

**STATE OF MAINE
SPECIAL EDUCATION DUE PROCESS HEARING**

Hearing #20.053H

Parents)
)
v.)
)
Falmouth Public Schools)
)
)

**ORDER
(clarified)**

This decision is issued pursuant to Title 20-A M.R.S.A. § 7202 et seq., Title 20 U.S.C. § 1415 et seq., and accompanying regulations. A due process hearing was held on March 2, 3, 4, 5 and 9, 2020 in Portland, Maine. Present and participating throughout the hearing were Eric Herlan, Esq. counsel for Falmouth Public Schools (District); Gene Kucinkas, Special Education Director for the District; Richard O’Meara, Esq., counsel for the Parents; the Mother, the Father (Parents); and the undersigned hearing officer.

Testifying at the hearing were:

Witnesses:

1. The Mother
2. The Father
3. Barbara Melnick Aucocisco School Director and Evaluator
4. Lisa Murphy Aucocisco School Reading Instruction Supervisor
5. Gene Kucinkas Special Education Director
6. Robin Seeker Special Education Teacher
7. Karen Dunn Special Education Teacher
8. Ann Binder Speech Language Pathologist

9. Emily Klaczynsky School Psychologist
10. Tanya Howard Classroom teacher

All testimony was taken under oath.

I. PROCEDURAL BACKGROUND

On January 13, 2020 the Parents filed a due process hearing request on behalf of their [REDACTED] (“Student”). On February 24, 2020, a telephonic prehearing conference was held. Documents and witness lists were exchanged in a timely manner. A Prehearing Report and Order was issued by the Hearing Officer on February 25, 2020.

The Parents distributed 601 pages of documents (herein referenced as P-#) and the District distributed 1,635 pages of documents (herein referenced as S-#).¹ Following the hearing, both parties requested to keep the hearing record open until March 20, 2020 to allow the parties to prepare and submit closing arguments. Pursuant to a post hearing order issued on March 10, 2020, the closing arguments were limited to a maximum of 45 pages and reply briefs were limited to 5 pages.

The District submitted a 45-page final argument memorandum and the Parents submitted a 45-page final argument memorandum. The record closed upon receipt of the reply briefs on March 20, 2020. The parties further agreed that the Hearing Officer’s decision would be due on April 6, 2020.

II. ISSUES: Evidence was taken on the following issues:

1. Did the District fail to provide the Student with a free appropriate public education (FAPE) and placement in the least restrictive environment since January 2018?
2. If so, what is the appropriate remedy under state and federal special education laws?²

¹ Hearing transcript referenced as [T-#]

² Parents are not making a FAPE claim between the period of March 12, 2019 through the remainder of the 2018-2019 school year.

3. Was the Parents' private placement of the Student at the Aucocisco School appropriate under state and federal special education laws?
4. Did either or both of the following actions on the part of the Parents constitute parental obstructionism that should preclude or limit any remedy:
 - Withdrawing the Student from literacy instruction within the District beginning in January 2019; and/or
 - Withdrawing the Student from special education between March 2019 and the end of the 2018-2019 school year.

III. FINDINGS OF FACT

1. The Student is ten years old (d.o.b. 03/19/2010) and resides with ■■■■■ parents in Falmouth, Maine. The District identified ■■■■■ in January, 2017 as eligible for special education and related services as a student under the IDEA category of "Other Health Impairment." [Parent Testimony].
2. The Student currently attends the Aucocisco School in Cape Elizabeth, Maine where ■■■■■ was unilaterally placed by ■■■■■ Parents on November 4, 2019.³ ("Aucocisco"). The Student has been diagnosed with orthographic dyslexia and attention deficit hyperactivity disorder ("ADHD").
3. The Student attended preschool (2013-2014 and 2014-2015) and kindergarten (2015-2016) at the Winfield Children's House Montessori School in Falmouth, Maine. [Parent Testimony]. ■■■■■ began receiving occupational therapy services in 2014 for sensory processing and self-regulation. [P-01; S-1]. The Student has phonological impairments, orthographic impairments and ADHD. [Parent testimony; Seeker testimony; Dunn testimony; T-479, 749]
4. In a functional behavior assessment performed by Dr. Susan Jarmuz-Smith in June and July, 2016, she found that the Student was triggered by "difficult work" and that ■■■■■ was "on task" only 42% of the time, behaviors aligning with

³ At the time of this Order, the State of Maine is on a stay-at-home order for all but essential services through at least April 30, 2020 due to the Coronavirus pandemic.

a diagnosis of ADHD. [S-9] Dr. Jarmuz-Smith also noted that the Student “requires repetition and appears to forget things [redacted] learns...[and that the Student’s] behaviors are triggered by demands and lack of peer/adult attention...” [S-12]

5. The Student enrolled in Falmouth schools in the fall of [redacted] first-grade year (2016-2017) and attended Falmouth Elementary School (FES) full time. [Parent testimony]
6. On September 16, 2016, the District initiated a Response to Intervention ("RTI") program for the Student for 1:1 support in reading and math for four 30-minute sessions per week. [S-28].
7. In the minutes of the RTI meeting dated October 17, 2016 (during the Student’s first grade year), it was noted:

Foundational skills in both reading and writing are lagging. [redacted] is performing at the pre-K level in both areas. [redacted] has not internalized the alphabetic principle and has no sight words. [redacted] relies on the number line to recognize, name, and form numbers. For writing [redacted] draws pictures and adds letters that [redacted] copies, but they have no connection to the message. [S-31]

8. The Special education referral report dated October 24, 2016, noted that the Student was making “very little progress to all interventions.” [S-28] This report also noted that “[the Student] is struggling in all academic areas. [redacted] is working on pre-kindergarten reading skills. [redacted] writing is mostly pictures with random letters...[and the Student] has been observed mirror writing and forming letters upside down and backward.” [S-28]
9. The District initiated a special education referral for the Student on October 25, 2016. [Seeker testimony; S-27, 28, 32]

- 10.** The Student’s IEP team convened on November 15, 2016, and determined that the Student should undergo academic testing, classroom observations and a psychological evaluation. [S-37] The Parents signed a consent for the Student to be evaluated on November 15, 2016. [S-39]
- 11.** The IEP Team arranged for the Student to be evaluated in January 2017 by Emily Klaczynsky, the District’s psychologist, with regard to ■■■ competencies in total reading, basic reading, and written expression. [S-39] Results of these evaluations indicated that the Student was performing below expected levels for reading, writing, and math, and had a “significant weakness in the underlying cognitive processes that are required to become a fluent reader.” [Klaczynsky testimony] The evaluations resulted as follows: Verbal Comprehension (WISC-V): 10th percentile; Visual Spatial: 63rd percentile; CTOPP (test of Phonological Awareness/Processing) 30th percentile; rapid symbolic and non-symbolic naming, below the 1st percentile; full Scale I.Q. 14th percentile. [S-85]
- 12.** This initial testing confirmed that the Student also had attentional/impulsivity challenges along with a “formal processing disorder based on ■■■ difficulty with rapid naming, phonological awareness and verbal comprehension skills.” [S-52]
- 13.** The IEP team reconvened on January 30, 2017 and determined that the Student was eligible for special education as a student with an “Other Health Impairment” (OHI) based on ■■■ ADHD. [Seeker Testimony; S-77] The team noted that ■■■ met the standards for a specific learning disability, but concluded

that the Student's needs were best met under the label of OHI and that the Student "did not require special education and related services because of [a learning] disability." [S-74]⁴ Ms. Klaczynsky testified that "we answered "no" because we determined that ■ requires services because of a different disability." [Klaczynsky testimony; T-995]

14. The Student's February, 2017 IEP stated that ■ was reading at an instructional Level A, classified as an "early kindergarten level" under the Benchmark Assessment System (BAS).⁵ [S-83] This IEP also noted that the Student's "challenges with working memory, rapid naming, phonological awareness, verbal comprehension, and attention impact ■ ability to adequately progress in the general education setting without specialized literacy and math programs."⁶ [S-83; P-596]

15. The IEP team determined at the January 30, 2017 meeting that the Student would receive specialized instruction in reading, writing, and math for 30 minutes per day in each category. [S-89]

16. Robin Seeker, the Student's special education teacher in first and second grade noted that the Student was "definitely oppositional and defiant about literacy

⁴ Ms. Klaczynsky noted that the reasons for identifying the Student as eligible under OHI related to ■ ADHD as opposed to SLD, is that [OHI] "is that was really what described ■ the best as a learner based on what we were able to see and the reports that we had over time. So when you saw [the Student] in the classroom, ■ inattention and hyperactivity were so strong that they really prevented ■ from being available to access ■ learning. [Klaczynsky testimony, T-985]

⁵ Robin Seeker described the BAS system as a standardized assessment that's normed against other typically developing students to measure students' reading levels. BAS has an independent level and an instructional level. Independent is what students can read without teacher support. Instructional level is what Students can read with teacher support. Frustration/Hard level is a text that's beyond the student's ability. A score of 95-98 percent and above would be independent level and 90 percent to 94 percent is instructional level. [Seeker testimony]

⁶ Although the Student's February 2017 IEP identified ■ as BAS level A, Robin Seeker testified that the Student was reading "below level A." [Seeker testimony].

tasks and about trying things that were hard for [REDACTED]... [REDACTED] had extreme attention deficit ... he's a tricky kid to teach and [REDACTED] definitely has some emotional dysregulation.” [Seeker testimony]

17. Ms. Seeker noted that she had “no concerns about the Student’s cognitive abilities. He's a very smart boy.” [Seeker testimony; T-649] She noted that the Student was engaged with mainstream programs like science and math (that did not involve written language) and other “hands-on” things which were “a strength” for [REDACTED] [Seeker testimony]
18. Ms. Seeker started the Student with the “Foundations” reading program which is the early Wilson/pre-kindergarten program that uses sound and picture cards designed to help students with orthographic disabilities. [Seeker testimony]
19. Ms. Seeker reported that she merged the Wilson and SPIRE methodologies March or April 2017 because the Student was showing some opposition and she felt that [REDACTED] would benefit from the SPIRE program which was more structured and predictable. [Seeker testimony] Ms. Seeker also chose SPIRE for the Student as it “touches on all five pillars of reading instruction: phonological awareness, phonics, comprehension, fluency and vocabulary.” [Seeker testimony; T-483]
20. At the April 26, 2017 IEP team meeting, the team determined that the Student’s IEP would be amended to add extended school year services (ESY) for one hour a day, two times a week, for a total of six-weeks. [Seeker testimony; S-95] The Student’s reading goal was to move from Level A to Level D (early first grade level) on the BAS by January 2018. [Seeker testimony; S-83; S-89; P-596]

21. On March 31, 2017, Ms. Seeker referred the Student for disciplinary action due to ■■■ alleged refusal to work and inappropriate language during a session when she was providing reading instruction in the SPIRE program. [SB-90] On April 24, 2017, she sought a behavioral consult for the Student. [P-021]
22. In the spring of 2017, the Parents arranged for a psychological evaluation by Dr. Nancy Jarmuz-Smith to address “concerns related to the Student’s attention and social-emotional behavior.” [S-100] In her report, Dr. Jarmuz-Smith recommended that [the Student] would “likely benefit from explicit and direct instruction, modeling, and guided feedback in phonetic coding/decoding to improve phonological processing” [S-116]
23. Dr. Smith’s evaluation diagnosed the Student with ADHD, and called for monitoring of a possible specific learning disability and an anxiety disorder. [S-115]
24. On April 26, 2017, the IEP team amended the Student’s IEP to add one hour of ESY services on a frequency of two times per week due to the “emergent level of ■■■ literacy and math skills.” [S-95]
25. On May 30, 2017, the IEP team met to review Dr. Jarmuz-Smith’s evaluation and to review ■■■ progress on ■■■ IEP goals. [S-119, 120] The Written Notice prepared in connection with this meeting stated that the Student made “nice progress on ■■■ reading goals” but that the Student’s “opposition to accepting teacher directions especially with writing has limited the amount of progress ■■■ has made on ■■■ goals. ■■■ is more capable than what ■■■ will produce.” [S-120] The Student’s literacy skills remained at a “beginning” level BAS level C with

instructional support. [S-130, 159] The team determined that no changes to the level of services would be made to the Student's IEP and agreed to observe the Student in the special education and regular education classrooms to document a possible need for behavioral supports. [S-123]

26. The District offered 12 hours of extended school year services for the summer after first grade. [S-94- S-97] The Student attended eight sessions between July 6 and July 31, 2017. [S-131, SB-148]

27. The Student's mother did not have the Student attend four of [REDACTED] ESY sessions as [REDACTED] was "having increasing difficulty going to extended school year services." [Seeker testimony, P-045]

28. At the start of second grade year (2017-2018), the Student continued to receive three 30-minute sessions of specially designed instruction in reading, writing and math. [P-50] In classroom observations performed by Cynthia Smith (Therapeutic Intervention Teacher) in September and October of 2017 it was noted that the Student "struggled with demonstrating socially expected behaviors multiple times during the observation." [Seeker testimony; S-136] Ms. Seeker consulted with Leslie Fitzgerald, Behavioral Strategist for the District, who helped her come up with a "star chart" program for the student to help address [REDACTED] resistant behaviors. [Seeker testimony]

29. On October 12, 2017, the IEP team met to review the District's behavioral observations earlier in the 2017-2018 school year. [S-165] At this meeting, the team agreed to amend the Student's IEP to add a specific goal for the Student to "demonstrate a particular work product [REDACTED] is proud of." [S-151] The team also

added “participation in a social skills group” one time a week for 45 minutes per session and provided for “modified homework assignments.” [Seeker testimony; S-141,155]

- 30.** In a November 9, 2017 progress report, Ms. Seeker wrote that the Student remained at a BAS instructional level C, but had made “satisfactory progress” towards reading goal of BAS instructional level “D”. [S-159] Ms. Seeker testified:

“I wrote that [REDACTED] had lost ground in reading over the summer months...had attended ESY, extended school year services, for about seven or eight sessions...so back in November we were back up to reading at that instructional level C where we had left off in the spring. So my anticipation was that we would get to the level D by January [2018].” [Seeker testimony; T-528; T-607]

- 31.** On January 23, 2018 the IEP team convened for the Student’s annual meeting. The Student’s IEP progress report from late January 2018 revealed that [REDACTED] made “limited progress” with [REDACTED] reading instruction. [S-159] The IEP reported that the Student was reading at a “BAS instructional level C and D.” [S-172] The writing progress report also indicated that the Student remained at an “end of kindergarten” writing level. [S-161].⁷

- 32.** Ms. Seeker testified that she told the Parents at the January 23, 2018 IEP team meeting about her concerns with the Student’s orthographic impairment. [Seeker testimony] In the Written Notice from January 23, 2018 IEP team meeting, it was noted that the “Student’s biggest challenge is in the orthographic

⁷ Ms. Seeker testified that the Student’s remaining on “instructional level C” from the spring of first grade to the middle of second grade was “concerning” to her: “we were really heavily using the SPIRE program and that doesn’t always translate when we weren’t able to read non-decodable text [sic] because we were using our time to work on the systematic structured program, which is why I changed [REDACTED] goals and altered them to more closely align with the skills [REDACTED] was learning.” [Seeker testimony; T-618]

area. ■■■ relies on the teacher to help ■■■ as ■■■ brain will flip some of the letters and sounds.” [Seeker testimony; S-166, 172]

33. At the January 23, 2018 meeting, the team determined the Student’s programming would be modified as follows:

- Increasing reading instruction from 30 minutes to 60 minutes per day⁸;
- Increasing writing instruction from 30 minutes to 45 minutes per day;
- Updated spelling goals using symbol imagery and orthographic patterns;
- Adding 45 minutes per week of social skills;
- Adding adult behavior support in the regular education classroom; and
- Providing extended year services for an hour a session, two sessions a week, for six weeks. [Seeker and Kucinkas testimony; S-166; S-175-177, 180]

34. By June, 2018 Ms. Seeker testified that the Student finished the year at an instructional BAS level “C” and a “comfortable” level “D” but not successful on a daily basis at level “E”. [Seeker testimony]⁹ Ms. Seeker testified that she observed the Student attain an “independent” reading level “B” in the first grade, but she could “not recall” if ■■■ attained an independent level on any other BAS assessments after first grade. [Seeker testimony]

35. Ms. Seeker testified that in January, 2018 the IEP team removed reference to the BAS “so that we could more closely align with the skills that ■■■ was being taught each day [and] measuring with the Rebecca Sitton word list...” [Seeker testimony; T-620] Additionally, Ms. Seeker testified that the team was keeping the Student’s goal at “level one” SPIRE for the following year and that the

⁸ The District continued to use the SPIRE program for the Student’s reading instruction. [Seeker testimony]

⁹ The Student had 25 errors on a BAS level E level report in June, 2018 which determined an accuracy rate below 90%, which was below the 92% required to be an “instructional” level. [Seeker testimony; SC-12] The Student received a zero on fluency and ■■■ comprehension was three out of seven. Ms. Seeker noted that while this was the measurement tool at the time, this was not “representative” of the Student’s work on level E readers. [Seeker testimony; SC-12]

Student had been on level one SPIRE for the previous year since March, 2017.

[Seeker testimony]¹⁰ At the January 2018 IEP team meeting, the Student was given an instructional goal to accurately spell the first 100 most frequently used words from the Rebecca Sitton list with 70% accuracy. [S-175]

36. With respect to measuring the Student's progress in the SPIRE program, Ms.

Seeker testified:

...the tricky part with the phonics program is that sometimes it doesn't always translate to the BAS level and that's what I was adjusting my IEP to. So my hope was we would continue reading, which is what we did, and then we would measure [REDACTED] IEP goal based on [REDACTED] progress in the SPIRE text. [Seeker testimony, T-622]

37. Ms. Seeker noted that she had started working with the Student in March, 2017

at level one of the SPIRE program until [REDACTED] moved to level two by the end of the Student's second grade year¹¹. [Seeker testimony; S-B-56] Ms. Seeker testified that she did not recall ever having another student take that long on SPIRE level one. She attributed the Student's slow progress in part to [REDACTED] oppositional behavior and "extreme attention difficulties." [Seeker testimony]

38. In the Student's June 8, 2018 progress report, Robin Seeker wrote:

¹⁰ HEARING OFFICER: So the last part of my notes that make really any sense to me, when we were talking about setting [REDACTED] goal in January of 2018 for the following year, I think I heard you testify that you are keeping [REDACTED] goal at level one SPIRE?

THE WITNESS: Yes.

HEARING OFFICER: Which would be the 90 percent accuracy for that year. He'd been on level one SPIRE for the previous year since January, is that correct?

THE WITNESS: Since -- no, since March.

HEARING OFFICER: Since March?

THE WITNESS: Yes, and then we took a step back in the fall and we were -- yes, so we were writing this for that. So I was kind of working to get that 90 percent accuracy up there. SPIRE requires 80 percent to continue moving on, and so that's -- and we got to the level two SPIRE by the end of second grade.

¹¹ Robin Seeker testified that SPIRE has eight levels, and that the Student started at level one in the spring of 2017. [Seeker testimony; S-B-34]

...performance in writing varies daily and ■ does not demonstrate independence in writing at this time. ■ is able to write and elaborate on topics with constant teacher support and instructional scaffolding. ■ writing is negatively impacted by ■ lack of independence in generating an idea and supporting details, beginning a written task, and sustaining ■ attention to sound out the words and write out a complete thought. ■ does demonstrate more success with spelling when given dictation sentences to help ■ practice common word patterns being taught in reading; however, ■ still needs teacher prompting to remember the patterns we are aiming to spell correctly because ■ can be inconsistent within a controlled sentence...

[The Student] spelled 56 out of the first 100 high frequency spelling words on the Rebecca Sitton spelling list. ■ needs constant teacher prompting to implement ■ spelling knowledge into ■ daily written work.

The increased time in the resource room [since January] has helped [the Student] to begin to show growth in ■ reading. ■ is able to read controlled texts with long vowel patterns in them with teacher support. In addition ■ is reading uncontrolled texts at the instructional levels D and E with teacher support. [The Student]'s performance varies daily based on ■ attention, focus, and compliance. [S-235]

39. Dolch word lists are a method of measuring a student's ability to read high frequency sight words that "can't be sounded out." [Seeker testimony; S-B-77; Dunn testimony, T. 710-711]
40. Ms. Seeker testified that she gave the Student a "limited progress" rating and was "disappointed" that the Student had only increased ■ Sitton spelling rate from 50 words to 56 words between January and June of 2018. [Seeker testimony]
41. The Parents chose to not have the Student attend ESY during the summer of 2018 in light of the Student's experience during the previous summer. [Parent testimony] Instead, the Parents enrolled the Student in twice weekly tutoring at the Children's Dyslexia Center in Portland (an Orton-Gillingham based

program) supplemented by visits to an educational therapist, Allison McLatchie.
[P-189; S-196]

42. Ms. Seeker testified that she was “excited” that the Student was attending the Dyslexia Center as its program involved one-on-one tutorials in Orton-Gillingham method reading which was similar to what the District was doing with the Student. [Seeker testimony; T-642-643]
43. The Student’s mother testified that while initially the Student “was ok” with the Children’s Dyslexia Center program, [REDACTED] later exhibited more behavioral concerns and said [REDACTED] “didn’t want to go.”¹² [Parent testimony]
44. During the start of the Student’s third grade (2018-2019) school year, [REDACTED] remained enrolled in the District and [REDACTED] primary special education teacher and case manager was Karen Dunn. [Dunn Testimony; S-200]
45. On September 17, 2018, the IEP team met for a program review at the Parent’s request. At this meeting, Ms. Dunn noted that the Student “appeared to have regressed in the reading area some over the summer.” [S-201] The Student’s IEP team determined that [REDACTED] services would be maintained at the current level, but added the use of audiobooks as an accommodation and agreed that a staffing should occur in November, 2018 to check on the Student’s progress. [S-201]
46. Ms. Dunn has a Master’s degree in educational leadership with a focus on educational literacy. She has taught for 29 years in the Falmouth schools, primarily working with learning disabled and dyslexic students. [Dunn testimony] She had Wilson reading training and certification in 1996 and

¹² The Parents continued with twice weekly tutorials at the Dyslexia Center for the Student beginning in October 2018. [S-222] The Dyslexia Center utilized an Orton Gillingham methodology with the Student.

training in the SPIRE reading program and has participated in 13 hours of Seeing Stars training in 2017¹³. [Dunn testimony] She also participated in a 14 hour orthographic skill development program [Dunn testimony, SE-16, 25,26]

47. Ms. Dunn testified that she has not fully utilized the Seeing Stars program as she did not feel that the program had a strong “phonological piece” or a clear structure or system to the lesson plan. [Dunn testimony; T- 664-665] Her use of it is limited to some of the questioning techniques when students are making errors. [Dunn testimony; T-772]

48. Ms. Dunn noted that the “level of structure” in the Seeing Stars program is lower than the level of structure in the SPIRE and Wilson programs. [Dunn testimony; T 782] As the Dyslexia Center used an Orton-Gillingham-based program for the Student, Ms. Dunn noted that this would have provided additional reinforcement for the lessons she was using with the Student. [Dunn testimony]

49. Ms. Dunn explained that when she started working with the Student in September, 2018, due to ■■■ regression over the summer, she used the Wilson reading program as a way to review things that the Student had already learned in the 2017-2018 school year. [Dunn testimony; T-672] She then started to use the SPIRE program in November, 2018. [Dunn testimony] Most of the Student’s literacy instruction was done on a 1:1 basis by Ms. Dunn or under her supervision. [Dunn testimony]

¹³ Seeing Stars is a program designed specifically for children who have orthographic dyslexia. [Dunn testimony; T-768]

50. Ms. Dunn testified that it took the Student a month to recoup the SPIRE level one skills that ■■■ had achieved with Robin Seeker in the spring of the Student's 3d grade year. [Dunn testimony] Ms. Dunn testified:

I definitely saw ■■■ as a dysregulated kid and so some days ■■■ would show up and ... stuff was tough. ■■■ just really had a hard time retrieving things that we had done the day before perhaps, it could be in math, it could be in reading, spelling, and I would sometimes have to adjust what we were going to do because I could tell that ■■■ was just having a hard time that day. [Dunn testimony; T-701,756]

51. The District convened a staffing meeting on November 30, 2018. At this meeting, Ms. Dunn reported that while writing was "still hard", she was "seeing growth." [Dunn testimony; SC-53 to SC- 54] Ms. Dunn noted that the Student "would be oppositional, but [the Student's oppositional behavior was] short lived and ■■■ could work through." [Dunn testimony]

52. In December, 2018, due to the Parents' concerns about the Student's lack of progress in literacy, they arranged for ■■■ to have an educational evaluation at the Aucocisco School. [Parent testimony] The evaluation included the Feifer Assessment of Reading ("FAR"), the Kaufman Test of Educational Achievement, Third Edition ("KTEA-3") and the Gray Oral Reading Test Fifth Edition ("GORT-5"). [S-210 SA-134] Lisa Murphy-a former Lindamood Bell consultant who is now a special education teacher at the Aucocisco School, coordinated the Student's testing on behalf of Aucocisco. [P-265]

53. The Aucocisco evaluation report indicated that the Student's "decoding and word recognition skills were "still at the pre-k to kindergarten levels, and ■■■ was unable to read passages at the kindergarten level... [P]rocessing the visual

symbols [orthographic processing], whether objects or letters, is an absolute weakness across [REDACTED] learning profile.” [P-265]

54. In her report, Ms. Murphy recommended one and a half to three hours per day of Lindamood Bell programming, consisting of the Seeing Stars program, with LiPS (the Lindamood Phoneme Processing System) as needed, along with a full neuropsychological evaluation. [P-266]

55. Wilson and SPIRE programs are both Orton-Gillingham-based programs.

[Melnick, Binder testimony] Seeing Stars, based on Lindamood Bell programming, is different from the Orton-Gillingham family insofar as it is based on symbol imagery that “teaches [a student] how to make that trace image in your brain of what a word looks like and recognize it immediately on sight.

[Melnick testimony] Ms. Melnick testified that on a page of print, those words “are often up to 75 to 80 percent ‘sight words’, like ‘the’ and ‘once’ that [a reader must] recognize immediately because they don't follow the rules of English.” In order to deliver Seeing Stars, a teacher must have experience and significant training in order to implement the “immediate correction” ability necessary to work with students using this methodology. [Melnick testimony; T-255]

56. In the September, 2018 Written Notice, Ms. Dunn reported that the Student appeared to regress over the summer, and [REDACTED] appears to “hate how hard” the work is for [REDACTED]. [S-200]

- 57.** Ms. Dunn testified that a BAS assessment performed in September 2018 showed that ■ reading accuracy was at 55%, which “seemed like regression from Robin Seeker’s report” from the spring of 2018. [Dunn testimony]
- 58.** Ms. Dunn repeated the SPIRE “decoding phonogram test” in January, 2019, indicating the Student had moved from 43% to 97%, with a BAS accuracy rate 93% [Dunn testimony, SC-26; SC-84]¹⁴
- 59.** Ms. Dunn testified that this test measured the Student’s errors with regard to proper nouns only once, even though the Student misspelled the word “Kate” as “Kim” three separate times, but subsequent errors were not recorded on this test. Ms. Dunn noted that the Student’s proper noun errors were both an orthographic and a memory issue. [Dunn testimony]
- 60.** In September of 2017 the Student was able identify 14 out of 25 words from the Rebecca Sitton list and in January of 2018 ■ was able to accurately spell 50 out of 100 word from this list. [Seeker testimony; S-B-81]
- 61.** One of the goals on the Student’s January 2018 IEP was to spell the first 100 most frequently used words from the Sitton list with 70 percent accuracy. [S-233] The Student’s progress towards that goal was characterized as “limited” when evaluated in June, 2018 when ■ spelled 56 words correctly out of 100 for an accuracy rate of 56%. [S-233] In November of 2018, the Student correctly spelled 35 words out of 60 for an accuracy rate of 58% and in January, 2019 the Student correctly spelled 47 out of 100 for an accuracy rate of 47%. [S-233]

¹⁴ This test measure pre-supposes that the Student will be assessed by looking at a cold read of unfamiliar text to see if ■ gets 90 percent accuracy. [Dunn testimony] Ms. Dunn testified, however, that “maybe” she did not do any connective text that was unfamiliar, and that she did not recall that the Student was actually being assessed in this respect. [Dunn testimony, T-807-809]

62. In the January, 2019 IEP, it was noted that [the Student] had mastered about 15 new words this year so far, however [redacted] sight word reading accuracy level was below 50%.¹⁵ [S-233; SC-104 & SC-122]

63. Ms. Dunn noted that she still had orthographic processing concerns about the Student in January, 2019 as she was nearing the end of her time with [redacted] [Dunn testimony].

64. In a January 11, 2019 e-mail to Robin Seeker and Emily Klaczynsky, Ms. Dunn wrote:

[D]oes it make any sense to have [the Student's] visual-perceptual skills assessed or is it all just covered under orthographic? The reason I ask is that I am thinking that [redacted] could benefit from some work with solidifying [redacted] identification of letters, exclamation point, form constancy, I feel like [redacted] difficulty with distinguishing between Q and P, et cetera, is impacting [redacted] imaging of a word which impacts both spelling and reading. [Dunn testimony; P-224]

¹⁵ Ms. Dunn testified with regard to the Student's literacy progress as follows:

Q: Did you have data to report to the family about what [redacted] actually could do in November?

A. Well, I said that [redacted] has practiced and shown repeated success with 12 new words from the start of the school year."

Q. So [redacted] had kept the 35 and added 12?

A. I believe so.

Q. Is that what you were trying to say?

A. I believe so.

Q. So that would be 47?

A. Yes.

Q. So [redacted] nice progress was to get to within nine of where he'd been in the spring at 56?

A. I guess there could be some variation in how the spelling words were assessed between Robin and I. I don't know this for sure, but I don't know if there was any cueing involved when Robin did the assessment, I don't know if words were done in portions. [The Student] is expected to read a certain number -- I'm not certain, but I felt like [redacted] had certainly gained from the beginning of the year to November.

Q. But [redacted] certainly could not spell more words correctly than Ms. Seeker had reported from June 8th, right?

A. That's right.

Q. But you can't really give us a count of where [redacted] was compared to the 56 he'd had in the spring?

A. I guess not.

Q. But it's less than 50?

A. Yes. [Dunn testimony; T-798]

65. In the January, 2019 IEP, Ms. Dunn wrote that the Student “requires significant repetition in order to master new words due to [REDACTED] challenges with orthographic processing.” [S-259]
66. When the Student was tested on the Dolch list in June, 2018 [REDACTED] was able to correctly identify 109 out of 220 words. By January, 2019 [REDACTED] was only able to identify 96 out of 220 words. [Dunn testimony; S-C-77, 104, 122]
67. Ms. Dunn didn't feel that the Dolch testing results were necessarily a true representation of what the Student knew or didn't know or that [REDACTED] had regressed because the Student was very quick to say “I don't know” repeatedly. [Dunn testimony]. Ms. Dunn did not further attempt to obtain a more accurate measure of the Student's progress towards that [REDACTED] sight word identification goal.
68. The Parents submitted a statement of parental concerns to be considered at the January 14, 2019 IEP team meeting. [P-227-8] In that statement, the Parents requested special education services to utilize “LiPS followed by/overlaid with the Seeing Stars program” [P-228; S-219]
69. As part of the January 2019 IEP, the District offered to modify the methodology of the Student's reading program to the Lindamood Bell Seeing Stars program instead of the SPIRE program. In addition, the District offered a Lindamood Bell/LIPs reading expert to provide 50 minutes of consultation to the Student's instructor on an every-other week basis. [Dunn Testimony; S-242; 266] The proposed IEP included the following additional services/supports:
- Reading and spelling instruction: 9 hours a week
 - Writing instruction: 1 hour a week
 - Math instruction: 2.5 hours a week
 - Social skills group: 45 minutes a week

- ESY services:
[S-242; 266]

2 hours twice per week

70. Ms. Dunn testified with regard to the proposed change in reading methodologies that she didn't think "there's any magic in one program", but that she was "open to what the Parents were requesting and some of their advocates" to "give it a go and see what happens" [Dunn testimony; T-772] The District arranged for the program to be overseen by Shar Mahoney, a consulting teacher, who had some experience with the Seeing Stars program. [Dunn testimony] In addition, the District retained Ann Binder to oversee the Seeing Stars training. Ms. Binder is a Speech/Language Pathologist, trained in LiPS and certified as an Orton-Gillingham instructor focusing on reading and writing disorders. [Binder testimony; T-734]

71. In January 2019, the Parents revoked consent for the District to provide special education services in order for the Student to attend a half-day schedule at the Aucocisco School. [Parent Testimony; S-246] The Parents planned for the Student to attend Aucocisco 5 days a week for two hours a day, using the Lindamood Bell Seeing Stars and LiPs methodologies, while maintaining a connection to [REDACTED] mainstream programming at FES. [Parent Testimony; S-244] At this point, the Student was no longer receiving [REDACTED] literacy instruction within the District. [Dunn testimony]

72. At the end of the Student's third grade school year, the Parents reinstated consent to the District to provide special education services beginning at the start of the Student's fourth grade school year. [Parent Testimony].

- 73.** In the late winter and spring of 2019, Dr. Marcia Hunter performed a neuropsychological assessment of the Student at the request of the Parents. [S-293] This test revealed changes from the test performed by Emily Klaczynsky in 2017 as follows: The Student’s full scale IQ had increased From the 14th to the 23rd percentile; ■■■ verbal comprehension score had increased from the 10th to the 45th percentile. [S-307] On the Woodcock-Johnson-IV test of Achievement on Letter Word Identification the Student’s score was in the first percentile.
- 74.** In her report, Dr. Hunter opined that “[w]hile [the Student] has benefitted from tutoring in the phonology of words, ■■■ is still lagging behind in ■■■ achievement of rapid naming and automaticity. ■■■ scores on standardized measures of academic achievement in reading are at the 1st percentile.” [S-298] Dr. Hunter concluded that Student requires instruction utilizing the “systematic program offered by professionals with training and experience in Lindamood Bell methodologies.” [S-303]
- 75.** On May 24, 2019, Emily Klascynsky recommended to Gene Kucinkas:
- I would recommend that we seek more data around potential processing strengths and weaknesses. Based on the results shared in the attached reports, I’d specifically like us to consider ■■■ phonological and orthographic skills using measures that provide composite scores in those areas.” [SA-289]
- 76.** A reading skills assessment performed by Lisa Murphy at Aucocisco measured the Student’s progress between December, 2018 and July, 2019 after the Student completed approximately 100 hours of Seeing Stars instruction. The assessment results for that time period were as follows: The Phoneme

Recognition Screener score increased from 26/50 to 48/50; ■■■ standard score on the KTEA-3 Nonsense Word Decoding test rose from 76 to 86; ■■■ score on the Letter and Word Recognition test increased from 61 to 71. [S-325 to S-326] On the GORT-5, ■■■ fluency scaled score rose from 2 to 3, while ■■■ comprehension scaled score jumped from 2 to 6. [S-326]

77. The narrative section of the July, 2019 Aucocisco report noted:

[The Student] has shown growth in the foundational skills for reading: phoneme recognition, untimed decoding, and untimed sight word recognition. ■■■ developing the ability to accurately decode simple syllables and recognize common words. ■■■ is just beginning to apply those skills to reading on the page. These processes are still emerging.

...

During the morning sessions this summer, [the Student] had notably greater stamina and ability to attend. This increased attention and emotional regulation resulted in being able to accomplish much more during ■■■ tutoring sessions.” [S-327]

78. On August 12, 2019 Dr. Jayne Boulos conducted a Test of Word Reading Efficiency (TOWRE) evaluation which looks at the impact of orthographic weaknesses, including sight word efficiency and decoding efficiency. The test results showed that the Student remained in the first percentile in these areas. [Klaczynsky testimony; S-333]

79. In September, 2019, the Student returned to Falmouth Elementary School for the mornings to maintain a connection to FES, and continued a half-day unilateral placement at Aucocisco for ■■■ literacy programming. [P-330; Dunn testimony; T-742]

80. At an IEP team meeting on September 12, 2019, the team again increased the Student’s literacy instruction to 12.5 hours a week (10 for reading and 2.5 for writing), and removed the specific listing of Seeing Stars as a methodology,

replacing it with use of "multisensory synthetic phonics instruction." [S-352]

Ms. Dunn noted that the Seeing Stars methodology was removed from the IEP since the Student had done "so poorly on that assessment with Jane Boulos, some of [REDACTED] scores had actually decreased from a couple years previously."

[Dunn testimony; T-747]

- 81.** On November 1, 2019 the Parents notified the District that the Student would begin a full-day placement at Aucocisco starting November 4, 2019.
- 82.** At the IEP Team meeting on November 1, 2019, the Student's mother noted that [the Student] now "considers [REDACTED] self a reader" and that [REDACTED] is "reading more at home." [S-406]
- 83.** Aucocisco increased the Student's Seeing Stars tutorials to three 45-minute blocks per day, scheduling most of those services before lunch. [SG-18]
Aucocisco tested the Student in late January 2020. By that point, [REDACTED] had completed 289 hours of Seeing Stars instruction. [S-444] [REDACTED] KTEA-3 Nonsense Word Decoding score increased to a score of 95 (up from 86 in July). [S-445] [REDACTED] score on the Letter and Word Recognition test increased to 78 (up from 71 in July). [S-446] [REDACTED] score on the Symbol Imagery Test, which directly measures [REDACTED] ability to process orthographically, hit a standard score of 84 (up from 73 in July). [S-446 and S-447]
- 84.** The Parents filed for the current due process hearing on January 13, 2020.

IV. SUMMARY OF THE PARTIES' ARGUMENTS

Brief summary of the position of the Parents:

The Parents argue that the Student's IEPs, developed and implemented prior to and during the 2018-2019 and 2019-2020 school years, failed to provide the Student with a FAPE. The Parents claim that the District's use of the SPIRE program, which primarily addresses weaknesses in phonological processing, insufficiently targeted the Student's orthographic processing disorder.

The Parents point out that *Andrew F.*'s¹⁶ focus on "careful consideration of the child's individual circumstances," requires consideration of both the child's potential and the ability to remediate [REDACTED] particular disability using specialized instruction. Because the Student is a reasonable prospect to aim for grade level advancement, this more robust standard of appropriateness applies. Accordingly, the District is required to provide programming sufficient to permit the Student to succeed in the general curriculum.

The Parents point out that the Student does not have an intellectual disability, as indicated by [REDACTED] Full Scale IQ of 89, nor does [REDACTED] have a language deficit; all [REDACTED] language scores are in the average range. There was no dispute that [REDACTED] is a bright boy who can aurally receive, process, analyze, and orally express grade level information.

Only if a child's disability makes it unreasonable to expect advancement on par with grade-level expectations does the IDEA permit use of a lower standard; but even then, according to *Andrew*, the "educational program must be appropriately ambitious in light of [REDACTED] circumstances" and provide a "chance to meet challenging objectives."

¹⁶ *Andrew F. v. Douglas Cnty. Sch. Dist.* RE-1, 137 S. Ct. 988 (2017).

The Parents also argue that the Student's substantial orthographic processing disorder was well known to both of [REDACTED] teachers, Ms. Seeker and, later, to Ms. Dunn. It was only when [REDACTED] parents finally obtained independent testing, beginning at Aucocisco and concluding with Dr. Hunter, that they learned what was wrong and how to fix it. The District, however, opted to provide only more minutes of the phonics program that was failing to ignite the Student's reading development. Because the District continued to focus on the Student's ineffective phonics programming and didn't identify and implement a program designed to remediate the Student's orthographic processing disability, [REDACTED] progress continued to stall. The Parents had to revoke consent for special education due to the Student's lack of progress and the District's failure to develop an appropriate IEP for the Student.

The Parents argue that although the District offered to provide the Student with Lindamood-Bell instruction, it did not offer to deliver the program with staff that was adequately trained to deliver the program to the Student. Specifically, Shar Mahoney has had little or no experience with the Lindamood-Bell curriculum or effectively remediating the orthographic deficits that the Student requires.

The Parents are making a claim for the District's denial of a FAPE for the Student beginning in September 2019. By that time, the District knew that the Student's deficits in processing sequences of symbols served as a principal source of [REDACTED] academic struggles, yet it proposed an IEP that ended the Seeing Stars program and returned the Student to a program that, for two straight years, had failed to deliver a FAPE for the Student.

The Parents argue that they should be reimbursed for their expenses in sending the Student to Aucocisco. They assert that compensatory awards must be designed to restore the affected student to the levels of skill and function [REDACTED] would have attained had proper services been delivered in a timely fashion. Aucocisco is an appropriate placement. The Aucocisco program provides for intensive, one-on-one reading intervention in the Lindamood-Bell curriculum of the Seeing Stars program overseen by "an experienced special educator who is knowledgeable in a variety of interventions and can target the areas of primary importance for the Student.

The testing conducted by Aucocisco in July 2019, following nearly 100 hours of specialized instruction that focused on building the Student's basic sound-to-symbol recognition and phonological awareness, indicated progress on [REDACTED] phoneme recognition screening score and in both nonsense word decoding and word recognition. The Student also showed mild gains on the GORT-5 in fluency and comprehension.

Finally, the Parent claims that Aucocisco was the right choice for the Student because the instructor designing and overseeing the program would be Lisa Murphy, who has substantial experience in the Lindamood-Bell curriculum of LiPS and Seeing Stars.

Brief summary of the position of the District:

The District argues that the Parents have not met their burden of proving that the Student's IEPs have failed to meet IDEA standards and that the Student suffered educational harm as a result. The District points out that special education is not a guarantee of success, but a reasonable calculation of programming that will result in educational gains in the least restrictive environment, and the evidence shows that the Student's IEPs met this standard.

The District argues that the IDEA confers primary responsibility upon state and local educational agencies, not parents, to choose an appropriate methodology to address a particular child's needs. No one has testified that SPIRE was an inappropriate program to use with the Student, and the Parents offered no testimony that one methodology is better than the other.

The Student came to the District in the first grade as a non-reader, below the Level A on the BAS reading measure. ■■■ has a significant learning disability, one that impacts both ■■■ phonemic processing and ■■■ orthographic processing. ■■■ also has ADHD, which makes it very difficult for ■■■ to remain focused on task. The District promptly identified ■■■ for special education services and offered specialized services in reading, writing and math. The IEP team met at least twice during each school year, and each time made often significant revisions in the IEP.

The only IEPs at issue are those that began halfway through the 2017-2018 school year while the Student was in second grade. As a result of the Parents' decision, the Student was not in special education, and therefore has no right to a FAPE, from March 13, 2019, through the first day of the Student's fourth grade year in school, early September 2019.

From the time the Student entered special education in January 2017 until the end of second grade in June, 2018, the Student's teachers used the Wilson Foundations program and then SPIRE, both Orton-Gillingham-based reading programs. From January 2017 to January 2018, the Student had moved through an instructional Level A and B, and was at an instructional level C. ■■■ had moved through Level 1 in SPIRE and into Level 2 by April of 2018. At the beginning of the 2017-2018 school year, the Student

could read 15 out of the first 40 Dolche sight words; by January 2018 [REDACTED] could read 28 out of the first 60. By the end of second grade, [REDACTED] could read 109 out of the first 220.

Although the Student's progress was reasonable based on [REDACTED] unique challenges, the District determined at the Student's annual IEP team meeting in January 2018 that [REDACTED] reading instruction time would be doubled, in addition to other changes in the IEP. It was also reasonable to continue using the SPIRE program, which was meeting with success.

The Parents rejected the District's six-week ESY program which would have continued the Student in the SPIRE program. Instead, the Parents chose to enroll the Student in a summer program at the Dyslexia Center in Portland. Although the Dyslexia Center uses Orton-Gillingham as its methodology, it does not use SPIRE and its quality can vary depending on the experience of the tutor providing the service. As a result, the Student had more regression during the summer than school staff would have hoped.

The District addressed the Student's regression by immediately convening an IEP team meeting on September 17, 2018, and by utilizing the Wilson program in an effort to regain lost ground with a different Orton-Gillingham methodology. By October, the Student picked up the SPIRE program at Level 2, Lesson 3. Between mid-October and the end of January, when the family pulled the Student out of the Falmouth literacy program, the Student had moved up in the SPIRE Level 2 program from Lesson 3 to Lesson 7-12b. Where [REDACTED] had been unable to pass the Level E BAS reading measure in June, [REDACTED] now was able to pass it in January, 2019.

At the Student's annual meeting in January, 2019, the level of the Student's literacy instruction was again increased, this time from 5 hours a week to 9 hours a week. In addition, the team agreed with the parents' request to use the Seeing Stars program

from Lindamood-Bell and to hire a literacy expert to consult on the program delivery. This methodology decision demonstrates the willingness of the District to listen to the Parents' concerns and make an effort with a different approach to see if it would produce a different rate of growth. Rather than give this approach a try, the Parents decided to withdraw the Student from the District's literacy program in March, 2019 and placed [REDACTED] at the Aucocisco program, using the same methodology delivered by tutors with less educational experience.

The Parent's placement of the Student at Aucocisco was an inappropriate placement as well, because it took the Student completely out of [REDACTED] mainstream setting into the most restrictive setting. Although performance "after the fact" is not evidence that earlier IEP team decisions were unreasonable, the Student remained at a first-grade reading level up through August 2019 despite hundreds of hours of programming at Aucocisco. The Student's GORT score in August remained at the first percentile with a standard score of 62.

The District's BAS reading assessment on October 9, 2019 indicated that the Student tested at an instructional level E, the same level [REDACTED] was at when [REDACTED] left the District's literacy instruction nine months earlier. The January 2020 report prepared by Aucocisco provides virtually no evidence of the Student's advance in reading skills and provided no report on reading level of the sort that Aucocisco had reported in its four earlier reports. Aucocisco's failure to measure the Student's reading level at this point in time should provide an additional bar to any argument that [REDACTED] reading is significantly different than when measured in August and October 2019.

With regard to the issue of whether the District's coding of the Student's

disabling condition as OHI rather than SLD, no witnesses testified that this had any impact at all on the student's programming.

The District also argues that parents who unilaterally place their child outside the district are only entitled to tuition reimbursement if: (1) The district's proposed IEP was not appropriate; and (2) the parents' unilateral placement is appropriate. In the present case, the Parents have failed to establish that Falmouth denied the Student a FAPE. In Addition, the Aucocisco placement is inappropriate as it violates the IDEA's requirement for least restrictive programming, and LRE issues remain a part of the equation when determining an appropriate remedy.

Finally, hearing officers can deny a remedy based on parent obstructionism. In the present case, the Parents pulled the Student out of special education to prevent the District from continuing to measure the Student's performance, an unsuccessful effort to control the flow of data for litigation that the family was threatening to undertake.

V. LEGAL STANDARD AND ANALYSIS

A. Burden of Proof

Although the IDEA is silent on the allocation of the burden of proof, the Supreme Court has held that in an administrative hearing challenging an IEP, the burden of persuasion, determining which party loses "if the evidence is closely balanced," lies with the party seeking relief. *Schaffer v. Weast*, 126 S.Ct. 528, 537 (2005). As such, the Parent bears the burden of persuasion in this matter with regard to the issues of FAPE and appropriate remedies (as set forth in issues 1-3). With regard to the issue of parental obstructionism as set forth in issue 4, the District bears the burden of proof. See, *Blue Star Corp. v. CKF Properties, LLC*, 2009 ME 101 ¶ 25, 980

A.2d 1270, 1276 (Me. 2009).

B. Legal Overview

The U.S. Supreme Court has prescribed a two-part test for analyzing challenges to an IEP and educational placement. First, has the State complied with the procedures set forth in the Act? And second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive education benefits?" *Board of Educ. v. Rowley*, 458 U.S. 176, 206-207 (1982). The First Circuit suggests that the first part of this test is more instructive than dispositive, and that compliance with the second part is likely to nullify a violation of the first. See *Town of Burlington v. Dept. of Educ.*, 736 F.2d 773, 788 (1st Cir. 1984). ("The ultimate question for a court under the Act is whether a proposed IEP is adequate and appropriate for a particular child at a given point in time.")

In a recent U.S. Supreme Court case strikingly similar to the present case, the Court explained its *Rowley* standard by noting that educational programming must be "appropriately ambitious in light of a student's circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives." *Endrew F. v. Douglas County School District RE-1*, 2017 WL 1066260 137 S. Ct. 988, 1001; 580 US____ (Mar. 22, 2017). Under the *Endrew F.* standard, "the adequacy of a given IEP turns on the unique circumstances of the child for whom it was created."

In *Endrew*, the parents of an Autistic child (Endrew F.) were dissatisfied with progress after IEPs largely carried over the same basic goals and objectives from one year to the next. *Id.*, *Slip Op* at 6. As a result, they removed Endrew from public school

and enrolled ██████ at Firefly Autism House, a private school that specializes in educating children with autism. *Id.*

In November 2010, six months after Andrew started classes at Firefly, the district presented a new IEP to the parents. *Id., Slip Op* at 7. The parents rejected it as the stated plan for addressing Andrew’s behavior did not differ meaningfully from the plan in ██████ fourth grade IEP, and ██████ experience at Firefly suggested that ██████ would benefit from a different approach. *Id., Slip Op* at 7. Upon filing a complaint with the Colorado Department of Education seeking reimbursement for Andrew’s tuition at Firefly, an Administrative Law Judge rejected the parent’s claims, concluding that the annual modifications to Andrew’s IEP objectives were “sufficient to show a pattern of, at the least, minimal progress.” *Id., Slip Op* at 8. Both the Federal District Court and the Tenth Circuit Court of Appeals affirmed, the latter noting that it had long interpreted the “minimal progress” standard under *Rowley* to mean that a child’s IEP is adequate as long as it is calculated to confer an “educational benefit [that is] merely . . . more than de minimis.” *Id.*

The *Andrew* Court further explained:

The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child’s parents or guardians. Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.

When a child is fully integrated in the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum. If that is not a reasonable prospect for a child, ██████ IEP need not aim for grade level advancement. But ██████ educational program must be appropriately ambitious in light of ██████ circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but

every child should have the chance to meet challenging objectives.

Id., *Slip Op* at 11.

Schools must also provide programming to eligible students in the Least Restrictive Environment (LRE). This requirement reflects the IDEA's preference that "[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled." *See* 20 U.S.C. §1412(a)(5); *A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 330 (4th Cir. 2004). MUSER §VI.2.I.

The First Circuit Court of Appeals has declared that determinations about least restrictive programming are unavoidably part of the determination of an "appropriate" program for a student. *See Lenn v. Portland School Committee*, 998 F. 2d 1083, 1090 n.7 (1st Cir. 1993) (questions about least restrictive programming are "an integral aspect of an IEP package (and) cannot be ignored when judging the program's overall adequacy and appropriateness."). The educational benefit and least restrictive environment requirements operate in tandem to create a continuum of educational possibilities. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 928, 993 (1st Cir. 1990). Supplementary aids and services must be provided within the regular classroom and placement in a more restrictive setting should only be considered when those services cannot be achieved satisfactorily. MUSER §X.2.B.

Because there is no "bright-line rule on the amount of benefit required of an appropriate IEP," courts and hearing officers must use "an approach requiring a student-by-student analysis that carefully considers the student's individual abilities." *Ridgewood Bd. of Educ.*, 172 F.3d at 248 (decision-maker must "analyze the type and amount of

learning” that a student is capable of when determining whether “meaningful benefit” has been provided). Whether a program provides a “meaningful benefit” however, must be individualized, based upon each student’s potential for advancement. *Polk v. Central Susquehanna Interm. Unit 16*, 853 F.2d 171, 180 (3d Cir. 1988).

In the present case, the Parents argue that the Student has average range cognitive abilities as indicated by ■■■ full scale IQ of 89 and language scores in the average range. As a result, the Parents contend that under *Andrew F.*’s “appropriately ambitious” standard, the proper question is whether the Student’s IEPs and placements were designed to assist ■■■ in reaching a level of literacy skills at or near grade level.

It is undisputed that the Student has serious challenges in the area of orthographic processing and attention deficit which deeply impact ability to read and write. While it is unclear if the Student can reach a level of literacy at or near grade level, the Student’s IEPs, for the time periods in question, must be reasonably calculated and ambitious to enable the Student to make appropriate progress in light of ■■■ circumstances.

C. Did the District fail to provide the Student with a free appropriate public education (FAPE) and placement in the least restrictive environment since January 2018?

In the present case, the Student was determined to be eligible for special education services in January, 2017 under the category of Other Health Impairment, related to ■■■ ADHD diagnosis.¹⁷ The Student’s February 2017 IEP stated that ■■■ was

¹⁷ The Parents argue that the District failed to also identify the Student’s eligibility under the Specific Learning Disability category, based on ■■■ dyslexia and challenges with written expression. The record reveals, however, that the IEP team provided specialized instruction and programming to address the Student’s learning disability. Although the record supports a finding that the District denied FAPE to the Student as discussed, supra, there is insufficient evidence to support a finding that this denial was based on the lack of a specific identifying category of Specific Learning Disability on the Student’s IEP. In a January 30, 2017 Learning Disability Evaluation Report, the team noted that ■■■ met the standards for a specific learning disability but concluded that Student “did not require special education and related services because of [a learning] disability.” [S-74] It is undisputed, however, that the Student did in fact require

reading at a BAS instructional Level A (early kindergarten) as of January 2017. The IEP from the January 30, 2017 meeting determined that the Student would receive specialized instruction in reading, writing, and math for 30 minutes per day in each category. Ms. Seeker, the Student's special education teacher and case manager, provided the Student's instruction first using Wilson and then transitioning to the SPIRE program, both under the Orton-Gillingham reading program.¹⁸

The concerns raised by Dr. Jarmuz-Smith regarding the Student's poor attention and oppositional behaviors when confronting difficult work materialized again during the spring of the 2016-2017 school year when the Student's teacher (Ms. Seeker) referred the Student for disciplinary action after [REDACTED] refused to work and used inappropriate language when she tried to provide [REDACTED] with [REDACTED] reading instruction. The Student's oppositional and defiant behaviors continued into the summer, and the Student's mother did not have the Student attend four of [REDACTED] ESY sessions as [REDACTED] was "having increasing difficulty going to extended school year services." [P-45] Ms. Seeker noted that the Student was "definitely oppositional and defiant about literacy tasks and about trying things that were hard for [REDACTED]. The Student's behavior concerns persisted in September and October of 2017 and it was noted that the Student "struggled with demonstrating socially expected behaviors multiple times during the observation." [Seeker testimony; S-136]

In a November 9, 2017 progress report, it was noted that the Student remained at a BAS instructional level C. By the annual meeting in January, 2018 the Student's IEP

special education and related services because of [REDACTED] learning disability. The District's rationale, that it "determined that [REDACTED] requires services because of a different disability," hardly passes muster. While the evidence is inconclusive as to whether the omission on this form impacted the delivery of services to the Student, the team's decision to check the "no" box on this form creates the potential for confusion and misunderstanding for the Parents, school staff and professionals working with the Student.

¹⁸ Wilson and SPIRE are both under the Orton-Gillingham reading program umbrella.

progress report noted that [REDACTED] only made “limited progress” with [REDACTED] reading instruction. [S-159], indicating that [REDACTED] remained at an “end of kindergarten” writing level. [S-161]. Ms. Seeker, a masters level literacy educator with over 20 years of experience testified that she did not recall ever having another student take that long on SPIRE level one.

While the IEP team responded to the Student’s behavior issues by coordinating with a behavior strategist at the start of the 2017-2018 school year, the team failed to take other meaningful steps to address the Student’s unique circumstances and challenges with regard to [REDACTED] orthographic processing disability, which by this time was known by the District.

First, it did not request additional evaluations that would look more closely at the Student’s orthographic issues, as later recommended by Emily Klaczynsky and Karen Dunn.¹⁹ Additionally, the Team did not consider a change in the methodology being used for the Student’s programming, like the Seeing Stars program that Ms. Dunn, Ms. Melnick and others testified was “specifically designed for children who have orthographic dyslexia.” [Dunn testimony; T-786]

Instead, the IEP team increased the duration of [REDACTED] SPIRE literacy program and changed the Student’s reading goal to accurately spell the first 100 most frequently used word from the Rebecca Sitton list with 70% accuracy. [S-175].²⁰

The Student’s continued slow progress during the second semester of the 2017-2018 school year demonstrates the deficiencies in the January, 2018 IEP. On the June 8,

¹⁹ Consultants retained by the District recommended further evaluations that specifically looked deeper into the Student’s phonological and orthographic deficits. On May 24, 2019, Ms. Klascynsky recommended to the District’s Special Education Director that “we seek more data around potential processing strengths and weaknesses...[and to] specifically ... consider [REDACTED] phonological and orthographic skills using measures that provide composite scores in those areas.” [SA-289]

²⁰ Ms. Seeker testified that the IEP Team kept the Student’s goal at “level one” SPIRE for the following year (where [REDACTED] had been since March, 2017) and removed reference to the BAS measuring tool. [Seeker testimony]

2018 progress report, Robin Seeker gave the Student a “limited progress” rating and was “disappointed” that the Student had only increased █████ Sitton spelling rate from 50 words to 56 words between January and June of 2018. She noted that the Student “needs constant teacher prompting to implement █████ spelling knowledge into █████ daily written work.” [S-235] Ms. Seeker attributed the Student’s slow progress in part to █████ oppositional behavior and “extreme attention difficulties.” [Seeker testimony]

The Parents chose to not have the Student attend ESY offered by the District during the summer of 2018 and instead enrolled the Student in twice weekly tutoring at the Children’s Dyslexia Center in Portland. At an IEP team meeting on September 17, 2018, Ms. Dunn, the Student’s special education teacher and case manager noted that the Student “appeared to have regressed in the reading area some over the summer.” [S-201]²¹

Again, the IEP team was presented with additional data about the Student’s lack of progress. However, rather than examine whether the Orton-Gillingham methodology was appropriate, the Team kept █████ services “at the current level.”²² Instead, Ms. Dunn reverted the Student’s literacy instruction back to the Wilson reading program, used by Ms. Seeker with limited success 18 months earlier. Ms. Dunn’s testimony was inconclusive and suggested that she and Ms. Seeker had not carefully coordinated their teaching approaches for the Student. On the one hand, she testified that she understood that Seeing Stars was specifically designed for students with *orthographic challenges*

²¹ The District’s argument that the Student’s regression was attributable to the Parent’s refusing to take advantage of the District’s ESY program is without merit. The program that the Dyslexia center was based on a similar Orton-Gillingham based program that the District was using with the Student. [Seeker testimony; T-642-643]. Ms. Dunn also testified that this summer programming would have provided additional reinforcement for the lessons she was using with the Student.

²² The IEP team added the use of audiobooks as an accommodation and agreed that a staffing should occur in November, 2018 to check on the Student’s progress. [S-201]

such as the Student was confronting. However, she testified that she has not fully utilized the Seeing Stars program as she did not feel that the program had a strong “*phonological piece*” or a clear structure or system to the lesson plan. [Dunn testimony; T- 664-665]

Ironically, Ms. Seeker used the “structured” justification when she transitioned the Student to the SPIRE program in April of 2017.

While SPIRE may have been a structured plan, by January, 2018 it was clear that it was not a plan that was reasonably calculated to provide this Student with a FAPE. The District’s failure to consider other methodologies like Seeing Stars for this student supports a finding that it failed to specially design a program to meet the Student’s “unique needs.” 20 U.S.C. §§1401(29), (14).

The Student’s Dolch word list results during the 2018-2019 school years provided another key indicator of the Wilson/SPIRE program’s ineffectiveness at addressing the Student’s orthographic processing issues.²³ In November of 2018, the Student correctly spelled 35 words out of 60 for an accuracy rate of 58% and by January, 2019 the Student was only able to correctly spell 47 out of 100 for an accuracy rate of 47%.²⁴ [S-233]

In a January 11, 2019 e-mail to Robin Seeker and Emily Klaczynsky, Ms. Dunn wrote: “[D]oes it make any sense to have [the Student’s] visual-perceptual skills assessed

²³ Ms. Dunn didn’t feel that the Dolch testing results were necessarily a true representation of what the Student knew or didn’t know because the Student was very quick to say “I don’t know” repeatedly. [Dunn testimony]. The District did not, however, further attempt to obtain a more accurate measure of the Student’s progress towards ■ sight word identification goal.

²⁴ Ms. Dunn repeated the SPIRE “decoding phonogram test” in January, 2019, the Student had moved from 43% to 97%, with a BAS accuracy rate 93% [Dunn testimony, SC-26; SC-84] While this appears to show some progress, Ms. Dunn testified that this test measured the Student’s errors with regard to proper nouns only once, even though the Student misspelled the word “Kate” as “Kim” three separate times, but subsequent errors were not recorded on this test. These “BAS” results taken in January, 2019 also are inconsistent with the IEP team’s decision in January, 2018 to remove reference to the BAS in the Student’s goals “so that we could more closely align with the skills that ■ was being taught each day [and] measure with the Rebecca Sitton word list...” [Seeker testimony; T-620] Ms. Seeker also noted in her testimony that “SPIRE program results don’t always translate with regard to the Student’s ability to read non-decodable text.” [Id.]

or is it all just covered under orthographic? ... I feel like [REDACTED] difficulty with distinguishing between Q and P, et cetera, is impacting [REDACTED] imaging of a word which impacts both spelling and reading.” In the January, 2019 IEP, Ms. Dunn reported that the Student “requires significant repetition in order to master new words due to [REDACTED] challenges with orthographic processing.” [S-259]

The District argues that state and local educational agencies, not parents, are tasked with choosing an appropriate methodology. Although educational methodology generally falls within the discretion of the school district unless the method is distinctive or exclusive, it must be effective in addressing the Student’s unique needs and allowing [REDACTED] to make appropriate progress in light of [REDACTED] circumstances. *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988; see also, *Central Bucks School District* 40 IDELR 106, 103 LRP 52413, *Pennsylvania State Educational Agency*, November 13, 2003; see also, *Medina Valley In-dependent School District, Texas State Educational Agency*, 106 LRP 29730 October 10, 2005; *Brougham v. Town of Yarmouth*, 823 F. Supp. 9, 16 (d. Me. 1993), quoting *Lachman v. Illinois State Board of Education*, 852 F.2d 290, 297 (7th Cir.), cert. denied, 109 S.Ct. 308 (1988).

In *Parents v. Falmouth Sch. Dep’t*, No 17.052H (Me. Dep’t Educ. Oct. 31, 2017), a Maine case substantially similar to the instant case, the Hearing Officer noted:

After three years of instruction that was ineffective in remediating the Student’s orthographic processing disability and therefore allowing [REDACTED] to making reasonable progress in learning how to read, the IEP could not leave open the possibility that the Student would continue to receive inappropriate instruction. *Parents v. Falmouth Sch. Dep’t Id.* at 46.

In *Parents v. RSU No. 75*, (No. 18.047H, June 22, 2018), a second Maine case dealing with methodologies and students with severe orthographic weaknesses, the

Hearing Officer noted: “The IEP Team did not consider whether the methodology they were using was appropriate given the Student’s orthographic impairment.” *Id.* at 42 The

Hearing Officer further noted:

As *Endrew F.* directed school districts to focus on the unique circumstances of students when developing IEPs and to provide access to instructional strategies based upon these unique circumstances.” *Id.* It was foreseeable that the Student was essentially set up for failure during the seventh grade given the reduction in the direct instruction [REDACTED] was getting, along with a methodology that was not addressing [REDACTED] specific learning disability. [REDACTED] frustration level, lack of focus, and lack of motivation to succeed were symptoms of the ineffective programming decisions made by the IEP Team. *Id.* at 51.

The District argues that the Parents’ case should fail because “no one has testified that SPIRE was an inappropriate program to use with the Student, or that it is anything other than a "widely regarded methodology" to address [REDACTED] educational needs.” While it is clear that SPIRE and other methodologies work for many students, I believe the evidence plainly supports a conclusion that it was not working for this Student.

By January 2019, the District seemed to acknowledge the limitations of the SPIRE program for this Student when it offered to modify the Student’s reading program methodology to the Lindamood Bell/Seeing Stars program.²⁵ The District retained Ann Binder, an experienced Speech and Language Pathologist with training and experience with Lindamood-Bell/LiPs reading. The proposed IEP included the following additional services/supports:

Reading and spelling instruction:	9 hours a week
Writing instruction:	1 hour a week
Math instruction:	2.5 hours a week
Social skills group:	45 minutes a week
ESY services:	2 hours twice per week

The Parents, however, rejected this IEP, as they questioned the District’s expertise

²⁵ The District argues that this offer to change methodologies was proposed merely to accommodate the Parents’ request, and should not be an inference that the SPIRE program was inappropriate for the Student.

and readiness to deliver the Seeing Stars program to the Student. Instead, the Parents provided notice of their intent to place the Student at Aucocisco from 1:00 to 3:00 each day for literacy instruction, while allowing [REDACTED] to remain at FES for the delivery of [REDACTED] mainstream programming and to stay connected to [REDACTED] typically developing peers.

While the IEP offered by the District was a step in the right direction, the evidence supports a finding that this IEP, abruptly changing the Student's literacy methodology at the last minute, was not reasonably calculated to enable [REDACTED] to make appropriate progress.

In effect, the District's efforts could be classified as 'too little, too late.' As the record shows, even as early as the spring of 2017 it became apparent that the Student's literacy struggles were primarily based on [REDACTED] orthographic processing challenges. Despite this evidence, the District demonstrated a reluctance to conduct further evaluations or to consider modifying the Student's literacy methodology.

Further, it is undisputed that District staff, while qualified in delivering literacy instruction, is not experienced in delivering Lindamood-Bell/LiPs reading programs. The District identified Shar Mahoney to primarily deliver this programming to the Student, a teacher within the District who had only "limited experience" with Seeing Stars several years earlier and had never delivered a full Seeing Stars program. [Kucinkas testimony]

While the District proposed to address this deficiency by retaining a consultant who was a Lindamood-Bell/LiPs certified trainer, the IEP only allowed for 25 minutes per week of consulting time to a teacher without significant experience in delivering this methodology. [S-242] While Ms. Mahoney could have eventually become a competent Lindamood-Bell/LiPs reading instructor, it would undoubtedly take some time for her to

deliver this methodology with fidelity to the Student.²⁶

Ultimately, it became clear that the District's commitment to Seeing Stars was superficial when abruptly reverted the Student's methodology back to the "multisensory synthetic phonics instruction" six months later in September, 2019.

I find that the Parents' testimony was credible when they explained that when they chose to remove the Student from [REDACTED] literacy program within the District, they did so for half days, so as to maintain [REDACTED] mainstream programming and connection to [REDACTED] typically developing peers. Even after the Student showed signs of progress at Aucocisco after the summer of 2019, they returned the Student to the District in order to determine if an appropriate IEP could be developed. It was unreasonable for the District to remove the Seeing Stars methodology from the Student's IEP, after the Student was achieving some confidence and success with the LiPS methodology at Aucocisco after a relatively short period of time. It is incongruous that the District seemed to hold out hope that the SPIRE program would work for the Student after two years of limited progress, and then to offer and then abruptly remove the LiPS program, declaring that it was "ineffective" after the Student had only incorporated it into [REDACTED] learning for a period of six months.

For the reasons identified above, I find that the September 2019 IEP was not reasonably calculated and reasonably ambitious to enable the Student to make appropriate progress in light of [REDACTED] circumstances.

Accordingly, I find that the Parents, as the parties seeking relief, meet their burden of persuasion with regard to the claim that the Student was not provided with a

²⁶ There was ample evidence that unlike the SPIRE program that had a "step by step" instructional approach, the Lindamood-Bell/LiPs reading program required more significant experience to effectively deliver the program to students. [Melnick testimony]

FAPE between January 2018 and January 2019 and between September, 2019 to present.

D. Did either or both of the following actions on the part of the Parents constitute parental obstructionism that should preclude or limit any remedy:

- a. Withdrawing the Student from literacy instruction within the District beginning in January 2019; and/or**
- b. Withdrawing the Student from special education between March 2019 and the end of the 2018-2019 school year.**

The District argues that the Parent’s remedy should be denied due to parental obstructionism, based on the Parents’ “pulling the Student out of special education classes, and then out of special education” to prevent the District from continuing to measure the Student’s performance in order to control the flow of data for possible litigation. In support of its argument, the District cites *C.G. and B.S. v. Five Town Comm. Sch. Dist.*, 513 F.3d 279, 288 (1st Cir. 2008). In that case, the court upheld a lower court ruling that specifically found:

that the parents harbored a fixed purpose: to effect a residential placement for their daughter at the School District's expense, come what may... Once the parents realized that the School District was focused on a non-residential placement, they essentially lost interest in the IEP process.

C.G. and B.S. v. Five Town Comm. Sch. Dist., Id at 288.

The District provided no specific facts from the record, and the evidence in this case does not support a finding that the Parent’s behavior rose to a level of parental obstructionism as suggested by the District. Rather, the evidence supports a finding that the Parents were active participants with the Student’s education, attending IEP team meetings and providing reasonable consent for evaluations of the Student. As noted above, the Parents were reasonably concerned about the Student’s slow progress with reading fluency.

While the Parents' placement of the Student at Aucocisco may have impacted the District's ability to measure the Student's performance, the District itself offered to implement the Seeing Stars program for the Student in January, 2019 which would have changed "the flow of data" if the Parents had accepted this offer. In sum, there is no evidence that the Parents' actions were intended to prevent the District from continuing to measure the Student's performance or constituted parental obstructionism.

E. If the Hearing Officer determines that the District failed to provide the Student with a FAPE or violated the IDEA, what remedy is appropriate?

The Parent and Student are entitled to a remedy for the District's failure to provide a FAPE from the period of January, 2018 to March, 2019 and the period from September 2019 to the present. This remedy must be in the form of equitable relief. *Pihl v. Massachusetts Dep't of Educ.*, 9 F.3d 184, 188-89 (1st Cir. 1993). The remedy of compensatory education is available only where a student's substantive rights, as in the present case, are affected by a school district's non-compliance with the IDEA.

In *Pihl v. Mass Dep't of Education*, the First Circuit Court of Appeals held that "a student who fails to receive appropriate services during any time in which [REDACTED] entitled to them may be awarded compensation in the form of additional services at a later time." 9 F.3d 184, 198 (1st Cir. 1993). The *Pihl* Court explained, "[t]he nature and extent of compensatory education services which federal courts have recognized varies according to the facts and circumstances of a given case." *Pihl*, 9 F.3d at 188, n. 8.

An award of compensatory educational services is designed to place a Student in the same position [REDACTED] would have occupied, had the District complied with the IDEA and should be fact-specific, depending on the child's needs. *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, at 524 (D.C. Cir. 2005); *Pihl*, 9 F.3d at 188 n.8. See also, *Mr. I.*

ex rel. L.I. v. Me. Sch. Admin. Dist. No. 55, 480 F.3d 1, 25 (1st Cir. 2007); *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 31 (1st Cir. 2006). A unilateral parental placement need not be in the least restrictive setting. In *Warren G. v. Cumberland County Sch. Dist.*, 190 F.3d 80, 84 (3d Cir. 1999), the court held: “the imposition of the least restrictive environment requirement on such a placement “would vitiate the parental right of unilateral withdrawal,” and that “the test for the parents’ placement is that it is appropriate, and not that it is perfect.” *Id.* at 84.

In its closing argument, the District argues that Aucocisco has not provided measurable results for the Student and that despite hundreds of hours of programming ■■■ reading level remained at the first grade instructional level and ■■■ GORT and other reading evaluation scores remained in the first percentile.

A reading skills assessment performed by Lisa Murphy at Aucocisco measured the Student’s progress between December, 2018 and July, 2019 after the Student completed approximately 100 hours of Seeing Stars instruction. The assessment results showed increases in the Student’s Phoneme Recognition Screener score (increased from 26/50 to 48/50); increases on the KTEA-3 Nonsense Word Decoding test (from 76 to 86) and ■■■ score on the Letter and Word Recognition test increased from 61 to 71. [S-325 to S-326] On the GORT-5, ■■■ fluency scaled score rose from 2 to 3, while ■■■ comprehension scaled score jumped from 2 to 6. [S-326] The District pointed out that the Student’s IEP Team received four updates from Aucocisco from February through August 2019.

Dr. Jayne Boulos also performed a literacy assessment in August 2019 that reported more stagnant results, showing that the Student’s reading comprehension was in

the 3rd percentile, ■■■ word reading was in the 0.4 percentile, ■■■ total word reading index was in the 1st percentile, and the Gray Oral Reading measure was in the 1st percentile in all categories.

I find that the Student's placement at Aucocisco is appropriate. Aucocisco is a well-established private school providing instruction for students with language-based disabilities. It employs eight teachers certified in special education from K-8 through high school. In addition, it employs six ed techs and four BHPs (behavioral health professionals). The educational technicians delivering the program were being directly supervised by Lisa Murphy, who had a good deal of experience both in delivering and supervising such instruction.

In addition to these facts, it is notable that the Student is a more confident and independent reader. Based upon these facts, I find that the Aucocisco School is an appropriate placement for the Student.

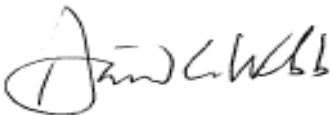
Finally, I find that the Parents are entitled to reimbursement of their independent evaluation expenses as set forth on their exhibit P-348A. MUSER § 6.B(3). The evidence supports a finding that the District's evaluations did not adequately address the Student's orthographic processing disorders. As noted herein, Karen Dunn asked, in an e-mail on January 11, 2019, if it made "any sense to have [the Student's] visual-perceptual skills assessed or is it all just covered under orthographic?" On May 24, 2019, Emily Klaczynsky recommended that "we seek more data around potential processing strengths and weaknesses...[and to] specifically ... consider ■■■ phonological and orthographic skills using measures that provide composite scores in those areas." [SA-289]. The Parents reasonably obtained qualified evaluators to obtain appropriate

information missing from evaluations that were not conducted by the District.

ORDER

1. The District violated state and federal special education laws by failing to offer the Student with an IEP reasonably calculated to provide [REDACTED] with a free appropriate public education from the period of January, 2018 to March, 2019 and September 2019 to February, 2020.
2. The Parents withdrew consent for the District to provide the Student with a free appropriate public education from the period of March, 2019 to September 2019. There is no violation of state and federal special education laws during this time period.
3. The District is ordered to reimburse the Parents for the cost of the Student's tuition at Aucocisco from January 28, 2019-September 2019 and for the 2019-2020 school year plus transportation expenses permitted under the IDEA as compensatory educational services for the failure to provide the Student with FAPE during the period of January, 2018 to January, 2019 and September, 2019 to February, 2020. If the Parents have not paid all of the tuition to Aucocisco for this year, then the District may elect to pay the remainder directly to Aucocisco.
4. The District is ordered to reimburse the Parents for the cost of their evaluation expenses as set forth on their exhibit P-348A.

Dated: April 11, 2020



David C. Webb, Esq.
Hearing Officer