

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

Student v. Framingham Public Schools

BSEA # 2101266

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.

RELEVANT PROCEDURAL HISTORY

Parents, appearing, *pro se*, requested a Hearing on August 14, 2020. The Hearing was scheduled for September 18, 2020. On August 19, 2020, Framingham Public Schools, (hereinafter, “Framingham” or “District”) requested that the timelines for the hearing be recalculated because Parents did not serve the District with a Hearing Request. Framingham filed its response to the Hearing Request on August 28, 2020. A Re-Calculated Notice of Hearing was issued on August 28, 2020 with a new Hearing date, September 22, 2020. A Pre-Hearing Conference was held on September 22, 2020. Parents’ request to postpone the Hearing and to submit an Amended Hearing Request was allowed on September 22, 2020, and the Hearing was rescheduled until October 28, 29, and 30, 2020. The case was re-assigned from Hearing Officer Rosa Figueroa to Hearing Officer Catherine Putney-Yaceshyn on October 6, 2020. Parents filed an amended request for hearing on October 19, 2020. Parents’ request to postpone the Hearing to allow additional time to conduct discovery and prepare their case was allowed over Framingham’s objection on October 19, 2020. The Hearing was re-scheduled for January 12, 13, and 14, 2021. On November 2, 2020, Framingham filed a Motion to Dismiss and/or Motion for Summary Judgment. Parents filed their response to the motion on November 18, 2020, which included a request for an extension of time to further respond to Framingham’s motion and a request for a Hearing on the Motion. The Parents were granted an extension until December 11, 2020 and their response was timely filed. There was a telephonic Hearing on the Motion on December 16, 2020. On December 23, 2020, the Hearing Officer allowed the Parties’ joint request to postpone the Hearing, and it was re-scheduled to March 1, 4, and 5, 2021. On January 25, 2021, the Hearing Officer issued a Ruling allowing in part and denying in part Framingham’s Motion for Summary Judgment. Parents filed numerous motions and requests for clarification and reconsideration before the hearing, which were responded to and ruled upon. The Hearing was held remotely over Zoom on March 1, 4, and 5, 2021¹. The Parties’ request to postpone the

¹ During a February 19, 2021 conference call, the Parties discussed Parents’ witness list, containing 18 names, and the amount of time it would take for Parents to call all of the witnesses. The Parties requested and Hearing Officer allowed an additional day for Hearing on March 18, 2021. However, on the second day of hearing, March 4, Parent did not have any witnesses available other than her son and refused to provide her own testimony at that time, stating that she was not prepared. Thus, Parent only used twenty-four minutes of the entire day that had been allotted to her that day. Parent then decided not to call any additional witnesses after providing her testimony on the third day. Framingham was able to complete its case, and the fourth hearing date was not needed.

closing of the record in order to submit written closing arguments by April 16, 2021 was allowed. On April 15, 2021, Parent emailed the Hearing Officer requesting clarification of the time at which the closing argument was due. The Hearing Officer emailed the Parents confirming that the closing argument was due by 5:00 p.m. on April 16, 2021. Framingham submitted its closing argument on April 16, 2021. Parents filed their closing argument after 5:00 p.m. on April 16, 2021 and filed their “corrected version” of their closing argument on Sunday, April 18, 2021. The record closed on April 19, 2021, the first business day after receipt of Parents’ closing argument.

Those present for all or part of the hearing were:

Mother	
Student	
Student’s grandfather	
Student’s aunt	
Scott Sokol	Metro West Jewish Day School
Linda Cherubino	Student’s private tutor
Laura Spear	Director of Special Education, Framingham Public Schools
Courtney Ryan	Team evaluation coordinator, Framingham Public Schools
Kathleen DeLisi	Team evaluation coordinator, Framingham Public Schools
S. Otto Johnson	School psychologist, Framingham Public Schools
Amy Chesin	Speech language pathologist, Framingham Public Schools
Lynne Mosher	Reading specialist/special education teacher, Framingham Public Schools
Christine Mulroney	Special education teacher, Framingham Public Schools
Danielle Dowd	Special education teacher, Framingham Public Schools
Phillip Benjamin	Attorney, Framingham Public Schools
Alexander Loos	Court Reporter
Catherine Putney-Yaceshyn	Hearing Officer

The official record of this hearing consists of joint exhibits² marked J-1 through J-33 and approximately 11 hours of recorded oral testimony.

ISSUES

1. Whether the IEPs proposed by Framingham for the period from 2019 to 2020 were reasonably calculated to provide Student with a free and appropriate public education in the least restrictive environment;
2. If not, whether the parents are entitled to reimbursement for their unilateral placement of Student at the MetroWest Jewish Day School.

² In a letter dated February 22, 2021 and received by the Hearing Officer on February 23, 2021, Mother stated that she will be referring to the same exhibits that Framingham submitted. She re-submitted the List of Exhibits Framingham submitted and added “Parent and” to the heading “Framingham Public Schools List of Exhibits.” She added a notation indicating the number of pages included in each exhibit. For ease of reference, the Exhibits will be referred to as joint exhibits and referenced as J-1 through J-33. (See Exhibit book.)

SUMMARY OF THE EVIDENCE

1. Student is fifteen years old and resides within the Framingham Public School District. He has a complex profile, with a primary disability in communication and secondary specific learning disabilities in the areas of reading fluency, written expression, and reading comprehension. (J-2, J-12) He also has executive function and social-emotional needs, with variable attention and vulnerability to anxiety. (J-2)
2. Student attended Metro West Jewish Day School³ for the 2017-2018 (sixth grade), 2018-2019 (seventh grade), and 2019-2020 (eighth grade) school years pursuant to a unilateral placement. (Mother)
3. Student's last accepted IEP at the time the hearing was requested was for the period from March 16, 2016 to March 15, 2017, accepted by Parents on December 12, 2016. It contained goals in the following areas: inference/nonliteral language; social communication; reading-decoding/encoding; fluency-sight words and text; reading comprehension; and written language. The A Grid contained a consult with Student's related service providers 1 x 10 minutes per month and consult with the occupational therapist or certified occupational therapy assistant 1 x 30 minutes per week, from 9/14/17 through 3/ 15/2017. There were no services in the B Grid. The C grid provided for speech language therapy with the speech language pathologist 3 x 30 minutes per cycle in small group; reading with the special educator and teacher assistant 4 x 30 minutes per cycle for decoding/encoding "provider trained in multisensory program"; reading with a special educator and teacher assistant 4 x 15 minutes per cycle: sight word and text fluency; reading with a special educator and teacher assistant 5 x 45 minutes per cycle: comprehension; and written language with the special educator and teacher assistant 5 x 45 minutes per cycle. Extended school year services were also proposed, as follows: summer special education staff, 5 x 120 minutes per cycle, from July 5, 2016 through July 29, 2016; and reading with the special educator/general educator/assistant teacher 5 x 45 minutes: comprehension from August 29, 2016 through March 15, 2017. (J-2)
4. On or around February 13, 2019, Framingham received Mother's consent to conduct Student's three-year evaluation. Along with the signed consent, Mother requested that Framingham conduct the same tests that were used to assess Student during his prior three-year evaluation. She made a number of requests that specific assessments be included⁴. (See J-3) The assessments requested by Mother were far more extensive than what Framingham typically does for a three-year evaluation. The requested evaluations were more akin to an initial evaluation. (Johnson)

³ During the 2018-2019 and 2019-2020 school years Mother was on the board of directors for MetroWest Jewish Day School. (Mother)

⁴ Framingham conducted all the evaluations Mother requested except for the D-KEFS, which it did not have in the district. (Johnson)

5. S. Otto Johnson, CAGS, NCSP, School Psychologist, Framingham Public Schools, conducted a Psychological Assessment of Student on March 28 and April 1, 2019⁵. He also conducted an observation of Student at Metro West Jewish Day School. He noted Student's primary communication disability and secondary specific learning disability as reported on his IEP. Student's score on the Verbal Comprehension Index was 95, Average range; his score on the Visual Spatial Index was 94, Average range; his score on the Fluid Reasoning Index was 88, Low Average range; his Working Memory Index score was 97, Average range; and his Processing Speed score was 95, Average range. Mr. Johnson did not report Student's full scale IQ due to Student's diverse performance across subtests, but noted that it was within the Average range. Social/emotional measures indicated Student had a low confidence level in his ability to make decisions, solve problems, and/or be dependable. Student's mother reported that he engages in many disruptive, impulsive, and uncontrolled behaviors. Mother and Student's teachers noted that he sometimes displays behaviors stemming from worry, nervousness, and/or fear. His teachers noted that Student has poor social skills and difficulty communicating with others and sometimes has difficulty controlling and maintaining his behavior and mood. His teachers further noted some areas of concern in the executive functioning realm, including his ability to inhibit, self-monitor, shift, initiate plan/organize, as well as working memory deficits. (J-5)

Mr. Johnson made a number of recommendations to support Student in the area of executive functioning, including setting clear rules and expectations and encouraging Student to verbalize a plan of approach before starting work. He also made recommendations for accommodations in the areas of working memory, planning, organization, and task monitoring. (J-5)

6. Alexandra Loos, M.Ed., Commonwealth Learning Center, evaluated Student as part of the three-year evaluation conducted by Framingham in March 2019⁶. The evaluation consisted of "one full morning" on March 27, 2019⁷. Ms. Loos reported that Student's performance varied from within the Very Poor range to the Above Average range, with his phonological awareness skills in the Above Average range and his phonological memory in the Average range. (J-4)

Ms. Loos concluded that Student continued to require specialized instruction. She noted that he would benefit from a small classroom environment that is designed to meet the needs of students with language-based learning difficulties. She stated that specialized instruction should be provided across the curriculum, including math, science, English language arts, and social studies. She further recommended that Student receive 1:1 or

⁵ Mr. Johnson conducted a record review, parent interview, teacher interview, Student interview and classroom observation. He administered the WISC-V, select subtests of the WRAML2k BASC-3: Self Report-Adolescent, Parent Rating Scales-Adolescent, Teacher Rating Scales-Adolescent; the NEPSY-II Attention and Executive Functioning Battery, and the BRIEF 2, Parent Form and Teacher Form. (J-5)

⁶ Mother had requested that Framingham conduct additional literacy testing and Framingham contracted with the Commonwealth Learning Center to conduct the testing. (J-4)

⁷ Ms. Loos administered the Comprehensive Test of Phonological Processing-Second Edition (CTOPP-2), Test of Word Reading Efficiency – 2d Edition (TOWRE-2), Form A; Gray Oral Reading Tests- Fifth Edition (GORT-5), Form A; Gray Silent Reading Tests (GSRT), Form B; Test of Written Spelling – Fourth Edition (TWS-4), Form A; and Rapid Automatized Naming/Rapid Alternating Stimulus Tests (RAN/RAS). (J-4)

very small group instruction 4 x 45 minutes per week with a specialist trained in a specific, evidence-based, cumulative, multi-sensory program such as Orton-Gillingham. She noted that Student requires over-exposure to concepts with consistent spiraling back and repetition in order to commit phonetic concepts to memory and improve automaticity. (J-4)

Ms. Loos also recommended a program such as RAVE-O to emphasize syntax, semantics, and morphology, which would improve Students\'s fluency and comprehension, that spelling instruction be integrated with his reading instruction, and that Orton-Gillingham instruction focus on morphology. She noted that Student requires explicit instruction to learn strategies to support comprehension, and recommended that he be provided opportunities to demonstrate his comprehension of material in multiple ways. Further recommendations included the use of graphic organizers, assistive technology, extended time for all testing, breaks throughout the day, testing in a separate setting, and instructions to be read aloud. (J-4) Ms. Loos presented her findings at the May 8, 2019 Team meeting. (J-12) She did not testify at the Hearing.

7. Amy Chesin, speech language pathologist, Framingham, evaluated Student on March 22, and April 1, 2019. Ms. Chesin used the following assessments: the CELF-5; the CASL-2 (idiomatic language, sentence expression, nonliteral language, inference, double meaning, and pragmatic language); Social Language Development Test- Adolescent: Normative Update (SLDT-A: NU) (making inferences); Social Thinking Dynamic Assessment Protocol (Thinking with Our Eyes, Double Interview). Ms. Chesin concluded that Student\'s discrete receptive and expressive language skills, including vocabulary, grammar, sentence structure, and sentence-level comprehension, appeared to be relative strengths for him. Integrating verbal information, recalling lengthier information, understanding higher-level language, and social language skills were more challenging areas for Student. Student\'s social language skills were reduced in many areas. He struggled with social flexibility and using nonverbal cues to make social inferences. He was easily distracted by external stimuli and idiosyncratic portions of testing items. He performed in the below average range on tasks assessing higher-level language skills and making inferences. He exhibited difficulty connecting and integrating salient information. Ms. Chesin made several recommendations for classroom accommodations. (See J-6, pgs. 8-9.)
8. Christine Mulrone⁸ completed an Educational Assessment of Student on April 1, 2019. She then sent the report of the test scores to Danielle Dowd⁹. They met to discuss the test results and Ms. Dowd then wrote a report and attended the Team meeting. (Mulrone, Dowd)

Ms. Mulrone administered a number of sub-tests of the WIAT-III and Key Math Test, Revised: Diagnostic Inventory of Essential Mathematics. Student scored in the Average

⁸ Ms. Mulrone is certified in middle school math, elementary education one through six, and severe special needs, K through 12. She conducts special education testing for Walsh Middle School students. (Mulrone)

⁹ Ms. Dowd is certified in moderate disabilities five through eight and English five through eight and eight through twelve. (Dowd)

range on the majority of sub-tests. Student scored in the Below Average range in the Grammar and Mechanics and Word Count sub-tests, and in the Very Low range in the Essay Composition sub-test, and the Theme Development and Organization portion of the sub-test. His Written Expression Composite score was in the below average range, while his Spelling and Sentence Composition subtests were in the average range. Student's Word Reading, Reading Comprehension, and Pseudoword Decoding all fell within the average range, with Oral Reading Fluency within the below average range. Math and Math Fluency Composite scores were in the average range, and all Key Math subtest scores were in the average range, with the exception of division. Ms. Dowd concluded that Student's achievement in mathematics, pseudoword decoding, and numerical operations were shown to be his strengths, while his scores in essay composition, theme development and text organization, oral reading accuracy and oral reading rate indicated areas of weakness. (J-7)

9. Karen Clarke, MS, OTR/L, conducted an occupational therapy evaluation of Student on April 2, 2019. Testing results showed overall visual motor planning and visual motor integration skills in the average range. Copying samples was somewhat immature, but output was legible. He was able to copy passages at a slightly slower pace than other seventh graders. Testing showed no underlying visual motor or visual motor integration difficulties. Ms. Clarke recommended that Student be encouraged to type assignments when possible. She suggested using shaded or highlighted notebook paper to help with consistency in spacing and when editing. (J-9)
10. Lynn Mosher, special education reading teacher at Walsh Middle School, is a certified reading specialist and is certified in intensive special needs. She prepared a summary of Student's literacy related testing results in May 2019. (J-10) Ms. Mosher noted that overall, when time was not a factor, Student read words and text similarly to age-matched peers, however, when there was a timed component, Student struggled compared to age-matched peers. He had difficulty with fluency at both the word and text level. She concluded that his lack of automaticity was likely contributing to his difficulty with comprehension, noting variable comprehension scores. Student performed best when he read silently and answered open ended questions, but had more difficulty with multiple choice and inferential questions. (J-10)

Ms. Mosher indicated that Student would likely benefit from direct fluency instruction and support. She further recommended tracking with a pencil or his finger, the use of audiobooks to allow him to visually follow along while listening, providing Student with comprehension strategies (such as predicting, questioning, and summarizing), instruction in test-taking strategies, and that he be allowed extended time on tests. She suggested Student be encouraged to read independently to reinforce skills taught in class. (J-10)

In the area of written expression, Ms. Mosher noted Student's difficulty with theme development and text organization, and recommended the use of graphic organizers as well as providing him with instruction with written text organization and structure, including how to write an introduction, supporting paragraphs, a conclusion, and the use of transition words. (J-10)

Ms. Mosher indicated that given Student's above average performance on phonological awareness, direct instruction in that area was not recommended, nor was direct instruction in decoding, due to his average performance reading words in isolation. Likewise, given his average spelling scores, she did not recommend specialized instruction in spelling. (J-10)

11. The Team met for Student's 3-year re-evaluation on May 8, 2019. Attendees included Parents; Courtney Ryan (Team evaluation coordinator); Laura Spear (Director of Special Education, Framingham)¹⁰; Karen Clarke; Danielle Dowd; Amy Chesin; Otto Johnson; Scott Sokol, Head of School, Metro West Jewish Day School; Kathy Bach, Parents' advocate; and Alexandra Loos. Parents signed a Statement of Attendance Excusal with respect to Christina Sickles, guidance counselor, and Christine Mulrone, special education teacher. (J-12)

The Team meeting was a collaborative process. (Spear, Ryan,) Each evaluator presented his/her findings and Dr. Sokol, from Metro West Jewish Day School, provided input regarding his knowledge of Student. There was no disagreement about the findings of the evaluations. Mother asked about the specific reading program that would be used for Student and mentioned that a previous program that Framingham had used for Student was not effective for him. Ms. Spear told Mother that it was challenging to know what program would work for Student because Framingham had not worked with him for several years, but she would look into the Language Live program that Student was using at Metro West Jewish Day School. (Spear) The meeting lasted in excess of three hours. (Mother, Ryan)

When the Team was reviewing Mr. Johnson's report, Mother raised a concern that the BRIEF scores were reported in a graph and she preferred having the information in the form of a chart. Mr. Johnson offered to revise the format and provided Mother with a new copy of the report with the information in chart form during the meeting. Additionally, there was a typographical error in Mr. Johnson's report. In the body of the report, he had reported a certain scaled score as a 6, when in actuality it should have been a 3. The score was accurately recorded in the chart at the back of the report that listed all of the scores. The correct number had been used in calculating composite scores. (Johnson)¹¹

After reviewing the updated evaluations, the Team proposed continued IEP services and drafted a new IEP for the period from May 9, 2019 through May 7, 2020. (J-12) The IEP proposed small group instruction in the language-based learning disabilities program for all content areas. It contained goals in the following areas: language processing; social

¹⁰ Ms. Spear typically does not attend Team meetings, but Mother requested that she attend and she did. (Spear)

¹¹ In addition to the revisions Mr. Johnson made to his report during the May 8, 2019 Team meeting, Mother requested that he make additional modifications to his report. In an email dated June 13, 2019, Mother requested that Mr. Johnson revise portions of Student's educational history; rewrite the description of why Student's full scale IQ was not reported; and add scores reported in the score charts to the body of the report. Mr. Johnson made Mother's requested changes. (J-17) The results of Mr. Johnson's testing would not have been interpreted any differently if he had not made the changes requested by Mother. (Johnson)

communication; reading fluency; reading comprehension; written language; and organization. The A grid contained a consult with related service providers (occupational therapist, special education, and speech language pathologist) 2 x 15 minutes per month. The C grid contained speech language services 2 x 45 minutes per cycle; reading with a special educator 3 x 45 minutes per cycle; guided academics with a special educator and teacher assistant 1 x 45 minutes per cycle; language arts with a special educator and assistant teacher 1 x 270¹² minutes per cycle; academics (social studies and science) with a special educator and assistant teacher 2 x 270 minutes per cycle; and study strategies with a special educator and assistant teacher 1 x 270 minutes per cycle. The IEP was signed by Courtney Ryan on May 23, 2019. (J-12)

12. The Language-based Learning Disabilities (LLD) program at Walsh Middle School serves students with language-based learning disabilities in grades six through eight. Its students have significant needs in the areas of reading and writing (most students have specific learning disabilities in these areas, and some have communication disabilities and present with reading and writing needs). The LLD program has a partnership with the Landmark School¹³, wherein a Landmark employee provides consultation to the program. (Mosher, Spear) Students in the program have small group classes for all content areas. They receive support for executive functioning, pull-out or push-in reading support as needed, as well as pull-out or push-in speech and language services. Language-based strategies are embedded across all content areas and carried over among classes. Teacher assistants or special educators push into inclusion classes with their students. Speech language pathologists push into the program and reading teachers consult with the LLD teachers to ensure that skills are being generalized across the program. (Ryan)

During the 2019-2020 school year there were twelve eighth grade students in the LLD program with one teacher and one teacher assistant. Each student participated in Guided Academics, a class which provided previewing and reviewing of content material and addressed executive functioning. Students worked on skill development, particularly in the areas of reading and writing and learning to interact with text and content. Ms. Ryan explained that students with language-based learning disabilities, like Student, require over-exposure to content to internalize it. The students require exposure to the material beyond the initial exposure in their content area classes, and the Guided Academics class provides students with the necessary multiple exposures to content. (Ryan)

13. Ms. Chesin meets with the LLD students weekly as a group. She provides push-in services to the classroom and did so approximately three times weekly during the 2019-2020 school year. She meets with the teachers daily to discuss strategies, and consults with the school psychologist and guidance counselor (who lead the lunch group) to help them to incorporate social language concepts into their groups. Lunch groups are organized

¹² A review of the service delivery grid along with the N1, Plep A, and sample schedule (J-21) clarifies that Student was to receive each academic subject for one 45 minute period per day, or for a total of 270 minutes per cycle. (J-12)

¹³ I take administrative notice that the Landmark School is a 766 approved school serving students with dyslexia, language based learning disabilities and learning disabilities. (See MAAPs website.)

around student's interests. Thus, not all LLD students participate in the same lunch groups. (Chesin)

In the LLD program, text is broken down and students are taught specific strategies for how to use self-talk and think as they are reading. They learn to ask themselves questions and think aloud. In Ms. Chesin's opinion, the LLD program would have been beneficial for Student because the strategies used in the academic classes are consistent; the language that the teachers use is consistent; information is broken down and made explicit; main ideas are explicitly taught, and teachers constantly check in with the students to make sure they are understanding. The consistency would be really important for Student's learning. (Chesin)

Ms. Chesin also opined that Student would benefit from exposure to general education peers, which would occur in homeroom, specials, after school clubs and lunch groups. She, Ms. Ryan, and Mr. Johnson believed that the Walsh Middle School LLD program would provide Student with the academic support he requires in his core classes while allowing him the benefit of exposure to general education peers at other times during his school day. (Chesin, Ryan, Johnson)

14. Ms. Mosher provides pull-out reading services for students who require specialized reading instruction, generally in the areas of decoding, encoding, and fluency. She often uses the Read Naturally program to address fluency and comprehension as recommended by the Landmark consultant who works with the Walsh Middle School LLD program. She believes that Student's fluency needs could be addressed either via pull-out services or through the Guided Academics class. (Mosher)
15. All students at Walsh participate in a class called Intervention, which addresses social-emotional learning twice per six-day cycle. The Intervention block was also used to target specific skills. LLD students were able to work in small groups that targeted different skills related to reading. (Ryan)
16. In June 2019 Mother visited the Walsh Middle School along with her advocate. After the visit, they met with Ms. Ryan and Ms. Mosher. They discussed Mother's concern that Student would be pulled out for reading services during most of his scheduled Guided Academics classes. Mother was concerned that he would be missing a portion of the program that would address executive functioning. They discussed ways that fluency instruction could be provided for a rising eighth grader. (Ryan)
17. On August 29, 2019, Framingham received a letter from Parents, dated August 13, 2019, rejecting the IEP and placement. Parents claimed that the IEP did not provide Student with a FAPE in the least restrictive environment and rejected the omission of extended year services. They stated that the IEP did not offer any "relevant evidence-based reading or writing programs" and that the frequency of the proposed reading services was insufficient. Parents rejected Student's being pulled out of Guided Academics to receive speech and reading services five of six times per cycle. They asserted that the Metro West Jewish Day School, where they had unilaterally placed Student, could offer him services

they deemed appropriate. They also alleged that Framingham had committed procedural and substantive violations over the years and requested that Framingham agree to extend a prior settlement agreement to resolve the IEP dispute. (J-18)

18. In another letter, dated August 26, 2019 and received by Framingham on August 29, 2019, Parents commented on the 2019-2020 IEP and requested that changes be made. Parents noted their disagreement with Framingham's conclusion that Student requires instruction within the substantially separate language-based program to make progress. They requested that the Team reconvene on September 4, 2019. (J-19)
19. The Team reconvened on September 11, 2019, to discuss rejected portions of the IEP. The participants in the meeting included Mother, Courtney Ryan, Laura Spear, Lynne Mosher, Kathy Bach and Christina Sickles (school counselor). The Team continued to propose that Student receive services within the substantially separate LLD program at Walsh Middle School. The IEP proposed placing Student in the substantially separate language-based learning program because his receptive and expressive language delays and social communication difficulties impacted his ability to interact effectively with peers and adults resulting in his needing small group remediation in speech and language. Due to his communication difficulties and reading and writing disability, Student required teacher support in order to continue to make effective progress across the day. He would be removed from the general education setting to receive instruction for all classes within the substantially separate classes in which content is presented at his instructional reading level with opportunities for much repetition and review. (J-20)

Mindful of Mother's concern regarding Student's missing Guided Academics to receive pull-out reading services, the Team proposed removing pull-out reading services from the service delivery grid and addressing Student's reading goal within the substantially separate language based Guided Academics class. The Team rejected the option of having Student receive his reading services via a pull-out model because his scores fell within the average range for decoding and he did not require the support of a small group program to support skill development. It noted that Student struggles with reading fluency and writing, both of which are annual goals that the district believed could be supported throughout the language based substantially separate program, and also through targeted instruction within Guided Academics. (J-20)

The IEP proposed pursuant to the September 11, 2019 meeting contained goals in language processing; social communication; reading fluency; reading comprehension; written language; and organization. The A grid provided for a consult with related service providers 2 x 15 minutes per month. The C grid contained speech language services 2 x 45 minutes per cycle; language arts with the special educator and teacher assistant 1 x 270 minutes per cycle; guided academics with the special educator and teacher assistant 4 x 45 minutes per cycle; academics with the special educator and assistant teacher 2 x 270 minutes for social studies and science per cycle; and study strategies 1 x 270¹⁴ minutes per

¹⁴ A review of the service delivery grid along with Plep A, and sample schedule (J-21) clarifies that Student was to receive each academic subject for one 45 minute period per day, or for a total of 270 minutes per cycle. (J-20)

cycle. The IEP also proposed a lunch group to address Student's social/emotional needs and promote his social pragmatic skills. (J-20)

20. On November 13, 2019, Framingham received a letter from Parents dated November 11, 2019, which read, "Re: Rejection of 2019-2020 IEP and Notice of Unilateral Placement for [Student]." Parents stated that they were rejecting Student's program and placement as inadequate to provide Student with a free appropriate public education in the least restrictive environment. Parents were concerned that Student's reading service delivery methodology was changed absent any new data that the Team considered. The letter further stated that Parents would be continuing Student's unilateral placement at the Metro West Jewish Day School for the 2019-2020 school year. (J-22)
21. Danielle Kramer, M.S.Ed, BCBA, and Becki Lauzon, M.A., CRC, from Accept Education Collaborative, conducted a Transition Assessment of Student at Framingham's request, and wrote a report dated January 20, 2020. (J-23) The report made recommendations in the areas of education/training; employment; independent living; and community participation. The Team reviewed the results at a Team meeting on January 27, 2020 and prepared a Transition Planning Form (TPF). Student's post-secondary vision was to attend a two or four-year college to study cancer research. His action plan noted that he requires direct instruction in executive function which will be addressed by his IEP goal for organization. It noted, in relevant part, that he should continue to receive instruction to support his reading, writing, organization, and language processing skills and that he would continue to have direct instruction in social skills. (J-24)
22. Metro West Jewish Day School is not a 766-approved school. It is not approved by DESE for the delivery of special education services. It is not a program designed for students with language-based learning disabilities. Ms. Spears was aware of no evidence to show that the curriculum used at Metro West Jewish Day School followed the Massachusetts Curriculum Frameworks. She was concerned when she reviewed Student's schedule and noted that Student only had science twice per week and did not appear to be taking a specific social studies course. Ms. Spear stated that she has not seen any valid assessment data from MetroWest Jewish Day School demonstrating that Student has made progress while he has attended there. (Spear)
23. Mother testified that Student was "included" at MetroWest Jewish Day School. She did not believe that it was necessary for him to be in a substantially separate classroom. She also did not believe that Framingham's proposed program would provide Student with reading support with sufficient frequency. Moreover, in her opinion, Student required a math goal on his IEP. (Mother)

Mother testified that Metro West Jewish Day School used a reading program that had been recommended by a clinician specifically for students with profiles similar to her son's. She stated that Student received 1:1 instruction with a special educator four times per week during his eighth grade. She also stated that he received speech and language services 3 x 30 minutes per week, lunch bunch one times 25 minutes per week, academic pull-out support two to three times per week, and that his homeroom teacher provided

organizational support 4 x 15 minutes per week. Mother did not specify which year Student received the above services. She reported that Student received most of his pull-out services during classes such as Spanish¹⁵ or Judaic studies. (Mother)

Mother testified regarding her visit to the LLD program on June 7, 2019. She stated that one student did not seem to be engaged in the instruction, one was distracted by her Chromebook, and “there seemed to be students with physical disabilities as well as cognitive impairments in the classes.” (Mother)

In Mother’s view, Student required a more intensive approach to meet his needs than what Framingham was providing. She stated that he required a program that would focus on his dyslexia. (Mother)

24. Student testified that he found it very challenging when he started attending Metro West Jewish Day School. However, he found some things familiar because he had gone there before for temple and Hebrew School. He liked the small classes and found the teachers helpful. He liked having recess there and enjoyed electives such as ultimate frisbee. Student was proud of some science experiments he conducted and a graduation speech he wrote. He stated he would not have wanted to attend Walsh Middle School because the classes would be larger than at Metro West Jewish Day School and he does not like having “big classes.” (Student)
25. Parents did not present any witnesses from Metro West Jewish Day School. Although Dr. Sokol participated during a portion of the first day of Hearing, he did not testify. Besides Mother and Student, Parents called seven additional witnesses, all Framingham staff members. (See transcripts of Hearing.)

FINDINGS AND CONCLUSION:

Student is an individual with a disability, falling within the purview of the Individuals with Disabilities Education Act (IDEA)¹⁶ and the state special education statute.¹⁷ As such, he is entitled to a free appropriate public education (FAPE). Neither his status nor his entitlement is in dispute.

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education, employment and independent living.”¹⁸ FAPE must be provided in the least restrictive environment. Least restrictive environment means that, “to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other

¹⁵ The schedule provided to Framingham for Student’s eighth grade includes “morning meeting, homeroom, Tefilah, math, “explo”, snack, humanities, Hebrew, lunch/recess, science, “Atid”, “O block”, Tanakh, humanities, Spanish, JLL/Jcat/Holocaust, PE, science, electives, community service, and Shabbat on various days. (J-29)

¹⁶ 20 USC 1400 *et seq.*

¹⁷ MGL c. 71B.

¹⁸ 20 USC 1400(d)(1)(A). See also 20 USC 1412(a)(1)(A); *Mr. I ex. Rel. L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1 (1st Cir. 2007)

removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”¹⁹

Student’s right to a FAPE is assured through the development and implementation of an individualized education program (“IEP”).²⁰ An IEP must be custom-tailored to address a student’s “unique” educational needs in a way reasonably calculated to enable him to receive educational benefits.²¹ For an IEP to provide a FAPE, it must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”²² A student is not entitled to the maximum educational benefit possible.²³ Similarly, the educational services need not be, “the only appropriate choice, or the choice of certain selected experts, or the child’s parents’ first choice, or even the best choice.”²⁴ The IDEA further requires that special education and related services be designed to result in progress that is “effective.”²⁵ Further, a student’s level of progress must be judged with respect to the educational potential of the child.²⁶

Massachusetts special education regulations provide that specially designed instruction and related services described within the IEP must be sufficient to “enable the student to progress effectively in the content areas of the general curriculum.”²⁷ Massachusetts also requires that the special education services be designed to develop a student’s educational potential.²⁸

An IEP is a snapshot; therefore, the IEP must take into account what was, and was not objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.²⁹ An IEP is not judged in hindsight; its reasonableness is evaluated in light of the information available at the time it was promulgated.³⁰ The critical inquiry is whether a proposed IEP is adequate and appropriate for a particular child at a given point in time.³¹

The IDEA requires that “to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. See 20 USC 1412(a)(5); 20

¹⁹ 20 USC 1412(a)(5). See also 20 USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c)

²⁰ 20 USC 1414(d)(1)(A)(i)(I)-(III); *Honig v. Doe*, 484 U.S. 305 (1988); *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982)

²¹ *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir.1993)

²² *Andrew F. v. Douglas County. Sch. Dist.*, 580 U.S. ___ (2017)

²³ *Rowley*, 458 U.S. at 197

²⁴ *G.D. Westmoreland Sch. Dist.*, 930 F.2d 942 (1st Cir. 1991)

²⁵ 20 USC 1400(d)(4); *North Reading School Committee v. Bureau of Special Education Appeals*, 480 F. Supp.2d 479 (D. Mass. 2007)(the educational program must be reasonably calculated to provide effective results and demonstrable improvement in the various educational and personal skills identified as "special needs")

²⁶ *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F.3d 18 (1st Cir. 2008)

²⁷ 603 CMR 28.05(4)(b)

²⁸ MGL c.71B; 603 CMR 28.01(3)

²⁹ *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983 (1st Cir. 1990)

³⁰ *Id.*

³¹ *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir. 1993)

USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c)

The burden of persuasion in an administrative hearing challenging an IEP is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 534, 537 (2005). In the instant case, Parents are the party seeking relief, and as such have the burden of persuading the Hearing Officer of their position.

With the foregoing legal framework in mind, I turn to the issues before me. There is no dispute with respect to Student's profile or areas of educational need. The first issue before me, therefore, is whether the IEPs proposed by Framingham for the period from 2019-2020 were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

Although Parents assert that Framingham's proposed program would not have provided Student with a free appropriate public education in the least restrictive environment, they did not proffer any expert testimony or reports to support their position. In fact, the only witness called by Parents to testify with respect to the inappropriateness of Framingham's IEPs was Mother.³² Similarly, Parents did not present any evaluative information in contravention of that provided by Framingham.

Framingham's proposed IEPs offered the services and accommodations that were recommended in Student's three-year evaluations.³³ The IEPs provided the majority of the services recommended by Alexander Loos, who did not testify, but whose evaluation report was in evidence. (J-4) Her primary recommendation was that Student would benefit from a small classroom, designed to meet the needs of students with language-based learning difficulties. She noted that the program should provide specialized instruction across all curriculum areas, including math, science, English language arts, and social studies. That is precisely what Framingham's LLD classroom would have provided. The IEP proposed after the May 8, 2019 meeting contained goals to address all areas of Student's identified needs. While Mother objected to the omission of a math goal, she did not provide any expert evidence that Student required one.

The May 8, 2019 IEP further provided for speech language services to address Student's significant language needs, specialized instruction in study strategies, and Guided Academics to address his executive functioning and learning disabilities. It provided a goal in social communication and a lunch group to target his social communication needs. Additionally, the Intervention class would have addressed Student's social-emotional learning. Further, placement in the Walsh Middle School would have provided Student exposure to general education peers during specials, homeroom, lunch group, and after school clubs. Ms. Ryan, Ms. Spear, Mr.

³² Parents submitted a witness list which provided eighteen proposed witnesses. Of those witnesses, Parents called nine witnesses, none of whom were from Metro West Jewish Day School. Other than the seven Framingham staff members called by Parents, only Mother and Student testified.

³³ Although during the Hearing Mother sought to discredit the accuracy of some of the evaluations, she never challenged the ultimate results of the evaluations. She did not express disagreement with the results to Framingham, nor did she request independent evaluations during the relevant time period. And, as noted above, she did not present any evaluations for consideration.

Johnson, Ms. Dowd, and Ms. Chesin all credibly testified that they believed that the IEPs proposed by Framingham were reasonably calculated to provide the Student with a free appropriate public education in the least restrictive environment. (Ryan, Spear, Johnson, Dowd, Chesin)

The Team reconvened on September 11, 2019, to discuss the rejected portions of the May 8, 2019 IEP and proposed a revised IEP. In response to Mother's concerns that Student would have missed much of the Guided Academics class to receive pull-out reading services under the proposed IEP, Framingham proposed providing Student's reading services within the LLD program, including, within Guided Academics, instead of via the previously proposed and rejected pull-out reading services. (J-20) The proposed service delivery was modified to propose Guided Academics 4 x 45 minutes per cycle (instead of the previously proposed Guided Academics 1 x 45 minutes per cycle and 3 x 45 minutes reading).

Ms. Mosher, a certified reading specialist, credibly testified that Student's fluency needs could be addressed either via pull-out services or through the Guided Academics class. Further, Student's language needs would be addressed throughout the entire LLD program. Although Parents objected to the proposed change in service delivery, they did not offer any substantive evidence to support their position. And, although Ms. Loos' report had recommended pull-out reading services, she did not testify, and thus did not provide any opinion as to the newly proposed service delivery model. Further, Ms. Spear explained that when a new student comes to Framingham there is a fluid process whereby changes can be made, if necessary, through the Team process as staff gets to know the student. This is precisely what is required by the IDEA.

The IEP proposed after the January 27, 2020 Team meeting addressed transition. The Team added Student and Parent concerns and a transition assessment summary. It did not modify service delivery.

As with the IEP proposed after the May 8, 2019 meeting, and for the reasons cited above, I find that the IEPs proposed after the September 11, 2019 and January 27, 2020 Team meetings were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

Having determined that Framingham's proposed IEPs for the period from 2019-2020 were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment, it is not necessary to address the appropriateness of Metro West Jewish Day School.³⁴

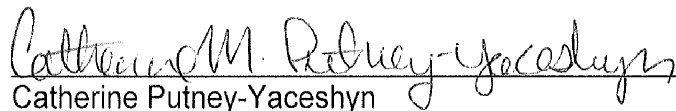
³⁴ I note, however, that even if I had found Framingham's IEPs had been lacking in any way, the record contains very little information regarding the services provided by Metro West Jewish Day School, and would not have supported a finding that it was appropriate. Parents did not call any witnesses from Metro West Jewish Day School. Mother testified regarding her understanding of Student's program, but did not testify to having any firsthand knowledge of Student's daily schedule. Parents sought to provide additional information about Metro West Jewish Day School in their closing argument, however, any information that was not provided during the Hearing and made a part of the official record was disregarded.

Finally, Parents' closing argument alleges that they were treated unfairly during the Hearing process. A review of the record will reveal the opposite. Parents were granted postponements over Framingham's objection in recognition of their pro se status. Mother was permitted to testify on the third day of Hearing after being unprepared to do so on the second day, when Parents were scheduled to present their witnesses. They were provided extra time to submit their closing arguments. They were provided unfettered access to the Director of the BSEA, of whom they were able to ask procedural questions. Further, Parents filed an unusually large number of motions, objections, and requests for reconsideration, all of which received responses from the Hearing Officer. Parents also filed responses when specifically instructed that a response was not required or expected. Any suggestion that Parents were treated unfairly is disproven by the record.

ORDER

Based upon the foregoing, I find that the IEPs proposed by Framingham Public Schools for the 2019-2020 school year were reasonably calculated to provide Student with a free, appropriate public education in the least restrictive environment. Therefore, Parents are not entitled to reimbursement of costs occasioned by their unilateral placement of Student at the Metro West Jewish Day School.

So ordered by the Hearing Officer,



Catherine Putney-Yacashyn

Dated: May 28, 2021