

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

In Re: Xaylen¹

&

BSEA #2008870

Arlington Public Schools

DECISION

This Decision is issued pursuant to M.G.L. c.71B, 20 U.S.C. 1401 *et. seq.*, 29 U.S.C. 794 and the regulations promulgated under these statutes. A hearing was held in the above-entitled matter on January 7 and February 24, 2021 via a remote videoconferencing platform. The Parents did not attend the second day of hearing. They were represented by their advocate, Rachel Bullock. The School was represented by Attorney Colleen Shea. The official record of the hearing consists of documents submitted by the Arlington Public Schools labeled S-1 through S-39, documents submitted by Parents labeled P-1 through P-9, and approximately 11 hours of recorded oral testimony and argument. The Parents and the School District submitted written closing arguments on March 8, 2021 and March 11, 2021, respectively, and the record closed on March 11, 2021.

ISSUES:

The issues for Decision are:

- I. Whether the Individualized Education Program developed by the Arlington Public Schools for the 2019-2020 school year (6th grade IEP) was reasonably calculated to provide a free, appropriate public education to Xaylen?
 - a. If not, whether the Parents are entitled to reimbursement of expenses they incurred in connection with Xaylen's unilateral placement at the Carroll School for the 2019-2020 school year?

¹ "Xaylen" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public. Family members are assigned derivative pseudo-initials.

- II. Whether the Individualized Education Program developed by the Arlington Public Schools for the 2020-2021 school year (7th grade IEP) was reasonably calculated to provide a free appropriate public education to Xaylen?
 - a. If not, whether the Parents are entitled to reimbursement of expenses they incurred in connection with Xaylen’s unilateral placement at the Carroll School for the 2020-2021 school year?

FINDINGS OF FACT:

1. Xaylen is a now 13-year-old, 7th grade student. He is uniformly described as a bright, cheerful, hard-working young man with a special gift for athletics. He attended Arlington Public Schools from Kindergarten through the fifth grade. The Parents began to have concerns about Xaylen’s social-emotional and academic functioning while he was in kindergarten. In the summer, between kindergarten and 1st grade (2014), the Parents arranged for a private evaluation by Rebecca Tubbs, Psy.D., of the Child Development Network, Inc.. Based on parental reports and standardized testing Dr. Tubbs found Xaylen to have intellectual and language functioning within the average range for his age. She wrote that Xaylen had “a history of significant regulatory deficits in the context of otherwise typical development.” (P-1) Dr. Tubbs also assigned diagnoses of Attention Deficit Hyperactivity Disorder (“ADHD”) and specific learning disabilities (“SLD”) in reading and math. She recommended that Xaylen be placed in a small, structured language-based class with a one-to-one aide along with home-based BCBA (Board certified behavioral analyst) services. Dr. Tubbs exchanged limited information with the School and did not observe Xaylen outside of the evaluation setting.

The Parents then requested Arlington an initial special education evaluation. After conducting the appropriate assessments in the winter 2015 Arlington found Xaylen eligible for special education services. During the remainder of the first grade, and the second and third grade years, Xaylen received direct reading instruction and support through RTI, a general education reading development program, as well as special education academic and behavioral support in and outside of the general education classroom in accordance with IEPs accepted by the Parents. (P-3; P-5; Catizone; Henry; Condon; Mendes; Ms. X.)

2. During Xaylen’s fourth grade year, 2018-2017, the Parents arranged for a re-evaluation by Dr. Tubbs. Based on parental report and standardized testing. Dr. Tubbs’ findings were consistent with those in her 2014 report. She found that Xaylen demonstrated intellectual, language and reading functioning within the average range for his age. She noted that Xaylen had made progress in important skill areas: working memory, concentration, fine motor skills, decoding and computation. According to Dr. Tubbs, Xaylen continued to demonstrate weak executive functioning and social-emotional skills. She recommended placement in a small, language-based program geared to remediating executive challenges. Dr. Tubbs requested limited information from the School in the form of teacher responses to a standardized behavioral rating scale. She did not observe Xaylen’s special education program, nor observe Xaylen anywhere other than the formal evaluation setting. (P-2; S-8)

3. Arlington conducted a three-year re-evaluation in the winter/spring of 2018. It included a psychoeducational evaluation, an academic assessment, a reading assessment, an occupational therapy evaluation, and a social work/behavioral assessment. The assessments concluded consistently and uniformly that Xaylen was making measurable progress in all areas of learning with the special education services and general education supports he was then receiving in the partial inclusion program. He also demonstrated improved social skills with coaching and direct services in counseling and occupational therapy. (Catizone; Henry; Condon; Mendes; S-1 through S-7; P-4)

At a meeting held in April 2018 the Team discussed the results of Dr. Tubbs' evaluation as well as Arlington's assessments. The Team proposed continuing the type and level of special education service Xaylen had been receiving in the fourth grade into the fifth grade year (2018-2019). The Parents accepted the proposed IEP and the services were implemented. (Mendes; Ms. X.; S-8 through 11; P-4).

4. During the fall of 2018 the Parents became increasingly concerned about Xaylen's mood and behavior at home. Ms. X. testified that Xaylen refused to do homework independently, that he stated that he hated everything about school, and that he was belligerent, hostile and provocative to family members. Ms. X. sought medical treatment for Xaylen. She also communicated her observations and concerns to the School and, heeding the advice of trusted sources, sought a change in educational approach that could improve Xaylen's social-emotional functioning. (Ms. X.; Mr. X.) The School and the family met multiple times during the 2018-2019 school year to discuss the family's concerning experiences. School staff uniformly reported that Xaylen functioned well in school, had no significant behavioral or disciplinary issues, had steadily improving social skills and insight, was beginning to take on a "leader role" in the classroom and appropriately used the available counseling services and fidget accommodations. The counselor stated that when Xaylen identified areas of stress in his life he never mentioned school but consistently reported difficult family relations. (Mendes; Mullen; Henry; Ms. X.; S-20)

5. The Team reconvened on April 10, 2019 to plan for the 2019-2020 6th grade year. Parents continued to advocate for a small, language-based program as Dr. Tubbs had recommended. School based Team members reported that Xaylen had made progress in all IEP target areas and in the general curriculum with the type and level of special education services he received in the 2018-2019 partial inclusion IEP. They agreed that he was able to use learned strategies independently in academic work, reading and social situations. He sought, and responded well to, staff feedback. He was engaged in the general classroom and in his pull-out instructional groups. (Mullen; Henry; Catizone; Mendes; S-12-16; S-20-21; S-28).

In particular, Ms. Catizone, Xaylen's reading teacher since 2nd grade, reported that he had achieved grade level benchmarks on all standardized reading tests and that his overall reading skills and comprehension were in the average range. Ms. Catizone testified that at the end of the fifth grade Xaylen had met all the IEP reading goals and was able to read 5th grade text independently with accuracy and comprehension. She emphasized that Xaylen had, at that time, the skills and ability to engage independently in general education classroom activities and curriculum. (Catizone; S-8; S-10; S-14-16; S-20).

The Team concluded that continuing the constellation of fifth grade special education services for the remainder of the fifth grade year would be appropriate for Xaylen. Taking the Parents' concerns seriously, however, Arlington proposed increasing the hours of special education instruction for Xaylen in the 2019-2020 6th grade year. (Henry; Mendes; Mullen; Cortizone; S-16)

6. After the April Team Arlington proposed a partial inclusion IEP identical that that then in effect to cover the remainder of the 2018-2019 school year (5th grade). In June, 2019 the Parents rejected that 5th grade portion of the proposed IEP.

Arlington also proposed providing Xaylen with summer services in reading and academics. Finally, for the 2019-2020 school year (6th grade) Arlington proposed placing Xaylen in a more intensive, co-taught, model of special education service delivery at the middle school.

The Team reconvened in June 2019 to review the middle school proposal. Stephanie Grenier, the special education coordinator for the middle schools, attended the meeting to describe the details of the proposed program to the Parents. All 6th grade students in Arlington attend one, 6th grade only, middle school known as Gibbs. There are a variety of special education options. The one proposed for Xaylen, the co-taught model, is available to both students with identified disabilities and those without. All core academic classes are taught by both a general education content specialist and a special educator. The assigned general educator changes from subject to subject. One special educator is responsible for English Language Arts and Social Studies instruction and support. A different special educator is responsible for Math and Science instruction and support. There are 18-20 students in each class. About half are receiving special education services through an IEP. The general education students change from class to class. The special education cohort remains constant for the 4 academic classes. The cohort is divided by skill level into smaller groups of 4-6 students for additional academic support classes outside of the general education setting, taught by one of the 2 assigned special educators. The academic support class concentrates on development of executive functioning skills, writing skills and conceptual review. The proposed IEP for Xaylen called for an academic support class period three days a week. In addition, Xaylen would have an intensive reading skills class three days per week. The IEP also proposed increasing counseling time for Xaylen to address any social-emotional issues connected to the transition to a new setting. (Grenier; S-17)

Ms. Grenier testified that the 6th grade co-taught program at Gibbs provides more intensive and coordinated special education services than Xaylen had been receiving at the elementary level. It directly addresses the ongoing concerns about executive functioning weaknesses and reading level expressed by the Parents and Dr. Tubbs by increasing the time and specialized interventions target those areas. (Grenier; Manke; Mullen; Henry; S-17) The Parents did not observe the proposed Gibbs program. (Ms. X.; Mr. X.)

8. The Parents rejected the proposed 2019-2020 IEP. They notified Arlington of their intent to enroll Xaylen at the Carroll School for the 2019-2020 school year and to seek public funds to support his attendance there. Xaylen attended the Carroll School both in-person, and eventually virtually, throughout the 2019-2020 school year. Ms. X. testified that within the first month at Carroll Xaylen appeared more relaxed, more engaged in school and more independent in completing his school assignments. Xaylen testified that he was happier attending Carroll than he had been in Arlington because the other kids were just like him. (Ms. X.; Xaylen)

9. The Carroll School is an independent day school that provides a specialized curriculum addressing the learning needs of students with specific learning and language disabilities. It is not approved by the Massachusetts Department of Elementary and Secondary Education to receive public funding for those services (P-6) Initial Carroll School testing data pegged Xaylen's reading skills in the average range for an entering 6th grade student. (P-5; P-9). Carroll School progress reports for the 2019-2020 school year show that he made expected progress in the acquisition of 6th grade level skills. (P-7) Neither the Parents nor Dr. Tubbs observed the Carroll School program. (Ms. X.)

10. Dr. Tubbs evaluated Xaylen again in September 2019. She solicited Arlington's fifth grade teacher responses on standardized behavioral rating scales. She did not exchange any information about Xaylen with the Carroll School. She wrote:

Neurologically, [Xaylen] exhibits solidly average intellectual capacities across the verbal and nonverbal domains . . . results demonstrate stability and/or growth across his intellectual capacities. [Xaylen] is able to follow verbally-mediated directions, and his working memory skills are age appropriate across the verbal and nonverbal domains of functioning. He accurately perceives complex visual information, his fine motor speed and accuracy are excellent, and his visual scanning skills are nicely developed. [Xaylen] performs best on well structured tasks with reduced language and/or writing demands. He also clearly benefits from opportunities to expand upon and/or clarify his answers. Academically, he demonstrates grade appropriate math computation skills and his single word decoding skills fall broadly in the average range.

(P-5)

Dr. Tubbs noted that Xaylen continued to demonstrate learning "vulnerabilities" related to ADHD and a Neurodevelopmental Disorder, as well as specific learning disabilities in reading, written expression and math. She also offered a diagnosis of "Persistent Depressive Disorder with Anxious Distress." Dr. Tubbs recommended that Xaylen attend a comprehensive language-based program with a "like cohort of peers", small classes, and intensive daily reading, writing and math instruction. Arlington received Dr. Tubbs' 2019 evaluation report in April, 2020. (P-5)

11. In February 2020 Dr. Tubbs observed portions of the Gibbs co-taught program proposed for Xaylen. She saw a part of a science class, a core math class and a math academic support class. She did not observe either of the two language intensive core academic classes: English Language Arts and Social Studies. Nor did she observe the intensive reading skills development

class. Dr. Tubbs concluded that although the program was “good” it was insufficiently language-based and too “decentralized” to be appropriate for Xaylen. (P-8; Grenier)

12. The Team reconvened on May 18, 2020 to review the evaluation and observation reports of Dr. Tubbs and to plan for the 2020-2021 7th grade year. Dr. Tubbs did not attend the meeting. Arlington invited the Carroll School but it declined to send a representative.

13. The Team reviewed Dr. Tubbs’ evaluation and observation reports, progress reports from the Carroll School, and the Parents’ observations and request for a private school placement. Taking into account the continuing academic, executive functioning and social-emotional concerns of the Parents and Dr. Tubbs, the Team proposed increasing the direct reading instruction and counseling time for Xaylen but otherwise continuing the co-taught core academic class model in use at Gibbs.

14. In Arlington, all 7th and 8th grade students attend one Middle School: Ottoson. In the co-taught program proposed for Xaylen there, the same special educator would support all four 7th grade core academic classes as well as provide all academic support services. Academic support classes would meet every other day outside of the general education setting. The assigned special educator was responsible for coordinating the conceptual reviews, class assignments and pertinent executive functioning skills instruction. Direct reading instruction with a reading specialist would occur for a full class period during four of six days in the schedule. The special educator and the reading specialist work closely together. Social work counseling services for Xaylen were increased to one class period per week. (S-26; Grenier).

15. All Arlington staff who had worked directly with Xaylen in the fifth grade when he last attended a public school program testified that the Gibbs and Ottoson co-taught special education programs could meet his identified learning needs. (Henry; Catizone; Mullen)

16. The Parents rejected the proposed 2020-2021 IEP and the Ottoson placement. (S-27) Neither the Parents nor Dr. Tubbs observed the proposed Ottoson co-taught program.

17. Xaylen attended the Carroll School in person and remotely, as public health guidelines permitted, during the 2019-2020 and 2020-2021 school years.

LEGAL STANDARD:

A student with special needs as defined by 20 USC §140; *et seq.* and MGL c.71B is entitled to receive a free, appropriate public education. A free, appropriate public education, often referred to as "FAPE", is a set of specialized instructional methods, materials and services, curricular modifications, related therapeutic, supportive and health services, equipment, environmental adaptations and settings that are specifically tailored to an individual student's unique learning needs and designed to provide a meaningful educational benefit to the student. *Endrew F. v. Douglas County School District*, 580 U.S. ___, 137 S. Ct. 988, 992

(2017); 34 CFR 300(3) (iii); 603 CMR 28.02 (17). *See also Johnson v. Boston Public Schools*, 906 F.3d 182 (1st Cir. 2018).²

The primary vehicle for delivery of FAPE is an Individualized Education Program (IEP). The IEP must be custom tailored to the student's unique needs and potential and designed to produce "meaningful educational benefit" and "demonstrable improvement" in the educational, behavioral and personal skills identified as special needs. *Lenn v. Portland School Committee*, 998 F.2d 1083, 1089-1090 (1st Cir. 1993). Whether an educational benefit is meaningful must be determined in the context of the individual student's "circumstances" and potential to learn. A student's goals should be appropriately ambitious...just as advancement from grade to grade is appropriately ambitious for most students in a typical classroom, *Andrew F. supra*, and be reasonably likely to measurably advance the student toward the goal of increased learning and independence. *D.B. v. Esposito*, 675 F.3d 26, 38 (1st Cir. 2012).

To the maximum extent appropriate, students should be educated in the "least restrictive environment ("LRE"). In the special education context this means that students with disabilities are entitled to an educational program which affords the greatest exposure to, and integration in, the mainstream of typical school life, students and curriculum that is possible, while still delivering the necessary special services. Students with disabilities are to be placed in separate settings, such as a private day school, only if the nature or severity of the disability is such that the student cannot benefit from a general education setting with supports and services, or the student has demonstrated an inability to make appropriate educational progress with carefully designed and provided special education services in a mainstream setting. 20 U.S.C. 1412(a)(5). Massachusetts special education regulations mirror the IDEA's statutory language:

The school district shall ensure that, to the maximum extent appropriate, students with disabilities are educated with students who do not have disabilities, and that special classes, separate schooling, or other removal of students with special needs from the general education program occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

603 CMR 28.06 (c).

The requirement that special education and related services be delivered in the least restrictive environment possible is of particular pertinence in this matter.

² In *Johnson, supra*, the First Circuit U.S. Court of Appeals confirmed that the FAPE standard in use throughout the First Circuit, and by the U.S. District Court for Massachusetts and the Bureau of Special Education Appeals, as enunciated consistently in previous reviews of disputed special education programs and placements, was consistent with the standard cited by the U.S. Supreme Court in *Andrew F., supra*. *See e.g. D.B. v. Esposito*, 675 F.3d 26 (1st Cir. 2012); *Sebastian M. v. King Philip RSD*, 685 F.3d 79 (1st Cir. 2012); *Lessard v. Wilton-Lyndeborough Cooperative School District*, 518 F.3d 18 (1st Cir. 2008); *Roland M. v. Concord School Committee*, 910 F.2d 983 (1st Cir. 1990); *Town of Burlington v. Department of Education*, 736 F.2d 773 (1st Cir. 1984). The First Circuit Court of Appeals recently re-confirmed, and more fully explained, its formulation of the FAPE standard and that standard's alignment with *Andrew F.* in *C.D. v. Natick*, 924 F.3d 621 (1st Cir. 2019) *cert. den.* 140 S. Ct. 1264 (2020). *Shakes? AWW* 1.1.61-64.

Considerations of LRE and meaningful educational benefit are "correlative": "a placement...considered better for academic reasons" does not relieve the State from the requirement to comply with the LRE provisions, and compliance with the LRE provisions does not "cure" an inappropriate placement. The desirability of mainstreaming must be weighed "in concert with the IDEA's mandate for educational improvement: an appropriate educational plan balances the benefits gained or lost on both sides." *Roland M. v. Concord School Committee*, 910 F.2d 983, 993 (1st Cir. 1990); 20 USC §1412(a)(5)(A).

The educational program developed by the IEP Team, or offered to the student in a particular IEP, might not be the only appropriate program, methodology or placement. It might not reflect the opinion of an educational expert or experts. It might not be the program or placement the parent would have chosen had the parent free rein to do so. So long as it reasonably addresses all the identified learning needs of the individual student, and ensures those services are delivered in a setting (s) that is capable of producing a meaningful educational benefit to the student, the IEP will be upheld. *GD v. Westmoreland School Dist.*, 930 F.2d 942, 948-9 (1st Cir. 1991).

Should a parent prove at due process hearing that the public school has failed in its duty to develop and/or implement an appropriate IEP for an eligible student, the parent may request that the Hearing Officer order an individually tailored remedy for the lapse. Parents who enroll a student in a private school without the consent of or referral by the school district may obtain reimbursement if a hearing officer finds both that the school district "had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate" for the student. 34 CFR 300.148(c). *See* 20 USC § 1412(a)(10)(C)(ii); *see also Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 243 (2009) (explaining that 20 U.S.C. §1415(i)(2)(C)(iii) authorizes "reimbursement when a school district fails to provide a FAPE and a child's private-school placement is appropriate").

In a due process proceeding to determine whether a school district has offered or provided a free, appropriate public education to an IDEA-eligible student the burden of proof is on the party seeking to change the *status quo*. *See Schaffer v. Weast*, 546 U.S. 49 (2005). In this matter, the Parents bear the burden of proof.

DISCUSSION:

There is no dispute that Xaylen is a student with special learning needs and is, therefore, entitled to a free, appropriate public education pursuant to M.G.L. c 71B and 20 U.S.C. §1401. The parties' dispute centers on whether Xaylen can make effective educational progress with supplementary aids and special education services in a partial-inclusion setting within a public school, as proposed by the District? The Parents argue that Xaylen needs a specialized private school placement that will offer him small classes, a homogenous peer group, and a consistent language-based program. They contend that, since Arlington's proposed IEPs did not offer Xaylen that type of program, they were justified in unilaterally placing Xaylen at the Carroll School, which does. Arlington asserts that Xaylen made effective progress commensurate with his educational potential in the partial inclusion programs he attended throughout his elementary school years, and there is no reason to think that he would not continue to make similar progress with the more intensive special education supports and interventions proposed for his middle

school experience. Arlington points out that the 2019-2020 and 2020-2021 IEPs offer Xaylen the opportunity to remain in his home community and to have continual access to his non-disabled peers in a less restrictive program than a specialized private school.

After careful consideration of the totality of the evidence proffered in the hearing and of the arguments of both parties, I find that both the 6th grade and 7th grade IEPs developed by the Arlington Public Schools were, and are, reasonably calculated to provide a free, appropriate public education to Xaylen in the least restrictive setting. The Parents did not meet their burden of proving otherwise. My reasoning follows.

In determining whether a public school district has met its obligation to provide a student a free appropriate public education under the IDEA and MGL.c. 71B four essential elements must be considered: 1) is the educational programming individualized? 2) is the IEP geared toward meaningful and measurable educational progress? 3) does the IEP offer the maximum feasible access to the mainstream of public school life? and 4) were the parents included in the decision-making process?

Here, Arlington met all four 4 standards. The Teams included members who knew Xaylen well over time. They were able to intelligently and sympathetically discuss his individual learning style, his use of accommodations, his response to academic and counseling interventions, and his educational progress towards the goals outlined in, and with the supports offered under past IEPs. They crafted educational goals and tailored interventions based on a deep understanding of how Xaylen learns best and a confidence that interventions that had produced measurable progress in the past would continue to do so in the future. They also were able to site these appropriate special education services in the general life of a public middle school, thereby building on what they had previously observed to be Xaylen's maturing social skills. The Teams clearly considered Xaylen's individual, unique learning needs and custom tailored the proposed special education services to meet them. There is no evidence that could support a reasonable conclusion otherwise.

Equally incontrovertible is the conclusion that, with each of the IEPs at issue, the School made the appropriate special education services available to Xaylen while maintaining his access to, and integration in, the least restrictive environment of a public school, as is required under the IDEA.

Finally, the Teams took the Parents' contributions and requests seriously. They not only included parental and evaluator observations in the student information section of the proposed IEPs, they "tweaked" each IEP to include the more intensive, targeted and restrictive services the Parents sought, even when Xaylen had demonstrated progress with less special education intervention. The School thus met its obligation to include the Parents in the relevant decision-making.

In reaching this decision I note that each of the School-based witnesses was deeply knowledgeable about, and concerned about, Xaylen and respectful of the Parents' views and experiences. I found their expert testimony to be thoughtful, candid and highly persuasive. On the other hand, I found the evaluation reports authored by Dr. Tubbs and relied upon by the Parents less trustworthy. They contained inconsistencies in data and conclusions that were not

adequately supported or explained, and therefore carry significantly less weight than the testimony of the teachers and counselor who worked with Xaylen over time.

The Parents presented a very sympathetic case. Their investment in, and advocacy for Xaylen, is admirable. Nevertheless, the focus in a BSEA Hearing is whether the School has met its statutory and regulatory obligations to offer a special education program that meets Xaylen's identified learning needs and permits him to make progress in the acquisition of skills targeted for improvement in the IEP and in the general curriculum. The preponderance of the evidence, indeed the unequivocal and convincing weight of the evidence, introduced in this matter demonstrates that Arlington did just. A brief discussion of the two IEPs is merited:

2019-2020 IEP

The undisputed evidence established that Arlington identified Xaylen's special learning needs in early elementary school and provided substantive special education instruction and general education support which allowed him to acquire academic and behavioral skills, and to progress from grade to grade. Arlington took the observations and recommendations of the Parents and their private evaluator into account at each Team meeting and developed IEPs that reflected their observations and recommended actions. (¶ 1-4)

As Arlington planned for Xaylen's transition to a 6th grade middle school it had some conflicting information to consider. On the one hand, Arlington had reports from Xaylen's teachers and counselor that described him as having made substantial academic and behavioral gains in all targeted skill areas. Teachers consistently noted that Xaylen could learn independently and produce academic work at the expected grade level. In particular, he demonstrated reading skills sufficient to access and to engage with the fifth grade curriculum. They reported a maturation of social skills which allowed him to work meaningfully in groups, have friends in the mainstream and be viewed as a leader. He could independently and appropriately use both academic and counseling support services. Xaylen was a success story.

On the other hand, the Parents reported difficult mood and behaviors at home. (¶ 5,6) While there is no evidence that Xaylen's home-based behaviors interfered with his progress at School, or for that matter, in community activities, Arlington took that information seriously and incorporated it into the proposed 2019-2020 IEP. The IEP accurately reflects the findings, observations and recommendations of Team members. As requested by the Parents, the IEP provides intensification of in-class support and direct reading instruction. As Xaylen had made measurable, effective and meaningful educational progress with fewer services/service hours during elementary school, it was reasonable for the Team to conclude that building on that progress by offering a 6th grade program providing cohesive and coordinated academic and reading support in a more intensive co-taught model (rather than the partial inclusion model used in the elementary school) would produce at least similar educational gains and ensure that Xaylen continued to make educational progress alongside his non-disabled peers. There is no persuasive evidence to the contrary. (¶ 6-7)

I thus find that it was reasonable for Arlington to reject requests for a private placement. Although Dr. Tubb's academic findings were substantially similar to those obtained and

observed by Arlington staff, her recommendation for private school was decidedly not. In reaching her recommendation Dr. Tubbs did not have a meaningful exchange of information with Xaylen's teachers or counselor. She did not observe Xaylen at school. Nor did she observe his special education program. She did not identify, in her 2017 evaluation, a disability that by its "nature or severity" would warrant removal from the mainstream of the school community. For these reasons Dr. Tubbs' 2017 recommendation for a private placement is not persuasive.

2020-2021

When developing the 2020-2021 IEP Arlington had little information beyond what it had known about Xaylen in the spring of 2019. The Parents provided another reevaluation conducted by Dr. Tubbs in the fall 2019 which essentially made the same findings and recommendations as her earlier evaluations. It is notable only that Dr. Tubbs continued to find, confirming Arlington's data, that Xaylen was making progress in Arlington's program in the acquisition of academic and reading skills over time and could access grade level material. Nevertheless, she continued to recommend that Xaylen be placed in a private school setting. As Dr. Tubbs did not adequately explain the internal inconsistencies in her report, or how she reached her placement recommendation, the 2019 evaluation is accorded little weight. The Parents also provided some Carroll School progress reports for Xaylen which similarly confirmed Arlington's observations about Xaylen's reading levels and related learning strengths and weaknesses. (P-7)

The Team acknowledged the Parents' input, and again developed a 7th grade program and services which offered Xaylen even greater instructional cohesion and more intensive direct reading instruction and support than the 2019-2020 IEP had. (¶ 12,13) Other than objecting that the proposed 2020-2021 IEP did not support the Carroll School placement, the Parents did not identify any inappropriate or inadequate elements of the 2020-2021 IEP.

The clear weight of the evidence at Hearing supports the conclusion that the 2020-2021 IEP proposed by Arlington was reasonably calculated to provide a set of special education services appropriately targeted to Xaylen's learning needs as identified by a variety of sources, including the Parents, sufficient to permit Xaylen to continue to make meaningful, measurable progress in the acquisition of targeted skills in the general curriculum, and to allow him to participate in the mainstream of his community school life alongside his typical peers.

CONCLUSIONS OF LAW:

In conclusion, the Parents did not show that either the nature or the severity of Xaylen's disabilities were so severe as to require removal from his community school in order to make meaningful educational progress. 603 CMR 28.06 (c). On the contrary, the undisputed and convincing evidence showed that Xaylen made steady, measurable progress in the acquisition of targeted academic and behavioral skills over the course of his elementary school career. That progress and skill development permitted him to access and to participate in the general curriculum and advance from grade to grade alongside his non-disabled peers. He made educational progress with the assistance of a program of special education services in and out of the general classroom that the IEPs at issue here sought not only to duplicate, but to refine and

intensify. The Parents did not show that Xaylen had failed to make appropriate progress in the elementary special education program. Further, they did not show how or why a program similar to that in which Xaylen had previously demonstrated success, but more tightly coordinated and intensive, would not produce similar results in 2019-2020 and 2020-2021. 603 CMR 28.06 (c).

Having determined that the Parents have not demonstrated, by a preponderance of the evidence, that either IEP at issue was/is inappropriate, I do not reach the question of whether the Carroll School was an appropriate placement for Xaylen. Parents are clearly dedicated and loving. They are commended for their efforts and sacrifices as they seek every opportunity for Xaylen to excel. As explained, *supra*, however, the legal standard guiding this Decision is whether Arlington has offered a free appropriate public education to Xaylen. It has.³ The Parents' request for reimbursement and prospective funding for the Carroll School placement is, therefore, denied.

ORDER

The 2019-2020 and 2020-2021 Individualized Education Programs developed by the Arlington Public Schools were and are reasonably calculated to provide a free, appropriate public education to Xaylen in the least restrictive setting. There is no evidence sufficient to support a finding that Xaylen requires a specialized school setting such as the Carroll School in order to receive a free, appropriate public education. Therefore, the Parents are not entitled to reimbursement for expenses they incurred in connection with Xaylen's Carroll School attendance during those school years.

By the Hearing Officer

April 2, 2021

³ See *In Re: Marshfield Public Schools and Beth*, BESA #07-1052, 13 MSER 238 (Oliver, 2007) (“The fact that [a student] did not like [a] placement ... in the past and does not want to go there now is most unfortunate. Certainly [a] student's wishes are a factor that must be considered, along with all of the other evidence. However, such wishes cannot dictate a BSEA decision.”)