

**COMMONWEALTH OF MASSACHUSETTS
SPECIAL EDUCATION APPEALS**

Student v. Boston Public Schools

BSEA #09-0294

DECISION

This decision is issued pursuant to M.G.L. c. 71B and 30A, 20 U.S.C. § 1401 *et seq.*, 29 U.S.C. § 794, and the regulations promulgated under said statutes.

A hearing was held on May 12, June 11, and June 12, 2009 at the Bureau of Special Education Appeals before Catherine M. Putney-Yaceshyn, Hearing Officer.

PROCEDURAL HISTORY

Parents requested a hearing on July 8, 2008 and the hearing was scheduled to occur on August 12, 2008. On July 17, 2008, Boston requested a postponement of the hearing and Parents assented subsequently. At the request of the Parties a pre-hearing conference was held on September 19, 2008. The hearing was rescheduled for November 10 and 12, 2008. On October 1, 2008, Parents requested that the hearing be continued until January to allow Parents' evaluator to observe Boston's program and the Carroll School. The postponement request was allowed. The hearing was re-scheduled for March 19 and March 20 pursuant to the Parties' February 10, 2009 request. On February 26, 2009, Parents requested another postponement of the hearing. Boston objected to this postponement and requested that the hearing proceed as scheduled. The hearing officer allowed Parents' request to postpone the hearing and informed the Parties that no further postponements would be granted once the hearing dates were rescheduled. The hearing was rescheduled for May 12, 13, and 14, 2009. On May 8, 2009, this case was reassigned to Hearing Officer Catherine Putney-Yaceshyn. Due to the new hearing officer's schedule, the second date was scheduled for half a day. The Parties requested that the matter be continued until a day on which all Parties were available for an entire day on the second day and requested that a third partial day be scheduled. The matter was scheduled to begin on May 12 and to continue on June 11 and the morning of June 12, 2009.

The hearing was held on May 12, June 11, and June 12, 2009 at the Bureau of Special Education Appeals. At the close of the hearing, the parties requested a postponement to allow for the submission of written closing briefs. The hearing officer set a deadline of July 2, 2009 for the submission of briefs. Parents filed their brief on July 2, 2009. Boston submitted its brief on July 3, 2009. Parents did not object to Boston's brief being filed late and the record closed on July 3, 2009.

Those present for all or part of the Hearing were:

Mother

Father

Sue Kingman

Director of the Lower School, The Carroll School

Barbara Baatz

Reading tutor, The Carroll School

Phoebe Adams

Parents' Private Evaluator

Shelly Greene

Advocate for Parents and Student

Michael Murphy

Assistant Program Director, Boston Public Schools

B.J. Constable

Reading specialist, Mary Lyon School, Boston Public Schools

Elinda Scherr

Speech language pathologist, Boston Public Schools

Erin Gallagher

Second grade special education teacher, Mary Lyon School, Boston Public Schools

Deborah Rooney

Principal, Mary Lyon School

Peter Tierney

School psychologist, Boston Public Schools

Kimberly Janes

Science teacher, Carroll School

Eleanor Summers

Second grade teacher, Carroll School

Elizabeth Kurlan

Senior Program Director, Litigation, Boston Public Schools

Jill Murray

Attorney for Boston Public Schools

Nancy Kingsbury

Court Reporter

Darlene Coppola

Court Reporter

Catherine Putney-Yaceshyn

Hearing Officer

The official record of this hearing consists of Parents' exhibits marked P-1 through P-105¹, Boston Public Schools' exhibits marked S-1 through S-22, and approximately 17 hours of recorded oral testimony.

ISSUES

1. Whether the IEP proposed for the period from May 2008 through May 2009 was reasonably calculated to provide the Student with a free appropriate public education in the least restrictive environment.
2. If not, are Parents entitled to reimbursement for their unilateral placement of Student at the Carroll School for the period from May 2008 to May 2009.

SUMMARY OF THE EVIDENCE

¹ The portion of P-27 that consisted of an audio CD was not allowed into evidence. The remainder of the exhibit was allowed into evidence.

1. The student (hereinafter, “Student”) is almost nine years old, resides in Boston, and recently completed the second grade at the Carroll School in Lincoln, Massachusetts, pursuant to a private parental placement. (S-15, Mother) He has never attended the Boston Public Schools. (Mother) He was diagnosed with a Reading Disorder by Ronald Becker, M.D., of Children’s Hospital on or around March 30, 2007. Dr. Becker’s evaluation report also referenced attentional and oppositional issues, but did not make a diagnosis pertaining to either. (P-90, S-7)
2. Student attended the Walnut Park Montessori School (hereinafter, “Walnut Park”) for Kindergarten and Parents planned to enroll him in the Jackson School, a Catholic School in Newton, for the first grade. Parents first became aware of Student’s learning difficulties when Walnut Park conducted a reading readiness test and asked Parents to come to a meeting to discuss concerns raised by his test scores. (Mother, P-99, P-100) After receiving the test results, Mother hired a tutor to assist Student and sought an evaluation at Children’s Hospital. (Mother)
3. Student was evaluated by Ronald E. Becker, M.D. at the Children’s Hospital Developmental Medicine Center on March 12, 2007 for “reading concerns.” He was described by the evaluator as “an endearing but at times distractible and oppositional young man, who has significant difficulties with reading skills.” He was found to have significantly delayed pre-literacy skills, including letter and number reversals. He was noted to have difficulty with phonology and receptive communication. He was diagnosed with a reading disorder. He was also noted to demonstrate impulsive, anxious, and oppositional tendencies that will require close monitoring over time. Dr. Becker made a number of recommendations regarding Student. He recommended that Student’s teachers be apprised of his profile so that “a balance of challenge, enrichment, and support for vulnerabilities can be provided.” He recommended that Student’s school Team convene to determine eligibility for special education. Dr. Becker indicated that Student would most likely require a specialized multi-sensory reading approach. He noted that Student would benefit from multi-sensory and tactile/kinesthetic activities for letter formation combined with sound production. He recommended that Student study and learn sight words separately from phonetically regular words and noted he would require numerous exposures to words before he mastered them. Dr. Becker recommended the implementation of intense academic services including significant amounts of repetition and strategies for development of memory skills. He recommended that Student receive a comprehensive speech and language evaluation and a comprehensive occupational therapy evaluation. He noted that Student’s attentional difficulties may make it difficult for him to keep up with the pace of information being presented in a “normal” classroom. He made a number of suggestions that may be helpful in the classroom including: a well structured learning environment, frequent feedback, redirection, positive reinforcement and breaks from work; classroom rules that are clearly stated and consistently enforced; and a behavior program. (S-7, P-90)

4. Student was first found eligible for an IEP at an April 10, 2007 Team meeting. He was found to have a specific learning disability and to require specialized instruction in the areas of reading and written language. (S-8) Boston proposed an IEP for the period from September 2007 through April 2008. (S-8) Parents rejected the IEP. (Mother)
5. Parents sent Student to the Carroll School summer program for the summer of 2007. Parents believed Student required a “more intense program” than Boston had proposed and unilaterally placed Student at the Carroll School for the 2007-2008 school year. Parents did not provide Boston with written notice of their intent to place Student at the Carroll School nor did they seek reimbursement for their unilateral placement. (Mother) Student attended the Beginning Reader 1 program, an unapproved pilot program at the Carroll School.
6. In the spring of 2008, the parties agreed that Boston would conduct an evaluation of Student. Eileen Walsh, MSOTR/L, conducted an occupational therapy evaluation. She concluded that Student’s fine motor, visual motor, visual perceptual, and sensory integration skills were functioning properly. She concluded that occupational therapy services were not warranted. (S-11)
7. Elinda Scherr, M.S., C.C.C.-SLP, conducted a speech language evaluation of Student. She noted that Student presented with difficulty in Phonemic Awareness skill, Rapid Naming, and Phonological Memory. He had difficulty following directions and understanding concepts. Additionally, he had difficulty attending and remaining focused on a task. He benefitted from a structured setting and was easily redirected when spoken to in a quiet, but purposeful manner. She recommended that Student be seen by the reading specialist. She noted that Student should be instructed in an organized, well established, rule-governed, multi-sensory program both in the classroom and in individual or small group sessions to improve auditory discrimination of vowel sounds, increase phonemic awareness skills, and to improve reading and spelling skills. She also recommended that Student be presented with Visualization and Verbalization strategies to improve his ability to hold onto information both in the classroom and in therapy sessions. (S-12)
8. Megan Quaranto conducted an Educational Evaluation of Student. She concluded that Student’s English oral language skills are average when compared to others at his grade level. She noted his fluency with academic tasks is low. She noted that his academic skills and his ability to apply those skills are both within the low average range. She concluded that Student’s performance in basic reading skills, math calculation skills, and math reasoning is average when compared to others at his grade level. Student scored in the low average range in broad reading, reading comprehension, and basic writing, and in the low range in written expression. Ms. Quaranto suggested that Student would benefit from a small, structured learning environment and a routine that has explicit and consistent rules and consequences. She noted that Student would benefit from positive reinforcement and that

expectations should be clear and concise. She noted that Student would benefit from a small, guided reading group that meets daily to focus on all areas of reading and from interactive/shared reading activities to improve his phonological awareness. She recommended that Student participate in activities using high-frequency words and would benefit from word structure activities focusing on parts of words. (S-13)

9. Leonard Rappaport, M.D., of the Developmental Medicine Center at Children's Hospital met with Student on March 7, 2008 as a follow up to his March 12, 2007 visit when he was diagnosed with a reading disorder. He indicated that Student's teachers had reported increasing difficulties with impulse control and transition as well as some difficulties with anger management. His parents noticed similar difficulties with transitions, but fewer problems with attention and impulse control at home. Dr. Rappaport concluded that work with a behavioral specialist would be beneficial and encouraged Parents to maintain close contact with the school counselor regarding behavioral management. He also recommended that Parents and teachers complete a BASC-2 and that Student follow up with him in two months for further diagnostic clarification and recommendations. (P-69)
10. Peter Tierney, Ph.D., school psychologist for the Boston Public Schools, evaluated Student on May 14, 2008. He noted Student's great difficulty sitting still and indicated that Student's attention had to be redirected at times. He also noted that Student appeared to be fatigued at one point and Dr. Tierney walked around the school a couple of times with Student before Student was able to return to resume working. He concluded that Student's cognitive functioning was uneven, ranging from borderline to average. Processing speed was an area of particular weakness for him. His nonverbal reasoning abilities were stronger than his verbal reasoning skills, but that difference no longer reaches significance. Dr. Tierney made a number of recommendations for Student's educational program. He made a number of recommendations to deal with Student's attentional issues, including allowing him to have movement breaks; using cueing to head off disruptive behavior; shortening assignments as necessary; and providing a quiet area to minimize distractions during seat work time. He recommended that intensive reading instruction be continued. He suggested that Student be presented with information in formats other than print. He noted that Student's slow processing speed may mean that it will take him longer than one would assume to process information or produce written work. Finally, Dr. Tierney noted that Student had a weak working memory when compared to his strong nonverbal reasoning abilities. He recommended pre-teaching the general framework of new information. He also noted Student may require additional processing time or time to rehearse information. He noted tasks or information may need to be broken down into smaller steps or chunks. He also recommended playing memory games with Student and working on multi-step directions with him. (S-3)
11. Sarah Wilkins, Student's Carroll School Beginning Reader teacher, completed an Educational Assessment on March 31, 2008 which was provided to the Boston

Team prior to the May 2008 meeting. The assessment noted that “[Student]’s behavior is a concern. He can become oppositional and is overly active in all situations, unable to sustain attention for more than ten to fifteen minutes.” It also noted that Student “needs support behaviorally and emotionally, and needs an outlet for his energy. [Student] needs to feel a part of his class and that his work is similar to the other children. He is very aware of what others are doing and needs to know that he is working on the same thing and doing comparable work.” (S-10)

12. The Team convened on May 20, 2008 to review the findings of the evaluation and draft an IEP for the 2008-2009 school year. The IEP noted Student’s specific learning disability in the areas of basic reading, reading fluency, writing, phonological awareness, decoding and processing speed. It also noted a diagnosis of ADHD for which he had recently begun taking medication. The IEP indicated that the Team was recommending the inclusion program at the Mary Lyon School. Student would receive a multi-sensory approach for reading/language arts in the inclusion classroom. He would also receive individual/small group instruction with the reading specialist using a rule-based approach three times per week. Due to Student’s behavioral issues, he was to receive counseling once a week. The clinical coordinator would consult with the classroom teacher with strategies to use in the classroom. Additionally, Student would be on a daily behavioral modification program in the classroom. (S-15)

The service delivery grid included consultation with the clinical coordinator and special education teacher ten minutes per day on two days per month in the area of behavior/social emotional. The C grid contained the following services: language arts with the special education teacher 5 x 90 minutes per week; math with the special education teacher 5 x 60 minutes per week; behavioral/social emotional services with the special education teacher 5 x 15 minutes per week; counseling with the clinical coordinator 1 x 40 minutes per week; social studies with the special education teacher 3 x 45 minutes per week, and science with the special education teacher 2 x 45 minutes per week. (S-15) The grid did not contain the services of the reading specialist referred to on the first page of the IEP. The parties were aware that the proposed program included the services of the reading specialist despite the services being left off of the service delivery grid. (Mother, Constable)

13. Parents visited the Mary Lyon School and spoke to the principal, Deborah Rooney, the classroom teacher, Erin Gallagher, and the reading specialist, B.J. Constable, but did not observe the program proposed for Student. Although they did not observe the program, they did see the classroom. Parents were concerned that they observed a Student in a reading tutorial in a noisy hallway. Mother did not recall asking anybody at the Mary Lyon School where Student would receive his reading tutorial. They concluded that Student would receive his tutorial in the hallway. Deborah Rooney, the principal of the Mary Lyons School, testified that the tutorial was generally held in a room the staff referred to as the “oval office.” However, the “oval office” was being used for a Team meeting that day and because the tutor

believed that the particular student would be able to attend despite the noisy hallway, the tutorial was held there. Ms. Rooney testified that Student would not receive his tutorial in the hallway. Mother was concerned that the classroom would be too chaotic for Student. She did consider placing Student at the Mary Lyon. However, Student had been working with a reading tutor and the tutor told her that Student was not “getting” his Orton-Gillingham lessons. Additionally, Mother noted that Student continued to struggle at the Carroll School. Parents decided that Student would continue at the Carroll School instead of attending the Mary Lyon School. (Mother)

14. Erin Gallagher, the second grade inclusion teacher at the Mary Lyons School, has a Master’s degree in moderate disabilities and elementary education. She is dually certified as an elementary school teacher (grades one through six) and special needs teacher (grades K-8.) Additionally, she is a highly qualified teacher. She has received training in and utilizes a number of specialized programs such as the Wisnia Kapp Reading Program², Visualizing and Verbalization by Lindamood-Bell, On Cloud Nine (a Lindamood-Bell math program), Developing Mathematical Ideas (DMI), TeRK math, and Handwriting Without Tears. During the current school year, there are ten regular education and three special education students in her inclusion classroom. The special education students present with learning disabilities, ADHD, and cognitive disabilities. Ms. Gallagher teaches a one hour block of reading workshop and a one hour block of writer’s workshop each morning. In the afternoon she teaches math, science, and social studies. During both reading and writer’s workshop, the students are assigned to various stations where they practice skills. During the reading block, students participate in small reading groups or receive individual services from Ms. Gallagher or one of the paraprofessionals, depending on students’ individual needs.

Ms. Gallagher pre-teaches vocabulary, utilizes scaffolding and repetition, uses graphic organizers and provides scribes as needed. She has a computer program to assist students in organizing their writing. She has a rice box, weighted vests, a swing, and allows frequent breaks with supervision. She has a “word wall” which contains words students that have been working on and high frequency words which students can use as a visual aid. She displays the school wide behavior plan on a bulletin board. Additionally, she displays many co-constructed charts which explain steps to solving a story problem or good reading strategy and which students can refer to as a reminder. She allows students to take breaks as needed. She consults with the occupational therapist around students’ sensory needs. She also uses Story Grammar Marker, a way for students to organize their thoughts. Each morning she reviews what the class did the day before and discusses what they are going to do that day as part of her “mini lesson.” Her mini lessons are oral language based. The students talk back and forth in conversations with her or one another about the lesson. Next, her students engage in “buddy reading” which is

² Ms. Gallagher described the Wisnia-Kapp Reading Program as a multi-sensory program with direct and explicit instruction that teaches students about phonological awareness, syllable segmentation, and word-sound association that is rule-based and has a systematic approach. (Gallagher)

reading with a peer. Then students go to the various word study centers in the classroom. Ms. Gallagher also does guided reading during the reading block. She works with a small group or with an individual on direct reading instruction which is generally linked to what she's been working on in the classroom. The literacy centers are usually word study centers where students work on various kinds of words. She assigns students to centers and groups them depending on what she thinks they need to work on. She introduces the centers to students at the beginning of the year so that students are able to move through them as part of their routine. If a student or students need assistance at a center, Ms. Gallagher or one of the paraprofessionals can provide individual or group assistance as needed. Students who have difficulty with organizing themselves or transitioning are able to learn to use the centers and, if they have difficulty, there are three adults in the room who can assist.

Ms. Gallagher's classroom has a large library that is arranged according to reading level. She has bins of books that are designated level A, B, C, and D. Students know what their reading level is and they are able to access books on their reading level. She also has bins that are arranged according to genre that are not leveled. Students can choose any books they want from these bins. Additionally, students have leveled book bags at their seats. Ms. Gallagher explained that her students read all day. They read first thing every morning and last thing each afternoon.

Writer's workshop also begins with a mini lesson each day and it is generally linked to the reading lesson. Students may be asked to write something that relates to what they learned during their reading lesson and at the end of class, students share their writing with one another. She described how she and the other staff can assist a student struggling with writing by scribing for a student as needed or assisting a student with spelling.

Ms. Gallagher determines the pace of instruction by the students' response to a lesson. If the students are understanding the lesson, she moves on, if she feels that the majority of students are not understanding, she may slow down or backtrack and reintroduce a concept. If it appears that one or two students are not understanding the lesson, she will pull them aside after the mini-lesson and work one on one with the student or students who require additional direct instruction.

If Ms. Gallagher were to work with Student, she would have to get to know him to determine which strategies would work best with him. She would draw from her experience in working with other students and use strategies from the many programs she is trained to implement. She always provides students extra time as needed, clarifies directions, provides verbal prompts, breaks, and graphic organizers.

Ms. Gallagher disagreed with Phoebe Adams' opinion that Student would be confined to modified or reduced work, require considerable accommodations, and that her classroom would be isolating for Student. Although she agreed Student

would likely need accommodations and modified work, she did not believe it would isolate him. She has other students who have modified work and students with various needs. She thinks he would feel a part of the community despite having modified work and receiving accommodations. She also disagreed with Ms. Adams' prediction that Student would miss portions of his classroom instruction in order to receive his services from Ms. Constable. Ms. Gallagher explained that Student's reading tutorials would be scheduled at a time that would be the least disruptive to Student and not during his reading or writing periods. Ms. Gallagher testified that the IEP proposed for the 2008-2009 school year is reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. (Gallagher)

15. B.J. Constable is a certified teacher and has a bachelor's degree in elementary education. She is certified in Orton-Gillingham and Wisnea Kapp and in Project Read Framing Your Thoughts. She is the reading specialist at the Mary Lyons School and she works with children who need intervention with reading, writing, and comprehension. She uses a variety of programs depending on each student's level of need. She provides direct services to students who are not on track to meet benchmarks. She consults and collaborates with classroom teachers to provide carry-over of strategies into the classroom. She also consults with teachers regarding scheduling her services to ensure that the schedule works for the students. When working with a student, she chooses the level of text she uses based on his or her reading ability and what sound he or she is working on. She will choose a text that contains a lot of the sound feature that a student is working on. If Student had come to Mary Lyons, he would have received direct services with her for at least thirty minutes per session. She can be flexible depending on a student's needs. Student's IEP says that he would have met with her three times per week, but if a student benefits from a longer session or needs to be seen five times per week, the Mary Lyons School can accommodate the student. Ms. Constable consults with the classroom teacher to determine the best time of day to meet with each Student and determine what lesson he or she would be missing during his or her reading instruction.

If Ms. Constable was working with Student she would carry over what he is currently receiving, Orton-Gillingham, and weave in anything that might be helpful to him. Ms. Constable has experience working with students with dyslexia, low self-esteem, learning anxiety, and they have made progress. Ms. Constable testified that the IEP proposed for the 2008-2009 school year is reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. (Constable)

16. Phoebe Adams testified that she is a learning specialist in private practice where she conducts psycho-educational assessments, consults with schools and families, performs observations, and attends Team meetings. She was hired by Mother in the fall of 2008 to observe the proposed Mary Lyons program and the Carroll School program. She reviewed assessments of Student and spent some time

getting to know him. She interviewed Mother and Student and administered several sub-tests of the WIAT to Student. Her testing revealed results similar to the testing previously conducted by Boston and Children's Hospital. She concluded that Student had a very severe form of dyslexia with rapid naming and phonological processing difficulties, and that he was at a very early stage of reading development and arguably writing and math development. She also noted difficulty with working memory, fine motor output, and processing speed. (Adams, P-39)S

17. Ms. Adams first observed Student at Carroll in October 2008 and later in March 2009. She observed the Mary Lyon program on November 25, 2008. Ms. Adams arrived approximately twenty minutes late for the observation and missed all or most of Ms. Gallagher's mini lesson³. (Gallagher, Murphy, Adams) She noted her concern that because only a few of the students were on IEPs, students who required more substantial help were "outlier[s]." She also noted that after observing a student's reading tutorial with B.J. Constable, she thought that there was not enough time to cover all the skills the student required during the time allotted for tutorial. She also concluded that Student would not be able to transition between a pull-out tutorial and Ms. Gallagher's classroom. She also was concerned that Student would be sensitive to being one of the only students who receives pull-out tutorial because he is sensitive to being different. She inferred that Student would not have been able to get through all of the stations because he does not have the skills and does not have "that sort of self-regulation to move independently from one station to the next." She concluded that when a classroom uses a workshop model, students are more independent and there is not as much direct instruction. She stated that the amount of direct instruction he would receive in Ms. Gallagher's classroom would be less than he currently receives and less than he requires. She also stated that he would be required to "fend for himself" in the proposed inclusion setting. Ms. Adams testified that there had been some discussion about having Student come in for additional tutoring first thing in the morning to provide him with additional tutoring time. After speaking to Mother about that proposal, Ms. Adams concluded that this tutoring would be "a real disruption," would be stigmatizing and "not appropriate." (Adams)

Ms. Adams reported that "although behavioral expectations are defined and clarified there is no clear behavioral plan in place." Deborah Rooney, the principal of the Mary Lyon School, testified that there is a school wide behavioral plan. The plan is outlined and explained on one of Ms. Gallagher's classroom bulletin board. (Rooney, Gallagher)

Ms. Adams described what she believed to be an appropriate type of classroom as follows. She testified that Student needs a structure and a schedule in which he receives "the most intensive instruction in language skills possible in terms of one-

³ Ms. Adams did not mention being twenty minutes late and missing a significant piece of the literacy program in her report. She acknowledged being late during cross examination. She did not return to the Mary Lyon School to observe a complete Reading Workshop period. (Adams)

to-one tutoring that is very specialized, multi-sensory integrated, explicit, as well as an environment that can teach skills and content simultaneously with the idea that you are teaching language skills in a very purposeful, planned manner, and that's part of a language-based program, a program that reflects that deep understanding of what language is, the theory behind teaching language in order to teach someone how to read and write." She concluded that the Carroll School was the appropriate placement for Student.

Ms. Adams testified that an inclusion program cannot provide Student with the intensity of services that he requires. She stated that when working with a student with severe dyslexia, a student requires well-trained teachers who understand language and remediation. She did not know what kind of training or teaching credentials Ms. Gallagher possessed. She testified that it is important for Student's teacher to have certain qualifications and certifications.

18. Susan Kingman is the Head of the Lower School at the Carroll School. She explained that the Beginner Reading Program in which Student participated during the first grade is a pilot program which is not approved by the Department of Elementary and Secondary Education. Additionally, Student attended the Beginner Reading II program at the beginning of the second grade. This program also is not approved by the Department of Secondary and Elementary Education. Both Beginner Reading programs admit only private pay students. Ms. Kingman explained that some time during November 2008 the Beginner Reader II program became a second grade classroom. This was an administrative decision, and neither the curriculum, nor the teacher, nor the classroom structure changed.
19. Ms. Kingman described Student's Carroll School daily schedule as having three fifty-minute periods of language classes per day including his 1:1 Orton-Gillingham tutorial. Student receives one fifty-minute tutorial 4.5 days per week. Student's academic classes have six students in them and one teacher. Student's current teacher, Ellie Summers, has a bachelor's degree in Early Childhood Education and is certified in Orton-Gillingham. She is certified in Maine and working toward obtaining her Massachusetts certification. Ms. Kingman testified that Student is able to access the second grade curriculum at the pace used in his classroom. She also testified that she did not believe Student required services to address his behavior either in May of 2008 or presently. (Kingman)
20. Joel Shulkin, M.D., a Fellow at Children's Hospital wrote a letter addressed to "To Whom it May Concern" dated March 11, 2009. In the letter he supported "recommendations to keep [Student] at the Carroll School." Dr. Shulkin did not testify at the hearing and there was no evidence of him having any personal knowledge of either the Carroll School program or the Mary Lyon School program. (P-29)
21. Cynda Boyd-Farah, LICSW, wrote a letter dated March 10, 2009, addressed "To whom it may concern." In her letter she supports Student's continued placement at

the Carroll School. Ms. Boyd-Farah did not testify at the hearing and there was no evidence of her having any personal knowledge of either the Carroll School program or the Mary Lyon School program. (P-30)

FINDINGS AND CONCLUSIONS:

Student is an individual with a disability, falling within the purview of the Individuals with Disabilities Education Act (IDEA)⁴ and the state special education statute.⁵ As such, he is entitled to a free appropriate public education (FAPE). Neither his status nor his entitlement is in dispute. Under the FAPE standard, the IEP proposed by the school district must offer the student a free appropriate public education that meets state educational standards.

Federal law also requires that the student be able to fully participate in the general curriculum to the maximum extent possible. 20 USC § 1415(d)(1)(A)(iii); 34 CFR 300.347(a)(2)(I) and (a)(3)(ii); 64 Fed. Reg. No. 48, page 12595, column 1; See also, *In Re: Worcester Public Schools*, BSEA # 00-1912, 6 MSER 194 (2000). Additionally, the student's education must be offered in the least restrictive environment appropriate to meet his/her individual needs⁶. 20 USC §1414(d)(1)(A)(iii); 34 CFR 300.347(a)(2)(i) and (a)(3)(ii); 64 Fed. Reg. No. 48, page 12595, column 1; MGL c. 71B § 1; 603 CMR 28.02 (12). See *In re: Worcester Public Schools*, BSEA # 00-0912, 6 MSER 194 (SEA MA 2000) and *In re: Gill-Montague Public Schools District*, BSEA # 02-1776, August 28, 2002.

As stated by the federal courts, the LEA is responsible to offer students meaningful access to an education through an IEP that provides "significant learning" and confers "meaningful benefit" to the student⁷, through "personalized instruction with sufficient support services"⁸ The requirements of the law assure the student access to a public education rather than an education that maximizes the student's individual potential. *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir. 1993); *GD v. Westmoreland School District*, 930 F.2d 942 (1st Cir. 1991).

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

⁴ 20 USC 1400 *et seq.*

⁵ MGL c. 71B.

⁶ 20 USC 1412(5)(A); 603 CMR 28.02(12).

⁷ For a discussion of FAPE see *Hendrick Hudson Bd. Of Education v. Rowley*, 458 U.S. 176, 188-189 (1992); *Cedar Rapids Community School District v. Garret F.*, 526 U.S. 66 (1999); *Burlington v. Department of Education*, 736 F. 2d 773 (1st Cir. 1984); *Houston Independent School District v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000); *Stockton by Stockton v. Barbour County Bd. of Educ.*, 25 IDELR 1076 (4th Cir. 1997); *MC v. Central Regional School District*, 81 F.3d 389 (3rd Cir. 1996), *cert. denied* 519 US 866 (1966); *Ridgewood Board of Education v. NE*, 30 IDELR 41 (3rd Cir. 1999). See also *GD v. Westmoreland School District*, 930 F.3d 942 (1st Cir. 1991).

⁸ *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 203, 102 S.Ct. 3034, 3049 (1982).

Student's eligibility for special education services is not in dispute, nor is his profile. The dispute centers on the appropriateness of the services proposed by Boston for Student for the 2008-2009 school year.

It is notable in this case that no clinician recommended that Student be placed in an out-of-district placement prior to his placement at the Carroll School for the Beginner Reading I program. Student had never attended the Boston Public Schools before Parents placed him at the Carroll School. Shortly after Student was found eligible for special education services by Boston Public Schools, Parents opted to privately place Student at the Carroll School. It is also notable that no clinician recommended that Student be placed in an out-of-district placement prior to his second grade placement, first in the Beginner Reading II program and then in the second grade program at the Carroll School.

To determine whether Parents are entitled to reimbursement for their unilateral placement of Student for the 2008-2009 school year, the only year at issue in this case, I must first look at the information that was available to the Team when they proposed the IEP at issue and then determine whether the IEP was reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment given the information available to the Team.

When the Team convened in May 2008, it had Boston's evaluations, including a speech language report (S-12), an occupational therapy report (S-11), an educational assessment from Sarah Wilkins, Student's Carroll School teacher (S-10), an educational evaluation completed by Megan Quaranto (S-13), Dr. Tierney's psychological evaluation (S-3), and a Children's Hospital report that was provided to the Team after the meeting. (S-7, P-90) Nothing in any of those reports recommended that Student be placed out of district. Instead, the reports recommended that Student receive intensive academic services including significant amounts of repetition and strategies for development of memory skills in a well structured learning environment that provides frequent feedback, redirection, positive reinforcement and breaks from work. There were also recommendations that classroom rules should be clearly stated and consistently enforced; and a behavior program should be provided. (See S-7, P-90) Dr. Tierney also recommended that Student receive intensive reading instruction. (S-3) Dr. Tierney did not indicate that intensive reading instruction could only be provided by an out-of-district placement. He endorsed the placement of Student in Erin Gallagher's second grade classroom at the Mary Lyon School. (Tierney)

The only witness who recommended that Student be placed at the Carroll School was Phoebe Adams. Ms. Adams did not become involved in the case until well after Parents placed Student at the Carroll School for the first grade. In fact, Ms. Adams did not even observe either program until after Parents made the decision to unilaterally place Student at the Carroll School for the second grade and well after Parents requested a hearing on July 8, 2008. Ms. Adams first observation of Student at the Carroll School took place on October 15, 2008, and she first observed the proposed Mary Lyon School program on November 25, 2008. (P-39)

I did not find Ms. Adams to be a credible witness with respect to her opinion that the Mary Lyon School did not provide sufficiently intensive services to Student for several reasons. First, as previously mentioned, she was not consulted regarding Student until Parents had already made a unilateral placement and requested a hearing. Second, Ms. Adams did not observe an entire period of Reading Workshop before reaching the conclusion that Ms. Gallagher's classroom did not provide sufficiently intensive services for Student. Ms. Adams did not even divulge the fact that she had missed one third of the Reading Workshop class until she was questioned about it on cross examination. Additionally, Ms. Adams' testimony contained many instances in which she acknowledged that she made assumptions about the Mary Lyons program without asking any of the Mary Lyons staff. (See testimony of Adams) Additionally, Ms. Adams did not seem to acknowledge that Ms. Gallagher is a dually-certified regular education and special education teacher who provides special education services in an inclusion setting. Ms. Adams appeared to view the Mary Lyon inclusion program as a regular education program and the Carroll School as the school that provided specialized instruction. In fact, the evidence clearly shows that Ms. Gallagher provides specially designed instruction in the inclusion setting.

The evidence shows that other than the amount of time proposed for Student's reading tutorial, the amount of time devoted to reading and writing is similar at the Mary Lyon School and the Carroll School. Student would receive a daily one-hour block of Reading Workshop and a daily one-hour block of Writing Workshop at the Mary Lyon School. This instruction would be provided by Ms. Gallagher, a highly qualified, dually-certified teacher along with two paraprofessionals who are certified teachers. Conversely, at the Carroll School Student received two daily language blocks of fifty minutes each in addition to a fifty-minute reading tutorial 4.5 days per week.

Although Parents criticized Boston's proposal to provide Student with tutorial three days per week for thirty minutes per session, the credible evidence shows that that proposal was based upon the information available to the Boston Team when it drafted the IEP. The reading tutorial could be expanded both in terms of the number of sessions provided per week and the number of minutes provided for each session. (Rooney, Constable.) At the time that Boston proposed providing the reading tutorial 3 x 30 minutes per week it had an educational assessment from Student's Carroll School teacher, Sarah Wilkins, which stated that Student was unable to sustain attention for more than ten to fifteen minutes. Therefore, it was reasonable for the Team to propose thirty minute sessions for Student, at least initially.

Although Ms. Adams testified that Ms. Gallagher's class did not provide the level of intensity that Student required, the evidence does not support that conclusion. Ms. Adams was not specific in terms of what portions of the program she did not find sufficiently intensive for Student. Ms. Adams only observed a portion of Ms. Gallagher's Reading Workshop and her Writing Workshop. She did not observe science or social studies. Therefore, it is unclear how she reached the conclusion that Ms. Gallagher's class did not provide sufficiently intensive services. In fact, Ms. Gallagher's testimony

showed that she is a highly skilled special educator who has the ability to utilize many specialized programs in tailoring her services to particular students. She credibly testified regarding her ability to provide one-to-one services to Student as needed or to provide the one-to-one support of one of the paraprofessionals as needed. She also credibly testified that she had prior experience in working with students with profiles similar to Student. Additionally, Ms. Rooney credibly testified that the Mary Lyon program can provide additional supports to Student as needed. She indicated that Student's time with Ms. Constable can be increased if Student requires it and can attend to additional tutorial services. She also explained that staffing levels could be adjusted to meet the needs of Student as needed. (Rooney)

In addition to not supporting the conclusion that the services proposed by Boston would not be intensive enough to meet Student's needs, none of the clinicians who evaluated Student prior to the 2008-2009 school year found that Student required a language-based classroom. Ms. Adams recommended a language based classroom after Student had been placed at the Carroll School. I did not rely on her recommendation.

Although Parents and their witnesses provided significant testimony indicating that Student did not require the behavioral interventions provided for on his IEP, the record does not support this conclusion. The credible evidence shows that at the time that the Team convened in May 2008, most of the evaluators had noted that Student displayed behavioral difficulties. Additionally, Parents and their witnesses testified that Student became distressed when his work was not the same as all of the other students in the class. Given the behavioral difficulties Student has displayed in multiple settings and the emotional difficulties that his learning needs have caused him, it is appropriate that his IEP contain behavioral interventions and one session per week of counseling.

I did not attribute any weight to the letters provided by Dr. Shulkin or Ms. Boyd-Farah as they did not testify and their letters did not provide any indication that they were familiar with either the Carroll School program which they were endorsing or the Mary Lyons School program.

Finally, although Boston erred by not including the proposed reading tutorial services in the service delivery grid, I find that their error was de minimus as the first page of the IEP included the services and the parties understood that Boston was proposing the reading tutorial 3 x 30 minutes per week.

I find that the IEP proposed by the Boston Public Schools for the 2008-2009 school year was reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. Parents have not met their burden of demonstrating that the IEP was not reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. Because I have so found, it is unnecessary to analyze the appropriateness of the Carroll School program.

ORDER

Parents are not entitled to reimbursement for their unilateral placement of Student at the Carroll School for the period from May 2008 to May 2009.

By the Hearing Officer,

Catherine M. Putney-Yaceshyn

Dated: September 28, 2009