

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

**In Re:** Student v.  
Greenwood<sup>1</sup> Public Schools

**BSEA # 1403564**

**DECISION**

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

Parents requested a Hearing in the above-referenced matter on January 27, 2014. Thereafter, by agreement of the Parties, the matter was scheduled for Hearing in April 2014. The Hearing was held on April 15, 16, 17 and 18, 2014, at DALA/BSEA, One Congress St., Boston, Massachusetts before Hearing Officer Rosa I. Figueroa. Those present for all or part of the proceedings were:

Student's father	
Student's mother	
Jeffrey Sankey, Esq.	Attorney for Parents
Alisa Hall	Attorney for Parents (co-counsel)
Kira Armstrong	Neuropsychologist
Lara Goldman	Special Education tutor
Paige Tobin, Esq.	Attorney for Greenwood Public Schools
Bruce Cole	Special Education Director, Greenwood Public Schools
Kathleen Polcaro	Educational Diagnostician/ Consultant to Greenwood Public Schools
Sue Kingman	Head of the Lower School, The Carroll School
Ann St. Pierre	Team Chairperson, Greenwood Public Schools
Rebecca Walkup	Elementary School Team Chairperson, Greenwood Public Schools
Kimberly Crowell-Oravec	Special Education Teacher, Learning Center Classroom, Greenwood Public Schools
Debra Kirby	School Psychologist, Greenwood Public Schools
Janet Mellon	Speech and Language Pathologist
Melissa Walsh	Special Education Teacher, Greenwood Public Schools
Joan Murphy	Elementary School Special Education Teacher, Greenwood Public Schools

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<sup>1</sup> Greenwood is a pseudonym for the LEA in the instant appeal.

Pamela Larson  
Alice Gillan  
Anne H. Bohan  
Carol Kusinitz

Reading Specialist, Greenwood Public Schools  
Reading Specialist, Greenwood Public Schools  
Court Reporter, Doris Wong Court Reporting Services  
Court Reporter, Doris Wong Court Reporting Services

The official record of the hearing consists of documents submitted by Parents marked as exhibits PE-1 through PE-36, and documents submitted by Greenwood Public Schools (Greenwood) marked as exhibits SE-1 through SE-33<sup>2</sup>; recorded oral testimony and written closing arguments. The Parties written closing arguments were received on June 16, 2014. The record closed on that date.

### **HEARING ISSUES:**

1. Whether the IEP and placement offered by Greenwood for the period from October 1, 2012 to September 30, 2013 as amended in March 2013 and May 10, 2013 was reasonably calculated to offer Student a Free, Appropriate Public Education (FAPE) in the least restrictive environment consistent with state and federal law?
2. Whether the IEP and placement offered by Greenwood in October 2013, covering the period from September 30, 2013 to September 29, 2014, forwarded to Parents in October 2013, following Student's unilateral placement by Parents at the Carroll School, was reasonably calculated to offer Student a Free Appropriate Public Education (FAPE) in the least restrictive environment consistent with state and federal law?
3. Whether Parents are entitled to reimbursement for their unilateral placement of Student at the Carroll School for the 2013–2014 school year.

### **POSITIONS OF THE PARTIES:**

#### **Parents' Position:**

Parents assert that Student is a bright young man with significant language learning disabilities, serious reading deficits and ADHD. They assert that he was not making effective progress commensurate with his abilities in the partial inclusion programs offered by Greenwood, leaving them no choice but to look for a different whole language-based program by the end of Student's second grade. Moreover, Parents assert that the results of Greenwood's three-year re-evaluations, and of the independent neuropsychological evaluation obtained in in December 2012, caused and supported their concerns that Student was falling further and further behind academically and that the gap between him and his same-age peers was not closing. Parents state that they began looking at programs such as The Carroll School mentioned in Dr. Armstrong's report in January 2013, and when Greenwood continued to recommend partial inclusion programs with modifications in November 2012, March 2013 and May 2013, they were convinced to place Student at The

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<sup>2</sup> School Exhibit #34 was marked for identification only.

Carroll School and then seek public funding. They informed Greenwood in the summer of 2013 and Student attended Carroll for third grade.

According to Parents, in September 2013, Greenwood continued to recommend a similar partial inclusion program with pull-out services for the remainder of the 2013–2014 school year, which program and placement they rejected. They assert that Student has made effective progress at Carroll and now seek reimbursement for this program.

### **Greenwood's Position:**

Greenwood maintains that it has always offered Student appropriate in-district programs that have afforded him a FAPE and deny that Greenwood cannot meet Student's needs appropriately. Moreover, it argues that Parents have accepted all of the proposed IEPs up to and including the 2012–2013. According to Greenwood, Student made meaningful effective progress as noted by the results of the evaluations and his second grade IEP progress notes.

Greenwood argues that prior to Student's unilateral placement none of Parents' experts viewed the proposed program at Alden Elementary School (Alden) in which all of the Learning Centers were operational by the first day of the 2013–2014 school year. According to Greenwood's expert, the proposed program at Alden was exemplary and would have met all of Student's needs.

Lastly, Greenwood challenges that Student has made effective progress at Carroll and argues that Parents are not entitled to reimbursement for their unilateral placement.

### **FINDINGS OF FACT:**

1. Student is a nine year-old resident of Greenwood. He has been diagnosed with a communicative Disorder, a Reading Disorder, Learning Disabilities–Not Otherwise Specified and Attention Deficit Hyperactivity Disorder (PE-12). He has significant difficulty with sustaining attention, impulsivity and fidgeting behaviors. Student also has a history of sensory and fine motor weaknesses (PE-2). He has been described as a friendly, engaging, gregarious, and loving child who enjoys playing sports and has friends in the community (SE-5; Mother). Some of his teachers in Greenwood described him as creative, curious and highly verbal, vibrant, happy, possessing a strong wealth of background knowledge in science and social studies (preferred areas for him), and that he loved coming to school (Gillan, Goldman).
2. Student began receiving special education services through Early Intervention at the age of one and was thereafter enrolled in the Greenwood Early Childhood program. He later entered Kindergarten in Greenwood and continued onto elementary school in the same district (SE-4; SE-5; SE-6A; PE-12; Parent). In Kindergarten Student demonstrated difficulty with rote learning including recognizing numbers, letters and with rhyming (Armstrong).

3. Dr. Ronald Becker of the Developmental Medicine Center at Children's Hospital conducted an evaluation of Student on March 15, 2011. Student was five years ten month old at the time of this evaluation (PE-12). Student's full scale IQ score, as measured by the Wechsler Preschool and Primary Scales of Intelligence—third Edition (WPPSI—III), fell in the 63<sup>rd</sup> percentile, solidly within the average range of intelligence. His verbal skills fell within the high end of the average range of intelligence with vocabulary falling in the superior range but with weaknesses on nonverbal measures. Academic testing however, showed significant deficits in reading and math as measured by the WIAT—III. He also demonstrated significant articulation deficits and evidenced some deficits with visual—motor integration skills, but with overall scores fell within the average range (PE-12).
4. Dr. Becker diagnosed Student with a Communication Disorder, a Learning Disorder—Not Otherwise Specified (NOS) and ADHD, and made numerous recommendations and suggested accommodations including provision of one—to—one language—based supports, multisensory, structured language instruction based on Orton—Gillingham (OG) principles, extended time for tests and assignments, frequent breaks with positive encouragement, and that the DIBELS be used to measure Student's reading progress. He also recommended that the school—based Team conduct a functional behavioral assessment to address unwanted behaviors and made numerous recommendations for implementation at home by Parents. Dr. Becker further raised the possibility of Parents' consideration of medication to address attention and impulsivity issues and for treatment of a possible sleep—disordered breathing syndrome (PE-12).
5. As a result of Dr. Becker's evaluation, Parents arranged for Student to receive private OG reading instruction twice per week (Mother).
6. Student participated in a partial inclusion program in Greenwood during first grade consistent with an accepted IEP covering the period from September 28, 2011 to September 27, 2012 (Parent). Under this IEP Student was offered thirty minute pull—out support for reading five times per week, communication services once per week for thirty minutes, occupational therapy twice per week for thirty minutes, and social/ emotional skills services once per week for thirty minutes. The IEP included goals in the areas of literacy, visual—fine motor/ pre—writing, social/ emotional, academic access and communication. (SE-25). The IEP notes that Student is most successful when tasks are broken down into smaller steps and he was given supports and cues to help regulate his attention (SE-25). Parents accepted this IEP in full (Mother).
7. Laura Goldman was Student's first grade special education teacher for Student's pull—out services and co—taught the inclusion classroom with the regular education teacher Nancy Amrhein. Ms. Goldman is certified as a special education teacher and has been trained in the Wilson Reading Program, Project Read, Lindamood Bell and Language—Based Writing through Landmark, and has also received training in differentiated instruction, test administration and other subjects (SE-29; Goldman).

8. Student's reading instructor in first grade was Mrs. Wallis, a certified reading specialist. She used the Orton-Gillingham methodologies in implementing Student's reading program (SE-13). Because Mrs. Wallis was only available four times per week, for a period of time Student received four times per week, thirty minute pull-out reading instruction sessions instead of the five times per week he was supposed to receive per his IEP. When the discrepancy was brought to Greenwood's attention, the District arranged for Ms. Goldman to tutor him once per week for half-an-hour to make-up the missing session (SE-29; Parent).
9. Ms. Goldman testified that in the fall of Student's first grade she administered the DIBELS nonsense words revealing that Student could only give one letter sound and no whole words of nonsense syllables, but that by the end of the 2011-2012 school year she found that he could give sounds to 26 letters within nonsense syllables, could read one word as a whole word, four nonsense words as whole words, and had improved in his ability to decode three letter words and blend sounds. She described Student as happy but lacking in confidence<sup>3</sup> (SE-6B; Goldman).
10. In the spring of Student's first grade, his regular education teacher Ms. Amrhein, administered an Early Reading and Literacy Assessment to ascertain Student's performance. Student was administered a literacy, math and an oral reading fluency assessment.<sup>4</sup> The desired rate of oral reading for a first grader was 65 words per minute but Student scored a three (3); that is, he could only read three words per minute by the spring of 2012 (PE-23; Armstrong, Goldman). In the Literacy Assessment, Student scored 30 out of 36 possible points in the first term, 23 out of 34 possible points in the second term and 21 out of 32 possible points in the third term. In math, he scored 24 out of 42 possible points in the first term, 31 out of 46 possible points in the second term and 31 out of 39 possible points in the third term (PE-23). According to Parents, this report was never sent to them nor was it ever discussed at a Team meeting (Parent).
11. According to Greenwood, by the end of first grade, Student achieved his occupational therapy goals, made progress in his social/emotional goals, improved his speech and intelligibility, and made some gains in reading. He however, could not access grade-level curriculum independently (SE-24).
12. Student was again placed in a partial inclusion program in Greenwood for second grade consistent with the previous year's IEP and later under an IEP covering the period from October 1, 2012 to September 30, 2013 (SE-25; PE-2).
13. Commencing in April 2012 and continuing through September 2012, Student participated in a re-evaluation (SE-20; SE-21; SE-22; SE-23; PE-14; PE-15; PE16; PE-17). Baseline assessments showed that Student could only identify 22 out of 26 letters and 22 out of 26 sounds (PE-2). On the DIBELS he correctly identified 13 out of 66 letters and sounds (*Id.*).

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<sup>3</sup> Ms. Goldman also testified that Student was not motivated by school because it was difficult for him (Goldman).

<sup>4</sup> In the oral reading fluency assessment the score is the number of words read correctly by the student in one minute (PE-23).

14. Judith Atanasov, Licensed School Psychologist, C.A.G.S., NCSP, conducted the psychological evaluation on April 30 and May 3, 2012 (SE-21). Ms. Atanasov administered the Wechsler Intelligence Scale for Children—fourth edition (WISC-IV) and reviewed student’s record. She noted that Student had been cooperative during the testing sessions. She noted that he displayed articulation errors and rapid speech, making it difficult to understand him at times. She also noted that he rushed through tasks and displayed difficulty sustaining attention when instructions were provided and while completing tasks. On the Wechsler Intelligence Scale for Children—IV (WISC—IV) Student’s scores were as follows: verbal comprehension (121 score) fell in the superior range, perceptual reasoning (102 score) and processing speed (97 score) were both in the average range, and working memory fell in the low–average range score. Student’s full scale score fell in the average range (FSIQ 104) but she opined that it did not provide an accurate reflection of Student’s true abilities because of the significant discrepancies between subtests (SE-21; PE-17).
15. Ms. Atanasov concluded that Student displayed superior verbal comprehension ability but low average working memory ability. She noted that Student displayed “strengths in his ability to understand and express higher level relationships between objects and ideas, his word knowledge, verbal comprehension and use of social judgment” (SE-21; PE-17). Ms. Atanasov opined that Student’s weaknesses in working memory could be attributed to his significant difficulties sustaining attention supporting a diagnosis of ADHD. She recommended accommodations to address Student’s impulsivity hyperactivity and inattention as well as to address his working memory weaknesses. She also noted that student would benefit from positive behavioral support system to increased attention were production and self–monitoring (SE-21; PE-17).
16. Lora Goldman, Special Education Teacher, administered the Woodcock-Johnson III Test of Achievement (WJ-III). Student’s reading level fell in the low range of achievement (SE-20; PE-14).<sup>5</sup> Specific scores were as follows:

	Percentiles	Standard Scores
Letter Word Identification	14	84
Word Attack	7	78
Passage Comprehension	0.4	60
Reading Fluency	3	72
Broad Reading	1	67 (SE-20; PE-14). <sup>6</sup>

<sup>5</sup> Ms. Goldman testified that she did not administer the reading fluency portion of the test but her report notes a standard score of 72 (3<sup>rd</sup> percentile) in reading fluency (PE-14; Goldman).

<sup>6</sup> Ratings in the WJ-III are as follows: Standard Score Range Classification  
 131 and above Very Superior  
 121-130 Superior  
 111-120 High Average  
 90-110 Average  
 80-89 Lower End of Average Range  
 70-79 Below Average  
 69 and below Low (SE-20; PE-14).

Ms. Goldman noted that to decode words Student required prompting for each letter sound. She noted that throughout the test he required re-direction to regain his attention and cues in the form of pencil taps (Goldman). He “required prompts to look at each word and to use picture clues and sounds to support task completion.” He also had difficulty when attempting to blend three sounds correctly and required auditory prompts for each sound. Regarding the reading fluency subtest, the report states that since Student was unable to read and correctly respond to four sample questions “the subtest was not administered” (SE-20; PE-14). Ms. Goldman noted that Student was developing reading skills in isolation but his deficits in accessing print significantly impacted his ability to access the general curriculum (SE-20; PE-14).

17. Student’s math skills presented with significant scatter, with strengths in applied problem solving and weaknesses in math facts of addition and subtraction and solving computational problems on paper. Inability to sustain visual attention was found to interfere with his performance. Scores in this subtest were as follows:

	Percentiles	Standard Scores
Calculation	5	75
Math Fluency	4	74
Applied Problems	86	116
Broad Math	33	93 (SE-20; PE-14).

18. In the Written Language Skills portion of the WJ-III Student obtained the following scores:

	Percentiles	Standard Scores
Spelling	6	77
Writing Fluency	8	79
Writing Samples	0.3	58
Broad Written Language	0.3	58 (SE-20; PE-14).

Ms. Goldman found that Student’s writing skills fell in the low range for his age. She noted that he attempted to spell words phonetically and when doing so he inserted additional sounds or omitted sounds most notably at the end of the word. Student’s difficulties in this area were further impacted by articulation errors and oral motor deficits. He had difficulty responding to questions in writing. The evaluator further noted that when asked to write a sentence regarding a picture, Student was only able to respond with one word and was not able to formulate a sentence verbally or in writing. He was also unable to produce a sentence using three specific words and instead just copied the words. Ms. Goldman noted that Student’s written language abilities were low compared to same age peers (SE-20; PE-14).

19. Student’s overall skills in the WJ-III fell in the 1<sup>st</sup> to 5<sup>th</sup> percentile according to Ms. Goldman, with specific scores as follows:

Percentiles	Standard Scores
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Academic Skills	5	75
Academic Fluency	1	66
Academic Application	2	70 (SE-20; PE-14).

20. Student’s performance showed that he could apply skills consistently when skills were presented in isolated word areas but overall his ability to apply academic skills fell in the below average range with particular difficulty in accessing skills efficiently and accurately in context. Student’s literacy skills were found to be at the emergent level, making contextual reading very difficult for him (SE-20; PE-14). Ms. Goldman noted that

When cued, he will try to apply learned phonemic skills to read three letter words in isolation, but lacks automaticity of these words, especially when needing to access them in context. He attempts with teacher support to apply basic phonetic rules to decode short vowel words, but has some difficulty holding onto three sounds to blend them sequentially or to write them. His sight word vocabulary appears to be impacted by his visual attention, specific learning weaknesses, retrieval, and working memory. In addition, with a teacher support and re-direction, [Student] is able to formulate and write simple sentence structures, but requires models and/ or templates to assist. Attention to capitalization and punctuation is inconsistent at this point. In math, [Student] appears to have an understanding of numbers for problem solving, but is unable to apply those concepts to manipulate numbers for computation. Working memory and attention also appear to impact this skill area (SE-20; PE-14).

21. Ms. Goldman found that Student’s fluency rate fell in the low end of the average range, while, his ability to apply academic skills fell in the average range. She concluded that Student’s academic skills pursuant to the Wookcock Johnson Test of Achievement fell within the below average range as compared to same age peers (SE-20; PE-14).

22. Given the discrepancies between Student’s superior verbal comprehension abilities as per Ms. Atanasov’s testing and academic skills deficits noted in Ms. Goldman’s test results, Parents became concerned that Student may not be able to make progress commensurate with his abilities Atanasov concluded that Student displayed superior verbal comprehension (Parent).

23. Student’s Occupational Therapy Assessment was conducted by Druanne Davies, OTR/L on June 4 and 5, 2012. Her report notes that Student’s progress in the areas of visual–fine motor and fine motor skills had been significant. At the time of the assessment, Student was able to complete appropriate age–level fine motor skills such as tying his shoes and cutting with scissors independently. His visual–motor integration and motor control of a pencil were also age appropriate. Ms. Davies concluded that Student’s visual skills for tasks that did not involve a language component appeared to be well–established however, he continued to demonstrate sensory sensitivity to taste, tactile, auditory and visual inputs. She noted that

Student's sensory seeking behaviors interfered with his daily functioning and she made several recommendations to assist Student with these needs (SE-23; PE-15).

24. Jan Mellen performed the speech and language evaluation in September 2012. Ms. Mellen is certified as a speech and language pathologist and has received training in Lindamood Bell (Visualizing and Verbalizing), LIPS, Talkies, Project Read, Telian, Fast ForWord and the CELF (Mellen). She administered the CELF-4, Peabody Picture Vocabulary Test-IV; Test of Auditory Comprehension of Language-3, Test of Auditory Perceptual Skills-3, Language Processing Screen, Goldman-Fristoe Test of Articulation, Comprehensive Test of Spoken Language-Pragmatic Judgment and conducted other informal assessments (SE-22; PE-16).
25. Ms. Mellen found Student's core language skills to fall within the low average range, with comprehension skills significantly higher than his language production skills. Ms. Mullen noted that although Student had progressed steadily in developing his skills, significant weaknesses in using language in context with articulation/ phonological area and in written language were noted. Variability with accessing his knowledge base in a timely and an efficient manner was also noted. Ms. Mullen stated that Student was working on expanding his repertoire of learned strategies and using them independently. Her report noted that Student used strategies such as retrieval and self-advocacy to support himself during her evaluation, and noted that he had a good understanding of social thinking behaviors (SE-22; PE-16).
26. Ms. Mellen recommended numerous instructional strategies including provision of a multi-sensory approach, simple visual support systems, using explicit direct language, movement breaks, visual organizers to assist with task completion and independence, wait time for information processing retrieval and thought development. To assist with the organization of information she recommended the use of graphic organizers, checks for processing, use of cues for keywords to identify and emphasize main ideas and provision of summaries of the information presented at the end of instructional periods. Appropriate sounds should be modeled as well as rate of speech, Student should be encouraged to self-talk, to use visual cues during presentation of auditory stimulus and use his learned clarification strategies when breakdowns in communication occur. Spoken information should be repeated and task completion should be untimed. Regarding the instructional setting, Ms. Mullen recommended provision of a supportive, predictable environment which minimized distractions and in which expectations and routines were established. She also recommended preferential seating away from sound sources, as well as the use of attention prompts (SE-22; PE-16).
27. The Team convened on October 1, 2012 to review the results of Greenwood's evaluations and plan for the next IEP (SE-5; PE-3). At the meeting, Parents shared their concern over Student's lack of progress in reading and overall academic performance the failure to close the educational gap between Student and his chronological peers. This IEP which covered the period from October 1, 2012 through September 30, 2013 offered weekly ten minutes reading consultation, weekly ten minutes occupational therapy combined with speech consultation, and fifteen minutes per week of special education consultation (PE-3). It also

offered Student ninety minutes, five days per week, of academic support in the regular education classroom for math, social studies, science, morning meeting, physical education, music and art (PE-2; PE-19; SE-4). The IEP also offered direct services in other settings as follows: five, forty-five minute reading services per week; five, thirty-minute literacy services; and four, twenty minute speech and language sessions. It also offered extended school year services for reading three times per week for sixty minutes and for speech two thirty minute sessions per week. The IEP provided goals in phonemic awareness/literacy, English language-arts, academic access and communication. The IEP offered to continue Student's placement in the same partial inclusion program he was attending in Greenwood (SE-5; PE-3).

28. On November 2, 2012 Parents consented to the partial inclusion program and placement in Greenwood but rejected the literacy and language arts goals in the IEP, and requested that the Reading Instruction/ [English Language Arts] be offered in a group with students of similar cognitive abilities as Student (SE-5; PE-3).
29. Merisa Walsh was Student's special education teacher in the co-taught classroom with Courtney McKinney, the certified regular education teacher (SE-29; Walsh). Ms. Walsh has received training in Wilson Reading, Lindamood Bell, Project Read and Social Thinking (SE-29; Walsh). She testified that she and Ms. McKinney used a number of language-based approaches in class and often consulted with Ms. Mellen, the speech and language pathologist, Ms. Kirby, the school psychologist and Ms. Davies, the occupational therapist. Ms. Walsh was also responsible for Student's literacy pull-out sessions during which she worked on phonemic awareness, following the strategies recommended by Ms. Mellen, and on writing. She also helped Student address organizational skills and helped him with his agenda (Walsh).
30. Alice Gillan provided Student's pull-out reading instruction during the 2012-2013 school year (Gillan). She is license in Reading pre-K to grade 12, has received training in the Wilson Reading program and is a certified Orton-Gillingham instructor which methodology she used with Student (SE-29; Gillan). Ms. Gillan testified that because the Orton-Gillingham methodology does not publish materials she used the SPIRE program, a published program used to implement the Orton-Gillingham methodology, which program she used with fidelity using the steps in sequence (Gillan). Prior to working with Student, Ms. Gillan had never used SPIRE. In addition to the Orton-Gillingham instruction using SPIRE, Ms. Gillan added SnapWords after Mother made her aware of this program. Additionally, in-class support offered Project Read, Reading Naturally and Reading Street (Gillan).
31. Ms. Gillan had a very cooperative relationship with Mother and when Mother approached her about using a reading program she had purchased for the home called "SnapWords", Ms. Gillan researched the program, thought that the program was exceptional and purchased it to use with Student and other children in Greenwood (SE-17; Gillan, Mother). Ms. Gillan testified that there was a "dramatic change" in Student's performance when she implemented the SnapWords program (*Id.*).

32. Ms. Gillan developed a home support plan in collaboration with Parent to further support Student's reading efforts in the home (SE-15; Gillan, Mother). Ms. Gillan trained Mother and prepared the materials for Mother to use in her delivery of the additional reading support in the home. Mother was expected to work with student for approximately half-an-hour, four nights per week. Ms. Gillan called Mother every Thursday night. She considered this home support very important to Student's success (Gillan; Mother). Mother testified that she worked with Student regularly using SnapWords and Ms. Gillan's materials (Mother).
33. During Student's second grade year he also received private speech and language services for which services Ms. Gillan was Greenwood's liaison (Gillan).
34. On November 19, 2012, Mother observed Student during a small group literacy session with Ms. Walsh and one other student who appeared to have Down Syndrome. Mother became concerned that said student's needs and abilities were significantly different than those of Student (PE-29; Mother). According to Ms. Walsh, the purpose of the small group ELA session was: to provide more individualized attention to Student while focusing on specific direct skills; to work on the IEP goals; and to support the second grade curriculum that student would be exposed to in the general education classroom so that he would be better prepared in that setting (Walsh). Ms. Walsh testified that the student with whom Student had been paired was developmentally delayed --, whereas Student's cognitive functioning fell within the average to above-average range with a verbal IQ of 117 but she opined that their skill sets were at a similar level. She stated that the student with Down Syndrome did not interfere with her ability to provide services to Student and opined that his presence allowed Student to shine and improve his self-confidence (Walsh; Armstrong).
35. The Team re-convened on November 26, 2012 to review the results of Student's three-year re-evaluation and Parents' concerns regarding the ELA pull-out grouping (PE-2; PE-29). At the meeting Parents expressed concern that three months into second grade, Student remained an "emergent reader", evidencing little progress and not having closed the gap between him and his same-age peers (PE-2).
36. The IEP resulting from the November 2012 Team meeting continued Student's placement in his partial inclusion program and noted that the Team would convene again on or about September 30, 2013 at which time Student's three year re-evaluation would be due. The Present Level of Educational Performance narrative section of the IEP states

Factors associated with specific learning disability in the area of reading impacts [Student's] ability to decode, encode, and segments text in order to read and understand written material in all content areas, in addition to reduced executive function skills, which hinder [Student] from effectively accessing the general education curriculum. His difficulty reciprocating and establishing meaningful and sustained interactions reduces his ability to have peer conversations and interactions (PE-2).

The November 2012 IEP noted that Student's communication issues "compromise his ability to participate in classroom activities both as a listener and speaker and to follow multi-step directions in sequence" (PE-2). It states that Student required prompting to use his skills, was unable to decode independently, and used picture cues to assist in identifying beginning sounds of words. It states that Student's sensory-seeking behaviors and reduced attention impact his functioning in the classroom and notes that Student was resistant to approaching difficult tasks (PE-2). In math, the IEP noted that Student overlooked symbols when solving mathematical operations on paper but was able to use strategies and "display his higher level thinking skills to solve problems verbally with manipulatives and pictures" (PE-2). The IEP described Student as kind, hardworking and respectful and states that he had "lots of friends in class" (PE-2).

37. The service delivery grid in the November 2012 IEP offered Student five times 90 minutes of academic support in the general education classroom and as direct services in other settings. Under part C of the grid it offered: five, forty-five minute reading sessions per week<sup>7</sup>; five, thirty-minute literacy sessions; and four twenty minutes speech and language sessions. Consultation services included: ten minutes weekly reading, fifteen minute weekly special education, and a ten minutes weekly occupational therapy and speech. The IEP also offered extended school year reading sessions three times per week for sixty minutes and two thirty minute speech sessions weekly (SE-2).<sup>8</sup> According to Ms. Gillan, the reason for the increase in the duration of the reading instruction was that Student was making such good progress (Gillan).
38. On or about November 28, 2012, Rebecca Walkup, Team Chairperson, wrote to Mother confirming Greenwood's agreement to change Student's ELA pull-out session so that he would not be paired with the student with developmental delays (PE-29). According to Ms. Walsh, the decision had been made to honor Mother's request but not because Greenwood agreed with it (Walsh).
39. The IEP resulting from the November 2012 meeting was forwarded to Parent on or about December 3, 2012 (SE-4; PE-2).
40. At Parents' request, Kira Armstrong, Ph.D., ABPP-CN, Pediatric neuropsychologist, conducted a neuropsychological evaluation of Student on December 13 and 20, 2012 (PE-6; PE-7; PE-8). Student was half way through his second grade at the time of this evaluation. In addition to obtaining a comprehensive history from Parent, reviewing records and reports of previous testing, Dr. Armstrong administered the following tests: Wechsler Abbreviated Scales of Intelligence (WASI); Boston Naming Test; selected subtests, NEPSY-II; California Verbal Learning Test-Children's Version (CVLT-C); selected subtests, Children's Memory Scale (CMS); Beery Developmental Test of Visual-Motor Integration (VMI);

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<sup>7</sup> An increase from the previous five, thirty minute sessions per week in the previous IEP.

<sup>8</sup> According to Ms. Gillan, the reason for the increase in the duration of the reading instruction was that Student was making such good progress (Gillan).

Developmental Test of Visual Perception; Tower of London; selected subtests, Wide Range Achievement Test –Fourth Edition (WRAT–IV); Gray Oral Reading Tests –4<sup>th</sup> Edition (GORT–4); Test of Word Reading Efficiency (TOWRE); selected subtests, Test of Written Language–3<sup>rd</sup> Edition (TOWL–3); and, selected subtests, Comprehensive Test of Phonological Processing (CTOPP). She asked Student to complete an informal school questionnaire and the Multidimensional Anxiety Scale for Children (MASC), and also asked Parent and Ms. Hines, Student’s teacher, to complete the Behavior Rating Inventory of Executive Function (BRIEF) (PE-7; PE-8). The purpose of this evaluation was to assess Student’s neurocognitive presentation and psychosocial, behavioral presentation (PE-7).

41. Dr. Armstrong noted that Student rushed through some items during testing, resulting in a drop in performance. He exhibited a great deal of executive functioning deficits associated with inattention and behavioral dysregulation. He had trouble initiating tasks, was impulsive, demonstrated reduced ability to sustain mental effort and reduced working memory. However, when able to resume attention with support, he demonstrated great wealth of knowledge and his comprehension appeared to be intact. According to Dr. Armstrong, the results of the evaluation presented a valid representation of how Student functioned on a day-to-day basis “in a quiet one-to-one setting that allows for frequent cues, breaks and redirection” (PE-7; Armstrong).
42. The cognitive assessments showed that while Student’s Verbal IQ fell in the above-average range and his Perceptual IQ in the average range, he performed below age, grade and cognitive expectations in reading and spelling tasks, falling within the Kindergarten to first grade level. He was able to spell only four words correctly: go, cat, boy and run, and his errors reflected significant deficits with phonological processing. He had significant difficulty decoding consonant and vowel sounds and also had difficulty blending sounds together. Dr. Armstrong found that Student had not memorized many two-letter sight words and was unable to read words like “in”, “at” or “do”. As Student attempted to spell words, he appeared not to hear phonemes resulting in his spelling the word “s-a-s” for “dress” and “s-a-t” for “shout”. According to Dr. Armstrong, this showed that Student was not hearing all of the sounds in words, and was unable to create decodable output (PE-7; Armstrong).
43. The results of Student’s academic functioning testing were:

<u>Test/Subtest</u>	<u>Standard Score/ Scaled Score</u>	<u>Grade Equivalent</u>
<b>WRAT–4</b> (Green version)		
Word Reading	81	K.9
Spelling	84	1.1
Math Computation	95	1.9
<b>TOWRE</b> (Form B)		
*Sighth Word Efficiency	68	1.0
Phonemic Decoding Efficiency	(not administered)	
<b>GORT–4</b>		
Reading Rate	5	<1.0

Reading Accuracy	4	<1.0
Reading Fluency	4	<1.0
Comprehension	4	<1.0

**CTOPP**

Elision	8	2.0
Blending Words	10	2.4
Rapid Digit Naming	8	2.0
Rapid Letter Naming	8	2.0 (PE-7).

44. Dr. Armstrong found that Student’s language–based tasks were impacted by his difficulties with phonological awareness and organization, and noted that Student’s verbal learning and memory was hampered by decreased mental effort, inattention and performance–based anxiety combined with a desire to please others. He scored in the average to above-average range on nonverbal tasks, where according to Dr. Armstrong, Student’s weaknesses were due to his inattentive approach to tasks and impulsive behavior. Similarly, visual learning and memory were impacted by inattention placing him in the low average to average range. Learning and delayed recall fell in the average range and immediate recognition in the low average range pursuant to the CMS Faces subtest, and working memory fell in the low average range (PE-7).
45. Dr. Armstrong’s evaluation showed that Student presented with expressive language deficits characterized by disorganized verbal output, word finding difficulties and significant articulation difficulties. She further noted significant discrepancies between Student’s neurocognitive abilities and his poor reading skills and stated that if Student’s reading was not addressed so that he could read at a level commensurate with his cognitive abilities he would never catch–up to his same age/ cognitive abilities peers. Because of Student’s receptive language deficits, his ability to consistently attend, follow, understand, retain and implement instructions was compromised. He also presented difficulties with verbal expression and with orally presented information impacting his ability to encode new information and efficiently access that information when he needed it to share his knowledge with others. In her opinion, Student could be expected to continue to struggle with recording assignments accurately, being able to take meaningful notes from classroom discussion, from the board or from text books, impacting his ability to demonstrate his knowledge or communicate effectively through written form (PE-7; Armstrong).
46. Dr. Armstrong diagnosed Student with a Communication Disorder, Dyslexia, Disorder of Written Expression and ADHD, and noted Student’s history of social performance –based anxiety, characterized by fears of humiliation and rejection (PE-7). She noted Student’s significant executive functioning deficits and discrepancies between his cognitive abilities and his poorly developed reading skills. Dr. Armstrong noted that Dyslexia was defined by two sets of skills, phonological awareness, and the ability to read or decode fluently. She explained that in general, children learned to read fluently by mastering site words and decoding skills, they then built reading speed through continued reading. Citing two studies she explained that a significant difference in word reading would make it impossible for children whose skills were not remediated to close the gap in fluency mainly because

children with reading impairments read so many fewer words than their typically developing peers. For example, a fifth grader reading at the 50<sup>th</sup> percentile will read an average of 601,000 words a year as compared to a student at the 10<sup>th</sup> percentile who will read 51,000 words a year and a student at the second percentile reads only 8,000 words per year. Dr. Armstrong warned that if Student's reading skills were not remediated it could translate to a life-long disability with serious implications for Student (PE-7; Armstrong).

47. Dr. Armstrong opined that Student had not made effective progress in reading despite the numerous interventions offered since Kindergarten, and expressed concern that Student was at risk for significant academic difficulties if his needs were not properly remediated (*Id.*). Her recommendations included placement in a language-based classroom/ program that allowed him to access grade level curriculum, with peers who had similar cognitive abilities, offered a high teacher to student ratio, and where the language-based interventions were provided across all academic settings throughout the day. She stressed the need for provision of individualized, specialized reading interventions and recommended that reading and writing should be areas of focus in all of Student's mainstream classes. Also, an empirically validated, multi-sensory reading program, such as Wilson or Orton-Gillingham, should be offered for one to three hours per day, by a properly certified instructor, on an individual or small group basis (one teacher to two students). Student's cohort in reading should perform at a cognitive level similar to Student's. She further recommended that additional interventions that focused on awareness and processing of phonemes, such as the LiPS Program, be used and stated that the reading goals should "be expanded so as to encourage (and document) [Student's] ability to close the gap between himself and same-aged peers" (PE-7).
48. Dr. Armstrong also recommended ongoing Speech and language therapy that focused on organized verbal retrieval and output. She also made numerous other recommendations for accommodations (PE-7). Regarding Greenwood's proposal that Student receive extended day reading services, Dr. Armstrong opined that this would be "highly ineffective" to address Student's reading issues. She explained that because of Student's disabilities, he struggled to attend to instruction during the school day and by the end of the day would not have the mental capacity to focus on the skill set most challenging to him (Armstrong). Dr. Armstrong did not support placing Student in a partial inclusion program and instead recommended that he be placed in a program such as The Carroll School or Landmark (PE-7; Armstrong).
49. Because of the impact that Student's disabilities had on his day-to-day life outside school, Dr. Armstrong recommended that Parents pursue a private speech and language evaluation for Student and that they engage him in cognitive behavioral therapy (CBT) to address Student's anxiety (PE-7).
50. Mother testified that out of concern over Student's lack of progress, Parents applied for Student's admission to The Carroll School on January 2, 2013 (SE-28; Mother).
51. On January 3, 2013, Parents fully accepted Greenwood's proposed IEP and placement for the period from October 1, 2012 through September 30, 2013 (SE-4; PE-2).

52. Student's Team reconvened on March 14, 2013 to discuss Dr. Armstrong's evaluation report and recommendations which had been received by Greenwood on March 1, 2013. No other evaluation or report was discussed (Walkup). Dr. Armstrong attended the meeting and stated her recommendation that Student required a small group, language-based program that used language-based interventions and methodology across settings throughout the day with similarly disabled peers (Armstrong). According to Parent, Bruce Cole (Director of Special Education in Greenwood) stated that Greenwood could meet Student's needs but that it did not have a language-based program for third graders (PE-27; Parent).<sup>9</sup> Mother testified that Mr. Cole had mentioned that language-based programs were not available in Greenwood until fifth grade (PE-27; Mother). Instead, Greenwood used the term "language-based team" referring to a team of individuals who provided support inside and outside the regular education classroom, using consistent language and small group/ whole group instruction for students requiring language-based instruction (Walsh). Whole group instruction in the inclusion classroom was provided to the approximately 20 students in class, a small fraction of whom carried a diagnosis of language-based learning disability (Walsh).
53. The March Team proposed an amendment to the IEP for provision of one additional pull-out ELA service increasing this service to an hour each day, and also proposed additional accommodations including the use of a scribe, strategic seating, check-ins for comprehension of instructions and tasks, modified testing, and additional time for completion of assessments and assignments (SE-3).
54. Mother testified that she did not see Student exhibit the level of progress Greenwood was reporting at school. At home Student did not demonstrate knowledge of all the letters or sounds of the alphabet and could not write a sentence on his own even though his progress reports indicated that he had mastered these skills and was able to complete those tasks (PE-20; Mother). After a year of working with Student in the home using Ms. Gillan's materials and SnapWords, Mother notified Ms. Gillan that she could no longer continue to provide the intensive home instruction (Mother). Ms. Gillan testified that when the home services were reduced, Student's progress declined noticeably (Gillan).
55. According to Ms. Gillan, Student was unable to make meaningful progress in reading solely with the reading support offered during the school day. She therefore recommended that extended school day services be added to Student's IEP (Gillan). By the end of the 2012-2013 school year, Student's reading level as measured by the Slosson Oral Reading Test was at the 1.6 grade level (SE-21). While Student had progressed during the school year, by the end of second grade he was still behind grade expectation (Adams).
56. Parent arranged for Student to participate in intake assessments at the Carroll School on March 22, 2013 (SE-33). The Woodcock Reading Mastery test was administered reflecting

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<sup>9</sup> Joan Murphy, co-teacher in one of Greenwood's inclusion classrooms, testified that there was a substantially-separate language-based classroom in Greenwood (Murphy).

that Student's Word Attack (score of 91) was within the average range; an improvement when compared to Greenwood's testing of September 2012 (score of 78) (SE-20; SE-33).<sup>10</sup>

57. On March 27, 2013, Greenwood forwarded to Parents the proposed IEP Amendment that followed the March 2013 Team meeting, and on April 22, 2013, Parents rejected the IEP Amendment. As a result, the additional pull-out literacy service was not implemented (SE-3; Parent).
58. Starting on September 28, 2012 and over the course of Student's second grade Ms. Gillan administered the "Ideal Curriculum Based Measurement" (DIBELS). Using second grade standards, in September 2012 Student read six words correctly in one minute with five errors, on October 12<sup>th</sup> he read nine (9) words correctly in one minute with four (4) errors, on October 26<sup>th</sup> six (6) words correctly in one minute with and seven (7) error, on November 8, 2012 he read 12 words correctly in one minute with 7 errors (PE-35; Gillan). Because of Student's struggles with the second grade material, in December 2012 Ms. Gillan used first grade passages. He demonstrated little progress even with the first grade passages, reading sixteen (16) words correctly with three (3) errors on December 21, 2012, to nineteen (19) words correctly with six (6) errors on April 25, 2013 (PE-36; Gillan).
59. Student's spring 2013 Early Reading and Literacy Assessment and Oral Reading Fluency test conducted by Greenwood showed that Student was reading twenty (20) words per minute correctly instead of the 107 correct words per minute expected or desired of a second grader. Student's twenty words per minute represented an increase of seventeen (17) words per minute from the previous year's testing<sup>11</sup>, when reading grade level text; the expected increase per year was approximately 42 words. By the end of second grade, Student was reading only two thirds of the expected number of words for a first grader (PE-21; PE-23; Walsh).
60. Student performed well in the Math Assessment for the first, second and third terms. His scores were as follows: in the first term he obtained 20 out of 25 possible points; second term he obtained 45 out of 48 possible points; and, in the spring term, he obtained 38 out of 47 possible points (PE-21).
61. On the spring 2013 "Maze Assessment", which measures silent reading comprehension Student correctly identified four (4) out of a seventeen (17) word goal for a second grader (PE-21; Walsh). This report was neither forwarded to Parents nor mentioned in any of Student's IEPs (PE-21).
62. Student's grades for second grade show minimal progress across all reading and literacy criteria except for the category of "identifies poetic elements" in which he obtained a

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<sup>10</sup> Parents did not share the result of this intake testing with Greenwood.

<sup>11</sup> In the Oral Reading Fluency test conducted in the spring of 2012, the end of first grade, Student had read three (3) correct words per minute. The expected correct number of words per minute for a first grader would have been 65 (PE-23).

Proficient mark in the third term. In four of the remaining categories, he achieved a “Beginning” mark indicating that he “showed little understanding of the concept or skill” in “identification of genre and author’s purpose for writing”, use of “phonetic skills to decode written English”, reading with “fluency and expression”, and using “evidence from the text to show understanding of literature” (PE-22). In the two remaining categories he improved slightly to “Developing” indicating that he had gained “some understanding” but “errors or misunderstandings still occurred” by the final term in the remaining two categories involving ability to “ask and answer questions about key details” and “describing characters, setting, plot and point of view”. He was unable to write effectively for a variety of purposes and was still developing revision and editing skills, but was able to participate in shared research and writing projects and only in the last term used digital tools to produce writing (PE-22). Ms. Gillan however, was very proud about Student’s writing progress and the one-and-half year reported progress in reading (SE-12; SE-16; Gillan). In math, he showed greater capacity in most areas except in the ability to add and subtract within 20 fluently, and in subtracting multiple digit numbers (*Id.*).

63. At the end of Student’s second grade year, Parents remained concerned about his lack of progress and had lost faith in Greenwood’s ability to address and remediate Student’s deficits and properly individualize his program (Mother).
64. Greenwood reconvened Student’s Team on May 10, 2013, recommending additional extended school year services so that Student could maintain his skill development during the summer months. The Team recommended increasing Student’s reading services to three times per week for 120 minutes and speech and language to twice per week for thirty minutes from July 9 to August 15, 2013 (SE-2). Parent accepted the ESY services on May 20, 2013 (SE-2; Mother).
65. Between July 9 and July 25, 2013 and August 13 to August 14, 2013 Student participated in the ESY program in Greenwood (PE-18). He missed a portion of the program due to a previously scheduled family vacation (PE-18; Mother, Adams). According to his tutor, Mary Jane Banville, Student

... demonstrated that he [was] able to decode words containing short vowel sounds and consonant diagraphs in one syllable words with at least 80% accuracy. He ha[d] some difficulty with accurately identifying and producing sounds of the phonemes, especially/ ch,/ sh/, r/, th/, and blends containing I. [Student] made progress over the course of the tutoring sessions and by the end of the sessions was able to pronounce these sounds correctly in 3 out of 5 attempts. Given a syllable or word containing up to four sounds, [Student] was able to blend the sounds together and segment the sounds with modeling with at least 70% accuracy. He [wa]s able to spell words containing closed (cvc, cvcc and ccvc) syllables correctly sequencing sounds when encoding words containing short vowels and consonants blends attaining at least 70% accuracy with guidance. He also [wa]s able to read words containing the exception to the closed syllable pattern (old, ild, ost, d and olt) with at least

60% accuracy in isolation and in context. When reading or listening to material read aloud, [Student wa]s able to verbally answer literal questions with 80% accuracy and inferential questions with better than 70% accuracy (PE-18).

66. On July 18, 2013 Mother wrote to Bruce Cole, Greenwood's Director of Special Education, informing Greenwood that Parents rejected Student's IEP and placement for the 2013-2014 school year, and stating that they intended to place Student unilaterally at The Carroll School and seek financial reimbursement for this placement from Greenwood (PE-26; Mother). Parents also paid the non-refundable deposit to The Carroll School
67. On August 15, October 23 and November 1, 2013, Phoebe Adams, Ed.M., conducted an Educational evaluation of Student at Parents' request. Ms. Adams holds a masters degree in reading language and learning disabilities and she has evaluated over 800 language-based learning disabled children over the years. At present, she is the Senior Education Specialist and Director of Clinical Education at the Center for Children with Special Needs, Tufts-New England Medical Center (CCSN) (PE-9; Parent, Adams). Parents had contacted Ms. Adams to conduct the evaluation in June 2013 (Adams).
68. Ms. Adams reviewed the CCSN responses provided by Parent and teacher, interviewed Parent and Student, reviewed Student's records including Dr. Armstrong's evaluation<sup>12</sup>, observed Student at The Carroll School, observed Greenwood's proposed program at the Alden School, and conducted a formal evaluation.
69. Based on her assessments, which included the Elision measure of the CTOPP and other measures for predicting reading success, Ms. Adams found that Student was performing between one-and-a-half (1½) and two-and-a-half (2½) years behind his same age peers in reading, spelling and written expression, and was performing one (1) year behind in math computation. His single word reading and word analysis skills fell within the first percentile, and he struggled to read connected text at the first (1<sup>st</sup>) grade level (GORT-4, SRI-A). Student struggled with all aspects of written language, including recalling the alphabet, handwriting, letter and word spacing and encoding. On the CTOPP, measuring phonological awareness, Student had tested in the 25<sup>th</sup> percentile in Dr. Armstrong's evaluation in December 2012, but he scored in the second (2<sup>nd</sup>) percentile on the same measure when tested by Ms. Adams in August 2013 (PE-10). During the summer preceding her evaluation, Student had been off Adderall, a medication he had previously taken (Adams).

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1. <sup>12</sup> From these she learned that Greenwood's evaluation had identified issues with working-memory, attention, uneven cognitive skills, and below average to well-below average academic achievement skills and from Dr. Armstrong's she learned that Student's profile included: Average to above-average cognitive functioning; ongoing deficits in expressive language skills; above average visual spatial/non-verbal tasks which were hampered by organizational deficits; very severe language-based learning disability; social and performance anxiety symptoms characterized by fears of humiliation and rejection; ADHD; and that he met criteria for reading disorder or dyslexia, disorder of written expression and expressive language disorder (PE-10).

70. Ms. Adams expressed concern over the discrepancy between Student’s performance per Greenwood reports and her assessment. While Greenwood’s progress reports noted that Student was able to decode and encode CVC words in isolation with 95 percent accuracy and segment and blend CVC words with 100 percent accuracy, in her assessment, Student was unable to apply those skills to the CVC words presented on standardized measures, indicating that those skills were not automatic for him. Student struggled with pre-primer level text and was only able to read two words on a single word reading test during her assessment. This suggested to her that it was improbable that he would have been able to decode and encode CVC words with the level of accuracy Greenwood claimed (PE-10; Adams). She opined that he displayed the types of reading skills challenges characteristic of individuals with Dyslexia. She noted that

The discrepancy between that which [Student] can understand through “piecing together” information and guessing for context (stronger) and that which he can understand through decoding (weaker) is evident throughout this protocol and has implications for class structure, peer grouping and presentation, as well as service delivery (PE-10).

In comparing her findings to the testing done in 2012, Ms. Adams concluded that Student had made limited progress and had regressed in some areas. Written expression was found to be significantly reduced with variability in spelling skills and overall ability falling in the below average range. Math skills assessments reflected Student’s difficulties with “fluency, automaticity and recall of math facts and procedures” but found him to present relative strength in numeration and conceptual skills. Ms. Adams noted that Student presented weak math problem solving skills on tasks that involved basic addition, subtraction and basic multiplication facts (PE-10).<sup>13</sup>

71. Student started third grade, the 2013–2014 school year, at the Carroll School in Waltham, MA (PE-26; PE-32).

72. The Carroll School (Carroll) is a private Massachusetts Department of Elementary and Secondary Education (DESE) approved special education school which follows the Massachusetts Curriculum Frameworks (MACF) (Susan Kingman). Carroll’s programs are specifically designed to address the needs of students whose primary diagnosis is a language-based learning disability and who have average to above-average cognitive abilities. Children who exhibit significant social, emotional or behavioral challenges are not admitted. Carroll follows the Orton–Gillingham reading approach and offers language-based instruction which is embedded within the curriculum across all educational settings throughout the day. All students at Carroll participate in a daily one-to-one reading tutorial. Students at Carroll are grouped in small classes of no more than eight (Kingman).

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<sup>13</sup> Ms. Adams report, which includes her November 2013 observations of Carroll and Greenwood, did not become available until after the September 2013 Team meeting had been convened by Greenwood (Mother).

73. At Carroll, Student received three language periods per day, including English language arts (ELA), RAVE–O and the reading tutorial, in addition to science, math, physical education, art or music, and “cognitive development” which class focuses on logical reasoning, visual thinking and movement skills. According to Ms. Kingman, Head of the Lower School at Carroll since 2000, the social studies curriculum is embedded in one of the three language periods, and the speech and language instruction is also embedded within one of those daily language periods<sup>14</sup> (Kingman). Because of Student’s severe needs, he was assigned to “the classroom with the most learning needs and with children who have the most depressed skills and the most complexity of disabilities” (Kingman).
74. Ms. Kingman testified that when Student arrived at Carroll, he demonstrated lack of confidence in his abilities and appeared hypersensitive to how he compared to his peers. He demonstrated very low frustration tolerance and engaged in avoidance behaviors. His reading readiness skills were also very low (Kingman).
75. According to Ms. Kingman, during his first year at Carroll, Student progressed effectively in his verbal and written output, his spelling improved significantly, he began speaking in complete sentences, and his self–confidence has increased. In Orton–Gillingham, he has been able to advance through levels. He also became more willing to take risks (PE-31; Kingman).
76. Greenwood convened Student’s Team on September 30, 2013 (PE-1; SE-1). Anne St. Pierre chaired the Team. Also present were: Dawn Hastings–Ely the English Language arts special education teacher, Pamela Larson, the reading specialist and Jacqueline Biagini, the speech and language pathologist, all of whom would be responsible to provide services to Student in third grade (SE-1; Larson). Bruce Cole, Debra Ann Kirby (school psychologist), Merissa Brooke Walsh (special education teacher), Ellie Hickey (advocate) and Parent were also present at the Team meeting<sup>15</sup> (SE-1).
77. During the Team meeting, Greenwood reviewed Student’s performance, noting that by the end of second grade Student was able to decode and encode CVC words in isolation with 95% accuracy; could segment and blend CVC words with 100% accuracy, CCVC and CVCC words with 80% accuracy, CVCe words with 100% accuracy and CCVCe words with 60% accuracy. The Team also indicated that Student could discriminate beginning sounds at 90% accuracy, ending sounds at 80% accuracy and rhyming words at 90% accuracy. Greenwood also reported that Student could read a 1.3 level book at 29 words per minute with 12 errors. On the Slosson Oral Reading test, Greenwood stated that Student had scored a 1.6 grade equivalency by June 18, 2013 and could read 35 words per minute correctly with six errors on a Grade 1 IDEAL curriculum–based measure. After listening to a story, Greenwood noted that Student could answer comprehension questions with 80% accuracy.

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<sup>14</sup> Kathleen Porcaro’s (Greenwood’s expert) observation of Student at Carroll notes that a speech and language pathologist was teaching Student’s ELA during her observation (SE-8).

<sup>15</sup> Janet Lynne Mellen (speech and language pathologist) is named in the invitation sheet but she did not attend the meeting (SE-1).

Comprehension was an area which Greenwood recognized was significantly stronger than Student's overall language production skills. With prompting, Student could write a complete sentence, and when using a graphic organizer, he could complete five sentences and use appropriate punctuation in three (3) out of five (5) instances. When assisted with reading the directions and with word problems Greenwood reported that Student could solve math problems with 80% accuracy. In large groups Student required prompting to initiate tasks but did so in two (2) of five (5) instances in the classroom. Fine motor skills, motor control and visual/motor integration skills were found to be age-appropriate. He however continued to display "sensory sensitivities to tactile, taste, visual, and auditory inputs" and it was noted that Student's sensory seeking behaviors interfered with his daily functioning (PE-1; SE-1). Greenwood's staff opined that overall Student was able to follow routines and functioned well in the classroom (SE-1).

78. The Team recognized that Student was making slow progress and required additional supports moving forward (St. Pierre). The report of Ms. Adams' assessment was not made available to the September 2013 Team because it was not yet available (Mother).
79. The IEP resulting from the September 30, 2013 Team meeting, covering the period from September 30, 2013 to September 29, 2014, offered Student a partial inclusion program in Greenwood with numerous accommodations, participation in a six week, extended school year program (ESY) and special education services as follows: fifteen minutes each, daily consultation services by the reading and special education staff, by the special education and classroom teacher and by the occupational therapy and speech and language therapist; and Grid B offered academic support 90 minutes each day by the special education teacher and the classroom teacher. Under Grid C, direct services outside the regular education classroom, the IEP offered: 45 minutes daily reading instruction; three thirty minutes sessions weekly of extended day reading instruction; 90 minutes per day of English language arts instruction; two thirty minute sessions per week of speech and language; and extended school year services included 120 minutes of reading weekly and twice weekly half hour sessions of speech and language (SE-1; PE-1). The IEP further noted that mathematics and English language arts instruction would be modified (*Id.*).
80. According to Ms. Gillan, the extended day reading program was necessary to support Student in light of Mother's inability to continue to provide home-based reading support. She acknowledged that in order to make meaningful progress in reading Student required more than what was available through the school-day reading program (Gillan).
81. The September 30, 2013 IEP was forwarded to Parents on October 3, 2013. Parents understood this IEP to offer essentially the same services Student had received in second grade, under which they believed Student had failed to make effective progress. The only addition to the prior IEP was three thirty (30) minute sessions weekly of after-school reading service. Ms. Larson, the proposed reading tutorial service provider, had not used the SPIRE program previously and was not familiar with the SnapWords program that had been

successfully used in school and at home during Student's second grade (Gillan; Larson). On November 1, 2013 Parents fully rejected the proposed IEP and placement<sup>16</sup> (PE-1; SE-1).

82. At Hearing, Dr. Armstrong reviewed the IEPs of the students that would have become Student's peers in the proposed classroom. She opined that of the seven children only two would have been appropriate peers for Student (Armstrong).
83. Ms. Adams observed Greenwood's proposed program for Student for the 2013-2014 school year on November 1, 2013 (Adams). When arranging to make the observation with Anne St. Pierre, Student's Team chairperson, Ms. Adams specifically requested to view the program proposed for Student (Adams). Ms. St. Pierre provided Ms. Adams with the proposed tentative schedule for Student, which identified Ms. Murphy as the inclusion special education teacher and Ms. Doel as the regular education teacher (PE-19). Ms. St. Pierre described the proposed program as a partial inclusion classroom consisting of approximately 23 students, seven (7) of whom were on IEPs, and whose disabilities included, autism spectrum disorder, non-verbal learning disabilities, developmental delay and two of the students carried a diagnosis of dyslexia (St. Pierre). Student's schedule offered two (2) math sessions per day, one (1) "pull-out" phonics-based reading instruction per day, and one (1) "pull-out" English language arts session per day. The schedule also showed that speech and language would be offered four times per week, physical education twice per week, and art, science and social studies once per week (PE-19). Based on this schedule, Ms. Adams requested to observe a substantially separate classroom referred to as a "language-based classroom" (PE-10). Following a conversation between Mr. Cole and Ms. St. Pierre, the day of the observation Ms. St. Pierre offered to show Ms. Adams a different classroom which she described as "another option" for Student (Adams). Ms. St. Pierre described the new English language arts "pull-out" classroom taught by Ms. Kimberly Crowell-Oravec (Oravec) as designed to provide additional support to students who were struggling in the mainstream setting. Ms. Oravec's classroom was not being proposed for Student (PE-10; Adams). According to Ms. St. Pierre, this decision was prompted at least in part by a desire not to show Ms. Adams a "pull-out" class to which the student with Down syndrome whom Parent had not wanted paired with Student was assigned (St. Pierre). Ms. Adams observed Ms. Oravec's Learning Center program in Greenwood. She noted that the classroom observed would not be appropriate for Student because the level of instruction required that Student had a more solid foundation of language skills than he possessed, and the children observed in this classroom had more advanced language skills than Student. Ms. Adams opined that Student lacked the language skills necessary to be successful in this classroom (PE-10; Adams).
84. On November 1, 2013, Ms. Adams also observed the class proposed for Student which included three (3) adults, one of whom was Ms. Hastings-Ely, and (3) three students (PE-10; Adams; St. Pierre). The three children in this class had disabilities which included autism

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<sup>16</sup> The placement page in this IEP only identifies "Greenwood Public Schools" as the location for provision of services. A reference to Student being assigned to the Language-Based Team at Alden Elementary School appears under Additional Information (SE-1).

spectrum disorder and learning disabilities with emotional challenges (St. Pierre). Ms. Adams noted that his classroom would not be appropriate for Student because the children's needs were vastly different from his, the environment was extremely distracting, and the instruction lacked the intensity, specialization and language-based approach needed by Student (PE-10; Adams). Ms. Adams also noted that the reading program proposed for Student appeared to combine several methodologies, something she felt would not be appropriate for him. She concluded that Greenwood's program was based on a "learning center" model of instruction, with an eclectic reading program, no writing program, and a group of dissimilar peers which would be inappropriate for Student (PE-10; Adams). Ms. Adams also inquired about the writing program used in Greenwood and Ms. St. Pierre informed her that Greenwood did not use any specific writing program different from what they used school-wide (Adams).

85. Since she Ms. Adams retained by Parents in June 2013, Ms. Adams did not have an opportunity to observe Student while he was still in Greenwood (Adams).
86. Ms. Adams noted that Greenwood's program would not sufficiently address Student's needs so as to help him make effective progress and recommended that he participate in a language-based program that offered a comprehensive program designed specifically for this population, and offered a community of like peers where he could also receive intensive, systematic reading and spelling instruction daily (Adams). She further noted that an appropriate program for Student should also offer challenging grade level content (PE-10; Adams).
87. On November 7, 2013, and March 24, 2014, Ms. Gillan observed Student's RAVE-O lesson and reading at Carroll. Her observation notes state that Student had read a passage of 32 words correctly in one minute with six (6) errors, agreeing that this reflected a significant increase from his performance while at Greenwood (SE-25). During the November observation she opined that the teacher was trying to teach too much and that the lesson had not been sequential. Ms. Gillan observed a much better lesson when she returned on March 24, 2014, noting that the Orton-Gillingham tutor and Student were a good match and that he was following the Orton-Gillingham steps correctly. She opined however, that there had been some missed opportunities for instruction or for allowing Student to shine, and that some errors had gone uncorrected. Overall, she thought that the tutor observed in March had done some things well and recognized that every reading teacher did things slightly differently (SE-25; SE-30; Gillan).
88. Ms. Adams observed Student at Carroll on November 23, 2013 (Adams). She observed Student's Math and ELA classes, noting that there were four students in a combined math class, and seven students and two teachers in ELA. In math, Student was observed to be "highly engaged in applying problem solving skills" and "numerous visual supports and scaffolding occurred throughout... the lesson" (PE-10). She noted that Carroll's "Take-5" rules were embedded in the lesson and posted throughout the classroom and in the hallways. In ELA, she observed that the class was highly structured, language-based and targeted at Student's skill-level. She noted that Student was curious and focused in ELA and appeared

to benefit from the structure of the visual inputs and sensory supports provided throughout the instruction, as did his peers. Student was observed to be able to work and engage in conversation with peers, about common interests and recent play–dates with these peers. Ms. Adams noted that Student’s presentation “suggested that the instructional content was well targeted and he was able to meet the demands albeit with scaffolding, movement breaks and direct instruction”, leading her to conclude that the placement was appropriate for him (Adams; PE-10).

89. At Hearing, Kimberly Crowell–Oravec described the Learning Center model in Greenwood, one of which she leads (there are two). Ms. Oravec is certified in elementary education and moderate special needs. She also has experience as a music therapist and has received training in Orton–Gillingham and Project Read. She testified that Student would be assigned to her program if he returned to Greenwood. She described the Learning Center as a separate classroom where students receive the specially designed instruction prescribed by their IEPs, and where third, fourth and fifth graders who participate in inclusion programs receive support for their work. In the Learning Center, Ms. Oravec offers students pre and post classroom instruction, to preview and review the material to which they are exposed in the inclusion classroom. She also teaches math and literacy in the sub–separate setting (Oravec). Ms. Oravec testified that she participates in weekly planning with the regular education teachers, and with the related service providers almost daily. An instructional assistant is assigned to her Learning Center who is there throughout the day (Oravec).
90. Ms. Oravec testified that Student would have been the eighth child assigned to her Learning Center, and stated that the largest number of students with whom she works at a time is five. All of the students in her Learning Center carry a diagnosis of language–based learning disability and two of the students have been diagnosed with Dyslexia. She identified students 2, 5 and 6 in SE-18 as peers who would be in the same grouping as Student (Oravec).
91. Pamela Larson, reading specialist, would have been responsible for Student’s individualized reading services. She testified that in preparation for Student’s transition to third grade, she observed Student in the spring of 2013 and met with Ms. Gillan from whom she received training in SPIRE which she had not used before. Ms. Larson volunteered to offer the proposed extended day reading services to Student in lieu of the home support program. She testified that she would have assessed Student at the beginning of the school year to establish his reading baseline (Larson).
92. Kathleen Porcaro holds a Doctorate in Administration, Curriculum and Supervision and Instruction as well as a Master degree in special education (SE-29; Porcaro). She works as a consultant and is the executive director and cofounder of Educational Performance Systems, a privately owned company that offers consultation services to school districts in Massachusetts. She has also taught university level courses in administration of educational testing (Porcaro).
93. Dr. Porcaro was retained by Greenwood in 2007 and has since provided consultation services, program design, training, coaching and mentoring to Greenwood’s staff with a

focus on differentiated instruction. She worked with Greenwood personnel on the differentiated model and after training the staff visited once per month to monitor the teachers' progress and ascertain whether they were following up with her recommendations. She has used the program she designed in Greenwood as exemplary of the type of work she conducts and as a model for development of similar programs in other districts (Porcaro).

94. Greenwood engaged Dr. Porcaro as an expert in the case at bar and in that capacity, she observed the Greenwood program proposed for Student, which she herself had indirectly helped develop, and also observed staff members whom she had previously trained while consulting to Greenwood (Porcaro). She specifically observed Ms. Oravec's ELA class between March 12 and 27, 2014 under a schedule arranged by Ms. St. Pierre (SE-9). Ms. Oravec's class had not been proposed or mentioned as available for Student when the Team met in March, May or September 2013. Instead, the third grade ELA special education teacher who observed Student in second grade, and attended the September 2013 IEP meeting was Ms. Hastings-Ely (SE-1). Since Dr. Porcaro did not observe Ms. Hastings-Ely's class she rendered no opinion as to the appropriateness of this class for Student (Porcaro).
95. In addition to Ms. Oravec's ELA class, Dr. Porcaro observed Ms. Larson's reading tutorial, the inclusion social studies class and the writing instruction. Dr. Porcaro's testimony about the classes and staff was extremely favorable, finding each of the classes and service providers to be "exemplary" and finding absolutely nothing deserving a negative comment (Porcaro). Dr. Porcaro opined that the program proposed by Greenwood for Student was appropriate (Porcaro).
96. Dr. Porcaro testified that Dr. Armstrong's evaluation provided misleading information regarding Student's abilities, because it reported grade equivalency scores which in her opinion do not correspond to the functioning level of a student and as such are discouraged by assessment manuals (Porcaro).
97. Dr. Porcaro also observed Student in his math, science, cognitive development and language development classes at Carroll on March 18 and April 1, 2014, noting nothing positive about her observations. She further testified that in science, students (including Student) were hitting each other and described the incident as "appalling". Her report however, made no mention of the incident (SE-26; Porcaro).
98. Mother transported Student to Carroll during the 2013-2014 school year, and received \$100.00 per week for transporting another student. She works approximately six minutes away from Carroll (Mother).
99. Parents are not alleging any procedural violations and are not raising any claims for compensatory services.

#### **CONCLUSIONS OF LAW:**

Student’s eligibility to receive special education services is not disputed. The Parties also do not dispute Student’s diagnoses. Their disagreement centers on placement. While Greenwood agrees that Student is an individual with a disability falling within the purview of the Individuals with Disabilities Education Act<sup>17</sup> (IDEA) and the state special education statute<sup>18</sup>, it argues that it can properly offer Student a free, appropriate public education (FAPE)<sup>19</sup> within a partial inclusion program in Greenwood. Parents disagree, and having placed Student at the Carroll School in September 2013, seek reimbursement for their unilateral placement.

The IDEA and the Massachusetts special education law, as well as the regulations promulgated under those acts, mandate that school districts offer eligible students a FAPE. A FAPE requires that a student’s individualized education program (IEP) be tailored to address the student’s unique needs<sup>20</sup> in a way “reasonably calculated to confer a meaningful educational benefit”<sup>21</sup> to the student.<sup>22</sup> Additionally, said program and services must be delivered in the least restrictive environment appropriate to meet the student’s needs.<sup>23</sup> Under the aforementioned standards, public schools must offer eligible students a special education program and services specifically designed for each student so as to develop that particular individual’s educational potential.<sup>24</sup> Educational progress is then measured in

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<sup>17</sup> 20 USC 1400 *et seq.*

<sup>18</sup> MGL c. 71B.

<sup>19</sup> MGL c. 71B, §§1 (definition of FAPE), 2, 3.

<sup>20</sup> E.g., 20 USC 1400(d)(1)(A) (purpose of the federal law is to ensure that children with disabilities have FAPE that “emphasizes special education and related services designed to meet their unique needs . . . .”); 20 USC 1401(29) (“special education” defined to mean “specially designed instruction . . . to meet the unique needs of a child with a disability . . . .”); *Honig v. DOE*, 484 U.S. 305, 311 (1988) (FAPE must be tailored “to each child’s unique needs”).

<sup>21</sup> See *D.B. v. Esposito*, 675 F.3d 26, 34 (1<sup>st</sup> Cir. 2012) where the court explicitly adopted the meaningful benefit standard.

<sup>22</sup> *Sebastian M. v. King Philip Regional School Dist.*, 685 F.3d 79, 84 (1<sup>st</sup> Cir. 2012) (“the IEP must be custom-tailored to suit a particular child”); *Mr. I. ex rel L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1, 4-5, 20 (1<sup>st</sup> Cir. 2007) (stating that FAPE must include “specially designed instruction . . . [t]o address the unique needs of the child that result from the child’s disability”) (quoting 34 C.F.R. 300.39(b)(3)). See also *Lenn v. Portland School Committee*, 998 F.2d 1083 (1<sup>st</sup> Cir. 1993) (program must be “reasonably calculated to provide ‘effective results’ and ‘demonstrable improvement’ in the various ‘educational and personal skills identified as special needs’”); *Roland v. Concord School Committee*, 910 F.2d 983 (1<sup>st</sup> Cir. 1990) (“Congress indubitably desired ‘effective results’ and ‘demonstrable improvement’ for the Act’s beneficiaries”); *Burlington v. Department of Education*, 736 F.2d 773, 788 (1<sup>st</sup> Cir. 1984) (“objective of the federal floor, then, is the achievement of effective results--demonstrable improvement in the educational and personal skills identified as special needs--as a consequence of implementing the proposed IEP”); 603 CMR 28.05(4)(b) (Student’s IEP must be “designed to enable the student to progress effectively in the content areas of the general curriculum”); 603 CMR 28.02(18) (“*Progress effectively in the general education program* shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the child, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district.”).

<sup>23</sup> 20 USC 1412 (a)(5)(A).

<sup>24</sup> MGL c. 69, s. 1 (“paramount goal of the commonwealth to provide a public education system of sufficient quality to extend to all children the opportunity to reach their full potential. . . .”); MGL c. 71B, s. 1 (“special education” defined to mean “. . . educational programs and assignments . . . designed to develop the educational potential of children with disabilities . . . .”); 603 CMR 28.01(3) (identifying the purpose of the state special education regulations as “to ensure that eligible Massachusetts students receive special education services designed to develop

relation to the potential of the particular student.<sup>25</sup> At the same time, the IDEA does not require the school district to provide what is best for the student.<sup>26</sup>

As the party challenging the adequacy of Student’s proposed IEP, Parents carry the burden of persuasion pursuant to *Schaffer v. Weast*, 126 S.Ct. 528 (2005), and must prove their case by a preponderance of the evidence. Also, pursuant to *Schaffer*, if the evidence is closely balanced, the moving party, that is Parents, will lose.<sup>27</sup>

In rendering my decision, I rely on the facts recited in the Facts section of this decision and incorporate them by reference to avoid restating them except where necessary. Upon consideration of the evidence, the applicable legal standards and the arguments offered by the Parties in the instant case, I conclude that Parents were correct in making the unilateral placement of Student at Carroll and have therefore met their burden of persuasion pursuant to *Schaffer* regarding reimbursement for Student’s placement at Carroll for the 2013-2014 school year. However, the evidence is equally persuasive that Greenwood’s program and placement may be modified to render it appropriate moving forward. My reasoning follows that the only IEPs Parents had before them at the time of their decision to unilaterally place Student at Carroll was the October 2012 IEP (as amended). Said IEP is therefore the operative IEP for purposes of assessing the retroactive reimbursement claim.

#### **I. The October 2012 IEP with March 22 and May 10, 2013 Amendments:**

The record shows that the IEP covering the period from October 1, 2012 through September 30, 2013 offered Student participation in a partial inclusion program, co-taught by a regular and a special education teacher with pull-out services for phonemic awareness/literacy, communication and academic access. It also offered consultation services among the staff, numerous accommodations and extended school year services (SE-5). This IEP was partially accepted by Parents on November 2, 2012.

The Team convened again on November 26, 2012 to review the result of Greenwood’s three-year re-evaluation which showed that despite Student’s high cognitive abilities and

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the student’s individual educational potential...”). See also Mass. Department of Education’s Administrative Advisory SPED 2002-1: Guidance on the change in special education standard of service from “maximum possible development” to “free appropriate public education” (“FAPE”), effective January 1, 2002, 7 MSER Quarterly Reports 1 (2001) (appearing at [www.doe.mass.edu/sped](http://www.doe.mass.edu/sped)) (Massachusetts Education Reform Act “underscores the Commonwealth’s commitment to assist all students to reach their full educational potential”).

<sup>25</sup> *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 199, 202 (court declined to set out a bright-line rule for what satisfies a FAPE, noting that children have different abilities and are therefore capable of different achievements; court adopted an approach that takes into account the potential of the disabled student). See also *Lessard v. Wilton Lyndeborough Cooperative School Dist.*, 518 F.3d 18, 29 (1<sup>st</sup> Cir. 2008), and *D.B. v. Esposito*, 675 F.3d at 36 (“In most cases, an assessment of a child’s potential will be a useful tool for evaluating the adequacy of his or her IEP.”).

<sup>26</sup> E.g. *Lt. T.B. ex rel. N.B. v. Warwick Sch. Com.*, 361 F.3d 80, 83 (1<sup>st</sup> Cir. 2004) (“IDEA does not require a public school to provide what is best for a special needs child, only that it provide an IEP that is ‘reasonably calculated’ to provide an ‘appropriate’ education as defined in federal and state law.”)

<sup>27</sup> *Schaffer v. Weast*, 126 S.Ct. 528 (2005) places the burden of proof in an administrative hearing on the party seeking relief.

positive motivation, three months into second grade Student was still an emergent reader displaying numerous deficits that impacted his ability to access the curriculum and participate in classroom activities. Team members noted that Student's difficulties with executive functioning and attention had significant impact not only on his performance and participation in class, but also when conversing with peers, impacting his ability to reciprocate and establish meaningful relationships with peers (PE-2). At the time of this Team meeting, Student could only identify 22 of 26 letters, 22 of 26 sound, and 6 sight words. He was also unable to decode independently, use picture cues to identify beginning sounds of words, and was still working on basics in all areas of reading including sounds, encoding, decoding, segmenting, and with sight words (PE-2).

The IEP resulting from this Team meeting recommended continued participation in the same partial inclusion program in Greenwood except, in light of Parents' objections regarding the grouping in Student's pull-out literacy services, Greenwood offered Student one-to-one, pull-out literacy sessions going forward (*Id.*; PE-29; Mother, Walsh). Parents accepted this IEP on January 3, 2013 (SE-4; Mother).

However, concerned over Student's delays and lack of performance as per Greenwood's evaluation results (especially Ms. Goldman's report, PE-14), Parents arranged for Dr. Armstrong to evaluate him in December 2012.

Dr. Armstrong reviewed the IEPs of the students who would participate in Greenwood's proposed program for Student, finding that of the seven students, only two were appropriate to be grouped with him (Armstrong). She also testified that Greenwood's proposed partial inclusion program was inappropriate and insufficient to meet Student's needs and specifically recommended participation in a language-based program that offered specially designed instruction and interventions across all academic settings throughout the day. In said program Student should be grouped and have access to peers at his same cognitive level (Armstrong). Her report and recommendations were discussed at the Team meeting on March 14, 2013 at which time Bruce Cole explained that Greenwood could meet Student's needs through its partial inclusion program. According to Mother, he further stated that Greenwood did not have a language-based program for third graders but could offer a "language-based team". Dr. Walsh explained that this was a team of individuals who provided support inside and outside the regular education classroom, using consistent language and small group/ whole group instruction for students with language-based needs. According to her, this style of instruction benefitted all students (Walsh). Whole group instruction included groups of approximately 20 students, a small fraction of which carried a diagnosis of language-based learning disability (Walsh).

If not in November 2012, at least by March 2013, when Student's Team discussed Dr. Armstrong's evaluation results, Greenwood knew that Student was seriously delayed given his intellectual abilities and that he required more than it was delivering during the school day; that is, Student required a language-based program and not just language-based interventions within a large group setting with literacy, reading and speech and language pull-out services.

When Dr. Armstrong’s evaluation results were discussed in March 2013, Greenwood proposed additional accommodations and pull-out ELA services, five times per week for sixty minutes, starting the following school year (i.e., September 2013) (SE-3; SE-4). Ms. Gillan testified about the cooperative relationship she enjoyed with Mother. She stated that she prepared materials and instruction complementary of the work Student was receiving in school for Mother to work with Student in the home. Ms. Gillan also provided training for Mother. During this time, while conducting a Google search in an attempt to further help her son, Mother came across SnapWords. After successfully implementing SnapWords at home, Mother brought SnapWords to Ms. Gillan’s attention and she began using it in School with Student and other children. Ms. Gillan noted a “dramatic change” in Student’s performance after implementing SnapWords (SE-15; SE-17; Gillan, Mother).<sup>28</sup> Ms. Gillan testified as to the great benefits of the home program and implementation of SnapWords observed in Student. She also testified as to the “really dramatic” skill decline observed at the end of the school year when Mother was unable to maintain the demands of the home reading program and had to stop (Gillan). Ms. Gillan considered the home-based instruction to be such a necessary requirement for Student’s academic success that she recommended that this service be offered as part of Student’s program in school. As a result of her recommendation, the September 2013 Team added after-school reading services. The evidence is persuasive that the additional reading interventions were required in order for Student to address his reading deficits appropriately and access a FAPE. As such, whatever progress was achieved by Student in Greenwood cannot be totally divorced from the home services provided by Mother, and other privately offered services.

Parents are correct that an IEP must be judged at the time it was proposed, that is,

...the issue is whether the IEP was “objectively reasonable... at the time the IEP was promulgated by the school district. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1<sup>st</sup> Cir. 1990) (internal quotations omitted).

As noted above, analysis turns on the IEP proposed for 2013–2014 prior to Parents’ unilateral placement, and the information then available regarding Student’s needs, skill level and progress. With this guidance I turn to consideration of the program proposed for the 2013 school year (albeit only through September 2013) at the time Parents made the unilateral placement.

The evidence shows that Student was struggling in Greenwood and not making effective progress in reading or other academic skills. The Children’s Hospital evaluation of 2011 noted early reading and math skills at the second percentile; a year later, Greenwood’s fall of second grade (2012) baseline assessments showed that Student did not recognize all of the letters of the alphabet and could only identify 22 of 26 characters and 22 of 26 sounds; the DIBELS evidenced Student was only able to identify 13 of 66 letters and sounds, 1 of 19

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<sup>28</sup> During Student’s tenure at Greenwood Parents have also arranged for private speech and language services although he hasn’t been engaged in said services for a while (Mother).

CVC words and 0 of 61 sight words; and the Woodcock Johnson–III revealed Student to be scoring in the 1<sup>st</sup> percentile in Broad Reading, 3<sup>rd</sup> percentile for Broad Written Language and between the 1<sup>st</sup> and 5<sup>th</sup> percentiles in broad academic skills. Ms. Gillan testified that beginning in December 2012, after having used a second grade measure to evaluate Student, she began using a lower first grade standard (Gillan). By December 2012 when evaluated by Dr. Armstrong, was falling further and further behind his peers albeit solid cognitive abilities. By the end of the school year, although Student had made some gains, his report card continued to rank him in the lowest level indicating that he showed “little understanding of the concept or skill” in most subject areas (PE-22).

At Hearing it also became clear that Student had performed poorly in Early Reading and Literacy Assessments administered in the spring of first and second grades which were never shared with Parents or discussed at a Team meeting (PE-21; PE-22). The assessments demonstrated Student’s alarming lack of progress in reading fluency. According to Greenwood, given Student’s significant difficulties, the assessments showed improvement. Parents correctly argued that while these assessments were intended as a means to inform parents of Student’s progress, Greenwood never shared them with Parents and none of Greenwood’s witnesses could provide an explanation for this failure.

Parents were aware of the aforementioned difficulties, especially given that Mother was working with Student in reading no less than four nights per week and was not observing the amount of progress claimed by Greenwood. At home, Student did not demonstrate knowledge of all of the letters of the alphabet and could not write a sentence independently (Mother). As such, Parents were justified in assuming that continuing to receive the same type of program would have likely resulted in a continuing failure to address Student’s needs and an increase in the educational gap between Student and his peers. Student’s reading skills were significantly delayed as he was about to enter third grade, a time when students are expected to use reading for learning. Instead, Student was still learning to read (Adams, Armstrong).

The record shows that Parents initiated their inquiries regarding out of district programs in January 2013 and decided to secure placement for Student at Carroll in April 2013, following the March 2013 Team meeting during which Mr. Cole stated that Greenwood could educate Student in–district but did not have a substantially–separate, language–based program for Student (PE-27; Parent).

Greenwood argued that the Carroll School admission tests of March 2013, during which Parents argued Mother was most involved in the home reading program, showed that Student was making progress (SE-33). Greenwood is correct that Student was making some progress but the progress he was making was neither meaningful nor commensurate with his abilities. Student was still struggling in critical areas of reading and later testing showed that he had not automatized learned skills (PE-11; Adams). When questioned about Student’s decline in the CTOPP score for phonological awareness between her December 2012 testing (25<sup>th</sup> percentile) and Ms. Adams’ testing in August 2012 (2<sup>nd</sup> percentile), Dr. Armstrong expressed great concern stating that students should never lose skill sets; instead, they should be able to

answer questions and increase their capabilities. In looking at Student's raw scores Dr. Armstrong concluded that Student had been unable to recall information that he once knew, or he had not automatized those skills and made them his own (PE-7; PE-10; Armstrong).

Prior to the start of the 2013–2014 school year, when Parents unilaterally placed him at Carroll, their only other option was an offer by Greenwood to place Student in a partial inclusion program similar to what he had already experienced in Greenwood, where he would not receive the amount and intensity of language-based interventions recommended by Dr. Armstrong in a setting with similar peers. As such, I find that Parents were justified in placing Student at Carroll.

#### **I. The IEP for September 30, 2013 through September 29, 2014:**

Approximately a month after Student had entered third grade at Carroll, Student's Team reconvened. By then, the Team had Student's progress reports, the results of all of Greenwood's evaluations, and the results of Dr. Armstrong's evaluation (SE-20; SE-21; SE-22, SE-23; PE-7).

The IEP resulting from the September 30, 2013 Team meeting, covering the period from September 30, 2013 to September 29, 2014, continued to offer Student participation in a partial inclusion program with pull-out reading, ELA and communication, as well as academic support within the general education classroom, consultation among various service providers, extended day reading services and ESY reading and speech and language services (SE-1; SE-7). According to Ms. Gillan, the extended day program was needed because Student required more than what was available to him during the school day reading program in order to make meaningful progress (Gillan). Ms. St. Pierre characterized Student's progress as "slow" and she recognized that he needed additional supports moving forward (St. Pierre). Dr. Armstrong's objections to instructing Student in his most challenging area at the end of the school day, when he lacked the mental capacity to focus, has already been noted.

The Additional Information section of the IEP notes that Student would be part of the "language-based team at Alden Elementary School" in Greenwood (SE-1; SE-7). This Team would be comprised of a reading instructor, a speech and language therapist, an occupational therapist (to assist with self-regulation), a special education teacher, an instructional assistant and a general education teacher.

Student's proposed schedule for the remainder of the 2013–2014 school year (third grade) included two sessions of math daily and one session of reading and one session of ELA per day. Student's additional reading would be offered after-school by Ms. Larson as explained above.

Greenwood alleged that none of the expert reports recommended out-of-district placement, however, Dr. Armstrong's report of December 2012 specifically states that

In fact, at this point in time it is this Examiner's opinion that [Student] should be placed in a specialized language-based classroom that is able to support [Student's] language-based disability while simultaneously allowing him to access grade level curriculum. His Team should meet to determine whether they have a setting that can meet his multiple disabilities and many clear cognitive strengths. More specifically, he will require a placement with a high teacher-to-student ration that focuses on his reading and writing skills in all mainstream classes and that is designed to serve children with similar cognitive profiles. This class must be limited to children with average to above-average cognitive abilities and quote "typical" social skills, but who also have language-based learning disabilities. Otherwise, even if the curriculum matches [Student's] academic needs, this setting will be more restrictive, rather than a "least restrictive environment." If his school district does not have a placement that meets these needs, then his Team may need to determine whether Student will require an outside placement (such as Carroll School or Landmark)" (PE-7).

Elsewhere in her report, Dr. Armstrong emphasizes the need for a classroom with a small enough teacher to student ratio (PE-7). Greenwood could not have interpreted this to mean that a classroom with 23 students, seven of which were on IEPs for varying disabilities (two students carrying a diagnosis of dyslexia) and two teachers (a regular education and a special education teacher) within a co-taught inclusion model met Dr. Armstrong's recommended criteria. A classroom where language-based learning interventions are used albeit under the guise of "differentiated" instruction is not the same as a language-based program/classroom.

Ms. Adams expressed similar concerns to those voiced earlier by Dr. Armstrong, noting that in her assessment of August 2013 Student had struggled with pre-primer level text. She found that he could not do basic level first grade reading, that his academic skills were significantly below his cognitive ability, and that he was performing between 1½ and 2 years behind grade level in reading, spelling, and written expression. She further indicated that he was performing much lower than Greenwood reported at the end of his second grade (Adams). Despite the special education services received in Greenwood, Ms. Adams' observations and testing results revealed significant deficits, indicating to her that Student had failed to made effective educational progress (PE-10; Adams).

Greenwood attributed Student's depressed performance in Ms. Adams's evaluation to the fact that his summer program had been disrupted due to a family vacation. The record shows that Student participated in Greenwood's summer program between July 9 and 25, 2013 and August 13 and 14, 2013 (PE-18; Mother, Adams). His reading tutor, Mary-Jane Banville, noted satisfactory effort on Student's part and listed accomplishments greater than Ms. Adams found (PE-18).<sup>29</sup> Greenwood's argument that Student's depressed scores were due to the family vacation and Student not taking his medication is not persuasive.

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<sup>29</sup> Student was no longer taking Adderall when he participated in the 2013 summer program (Adams).

Ms. Adams also observed Student at Carroll and observed some of the programs available in Greenwood (Adams, St. Pierre). Based on her observations of Student at Carroll and of the proposed program in Greenwood, Ms. Adams opined that Student's disabilities could not be appropriately addressed through the inclusion model with pull-out services proposed by Greenwood. She testified that Student required a language-based program, with small class sizes, with cognitively and linguistically like peers, that offered daily one-to-one reading tutorials, where he could develop self-advocacy skills, that offered a comprehensive program where language and literacy skills were taught in all areas of the curriculum, be specifically designed to meet the needs of bright, language-disabled students (PE-10; Adams).

At Hearing, Greenwood argued that Student was intended to be in Ms. Oravec's Learning Center and noted that neither Mother nor Ms. Adams had observed the proposed third grade classroom for Student. Greenwood further explained that the Team notes did not reflect any discussion regarding a particular classroom for the 2013-2014 school year because of its understanding that Parents had no interest in returning Student to Greenwood, and argued that as such, Greenwood did not have to provide any further specificity. Greenwood is not persuasive in any of the aforementioned arguments for the reasons that follow.

Much confusion surrounded which specific program and Learning Center was being proposed by Greenwood at the Team meeting in September 2013. Present at the meeting was Ms. Hastings-Ely who was also the only one of the Learning Center teachers invited to attend. The record lacks any testimony, and the meeting notes do not reflect that Student was intended to partake of Ms. Oravec's Learning Center instead of Ms. Hasting-Ely. Ms. Hasting-Ely's room serviced children with more compounding disabilities and included the student with Down Syndrome whom Parent had objected to being paired with Student the prior year (Oravec, Adams). At the conclusion of the Team meeting Parents had no way of knowing that the individual attending the meeting was different than the individual proposed to educate Student, and the meeting notes reflect the fact that no specificity was provided (SE-1). The notes further reflect that Mother asked for more information regarding the language-based model in Greenwood (SE-1). Parents also had little information regarding the Learning Centers.

The confusion regarding what would have actually been available for Student lingered through November 2013 when Ms. Adams observed in Greenwood. After Ms. St. Pierre and Ms. Adams communicated regarding which classes and periods would be observed, Ms. St. Pierre offered the opportunity to observe "another option" for Student's pull-out ELA and offered to show her Ms. Oravec's class. During cross-examination Ms. St. Pierre acknowledged that the idea to show Ms. Adams, Ms. Oravec's class had come from a conversation between her and Mr. Cole, the special education director, "just prior" to Ms. Adams' observation (which she explained had been prompted in part to avoid showing Ms. Adams a class that included the Down Syndrome student who had been paired with Student in second grade). Ms. Adams observed both classes and stated that the peer groupings did not appear to be appropriate for Student. Regarding Ms. Hasting-Ely's Learning Center, Ms. Adams testified that she observed children with vastly different disabilities from those of

Student, in what she described as a distracting environment with instruction that was not language-based (Adams).

In contrast, Ms. Oravec's class serviced a more advanced group of students, at least three of which she opined would have been appropriate peers for Student (Adams, Oravec). Furthermore, Ms. Oravec herself testified that the first time it was mentioned to her that Student may be assigned to her class was in November 2013. Greenwood's argument at Hearing in April 2014 that Ms. Oravec's Learning Center was the one intended for Student in September 2013 is disingenuous and not supported by the credible evidence. This decision came later in the process. The credible evidence is persuasive that the Learning Center being considered for Student in September 2013 was likely Ms. Hastings-Ely's class. Even if Greenwood truly intended on Student attending Ms. Oravec's classroom, this was not made clear to Parents at the Team meeting in September 2013 or for that matter, until the Hearing.<sup>30</sup> At Hearing Greenwood also argued that it would have had flexibility to move students between the two Learning Centers depending upon their functioning at the beginning of the school year. While I am persuaded that the district does have such capability, this was not communicated to Parents at the Team meeting in September 2013.

Finally, the schedule submitted by Greenwood for Student lists two periods of math per day and only one of language, an area far more challenging for Student. Also, the proposed IEP offered failed to provide all of the needed reading interventions during the school day as additional extended day reading services were proposed. Dr. Armstrong testified that extended day reading intervention was contraindicated, because it would require Student to sustain attention, an area of deficit for him, to receive instruction in reading another very challenging area for him (Armstrong).

At Hearing, Greenwood relied on the expertise of Dr. Porcaro. Dr. Porcaro testified at length regarding her observations of a stellar program in Greenwood in stark contrast to her grim observations in Carroll. While she could think of nothing she would recommend to improve the program in Greenwood, she struggled to find even one positive thing to say about Carroll. The fact that she developed the Greenwood program (through her private company), and that she uses the Greenwood programs as exemplary models for other districts, compounded by the fact that she trained, mentored and supervised many of the teachers and service providers she observed (some of whom would be responsible to provide services to Student) compromised the evidentiary weight that can be afforded to her testimony.

The foundation of Dr. Porcaro's models is differentiated instruction and inclusion. She truly believes and supports the idea that when language-based interventions are used in the mainstream, inclusion programs can serve almost any student and, specifically in the instant case Student. While the evidence is persuasive that the programs offered in Greenwood are solid inclusion programs, they are not the panacea for all students and particularly herein not

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<sup>30</sup> Ms. Oravec's Learning Center class was made available for observation to Ms. Porcaro, Greenwood's expert, shortly before the Hearing in 2014 (Polcaro, St. Pierre).

for Student. I note that Dr. Porcaro has not evaluated Student and this combined with her potential financial interest raised questions about her credibility. As such, I do not find her testimony to be reliable regarding the appropriateness of either the Greenwood or Carroll programs for Student.

In contrast, I credit the testimony of Dr. Armstrong, whom I found to be a knowledgeable, experienced, neuropsychologist who demonstrated a solid understanding of Student's deficits and strengths, and who offered an objective opinion. Ms. Adams evaluation and report are also deemed to be reliable. Her observations of Greenwood and Carroll were found to be balanced and corroborated in part by Ms. Gillan. Parent, Ms. Oravec, Ms. Larsen , Ms. Murphy, Ms. Kingman and Ms. Mellon were also found to be credible.

The credible evidence supports a finding that in September 2013 and through the end of the 2013–2014 school year, Student required a language–based program with similar cognitive and learning style peers that offered language–based instruction across settings and throughout the day as recommended by Dr. Armstrong, and that the Learning Center model offered by Greenwood did not meet such criteria.

## **II. Reimbursement for Carroll for the 2013-2014 school year:**

The evidence shows that Carroll is a MADESE approved private school primarily servicing children with language–based learning disabilities who do not exhibit significant social, emotional or behavioral challenges (Kingman). Ms. Kingman testified that the Orton–Gillingham reading approach is followed and she explained that language–based instruction is embedded within the curriculum across all educational settings throughout the day. Students at Carroll are grouped in small classes of no more than eight students and all 160 students in the lower school participate in a daily one–to–one reading tutorial (Kingman).

Ms. Kingman explained that Student received three language periods per day, including English language arts (ELA), RAVE–O and the reading tutorial in addition to science, math, physical education, art or music, and “cognitive development” which class focuses on logical reasoning, visual thinking and movement skills. Orton–Gillingham principles, reading comprehension and written expression are emphasized during the language arts periods. She testified that the content of the social studies curriculum was used as a “tool for skill development” and was embedded in one of the three language periods. She noted that social studies content was used for reading and writing during. Ms. Kingman explained that Carroll followed the Massachusetts Framework Curriculum for content areas such as science, math and English language arts and noted that even though Student was not able to read at the third grade level, he was nevertheless exposed to third grade level curriculum (Kingman).

Ms. Kingman testified that when Student arrived in Carroll, he demonstrated lack of confidence in his abilities and appeared hypersensitive as to how he compared to his peers. He demonstrated very low stamina and low frustration tolerance, engaged in avoidance behaviors and accessed coping strategies that were not helpful. His reading readiness skills were also very low. Because of his severe needs, he was assigned to “the classroom with the

most learning needs and with children who have the most depressed skills and the most complexity of disabilities” (Kingman).

According to Ms. Kingman, Student progressed effectively in his verbal and written output during his first year at Carroll. In spelling he made significant improvement, and he was noted to begin speaking in complete sentences. She noted that in the curriculum-based assessment, Level 1, Student had only been able to respond to one (1) of 12 correctly in the fall 2013 and by mid-April 2014 he could answer seven (7) or eight (8) out of the 12 (Kingman). Also, in Orton-Gillingham, he had been able to advance through levels (PE-31; Kingman).

Ms. Kingman and Mother reported that Student’s self-confidence has also increased noticeably and he has become more willing to take risks, displaying more of a “can do” attitude (Kingman, Mother). Mother testified that Student is happy to go to school, and no longer avoids academic challenges. According to her, Student’s confidence has “soared”.<sup>31</sup> Mother also testified that Student has made very good friends at Carroll while maintaining some of his ties to previous friends in his community (Mother).

The appropriateness of Carroll for Student is further supported by the observations of Ms. Adams<sup>32</sup> and in part Ms. Gillan who conceded that Student had made progress in reading<sup>33</sup> (SE-25; PE-10).

Greenwood argued that Student’s report card from Carroll indicated that he had made little progress and even regressed in certain areas and that overall, the program did not provide access to the general education curriculum such as social studies. Explaining PE-31, Ms. Kingman testified that Carroll uses rating scales based on level of independence and noted that Student was improving toward gaining independence (Kingman).

Additionally, Greenwood argued that Student had not received direct speech and language services nor had those services been privately provided. However, Ms. Kingman testified that speech and language was embedded into the language arts periods taught daily<sup>34</sup> (Kingman).

Greenwood raised concern as to Ms. Adams credibility and drawing similarities to another BSEA decision<sup>35</sup>, argued that she had been retained after Parents had made the decision to

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<sup>31</sup> Mother testified that at a March 2014 meeting, he went to a presentation and despite his articulation issues he became a tour guide providing explanations at each of the five stops during the tour (Mother).

<sup>32</sup> Ms. Adams’s indicated that Student was able to meet the demands of the class with scaffolding, direct instruction and movement breaks; his presentation suggested that the instructional content was well targeted at his level; he worked and interacted well with peers; and had developed friendships that carried outside school leading her to conclude that the placement was appropriate (Adams; PE-10).

<sup>33</sup> Ms. Gillan noted that Student had been able to read a 32 word passage in one minute with only six errors; a substantial increase compared to his performance in Greenwood (SE-25).

<sup>34</sup> Dr. Porcaro’s observation of Student at Carroll notes that a speech and language pathologist was teaching Student’s ELA during her observation (SE-8).

<sup>35</sup> *In Re: Boston Public Schools*, 109 LRP 62237 (Putney-Yaceshyn, 2009) also involving Phoebe Adams.

unilaterally place Student, had not observed Student while in Greenwood, and had not observed Greenwood's inclusion classes with Ms. Doel and Ms. Murphy or the inclusion science, math and social studies. There are however, some inconsistencies in Greenwood's arguments and distinctions can be drawn.

The record reflects that Ms. Adams was retained in June 2013, prior to Parents paying the deposit at Carroll and filing a Hearing Request, but at a time when they were already inclined to place Student unilaterally. While Greenwood is correct that she did not observe Student at the end of the 2012-2013 school year, even if she had, that was not the program, school or classroom that Parents were being asked to consider for the 2013-2014 school year, rendering such observation irrelevant. Also, when Ms. Adams observed the Greenwood programs in November 2013, it was Ms. St. Pierre who provided the proposed schedule and she, in consultation with Mr. Cole, decided to which classes within Greenwood Ms. Adams would have access. Greenwood cannot therefore now argue that Ms. Adams testimony should be set aside this late in the process when Greenwood chose not to and even if Ms. Adams was retained by Parents for the purpose of seeking public funding for the Carroll placement, her testimony, which emerged as balanced and credible, was corroborated by Dr. Armstrong whom I found to be a credible witness and in part by Greenwood's witnesses.<sup>36</sup>

While the IDEA favors placement of students in the least restrictive environment, it is well established that when this is not feasible, students may be placed in private schools at public expense. *School Comm. of Burlington v. Dept. of Ed.*, 471 US 359, 369 (1985). Furthermore, when considering the appropriateness of a private educational placement and services, Parents are not bound by the same statutory requirements of FAPE that apply to public schools. This standard was clearly articulated by the Court in *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 13-14 (1993).<sup>37</sup> The First Circuit Court of Appeals has further explained that if parents can show that the public school failed to offer a FAPE, so long as the private school is reasonably calculated to enable the student to receive educational benefit parents may be reimbursed.

A private placement needed provide only *some element* of the special education services missing from the public alternative in order to qualify as reasonably calculated to enable the child to receive educational benefit...[n]or must the placement meet every last one of the child's special education needs. *Mr. I. v. Maine School Administrative District No. 55*, 480 F.3d 1, n. 22 (1<sup>st</sup> Cir. 2007) (internal quotations and citations omitted; emphasis in original); *Rafferty v. Cranston Pub. Sch. Comm.*, 3315 F.3d 21, 26 (1<sup>st</sup> Cir. 2002).

In order for parents to be reimbursed they must provide an otherwise proper education.

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<sup>36</sup> Later, Greenwood arranged for Ms. Porcaro, their own consultant, to observe in 2014 the alleged actual classes proposed for Student in preparation for Hearing.

<sup>37</sup> See *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 13-14 (1993), "private school need not necessarily meet state educational standards or be state-approved, and need not meet federal statutory definition of FAPE". See also, *Doe v. West Boylston School Committee*, 4 MSER 149, 161 (D. MA. 1998) (in order for a private placement to be rendered appropriate it need not meet Massachusetts FAPE standards).

Based upon the evidence presented, I find that Carroll’s program meets the above–noted standard for reimbursement as it provided Student a small–group, language–based program, with similar peers and language–based interventions across settings, consistent with Parents’ experts’ recommendations.<sup>38</sup>

### **III. Academic year beginning September 2014:**

The evidence is persuasive that Greenwood’s partial inclusion and Ms. Oravec’s Learning Center are solid programs. However, the combination of Learning Center with partial–inclusion programming is not appropriate for a child with the significant delays and challenges Student presents. While the IDEA mandates that children with special education needs be educated to the maximum extent possible in the mainstream, the idea that all students with special education needs are appropriately placed in the mainstream under a co–taught model is also contrary to the IDEA, and ignores the fact that an individualized educational program that responds to a student’s particular needs is at the core of the determination of placement.

At Hearing, Ms. Oravec described the two Learning Center programs available in Greenwood for third graders and specifically the one she runs (Oravec). At this point, Greenwood has made it clear that she would have been responsible for Student and I take this representation to be true.

Ms. Oravec, Ms. Larson, Ms. Murphy, all members of the “language–based team” at Alden Elementary School, presented as competent, knowledgeable and experienced teachers, and Dr. Porcaro is credited to the extent that she was involved in their training and mentoring. Given the quality of the personnel responsible for the special education and related services offered in Greenwood, I am persuaded that were Greenwood to create a language–based program (as distinguished from the “language–based team” already in place) with similar peers, inclusive of a rule–based reading program consistent with the terms of this decision with this excellent staff or its equivalent, Student would be able to access a FAPE in–district. If Greenwood is able to create and propose such an in–district program for Student prior to the start of the 2014–2015 school year, then Student should return to Greenwood.

In sum, the evidence is persuasive that at this time, Student requires a small group, language–based program that uses language–based interventions and methodology across settings throughout the day as distinguished from the “language–based team” interventions in the partial inclusion program, with twenty or more children in each class.

For all of the aforementioned, I find that Parents have met their burden of persuasion under *Shaffer*, regarding their claim for reimbursement for their unilateral placement of Student at Carroll for the 2013–2014 school year and reasonable transportation expenses.

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<sup>38</sup> Greenwood raised concern as to whether Michael Curtin held proper certification in reading because his CV was not included in Parents exhibits.

**ORDER:**

1. Greenwood shall reimburse Parents for their unilateral placement of Student at Carroll for the 2013–2014 school year and reasonable transportation expenses.
2. Greenwood shall create a small–group language–based program for Student consistent with the recommendations of Dr. Armstrong for the remainder of his IEP period, September 30, 2014. If Greenwood does not, or cannot develop such a program, it shall continue to support Student’s placement at Carroll or locate another suitable, language–based program for Student.

By the Hearing Officer,

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Rosa I. Figueroa

Dated: July 25, 2014

