

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

---

**STUDENT V.  
HAMPSHIRE REGIONAL SCHOOL DISTRICT**

BSEA # 2103975

---

**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 c. 71B), the state Administrative Procedure Act (MGL c. 30A), and the regulations promulgated under these statutes.

A hearing was held on March 22, 23, and 24, 2021 before Hearing Officer Alina Kantor Nir. Those present for all or part of the proceedings agreed to participate via a remote videoconferencing platform.

The official record of the hearing consists of documents submitted by the Hampshire School District (Hampshire) and marked as Exhibits S-1 to S-28; documents submitted by the Parents and marked as Exhibits P-1 to P-13; approximately 11 hours of recorded oral testimony and argument; and a three-volume transcript produced by a court reporter. A transcript of the proceedings was sent to the Parties and as requested by the parties, a postponement until April 23, 2021 was granted for good cause, to allow the Parties an opportunity to submit written closing arguments. Parents' and Hampshire's closing arguments were received on said date, and the record closed on that date.

**RELEVANT PROCEDURAL HISTORY:**

On November 23, 2020, Parents filed a *Hearing Request* alleging, in part, that Student's current placement at William E. Norris Elementary School in Southamptn, Massachusetts did not provide him with a FAPE and requesting placement for Student at White Oak School in Westfield, Massachusetts. On December 2, 2020, Parents filed a *Motion to Enforce Stay-Put* in which they asserted that Student's accepted IEP, dated 02/05/20 to 02/04/21, called for 40 minutes of specially designed instruction in Reading from a Special Education Teacher two times per day. However, in an IEP Amendment dated November 16, 2020, the service was reduced to one time per day without prior discussion at the November 12, 2020 Team meeting. Parents further alleged that they were not provided with Prior Written Notice of the reduction. Parents, hence, asserted that they were "entitled to a restoration of the total amount of Reading services which were in the IEP prior to the IEP Amendment."

On December 4, 2020, Hampshire filed its *Response to Parents' Hearing Request/Opposition to Parents' Motion to enforce Stay-Put*. Hampshire asserted that Student never received 40 minutes twice per day of reading services as this was "simply a typographical error." Hampshire argued that in September 2020 reading and writing services were separated out so that the full 40 minutes were devoted to reading and an additional 30 minutes were allotted for writing. In addition, Hampshire asserted that Parents accepted the Amendment.

The Parties argued the *Motion* on January 11, 2020. On February 9, 2021, the Hearing Officer found that Parents had not met their burden of persuasion and that Student's stay-put Grid C reading services were 1x40min/per day/5-cycle for the pendency of the dispute.

On March 8, 2020, with Hampshire's permission, Parents amended their Hearing Request, arguing that the recently proposed IEP for the period 1/27/2021 to 1/26/2022 is not reasonably calculated to provide Student with a FAPE.

#### **ISSUES IN DISPUTE:**

1. Whether the IEP and placement proposed for the period from 1/27/2021 to 1/26/2022 (2021-2022 IEP) is reasonably calculated to provide Student with a free and appropriate public education (FAPE) in the least restrictive environment (LRE);
  - a. If I find that the answer to #1 is "no," then whether there are supplementary aides and services which could be added to his IEP that would result in the provision of a FAPE;
  - b. If I find that the answer to (a) is "no," then whether Student requires placement at White Oak School, with door-to-door round-trip transportation, in order to receive a FAPE in the LRE.

#### **FACTUAL FINDINGS:**

1. Student is a hardworking, kind, nine year old third grade student attending the William E. Norris Elementary School (Norris Elementary) in Southampton, MA. (Mother; Braastad; Corey; Bell; Pereira)
2. Student carries the following diagnoses: ADHD-Primary Inattentive Type; Mixed Receptive-Expressive Language Disorder; Specific Reading Disability (Dyslexia – single deficit, phonological awareness); Mathematics Disorder; and a Disorder of Written Expression. (Currie-Rubin; Gengler; P-3; S-12; S-22; S-24)

3. Parents had Student repeat preschool at Young World Child Care Center prior to entering kindergarten at Norris Elementary. (Mother; P-3) Parent<sup>1</sup> testified that, as a pre-schooler, Student shied away from reading and writing tasks and could not repeat his letters or spell his name. (Mother)
4. In kindergarten, Student began receiving small group literacy intervention which he continued to receive through the middle of second grade. (Mother; P-3) Despite Parent's concerns regarding Student's reading and writing, she was assured that he was developing appropriately. (Mother)
5. By the end of kindergarten, Student was meeting most curriculum standards, made progress on kindergarten benchmarks, but needed adult support to stay on task and to complete assignments. Student had 13 absences in kindergarten. (S-19)

### **2018-2019 School year – First Grade**

6. Parent continued to share concerns about Student's progress in reading and writing with his first-grade teacher who assured Parent that Student was making progress. (Mother)
7. By the end of first grade, Student was meeting the curriculum standards in mathematics, science and history/social studies. He was approaching the standard for foundational skills for reading, writing opinion pieces and applying conventions of English grammar when writing or speaking and was developing towards the standard in knowledge of high frequency words and in applying knowledge of capitalization and punctuation when writing and using learned spelling patterns. Student had 18 absences during the school year, which "hindered" his progress. (S-19; S-24)

### **2019-2020 School Year – Second Grade**

8. Parent's concerns regarding Student's progress in reading and writing persisted into second grade. (Mother) Student's second grade teacher was concerned that he was performing below grade level expectations in reading and writing and that he struggled with organization and attention. (Gengler; White) In mid-October, the classroom teacher referred Student for a Pupil Review Meeting, but on November 14, 2019, before the Pupil Review Team had a chance to meet, Parents referred Student for special education testing. Hampshire subsequently proceeded with the special education evaluation process. (White; Gengler; S-18)
9. In January 2020 Student was assessed for special education eligibility. (White) Kristin Gengler, Ed.S., NCSP conducted the psychological assessment. Ms. Gengler has a master's degree in school psychology and is working on her doctorate degree in education. She is state licensed and nationally certified as a school psychologist. She has been working at Norris Elementary as a school psychologist for 4 years. (Gengler) Formal testing on the WISC-V revealed that Student presented with overall average cognitive skills with stronger nonverbal reasoning skills. Student exhibited weaknesses

---

<sup>1</sup> In this Decision, "Parent" refers to Student's mother.

in his ability to comprehend language and use it to communicate general knowledge.<sup>2</sup> He also demonstrated deficits in working memory and associative memory. (Gengler; S-24) Although Parents reported concerns regarding Student's poor self-confidence and low frustration tolerance relating to academic tasks, the BASC-3 revealed no concerns regarding anxiety or depression. (Gengler; S-24) Ms. Gengler concluded that Student met the criteria for a specific learning disability and/or health impairment and suggested further examination of a communication impairment. (Gengler; S-24)

10. Maria Pereira conducted Student's reading evaluation. (S-20; Pereira) Ms. Pereira has two master's degrees in education and is licensed by the Department of Elementary and Secondary Education in special education, general education, and reading. (Pereira) She is trained in Orton-Gillingham and Lindamood Bell. She has over 12 years of experience working with students with varying disabilities, including, but not limited to, phonological processing disorders, dyslexia, language delays and cognitive impairments. Prior to working as the language-based teacher at Norris Elementary, she taught in a language-based classroom at the Clarke School for Hearing and Speech. (Pereira). According to Ms. Pereira, Student demonstrated challenges in many areas of literacy, phonological awareness, decoding, spelling and vocabulary. (S-14; Pereira) As a mid-second grader, Student was reading at approximately the first grade level. (S-16) According to the DAR and other measures, Student's spelling skills were at the kindergarten/beginning first grade level. (S-14)
11. Sarah White, M.Ed., conducted the academic assessment. Ms. White is the Special Education Team Leader at Norris Elementary. She has a bachelor's and a master's degree in education, and she is licensed by the Department of Elementary and Secondary Education in moderate disabilities, elementary math, middle school science, and high school biology. (White) According to Ms. White, Student demonstrated significant weaknesses across all literacy domains including sight word recognition, spelling, passage comprehension, word attack, and general decoding. He demonstrated a relative strength in mathematics. Results were consistent with Parent and teacher concerns. (S-21; White) During Ms. White's observation, Student struggled with attention, although it was difficult to ascertain whether his issues were attentional or related to academic difficulties. Rating scales did not indicate any concerns regarding depression or anxiety, although Parent noted emotional control as a concern. Ms. White recommended, in part, a structured multisensory literacy approach that is systematic and explicit. (S-21)
12. Karlyn Frye, MOT, OTR/L, conducted Student's occupational therapy assessment. Ms. Frye has a master's degree in occupational therapy, is licensed by the Massachusetts Board of Allied Mental Health Professionals, and is registered with the National Board for Certification in Occupational Therapy, with a specialty in pediatrics. Prior to Norris Elementary, she worked in the Springfield Public Schools as well as in a private school. (Frye) According to Ms. Frye, testing demonstrated solid self-care skills but deficits in Student's visual skills both with and without a motor

---

<sup>2</sup> Ms. Gengler explained that the WISC-V is a "very language heavy assessment," and Student's score of below average on the Verbal Comprehension Index "pulled down" his overall scores. (Gengler)

component. He demonstrated an awkward pencil grasp and his handwriting, though legible when provided structured paper and extra time, became increasingly illegible as pace demands increased. (S-23; Frye) Although Student's letter formation was inconsistent, both alignment and sizing were emerging. (S-23) Student also had difficulty organizing his materials, completing multi-step tasks and carrying multiple items at once. Ms. Frye recommended direct occupational therapy services. (Frye; S-23)

13. Julie Reiss, M.A., CCC-SLP,<sup>3</sup> conducted the speech and language assessment. During her observation, Student was engaged and interested. (S-22) Ms. Reiss had concerns regarding Student's skills in each of the five domains of oral language: syntax, phonology, pragmatics and semantics. (Bell) According to Ms. Reiss, Student's receptive language skills were better developed than his expressive language skills, which is a typical presentation for students with these types of deficits. (S-22; Bell) Although his use of complex language was limited (for instance, his use of conjunctions within sentences was almost 2 standard deviations below the mean), Student demonstrated adequate comprehension skills. Student presented with significant deficits in phonological awareness and phonological memory. Some articulation concerns were noted as well. According to Ms. Reiss, Student exhibited a Language Processing Disorder in the areas of phonology, expressive language and higher-level language skills. She recommended speech and language services and direct work on articulation, syntax, and grammar, as well as vocabulary. (Bell; S-22)
14. The Team convened on February 5, 2020 to review the results of the initial evaluation and found Student eligible for special education and related services under the specific learning disability (SLD) category. (S-16; S-20) Based on the findings of Hampshire's assessments, the Team developed an IEP with goals in the areas of reading, writing, speech and language, and occupational therapy. (S-16; White)
15. Following the Team meeting, via Notice dated February 14, 2020, Hampshire proposed, and Parent accepted<sup>4</sup>, an IEP dated 2/5/20-2/4/21 ("2020-2021 IEP") with full inclusion placement at Norris Elementary. (S-17) Services included : Grid A: Team Consult, monthly; Grid C: Specially Designed Instruction – Reading and Writing, 40 minutes, daily; speech and language therapy, 3x30; occupational therapy, 1x30; Summer Tutoring – Reading and Writing, yearly, 12 hours. (S-15; S-16) Services were implemented following acceptance on February 25, 2020. (White; Pereira)
16. In March 2020, less than one month after Parent accepted the IEP, Hampshire shut down due to the COVID-19 pandemic. (S-13; White; Frye). Student's general education teacher sent worksheets and writing prompts home, but Student struggled to complete the assignments provided by the general education teacher independently. (Mother) He required Mother's support both to stay on task and to complete tasks. (Mother)

---

<sup>3</sup> Because Ms. Reiss did not testify at Hearing, I do not have additional information regarding her training and experience.

<sup>4</sup> At Hearing, the Parties stipulated that the IEP was signed and accepted on February 25, 2020, not 2019 as written.

17. At this time Hampshire also offered a modified delivery of IEP services. (S-13) For instance, Ms. Pereira testified that during the school closure in the spring of 2020, she worked with Student on his reading goal one-on-one for 30 (instead of 40), minutes per day. Ms. Pereira also provided Student with reading and writing homework which he was able to complete. (Pereira)
18. Although it was an adjustment, Student was engaged during remote sessions but became distracted when he could not work in a quiet place. (Pereira) Nevertheless, Student was able to meet two writing objectives and partially meet a third objective by June 2020. (S-27) He also met three reading objectives and was making progress on four objectives. (S-27)
19. Ms. Frye testified that due to Student's absence on the date of their initial session and the COVID shutdown that ensued the following week, she had no opportunity to begin occupational therapy services until Student transitioned to remote instruction. (Frye). During the school closure, she sent regular emails with PowerPoints, videos and printable activities. She was also available for consultation, but Parents did not reach out to Ms. Frye during that time. (Frye; S-26)
20. Similarly, Student "just began to attend speech" before the school closed. Student "consistently participated in direct services through Zoom and reportedly practiced target speech sounds between therapy sessions. In June 2020, Student was able to match definitions to idioms with 90% accuracy." (S-26)
21. In accordance with guidance from the Department of Elementary and Secondary Education, no grades were awarded in June 2020. During the second trimester of 2<sup>nd</sup> grade, however, Student was struggling to meet grade level standards in English Language Arts and Literacy as well as the Numbers and Operations in Base 10 standard in Mathematics. Nevertheless, he also made "a great deal of progress" in skills across the curriculum and demonstrated increased confidence. Math continued to be his strongest subject, and Student was a "top scorer" on timed tests. Moreover, he was popular and social. Student had 10 absences during the 2019-2020 school year. (S-19)

## **Summer 2020**

22. For the extended school year (ESY), Hampshire proposed that during July 2020, Student would be provided 12 hours of reading and writing remote services. Parents declined to have Student participate in ESY programming, opting instead to let him spend the summer relaxing. (Mother; White; S-11)
23. Frustrated with Student's "learning struggles" during the remote learning period, Parents toured White Oak School (White Oak) during the summer of 2020. (Mother)
24. Jody Michalski is the Academic Dean at White Oak and has been in that role for 6 years. (Michalski; P-8) White Oak is approved by the Commonwealth of Massachusetts

and the Department of Elementary and Secondary Education. (P-12; Michalski) Although White Oak serves many populations, most students' primary disability is Specific Learning Disability (SLD). (S-12; Michalski) There are approximately 25 teachers on staff and no paraprofessionals. One teacher is Orton-Gillingham certified, and the others are Orton-Gillingham trained. Most teachers are certified in special education or are working towards their Department of Elementary and Secondary Education licenses in moderate special needs. All teachers participate in 40 hours of in-service training per year. White Oak's language-based program is "explicit, structured and immersive as to language skills." Language skills are explicitly taught in every class, and students practice them across the day for repetition and consistency. (Michalski)

25. White Oak serves grades 1 through 12. (P-12; Michalski) Currently, students in grades 4 through 6 are grouped together, and there is only one fourth grade student attending. (Michalski) Students receive instruction in small groups (8 students maximum). In addition to core content classes, all students participate in an oral expression class which targets expressive, receptive and pragmatic language skills. (P-12; Michalski) Social emotional needs are also addressed during oral expression class. (Michalski) To work on individual skill deficits, students participate in a daily, 50-minute, one-to-one tutorial. (Michalski; P-12) Although Ms. Michalski testified that there are no "pull-out" sessions at White Oak, she also indicated that speech and language services by the two White Oak speech and language pathologists are provided as pull-out services during an elective or PE. (Michalski; P-12) There are no occupational therapists or physical therapists on staff, and such services are usually provided by the sending school district. There is no social worker or school adjustment counselor on staff. (Michalski)

### **2020-2021 – Third Grade**

26. For the 2020-2021 school year, Hampshire offered students with significant disabilities the opportunity to attend in-person instruction 4 days per week; despite said offer to Student, Parent chose to have Student begin the school year with remote instruction only. Student returned to in-person instruction on October 19, 2020. (White; Mother)
27. In the fall of 2020, Parents requested, and Hampshire agreed to fund, an independent evaluation. (S-7)
28. The Team convened on September 16, 2020. Parent shared her concerns regarding Student's progress and asked Hampshire to consider White Oak for Student. (Mother; S-11) Hampshire rejected this option indicating that Student was making effective progress, even in light of his non-attendance at ESY. (S-11)
29. As a result of the September 16, 2020 Team meeting, via Notice dated September 16, 2020, Hampshire proposed, and Parent accepted, an Amendment to the IEP for the period 2/5/20 to 2/4/21. (S-11) To "provide a bridge between [Student's] special education services and his general education classroom," the Amendment added to the A Grid a weekly ten minute consult between the special education teacher and the

paraprofessional. To the B Grid, the Amendment added daily academic support for 2 hours with special education staff. Furthermore, to the C Grid, Writing, 3x30 was added. (S-11; White) On the Response Page, Parent indicated that she had asked for the Team to consider White Oak. She also requested revisions to Student's remote learning plan, such as breaks, as needed, or a shorter online school day. (S-10) In response to Parent's request, breaks were added into Student's schedule. (Mother; S-1) Services were implemented following acceptance on September 18, 2020. (White)

30. Student struggled to stay engaged during remote instruction. (Pereira; Mother) Since he now had 70 minutes of direct one-on-one reading and writing services with Ms. Pereira, she divided the one-on-one sessions into shorter ones, but Student continued to struggle. In the Fall of 2020, Ms. Pereira "highly recommended" to Parents that Student attend in-person instruction. She suggested that, like other students receiving her services, he at least attend his special education services in person and receive his general education instruction remotely. Parent rejected this option at that time. (Pereira)
31. Ms. Frye testified that she offered Parents the option of Zoom sessions, in-person drop-in sessions for 30 minutes/week, or in-person drop-in sessions for 60 minutes biweekly. Although Parents chose the 60min/biweekly option, Student did not attend. As a result, Ms. Frye was unable to provide Student with any occupational therapy sessions while Student was remote, although she was available to do so. (Frye)
32. Ms. Erica Bell is Student's current speech and language pathologist, as she is in charge of grades 3 to 6 at Norris Elementary. (Bell). Ms. Bell has a master's degree in communication science and disorders and has been practicing for approximately 20 years. She holds a teaching license as well as a state license by the Massachusetts Board of Speech Pathology and Audiology and a national license from the American Speech Language Hearing Association (ASHA). Ms. Bell testified that due to scheduling difficulties, she did not begin individual sessions with Student until he returned to in-person instruction in October, but she participated in general education Zoom meetings and in Ms. Pereira's small groups.<sup>5</sup> (Bell)
33. For general education instruction during the 2020-2021 school year, Hampshire has been utilizing the Florida Learning Virtual School (FLVS) program. Students who access the virtual program receive support from teachers who were hired specifically for that role, although all students participate in social time with their general education class on Wednesdays. (Pereira; Michaud) On the FLVS Platform, Student was unable to complete third-grade work independently. (Mother) Parent found the virtual program frustrating. (Pereira, Mother)
34. Due to fluctuations in the COVID-19 rates, Hampshire alternated between fully remote and hybrid instructional models.<sup>6</sup> (Mother; White) Parent testified that Student continued to require her full assistance and support to initiate and complete tasks during remote periods. (Mother) Ms. Pereira testified that, utilizing the visual supports in her

---

<sup>5</sup> Parents did not raise any claims for compensatory services.

<sup>6</sup> There was no testimony offered regarding the specific dates when Hampshire was fully remote or hybrid.



classroom, Student is independent in getting his materials organized, but he struggled in the home environment. (Pereira)

35. Given ongoing difficulties managing Student's service-delivery schedule and providing Student with continuous support throughout the day, Parent returned Student to four days of in-person instruction on October 19, 2020. (Mother; S-7)
36. Ms. Erika Michaud is Student's general education classroom teacher. She has a master's degree in elementary education and is licensed by the Department of Elementary and Secondary Education in same. She has been working at Norris Elementary for 10 years. Student is one of 14 students in her classroom, four of whom have IEPs. (Michaud) During in-person instruction days, Student begins his day in the general education classroom and participates with his peers in morning meeting and group instruction for reading. (Pereira; Michaud; S-1; P-10) During such time, he is supported by a Landmark-trained paraprofessional who supports other students in the classroom as well as Student.<sup>7</sup> (Pereira) Reading begins with a "word study." Ms. Michaud testified that she and Ms. Pereira collaborate as to Student's specific material; at times, he works on the same material as his classmates, and at times Ms. Pereira provides him with different word patterns to work on. In the latter case, he works in a small group with the paraprofessional. (Michaud) Student then participates in a whole group read-aloud and discussion. When the class transitions to independent reading activities, he walks with a peer and the paraprofessional to Ms. Pereira's language-based classroom, where Student works on reading and writing with Ms. Pereira and/or the paraprofessional. (Pereira; Michaud) Movement breaks are incorporated into that time. (Pereira; P-11; Currie-Rubin) Ms. Pereira's class is a language-based classroom, and the environment promoted language rich experiences, including visuals of tasks and expectations, and an interactive Smart Board. (Pereira) She utilizes programs with many visuals for reading and writing including Project Read and Orton-Gillingham, which are both multi-sensory approaches. (Pereira; Currie Rubin)

On Mondays and Tuesdays, Student returns to class and participates in shared writing, whereby Ms. Michaud models a writing piece with student interaction, and they jointly create a writing piece on the board; students then work on their own, and Student, during such time, has the supports of graphic organizers, verbalizing, scribing, as well as the support of the paraprofessional and Ms. Michaud. (Michaud) On Thursdays and Fridays, he works with Ms. Pereira one-on-one on his writing and then returns to Ms. Michaud's class for the last 10 minutes of ELA as students are reading independently. Student also has access to independent reading activities utilizing the books from Ms. Pereira's language-based classroom; Ms. Michaud testified that Student's name is on the board "just like everybody else's, and it has three activities under his name." (Michaud; Pereira)

---

<sup>7</sup> At Hearing, Ms. Pereira was uncertain whether she supervises the paraprofessional. She does not train the paraprofessional. (Pereira) Ms. Braastad testified that both she and Ms. Michaud supervise the paraprofessional. (Braastad)

Student participates in snack, specials and lunch with his peers. (Pereira; Michaud; S-1; P-10) Supported by the paraprofessional who checks in with Student and reminds him to use his learned strategies, Student receives whole group math instruction in the general education class. Ms. Michaud used the “I do, we do, you do” model of instruction where she first demonstrates an activity, then the class completes it together, and then each student completes it himself/herself. (Michaud; Braastad)

When students break into small group math work, Student transitions into his pull-out math session with Linda Braastad, where he works with a peer. (Pereira; Michaud; Braastad; S-1; P-10) Ms. Braastad is licensed by the Department of Elementary and Secondary Education in moderate disabilities and high school history. She is also Orton-Gillingham certified. She works with Student in a small group for 30 minutes daily. During sessions she works on third-grade benchmarks, but because Student is “part of the language-based framework,” she pre-teaches Student math vocabulary and strategies for material that will be taught in his general education classroom approximately two weeks later. (Braastad) Student then returns to his general education class for Work Share or Skills Practice, at which time he may be pulled out for speech or OT services. (Michaud; Bell; Frye) Student then participates in science and social studies with the class. (Michaud; S-1; P-10) The third-grade science and social studies curriculum is teacher-directed; Ms. Michaud uses a lot of visuals, reads aloud from the textbook, and engages students in a discussion. (Michaud)

Student transitions in and out of the general education classroom either by himself or with a gentle reminder from the service provider (i.e., standing at the doorway and making eye contact with Student). (Bell, Frye, Braastad, Pereira) Other students are also seen in the classroom for a variety of reasons, and there are “often two or three adults in the room helping students.” (Bell) The general education classroom is a “fluid environment with lots of activity and lots of support.” (Bell)

During remote Wednesdays, Ms. Pereira and the paraprofessional work with Student and a peer via Zoom, and Student also participates in social skills whole group instruction with Ms. Michaud. (Pereira; Michaud) Student receives 70 minutes of synchronous reading and writing instruction on Wednesdays. Ms. Pereira and the paraprofessional utilize breakout rooms which are helpful to Student. (Pereira) Student also participates in Zoom with Ms. Michaud and then students complete independent work; Student is able to complete the independent work assigned to him which consists of work assigned by Ms. Pereria, XtraMath (which he completes independently at school), and keyboarding practice. If he has trouble with his independent work, he has access to his paraprofessional. Even though Student is able to do the work, recently he has not been completing it consistently. (Michaud)

37. Ms. Bell testified that, due to concerns regarding the amount of pull-outs, she felt she could effectively support Student with two pull out sessions and one push in session. (Bell) She also indicated that her office adjoins the classroom, and, if the class is in the middle of an activity that Ms. Michaud does not want Student to miss, she reschedules her speech and language session rather than pulling Student out of class. At times,

Student has chosen to come to Ms. Bell's office. She testified that the Team is providing Student the services that he needs "in as smooth and as appropriate a way as [they] can while being sensitive to where he is ... day-to-day and how he's doing."  
(Bell)

38. On October 19, 2020, Hampshire proposed, and Parent accepted, another Amendment adding allergy accommodations to Student's IEP. (S-8; S-9; White) These were implemented following acceptance on October 20, 2020. (White)
39. On November 12, 2020, the Team reconvened to review a Hampshire-funded independent evaluation of Student by Learning Solutions. Dr. Currie-Rubin from Learning Solutions attended the Team meeting as did the school psychologist, Ms. Gengler. (Currie-Rubin; Gengler) Parent again requested an out of district placement for Student. This option was rejected by the Team. (S-7)
40. Testing by Learning Solutions included the following assessments: psychological, speech and language, and education. (P-3; S-12) Overall, testing results were consistent with Hampshire's January 2020 testing. (White; Gengler; Bell; Currie-Rubin) Student attained an average full-scale IQ score, but his verbal learning ability was below average.<sup>8</sup> He also struggled with attention. (P-3; S-12) Although Parents reported social-emotional concerns, the rating scales and standardized assessments were non-corroborative for depression, anxiety and/or withdrawal, and Student reported that he "generally liked school." (Gengler; P-3; S-12; Currie-Rubin) Nevertheless, at Hearing, Ms. Gengler opined that it was typical of students with learning disabilities to find academic work frustrating and, as a result, to struggle with anxiety. (Gengler) On the BASC-3 Self-Report Inventory, Student reported enjoying school and liking his teachers. Results on the BRIEF-2 suggested difficulties with many aspects of executive functioning, including response inhibition, self-monitoring, and cognitive regulating abilities such as planning ability, as consistent with an ADHD diagnosis. (P-3; S-12)
41. The speech and language portion of the independent evaluation was also consistent with that of the school district. (Bell) Results evidenced significant language weaknesses across a number of skill areas, including organizing, grammar, oral expression, listening comprehension, and semantics (vocabulary). (P-3; S-12) During testing, Student struggled to derive full meaning from written and verbal instructions, solve word problems, and understand the different steps required to carry out assignments. His pragmatic language skills, however, were average. The results were consistent with a diagnosis of a Mixed Receptive-Expressive Language Disorder. (P-3; S-12)
42. Ms. Bell testified that based on her observation and work with Student, she concurred with Learning Solutions' finding that Student did not require direct intervention in pragmatics as he is very "socially savvy." (Bell)

---

<sup>8</sup> Student scored better on the Stanford-Binet administered by Learning Solutions than on the WISC-V, which may have been due to its shorter tasks which appeared less academic. The test also involves more visual cues. (P-3)

43. Rachel Currie-Rubin, Ed.D., conducted the educational portion of the independent evaluation by Learning Solutions. (P-3; S-12; Currie-Rubin) Dr. Currie-Rubin has an educational doctorate in human development and education. Her dissertation focused on decision making and problem solving related to psychoeducational assessments focused on literacy, and she has an extensive background in conducting assessments and some experience conducting observations.<sup>9</sup> (P-6; Currie-Rubin) Student reported to Dr. Currie-Rubin that at school he feels uncomfortable when he does not know how to begin a task or when he feels that something has not been fully explained. (P-3; S-12) According to Dr. Currie-Rubin's testing, Student scored below grade level in all areas of reading and writing. (Currie-Rubin) His phonological awareness, decoding, fluency, reading comprehension, and spelling skills were in the borderline range. Student's contextual writing earned his lowest score. His story lacked cohesion and detail. He did not write full sentences; his writing was disfluent; and his spelling skills were very weak, as he even demonstrated difficulties writing recognizable words. Student's significant phonological awareness deficits impacted all areas of literacy, including but not limited to word reading, decoding, and oral fluency which, in turn, impacted his reading comprehension and access to grade-level text. (Currie-Rubin) (P-3; S-12; Currie-Rubin)
44. Dr. Currie-Rubin testified that Student's math scores were less concerning than his reading and writing scores but were mostly below average (with the exception of Math Fluency and Subtraction). (Currie-Rubin) Student struggled with problem solving skills, telling time, counting with change, single-operation word problems, addition fluency skills, and basic concepts. (P-3; S-12; Currie-Rubin; Braastad)
45. Based on testing results and her short conversation with Ms. Pereira, which corroborated her findings, Dr. Currie Rubin diagnosed Student with dyslexia (single deficit, phonological awareness). (Currie-Rubin; P-3; S-12) Student also met the criteria for a Disorder of Written Expression, and a Mathematics Disorder. (P-3; S-12; Currie-Rubin)
46. The Learning Solutions report recommended accommodations for ADHD, including but not limited to extra time for completing tests and longer assignments, class notes, a calculator, and small group work when possible. Furthermore, in light of Student's reluctance to ask for help, it was recommended that he be provided opportunities to preview and review materials. Speech and language services were recommended to work on improving Student's vocabulary, morphology and syntax, language reasoning and narratives. The report further stated that Student required intensive reading instruction using a sensory phonics-based program, such as Orton-Gillingham. It was recommended that he receive instruction in fluency, spelling and writing. Teaching Student a structured writing approach was also recommended as was access to speech-to text technology across the curriculum. An assistive technology evaluation was recommended. Pairing visual and verbal strategies for problem-solving was suggested for Student's math difficulties. (P-3; S-12; Currie-Rubin)

---

<sup>9</sup> Dr. Currie-Rubin testified that she has conducted a little over 300 psychoeducational assessments in the last 2 years, but, in the last 5 years, has only conducted 10-15 observations for the purposes of evaluation. (Currie-Rubin)

47. Dr. Currie-Rubin did not recommend either an in-district or out-of-district-placement for Student. (S-12; P-3; Currie-Rubin) She testified that she does not make recommendations for in-district or out-of-district placements. Instead, she makes recommendations which should be implemented in any setting where they can be implemented with “sufficient fidelity, with sufficient time, [and] with sufficient progress.” She defined “fidelity” as “approaches that are set out in terms of reading, writing, and math [which are] done intensively [and] actually help the student progress in the general education curriculum ultimately.” (Currie-Rubin)
48. Linda Braastad attended the November 2020 Team meeting and drafted the proposed math goal. Ms. Braastad noted that the results of the Learning Solutions assessment correlated to Student’s performance on school assessments in mathematics. Although Student did in fact struggle with word problems, he also required foundational remediation. She opined that Student did not master addition and subtraction facts in second grade because of the COVID-19 school closure, and, therefore, she included those as benchmarks in Student’s math goal so that he could first master these skills before moving on to word problems. In developing the math goal at the November 12, 2020 Team meeting, Ms. Braastad sought to develop Student’s fluency in addition, subtraction and multiplication before tackling word problems. (Braastad)
49. Following the November 12, 2020 Team meeting, via Notice dated November 16, 2020, Hampshire proposed a further Amendment to the IEP for the period from 2/5/2020 to 2/4/2021, as amended on September 16, 2020 and on October 19, 2020. Following recommendations from Learning Solutions, the Team added the following accommodations to Student’s IEP: teacher modeling of problems, an option to verbalize for assessments to extend his answers in science and social studies, and both speech to text and text to speech options. (S-6) In addition, the B Grid now reflected an additional hour of paraprofessional support during the general education math block and the C Grid included small group math instruction for 30 minutes per day. A math goal was also added to Student’s then-current IEP. (S-5; S-6; S-7) Placement for 11/12/2020-2/4/2021 was proposed in the partial inclusion program at William E. Norris Elementary School. (S-15; White) School based staff testified that this IEP was appropriate, incorporated the recommendations of the independent evaluators, and met Student’s special education needs. (White; Gengler; Bell; Frye; Pereira; Braastad)
50. Parent rejected the placement on November 2, 2020.<sup>10</sup> (S-15) On November 24, 2020, Parent fully accepted the services proposed by the Amendment<sup>11</sup> but rejected the IEP “as a whole.” (S-6) Services were implemented following acceptance. (White)

---

<sup>10</sup> November 2, 2020 appears to be an error as this would mean that Parent signed the placement page prior to the meeting.

<sup>11</sup> Changes made to the service delivery grid following the September 2020 and November 2020 Team meetings, respectively, were the subject of Parent’s *Motion to Enforce Stay Put*. A *Ruling* on the matter was issued on February 9, 2021, and its findings are described in the **Relevant Procedural History** section in this Decision.

51. A progress meeting was held on December 18, 2020, but no changes were made to the IEP. (White)
52. The Team convened for an annual review on January 27, 2021. Parents shared their concerns regarding Student's academic progress and social well-being. (S-4) Parent was concerned that Student was not generalizing skills from his special education services into the general education and home environments. (S-4) Parent testified that Student continued to struggle with grade level spelling and math work. (Mother; P-13) Student also stopped competing his homework. (Pereira) Parent testified that Student had begun to "hide" work assignments, claiming that he had completed them with his paraprofessional. (Mother)
53. Parent also testified that Student was stressed, depressed and anxious. (Mother; Corey) He began to "dread school" and expressed not wanting to attend. (Mother; Corey) He felt singled out and embarrassed by his numerous pull-out services. Parent testified that the fact that other students in the classroom were also receiving services or transitioning in and out of the classroom would not impact Student's feelings of embarrassment since Student "holds himself by very high standards [and] has very harsh judgment on himself." (Mother) Due to all of the transitions in his schedule, Student did not feel part of the group in the general education classroom. There were instances when he cried and did not want to go to school. (Mother; Corey) In a couple of instances, Parent required help from school staff to transition Student from her car into the school building. (Mother) Parent testified that she observed Student's friends make fun of him on social media due to the help he received in class. (Mother) She raised these concerns at the January 2021 Team meeting. (White)
54. School staff did not share Parent's concerns regarding Student's social-emotional functioning. (White) Ms. Michaud indicated that Student navigates social situations well. (Michaud) Ms. Gengler opined that it is "very common" for students with specific learning disabilities to feel anxiety and frustration and have low self-confidence; and the reading specialist, Ms. Pereira, testified that she addressed self-confidence and helps students understand their learning needs. (Pereira; Gengler) Ms. Michaud indicated that she would be concerned about a student who does not want to come into school if it was a daily or a regular occurrence, which it is not in Student's case. She noted Student may simply have a hard time "transitioning" from remote Wednesday to in-person Thursday, especially since he has a therapy appointment on Thursday mornings. (Michaud)
55. Also at the January 2021 Team meeting, Parent requested that Student be allowed to work remotely on days when he refused to attend in person. (Mother) She also again requested a more restrictive placement for Student, but the school-based Team asserted that Student was making progress and rejected this option. (S-3; S-4) Ms. Michaud reported that Student understood classroom routines and seemed to enjoy school and being with his peers. With support, he participated well in the general education setting and frequently contributed to classroom discussion. (S-4; Michaud) Ms. Michaud

testified that she has no concerns regarding Student's social emotional functioning. In fact, he navigates social situations well. (Michaud)

56. During the January 2021 meeting Ms. Pereira voiced her concern that Student had missed 6 hours of reading and writing instruction with her due to his sessions with his private therapist, Shelah Corey, LICSW, whom he began seeing on or about mid-January 2021 for 55-minute sessions on Thursday mornings. (Pereira; S-4; Mother; Corey) Parent testified that Student's mental health needs were "urgent," and she felt she had to accept the first available option which, in turn, meant that he missed school on Thursday mornings. (Mother; S-1; P-10) She was concerned that Student has been more withdrawn this year and that his self-confidence has suffered. (Mother) However, Ms. Pereira opined that six hours of missed instruction resulting from Student's morning therapy sessions is "a lot." (Pereira) Parent subsequently agreed to reschedule the therapy sessions for a time that did not conflict with school. (Pereira; Corey)
57. Student began seeing Ms. Corey in mid-January. (Mother; Corey) Parent was concerned about what Student was experiencing "under the surface." (Mother) Ms. Corey indicated that Parent cited Student's anxiety as the reason for the referral; although "school was mentioned," it did not "appear to be a large part of it." (Corey) Parent later explained that Parent felt that Student struggled generally with anxiety which appeared to be "exacerbated by the current school placement." (Corey)
58. Ms. Corey did not conduct any formal assessments of Student. She testified that during sessions Student reported anxiety about peer perceptions of him. He found schoolwork difficult and did not feel comfortable advocating for himself when he was confused by the work or by conflicting teacher expectations, because he was concerned about "how people will perceive it if he doesn't like something or he's uncomfortable or he's unhappy." Ms. Corey developed three goals for Student: to understand himself as a learner; to self-advocate; and to identify strategies to manage his anxiety. (Corey) Ms. Corey spoke with Ms. Beth Gordon, School Adjustment Counselor, advising that Student utilize Ms. Gordon for social-emotional difficulties and suggesting that a plan be developed for mornings when Student struggled to come to school. (Corey; Gordon) She also advised that Student's Team develop a unified set of rules and expectations for him. Ms. Corey testified that Student expressed wanting to attend White Oak but that she could not comment on the appropriateness of Student's IEP or placement. (Corey)
59. Student's December 2020 Progress Report shows that he met many of his objectives and made progress on all others. (S-25; S-26; S-27; S-28) Furthermore, although Student's mathematics services were only introduced following the acceptance of the November Amendment, at Hearing Ms. Braastad testified that, in three months, Student had made substantial gains. (Braastad; S-28). For example, in December 2020, Student could not demonstrate understanding of the greater than/less than symbols, but in March 2021, he demonstrated 80%-100% mastery of the skill. (S-25; S-28; Braastad) Ms. Braastad opined that a "big difference" she has observed is his increased self-awareness in using the learned strategies which she had taught him. With the

supports he has in place Student is able to access the third grade math curriculum.  
(Braastad)

60. Ms. Bell testified that she was “very pleased” with Student’s progress on his speech and language goals for the period during which she has worked with him. (Bell) For instance, he had improved his ability to expand his language using conjunctions and to utilize irregular verbs. (Bell; S-25) He was also able to answer more abstract language questions, such as those beginning with conditional words (i.e., how should, how might, how could). She observed him carrying over skills learned in their one-to-one sessions when she pushed into Ms. Pereira’s language-based classroom. (Bell)
61. Ms. Frye too testified regarding Student’s progress. She noted “greatly improved” handwriting and written organization skills. Although she has not observed Student in the general education setting, she participates in Student’s monthly consultation and has not been made privy to any concerns. Therefore, she believes that Student is generalizing the skills that he has mastered in their sessions. Ms. Frye testified that Student needs OT services, as he is clearly benefitting from them at the present time. (Frye)
62. Reading tests conducted in January 2021 show significant progress. (S-14; S-27; Pereira) Student made progress in all 15 sections of the Formative Assessment for Phonological awareness (FAPA) since he was first administered the assessment in January 2020. The Gallistel-Ellis Test of Coding Skills also evidenced gains in all areas, including giving sounds, reading, and spelling. Student made progress in his sight word vocabulary as well. For example, in January 2020, Student could only name 46 % of third grade Dolch Sight vocabulary but could name 100% in January 2021. His spelling and decoding were at a kindergarten/beginning first grade level in January 2020 but at the first grade/beginning of second grade level in January 2021. Ms. Pereira testified that he has made effective progress. (Pereira; S-4; S-14; S-27; S-25)
63. Following the January 27, 2021 Team meeting, via Notice dated February 10, 2021, Hampshire proposed an IEP for the period 1/27/2021 to 1/26/2022 (2021-2022 IEP). The IEP described Student as presenting with “significant weaknesses in phonology, expressive language and higher-level language skills which hindered his development of basic reading, written expression, oral expression, and listening comprehension skills” and impacted his progress across curriculum areas. In addition to a handful of accommodations, the IEP provided for content to be modified at Student’s instructional levels in the areas of reading, writing and math and for a small group multi-sensory, systematic and explicit literacy approach. (S-4)
64. The Team proposed goals in the following areas: reading, writing, speech and language, occupational therapy and mathematics. (S-4) To support Student’s goals, Hampshire proposed the following service delivery per 5 day cycle: Grid A: Team Consult (general education teacher, special education teacher, occupational therapist, speech and language pathologist, school adjustment counselor<sup>12</sup>), monthly, 30 min;

---

<sup>12</sup> The Team added the school adjustment counselor, who is a social worker, as a consult to the Team.



Consult (special education teacher/paraprofessional), weekly, 10 min; Grid B: Academic Support - reading and writing, daily, 2 hours; Academic Support<sup>13</sup> – Math, daily, 1 hour Grid C: Reading, daily, 40 min; Writing, daily, 30 minutes, speech and language therapy, 3x30; occupational therapy, weekly, 30 minutes; Math, daily, 30 min; summer tutoring, yearly, 12 hours. The school adjustment counselor was added to the Team Consult service on the service delivery grid in response to Parent's concerns regarding Student's social-emotional functioning. (S-4; S-5; White; Gordon) Additional Information noted that thirty minutes of speech and language therapy services would be conducted in conjunction with C grid reading and/or writing services "in an effort to reduce out-of-classroom time" and to increase consistency among service providers. Placement was proposed at the partial inclusion program at Norris Elementary. (S-3; S-4) School based staff testified that the IEP was appropriate and met Student's special education needs. (White; Gengler; Pereira; Bell; Frye; Michaud) On February 11, 2021, Parents rejected the IEP but accepted the services. They also rejected the placement. (S-2)

65. On February 26, 2021, a three-hour observation was conducted by Dr. Currie-Rubin at Norris Elementary. She noted that she had selected a "typical" day to observe.

She testified that she observed Student receiving "consistent support." Student received appropriate reading and OT services. Additionally, his reading teacher and paraprofessional provided him with accommodations, including but not limited to, pairing verbal and visual instruction, breaking down multi-step directions and assignments into smaller steps, checking-in consistently to make sure Student was on task, and providing movement breaks. Student also willingly left the general education classroom to attend pull-out sessions.

However, she went on to state that Student's affect varied during the observation, ranging from flat and compliant during reading, to talkative and happy during OT. Student's general education schedule did not "pair" with his pull-out sessions, and the class was often "in the middle of things" when he transitioned in and out of the classroom. Student did not have time to fully engage in the activities of the classroom before transitioning out again. Dr. Currie-Rubin observed that Student's day was "chopped up"; in light of the short classroom periods and Student's frequent transitions, his schedule was challenging as it required him to quickly transition, start working, listening and incorporate directions. His pull-outs, though necessary given the nature of his learning disabilities and his need for intensive instruction, left him "disconnected" from the general education classroom, including from the work, his teacher and his peers. Dr. Currie-Rubin acknowledged that this was "in part due to the fact that [students] were apart" and were wearing masks, but Student also missed some interactions when he left for services.

Moreover, she observed "little direct interaction [between the classroom teacher and Student] in terms of instruction [although] it did happen occasionally." The paraprofessional worked with other students in addition to Student but "spent quite a lot

---

<sup>13</sup> This service was provided by the paraprofessional.

of time” with Student. Dr. Currie-Rubin also noted “discrepancies in carry-over” between similar or related tasks in his pull-out classroom and his general education classroom, and she did not observe Student to apply learned skills from pull out sessions into the general education classroom. For instance, he practiced handwriting with multiple prompts per letter while holding his pencil with a poor grip in the general education classroom, but he did not work on his cursive handwriting during his OT session, focusing instead on hand strength.

Dr. Currie-Rubin testified that Student also relied heavily on adult prompting to complete his work and was not integrated into the general education classroom. She explained that prompting during pull-out sessions is less concerning to her because in that environment Student is “learning new things and may need prompts for that.” However, she “had concerns that he wasn’t able to apply the work that he was doing in the pull-outs in the classroom fully” and he was not able “to finish or really engage in a task as fully as he needed to be able to kind of finish and get the practice fully.” Dr. Currie-Rubin opined that if Student were to remain prompt dependent, “he’s not going to practice on his own ... or expand on things on his own” which “ultimately could be a problem,” although she could not specify whether it would “ultimately” be a problem for Student. (Currie-Rubin)

Dr. Currie-Rubin testified that in her evaluation she recommended Student be given ample time, which is distinct from extra time; while she observed Student be given ample time in pull outs, he was not offered it in the general education classroom. Based on her observation, she did not see a “real benefit of doing reading and writing in the classroom.” However, she also could not indicate whether, if Student “had chances to finish an assignment” in the general education classroom, he would have received educational benefit. (P-4; Currie-Rubin).

Dr. Currie-Rubin recommended increased consultation between the classroom teacher and service providers to increase carryover and ensure that he is practicing the skills that he is learning in his classroom. She also suggested practicing a skill until fluent outside of the general education classroom. She suggested that assistive technology be utilized in the classroom to encourage independence during independent reading time and to avoid having the paraprofessional scribe for Student. (P-4)<sup>14</sup> Dr. Currie-Rubin also opined that certification of staff is less important than training and extensive knowledge of the Orton Gillingham/language-based techniques needed for Student. (Currie-Rubin) She did not recommend a language-based program in her report.

66. Dr. Currie-Rubin opined that she did not observe “sufficient activity in the classroom to be able to say whether the special education services were resulting in a better ability or an ability to access the general education curriculum even with accommodations.” She reiterated that during her observation of the general education classroom, she did not “see [Student] able to dig into the stuff sufficiently to be able to tell if he would be able

---

<sup>14</sup> The Team convened on March 18, 2021 to review the observation report. Although no changes were made to the IEP at that time, the Team proposed an assistive technology evaluation. (White) No documentary evidence relating to said meeting was submitted at Hearing.

to access that information and that stuff and do anything on his own. The periods were short.” (Currie-Rubin)

67. Student’s schedule includes core content classes that range between 35 minutes and an hour and twenty-five minutes depending on the day and the subject matter. Lunch and recess are each 25 minutes long. (S-1)
68. Dr. Currie-Rubin conceded that Student made some progress since January 2020, especially in the phonological awareness domains. (Currie-Rubin) However, she also noted that despite this progress, Student was not yet independent in his skills and still required a lot of prompting with decoding.<sup>15</sup> She testified that he “was making progress, but he’s not independent,” and he continued to be below grade level. In addition, his rate of reading (73 words per minute) was very slow; in third grade, “it should be solidly in the hundreds.” According to Dr. Currie-Rubin, most concerning was Student’s inability to complete any work independently during her observation. However, she could not comment on whether Student had, in fact, made overall effective progress from January 2020 to the present. (Currie-Rubin)
69. At Hearing, Ms. Michaud testified that on the day of Dr. Currie-Rubin’s observation, Student was completing work in class that he had failed to complete during remote Wednesday. Furthermore, she noted that cursive writing instruction in third grade is “introductory,” and there is “no expectation of mastery.” Because of COVID-19 safety guidelines, students in her class must wear masks, and her classroom configuration sets desks 6 feet apart. As a result, students are hampered in their ability to socialize in the classroom. Furthermore, students have limited opportunities to work in pairs or groups. However, Student is very social during recess and plays with the boys from the classroom. She opined that Student is able to carry over skills from his pull-out sessions with Ms. Pereira and Ms. Braastad; for instance, he works with Ms. Braastad on material that he is then exposed to in her classroom. She also opined that Student’s progress is evident on an online assessment in reading and writing that she administers three times per year. She indicated that Student is able to access the third grade curriculum with the accommodations called for by his IEP. She has not noticed Student being sad or depressed, but was aware that a couple of times he had difficulty coming into the school. She was not concerned because this was an infrequent occurrence. (Michaud)
70. At Hearing, school-based staff disputed Dr. Currie-Rubin’s characterization of Student as passive and of Student’s program as disjointed and lacking carryover. (Bell; Pereira; Frye; Braastad; Michaud) Staff reported that they have not observed Student to have a low affect in school. (Braastad; Bell; Pereira; Frye; Michaud) Individually and independently, they also testified that they meet to discuss Student on a monthly basis, per his IEP, but also engaged in ongoing – oftentimes daily -- conversation about his needs. (Bell; Pereira; Frye; Braastad; Michaud) The proximity of their adjoining rooms further contributes to their collaboration. (Bell; Braastad; Frye) They communicated

---

<sup>15</sup> Dr. Currie-Rubin acknowledged that she was not an “expert” on the assessments conducted by Ms. Pereira. (Currie-Rubin)

“regularly and through many means.” (Bell) Staff indicated that Dr. Currie-Rubin’s observation that Student had low affect and was disengaged, both with materials and peers, was uncharacteristic. (Bell; Pereira; Frye; Braastad; Michaud) They further testified that Student is not singled out by his schedule as other students in the classroom have similar pull-out schedules, and there are always additional adults providing services in the general education classroom. (Michaud; Pereira; Braastad; Bell; Frye)

71. Ms. Pereira testified that she and Ms. Michaud maintain an appropriate level of communication to ensure carryover of skills. She testified that Student is exposed to the same ELA concepts as his peers but in a modified way. Although Student participates in reading and writing in the language-based classroom, she makes sure to incorporate the material that Ms. Michaud is working on into her work with Student. At the same time, she provides Ms. Michaud with her spelling list for Student to use in the general education classroom.<sup>16</sup> Ms. Pereira noted that Student is able to carry over skills from her room into the general education classroom as evidenced by his writing samples. Although she has only observed Ms. Michaud’s class a few times, during said observations, Ms. Michaud had written out tasks on the whiteboard, read aloud to students, paced her rate of speech, explained information using visuals, reviewed concept vocabulary, and used a graphic organizer. Student was mostly engaged, and the paraprofessional circulated from student to student. Ms. Pereira has not witnessed Student’s demonstrating symptoms of anxiety nor does she think that he stands out as a result of his schedule. When he once expressed to her that he does not feel smart, the other peer in the language-based classroom indicated similar feelings, and they discussed what it means to have dyslexia. (Pereira) As part of her work with students in the language-based classroom, Ms. Pereira works on having students understand their learning styles. (Pereira; Gengler) Like all Norris Elementary students, Student is also instructed in a school-wide social emotional curriculum which is explicitly taught during remote Wednesdays. This curriculum focuses on teaching common vocabulary to talk about self-esteem, self-advocacy, and respecting differences. (Bell; Braastad; Michaud). During Ms. Pereira’s observations of Ms. Michaud’s class, Student was engaged.

Ms. Pereira explained that scribing helps Student focus on written expression skills; specifically, Student can “verbally dictate sentences using [taught] concepts” but has a hard time retaining the information in order to write it down. Hence, scribing makes him more successful. She noted that Student is prompt dependent because multi-sensory approaches are “prompt heavy.” At this time, Student requires a lot of prompting as Ms. Pereira is “trying to rewire his brain.” She opined that once Student masters the foundational skills, he will not require as many prompts as he currently does. She indicated that Student needs the supports that he currently receives; she also opined that he is accessing those supports, and, as a result, is able to access the third-grade curriculum and is making effective progress. (Pereira)

---

<sup>16</sup> Ms. Pereira testified that she provides Ms. Michaud with spelling lists for other students in the classroom whom she services as well. (Pereira)

72. Ms. Brasstad too testified that she communicates with Ms. Michaud daily and consults with the entire Team monthly. She opined that Student is able to carry over skills from her sessions with him into the general education classroom; for instance, Student is a proud top performer in multiplication facts in Ms. Michaud's classroom. Ms. Braastad speaks to the paraprofessional about Student's needs daily. She also noted that when she observed Student in the general education classroom, Ms. Michaud was working with him and the paraprofessional was working with another student. Ms. Braastad testified that Ms. Michaud integrates a lot of manipulatives, especially for those students who receive support from Ms. Braastad.
73. Acknowledging that Student may have moments of sadness or frustration of which she is unaware, Ms. Braastad testified that she observes him daily, not only during sessions but also while she is at hall duty in the mornings and afternoons. She testified that Student is always part of a group and happy. She testified that she and Student have a good relationship; he seems "extremely comfortable" in her classroom and talks to her "not just about math but about everything that's going on in his life." She also opined that this has been a "hard year" and the COVID-19 pandemic has been difficult and overwhelming for most students, but Hampshire has put in place a school-wide social-emotional curriculum. Ms. Braastad also noted that it is helpful to have Ms. Gordon, the school adjustment counselor, join their monthly consultation and participate in conversations about Student's needs. She testified that Student is able to articulate his frustrations and reiterated that he has a good relationship with her. (Braastad)
74. Similarly, Ms. Bell noted that during her push-ins into Ms. Pereira's language-based classroom, she has observed Student engaging with peers. (Bell) She testified that she incorporates conversation about feelings into her work on perspective taking, and that although they talk about feelings a lot, Student has not indicated unhappiness to her. Student has carried over skills learned during speech and language therapy sessions into Ms. Pereira's language-based classroom (i.e., use of conjunctions). In addition, she has observed Ms. Pereira carry over speech and language therapy targets during her work with Student and has noticed that Student generalizes skills learned in that setting. She did not feel that Student required a more restrictive setting since he benefits from being part of the general education environment and is able to access the third-grade curriculum with the supports he currently has on his IEP. She testified that the Team "meets" Student "where he is, acknowledging the challenges that he faces with the learning disability, as well as [with] retention and memory and executive functioning." (Bell)
75. Norris Elementary staff similarly disputed Parent's assertion that Student was singled out due to his "schedule" or pull-out sessions, and asserted that several students in Ms. Michaud's classroom receive services. As such, service providers and students enter and exit the general education classroom all day. (Bell; Pereira; Frye; Braastad; Michaud)
76. Beth Gordon is a licensed social worker and is licensed by the Department of Elementary and Secondary Education as a school adjustment counselor. She has 30

years of clinical experience working with children and families in a variety of settings. Her involvement with Student has been limited, as she was only added to the A Grid of his IEP at the January 2021 IEP meeting. She serves as the liaison between Student's private therapist and the school-based Team and addresses any social-emotional concerns that arise. As of the date of the Hearing, Student accessed Ms. Gordon once when needing a break from his academic work. Ms. Gordon testified that she services other students in Student's classroom, and if Student were to require direct services with her in the future, she would be able to arrange for him to see her. Ms. Gordon also testified that, at the monthly consult meeting, she addressed Student's concern regarding inconsistent expectations (i.e., being able to use a fidget toy in one setting but not in another). Since February, Parent has not reached out to Ms. Gordon. (Gordon)

77. An assistive technology evaluation consent form has been sent to Parents.<sup>17</sup> (White) Ms. Frye noted that many fourth grade students utilize computers and headphones, and, as such, Student will not be set apart if he utilizes technology to access the curriculum. (Frye)
78. At Parents' request, on February 5, 2021, Dr. Currie-Rubin observed the White Oak School via Zoom. (P-11; Currie-Rubin) In reviewing Student's IEP and referencing her observation of White Oak, Dr. Currie-Rubin noted several of the accommodations on Student's IEP being implemented in that setting. She testified that White Oak could address Student's reading, writing, and speech and language goals. She had not observed an OT session. She further noted that teachers at White Oak used direct instruction and consistent language-based methods across classes (i.e., pairing verbal with visual, read aloud, repetition, graphic organizers), and she observed students referencing skills learned in a previous class. She opined that Student's reading and overall language skill would benefit from the language-based instruction at White Oak. (P-11; Currie-Rubin)
79. Dr. Currie-Rubin testified that she did not have an opinion as to the impact of the COVID-19 school closure on Student's progress, but she acknowledged that this has been a "different than normal" school year. (Currie-Rubin)
80. Ms. White testified that when staff bring up concerns to her, she arranges for a Team meeting. To date, no staff has raised any concerns regarding Student. (White)

## **DISCUSSION:**

### ***A. Legal Standards***

#### **1. Free Appropriate Public Education in the Least Restrictive Environment**

---

<sup>17</sup> At the time of the Hearing, the consent had not been returned, but Ms. White was unsure whether Parents had received it yet. (White)

The Individuals with Disabilities Education Act (IDEA) was enacted "to ensure that all children with disabilities have available to them a free appropriate public education" (FAPE).<sup>18</sup> To provide a student with a FAPE, a school district must follow identification, evaluation, program design, and implementation practices that ensure that each student with a disability receives an Individualized Education Program (IEP) that is: custom tailored to the student's unique learning needs; "reasonably calculated to confer a meaningful educational benefit"; and ensures access to and participation in the general education setting and curriculum as appropriate for that student so as "to enable the student to progress effectively in the content areas of the general curriculum."<sup>19</sup>

The IEP must be individually tailored for the student for whom it is created.<sup>20</sup> When developing the IEP, the Team must consider parental concerns, the student's strengths, disabilities, recent evaluations and present level of achievement, the academic, developmental and functional needs of the child, and the child's potential for growth.<sup>21</sup> The IEP must be reviewed no less than once a year (the annual review) to consider the information available on the child including progress, lack of expected progress toward goals and the general curriculum, evaluative information, information provided by the parents and the anticipated needs of said child.<sup>22</sup> The Team must consider the requirements of the general education curriculum, and the need for specially designed instruction and/or related services to allow the student to progress effectively in the content areas of the general education curriculum.<sup>23</sup> Evaluating an IEP requires viewing it as a "a snapshot, not a retrospective. In striving for 'appropriateness,' an IEP must take into account what was . . . objectively reasonable . . . at the time the IEP was promulgated."<sup>24</sup>

At the same time, FAPE does not require a school district to provide special education and related services that will maximize a student's educational potential.<sup>25</sup> 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."<sup>26</sup> Although parental participation in the planning, developing, delivery, and monitoring of special education services is central in IDEA, MGL c. 71B, and corresponding regulations,<sup>27</sup> schools are obligated to propose what they believe to be FAPE in the LRE, "whether or not the parents are in agreement."<sup>28</sup> The educational authorities

---

<sup>18</sup> Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 (d)(1)(A).

<sup>19</sup> See 20 USC § 1401 (9), (26), (29); 603 CMR 28.05(4)(b); *Sebastian M. v. King Philip Reg'l Sch. Dist.*, 685 F.3d 84, 84 (1st Cir. 2012); *C.D. v. Natick Public School District, et al.*, No. 18-1794, at 4 (1st Cir. 2019) (quoting *Fry v. Napoleon Community Schools*, 137 S. Ct. 743, 748-749 (2017)); *Lessard v. Wilton Lyndeborough Cooperative School Dist.*, 518 F. 3d 18 (1st Cir. 2008); *C.G. ex rel. A.S. v. Five Town Community School Dist.*, 513 F. 3d 279 (1st Cir. 2008); *In Re: Chicopee Public Schools*, BSEA # 1307346, 19 MSER 224 (Byrne, 2013).

<sup>20</sup> *Andrew F. v. Douglas Cty. Reg'l Sch. Dist.*, 137 S. Ct. 988, 1001 (2017).

<sup>21</sup> 34 CFR 300.324(a)(i-v); *Andrew F.*, 137 S. Ct. at 999; *D.B. ex rel. Elizabeth B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012).

<sup>22</sup> 34 CFR 300.24(b)(ii)(A-E).

<sup>23</sup> 603 CMR 28.05 (4)(b).

<sup>24</sup> *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990).

<sup>25</sup> *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197, n.21 (1982) ("Whatever Congress meant by an "appropriate" education, it is clear that it did not mean a potential-maximizing education.").

<sup>26</sup> *G.D. Westmoreland Sch. Dist.*, 930 F.2d 942, 948-949 (1st Cir. 1991).

<sup>27</sup> *Rowley*, 458 U.S. at 208 ("Congress sought to protect individual children by providing for parental involvement . . . in the formulation of the child's individual educational program").

<sup>28</sup> *In Re Natick Public Schools*, BSEA #11-3131, 17 MSER 55 (Crane, 2011).

carry the "primary responsibility for formulating the education" to be provided to the disabled student and for selecting the educational method most appropriate to meet the student's needs.<sup>29</sup> In addition, schools have considerable professional discretion and flexibility in how they fulfill their responsibilities, as long as the goals and objectives of the IEP can be met and the student can make effective progress.<sup>30</sup>

The Massachusetts special education regulations define "progress effectively" to mean:

...mak[ing] 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 student, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district.<sup>31</sup>

In *Andrew F.*, the Supreme Court explained that "appropriate progress will look different" depending on the student.<sup>32</sup> For instance, for a child fully integrated in the general education classroom, an IEP typically should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade."<sup>33</sup> Nevertheless, a student may be advancing from grade to grade and not receiving FAPE.<sup>34</sup> The Court's use of terms such as "ambitious" and "challenging" simply underscored its main holding that IEPs must allow for progress that is appropriate in light of the student's circumstances.<sup>35</sup> With respect to a child who is not fully integrated in the general classroom and not able to achieve on grade level, the child's educational program must be "appropriately ambitious" and give the child a "chance to meet challenging objectives."<sup>36</sup> An individual analysis of a student's progress in his/her areas of need is key.<sup>37</sup> Hence, as the Fifth Circuit eloquently stated, "A disabled child's development should be measured not by his relation to the rest of the class, but rather with respect to the individual student, as declining percentile scores do not necessarily represent a lack of educational benefit, but only a child's inability to maintain the same level of academic progress achieved by his

---

<sup>29</sup> *Lessard*, 592 F.3d at 270 (quotations and citations omitted).

<sup>30</sup> *See In Re: Dennis-Yarmouth Regional School District*, BSEA #03-4447, 10 MSER 64 (Putney-Yaceshyn, 2004) ("Case law generally allows the school district discretion to determine the appropriate methodology of the education services so long as the student is able to make meaningful and effective progress") (internal citations omitted).

<sup>31</sup> 603 CMR 28.02(17).

<sup>32</sup> *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 992 (2017).

<sup>33</sup> *Id.*

<sup>34</sup> *See* 34 CFR 300.101(c)(1): "Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade."

<sup>35</sup> *See C.D. by & through M.D. v. Natick Pub. Sch. Dist.*, 924 F.3d 621, 631 (1st Cir. 2019), *cert. denied*, 140 S. Ct. 1264, 206 L. Ed. 2d 254 (2020). *See also Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 992 (2017) ("A child's IEP need not aim for grade-level advancement if that is not a reasonable prospect.").

<sup>36</sup> *Andrew F.*, 137 S. Ct. at 992.

<sup>37</sup> *Andrew F.*, 137 S. Ct. at 1001 ("The nature of the IEP process, from the initial consultation through state administrative proceedings, ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child's IEP should pursue"); *see also K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 809 (8th Cir. 2011) (explaining that the court would not compare the student to her nondisabled peers since the key question was whether the student made gains in her areas of need).



nondisabled peers."<sup>38</sup> Rate of progress on IEP goals must be assessed given the child's circumstances.<sup>39</sup>

Under state and federal special education law, a school district has an obligation to provide the services that comprise FAPE in the "least restrictive environment."<sup>40</sup> The Massachusetts special education regulations require that students be "educated in the school that he or she would attend if the student did not require special education" unless some other arrangement is dictated by the IEP.<sup>41</sup> This means that to the maximum extent appropriate, a student must be educated with other students who do not have disabilities, and that "removal . . . from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services, cannot be achieved satisfactorily."<sup>42</sup> In *C.D. v. Natick Public School Dist.*, the First Circuit noted that consideration of the least restrictive environment requirement involves weighing the preference for mainstreaming together with assessing the "potential placements 'marginal benefits' and costs and choosing a placement that strikes an appropriate balance between the restrictiveness of the placement and educational progress."<sup>43</sup> "The goal, then, is to find the least restrictive educational environment that will accommodate the child's legitimate needs."<sup>44</sup> Removing a child from the mainstream setting is permissible when "any marginal benefits received from mainstreaming are far outweighed by the benefits gained from services which could not feasibly be provided in the non-segregated setting ...".<sup>45</sup>

## 2. Burden of Persuasion

In a due process proceeding, the burden of proof is on the moving party that is seeking relief. If the evidence is closely balanced, the moving party will not prevail.<sup>46</sup>

In this matter, the Parents are seeking a change in the *status quo* to a more restrictive placement for Student. Therefore, they bear the burden of proving by a preponderance of the evidence that the third grade IEP offered by Hampshire is not reasonably calculated to provide a free appropriate public education to Student.<sup>47</sup> Should a parent prove at hearing that the public school has failed in its duty to develop and/or implement an appropriate IEP for an eligible student, the Parent may request that the Hearing Officer order an individually tailored remedy for

---

<sup>38</sup> *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000); see also *H.C. ex rel. M.C. v. Katonah-Lewisboro Union Free Sch. Dist.*, 528 F. App'x 64, 67 (2d Cir. 2013) ("To the extent [the parents] argue that the gap between [the child] and her peers was growing in terms of reading ability, ... a child's academic progress must be viewed in light of the limitations imposed by the child's disability.").

<sup>39</sup> See *G.D. by & through Jeffrey D. v. Swampscott Pub. Sch.*, No. 19-CV-10431-DJC, 2020 WL 3453172, at \*5 (D. Mass. June 23, 2020).

<sup>40</sup> 20 U.S.C § 1412(a)(5)(A); 34 CFR 300.114(a)(2)(i); M.G.L. c. 71 B, §§ 2, 3; 603 CMR 28.06(2)(c).

<sup>41</sup> 603 CMR 28.05(6).

<sup>42</sup> 20 U.S.C. 1412(a)(5)(A).

<sup>43</sup> *C.D. v. Natick Public School Dist.*, 924 F. 3d at 631 (internal citations omitted), citing *Roland M.*, 910 F2d at 992-993.

<sup>44</sup> *C.G. ex rel. A.S. v. Five Town Comty. Sch. Dist.*, 513 F.3d 279, 285 (1st Cir. 2008).

<sup>45</sup> *Pachl v. Seagren*, 453 F.3d 1064, 1068 (8th Cir. 2006) (internal citation omitted).

<sup>46</sup> *Schaffer v. Weast*, 546 U.S. 49, 44 IDELR 150 (2005).

<sup>47</sup> *Id.*

the lapse.<sup>48</sup> Here, the Parent is seeking a publicly funded placement at White Oak, a private special education day school. That type of prospective relief may be available to a Parent who demonstrates at hearing both that the IEP and/or placement offered by the public school cannot meet Student's identified special learning needs and provide a meaningful educational benefit to him, and that her proposed alternative can.<sup>49</sup>

***B. Application of Legal Standard:***

It is not disputed that Student is a student with a disability who is entitled to special education services under state and federal law. The fundamental issues in the instant matter are set out under **ISSUES IN DISPUTE**, above.

Where, as here, Parents are the moving party, they bear the burden of proof.<sup>50</sup> To prevail, they must first prove--by a preponderance of the evidence--that the IEP proposed by Hampshire for the period from 1/27/2021 to 1/26/2022 (2021-2022 IEP) did not offer Student FAPE in the LRE. I note at the outset that in judging the appropriateness of the IEP, I consider only whether it was appropriate at the time that it was proposed.<sup>51</sup> Furthermore, Parents must prevail on the first element (showing that Hampshire's proposed IEP was inappropriate) before I address the question of whether the addition of supplementary aides and services would provide Student FAPE. Then, only if that answer is "no" will I examine whether White Oak can meet Student's identified special education learning needs and provide a meaningful educational benefit to him.

As noted above, Student's eligibility for special education services is not in dispute, nor is his profile as a student with a language-based learning disability. The dispute centers around the question of whether Student's special education needs have been in the past, and can prospectively, be addressed appropriately through a partial inclusion model of services as proposed by Hampshire's IEP, or whether, as Parents assert, nothing less than an out of district private day language-based educational program was and currently is needed for Student to receive a FAPE in the least restrictive environment.

Based upon three days of oral testimony, the extensive exhibits introduced into evidence, and a review of the applicable law, I conclude that the IEP proposed for the period from 1/27/2021 to 1/26/2022 is reasonably calculated to provide Student with a FAPE in the LRE. The Parents did not meet their burden of proving otherwise. My reasoning follows.

The 2021-2022 IEP was individualized to Student's needs, and Parents were active participants in the decision-making process. At all times, the Team was properly assembled and included not only Parent, but also those educators and service providers who were most familiar with Student. Student's goals, accommodations, and services were directly based on the information available

---

<sup>48</sup> See *In Re: Fairhaven Public Schools and Pablo*, BSEA #1904924, 25 MSER 160 (Byrne, 2019).

<sup>49</sup> See *id.*

<sup>50</sup> See *Schaffer*, 546 U.S. at 62.

<sup>51</sup> See, e.g., *Roland M.*, 910 F.2d at 992.

to the Team when the IEPs were promulgated.<sup>52</sup> For instance, when the Team convened in February, 2020 to develop Student's initial IEP, the 2020-2021 IEP, the Team relied on recently completed district assessments. At that time, the Team was aware that Student demonstrated mostly average cognitive ability with weaker verbal abilities. (Gengler; S-22; S-24) Student's disabilities manifested as significant weaknesses in phonology, expressive language, and higher-level language skills; these deficits impacted his development of basic reading, written expression, oral expression, and listening comprehension skills. (S-14; S-21; S-23; S-24; S-22; Gengler; Bell; Braastad; Frye; Michaud; White) Student was below grade level in the areas of reading and writing. (S-14; S-21; S-22; S-23; S-24; Bell; Gengler; Frye; White) Hence, at that time, goals and services focused on reading and writing were proposed. (S-16) Subsequently, in November, 2020, in response to Parent's concerns and to the independent evaluator's findings and recommendations, goals and services were amended to include additional writing services, math, and inclusion support. (White; Pereira; Braastad) Accommodations, such as speech to text were also added pursuant to Learning Solutions' recommendations. (P-3; S-6; S-12) In fact, the 2020-2021 IEP was amended three times, each time tailoring the goals and services further to meet Student's individual needs or parental concerns. (S-6; S-8; S-9; S-10; S-11; White)

Parents originally accepted the 2020-2021 IEP, as well as the September 2020 and October 2020 Amendments. They later rejected the 2020-2021 IEP following the issuance of the November 2020 Amendment, and they requested a language-based placement at White Oak.<sup>53</sup> (S-6; S-15; White; Mother) At that time, based on Student's need for additional pull-out services, the Team transitioned Student's placement from full inclusion to partial inclusion, but did not agree to an out-of-district placement. (S-15; White) I find that this proposal was proper as the evidence before the Team at that time did not support an even more restrictive setting when a less restrictive setting (partial inclusion) had yet to be tried. Moreover, Student's eligibility for special education was yet short-lived; Parents only signed the 2020-2021 IEP on February 26, 2020, and, like all Massachusetts schools, Hampshire shut down for the Covid emergency soon after, in early March. (White) Remote instruction began in April 2020. (S-13; S-15; White; Mother). Ms. Frye testified that she did not even have an opportunity to begin in-person services with Student following his IEP's acceptance in late February 2020, because Student was absent during the initial session and the school district closed the following week. (Frye). Similarly, Student had "just [begun] to attend speech" sessions before the school closed. (S-26) Student did not attend ESY services in 2020, and, therefore, in November 2020, Student had only been accessing IEP services for 6 months<sup>54</sup> and in-person special education services for a total of less than 2 months. (White; Mother; Frye; Bell; S-13)

While it is clear from the record that the Team considered the findings of Learning Solutions' evaluation, and incorporated many of the recommendations into the IEP Amendment, they

---

<sup>52</sup> In contrast, see *In Re: Westford Public Schools*, BSEA # 11-0373, 16 MSER 459 (Figueroa, 2010) (finding that, in contravention of state and federal law, the Team had "available relevant information, which neither Team discussed or considered" and, instead, Westford relied on its teachers' observations and the limited information obtained through its three-year evaluation which "should have been one piece of the puzzle, but not the sole basis for the Teams' recommendations and ultimate service delivery offer").

<sup>53</sup> Although Parent first discussed White Oak with the Team in September 2020, she did not reject the IEP, as amended, until November 2020.

<sup>54</sup> July and August are excluded in the calculation since the Parents declined to have Student attend offered special education ESY services in 2020.

determined these additional services could be provided in a partial inclusion setting. The psychological, academic, and social-emotional findings and recommendations of the independent evaluation were substantially consistent with those of Hampshire, and Learning Solutions neither endorsed an out of district language-based day program nor identified the nature of Student's disability to be so severe as to necessitate removal from the public school environment.<sup>55</sup> (P-3; S-12; Gengler; White; Bell; Pereira; Currie-Rubin) I thus find it reasonable that Hampshire rejected Parent's request for White Oak at that time.

When the Team reconvened in January 2021 to develop Student's 2020-2021 IEP (his second IEP), the evidence before the Team was indisputable that Student was making progress. (S-19; S-26; S-27; Currie-Rubin). However, Parents and Hampshire disputed whether this progress was sufficient, or meaningful, in light of Student's potential to learn. Clearly, as early as June 2020, Parents felt that Student's progress was insufficient as they began to explore private placements and toured White Oak. (Mother) They also requested that the Team consider White Oak in early September, just at the start of the 2020-2021 school year. In contrast, Hampshire considered Student's progress to be meaningful, especially viewed in light of Student's unique circumstances.<sup>56</sup>

Student had met many Massachusetts curriculum standards at the conclusion of second grade<sup>57</sup>, and even Dr. Currie-Rubin acknowledged at the Hearing that Student had made progress on his phonological awareness skills. (S-19; S-26; S-27; Currie-Rubin). Not only did Student make progress on his IEP goals, but he did so in spite of a school shut down. Although at the Hearing Dr. Currie-Rubin was unable to state whether the school shutdown negatively affected Student's progress, Parent and school staff believed there was some impact. (Currie-Rubin; Mother; Pereira; S-26) According to Parent, Student struggled with remote instruction. (Mother; S-10) Scheduling and Student's attentional difficulties made service implementation difficult in a remote setting. (Frye; Pereira; Bell). Although Student participated in online speech and language therapy sessions, reading and writing sessions in the spring of 2020, Student did not have any synchronous OT sessions. (Pereira; Mother; S-26). Furthermore, despite Parent's concerns regarding lack of progress, she declined ESY services as well as 4 days of in-person instruction for a period of time at the start of the 2020-2021 academic year. (Mother; White; Pereira; S-11) Although Hampshire offered, and Ms. Pereira strongly advocated for, in-person special education services, Student did not partake in any occupational therapy or speech and language therapy services nor in any onsite reading and writing services until the end of October 2020 when he returned to school in-person. (Frye; Pereira; Bell) Unfortunately, remote reading services were not as effective as they would have been had Student participated in them in person. (Pereira)

---

<sup>55</sup> In contrast, see *In Re: Nashoba Regional School District*, BSEA #1909691, 25 MSER 244 (Putney-Yaceshyn, 2019) (finding that the student's attention deficits, language level and working memory were so severe that he could not benefit from being in a class with 23 other students and a general education teacher where the pace of instruction was too fast, and he could not receive the immediate clarification and reinforcement of content and strategies especially where student was observed to become overwhelmed and shut down).

<sup>56</sup> *Andrew F.*, 137 S. Ct. at 992 ("The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created").

<sup>57</sup> *Id.* at 1000 ("The IEP provisions reflect *Rowley*'s expectation that, for most children, a FAPE will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade").

Nevertheless, there was no evidence presented at the Hearing that, given Student's constellation of weaknesses, Student should have been capable of making more progress than he had made. At the Hearing, Dr. Currie-Rubin testified that she was unable to state whether Student's overall progress was sufficient since testing conducted by Learning Solutions took place only 6 months following the school district's testing. (Currie-Rubin). Although she stressed that Student remained below grade level in reading, she did not opine as to what appropriate progress should have looked like for Student based on his constellation of significant deficits. (Currie-Rubin)

Nor can Student's development be compared to that of his peers. Although Student remained one year below grade level in reading and spelling, the evidence presented at the Hearing established that he made one year of progress in a one-year period, despite the COVID-19 school shut down, his struggles with remote instruction, non-attendance at ESY, and an additional 6 hours of missed reading and writing instruction due to Student's private therapy appointments with Ms. Corey.<sup>58</sup> In addition to making progress in reading, Student also made progress on his speech and language therapy, occupational therapy, and math IEP goals. (S-14; S-25; S-26; S-27; S-28; Pereira; Braastad; Bell; Frye). At the Hearing, there was no testimonial or documentary evidence suggesting that Student's progress was misaligned to his potential. Hampshire is not obligated to provide Student special education and related services that maximized his educational potential.<sup>59</sup> Neither Parents' IEP rejections nor the testimony of Parent and the individual evaluator suggested that Student's goals were not "ambitious" enough; based on available information, Student's goals reflected expectations that were appropriate for him. The evidence is uncontested that, with the supports and services of his IEP, Student was making progress and accessing the third-grade curriculum. (S-14; S-25; S-26; S-27; S-28; Pereira; Braastad; Bell; Frye; Michaud)

The 2021-2022 IEP updated Student's current performance levels from his teachers and related service providers. (White; S-7; Pereira; Bell; Michaud; Frye; Braastad) Goals, objectives and services were proposed based on documented educational needs. (White; S-7; Pereira; Bell; Michaud; Frye; Braastad) In light of Student's trajectory of progress, especially taking into consideration the unique circumstances of the 2019-2020 and 2020-2021 school years, there was no information before the Team that suggested that the in-district program could not offer Student a FAPE in the LRE. As such, the 2021-2022 IEP was clearly calculated to provide meaningful and measurable progress for Student. (White; S-7; Pereira; Bell; Michaud; Frye; Braastad)

---

<sup>58</sup> See *In Re: Framingham Public Schools*, BSEA #1905348, 25 MSER 89 (Reichbach, 2019) ("Although Percy remained below grade level in reading and math and continued to struggle academically, she was making progress 'appropriate in light of [her] circumstances'"); see also *In Re: Sutton Public Schools*, BSEA #12-6333, 18 MSER 288 (Figuroa, 2012) ("The fact that frequent early dismissals interrupted the occupational therapy session and prevented him from participating in after school activities cannot be ignored as these removals impeded Student's ability to fully access the program and services specifically designed for him in Sutton").

<sup>59</sup> *Rowley*, 458 U.S. at 197, n.21 ("Whatever Congress meant by an "appropriate" education, it is clear that it did not mean a potential-maximizing education."); see also *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 809 (8th Cir. 2011) (explaining that the court would not compare the student to her nondisabled peers since the key question was whether the student made gains in her areas of need).

In assessing the appropriateness of the Norris Elementary program, I am guided and bound by the principle that Student is not entitled to an ideal program<sup>60</sup> but rather to one that strikes “an appropriate balance between the restrictiveness of the placement and educational progress.”<sup>61</sup> It is true that, under ideal circumstances, Student’s special education services would align perfectly with his general education classes, and Student would have more time to practice skills in the general education environment. However, as aptly stated by Hearing Officer Sarah Berman in *In Re: Student v. Nashoba Regional School District & LABBB Collaborative*, BSEA # 18-10420, 25 MSER 70 (Berman, 2019), “The law does not require [the school district] to provide this ideal experience.”<sup>62</sup> No outcome other than to have access to and make documented and meaningful growth in the general education curriculum is guaranteed by the IDEA or by Massachusetts special education law.<sup>63</sup>

In reaching my conclusion I have not failed to consider the expert opinion offered by Dr. Currie-Rubin. Although at Hearing Dr. Currie-Rubin disputed the appropriateness of the Norris Elementary program, she was hard-pressed to indicate which of Learning Solutions recommendations were not incorporated into the 2021-2022 IEP.<sup>64</sup> She found the Norris Elementary program to be disjointed and lacking in carry over, did not see the benefit of the general education setting for “reading and writing”, and was especially concerned about Student’s prompt dependence. (Currie-Rubin) However, she acknowledged that Student received “consistent support”; that his accommodations were implemented; and that he had made progress, though he was not yet independent. Notwithstanding her concerns, she, once more, did

---

<sup>60</sup> *G.D. Westmoreland Sch. Dist.*, 930 F.2d 942, 948-949 (1st Cir. 1991); *Lessard*, 518 F.3d at 23-24 (internal quotations and citations omitted); see also *In Re: Springfield Public Schools*, BSEA #04-4706, 11 MSER 1 (Crane, 2005)(finding that student is not entitled to the “ideal” methodology so long as the methodology chosen by the school district “is likely to result in the student making the requisite educational progress”); *In Re: Kay v Amherst Public Schools*, BSEA #05-5930, 12 MSER 113 (Sherwood, 2006) (though having a psychiatrist on staff “would be ideal,” a psychiatric consult could offer the necessary expertise to ensure student receives an appropriate educational program”); *In Re: Quincy Public Schools*, BSEA # 08-5707, 14 MSER 240 (Crane, 2008) (although the peer grouping in Quincy’s program was not ideal for the student, the participation of one child diagnosed with Asperger’s Syndrome and the possibility that other children who did not precisely fit the student’s profile did not, by itself, demonstrate that the peer group was inappropriate and did not establish the inappropriateness of its program by reason of the peer grouping).

<sup>61</sup> *C.D. v. Natick Public School Dist.*, 924 F. 3d 621, 631 (1<sup>st</sup> Cir. 2019) (internal citations omitted), citing *Roland M. v. Concord School Committee*, 910 F2d 983, 992-993 (1<sup>st</sup> Cir. 1990).

<sup>62</sup> *In Re: Student v. Nashoba Regional School District & LABBB Collaborative*, BSEA # 18-10420, 25 MSER 70 (Berman, 2019) (although ideally student would have had more opportunities for instruction and experience in cooking and baking, “[taken] as a whole, and given the absence of contrary evidence, Nashoba’s IEP and placement meet the requirements of the IDEA...”)

<sup>63</sup> 603 CMR 28.02(17); 20 U.S.C. §1414(d)(A)(I)(aa); *D.B. v. Esposito*, 675 F.3d 26 (1<sup>st</sup> Cir. 2012); see also *In Re: Nashoba Regional School District and Quinelle*, BSEA #2009112, 26 MSER 242 (2020); *Cedar Rapids Community School Dist. v. Garret F. ex rel. Charlene F.*, 526 U.S. 66, 79 (1999) (IDEA dispute “is about whether meaningful access to the public schools will be assured”); *Irving Independent School District v. Tatro*, 468 U.S. 883, 891 (1984) (“Congress sought primarily to make public education available to handicapped children and to make such access meaningful”) (internal quotations omitted); *Rowley*, 458 U.S. at 192 (“in seeking to provide ... access to public education, Congress did not impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful”).

<sup>64</sup> She did however identify that “ample time” was missing from the accommodations as Student had to transition often in his schedule to accommodate short classroom blocks that were insufficient for skill practice.

not recommend an out of district language-based day program in her observation report.<sup>65</sup> Instead, she suggested increased consultation amongst staff and the use of push-in services. She also recommended that Student practice a skill until fluent in the small-group or individual sessions first, in order to prevent him from practicing the skill incorrectly and advocated for reducing Student's prompt dependence by allowing him time to practice a skill until he "owns" it. (Currie-Rubin) In addition, she recommended an assistive technology evaluation to reduce dependence on the paraprofessional in the classroom.<sup>66</sup> (Currie-Rubin; P-4)

Dr. Currie-Rubin's observation was a limited, snapshot of Student's educational life, especially as compared to the more in-depth daily knowledge of Norris Elementary staff which subsequently formed the basis for their testimony. She herself acknowledged that she did not observe sufficient time in the classroom to be able to indicate whether Student's special education services were resulting in a "better ability or an ability to access the general education curriculum, even with accommodations." (Currie-Rubin) On the day of her observation, Student appeared disengaged from his peers; however, none of the formal assessments conducted by Learning Solutions or by Hampshire noted any social-emotional concerns, and Student was described as social and popular by Norris Elementary staff. Also, Dr. Currie-Rubin did not observe Student during recess or breaks, and I credit Ms. Michaud's testimony that all students' interactions were limited due to the modified classroom configuration necessitated by the pandemic. (Currie-Rubin; P-3; P-4; S-12; S-19; S-24; Gengler; Michaud; Braastad; Bell; Pereira)

Similarly, the testimony of Ms. Michaud suggests that some of Dr. Currie-Rubin's observations were taken out of context. Indeed, the evidence suggests that the process used by the Team to create Student's schedule involves close consultation and coordination between the general educator and the special education service providers to ensure that his schedule closely aligns core content instruction in the general education classroom and the delivery of his special education services. For example, on the day of the observation, Student was not expected to be able to complete the cursive writing assignment without prompts. In addition, he was not excluded from general education activities from which he could benefit; instead, the timing of his pull-outs and his access to general education instruction and assignments were determined and coordinated through the ongoing consultation of Ms. Michaud, Ms. Braastad and Ms. Pereira. Both Ms. Pereira and Ms. Braastad testified how they individually coordinate with Ms. Michaud in order to plan for Student's direct instruction and for his instruction in the general education classrooms. They pre-teach, break down tasks, preview and review material presented in the general education classroom with Student so as to allow him access to said material when it is presented by Ms. Michaud in class. They also change Student's pull-out times to limit interruption of general education activities. (Braastad; Michaud; Pereira)

Although Student continues to require numerous prompts throughout his day, I credit Ms. Pereira's testimony that multi-sensory programs, such as those indicated for Student by both Hampshire and Learning Solutions, are prompt-heavy in nature. (Pereira). As Student continues to make progress, he will require fewer prompts. (Pereira) At this time, however, Hampshire is addressing Student's needs as they currently present; when they change, so may his

---

<sup>65</sup> Dr. Currie-Rubin testified that she does not recommend specific placements in her reports; still, absent from the record is a recommendation for an out of district language-based day program for Student.

<sup>66</sup> Hampshire has since proposed an assistive technology evaluation. (White)

interventions.<sup>67</sup> (Pereira) Hampshire’s proposed assistive technology assessment may also offer additional accommodations to address Student’s prompt dependence but allow him to continue to have maximum access to his non-disabled peers. In the meantime, there is insufficient evidence that, with his carefully designed special education services, Student is not benefiting from – or is unable to make meaningful educational progress in - the general education environment.

Although I find that the 2021-2022 IEP is appropriate as proposed, Hampshire is advised to note and consider Dr. Currie-Rubin’s recommendations. For example, consult time between the special education teachers, the general education teacher and the paraprofessional may be increased to allow for training and collaboration.<sup>68</sup> Hampshire may also want to collect and track data regarding Student’s prompt dependency to ensure that he is moving towards greater independence in all skills and across all environments. Similarly, Hampshire should continue to find opportunities for Student to practice learned skills in the general education setting; generalization of skills should be tracked and Student’s schedule examined for less “choppiness” and increased opportunities for push-in services.<sup>69</sup> If so, amendments to the IEP consistent with these changes may result. Furthermore, Student’s social-emotional functioning and ability to self-advocate should be monitored, and regular consultation between Ms. Gordon and Ms. Corey should occur, as appropriate.

In conclusion, for the reasons articulated above, Parents have not met their burden of proof to show that the 2021-2022 IEP is not reasonably calculated to provide Student with a FAPE. In fact, I find that it meets Student’s individual special education needs and is promulgated to allow Student to make effective progress. As such, Parents’ request for prospective placement at White Oak is denied.<sup>70</sup>

## **ORDER:**

The 2021-2022 Individualized Education Program developed by the Hampshire Regional School District is reasonably calculated to provide a free, appropriate public education to Student in the least restrictive setting. There is no evidence to support a finding that Student requires a specialized school setting such as White Oak School to receive a free, appropriate public education; therefore, Parents’ request for prospective placement at White Oak is denied.

---

<sup>67</sup> See *In Re: Sutton Public Schools*, BSEA #12-6333, 18 MSER 288 (Figueroa, 2012) (“a FAPE must address his needs as he presents today”).

<sup>68</sup> See, for example, *In Re: Peabody Public Schools*, BSEA #05-4488, 11 MSER 207 (Berman, 2005) (although student might have made more progress if the student’s multiple teachers and other providers had formal, common planning time to coordinate his services and keep track of progress, “these imperfections in service delivery did not prevent Student from receiving services, did not stop Student from making meaningful progress in third grade and do not constitute a denial of FAPE”).

<sup>69</sup> *In Rr: Monson Public Schools v. Student*, BSEA # 10-6892, 17 MSER 12 (Putney-Yaceshyn, 2011) (“Parents and Monson are urged to consider whether disruptions to Student’s schedule can be avoided ...”).

<sup>70</sup> Because I find that the 2021-2022 IEP was reasonably calculated to offer Student a FAPE in the LRE, I need not address the question of whether White Oak would be able to meet Student's identified special learning needs and provide a meaningful educational benefit to him



s/s Alina Kantor Nir  
Alina Kantor Nir, Hearing Officer  
Date: May 28, 2021