April 5, 2024

 **COMMONWEALTH OF MASSACHUSETTS**

***Division of Administrative Law Appeals***

**Bureau of Special Education Appeals**

**DECISION**

**BSEA # 2312178**

**BEFORE**

**MARGUERITE M. MITCHELL**

**HEARING OFFICER**

**JEFFREY SANKEY, ATTORNEY FOR PARENT AND STUDENT**

**PHILIP B. BENJAMIN, ATTORNEY FOR SCHOOL DISTRICT**

**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student and Framingham Public Schools BSEA# 2312178**

**DECISION**

This decision is issued pursuant to the Individuals with Disabilities Education Act (IDEA) (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.

On June 1, 2023, Parent filed a *Hearing Request* against Framingham Public Schools (District or FPS). At the joint request of the Parties, the Hearing was rescheduled twice for good cause to November 7, 13 and 23, 2023, and thereafter, an additional day of Hearing was added, and the matter was further postponed for good cause to December 18, 2023. The Hearing was held via a virtual platform, at the joint request of the Parties.

The official record of the Hearing consists of documents submitted by the Parent and marked as Exhibits P-1 through and inclusive of P-16, P-16R, P-17 through and inclusive of P-30; documents submitted by the District and marked as Exhibits S-1 through and inclusive of S-19, S-19A, S-20 through and inclusive of S-29; joint documents marked as Exhibits, J-1 through and inclusive of J-10[[1]](#footnote-1); and approximately 19.5 hours of stenographically recorded oral testimony by 15 witnesses resulting in a 4-volume transcript.

Present for all or part of the proceedings, all agreeing to participate virtually, were:

*Mother*

*Grandmother[[2]](#footnote-2)*

*Jeffrey Sankey, Esquire* Attorney for Parent and Student

*Melanie Falzone, Esquire* Attorney for Parent and Student

*Philip B. Benjamin, Esquire* Attorney for FPS

*Dr. Brian Willoughby* Neuropsychologist – Achieve New England

*Kendra McCuine* Educational Consultant – Achieve New England

*Nicole Coman* Educational Psychologist – Coman Psychological & Educational Assessment Group

*Amy Davis* Principal – Learning Prep School

*Laura Spear* Special Education Director – FPS

*Amy Dudziak* Grade 6 Special Educator – Fuller Middle School (Fuller) - FPS

*Jennifer O’Brien* Grade 5 Teacher – King Elementary School (King) – FPS

*Lisie Haustein* Special Educator – Barberi Elementary School (Barberi) – FPS

*Katherine Mulvey* Speech and Language Pathologist – FPS

*Dr. Aradhana Mudambi* Director of Multilingual Education – FPS

*Phoebe Melendez* Team Evaluation Coordinator – Fuller – FPS

*Anna Banerjea* School Psychologist – Fuller – FPS

*Daniel Tratt* Team Evaluation Coordinator –King-FPS

*Tina Miller* Grade 5 Special Educator – King – FPS

*Maria Davis* Principal – Barberi – FPS

*Damarys Riveira* Team Evaluation Coordinator – Barberi – FPS

*Melissa Lupo* Court Reporter – Advanced Court Reporting

*Julieanne Ryan* Court Reporter – Advanced Court Reporting

*Marguerite M. Mitchell* Hearing Officer

At the conclusion of the testimony, on December 18, 2023, the Parties’ request for an extension of time to submit written closing arguments was granted for good cause. Subsequently, further postponement requests to extend the deadline to submit written closing arguments were sought and granted for good cause. On February 27, 2024, the Parties filed their written closing arguments and the record closed on that date.

**ISSUE IN DISPUTE:**

The issue for hearing in this matter as contained in the *Hearing Request*, is as follows:

1. Whether the proposed Individualized Educational Program (IEP) calling for a proposed placement in a full inclusion program will provide Student with a free, appropriate, public education (FAPE), or whether he requires placement at the Learning Prep School for the 2023-2024 school year in order to receive a FAPE?

**POSITIONS OF THE PARTIES:**

**Parent’s Position**

Parent submits that despite agreement as to eligibility, disability, diagnosis and test results by both the District and independent evaluators, the IEPs proposed by the District have failed to appropriately address Student’s severe language-based learning disability, his specific learning disabilities in reading, math and writing as a result of his Double-Deficit Dyslexia, his ADHD, and his executive functioning challenges, and thus have denied him a FAPE. As a result, Parent had no choice but to unilaterally place Student at the Learning Prep School for the 2023-2024 school year in order for him to receive a FAPE.

Specifically, Parent asserts that since Student was found eligible for special education services in third grade, she has always been concerned that the proposed IEP services and supports were not sufficiently intense to provide him with a FAPE. Parent partially rejected IEPs throughout Student’s education, leading up to the 2022-2023 school year (5th grade). Student started 5th grade with an IEP that provided for B and C-grid services for written language and C-grid services for math and reading, (including Wilson reading). Student attended a full inclusion program at Barbari School, a bi-lingual English and Spanish elementary school, he had attended since Kindergarten.

In the fall of 2022, an independent neuropsychologist diagnosed Student with double-deficit dyslexia, a specific learning disability in reading, math and written language, a language disorder and ADHD. He recommended Student be placed in an English-only substantially separate language-based program containing daily reading intervention using a research-based multi-sensory program, with language-based supports infused across all areas of curriculum, including science and social studies. After the Team reviewed this evaluation, the District agreed to Parent’s request to transfer Student to an English-only 5th grade classroom at King School but made no substantive changes to Student’s IEP. At all Team meetings subsequent to Student’s transfer that school year, the District proposed to decrease Student’s C- grid academic services, substituting B-grid services, and in March 2023, proposed elimination of Wilson services, contrary to the independent evaluation recommendations and Parent’s requests. The only remaining proposed C-grid services in March 2023, were speech and language services. Additionally, no services were ever proposed for science or social studies.

Rather than accept the reduction of services, Parent unilaterally placed Student at the Learning Prep School for the 2023-2024 school year, in August 2023, based upon the IEP proposed as of June 2023 that made no substantive changes to the IEP proposed in March 2023. Parent submits Student has been receiving a FAPE at Learning Prep.

Finally, the Team reconvened in October 2023 to review the results of Student’s 3-year reevaluation and offered to reinstate and augment certain C-grid services; however, as Student was already attending Learning Prep School, this proposal was too late. Parent contends that even if the IEP proposed in October 2023 is found to provide Student with a FAPE, she should still prevail, as parents should not have to wait for districts to cure defective IEPs before making placement decisions.

**District’s Position**

The District asserts that all IEPs it proposed for Student, were based on the information known to the Team and were reasonably calculated to provide Student with a FAPE. Student’s lack of progress was due, in part, to Parent’s failure to accept any proposed IEP services in 5th grade, as well as his participation in the Barberi dual-language program which slowed acquisition of his language skills. Parent did not give the King program a chance. By not responding to any IEPs after his transfer to King, through the remainder of that school year, including failing to accept any proposed updated goals or objectives, Parent prohibited the District from implementing them. Rather, Parent initiated outreach to Learning Prep School immediately upon Student’s transfer to King. At all times it was Parent’s intention to place Student out of district for the 2023-2024 school year, regardless of the IEPs proposed by the District.

The District also disputes Parent’s contention that its post-transfer IEPS reduced special education services and supports to Student. Instead, it asserts that services to Student were increased even though they would no longer be provided on a pull-out basis. Further, each IEP proposal reflected Student’s performance in the classroom at that time, his progress reports and benchmark assessment data, as well as the least restrictive environment mandate of IDEA. While at King, Student regularly accessed grade level curriculum and made effective progress in the general education classroom. The manifestation of Student’ disabilities was not as severe in the classroom as opined by Parent’s experts. Finally, the District challenges the intensity of Parent’s experts’ recommendations as none of them observed Student in school in the District. They also only observed Student at Learning Prep during the course of this Hearing, thus the Team was not able to meet about that observation and discuss it.

**FACTUAL FINDINGS[[3]](#footnote-3):**

1. Student is a kind, happy, well-behaved, social, cooperative, and respectful sixth grader with a great sense of humor who is close to his family and makes friends easily. He has been eligible for special education and related services since third grade, for a primary disability category of specific learning disability in reading, writing and math and a secondary disability category of emotional[[4]](#footnote-4). (J-1; S-16; P-5; P-13; Grandmother, I, 202-03, 209).
2. Student attended the Barberi Elementary School’s (Barberi) dual language Spanish-English program from Kindergarten through December of his 5th grade year. At Parent’s request, Student transferred to King Elementary School (King) in January 2023, where he completed 5th grade in its English-only program. Student is a native English speaker[[5]](#footnote-5). At Barberi, Student received instruction primarily in Spanish in grades K-2 (80% Spanish in Grade K; 70% in Grade 1 and 60% in grade 2), moving to 50% Spanish and English instruction starting in Grade 3. (S-16; P-10; P-13; Mudambi, II, 144-46).
3. Student was initially assessed for special education eligibility in September 2020. The educational evaluation was conducted in both Spanish and English, while the psychological and subsequent (November 2020) speech and language evaluation was conducted only in English. Student showed a “marked difference” in his Spanish and English reading, writing and math skills, performing in the very low to low range in Spanish and generally in the below average range in English. (P-10; P-14; P-17; Grandmother, I, 208-09).
4. Student’s initial IEP dated November 16, 2020 to November 15, 2021, had goals in reading, written language and math, with C-grid services in each goal area for 2 x 45 minutes per week, “with opportunities for inclusion”[[6]](#footnote-6). (Initial IEP). Placement was proposed to be a full inclusion classroom. (J-1; Haustein, II, 159).
5. Due to school closures related to the COVID-19 pandemic, Student initially received his IEP services virtually. In April 2021, when all students returned for in-person instruction, Student began receiving pull-out reading services in one language, and push-in writing services in the other language. Starting in January 2021, Student’s reading services were provided only in English, to help prepare for the MCAS exam. (Haustein, II, 158, 160-61).
6. On November 17, 2021, the Team reconvened for Student’s annual review and proposed an IEP dated November 17, 2021 to November 16, 2022. (Grade 4 IEP). The Team considered but rejected increasing reading services as Student was making “significant progress”. According to the IEP, while Student’s English reading level on the Fountas and Pinnel Benchmark Assessment System (BAS) increased three levels since the spring of third grade (Level H to Level K), he had no growth in his Spanish reading level, and it remained at Level H. Additionally, Student was performing at an overall Grade 2 level on the English i-Ready[[7]](#footnote-7) fall Reading diagnostic assessment (testing out of phonological awareness and high frequency words). In Math, Student was performing at an overall Grade 1 level. No changes were made in the IEP to the Goal areas or the Service Delivery Grid, but objectives and benchmarks were updated. Further, the methodology/delivery of academic instruction was revised to include a multi-sensory, research-based systemic language-based program using imagery and mnemonics. Student was also provided with access to a guidance counselor/social worker “as needed”. Placement continued to be a full inclusion classroom. (J-2; S-10).
7. Parent fully accepted the Grade 4 IEP and placement on December 22, 2021. However, on the day after the Team meeting, Parent sent the District a statement relating to 8 areas of concerns that she developed jointly with Grandmother, including concerns about Student’s lack of progress, the widening of the gap in his learning as compared to his peers, increased challenges with math, how his pull out services are being integrated back into the classroom, the need for improvement in and more attention to Student’s writing and spelling skills, moving Student from learning to read, to reading to learn, Student’s decreased self-esteem and confidence due to awareness of his learning challenges, and concerns with Student continuing to attend the Spanish immersion program. Further, in accepting the Grade 4 IEP, Parent noted that she disagreed that Student made “meaningful progress” and challenged the use of i-Ready or the BAS testing as not being “scientific evidenced based tools to adequately measure progress in reading, especially with a specific learning disability”. Parent requested increased reading services occur daily using a “tier 3 program such as Wilson or Orton Gillingham”. Finally, Parent noted her concerns that the “gap between [Student] and peers of the same age is widening”. (J-2; P-18; Grandmother, I, 212-14).
8. In response to receiving Parent’s comments on the Grade 4 IEP, the District proposed, and Parent consented to academic testing. Lisie Haustein[[8]](#footnote-8), Student’s special educator at Barberi, administered the C-TOPP, and the WIST to Student in April 2022 and compared his results on the WIST with the same domain areas of the WADE she had previously administered in September, 2021[[9]](#footnote-9). Ms. Haustein noted that all of these assessments are normed for monolingual students, and thus she felt the scores needed to be interpreted through that lens. Student scored in the “very poor” range for sound-symbol knowledge on the WIST (SS 61), in the “poor” range for elision (SS 4), blending words (SS 5), memory for digits (SS 4) of the C-TOPP, in the “below average” range for phoneme isolation (SS 9[[10]](#footnote-10)), rapid digit naming (SS 7), and rapid letter naming (SS 7) of the C-TOPP, and in word identification (SS 85[[11]](#footnote-11)), spelling (SS 80) and fundamental literacy ability (SS 81) of the WIST, and in the “average” range for nonword repetition (SS 10[[12]](#footnote-12)) on the C-TOPP. On the WIST, Student demonstrated substantial improvement since the start of the school year in reading and writing regular closed syllables, reading and writing sight words and sound symbol knowledge. Ms. Haustein recommend Student receive small group instruction using a multisensory, research-based reading program, have daily opportunities to read at his instructional level, focus his attention on the spelling patterns he is working on and increase his access to higher level texts with vocabulary activities to improve comprehension. According to Ms. Haustein, this recommendation was made because she found Student learned best by breaking down words so he could learn the rules in English as well as learn correct spelling. (J-3; P-9; Grandmother, I, 215; Haustein, II, 164, 181-86)
9. On June 13, 2022, the Team reconvened to review the results of Ms. Haustein’s testing and developed an IEP Amendment to the Grade 4 IEP that proposed to increase reading services to 3 x 45 minutes per week. (June 2022 Amendment). A revised IEP was also developed that included a summary of Ms. Haustein’s testing as well as the increased reading services. (Revised Grade 4 IEP). The revised IEP also noted that Student had moved from level H to level N in reading (English)[[13]](#footnote-13) on the BAS. According to the N1 form, reading services beyond three times a week were considered but rejected because Student is “currently making significant progress with the services he is receiving. Also, he highly benefits from participating in whole group reading instruction”. Parent partially rejected both the June 2022 Amendment and the Revised Grade 4 IEP, accepting the increase in services, and existing services on July 10, 2022[[14]](#footnote-14). (J-3; Grandmother, I, 214; Haustein, II, 164-65).
10. Ms. Haustein provided Wilson reading support to Student in both 4th and 5th grade. Student began at the first Book of the Wilson Program (Book 1.1) in 4th grade, progressing to the last Book of Level 2 (Book 2.5) by the end of that school year. As of December 2022 (when Student left Barberi, as discussed below), Student was working on Wilson Book 3.2. Ms. Haustein credited Student’s progress to his participation in these Wilson reading services. (Haustein, II, 170, 189-92, 194-95).
11. Overall, Student’s June 23, 2022, IEP progress reports indicate that he met or was progressing on all his objectives. In Reading, Student was reading at an instructional level of L/M with fluency and accuracy. In writing, Student required less support in English than Spanish and was progressing on both goals about writing essays with accommodations. His Spanish progress report indicates that Student’s comprehension in Spanish was decreased or diminished. Finally, in Math, Student met his multiplication objective but was progressing on his word problem and two step addition and subtraction objectives. (S-3).
12. The Team reconvened again on September 12, 2022, at the start of Student’s 5th grade year, to review Parent’s partial rejections to the June 2022 Amendment and Revised Grade 4 IEP. A further IEP Amendment was proposed that moved one of Student’s written language sessions from the C-Grid to the B-Grid and added weekly consultation between the special education teacher and the general education teacher 1 x 15 minutes to the A-Grid. (September 2022 Amendment). Further, all references to “opportunities for inclusion” in the C-Grid services were removed. Additionally, a compensatory service plan to cover 20 hours of compensatory services owed for the prior school year was developed. On November 4, 2022, Parent partially rejected the September 2022 Amendment, accepting all increases in services and the current services, but maintaining that the proposed frequency and duration of services do not meet Student’s needs. (J-4; Tratt, III, 115-117).
13. On September 20 and 21, 2022, Student underwent a neuropsychological and academic evaluation by Dr. Brian Willoughby[[15]](#footnote-15) of Achieve New England. In addition to wanting to know more about Student’s cognitive, academic and communication abilities, Parent was particularly interested in determining if Student had ADHD and was also concerned with any social or emotional needs that Student had due to his father passing tragically and unexpectedly when he was 2 years old. Dr. Willoughby obtained a clinical history of Student from Parent, performed a record review, made behavioral observations of Student on the testing days and performed standardized assessments of Student’s cognitive functioning, academics, language, motor functioning, attending, executive functioning, memory and social and emotional health. Dr. Willoughby did not observe Student in any educational setting. (P-4; Willougby, I, 41-42, 44-45, 97-98).
14. Dr. Willoughby explained that “warning bells were raised” when he learned Student did not speak until he was 4, as early language delays often are predictive of severe learning disabilities. (Willoughby, I, 47).
15. To assess Student’s cognitive and academic functioning, Dr. Willoughby administered the WISC-V, and the WIAT-4[[16]](#footnote-16). On the WISC-V, Student scored in the Borderline range for the Verbal Comprehension Index (SS 76) and Working Memory Index (SS 72) and in the Low Average Range for the Visual Spatial Index (SS 81), Fluid Reasoning Index (SS 82) and Processing Speed Index (SS 89). These scores were slightly lower than the District’s prior 2020 cognitive testing that had found Student to perform in the generally low average range except for impairments with working memory. Overall, Dr. Willoughby believes Student functions in the low average to average range, cognitively, because nonverbal measures are better indicators of cognitive functioning for students with language disorders, as language-based measures tend to confound and deflate the overall IQ due to the language challenges. (P-4; P-14; Willoughby, I, 50, 52-54).
16. On the WIAT-4, Student performed in the borderline range in the Reading Composite Index (SS 76), Decoding Composite Index (SS 78) and Math Fluency Composite Index (SS 73) and in the impaired range in the Math Composite Index (SS 67). As compared to the District’s 2020 WIAT-3 scores, Student’s scores decreased in Reading Comprehension (SS 80 in 2020 to 74 in 2022), Oral Reading Fluency (SS 87 to 83), Math Problem Solving (SS 71 to 60), and Numerical Operations (SS 79 to 78); stayed the same in Word Reading (SS 81); and improved in Spelling (SS 78 to 81) and Essay Composition (SS 79 to 83)[[17]](#footnote-17). According to Dr. Willoughby, a shift of a few numbers over time is not meaningful, but the importance was that the scores remained very low. (P-4; P-14; Willoughby, I, 58-59).
17. To assess Student’s language and phonological processing, Dr. Willoughby administered the Gray Oral Reading Test, Fifth Edition (GORT-5). Consistent with the District’s 2020 testing, Student scored in the Borderline range for all subtests of the GORT-5. Dr. Willoughby also reviewed Ms. Haustein’s C-TOPP-2 results, noting Student to have challenges in all composite areas. Thus, based on his challenges in phonological awareness and rapid symbolic naming, Dr. Willoughby, diagnosed Student with Double-Deficit Dyslexia. (P-4).
18. In terms of language skills, on the WIAT-4 Student received a SS of 76 for the Listening Comprehension Composite and a SS of 85 for the Oral Expression Composite[[18]](#footnote-18). Given Student’s language comprehension challenges and attention weaknesses, Dr. Willoughby concluded that Student’s “… variable auditory attention span and language-based weaknesses may adversely impact his ability to encode verbal information” and diagnosed Student with a Language Disorder. Additionally, as assessments measuring attention and executive functioning skills indicated difficulties in both areas, Dr. Willoughby also diagnosed Student with ADHD – Predominately Inattentive type. Finally, Dr. Willoughby found Student to have visual motor and fine motor skill weaknesses and weaknesses in long term memory, but noted the memory test had a greater language and attentional component that may have led to his poorer scores. (P-4; Willoughby, I, 60-67).
19. Overall, Dr. Willoughby concluded that Student’s difficulties adversely impact his academic functioning in the areas of decoding, fluency, comprehension, written expression, spelling and math computation, math word problems and math fluency. Student’s academic performance was lower than his cognitive potential, thereby supporting a diagnosis of a Specific Learning Disorder with Impairment in Reading (“Double-Deficit Dyslexia”), Mathematics (“Dyscalculia”) and Written Expression (“Dysgraphia”). Dr. Willoughby also opined that Student “is not closing the gap in the areas of literacy and math”, reasoning that as compared to his 2020 WIAT results, Student has “fallen further ‘off the curve’”. Specifically, Dr. Willoughby noted decreases in Student’s reading comprehension, reading fluency and math word problems scores between his evaluation and the 2020 WIAT-3 results, in support of his conclusions[[19]](#footnote-19). (P-4; Willoughby, I, 54-56, 57-58).
20. Further, according to Dr. Willoughby, Student’s weaknesses are “above and beyond those seen even in dual language learners” as they are neurologically based learning disabilities, not merely language acquisition issues, and they involve deficits that impose challenges across both languages. Dr. Willoughby agreed that Student’s instruction in Spanish adversely affected his test results, as the tests were not normed for dual-language instructed students. He opined that being in the Spanish immersion program “has likely exacerbated and contributed to [Student’s] lack of effective progress” in school and attending the bilingual program was “not doing any favors” for Student, especially as the program focus was in the language Student was less confident in[[20]](#footnote-20). (P-4; Willoughby, I, 70-71, 94-95, 110-11).
21. Noting that Student’s age places him in a “critical window of development”, Dr. Willoughby recommended a “drastic shift” in programming. He stressed that removing Student from the Spanish immersion program, alone, while a “great” first step, was not sufficient. Specifically, he recommended placement in an English-language substantially separate program that infused language-based learning supports in all aspects of the curriculum, had a small student to teacher ratio, had similar peers, and provided multi-sensory, language-based instruction across all areas, “even Math, Science and Social Studies” by specially trained teachers in language-based instruction who are also licensed in special education. Additionally, Student should receive daily 1:1 reading tutoring using a multi-sensory, phonics-based reading program, as well as specialized instruction and support in math and writing, and summer services to avoid regression. Further, Student needs executive functioning supports “infused across all subject areas”, as well as weekly speech and language and occupational therapy services. (P-4; P-10; P-12; Willougby, I, 71-73, 78-79, 98-100, 102-104).
22. According to Dr. Willoughby it was critical that Student be taught strategies “really individualized one to one” and tailored specifically for him due to his attention and distractibility concerns.  Dr. Willoughby indicated that if his recommendations were not generally followed, research shows that for students such as Student (who have very severe learning disabilities and who test at the bottom 10 percent), the educational “outcomes tend to be far worse”. (Willoughby, I, 76, 83).
23. Dr. Willoughby prepared an evaluation report that Parent received on December 1, 2022, and provided to the District a few days later. (P-4; Willoughby, I, 96; Grandmother, I, 217).
24. The Team reconvened on December 14, 2022, for Student’s annual review and to review Dr. Willoughby’s evaluation and proposed an IEP dated December 14, 2022, to December 13, 2023. (Grade 5 IEP). At the meeting, Ms. Haustein indicated that on the BAS, Student was at Level L independently and Level M instructionally in English and at Level I independently and Level K instructionally in Spanish. However, Student was able to read Level P books with support. Student’s overall i-Ready English score was at a Grade 3 level (continuing to test out of phonological awareness and high frequency words, improving in comprehension of informational texts and phonics, but declining for vocabulary). Student’s i-Ready Math score also improved from an overall Grade 1 level to an overall Grade 2 level, too.

No changes were made to the Goal areas or the Service Delivery Grid from what had been proposed in the September 2022 Amendment, however some of Student’s accommodations were adjusted, objectives and benchmarks were updated, and the Team agreed to provide reading services wholly in English. The Team also proposed to conduct a speech and language evaluation to address concerns with Student’s communication skills. Placement continued to be a full inclusion classroom. (J-5; S-10; S-18; Grandmother, I, 220).

1. Parent never signed the Grade 5 IEP and thus Student continued to receive services and to work on the goals and objectives provided in the last accepted IEPs (portions of both the Initial IEPs and the Grade 4 IEP as it was subsequently amended and revised and partially accepted). (S-4; Grandmother, I, 251-54; Tratt, III, 118-124).
2. In January 2023, pursuant to Parent’s October 27, 2022 request, Student transferred from Barberi to King[[21]](#footnote-21). (S-23; J-6; J-19; Grandmother, I, 218-19).
3. Student’s transfer from Barberi to King went well both academically and socially. Student easily made friends, was happy, and became a productive and positive class contributor. Student was the 22nd student in his new classroom. There were 4 other students in this classroom on IEPs and Student was the only one receiving pull-out reading services. (S-8; P-27; Grandmother, I, 231, 247; O’Brien, II, 204; 209-10, 216; Tratt, III, 15; Miller, III, 192).
4. On January 12, 2023, Student was readministered the i-Ready Reading assessment and continued to score overall at a Grade 3 level (and continued to test out of phonological awareness and high frequency words, but now also tested out of phonics). On January 19, 2023, Student was readministered the i-Ready Math assessment, improving overall from a Grade 2 level (in 4th grade) to a Grade 3 level. His individual domain scores also all improved, except measurement remained the same. (S-17; S-18).
5. According to his January 27, 2023 progress report Student met all of the objectives for his reading, written language and math goals. The report also noted that the District had proposed a new IEP for Student on December 14, 2022, that was not yet accepted; thus, the staff continued to work on goals and objectives from the last accepted IEP. (S-4; Tratt, III, 19-21).
6. The Team reconvened on February 15, 2023, to discuss Student’s transition from Barberi and King, as well as to review the way in which the services on Student’s IEP would be delivered, in light of potential schedule differences between the two schools. In addition to reviewing Student’s classwork and teacher reports, the Team also reviewed Student’s January i-Ready scores, his January 27, 2023 progress report and Wilson data. No standardized evaluations were performed by the District prior to this meeting. However, the Team was aware of and discussed Dr. Willoughby’s neuropsychological evaluation.

At the conclusion of this meeting, the Team proposed to revise the Grade 5 IEP by adding accommodations specific to Literacy and Math as they were supports Student used to access grade level curriculum in the classroom; adding additional Grid B services for Language Arts and Math; eliminating the Grid C Math services[[22]](#footnote-22); and decreasing by 15 minutes the Grid C service for Written Language to be focused on Spelling. (February 2023 IEP). Although it considered shifting Student’s pull-out reading services to the B-grid (so they could be provided in the classroom), this was not ultimately proposed as the Team determined Student still benefitted from this service and was concerned that eliminating this service at this time would keep Student from making effective progress in reading and spelling. The Team felt more data was needed related to the service.

Thus, the Service Delivery Grid proposed for the February 2023 IEP was as follows:

|  |  |  |
| --- | --- | --- |
| Grid | Service | Minutes/cycle |
| A | Consultation  | 1 x 15/week |
| B | Math  | 2 x 30/week |
| B | Language Arts  | 3 x 30/week |
| B | Written Language  | 1 x 45/week |
| C | Reading | 3 x 45/week |
| C | Written Language – (focus on spelling) | 1 x 30/week |

A full inclusion classroom placement continued to be proposed. (J-6; Tratt, III, 15-19, 47-59, 106-07; Miller, III, 196-200).

1. Parent never signed the February 2023 IEP and thus Student continued to receive services and to work on the goals and objectives provided in the last accepted IEPs (portions of both the Initial IEPs and the Grade 4 IEP as it was subsequently amended and revised and partially accepted). (S-4; S-8; P-27; Grandmother, I, 251-54; Tratt, III, 22, 118-124).
2. According to Jennifer O’Brien[[23]](#footnote-23), Student’s Grade 5 general education teacher at King, Student was successful in the general education classroom. He fully participated and benefited from working with strong role models, especially in Math when the class worked in small groups of approximately 3 students that changed daily. Student successfully completed and explained the assigned math task with his group. With the accommodation supports of his IEP, Student accessed grade level material and curriculum, and also completed grade level work in science, social studies and reading comprehension. (O’Brien, II, 205; 212-15).
3. According to Tina Miller[[24]](#footnote-24), Student’s Grade 5 special education Teacher at King, Student was very happy at King. Ms. Miller provided Student with his “stay put” C-Grid services in Reading (3 x 45 minutes per week) Math (3 x 30 minutes per week)[[25]](#footnote-25) and Written Language (1 x 45 minutes per week), and his “stay put” B-Grid Written Language (1 x 45 minutes per week) services, as well as pushed into the classroom to support him during the rest of his day. All C-Grid services were provided to Student on a 1:1 basis, until the end of the year, when he worked with a third-grade student during his Written Language C-Grid service time.

Ms. Miller explained that Student was hesitant and shy at first, but by the February school break, he had opened up more was participating and raising his hand in class and did not look like a new student. This shift was one of the reasons Ms. Miller recommended at the February Team meeting that the Team take more time to review and observe Student’s reading and spelling progress before making any adjustments to his reading services. Also, Student’s fluency in person began to appear different than what his testing scores had indicated, and he was working on higher level material in the classroom than she was working with him on when delivering his Grid-C reading services. (Miller, III, 134-137, 140-42, 178, 189-91).

1. Ms. Miller has been certified to teach Wilson since 2008. Student was working on Book 3 with Ms. Miller. Ms. Miller advised that she was unable to move Student beyond Book 3.2, however, because Parent had not accepted any portions of the proposed IEPs, and the proposed reading objectives and benchmarks were based on the Wilson program. It was Ms. Miller’s understanding that, without acceptance of new benchmarks, she needed to maintain Student at his current performance level. Ms. Miller felt that Student was able to perform well beyond Book 3.2. (Miller, III, 132, 137-38, 153, 164, 209, 211-12).
2. In March 2023, Katharine Mulvey[[26]](#footnote-26) administered the Speech and Language evaluation to Student with Parent’s consent, performing the CELF-5, EOWPVT-4, ROWPVT-4 and the TAPS-4. Ms. Mulvey did not review Student’s school file as part of the evaluation. Student had overall low average core language with a standard score (SS) of 84, but average receptive language and language memory with SS of 91 and 89, respectively on the CELF-5. Within the individual subtests, he scored in the below average range for recalling sentences and semantic relationships (SS of 6 and 5, respectively).

On the TAPS-4, Student scored in the overall below average range with a SS of 79 and in the below average rage for the phonological processing index (SS 77) and auditory memory index (SS 75), but the average range for the listening comprehension index (SS 88). Finally, Student’s EOWPVT-4 and ROWPVT-4 scores were both average (SS of 89 and 85[[27]](#footnote-27), respectively).

In addition to recommending accommodations, Ms. Mulvey recommended Student receive specialized instruction from a speech language pathologist to work on his weaker language skills. (S-5; P-16; Mulvey, II, 235-41; 252-53, 270-72)

1. The Team reconvened on March 17, 2023, to discuss the results of Ms. Mulvey’s evaluation[[28]](#footnote-28). The Team again reviewed Student’s January i-Ready scores, his January 27, 2023 progress report, BAS scores and Wilson program data. Ms. O’Brien and Ms. Miller informed the Team that Student was accessing grade level curriculum in the classroom with the support of his accommodations and special educator assistance. Further, the Team considered information from the Barberi Teams that indicated Student benefited from reading in a large group setting. As with the February 2023 Team meeting, no standardized academic evaluations were performed, but prior standardized testing results were considered.

Given Student’s performance and progress in the classroom, the Team discussed delivering his reading services in the classroom rather than on a pull-out basis, using the classroom reading and spelling programs (Lucy Caulkins for Reading and Words Your Way for Spelling). Ms. Miller acknowledged these curriculums were not phonics programs or replacements for Wilson, but she believed they accommodated Student’s areas of weakness. (J-7; Grandmother, I, 222-23; O’Brien, II, 227-28; Mulvey, II, 239-41; Tratt, III, 22-29, 80, 83; Miller, III, 202-05, 222-24, 225-28, 238).

1. At the conclusion of the meeting, the Team proposed to further revise the Grade 5 IEP to add a communication goal to address Student’s weak language skills and to replace the reading and writing goal with one ELA goal that contained spelling and reading benchmarks. (March 2023 IEP). Student’s Service Delivery Grid was revised by removing the C-Grid Reading and Writing services, as well as the B-Grid Language Arts and Written Language services[[29]](#footnote-29) but adding ELA services to the B-Grid and Speech and Language services to the C-Grid. Additionally, Ms. Mulvey’s recommended accommodations were added and the Nonparticipation Justification statement was revised to read: “[Student] requires small group specialized instruction for speech services to address his weaknesses with his expressive/receptive language skills”.

Thus, the Service Delivery Grid proposed in the March 2023 IEP was as follows:

|  |  |  |
| --- | --- | --- |
| Grid | Service/Personnel | Minutes/cycle |
| A | None |  |
| B | Math  | 2 x 30/week |
| B | Language Arts  | 4 x 45/week |
| C | Speech and Language – Speech Pathologist | 1 x 30/week |

A full inclusion classroom placement continued to be proposed. (J-7).

1. As with the Grade 5 IEP and the February 2023 IEP, Parent never signed the March 2023 IEP and thus Student never received any of the proposed speech and language services and continued to receive services and to work on the goals and objectives provided in the last accepted IEPs (portions of both the Initial IEPs and the Grade 4 IEP as it was subsequently amended and revised and partially accepted). (S-4; S-8; P-27; Grandmother, I, 251-54; Mulvey, II, 242, 245; Tratt, III, 31, 118-124).
2. According to Ms. Miller, by the time of the March 2023 Team meeting, Student was raising his hand to volunteer to read in the classroom. Further his Wilson lessons were going very quickly. While a typical lesson “with fidelity” generally lasts 45 to 50 minutes, Student was completing them in 30 to 40 minutes with complete accuracy in both reading and spelling, and he seemed bored. The data she was collecting from the Wilson progress monitoring reports supported her beliefs. Student was reading grade level materials in the classroom during whole group science and social studies as well as small group work for reading and writing, with proper fluency. He was completing grade level work, with accommodations, on pace with his peers in the classroom, too. Student participated in discussions during book group work and his comprehension was accurate based on what he had read. Although Student was always offered supports and accommodations with his reading, he would choose to read his books independently or co-read in the general education classroom. Further, while Student’s spelling continued to be a concern, Ms. Miller explained that the spelling words he worked on in the classroom, using Words Their Way, were higher level and more appropriately challenging words than the Wilson spelling words, and Student was accurate in his Words Their Way spelling lists. Ms. Miller did not find Student’s performance in the classroom or when she provided C-Grid services to reflect the evaluation scores he had received (which scores she agreed appeared to support Student receiving Wilson services). (Miller, III, 142-49, 151-52, 204-05).
3. In Math, Student also accessed grade level work in the classroom. He received the lesson as part of the whole group and often was then in Ms. Miller’s small group when the class divided. He had accommodations and supports always available to him, such as a reference guide, number line, or fraction bars that he used to access the grade level curriculum. By comparison, during his C-Grid Math lessons, Student appeared bored, and the work seemed too easy for him. (Miller, III, 153-54, 208).
4. On April 5, 2023, Nicole Coman, Ed.S.[[30]](#footnote-30), observed the Language and Learning Disabilities (LLD) program at Walsh Middle School in Framingham (Walsh) [[31]](#footnote-31). Parent elected to have Ms. Coman observe this program as it is the only substantially separate middle school program to support students with language-based learning needs in the District.  No Team ever recommended the Walsh LLD program for Student, as it was felt to be too restrictive for him. (P-6; J-8; Grandmother, I, 224-26; Coman, II, 14-19; Tratt, III, 91).
5. The Team reconvened again on April 12, 2023, to discuss Student’s transition into middle school the following school year as well as his ongoing progress. At the conclusion of this meeting, the Team proposed a further revised Grade 5 IEP (April 2023 IEP). No changes were proposed from the March 2023 IEP for the rest of 5th grade. However, starting in 6th grade, the March 2023 IEP was revised to add separate goals for reading comprehension and written language to support Student’s specific needs in reading comprehension, both of which would be worked on in Language Arts. Additionally, the Service Delivery Grid for middle school was revised to better reflect the middle school schedule (6-day cycle) as follows[[32]](#footnote-32):

|  |  |  |
| --- | --- | --- |
| Grid | Service/Personnel | Minutes – Revisions |
| A | Consultation  | 1 x 15 – no change |
| B | Math  | 2 x 30 to 5 x 45 |
| B | Language Arts | 4 x 45 to 5 x 45 |
| C | Speech and Language | 1 x 30 to 1 x 45 |

A full inclusion classroom placement continued to be proposed at King for the rest of elementary school and at Fuller Middle School (Fuller) starting in September 2023. (J-8; Grandmother, I, 227-28; Tratt, III, 29-35).

1. Parent partially rejected the April 2023 IEP and refused the placement, dating her signature May 25, 2023, but not sending it to the District until after the conclusion of that school year. Thus, Student continued to receive services and work on the goals and objectives provided in the last accepted IEPs (portions of both the Initial IEPs and the Grade 4 IEP as it was amended and revised) for all of his 5th Grade year. Student never received any of the proposed speech and language services during 5th grade, either, as they were not accepted by Parent during the year. (J-8; S-4; S-8; P-27; Grandmother, I, 298; Mulvey, II, 242; Tratt, III, 35, 38-40, 97).
2. Prior to the April 2023 Team Meeting, Ms. Miller had performed the Wilson end of Book assessments for Books 1 and 2 (since she was still working on Book 3 so she could not administer the end of Book assessment for that yet). Student did not score lower than a 95% in any area on Book 1, with 100% in accuracy, independence, comprehension, dictation, word reading and marking the words. Student had some low areas in Book 2, particularly charting, spelling and dictation, and Ms. Miller explained she had been focusing her lessons on these areas for purposes of maintaining his performance. Ms. Miller also again observed that Student’s performance and work in the classroom at this time looked very different than the student described on paper. While his testing indicated struggles with phonics and executive functioning, when Ms. Miller worked with Student in the classroom and during his C-Grid lessons, she did not find such issues to have any impact on his learning. He continued to complete grade level work and remained very happy. Ms. Miller also found that educating Student with his general education classroom peers was beneficial to him, especially in math, where Student was now the leader of the small group. For instance, Ms. Miller recalled once when they were working on adding fractions with uncommon denominators, Student answered all her questions first, to the point that she had to remind him he needed to give the other 3 students in his small group a chance. In response to this request, Student replied “yeah, but I know it”. (Miller, III, 156-58, 239).
3. On May 24, 2023, Student was readministered the i-Ready Reading assessment. Student’s year to date growth was noted to be 180 percent, although the typical student growth is 36 to 50 percent. He continued to score at an overall Grade 3 level (continuing to test out of phonological awareness, high frequency words, and phonics). (S-18; Miller, III, 173-75, 229-35).
4. Parent filed her Hearing Request on June 1, 2023, challenging all of the IEPs issued by the District during the 2022-2023 school year through the date of filing, and seeking an Order placing Student at the Learning Prep School (Learning Prep) for the 2023-2024 school year. (Hearing Request).
5. The Team reconvened for a final time in the 2022-2023 school year on June 16, 2023, to review Ms. Coman’s observation report. At the conclusion of this Meeting, the Team proposed to further revise the IEP by including a summary of Ms. Coman’s observation of the Walsh. (June 2023 IEP). It made no other changes. Parent was reminded that the proposed Speech and Language services had not yet been accepted, and Daniel Tratt[[33]](#footnote-33), reiterated that Parent could partially accept the IEP so that those services could begin. Further, the Team reviewed and rejected Parent’s request to place Student at Learning Prep. Thus, the Service Delivery Grid proposed for the start of middle school, was as follows:

|  |  |  |
| --- | --- | --- |
| Grid | Service/Personnel | Minutes/cycle |
| A | Consultation  | 1 x 15/week |
| B | Math  | 5 x 45/6 days |
| B | Language Arts  | 5 x 45/6 days |
| C | Speech and Language  | 1 x 45/6 days |

A full inclusion classroom placement at Fuller continued to be proposed. (J-9; Mulvey, II, 244-45; Tratt, III, 35-37, 99-103).

1. On the spring MCAS, Student achieved a 474 (Partially Meeting Expectations) in English Language Arts. This was lower than his score in 2022 (478) and 2021 (477). He achieved a score of 460 (Not Meeting Expectations) in Math. This was lower than his score in 2022 (463) but higher than his score in 2021 (455). He also achieved a score of 461 in Science and Technology/Engineering, which was the first year he took that MCAS exam. The King Team was not aware of these results when it made its recommendations and proposals between January and June 2023, as the scores were not released until the fall of 2023. (S-8; Miller, III, 212-16).
2. Student’s June 20, 2023, Progress Report indicates that he had met all of his goals and objectives as the District was still working on the ones from the last accepted IEPs, but it also provided a status update. In Reading, Student was accessing grade level curriculum using both audio and classroom books, as well as other accommodations. On the BAS, Student had made more than a year’s growth in reading in Grade 5, finishing at an instructional level of O (noted to be at the end of third/beginning of 4th grade). Student also accessed grade level Writing assignments with accommodations and frequent check-ins. Student was described to be a “very thoughtful writer” who is “hesitant to put his thoughts on paper” and who “needs lots of encouragement”. In Math, Student was noted to be a leader in small group instruction, but to experience more challenges in whole group instruction. With accommodations and tools such as extra time, repetition, reference guides, number lines, a multiplication/division chart, a calculator, and encouragement to learn math concepts, Student was able to be independent to complete his Math work once he understood it. Instructionally, he was struggling with 2 x 2 number multiplication problems. (S-8; P-27; Miller, III, 163).
3. From January to June 2023, Ms. Miller found Student to be a “completely different reading Student”. He chose to use the classroom textbooks rather than the assistive technology reader for the poetry and fairy tale units in the classroom. For the fantasy unit, although he was offered a book at the third grade reading level, he insisted on reading Harry Potter, a book at higher than a fifth grade level, and again declined the assistive technology reader accommodation, choosing instead to co-read it with a friend in his book club. His fluency deficit did not impact his comprehension, and he participated in the group discussions and completed the comprehension work appropriately, using graphic organizers for support despite not necessarily needing them. In math, by the end of the year, Ms. Miller was creating word problems for Student to work on using Grade 5 MCAS questions during his C-Grid Math lessons. So as to keep Student willing to attend these lessons, she also let him invite up to 3 friends to work on this with them, and other students who also needed help with word problems would always volunteer to come. In writing, although Student initially was hesitant to write, after an interaction where classmates overheard him say “Boys don’t write” and the classmates responded to say, “Yeah we do”, Student increased the amount of his writing up to producing paragraphs. He would even ask for extra time to finish writing assignments. Student accessed grade level writing materials with accommodations. Overall, given Student’s benchmark BAS and i-Ready scores, his performance in the general education classroom and when receiving C-Grid services, his Wilson data, and his progress reports, Ms. Miller felt that being in an inclusion setting while receiving pull-out C-Grid services, and being in a monolingual setting benefitted Student. However, she believed that the appropriate placement for Student was to receive all his services in the B-Grid, as it was the least restrictive place for him to learn, to make mistakes and to then learn from his mistakes. (Miller, III, 160-62, 175-82).
4. On June 29, 2023, Grandmother emailed Mr. Tratt with Parent’s responses to the April IEP, and her consent to testing for Student’s 3 -year reevaluation to take place in the fall of 2023[[34]](#footnote-34). (S-26; Tratt, III, 38-40, 112; Spear, IV, 253-55).
5. Student was reassessed by Dr. Willoughby and Kendra McCuine[[35]](#footnote-35) in July 2023 to determine his progress since the 2022 evaluation and a report was prepared. (July 2023 Evaluation). The evaluators obtained an updated history from Grandmother, reviewed updated records and administered more standardized assessments. They did not observe Student in any educational setting. Dr. Willoughby learned that all of his recommendations had not been followed by the District, that the family had decided to place Student at Learning Prep and that they had filed a Hearing Request with the BSEA. Ms. McCuine was not aware that a Hearing Request had been filed but was aware of the decision for Student to attend Learning Prep[[36]](#footnote-36). (P-5; Willoughby, I, 85, 96-98, 111-12, McCuine, I, 145-47, 187-88).
6. Student was administered the C-TOPP-2, GORT-5, WIST, TOWRE-2, SLS, TNL-2 and selected subtests of the TILLS and KTEA-3[[37]](#footnote-37). Student’s language scores ranged from the impaired to high average range, with most scores in the impaired and borderline range. As compared to his prior C-TOPP-2 scores, Student generally decreased with three exceptions. Specifically, his memory for digits score remained the same (SS 4) and his Elision score (SS 4 in 2022 and SS 5 in 2023) and Blending Words score (SS 5 to SS 6) improved. However, as his Phenome Isolation score decreased (SS 9 in 2022 to SS 5 in 2023), Student’s overall Phonological Awareness Composite, Phonological Memory Composite and Rapid Symbolic Naming Composite also decreased[[38]](#footnote-38). Ms. McCuine acknowledged that the decrease in Student’s phenome isolation score does not mean there was no growth, rather his growth was slower than his peers, thereby widening the gap in his skills. She suggested Student’s C-TOPP scores may reflect the focus of his C-Grid services being on Elision and Blending Words rather than phenome isolation, although she did not know if this was true. According to Ms. McCuine, all 3 areas need to be worked on together for overall phonological awareness to improve, so as to build the requisite decoding skills to read novel words. Thus, as Student did not appear to have a specific phonological awareness goal or objective in his IEP, she included in her report a recommendation for Student to receive services in both decoding (i.e. Wilson) and phonological awareness (i.e. Lindamood-Bell LiPS program). (P-5; McCuine, I, 151- 55, 191-96).
7. In reading, Student continued to perform “far well below grade-based expectations” in pseudoword-reading tasks, text level reading and reading comprehension, with “widening skill gaps” in nearly all reading and spelling skills, but gains in reading fluency, and text-level accuracy. This was ascribed to Student having improved his sight word recognition. Student’s reading scores ranged from the borderline to average range (the average score being a 90 on the Word Identification subtest of the WIST). However, Ms. McCuine found this to be an inflated measure of Student’s decoding skill progress, as it involved reading high frequency words. Student’s other reading scores on the KTEA-3, TOWRE-2 and GORT-5 and were in the Borderline to Low Average range.

As compared to his prior GORT-5 testing, Student stayed the same on one subtest – Reading Comprehension (SS 6) and improved on all other subtests, thus his Oral Reading Index also improved (SS 76 to 81). Student’s WIST reading scores were also an overall improvement from his prior WIST testing performed by Ms. Haustein. Additionally, Student’s KTEA Reading Comprehension score (SS 77) was an improvement over the 2022 WIAT-4 Reading Comprehension Score (SS 74). Ms. McCuine characterized this improvement as “mild remedial progress” in text level reading, but not necessarily in decoding, and felt it was a result of Student’s pull-out reading services. Ms. McCuine believed that without these pull-out reading services, it was unlikely that Student would have made any reading improvements. Despite Student’s performance in comparison to prior testing, the July 2023 Evaluation concluded that “GORT-5 scored (sic) indicate slight remedial progress in [Student’s] text-level reading fluency since the start of fifth grade …” and that “current scores on both the WIAT-4[[39]](#footnote-39) and GORT-5 indicate minimal to no remedial progress in [Student’s] reading comprehension”. Further, although Student’s reading rate and speed improved, which meant his reading fluency improved (as fluency is made up of rate and accuracy), his increased decoding deficits negatively impacted his reading comprehension, thereby not reflecting remedial growth[[40]](#footnote-40). (P-4; P-5; P-9; Willoughby, I, 125-28; McCuine, I, 156-60, 164-67, 196-97).

1. In written language, Student’s scores varied as compared to his prior testing. His Spelling and Sentence Writing Fluency dropped between the WIAT-4 in 2022 and the KTEA-3 in 2023 from a SS of 81 to 78 and a SS of 72 to 64, respectively. Further, while Student’s WIST scores dropped in some subtests, they improved on others. He had 100 percent accuracy in spelling suffixes and continued to spell irregular high-frequency words well. The July 2023 Evaluation concluded there were “… widening gaps in several [ ] writing-related skills since last fall”, specifically commenting on Student’s lack of remedial progress in spelling, his reliance on memorization of common high-frequency words and his impaired-range scores in sentence writing fluency and written expression. The evaluation drew no conclusions about any of the improved scores Student displayed. (P-4; P-5; P-9).
2. Student’s mathematical performance varied from his 2022 testing, with Student performing better on problem solving but poorer on computation. The July 2023 Evaluation concluded that in Math, “while [Student] appears to be on an upward trajectory in his ability to solve applied mathematical problems, the gap between his computation skills and those of his peers widened during fifth grade”. It attributed Student’s gains in mathematical problem solving to the school-based supports he had received. (P-4; P-5; P-9)
3. The July 2023 Evaluation concluded that Student continues to have very severe learning disabilities in all areas. Student had not made the necessary “remedial progress”, except with regard to reading rate and speed, and that Student’s gaps with his peers either remained the same or widened. Dr. Willoughby explained that “remedial progress” is when the skills a student has moves in line with the student’s educational potential and their same age and grade level peers. This is different than aligning a student back to average range. “Closing the gap” was explained as one of three learning trajectories for students. If a student keeps pace with the disparity between skills and potential at the same rate as his peers, the “gap” remains the same, and although the student may be learning new things, no remedial gains are happening. If, instead, testing percentiles go down as compared to prior results, the “gap” widens. While this does not mean there is no learning happening or skills are regressing, it is a reflection of their trajectory of learning. To “close the gap”, however, over a one-year period, Dr. Willoughby advised that he may expect to see a student reading at the 5th percentile improve to the 12th percentile, and that this improvement would start to be consistent across all academic areas. Ms. McCuine indicated that she would have needed to see Student score at the bottom of the average range for phonological awareness, thus resulting in a SS of 8 for blending words and phoneme isolation, and a 7 for elision[[41]](#footnote-41). (P-5; Willoughby 1, 88-89, 122-23, 125-28; McCuine, 1, 164-67, 196-97).
4. The July 2023 Evaluation strongly disagreed with the District’s proposal to eliminate Student’s decoding services (i.e. Wilson), instead recommending Student receive “significantly more intensity of instruction to remediate his underlying skill deficits; namely phonological awareness, decoding accuracy and efficiency, text-level accuracy, and reading comprehension”. Additionally, given continued concerns with Student’s performance with his written expression, the July 2023 Evaluation concluded that the District’s proposal for inclusion-based writing services and speech and language services once a week were “largely insufficient” to address Student’s “severe deficits”, instead recommending a “remedial approach” to all his language learning – both verbal and written. Finally, although recognizing Student made “good remedial progress over the past year in his ability to solve verbally presented word problems”, in math, he did not make “remedial progress” performing written calculations, and the “gap” between Student and his peers was found to have “widened slightly”. Thus, Ms. McCuine further opined that Student’s learning disabilities in reading, writing or math could not be “appropriately remediated” in an inclusion setting. According to Ms. McCuine, given the severity of Student’s deficits the only way for him to be able to close his academic gaps between his functioning level and his potential would be to intensify the services he was receiving or to receive the services more frequently, in a smaller group, by teachers with more specialized training. (P-5; McCuine, I, 163-64, 175-77).
5. The July 2023 Evaluation continued to recommend Student be placed in a “cohesive program designed for students with language-based learning disabilities” that is substantially, separate, multisensory, integrates language-based programming throughout the curriculum, has a low student to teacher ratio, has similar peers, and provides daily instruction, infused with executive functioning support across all academic areas. Student should receive reading instruction using a multisensory, phonetic, rule-based reading program such as Wilson, 5 x 45 minutes per week to address reading and spelling, by a teacher “certified in the specified approach, delivered with fidelity” and a cohesive, multisensory phonological awareness program, such as Lindamood Bell’s LiPS program, 5 x 30 minutes per week by a certified teacher, both on a 1 to 1 basis. Reading comprehension and writing should be supported via a small group substantially separate ELA class of no more than 6 to 8 students 5 x 45 minutes per week, as well as typing instruction 5 to 10 minutes per day. Math instruction should also occur daily in a small group substantially separate math class with similar peers. Further, 2 x 45 minutes per week of substantially separate 1 to 1 or small group (up to 4 students) speech and language services was recommended to work on Student’s expressive language as well as 1 x 45 minutes per week of inclusion speech and language support. According to Ms. McCuine, it was important Student learn with peers with similar profiles and developmental levels because since proper language-based teaching targets a student’s individual needs, having peers with varying profiles makes this targeted instruction difficult. Moreover, learning in a small group or individual setting will eliminate the noise and distractions of the general education classroom, which would exist if he was taught in an inclusion setting. Finally, the report recommended Student receive, extensive extended year services[[42]](#footnote-42). (P-5, Willoughby, I, 115-19, McCuine, I, 165-74, 178-82).
6. On August 4, 2023, Parent partially rejected the June 2023 IEP and rejected the proposed placement. (J-9).
7. On August 8, 2023, Parent gave timely and proper notice of her intention to unilaterally place Student at Learning Prep for the 2023-2024 school year via a letter to Laura Spear, the District’s Director of Special Education. Parent considered several out of district programs, deciding on Learning Prep as it was the best fit for Student’s profile, particularly his working memory deficits. According to Grandmother the decision to send Student to Learning Prep was made after the June 2023 Team meeting, around the same time Parent filed her Hearing Request. However, Student visited Learning Prep for a trial day on March 31, 2023, and Parent filed her application for Learning Prep in January or February 2023, prior to any Team proposal to move any of Student’s C-Grid services to the B-Grid. (S-9; P-28; Grandmother, I, 229-30, 234, 248; Davis, II, 108; Spear, IV, 273-77).
8. Student began attending Learning Prep in September 2023. Student transitioned smoothly and easily made new friends. While a transition meeting was scheduled for November 7, 2024, it was not held as scheduled and a new date was not set as of the Hearing. (S-12; S-16; P-13; Grandmother, I, 231, 249; Davis, II, 78-79).
9. According to Amy Davis[[43]](#footnote-43), the Principal of Learning Prep as well as written materials about Learning Prep that were submitted into evidence, Learning Prep is a Chapter 766-approved school that currently supports 128 students in grades 4-12, typically with primary disabilities of specific learning disabilities (dyslexia, dysgraphia and dyscalculia); Language Disorders (receptive, expressive and mixed), Nonverbal Learning Disabilities, and Communication Disorders. It also supports students with diagnosis of ADHD, anxiety and ASD, Level 1, provided they have a need for language-based instruction, which is a criterion for admission. It specifies it does not accept students with intellectual disabilities, ASD, Level 2 or 3 or primary behavioral or emotional disabilities that require a therapeutic placement. However, Ms. Spear testified that her review of the 20 redacted peer IEPs from Learning Prep indicated that only 6 had primary disabilities of specific learning disabilities or communication, while 7 had primary neurological disabilities, 3 had primary autism disabilities, 2 had primary health disabilities, 1 had a primary emotional disability, and 1 had a primary intellectual disability (while a second had a secondary intellectual disability). Further, most of the IEPs contained supports to develop social skills and pragmatic language, which were areas of strength for Student. (P-25; Davis, II, 62-66; Spear IV, 255-58, 280-81)
10. At Learning Prep, language-based instruction, consisting of spiral teaching, multi-modal teaching, decreased language, breaking down vocabulary, and previewing, is provided in every class and all electives. Learning Prep offers embedded, rather than pull-out, speech and language, occupational therapy and counseling supports. If a Student requires individual additional related services, such as speech and language, Ms. Davis explained that they are scheduled in place of an elective and occur on a 1:1 or up to 3:1 basis. Counseling is provided 1:1. The average student to teacher ratio for all classes is 3:1 and Learning Prep has a maximum class size of 8:1. For Social Studies and Science classes, students are grouped by grade. For all other classes, Students are grouped based on work level, not grade level, although Learning Prep adheres to the regulatory requirement of no more than a 48-month age difference for all student groupings. Students attend for the 180-day school year and a summer program is available. Two reading classes are provided to students daily – a Language Arts class to work on decoding and encoding deficits via the Wilson program[[44]](#footnote-44), and a Reading Comprehension class. Learning Prep also performs ongoing progress monitoring adjusting student classes to address their intervention needs. (P-21; P-25; P-29; Davis, II, 68-73, 89-90).
11. Student’s school day at Learning Prep is 6.5 hours long. Student’s preliminary individual service plan (ISP)[[45]](#footnote-45) at Learning Prep consists of 10 x 43 minutes per week of substantially separate reading and language arts services by a Special Education Teacher or Reading Language Arts Teacher; 1 x 43 minutes per week of Counseling; 1 x 43 minutes per week of “Health/Student issues” both by a Counselor; and 5 x 43 minutes per week for each class of Science, Social Studies and Math by a special education teacher or respective content area teacher. In addition to his ISP services, Student’s schedule at Learning Prep includes a half an hour of Homeroom, daily; a 43 minute block daily for either games, crafts, physical education, Legos or “color & chat”; a second 43 minute block daily for 2 more sessions of physical education, one session of art, and 2 sessions of technology and design; and a third 43 minute block daily of “health/student issues”, counseling, 2 sessions of horticulture and one more session of art. On October 20, 2023, Student’s schedule changed, to provide speech and language services with a speech and language pathologist once a week instead of horticulture[[46]](#footnote-46). He also moved to a faster paced Math classroom based on progress monitoring around this time[[47]](#footnote-47). According to Learning Prep, Student’s staff to student ratio in these classes ranges from 1:4 to 1:8. Student only receives 1:1 instruction for Counseling and Speech and Language services. In Math, at the start of the school year, there were 2 fifth graders, 2 sixth graders (including Student); 3 seventh graders and an eighth grader. In Language Arts there is one fifth grader; Student the only sixth grader; and 2 seventh graders. While Student’s Reading, Math and Science teachers are certified special educators, but not content certified, his Social Studies teacher is content-certified but not special education certified. Also, Student’s Language Arts teacher is neither Wilson certified, nor supervised by a Wilson certified teacher. (S-25; S-27; P-20; P-21; P-25; P-29; Davis, II, 73-74, 79-86, 90, 116-17; Spear, IV, 259).
12. In September 2023, the District performed Student’s 3-year reevaluation consisting of an academic, psychological and speech and language evaluation. The Academic Assessment was performed by Amy Dudziak[[48]](#footnote-48) who administered the WIAT-4 on September 20, 2023. Overall, Students scores generally were in the below average to average range. Of note, as compared to Dr. Willoughby’s 2022 testing, Student’s Reading Comprehension scores improved from a SS of 74 to a SS of 84, his Reading Fluency scores improved from a SS of 83 to a SS of 92 and his Math Problem Solving scores improved from a SS of 60 to a SS of 75[[49]](#footnote-49). Further, his Sentence Writing Fluency improved from a SS of 72 to a SS of 84 and his Word Reading increased from a SS of 81 to a SS of 83 on the WIAT-4, although his Spelling decreased from a SS of 81 to a SS of 79 and his Pseudoword Decoding decreased from a SS of 77 to SS of 74[[50]](#footnote-50). Ms. Dudziak recommended several accommodations and supports both in the classroom and during testing. Although Ms. Dudziak felt Student’s testing supported the need for Student to receive reading services using a multi-sensory, research-based methodology, such as Wilson, she did not put this recommendation in her report, because these recommendations typically are made at a Team meeting, and she does not provide Wilson services herself. (J-10; S-13; S-14; P-11; P-12; Dudziak, IV, 111-114, 147-50, 167-69).
13. The Psychological assessment was performed by Anna Banerjea[[51]](#footnote-51), the District’s School Psychologist, on September 21, 2023. Ms. Banerjea conducted a record review, an interview of Student and Parent, an observation of Student at Learning Prep, administered the BASC-3 and WISC-V and had Parent and Student’s Reading Teacher at Learning Prep complete BRIEF-2 rating scales[[52]](#footnote-52). Ms. Banerjea found Student’s cognitive skills to reflect his prior testing. Specifically, Student had low scores on the Verbal Comprehension (SS 78)[[53]](#footnote-53) and Working Memory (SS 72) Indices, low average scores on the Visual Spatial (SS 84), Storage Retrieval (SS 86) and Naming Speed (SS 82) Indices, and average scores on the Fluid Reasoning (SS 91) and Symbol Translation (SS 97) Indices. No composite score on the Processing Speed Index was generated due to Student’s inconsistent scores. Student was noted to work at a slower pace than others his age when asked to copy shapes, but at a similar pace when marking multiple choice answers, consistent with his prior outside testing that identified fine-motor and visual-motor integration weaknesses. Although no assessments in this area were performed, Student also demonstrated executive functioning and attention weaknesses. Ms. Banerjea observed mild anxiety and executive functioning difficulties during testing, and the Teacher response to the BRIEF indicated that, despite knowing him only a month and observing him in a highly structured and small group class setting where executive functioning difficulties likely would not be as obvious, Student had slightly more difficulty than his peers with working memory and following through on multi-step tasks. (S-16; P-13, Banerjea, IV, 187-89, 219-21, 230, 246-47).

1. As part of her evaluation, Ms. Banerjea also observed Student at Learning Prep in his Math and Language Arts classes. Math consisted of 8 students including Student and 1 teacher. The entire class was spent working on rounding to the thousandth place. Language Arts consisted of 2 students including Student and 1 teacher. It was presented to be a Wilson lesson, but Ms. Banerjea did not see many of the Wilson elements and procedures used that she had observed in Wilson lessons at Fuller. In both classes, Student was observed to be on task 100% of the time and was provided with and benefitted from scaffolding and strategies to support his learning. Many of the language-based strategies that Ms. Davis testified that Learning Prep used were observed by Ms. Banerjea. Ms. Banerjea noted that these strategies are also used at Fuller. Ms. Banerjea was surprised by the pace of instruction, however. She explained that the Math class objective would be appropriate to use as a review and support of a grade level skill but was not itself a grade level skill. Therefore, it should not have been taught over the course of the entire class, particularly as Student was able to successfully demonstrate mastery of the skill within the first half of the class. Further, Ms. Banerjea was concerned as Student did not seem challenged by the work in either class, making minimal errors and demonstrating understanding when corrected. According to Ms. Banerjea, for students to make progress, they should be balancing a bolstering of their foundational skills with productive struggle. Intellectual challenge allows students to stay engaged, interested and find meaning in a skill being taught. (S-16; P-13, Banerjea, IV, 196-205, 235-40).
2. While Ms. Banerjea agreed that Student had a specific learning disability in reading writing and math, requiring services and supports through an IEP, she did not find Student’s disabilities to be as severe as Dr. Willoughby and Ms. McCuine concluded they were. Ms. Banerjae, therefore, recommended different services for Student. She did not agree that Student required the level of intense programming that Dr. Willoughby’s 2022 Evaluation and July 2023 Evaluations recommended. According to Ms. Banerjea, best practice is to interpret test results “with care” meaning that the composite scores of her evaluation and Student’s prior tests, should be “cross checked” with historical data (including being educated during the COVID-19 pandemic), educational progress in school, responses to intervention, and observations in the classroom. Student’s historical performance demonstrated that he was able to make progress while accessing grade level material at King as evidenced by progress monitoring assessments, like the BAS[[54]](#footnote-54). Ms. Banerjea was also mindful of Student’s dual language educational program background up until less than a year prior to her testing[[55]](#footnote-55). Additionally, she noted that Student’s evaluation scores were similar to students she had tested with linguistically diverse backgrounds, who are successfully placed in inclusion classes (although she acknowledged that not all students with similar scores were successful in inclusion). Further, she believed that some of Student’s test scores reflected his attention and executive functioning weaknesses rather than the cognitive skill being measured. Thus, Ms. Banerjea opined that Student should be provided with a structured multi-sensory, systemic research-based reading program to support his decoding and encoding needs, as well as additional reading services in the inclusion class to support his vocabulary, reading comprehension and reading fluency needs, along with scaffolds and accommodations to support his access to grade level materials. (Banerjea, IV, 185-87, 190-94, 206-08, 222-33, 240-41).
3. Student’s Speech and Language Evaluation was performed on September 21, 2023, by Alison McDonough, who did not testify at the Hearing. Student was administered the Comprehensive Assessment of Spoken Language – 2 (CASL-2) and the reading comprehension subtest of the CELF-5. Student scored in the average range on the CELF-5 reading comprehension subtest (SS 10) and the CASL-2 subtests of nonliteral language (SS 86), sentence expression (SS 108) and double meaning (SS 93) but the below average range on receptive vocabulary (SS 80) and grammaticality judgment (SS 60). Several recommendations for accommodations and interventions in the classroom were proposed. Although Ms. Mulvey did not administer this evaluation, she reviewed the report and noted its findings were consistent with her prior evaluation. (S-15; P-15; Mulvey, II, 243).
4. All Student’s 3-year reevaluations took place at Fuller Middle School. Student appeared to enjoy being at the school, and so many students were stopping by to greet Student that evaluators had to step in to keep the testing moving. (Melendez, IV, 51-54).
5. On October 4, 2023, Ms. Coman conducted an observation of Student’s proposed placement at Fuller Middle School (Fuller) and issued a Report on October 24, 2023[[56]](#footnote-56). She did not perform any testing of Student or observe Student in any program in the District. Her opinions were based solely on her review of Dr. Willoughby’s 2022 report and the July 2023 Evaluation. (P-7; Coman, II, 43-45).
6. Ms. Coman was aware that Student was attending Learning Prep at the time of her second observation. She again noted at the start of the Observation Report that Student’s previous pull-out services in reading, writing and math had been “discontinued at the direction of the [D]istrict”, but that they were reinstated at a recent Team meeting[[57]](#footnote-57). (P-7; Coman, II, 29).
7. Ms. Coman observed an inclusion Math and inclusion ELA class, each with 15 students that were co-taught by a licensed general educator and special educator. All students in the inclusion Math and ELA classes attend general education Science and Social Studies classes with teaching assistant support. There is also a certified reading specialist at Fuller, certified in Wilson, who incorporates the Sonday System (using Orton-Gillingham curriculum) into her programming. The special educator supports 5 students in each class, 2 of whom have language-based learning needs like Student[[58]](#footnote-58). The other students have executive functioning needs or otherwise need only “additional support”.

Although Ms. Coman acknowledged some aspects of the Fuller program were consistent with Dr. Willoughby’s 2022 recommendations and the July 2023 Evaluation recommendations, she found many aspects to be inconsistent particularly with the July 2023 Evaluation. Specifically, she did not observe any “multi-sensory rule-and-phonics-based teaching format with language intensive instruction” or specific “in-class specific language-based supports” or scaffolding supports provided to any students. Rather teachers would just correct students who misstated a word. Class sizes were deemed too large, teachers were not sufficiently trained in language-based instruction, and the cohort of peers was not appropriate for Student, both with regard to disability profiles and academic performance levels. Ms. Coman stressed the importance of Student being placed with similar peers to ensure “consistent implementation” of instruction and to avoid challenges that come with the need to individualize curriculum, which was “contraindicated given the potential impacts on [Student’s] own academic and social-emotional development”. As with the Walsh LLD program that had not been proposed for Student, Ms. Coman continued to conclude that the District’s proposed placement and academic programming will “not adequately meet [Student’s] educational needs”. (P-7; Coman, II, 30-40, 48-49).

1. On October 11, 2023, the Team reconvened to review the results of Student’s 3-Year Reevaluation as well as the July 2023 Evaluation. Although the Team requested teacher evaluation and student performance information from Learning Prep, no such information was provided[[59]](#footnote-59). The Team noted that the results of its testing and the July 2023 Evaluation were consistent. At the conclusion of the Team meeting, the Team proposed an IEP dated October 11, 2023, to October 10, 2024. (Grade 6 IEP). Substantial revisions were made to Student’s accommodations, incorporating the recommendations from the 3-year re-evaluation. Further, for the first time since the Initial IEP, revisions were made to both PLEPs A and B about how Student’s disability affects his progress in all curriculum areas. Specifically, in addition to noting Student’s weakness with working memory in PLEP-A, additional information was added about Student having weaknesses in his verbal ability, receptive vocabulary, vocabulary, informational knowledge, reading and the ability to catch information during a lesson. Similarly, PLEP B was revised to add that Student’s “… weaknesses in his language skills may impact his ability to engage without supports in place”. (J-10; P-3; S-19; S-Melendez, IV, 12-13, 61-62).
2. The Grade 6 IEP also added a Decoding goal area to the previous goal areas of Math, Reading, Written Language and Communication. The Service Delivery Grid was revised to eliminate the A Grid consultation; maintain the B-Grid services of Math and Language Arts; add C Grid Guided Academics (to work on the Math, Reading and Written Language goals), and separate phonics Reading services to work on the Decoding goal; and increase the speech and language services from once to twice a cycle with opportunities for inclusion, focusing on building vocabulary. The Nonparticipation Justification statement was also revised by adding:

“Due to [Student’s] weak decoding skills, he requires small group reading instruction where he will learn and apply strategies to decode and encode words with a variety of phonetic patterns through an explicit, systematic approach. [Student] also requires small group guided academics support where instruction is provided at a slower pace with built in preview and review of skills and repetition”.

Thus, the Service Delivery Grid proposed in the Grade 6 IEP (6-day cycle) was:

|  |  |  |
| --- | --- | --- |
| Grid | Service/Personnel | Minutes |
| A | None |  |
| B | Math  | 5 x 45  |
| B | Language Arts  | 5 x 45  |
| C | Speech and Language (with opportunities for inclusion) | 2 x 45 |
| C | Guided Academics  | 2 x 45 |
| C  | Reading  | 2 x 45 |

A full inclusion program continued to be proposed. (J-10; Melendez, IV, 13-16, 19).

1. According to Phoebe Melendez[[60]](#footnote-60), the Team Chair at Fuller, although the Team considered the July 2023 Evaluation recommendation that Student receive a multi-sensory research-based phonics reading program daily, it only proposed Student receive such a service twice a cycle. Ms. Melendez felt it was important for Student to have opportunities to build skills in a phonics-based program but also practice the skills in the classroom in order to foster independence and truly learn and master the skills. She also thought Student needed opportunities to demonstrate the skills he learned in his Wilson program in context, to build his vocabulary and skills within the “zone of proximal development”[[61]](#footnote-61). The Team was also aware that Student had accessed grade level reading content at King with supports in his classroom. Thus, while Student’s schedule could have accommodated C-Grid reading services daily, the Team felt he only needed it twice per cycle.

For Math, the Team recommended B-Grid Math services. However, additional Math support is available during the academic advisory/Flex Block, discussed below. Ms. Dudziak would be Student’s Special Educator at Fuller. She confirmed that none of her students receive C-Grid Math services, but she did not feel C-Grid Math services were appropriate, either, as, despite Student’s lower WIAT-4 Math scores than Reading, the WIAT-4 did not allow the use of accommodations or other supports for the Math tests, such as a multiplication chart, or step by step procedural instructions, that Student regularly used to access grade level Math at King. Additionally, other Fuller students with similar Math scores are successful in Math inclusion. (Melendez, IV, 21-23, 78, 84-85; Dudziak, IV, 150-53, 166-67).

1. Student’s schedule at Fuller involves 45 minutes daily of Language Arts, Social Studies, Science, Math, a block for Guided Academics/C-Grid Services (instead of a Foreign Language) and a “Flex Block”, over a 6-day cycle[[62]](#footnote-62). Additionally, there is a specials block for Art, Health, Technology Education and Physical Education.

Ms. Dudziak teaches Guided Academic and co-teaches inclusion Math and ELA. Guided Academics offers extra support to inclusion students, including previewing new concepts, pre-reading, previewing vocabulary, providing more practice and repetition time with a skill, providing reading comprehension strategies or providing specific vocabulary instruction. Generally, she spends two days a cycle on Math, Reading and Writing, and Executive Function support. At times, she incorporates topics students are learning in Science and Social Studies into the content days. On one executive function day, Ms. Dudziak follows the SMARTS curriculum and offers a “What I Need” day for the other day, where students self-identify where they need extra support or additional practice from a guided list of options. There are 8 students in Guided Academics, but most of them have other C-Grid services, such as Reading and Speech and Language during this block of time. Thus, the work done on any given day is fluid and based upon the students who are present. Ms. Dudziak noted that while generally Student would be in Guided Academics for two of the six days in the cycle, in certain circumstances, he could have an additional day[[63]](#footnote-63). (S-22; Melendez, IV, 16-17, 19-21; Dudziak, IV, 114-17, 121, 124, 136-37, 153-56, 169-78).

1. Student’s proposed peer group at Fuller consists of 6 to 8 other students on IEPs with communication disabilities related to building vocabulary. Only 2 of the 8 students have a primary disability similar to Student. There are approximately 70 students on his team divided among the 4 content classes. The inclusion Math class has 20 total students, 7 of whom are on IEPs, however this cohort of students does not travel together for every content class. The inclusion ELA class has 18 total students, 10 of whom are on IEPs. Further, Ms. Dudziak noted that all of the 8 students in her Guided Academics block receive speech and language services either once or twice a cycle, primarily to build vocabulary, and 6 of the 8 students receive C-Grid reading services either twice or three times a cycle. (Melendez, IV, 27, 104-06; Dudziak, IV, 123, 137-38, 156, 163, 172).
2. According to Fuller staff, Fuller uses language-based strategies throughout its classes, similar to those used at Learning Prep. These strategies support students with language-based learning disabilities as well as SEI and emerging bilingual students who are placed at Fuller. There are school wide teacher trainings on implementing language-based strategies in the classroom. There is also a language development coach at Fuller who provides strategies and supports teachers as they plan their lessons. Every Math and ELA inclusion class is co-taught by a general educator and a special educator. Reading C-Grid services are delivered by a reading specialist certified in Wilson, who is a Wilson trainer for the District, and also has Sonday training. Science and Social Studies, while general education classes, have a teaching assistant assigned to support students with IEPs, and Social Studies is also co-taught by the ESL teacher. Additionally, the inclusion special educator consults with the Science and Social Studies teachers to ensure all accommodations and modifications are provided to students on IEPs in those classes. The inclusion classes teach grade level content. IEPs are shared across all building personnel so that every teacher is able to provide the IEP scaffolding and accommodations that the student needs. Further, consistent organizational approaches and lesson patterns are used across classrooms to build executive functioning skills. King is a feeder school to Fuller, so Student will be familiar with many of his peers. Finally, none of the students with IEPs in the inclusion classes have primary disability categories of autism, emotional or intellectual delays. (Melendez, IV, 23-28, 49-50, 86, 93-94, Dudziak, IV, 120, 127-30).
3. On October 19, 2023, Ms. Melendez observed Student at Learning Prep and made a written summary of her observation notes. She observed Student’s Math class, lunch and recess, Language Arts class and Reading Comprehension class. In Math, Student worked on a lesson on equivalent fractions (which is not a grade 6 standard) and Student finished his work without support and before most of the other students in the class, without an alternative assignment. As a result of the extensive wait time, Student began to ask off topic questions of the teacher such as how many legs does a crab have. The Language Arts class addressed breaking complex words into syllables. Student required less support than the other student in this class, too. While the lesson was supposed to be a Wilson lesson, Ms. Melendez did not observe all of the Wilson elements and procedures being used that she observes in Wilson lessons she has attended at Fuller. The Reading Comprehension class lesson used a third grade reading level text. Student needed little support (and was not provided with any strategies or feedback to correct his two oral reading errors) and finished his work well before his peers, in approximately 5 to 10 minutes, with no alternate assignment. Ms. Melendez was provided with a copy of Student’s work at the end of the class, and found it to be complete, accurate and appropriate to the assignment. Overall, Ms. Melendez did not think Student had the same needs or required the same amount of supports as the other students in his classes. She described him as not being a “typical peer”. Student attended all lessons without redirection and did not require social skills supports, while the other students did. Further, Ms. Melendez did not observe Student to be provided grade level work, or even work that challenged him, thus she was concerned that Student is not building the skills he needs to perform independently. Ms. Melendez also did not observe many of the language-based strategies that Ms. Davis testified Learning Prep uses throughout the school day. For example, the text used in Reading Comprehension did not have any visuals, and Student was not provided with any scaffolding support to correct the words he misread out loud. (S-29; Melendez, IV, 29-37, 41-45, 48, 50-51).
4. On October 24, 2023, Ms. Miller also observed Student at Learning Prep and made a written summary of her observation notes. Student was observed in his Language Arts class and his Reading Comprehension class. The Language Arts class focused on a Wilson reading lesson, with the worksheet passed to the students indicating it was Wilson words 4.4. Student needed limited prompting at the beginning but then was the only student to complete the work, independently, with 100% accuracy and no prompting. Although the class used Wilson words, the Wilson lesson was not taught “with fidelity”, as none of the ten parts of a true Wilson lesson was observed.

In the Reading Comprehension class Student volunteered to read the first paragraph of the text for that lesson, reading it independently, with 100% accuracy, good fluency and at a proper pace, even though it contained up to four syllable words. Student also completed work independently, without prompting, although some students in the class required ongoing support. He was the first to raise his hand to answer questions about similarities and differences between the two texts. Ms. Miller concluded that there were varying levels of need and instruction for students in both classes observed, ranging from full support to Student, who was primarily independent. She also felt the content of the work was too easy for Student, as he completed the work ahead of his peers and even prior to his teacher’s instruction. She further found all the instruction to be below Student’s grade level and the Reading Comprehension text to be far below the reading level Student had been reading at the end of 5th grade. (S-28; Miller, III, 163-73, 181).

1. On November 2, 2023, Parent partially rejected the Grade 6 IEP and rejected the proposed placement. (S-19A).
2. On December 11, 2023, Ms. Coman observed Student at Learning Prep and prepared a report of her notes on December 13, 2023[[64]](#footnote-64). Prior to the observation, she reviewed the Learning Prep observations by Ms. Melendez and Ms. Miller. She did not review any IEPs of the cohort students she observed, however, and her opinions about Student’s cohort were based solely on her observation. She also did not conduct any assessments of Student. Again, Ms. Coman noted at the start of the report that Student’s previous pull-out services in reading, writing and math had been “discontinued at the direction of the [D]istrict”, but that they were reinstated at a recent Team meeting[[65]](#footnote-65). (P-30; Coman, IV, 296, 299-300, 311-12, 316).
3. Ms. Coman observed the same schedule Ms. Melendez did (Math, Lunch and Recess, Language Arts and Reading Comprehension). Math was taught by a certified special educator who was reported to have “extensive training on language-based learning disabilities”. No certification or training status was provided for the Language Arts or the Reading Comprehension teachers, and Ms. Coman did not know the Language Arts teacher was not Wilson certified.

Student had recently been placed in the Math class Ms. Coman observed as a result of data collection and progress monitoring review, so the Math teacher was different than the Math teacher Ms. Melendez observed. Ms. Coman was not sure if the Math lesson was at grade level, but since Student tested below grade level in Math, she felt the lesson was appropriate for Student and he was “well matched” for this Math grouping and with the peer cohort. There were no peers observed who needed more support than Student. According to Ms. Coman, Student appeared challenged by the Math lesson, and asked questions for assistance.

The Language Arts class involved what Ms. Coman described to be an “interactive Wilson reading program” lesson. Student appeared challenged by the lesson consistent with his peers in the classroom, and Ms. Coman did not think that the work was too easy for him. The Reading Comprehension class involved a novel appropriate for students between a second and sixth grade reading level. Ms. Coman observed multiple language-based strategies and scaffolding by teachers in both reading classes. (S-29; P-30; Coman, IV, 299-309, 312-13, 315).

1. Ms. Coman concluded that many aspects of the Learning Prep program appear appropriate for Student. Overall, it was her opinion that Student’s placement and programming at Learning Prep are “consistent with most of the services that are needed to address his significant learning needs”[[66]](#footnote-66). Reportedly Student was successful at Learning Prep, and she observed that he had made a successful social transition there. Ms. Coman emphasized that by using data collection to monitor progress and adjust the educational program Student receives, Student can be grouped with peers at his ability level throughout the day. She also noted the extensive staff training in language-based learning strategies and the demonstrated use of these strategies in every class. Finally, Ms. Coman was concerned that removing Student from this successful program may “easily derail his progress” and “contribute to the possibility of regression of skills”. (P-30; Coman, IV, 310-11).
2. According to Dr. Aradhana Mudambi[[67]](#footnote-67), the District’s Director of Multilingual Education, research[[68]](#footnote-68) shows that the opportunity gap (measured by scores on ELA achievement tests) only begins to close between students educated in dual language programs and students educated in English-only programs around fifth grade, as it takes five to seven years to gain proficiency in another language. However, Dr. Mudambi acknowledged she has no knowledge of Student, has not reviewed his IEP or assessment results and has never attended any of his Team meetings. (Mudambi, II, 146-153).
3. According to Ms. Dudziak, the Grade 6 IEP and the proposed inclusion placement at Fuller will provide Student with the support he needs but also the opportunities to be challenged academically with grade level content (such as reading the novel *Refugee* in ELA) in the least restrictive environment. It will enable Student to benefit from peer modeling both with other peers who have IEPs and general education peers. Student will receive repetition and practice in a small group but also have the chance to apply that knowledge to the large group setting with decreased supports, while still getting all needed accommodations and modifications. Dudziak, IV, 133-34, 138, 162, 165-66).
4. According to Ms. Banerjea, the Grade 6 IEP was appropriate for Student, as it provided him with a structured multi-sensory, systemic research-based reading program to support his decoding and encoding deficits, as well as additional reading services in the inclusion class to support his vocabulary, reading comprehension and reading fluency needs, in conjunction with scaffolds and accommodations to support his access to grade level materials. (Banerjea, IV, 208, 222-27).
5. Grandmother testified that Student has had much success at Learning Prep. He is happy at school again, and even asked her to arrive later at pick-up so he had more time daily to stay with his friends. Student starts his homework right when he gets home from school, and he is receiving good grades. Shortly after starting at Learning Prep, Student was nominated for Student of the Week, and he frequently receives tickets for helping other students. Although the commute can take an hour and a half in traffic, Student has never once complained. Despite transitioning easily to King and Learning Prep, Grandmother believes that transitioning Student back to the District now, after having been at Learning Prep this entire year, will be difficult because of the academic program that the District is offering, but not for social reasons. (Grandmother, I, 231, 235-37, 239, 247, 249-50).

**LEGAL ANALYSIS:**

1. Free Appropriate Public Education in the Least Restrictive Environment

Federal and state law guarantees every student with a disability the right to a FAPE[[69]](#footnote-69). To constitute a FAPE, a student’s educational program must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances”[[70]](#footnote-70). FAPE is “special education and related services [consisting of] both ‘instruction’ tailored to meet a child’s ‘unique needs’ and sufficient ‘support services’ to permit the child to benefit from that instruction” [[71]](#footnote-71). Effective progress must be examined in the context of the educational potential of the student[[72]](#footnote-72). For progress to be “effective”, a student must make “‘demonstrable improvement’ in the various ‘educational and personal skills identified as special needs’”[[73]](#footnote-73). To meet the “unique needs” of students who are fully integrated in the regular classroom, the IEP must typically, “…provid[e] a level of instruction reasonably calculated to permit advancement through the general curriculum”[[74]](#footnote-74).

The services that comprise a FAPE must be set forth in an IEP. An IEP must be “custom tailored” and “individually designed” to be “reasonably calculated to confer a meaningful educational benefit” to a student[[75]](#footnote-75). IEP proposals must be based on the information known to the Team at the time the IEP is developed[[76]](#footnote-76). Evaluating an IEP requires viewing it as “… a snapshot, not a retrospective. In striving for 'appropriateness’, an 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”[[77]](#footnote-77).

To receive a FAPE, “to the maximum extent appropriate”, students with disabilities must also be educated in the “least restrictive environment” [[78]](#footnote-78) or LRE. This means that they shall be educated with students without disabilities, and their removal from the general education classroom to more restrictive settings, such as private day schools, shall occur “…only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily”[[79]](#footnote-79). However, the opportunity to be educated with non-disabled peers does not cure a program that otherwise is inappropriate[[80]](#footnote-80).

An IEP’s educational services need not be “the only appropriate choice or the choice of certain selected experts, or the child’s Parent’ first choice, or even the best choice” [[81]](#footnote-81). School districts are not compelled to afford a disabled child an ideal or optimal education[[82]](#footnote-82). While an IEP’s educational program must be “markedly more demanding” than producing “‘merely more than *de minimis’* progress from year to year”[[83]](#footnote-83), according to the First Circuit,

The IDEA does not promise perfect solutions to the vexing problems posed by the existence of learning disabilities …. The Act sets more modest goals: it emphasizes an appropriate, rather than an ideal, education; it requires an adequate, rather than an optimal, IEP. Appropriateness and adequacy are terms of moderation. It follows that, although an IEP must afford some educational benefit …, the benefit conferred need not reach the highest attainable level or even the level needed to maximize the child's potential[[84]](#footnote-84).

When undertaking judicial review of an IEP, “deference is based on the application of expertise and the exercise of judgment by school authorities” and such review is not tantamount to “an invitation to the courts [or administrative adjudicatory hearing officers] to substitute their own notions of sound educational policy for those of the school authorities which they review”[[85]](#footnote-85).

1. Unilateral Placement and the Right to Reimbursement

Parents who are dissatisfied with a proffered IEP may “unilaterally” place their child at a private school “during the pendency of review proceedings”[[86]](#footnote-86). Parents who place students unilaterally, do so at their own financial risk[[87]](#footnote-87). Parents may request reimbursement of the expenses related to their unilateral placement of their child, but they are not entitled to such reimbursement unless the school district is found to have “not made a free appropriate public education available to the child in a timely manner” prior to the unilateral placement[[88]](#footnote-88) and that the private school chosen was proper. Private school placements are only “proper under the [IDEA]” if the education they provide is “reasonably calculated to enable the child to receive educational benefits” even if it does not meet all of the requirements a school district must comply with to provide a FAPE[[89]](#footnote-89).

Reimbursement awards are equitable remedies intended to ensure that Districts pay for the expenses they should have been paying if they do not meet their obligations to provide a student with a FAPE[[90]](#footnote-90). When parents disagree with school district proposals they are “… faced with a choice: go along with the IEP to the detriment of their child if it turns to be inappropriate or pay for what they consider to be the appropriate placement”[[91]](#footnote-91). “A reimbursement award when a school district fails to provide a FAPE merely requires the district ‘to belatedly pay expenses that it should have paid all along’”[[92]](#footnote-92). Although such awards place a “significant financial burden” on school districts, the *Supreme Court* reasoned that,

“public educational authorities who want to avoid reimbursing parents for the private education of a disabled child can do one of two things: give the child a free appropriate public education in a public setting or place the child in an appropriate private setting of the State's choice. This is the IDEA's mandate, and school officials who conform to it need not worry about reimbursement claims”[[93]](#footnote-93).

Due process hearing officers, therefore, have “broad discretion” when making reimbursement awards[[94]](#footnote-94). Given the equitable nature of such awards “equitable considerations are relevant in fashioning relief”[[95]](#footnote-95). “All relevant factors” must be factored into a reimbursement award should such an award be otherwise warranted[[96]](#footnote-96).

1. Burden of Persuasion.

In a special education due process proceeding, the burden of proof is on the moving party.[[97]](#footnote-97) If the evidence is closely balanced, the moving party will not prevail.[[98]](#footnote-98)

**DISCUSSION[[99]](#footnote-99):**

Student’s eligibility for special education based on a specific learning disability is not in dispute. Nor are his diagnoses of double-deficit dyslexia, dysgraphia, dyscalculia, a language disorder, ADHD or his executive functioning and fine motor skills weaknesses. The Parties also do not dispute the validity of the standardized evaluation results from the District’s or the Parent’s evaluators. What is disputed is the level of severity of Student’s disability in the educational setting, and the appropriate programming for Student to receive a FAPE. Upon consideration of the documentary and testimonial evidence, the applicable law, and the Parties’ arguments, I conclude that Parent met her burden to prove the proposed IEPs between February 2023 and June 2023 were not reasonably calculated to provide Student with a meaningful educational benefit in the least restrictive environment in light of his circumstances[[100]](#footnote-100). I further conclude that Parent met her burden to prove that Student’s placement at Learning Prep was proper. Thus, applying the “equitable considerations relevant in fashioning relief”[[101]](#footnote-101), Parent shall be reimbursed for Student’s placement at Learning Prep through the date of this *Decision*. My analysis follows.

As discussed below, it is important to articulate at the outset that the record reflects that the IEPs offered and implemented by the District were appropriate for Student *until* proposing to remove Student’s C-grid academic supports beginning in February 2023. Student successfully accessed the general education curriculum with the supports and modifications in his “stay put” IEP in all content areas and made effective progress at King. Both Ms. O’Brien and Ms. Miller credibly testified to Student’s success in his 5th grade classroom, providing specific examples of Student’s progress in Reading (i.e. reading Harry Potter), Math (adding fractions with uncommon denominators), Written Language (moving from being a hesitant writer to asking for more time to write paragraphs) and Spelling (his success with the Words Your Way program). Student worked on pace with his peers on grade level curriculum, often leading the small groups, with supports or with scaffolding assistance of the special educator or assistive technology and other tools (e.g., graphic organizers, number lines, multiplication charts or fraction bars). This testimony was unrefuted by any of Parent’s witnesses. It was also supported by the written record consisting of Student’s benchmark BAS and i-Read test scores, and his progress reports.

Parent relies on her independent evaluations to challenge the District’s evidence of Student’s progress. Although the validity of testing scores are not in dispute, the conclusions drawn from these scores are disputed, particularly as to Student’s progress and the manifestation of his disability in his educational environment. The balance of the evidence weighs in favor of the District in both areas. Ms. Banerjea, whose expertise and background is in providing culturally responsive multilingual psycho-educational assessments to linguistically diverse students, credibly explained that Student’s standardized test scores must be considered in light of his educational background in a dual language program until the second half of 5th grade. Ms. Haustein similarly advised that the results of her assessment should be viewed through the lens of Student being a dual language learner. I also credit the unrebutted testimony of Dr. Mudambi that students educated in a dual language program, regardless of having a disability, will experience an opportunity gap that begins to close starting in fifth grade.

Parent’s experts did not account for Student’s individual circumstances or his actual classroom performance and progress[[102]](#footnote-102). The only observation of Student in an educational environment by any of Parent’s experts was Ms. Coman’s observation at Learning Prep. Ms. Coman never observed Student in any District classroom. Additionally, her conclusions relied exclusively on Dr. Willoughby and Ms. McCuine’s testing. She did not review or consider any of the District’s assessments or speak to any of the District staff who worked directly with Student.

Dr. Willoughby and Ms. McCuine also failed to observe Student in any educational environment, even at Learning Prep, or otherwise receive information from any resource as to Student’s actual performance in the classroom (such as through a teacher interview). Their conclusions and program recommendations for Student were based solely on programming they considered necessary for students presenting with similar standardized test scores and disabilities[[103]](#footnote-103). However, the tests they used were not normed for students educated in dual language programs. As such, while I do not question the expertise of Parent’s experts as it relates to recommendations, generally, for students who present with language-based learning disabilities, I place greater weight on the programming recommendations of the District’s evaluators, Ms. Haustein, Ms. Banerjea and Ms. Dudziak, as they accounted for Student’s actual performance and historical educational experiences.

Additionally, despite concluding in their July 2023 Evaluation that Student’s scores indicate that his “gap is widening”, the domain scores themselves, when compared to his prior test results, do not wholly demonstrate that, and thus I do not credit this characterization by Parent’s experts. A true “apples to apples” comparison using the WIAT scores of the District’s 2020 testing, Dr. Willoughby’s 2022 testing and the District’s 2023 testing, indicates that Student’s scores improved in several areas over these years[[104]](#footnote-104). As such, a review of all standardized testing in the record demonstrates that while Student continued to exhibit struggles in some areas (such as math fluency, particularly multiplication, and spelling), he has begun to “close the gap” in other areas including reading comprehension, reading fluency and math word problems.

Moreover, while Student benefitted from being educated only in English, this was not the only reason for his success at King. Student’s progress at King was also attributable to his continued receipt of “stay put” C-grid services in Reading, via the Wilson program, Math, and Written Language. The record reflects that Student’s effective and meaningful progress in the second half of 5th grade was due to a combination of programming - learning only in English; receiving an individual multi-sensory, phonetic, rule-based reading program; and supplementing his inclusion program with substantially separate academic services and language-based accommodations and modifications.

The need for Student to receive substantially separate services in the areas of decoding and encoding, mathematical operations, mathematical fluency, and spelling[[105]](#footnote-105), in addition to accommodations and modifications in the inclusion classroom is further supported by the District’s 3-year reevaluation tests conducted in the fall of 2023. Thus, had the District proposed IEPs that contained this type of programming, the inquiry would now be over. However, the IEPs proposed by the King Teams, between February and June 2023, progressively eliminated Student’s academic substantially separate programming, instead providing for services to solely be delivered in the general education classroom; and, as of the March 2023 IEP through the June 2023 IEP, also eliminated Student’s Wilson reading services entirely.

The District contends that the King Teams’ decisions to reduce Student’s C-Grid academic services, and “shift” them to inclusion services in the classroom (i.e., remove C-Grid services and add B-Grid services) was proper as it was based on classroom observations, progress reports, benchmark testing scores, Wilson diagnostic data, and teacher input. While all these elements are important considerations for an IEP Team to utilize in determining the necessary special education services a student requires, the record does not support that they were sufficient, in this case, to justify the King Teams’ proposals. Although I credit and commend the educational work the King staff did with Student, I do not find the King Teams’ proposed IEPs to have been reasonably calculated to provide Student with a FAPE. The District’s own 3-year reevaluation information and the recommendations of the Fuller Team two months later to reinstate Wilson services for decoding support, as well as to propose Guided Academics in the C-Grid to address Student’s Math, Reading and Written Language goals, further contravenes the King Teams’ IEPs[[106]](#footnote-106).

While IEPs must be viewed as a “snapshot” not a retrospective, this does not abrogate a Team from its obligation to pursue *knowable* information that could impact its determinations[[107]](#footnote-107). The King Teams failed to do this. Thus, although I agree that decisions to reduce or eliminate C-grid services, or to replace C-grid services with B-grid services need not always be based on standardized testing information, here, that information was a critical missing component that the King Teams could have and should have sought out before making its recommendations[[108]](#footnote-108).

I therefore conclude that the IEPs proffered by the District, (specifically the February 2023 IEP, the March 2023 IEP, the April 2023 IEP and the June 2023 IEP) as they progressively eliminated Student’s C-Grid academic services, replacing them with B-Grid inclusion services only, and entirely eliminated Student’s Wilson services were not appropriate for Student. However, my conclusion in this regard is related to the programming proposed in these IEPs, not the placement. The record reflects for Student to receive a FAPE he requires placement in a full inclusion program with both B and C-Grid academic services to support his reading, writing and written language needs; a C-Grid multi-sensory, rule-based phonics reading program; both B and C-Grid speech and language services; and language-based accommodations and supports in the inclusion classroom. Such a program is the least restrictive environment for Student in which to make meaningful and effective progress in light of his abilities and circumstances. The program at Fuller, as proposed in the October 2023 Grade 6 IEP, fulfills these requirements, and I therefore find the Grade 6 IEP to be “reasonably calculated to enable student to progress appropriately in light of his circumstances”[[109]](#footnote-109).

The District contends that Student’s receipt of “stay put” services obviates any failure to propose appropriate IEPs at King. I disagree. While Student’s receipt of his “stay put” services did provide him with a FAPE while attending King[[110]](#footnote-110), this only precludes Parent from an ability to seek compensatory services for this timeframe. It does not absolve the District of its responsibility to propose an IEP that would have provided Student with a FAPE. Further, I agree with Parent that the last IEP proposed prior to her unilateral placement notice is the operative IEP for purposes of determining the appropriateness of this placement decision. At the time Parent made her decision to unilaterally place Student at Learning Prep, the District had not proposed an appropriate IEP.

Having met her burden to prove that the June 2023 IEP (the operative IEP for purposes of her unilateral placement decision) would not provide Student with a FAPE, Parent is entitled to reimbursement if she can establish that Student’s unilateral placement at Learning Prep was appropriate. I first note that regardless of when Parent first began to explore a placement at Learning Prep, the ultimate decision to place Student there was made in August 2023, after receiving the June 2023 IEP[[111]](#footnote-111). The June 2023 IEP was also proposed after Parent had filed her Hearing Request seeking prospective placement at Learning Prep. Thus, although Parent had not yet responded to any of the King Team IEPs, prior to this Team meeting, the District was on notice at that meeting that Parent was not satisfied with the King Team proposals and was seeking an out of district day school placement. In fact, the King Team discussed but rejected Parent’s proposal to place Student at Learning Prep but did not otherwise make any changes to its proposed special education program for Student in middle school.

Parents need not meet all the requirements that a school district must under the IDEA in providing a FAPE, provided a unilateral placement “provides an education that is otherwise proper under [the] IDEA”[[112]](#footnote-112). While the District has enumerated many concerns with the Learning Prep program, many of which are valid[[113]](#footnote-113), the record nevertheless reflects that at Learning Prep Student “receive[s] educational benefits” that are consistent with the *Florence County* standard[[114]](#footnote-114). Learning Prep is an approved private special education day program focused on supporting students with language-based learning needs, and Ms. Davis credibly testified to the language-based strategies that are infused throughout its programming. Her testimony was supported by the observations of the District staff and Ms. Coman, who, for the most part, observed these strategies in his Learning Prep classes.

At Learning Prep Student is in small classes ranging in size from 2 to 8 students. While some of his classes include students from different grades, Learning Prep adheres to the regulatory age differentiation restriction requirements. All of Student’s peers have language-based learning needs. Student’s teachers at Learning Prep all have substantial language-based training and are also appropriately skilled educators from a unilateral placement perspective. Student also receives phonics and reading comprehension classes daily. Further, via progress monitoring, Student’s classes are adjusted to reflect his learning needs, as evidenced by Student’s transfer to a Math class that worked at a faster pace. Finally, although it did not start right away, Student is now being provided with speech and language services.

Given the appropriateness of Learning Prep, Parent is entitled to equitable reimbursement for unilaterally placing Student there[[115]](#footnote-115). I next consider all relevant factors to determine the appropriateness of the reimbursement award owed.

This matter involves the unique circumstances wherein the District proposed an inappropriate IEP, justifying Parent’s unilateral placement of Student at Learning Prep. However, shortly after the unilateral placement began, the District cured the deficiencies in its IEP and proposed an IEP that was reasonably calculated to provide Student with a FAPE. Further, because Student received “stay put” services throughout the time that the inappropriate IEPs were proposed[[116]](#footnote-116), Student was never without a FAPE[[117]](#footnote-117). The deficient IEP was due to expire in December 2023, however, the subsequently appropriate IEP was proffered in October 2023, and Parent did not accept that IEP.

While Parent would have my analysis end with my finding that the IEP proffered prior to Student’s unilateral placement at Learning Prep was inappropriate, for purposes of considering the equitable remedy here, I cannot ignore the subsequent relevant evidence submitted and argued by both Parties regarding the October 2023 Grade 6 IEP. The Grade 6 IEP was initially submitted by both Parent and the District as an exhibit for Hearing, separately, as Exhibits P-3 and S-19. This document was also resubmitted as a joint exhibit (Exhibit J-10). Several District witnesses, including Ms. Melendez, Ms. Dudziak and Ms. Banerjea, presented substantial testimony relating to the Grade 6 IEP and the program proposed therein at Fuller. Parent did not object to this testimony and even cross-examined school witnesses on it.

Additionally, I note that this is not a case in which transition concerns would justify keeping Student at Learning Prep or otherwise render the District’s Grade 6 IEP inappropriate[[118]](#footnote-118). The concerns raised by Parent and Dr. Coman regarding Student returning to Fuller, while understandable, do not account for Student’s prior successful history of transitions. Student was able to easily transition from Barberi to King, quickly making friends, contributing to the classroom, and within a few weeks of the transfer blended seamlessly into his new class. Several of these friends attend Fuller now, as King is a feeder school to Fuller. It is noteworthy that when Student went to Fuller for his 3-year reevaluation, many of his peers stopped by to greet him. Similarly, Student’s transfer to Learning Prep was smooth. He quickly made friends and has been happy there, even earning the Student of the Week award early in the school year. Further, it is undisputed that Student’s social skills are an area of strength for him, as noted by every witness who has interacted with him.

Districts retain the right, long recognized by the BSEA, to cure deficient IEPs in unilateral placement disputes, thereby avoiding prospective reimbursement upon the proffering of an appropriate IEP[[119]](#footnote-119). While typically, this cure occurs after a BSEA decision is made, here, I find that the District had already proffered an appropriate IEP. Parent shall, therefore, be reimbursed for Student’s placement at Learning Prep through the date of this Decision[[120]](#footnote-120).

All the same, a transition plan will be helpful before Student returns to Fuller. Given the valid curriculum content concerns about Learning Prep addressed above, it is possible Student has not been receiving the same grade level curriculum as his Fuller peers. Thus, the District should convene a Team meeting to assess any content gaps with which Student may present and discuss what transition services, if any, may be needed to remedy those gaps[[121]](#footnote-121).

**ORDER:**

The IEPs proposed between February 2023 and June 2023 were not reasonably calculated to provide Student with a FAPE. Upon receipt of appropriate documentation, the District shall reimburse Parent for the cost of Student’s placement at Learning Prep, including transportation costs, from the start of the 2023-2024 school year through the date of this *Decision*.

Within 14 school days, the Team shall reconvene to discuss a transition plan for Student to return to Fuller and what, if any, assessments and transition services may be needed to ensure that any content gaps Student may have experienced between the Learning Prep and Fuller curriculum are remedied.

Respectfully submitted,

By the Hearing Officer,

/s/ Marguerite M. Mitchell

Marguerite M. Mitchell

April 5, 2024

**COMMONWEALTH OF MASSACHUSETTS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**EFFECT OF FINAL BSEA ACTIONS AND RIGHTS OF APPEAL**

**Effect of BSEA Decision, Dismissal with Prejudice and Allowance of Motion for Summary Judgment**

20 U.S.C. s. 1415(i)(1)(B) requires that a decision of the Bureau of Special Education Appeals be final and subject to no further agency review. Similarly, a Ruling Dismissing a Matter with Prejudice and a Ruling Allowing a Motion for Summary Judgment are final agency actions. If a ruling orders Dismissal with Prejudice of some, but not all claims in the hearing request, or if a ruling orders Summary Judgment with respect to some but not all claims, the ruling of Dismissal with Prejudice or Summary Judgment is final with respect to those claims only.

Accordingly~~,~~ the Bureau cannot permit motions to reconsider or to re-open either a Bureau decision or the Rulings set forth above once they have issued. They are final subject only to judicial (court) review.

Except as set forth below, the final decision of the Bureau must be implemented immediately. Pursuant to M.G.L. c. 30A, s. 14(3), appeal of the decision does not operate as a stay. This means that the decision must be implemented immediately even if the other party files an appeal in court, and implementation cannot be delayed while the appeal is being decided. Rather, a party seeking to stay—that is, delay implementation of-- the decision of the Bureau must request and obtain such stay from the court having jurisdiction over the party’s appeal.

Under the provisions of 20 U.S.C. s. 1415(j), “unless the State or local education agency and the parents otherwise agree, the child shall remain in the then-current educational placement,” while a judicial appeal of the Bureau decision is pending, unless the child is seeking initial admission to a public school, in which case “with the consent of the parents, the child shall be placed in the public school program.”

Therefore, where the Bureau has ordered the public school to place the child in a new placement, and the parents or guardian agree with that order, the public school shall immediately implement the placement ordered by the Bureau. *School Committee of Burlington v. Massachusetts Department of Education*, 471 U.S. 359 (1985). Otherwise, a party seeking to change the child’s placement while judicial proceedings are pending must ask the court having jurisdiction over the appeal to grant a preliminary injunction ordering such a change in placement. *Honig v. Doe*, 484 U.S. 305 (1988); *Doe v. Brookline*, 722 F.2d 910 (1st Cir. 1983).

**Compliance**

A party contending that a Bureau of Special Education Appeals decision is not being implemented may file a motion with the Bureau of Special Education Appeals contending that the decision is not being implemented and setting out the areas of non-compliance. The Hearing Officer may convene a hearing at which the scope of the inquiry shall be limited to the facts on the issue of compliance, facts of such a nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Elementary and Secondary Education or other office for appropriate enforcement action. 603 CMR 28.08(6)(b).

**Rights of Appeal**

Any party aggrieved by a final agency action by the Bureau of Special Education Appeals may file a complaint for review in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts. 20 U.S.C. s. 1415(i)(2).

An appeal of a Bureau decision to state superior court or to federal district court must be filed within ninety (90) days from the date of the decision. 20 U.S.C. s. 1415(i)(2)(B).

**Confidentiality**

In order to preserve the confidentiality of the student involved in these proceedings, when an appeal is taken to superior court or to federal district court, the parties are strongly urged to file the complaint without identifying the true name of the parents or the child, and to move that all exhibits, including the transcript of the hearing before the Bureau of Special Education Appeals, be impounded by the court. See *Webster Grove School District v. Pulitzer Publishing Company*, 898 F.2d 1371 (8th. Cir. 1990). If the appealing party does not seek to impound the documents, the Bureau of Special Education Appeals, through the Attorney General's Office, may move to impound the documents.

**Record of the Hearing**

The Bureau of Special Education Appeals will provide an electronic verbatim record of the hearing to any party, free of charge, upon receipt of a written request. Pursuant to federal law, upon receipt of a written request from any party, the Bureau of Special Education Appeals will arrange for and provide a certified written transcription of the entire proceedings by a certified court reporter, free of charge.

1. The Parties agreed that for purposes of my review, Exhibit J-1 replaces Exhibit P-26, Exhibit J-2 replaces Exhibit S-1, Exhibit J-3 replaces Exhibit S-2, Exhibit J-7 replaces Exhibit P-1, Exhibit J-8 replaces Exhibits P-2 and S-6, Exhibit J-9 replaces Exhibit S-7 and Exhibit J-10 replaces Exhibits P-3 and S-19. [↑](#footnote-ref-1)
2. While not technically Student’s grandmother, Parent and Student consider her to be so, and I will refer to this witness by that term for this Decision. (Grandmother, 201-02). [↑](#footnote-ref-2)
3. I have carefully considered all the evidence and testimony presented in this matter. I make findings of fact, however, only as necessary to resolve the issue(s) presented. Consequently, all evidence and all aspects of each witness’ testimony, although considered, is not included if it was not needed to resolve said issue{s}. [↑](#footnote-ref-3)
4. The Team removed this category in March 2023 at Parent’s request. [↑](#footnote-ref-4)
5. The Administrative Data Sheet for every IEP incorrectly notes Student’s primary language to be Spanish. At the Team meeting on April 12, 2023, the Team agreed to correct this to reflect Student’s primary language accurately as English, however, while the Notice of Proposed School District Action (N1) form noted this agreement, and this statement was also included in Additional Information on the IEP, the error was never actually corrected on the Administrative Data Sheet. [↑](#footnote-ref-5)
6. All reading services working on encoding or decoding, however, were always provided in a pull-out small group, never via inclusion. (Haustein, II, 160). [↑](#footnote-ref-6)
7. The i-Ready Math and Reading assessments are diagnostic assessments that were administered to all Barberi students twice a year each school year. The Reading portion tests for reading comprehension, vocabulary, phonics, and comprehension of fiction and non-fiction. (Haustein, II, 17). [↑](#footnote-ref-7)
8. Ms. Haustein is a Grade 4 Special Educator at Barbari. She has worked at Barbari for 25 years and provided Wilson services there for 18 years. She is certified in special education Pre-K to 9 and ESL Pre-K to 6. She also has SEI and bilingual Spanish endorsements. She became Wilson certified in 2004, having 90 hours of coursework, 60 hours of practicum training in Wilson and 30 hours of training in Orton-Gillingham, but no Orton-Gillingham license. (S-20; S-21; Haustein, II, 155-57). [↑](#footnote-ref-8)
9. Comprehensive Test of Phonological Processing – Second Edition (C-TOPP); Word Identification and Spelling Test (WIST); and Wilson Assessment of Decoding and Encoding (WADE). [↑](#footnote-ref-9)
10. However, according to the scoring matrix this is actually an “average” range score. [↑](#footnote-ref-10)
11. The narrative summary of the score reports it at 85 although the chart notes it as 97. I rely on the narrative summary score, as it is also reported to be “below average” which is more consistent with an 85 than a 97. Further, the score was also reported to be in the 16th percentile which is more consistent with a SS of 85 than a SS of 97. [↑](#footnote-ref-11)
12. The narrative summary of the score repots it as a 10 although the chart reports it as a 50. I rely again on the narrative summary as the percentile on the chart is a 10 and it appears that the Scaled Score and Percentile were swapped on the chart. Further, Scaled Scores range from 1 to 20. [↑](#footnote-ref-12)
13. According to the BAS summary chart provided as Exhibit S-10, however, Student was performing at a “highest independent level” of K and a “highest instructional level” of L in English as of 4/27/2022. (S-10). [↑](#footnote-ref-13)
14. Parent’s written reasons for partial rejection on both the Grade 4 IEP Amendment and Revised Grade 4 IEP are largely illegible. (J-3) [↑](#footnote-ref-14)
15. Dr. Willougby is a licensed clinical psychologist and co-director of Achieve New England where he performs neuropsychological, developmental and psychological assessments of people between the ages of 2 and 26. He has performed over 3,000 neuropsychological evaluations and supervised over 2,000 more. He has worked as a Clinical Research Associate at UMass Boston’s Department of Psychology supervising the Child Development Lab and has been an Instructor of Psychology at Harvard Medical School/Massachusetts General Hospital’s Department of Psychiatry as a Staff Psychologist in the LEAP program and Co-Director of the Developmental Neuro Pediatrics Unit. He has authored, peer-reviewed and presented on many areas of child psychology, including gender identity, sexual orientation, developmental and intellectual disabilities, processing speed delays, executive functioning and 18p deletion syndrome (P-22; Willoughby I, 38-43). [↑](#footnote-ref-15)
16. Wechsler Intelligence Scales for Children, Fifth Edition (WISC-V); Wechsler Individual Achievement Test – Fourth Edition (WIAT-4). [↑](#footnote-ref-16)
17. Dr. Willoughby administered the WIAT-4; the District administered the WIAT-3 in 2020, and the WIAT-4 in 2023. I take administrative notice that the WIAT-4 was published in 2020. Dr. Willoughby’s descriptive ranges on the WIAT-4 differed from the District’s descriptive ranges on both the WIAT-3 in 2020 and the WIAT-4 in 2023. It appears this discrepancy is due to a difference in the standard deviation applied, with Dr. Willoughby applying a 10-point standard deviation and the District applying a 15-point standard deviation. No testimony was provided as to the appropriate standard deviation, thus, given this discrepancy, I rely on the reported Standard and Scaled Scores (SS) rather than descriptors to compare Student’s evaluative performance on the similar composite scores and subtests of the WIAT. (S-14; P-4; P-10; P-12; Dudziak, IV, 140, 142). [↑](#footnote-ref-17)
18. As discussed, supra, the 2023 WIAT-4 scores showed improvements in both these composites, with Listening Comprehension scoring at SS 85, and Oral Expression scoring at SS 92. [↑](#footnote-ref-18)
19. Specifically, Student’s Reading Comprehension went from SS 80 in 2020 to SS 74 in 2022; Reading Fluency went from SS 87 to SS 83 and Math Word Problems went from SS 71 to SS 60. However, as discussed, *supra*, the scores for all 3 of these areas rose above even the 2020 scores in the 2023 WIAT-4 assessment (Reading Comprehension was a SS of 87; Reading Fluency was a SS of 92 and Math Problem Solving was a SS of 75). [↑](#footnote-ref-19)
20. Kendra McCuine, who evaluated Student in July 2023, also testified that Student’s participation in the dual language program was not “optimal” as it will delay expressive vocabulary growth which loosely relates to the reading process. (McCuine, I, 189-91). [↑](#footnote-ref-20)
21. As a result of some miscommunications about the request, the District ultimately did not approve the transfer until late December 2022. [↑](#footnote-ref-21)
22. The elimination of these services was shown by noting an “end date” of February 15, 2023. Inexplicably, these services were also noted to be 2 x 30, although the Grade 5 IEP had proposed 2 x 45 minutes per week. [↑](#footnote-ref-22)
23. Ms. O’Brien has taught grade 5 at King for the past 5 years. She also taught grade 2 for 2 years in the District and has taught grade 4 at a private school. She is licensed in elementary education 1-6 and has an SEI endorsement. (S-20; S-21; O’Brien, II, 202-03). [↑](#footnote-ref-23)
24. Ms. Miller is currently a general education and special education teacher in grade 5. Last year she was the special educator at King for grades 3 through 5. She has taught for 23 years, 17 of them in the District, with the last 7 being at King. She is Wilson certified, has licensure in moderate disabilities Pre-K to 8 and elementary education 1-6 and an SEI endorsement. (S-20; S-21; Miller, III, 132-33). [↑](#footnote-ref-24)
25. Ms. Miller explained that due to the schedule at King, Math services were delivered 3 x 30 minutes per week instead of 2 x 45 minutes per week, but the total service minutes remained the same. [↑](#footnote-ref-25)
26. Ms. Mulvey has been a speech and language pathologist in public schools for 15 years. She has worked in this capacity for the District since 2022, previously working for the Worcester Public Schools. She has a master’s degree in speech and language pathology and has licensure in Speech Language and Hearing Disorders, all levels. (S-20; S-21; Mulvey, II, 232-33). [↑](#footnote-ref-26)
27. The Speech and Language Evaluation identified this as “low average” while noting that “standard scores between 85-115 are considered to be within the average range based on age. [↑](#footnote-ref-27)
28. At the family’s request, the Team removed the secondary disability category of emotional from the IEP and discussed, but did not add, a communication disability, as the speech and language evaluation results indicated that Student’s language weaknesses were tied to his specific learning disability. [↑](#footnote-ref-28)
29. These changes were evidenced by indicating an “end date” to the services of March 17, 2023. Also, inexplicably, the B-Grid Written Language services that were removed in the March 2023 IEP were noted to be 1 x 30 with a focus on spelling, whereas in the February 2023 IEP service delivery grid they were listed as 1 x 45 with no focus on spelling. Further, the A-Grid Consultation services were deleted from the Service Delivery Grid, without articulated reason. (J-6; J-7). [↑](#footnote-ref-29)
30. Ms. Coman is a licensed educational psychologist. She currently works in private practice performing 30 to 40 school observations and consultations for families each year, as well as educational testing. Previously she worked as the director of learning support at a private school in Cambridge, at Boston Children’s Hospital as a Clinical Research Coordinator and has also performed school consultations for 3 public school districts in Florida. She has a master’s degree in school psychology and an educational specialist degree. She has presented, taught and published research primarily pertaining to students with autism and has experience performing bilingual early childhood and autism assessments. (P-24; Coman, II, 13-14). [↑](#footnote-ref-30)
31. Ms. Coman prepared a report dated May 20, 2023, noting at the outset that Student’s pull-out supports for reading, writing and math were “recently discontinued at the direction of the [D]istrict”. It appears Ms. Coman was not aware that all of these “pull out” services continued to be provided to Student at that time under “stay put” status. Ms. Coman did not find the Walsh LLD program to be appropriate for Student based on Dr. Willoughby’s evaluation and recommendations. (P-6; Coman, II, 22-28; 49). [↑](#footnote-ref-31)
32. The inexplicable changes to the minutes for Math and Written Language were corrected. Additionally, the A-Grid consultation services were reinstated. [↑](#footnote-ref-32)
33. Mr. Tratt has worked as a special education administrator for the District for 5 years, spending the last 4 years as the Team Evaluation Coordinator for King. He has a master’s degree in education and advanced graduate certificates in school building and district leadership. He is licensed as a special education administrator for all levels, and he has his SEI Endorsement in Massachusetts. He also is a licensed special educator and special education administrator in New York, where he worked as a special education teacher for 15 years. (S-20; S-21; Tratt, III, 232-33). [↑](#footnote-ref-33)
34. It is unclear when Parent was sent this consent form or if it was ever discussed at a Team meeting. [↑](#footnote-ref-34)
35. Ms. McCuine is an Educational Consultant at Achieve New England where she performs school observations as well as conducts evaluations in conjunction with the clinical psychologists. She was previously the director of the Bancroft School and has taught in language-based programs at public elementary and middles schools as well as private schools. She has performed between 75 to 100 educational evaluations in her career. She has a master’s degree in special education and a graduate certificate in language and literacy. She is certified in Orton-Gillingham and is a member of the Massachusetts Board of the International Dyslexia Association and the Academy of Orton-Gillingham Practitioners and Educators. (P-23; McCuine, I, 138-43). [↑](#footnote-ref-35)
36. The July 2023 Evaluation incorrectly explained that IEP changes proposed at King had been implemented for Student. (P-5; Willoughby, I, 86, 99, 114, 119-21, McCuine, I, 148). [↑](#footnote-ref-36)
37. The acronyms not previously set forth are as follows: Test of Word Reading Efficiency, Second Edition (TOWRE-2); TILLS Student Language Scale (SLS); Test of Narrative Language, Second Edition (TNL-2); Kaufman Test of Educational Achievement, Third Edition, Form B (KTEA-3); Test of Integrated Language and Literacy Skills (TILLS). [↑](#footnote-ref-37)
38. Ms. McCuine explained that the C-TOPP’s phonological awareness composite with its subtests of blending words, elision and phoneme isolation are more indicative of reading progress, while the phonological memory and rapid symbolic naming composites and their subtests are more reflective of phonological deficit. Thus, a decrease in these scores indicates that Student’s underlying phonological deficit has become more severe over time. (P-5; McCuine 197-98). [↑](#footnote-ref-38)
39. This appears to be a typographical error and should instead reference the KTEA-3 as no WIAT was performed in July 2023. [↑](#footnote-ref-39)
40. As discussed, below*,* however,Student’s Reading Comprehension, Word Reading, Oral Reading Fluency, Reading Composite, Math Problem Solving, Math Fluency-Addition, Math Composite, Essay Composition and Sentence Writing Fluency improved on the District’s 2023 WIST-4 assessment from Dr. Willoughby’s September 2022 WIST-4. (P-4; P-12). [↑](#footnote-ref-40)
41. As noted above, Student’s 2023 C-TOPP-2 scores were a SS 6 for Blending Words, and a SS of 5 for Phenome Isolation and Elison. [↑](#footnote-ref-41)
42. However, both Dr. Willoughby and Ms. McCuine acknowledged in testimony that this recommendation for extended year services was not based on specific knowledge or evidence of regression, but rather their opinions that a full year program was important to ensure consistency with his school year programming and given his lack of progress as compared to his peers. (Willoughby, VI, 129-30; McCuine, VI, 184-85). [↑](#footnote-ref-42)
43. Ms. Davis has been the Principal at Learning Prep for over 10 years, and has worked there for 26 years. She has master’s and CAGS degrees as a licensed mental health clinician (LMHC), and is licensed as a school guidance counselor, school adjustment counselor, and special education administrator. (Davis, II, 61-62). [↑](#footnote-ref-43)
44. According to Ms. Davis, Student was reading at a Wilson Book 5 as of the Hearing. (Davis, VII, 118). [↑](#footnote-ref-44)
45. Students who do not receive public funding to attend Learning Prep have an ISP, rather than an IEP. Ms. Davis advised that while the forms are similar, they have a different title at the top. Ms. Davis admitted that the wrong form was used to develop Student’s ISP – as the document submitted into evidence indicates it is from an IEP. (P-25; Davis, VII, 78-80, 118, 125-128). [↑](#footnote-ref-45)
46. Ms. Davis did not consider this “pull out” services. It is unclear what occurs during this session as no speech and language goals were entered into evidence and, when asked, Ms. Davis was unable to provide specific information about what the speech and language services were addressing. (Davis, VII, 120). [↑](#footnote-ref-46)
47. The Math curriculum did not change in the new class, only the pacing was faster. (S-25; S-27; P-29; P-30; Davis, II, 81, 91; Coman, IV, 299-300, 119, 129-30). [↑](#footnote-ref-47)
48. Ms. Dudziak has been a special educator at Fuller for 4 years. Prior to teaching was an ABA tutor in a substantially separate elementary autism program. She has 16 students on her caseload this year. She has a master’s degree in special education with a concentration in autism. She has licensure in moderate disabilities, Pre-K to 8 and elementary, 1-6 as well as SEI and Autism endorsements. (S-20; S-21; Dudziak, IV, 108-110). [↑](#footnote-ref-48)
49. This was also an improvement from the District’s 2020 WIAT-3 results where Student’s Reading Comprehension was at SS 80, his Reading Fluency was at SS 87 and his Math Problem Solving was at SS 71. (S-14; P-10; P-12). [↑](#footnote-ref-49)
50. Word Reading and Spelling also improved from the District’s 2020 WIAT-3 results where Student had received a SS of 81 and SS of 78, respectively. Sentence Writing Fluency and Pseudoword Decoding was not addressed that year. The only repeated subtest score that decreased between the District’s 2020 WIAT-3 test to its 2023 WIAT-4 test was Numerical Operations from SS 79 in 2020 to SS 76 in 2023. Numerical Operations had also decreased in Dr. Willoughby’s 2022 WIAT-4 evaluation scoring at SS 78. (S-14; P-4; P-10; P-12). [↑](#footnote-ref-50)
51. Ms. Banerjea has been a school psychologist for 8 years. She has a master’s degree in Spanish, a master’s degree in school psychology and an educational specialist degree in school psychology. She has licensure as a school psychologist, all levels and a special education administrator. Her experience and expertise are in providing culturally responsive multilingual psycho-educational assessments to students who are in or from dual language programs or are otherwise linguistically diverse. She explained this means that she needs to keep in mind linguistic diversity in both the choice of assessments and interpretation of results, when assessing students who have dual language backgrounds. (S-20; 2-21; Banerjea, IV, 182-84). [↑](#footnote-ref-51)
52. Behavior Assessment System for Children, Third Edition (BASC-3); Wechsler Intelligence Scales for Children, Fifth Edition (WISC-V); Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2). [↑](#footnote-ref-52)
53. This was significantly different than Student’s verbal comprehension index results of the WISC from September 2020 where he had received a SS of 95 (average), and it was noted that his Verbal Comprehension skills were an area of “strength” for Student. Ms. Banerjea explained this does not mean that Student lost or decreased his verbal comprehension skills, but rather that they were not developing at the same level as his peers. (P-14; Banerjea, IV, 212-18). [↑](#footnote-ref-53)
54. Ms. Banerjea explained that standardized testing is not necessarily indicative of progress monitoring, and there are different tests that are more appropriate to measure progress. (Banerjea, IV, 231-32). [↑](#footnote-ref-54)
55. According to Ms. Banerjea coming from a multilingual background did not have much of an impact on her interpretation of Student’s cognitive testing results, except perhaps a small amount on Student’s verbal ability score, but it did impact her interpretation of Student’s academic testing results. (Banerjea, IV, 193). [↑](#footnote-ref-55)
56. Although the observation took place prior to the October 11, 2023, Team meeting, the report was not written until after the Team meeting had occurred. The Team proposals were included in the report, and while Ms. Coman reviewed the District’s 3-year reevaluation testing results she did not include them in the report or rely on them in forming her conclusions. (Coman, II, 43-44). [↑](#footnote-ref-56)
57. It appears Ms. Coman was still not aware that all of these “pull out” services continued to be provided to Student throughout 5th grade under “stay put” status. [↑](#footnote-ref-57)
58. Ms. McCuine also noted in her testimony that based on the cohort IEPs she had reviewed, 3 of these students received Wilson reading support, with 2 being at Level 1 and 1 at Level 4. (McCuine, VI, 180). [↑](#footnote-ref-58)
59. Thus, all present levels of performance information discussed at the Team meeting was taken from Student’s performance in Grade 5 at King. (Melendez, IV, 13-14). [↑](#footnote-ref-59)
60. Ms. Melendez has been the Team Evaluation Coordinator at Fuller for the past two years. Prior to that, she was a special educator for 6 years. She has a master’s degree in special education and SEI Endorsement. She is a licensed special educator and special education administrator. (S-21; Melendez, IV, 9-10). [↑](#footnote-ref-60)
61. Ms. Melendez described this as the learning area that is above a student’s current level of performance but not out of reach. In other words, not too challenging and not too easy, but rather the “middle playing field”. Ms. Melendez believes that educating students within the “zone of proximal development”, with all necessary supports and access strategies, increases the likelihood a student will gain or progress in the skill to reach the intended developmental milestone. She advised that this zone is determined based on reviewing the academic standardized testing, classroom performance, and the necessary scaffolds a student needs to learn. For instance, in reading, it is moving a student from their independent reading level to the instructional reading level, with the necessary access supports. This ensures that a student still receives the rigor of the grade level curriculum while also being provided with all accommodations and supports necessary to meet the content target or skill. (Melendez, IV, 22, 56, 102-04). [↑](#footnote-ref-61)
62. The “Flex Block” is a general education Academic Advisory support. Students are assessed for need on a trimester basis using classroom performance and diagnostic assessments like i-Ready. Interventions tied to these need areas are offered in reading, writing, math or social and emotional supports. Within the 6-day cycle, Students spend 1 day looking at their “data” – their progress reports, grades, i-Ready diagnostic tests, assignments, and recent tests taken – and set individual goals. 4 days are spent working on identified areas of content intervention taught by content area teachers, in small groups. The last 2 days are spent doing community building or participating in the Second Step (social emotional curriculum) program. [↑](#footnote-ref-62)
63. This could occur if the Speech and Language pathologist pushed into a class (such as Science or Social Studies) as part of the “opportunities for inclusion” proposed in the IEP thereby freeing up the substantially separate speech and language services that cycle that would otherwise occur during Guided Academics. [↑](#footnote-ref-63)
64. As a result of learning during the Hearing that Ms. Melendez and Ms. Miller’s observation notes of Student at Learning Prep had not been disclosed to Parent during discovery (through no fault of the Parties), the Parties agreed to allow this evidence into the Hearing even though Ms. Coman’s observation occurred after the start of the hearing. (Transcript III, 185-88). [↑](#footnote-ref-64)
65. It appears Ms. Coman was still not aware that all of these “pull out” services continued to be provided to Student throughout 5th grade under “stay put” status. [↑](#footnote-ref-65)
66. Under cross examination Ms. Coman acknowledged that she was not aware Student was not receiving speech and language services twice a week as had been recommended in the July 2023 Evaluation Report. As noted above, in late October 2024, Student began receiving speech and language services once a week on a 1:1 basis. (S-25; P-29; Davis, II, 90; Coman, IV, 316). [↑](#footnote-ref-66)
67. Dr. Mudambi has been the Director of Multilingual Education for the District for the past 3 years. Prior to that she was the ESL, Bilingual Education and World Language Director for a public school district in Connecticut for 4 years. She has also taught dual language, transitional bilingual education, ESL and world language. She has taught, presented and written about bilingual education and dual language programs. She a master’s degree in educational leadership and cultural studies, a master’s degree in technology, innovation and education, and a doctorate in educational policy, leadership, instruction and practice. [↑](#footnote-ref-67)
68. Dr. Mudambi referenced a longitudinal study conducted by Thomas and Collier on academic progress of students in dual language programs as compared to English-only programs. [↑](#footnote-ref-68)
69. 20 USC 1400, *et seq*.; M.G.L. c. 71B; 34 CFR 300.000, *et seq*.; 603 CMR 28.00 *et seq.*; see 20 U.S.C. §1400 (d)(1)(A). [↑](#footnote-ref-69)
70. *Endrew F. ex. rel. Joseph F. v Douglas County Sch. Dist., RE-1*, 580 US 386, 399-400, 403 (2017); see *Johnson v. Boston Pub. Schs.*, 906 F.3d 182, 194-95 (1st Cir. 2018) (holding that Massachusetts’ “meaningful educational benefit” standard adopted by the 1st Circuit in *Esposito*, comports with the *Endrew F.* standard). [↑](#footnote-ref-70)
71. 20 USC 1401(9), (26), (29); C.D. v. Natick Public School District, et al., 924 F.3d 621, 624 (1st Cir. 2019), quoting Fry v. Napoleon Community Schools, 580 US 154, 158 (2017). [↑](#footnote-ref-71)
72. See *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.,* 518 F.3d 18, 29 (1st Cir. 2008). [↑](#footnote-ref-72)
73. *Lenn v. Portland Sch. Comm.*, 998 F.2d 1089-90 (1st Cir. 1993); see Sebastian M. v. King Philip Reg'l Sch. Dist., 685 F.3d 79, 84 (1st Cir. 2012) (“… an IEP need not be designed to furnish a disabled child with the maximum educational benefit possible”). [↑](#footnote-ref-73)
74. *Endrew F.*, 580 US at 402 (however, in Ftnt 2, the Court recognizes that this does not mean that “every handicapped child who is advancing from grade to grade ... is automatically receiving a [FAPE]” quoting *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 203 n. 25). [↑](#footnote-ref-74)
75. Sebastian M., 685 F.3d at 84; *Lenn*, 998 F.2d at 1086; *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012). [↑](#footnote-ref-75)
76. *Roland M. v. Concord Sch. Comm.*, 910 F. 2d 983, 992 (1st Cir. 1990). [↑](#footnote-ref-76)
77. *Id*. [↑](#footnote-ref-77)
78. 20 U.S.C §1412(a)(5)(A); 34 CFR 300.114(a)(2)(i); M.G.L. c. 71 B, §§2, 3; 603 CMR 28.06(2)(c); *C.G. and B.S. v. Five Town Cmty. Sch. Dist.*, 513 F.3d 279, 285 (1st Cir. 2008) (citations omitted). [↑](#footnote-ref-78)
79. *Id*.; see 603 CMR 28.01. [↑](#footnote-ref-79)
80. See *Burlington v. Dept. of Ed.*, 736 F.2d 773, 789 n. 19 (1984) *aff’d* 471 US 359 (1985). [↑](#footnote-ref-80)
81. *G.D. v. Westmoreland Sch. Dist.*, 930 F.2d 942, 948 (1st Cir., 1991). [↑](#footnote-ref-81)
82. *Five Town*, 513 F.3d at 284; see *Lenn*, 998 F.2d at 1086. [↑](#footnote-ref-82)
83. *Endrew F.* 580 US at 402-403. ( “[i]t cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom but is satisfied with barely more than *de minimis* progress for those who cannot”). [↑](#footnote-ref-83)
84. *Lenn*, 998 F.2d at 1086 citing *Rowley*, 458 U.S. at 198; *Roland M.*, 910 F.2d at 992; see *E.T., a minor, by his Parent v. BSEA*, 169 F. Supp. 3d 221, 229 (D. Mass. 2016). [↑](#footnote-ref-84)
85. *Endrew F.* 580 US at 404 quoting *Rowley*, 458 US at 206. [↑](#footnote-ref-85)
86. *Sch Comm. of Town of Burlington, Mass. v. Dept. of Educ. of Mass.*, 471 US 359, 373-74 (1985). [↑](#footnote-ref-86)
87. *Id*. at 374. [↑](#footnote-ref-87)
88. 20 U.S.C. §1412(a)(10)(C)(ii); *G.D. ex rel. Jeffrey D. v. Swampscott Pub. Sch.*, 27 F.4th 1, 5–6 (1st Cir. 2022). [↑](#footnote-ref-88)
89. 20 USC § 1412(a)(10)(c)(ii); *Florence County Sch. Dist. Four v. Carter*, 510 US 7, 9-10, 11 (1993) quoting *Rowley*, 458 US at 207; see *Forest Grove Sch. Dist. v. TA*, 557 US 230, 247 (2009) (confirming the *Florence County* holding applies to the reauthorization of the IDEA); *Norton Sch. Comm. v. Mass. Dept. of Ed.*, 768 F. Supp. 900, 907 (D. Mass. 1991). [↑](#footnote-ref-89)
90. See *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 31 (1st Cir. 2006). [↑](#footnote-ref-90)
91. *Burlington*, 471 US at 370. [↑](#footnote-ref-91)
92. *Forest Grove*, 557 US at 246 quoting *Burlington*, 471 US at 370-71. [↑](#footnote-ref-92)
93. *Florence County*, 510 US at 15. [↑](#footnote-ref-93)
94. *Burlington*, 471 US at 569. [↑](#footnote-ref-94)
95. *Id.* at 374. [↑](#footnote-ref-95)
96. *Forest Grove*, 557 US at 247 (remanding to the Court of Appeals for considerations of the equities related to a reimbursement analysis holding that “When a court or hearing officer concludes that a school district failed to provide a FAPE and the private placement was suitable, it must consider all relevant factors … in determining whether reimbursement for some or all of the cost of the child’s private education is warranted”); see *Dallas Independent School Dist. v. Woody*, 865 F.3d 303 (5th Cir. 2017) (Temporally limiting the reimbursement entitlement to begin as of the date the District should have offered a FAPE, but not earlier). [↑](#footnote-ref-96)
97. *Schaffer v. Weast*, 546 US 49, 56-57, 62 (2005). [↑](#footnote-ref-97)
98. *Id*. (placing the burden of proof in an administrative hearing on the party seeking relief). [↑](#footnote-ref-98)
99. In making my determinations, I rely on the facts I have found as set forth in the Findings of Facts, above, and incorporate them by reference to avoid restating them except where necessary. [↑](#footnote-ref-99)
100. The June 2023 IEP is the relevant IEP for purposes of the reimbursement claim raised in the instant matter. [↑](#footnote-ref-100)
101. *Florence County*, 510 US at 16 quoting *Burlington*, 471 US at 374. [↑](#footnote-ref-101)
102. In addition, to my concerns that Dr. Willoughby an Ms. McCuine’s recommendations do not account for Student’s dual language educational background, or his progress in the 5th grade classroom, both Dr. Willoughby, and Ms. McCuine also acknowledged that their recommendation for extended year services (ESY) was not based on any regression data that they were aware of, and no Team has ever recommended ESY services for Student, nor has or will Student receive ESY programming at Learning Prep. Further, the reports of all these witnesses indicated they did not have an accurate understanding of the services Student was actually receiving at King. [↑](#footnote-ref-102)
103. They emphasized the need for Student to make remedial progress. Remedial progress is not the same as effective progress. See *Mercer Island School District,* 106 LRP 12356 (WA, 2006) *aff’d*55 IDELR 164(declining to reimburse parents for their private placement at a school that enabled the student to make “remedial progress” with her reading difficulties reasoning that Districts are not required by IDEA to “maximize” a Student’s potential; the standard is whether the IEP was reasonably calculated to provide educational benefit.) See also *G.D.*, 930 F.2d at 948. [↑](#footnote-ref-103)
104. In Dr. Wiloughby’s 2022 Evaluation, as support for his conclusion that Student was not “closing the gap” in the areas of literacy and math. He noted as “particular areas of concern”, the decrease in the test scores in the domains of reading comprehension, reading fluency and math word problems as compared to the District’s 2020 WIAT-3 scores. However, there was statistical improvement to each of these scores for Student’s 2023 WIAT-4 evaluation. Specifically reading comprehension improved by 13 points from SS 74 in 2022 to SS 87 in 2023; reading fluency improved by 9 points from SS 83 to SS 92 in 2023; and math problem solving improved by 15 points from SS 60 to SS 75 in 2023. In comparison, except for Student’s math fluency scores in multiplication (an area the District’s progress reports acknowledged to be difficult for Student), the 2023 domain scores that decreased from Dr. Willoughby’s testing only did so by 4 or fewer points. [↑](#footnote-ref-104)
105. Additionally, neither party disputes that Student requires speech and language services to build his vocabulary and address his phonological processing and auditory memory weaknesses. [↑](#footnote-ref-105)
106. I also do not agree with Parent that Student will not receive any support or services in Social Studies or Science under the Grade 6 IEP. According to Ms. Dudziak at times she addresses Social Studies and Science curriculum in Guided Academics. Further, Ms. Dudziak and Ms. Melendez credibly testified that all teachers at Fuller receive a copy of the IEP, so that all accommodations and modifications a student requires are provided in all classes. Fuller also utilizes language-based strategies in all its classes, which are developed and supported through school-wide teacher trainings on implementing language-based strategies in the classroom, as well as supported by the assistance of the language-development coach at Fuller. Further, a teaching assistant supports students on IEPs in both Social Studies and Science, and Ms. Dudziak consults with these content teachers ensure that all needed accommodations, modifications and supports in her students’ IEPs are given to them in Science and Social Studies classes. [↑](#footnote-ref-106)
107. Ms. Spear testified that she does not think there is a strict requirement that prior to removing C-Grid academic services a standardized evaluation must be performed, as that type of rule would make it very challenging for Teams to increase or decrease special education services and supports of students based on their individual needs. However, she acknowledged that when Student was reevaluated in October 2023, the Team found he did require C-Grid reading services. She also agreed that nothing prohibited the King Team from performing these assessments earlier, had they felt they were needed. (Spear IV, 284-88). [↑](#footnote-ref-107)
108. Student’s Wilson services were only added by the Team after Ms. Haustein’s 2022 reading assessment was administered. This same process should have, therefore, been followed before removal of his Wilson services was proposed by the Team. [↑](#footnote-ref-108)
109. *Endrew F.*, 580 US at 399-400, 403; see *Johnson*, 906 F.3d at 194-95. [↑](#footnote-ref-109)
110. Although parental consent is essential for the delivery of services and supports in an IEP, and in some cases, when it is not given, precludes Districts from advancing programming, I disagree with Ms. Miller that, in this instance, she was not able to advance Student in his Wilson lessons as Parent did not timely respond to the IEPs. The last accepted Reading goal is “Given a multimodal approach to instruction in decoding and decoding, [Student] will decode and encode sentences with 75% accuracy and increase his fluency by at least 20% over baseline” while the proposed unaccepted Reading goal is “Given a multimodal approach to instruction in decoding and encoding, [Student] will decode and encode words and sentences with 80% accuracy while demonstrating literal and inferential comprehension of what he reads”. Moreover, despite not advancing beyond Wilson Book 3.2 at King, the evidence indicates that Student still gained phonics skills beyond Book 3.2, as Ms. Miller observed him successfully working with Book 4.4 materials in October 2024. [↑](#footnote-ref-110)
111. *In Re: Student with a Disability*, 122 LRP 30475 (NY, 2019) (student’s unilateral placement prior to the end of the school year did not mean the Parent was unwilling to consider the District’s proposal). [↑](#footnote-ref-111)
112. *Florence County*, 510 US at 9-10, 11, 15; see *Mr. I. ex rel. L.I. v. Me. Sch. Admin. Dist. No. 55*, 480 F.3d 1, 25 (1st Cir. 2007) (private placement is proper if it provides “‘*some element* of the special education services’ missing from the public alternative ….”) quoting *Berger v. Medina City Sch. Dist*., 348 F.3d 513, 523 (6th Cir. 2003) (emphasis in original). [↑](#footnote-ref-112)
113. For instance, Student’s curriculum in all his classes is below grade level, his Wilson services are not taught “with fidelity” by a teacher certified in Wilson or supervised by a teacher certified in Wilson, many peers at Learning Prep have social skill weaknesses, unlike Student, whose social skills are a strength, and Student only receives one speech and language session per week. [↑](#footnote-ref-113)
114. *Florence County*, 510 US at 9-10, 11, 15. [↑](#footnote-ref-114)
115. *Burlington*, 471 US at 569; *Forest Grove*, 557 US at 247. [↑](#footnote-ref-115)
116. This was due to Parent’s unresponsiveness to said IEPS until her partial rejections in the summer of 2023. [↑](#footnote-ref-116)
117. Compare *Doe v. Belchertown Pub. Sch.*, 347 F.Supp.3d 90, 101-02, 103 (2018) (upholding the Hearing Officer’s decision not to award any reimbursement to a Guardian who unilaterally placed a Student in a private day program after the date the District had issued a subsequent IEP curing a deficiency in a prior IEP that had not resulted in a denial of a FAPE to the Student). [↑](#footnote-ref-117)
118. Compare *Doe v. Newton Public Schools*, 48 F.4th 42, 58 (holding that in the “limited” circumstances of that case, Parents were entitled to reimbursement even after the District had proffered an IEP that would have provided a FAPE, in light of Student’s “unique needs” wherein he would have suffered emotionally and academically by transferring from his unilateral out of district placement in his twelfth grade year “due to his particular disability” and recognizing that “an IEP in some cases may not be reasonably calculated to provide a FAPE due to circumstances related to a transfer from an appropriate private placement”). [↑](#footnote-ref-118)
119. *In Re: Student v. Andover Public Schools*, BSEA #18-05127, 24 MSER 109 (Decision, Berman, July 2018) (finding that while Parents were entitled to reimbursement for the prior academic year, the in-district program could be made appropriate for Student, and ordering the District to issue an IEP with the necessary provisions, or fund Student’s prospective placement at the out-of-district program for the subsequent year); *In Re: Lauren & Hampden-Wilbraham R.S.D.*, BSEA No. 15-05285 24 MSER 208 (Decision, Reichbach, August, 2015) (awarding reimbursement for Parents’ unilateral placement for the prior academic years, but noting that if the District’s proposed program that was still in the planning stages, was developed consistent with the testimony, it may be an appropriate place for the Student in the future, and ordering the District to prospectively locate or create an appropriate placement, which may be the proffered in-district program). [↑](#footnote-ref-119)
120. See *Doe v. Portland Public School*, 30 F.4th 85, 91-92, 94 (1st Cir. 2022) (no “stay put” rights where hearing officer found subsequent IEP provided a FAPE, despite prior FAPE denial justifying a reimbursement award for costs paid to a unilateral placement, reasoning that ruling otherwise would “…. mean that even when school districts take actions to come into compliance with the IDEA and provide students with a new IEP providing a FAPE, as happened in this case, any past denial of a FAPE … that the hearing officer determines should be reimbursed as an equitable matter will have far-reaching consequences”); *A.W. ex. rel. B.W. v. Bd. of Ed. Of Wallkill Cent. Sch. Dist.*, 2015 WL 3397936 (N.Dist. NY, 2015) (no stay put ordered where hearing officer found unilateral placement appropriate for one year but inappropriate for next two years and awarded reimbursement for only the first year); compare *Sudbury Pub. Sch. v. Mass. Dept. of Elem & Second. Ed*., 762 F.Supp. 2d, 254, 268-69 (D. Mass. 2010) (“stay put” applied to unilateral placement where hearing officer explicitly made no findings about prospective placement at private school). [↑](#footnote-ref-120)
121. This may mean providing Student with enrichment services during the summer or over school vacation weeks or increasing on a temporary basis Student’s C-Grid services, particularly in Math and Spelling, areas where Student has consistently tested in the borderline or very low range on standardized tests. Although Ms. Dudziak testified that no students in the Fuller inclusion program receive pull-out C-Grid Math services, the IDEA mandates “individualized” educational programming be given to students with disabilities. Thus, should Student’s individual needs, even if only for transition purposes, require additional substantially separate or individual Math services, he must receive them. [↑](#footnote-ref-121)