**COMMONWEALTH OF MASSACHUSETTS**

**Division of Administrative Law Appeals**

**Bureau of Special Education Appeals**

**In Re: East Bridgewater Public Schools (“EBPS”) BSEA #12-4944**

**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 c. 71B), the state Administrative Procedure Act (MGL c. 30A) and the regulations promulgated under these statutes.

A Hearing was held on July 16, 2012, in Quincy, MA before Ann F. Scannell, Hearing Officer. Those present for all or part of the Hearing were:

Cody[[1]](#footnote-1) Student

Cody’s Mother

Cody’s Brothers[[2]](#footnote-2)

Cody’s Family Friend

Marie Grable Director of Pupil Services, EBPS

Annette Jackson Speech-Language Pathologist, EBPS

Lauren Delahanty (via telephone) School Psychologist, EBPS

Cynthia Manning Principal, Learning Prep School

Mary Ryan Co-Director, Clearway School

Alisia St. Florian Attorney, EBPS

Felicia Cote Intern, Murphy, Hesse Toomey & Lehane

Jane Court Reporter

The official record of the Hearing consists of documents submitted by the school district and marked as Exhibits S-1 through 37; documents submitted by the parent and marked as Exhibits P-1 through 11; and approximately one day of oral testimony. Written closing arguments were submitted on July 23, 2012 and the record closed on that date.

**INTRODUCTION**

Cody is a 17 year old boy who resides with his parents and three older brothers in East Bridgewater. He has been out of school since June of 2011 and receiving tutoring by East Bridgewater Public Schools (“EBPS”). Cody attended an out of district placement at Clearway School for 8th through 10th grade. Prior to that, he was home-schooled for five years, having left EBPS after 2nd grade. Cody has difficulty accessing the general curriculum due to his attention deficit disorder (“ADD”), central auditory processing disorder (“CAPD”) and language based learning disabilities (dyslexia). He is eligible for and has received special education services as a result of these disabilities.

EBPS placed Cody at Clearway School in September of 2007, the beginning of 8th grade. He remained at Clearway through 10th grade but did not return for 11th grade because Cody’s parents felt Clearway was no longer an appropriate placement due to allegations that Cody was being bullied. Although the parties have participated in two mediations and one facilitated TEAM meeting between August 2011 and December 2011, they have been unable to come to an agreement on an alternative placement.[[3]](#footnote-3)

On January 24, 2012, EBPS filed a Hearing Request with the Bureau of Special Education Appeals (“BSEA”) seeking an order that the December 3, 2011 to June 3, 2012 Individualized Education Program (“IEP”) that called for placement at the South Shore Educational Collaborative (“SSEC”) provides a free appropriate public education (“FAPE”) to Cody in the least restrictive environment.[[4]](#footnote-4) The parents rejected the IEP and placement. The parents filed a response to the Hearing Request on February 3, 2012.

A conference call was held on February 8, 2012. Both parties requested a postponement of

the Hearing that was originally scheduled for February 13, 2012. The postponement requests were allowed. A further conference call was held on March 2, 2012. A pre-hearing conference was scheduled for April 3, 2012. The parties were unable to resolve the issues at that time. The matter was scheduled for Hearing on June 14 and 15, 2012.

After the Hearing Request was filed, the parents consented to a three year reevaluation and also agreed to visit the proposed placements. Subsequently, Cody was accepted at Chamberlain and Learning Prep School (“LPS”). SSEC had no openings at that time. The parents rejected Clearway School (Cody’s prior placement), Chamberlain and LPS.

The TEAM met in June of 2012 to review evaluations and propose a new IEP with placement proposed at LPS. Due to the TEAM meeting, the Hearing was rescheduled to July 16 and 17, 2012. On June 26, 2012, by agreement of the parties, EBPS filed an amended Hearing request to substitute the newly proposed IEP from June 6, 2012 to June 5, 2012 for the prior expired IEP. The matter proceeded to Hearing on July 16, 2012.

**ISSUES**

The issues to be decided in this matter are:

1. Whether the June 6, 2012 to June 5, 2013 IEP which proposes an out of district placement at LPS provides Cody with a FAPE in the least restrictive environment?
2. If not, can the IEP be amended or modified to provide Cody with a FAPE in the least restrictive environment?

**FACTS**

Cody is 17 years old. He lives with his parents and three older brothers in East Bridgewater. Cody spent the 2011-2012 school year at home. His parent and EBPS have spent this past year trying to agree on his school placement. During this time, EBPS provided Cody with ten hours of tutoring per week. Prior to the 2011-2012 school year Cody attended the Clearway School. Clearway is a small, private, chapter 766 approved school that mainly services students with language based learning disabilities. He began attending Clearway in September 2008 (the start of 8th grade) and remained there through the 10th grade. Following the completion of 10th grade, Cody’s parents informed EBPS that Cody would not be returning to Clearway due to allegations that Cody was being bullied. (Exhibits 1 and 30 and testimony of Ryan, Grable and Cody’s mother)

Cody has struggled with reading and language since he began his schooling. He attended EBPS through April of second grade. Cody underwent a speech and language screening during preschool and began receiving small group speech therapy shortly thereafter. Due to his difficulties developing kindergarten skills, his teacher referred him for an initial academic evaluation. EBPS conducted the evaluation in April of 2001. The results revealed that Cody had significant difficulty accessing the kindergarten curriculum. Many of Cody’s test scores fell in the below average range and he exhibited weaknesses in his pre-reading skills. (Exhibits P-6, 7 and 8 and testimony of Grable and Cody’s mother)

A psychological assessment was conducted by EBPS at the beginning of 1st grade. Results indicated that Cody’s overall academic ability fell in the borderline range. An IEP was developed in October of 2001 to address Cody’s needs. Cody continued to receive academic support from the special education teacher and speech and language therapy during the 2nd grade. In April of 2003 Cody was removed from EBPS, and homeschooled for the next five years (end of 2nd grade through 7th grade). (Exhibits P-6, 7, 8 and 9 and testimony of Grable and Cody’s mother)

In November of 2007, while Cody was still being home schooled, EBPS conducted a speech and language evaluation.[[5]](#footnote-5) Cody scored in the in the below average range for receptive and expressive language and in the borderline range for language content skills. Based on these test results, the examiner, Annette Jackson, stated that Cody would have difficulty recalling and following spoken directions, learning subject content, formulating questions and responses and retaining auditory information for language processing and expression. Ms. Jackson recommended direct speech and language therapy, and accommodations such as multi-sensory presentation of information, simplifying directions, chunking information and using visual aids and graphic organizers. Cody continued with home schooling. (Exhibit s-37 and testimony of Jackson)

In May of 2008, Cody underwent a consultation with Dr. Florence Lai at Massachusetts General Hospital (“MGH”). Her brief note indicated that Cody presented with evidence of dyslexia, ADD and a language processing disorder. She recommended supplemental testing to confirm her impressions. Dr. Lai also recommended an intensive systematic reading program that utilizes a phonics rule-based approach, such as Orton-Gillingham or the Wilson Reading Program. She recommended that the program be provided to Cody 4-5 times per week in a 1:1 setting and that he should also receive 20 hours of remedial reading tutorials during the summer to prevent regression. (Exhibit P-11)

Also in May of 2008, Cody underwent a second neuropsychological evaluation with Cynthia Levinson, Ph.D. at MGH.[[6]](#footnote-6) Dr. Levinson reported that since her initial evaluation of Cody, he had undergone additional testing which revealed a central auditory processing disorder. Dr. Levinson also administered several tests to assess memory, intelligence, academic achievement, executive functions and reading and writing. Cody’s intellectual functioning was within the low average range for verbal reasoning, acquired knowledge and visual processing speed. Cody was in the high average range for visuo-spatial processing and reasoning. He scored in the borderline range for auditory working memory. Single word reading, phonetic decoding and written expression fell markedly below age and grade expectation.[[7]](#footnote-7) (Exhibit P-11)

Several recommendations were made to address Cody’s deficits. Dr. Levinson recommended a routine, structured and low distraction setting due to Cody’s auditory processing disorder. She also made several instructional recommendations including multisensory presentation of information, chunking information, pre-teaching vocabulary and other content, hands on experiences, relating new information to previously learned information, allowing extra time to process and frequent check-ins with Cody to ensure his understanding. Due to the insecurity of his comprehension, phonological and decoding skills, Dr. Levinson recommended a structured multisensory reading program such as Lindamood-Bell. Specific writing recommendations included writing and editing rubrics, “writer’s workshop” consultations with teachers, small group projects that include brainstorming, the use of a keyboard and practice writing misspelled words. Finally, Dr. Levinson recommended speech and language therapy, more extensive educational and speech evaluations, teaching him memory strategies, and providing various classroom accommodations. (Exhibit P-11)

Cody returned to a school based program in September of 2008. He entered Clearway at that time and underwent a reading and writing evaluation. This evaluation was conducted by Clearway’s speech and language therapist, Rebecca Antes, and special education teacher, Mary Ryan. The results revealed that Cody’s overall written language and spelling skills were significantly below average for students his age. His reading scores were also well below average and documented the presence of a reading disability. Cody exhibited weaknesses in his ability to read and follow directions, his overall communication skills, and his reading vocabulary. A structured reading program to address Cody’s reading rate, fluency and accuracy was recommended, as well as a structured written language program to address his social language, language processing and expressive language skills. The examiners further determined that an emphasis should be placed on addressing Cody’s spelling deficits. (Exhibit P-11 and testimony of Ryan)

Cody attended Clearway for 8th, 9th and 10th grades. Ms. Ryan was Cody’s educational counselor for two years and his Orton-Gillingham reading teacher for three years. Cody received 1:1 Orton-Gillingham instruction twice a week for fifty-five minutes. Although he remained below average, he made progress in his reading skills. Cody also progressed in his written language skills. Progress reports from Cody’s time at Clearway indicate that he made progress. His progress, however, was limited due to Cody’s inconsistent completion of homework assignments. (Exhibits S-28, 29 and 30 and testimony of Ryan)

In November of 2010, during Cody’s 9th grade year, Clearway conducted a reading/spelling evaluation and a speech and language evaluation. The results revealed that Cody’s spelling and reading scores had increased from two years earlier but he remained well below grade level. In his written language skills, the testing revealed that Cody had made gains on all composite scores from the prior testing in 2008, although on individual subtests Cody’s skills for combining sentences, story composition, spelling and punctuation remained the same or declined slightly. (Exhibits S-31 and 32)

In June of 2011, the end of 10th grade, Cody’s mother contacted Clearway and EBPS to express her concern that Cody was being bullied.[[8]](#footnote-8) Discussions and meetings were held to address these concerns. Cody’s parents, however, advised EBPS that Cody would not return to Clearway and that he had applied to the Landmark School. Following a TEAM meeting on July 13, 2011, the TEAM proposed Cody’s continued placement at Clearway for the 2011-2012 school year. The placement was rejected on July 28, 2011. Ultimately, Cody did not return to a school based program and received tutoring from EBPS for 11th grade. (Exhibits P-3S-1, 23 and 24 and testimony of Grable and Cody’s mother)

In July of 2011, Cody began outside speech and language therapy with Jennifer Leary. Treatment was focused on the use of visualization as a memory strategy to help process and recall information from short paragraphs. After four sessions, Ms. Leary reported that this visualization strategy was beneficial for Cody as a memory support strategy. (P-5 and testimony of Cody’s mother)

In August of 2011, Cody underwent an outside evaluation at the Lindamood-Bell Center.[[9]](#footnote-9) The evaluator administered a sampling of subtests from various comprehensive tests. As in prior evaluations, the results showed weaknesses in reading, spelling, language and following directions. The evaluator noted that Cody would benefit from instruction in various Lindamood-Bell programs. (Exhibit P-5)

The parties participated in mediation at the end of August 2011. Referral packages were sent to South Shore Educational Collaborative (“SSEC”) and Learning Prep. Cody’s mother also visited these schools. EBPS agreed to provide ten hours a week of tutoring during this time.(S-1 and S-20 and testimony of Grable and Cody’s mother)

On September 5, 2011, Cody returned to Dr. Levinson for a third neuropsychological evaluation. Dr. Levinson reported that Cody’s current intellectual functioning relative to his peers had stabilized. Overall his intellectual functioning was within the average range with receptive and single word expressive language and auditory working memory in the low average range. Dr. Levinson opined that Cody was in need of a school placement that could help him master the academic and life skills knowledge and strategies he needs. She recommended continued instruction in a 1:1 multisensory reading program, group social skills training, consistent routine and structure, trained staff to assist with brainstorming and problem solving strategies and access to assistive technology. Dr. Levinson concurred with the classroom accommodations listed in Cody’s current IEP and in addition suggested allowing oral responses, modeling, limited use of abstract language, assistance in making conceptual connections, verbally labeling important points and brainstorming of prior knowledge. (Exhibit P-5)

A facilitated TEAM meeting was held on October 28, 2011 to discuss the Lindamood-Bell and Dr. Levinson evaluations and to develop an IEP. A new IEP was proposed and the parent consented to a three year reevaluation assessing only Cody’s academic skills and speech.[[10]](#footnote-10) The proposed IEP contained reading, written language, social skills, study skills and pragmatic language goals. It also contained several accommodations, many of which had been suggested by Dr. Levinson. SSEC was designated as the placement. The parent rejected the IEP and placement on November 28, 2011. (Exhibits P-3 and S-1, 16, 17, 19 and 23)

Also in the fall of 2011, Cody’s parents requested that a referral package be sent to the Chamberlain School. Although EBPS did not believe that Chamberlain was appropriate, they agreed to send a referral package. At a mediation session on December 19, 2011, EBPS agreed to support placement at Chamberlain if Cody was accepted. Cody was accepted on December 27, 2011 and EBPS proposed placement at Chamberlain on January 3, 2012. A few days later, Cody’s parents informed EBPS that they would not consent to Cody’s placement at Chamberlain because Chamberlain did not currently have staff certified to provide Lindamood-Bell programming. (P-3 and S-1, 8, 9, 10, 11, 12 and 14 and testimony of Grable and Cody’s mother)

In January of 2012 Cody underwent an outside speech and language evaluation and an auditory processing evaluation at Childrens’ Hospital. The audiologist suggested certain accommodations to address Cody’s auditory processing disorder. She recommend structured, minimal distraction classrooms, seating near the speaker, extra time to process, use of outlines and study guides, the use of the Fast For Word computer program and direct speech therapy. The results of the speech and language evaluation revealed mild to moderate difficulties with higher-order language tasks and retrieval and organization of spoken output, and severe difficulties following oral directions. The evaluator recommended direct speech and language therapy and deferred to Dr. Levinson’s recommendations. (Exhibit P-5)

The TEAM reconvened on March 19, 2012 to review this outside testing.[[11]](#footnote-11) Consent was requested to conduct Cody’s three year evaluation. The parents would not consent. No changes to the IEP were proposed by the TEAM. (Exhibit S-1 and 8)

After the prehearing conference on April 3, 2012[[12]](#footnote-12), Cody and his mother spent the next few weeks visiting Chamberlain, Learning Prep and SSEC. Subsequent to these visits, Chamberlain Maintained Cody’s acceptance, and Learning Prep accepted Cody. SSEC did not accept Cody due to limited space. (Exhibits S-1, 2 and 3)

In May of 2012, EBPS conducted Cody’s three year reevaluation which consisted of an educational evaluation and a speech and language evaluation. The educational evaluation, conducted by Lauren Delahanty, revealed that Cody’s overall academic skills were in the below average range, with the exception of average performance in math, an area of relative strength. His primary weaknesses were his basic reading skills and written expression. The recommendations made by Ms. Delahanty were comparable to those expressed by Dr. Levinson and other evaluators. Annette Jackson conducted Cody’s speech and language evaluation. Her findings were consistent with her original findings, as well as the findings of the other speech language evaluations. Ms. Jackson’s recommendations did not differ significantly from those expressed by prior evaluators. (Exhibits S-5 and 35 and testimony of Delahanty and Jackson)

A TEAM meeting was held on June 6 and 15, 2012. A new IEP was developed at that time. The new IEP, which is the focus of this due process Hearing, contains reading, written language and pragmatic language goals. Direct special education services are to be provided in reading for three times per week and written language for five times per week. Direct speech and language will also be provided twice per week for forty-five minutes. Several accommodations will also be provided, including but not limited to the use of templates, graphic organizers, assistive technology, extended time, chunking of information and multisensory presentation of information. The IEP provides for a longer school year and provides for transition planning. Learning Prep is designated as the placement. The parents rejected the IEP services and placement on July 3, 2012. (Exhibits S-27 and 36 and testimony of Grable and Cody’s mother)

Learning Prep is a private chapter 766 approved school located in Newton. The school services students with language based learning disorders. Many of the students are diagnosed with dyslexia. There are approximately forty-five students in each grade with a student teacher ratio of 6:1. The students are grouped by their educational and social needs and there is no more than a 48 month age span within groups. There is a dedicated speech pathologist that works within the classroom in addition to providing direct services. The staff is trained to address significant reading deficits. They use Lindamood-Bell, Orton Gillingham and Wilson to address reading deficits. The program is individualized for each student. The students participate in two daily small group English language arts classes. (Testimony of Manning)

At Learning Prep, each student is assigned a job counselor/coach to assist with transition programming. All high school seniors participate in the work study program which is modeled after the work study program at Northeastern University. Eighty-eight to ninety-two percent of Learning Prep students continue on to attend college. Learning Prep believes it can meet Cody’s educational and social needs and has accepted him into their program. (Testimony of Manning)

**DISCUSSION**

It is not disputed that Cody is an individual with a disability falling within the purview of the federal Individuals with Disabilities Act (“IDEA”), 20 USC 1400 *et seq*. and the Massachusetts special education statute, MGL c. 71B. As such, he is entitled to a free, appropriate public education (“FAPE”). 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 and related services designed to meet their unique needs and prepare them for further education, employment and independent living.”[[13]](#footnote-13) 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 and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”[[14]](#footnote-14)

Cody’s right to a FAPE is assured through the development and implementation of an individualized education program (“IEP”).[[15]](#footnote-15) 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.[[16]](#footnote-16) A student is not entitled to the maximum educational benefit possible.[[17]](#footnote-17)

Similarly, the educational services need not be, “the only appropriate choice, or the choice of certain selected experts, or the parents’ first choice, or even the best choice.”[[18]](#footnote-18) The IDEA further requires that special education and related services be designed to result in progress that is “effective”.[[19]](#footnote-19) Further, a student’s level of progress must be judged with respect to the educational potential of the child.[[20]](#footnote-20)

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.”[[21]](#footnote-21) Massachusetts also requires that the special education services be designed to develop a student’s educational potential.[[22]](#footnote-22) Cody is eligible for special education services because his ADD, CAPD and dyslexia negatively affect his ability to effectively access the curriculum.

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.[[23]](#footnote-23) The critical inquiry is whether a proposed IEP is adequate and appropriate for a particular child at a given point in time.[[24]](#footnote-24)

The only dispute in this matter is whether the most recent IEP proposed by EBPS offers Cody a FAPE in the least restrictive environment, and if not, whether it can be modified to provide a FAPE to Cody. The school district, as the party seeking relief in this matter, has the burden of persuasion.[[25]](#footnote-25) It is the school district’s burden to show by the preponderance of the evidence that the June 6, 2012 to June 5, 2013 will allow Cody to make effective progress; that is, that the IEP was reasonably calculated to provide Cody with a FAPE in the least restrictive environment. After a careful review of the testimony and documentary evidence, I find that the school district has met its burden to show that the proposed IEP and placement at LPS provides a FAPE to Cody in the least restrictive environment.

There is no dispute as to Cody’s needs. As a result of Cody’s ADD, CAPD and dyslexia, he is unable to access the curriculum without special education services. Cody has difficulty following and understanding directions. He processes information slowly. He has great difficulty writing essays due to his spelling and punctuation deficits. Cody’s exhibits great difficulty in his basic reading skills. Cody responds well to pairing of auditory information with visual materials, extra time to process information and repetition and chunking of lengthy information.

Over the last nine years, since the 3rd grade, Cody has only been educated in a structured school setting for a total of three academic years. The evidence shows that when Cody was enrolled in a structured school program, he made academic progress. Cody attended Clearway for 8th, 9th and 10th grades. The documentary evidence and the oral testimony from Mary Ryan, Cody’s Orton-Gillingham teacher and the co-director of Clearway, convincingly established that Cody made gains in his reading skills, writing skills and math skills.

Ms. Ryan testified that Cody was able to access the curriculum at Clearway with special education services. His fluency and reading comprehension improved and Cody was able to effectively write a multi paragraph essay with support.[[26]](#footnote-26) His ability to use descriptive language, decode unfamiliar words, use target vocabulary words to respond to concrete questions and participate in class discussions improved. Cody was able to demonstrate mastery of the spelling rules, however he still had difficulty applying these rules during independent tasks and with homework assignments. In addition, Cody passed his math MCAS. Overall, Ms. Ryan’s testimony about Cody’s progress was credible and was supported by the progress reports generated by Clearway staff.

The IEP proposed by EBPS calls for placement at Learning Prep. As with Clearway, Learning Prep is a private chapter 766 school that works with students with language based learning disabilities. Based on Cody’s ability to make progress at Clearway, the evidence overwhelmingly suggested that Cody will also be able to make effective progress at Learning Prep. Cynthia Manning, the principal at Learning Prep credibly, and persuasively testified about Learning Prep’s ability to meet Cody’s needs.

Ms. Manning testified that Cody would not have been accepted to her program if Learning Prep did not have a set of students with profiles similar to Cody that he could be grouped with. There are students at Learning Prep with ADD and CAPD in addition to their primary diagnosis of a language based learning disability. She further testified that Learning Prep could address Cody’s significant reading deficits and written language deficits. Learning Prep utilizes various Lindamood-Bell programs, including visualization/verbalization and the STARs program. These programs are utilized in science, history, math, and English language arts. Learning Prep also offers Orton-Gillingham instruction.

Ms. Manning testified that each student at Learning Prep is assigned a guidance counselor that assists with transitional planning. Moreover, in addition to the academic program, every senior is required to participate in a work study program modeled after Northeastern University’s program. Prior students of Learning Prep have worked at law firms, government agencies, food service industries and labor industries. Cody would like to attend college and Ms. Manning testified that 88-92% of Learning Prep students proceed to college.

The proposed IEP also contains many of the recommendations proposed by Dr. Levinson in her September 2011 evaluation of Cody, and includes placement at Learning Prep, a program that satisfies the criteria recommended by Dr. Levinson. Specifically, Dr. Levinson recommends a structured academic placement with resources and trained personnel to provide sufficient academic accommodations. These accommodations include consistent routine and structure, assistance and development of social skills, staff to assist with brainstorming and problem solving strategies, access to assistance technology and continued instruction in a 1:1 multisensory reading program.[[27]](#footnote-27) Dr. Levinson’s evaluation report stated that she agreed with the classroom accommodations listed in Cody’s current IEP and recommended a few others that are routinely implemented by staff at Learning Prep.

There was no testimony that Cody’s needs could not be met at Learning Prep. In fact, the evidence overwhelmingly supported EBPS’s contention that Learning Prep could address all of Cody’s educational, social and transitional needs. Whereas Cody’s mother testified that she did not want Cody to participate in a work study program, there was no evidence that participation in such a program would deny Cody a FAPE. Cody’s mother also expressed concern that the current IEP did not contain a math goal. I do not find, however that excluding a math goal denies Cody a FAPE. School psychologist Lauren Delahanty testified that her recent testing did not indicate that a math goal was necessary to provide Cody a FAPE, as this is an area of relative strength for him and his math skills are in the average range.[[28]](#footnote-28) She did testify that Cody has some difficulty with language based math but that the language based strategies utilized to address his language deficits would address any issue Cody is having with language based math problems.[[29]](#footnote-29)

The parents further objected to the suggestions that Cody needs social skills training and felt that the emphasis on social thinking at Learning Prep would render the program inappropriate for Cody. To the contrary, the testimony and documents submitted indicate that Cody has difficulty with social interactions, most likely due to his CAPD. The evidence was persuasive that Cody would benefit from social skills training.

I recognize that returning to a structured school program, after spending six of the last nine years being educated at home, may be a difficult transition for Cody and his parents. Nonetheless, I am persuaded by the evidence that Cody made effective progress in a structured school setting while he was enrolled at Clearway. I am also persuaded by the testimony of Ms. Manning that Cody will again be able to make effective progress at Learning Prep, and that the proposed IEP provides a FAPE to Cody. EBPS has met its burden in this regard.

**ORDER**

The June 6, 2012 to June 5, 2013 IEP proposed by EBPS which calls for placement at Learning Prep provides Cody with a FAPE in the least restrictive environment.

So Ordered by the Hearing Officer,

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Ann F. Scannell

Dated: August 6, 2012

1. Cody is a pseudonym used for confidentiality and classification purposes in publicly available documents. [↑](#footnote-ref-1)
2. Two of Cody’s brothers were present at the Hearing. [↑](#footnote-ref-2)
3. EBPS’s maintained their position that Clearway School was an appropriate placement for Cody. [↑](#footnote-ref-3)
4. It should be noted that EBPS offered placement at SSEC, Clearway School or Chamberlain School (requested by the parents). Subsequently, EBPS also offered placement at Learning Prep School (“LPS”) [↑](#footnote-ref-4)
5. In reviewing the parties’ documents, it appears that EBPS also conducted a psychological evaluation and and educational evaluation at about the same time. These documents were not introduced into evidence by either party. [↑](#footnote-ref-5)
6. Dr. Levinson conducted an initial neuropsychological evaluation of Cody in November of 2003. No report from this initial visit was introduced into evidence by either party. [↑](#footnote-ref-6)
7. Dr. Levinson reported that she reviewed a November 2007 outside psychological evaluation which diagnosed Cody with learning disabilities in reading, writing, spelling and math. The psychologist encouraged a return to the school system and recommended an IEP to address these needs. [↑](#footnote-ref-7)
8. Cody’s IEP from 12-3-10 to 12-2-11 calling for continued placement at Clearway was accepted by the parent on January 25, 2011. (Exhibit S-25) [↑](#footnote-ref-8)
9. Cody was retested in June of 2012 but these test results could not be credibly interpreted without the examiner’s testimony or detailed narrative report. The examiner neither testified nor provided any such report. [↑](#footnote-ref-9)
10. The parent subsequently rescinded her consent. She renewed her consent at the pre-hearing conference in April and the testing was completed in May 2012. [↑](#footnote-ref-10)
11. Cody was also seen at Sylvan and the Sylvan information was also reviewed at the TEAM meeting. [↑](#footnote-ref-11)
12. During the prehearing conference the parents provided their consent for EBPS to conduct Cody’s three year reevaluation. [↑](#footnote-ref-12)
13. 20 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) [↑](#footnote-ref-13)
14. 20 USC 1412(a)(5). See also 20 USC 1400(d)(1)((A); MGL c.71B; 34 CFR 300.114(a)(2)(I; 603 CMR 28.06(2)(c) [↑](#footnote-ref-14)
15. 20 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) [↑](#footnote-ref-15)
16. *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir. 1993) [↑](#footnote-ref-16)
17. *Rowley*, 458 U.S. at 197 [↑](#footnote-ref-17)
18. *G.D> Westmorelend Sch. Dist*., 930 F.2d 942 (1st Cir. 1991) [↑](#footnote-ref-18)
19. 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”.) [↑](#footnote-ref-19)
20. *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F.3d 18 (1st Cir. 2008) [↑](#footnote-ref-20)
21. 603 CMR 28.05(4)(b) [↑](#footnote-ref-21)
22. MGL c.71B; 603 CMR 28.01(3) [↑](#footnote-ref-22)
23. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983 (1st Cir. 1990) [↑](#footnote-ref-23)
24. *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir. 1993) [↑](#footnote-ref-24)
25. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005) [↑](#footnote-ref-25)
26. Although Cody’s composite scores on the Test of Written Language remained below average, the results from his 2011 test reveal that his composite test scores had improved over his 2008 results. During this time, Cody was enrolled in Clearway. [↑](#footnote-ref-26)
27. The parents argue that Cody requires Lindamood-Bell reading instruction. None of the recent reports from outside testing but for testing at the Lindamood-Bell Center, indicate that Cody requires that specific program. Nor is the parent entitled to choose a particular reading program for her child, pursuant to special education law. [↑](#footnote-ref-27)
28. Ms. Manning testified that after several weeks at Learning Prep, Cody’s IEP would be reviewed and amended to include additional services, if necessary. [↑](#footnote-ref-28)
29. None of Cody’s recent testing, including Dr. Levinson’s evaluation, recommended special services for math. Nor did the evidence from Clearway indicate difficulties with math that required special services. [↑](#footnote-ref-29)