP Amendment which updated Goal #2 (Reading) added an Expressive Language Goal and added direct services with a speech language pathologist 1 x 45 minutes per cycle¹⁰. (S-9) Ms. Finnegan would have provided the services, but Parents did not accept them. (Finnegan)

⁹There was another student (or students) in the room working independently on the computer at the same time, but Ms. Lambert worked only with Student. (Lambert, Stephens)

¹⁰Ms. Finnegan's goal addressed identifying story grammar elements, on sequential terminology and using transition words, and on word retrieval strategies. The Team proposed that Student receive small group speech and language therapy 1 x 45 minutes per week.

Parents partially rejected the IEP Amendment, specifically, the speech and language services. (S-9) In a letter dated December 5, 2017, Parents stated that they were rejecting the speech language services because they had provided private speech language services and the private provider determined Student had met his goals. They noted expressed strong reservations about accepting the IEP as they did not believe it provided appropriate services for Student. They maintained that Student required a small, language-based classroom that used methodologies such as Orton-Gillingham throughout the day. They did not believe that the services proposed in the IEP were comprehensive enough and believed that the IEP should address Student's executive function skills. They noted that they would carefully monitor Student's progress and would seek an out-of-district placement if [Student] "continue[d] to falter." (S-10)

14. The Team reconvened on December 14, 2017 to consider findings from an Assistive Technology evaluation which provided options to assist Student in accessing grade-level text and facilitate more efficient written output. (S-12) The Team proposed an IEP Amendment which added relevant findings from the assistive technology report to the Student Strengths and Key Evaluation Results section of the IEP. (S-13, P-22)
15. Ms. Finnegan, the speech language pathologist, ran Student's advisory group of twelve students during his fifth grade. The advisory group was a general education class that targeted social emotional learning in which all students participated. She noted that Student was great and one of the only students who did not "fool around." Student paid attention, participated, and was very appropriate. Topics discussed included bullying, positive thinking, building confidence, and growth mindset. Student never expressed any concerns about school during her class. (Finnegan)
16. Anita Pliner, Ph.D, J.D.¹¹, conducted a neuropsychological evaluation of Student on January 5 and 12, 2018, when Student was in the fifth grade¹² and wrote a report of her findings. (P-10) Dr. Pliner did not observe Student in school and did not speak to any administrators or teaching staff at the Maynard Public Schools. (Pliner) She referenced a February 2017 speech language assessment done at Boston University as being consistent with a previously diagnosed Language-Based Learning Disability/Dyslexia and Expressive Language Disorder. Dr. Pliner noted that Student presented as a polite and engaging boy who spoke easily to her about various subjects.

Dr. Pliner reported that Student's global cognitive skills as assessed by the WISC V indicated that Student had average verbal skills (Verbal Comprehension: 113), a strength

¹¹ Dr. Pliner has a bachelor's degree, a Master's degree, and a doctoral degree in psychology.

¹² She administered the Wechsler Intelligence Scale for Children V, Rey Osterrieth Complex, Wide Range Assessment of Learning and Memory II, California Verbal Learning Test-Children's Version, Delis Kaplan Executive Function System (Verbal Fluency), Boston Naming Test, Tower of London: 2d Edition, Wechsler Individual Achievement Test – Third edition, Gates MacGinire Reading Test, Level 5, Form S, and Behavior Rating Inventory of Executive Functions – Parent Report. She also conducted a diagnostic interview and a record review. (P-10)

in nonverbal/visual spatial skills (122) and a relative weakness in working memory (100) and processing speed (105) indices. His full scale IQ score was 113. Dr. Pliner noted that Student had a “relative weakness” in his verbal skills, “although all fell in the very high average range.” She further noted that most of Student’s executive functioning skills were age-appropriate, although she noted that the following skills were more challenging for him: verbal working memory and his ability to flexibly shift from one cognitive task to another. She also noted that some of his organization skills, although in the average range, were a relative weakness for him.

Student’s academic functioning was assessed via the WIAT III and Gates MacGinitie Reading Test. His score in math problem solving was 118 (grade equivalent of 8.2). His Sentence combining was a 101 (grade equivalent 5.7) and his sentence building was a 96 (grade equivalent 4.4). On the essay composition sub-test Student scored 86 on word count, 106 on theme development/text organization and 74 on grammar/mechanics. His word reading score was 112 and pseudoword decoding was 98. He scored 88 on spelling. Dr. Pliner noted that Student had shown “good improvement in his decoding skills since he has been tutored regularly in Orton-Gillingham decoding strategies.” His ability to read single words as well as reading words in context was average as long as he had no time limit. Under timed conditions, Student completed slightly less than 2/3 of comprehension questions and had a grade equivalence of 4.2. When he was given extended time to complete the test, he scored at the 70th percentile with a grade equivalency of 7.0.

Dr. Pliner concluded that Student has a language-based learning disorder/dyslexia and a mild weakness in metacognitive executive functioning skills which she described as “relatively compromised.” She noted that consistent with 2016 school-based testing Student’s verbal skills fall in the solid to high average range, and he has strengths in visual spatial skills and math skills. He also has some “challenging areas of functioning that affect his output.” She noted his reading disability is “seen in his weak rapid naming skills and compromised word retrieval skills.” She explained that he struggles to fluently decode and encode words which results in a spelling and reading rate below his grade expectation.

Dr. Pliner recommended that Student participate in a “full integrative school day program with a low student to teacher ratio that incorporates language-based support in all main academic subject areas.” She also suggested that he continue to participate in daily sixty minute one-to-one Orton Gillingham tutoring in addition to reading speed drills. Further, she recommended a full assistive technology assessment and that Student have all books downloaded to his computer, or other device, to access class material. Additionally, she suggested Student receive a highly structured writing program and individualized small group support in written expression. She suggested that he receive training in keyboarding and speech to text and text to speech software. Finally, she recommended that Student have preferential seating and that his teacher check-in frequently with him to ensure his comprehension. (P-10) Dr. Pliner did not seek or receive any input from Maynard when making her recommendations. Although she reviewed Student’s IEPs, she did not form any opinion as to whether Student was making effective progress while in Maynard. (Pliner)

Dr. Pliner testified that when Student was asked to write an essay he became sullen and his affect changed. She explained that she recommended the full integrative school day program with language-based support and a low student to teacher ratio because she saw Student become “another kid” when he had to perform tasks that were difficult for him. She was worried about his self-esteem. She noted that he was a bright student and was well aware of the areas in which he struggled. She wanted to “see him get bolstered academically” so his self-esteem would not go “down the tubes.” Her recommendations were also based on his reading and writing weakness and she was concerned that the demands in using those skills increase as students move to higher grades. (Pliner)

17. Diane Locatelli Stephens, Ph.D., an educational specialist consultant with the Integrated Center for Child Development, was hired by Parents to observe Student in his school program and determine whether the supports and services being provided were appropriate to meet his needs. (Stephens) Dr. Stephens was a special education teacher and was certified in special needs, but is no longer. She last worked in a public school setting five years ago. She visited the Fowler Middle School on May 30, 2018 and wrote a report of her observations and conclusions. (P-5) She observed Student for close to two hours. She testified that she was observing other students on the same day and her visit was “broken up a bit.” She observed a portion of Student’s inclusion history class, a portion of his inclusion math class and a portion of his pull-out reading instruction. (Stephens)

She noted that in the history class there was some interactive activity and that Student presented as withdrawn. She noted that students rotated around the room to different groups and answered questions in small groups. Student did not participate readily in that setting and was not involved in the group aspect of the instruction. There were some students who took the lead and did a lot of the discussion and writing, and Student was quiet. The teacher interacted with students and facilitated having students contribute information onto a chart, but did not prompt Student or facilitate his specific engagement in the activity. Student did, however, actively participate in a role-playing activity. Dr. Stephens spoke to Ms. Soler, Student’s teacher, after class who told her Student tends to not participate a lot in the group discussions. (Stephens)

Ms. Soler disagreed with Dr. Stephens conclusions with respect to Student’s performance in her classroom and noted that Dr. Stephens was only in her classroom for forty minutes. (Soler) Ms. Gahan, who observed the lesson along with Dr. Stephens noted that there were some students who were more assertive than others and two of those students were in Student’s group. She found that Student presented in the same way as the other students in the class did. (Gahan)

Dr. Stephens observed Student in math class with Ms. Elkins. Students were in groups, proceeding through different stations. Student’s group was smaller than the others and worked with Ms. Elkins initially. She provided scaffolding and broke down skills. Student was an active participant and seemed comfortable contributing ideas and answering questions. Ms. Elkins told Dr. Stephens that Student’s participation was typical. (Stephens)

Dr. Stephens next observed part of Student's pull-out reading. Student received his instruction individually, but another student was working on a computer in the room. Student was working with his teacher on a lesson from the Orton-Gillingham curriculum. The teacher was not certified in Orton-Gillingham, but had selected the lesson to follow up some of the skills on which Student was working in Orton-Gillingham tutoring. Dr. Stephens found that the lesson was not challenging for Student. She also observed some work on fluency. (Stephens) Ms. Lambert, the special education teacher who was working with Student explained her view of the lesson Dr. Stephens observed. She agreed that the lesson was not challenging for Student, as he was finishing up on a lesson on which he had previously worked. (Lambert)

At the end of her visit, Dr. Stephens concluded that the services being offered to Student were not appropriate to meet his needs. She explained that Student is compliant, his difficulties are subtle, and he does not act out in class. She stated that the program being offered to him does not match the recommendations of "people who very much specialize in this area of instruction." (Stephens, P-5)

18. Mother reported that fifth grade was difficult for Student because he "felt very stupid" being pulled out and had difficulty knowing where to start when responding to writing prompts at home. He was getting good grades, but Mother stated that she had to help him with everything that came home. (Mother)
19. The Team convened on May 21, 2018 for Student's annual review meeting. The proposed IEP included goals in Reading: Decoding/Encoding; Reading: Fluency/Writing; and self-advocacy. The C grid included Reading with an OG service provider 2 x 60 minutes per 4-day cycle from May 22, 2018 – May 20, 2019; writing with a special education teacher 4 x 30 minutes per 4-day cycle May 21, 2018 – June 21, 2018; self-advocacy with a special education teacher 1 x 15 minutes per week; extended year services with a special education teacher 4 x 150 minutes per cycle from July 9, 2018 – August 9, 2018; and writing with a special education teacher 4 x 45 minutes per 4-day cycle from September 5, 2018 – May 20, 2019. (S-4, P-21) The IEP was sent to Parents on June 11, 2018. It was delayed because the district was unable to obtain updated information from the contracted Orton-Gillingham provider who was dealing with a medical issue. Mother informed the Team that she did not think the proposed Fowler School placement was appropriate and she wanted Student to attend the Carroll School. (S-2)
20. Ms. Soler, Mr. Kitchell, (Maynard's Team Chair) and Ms. Lambert believed that the proposed IEP would have allowed Student to access the curriculum and make effective progress if he had remained in Maynard and attended the full English program.¹³ (Soler, Kitchell, Lambert)

¹³The Spanish speaking portion of the Spanish immersion program ended in sixth grade, so Student's instruction would be in English only. (Soler, Mother)

21. Mother sent a letter, dated June 12, 2018, to Maynard rejecting the Fowler School placement and asking that Maynard place Student at the Carroll School. Further, she notified Maynard that Parents would unilaterally place Student at the Carroll School for the summer 2018 program and in September 2018 and would seek reimbursement from Maynard. (P-20)
22. The Team reconvened on June 18, 2018 to review Dr. Stephens' observation report from May 30, 2018 and Dr. Pliner's neuropsychological report from January 2018. (P-8) Ms. Gahan informed the Team that she had been working to create a language-based program within the district to support students with language disabilities like dyslexia, but had not yet found a teacher. She suggested that Parents respond to the proposed IEP and accept any portions they agreed with and reject portions with which they disagreed. She stated that the Team would re-convene later in the summer after she had hired a teacher for the language-based classroom for further discussion. (Mother, P-8) Ms. Gahan testified that she explained to Parents that although Maynard was not proposing the language-based program for Student, Maynard would be prepared to offer additional supports if Student should require them in sixth grade. (Gahan) The record and Mother's testimony do not reflect that being explained to Parents. (P-8, Mother)
23. Ms. Gahan sent a response to Mother's letter, dated June 19, 2018. She declined to fund Student's placement at Carroll because Maynard believed its proposed IEP and placement would provide Student with a free appropriate public education in the least restrictive environment. (P-20)
24. Maynard hired a special education teacher for its language-based program during the summer of 2018. The teacher is certified in moderate special needs, is a certified reading specialist, and has Orton-Gillingham training and Wilson certification. She is also certified in RAVE-O and Lindamood-Bell. She is currently working at the Fowler School providing services to students who have language-based learning disabilities. She was hired to be the teacher in a full language-based program, providing services in ELA, math, science, and social studies, but is not yet working in that capacity, as the language-based classroom is not currently populated. (Kitchell, Gahan, Green)
25. Student's Team never proposed an IEP for the language based program. Maynard believed that the IEP proposed during the May 2018 Team meeting provided services appropriate to allow Student to access the curriculum and make progress. (Gahan, Kitchell)
26. Roberta Green, Ph.D., has an undergraduate degree in biopsychology, a Master's degree in clinical psychology, a doctorate of educational psychology with a specialty in learning disabilities. She is a certified school psychologist in Massachusetts and a diplomate of the American Board of School Neuropsychology. She holds certification in cross battery assessment. From 2008-2016 she was the principal agent in a private neuropsychology practice and is now an independent consultant. She consulted for both parents and school districts until 2017, and now only consults with the cooperation of school districts. She has conducted approximately 150 neuropsychological assessments.

Dr. Green was contacted by Ms. Gahan in July 2018 regarding consulting to Maynard. The consultation was to be multi-faceted and include making recommendations for setting up a substantially separate language-based classroom, reviewing student files for a variety of purposes, and providing training for professional staff. Dr. Green has provided consultation regarding Student and has reviewed his records, including Dr. Pliner's neuropsychological evaluation, Dr. Stephens' observation reports, and Maynard's 2016 evaluations of Student, and she briefly reviewed his IEPs. She has not tested or met Student or attended any of his Team meetings.

In reviewing Dr. Pliner's evaluation, she was struck by the fact that every single subtest score on the WISC V was at or above the average range. She then compared those scores to Maynard's 2016 psychological evaluation (S-26) and noted that the scores have been fairly consistent. She concluded that Student's cognitive growth has been commensurate with that of his peers over the last two years. Dr. Green explained that no change in standard scores over a period of a year represents expected growth.

In reviewing Dr. Pliner's results on the essay composition and subtests, Dr. Green noted that Student is "pretty well organized", he can sequence "pretty well", and his word count was in the low average range. His mechanics were weak and needed some work. His word reading was in the high average range and his pseudo-word reading was average. His spelling grew 22 points and was tested at an 88, by Dr. Pliner in 2018, as compared to a 66 in 2016. She concluded that Student had closed the gap with respect to his spelling.

With respect to Student's fluency scores, Dr. Green noted that Student appears to be a fairly dysfluent reader. He is fairly slow with reading, but his accuracy is getting better and he is doing some self-correcting. When Student reads orally, he reads slowly. However, when given enough time, he can read and understand grade level material. He may not read as quickly as his peers. Although his reading rate is below grade level, it does not appear to Dr. Green that Student's ability to access the curriculum would be below grade level given his comprehension.

Dr. Green did not agree with Dr. Pliner's suggestion that Student has a weakness with executive functioning. She reviewed all of the scores pertaining to executive functioning and did not see an executive dysfunction.

Dr Green does not believe Student's testing scores support the need for a full language-based program. She does see evidence that he requires specialized instruction for fluency and mechanics of writing. (Green)

27. Dr. Stephens observed Student at the Carroll School on October 24, 2018 for two class periods. She reported that each class had nine students. The teachers embedded scaffolding and supports, used previewing, broke down skills, made connections between previously learned concepts and new concepts, and used an appropriate pace of instruction. The teachers paired their language with visual supports to ensure students' understanding. Student participated and appeared comfortable in both classes. He asked

questions and responded when called on. She spoke to one of his teachers who said his participation on that day was typical for him. Dr Stephens found that Carroll was appropriate for Student and that the structure and support available matched the recommendations that have been made for him. (Stephens) Dr. Stephens considers herself fairly familiar with the Carroll School, having conducted a few visits there. She has an understanding of their instructional model, gleaned from attending “a talk on Carroll School personnel.” She did not know whether the teachers providing services to Student were certified as special education teachers and did not ask about the teachers’ backgrounds during her visit. She did not know about the profiles of any of the students grouped with Student. She did not know the age or grade range of students grouped with Student and did not ask. She was not aware of whether Student had an IEP at Carroll, and was not provided with one. (Stephens)

28. Dr. Stephens concluded that Student has good attentional skills, but had not been attending when she observed his Maynard history class¹⁴. She stated that with respect to Student’s strong reading comprehension skills and considering the least restrictive environment, it is important to recognize that he is already in middle school and having trouble with his reading, which impacts his ability to make progress as the curriculum gets more challenging. She noted that as the content gets more challenging, Student’s reading comprehension declines because he is working harder to take in the information. She stated that he is not making progress in his reading skills and not “closing the gap.” She noted that a student who is disconnected from learning in the classroom is not accessing instruction. She further noted that his self-esteem was being affected by his having difficulty in some of his classes due to his disability. She did not confirm this with any of the Maynard staff and none of Student’s teachers at the June 2018 Team meeting noted any concerns about his self-esteem based on his performance in school. The teachers thought he was making effective progress. Dr. Stephens believes Student requires a placement like Carroll School not just because of his reading skills, but his executive functioning as well so that he can be successful going forward academically and socially and moving through middle school and high school. (Stephens)
29. Although Dr. Orkin did not recommend a language-based classroom in her report, she testified that Student requires one to make effective progress. She noted that her recommendation was based upon Student’s positive response to the Tufts summer program, which she described as model of specialized reading instruction in both decoding and encoding and reading fluency and comprehension. She told Mother that “for children who are so far below the level of their peers and are not able to manage the grade-level content, we recommend a placement in a language-based program where these strategies would be reinforced across all domains of learning...” Dr. Orkin agreed that Student’s reading comprehension is strong, essentially at grade level, and “looks typical to his age-matched peers.” Despite Student’s grade-level reading comprehension she still believes that he requires a school like Carroll to make effective progress because “his fluency continues to be so poor and the demands academically are only going to increase.” (Orkin)

¹⁴She observed Student’s history class once for approximately forty minutes. (Stephens, Soler)

FINDINGS AND CONCLUSION:

Student is an individual with a disability, falling within the purview of the Individuals with Disabilities Education Act (IDEA)¹⁵ and the state special education statute.¹⁶ As such, he is entitled to a free appropriate public education (FAPE). Neither his status nor his entitlement is in dispute.

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education, employment and independent living.”¹⁷ FAPE must be provided in the least restrictive environment. Least restrictive environment means that, “to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”¹⁸

Student’s right to a FAPE is assured through the development and implementation of an individualized education program (“IEP”).¹⁹ An IEP must be custom-tailored to address a student’s “unique” educational needs in a way reasonably calculated to enable him to receive educational benefits.²⁰ For an IEP to provide a FAPE, it must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”²¹ A student is not entitled to the maximum educational benefit possible.²² Similarly, the educational services need not be, “the only appropriate choice, or the choice of certain selected experts, or the child’s parents’ first choice, or even the best choice.”²³ The IDEA further requires that special education

15²⁰ USC 1400 *et seq.*

16^{MGL} c. 71B.

17²⁰ USC 1400(d)(1)(A). See also 20 USC 1412(a)(1)(A); *Mr. I ex. Rel. L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1 (1st Cir. 2007)

18²⁰ USC 1412(a)(5). See also 20 USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c)

19²⁰ USC 1414(d)(1)(A)(i)(I)-(III); *Honig v. Doe*, 484 U.S. 305 (1988); *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982)

20^{Lenn v. Portland Sch. Comm.}, 998 F.2d 1083 (1st Cir.1993)

21^{Endrew F. v. Douglas County. Sch. Dist.}, 580 U.S. ___ (2017)

22^{Rowley}, 458 U.S. at 197

23^{G.D. Westmoreland Sch. Dist.}, 930 F.2d 942 (1st Cir. 1991)

and related services be designed to result in progress that is “effective.”²⁴ Further, a student’s level of progress must be judged with respect to the educational potential of the child.²⁵

Massachusetts special education regulations provide that specially designed instruction and related services described within the IEP must be sufficient to “enable the student to progress effectively in the content areas of the general curriculum.”²⁶ Massachusetts also requires that the special education services be designed to develop a student’s educational potential.²⁷

An IEP is a snapshot; therefore, the IEP must take into account what was, and was not objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.²⁸ An IEP is not judged in hindsight; its reasonableness is evaluated in light of the information available at the time it was promulgated.²⁹ The critical inquiry is whether a proposed IEP is adequate and appropriate for a particular child at a given point in time.³⁰

The burden of persuasion in an administrative hearing challenging an IEP is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 534, 537 (2005) In this case, Parents are the party seeking relief, and as such has the burden of persuading the Hearing Officer of its position.

With the foregoing legal framework in mind, I turn to the issues before me. The first issue is whether the IEP proposed for Student’s 2018-2019 school year were reasonably calculated to provide him with a free appropriate public education in the least restrictive environment. In assessing the appropriateness of the proposed IEPs, it is necessary to consider the Student’s profile, which was largely undisputed. There is significant agreement between the Parties regarding Student’s profile as a student with average to above average cognitive abilities, who has average reading comprehension skills (when not limited by time), but has a weakness in reading fluency. There is significant similarity between testing results obtained by the district and outside evaluators, but a difference of opinion as to how Student’s test scores are interpreted. Finally, there is disagreement as to whether Student’s needs can be met in Maynard’s inclusion setting, or whether Student requires placement at the Carroll School. The IEP proposed at the May 21, 2018 meeting included goals in reading decoding/encoding; reading fluency/writing, and self-advocacy. It proposed daily services in writing and reading fluency and services in reading decoding/encoding twice per four day cycle.

²⁴ 20 USC 1400(d)(4); *North Reading School Committee v. Bureau of Special Education Appeals*, 480 F. Supp.2d 479 (D.Mass. 2007)(the educational program must be reasonably calculated to provide effective results and demonstrable improvement in the various educational and personal skills identified as "special needs")

²⁵ *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F.3d 18 (1st Cir. 2008)

²⁶ 603 CMR 28.05(4)(b)

²⁷ MGL c.71B; 603 CMR 28.01(3)

²⁸ *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983 (1st Cir. 1990)

²⁹ *Id.*

³⁰ *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir. 1993)

Those most familiar with Student, the teachers who have worked directly with him, are unanimous in their opinions that he should be educated using the inclusion setting with a pull out model to address his areas of need. Ms. Soler, who was Student's teacher for two years, credibly testified that Student was able to access and keep up with the curriculum in her classroom during the third and fifth grades. She noted that Student was attentive, but quiet and participated in class. During the two years that she taught him she did not have any concerns regarding his academic performance other than his reading fluency. She noted that he made progress in her class. (Soler) Similarly, Ms. Lambert, who provided Student with his daily individual services, reported that Student made progress in all areas except fluency. She communicated daily with Ms. Soler regarding how to meet Student's needs. Neither Ms. Soler nor Ms. Lambert observed Student showing any signs of frustration or anxiety in their daily interactions with him. (Soler, Lambert) Although Mother testified that Student was anxious and frustrated, Student was not receiving any counseling and the school providers did not see any evidence of it. (Mother, Soler, Lambert)

Further, Dr. Green, who I found both particularly knowledgeable and candid, noted that Student reads slowly when he reads orally. However, when he is given sufficient time, he can read and understand grade level material. She noted that Student's spelling had improved to the point that he had closed the gap between him and his peers.

Ms. Soler, Ms. Lambert, Ms. Finnegan, and Ms. Gahan credibly testified that the IEP proposed for the period from May 21, 2018-May 20, 2019 was reasonably calculated to provide Student with a free appropriate education in least restrictive environment and that they believed Student would continue to make progress with the implementation of the IEP.

Parents' consultants were not persuasive with respect to their opinions that Student required placement in a substantially separate integrated language-based classroom with a low student to teacher ratio. Dr. Pliner based her recommendation in part, on her concern about Student's self-esteem and desire to see him "get bolstered academically" so that his self-esteem would not decrease. She was also concerned about Student's ability to meet future academic demands given his reading and writing weaknesses. Similarly, Dr. Stephens noted her concern that as content gets more difficult in higher grades, Student's reading comprehension would decline because he would be working harder to take in the information. Dr. Orkin also noted her concern that Student's "fluency continues to be so poor and the demands academically are only going to increase." Rather than making recommendations based upon Student's current presentation and abilities, the aforementioned consultants focused on their concern that Student would possibly struggle in later grades as the reading demands became greater. The IDEA recognizes that Student's abilities and needs change frequently, which is why IEPs are required to be reviewed at least annually. It is not necessary (or appropriate) to make programmatic decisions based upon speculation about a student's future needs. If, in the future, Student is not able to meet the demands (in reading or other areas) his Team will convene to consider and address the need at that time. IEPs are to be written according to a student's then- *current* needs.

Dr. Stephens also stated that her recommendation that Student be placed in a language-based placement was due, in part, to his executive functioning disability. However, the evidence does not support the conclusion that Student presents with an executive functioning disability. Dr. Pliner noted that some of Student's "metacognitive executive functioning skills are a relatively compromised." None of the teachers who worked with him daily reported any concerns about his executive functioning. Finally, Dr. Green, after extensively reviewing Student's testing,

credibly testified that Student's scores did not support the conclusion that he has an executive functioning disability. Thus, the evidence does not support a finding nor am I persuaded that Student requires a substantially separate placement in a language based program to address his executive functioning needs.

Student is currently able to read and access content at grade level when provided with sufficient time. His proposed IEP provides Student with extra time to complete reading tasks.

Additionally, it provides that Student will be given the opportunity to listen to text on audio CD and to use technology to complete written assignments. His weaknesses in reading fluency and written expression are appropriately addressed through the proposed pull-out special education services. There is no credible evidence to the contrary. Therefore, the IEP proposed for Maynard for the period from May 21, 2018-May 20, 2019 is reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

Although Student's fluency remains below grade level, he is able to access grade level curriculum with accommodations and should not be deprived of the opportunity to do so. His fluency can be addressed via pull-out services with a special education teacher, as proposed by Maynard. If Student returns to Maynard, his fluency rate should be monitored and if expected progress is not made, modifications should be made to his service delivery.

The evidence is persuasive that Maynard's proposed placement is the least restrictive appropriate environment for Student to receive his services. As cited above, the IDEA requires that "to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. See 20 USC 1412(a)(5); 20 USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c)

This was not a situation in which Parents made the decision to unilaterally place Student because they were not provided with sufficient information about the district's proposed program.

Although there was some confusion as to whether or not Maynard was formally proposing their language-based program (which as of the dates of hearing, had yet to be populated) for Student, Parents did not base their decision to place Student at the Carroll School on such lack of information. Parents had already notified Maynard of their intent to unilaterally place Student at Carroll and seek reimbursement with their June 12, 2018 letter, before the June 18, 2018 meeting when Maynard informally discussed its language-based program with Parents. Maynard never proposed its language-based program for Student, however.

Even if I had determined that Maynard's IEPs were not reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment, Parents did not meet their burden of showing that the Carroll School is appropriate for Student. Parents did not provide any evidence regarding the program provided by the Carroll School. Dr. Stephens was the only witness who testified about the Carroll School. She provided testimony regarding her brief observation at Carroll School, but was not able to provide any information about the educational program provided there. She was not aware of the qualifications of the staff providing services to Student and was not aware of whether or not he had an IEP. Parents did not produce any evidence regarding what services were being provided to Student, what curriculum he was accessing, what grade level he was working at, the appropriateness of his peers at Carroll, or whether Carroll was an approved special education program. Parents fell

well short of meeting their burden of showing that the Carroll School was providing Student with an appropriate educational program. All of this information would have been necessary for me to consider if I were to make a determination that the Carroll School was appropriate for Student, a determination that I need not reach because I found Maynard's proposed IEP to be reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

Finally, Parents' closing argument raises an issue that was not raised in their hearing request nor delineated as an issue for hearing, namely a § 504 claim. The argument claims that although Student was in a Spanish immersion program and receiving fifty percent of his instruction in Spanish, he was only offered special education reading and writing services in English. Consequently, Parents argue, Student struggled to participate and complete his work in the fourth grade. Parents' argument fails for two reasons. First, the issue was not properly before me as it was not raised in the Hearing Request or read into the record as a Hearing issue. Secondly, there were no recommendations from any educators that Student, whose dominant language is English, and who received fifty percent of his instruction in English during the time relevant to this Hearing, required special education supports in Spanish.

ORDER

Based upon the foregoing, I find that the IEPs proposed by Maynard Public Schools were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. As such, Parents are not entitled to reimbursement for the costs associated with their unilateral placement of Student at the Carroll School for the 2018-2019 school year.

By the Hearing Officer,

Catherine M. Putney-Yaceshyn
Dated: February 27, 2019