

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

Student v. Boston Public Schools

BSEA #1400688

DECISION

This decision is issued pursuant to M.G.L. c. 71B and 30A, 20 U.S.C. § 1401 et seq., 29 U.S.C. § 794, and the regulations promulgated under said statutes.

PROCEDURAL HISTORY

Parent requested a hearing on July 23, 2013. Multiple jointly requested postponement requests were allowed while the parties attempted to resolve their dispute. The hearing was reassigned to hearing officer Catherine Putney-Yaceshyn on June 18, 2014.

The hearing was held on June 25 and 26, 2014. The Parties requested a postponement to file written closing briefs and the hearing officer allowed their request to submit their briefs by July 22, 2014. The briefs were submitted and the record closed on July 22, 2014.

Those present for all or part of the hearing were:

Mother

Grandmother

Student

Cindie Neilson

Assistant Director, Special Education and Student
Services, Boston Public Schools

Aaron Couture

Special Education Liaison, Boston Public Schools

Gerard Lambert

Occupational Therapist, Boston Public Schools

Maryanne Johnson

Physical Therapist, Boston Public Schools

Diane Redmond

Teacher of the Visually Impaired, Boston Public
Schools

Maya Smith

Teacher, Boston Public Schools

Tracey Phillips-Williams

Citywide Behavioral Specialist, Boston Public
Schools

Bethany Kaczmarczyk

Special Education Teacher, Boston Public Schools

Angel Simpson

Math Enrichment Teacher, Boston Public Schools

Victoria Waite

Teacher, Boston Public Schools

Edwin Doolin

Teacher, Boston Public Schools

Lee Ann Murphy

Speech Language Pathologist, Boston Public
Schools

Jeffrey Becker
Andrea Alves-Thomas
Melina Munoz
Laura McCarthy

Attorney, Boston Public Schools
Attorney, Boston Public Schools
Law clerk, Boston Public Schools
Law clerk, Boston Public Schools

Catherine Putney-Yaceshyn

Hearing Officer

The official record of this hearing consists of Parent's exhibits marked P-1, P-3 through P-14, and P-17 through P-20, and Boston Public Schools' exhibits marked S-1 through S-24, and approximately ten hours of recorded oral testimony.

ISSUES

1. Whether the IEP proposed by the Boston Public Schools for the period from April 2012 through April 2013 was reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.
2. Whether the IEP proposed by the Boston Public Schools for the time period from April 2013 through April 2014 was reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.
3. Whether the IEP for the period from April 2014 through April 2015 was reasonably calculated to provide Student with a free appropriate public education in least restrictive environment.
4. If not, whether the IEP for the period for 2014 through 2015 can be modified to be made appropriate.
5. If not whether the Learning Prep School is an appropriate placement for Student.

SUMMARY OF THE EVIDENCE

1. The student (hereinafter, "Student") is twelve years old and resides in Boston. He has been diagnosed with ADHD (combined type), visual impairment, learning disorder NOS, and Visual Processing Disorder. (S-1, S-15)
2. Student has been in three different school placements within the Boston Public Schools during the past three years. During the 2011-2012 school year he attended the Lyndon School pursuant to an accepted IEP. (Mother, P-12) A few months into the school year his teacher noticed that his academic skills were strong compared to his classmates and she spoke to his ETF regarding the appropriateness of his placement. The Student was re-evaluated and the Team met in November and determined that his classroom was not appropriate. Boston proposed changing his placement. (Kaczmarczyk) Mother rejected the change in placement, because she thought a mid-year transition to a new school would be difficult for Student. (Mother, Kaczmarczyk) Student remained at the Lyndon and his teacher modified

his lessons in order to teach at Student's level. Ms. Kaczmarczyk taught Student math and reading at his level and he did very well and progressed nicely. (Kaczmarczyk)

3. The Team met on April 13, 2012 to propose an IEP for the 2012-2013 school year. The IEP contains goals in the areas of reading/writing skills, math skills, and communication skills. There are two proposed grids in the IEP, one for the period from April to June 2012 and one for the period beginning in September 2012. The services proposed in each grid are the same, however, the setting in which they are provided changes from being a primarily a substantially separate setting (April to June 2012) to being a primarily inclusion setting beginning in September 2012. Both grids provide for a consultation regarding reading/writing skills by the occupational therapist for ten minutes per month. The April to June 2012 grid provides for the following services in the C grid: reading/writing skills with the special education teacher 5 x 90 minutes per week, math skills with the special education teacher 5 x 45 minutes per week, communication skills 2 x 30 minutes per week with the speech language therapist, and reading/writing skills with the occupational therapist 1 x 30 minutes per week. The proposed grid for September 2012 differed from the April to June grid in that the 5 x 90 minutes of reading/writing skills and the 5 x 45 minutes of math skills with the special education teacher moved from the C grid to the B grid. The services were to be provided at the Gardner Pilot Academy. (S-3, P-12, Mother)
4. The record is unclear as to whether Mother accepted the 2012-2013 IEP. Boston's exhibits contain a copy of the IEP which has a check next to the box accepting the IEP, but does not have Parent's signature. Instead of the Parent's signature, her name and the date August 24, 2012 are typewritten on the signature line. Parent's exhibits contain the same IEP. Parent's copy does not have any boxes checked, but contains Parent's signature and the handwritten date, August 24, 2012. Boston's closing argument alludes to the IEP having been accepted pursuant to a mediation agreement. The record does not contain a copy of the mediation agreement.
5. Victoria Waite holds an M.Ed. and has worked at the Gardner Pilot Academy for six years. There were two general education fifth grade teachers. One taught math and one taught ELA and Ms. Waite supported them both as the learning specialist. She worked with Student in small group math, small group writing. Each small group had no more than four students. She was also his reading teacher and the reading group had six or seven students in it. There were 20 students in the general education setting. There were always two teachers in the classroom.

Student was six levels¹ below grade level at the end of the year. (P-5(14). He did not meet his reading goals by the end of the year. Student's behavior was a concern at times. He needed reminders to be kind to peers, to not roll eyes. They were trying to help him feel successful without making others feel bad or

¹ The levels did not refer to grade levels, but levels of the reading program used by Boston. By April 2013 Student was at level O and his goal was to be at level S by April 2013. (Waite)

disengaging when he found a task difficult or someone was re-directing him. He responded to star charts. She noticed more behaviors in the small group setting because he was able to interact more with peers. Because he was strong in math and knew the answers much more quickly than others, staff had to talk to him about letting others come up with the answers. In reading he would get upset when Ms. Waite corrected him.

Student was not nervous about sharing answers in the large group when he knew them. At the beginning of the year he could not write a three paragraph essay, but by the end of the year he could do it with teacher support. He required assistance with the topic sentence and conclusion. Student moved up two levels in reading by April. He started the year at level M and was at level O by the end of the year, which was still below level S (the benchmark for the beginning of fifth grade) and below his age peers. (Waite)

6. Allison B. Smith, Ph.D., conducted a neuropsychological evaluation at Mother's request on February 26, 28, and March 5, 2013. As part of her evaluation, Dr. Smith interviewed Mother and Student, reviewed a structured developmental history completed by Mother and had a phone call with Dr. Naomi Steiner, a developmental and behavioral pediatrician who evaluated Student on February 11, 2013. Dr. Smith diagnosed Student with Attention Deficit Hyperactivity Disorder-Combined Type, Visual Impairment, and Learning Disorder Not Otherwise Specified (Visual Processing Disorder). She noted that Student had a considerable strength in math fluency, but performed below grade level in reading, writing, arithmetic (other than math fluency), and oral language. Dr. Smith found that Student's most significant area of deficit is visual processing. She recommended that when available, auditory supplementing of reading materials should be made available to Student. She also noted a significant issue with graphomotor production. Dr. Smith recommended a behavior chart for Student and a medication evaluation.

Dr. Smith noted that Student required significant redirection in order to attend to tasks and had a need for consistent positive feedback and a low frustration tolerance. She stated several times that the results of the assessments did not provide for an accurate portrayal of Student's maximal cognitive, memory, executive function or academic abilities due to Student's interfering behaviors.

Dr. Smith made a number of recommendations for Student's programming. Among other things, she recommended small class size with access to one to one assistance throughout the day. She suggested Student receive direct instruction in reading comprehension strategies and teaching him to check his work. She recommended permitting Student frequent breaks and utilizing behavior charts with him. Dr. Smith recommended that Student "connect" with the school psychologist or guidance counselor to establish appropriate socioemotional supports at school. (P-10-1 through 11)

7. A progress report dated March 28, 2013, by Amanda Gleeson, speech language pathologist at Gardner Pilot Academy, states that Student continues to make progress toward his speech and language goals. The report also states that given his progress, it is anticipated that he will achieve his annual goal by the end date of his IEP. (P-4(15)) It also notes that Student can, at times, demonstrate non-compliant/defiant behaviors in speech and language sessions, which impact his accuracy with following multi-step directions. (P-14(15))
8. The Team convened on April 23, 2013 to propose an IEP for the 2013-2014 school year. (S-20, S-2, P-12) The IEP contains goals in the areas of reading/writing skills, self-regulation skills, math skills, communication skills, and motor skills. The IEP contains two separate grids, one for the period from April 2013 through June 2013 and one beginning September 2013. The grid for the period from April to June 2013 contains the following services. The A grid includes a consult with the occupational therapist to address motor skills for ten minutes per month. The B grid contains 120 minutes per day of reading/writing skills, 60 minutes per day of self-regulation skills, and 60 minutes per day of math skills with a special education teacher. The C grid includes 2 x 30 minutes per week of communication skills with a speech and language therapist and 15 minutes per month with the occupational therapist to address motor skills. The grid for services beginning September 2013 includes the same A grid services. It has no services in the B grid. The C grid provides for 120 minutes of reading/writing skills per day, 60 minutes of self-regulation skills and 60 minutes of math skills with the special education teacher. It provides for 2 x 30 minutes of communication skills the speech language therapist and 15 minutes per month working on motor skills with the occupational therapist. (S-2, P-12) The IEP noted that Student's placement would be at the Timilty Middle School. Parent accepted the IEP on July 11, 2013 with the notation, "accept until results of due process hearing."
9. Edwin Doolin has an M.Ed. in moderate disabilities, is certified in English Language Arts and special education. He was Student's ELA teacher for the 2013-2014 school year. There were fifteen students in Student's ELA classroom and two or three adults at all times. There was a paraprofessional in the classroom for all but the last block. There were different specialty teachers in the classroom during different times. The specialty teachers were ELD (English language development) science, math, and language arts teachers. (Doolin) All of the ELD teachers are certified in special education. (Aaron Couture, Special Education Liaison, Boston) When the ELD teachers were in the classroom, they would often break the class down into small groups.

Mr. Doolin did not test Student's reading level, but based upon his experience, he believes Student was reading at a fourth grade level by the end of the year, and his reading comprehension skills were somewhat lower. Student can write a 3 paragraph essay with graphic organizers, but cannot do so independently. He can identify key information in a paragraph and it helps him to use a graphic organizer. He can identify important details, but is not able to independently identify the main

idea. Most of the text that is read in Mr. Doolin's classroom is at the fourth or fifth grade level. Student can independently compose complex sentences, but requires assistance to link sentences together to compose paragraphs. Mr. Doolin described Student as polite, full of energy, having a wealth of background knowledge, and being engaged in learning. He also stated that he is needy and often raises his hand and asks for assistance. Student would get upset if another student got something right that he got wrong and would sometimes shut down. He was one of the stronger readers in the class and would sometimes make comments when another student made an error. Mr. Doolin never had to send Student to the office or even use his behavior plan. He did have to re-direct Student about once every ten minutes to tell him to stop talking or to remain in his seat. Mr. Doolin described Student's strengths as having great background knowledge, wanting to do well, participating, being a strong reader and being competitive and wanting to win. His weaknesses were in the areas of reading comprehension, writing (although he was getting much better), summarizing, and making inferences.

10. Mr. Doolin reported that Student was making strong progress toward his IEP goals, but had not yet met them. He remains below grade level, but has made some good progress this year. (Doolin)
11. Maya Smith is certified in math and special education and holds an M.Ed. from Simmons College. She was Student's math teacher this past year. There were 15 students, an additional certified math teacher, and a paraprofessional in the classroom at all times. None of the students had behavioral disabilities. She described Student as being able to apply concepts to problems and benefiting from modeling and being provided directions in smaller steps. She noted that he sometimes needs assistance with word problems. Student completed both homework and classwork in her class and was making effective progress toward his math goals. He benefits from slowing down and reading a problem to himself before asking for help. Although Student often calls out in class, the number of times that he does so decreased over the year. He was very engaged during group instruction and participated. When he worked with a friend he required re-direction because he would socialize excessively. He reached his goals with the assistance of the teacher and is still working toward independence.
12. In Ms. Smith's class, and all the classes at the Timilty Middle School, students complete BCW (before class work) which reviews concepts from the previous class. Her classroom is structured and she holds students accountable for their actions. She noted that Student has worked on being more independent and made progress. (Smith)
13. Angel Simpson is a certified math teacher who taught Student's math enrichment class three times per week for forty five minute sessions. There were five students in his class and they used the computer and had hands-on lessons often. In the beginning of the year Student constantly asked for help, but his requests for help lessened throughout the year and by the end he was very independent. By the end

of the year she only had to re-direct him very infrequently. Student is capable of doing the work assigned to him, but tends to rush through it. She assessed his grade level in math at below the sixth grade level in some areas and between the fifth and sixth grade level in other areas. She noted that by the end of the year Student became more willing and able to check his own work. (Simpson)

14. Lee Ann Murphy, M.Ed., is a speech language pathologist. She worked with Student twice per week in thirty minute sessions, one individual and one small group. They worked on information processing, note taking, identifying key words, and strategies that would help him integrate information. She noted that auditory comprehension impedes Student the most when following instructions. During the year he became a self-advocate and now requests repetition of directions when he needs them. Multi step instructions are difficult for him and she recommends that teachers give him instructions in writing. She notes that he made great progress toward his goals this year, but did not meet them. His effort plays a role in his success. Some days he works hard and others he disengages. She uses positive reinforcement to prevent him from disengaging. She uses sixth grade level material when working with him. (Murphy)
15. Cathy Mason, M.Ed., conducted a classroom observation of portions of Student's Timilty School placement on February 12, 2014. In preparation for her observation, Ms. Mason obtained information from the parent and reviewed available medical and education records. According to Ms. Mason's report, she observed Student's history class from 12:50-1:50 and observed his ELA class from 1:50 to 2:50. During her observation in history, she noted that the behavioral and learning environment were extremely poor and five or six students were poorly regulated, inappropriately behaved, socialized frequently and were inattentive. She noted that Student was not disruptive, but had difficulties with attention. She reported that some students called out without raising their hands. Student required much assistance when working on questions with the teacher and tended to provide incorrect responses indicating limited understanding or impulsivity. During her ELA observation Ms. Mason noted that the same students' behaviors were markedly different. Most of the students were quiet and attentive. She observed Student working alone at a table on a first draft. At some point a paraprofessional sat next to him and told him to continue working when he had stopped. The teacher, Mr. Doolin came over and got Student started on editing his work.
16. Ms. Mason concluded that Student had shown difficulties with attention and curricular comprehension. He was not able to consistently attend to lessons without direct adult supervision. In one class the teacher had poor class and behavior management strategies which resulted in a chaotic learning environment. She determined that Student's current placement does not completely provide him with the supports and type of instruction he needs to make progress. She noted that the class size of sixteen was too large for Student to receive the type of explicit instruction and monitoring he requires, even with additional adults in the room.

She reported that the diverse student needs resulted in reduced amount of direct, individualized instruction and resulted in Student being subjected to instruction that was below or above his level. She noted “lack of cohesion” across classes based upon the instructional and behavioral inconsistencies between the two classes she did observe. She noted serious concerns about Boston’s ability to appropriately address Student’s needs given the number of placements he had been in over the past years and the current IEP’s “multiple weaknesses as an individualized treatment plan for [Student]’s needs.” She made a number of recommendations for addressing Student’s cognitive, learning and behavioral profile. Among her recommendations were, “Intensive, research-based instruction designed for students with specific learning disabilities in language and non-verbal functioning in small groups (5-7) of students with similar learning needs and academic levels.” Additionally, she recommended direct and explicit instruction with structured and sequential lessons using oral and visual methods to ease comprehension. She further recommended spiraling and a highly structured environment with clear behavioral expectations. (P-11)

17. Aaron Couture, a special education liaison at Boston Public Schools, observed Student’s history and ELA classes along with Ms. Mason on February 12, 2014. He found her observation of the level of disruption in the classroom to be exaggerated. He did not see the same level of behavioral issues as Ms. Mason noted in her report. (Couture)
18. Mary Anne Johnson, DPT, physical therapist in the Boston Public Schools, did a physical therapy screening in mid-February 2014 and at Mother’s request, an evaluation of Student on April 28, 2014. In addition to her own assessment she spoke to teachers to find out if they had any concerns regarding Student. His teachers said he participated in gym class and could travel safely and independently in the halls. Mother was concerned about Student tripping at school. In the standardized testing she administered, Student scored in the average range in all areas except for bilateral coordination. She did not recommend physical therapy services for Student. Her report noted that Student displays some “weakness throughout his postural stabilizers and difficulty with bilateral coordination activities. These limitations do not currently limit [Student] from safely or efficiently navigating and accessing his curriculum and educational environment. (S-8)
19. Gerard Lambert, OTR/L, provided Student with services fifteen minutes per month. He noted that Student’s confidence and ability improved a great deal in the last few months of school. He developed more consistency in his ability to produce legible work. He noted that his motivation was variable which impacted his work, and that he requires a great deal of encouragement. Mr. Lambert created a check list to assist Student with editing his work, and Student required adult cues to remember to use his check list. He could not assign a grade level to Student’s writing ability, but stated that his writing appears similar to that of his age-peers. (Lambert, S-4)

20. Diane Redmond, M.Ed., is a teacher of the visually impaired within the Boston Public Schools. She conducted a functional vision assessment of Student on March 24, March 31, and April 7, 2014 at Mother's request. She noted that Student had difficulty reading material at a distance, that he did not currently have his text enlarged or utilize magnifying devices. She stated that as Student is required to read for extended periods, he may benefit from a combination of enlarged print and audio text. She also stated that it is important for Student to be monitored by a teacher of the visually impaired due to a high risk of retinal detachment. She made a number of recommendations including preferential seating, enlarging materials as needed, making copies of board notes and pairing visual with verbal information. (See S-7(8)) Ms. Redmond recommended direct services for 45 minutes per month to teach assistive technology that provides auditory and visual models. She does not believe that Student requires large print in all classes. This witness also noted that when she was giving Student different choices of materials to determine what he could see the best he kept asking her, "Did I get it right?" (Redmond, S-7)
21. The Team convened for its annual review on May 1, 2014. Parent indicated that she was concerned that Student was functioning below grade level, particularly in reading comprehension. She was also concerned about whether he was placed in the appropriate academic setting. Boston reported that Student had transitioned well to middle to school, was always prepared for class and was an eager class contributor. The IEP proposed for the 2014-2015 school year indicates that Student has strong decoding and overall reading fluency skills, but struggles with reading comprehension, which impacts his performance in all content areas. He also struggles to remember key details of a text and has difficulty finding the main idea and making inferences when reading grade level text. He struggles with organizing his thoughts when writing and with grammar. Math is an area of strength for Student, but he tends to rush to complete his assignments and needs reminders to slow down. He has made progress in speech and language, but his variable attention impacts his progress. Student continued to present with weakened expressive and receptive vocabulary and receptive language skills. The Team recommended continued placement in the substantially separate learning disability program at the Timilty with occupational therapy, speech and language therapy, and vision related services.(S-1, P-12)
22. The service delivery grid contains services in both the A and C grid. In the A grid, Boston proposed that an occupational therapist consult in the area of motor skills 15 minutes per month and that the itinerant vision teacher provide consult in the area of perceptual skills 20 minutes per month. In the C grid, Boston proposed that the special education teacher work with Student in reading/writing skills for 150 minutes per day, math skills for 60 minutes per day and in self-regulation skills for 30 minutes per day. The C grid further provided for services to address communication skills with the speech and language therapist 1 x 45 minutes per week. Occupational therapy is for 15 minutes twice per month and vision teacher

services (perceptual skills) is 1 x 45 minutes per month. (S-1, P-12) As of the date of hearing, Mother had only recently received the IEP and had not yet provided a written response. (Mother)

23. Mr. Doolin described Student's proposed placement at the Timilty for the 2014-2015 school year as follows. There will be two learning disability classes which will be primarily comprised of the fifteen students he was placed with during the 2013-2014 school year. Student will be grouped in the higher functioning of the two classrooms with classmates who care about learning and are focused. Mr. Doolin believes the stability of remaining at the Timilty for two more years will benefit Student. (Doolin)
24. Mother is very concerned by the number of placements Student has been in within the Boston Public Schools. She does not believe Student's needs have been met or that they can be met by Boston. She is concerned that his "learning disparities" are becoming larger. She is concerned that Student received scores in the warning range for both the math and English language arts portions of the MCAS. She believes that Boston has been out of compliance with Student's IEP because it has not provided him with large print materials for the last two years. She is concerned that Student has been tested so many times during the past several years. She believes Student has suffered academically, socially and emotionally and has developed psychological issues pertaining to his self-esteem due to the number of school placements/transitions he has had over the past four years. She is very concerned that at the end of his fifth grade year his teacher reported that he was reading at the end of the third grade level. (S-18-5) She believes that he requires stability to succeed and would like him to be placed out of district at Learning Prep.

FINDINGS AND CONCLUSIONS:

Student is an individual with a disability, falling within the purview of the Individuals with Disabilities Education Act (IDEA)² and the state special education statute.³ As such, he is entitled to a free appropriate public education (FAPE). Neither his status nor his entitlement is in dispute.

A FAPE is provided when the school district implements an IEP that is "reasonably calculated" to insure that the child receives meaningful 'educational benefits' consistent with the child's learning potential." *Hunt v. BSEA & City of Newton*, No. 08-10790-RGS, 2009 U.S. Dist. LEXIS 79775, at *4 n.8 (D. Mass. Sept. 4, 2009) (quoting *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. 16.*)

While an IEP must conform to the procedural and substantive requirements of IDEA, "the obligation to devise a custom tailored IEP does not imply that a disabled child is entitled to the maximum education benefit possible." *Lessard, v. Wilton-Lyndenborough*

² 20 USC 1400 *et seq.*

³ MGL c. 71B.

Cooperative School District et.al., 518 F.3d 18 at 23. Additionally, the IDEA does not require school officials to in effect finance alternative care as a means of remedying issues in a child's life that are unrelated to education. *Abrahamson v. Harshman*, 701 F.3d 223, 227-228 (1st Cir. 1983).

Under the Individuals with Disabilities Education Act (IDEA) and Massachusetts law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); (M.G.L. ch. 71B.) A FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(a)(9).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).)

There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the hearing officer must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the hearing officer must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) An IEP is not judged in hindsight; its reasonableness is evaluated in light of the information available at the time it was promulgated. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990)

The burden of persuasion in an administrative hearing challenging an IEP is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 534, 537 (2005) In this case, Parent is the party seeking relief, and thus has the burden of persuading the hearing officer of their position.

I find, based upon a preponderance of the evidence, that the IEPs proposed by Boston for the period from April 2012 through April 2013, April 2013 through April 2014 and April 2014 through April 2014 were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. As such, it is not necessary to reach the question of whether the Learning Prep School is an appropriate placement for Student. My reasoning follows.

April 2012 through April 2013 IEP

This IEP spanned the time from the end of Student's fourth grade at the Lyndon through most of Student's time at the Gardner Pilot School. Parent did not meet her burden of showing that the IEP was not reasonably calculated to provide Student with a free appropriate public education. With respect to the portion of time that Student was at the Lyndon School, it is undisputed that Boston determined early in the year that Student was not in the appropriate placement. (Kaczmarczyk) The testimony is also undisputed that Boston offered to change Student's placement, but that Mother was concerned about changing Student's placement mid-year and rejected Boston's offer. (Mother, Kaczmarczyk) The evidence is also undisputed that upon Mother's rejection of changing Student's placement mid-year, Ms. Kaczmarczyk provided Student with individualized and modified instruction and that Student made progress in reading and math.

The record contains little additional information about Student's academic performance at the Gardner Pilot School. There is Mother's testimony about Student's behavior becoming worse while he was at Gardner and there are also references in some of his evaluations to his defiant behavior negatively impacting his test results. (P-4-1, P-4-8) However, the limited amount of information in the record about the period from September 2012 through April 2013, including the testimony of Victoria Waite, shows that Student was making progress. Although Mother believes that Student's defiant behavior at the Gardner Pilot, which he had not displayed at previous placements (or later at the Timilty), was due to the inappropriateness of the Gardner Pilot placement, she was not able to establish that by the evidence she presented. Mother has not met her burden of showing that the IEP was inappropriate to meet Student's needs or that Student was not making progress during the IEP period from April 2012 through April 2013.

April 2013 through April 2014 IEP

This IEP provided similar services to the previous IEP, but the service delivery grid provided for Student's special education services to be delivered in a substantially separate environment instead of an inclusion classroom. It increased his service delivery time in the areas of reading and writing, areas of weakness, and decreased service delivery time in math, an area of strength. The reports of Student's service providers overwhelmingly support the position that Student made progress during the time period from April 2013 through April 2014. Mr. Doolin and Ms. Smith testified that Student made effective progress in their classes. I found them to be particularly credible witnesses because they were able to explain Student's needs, strengths, and weaknesses with specificity, and to provide detailed testimony as to how they addressed his needs within their classrooms. They further clearly described the areas in which he had progressed and in which he required additional work.

Although Student's providers testified that Student had made progress during the course of the 2013-2014 school year, many testified that he remained below grade level and had not reached his benchmarks. This raises the question of whether Student can be found to have made adequate progress despite not having met his benchmarks and continuing to be below grade level in some academic areas. Mother had the burden of showing that Student's rate of progress was not adequate. However, she did not present any evidence to show that Student's progress was not effective and in keeping with the progress which would be expected given his constellation of needs. Parent did not offer any expert testimony. Although she provided a report from Dr. Allison Smith, said report did not address the question of how much progress Student would be expected to make in the course of an academic year given his profile. Parent also submitted the report of Cathy Mason. Her report was afforded little weight because it was based on only approximately two hours of observation of Student's classroom, parent interview, and review of unspecified educational records. Additionally, the contents of her report were contradicted by a witness who provided credible testimony and was subjected to cross-examination. Thus, Parent did not present any credible expert testimony or documentary evidence to support her position that the IEP was not reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment, and therefore, was not able to meet her evidentiary burden.

April 2014 through April 2015 IEP

The IEP for the period from April 2014 through April 2015 provides for a continuation of many of the services Student received during the prior IEP period and continues his placement at the Timilty in the learning disability classroom. The learning disability classroom for 2014-2015 will have fewer students and the students will be divided according to ability with Student being in the higher level class which proceeds at a faster pace. The IEP increases the amount of services Student will receive in reading and writing from 120 minutes daily to 150 minutes daily. Additionally, it contains the addition of consultation and services from a vision teacher.

Although Mother expressed concerns that the services proposed are insufficient to meet Student's needs, she did not provide any credible expert evidence to support her position. The Boston witnesses who worked with Student this year and showed an excellent understanding of his needs supported the appropriateness of the proposed IEP for Student. Mother has not met her burden of showing that the 2014-2015 is not reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

Mother raised concerns about Student's visual needs not being met during the time periods relevant to this decision. Specifically, she states that Student was not provided with large print materials despite that accommodation appearing in his IEPs.⁴ Although Mother testified that Student did not receive large print materials, it is not clear whether any of Student's teachers ever provided Student with large print materials. Ms. Redmond, the teacher of the visually impaired, included in her recommendations of April 2014 the use of large print materials as needed. It is unclear how Student's teachers for the 2014-2015 can be expected to know when Student requires enlarged print and when he does not. Therefore, Boston shall provide a consultation between each of Student's academic subject teachers for the 2014-2015 school year and the teacher of the visually impaired to clarify when materials need to be enlarged for Student. Said consultation shall take place during the first two weeks of school to ensure that each teacher providing academic services to Student know when to provide him with enlarged materials.

Another area of concern which is not addressed by Boston's proposed IEP for the 2014-2015 IEP is Student's emotional needs surrounding his learning disabilities. There was extensive testimony and documentation as to the fact that Student is aware of his learning differences and acts out as a result. In addition, Mother expressed her concern that Student has been psychologically harmed and traumatized by being placed in so many different placements and his losing confidence in his abilities. Also, Mother noted concerns regarding Student being evaluated excessively and always asking teachers how he is doing in response to their asking him questions of any kind. Thus, it seems apparent that Student requires some counseling/education about how his learning disabilities impact his educational experience. Additionally, the record supports the conclusion that he requires some counseling to discuss his self-esteem as impacted by his learning disabilities.

⁴ The 2012-2013 IEP accommodations include "large print as needed." The 2013-2014 IEP contains the accommodation "large print materials." (S-2, S-3, P-12)

Mother is clearly very concerned about Student's education and has proven to be a very strong advocate for his needs. She should be commended on the organized and respectful manner in which she presented her case. That said, she was not able to sustain her burden as to the issues before me.

ORDER

Based upon the foregoing, I find that the IEP proposed for the period from April 2012 through April 2013 was reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

The IEP proposed for the period from April 2013 through April 2014 was reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

The IEP proposed for the period from April 2014 through April 2015, with the noted additions, is reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

Boston shall modify Student's April 2014 to April 2015 IEP to include an initial consultation between the teacher of the visually impaired and each of Student's academic teachers to provide them with specificity as to when Student requires enlarged print.

Boston shall modify Student's April 2014 to April 2015 IEP to include counseling with an appropriate staff person (guidance counselor, adjustment counselor, or appropriate clinical service provider) to educate Student with respect to his learning disabilities and to address the emerging self-esteem issues arising as a result of his learning disabilities.

By the Hearing Officer,

Catherine M. Putney-Yaceshyn

Dated: August 14, 2014