**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

In re:    Carly,[[1]](#footnote-1) Franklin Public Schools, &

 Acton-Boxborough Regional School District                                BSEA **#**2412891

**DECISION**

 This decision is issued pursuant to the Individuals with Disabilities Education Act (20 U.S.C. §1400 *et seq*.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794), the state special education law (M.G.L. c. 71B), the state Administrative Procedure Act (M.G.L. c. 30A), and the regulations promulgated under these statutes.

A hearing was held on January 13, 14, 16, and 17, 2025, before Hearing Officer Amy Reichbach. With the consent of both parties and agreement of all participants, the hearing was held in a virtual format, via Zoom. Those present for all or part of the proceedings were:

Mother/Attorney for Student

Nathan Doty, Ph.D. Neuropsychologist, Achieve New England

Jennifer Curry School Psychologist, Franklin Public Schools (Franklin)

Mary Emmons Interim Director of Special Education,

 Acton-Boxborough Regional School District

 (Acton-Boxborough)

Nicole Kelly Special Education Teacher and Liaison, Franklin

Tara Kirousis Special Education Coordinator, Acton-Boxborough

Paula Marano Assistant Superintendent of Student Services, Franklin

Janice Martineau Special Education Teacher, Acton-Boxborough

Daniel Mazur Assistant Director of Special Education, Acton-

 Boxborough

Kendra McCuine Educational Consultant, Achieve New England

Stephanie Morrisey Special Education Teacher, Acton-Boxborough

Briana Nichols, Ph.D. Associate Director and Educational Audiologist, Public School Partnership Program, Learning Center for the Deaf

Karen Rocco Speech/Language Pathologist, Franklin

Katherine Simmons Speech/Language Pathologist, Acton-Boxborough

Jessica Tangney Teacher, Franklin

Emily Teager School Psychologist, Acton-Boxborough

Nancy Nevils, Esq. Attorney for Acton-Boxborough

Marianne Peters, Esq. Attorney for Franklin

Carol Kusinitz Court Reporter

Alexander Loos Court Reporter

The official record of the hearing consists of documents submitted by Parents and marked as Exhibits P-1 to P-10;[[2]](#footnote-2) documents submitted by Franklin and marked as Exhibits FS-1 to FS-25;[[3]](#footnote-3) documents submitted by Acton-Boxborough and marked as Exhibits ABS-1 to ABS-20; four days of oral testimony and argument; and a four-volume transcript produced by court reporters. At the parties’ request, a postponement was granted through February 14, 2025 for submission of written closing arguments. The parties requested, and received, an additional extension through February 18, 2025. Closing arguments were received and the record closed on that date.

1. **INTRODUCTION**

On May 14, 2024, Parents filed a *Hearing Request* with the Bureau of Special Education Appeals (BSEA) against Franklin, asserting that the District failed to offer Carly, who had been diagnosed with dyslexia, dysgraphia, mixed receptive/expressive language disorder, and phonological disorder, a free, appropriate public education (FAPE).[[4]](#footnote-4) They sought reimbursement for tuition and transportation for their unilateral placement of Carly at the Carroll School (Carroll) for the 2023-2024 school year. The Hearing was scheduled for June 18, 2024.

On May 24, 2024, Franklin filed its *Response to [Parents’] Hearing Request*, asserting that the Individualized Education Programs (IEPs) and placements proposed for Carly have been reasonably calculated to provide her with a FAPE. On the same day, Franklin filed a *Motion to Join Acton-Boxborough Regional School District* with an accompanying Memorandum of Law. According to Franklin, Parents purchased a home in Acton in or about November 2023, at which point Acton-Boxborough assumed programmatic and financial responsibility for Carly.[[5]](#footnote-5) Acton-Boxborough did not oppose joinder, though it did dispute Franklin’s assertion that it assumed financial responsibility for Carly during the 2023-2024 year and asserted that to the extent the BSEA might find otherwise, Parents had not provided the requisite notice prior to unilateral placement. Franklin’s *Motion to Join* was allowed on July 2, 2024. In the meantime, the hearing was continued for good cause to August 12, 13, and 15, 2024 due to a scheduling conflict and to permit the parties to work together toward resolution.

On July 22, 2024, Parents filed an assented-to request to postpone the Hearing to October 22, 23, and 24, 2024, due to professional obligations, and on July 26, 2024 the Hearing was continued for good cause. Given delays in discovery, on October 16, 2024, the parties jointly requested further postponement to January 13, 16, and 17, 2025.[[6]](#footnote-6) That request was granted for good cause on October 17, 2024, and an additional day of hearing was added following a Pre-Hearing Conference that took place on January 6, 2025.

The issues set forth for Hearing are as follows:

1. Whether the IEPs proposed by Franklin and Acton-Boxborough for the 2023-2024 school year were reasonably calculated to provide Carly with a FAPE; and
2. If not, whether Parents are entitled to reimbursement for their unilateral placement of Carly at the Carroll School for the 2023-2024 school year from Franklin and/or Acton-Boxborough.
3. **FINDINGS OF FACT**[[7]](#footnote-7)
4. Carly, who is ten years old, lives with her parents and older brother in Acton, Massachusetts. She attended Jefferson Elementary School (Jefferson) in Franklin, Massachusetts, her then residence, from kindergarten through second grade. (P-2, P-10; FS-18, FS-25; ABS-11)
5. From an early age, Carly was happy, loving, carefree, and energetic. She loved storytelling but often substituted words. (Mother, I: 41-42) Carly’s parents, teachers, and service providers describe her as a bright, optimistic, helpful, kind, enthusiastic student and a hard worker who strives to do well in school. (P-2; FS-4, FS-17; ABS-11; Curry, II: 436; Rocco, III: 573; Tangney, III: 686, 688)
6. During the COVID-19 pandemic, which entailed virtual instruction for the first half of kindergarten, Parents noticed that Carly was anxious and struggling. Her kindergarten teacher provided general education interventions in math and reading. Mother was concerned that despite these interventions and Carly’s efforts, she was not progressing. According to Mother, Carly had a difficult transition to first grade and was afraid to be embarrassed by her word substitutions. Parents decided to obtain a private evaluation. (P-2, P-5; FS-1; Mother, I: 42-47, 52; Doty, I: 153, II: 303)
7. Dr. Nathan Doty conducted an integrated neuropsychological and educational evaluation of Carly on October 26, 2021. Dr. Doty has been the Co-Director at Achieve New England (Achieve) since 2016.[[8]](#footnote-8) In his current role, Dr. Doty supervises six to eight providers and conducts approximately six to eight full neuropsychological evaluations per month, 25-30% of which involve students with suspected language-based disabilities. He also consults with schools and families around programming based on those evaluations. Approximately 70-80% of Dr. Doty’s practice is related to parent referrals, approximately 15% are referrals from pediatricians, psychiatrists, and other doctors, and approximately 5% of his work is initiated by school district referrals. (P-1, P-2; Doty, I: 75- 76, 83, 144-45, 218-19, 294)
8. Dr. Doty’s evaluation of Carly, completed in one day, consisted of the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V); Expressive One-Word Picture Vocabulary Test; Comprehensive Test of Phonological Processing, Second Edition (CTOPP-2); Neuropsychological Assessment (NEPSY-II) Phonological Processing and Visuomotor Precision Subtests; Beery-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition (VMI-6); Wide Range Assessment of Memory and Learning, Second Edition (WRAML2); Wechsler Individual Achievement Test, Fourth Edition (WIAT-4); Gray Oral Reading Test, Fifth Edition (GORT-5 Form A); Behavioral Assessment System for Children, Third Edition (BASC-3) Parent and Teacher Reports; Behavior Rating Inventory of Executive Function, Second Edition (BRIEF2) Parent and Teacher Reports; and clinical interviews with Carly and her Parents.[[9]](#footnote-9) (P-2; Doty, I: 148-50).
9. Although the evaluation was completed on October 26, 2021, when Carly was in first grade, the written report was not generated until July 25, 2022, and it was presented to Franklin shortly thereafter.[[10]](#footnote-10) (P-2; Doty, I: 144-45) Dr. Doty did not observe Carly at school in connection with his report, nor did he speak with any of her teachers or service providers or review classroom assessments or norm-referenced or criterion-referenced measures in reading or math. (Doty, I: 167-71)
10. Dr. Doty described Carly as a bright child with positive and personal strengths, including strong intellectual potential and non-verbal reasoning abilities, who may have difficulty accessing that potential due to weaknesses in her verbal intelligence. In his report, Dr. Doty noted that Carly’s performance was “variable across domains,” particularly on the WISC-V, indicating unevenly developed cognitive abilities.[[11]](#footnote-11) He observed a strength in her nonverbal abilities, with her fluid reasoning and visual spatial indices falling in the high average and superior ranges respectively, whereas her verbal comprehension index was weaker, falling “near the lower end of the average range.” Although Carly’s phonological processing, phonological awareness, and rapid symbol naming abilities were within age-based expectations on the NEPSY-II and the CTOPP, Dr. Doty described them as “weak relative to her superior nonverbal intelligence.” Dr. Doty reported that Carly’s academic achievement on the WIAT and the GORT-5 were below expectations “based on her superior intellect,” particularly in oral reading fluency, reading comprehension, and math skills (which fell consistently below grade-level expectations), though he acknowledged that some of her scores were either not discrepant or not widely discrepant. At Hearing, Dr. Doty hypothesized that Carly’s average range scores on measures of phonological awareness may be explained by her high intelligence masking her underlying dyslexia-related deficits. (P-2; Doty, I: 85-90, 94-100, 154-57, 223-25, 248-49)
11. Dr. Doty did not report a Full Scale Intelligence Quotient (FSIQ) in his evaluation because, in his opinion, it is “not a valid representation of [Carly’s] true underlying intelligence” due to the unevenness of her cognitive profile.[[12]](#footnote-12) (P-2) Moreover, he employed an unusual method to calculate Carly’s intellectual potential, which he reported in the superior range. Given what he characterized as the unusual gap between Carly’s verbal performance and her intellect, Dr. Doty is of the opinion that it is appropriate to calculate her overall intelligence using measures of nonverbal intelligence only, to “side-step the language-intensive measures.”[[13]](#footnote-13) Specifically, according to Dr. Doty, the nonverbal index (NVI), which excludes verbally based subtests such as vocabulary, similarities, and auditory working memory, “should be considered the best representation of her underlying potential.” (P-2; Doty, I: 88-93, 226-32, II: 315)
12. On cross-examination, Dr. Doty acknowledged that Carly’s reading and academic achievement “is commensurate with her verbal profile,” and that his description of her intellectual functioning as “above average” and “superior,” references her nonverbal intellect only. (Doty, I: 154, 236) Dr. Doty did not see an issue with his failure to explain explicitly that his reporting of Carly’s intellectual potential was based only on a nonverbal index score. (Doty, I: 266-70)
13. Pressed further regarding his choice to calculate and describe Carly’s intellectual potential using her NVI scores rather than a FSIQ, Dr. Doty testified that it is a “subjective judgment by the clinician, but there are very clear guidelines as to when it’s appropriate to use those and not, [which] are available through the test publisher.” (Doty, II: 297-98) As explained in detail below, school psychologists at Franklin and Acton-Boxborough both testified this was not an appropriate method to use with Carly. (Curry, II: 439-40; Teager, IV: 891, 904)
14. Following testing, Dr. Doty diagnosed Carly with a Specific Learning Disorder (SLD) with Impairments in Reading, Math, and Spelling;[[14]](#footnote-14) Dyslexia; Dyscalculia; and an Unspecified Communication Disorder. He recommended what he described as a “more moderate level of service delivery,” comprised of pull-out services. Specifically, Dr. Doty recommended that Carly receive multisensory rules-based reading instruction such as Wilson or Orton-Gillingham (3x45 minutes/week); services for dyscalculia (2 or 3x30-45 minutes/week); and speech/language therapy (1x30-45 minutes/week).[[15]](#footnote-15) He further recommended that Parents follow up with a speech/language pathologist for further testing, given the discrepancies in test results and the language difficulties he observed. He also mentioned social-emotional adjustment as an area of concern, based on his “review of [Carly’s] history and working with her.” (P-2; Doty, I: 84, 100-03, II: 358)
15. Parents provided Dr. Doty’s report to Franklin during the summer of 2022, and it was reviewed initially by school psychologist Jennifer Curry.[[16]](#footnote-16) In her role as a school psychologist at Jefferson, Ms. Curry conducts special education initial evaluations and reevaluations, focused on areas of functioning that include cognitive, processing, social/emotional, adaptive, and executive; serves on the school’s instructional support team; participates in crisis intervention; provides counseling as necessary; and reviews neuropsychological reports. Ms. Curry conducts approximately 40 to 50 evaluations and reviews approximately one dozen neuropsychological evaluations per year. (FS-2; Curry, II: 420-22)
16. According to Ms. Curry, Dr. Doty’s evaluation showed that Carly had average to superior intellectual function, average verbal abilities, and intact processing speed and working memory. Carly demonstrated some language-based challenges, though phonological and visuomotor integration were in the average range. There was some concern about her math fluency. Dr. Doty had also noted that Carly can get nervous in new social situations. (FS-1; Curry, II: 423-24) At Hearing, Ms. Curry testified that she would not have calculated Carly’s intellectual abilities in the way Dr. Doty did. Specifically, because Carly was able to understand the directions presented and her “overall language abilities are in a place where she was able to access that assessment,” Ms. Curry would not have used only the nonverbal index to determine her cognitive ability. Ms. Curry added that the only instances where it would be appropriate to use the nonverbal index to determine intellectual ability and/or a learning disability would be for a student who is learning English, hearing impaired, or nonverbal. Moreover, unlike Dr. Doty, Ms. Curry would have reported Carly’s FSIQ, noting any discrepancies within the indices. (Curry, II: 433, 439-40)
17. Jessica Tangney was Carly’s second grade teacher.[[17]](#footnote-17) At the beginning of the school year, Ms. Tangney reviewed Carly’s report card and test scores from the previous year and administered her own assessments. According to Ms. Tangney, Carly’s DRA scores showed that she was a good reader, though she preferred to read with the teacher or in a small group rather than in front of the whole class, and she did not like to volunteer first to answer questions. She was kind, well-liked, and willing to work with any group of students. During recess, however, when she had a peer conflict she would have a hard time advocating for herself. Ms. Tangney aimed to increase Carly’s confidence and self-advocacy during the school year. (Tangney, III: 686-89)
18. Jefferson convened an Outside Evaluation Intake Meeting to discuss Dr. Doty’s report on September 6, 2022, which was attended by Carly’s Mother, Ms. Tangney, Ms. Curry, and Jefferson’s assistant principal. Based on the report, Parents presented concerns regarding Carly’s diagnosed dyslexia, dyscalculia (difficulties with math fluency, in particular), and unspecified communication disorder, as well as her ability to access the curriculum. Ms. Tangney described Carly’s classroom performance. She explained that Carly, like her classmates, seemed nervous at the beginning of the year. She seemed to want to hide; Ms. Tangney believed that once she built trust with Carly, Carly would feel more comfortable. She set a “sticky note system” to help Carly develop social/emotional and self-advocacy skills with her peers, and she explained this system at the meeting. Following this meeting, Franklin proposed an initial evaluation of Carly. Based on Parents’ concerns, Dr. Doty’s recommendations, and her own experience as a special education teacher, Ms. Tangney developed an accommodation sheet to help track Carly’s needs until the initial evaluation was completed. These included frequent check-ins with the teacher and access to a trusted adult. (FS-1, FS-2, FS-14; Curry, II: 423-24, 435; Kelly, II: 445-46; Tangney, III: 686, 690-94)
19. At the end of October 2022, prior to the completion of Carly’s evaluation, Parents sent an email to Ms. Tangney requesting that she fill out a teacher evaluation for Carroll. (Tangney, III: 695)
20. In the fall of 2022, Franklin conducted its initial evaluation of Carly, which was comprised of psychological, academic, and speech and language assessments. (FS-4, FS-17, FS-18, FS-19) At that time, Carly was receiving several general education interventions, including accommodations and small group targeted instruction in math. (FS-17; Curry, II: 424-25)

1. Ms. Curry conducted Carly’s psychological evaluation on September 20, 2022. She noted that during the evaluation, Carly was focused and persevered even with challenging tasks. Unlike Dr. Doty, Ms. Curry considered Carly’s verbal and nonverbal abilities in calculating her intellectual functioning to be within the average range. Carly’s scores on verbal measures were slightly higher than her scores on nonverbal measures, though they both fell within the average range. Ms. Curry utilized the Kaufman Brief Intelligence Test-Second Edition Revised (KBIT-2R) instead of the WISC-V, as Dr. Doty had administered the latter fairly recently. Ms. Curry also utilized the BASC-3 parent and teacher versions, on which Parents reported most areas within normal limits; they reported clinically significant concerns in the area of atypicality and at-risk range concerns in the areas of hyperactivity, attention problems, executive functioning, adaptability, and functional communication skills. In the classroom setting, all areas were assessed as being within normal limits. Ms. Curry testified that although Carly’s scores on the KBIT-2R differed from those on the WISC-V administered by Dr. Doty, in that Carly demonstrated higher verbal than non-verbal skills on the former, the two batteries may be difficult to compare. In any event, Carly’s scores on the KBIT-2R indicated learning difficulties. Observations in the classroom setting supported this conclusion, despite Carly’s average performance on curriculum-based classroom measures. (FS-4, FS-20; Doty, II: 311; Curry, II: 425-31)
2. Nicole Kelly, the second-grade special education teacher and liaison at Jefferson, conducted Carly’s academic achievement evaluation on nine separate dates between September 20 and October 18, 2022.[[18]](#footnote-18) As a special education teacher, Ms. Kelly evaluates students’ abilities, writes and implements IEPs for students with various disabilities, collaborates with family and other staff members, collects data and monitors progress for students on her caseload, and provides both inclusion and pull-out services to them. Ms. Kelly has administered “well over a hundred” comprehensive academic evaluations over the course of her career. (Kelly, II: 442-44, 447-48)
3. Prior to her formal evaluation of Carly, Ms. Kelly was already providing multiple hours of inclusion services per day within Ms. Tangney’s classroom. She observed that, like most students transitioning to a new grade, Carly seemed shy at the beginning of the school year but seemed solid academically. Carly was social and interacted well with her peers. (Kelly, II: 444-45)
4. According to Ms. Kelly, Carly appeared to have difficulty processing oral information during her evaluation and was more confident answering questions that included visual components. On the Kaufman Test of Educational Achievement, Third Edition (KTEA-3), which Ms. Kelly administered to obtain a broad understanding of Carly’s abilities in multiple areas, she scored in the average range on Reading, Math, and Written Language Composites, with an overall Academic Skills Battery Composite score in the average range. Specifically, Carly scored in the above average range on reading subtests; in the average range on math subtests; and in the average range on written expression subtests (with one score bordering the below average range). Carly’s Supplemental Composites were in the average range, with the exception of the Sound Symbol and Reading Understanding composites, where she scored in the above average range, and the Oral Language and Expression Composites, where she scored in the low average range.[[19]](#footnote-19) Her score on the Dyslexia Index indicated a very low risk of dyslexia. On the Test of Word Reading Efficiency (TOWRE)-Form A, which is often used with students when dyslexia is suspected, Carly scored in the average and above average ranges. She also scored in the above average and superior ranges on subtests of the Test of Phonological Awareness -Early Elementary Version (TOPA-2+). Based on these scores, in tandem with Carly’s classroom performance, Ms. Kelly concluded that neither dyslexia nor any other component of reading was a concern. Asked at Hearing to reflect on the difference between these scores and those in Dr. Doty’s evaluations, Ms. Kelly noted that given the COVID-19 pandemic, at the time Dr. Doty evaluated Carly, she had only been learning in-person, full-time, for two months, and much growth had occurred in her skills in the intervening time. (FS-4, FS-18; Kelly, II: 446-55, 465) Ms. Kelly testified, further, that she was – and remains – confused about how Dr. Doty determined that Carly has dyslexia, as her scores on his own evaluation were average to above average;[[20]](#footnote-20) Carly’s scores on Ms. Kelly’s evaluation were also average to above average, and Carly’s classroom performance was at or above grade level. Ms. Kelly acknowledged, however, that when a neuropsychologist identifies a student as dyslexic, this is typically based on discrepancy scores, whereas a school district only identifies a Specific Learning Disability in a particular area if the student has a disabling condition that impacts her ability to access the general education curriculum. Given Carly’s accurate and fluent word recognition, spelling, decoding, comprehension, and vocabulary, as evidenced by her test scores and classroom performance, she would not have met the criteria for dyslexia outlined in the Massachusetts Dyslexia Guidance. (FS-22; Kelly, II: 467-69, 471-73)

On the math portion of the KTEA, Carly scored toward the low end of the average range on the Math Concepts and Applications subtest, which entails a language component. Given some lower math scores on the KTEA and Carly’s challenges in class, Ms. Kelly decided to administer the KeyMath-3 to “dig in a little deeper.” Carly scored within the average range on all administered subtests. Considering the totality of this information, in conjunction with Dr. Doty’s evaluation, Ms. Kelly determined that math fluency was a weakness for Carly. (P-2; FS-4, FS-18; Kelly, II: 455-59, 465)

As part of her evaluation, Ms. Kelly observed Carly in the classroom during an informal group activity on Halloween. She noticed that at times, Carly had difficulty “inserting herself into the group’s plan,” trying to work on her own and becoming “slightly frustrated” when the group chose a plan other than hers. With two or three teacher redirections, Carly was able to complete the activity with her group. Ms. Kelly testified that her observation on this day was consistent with her general observations of Carly in class, where she was able to participate most of the time, utilizing “some great systems” that Ms. Tangney had in place to help Carly feel more comfortable. (FS-18; Kelly, II: 462-63)

Ms. Kelly offered a number of recommendations in her report, which included, for math: the use of multisensory instruction and manipulatives; spiraling of skills; continued practice with math facts to solidify fluency; small group instruction; and untimed assessments as needed. She also made recommendations to support Carly’s language, including the use of fill-in-the-blank assessments; assessment of knowledge in a variety of ways; and ensuring Carly had access to text in front of her when expected to answer questions based on something she had heard. Finally, Ms. Kelly recommended strategies and methods to support Carly’s executive functioning and focus. (Kelly, II: 466-67)

1. Ms. Tangney completed Carly’s Education Form A and B on November 2, 2022. At this time, Carly was doing well academically and was at the second grade level on the DRA.[[21]](#footnote-21) Ms. Tangney also noted that Carly was receiving some accommodations to support her learning, such as frequent prompting for attention; preferential seating; cues and choices before being asked to share with the class; extra processing time; opportunities to show her thinking in a variety of ways; word banks; and executive functioning supports, such as timers and visual pieces, which were provided for all students. She also benefitted from the FM system. Ms. Tangney had concerns about Carly’s ability to take in auditory information, as she had difficulty recalling information at times and required that directions be repeated. (FS-17; Tangney, III: 696-98)
2. Karen Rocco administered Carly’s speech and language evaluation on seven dates between September 27 and October 25, 2022.[[22]](#footnote-22) She has worked as a speech/language pathologist for 27 years, the last 16 at Jefferson where she also serves as a member of the instructional support team. Ms. Rocco conducts evaluations across a broad spectrum of speech and language issues, including phonology, articulation, receptive language, expressive language, fluency, and social pragmatic disorders.[[23]](#footnote-23) She develops IEP goals, accommodations, modifications, and service delivery based on evaluation results, and conducts small-group, classroom, and individual therapy. Ms. Rocco further consults with and services specialized in-district programs. (Rocco, III: 514-17)
3. Ms. Rocco initially met Carly when she was in first grade, through weekly classroom social pragmatic social/emotional skills lessons. To prepare for her formal evaluation of Carly in the fall of 2022, Ms. Rocco reviewed Dr. Doty’s report. She then administered a comprehensive speech/language assessment, beginning with the Clinical Evaluation of Language Fundamentals – Fifth Edition (CELF-5). Carly’s scores were in the average and above average ranges on both receptive and expressive measures; Ms. Rocco opted to administer the Understanding Spoken Paragraphs subtest to take a closer look at Carly’s comprehension skills. Carly scored in the below average range when there were no visuals included. Carly scored in the expected range for her age on the Peabody Picture Vocabulary Test (PPVT-IV) and the Expressive Vocabulary Test (EVT-II). As there was no discrepancy, Ms. Rocco concluded that Carly was not having difficulty in word-finding. Ms. Rocco then observed Carly in the classroom during a whole-class reading lesson, where she was able to turn and talk to her partner about what had happened in the book in two out of three instances, but she appeared to miss a funny part of the story. Carly showed some signs of distraction while the teacher was giving instructions for independent work, but she responded when verbally cued, and she requested clarification appropriately. She was able to expand verbally on her written retelling of the story. Ms. Rocco noted that Carly presented with articulation, voice, and fluency skills within normal limits, though she did not always follow oral directions accurately. Following her observation, Ms. Rocco administered two more tests to permit her to gather additional information about Carly’s comprehension with and without visuals. On the Test of Narrative Language (TNL), which included visuals, Carly scored within the average range; on the Oral Passage Understanding Scale, which did not include visuals, Carly scored in the below average range. Based on her testing, her review of Ms. Kelly’s testing, and her classroom observations, Ms. Rocco concluded that whereas Carly showed great skills and strengths, she had a specific deficit in comprehending oral language, specifically in the absence of visuals to support her understanding. This deficit fell within the mild range; as such, Ms. Rocco diagnosed Carly with a mild communication disorder in the area of auditory comprehension. She recommended a range of accommodations, including repetition of auditory directions, stated the same way; encouraging Carly to advocate for herself; teacher check-ins to ensure comprehension; modeling and teaching visualization strategies; pairing orally presented information with visuals and/or written information; extra time to plan and formulate responses elicited with or without visuals; and allowing expression of answers in various ways such as verbally, drawing, and writing. Finally, Ms. Rocco recommended consideration of an auditory processing evaluation, based on the discrepancy between Carly’s comprehension with and without visuals; her above average reading comprehension skills as reflected in Ms. Kelly’s academic evaluation; and signs of processing difficulty observed in class, such as difficulty following whole-class directions, taking longer to process, asking for repetition, and misunderstanding humor. (FS-4, FS-19; Rocco, III: 518-34, 598-99)
4. Carly’s Team convened on November 9, 2022 to discuss these evaluations and determine eligibility.[[24]](#footnote-24) Parents did not dispute the District’s evaluations. The Team found Carly eligible for special education under a primary Communication disability and a secondary Specific Learning Disability in Math. The Team acknowledged that Dr. Doty had diagnosed Carly with dyslexia, but Franklin did not view it as a disabling condition in the school setting. Specifically, Franklin disagreed with Dr. Doty’s findings that Carly had a Specific Learning Disability in Reading and Spelling, as evaluations did not reveal a discrepancy between Carly’s overall intellectual abilities and her academic achievement; her cognitive scores aligned with her reading performance on both standardized tests and within the classroom. As Ms. Tangney testified, Carly was able to decode and encode at grade level; her difficulty was with comprehension. Moreover, Carly did not meet the State Definition of Dyslexia, as she was making effective progress in the general education curriculum. The Team did not recommend specialized instruction in reading, nor did it recommend direct services focused on social/emotional or regulation skills. (FS-4, FS-5, FS-22; Mother, I: 53-54; Curry, II: 431-32, 434; Kelly, II: 446, 468, 472-74; Rocco, III: 535; Tangney, III; 700) Ms. Rocco recommended a trial with an FM system in the classroom to amplify the speaker’s voice.[[25]](#footnote-25) (Rocco, III: 597-98)
5. Carly’s initial IEP for the period from November 9, 2022 to November 8, 2023 (initial 2022-2023 IEP) listed a primary Communication disability and a secondary Specific Learning Disability in Math. It included a full inclusion placement and goals in the areas of communication[[26]](#footnote-26) and math. (FS-4). Speech and language services were proposed in both the B-Grid (1x30 minutes/week) and C-Grid (1x 30 minutes/week). Math services were also proposed in both settings, B-Grid (5x30 minutes/week) and C-Grid (2x15 minutes/week). In addition, the IEP included a consult between the special education teacher and the educational assistant (1x30 minutes/week) and incorporated accommodations such as preferential seating, positive reinforcement, repetition of directions in the same way, a visual timer, word banks, the FM sound system, access to a trusted adult, and a system to encourage Carly to advocate for herself. (FS-4; Kelly, II: 475-76; Tangney, III: 700-02)
6. On or about November 22, 2022, Parents partially rejected the initial 2022-2023 IEP “to the extent that it does not recognize [Carly’s] primary medically diagnosed [d]yslexia nor does it provide reading intervention at a level of support needed for [her] to make effective progress.” They consented to the proposed placement. (FS-4)
7. In December 2022, Parents obtained a private audiology evaluation and report from Dr. Brett Radosti at Boston Children’s Hospital. Although Carly’s scores on two tests showed reduced performance for her age and Dr. Radosti noted that she can be expected to miss or mishear information in groups, he concluded that her “overall pattern of performance is not one typically seen in children with a primary auditory processing disorder.” Dr. Radosti made several recommendations, including an educational audiologist review of the classroom FM system. When Parents presented this report to Franklin, Ms. Rocco reviewed it. Because she felt it was outside her scope of practice, Ms. Rocco consulted educational audiologist Dr. Briana Nichols from The Learning Center for the Deaf, who reviewed Dr. Radosti’s report and observed Carly’s classroom.[[27]](#footnote-27) Dr. Nichols noted that although Dr. Radosti had not identified a primary auditory processing disorder, he had made all of the recommendations applicable to a student with one.[[28]](#footnote-28) (P-6, P-9; FS-3, FS-3(b), FS-9; McCuine, II: 388; Rocco, III: 540-42, 550, 554, 584-88; Nichols, III: 661-63)
8. Parents contracted Carolyn Brinkert, M.S., CCC-SLP, of the Integrated Center for Child Development (ICCD), to conduct a comprehensive speech/language evaluation of Carly.[[29]](#footnote-29) When Ms. Brinkert assessed Carly on January 26, 2023, she had been receiving services pursuant to her initial 2022-2023 IEP for less than two months. Ms. Brinkert reviewed Dr. Doty’s neuropsychological evaluation and Franklin’s evaluations, but she did not observe Carly at school or consult with Ms. Rocco or any other members of Carly’s Team in connection with her report. (P-7; Doty, I: 207-08; Rocco, III: 549-5S0)
9. Ms. Brinkert observed that Carly participated in reciprocal conversation, though at times she was tangential or overly verbose and showed some impulsivity. Carly had brought fidgets, which she used appropriately. On the Test of Integrated Language and Literacy Skills (TILLS), Carly demonstrated strength in phoneme and phonological awareness, as well as reading skills at the word level and decoding and spelling nonwords and regular words. Lingering articulation errors suggested some isolated weaknesses in phonological encoding. Her auditory working memory for small and decontextualized units of information was strong, as was her oral reading and social communication. Carly’s oral language broke down at the sentence and discourse level; her listening comprehension for short passages without visual supports was below the level of her peers. She was able to follow directions, but as length and complexity increased, she experienced difficulty. On the WORD Test, Carly demonstrated broad semantic knowledge but struggled with specific vocabulary, scoring in the below average range on synonyms, borderline low/below average on antonyms, and average on definitions and flexible word use. On the Listening Comprehension Test, Carly scored in the average range on all measures except Understanding Messages, where she scored in the borderline low/below average range. Carly’s narrative language microstructure was “somewhat inconsistent with that of her peers,” and her narrative production showed some weaknesses. Ms. Brinkert concluded that Carly demonstrated some receptive and expressive language weaknesses and that her strong social communication skills, task persistence, and strengths at the sound and word levels likely masked higher-level weaknesses. She agreed with Dr. Doty that Carly was not demonstrating language skills commensurate with her intellectual potential.[[30]](#footnote-30) Ms. Brinkert diagnosed Carly with a Mixed Receptive/Expressive Language Disorder and a Phonological Disorder.[[31]](#footnote-31) She recommended that Carly receive structured, repetitive, multi-sensory instruction consistent across subject areas in a small, language-intensive learning environment alongside students with similar learning profiles. She also recommended the use of strategies to improve recall of information, graphic organizers, direct instruction in the area of written instruction, direct speech and language therapy once or twice a week, and extended school year services. Ms. Brinkert further recommended an Occupational Therapy evaluation to consider Carly’s “performance in the areas of planning/sequencing, impulsivity/self-monitoring, and executive functioning.” (P-7; Doty, I: 202)
10. An occupational therapist at Jefferson consulted with Carly’s Team, spoke with her teacher, and observed her in class, but did not see any fine motor or sensory integration concerns. (Rocco, III: 556-57)
11. Ms. Rocco reviewed Ms. Brinkert’s report in preparation for the Team meeting in March 2023. At Hearing, she testified that she did not agree with Ms. Brinkert’s finding that Carly had a phonological disorder. Ms. Brinkert had commented on some errors and inconsistencies in Carly’s sound production, including a motorically-based articulation error, but she did not actually administer an informal speech sample or any of the standardized testing that would typically reveal a diagnosis of a phonological disorder. Ms. Rocco did not see sufficient evidence to support an expressive language disorder diagnosis either, as Ms. Brinkert performed only one subtest examining vocabulary, rather than administering sufficient measures to get a comprehensive picture of Carly’s expressive language skills. Ms. Rocco did, however, note that Carly’s results on some subtests showed receptive language deficits consistent with a mild communication disorder. (P-7; Rocco, III: 542-547, 583-84)
12. Carly’s Team reconvened on March 16, 2023 to review Dr. Radosti’s and Ms. Brinkert’s evaluations and consider any necessary changes to Carly’s IEP.[[32]](#footnote-32) (P-8, P-8(b); FS-3, FS-3(b), FS-7; Rocco, III: 540, 542) At this point, Carly was making steady progress in math, accessing grade level material and receiving 90s on tests without modifications. She had mastered addition fluency and was just beginning to move on to subtraction fluency; she was also working on word problems. During pull-out services, Carly was using a systemic approach to fact fluency with Ms. Kelly. For push-in services, generally, Ms. Tangney would teach a lesson for approximately 30 minutes, followed by 30 minutes of small group work, during which Carly would receive direct instruction from either Ms. Kelly or the educational assistant. (FS-10, FS-21(a); Kelly, II: 476-77, 479-80; Tangney, III: 709-10) Carly had increased her participation in class and was utilizing strategies that she practiced with Ms. Tangney to advocate for herself in the classroom. (Tangney, III; 705-06) Carly’s DRA scores had increased from 20 to 24, maintaining grade level; she was advanced for fluency and independent for comprehension. Her decoding and encoding scores on Fundations were 90, 100, and 96. She was utilizing strategies to assist with comprehension and with the writing process. (Tangney, III: 710-11)
13. Carly was making good progress in speech/language as well. She was an active, enthusiastic participant in lessons; she provided feedback on the strategies Ms. Rocco was teaching her and often chose the visuals to accompany them. In the classroom she was able to use and apply the skills she was developing during individual sessions, which helped her build confidence. Some of the strategies Ms. Rocco used with Carly, such as sketching pictures on a form to track a classroom read-aloud, were then implemented classroom-wide. (FS-16, FS-21(a); Rocco, III: 536-40, 557-61) Carly was able to fade off some of these strategies when she no longer needed them, and she would check in with Ms. Tangney at the end of each day about what she had learned. She was also participating in a program where she read with a first-grade buddy. (Tangney, III: 706-07, 710, 729)
14. Dr. Nichols reviewed Dr. Radosti’s report and assisted the Team in amending the IEP with accommodations appropriate for the classroom setting. She noted, among other things, that she had observed that the FM system was set up in the way she would recommend, that Carly’s classroom overall had good acoustic properties, that Carly performed well overall, and that the teacher was “on target for providing all of the accommodations that Dr. Radosti had recommended.” Dr. Nichols created recommendations for the IEP that supported the recommendations Dr. Radosti had included in his report. The occupational therapist who had observed Carly in class also attended the meeting to provide input. (P-6, P-8, P-8(b); FS-3, FS-3(b), FS-6, FS-7, FS-9; Rocco, III: 554-57, 597-98; Nichols, III: 656-64) Ms. Tangney agreed with these recommendations, including the continued use of the FM system. (Tangney, III: 712)
15. The Team considered, but did not adopt, Ms. Brinkert’s recommendation that Carly be placed in a small-language-intensive environment, as she was accessing grade-level curriculum with accommodations but without modifications and making effective progress in her full inclusion placement. Franklin was of the view that anything else would be too restrictive and could impact her social and emotional development negatively.[[33]](#footnote-33) (P-8, P-8(b), FS-3, FS-3(b); Kelly, II: 482-85; Rocco, III: 547; Tangney, III: 712-14, 740-43, 749; Marano, III: 754) The Team did, however, amend Carly’s IEP to include summaries of Parents’ independent evaluations and proposed additional services and accommodations. Specifically, the Team proposed a new executive functioning goal based on Ms. Tangney’s observations, Carly’s performance in class, and Ms. Brinkert’s report, which showed that she would benefit from direct support within the area of written language to address executive functioning skills.[[34]](#footnote-34) B-Grid services (5x15 minutes/week) were proposed in connection with this goal, to take place during the written language block. Franklin also added several accommodations to PLEP-A and PLEP-B focused on Carly’s communication needs, including auditory processing,[[35]](#footnote-35) and added a vocabulary objective to her communication goal. Finally, the Team proposed Extended School Year (ESY) speech and language services (1x30 minutes/week) to prevent regression. (P-8, P-8(b); FS-3, FS-3(b), FS-13; 362-Doty, II: 362-64; Kelly, II: 486-88; Rocco, III: 547-53, 599-600; Tangney, III: 714-15)
16. Parents rejected the proposed Amended 2022-2023 IEP on or about March 29, 2023, stating that it failed to recognize Carly’s “primary medically diagnosed [d]yslexia,” and failed to provide sufficient special education services to address “her severe language based learning delays.” They also rejected proposed placement at Jefferson. (P-8, P-8(b); FS-3, FS-3(b); Rocco, III: 553)
17. At Hearing, Dr. Doty expressed concerns with the proposed 2022-2023 Amended IEP, testifying that without reading services in the form of multisensory instruction to address her dyslexia, Carly would experience issues with functional reading and literacy, which would impact her ability to glean information, and as demand increases, she will become less able to compensate, a “common sort of trajectory for kids that have dyslexia.” He further expressed concern about the frequency and duration of proposed math services. Moreover, in light of Ms. Brinkert’s report, he believed Carly should have been placed in a language-based classroom. For these reasons, Dr. Doty was of the opinion that Carly’s 2022-23 Amended IEP was not reasonably calculated to provide her with a FAPE. Dr. Doty acknowledged that speech and language services proposed by Franklin (1x30 minutes/week in the C-Grid and 1x30 minutes/week in the B-Grid) exceeded the recommendation of 1x30 minutes per week contained in his report. He testified, however, that this service delivery was not sufficient for Carly to make effective progress. (P-8, P-8(b); FS-3, FS-3(b); Doty, I: 104-07, 119-21, 139, 197-98, II: 341-42, 345-47)
18. At Hearing, Carly’s mother described Ms. Tangney as an “amazing” and creative teacher who provided many accommodations and supports for Carly. Mother testified that despite these efforts, Carly still came home upset during second grade, as she could not remember what Ms. Tangney had read aloud in class and could not follow a book through its end. She appeared to be frustrated by her own limitations and refused to participate in some school-wide activities such as field day, spring carnival, and curriculum night. Parents spoke with Ms. Tangney about their concerns. (Mother, I: 48-49) Ms. Tangney was not concerned that Carly did not want to participate in these unstructured activities, as this was not unusual with second graders. She noted that Carly did participate in field day and appeared to enjoy it. (Tangney, III: 722-23) Furthermore, according to both Ms. Kelly and Ms. Tangney, as the year progressed, Carly’s self-confidence improved, as did her ability to work with groups. (Kelly, II: 463; Tangney, III: 721)
19. Furthermore, by the end of second grade, Carly was accessing grade-level curriculum, reading above grade level (at a DRA 34, up from 20 at the beginning of the school year) and had achieved, or was progressing meaningfully and effectively toward, each of the benchmarks in her math goal. Carly was also making effective progress in executive functioning and speech and language. She was utilizing strategies and accommodations effectively; appeared to be happy and thriving; and she was confident and comfortable in different groupings throughout the classroom. (FS-10, FS-11, FS-12, FS-13, FS-21(b), FS-21(c); Kelly, II: 488-94; Rocco, III: 562, 568-69; Tangney, III: 717-21)
20. Although Franklin proposed ESY speech and language services for the summer of 2023 to prevent regression, Carly did not attend. (P-8, P-8(b); FS-3, FS-3(b); Mother, I: 73; Rocco, III: 572-73)
21. At Hearing, Mother testified that she could not recall when Parents applied to Carroll for Carly, and whether that occurred prior to the initial eligibility meeting in November 2022. (Mother, I: 54-55)
22. On or about March 28, 2023, Parents informed Franklin that they intended to enroll Carly at Carroll for third grade and requested District funding. Franklin rejected that request. (FS-3, FS-3(b), FS-8; Marano, III: 752-53)
23. Carly attended Carroll for third grade. Carroll is not approved by DESE to provide special education services to students and does not implement individual student IEPs. Moreover, Carroll teachers are not required to be licensed and certified, nor do Carroll staff attend Team meetings convened by a public school district where a Carroll student resides. (Mother, I: 55; Marano, III: 755-56)
24. When Carly began at Carroll, her speech/language pathologist, Jennifer Amos, noted significant weaknesses in several areas, including her comprehension of complex directions, connecting her background knowledge to current topics logically, explaining relationships between vocabulary words, and determining salient information. In third grade at Carroll, Carly received direct speech instruction in a group of five students (2x45 minutes/week), plus once per week within her small group ELA class. For the first half of the year, her speech/language intervention focused on “core cognitive-linguistic skills, such as sorting, categorizing, and comparing/contrasting,” although according to Ms. Rocco, Carly had already mastered these skills by the end of second grade. For the second half of the year, “her intervention focused more on receptive and expressive language development.” It concerned Ms. Rocco that Carroll did not focus on her receptive language development until the second half of the year. (P-5; Doty, I: 199-200, II: 348-49; Rocco, III: 563-64, 580-83)
25. According to Achieve educational consultant Kendra McCuine, who observed Carly at Carroll in May 2024, Carly received small-group, language-intensive instruction across subject areas and daily 1:1 Orton-Gillingham tutoring in addition to these services. (P-5)
26. During Carly’s first Parent-Teacher conference at Carroll, her teacher described her as engaged, inquisitive, and willing to take chances. (Mother, I: 50)
27. It is unclear from the record when, exactly, Carly and her family became residents of Acton. They purchased their home on or about August 15, 2023. Parents informed Franklin on August 16, 2023 that they had purchased a home in Acton and would be moving in October. (FS-25(a) A moving company moved their belongings on October 28, 2023, and Parents signed a quitclaim deed on November 7, 2023. (P-10; FS-25(a); ABS-1, ABS-2; Mother, I: 57; Marano, III: 757) However, Mother testified at Hearing that the move occurred on November 15, 2023, and that Franklin was the family’s primary residence until that date.[[36]](#footnote-36) (Mother, I: 56) Asked specifically whether they continued to live in the Franklin house despite the recording of the deed, Mother testified in the affirmative, though she later corrected herself and stated that the family moved on November 14, 2023. (Mother, I: 67-69) Parents did not contact Franklin again until December 29, 2023, at which time they provided their new address. Franklin responded on January 5, 2024 and encouraged Parents to enroll Carly in Acton Public Schools. (FS-25(a); Marano, III: 757-59)
28. Although Carly’s Amended 2022-2023 IEP expired on November 8, 2023, Franklin did not convene a Team meeting on or about that date. (FS-3, FS-3(b); Marano, III: 758) The District had, however, proposed a third-grade schedule for Carly, consistent with that IEP, which it would have implemented had Carly remained in Franklin. (FS-23; Marano, III: 760-61, 776)
29. Parents first reached out to Acton-Boxborough regarding their move to Acton on or about January 8, 2024. The next day, Acton-Boxborough personnel informed them that whether they intended to transfer their children during the 2023-2024 school year or enroll them for the 2024-2025 school year, they would need to be registered online and any IEPs should be provided to Acton-Boxborough as soon as possible. (P-10; FS-25(b); ABS-3, ABS-4, ABS-5; Mother, I: 69-70)
30. Parents provided Acton-Boxborough with Carly’s IEP on January 29, 2024 and completed registration shortly thereafter. Mother believed that Franklin would be responsible for funding Carly’s attendance at Carroll for the 2023-2024 school year because she was a Franklin student at the time Parents had placed her there. Mother expressed this belief to Franklin Assistant Superintendent of Student Services Paula Morano, who disagreed. (P-10; FS-25(a), FS-25(b); ABS-3, ABS-4, ABS-16; Mother, I: 57-59; Marano, III: 729-60)
31. Acton-Boxborough convened an Annual Review Team meeting for Carly on March 18, 2024, to review Franklin’s most recently proposed IEP (the Amended 2022-2023 IEP) as well as the evaluations that had been completed by Franklin, Dr. Doty, Ms. Brinkert, and Dr. Radosti. No information was available directly from Carroll regarding Carly’s performance during the 2023-2024 school year or her benchmarks, goals, or objectives, and no Carroll personnel attended the meeting. (ABS-7, ABS-8, ABS-10; Simmons, III: 635-39; Morrisey, IV: 799) Parents did, however, provide some Carroll data, which showed that Carly had some “good skills” as of October 2023.[[37]](#footnote-37) (ABS-6; Morrisey, IV: 793-97) Because so much of this data was unique to Carroll, Acton-Boxborough personnel did not feel they had sufficient current data, particularly as to speech and language, to propose a major shift in service delivery or programming. Acton-Boxborough offered an initial IEP dated March 18, 2024 to March 18, 2025 (initial 2024-2025 IEP), comparable to Franklin’s, based on the information it had, and proposed a comprehensive evaluation.[[38]](#footnote-38) Carly’s initial 2024-2025 IEP proposed a full inclusion placement and goals in Communication, Math, and Academic/Work Completion; consultation between the special education teacher and the assistant (1x15 minutes/week) in the A-Grid; B-Grid math (5x30 minutes/week) and speech/language (1x30 minutes/week); C-Grid math (2x15 minutes/week) and speech/language (1x30 minutes/week); ESY speech/language (1x30 minutes/week); and a plethora of accommodations.[[39]](#footnote-39) (FS-25(b); ABS-8, ABS-9, ABS-10; Simmons, III: 635-39; Morrisey, IV: 798-99, 827-28; Teager, IV: 856-61) Dr. Doty, who remotely attended the Team meeting at which this IEP was developed, questioned whether Carly would need a substantially separate language-based program at this time. He suggested that updated testing would assist him in making this determination. (ABS-8; Doty, I: 250-57) Parents rejected the proposed initial 2024-2025 IEP and placement, noting that they agreed with the eligibility determination but disagreed that the proposed services met Carly’s needs. (ABS-10)
32. Acton-Boxborough staff evaluated Carly in the spring of 2024, at which time Carly had received approximately seven months of services from Franklin pursuant to her IEPs and approximately nine months of services from Carroll. She had received no services over the summer of 2023, despite her pattern of regression over breaks, as Parents had not enrolled her in the ESY services proposed by Franklin. (FS-25(b); ABS-12; Doty, II: 359-62; Simmons, III: 622, 631)
33. Emily Teager, an Acton-Boxborough school psychologist, conducted Carly’s cognitive evaluation in May 2024.[[40]](#footnote-40) As a school psychologist at the Douglas Elementary School in Acton (Douglas), Ms. Teager conducts initial evaluations and reevaluations; reviews neuropsychological and other independent evaluations; serves on the Instructional Support and Crisis Support Teams; manages a counseling caseload for students with counseling on their IEPs; and participates in some general education counseling. In the course of her career, Ms. Teager has administered between 500 and 600 cognitive and social/emotional evaluations. (Teager, IV: 853-55)
34. Ms. Teager completed a record review then administered the WISC-V and the Connors-4 to assess Carly’s cognitive abilities and her attention. She had hoped to have Carly complete additional measures to permit her to examine Carly’s self-perception and executive functioning, but Ms. Teager did not have time on that day and Parents communicated that they wished to avoid further disruptions for Carly through non-essential testing. Carly was able to sustain her attention with short breaks, leading Ms. Teager to conclude that her scores were valid. On the WISC-V, Carly’s Working Memory and Visual Spatial Index scores were in the high average range; her Verbal Comprehension Index, Fluid Reasoning, and Processing Speed were in the average range. Carly’s FSIQ was in the average range, at 109. On the Conners-4, a rating scale filled out by Parents and Carly’s third grade Carroll teacher, Carly’s scores in the school environment were all average, whereas Parents expressed elevated concerns outside the school setting in the areas of hyperactivity, impulsivity, and emotional dysregulation and slightly elevated concerns in the areas of inattention and executive function. (ABS-12; Teager, IV: 861-64, 902-03)
35. At Hearing, Ms. Teager testified that when an evaluator determines whether a student has a Specific Learning Disability using the discrepancy model, the student’s FSIQ must be compared with her academic achievement scores on formal testing. Ms. Teager agreed with Ms. Curry’s opinion that whereas it might be appropriate to utilize a student’s Nonverbal Index to calculate her overall cognitive abilities when the student is an English Language Learner, is hearing-impaired, or is nonverbal/minimally verbal due to another disability such as autism, this is not an appropriate measure when the student has a mild communication disorder. Like Ms. Curry, Ms. Teager is of the opinion that Dr. Doty’s reliance on Carly’s Nonverbal Index score (rather than her FSIQ) to determine her cognitive abilities was not reasonable. Ms. Teager explained that when she encounters a discrepancy between indices in a student’s testing, she will still report a FSIQ, note that it should be viewed with caution, and suggest that the Team consider the student’s strengths and weaknesses across her cognitive profile. Moreover, if she suspected a SLD she might use a different model to understand the student’s presentation, perhaps examining curriculum-based measures to identify patterns of lack of response to intervention. Ms. Teager also testified that it would be appropriate to conduct a discrepancy analysis from the Verbal Comprehension Index on the WISC to reading subtests on the WIAT, to determine whether a child’s reading achievement abilities aligned with her verbal comprehension abilities, and to compare the Visual Spatial Index on the WISC to a student’s performance on the WIAT math achievement test, to determine whether there was a discrepancy indicating a SLD in math. (Teager, IV: 882-88) Ms. Teager also testified that Dr. Doty’s testing, which revealed many average scores on subtests of the WIAT, CTOPP, and NEPSY related to word reading, spelling, phonological awareness, and phonological processing, did not support his recommendation of pull-out rules-based reading instruction (3x45 minutes/week). (Teager, IV: 894-95)
36. At Hearing, Dr. Doty testified that although Acton-Boxborough calculated Carly’s FSIQ to be 109, which differed from the 124 Nonverbal Index on which he had relied to diagnose dyslexia in 2021, he was not surprised. He explained, “[W]e see this kind of fluctuation, especially for students as they get older and the demands on executive functioning, especially for someone with ADHD . . . increase and they’re less able to show their problem solving.” He continued to assert that Carly’s intelligence is in the high-average range. (Doty, I: 259-61)
37. Katharine Simmons, lead speech pathologist at Douglas, administered Carly’s speech/language evaluation in April and May of 2024, and then attended Carly’s Team meeting in June 2024.[[41]](#footnote-41) In her role as a speech/language pathologist for Acton-Boxborough, Ms. Simmons treats students with language disabilities in and out of the classroom in small group settings; attends instructional support team meetings; evaluates students and assesses the need for therapy; and develops curriculum for, and co-teaches in, a language-based classroom. Throughout her career, Ms. Simmons has conducted approximately 700 to 800 speech/language evaluations. (Simmons, III: 619-622)
38. During her evaluation of Carly, Ms. Simmons observed Carly informally; performed seven different tests in the areas of receptive and expressive language;[[42]](#footnote-42) and conducted a record review, which included the reports written by Dr. Doty, Ms. Rocco, Dr. Radosti, and Ms. Brinkert. Ms. Simmons chose measures to assess previously identified weaknesses. Carly scored within the average range on all tests, with one exception that Ms. Simmons explained did not raise any concerns.[[43]](#footnote-43) Ms. Simmons concluded that Carly was making progress commensurate with her same-age peers. At this time, Carly was not presenting as a child with an expressive or receptive language disability, nor did she have a communication impairment, as defined by the Massachusetts special education regulations. However, given Carly’s history and Parents’ past concerns, Ms. Simmons recommended that Carly be kept on a consult model for four to six weeks to see how she did in the classroom, after which the Team could meet to consider whether she was making effective progress or whether she required speech and language services. (ABS-14; Simmons, III: 623- 30, 645-46)
39. Stephanie Morrisey, an elementary special education teacher in charge of the Language-Based Program at Douglas, attended Carly’s March 2024 Team meeting, conducted her educational evaluation on two dates in April 2024, and observed Carly at Carroll.[[44]](#footnote-44) In her current position at Acton-Boxborough, Ms. Morrisey works to identify students with language-based learning disabilities through comprehensive initial evaluations and reevaluations, report-writing, and meeting presentations; co-teaches a language arts class within a partial inclusion environment with a speech and language pathologist; remediates and treats dyslexia using the Wilson Reading System; teaches a math class using language-based methodology; co-plans with regular education teachers around content areas, helping to provide modifications for students who require them; and contributes to the writing of IEPs. Ms. Morrisey has conducted approximately 100 educational evaluations in the course of her career. (ABS-13; Morrisey, IV: 790-92)
40. During her observation at Carroll, Ms. Morrisey collected several work samples, noting that Carly had some nice writing skills, and that her spelling was “extremely accurate.” Ms. Morrisey administered the WIAT-4 and additional batteries in literacy and math. Carly achieved average range scores in Total Achievement and on the following subtests: Reading Composite; Reading Comprehension; Written Expression Composite; Spelling; Sentence Composition; and Numerical Operations. She scored within the high average range on the Word Reading and Essay Composition subtests and in the low average range on the Math Composite and Math Problem-Solving subtests. Carly’s Dyslexia Index was in the high average range, connoting a very low probability that she is a child at risk for dyslexia.[[45]](#footnote-45) Ms. Morrisey concluded that Carly has sound skills in reading and writing and shows some difficulty in math, particularly fluency and problem-solving. Carly’s GORT-5 scores were all within the average range, except for Comprehension, where she obtained a below average score. On the RAN/RAS test, which measures retrieval, and on the TOWRE-2, Carly scored within the average range. Many of Carly’s KeyMath-3 scores were in the below average range, leading Ms. Morrisey to recommend explicit multimodal instruction to support math fluency and calculation, as well as explicit word problem instruction. She did not recommend rules-based reading instruction, such as Wilson, because Carly showed strong skills in accuracy and retrieval and average to high average skills in all areas at the word level that tie into accuracy and fluency. As such, her instruction needed to focus on comprehension using grade-level texts. (ABS-13, ABS-15, ABS-17; Morrisey, IV: 793, 800-10, 813-19, 840-43)
41. Acton-Boxborough convened a Re-Evaluation/Eligibility Determination Team meeting on June 10, 2024. The Team determined that Carly does not present as a student with a communication disability. All Team members present at the meeting, including Mother and Ms. McCuine, agreed that Carly was eligible for an IEP due to SLDs in math and reading comprehension, as evaluations showed significant discrepancies between her cognitive abilities and her scores in math problem-solving, math fluency, and reading comprehension.[[46]](#footnote-46),[[47]](#footnote-47) The proposed Amended 2024-2025 IEP (dated June 10, 2024 to June 9, 2025) included goals in Math, Reading/Writing, and Executive Functioning; Consultation in the A-Grid between the special education and general education teachers/assistants (1x10 minutes/week); B-Grid academic support in Math and English Language Arts (ELA) (225 minutes/week each); C-Grid specialized instruction in both Math (60 minutes/week) and ELA (90 minutes/week, focused on comprehension, writing, and executive functioning), both with a special educator or assistant; ESY (2x30 minutes/week); and a plethora of accommodations. According to Ms. Morrisey, Acton-Boxborough proposed additional math services, beyond those proposed in the initial 2024-2025 IEP, due to Carly’s KeyMath results. These services, both inside and outside of the classroom, would permit Carly to learn and practice specific skills and strategies. ELA services targeted executive functioning, “preloading” the use of specific organizers. Although Acton-Boxborough offers a language-based program, the school-based Team members proposed a full inclusion IEP for Carly because they believed she could be educated most appropriately in a general education program, with access to strong peer modeling and rich language. (ABS-19, ABS-20; Morrisey, IV: 812-13, 819-21, 834-35, 838-39; Teager, IV: 864-81)
42. Parents fully rejected both the proposed Amended 2024-2025 IEP and the placement in August 2024. (ABS-20; Morrissey, 833)
43. Dr. Doty testified at Hearing that Acton-Boxborough’s proposed 2024-2025 IEP was deficient due to the absence of direct instruction in reading and insufficient math instruction, which could be delivered by a special education assistant rather than a teacher. (ABS-10; Doty, I: 109-11)
44. Dr. Doty evaluated Carly again in June 2024, toward the end of third grade. This time, he performed tests on two different days (June 18 and 27) and generated a report dated August 30, 2024.[[48]](#footnote-48) Dr. Doty administered the Test of Nonverbal Intelligence, Fourth Edition (TONI) this time instead of the WISC, as he believed a nonverbal measure would be the best estimate of Carly’s intelligence given her history of language-based learning disabilities. He decided against doing additional IQ testing, as he did not disagree with Acton-Boxborough’s WISC results.[[49]](#footnote-49) Dr. Doty concluded that Carly continues to present with language-based learning disabilities that are the result of her underlying dyslexia[[50]](#footnote-50) and mild co-occurring communication disorder. He diagnosed Carly with Attention Deficit/Hyperactivity Disorder (ADHD-Combined Presentation);[[51]](#footnote-51) Specific Learning Disorder (Dyslexia and Dyscalculia) with Impairment in Reading, Impairment in Math, and Impairment in Spelling; and an Unspecified Communication Disorder. He recommended that she receive specialized reading instruction (at least 3x45 minutes/week), “including ongoing remedial intervention for her dyslexia;” specialized instruction in writing (at least 3x45 minutes/week), focused on spelling/encoding, grammar and mechanics, and higher order components; specialized instruction in math (at least 3x30-45 minutes/week); targeted instruction in executive functioning strategies; speech/language therapy (at least 1x30-45 minutes/week); and a number of accommodations. As in his prior report, Dr. Doty did not recommend a full-time substantially separate placement. (P-3; Doty, I: 121-22, 257-58, 260-64)
45. According to Dr. Doty’s evaluation, Parents reported to him that Carly had improved in her communication, academic skills in all areas, and confidence around learning since transitioning to Carrol.[[52]](#footnote-52) He noted that Carly’s phonological processing and rapid symbolic naming abilities continued to fall within age-based expectations; that she had made gains in her oral language skills, strong gains in foundational literacy skills such as decoding, spelling, and reading fluency, and demonstrated a well-developed vocabulary. He indicated that she continued to struggle with higher-order language skills such as comprehension and formulation/organization. Dr. Doty concluded in his report that Carly “shows a pattern of clear and meaningful academic progress over the past two to three years,” such that her academic skills in most areas fell within the average range. He noted that areas in which she improved “have been central targets of intervention at the Carroll School.” (P-3; Doty, I: 121-30, 177-79)
46. In his report and at Hearing, Dr. Doty attributed Carly’s progress to Carroll. For example, he testified that Carly’s communication profile “worsened over the course of second grade and improved over the course of third grade.” At Hearing, he testified, further, “with a high degree of certainty” that Carly’s progress in oral communication skills was “made in the context of [Carroll’s] intensive levels of language-based programming,” rather than during her time at Jefferson, where he would expect her to make no more than incremental gains. He acknowledged, however, that no testing had occurred that would enable him to isolate what percentage of the progress he observed was attributable to Carroll. Still, Dr. Doty opined that Carroll’s interventions contributed to the partial mitigation of Carly’s communication challenges or at least prevented them from becoming more significant.[[53]](#footnote-53) (P-3; Doty, 177-82, 197, 257, 273-76, II: 315, 349-51)
47. Despite these observations in his written evaluation, at Hearing Dr. Doty testified that Carly’s profile seems to have shifted from the fall of 2021 to June of 2024 to her detriment, such that she was displaying more significant language-based deficiencies. He referenced her declining scores, lack of progress, and “widening gaps with regard to her verbal comprehension and functional listening” as indicators that she was not making effective progress within Franklin. Dr. Doty noted that Acton-Boxborough’s testing revealed somewhat weaker scores than his 2022 report; that despite her gains in oral language skills, her scores in some areas “fall statistically below expectations in comparison to her WISC;” and that Carroll’s interventions had not increased her KTEA scores. Specifically, Dr. Doty acknowledged that since she had enrolled at Carroll, Carly’s Decoding Composite had decreased numerically (though not meaningfully), her word recognition fluency had decreased moderately, her Reading Composite had decreased, and her reading comprehension had decreased substantially. Dr. Doty posited that these decreases reflect “decreased ability to compensate as demands increased” between first and third grade, demonstrating that Carroll’s daily interventions were needed, not that they were not working. (P-3; Doty, I: 121-30, 177-82, 210-11)
48. Dr. Doty was unable to reconcile his conflicting testimony regarding whether Carly’s language-based deficiencies had been remediated or had become more significant between 2021, when he administered his first neuropsychological evaluation, and June 2024.
49. Moreover, Dr. Doty’s maintaining that Carly continues to present with dyslexia conflicts with the bulk of credible witness testimony. At Hearing, Dr. Doty affirmed that he recommended “ongoing remedial intervention” for Carly’s dyslexia, a diagnosis he stated was supported by the discrepancy between her FSIQ and her achievement scores. Asked to re-examine Acton-Boxborough’s evaluation, Dr. Doty responded that “a common thing that we see when students get intensive intervention is that . . . dyslexia in some domains can become remediated . . . [a]nd then they still struggle in other domains. That’s what we would call like a partial remediation.” Dr. Doty continued to recommend rules-based reading instruction focused on decoding, despite high “isolated single-word scores” because Carly “needs to continue to make progress in [specific target] areas beyond just what a third grade phonics for word reading would look like.” (P-3; ABS-12, ABS-13; Doty, I: 124, 133-35, 203-04, 255-57, 271-72, 276-84) Ms. Teager, on the other hand, expressed concern regarding Dr. Doty’s understanding of Carly’s evaluations – his own and Acton-Boxborough’s. According to Ms. Teager, Dr. Doty should not be maintaining his diagnosis of dyslexia, as it is not “consistent with AB’s evaluation results or the discrepancies he’s finding in [the] updated KTEA scores.” (Teager, IV: 897-99)
50. In the spring of 2024, Parents hired Kendra McCuine, an educational consultant at Achieve, to conduct an educational consultation with direct program observations of Carly at Carroll. [[54]](#footnote-54) In her current role, Ms. McCuine conducts classroom observations as well as academic progress monitoring and learning disability evaluations in conjunction with Achieve psychologists. (P-4, P-5; McCuine, II: 366-68, 387)
51. To prepare for a classroom observation, Ms. McCuine schedules an intake call with parents and reviews records she receives from them, which include school-based and independent evaluations. She then reaches out to the school to schedule the observation, completes the observation, meets with parents to report her observations, and finally, completes and shares a report. Ms. McCuine took these steps in connection with her report regarding Carly. (McCuine, II: 368-70)
52. On May 3, 2024, Ms. McCuine observed Carly for 50 minutes in her language class at Carroll, and on June 12, 2024 she observed three academic blocks of the program at Jefferson (Inclusion Math, Pull-Out Math, and general education Reading) that had been proposed for Carly for third grade, had she remained in Franklin. (McCuine, II: 370) She followed up with speech/language pathologists at Jefferson and Carroll. Ms. McCuine reviewed her observations with Dr. Doty and on August 27, 2024 she produced a report that was reviewed and “cosigned” by him. (P-5; Doty, I: 139-41; McCuine, II: 370-71, 389)
53. In her report and at Hearing, Ms. McCuine shared her concerns about Carly’s proposed placement at Jefferson. As to math, she opined that the amount of specialized instruction proposed by Franklin for the 2023-2024 school year was inadequate, given the recommendations articulated in Dr. Doty’s original report based on his 2021 evaluation. Ms. McCuine’s report did not, however, mention the KeyMath assessment administered by Franklin in the fall of 2022, on which Carly obtained average scores on all subtests. Ms. McCuine also noted that during the math lesson she observed, the math specialist and the general education teacher gave instructions for a hands-on activity and the special education teacher circulated, checking in with individual students. The special education teacher then took a small group of approximately five students to a different classroom, reiterated the instructions, and facilitated students’ work. According to Ms. McCuine, the math services she observed were more instruction-based than skills-based, though she recognized that because Carly was not in the classroom she was not able to observe the precise services Carly would have received. (P-5; FS-18, FS-23; McCuine, II: 371, 373-75, 394-98, 400)
54. On cross-examination, Ms. McCuine acknowledged that it would have been better for her to observe the program at Jefferson while Carly was in attendance, to see her in the actual environment, and that the accommodations proposed for Carly could have been implemented in the program had she been there.[[55]](#footnote-55) She also testified that the timing of her observation, during the last week of the school year, was not ideal. (McCuine, II: 388-92) Ms. Kelly clarified that had Carly been observed in her third grade class during the school year, before the last week of school, Ms. McCuine would have seen math services more like those she provided for Carly in second grade: a half hour lesson taught by a general education teacher, followed by a half hour of direct support by the special education teacher consisting of instruction based on her IEP goals, review, supports, accommodations, and other assistance. (FS-23, FS-24; Kelly, II: 477-79)
55. When Ms. McCuine spoke with Ms. Rocco, Ms. Rocco reported that Carly had been working primarily on building comprehension, advocating for herself, and implementing taught strategies, including Visualizing and Verbalizing, as Ms. Brinkert had recommended. (Rocco, III: 565-66) At Hearing, Ms. McCuine testified that she had concerns about the differences between the speech/language services proposed by Franklin and those Carly received at Carroll.[[56]](#footnote-56) She believed that Franklin’s speech and language goals and services were “more about providing checklists to . . . accommodate her participation in the general education classroom,” whereas Carroll’s focus was on remediation.[[57]](#footnote-57) She was concerned that Franklin’s proposed services were not in a small-language intensive educational environment, as had been recommended by Ms. Brinkert in January 2023. In her report and at Hearing, Ms. McCuine opined that Carly’s “progress in listening comprehension, oral expression and vocabulary-related skills would not have been possible” without the intensive language-based interventions she received at Carrol in third grade. (P-5; McCuine, II: 372-73, 375-76, 384-85, 401) On cross-examination, however, Ms. McCuine acknowledged that although she wrote in her report that the data supported her position that Carroll’s services were adequate and Franklin’s were not, the test scores in fact showed progress between 2022 and 2024 but this timeframe included almost an entire school year when Carly was receiving individualized one-on-one services from Franklin. (P-5; McCuine, II: 401-03)
56. Ms. McCuine also testified at Hearing about her understanding of Ms. Brinkert’s January 2023 report. She stated that Ms. Brinkert’s diagnosis of mixed receptive/expressive language disorder, together with Dr. Doty’s diagnosis of dyslexia, demonstrates that Carly was having difficulty getting words off the page and difficulty understanding, and producing, oral and written language. The “higher level aspects of comprehension” were impacted. In Ms. McCuine’s opinion, this information would have led her to recommend a language-based classroom, as Ms. Brinkert did. For this reason, in addition to the omission of reading services and a reading goal, and the inadequacy of specialized math instruction, Ms. McCuine is of the opinion that Franklin’s Amended 2022-2023 IEP was not reasonably calculated to provide Carly with a FAPE.[[58]](#footnote-58) Ms. McCuine testified that Acton-Boxborough’s proposed initial and Amended 2024-2025 IEPs were not reasonably calculated to provide her with a FAPE for similar reasons, in addition to the provision that would permit a special education assistant to deliver math services rather than a teacher (McCuine, II: 380-84)
57. Finally, Ms. McCuine testified that she agreed with Dr. Doty’s 2024 report, to the effect that Carly no longer required a language-based classroom and that she currently presents with “remediated” dyslexia. (McCuine, II: 415, 418)
58. According to Ms. Morrisey, however, it would be “virtually impossible” to remediate dyslexia within one year, particularly when a student did not receive specialized instruction in a systemic reading program such as Wilson for the entire period of time. Moreover, from her review of the records, Ms. Morrisey did not believe Carly ever had dyslexia. (Morrisey, IV: 822-25, 829, 840)
59. During the summer of 2024, following third grade, Carly received direct private speech and language services through ICCD. (Mother, I: 71-72)

1. **DISCUSSION**

It is not disputed that Carly is a student with a disability who is eligible for special education services under state and federal law. To determine whether Parents are entitled to a decision in their favor, I must consider substantive and procedural legal standards governing special education. As the party challenging the status quo in this matter, Parents bear the burden of proof. [[59]](#footnote-59) To prevail, Parents must prove by a preponderance of the evidence that Franklin and/or Acton-Boxborough failed to propose IEPs reasonably calculated to provide Carly with a FAPE during the 2023-2024 school year; that Carroll was appropriate for Carly; and that Parents are entitled to reimbursement for Carly’s unilateral placement at Carroll during the 2023-2024 school year.

1. Legal Standards : FAPE and Unilateral Placement
2. *The Substantive Right to a Free Appropriate Public Education in the Least Restrictive Environment[[60]](#footnote-60)*

The Individuals with Disabilities Education Act (IDEA) was enacted “to ensure that all children with disabilities have available to them a free appropriate public education . . . designed to meet their unique needs and prepare them for further education, employment and independent living.”[[61]](#footnote-61) To fulfill its substantive obligations pursuant to federal law, a school district is required to develop and implement an IEP tailored to a child’s unique academic and functional needs.[[62]](#footnote-62) To provide a FAPE, the IEP must be individually designed and reasonably calculated to confer a meaningful benefit.[[63]](#footnote-63) It must include, “at a bare minimum, the child’s present level of educational attainment, the short- and long-term goals for his or her education, objective criteria with which to measure progress toward those goals, and the specific services to be offered.”[[64]](#footnote-64) These elements should incorporate parental concerns; the student's strengths, disabilities, recent evaluations; and the child’s potential for growth.[[65]](#footnote-65) The goals contained in an IEP should be “appropriately ambitious.”[[66]](#footnote-66) An IEP “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances” will be substantively sound.[[67]](#footnote-67)

Under state and federal special education law, a school district has an obligation to provide the services that comprise FAPE in the least restrictive environment.[[68]](#footnote-68) To the maximum extent appropriate, therefore, a student with disabilities must be educated with her peers who do not have disabilities, such that "removal . . . from the regular educational environment occurs 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."[[69]](#footnote-69) "The goal, then, is to find the least restrictive educational environment that will accommodate the child's legitimate needs.”[[70]](#footnote-70) For most children, a FAPE “will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade.”[[71]](#footnote-71)

Finally, evaluating an IEP requires viewing it as a “a snapshot, not a retrospective. In striving for ‘appropriateness, an IEP must take into account what was . . . objectively reasonable . . . at the time the IEP was promulgated.’”[[72]](#footnote-72)

Here, as Parents seek reimbursement for unilateral placement of Carly at Carroll, I measure the IEPs proposed for her during the relevant time period against the substantive standards outlined above. If I determine that one or more of the IEPs was not reasonably calculated to provide Carly with a FAPE, I must then turn to standards governing unilateral placement to determine whether Parents are entitled to reimbursement.[[73]](#footnote-73)

1. *Unilateral Placement*

When parents elect to place a student unilaterally in a private school notwithstanding the availability of a FAPE through the school district, they retain responsibility for the cost of that education.[[74]](#footnote-74) However, parents who enroll a student in a private school without the consent of or referral by the school district may obtain reimbursement as an equitable remedy under certain circumstances.[[75]](#footnote-75) The IDEA provides that a Hearing Officer may order reimbursement for the cost of that placement if she finds that a district had not made a FAPE available to the child in a timely manner prior to the parents’ unilateral placement.[[76]](#footnote-76) Hearing Officers and courts have interpreted this section of the IDEA to allow reimbursement for a unilateral placement when: (1) the school district had not made a free appropriate public education available to the student prior to that enrollment; and (2) the private school placement was appropriate.[[77]](#footnote-77) Unlike an IEP proposed by a school district, a unilateral private school placement need not meet all of the requirements of FAPE to be appropriate.[[78]](#footnote-78) Where parents have rejected an inappropriate IEP and placed their child unilaterally, to qualify for reimbursement the private placement must only “offer at least some element of special education services in which the public school placement was deficient.”[[79]](#footnote-79) The reasonableness of the private placement will depend upon the nexus between the special education required and the special education provided, such that a unilateral placement is only appropriate if it provides an education “*specifically* designed to meet the *unique* needs” of the child.[[80]](#footnote-80)

In addition to this substantive standard, there is a notice requirement. Even where parents have established that a district failed to offer a FAPE and that they selected a placement that was appropriate for their child, the IDEA allows a Hearing Officer to reduce or deny reimbursement due to parents’ failure to provide appropriate notice of their intent to place the child unilaterally.[[81]](#footnote-81)

1. Analysis

Here, Parents argue that the Amended 2022-2023 IEP proposed by Franklin for Carly was not reasonably calculated to provide her with a FAPE, that Carroll is appropriate for her, and that they are entitled to reimbursement for their unilateral placement of Carly at Carroll for the 2023-2024 school year. Franklin contends that its Amended 2022-2023 IEP was reasonably calculated to provide Carly with a FAPE but that, should the BSEA disagree, Acton-Boxborough bears at least part of the financial responsibility for any reimbursement, as Parents moved to Acton toward the beginning of the 2023-2024 school year. Acton-Boxborough, in turn, asserts that both Franklin’s Amended 2022-2023 IEP and its own initial and Amended 2024-2025 IEPs were and are reasonably calculated to provide Carly with a FAPE, and that should the BSEA determine otherwise, Franklin would be responsible for any reimbursement and/or Acton-Boxborough should not be required to reimburse Parents because they failed to provide the requisite notice.

In March 2023, when Franklin proposed its Amended 2022-2023 IEP, the operative IEP at the time Parents placed Carly unilaterally, the Team had before it the independent evaluations administered by Dr. Doty, Dr. Radosti, and Ms. Brinkert, as well as Franklin’s own psychological, academic, and speech/language assessments. Ms. Kelly, Ms. Tangney, and Ms. Rocco also provided information regarding Carly’s progress and performance for the first six months of second grade. This information demonstrated that Carly had a firm grasp on fundamental literacy skills, including decoding and encoding, and strong phonemic and phonetic skills. She was making effective progress toward her math and communication goals, utilizing in the classroom the strategies she was learning in her pull-out services. She had become more comfortable participating in class and interacted well with her peers. It was evident, however, that Carly struggled with executive functioning and with math, particularly fluency and problem-solving, and that it was difficult at times for her to comprehend information presented orally without visual supports.

Dr. Doty’s neuropsychological evaluation, however, painted a different picture. In his July 2022 report, based on testing that had occurred in October 2021, Dr. Doty diagnosed Carly with dyslexia. This diagnosis was predicated largely on what Dr. Doty described as a significant gap between Carly’s academic achievement (which was mostly within the average range) and her cognitive abilities, which he described as superior. As discussed above, Dr. Doty omitted measures of cognitive verbal abilities in calculating Carly’s intellectual potential and did not report a FSIQ. Two experienced school psychologists explained that these decisions were neither reasonable nor appropriate for a child with Carly’s profile, and I credit their testimony. Dr. Doty viewed Carly’s performance through the lens of his unorthodox calculation of her cognitive ability, which likely led him to overestimate the severity of her disabilities.[[82]](#footnote-82) Moreover, Ms. Curry and other Franklin evaluators provided summaries of their testing and recommendations for Carly contemporaneous with their evaluations; by the time Dr. Doty wrote his report, nine months had passed since he had seen Carly (which was just two months after she had returned to school following COVID school closures). None of Franklin’s testing or other data indicated that Carly had a Specific Learning Disability in Reading. As such, it is unclear how relevant Dr. Doty’s results were for understanding her current needs as of March 2023. Furthermore, Carly’s progress throughout second grade demonstrates that the services and accommodations she received were appropriate and effective.

Based on the evidence before me of Carly’s scores in the average range on multiple measures of reading, Dyslexia Index scores in 2022 and 2024 indicating a low risk of dyslexia, and the credible testimony of Ms. Curry, Ms. Rocco, Ms. Teager, and Ms. Morrisey, among others, I am not persuaded that Carly’s dyslexia diagnosis was accurate. To the extent that Carly did present with dyslexia in July 2021, such condition was not impacting her in school as of March 2023. Furthermore, as Ms. Rocco indicated, Ms. Brinkert’s January 2023 diagnoses of a Mixed Receptive/Expressive Language Disorder and a Phonological Disorder were not supported sufficiently by her own testing. Ms. Brinkert did not testify at Hearing. I did not find Dr. Doty to be a credible witness – his written reports and his oral testimony were internally inconsistent. Moreover, Dr. Doty’s insistence that as of the summer of 2024, Carly’s dyslexia continued to impact her learning and required rules-based reading instruction was contradicted by his own colleague, Ms. McCuine, who did not disagree that Carly had dyslexia at some point, but characterized it as a remediated condition.[[83]](#footnote-83) The Team’s conclusion at the time the Amended 2022-2023 IEP was proposed that Carly was a student with cognitive abilities in the average range, presenting with a SLD in math and a mild communication disorder, is better supported by the evidence.[[84]](#footnote-84)

During the Team meeting in March 2023, Franklin responded to the credible information it had available and, based on Team members’ observations and Ms. Brinkert’s recommendation, added ESY services and executive functioning and vocabulary goals to the IEP. With the help of Dr. Nichols, the Team incorporated Dr. Radosti’s recommendations to further expand the broad range of accommodations in place to support Carly’s difficulties with oral language. Moreover, the Team considered Parents’ request for a substantially separate language-based program, as recommended by Ms. Brinkert, but rejected that request because it would have been overly restrictive for Carly. Based on the record, I agree that Carly is a child for whom a FAPE involves “integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade.”[[85]](#footnote-85)

Given Carly’s diagnoses of a SLD in Math and a mild communication impairment; the progress she had made between November, when she was first found eligible for special education, and March; and the Team’s responsiveness to new information at the March Team meeting, I cannot conclude that the content of her Amended 2022-2023 IEP was deficient in services, accommodations, or placement. In fact, Franklin carefully crafted an IEP that reflected Parents’ concerns, as well as Carly’s strengths, disabilities, progress, and potential for growth.[[86]](#footnote-86) Based on this “snapshot,” the Team proposed an IEP that was reasonably calculated to provide her with a FAPE in the least restrictive environment.[[87]](#footnote-87)

I need not address the appropriateness of Acton-Boxborough’s initial or Amended 2024-2025 IEP for the 2024-2025 school year, as Parents’ claims are limited to the 2023-2024 school year. As to the 2023-2024 school year, I note that Acton-Boxborough’s initial 2024-2025 IEP, which covered March 18 to June 10, 2024 (when the Amended 2024-2025 IEP was proposed), was based on limited information regarding Carly’s then-current presentation. Acton-Boxborough appropriately proposed an IEP comparable to Carly’s most recent IEP while, also appropriately, proposing and executing a comprehensive evaluation. As I have already found that Franklin’s Amended 2022-2023 IEP was reasonably calculated to provide her with a FAPE, I find that, given the absence of contemporaneous information suggesting that Carly required something different, Parents have failed to establish that so much of Acton-Boxborough’s initial 2024-2025 IEP that pertained to the 2023-2024 school year was deficient.

After convening the Team in June 2024, Acton-Boxborough proposed its Amended 2024-2025 IEP, which covered the last weeks of the 2023-2024 school year. Based on a battery of expressive and receptive measures, informal observation, and a record review, Acton-Boxborough’s speech/language pathologist Ms. Simmons concluded that as of June 2024, Carly did not have an expressive or receptive language disability and that she no longer presented with a communication impairment. Results of Carly’s Educational Evaluation indicated solid skills in reading and writing, with a weakness in reading comprehension and some difficulty in math fluency and problem-solving. Although Parents contend that these results demonstrate that Franklin did not provide adequate services, I note that at this time, Carly had not attended Franklin for approximately 10 months. Franklin personnel testified about their concerns that Carly had received inadequate instruction focused on reading comprehension at Carroll for the first half of the year, and she had not attended the ESY speech and language services proposed by Franklin over the summer. As noted in the Findings, above, it is difficult to parse out what portion of Carly’s growth (and regression) is attributable to Franklin and what portion to Carroll.

Following its evaluation, Acton-Boxborough convened a Team meeting on June 10, 2024 to develop the Amended 2024-2025 IEP, dated June 10, 2024 to June 9, 2025, which would have covered less than one month of the 2023-2024 school year in issue. At this meeting, Acton-Boxborough proposed an IEP that listed Specific Learning Disabilities in Reading Comprehension and Math (computation and problem-solving), goals in math, reading/writing, and executive functioning, and services in each Grid (detailed in the Findings, above) within a full inclusion program.[[88]](#footnote-88) Parents failed to establish that this IEP was not reasonably calculated to provide Carly with a FAPE in the least restrictive environment.[[89]](#footnote-89)

Because Parents failed to prove that the IEPs proposed by Franklin and/or Acton-Boxborough were not reasonably calculated to provide Carly with a FAPE, I do not reach the question of whether Carroll was appropriate for her. Nor do I reach the issue of financial responsibility.[[90]](#footnote-90),[[91]](#footnote-91)

**CONCLUSION AND ORDER**

After reviewing the record in its entirety in the context of relevant case law, I conclude that Parents failed to meet their burden to establish that the IEPs proposed for Carly for the 2023-2024 school year were not reasonably calculated to provide her with a FAPE. Therefore, Parents are not entitled to reimbursement from Franklin or Acton-Boxborough for their private placement of Carly at Carroll.

By the Hearing Officer:

 /s/ Amy M. Reichbach

Dated: March 24, 2025

1. “Carly” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public. [↑](#footnote-ref-1)
2. Parents labeled their exhibits A through J, but for consistency, their exhibits have been remarked with numbers. Parents also submitted additional documents labeled Exhibits P-A and P-B to be marked for identification; these were not admitted into evidence. On the first day of Hearing, one page was added to the end of Parents’ Exhibit 8 and labeled P-8(b). [↑](#footnote-ref-2)
3. On the first day of Hearing, the same page was added to the end of Franklin’s Exhibit 3 and labeled Exhibit FS-3(b). [↑](#footnote-ref-3)
4. On May 22, 2024, Parents filed a motion seeking an order that would permit their educational consultant to observe the third-grade program that had been proposed by Franklin for Carly for the 2023-2024 school year. Franklin opposed the motion on the grounds that the family no longer resided within Franklin. On June 13, 2024, the undersigned Hearing Officer allowed Parents’ motion. [↑](#footnote-ref-4)
5. Specifically, Franklin argued that upon Carly’s enrollment in Acton-Boxborough, Acton-Boxborough had an obligation to implement her last accepted IEP. Franklin also asserted that M.G.L. c.71B, § 5 (“the move-in law”), is inapplicable because Carly was placed unilaterally by Parents in an unapproved program, rather than placed by her Team in an approved special education program pursuant to an IEP. [↑](#footnote-ref-5)
6. The parties agreed to the terms of a protective order for peer information sought by Parents, which was ordered by the undersigned Hearing Officer on January 8, 2025. [↑](#footnote-ref-6)
7. I have carefully considered all evidence presented in this matter. I make findings of fact with respect to the documents and testimony, however, only as necessary to resolve the issues presented. [↑](#footnote-ref-7)
8. Dr. Doty holds a Doctorate in Child and Family Clinical Psychology, board certification in psychology, and Massachusetts licensure as a psychologist. He completed a Postdoctoral Fellowship in Child Clinical Psychology and Neuropsychology in 2011 and, before joining Achieve, worked at the Learning and Emotional Assessment Program at Massachusetts General Hospital and taught psychology at Harvard Medical School. Dr. Doty has been practicing for over 16 years, during which he has written multiple publications regarding learning disabilities, dyslexia, and language-based learning disorders. He continues to teach seminars about these subjects on an ad hoc basis and until recently served on the Massachusetts branch of the International Dyslexia Association. (P-1; Doty, I: 77-82) [↑](#footnote-ref-8)
9. Dr. Doty observed that Carly showed signs of distractibility, motor restlessness, hyperactivity, and verbal impulsivity throughout the appointment, but he did not diagnose her with Attention Deficit Hyperactivity Disorder (ADHD), as neither teachers nor Parents noted a significant attention-related impairment in her daily life. (P-2; Doty, I: 220-22) [↑](#footnote-ref-9)
10. The delay between testing and reporting of the results may have impacted the utility of Dr. Doty’s evaluation, particularly as he did not collect any information regarding Carly’s performance in the classroom or on curriculum-based measures in the intervening nine months. (Teager, IV: 890-93) [↑](#footnote-ref-10)
11. Conversely, Dr. Doty also reported that Carly’s “underlying intelligence is well developed.” (P-2; Doty, I: 225-26) [↑](#footnote-ref-11)
12. At Hearing, Dr. Doty testified that he chose not to report a FSIQ at all, rather than include one with a cautionary note regarding its validity, to avoid having someone who is “not nuanced in understanding the test results . . . latch onto that score inappropriately.” (Doty, I: 222-23, 233, 298-99) [↑](#footnote-ref-12)
13. Dr. Doty testified that calculating the intelligence of someone who, like Carly, has a communication disorder, using measures that are impacted by that disorder would be like using visual measures to assess the reasoning abilities of someone with visual impairments. (Doty, I: 234-35) [↑](#footnote-ref-13)
14. Dr. Doty diagnosed Carly with a learning disability in spelling despite the fact that all of her scores on WIAT subtests of written expression were in the average range, because of what he saw as a discrepancy between those average scores and her superior Nonverbal Index score. (P-2; Doty, I: 154-57) [↑](#footnote-ref-14)
15. Dr. Doty also recommended a range of accommodations, including extended time; verbal clarification of instructions or reading material; reductions in reading material or alternative means of learning new information; increased repetition, structure, and visual prompting for new vocabulary; classroom supports for executive function; assistance with organization and study skills; and the use of visual aids, demonstrations, and other supports for her math delays. (P-2; Doty, I: 103) [↑](#footnote-ref-15)
16. Ms. Curry holds a master’s degree in school psychology and Massachusetts Department of Elementary and Secondary Education (DESE) licensure as a school psychologist. She has worked as a school psychologist for 23 years, the last 12 in Franklin. (Curry, II: 420-21) [↑](#footnote-ref-16)
17. Ms. Tangney has a master’s degree in special education. She is Wilson-certified and holds DESE licenses in elementary education, grades 1-6, and special education, pre-K-8. She taught special education in Plymouth, Massachusetts from 2001 to 2009, then taught at Jefferson in the substantially separate language-based program before she began teaching second grade in 2022. (Tangney, III: 685) [↑](#footnote-ref-17)
18. Ms. Kelly holds a master’s degree in special education and is licensed by DESE in moderate disabilities, grades pre-K-8. She is in her thirteenth year as a special education teacher and liaison in Franklin, before which she worked at the May Institute with students with severe autism, as a clinical coordinator for behavioral and medically complex children, and as a developmental specialist in early intervention. (Kelly, II: 442-44) [↑](#footnote-ref-18)
19. Carly’s lower scores in the areas of listening comprehension (consistent with Dr. Doty’s findings on the WIAT) and oral language demonstrate a discrepancy between her listening comprehension abilities and her higher reading comprehension skills. (FS-18; Doty, II: 309-10; Kelly, II: 459-61) [↑](#footnote-ref-19)
20. Ms. Kelly testified that she typically administers the CTOPP to a student when there are concerns about dyslexia or reading disabilities. Reviewing Dr. Doty’s findings from the CTOPP, Ms. Kelly noted that Carly’s scores on all the administered subtests were within the average range. (Kelly, II: 463-64) [↑](#footnote-ref-20)
21. Carly had achieved 83 to 100 percent accuracy on math assessments, and on decoding, spelling, and encoding assessments within reading assessments, she received scores of 92, 88, and 96, respectively. She did well with sight words, and with retelling, she was 80 percent accurate, with visual support. (Tangney, III: 696-98) [↑](#footnote-ref-21)
22. Ms. Rocco holds a master’s degree in speech/language pathology, a Certificate of Clinical Competence from the American Speech/Language Hearing Association (ASHA), and both teaching and speech/language pathology licenses from DESE. She has worked in a variety of settings, including hospitals, private practice, and clinical instruction, and has held various supervisory roles. (Rocco, III: 514-17) [↑](#footnote-ref-22)
23. Ms. Rocco estimated that she has conducted approximately 300 to 400 evaluations during her time at Jefferson. (Rocco, III: 517-18) [↑](#footnote-ref-23)
24. Mother, Ms. Curry, Ms. Kelly, Ms. Rocco, and Ms. Tangney attended, as did Carly’s Team Chair and the Assistant Director of Special Education. (FS-5) [↑](#footnote-ref-24)
25. An FM system may be used for a variety of different difficulties students experience in the classroom setting, including auditory, attention, and comprehension deficits. (Rocco, III: 598) [↑](#footnote-ref-25)
26. Carly’s communication goal included, given prompts, that she will use taught strategies to complete receptive tasks such as following sentence-level directions, answering comprehension questions, and identifying key points given auditory information in 4 out of 5 opportunities. (FS-4; Rocco, III: 535) [↑](#footnote-ref-26)
27. Dr. Nichols holds a master’s degree and a doctorate, as well as a Massachusetts Audiology License and a Certificate of Clinical Competence from ASHA. Among other responsibilities, she is contracted by Franklin to provide observations, evaluations, and direct services for students. She has worked as an educational audiologist since 1999. Over the course of her career in public schools, Dr. Nichols has conducted hundreds of formal evaluations and thousands of informal observations, both of which include recommendations to school districts to support students’ access to information presented orally in the classroom environment. (Nichols, III: 651-54) [↑](#footnote-ref-27)
28. Dr. Nichols testified at Hearing that she was confused by Dr. Radosti’s inclusion of four pages of recommendations typically made for a student with an auditory processing disorder, despite his conclusion that Carly does not present with one. Dr. Nichols explained that it is possible for a student to have an auditory processing disorder that is secondary to another disorder, but it is outside an educational audiologist’s scope to create a diagnosis that is not documented in writing from the clinical audiologist. She, therefore, just noted that Carly had reduced performance, indicating increased difficulty with speech perception. (Nichols, III: 662, 668-71, 679-80) [↑](#footnote-ref-28)
29. Ms. Binkert administered the Test of Integrated Language and Literacy Skills (TILLS), the WORD Test 3 – Elementary, the Listening Comprehension Test, Second Edition, and a narrative language sample. (P-7) [↑](#footnote-ref-29)
30. At Hearing, Dr. Doty described Ms. Brinkert’s report as showing a variable profile, with some areas in the average to slightly above average range and others deficient. He opined that although Carly’s scores themselves are not “severely low,” their impact in totality would be severe and “very concerning,” given her intellect. Although Dr. Doty has never communicated with Ms. Brinkert regarding Carly, he testified that given his evaluation, as well as those conducted by Franklin and Ms. Brinkert, he would have supported Ms. Brinkert’s recommendation for a substantially separate language-based program for Carly as of January 2023. (Doty, I: 111-17, 205-07, 209, 258, II: 347) [↑](#footnote-ref-30)
31. Mother testified that Ms. Brinkert did not diagnose Carly with dyslexia because such diagnosis would be outside her area of expertise. (Mother, I: 70-71) [↑](#footnote-ref-31)
32. The Team meeting was attended by Mother, Ms. Kelly, Ms. Rocco, Ms. Tangney, and Dr. Nichols (virtually), in addition to an occupational therapist, the Assistant Director of Student Services, and the Team Chair. (FS-6) [↑](#footnote-ref-32)
33. At this meeting, Parents inquired about the IDEAS classroom, the substantially separate language-based program at Jefferson. The Team did not propose it because it was too restrictive for Carly. (P-8, P-8(b); FS-3, FS-3(b); Marano, III: 753-54) [↑](#footnote-ref-33)
34. Carly’s IEP already included direct speech/language services twice per week, and her communication goal already included self-advocacy and compensatory strategies to facilitate communication, both of which were recommended by Ms. Brinkert. Carly’s IEP also included the interprofessional collaboration Ms. Brinkert recommended. The Team adopted Ms. Brinkert’s recommendation to add a vocabulary objective under the communication goal but rejected her suggestion that specific programs be used to assist in articulation; according to Ms. Rocco, one program Ms. Brinkert mentioned was more appropriate for preschool level students or students with autism than for someone with Carly’s profile. (P-8, P-8(b), FS-3, FS-3(b); Rocco, III: 548-49, 600) [↑](#footnote-ref-34)
35. Accommodations for auditory processing, based on the review of Dr. Radosti’s report and with Nr. Nichols’ input, included decreasing the level of background noise, breaking down auditory information into manageable steps, incorporating occasional pauses to assist with comprehension, utilizing closed captioning for video content whenever possible, utilizing a classroom FM system (beyond just the trial that had initially been attempted), modeling and monitoring accurate pronunciation of sounds, using graphic organizers for oral and written language and executive function skills, and preparing for more complex verbal responses. (P-8, P-8(b); FS-3, FS-3(b), FS-9; Rocco, III: 550-52) [↑](#footnote-ref-35)
36. On the Acton-Boxborough enrollment form, Parents stated that they moved to Acton on November 17, 2023; on their proof of residency affidavit they listed November 15, 2023. (ABS-4, ABS-5) [↑](#footnote-ref-36)
37. Specifically, according to the October 2023 testing performed by Carroll and provided by Parents to Acton-Boxborough, Carly achieved the maximum score on phonemic awareness and had more sight words than would have been expected for someone her age. The decoding and encoding data provided was difficult for Acton-Boxborough personnel to understand, as it was specific to Carroll and different from standardized Orton-Gillingham leveling. Carly’s fluency appeared to be at the 78th percentile for rate, with accuracy at the 98 ½ percentile in October 2023; she was at the 73rd percentile for rate and 99th for accuracy in February 2024. Carroll’s Track My Progress data, a measure created by Carroll to monitor student- performance across Common Core domains, showed a percentile score of 55 in November 2023 and 68 in February 2024. For math, in January 2024, she was in the 55th percentile and in February 2024, she had dipped to the 32nd percentile. (ABS-6; Morrisey, IV: 793-97) [↑](#footnote-ref-37)
38. Acton-Boxborough proposed the following assessments: academic/achievement; speech and language; educational; observation; and psychological (both cognitive and social-emotional functioning). (ABS-9, ABS-10) [↑](#footnote-ref-38)
39. The Service Delivery grid of the initial 2024-2025 IEP did not break out speech and language services, listing 120 minutes/month each in the B-Grid and the C-Grid, but additional documents specified that speech and language services would be delivered 1x30 minutes/week. (ABS-10) [↑](#footnote-ref-39)
40. Ms. Teager holds an educational specialist degree in school psychology and has been a nationally certified school psychologist for 13 years, during which she worked within other public school districts. She is in her second year in Acton-Boxborough. (Teager, IV: 851-53) [↑](#footnote-ref-40)
41. Ms. Simmons hold a master’s degree in speech/language pathology and Massachusetts teaching and speech and language licenses from DESE. She is certified with her clinical competence from ASHA. Ms. Simmons has worked for Acton-Boxborough for over twelve years, before which she worked in rehabilitation institutes and hospitals. She has also had a private practice, wherein she consulted to the Carroll School as a private speech therapist, providing individual therapy to students that was funded by either parents or school districts. (Simmons, III: 619-21) [↑](#footnote-ref-41)
42. Ms. Simmons administered the following assessments: Comprehensive Assessment of Spoken Language-Second Edition (CASL-2); TNL-2; TILLS; Listening Comprehension Test-Second Edition (LCT-2); WORD Test; Test of Auditory Processing Skills-Third Edition (TAPS-3); and Language Processing Test-Third Edition (LPT-3). (ABS-14) [↑](#footnote-ref-42)
43. According to Ms. Simmons, on the TILLS, which had been given by Ms. Brinkert, Carly’s Vocabulary Awareness had improved into the average range, as had Story Retelling and Listening Comprehension. Carly’s Delayed Story Retelling also improved from the borderline area to the average range; on the Listening Comprehension subtest where her scores had been deficient according to Ms. Brinkert, Carly scored within the average range, and she also improved in all measures tested previously on the Word Test. On the LPT-3, Carly obtained a below-average score on the Associations subtest, but Ms. Simmons concluded that in light of her demonstrated strength in semantic organization, Carly was unlikely to have a disability in this area. (ABS-14; Simmons, III: 624-27) [↑](#footnote-ref-43)
44. Ms. Morrisey has a master’s degree in special education and 35 additional graduate level courses, mostly within literacy. She participated in a Crafting Minds group in the areas of dysgraphia, dyscalculia, and dyslexia. Ms. Morrisey holds DESE licenses in early childhood education, K-3, and special education, K-9, and is certified as a Wilson Dyslexia practitioner. She has also participated on an Acton-Boxborough task force focused on identifying students at risk for dyslexia and creating a multitiered system of support for identification and intervention; taken courses on remediating dyscalculia; and participated in an intensive course on Orton-Gillingham. Ms. Morrisey is in her fifth year at Acton-Boxborough, having spent over 20 years in education as a special education teacher, reading interventionist, and developer and director of language-based programs. (Morrisey, IV: 784-90) [↑](#footnote-ref-44)
45. Carly also obtained scores in the high average range on Supplemental Composites in Basic Reading, Decoding, and Phonological Processing; in the average range in Reading Fluency and Orthographic Processing; and in the low average range in Math Fluency. (ABS-13; Morrisey, IV: 804-06) [↑](#footnote-ref-45)
46. Ms. Teager testified that Carly’s WISC and WIAT scores both demonstrated this discrepancy between her cognitive abilities and her academic achievement in reading comprehension and math (specifically, fluency and problem-solving) but no such discrepancy in basic reading or reading fluency. (Teager, IV: 873-75) [↑](#footnote-ref-46)
47. The paperwork completed at this meeting included a DESE form that a Team fills out in connection with finding a student eligible for a SLD. It appears that Acton-Boxborough personnel erroneously checked of “written expression” in addition to math and reading comprehension. (ABS-19; Teager, IV: 872-73) [↑](#footnote-ref-47)
48. Dr. Doty administered the following assessments: Test of Nonverbal Intelligence, Fourth Edition – Form A (TONI-4); Conners Continuance Performance Test, Third Edition; Delis-Kaplan Executive Function System – Trail Making & Verbal Fluency Subtests; Rey Complex Figure Test; Expressive One-Word Picture Vocabulary Test; CTOPP-2; NEPSY-II Visuomotor Precision Subtests; VMI-6; WRAML3; KTEA-3; GORT-5 Form B; BASC-3 Parent and Teacher Reports; BRIEF2 Parent and Teacher Reports; and Multidimensional Anxiety Scale for Children, Second Edition, as well as clinical Interviews with Carly and her Parents. (P-3) [↑](#footnote-ref-48)
49. In his evaluation, Dr. Doty reported that Carly’s FSIQ of 109 on Acton-Boxborough’s recent WISC-V “places her overall intelligence in the average to high-average range.” At Hearing, however, he acknowledged that this FSIQ is actually within the average range, or the “upper end of the average range.” Dr. Doty noted that this FSIQ is similar to Carly’s score of 112 (79th percentile) on the TONI he administered. He also observed that consistent with his 2021 evaluation, Acton-Boxborough’s testing “shows a profile of relative strengths/above average skills in the nonverbal domain;” and that per this WISC-V, her verbal abilities had improved to fall solidly in the average range. (P-3; Doty, I: 121-25, 272-73) [↑](#footnote-ref-49)
50. Dr. Doty noted that although many of Carly’s verbal communication and literacy skills were now within or approaching the average range, “her dyslexia will continue to impact her decoding, spelling, and reading fluency.” (P-3) [↑](#footnote-ref-50)
51. Carly’s teacher at Carroll had not reported any attention problems in connection with Acton-Boxborough’s evaluation, but Dr. Doty testified at Hearing that it was “readily apparent” in the test setting that Carly was struggling with ADHD symptoms, and that he considered Parents’ report in his diagnosis. He pointed out that several Franklin teachers had observed that Carly’s focus, attention, and impulsivity required accommodations such as preferential seating and redirection, and observed that in the highly structured, small group setting at Carroll a student with ADHD might still function “pretty optimally,” which would not “discount the significance or pervasiveness of the symptoms.” (FS-7, FS-10, FS-17, FS-18, FS-19; Doty, II: 320-29, 371-72) [↑](#footnote-ref-51)
52. Dr. Doty reported that Carly’s school adjustment had improved since her transition to Carroll. He acknowledged at Hearing, however, that this conclusion was based on Parent report, as no social-emotional or school adjustment concerns had been raised by Carly’s first or second grade teachers in connection with his first report or Franklin’s evaluations, nor had they emerged in connection with any of Franklin’s evaluations. (P-2, P-3; Doty, I: 137-38, 183-93) [↑](#footnote-ref-52)
53. On cross-examination, Dr. Doty expressed that “looking at the big picture of what she received prior to Carroll and jumping to a language-intensive classroom . . . we don’t have a point-per-point comparison, but you would be hard pressed to convince me that . . . one or two times a week of pull-out instruction for speech/language therapy would provide anything near the level of intervention that a language-based classroom, plus two to three times a week of pull-out or inclusion support would provide.” (Doty, I: 275-76) [↑](#footnote-ref-53)
54. Ms. McCuine has a master’s degree in education and DESE certification in moderate special needs, K-8. She has worked as a private Orton-Gillingham tutor and as a teacher and director of language-based programs at both public and independent schools. (P-4; McCuine, II:367) [↑](#footnote-ref-54)
55. At the time of this observation, the teacher was wearing her FM system microphone; there were visuals throughout the classroom; and teachers were repeating, checking in with students, and scaffolding students’ learning. (Marano, III: 763-64) [↑](#footnote-ref-55)
56. Ms. McCuine did not observe Carly in her speech and language therapy group at Carroll. (McCuine, II: 390) [↑](#footnote-ref-56)
57. Asked to comment on Ms. McCuine’s observation, Ms. Rocco explained that she did not use checklists with Carly, but instead remediated her skills through strategies, particularly the use of visuals. (Rocco, III: 564-65) At Hearing, Ms. Tangney explained that in second grade, Carly would carry over into the classroom the specialized instruction she received through her work with Ms. Rocco. (Tangney, IIII: 701) [↑](#footnote-ref-57)
58. Ms. McCuine also testified that whereas she observed Carly receiving certain accommodations at Caroll that she believed were necessary for Carly to succeed, these accommodations were not in Franklin’s proposed IEP. Asked on cross-examination to review particular aspects of Franklin’s Amended 2022-2023 IEP, Ms. McCuine acknowledged that Franklin’s accommodations were, in fact, similar to those she observed at Carroll, though not exactly the same, and some aspects were missing. She acknowledged, too, that her observation occurred after the expiration of the Amended 2022-2023 IEP. (McCuine, II: 404-11) [↑](#footnote-ref-58)
59. See *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2008). [↑](#footnote-ref-59)
60. As Parents have not alleged procedural violations by either school district, I limit my analysis to the substantive components of a FAPE. [↑](#footnote-ref-60)
61. 20 U.S.C. § 1400(d)(1)(A). [↑](#footnote-ref-61)
62. See *Endrew F. v. Douglas Cty. Sch. Dist*., 580 U.S. 386, 401, 403 (2017); *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012). [↑](#footnote-ref-62)
63. See 20 U.S.C. § 1401 (9), (26), (29); 603 CMR 28.05(4)(b); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 201 (1982); *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.,* 518 F. 3d 18, 23 (1st Cir. 2008); *In Re: Student v. Arlington Public Schools,* BSEA #2503543 (Kantor Nir, 2024). Similarly, Massachusetts FAPE standards require that an IEP be “reasonably calculated to confer a meaningful educational benefit in light of the child’s circumstances” and designed to permit the student to make “effective progress.” See CMR 28.05(4)(b) (IEP must be “designed to enable the student to progress effectively in the content areas of the general curriculum”); *C.D. v. Natick* *Pub. Sch. Dist.*, 924 F.3d 621, 624-25 (1st Cir. 2019) (cert denied). [↑](#footnote-ref-63)
64. *Esposito*, 675 F.3d at 34 (internal citations omitted). [↑](#footnote-ref-64)
65. See 34 CFR 300.324(a)(i-v); *Esposito*, 675 F.3d at 34; *N. Reading Sch. Comm. v. Bureau of Special Educ. Appeals*, 480 F. Supp. 2d 479, 489 (D. Mass. 2007). [↑](#footnote-ref-65)
66. *Endrew F*., 580 U.S. at 402. [↑](#footnote-ref-66)
67. *Id*. at 403. [↑](#footnote-ref-67)
68. 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). [↑](#footnote-ref-68)
69. 20 U.S.C. § 1412(a)(5)(A); *C.D.*, 924 F. 3d at 631 (internal citations omitted). [↑](#footnote-ref-69)
70. *C.G. ex rel. A.S. v. Five Town Comty. Sch. Dist.,* 513 F.3d 279, 285 (1st Cir. 2008). [↑](#footnote-ref-70)
71. *Endrew F.,* 580 U.S. at 401. [↑](#footnote-ref-71)
72. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990) (internal quotations and citations omitted). [↑](#footnote-ref-72)
73. See 20 U.S.C. § 1412(a)(10)(C)(ii); *Sch. Comm. of Burlington v. Dept. of Educ.,* 471 U.S. 359, 369-70 (1985); *In re: Uma*, BSEA #2103885 (Reichbach, 2021); see also *Schoenfeld v. Parkway Sch. Dist.,* 138 F.3d 379, 382 (8th Cir. 1998) (“Reimbursement for private education costs is appropriate only when public school placement under an individual education plan (IEP) violates IDEA because a child's needs are not met”). [↑](#footnote-ref-73)
74. See 34 CFR 300.148. [↑](#footnote-ref-74)
75. See 20 U.S.C. § 1412(a)(10)(C)(ii); *Sch. Union No. 27 v Ms. C.*, 518 F.3rd 31, 34-35 (1st Cir. 2008); *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 31 (1st Cir. 2006). [↑](#footnote-ref-75)
76. See 20 U.S.C. § 1412(a)(10)(C)(ii). [↑](#footnote-ref-76)
77. See 20 U.S.C. § 1412(a)(10)(C)(ii); *Burlington,* 471 U.S. 359 at 369-70; *Schoenfeld,* 138 F.3d at 382; *In re: Uma*; *In re: Medfield Public Schools*, BSEA #077260 (Crane, 2007). See also *Florence Cnty. Sch Dist. Four v. Carter ex rel. Carter*, 507 U.S. 10, 15 (1993) (Parents who place their children unilaterally “are entitled to reimbursement *only* if a federal court concludes both that the public placement violated IDEA and that the private school placement was proper under the Act” (emphasis in original)). In addition to this standard, there is a notice requirement. [↑](#footnote-ref-77)
78. See *Florence Cnty.*, 507 U.S. at 13-14; *Mr. I. v. Maine Sch. Admin. Dist. No. 55*, 480 F.3rd 1, 23-24 (1st Cir. 2007); *Frank G. v. Bd. of Educ.*, 459 F.3d 356, 364-65 (2nd Cir. 2006). [↑](#footnote-ref-78)
79. *Mr. I.*, 480 F.3rd at 23-24. [↑](#footnote-ref-79)
80. *Gagliardo v. Arlington Cent. Sch. Dist*.,489 F.3d 105, 115 (2d Cir. 2007) (emphasis in the original) (citing *Frank G.*, 459 F.3d at 365 (internal quotation marks and citations omitted); see *Mr. I.*, 480 F.3d at 24. [↑](#footnote-ref-80)
81. See 20 U.S.C. § 1412(a)(10)(C)(iii). [↑](#footnote-ref-81)
82. For example, Dr. Doty diagnosed Carly with a SLD in spelling, despite her average range scores in written expression, because he viewed those average scores as discrepant with his characterization of her “superior” intelligence. [↑](#footnote-ref-82)
83. Even so, Ms. McCuine testified that Carly continued to require reading services and a reading goal. Further, I credit Ms. Morrisey’s testimony that it would be virtually impossible to remediate dyslexia within one year, particularly where for part of that year the student did not receive specialized instruction in a systemic reading program. [↑](#footnote-ref-83)
84. Ms. Curry acknowledged that the scores on the KBIT-2R she administered showed higher verbal than non-verbal intelligence (though both were in the average range), in contrast to other measures administered to Carly. However, in the context of additional information regarding Carly’s performance, she concluded – like the other evaluators – that her results indicated learning difficulties. [↑](#footnote-ref-84)
85. See *Endrew F.,* 580 U.S. at 401. [↑](#footnote-ref-85)
86. See 34 CFR 300.324(a)(i-v); *Esposito*, 675 F.3d at 34; *N. Reading Sch. Comm.*, 480 F. Supp. 2d at 489 [↑](#footnote-ref-86)
87. See *Roland M.*, 910 F.2d at 992. [↑](#footnote-ref-87)
88. Acton-Boxborough proposed additional math services, beyond those in its initial 2024-2025 IEP, based on the results of its evaluation. [↑](#footnote-ref-88)
89. See *Endrew F.,* 580 U.S. at 401; *C.D.*, 924 F. 3d at 631. [↑](#footnote-ref-89)
90. Had I found that Franklin’s Amended 2022-2023 IEP and/or so much of Acton-Boxborough’s initial or Amended 2024-2025 IEPs that applied to the 2023-2024 school year was deficient and Parents were entitled to reimbursement for their unilateral placement, I would have had to consider whether financial responsibility transferred at some point, and to what degree Parents’ failure to provide requisite notice to Acton-Boxborough might impact the amount of an equitable award. [↑](#footnote-ref-90)
91. Although Parents did not raise procedural claims in connection with Franklin’s failure to convene a Team meeting or propose an IEP for Carly in or about November 2023 – and that even if they had, they likely would not have been able to establish harm as a result of such error – Franklin did have a responsibility to take these actions. In the absence of written confirmation from Parents regarding their move prior to November 8, 2023, Franklin allowed the Amended 2022-2023 IEP to expire while, to its knowledge, Carly remained a Franklin resident. [↑](#footnote-ref-91)