

THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

Bureau of Special Education Appeals

IN RE: ANATOLE¹

&

BSEA #1300493

LEXINGTON PUBLIC SCHOOLS

DECISION

This Decision is issued pursuant to M.G.L. c. 71 B and 30A, 20 U.S.C. §1400 et seq., 29 U.S.C. §794 and the regulations promulgated under those statutes. A hearing was held on March 21 and 27, 2013 at the Administrative Offices of the Lexington Public Schools. Those present for all or part of the proceeding were:

Mr. & Mrs. A.	Parents
Karen Levine	Psychologist
Sarah Measures	Psychologist
Linda Chase	Director of Student Services, Lexington Public Schools
Elizabeth Billings-Fouhy	Supervisor of Early Childhood Education, Lexington
Katie Bowen	Teacher, Intensive Learning Program, Lexington
Lisa Williams	Teacher, Kindergarten, Lexington
Martha Bakken	Supervisor, K-8 Student Services, Lexington
Stephanie Visone	Administrative Intern, Lexington
Colby Brunt	Attorney for Lexington Public Schools
Katie Meinelt	Attorney for Lexington Public Schools
Linda Walsh	Court Reporter
Anne Bohan	Court Reporter
Lindsay Byrne	Hearing Officer

¹ "Anatole" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

The official record of the hearing consists of exhibits submitted by the Parents marked P-1 through P-8; exhibits submitted by the School marked S-1 through S-50; and approximately 9 hours of recorded testimony and argument. Throughout the Hearing process the Parents proceeded pro se and the school was represented by attorneys. The Parties submitted written closing arguments on April 24, 2012 and the record closed on that date.

ISSUES²

I. Whether the 2013-2014 Amendment to the 2012-2013 Individualized Education Program as developed on January 28, 2013 and implemented since then is reasonably calculated to ensure that Anatole receives a free appropriate public education? And in particular:

II. 1. Whether the size of the regular education classroom component of Anatole's program is appropriate for him?

2. Whether Anatole requires daily 1-1 DIR/Floortime services in school in order to receive a free appropriate public education?

3. Whether the Student Support Instructors are appropriately trained in DIR/Floortime to ensure consistent implementation of that methodology?

4. Whether Anatole requires the direct and consultative services of a certified DIR/Floortime consultant as part of his IEP in order to receive a free appropriate public education?

5. Whether the peer composition of the Intensive Learning Program component of Anatole's IEP is appropriate for him?

6. Whether the social skills instruction Anatole receives in the Intensive Learning Program is appropriate for him?

7. Whether the proposed IEP and placement provide sufficient academic challenge for Anatole?

PARENTS' POSITION

The Parents did not testify and therefore their position is gleaned primarily from the nature of the arguments and questions they raised at the Hearing. They have three chief arguments. First, the Parents assert that Anatole is able to learn and participate at an age appropriate level in mainstream environments so long as the number of children is small, the expectations are clear, consistent and predictable, and the activity is adult directed. They contend that Anatole could be successfully educated in an entirely mainstream environment with limited

² In addition to the overall question of whether Lexington is meeting its statutory obligation to provide a free appropriate public education to Anatole, the Parents requested specific findings on a number of subsumed issues as set out above.

special education support if the number of students could be capped at 10-12. They argue that the environmental stimulation in the 20-plus children regular education class overwhelms Anatole's sensory and coping skills, causing him to shut down and preventing learning. They request that Lexington establish a small regular education or mixed regular/special education kindergarten class that would permit Anatole to be fully mainstreamed.

Second, the Parents contend that the DIR/Floortime approach has had the most success in addressing Anatole's sensory, attentional and behavioral challenges. They assert that the IEP and placement offered by Lexington do not offer adequate DIR/Floortime services with staff appropriately trained in DIR/Floortime techniques to address Anatole's ongoing needs. They further claim that Lexington demonstrates a philosophical bias against DIR/Floortime, and in favor of the ABA approach, that prevents it from offering a program that is appropriately tailored to Anatole's unique needs. They request that daily DIR/Floortime sessions be incorporated in Anatole's IEP and that all staff be trained in DIR/Floortime intervention practices.

Third, the Parents assert that the composition of the peer group in which Anatole receives direct social skills training in a substantially separate setting is not appropriate for him. They argue that Anatole requires instruction with peers who have cognitive and social skills at least as well developed as his.

As a result, the Parents argue, the current IEP and the disputed Amendment are not specifically tailored to Anatole's unique learning needs and are not designed to ensure that he receives a free appropriate public education. Because of the large kindergarten class size, the inappropriate small group placement, and the lack of intensive DIR/Floortime work Anatole is not making educational progress consistent with his very considerable potential. They would like Lexington to establish a small regular education kindergarten with a teaching approach based on DIR/Floortime principles, and additional daily intensive DIR/Floortime sessions arranged for Anatole. The Parents believe that only with this model can Anatole learn to his potential and be fully integrated with mainstream peers as he is entitled.

SCHOOL'S POSITION

Lexington argues that Anatole is making steady, significant progress academically, behaviorally, and socially in the educational program it designed for him. He receives targeted instruction in social skills and emotional-behavioral regulation in a small group of similarly situated peers in a low-stimulation protected setting. He also has the opportunity to practice and generalize those skills, and to learn and participate in age appropriate academic instruction in a mainstream kindergarten class. Anatole has demonstrated learning and growth in all areas since beginning the program in October 2012. The teachers and assistants use a variety of instructional techniques and behavioral interventions, including some based on DIR/Floortime principles that are proving successful for Anatole. At the Parents' election Anatole attends the morning half of a full day program. The school asserts that Anatole is capable of making greater, more rapid social and behavioral progress were he also to attend the afternoon component of the full day program outlined in his IEP.

SUMMARY OF THE EVIDENCE

1. Anatole is a six year old first grade student who attends the Lexington Public Schools. He is described as lively, curious and engaging with strong intellectual skills and weaker social skills and behavioral regulation. Anatole is fully bilingual. He has difficulty managing transitions, has rigid responses to disappointment and direction and benefits from adult assistance and modeling for appropriate social interactions with peers. He was diagnosed with PDD-NOS when he was nearly two and received Early Intervention services including ABA and Floortime. When he entered preschool Anatole had an IEP calling for placement in a substantially separate preschool classroom for 2 and one half hours per day and one hour per day of inclusion with typical peers. The next year Anatole's IEP provided for a preschool program consisting of 19.5 hours per week in a small, substantially separate classroom designed for 7-9 young students with autism spectrum disorders and 10 hours per week in an integrated preschool classroom with approximately 15 typical age peers. (S-30; S-7; S-13; Billings-Fouhy).

Although the Parents accepted the program, Anatole did not attend the preschool for the amount of time offered. He attended for 19.5 hours per week and participated in a day care program 2 days per week. The Parents supplemented the program with direct DIR/Floortime sessions. (Billings-Fouhy)

2. The Team met in April and June 2012 to discuss plans for Anatole's kindergarten year. Lexington proposed that Anatole attend the Intensive Learning Program ("ILP") at the Fiske School. The ILP program proposed for Anatole included placement in a regular full day inclusion kindergarten with the individual assistance of a highly trained Student Support Instructor ("SSI") and targeted additional social/behavioral instruction and support in a small group of peers with similar needs. The accommodations and modifications outlined on the PLEP-A and PLEP-B pages of the proposed IEP include interventions, techniques, approaches based on DIR/Floortime and Social Thinking as well as other philosophical and educational best practices such as ABA. (Billings-Fouhy; Bowen) The Parents requested that Lexington establish a small (8-10 student) integrated kindergarten classroom similar to the model used in the preschool program. (S-14, 15, 16).

3. Anatole completed the preschool placement at the conclusion of the 2011-2012 school year. He did not attend the summer component of the program during the summer 2012. (S-19)

4. On July 25, 2012 the Parents notified Lexington of their intention to place Anatole at the Clark School in Danvers and to seek an IEP and public funding for that kindergarten placement. (S-18) The Parents requested a due process hearing on August 8, 2012. (Administrative Record) Anatole attended the Clark School from the beginning of September until mid-October 2012. In October 2012 the Parents notified Lexington of their intent to re-enroll Anatole in Lexington Public Schools.

5. Lexington conducted a three year re-evaluation of Anatole in the Fall, 2012 (S-22), The speech-language evaluation (S-28) and psychological evaluation (S-30) were completed in

October 2012. The Team also met with Tal Baz, the Parents' DIR/Floortime consultant. Lexington's Psychologist, Lou Eckart, recommended that Anatole attend a special education program which combined inclusion in a typical kindergarten class with 1:1 support and additional small group and individualized instruction "as needed". She noted that the inclusion class should be structured, predictable, routine, quiet and moderately paced. She also recommended that a Board Certified Behavioral Consultant ("BCBA") consult to the classroom. (S-30)

6. The Team met on October 5 and October 9, 2012 (S-23, 24, 25) and concluded that the IEP that had been proposed for Anatole in April 2012 continued to meet the recommendations of Anatole's previous service providers as well as those of his then current evaluators and would provide a free appropriate public education to him. On October 10, 2012 the Parents accepted the April 2012- April 2013 IEP. Shortly thereafter Anatole transitioned to the ILP and inclusion kindergarten at the Fiske School. (S-13)

7. Lexington continued to evaluate Anatole during his transition to the Fiske School program. Lexington conducted an Education Assessment, an Academic Assessment, and Occupational Therapy Evaluation, an Adaptive Physical Education Assessment, and a Functional Behavioral Assessment. (S-31; S-34; S-35; S- 36; S- 38) In addition, Lexington collected data and created explanatory charts on areas of difficulty that the Team had identified: Problem Behaviors, Rigid Behaviors, Non-compliance. (S-45; S-46; S-47)

8. The Team reconvened on January 28, 2013. After discussing the evaluations Lexington had conducted, the observations of the service providers then working directly with Anatole, and the Parents' requests, Lexington proposed an Amendment to the 4/12-4/13 IEP. The Amendment continued the major components of the ILP program at the Fiske School. It also eliminated the occupational therapy service, reduced the number of Student Support Instructors assigned to work with Anatole from 3 to 2, and provided for Lexington Team consultation with the Parents' DIR/Floortime provider. ((S-42) The Parents accepted the IEP Amendment on February 25, 2013 but continue to assert that the program is overly restrictive and should be implemented in a small, integrated classroom of no more than 12 students,.

9. The Intensive Learning Program ("ILP") in Lexington is a district wide multi-grade initiative based on the principles of Applied Behavioral Analysis ("ABA") and designed to provide a continuum of flexible supports to students with autism spectrum diagnoses. (S-38; Bakken) The program at the Fiske School combines participation in general education classes with 1:1 support provided by Student Support Instructors ("SSI") and participation in small homogeneous special education groups or individual tutoring for targeted skill instruction in weak areas. (Bakken) Student Support Instructors are highly trained individuals who have a minimum of a Bachelor's level preparation in education, psychology or a related field and experience working with individuals with autism. The SSIs receive additional and ongoing training and supervision in relevant skills such as: verbal behavior, crisis intervention, social prompting, de-escalation, etc. (S-2; S-16) The SSIs are supervised by both the special education teacher and a Board Certified Behavioral Analyst (BCBA) who collaborate and coordinate each student's individual programming. The SSIs are responsible for translating and consistently implementing each student's individual behavioral plan in the general education setting and for

extending the skills learned in the small special education group to the mainstream environment. (Bakken)

10. Lisa Williams is the classroom teacher in the kindergarten Anatole attends. (S-1) She testified that the class is a heterogeneous group of 20 children, four of whom have IEPs. Two SSIs work in the class at a time. One works directly with Anatole. In addition there is a classroom paraprofessional four mornings a week and a literacy specialist during Writer's Workshop twice a week. Kindergarten is a full school day. The classroom follows a prescribed routine:

- 8:30 Entrance, free choice
- 9:00 Morning meeting using the Responsive Classroom model
- 9:30 Writer's Workshop: group lesson for 10 minutes, independent writing for 20 minutes
- 10:00 Reader's Workshop: consistent groups of 4-5: 2 teacher-led, 2 independent
- 10:45 Clean up, snack
- 11:00 Interventions/free choice
- 11:30 Sharing, story time
- 11:45 Math stations: 4-5 students per group
- 12:30 Clean up, recess
- 1:00 Lunch
- 1:30 Rest/buddy reading
- 2:00 Specials or social circle with guidance counselor

Ms. Williams testified that Anatole participates well in all classroom activities he is present for. He is bright, delightful, intellectually curious, and engaged. He keeps up with the pace of instruction. When he entered the class in October 2012 Ms. Williams noted that Anatole became rigid and noncompliant, and had occasional tantrums when directed to a non-preferred activity and during transitions. By March 2013 Ms. Williams testified, those problem behaviors had decreased dramatically. Though he still performs better in structured activities with clear expectations, he has made significant gains in social integration and pragmatics, flexibility and independence. For example, she has observed Anatole initiating conversations and appropriate play with peers both with SSI support and independently. Ms. Williams stated that at the Parents' election Anatole does not attend the afternoon portion of the kindergarten class. She believes he would make greater, more rapid progress toward his IEP goals were he to participate in the full day program available to him. (Williams)

11. Katie Bowen is the ILP Teacher responsible for implementation of Anatole's IEP at the Fiske School and for direct teaching in the substantially separate classroom. (S-1) She testified that Anatole participates in the general curriculum with an SSI for most of each school day. He also spends scheduled and unscheduled time in the substantially separate classroom. That room is devoted to the ILP students. They receive small group or individual instruction targeted to their particular needs in dedicated separate space and can retreat to it when feeling overwhelmed by experiences in the mainstream. During the kindergarten classroom's writer's workshop block Anatole receives listening therapy in the ILP classroom. He also participates in an instructional social skills group during that time. The group consists of Anatole and four other students with similar cognitive and social skills. (S-48) The group uses a social thinking

curriculum to improve social language, awareness of social conventions, anticipation of social dynamics and recognition of non-verbal language and emotions. Ms. Bowen has observed Anatole using the skills and language learned in the small group in the kindergarten classroom. She testified that Anatole is able to memorize and process the instruction and practice he receives in the small ILP group and apply it independently in structured activities and with the support of the SSIs in less structured settings. Ms. Bowen also testified that the other students in Anatole's ILP small group are appropriate peers for him. (Bowen) Ms. Bowen stated that she has pursued academic training in DIR/Floortime through Lesley University and incorporates Floortime techniques and approaches, along with other styles of intervention, into her work with Anatole.

Ms. Bowen stated that Anatole has made significant progress in the ILP program since he entered in October 2012. Charts of Anatole's targeted behaviors show a steady decrease in tantrums, rigidity and non-compliance. (S-46; S-47; S-48) Anecdotally Ms. Bowen has observed increased appropriate participation in mainstream social groups such as "lunch bunch" and more appropriate social language and increased engagement in and compliance with the kindergarten routine. Ms. Bowen also noted that Anatole is able to appropriately use and respond to the SSI in challenging sensory or social situations. (Bowen)

12. Elizabeth Billings-Fouhy is the Supervisor of Early Childhood Special Education for Lexington. She has known Anatole since he was 2 ½ years old and has observed him in both the preschool and the kindergarten settings. She recalled that Anatole began preschool in a substantially separate class with one hour per day of integration with typical peers. The next year Anatole's IEP provided for an integrated classroom of 15 students in the morning and a substantially separate class of 7-9 in the afternoon. Anatole attended the afternoon component infrequently. He made consistent progress when his attendance was consistent. Ms. Billings-Fouhy stated that all preschool personnel had received training in a variety of intervention programs: SCERTS; TEACH; ABA; DT; Floortime; Social Thinking. In 2010 all ILP staff received training in Floortime from Tal Baz, the Parents' DIR/Floortime Consultant. In addition both the preschool teacher and Ms. Bowen, the ILP teacher at Fiske, have taken coursework devoted to DIR/Floortime at Lesley University. (B-F; S-1)

Ms. Billings-Fouhy testified that she recommended that Anatole attend the Fiske ILP program for kindergarten. Because he was then functioning well in an integrated group of 15 students, Ms. Billings-Fouhy believed that a classroom environment of 20 students, with targeted support, would be an appropriate challenge for him. She stated that while Anatole has above average cognitive skills he demonstrates significant weaknesses in social/emotional functioning and classroom adaptation. For him the academic challenge is not the curriculum mechanics in which he already excels, but in the flexible responses and group learning components of the curriculum frameworks.

Ms. Billings-Fouhy observed Anatole in the ILP kindergarten in March 2013. Based on that observation she stated she was "thrilled" with the progress Anatole had made. She testified that the level of consecutive independent peer interaction demonstrated by Anatole was "much greater" than at preschool. According to Ms. Billings-Fouhy, at the time of her March 2013 observation Anatole appeared "typical" in body language and in verbalizing. (Billings-Fouhy)

13. Lou Eckart is the staff psychologist for the Lexington Early Childhood Team. (S-1) She first met Anatole in December 2009 and has since observed him in both the preschool and kindergarten settings. In October 2012 she conducted a formal psychological evaluation as part of Anatole's three year reevaluation. (S-30) Based on her knowledge of Anatole in October 2012 Dr. Eckart recommended that he attend a kindergarten program that combined participation in a regular kindergarten classroom with 1:1 support that could be faded as appropriate, direct instruction in a social thinking curriculum in a small group, and BCBA consultation. Dr. Eckart testified that the ILP program at the Fiske School contains the recommended elements.

Dr. Eckart observed Anatole in regular kindergarten class shortly after he transitioned to Fiske in October 2012. She testified that, in that setting at that time, Anatole had inconsistent interactions with adults and was not interacting at all with other students. He demonstrated extreme difficulty with transitions and significant non-compliance and rigidity. She observed Anatole again on March 15, 2013. Dr. Eckart testified that she "saw a different guy." While he still needed adult support Anatole talked independently to the classroom teacher, joined a large table of students, listened, displayed appropriate body language, added his own comments to the peer conversation and called a student by name. He was able to initiate conversation with and respond to peers independently without adult cues. Later, when asked to transition to a different activity, Anatole became rigid. The staff used several different strategies, including humor, over the course of 1-4 minutes until Anatole was able to happily engage in the alternate activity. Dr. Eckart also observed Anatole appropriately and independently using components of the super-flex curriculum taught in the small group ILP class to manage the transition. Dr. Eckart testified that she was familiar with the functioning levels of the other students in the small group ILP class in which Anatole receives direct social skills instruction. She testified that while none of the students is "typical" there are good communication partners in the group. (Eckart)

14. Sarah Measures is a DIR/Floortime Leader certified by the ICDL. She teaches DIR/Floortime at Lesley University and provides consultation to Anatole's Parents. She testified that Anatole benefits from the pro-social, abstract, child driven nature of Floortime. Anatole has significant cognitive strengths along with his weaknesses in social skills and sensory sensitivity. According to Ms. Measures, learning from scripts and rules as ABA techniques emphasize, strengthen Anatole's autistic qualities rather than exercising the more flexible parts of his brain. Ms. Measures recommends that Anatole receive 5 Floortime sessions a day, some individually, some with one other student, for a total of 2 ½ hours per day. In addition Anatole should participate in a small group that focusses on facilitated interaction with peers in order to improve his understanding of emotions.

Ms. Measures testified that in March 2013 she observed Anatole in the small group ILP class and in a home-based Floortime session. She testified that the peers in the ILP class were not appropriate for Anatole as they did not have the typical age appropriate emotional response and regulation Anatole needs to emulate. Ms. Measures also viewed a DVD of Anatole's participation in a private language class. She testified that in that small group, teacher directed setting Anatole's attention, listening and response skills were indistinguishable from those of the other, presumably "typical," students. (Measures)

15. Karen Levine is a psychologist in private practice who specializes in providing services to individuals with autism spectrum diagnoses, their families and schools. (P-3) Dr. Levine met with Anatole five times in 2012 and observed Anatole in the Fiske ILP program in January 2013. (P-2) Dr. Levine testified that Anatole is very bright and can follow rules but needs direct instruction, adult support and appropriate peer models and partners for social language, social pragmatics and emotional/behavioral regulation. She stated that DIR/Floortime, a specific approach to improving social outcomes for individuals with autism spectrum disorders, is one appropriate, though not the sole appropriate, intervention for Anatole. Dr. Levine testified that the kindergarten program Anatole attends is excellent, offering well- paced, tightly structured instruction with highly skilled teachers and assistants who use a variety of techniques to model, teach and reinforce pragmatic social skills, language and behavior. She noted that Anatole had demonstrated behavioral progress during his time as an ILP student as illustrated on the data charts maintained by Lexington. (S-47; S-48; S-49) She also observed improvement in Anatole's reciprocity and flexibility during the individual Floortime sessions she conducted with him over the same period. Nevertheless, Dr. Levine found that the Fiske School ILP program was not appropriate for Anatole. She stated that the inclusion kindergarten component was too large and stimulating for him. He was unable to access the pace and level of non-verbal and verbal peer interaction in the mainstream class and remained connected primarily to the adults present in the room. Dr. Levine stated that Anatole needs a full day of supported access to peer interaction in a small (6-12 student) co-taught classroom. Ideally instruction and facilitation would be based on the Floortime approach and incorporate both individual and smaller group work to improve empathy, perspective taking, and social pragmatics. (Levine)

FINDINGS AND CONCLUSIONS

There is no dispute that Anatole has special learning needs and is therefore entitled, pursuant to 20 U.S.C. §1400 et seq. and M.G.L. c.71B, to receive a free, appropriate public education. The Parties disagree on the setting and method which can ensure receipt of that education. After careful consideration of all the evidence presented in this matter, and of the thoughtful arguments made by the Parties, it is my determination that the program and placement offered by the Lexington Public Schools through the January 2013 IEP Amendment is reasonably calculated to provide Anatole with a free appropriate public education. My reasoning follows:

Federal and state special education statutes require school districts to offer a resident student with disabilities a custom-tailored individualized education program targeting all of the student's learning needs, and offering specialized instruction and related services designed to enable the student to make effective educational progress and derive a meaningful education benefit. Lenn v. Portland School Committee, 998 F.2d 1083 (1st Cir 1993) While this is a stringent standard it does not require a school district to provide a service that would "maximize" the educational benefit to the Student. Lessard v. Wilton-Lyndeborough Cooperative School Dist., 518 F. 2d 18 (1st Cir. 2008). A school district may select the educational approach, methodology and staff it considers appropriate for a student and that selection will be affirmed so long as it is reasonably supportable and results in a demonstrable educational benefit to the student. G.D. v. Westmoreland School Dist., 930 F. 2d 942 (1st Cir. 1991). The party requesting

the hearing, or a change from the status quo for the student, has the burden of persuasion. Schaffer v. Weast, 546 U.S. 29 (2005).

In this matter the Parents acknowledge that Lexington has offered Anatole appropriate pre-kindergarten services, that the preschool and Fiske School staff is highly qualified and committed to Anatole's educational growth, that Lexington has developed an intervention model for young students with autism that is based on a recognized methodology and incorporates elements of other standard approaches, and that Lexington has met its procedural obligations under the IDEA. The Parents argue, however, that Lexington has failed to appropriately individualize its educational approach for Anatole by declining to create a program and setting in which he can learn effectively alongside typically developing age peers. The Parents assert that Anatole would thrive in an early elementary program modeled after the preschool that includes students with disabilities in a smaller group of typical peers. They claim that such a setting would permit Anatole to participate in the general education without an individual aide and therefore would be less restrictive for him than the current kindergarten classroom where the sensory and communication challenges and the pace overwhelm his ability to cope. They also claim that Lexington is thwarting Anatole's educational growth through its failure to adopt and deliver direct individual DIR/Floortime services to him.

I am sympathetic to the Parents' position. It seems a reasonable request to continue services and settings which have, in their view, produced remarkable results and permitted Anatole to participate in community activities in a manner indistinguishable from typical peers. It is also a reasonable interpretation of the least restrictive environment requirement of federal and Massachusetts special education law. Which, after all, is "less restrictive": unaided participation in a specialized setting or aided participation in a general setting? That has been a perennial topic of debate in special education. Unfortunately, however appealing and interesting the Parents' contentions may be, this record does not provide sufficient support for a finding in their favor.

On the contrary, the solid preponderance of the evidence compels a finding that the current Fiske School ILP program is appropriately tailored to Anatole's identified special education needs and permits him to benefit from participation in the general curriculum alongside his typically developing age peers. The single most salient factor undergirding this finding is that Anatole has demonstrated positive adaptation to general classroom rules and social-behavioral expectations. On this the evidence is uncontroverted. Anatole is participating in general classroom activities. He appropriately uses the facilitation of the individual aides when he becomes confused or overwhelmed. He can increasingly independently navigate peer interactions and conversations. He is generalizing the social and behavioral skills directly taught and practiced in the substantially separate ILP class to mainstream settings. His affect, eye contact, patience, turn-taking, empathy and manners have all improved in the general kindergarten setting. (Williams; Billings-Fouhy; Bakken; Bowen) His reciprocity and flexibility also improved outside the classroom during the same time period. (Levine) Data collected concerning the incidence of targeted negative behaviors between January and March 2013 show a steady decrease (S-45; S-46; S-47; see also S-38.) There is no contrary evidence in this record. While Ms. Measures, a witness on behalf of the Parents, testified that Lexington's program was not appropriate for him she had not observed the general education component of the ILP

program nor had she previously observed Anatole in any educational setting. (Measures) Therefore I do not accord her testimony much weight. Further, although Anatole attended a program at the Clarke School which offered at least some of the elements the Parents sought to establish in Lexington, there is no information about Anatole's adaptation to or progress in that setting. I cannot conclude, therefore, that Anatole might make more, or more rapid progress in a small general education setting.

The IEP Amendment developed in January 2013 contains the programmatic and placement recommendations of all educators who had significant day to day experience with Anatole, and continues a program in which Anatole has demonstrated progress in the acquisition of targeted skills. (S-42) By these measures the program and placement developed by Lexington meet the standards set out in the IDEA and M.G.L.c.71B. I therefore find that the challenged IEP is reasonably calculated to ensure that Anatole receives a free appropriate public education. The Parents requested further specific findings as follows:

1. Whether the size/ number of other students in the general kindergarten class is appropriate for Anatole?

Appropriateness, in the special education context, is determined by evaluating whether the service, setting, method, or other special education related item under consideration is responsive to the need and produces the intended result. Thus in this question I must assess whether a general education classroom of 20 students meets Anatole's need for exposure to and engagement with typically developing peers, age appropriate academic challenges and assistance with social-emotional behavioral skills. All witnesses testified that Anatole needs placement with typically developing peers, exposure to a regular kindergarten curriculum and adult modeling, instruction and reinforcement of appropriate behavioral skills. The only question is in how large a group? Ms. Williams, Ms. Bowen and Ms. Bakken, all of whom have known or closely worked with Anatole daily over time, uniformly testified that he benefits from, and is making excellent progress in, the 20 student kindergarten group. Ms. Billings-Fouhy noted that Anatole had made good progress in a preschool group of 15 students and was ready for the additional challenge of a 20- student group. None recommended removal to a smaller integrated setting. (Williams; Billings-Fouhy; Bakken; Brown; see also: Levine) Only Dr. Levine, who observed Anatole once, briefly, at Fiske and who acknowledged that Anatole had demonstrated significant behavioral progress there, recommended creation of a smaller 6-8 student group for him. Though the Parents' request for a smaller learning group is reasonable based on their personal knowledge of their son's functioning and Dr. Levine's support, I am persuaded that for Anatole placement in the typically sized general kindergarten class is "appropriate" as that term is used in the IDEA and understood in the special education context. The kindergarten placement responds to his need to practice social skills in a typical setting with typical models and offers him the opportunity to participate in the regular curriculum as recommended by his current and former teachers. The evidence clearly demonstrates that the placement is producing the desired result: improved behavioral functioning in a mainstream environment.

2. Whether Anatole requires daily 1:1 DIR/Floortime services in school in order to receive a free appropriate public education?

3. Whether the Student Support Instructors are appropriately trained in DIR/Floortime to ensure consistent implementation of that methodology?
4. Whether Anatole requires the direct and consultative services of a certified DIR/Floortime consultant as part of his IEP in order to receive a free appropriate public education?

These three questions posed by the Parents involve a particular methodology developed to address skill deficits associated with Autism Spectrum Disorders: DIR/Floortime. (Measures) The Parents assert that Anatole receives the most significant benefit from interventions based on the Floortime Model and seek to have that methodology included more thoroughly in Anatole's IEP with ongoing expert consultation, direct one-to-one Floortime sessions in school, and greater training for all staff working with Anatole in Floortime principles and techniques. Their view is supported by Sarah Measures who provides direct Floortime sessions to Anatole outside of school. (Measures) It is not, however, supported by any other testimony, evaluation or document in this record. Dr. Levine testified that Floortime is one appropriate tool among other effective approaches, such as ABA, for students with autism in general and for Anatole in particular. (Levine) Dr. Levine also stated that Anatole benefits from interventions based on both Floortime and ABA approaches. From her assessment of Anatole as well as her observation at the Fiske School and other work with Lexington Dr. Levine concludes that Lexington is capable of providing an appropriate education to Anatole without "certified" DIR/Floortime instructors due to the individualization of instruction available in the ILP program. (Levine) Ms. Billings-Fouhy and Ms. Bakken reviewed Anatole's proposed IEP and pointed out how and where Floortime and social thinking principles and interventions are set out in the accommodations, modifications and strategies sections. (Billings-Fouhy; Bakken; S-42) Ms. Bowen and Ms. Williams explained how Floortime techniques are actually used with Anatole in the kindergarten and ILP classrooms. (Bowen; Williams) Ms. Williams also noted that Tal Baz, who regularly provides direct Floortime sessions to Anatole, observes Anatole in the kindergarten class every other week. While she is the Parents' consultant Ms. Baz attends Team meetings and discusses her observations with Lexington staff. (Williams) Ms. Williams, Ms. Bowen, Ms. Billings-Fouhy and one of the SSI's assigned to Anatole have received specialized training in Floortime. All are highly qualified and experienced in teaching students with Autism Spectrum Disorder. (S-1; Bowen, Billings, Bakken)

The great weight of credible evidence leads me to conclude that Lexington has incorporated appropriate Floortime principles into Anatole's IEP and that direct and supervising staff are sufficiently trained in Floortime to implement those portions of Anatole's IEP that reflect Floortime principles. There are no recommendations other than Ms. Measure's for direct DIR/Floortime sessions in school. For reasons set out earlier I find the weight of expert opinion in favor of the eclectic approach used by Lexington along with the evidence of educational benefit of this approach for Anatole, greatly outweighs her recommendation in this regard. Further, as the evidence that Anatole is making good progress under the current IEP is undisputed and that IEP does not include expert Floortime consultation, I conclude that neither additional Floortime consultation services nor direct in-school Floortime sessions are necessary components of an appropriate special education program for Anatole. The Parents have not carried their burden of proving otherwise.

5. Whether the peer composition of the Intensive Learning Program component of Anatole's IEP is appropriate for him?

The Parents contend that the four students with whom Anatole receives direct social skills instruction in the substantially separate ILP classroom do not provide appropriate social/behavioral/language models for him as they all have an autism spectrum diagnosis. Dr. Levine agreed stating that Anatole needs to practice social skills in the company of typical peers. (Levine) Dr. Eckart, Ms. Billings-Fouhy and Ms. Bowen all know the students in the ILP program well. They stated unequivocally that the students with whom Anatole is grouped are appropriate cognitive and communication partners for him. In both formal testing and actual classroom functioning Anatole's social and language skills fall in the mid-range of the group. (Eckart; Billings-Fouhy; Bowen; S-48) Ms. Williams observed that Anatole is able to learn and practice targeted social pragmatic and social language skills in the ILP classroom and then transfer that knowledge for use in the mainstream. She also noted significant progress in Anatole's social skills with the instruction provided in the ILP classroom. (Williams)

I credit the testimony of Ms. Williams, Ms. Bowen and Dr. Eckart that Anatole is appropriately placed in the ILP classroom for social skills instruction. I am not persuaded by Dr. Levine's testimony to the contrary because she had only limited exposure to the ILP group and no access to educational assessments of students other than Anatole. Further, her statements failed to take into account that Anatole spends the bulk of his in school time in the company of typical age peers. I therefore find that the Parents have not carried their burden of proving that the substantially separate ILP class is an inappropriate placement component for Anatole.

6. Whether the social skills instruction Anatole receives in the Intensive Learning Program is appropriate for him?

Apart from their arguments about incorporation of Floortime techniques and their objections to the composition of the peer group in the ILP class, the Parents offered no direct evidentiary support for their claim that the social skills instruction Anatole receives in the ILP is inappropriate. On the contrary Ms. Bowen pointed out that Anatole has the best of both: he receives direct, intensive instruction and practice in a safe, structured, predictable setting; he then can practice with support from the SSI's and teachers in the faster paced, more challenging mainstream environment where he benefits from typical peer models, typical activities and challenges, and increasing independence. I rely on the credible testimony of Ms. Bowen in this regard as she has had the most significant opportunity to craft appropriate social skills instruction for Anatole and to observe the results of her efforts, and his.

As there is no dispute that Anatole is making social and behavioral progress this academic year with the type, level and methods of social skills instruction provided by Lexington I find the Parents have not carried their burden of proving that the social skills instruction provided to Anatole is inappropriate.

7. Whether the proposed IEP and placement provide sufficient academic challenge for Anatole?

The Parents contend that Anatole is unusually bright. He is fluent in two languages. He completes academic work at well above grade level. He is curious and eager to learn. They argue he requires higher level academic instruction to maintain his interest in school and his progress. There is however, no independent evidentiary support for that position. Lexington agrees that Anatole's academic skills are advanced and that he learns fact based skills quickly. Ms. Williams points out that for Anatole the academic challenge posed by the kindergarten curriculum is growth in inferential and conceptual thinking, cognitive flexibility, social pragmatics and working in groups. She testified that Anatole is sufficiently challenged in these weaker skill areas to make the kindergarten curriculum and placement an appropriate learning environment for him. Currently he is engaged and productive in all aspects of the kindergarten program and would benefit from attending the full day available to him. There being no evidence to the contrary I find that Anatole's placement in the age appropriate inclusion kindergarten program at Fiske School provides an appropriate level of academic challenge for him.

ORDER

The January 2013-January 2014 Individualized Education Program developed by the Lexington Public Schools is reasonably calculated to ensure that Anatole receives a free appropriate public education.

Dated: May 15, 2013

Lindsay Byrne
Hearing Officer