

**COMMONWEALTH OF MASSACHUSETTS
BUREAU OF SPECIAL EDUCATION APPEALS**

In Re: North Reading Public Schools

BSEA # 07-1386

DECISION

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

A hearing was held on May 31 and June 1, 4, and 5, 2007 in Malden, MA before William Crane, Hearing Officer. Those present for all or part of the proceedings were:

Student's Mother

Student's Father

Jody Gray

Education Evaluator for Parents

Lisa Shaw

Neuropsychologist for Parents

Wendy Taylor

Case Manager, Landmark School

Karl Pulkkinen

Administrator, Landmark School

Tina Borek

5th Grade Teacher, North Reading Elementary School

Kathleen Conway

Learning Specialist, North Reading Elementary School

Mary Hayden

Speech-Language Pathologist, North Reading Elementary School

Tabitha Heidorn

School Psychologist, North Reading Elementary School

Debra Auday

6th Grade Teacher, North Reading Middle School

Susan Mavrinac

Speech-Language Pathologist, North Reading Middle School

Catherine Carmody

School Psychologist, North Reading Middle School

Kathryn Hashian

Reading Consultant, North Reading

Christine D'Anjou

Director of Pupil Personnel Services, North Reading

Elaine Lord

Advocate for Parents

Sean Goguen

Attorney for Parents

Thomas Nuttall

Attorney for North Reading

Laurie Jordan

Court Reporter

The official record of the hearing consists of documents submitted by the Parents and marked as exhibits P-1 through P-52; documents submitted by the North Reading Public Schools (North Reading) and marked as exhibits S-1 through S-27; and approximately four days of recorded oral testimony and argument. As agreed by the parties, oral closing arguments occurred on June 15, 2007, and the record closed on that date.

I. INTRODUCTION

This dispute presents the question of whether it is sufficient for a school district to address, through its IEP, educational issues not central to Student's fundamental learning disabilities or whether the school district must propose an IEP specifically tailored to remediate Student's underlying special education needs.

Student has language-based learning disabilities, including dyslexia. After attending the North Reading Public Schools since 1st grade, Student was privately placed by her Parents at the Landmark School for the summer of 2006 and her 6th grade school year (2006-2007).

In 5th grade, Student had made progress in certain areas of her education at North Reading (most notably, in math skills where she was weak at the beginning of the school year, and in selected language skill areas), and she did well in social studies and science throughout the year, but she did not make effective or meaningful progress in her underlying areas of special education need – that is, her severe phonological and literacy deficits. For 6th grade, North Reading proposed an IEP what would continue (with additional services) the 5th grade pull-out instructional model.

In this Decision, I have found that North Reading's proposed 6th grade IEP was not appropriate because it was not designed to address Student's underlying areas of special education need and because this IEP would likely lead to continued failure to make significant or effective progress in areas central to her further educational development. I have further found that the Landmark School would appropriately address Student's special education needs.

For these reasons, and as more fully explained below, I have found in favor of Parents with respect to their reimbursement claim for the 6th grade school year. However, based on Parents' failure to meet their burden of persuasion regarding summer services, I have found in favor of North Reading with respect to their reimbursement claim for the summer of 2006.

II. ISSUES

The issues to be decided in this case are the following:

1. Is North Reading's most recently proposed IEP (for the summer of 2006 and 6th grade, which was the 2006-2007 school year) reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment?
2. If not, would placement at the Landmark School satisfy this standard?
3. If so, are Parents entitled to reimbursement of some or all of their out-of-pocket expenses for their unilateral placement of Student at the Landmark School during the summer of 2006 and 6th grade?

III. BACKGROUND

A. Profile

Student is a twelve-year-old girl (date of birth 6/6/95) who lives with her Parents in North Reading, Massachusetts. At the time of the Hearing, Student attended the 6th grade at the Landmark School (Landmark). Parents have privately placed their daughter at Landmark since the summer of 2006. Testimony of Student's father (Father).

Cognitive testing of Student indicates that she is intellectually bright, with well-developed non-verbal reasoning abilities and very good cognitive potential. She also has good spatial skills, good visual memory, and good oral comprehension abilities. Student also has developed good math computational skills, she has demonstrated excellent artistic abilities, and she has obtained a good fund of knowledge. Testimony of Shaw, Gray; exhibits P-1, P-3; S-4, S-12.

Student also has a pattern of significant language-related learning deficits and academic dysfunction that are consistent with a diagnosis of dyslexia. Dyslexia may be described as having a combination of average to above average intelligence with a demonstrated deficit in the phonological processing of language. Deficits with phonics typically result in challenges for a student with respect to reading and spelling. Testimony of Shaw; exhibits P-1, S-12.

Student's language deficits include the following: (1) severely depressed phonological processing (i.e., difficulty perceiving, discriminating, and manipulating sounds, thereby compromising her ability to encode and decode language); (2) rapid naming deficits (i.e., difficulty "calling up" a name or sound when she sees a symbol); (3) central auditory processing deficits (i.e. difficulty processing information received orally, particularly where there is background noise such as in a large group situation) as well as significant deficits in auditory working memory (i.e., difficulty holding information in the mind and manipulating the information, thereby compromising her ability to perform multi-step tasks based on oral instruction); and (4) word retrieval deficits (i.e., difficulty putting thoughts into words both orally and in writing). Testimony of Shaw, Gray; exhibits P-1, P-3, P-11, P-41, P-42, S-4, S-12.

As a result of these deficits, Student has significant decoding difficulties that interfere with her ability to perform academically at grade level. When given an unlimited amount of time, Student is able to decode words, and she obtains meaning from the text. However, Student's decoding is slow-paced, labored, and dysfluid, as compared to her regular education peers. She is not able to read words automatically, instead having to sound out words. This likely impacts the accuracy of her decoding, as well as her reading comprehension. Testimony of Shaw, Gray; exhibits P-1, P-3; S-4, S-12.

The combination of deficits regarding phonological awareness and rapid naming places Student at significant risk for reading failure. Her rapid naming deficits negatively affect her reading fluency, resulting in labored reading and limiting her comprehension of text. Testimony of Shaw, Gray; exhibits P-1, P-3; S-4, S-12.

Student's written language production is impaired, and this impairment also interferes with Student's ability to perform at grade level. Compared to her regular education peers, Student has significant difficulty with grammar and spelling. Her spelling deficits make it difficult for her to use writing as a form of communication. Testimony of Shaw, Gray; exhibits P-1, P-3, S-4, S-12.

B. Educational History

Pre-Kindergarten through 1st Grade

A speech-language evaluation of Student in January 1999 resulted in speech-language services to address phonological skills and overall speech intelligibility. Speech-language services continued through 1st grade (2001-2002) at the Batchelder Elementary School in North Reading. Exhibit P-3.

2nd Grade (2002-2003 school year)

Student received special education services from North Reading in 2nd grade at the Batchelder Elementary School. Pursuant to Student's IEP, the special education services were pull-out services of learning instruction from a learning disability specialist for an hour, five times per week and language therapy from a speech-language therapist for a half an hour, twice per week. The IEP noted Student's weaknesses (as reported by a Children's Hospital speech-language evaluation) in auditory memory, word retrieval, and phonological awareness, and the IEP provided a goal and services to address these deficits. Parents accepted this IEP in full. Testimony of Father; exhibit P-16 (IEP).

Father reported that his daughter was happy and energetic in 2nd grade, as she was also in 1st grade. She did well in school, she was enthusiastic and engaged regarding her schoolwork, and she felt comfortable and accepted at school. At the end of 2nd grade, Parents had their daughter undergo a neurological evaluation by Lisa Shaw, PhD, which concluded that Student had dyslexia and central processing deficits. Testimony of Father; exhibit P-2.

3rd Grade (2003-2004 school year)

In 3rd grade at the Batchelder Elementary School, Student continued to receive the same special education services from North Reading that she had received in 2nd grade pursuant to an accepted IEP. Services were added for the summer of 2003. The IEP noted Student's weakness in phonological awareness, and the IEP provided a goal and services to address this deficit. Testimony of Father; exhibit P-15 (IEP).

Father reported that in 3rd grade, his daughter "hit a wall" with respect to schoolwork – she lacked emotion and was not engaged although she continued to try to please adults. Father was particularly concerned regarding his daughter's progress in reading. Parents had their daughter tested by an audiologist who reported a deficit in processing oral information. As a result, an FM system was placed in the classroom for the purpose of amplifying the teacher's voice for Student, for the purpose of helping her to focus on what was being said so that she could become more attentive to the teacher. Testimony of Father; exhibits P-5, P-6.

4th Grade (2004-2005 school year)

Student continued to receive special education services from North Reading in 4th grade at the Batchelder Elementary School. The IEP changed the pull-out services, which were reduced from what had been previously provided (i.e., learning instruction from a learning disability specialist for an hour, five times per week) to academic support by a learning disability specialist for 45 minutes, four times per week. The IEP continued the same language therapy services – that is, from a speech-language therapist for a half an hour, twice per week. The summer services from the previous IEP were also continued – that is, services from a learning disability specialist for 180 minutes, three times per week from 7/5/04 to 8/13/04. The IEP noted Student’s weakness in phonological awareness, and the IEP provided a goal and services to address this deficit. Parents accepted the IEP in full. Father testified that his daughter started to become more withdrawn this year. Testimony of Father; exhibits P-13, P-14 (IEPs).

5th Grade (2005-2006 school year)

Student continued to receive special education services from North Reading in 5th grade at the Batchelder Elementary School pursuant to an accepted IEP. Pursuant to this IEP, Student attended a mainstream classroom that consisted of 21 children (4 of whom were on IEPs). The same pull-out services (for math, reading, and writing) and summer services that had been provided pursuant to the 4th grade IEP were included in the 5th grade IEP. As in previous years, no consultation services were included in the IEP, and no services were listed on the IEP to be provided within the regular education classroom. However, twice per week a special educator co-taught and otherwise assisted Ms. Borek (the regular education teacher) in the math class. The IEP noted Student’s weakness in phonological awareness, and the IEP provided a goal and services to address this deficit. This IEP was fully accepted by Parents. Testimony of Father; exhibit P-12.

During the first half of the school year, Father reported concerns to North Reading that his daughter was having social difficulties with her peers outside of school. In response, North Reading included Student in a “lunch bunch” for a half hour each week for the purpose of working on social skills, including initiating and sustaining friendships. Testimony of Parent, Hayden.

During 5th grade, Father was concerned that his daughter had become increasingly upset about school and was crying in the classroom. He also testified that his daughter was not able to understand what was being taught, would lose her place in discussions with peers at school, and had no friends at school. Father believed that as the workload and expectations increased over the 5th grade school year, his daughter struggled. Parents spent time with Student in the evenings, helping her with her homework, often for several hours a night. Father reported that his daughter often cried at home because of her difficulties at school. At Parents’ request, Dr. Shaw conducted a second neuropsychological evaluation of Student in February and March 2006. Testimony of Father; exhibit P-1.

An FM amplification system was used for Student when the teacher lectured (or introduced new concepts) to the entire class. The FM system seemed to alert the entire class to pay attention since something important was going to be said. For several months, the FM

system was not used while it was being repaired, and during this time period, the teacher did not notice any difference with respect to Student's ability to pay attention to what was being said by the teacher. Testimony of Borek.

Team Meetings at the end of 5th Grade

In June 2006, near the end of Student's 5th grade year, the IEP Team met twice. During the first June Team meeting, Parents advised North Reading that they would be placing their daughter at the Landmark summer program and that Student would also be enrolled in Landmark's school year program starting in September 2006. Testimony of Hayden.

During the second June Team meeting, the Team considered Dr. Shaw's neuropsychological evaluation and prepared an IEP for the summer of 2006 and for 6th grade through June 6, 2007. The IEP proposed by North Reading included a significant increase in pull-out services, as well as the addition of special education support within Student's mainstream classes, as discussed below. Ms. Conway (Student's learning specialist in 5th grade) explained that she knew that 6th grade would be challenging for Student, and for this reason, special education services were added in the areas of reading and academic support. Testimony of Conway, Parent; exhibits S-6, P-11.

Parents rejected the proposed IEP for the period June 2006 to June 2007.

Summer of 2006 and the 2006-2007 School Year

Parents placed their daughter in a five-week session at Landmark during the summer of 2006 and notified North Reading that they would be requesting reimbursement from North Reading for these services. Testimony of Parent.

Parents placed their daughter at Landmark for the regular school year, beginning in September 2006 and continuing through the present. Through their advocate's letter to Ms. D'Anjou dated August 17, 2006, Parents provided notice to North Reading that they would be seeking reimbursement from North Reading. Exhibit P-11 (letter is after the IEP).

Student attended the 6th grade at Landmark.

Father reported that his daughter "loves" Landmark. Father explained that Student is not receiving counseling at Landmark because, according to Father's testimony, her disposition has improved since entering Landmark. Father reported that this school year, Student is smiling a lot, is engaged in conversations with Parents, has friends and advocates for them, and has become a more confident child.

C. Proposed IEP: 6/6/06 to 6/6/07

At issue in this dispute is the appropriateness of the IEP for the period 6/6/06 to 6/6/07, which includes the summer of 2006 and the majority of 6th grade.

For the summer of 2006, North Reading's proposed IEP called for 180 minutes per day of special education services for three days per week for six weeks as follows. During each

day, there would be 1½ hours of reading tutorial by a certified reading teacher and 1½ hours of math support and review by a math special education teacher. Student would have been one of five children in the class. These summer services were intended to provide review of material that would prepare Student to enter the 6th grade. Testimony of D'Anjou; exhibits S-6, P-11.

For the 6th grade school year, North Reading's proposed IEP, as drafted in June 2006, called for the following pull-out special education and related services: reading by a reading specialist for 50 minutes, three times per week; academic support by Learning Center staff for 50 minutes, twice per week; speech-language services by a speech therapist for 50 minutes, once per week; and counseling by a school psychologist for 30 minutes, once per week. Exhibits S-6, P-11.

Ms. D'Anjou testified that the academic support services would include pre-teaching, review, help with homework assignments, and work on note-taking skills. She also noted that Student would have had access to computers, including the Kurzweil Reader, which reads back aloud what has been written on the computer, thereby assisting with auditory processing deficits.

The 6th grade speech-language pathologist (Ms. Mavrinac) explained that the speech-language services would address Student's articulation and language deficits. Work on language issues would include word retrieval (in connection with curriculum materials) and organization, including help with organizing writing assignments and with sentence construction. Testimony of Mavrinac.

In November 2006, the IEP Team met to consider an evaluation by Jody Gray. As a result of that meeting, North Reading amended its IEP to increase the reading services to 50 minutes, five times per week (as compared to 50 minutes, three times per week pursuant to the IEP drafted in June 2006). This was the only amendment made in November 2006. Exhibits S-1, P-10.

The IEP called for the following inclusion special education and related services: inclusion services by Learning Center staff for 50 minutes, five times per week in science; identical inclusion services for social studies; academic support by a special education teacher for 50 minutes, five times per week in language arts; and identical academic support for math. Ms. D'Anjou testified that the academic support services were to be provided by a special education teacher, and the inclusion services would be provided by a paraprofessional under the supervision of the special education teacher. Testimony of Auday, D'Anjou; exhibits S-6, P-11.

The IEP called for the following consultation services: reading consultation by the reading specialist for 15 minutes, once per week; and speech-language consultation by the speech therapist for 15 minutes, once per week. Ms. Hashian testified that the reading consultation would assist teachers to develop reading strategies that would help Student access the curriculum through reading. Ms. D'Anjou testified that these services would include co-planning between the special education teacher and the regular education teachers. Testimony of Hashian, D'Anjou; exhibits S-6, P-11.

The regular education language arts teacher for 6th grade (Ms. Auday) testified that the 6th grade teachers and paraprofessionals collaborate daily with each other in order to provide consistent instruction to all students. She noted that all teachers use the same graphic organizers across the curriculum, and that each of the accommodations listed in Student's 6th grade IEP (on page numbered 4) is implemented in each 6th grade class for all students. Teachers use a variety of hands-on and multi-sensory approaches, and all teachers are trained to use the John Collins writing program. Testimony of Auday.

Ms. Auday testified that this year, there are 24 students in each of the classes that Student would have attended (Student would have made it 25 students) in 6th grade, and 13 of the 24 students have IEPs. These 13 students have the following range of disabilities: dyslexia (1 student), specific written language disability (5 students), specific reading and writing disability (1 student), specific reading disability (1 student), communication disability (3 students), dyscalculia (1 student), and neurological disability (1 student). Testimony of Auday.

D. Testing Results

The testing results of relevant evaluations and assessments are summarized below. Many of the opinions and recommendations of the testers, and the narrative reports (for example, progress reports and observation reports), when relevant, are considered separately in the Discussion section of this Decision.

Audiological Evaluations in 2007, 2004, and 2003

Three audiological/auditory processing evaluations were done privately, at Parents' request. On May 19, 2007, the most recent of these evaluations was conducted by Gerri Shubow, MS, CCC-A, Audiologist, who concluded as follows:

In summary, [Student] has normal peripheral hearing acuity for each ear with good word recognition in quiet bilaterally. . . . **She has some difficulty with the accuracy of what she hears when listening to words degraded by filtering on Filtered Words and difficulty when listening in the presence of competing background noise. She mishears. The scores reflect difficulty with decoding/mishearing/auditory closure. This is consistent with testing done in 2004. This would be more difficult for her in a larger classroom setting. It will be harder over the longer and more demanding school day. . . . The mishearing noted is a major problem for listening in the classroom environment and for all social communication. As all testing was done in a soundproof room under ideal listening conditions, it is felt that she would be having more difficulty in a classroom setting where the noise level varies continually. It will be harder for her to access to curriculum in a large group classroom setting.** [Emphasis in original.]

Exhibit P-7.

An audiological evaluation by Children's Hospital, Boston on August 2, 2004, concluded that Student likely had an auditory processing disorder that placed Student at risk for

inaccurately perceiving auditory information, particularly when the information is presented quickly, contains multiple steps or unfamiliar language, or is presented within a background of noise. Exhibit P-6.

The initial audiological evaluation was conducted by Children's Hospital, Boston on May 29, 2003. Exhibit P-5

Landmark Test Results

Landmark administered a variety of standardized tests during the time that Student has attended this school from July 2006 to May 2007. This one-page document, which reports test scores, is not accompanied by a narrative. This exhibit will be referenced in the Discussion section of this Decision to the extent that witnesses utilized the Landmark test results to inform their testimony regarding Student's strengths, deficits, progress, and educational needs. Exhibit P-17.

Educational Evaluation in 2006

Jody Gray, EdM, performed an educational evaluation of Student on July 7, 2006 after the completion of Student's 5th grade. The evaluation, conducted privately at the request of Parents, was intended to examine Student's strengths and weaknesses in phonological processing, fluency, decoding, encoding, reading comprehension, vocabulary, writing, and math, and to make recommendations for academic remediation as needed. The testing included a document/history review, parent interview, and standardized testing. Testimony of Gray; exhibits S-4, P-3.

On the Comprehensive Test of Phonological Processing (CTOPP), Student's composite score for phonological awareness was at the 12th percentile, indicating that her awareness and ability to access the phonological structure of oral language is "compromised." Similarly, on the CTOPP, Student's composite score for rapid naming was at the 12th percentile. This score measures efficiency of retrieval of phonological information from long-term memory and executing a sequence of operations quickly and repeatedly. Testimony of Gray; exhibits S-4, P-3.

The Wilson Assessment of Decoding and Encoding indicated adequate sound/symbol recognition and production but a lack of advance sound/symbol relationship knowledge that is likely to impact negatively Student's ability to decode and encode unknown words. Testimony of Gray; exhibits S-4, P-3.

On the Test of Word Reading Efficiency, Student scored in the 29th percentile in sight word efficiency, 6th percentile in phonemic decoding efficiency (which correlates with the CTOPP phonological awareness skills score of 12th percentile, above), and 10th percentile in total word reading efficiency (reflecting a significant weakness in decoding unknown words). On the Test of Written Spelling, Student scored in the 17th percentile. (All percentiles are age-based.) Testimony of Gray; exhibits S-4, P-3.

On the Gray Oral Reading Test, Student scored in the 32nd percentile, indicating that when Student is able to read silently, without time demands and given the opportunity to look back

within the text as well as a multiple choice format, she is able extract correct meaning from text. On the Test of Reading Comprehension, Student scored in the 25th percentile in the Syntactic Similarities and the Sentence Sequencing subtests, and in the 9th percentile in the Paragraph Reading subtest. On the Test of Written Language, Student scored in the 13th percentile in the Spontaneous Writing Quotient. On the Peabody Picture Vocabulary Test, Student scored in the 99th percentile, indicating her ability to understand single word vocabulary is in the superior range. (All percentiles are age-based.) Testimony of Gray; exhibits S-4, P-3.

On the Test of Mathematical Abilities, Student scored in the 37th percentile for her math quotient, indicating that Student has developed her basic computational skills. In the math subtest entitled Story Problems, Student scored in the 9th percentile, reflecting deficits in decoding. (All percentiles are age-based.) Testimony of Gray; exhibits S-4, P-3.

Gates McGinnity Test in 2006 and 2005

Student's 5th grade teacher (Ms. Borek) administered the Gates McGinnity test for the purpose of assessing Student's reading vocabulary and comprehension. This test is untimed. Student attained the following grade-equivalent scores:

	<u>September 2005</u>	<u>June 2006</u>
Vocabulary:	6.2	6.7
Reading comprehension:	5.4	6.2

Testimony of Borek.

Academic Assessment in 2006

Kathleen Conway, MEd, Learning Specialist employed by North Reading, performed an academic assessment of Student in May 2006 using standardized tests. Exhibits S-8, P-41.

On the Wechsler Spelling Test, Student scored in the 18th percentile, with Ms. Conway finding that multi-syllable words were "challenging" for Student. On the Jerry Johns' Reading Inventory Listening Comprehension, the Wechsler Basic Reading Test, and the Gray Oral Reading Test, Student scored generally in the average range, with percentiles from 37th percentile to the 63rd percentile.

On the Comprehensive Test of Phonological Processing (CTOPP), Student's composite score for phonological awareness was 8th percentile, her composite score for phonological memory was in the 3rd percentile, and her composite score for rapid naming was in the 21st percentile, with Ms. Conway noting that when presented with these tasks, "it was clear that Student had a great deal of difficulty."

On the Wechsler Individual Achievement Test, Student's math abilities fell in the average range, with a score in the 68th percentile in math reasoning and the 37th percentile in numerical operations. On the Test of Written Language, Student's scores also fell in the average range.

Speech-Language Evaluations in 2006, 2005, and 2001

Mary Hayden, MEd, CCC/SLP, Speech-Language Pathologist employed by North Reading, performed a speech-language evaluation of Student in May 2006. The purpose of this evaluation was to compare Student's speech and language skills and weaknesses with those found in a March 2005 full speech-language evaluation at Children's Hospital, Boston. Exhibits P-42, S-9.

Ms. Hayden's findings confirmed the results of the March 2005 evaluation. Ms. Hayden concluded: "Overall, the test scores and observations substantiate that in addition to possessing some language skills of average and above average ability level, [Student] does exhibit expressive language and memory difficulties that may hinder her ability to effectively address all curricular material without support." Exhibits P-42, S-9 (page 4).

The March 2005 evaluation concluded that Student "exhibited overall receptive and expressive language skills within age expectancies, with isolated weaknesses noted in auditory memory for decontextualized information, reduced phonological processing skills, and mild word retrieval difficulties." Exhibit P-8.

The May 2006 evaluation found that Student was performing in the average range on all expressive and receptive tasks given to her, with weaknesses in subtests involving auditory memory and word retrieval skills. The evaluator concluded that this testing appeared to corroborate the testing at Children's Hospital. Exhibit P-42.

Both evaluations noted Student's articulation difficulties involving a lateralization of certain sounds during conversational speech. Exhibits P-8, P-42.

The first speech-language evaluation was conducted by Children's Hospital, Boston on November 1, 2001. The evaluation noted Student's weakness in auditory memory, word retrieval difficulties, and phonological awareness deficits. The report further explained that phonological awareness skills are important precursors to success in decoding, and that Student is at risk for decoding difficulties. Exhibit P-9.

Neuropsychological Testing in 2006 and 2003

Lisa Shaw, PhD, who is a clinical neuropsychologist, tested Student twice – the first neuropsychological evaluation in June and July 2003, and the second neuropsychological evaluation in February and March 2006. These evaluations were conducted privately at Parents' request. Each evaluation utilized the same procedure of Parent interview, review of records, written language sample, and standardized testing of Student. A number of the standardized tests utilized in 2003 were also used in 2006. Testimony of Shaw; exhibits S-12, P-1, P-2.

Student's test scores regarding single-word decoding improved markedly, going from the 24th percentile in 2003 to the 99th percentile in 2006.¹ This indicated to Dr. Shaw that with as much time as needed (the test was untimed), Student can decode single words accurately.

¹ In Ms. Gray's educational evaluation, she reviewed and cast doubt on the 2006 test score.

Dr. Shaw observed during the 2006 testing, however, that Student's decoding was dysfluent and slow-paced, and Student began to cry in response to the challenge of this task. Dr. Shaw testified that she remained very concerned regarding Student's decoding abilities in 2006. Testimony of Shaw; exhibits S-12, P-1, P-2, P-3.

Student's test scores on the Wide Range Achievement Test (WRAT) – Expanded: Reading Comprehension Test improved markedly, going from the 1.7 grade equivalent (3rd percentile) in 2003 to the 7.4 grade equivalent (81st percentile) in 2006. In her testimony, Dr. Shaw cautioned that this test is considered to be a screening instrument rather than a comprehensive test of reading comprehension. She also noted that Student was given as much time as she needed during this test. Testimony of Shaw; exhibits S-12, P-1, P-2.

Student's test scores on the WRAT-3 arithmetic test, which is a math computational task improved markedly, going from the 2nd grade level in 2003 to the 6th grade in 2006, indicating improvement in Student's math computational skills. Dr. Shaw testified that this testing confirmed the math progress reported by Student's teacher. Testimony of Shaw; exhibits S-12, P-1, P-2.

Between 2003 and 2006, Student improved regarding her word retrieval skills and her ability to remember and repeat lengthy sentences read aloud. Student also made some gains in areas of strength such as non-verbal reasoning, visual memory, and spatial skills.

In the 2006 evaluation, on the Children's Memory Scale dot locations subtest, Student scored significantly above average. On this same test in 2003, Student's scores were somewhat above average. This testing reflects that Student's visual memories and her spatial skills continue to be areas of strength. Testimony of Shaw; exhibits S-12, P-1, P-2.

In the 2006 evaluation, on the Boston Naming Test, there was no indication of significant naming (i.e., word retrieval) difficulty although Student continued to demonstrate phonological production errors. In 2003 on the same test, Student's performance was significant for word selection errors and multiple phonological errors. This reflects improvement in word retrieval skills, most likely as a result of speech-language services provided to Student. Testimony of Shaw; exhibits S-12, P-1, P-2.

In the 2006 evaluation, on the Wide Range Achievement Test (Third Edition), Student was at the 4th grade level (24th percentile) on a single word spelling task. In 2003 on this same test, Student was at 42nd percentile on spelling. Testimony of Shaw; exhibits S-12, P-1, P-2.

In the 2006 evaluation, on the Wide Range Assessment of Memory and Learning – Second Edition sentence memory subtest, which requires recall of increasingly lengthy sentences read aloud, Student scored within the average range for age. In 2003 on the same subtest, Student scored significantly below average for age. This reflects Student's improvement in remembering and repeating sentences, most likely as a result of speech-language services and/or Student's general maturation. Testimony of Shaw; exhibits S-12, P-1, P-2.

On the California Verbal Learning Test, which requires learning a list of 15 words, followed by immediate recall of the word list, Student scored in the average range in 2006 and 2003. On the nonverbal Performance scale of the Wechsler Intelligence Scale for Children (WISC),

Student scored on the average to significantly above average range in 2003 and 2006. On the WISC Verbal Comprehension subtests, Student's scores ranged from low average to significantly above average in 2006 and from significantly below average to significantly above average in 2003. In 2006, on the WISC-IV test of auditory memory, Student scored significantly below age level expectation in auditory working memory, with the exception of arithmetic (a quantitative reasoning test) in which Student scored in the average range. This test was not performed in 2003. Testimony of Shaw; exhibits S-12, P-1, P-2.

In the 2006 and 2003 evaluations, different testing was done with respect to phonological processing and production. This testing revealed continuing difficulty with phonological processing and production, and difficulty efficiently retrieving phonemically similar lexical items on a verbal fluency task. Testimony of Shaw; exhibits S-12, P-1, P-2.

In 2006, Student produced a writing sample in a response to a picture from the Boston Diagnostic Aphasia Exam. Dr. Shaw found that Student "exhibited significant difficulty with more complex written language expression, producing a brief story that was significant for multiple grammatical and spelling errors and reduced graphomotor control." In 2003 on the same test, Dr. Shaw similarly found that Student exhibited significant difficulty with more complex written language, with "syntactic confusion, omission of punctuation, and multiple spelling errors." Testimony of Shaw; exhibits S-12, P-1, P-2.

In the 2006 evaluation, on the Developmental Test of Visual Motor Integration, which requires copying of progressively complex geometric designs, Student scored above age level expectations (98th percentile). In 2003 on the same test, Student scored somewhat above average for age (75th percentile). The testing reflects Student's continuing strengths in non-verbal reasoning and spatial skills, and also indicates good comprehension abilities. Testimony of Shaw; exhibits S-12, P-1, P-2.

MCAS Scores in 2006, 2005, and 2004

On the MCAS taken in the spring of 2006, Student obtained scores of 256 (proficient) in English language arts, 238 (needs improvement) in mathematics, and 242 (proficient) in science and technology/engineering. Exhibit S-7.

On the MCAS taken in 4th grade, Student obtained scores of 236 (needs improvement) in English language arts and 236 (needs improvement) in mathematics. Exhibit S-20.

On the MCAS taken in 3rd grade, Student obtained a score of 35 (proficient) in reading. Exhibit S-26.

Psychological Assessment in 2004

North Reading conducted a psychological assessment of Student in January 2002, concluding that Student has "high average abilities in many areas," with the only areas of weakness being auditory attention and memory. Exhibit P-47.

IV. DISCUSSION

A. Introduction

Student is an individual with a disability, falling within the purview of the Individuals with Disabilities Education Act (IDEA)² and the state special education statute.³ Pursuant to the IDEA, a school district must provide an eligible student with a free appropriate public education (FAPE) in the least restrictive environment.⁴ Neither Student's eligibility status nor her entitlement to FAPE is in dispute.

A student's right to FAPE is assured through the development and implementation of an individualized educational program (IEP).⁵ My inquiry is whether North Reading's most recent IEP was reasonably calculated to provide "appropriate" education services in the "least restrictive environment,"⁶ as those terms are defined in state and federal law.⁷ Although progress subsequent to the IEP may be considered, the "IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated."⁸

If a school district fails in its obligation to provide FAPE to a student with a disability, parents may enroll their child in a private school and seek retroactive reimbursement for the cost of the private school.⁹

In the instant dispute, Parents have the burden of persuasion that the School District's IEP and amendment are not appropriate and that the private school in which Student has been enrolled (Landmark) is appropriate.¹⁰

B. FAPE Standards

The IDEA requires that a school district's special educational services be "designed to meet" the student's "unique needs."¹¹ The Supreme Court has stated that FAPE is "educational

² 20 USC 1400 *et seq.* Congress reauthorized and amended the IDEA in 2004, with changes to take effect on July 1, 2005. Unless otherwise indicated, references in this Decision to the IDEA are to IDEA 2004.

³ MGL c. 71B.

⁴ *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 203 (1982).

⁵ *Honig v. Doe*, 484 U.S. 305, 311-12 (1988); *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 182 (1982).

⁶ See 20 USC 1412(a)(5)(A); MGL c. 71B, ss. 2, 3; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c), requiring that services be provided in the least restrictive environment to the maximum extent appropriate.

⁷ See, e.g., *Lt. T.B. ex rel. N.B. v. Warwick School Committee*, 361 F.3d 80, 83 (1st Cir. 2004); *In re: Arlington*, BSEA # 02-1327, 37 IDELR 119, 8 MSER 187, 193-195 (SEA MA 2002) (collecting authorities).

⁸ *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 991-992 (1st Cir. 1990). See also *Town of Burlington v. Dep't of Educ.*, 736 F.2d 773, 788 (1st Cir. 1984), *aff'd* 471 U.S. 359 (1985) ("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 the instant dispute, both parties rely on progress reports and evaluations completed subsequent to the current IEP in order to shed light on what was known or should have been known when the IEP was developed. Therefore, I also will consider these subsequent reports and evaluations for this purpose.

⁹ 20 USC 1412 (a)(10)(C)(ii); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985).

¹⁰ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 534, 537 (2005) (burden of persuasion in an administrative hearing challenging an IEP is placed upon the party seeking relief; a party who has the burden of persuasion "loses if the evidence is closely balanced").

instruction *specially designed to meet the unique needs* of a child with a disability coupled with any additional related services that are required to assist a child with a disability to benefit from that instruction.”¹² Similarly, the First Circuit has emphasized these principles by describing a school district’s responsibility to “custom tailor” the IEP to meet the student’s “unique needs.”¹³

Therefore, in evaluating whether North Reading’s most recent IEP was reasonably calculated to provide Student with FAPE in the least restrictive environment and thereby should be considered appropriate, the inquiry necessarily begins with a determination of Student’s “unique” educational needs and whether the IEP was “designed to meet” those needs so that Student can receive sufficient educational benefits.

The minimum required educational benefits from an IEP have been described by the federal courts and in Massachusetts laws and regulations. According to the First Circuit, the relevant inquiry is whether the IEP is “reasonably calculated to provide ‘effective results’ and ‘demonstrable improvement’ in the various ‘educational and personal skills identified as special needs.’”¹⁴ Similarly, the United States Supreme Court has identified, as a substantive educational standard, the expectation that special education services make a student’s access to his education “meaningful.”¹⁵

At the same time, the FAPE standard under the IDEA is one of “moderation.”¹⁶ The “benefit conferred [by the IEP] need not reach the highest attainable level or even the level needed to

¹¹ 20 USC 1400(d)(1)(A) (purpose of the federal law is to ensure that children with disabilities have FAPE that “emphasizes special education and related services designed to meet their unique needs”); 20 USC 1401(25) (“special education” defined to mean “specially designed instruction . . . to meet the unique needs of a child with a disability . . .”).

¹² *Winkelman v. Parma City School Dist.*, --- U.S. ---, 2007 WL 1461151 (2007) (internal quotations and citations omitted; emphasis supplied). See also *Honig v. DOE*, 484 U.S. 305, 311 (1988) (FAPE must be tailored “to each child’s unique needs”).

¹³ *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1086 (1st Cir.1993) (FAPE requires that IEP be “custom tailored to address the handicapped child’s unique needs in a way reasonably calculated to enable the child to receive educational benefits”) (internal quotations and citations omitted). See also, e.g., *A.A. ex rel. J.A. v. Philips*, 386 F.3d 455, 458 (2d Cir. 2004) (“IEPs are highly customized educational programs that are tailored to the particular, unique needs of disabled students”) (emphasis omitted).

¹⁴ *Lenn v. Portland School Committee*, 998 F.2d 1083, 1090 (1st Cir. 1993). See also 20 USC 1400(d)(4) (purpose of the federal law is “to assess, and ensure the effectiveness of, efforts to educate children with disabilities”); *Roland v. Concord School Committee*, 910 F.2d 983, 991 (1st Cir. 1990) (“Congress indubitably desired ‘effective results’ and ‘demonstrable improvement’ for the Act’s beneficiaries”); *Town of Burlington v. Dep’t of Educ.*, 736 F.2d 773, 788 (1st Cir. 1984), *aff’d* 471 U.S. 359 (1985) (“objective of the federal floor, then, is the achievement of effective results--demonstrable improvement in the educational and personal skills identified as special needs--as a consequence of implementing the proposed IEP”); *Manchester-Essex Reg’l Sch’l Dist. Sch’l Comm. v. Bureau of Special Education Appeals of the Mass. Dept. of Education*, CA No. 05-10922-NMG (D.Mass. September 27, 2006) (utilizing the First Circuit standard quoted in the text above); *North Reading School Committee v. Bureau of Special Education Appeals* 480 F.Supp.2d 479 (D.Mass. March 30, 2007 (citing the First Circuit standard quoted in the text above).

¹⁵ *Rowley*, 458 U.S. at 192. The 1st, 2nd, 3rd, 5th, 6th, and 9th Circuit Courts have similarly concluded that the IEP must provide a student with educational benefits that are “meaningful.” *Frank G. v. Board of Educ. of Hyde Park*, -- F.3d ---, 2006 WL 2077009 (2nd Cir. 2006); *Deal v. Hamilton County Board of Education*, 392 F.3d 840 (6th Cir. 2004); *Shore Regional High School Bd. of Educ. v. P.S.*, 381 F.3d 194, 198 (3d Cir. 2004); *Houston Independent School District v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000); *Adams v. Oregon*, 195 F.3d 1141, 1145 (9th Cir. 1999); *Town of Burlington v. Dep’t of Educ.*, 736 F.2d 773, 789 (1st Cir. 1984), (“federal basic floor of meaningful, beneficial educational opportunity”) *aff’d* 471 U.S. 359 (1985).

¹⁶ *Lenn*, 998 F.2d at 1086.

maximize the child's potential.”¹⁷ If the IEP proposed by the school district is determined to be appropriate for a particular student, it is irrelevant that additional or different services would likely result in greater educational progress or benefit.¹⁸

Student’s educational progress must be considered within the context of her educational potential. In explicitly rejecting a bright-line rule as to what quantum of educational benefit is necessary to satisfy the IDEA, the Supreme Court has noted that children of different abilities are capable of greatly different achievements. The Court adopted an approach that requires consideration of the potential of the particular student when judging the appropriateness of an IEP.¹⁹ Lower federal courts similarly require the sufficiency of a student’s progress to be judged within the context of her individual potential or capacity to learn.²⁰

In addition, the IDEA was enacted "to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for *further education*, employment, and independent living."²¹

Finally, Massachusetts requires, as an additional state standard, that special education services be “designed to develop [the student’s] educational potential.”²²

¹⁷ *Id.* See also *Rowley* at 197, n.21.

¹⁸ See, e.g., *Lt. T.B. ex rel. N.B. v. Warwick Sch. Com.*, 361 F.3d 80, 83 (1st Cir. 2004) (“IDEA does not require a public school to provide what is best for a special needs child, only that it provide an IEP that is 'reasonably calculated' to provide an 'appropriate' education as defined in federal and state law.”).

¹⁹ *Rowley*, 458 U.S. at 202.

²⁰ E.g., *Deal v. Hamilton County Board of Education*, 392 F.3d 840 (6th Cir. 2004) (“IDEA requires an IEP to confer a ‘meaningful educational benefit’ gauged in relation to the potential of the child at issue”); *Shore Regional High School Bd. of Educ. v. P.S.*, 381 F.3d 194, 198 (3d Cir. 2004) (“IEP must be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student's intellectual potential”) (Alito, J.); *Houston Independent School District v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000) (progress should be measured with respect to the individual student, not with respect to others); *Mrs. B. v. Milford Board of Ed.*, 103 F.3d 1114, 1122 (2d Cir. 1997) (“child’s academic progress must be viewed in light of the limitations imposed by the child's disability”); *Roland v. Concord School Committee*, 910 F.2d 983 (1st Cir. 1990) (“academic potential is one factor to be considered”).

²¹ 20 USC 1400(d)(1)(A) (emphasis supplied). See also 20 USC 1412(a)(1)(A); MGL c. 71B, ss. 2, 3.

²² MGL c. 71B, s. 1 (definition of “special education”). Similarly, the purpose of the Massachusetts special education regulations is “to ensure that eligible Massachusetts students receive special education services designed to develop the student’s individual educational potential” 603 CMR 28.01(3). See also MGL c. 69, s. 1 (“paramount goal of the commonwealth to provide a public education system of sufficient quality to extend to all children the opportunity to reach their full potential”); 603 CMR 28.02(18) (“*Progress effectively in the general education program* shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the child, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district [emphasis supplied].”); *Mass. Department of Education’s Administrative Advisory SPED 2002-1: Guidance on the change in special education standard of service from “maximum possible development” to “free appropriate public education”* (“FAPE”), *Effective January 1, 2002*, 7 MSER Quarterly Reports 1 (2001) (appearing at www.doe.mass.edu/sped) (Massachusetts Education Reform Act “underscores the Commonwealth’s commitment to assist all students to reach their full educational potential”). The IDEA allows Massachusetts to adopt these educational standards, which may possibly be understood as exceeding the mandates of the IDEA. See *Mr. I. v. Maine School Administrative District No. 55*, 2007 WL 641988 (1st Cir. 2007) (state may “calibrate its own educational standards, provided it does not set them below the minimum level prescribed by the [IDEA].”). In its

Therefore, in considering whether Student's likely progress in 6th grade pursuant to the North Reading IEP would be "appropriate" under the IDEA and Massachusetts special education law and regulations, I view Student's likely 6th grade progress within the context of her potential to learn, her likelihood of developing her educational potential, and her becoming prepared for further education.

C. Qualifications of Experts

I find both Parents' experts – Dr. Shaw and Ms. Gray – to be highly experienced in their fields in general; they also each have considerable experience working with children who have an educational profile similar to Student's educational profile; and they have gained a thorough knowledge of Student through the following processes: each expert evaluated Student (Dr. Shaw evaluated Student twice over a period of three years; Ms. Gray evaluated Student once), Ms. Gray observed Student at Landmark, and each expert interviewed Parents and reviewed Student's records, including all relevant previous evaluations and progress reports. Neither expert interviewed North Reading staff as part of her evaluation. Although doing so might have yielded additional, relevant information, I find that their failure to do so does not undermine the credibility of their findings and conclusions. Both experts currently are in private practice, and they have, at times, each worked for the public schools.²³

I find that Dr. Shaw and Ms. Gray each provided credible, expert testimony regarding Student's educational needs and how they should be met. Dr. Shaw's testimony and report were particularly illuminating regarding the nature and extent of Student's learning deficits over time, as measured in her testing in 2003 and 2006, and what educational model, in general, is necessary to address Student's underlying educational needs. Ms. Gray's testimony and report were most helpful in understanding the extent (and implications) of Student's phonological deficits and what detailed educational services would be necessary to address those deficits appropriately. Both experts also provided credible, expert testimony regarding the implications to Student's educational development if her underlying special education needs are not addressed appropriately.

definition of FAPE, the IDEA incorporates state educational standards. 20 USC 1401(9)(b). See also MGL c. 71B, s. 1 (defining FAPE to include federal FAPE standard and state educational standards).

²³ Lisa Shaw, PhD, has been a pediatric neuropsychologist for 20 years, evaluating children aged 3 to 22 in order to determine the nature of their disabilities and how those disabilities impact upon their education. She has conducted over 500 neuropsychological evaluations in her private practice, with many evaluations of children who had a profile and age similar to that of Student. Dr. Shaw worked for the Somerville Public Schools as a clinical psychologist from September 1985 to August 1988. She has held academic appointments at Harvard Medical School as a clinical psychology fellow from July 1983 to July 1985 and as a clinical instructor from July 1990 to June 1991. Testimony of Shaw; exhibit P-1 (resume at end of evaluation report).

Since 2003, Jody Gray, EdM, has been the director/owner of Learning Disabilities Defined, which specializes in the diagnosis and remediation of learning disabilities. In this position, she performs educational evaluations of students. Over the course of her career, Ms. Gray has done several hundred educational evaluations, and a large percentage of those evaluated had a diagnosis of dyslexia. From 1999 to 2003, she was the director of the Commonwealth Learning Center, which specializes in the remediation of students with learning disabilities. From 2001 to the present, she has been an adjunct professor/regional teacher trainer at Fitchburg State College/Commonwealth Learning Center, providing trainings to public school teachers in the Visualizing and Verbalizing Program for Language Comprehension, and the Lindamood Phoneme Sequencing Program (LiPS). She has been trained in these two programs, as well as Orton-Gillingham and other language-based programs. She also provides 1:1 reading tutoring to some students. Testimony of Gray; exhibit P-3 (resume at end of evaluation report).

North Reading provided the expert testimony of teachers and staff who worked with Student in 5th grade and others who would have worked with Student had she attended North Reading's proposed 6th grade program. These teachers and staff provided credible testimony with respect to the special education and related services that Student received during 5th grade, including her progress over the course of the school year, as well as the educational program offered for 6th grade.

Only two North Reading witnesses (Ms. Auday and Ms. Mavrinac) gave opinion testimony regarding the question of what special education and related services would be appropriate to meet Student's special education needs in 6th grade. Only one of these witnesses (Ms. Auday) gave opinion testimony regarding the appropriateness of North Reading's proposed IEP for 6th grade. Ms. Auday, who would have been Student's 6th grade regular education teacher at North Reading, testified that the 6th grade IEP was appropriate for Student. However, I find that Ms. Auday, as a regular education teacher who has never taught, observed, or evaluated Student, is not qualified to give an expert opinion on this issue.

Ms. Mavrinac, a speech-language pathologist who would have provided direct speech-language services to Student in 6th grade, testified regarding Student's need for these services. Although Ms. Mavrinac has never provided services to Student or evaluated Student, I find that she has sufficient expertise to render an opinion on this issue.

D. Application of the Legal Standards to the 6th Grade IEP

Introduction. The ultimate question to be determined is whether Student's likely progress pursuant to North Reading's IEP for 6th grade would be sufficient. Parents relied principally upon expert testimony from Dr. Shaw and Ms. Gray (who considered Student's underlying special education needs and what services would be necessary to address these needs appropriately), as well as the testing and evaluation reports of these experts, and the testimony of the North Reading 5th grade teachers and staff.

North Reading did not present expert testimony on the issue of the appropriateness of the 6th grade IEP. Instead, North Reading relied upon the evidence of progress prior to and during 5th grade, together with its argument that Student would continue to make similar progress pursuant to the 6th grade IEP. In its 6th grade IEP, North Reading proposed to continue the educational model utilized during 5th grade, with the enrichment described above in part IIIC of this Decision.

Student's special education needs. It is not disputed that Student's most fundamental educational deficit and the deficit that has the most significant implications for her further educational development is her severely depressed phonological processing. Depressed phonological processing results in Student's having difficulty perceiving, discriminating, and manipulating sounds, thereby compromising her ability to encode²⁴ and decode²⁵ language, and negatively impacting her written expression. In other words, appropriate development of phonological processing skills is essential for the appropriate development of her literacy

²⁴ "Encode" may be defined as converting a message, information, etc. into words (for example, spelling).

²⁵ "Decode" may be defined as extracting meaning from spoken or written words (for example, reading).

skills. Testimony of Shaw, Gray; exhibits S-4 (page 19), S-8 (page 4), P-3, P-41. See also Student's profile, described below in part IIIA of this Decision.

Student's phonological deficits (as well as the negative impact of these deficits on reading, writing, spelling) have been identified since at least 1st grade. They were identified in a speech-language evaluation by Children's Hospital, Lexington, in November 2001 (the fall of Student's 1st grade); they were later reported in the neuropsychological evaluations by Dr. Shaw in July 2003; and, more recently, they were re-confirmed in Dr. Shaw's neuropsychological evaluation in February/March 2006 and Ms. Gray's educational testing in July 2006. Testimony of Gray; exhibits P-1, P-2, P-3, P-9, P-41, S-4, S-8, S-12.

North Reading's academic testing in May 2006 (near the end of 5th grade) reached a similar conclusion. Summarizing in her report Student's principal learning strengths and deficits, the evaluator (Ms. Conway), who was also Student's 5th grade special education teacher, wrote:

Test results and observations reveal [Student] has average abilities in oral reading, listening/reading comprehension, and language mechanics. Challenging areas of the curriculum include: phonological awareness, phonological memory, rapid naming, spelling, and written language skills. Despite her average scores in math, [Student] struggles with some aspects of the grade level math program. [Exhibits S-8, P-41 (page 4).]

Because of the severity of Student's phonological processing deficits, together with the relationship between these deficits and the development of Student's literacy skills, it is incumbent upon North Reading to design its IEP to meet appropriately Student's "unique" special education needs in this area in order to satisfy the FAPE standards discussed above in part IVB of this Decision. I consider Student's likely future progress (pursuant to the proposed 6th grade IEP) in this light.

Progress reported by the 5th grade teachers and staff. With the exception of the Gates McGinnity test scores (which will be discussed separately below), the evidence regarding Student's progress over the course of the 5th grade came from the testimony of Student's regular education teacher (Ms. Borek), Student's special education teacher (Ms. Conway), and Student's speech-language pathologist (Ms. Hayden). Pursuant to Student's IEP, Ms. Conway provided pull-out academic support to Student for 45 minutes, four times each week, focusing on math for two of these sessions and language arts for the other two sessions. Pursuant to Student's IEP, Ms. Hayden provided small group speech language pull-out services for 30 minutes, twice per week.

Progress reported by these teachers and staff may be summarized as follows. With respect to reading, the Orton-Gillingham program was used, which led to increased ability to read and understand, allowing Student to access some grade-level reading material. Student's inferential abilities improved (that is, finding meaning within text) particularly with prompts, and her responses to open-ended questions about her reading improved. Student made progress in reading accuracy and rate (i.e., fluency). Over the course of the school year, Student began to feel more confident in reading. Testimony of Borek, Conway.

With respect to written expression, Student progressed by adding rich vocabulary, using strategies for writing, and adding details to her writing. The clarity and sequencing of her writing improved, and with the use of graphic organizers, her writing was more logical and sequential. Testimony of Borek.

With respect to math, at the beginning of the school year, Student's skills were generally weak, including her computation skills, math facts, and fractions and decimals. Student made significant progress over the course of the school year. Her progress was particularly notable in the areas of math facts, computational skills, geometry, and number sense. Testimony of Borek, Conway.

In oral presentation, Student's skills improved through increased use of vivid adjectives and greater content regarding a topic. In social studies, Student made a ten-minute prepared presentation to the class, during which she was articulate and made eye contact with her classmates. Student did well in social studies and science throughout the school year, fully participating in the curriculum. Testimony of Hayden, Borek.

Nevertheless, the 5th grade teachers' and staff's testimony reflected little, if any, gains being made with respect to Student's underlying phonological and related literacy deficits. Student's 5th grade special education teacher testified that with respect to reading, Student's greatest strides were made in "contextual reading" – that is, Student progressed in her ability to compensate for her language deficits by using context clues to figure out the meaning of what she was reading; and Student continued throughout the year to struggle with phonemic awareness and spelling, and words and sounds in isolation continued to be very difficult for her. Testimony of Conway.

Student's 5th grade teacher reported that throughout the school year, spelling remained difficult for Student – there was some improvement in this area and she was able to memorize words, but she continued to have difficulty sounding out words even at the end of the school year, indicating continuing phonological deficits. Similarly, grammar continued to be difficult for Student throughout the school year. Student's continuing spelling and grammar deficits negatively impacted her writing. Testimony of Borek.

Student's most notable progress was in math, as discussed above. However, Student's teacher made clear that Student continued, throughout the year, to struggle with *written* math problems, again reflecting Student's continuing difficulty in making significant gains regarding language. Testimony of Borek.

To the extent that these North Reading witnesses commented on Student's readiness to attend a pull-out/inclusion model of services for 6th grade (as proposed in North Reading's IEP), additional concerns were expressed. Student's 5th grade speech-language pathologist testified that by the end of the school year, Student's most significant areas of need included her word retrieval deficits and her auditory processing deficits with the result that Student continued to need help making inferences and summarizing. The speech-language pathologist testified that these deficit areas would likely present an even greater challenge to Student in 6th grade as the curriculum becomes more difficult. Testimony of Hayden.

Of most concern was that Student's 5th grade special education teacher and speech-language pathologist, in their testimony and written reports, indicated that Student was not effectively carrying over learning strategies (taught by special education staff) to other contexts such as the mainstream classroom. In other words, Student was often not using these strategies independently. Testimony of Hayden, Conway; exhibits P-40 (observation report, page 2), P-43 (progress report of 3/15/06). As will be discussed later in this part of the Decision, effective development of Student's literacy skills requires that Student learn and apply remedial learning strategies in all contexts. Testimony of Shaw, Gray.

In sum, I find that the testimony of the North Reading 5th grade teachers and staff indicates that through accommodations (for example, a teacher would read aloud instructions to Student rather than requiring Student to read the instructions herself) Student participated and gained knowledge from the 5th grade curriculum, Student made gains in math and in certain limited aspects of language, but she did not make effective progress with respect to her underlying phonological and literacy deficits.

Student's phonological processing and literacy deficits at the end of 5th grade. Standardized testing near (or at) the end of 5th grade, together with expert testimony explaining this testing, made clear the extent (and implications) of Student's phonological processing and literacy deficits.

Phonological processing consists of three areas – phonological awareness, rapid naming, and phonological memory – all of which are problematic for Student. Each of these areas will be discussed separately below. Exhibit P-3, S-4 (page 19).

Phonological awareness is considered a crucial underpinning of literacy skills. Generally speaking, phonological awareness is comprised of the ability to segment, blend, substitute, add, delete, and manipulate sounds within a syllable (i.e., phonemic awareness), as well as the ability to segment, blend, substitute, add, delete, and manipulate syllables within words. Phonological awareness is a key component in being able to read skillfully and successfully because it represents the ability to perceive and map sounds – that is, a good reader must be able to discriminate sounds and break down bundles of sounds. Studies indicate a causal relationship between phonemic awareness and reading progress. It is not disputed that phonological awareness is the foundation of reading. Testimony of Gray, Hayden; exhibit P-3, S-4 (pages 12-13).

The severity of Student's phonological awareness deficit is not in dispute. As described in part IIID of this Decision (summarizing evaluations, assessments, and testing), Parents' expert's testing indicated a phonological awareness composite score at the 12th percentile, while North Reading's academic testing indicated a phonological awareness composite score at the 8th percentile, and Landmark's admission screening assessment was at the 13th percentile. Testimony of Gray; exhibits P-3, S-4 (pages 12, 14, 15).

Similarly, in phonemic decoding efficiency, Student scored at the 6th percentile, indicating that Student did not possess many of the underlying phonological skills needed to analyze unknown words and would need to overly rely on sight word memorization; and her "Total Word Reading Efficiency" score at the 10th percentile reflected a significant weakness in her

ability to accurately decode unknown words. Testimony of Gray; exhibits P-3 (pages 12, 14, 15).

In addition, as indicated by her spelling subtest score at the 17th percentile, Student did not possess the phonological skills needed for successful age-appropriate spelling. All of these evaluations relative to Student's phonological processing occurred shortly after or near the end of Student's 5th grade. Testimony of Gray; exhibits P-3, S-4 (pages 12, 14, 15).

Rapid naming is also an area of weakness for Student. Rapid naming refers to the ability to "call up" a name or sound when one sees a symbol, with a deficit in this area negatively impacting her reading fluency. Student's rapid naming composite fell at the 12th percentile in Parents' expert's testing and in the 21st percentile in North Reading's testing. Student's poor fluency results in slow and labored reading, requiring considerable energy to decode words and leaving less energy to gain meaning from the text. Testimony of Gray; exhibits P-3, S-4 (pages 12-13).

Student's phonological awareness deficit combined with a rapid naming weakness result in a so-called "double deficit." As a general rule, children with such a double deficit tend to have the greatest difficulty attaining basic reading skills and prove to be the most challenging to remediate. Testimony of Gray; exhibits P-3, S-4 (pages 12-13).

Phonological memory difficulties further complicate Student's phonological awareness profile. A weakness in phonological memory makes it difficult to hold in memory phonological information, thereby hindering the ability to decode new words, particularly multi-syllable words – for example, it compromises the ability to hold (temporarily) in memory the first syllable of a word while decoding the second syllable. Student's phonological memory composite, as indicated in North Reading's academic testing near the end of 5th grade, was at the 3rd percentile. By the end of 5th grade, Student continued to demonstrate difficulty decoding multi-syllable words. Testimony of Gray; exhibits P-3, S-4 (page 12).

Reading comprehension continued to be a source of difficulty for Student. Although a number of reading tests have been administered by different testers, the most informative testing regarding Student's reading comprehension was provided in the testing done by Ms. Gray in July 2006. Ms. Gray tested Student's reading comprehension utilizing the Gray Silent Reading Test and the Test of Reading Comprehension Test. In the more forgiving of these tests (for example the Gray Silent Reading test which de-emphasizes accurate decoding and facilitates the use of context), Student did relatively well, scoring at the 32nd percentile compared to age-based peers. As the testing became more complex, Student's scores fell dramatically. For example, on the Paragraph Reading subtest, Student scored at the 9th percentile compared to age-based peers. Testimony of Gray; exhibits P-3, S-4 (pages 15, 16).²⁶

²⁶ As is explained earlier in this Decision (part IIID), Student's 5th grade teacher administered the Gates McGinnity test for the purpose of assessing Student's reading vocabulary and comprehension. Between September 2005 and June 2006, Student's scores improved, with reading comprehension improving from 5.4 to 6.2 grade level. There was no testimony or written report explaining what, specifically, the testing measured or the implications of this testing for Student, with the result that these test scores, standing alone, are given little weight.

Written language also continued to be a significant source of concern. Dr. Shaw tested Student's written language abilities in 2003 and then again in March 2006 (the spring of 5th grade). What was striking to Dr. Shaw was not only Student's minimal progress in this area over the course of three years, but also the gap (revealed in the 2006 testing) between Student's excellent cognitive abilities and knowledge and her significantly depressed ability to communicate information and express her ideas on paper. Testimony of Gray; exhibit S-4, P-3 (page 23).

Parents' experts' opinions regarding Student's educational needs. As noted above in part IVC of this Decision, Parents' education evaluator (Ms. Gray) has considerable expertise regarding Student's phonological processing deficits, the impact of these deficits on the development of her literacy skills, and the requisite special education and related services needed to appropriately address these underlying deficits. Ms. Gray came to know Student through a comprehensive evaluation, review of records, Parent interview, and observation at Landmark. Also, as noted above, Dr. Shaw evaluated Student twice, and although not focusing as directly on Student's phonological deficits, Dr. Shaw's reports and testimony add strong corroboration to Ms. Gray's conclusions and recommendations. North Reading provided no expert testimony in rebuttal of Ms. Gray's or Dr. Shaw's opinions.

In her testimony, Ms. Gray explained that North Reading, having recognized Student's phonological needs, has targeted her deficits in this area through the services described in the IEPs since at least the 2nd grade. Essentially the same educational model has been used to provide Student with remediation regarding these deficits – that is, pull-out academic support services using the Orton-Gillingham program and pull-out speech-language services. These deficit areas were similarly targeted in North Reading's proposed IEP for 6th grade, with the addition of individual reading services, support within the regular education classroom, and consultation services. See discussion of IEPs in part IIIB of this Decision.

Ms. Gray concluded that notwithstanding North Reading's identification of Student's deficits and the special education services intended to address them, objective testing at or near the end of 5th grade (discussed above) demonstrated that Student continued to have severely depressed phonological processing deficits. This led Ms. Gray to conclude that a different and significantly more intensive educational model was called for if Student's underlying phonological deficits were to be remediated. Dr. Shaw's testimony and written reports strongly corroborated Ms. Gray's opinions, for reasons explained below in part IVE of this Decision.

In addition, Student's learning strengths and weaknesses need to be understood within the context of 6th grade when Student would be entering middle school. Parents' experts' undisputed testimony was that as the academic expectations and demands increase in 6th grade, Student's underlying phonological deficits would make it increasingly difficult for Student to access the curriculum, keep pace with the reading and written language demands (even with accommodations and modifications), and participate effectively in her education. For example, to the extent that Student continued to be unable to decode an unknown word relatively quickly and relatively effortlessly, her reading would continue to be labored and slow-paced, and her comprehension would be compromised, in part, because so much effort is expended on decoding. Student's ability to learn from reading connected text at grade level would be limited. Student's written language deficits (particularly, spelling) would

likely continue, making it impossible for her to communicate effectively her knowledge and reasoning. Testimony of Gray, Shaw; exhibits S-4, S-12, P-1, P-2, P-3.

An additional concern was Student's emotional well-being were she required to continue in the North Reading educational model for 6th grade. In her February/March 2006 evaluation (exhibit P-1, page 10), Dr. Shaw noted that Student was "experiencing a significant amount of sadness . . . related to her continuing academic problems and speech/language difficulties." In her testimony, Dr. Shaw explained that at the time of the 2006 evaluation, Student presented as "feeling pretty helpless" about her ability to be successful. Dr. Shaw also noted, with concern, the greater academic challenges with which Student would be faced in middle school (beginning in 6th grade), as compared to elementary school. Parent's testimony explained Student's increasing sense of frustration and helplessness as the academic expectations increased from 2nd through 5th grade (referenced in part IIIB of this Decision).

Appropriateness of the IEP within the context of Student's educational potential. I consider Student's likely progress (pursuant to the North Reading 6th grade IEP) within the context of her potential to learn, her likelihood of developing her educational potential, and her becoming prepared for further education. This is not to say that North Reading's IEP must maximize Student's educational potential, or provide what is best for her educational development, or offer particular services or placement simply because they are recommended by an expert as helpful for Student. The standard remains effective or meaningful progress, but in determining whether this standard is met, Student's likely progress is considered within the context of her own particular educational potential. The result is that the minimum acceptable progress for Student would likely be more than the minimum acceptable progress for a similarly language-impaired student who has significantly lower cognitive abilities and learning potential. See the discussion and authorities cited in part IVB of this Decision.

It is not disputed (and it is amply reflected in the testimony of teachers, Parents' experts, and Father, as well as within standardized testing) that Student is intellectually bright, hard-working, and conscientious, with significant potential for educational growth if given appropriate services. This was reflected, for example, in cognitive testing where Student's perceptual reasoning score on the Wechsler Intelligence Scale for Children (4th ed.) was 115, placing her in the "high average" range; and this was also demonstrated within the classroom and in other standardized testing where Student had very high listening comprehension. Testimony of Borek, Shaw, Gray, Parent; exhibits S-4, S-12, P-1, P-2, P-3.

The gap between Student's current literacy abilities and her potential for educational growth is made clear in Ms. Gray's written report, where she stated that "[Student] has yet to attain basic literacy skills which are in concert with her intellectual potential despite remedial interventions." For Dr. Shaw, the gap was illustrated most clearly by Student's poor written language as compared with her reasoning abilities and fund of knowledge as of the date of Dr. Shaw's 2006 evaluation. Dr. Shaw testified that Student's written language did not come "anywhere near" communicating the strength of her reasoning and knowledge. Testimony of Gray; exhibit S-4, P-3 (page 23).

Appropriate educational services provide the likelihood that Student's literacy skills will better approach her level of intellect, thereby allowing Student to develop further her significant educational potential. With appropriate remediation of her learning deficits, Student has the potential to participate in further education, which may include post-secondary education. Testimony of Gray, Shaw; exhibits P-1, P-2, P-3.

In summary. Based on the testimony of North Reading's 5th grade teachers and staff, the standardized testing described above, and the unrebutted expert testimony of Dr. Shaw and Ms Gray, I find that (1) North Reading's educational services through 5th grade had resulted in progress in certain areas described above – for example, Student was better able to gain meaning from the context of what she read, her sight word vocabulary increased, and her math skills improved substantially – but had not been effective in addressing Student's underlying phonological deficits and basic literacy skills; (2) by the end of 5th grade, Student's phonological deficits were continuing to compromise the development of Student's basic literacy skills with respect to reading, writing, and spelling; (3) although North Reading's proposed IEP for 6th grade would increase services, it would do so through the same educational model and would not likely have any greater success in addressing Student's phonological deficits; (4) without significant remediation of Student's phonological deficits, there would likely be only limited further development of Student's basic literacy skills, and Student would likely have significantly greater academic difficulty in 6th grade; (5) this limited further development of literacy skills stands in marked contrast to Student's potential for further educational development if appropriate services are provided; and (6) therefore, North Reading's IEP for the 6th grade academic year does not satisfy the FAPE standards described in part IVB of this Decision.

E. North Reading's Remaining Arguments re Appropriateness of 6th Grade IEP

Progress reported by Dr. Shaw. In her written reports and testimony, Parents' neuropsychologist (Dr. Shaw) reported that Student made progress in certain areas but not in other areas, as reflected on a number of individual test scores, between the dates of her 2003 and 2006 evaluations. Dr. Shaw's 2003 and 2006 testing results were summarized earlier in this Decision (part IIID) and will not be repeated here.

It is not disputed that over the three-year period from 2003 to 2006, some of Student's test and subtest scores improved, and in certain instances improved significantly. North Reading argued from these scores that Student made progress in the educational model utilized by North Reading through 5th grade and, therefore, it would be appropriate to continue this educational model in 6th grade. North Reading sought to draw these conclusions from the test and subtest scores themselves, without the benefit of an expert witness (other than Dr. Shaw) to explain their implications or relevance to Student's educational needs for 6th grade.

For reasons set forth below, I do not find North Reading's arguments persuasive, particularly in light of the credible testimony of the witness most knowledgeable about these test scores – that is, Dr. Shaw.

As described below in part IIID of this Decision, Dr. Shaw's testimony and 2006 written report revealed certain noteworthy areas of improvement – for example, on a test of single word decoding, the WRAT reading comprehension, the WRAT arithmetic test, the Boston

Naming test, and the Wide Range Assessment of Memory and Learning. Also as noted in part IIID, however, Dr. Shaw's testimony provided a broader context for understanding the implications of these test scores. For example, notwithstanding Student's impressive test score regarding single word decoding, Dr. Shaw explained that this reveals Student's ability to decode a single word when given as much time as she would like and, notwithstanding this test score, Student's decoding remained dysfluent and slow-paced. Most importantly, from a more global perspective, Dr. Shaw found through her testing that Student's underlying phonological and literacy deficits remained largely unaddressed. For example, Dr. Shaw noted in the summary section of her written report that, for Student, "[a]reas of continuing language difficulty include significant reductions in auditory working memory, phonological processing and production difficulty, as well as word retrieval problems and verbal dysfluency." This was demonstrated by Student's continuing phonological deficiencies in the Boston Naming Test. Also, Dr. Shaw's testing revealed continuing difficulty with phonological processing and production, and difficulty efficiently retrieving phonemically similar lexical items on a verbal fluency task, and "inefficient and labored decoding" that was "dysfluent and slow paced." Testimony of Shaw; exhibits S-12, P-1 (pages 7, 8, 9).

In her testimony and in her 2006 report, Dr. Shaw emphasized that these long-standing deficits negatively impact Student's oral and written language – for example, Student slid from the 42nd percentile on spelling in 2003 to the 24th percentile in 2006. Dr. Shaw also singled out Student's written expression for concern, explaining that Student's language disabilities are particularly evident in this area. Testimony of Shaw; exhibits S-12, P-1 (pages 7, 9), P-2.

In her testimony and written reports, Dr. Shaw made clear that she had concerns regarding Student's underlying phonological and literacy deficits when she first tested Student in 2003. However, it is noteworthy that notwithstanding certain selected areas of progress relied upon by North Reading, Dr. Shaw's concerns increased significantly when, in March 2006, she found that North Reading's educational services had not proved effective in addressing these foundational areas of language deficit. As a result, Dr. Shaw changed her recommended services from her 2003 report when she supported the educational model then being used by North Reading. In her 2006 report and testimony, Dr. Shaw concluded that Student needed a significantly different educational model. Testimony of Shaw; exhibits S-12, P-1 (pages 9, 10), P-2 (pages 9, 10).

In her testimony and 2006 report, Dr. Shaw was particularly persuasive that for Student to receive educational services that would likely address her underlying phonological and literacy deficits, she must attend a much more intensive and comprehensive educational program, than the educational model being utilized by North Reading in 5th grade and proposed for 6th grade. Dr. Shaw explained that this more intensive and comprehensive model is characterized by integration of the same reading, writing, and spelling strategies throughout the curriculum. Without this reinforcement of remedial strategies throughout the school day, Student would not, in Dr. Shaw's opinion, be able to generalize her learning strategies to all settings and make effective progress regarding her basic literacy skills. Testimony of Shaw; exhibits S-12, P-1 (page 10).

For these reasons, I find that North Reading's assertions based upon Dr. Shaw's written reports and testimony are misplaced. Notwithstanding Student's demonstrated progress in selected tests or subtests between 2003 and 2006, Dr. Shaw's evaluation reports and testimony revealed that Student made little, if any, progress (through March 2006) regarding her underlying special education needs.

MCAS. North Reading also relied on Student's MCAS scores. As discussed in part IIID of this Decision, by the spring of 2006 Student had obtained scores of proficient in English language arts, needs improvement in mathematics, and proficient in science and technology/engineering. Pursuant to Student's IEPs, she was to be given accommodations during all testing although there was no testimony regarding the accommodations actually provided for MCAS. Equally important, there was no testimony or written report explaining what, specifically, the testing measured or the implications of this testing with respect to Student's progress in areas being addressed through her special education and related services.

Accordingly, I credit Student's performance generally on these tests and assume they are an indication of academic achievement. However, without testimony or other evidence explaining the accommodations given during testing and the relevance of the particular test scores to Student's educational progress, I am not able to give them any significant weight. This is because it is not possible to understand what the MCAS scores reveal with respect to the remediation of Student's underlying phonological and literacy deficits. Without more, the MCAS test scores cannot be a measure of the appropriateness of Student's special education services.

For these reasons, I find that the MCAS scores do not provide probative evidence in support of North Reading's assertions regarding the appropriateness of its 6th grade IEP.

F. Minimum Services Required to Provide Student with FAPE

Based on the demonstrated failure of North Reading's IEPs to remediate Student's known phonological and literacy deficits through a pull-out educational model and based on the recommendations contained within Parents' experts' written reports and testimony, I make the following findings with respect to what specific special education and related services, at a minimum, were necessary during Student's 6th grade (including what services were necessary when the Hearing occurred in June 2007).

The Orton-Gillingham program utilized through 5th grade and proposed for 6th grade for Student has likely been helpful to Student. However, it has not and is not likely, at least during 6th grade, to be sufficient to allow Student to remediate her phonological deficits. For the purpose of meeting Student's needs in this area, Orton-Gillingham does not sufficiently and directly address her phonological deficits. Student requires a program that more intensively focuses on developing phonological awareness and strengthening phonological memory. One such program is the Lindamood Phoneme Sequencing program (LiPS).

Student requires one-to-one instruction in this or a similar program on a daily basis. Testimony of Gray; exhibits P-3, S-4.²⁷

In order to learn, retain, and apply necessary language strategies effectively, Student requires the greater intensity and reinforcement of an integrated education model where all teachers are trained in the same strategies for encoding, decoding, and written expression, and where these strategies are taught and reinforced consistently throughout the curriculum. Under this model, the strategies taught within a one-to-one tutorial utilizing, for example, the LiPS program, are reinforced throughout the day, not only in language arts classes but in math, social studies, and science classes. This model can only occur effectively for Student in a substantially-separate, language-based program where all students have language-based learning needs and all have average to above-average intelligence, with the result that the group instruction can consistently reinforce throughout the day the language-based learning strategies which form the basis of the remediation of Student's learning disabilities. Testimony of Shaw, Gray; exhibits S-4, S-12, P-1 (page 10), P-3 (pages 22, 23).

The model that North Reading provided Student in 5th grade and proposed for 6th grade is not appropriate. The North Reading model involves consistent implementation throughout the curriculum of the many accommodations listed in Student's IEP, such as additional time to complete tasks, graphic organizers, and preferential seating. Although this is helpful and necessary, it has not proved sufficient for Student to generalize and apply remedial language strategies, as discussed earlier in this Decision. Testimony of Gray, Shaw, Conway.

North Reading's proposed educational model does not allow for the learning strategies taught within pull-out special education classes to be integrated across the curriculum into regular education classes. This model, with its lack of full integration, is likely to continue to result in Student's not being able to generalize what she has learned (within special education settings) into other settings during the day. Without being able to generalize what she has learned, Student's educational progress cannot lead to her becoming an independent learner. Testimony of Shaw, Gray; exhibit P-50 (page 6).

Student also requires speech-language instruction both for her articulation deficit and for her language deficits. The speech-language instruction for articulation must be direct, one-on-one or small group. The evidence was unclear as to how the speech-language instruction to address language deficits must be delivered. The North Reading witnesses (particularly, Ms. Mavrillac) supported direct instruction by a speech-language pathologist, while the Landmark staff (discussed below) supported integrating this instruction into the classroom. I am unable to conclude that either methodology is inappropriate.

²⁷A school district is generally given discretion to determine the appropriate methodology (such as Orton-Gillingham) so long as the selected methodology is likely to allow the student the opportunity to receive FAPE. In the instant dispute, I find that North Reading's reliance on Orton-Gillingham for purposes of addressing Student's phonological deficits is not likely to result in Student's receiving FAPE. Compare *Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840, 862 (6th Cir. 2004) ("there is a point at which the difference in outcomes between two methods can be so great that provision of the lesser program could amount to denial of a FAPE") with *E.S. v. Independent School District, No. 196*, 135 F.3d 566 (8th Cir. 1998) ("As long as a student is benefiting from her education, it is up to the educators to determine the appropriate methodology.").

There was testimony and written reports provided by both parties regarding Student's emotional difficulties. It is not disputed that Student became upset, at times, during 5th grade and has continued to become upset, at times, during 6th grade at Landmark. Father testified credibly regarding the emotional toll on Student as a result of her educational challenges and frustrations in the 4th and 5th grades, although these challenges and frustrations were downplayed by the 5th grade teachers who identified only Student's emotional difficulties regarding math in the second half of the school year. Father testified that counseling services were not necessary at Landmark in 6th grade because of Student's much improved affect. I am not persuaded that any emotional difficulties that Student may have would likely impact negatively her education in 6th grade at Landmark since all students have a similar education profile and the instruction is specifically geared towards Student's skill levels. I find that no special education or related services in this area are necessary within the context of the Landmark program.

While there was also evidence in support of a requirement that Student be taught only in small classes, the evidence was not persuasive that this is necessary. Parents' experts made this recommendation, in part based on Student's deficits identified in audiological evaluations. Student has normal hearing acuity but has difficulty with her hearing accuracy when there is ambient noise in the room. The most recent audiological evaluation concluded that for Student, it will be more difficult for her to access the curriculum in a large group classroom setting. It is also apparent that there are significant educational advantages to being taught in small classes as is demonstrated through the instructional model used at Landmark and discussed below. Nevertheless, I am not persuaded that with appropriate accommodations in the classroom (for example, preferential seating), small classes are necessary for Student to receive FAPE. Testimony of Gray; exhibits P-1, P-3, P-7, S-4, S-12.

Other detailed aspects of Student's educational program were recommended by witnesses, particularly by Parents' educational evaluator (Ms. Gray) as reflected in her written report. Although I expect that many, if not all, of these additional recommendations would benefit Student, there was not sufficient evidence to demonstrate their necessity for purposes of Student's receiving an appropriate education.

G. Conclusions Regarding IEP for the 2006-2007 Academic Year

For all of the reasons explained above, I find that North Reading's 6th grade IEP for the 2006-2007 academic year was not appropriate because it did not satisfy the minimum requirements under the IDEA and Massachusetts law and regulations relevant to the provision of appropriate special education and related services in the least restrictive environment.

This should have been apparent to North Reading in June 2006 when it first prepared this IEP. At that time, North Reading had completed its own testing, the 5th grade teachers understood Student's strengths and continuing phonological and literacy deficits, and Dr. Shaw's 2006 neuropsychological evaluation had been shared with North Reading. This should have been even more apparent in November 2006 by which time Ms. Gray's educational evaluation had been shared with North Reading. As a result of a November 2006 Team meeting, North Reading increased the services proposed by North Reading (an

increase in the reading services), but this did not correct the underlying deficiencies of the IEP, for the reasons explained earlier in this Decision.

H. Reimbursement for Landmark for 6th Grade

If a school district fails in its obligation to provide FAPE to a student with a disability, parents may enroll their son or daughter in a private school and seek retroactive reimbursement for the cost of the private school.²⁸ Parents are entitled to reimbursement for their out-of-pocket expenses only if I conclude not only that the proposed IEP failed to provide FAPE, but also that the privately-provided educational services were appropriate.²⁹ Determination of reimbursement is a matter of equitable relief.³⁰

Having determined that the 6th grade IEP proposed by North Reading was deficient with respect to the 2006-2007 academic year, I now consider whether Parents are entitled to reimbursement of part or all of their out-of-pocket expenses for Landmark during the academic year.

The First Circuit recently summarized and clarified the applicable standard when considering reimbursement for a parent's unilateral placement at a private school:

In *Burlington*, the Supreme Court reasoned that because parents who disagree with the proposed IEP are faced with a choice: go along with the IEP to the detriment of their child if it turns out to be appropriate or pay for what they consider to be the appropriate placement, they are entitled to reimbursement of the expenses of that placement if it turns out they were right in choosing it. Implicit in this reasoning is the notion that parents rightfully decide on a private placement when it addresses, at least in part, their child's special educational requirements, while the IEP does not. . . .

As we have recognized, a private placement need provide only *some element* of the special education services missing from the public alternative in order to qualify as reasonably calculated to enable the child to receive educational benefit. Nor must the placement meet every last one of the child's special education needs. But the reasonableness of the private placement necessarily depends on the nexus between the special education required and the special education provided.³¹

As a private school, Landmark has been specifically created and designed to address the educational needs of children with language-based learning disabilities – that is, students who, despite average to above average cognitive levels, have weaknesses in language skills. All students at Landmark have average to above average cognitive abilities, and all have a gap between their cognitive abilities and their academic achievement as a result of learning disabilities. Landmark specifically targets these language weaknesses by providing highly

²⁸ 20 USC 1412 (a)(10)(C)(ii); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985).

²⁹ *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 11-13 (1993).

³⁰ *Diaz-Fonseca v. Commonwealth of Puerto Rico*, 451 F.3d 13 (1st Cir. 2006); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 999 (1st Cir. 1990).

³¹ *Mr. I. v. Maine School Administrative District No. 55*, 480 F.3d 1, 19, 20 (1st Cir. 2007) (internal quotations and citations omitted; emphasis in original).

intensive remedial educational services through intensive small group instruction and 1:1 instruction. Testimony of Pulkkinen, Taylor.

A daily, 1:1 reading tutorial utilizing the LiPS program is provided to each student. This tutorial is intensive and individualized on the basis of each student's needs. For Student, in particular, the tutorial works on oral reading, spelling, composition, and handwriting. Testimony of Pulkkinen, Taylor.

Landmark provides an integrated educational program in that the remedial educational techniques and strategies that are used with a student to address her decoding, encoding, and written language deficits are applied throughout the curriculum so that these techniques and strategies are learned by the student as an automatic part of her repertoire, thereby allowing the student to apply these techniques and strategies in multiple settings. Therefore, for example, a child with decoding deficits is taught the same Lindamood Bell strategies (intended to ameliorate this deficit) in all learning contexts, including content area courses such as science and social studies. Testimony of Pulkkinen, Gray.

Relative to this aspect of the program, Ms. Gray wrote in the summary section of her observation report after visiting Landmark and observing Student's classes on May 8, 2007 (exhibit P-49, page 6):

With regards [sic] to the language arts component of the Landmark School's educational program, it is evident that many of [Student's] academic needs are being addressed. Specifically, phonemic awareness, decoding, encoding, reading fluency, and writing are being directly taught in both a 1:1 context as well as within small group settings. Equally importantly, [Student] is being given consistent opportunities during the school day to apply her decoding skills at an instructional level in her content area classes and given [Student's] level of skill deficit this is critical. A defining feature of the Landmark program was the fact that core language skills were not contained solely to the language arts curriculum, rather they were integral components of the content area curriculum. As previously noted by this examiner, the integration of remedial services with the direct teaching of content areas is critical to ensure successful learning.

Landmark provides speech-language services indirectly (rather than directly) by having its speech-language pathologist consult with teachers for the purpose of training them to implement strategies to address speech-language deficits within the classroom. Additional, one-to-one direct speech-language services may be provided occasionally. Students are referred out for additional speech-language services if the Landmark speech-language services are determined to be insufficient. Testimony of Pulkkinen, Taylor.

Landmark is approved by the Massachusetts Department of Education as a special education school. Testimony of D'Anjou.

For these reasons, I find that Landmark's program meets the First Circuit's above-described reimbursement standard by providing precisely the combination of services that I have earlier determined (part IVF of this Decision) to be minimally necessary for Student to receive FAPE. I summarize these minimum requirements as follows: (1) a language-based

instructional model, with all students having average to above-average intelligence and language-based learning needs; (2) daily one-to-one tutorial utilizing a program intensively focused on developing phonological awareness and strengthening phonological memory (at Landmark, the LiPS program); (3) an integrated education model where all teachers are trained in the same strategies for encoding, decoding, and written expression, and where these strategies are taught and reinforced consistently throughout all aspects of the curriculum; and (4) speech-language instruction that is available to address both Student's articulation deficit and her language deficits.

North Reading takes the position that the Landmark program is not appropriate for Student for a number of reasons. Since North Reading has in the past and continued at the time of the hearing to place students at Landmark who require a substantially-separate educational setting to address their language-based deficits (testimony of D'Anjou), I understand North Reading's concerns to relate principally to the appropriateness of Landmark for Student *in particular*, rather than a more general objection to Landmark's educational program for students who have a language-based disability and who require a substantially separate program to address those deficits. I will address each of North Reading's concerns.

5th grade curriculum taught to Student. When asked why she believed Landmark to be inappropriate for Student, the North Reading administrator who oversees its special education services (Ms. D'Anjou) testified that, in her opinion, Student can be educated successfully in North Reading's proposed education model and therefore does not require a program that is substantially-separate from the regular education environment of the public school. Ms. D'Anjou provided one additional reason in support of her view that Landmark was not appropriate for Student in particular – that reason being that in certain classes Student was taught a 5th grade curriculum during her 6th grade year at Landmark. Ms. D'Anjou opined that Student would have been able, with accommodations, to access a 6th grade curriculum at North Reading.

Ms. D'Anjou is correct with respect to the content of some of Student's courses at Landmark.

At Landmark, the reading level of a student's text may be adjusted so that the student is not reading at grade level text – for example, Student has generally been using 5th grade textbooks during her 6th grade year at Landmark. Landmark staff testified that this is done purposely so that each student will have access to the text through her own reading and decoding abilities rather than having to rely on assistance from others (for example, the teacher reading the text aloud). The additional positive result from this practice is that the student is able to apply her decoding strategies to the text being used in each class, and, as the student's reading improves, the student is given a higher level text. Testimony of Pulkkinen, Taylor.

At Landmark, Students are grouped not strictly on the basis of grade (Student was grouped with 5th, 6th and one 7th graders), but rather students are placed in small groups on the basis of their individual achievement and test scores for the purpose of defining each group in terms of a narrow range of skills. (Student has five to eight children in each of her classes.) This reflects Landmark's conscious choice to place a greater emphasis on teaching skills than on teaching grade-level content. As Mr. Pulkkinen explained in his testimony, Landmark is a

skills-based program. This is particularly appropriate for Student at this juncture of her educational career since her overriding educational need is to improve her phonological abilities, upon which the development of her literacy skills depends. Testimony of Pulkkinen, Taylor.

For these reasons, I am persuaded that the approach taken by Landmark, which involved teaching of 5th grade curriculum to Student during the 6th grade, to be appropriate for Student.

Qualifications of Landmark's teachers. North Reading reviewed the resumes of several Landmark staff who taught Student in 6th grade and argued that their qualifications were inadequate. North Reading focused exclusively on what appeared on the face of resumes of Landmark staff and, on this basis, argued that one or more Landmark staff was unqualified.

All teachers at Landmark are taught to understand and implement the Lindamood Bell phonemic sequencing program, which begins working with the phonemic component (isolated sounds) of a child's language, then applying phonemic awareness to multi-syllable words, and then applying to real words. Simultaneously, work is done on reading fluency (through the Read Naturally program) and sight word vocabulary. All new teachers are required to attend a week-long training on Lindamood Bell. All Landmark teachers have the same training regarding methodology to ensure that methodology is taught consistently throughout the school. During the school year, teachers receive additional training with various aspects of language development, and in content areas such as social studies and science. Testimony of Pulkkinen, Taylor.

Landmark occasionally hires a teacher who is certified in regular education but not special education and very occasionally hires a teacher who is certified in neither regular nor special education, and both were was case with staff working with Student at Landmark in 6th grade. As part of the employment contract, Landmark requires these people to enroll in a certification program. These teachers are supervised by a certified teacher. Testimony of Pulkkinen.

The un rebutted testimony of Ms. Gray was persuasive that this combination of initial training, on-going training and education, and supervision would be sufficient to allow the Landmark teachers to implement appropriately the Landmark curriculum. I find her testimony, together with the explanations of the Landmark witnesses, to be persuasive.

Speech-language services. North Reading argued that Landmark is not appropriate because it does not include the direct speech-language services from a speech-language pathologist, which were recommended for Student in various evaluations and were included within North Reading's 6th grade IEP. This argument is supported by the testimony of Ms. Mavrinac.

Landmark does not utilize direct speech-language instruction as part of its curriculum, although as necessary, Landmark will recommend that an individual student receive speech-language services outside of school, and occasionally Landmark will provide a limited amount of 1:1 direct speech-language services to a student. For Student, in particular, the Landmark speech-language pathologist provided ten individual sessions (of ten minutes each) to work on Student's articulation deficit (lateral lisp). Testimony of Pulkkinen, Taylor.

Landmark has tried providing direct speech-language services, but has found it preferable to have its speech-language pathologist consult with teachers for the purpose of training its teachers to implement strategies to address speech-language deficits within the classroom. Landmark has found that this approach is more likely to result in successful carry-over of skills learned into other settings during the day. Testimony of Pulkkinen, Taylor.

In her testimony, Ms. Gray supported the Landmark approach regarding speech-language services for Student.

On the basis of this evidence, I am unable to conclude that the Landmark approach for providing speech-language services is inappropriate for Student. Moreover, even were I to conclude that additional, direct speech-language services were necessary for Student for 6th grade, their omission would not defeat reimbursement under the First Circuit standards discussed earlier, and for purposes of prospective placement, these services can be added for Student, as they are added, as needed, for other students at Landmark.

Implementation of accommodations and integration of learning strategies. North Reading took the position that although Landmark claims to integrate learning strategies and techniques throughout the curriculum, it does not actually do so. In addition, North Reading argued that Landmark does not implement many of the accommodations listed on Student's 6th grade IEP. In support of this position, North Reading relied on the testimony of two of its staff (Ms. Conway and Ms. Hayden) who visited and observed one-half of one day's instruction at Landmark. I do not doubt that these witnesses reported, through their testimony, what they observed at Landmark, but, for the following several reasons, I do not find this testimony persuasive that Landmark is an inappropriate placement for Student or that reimbursement should be denied.

There is little need to implement at Landmark all of the accommodations from Student's 6th grade IEP. Much of Student's ability to access the North Reading curriculum was dependent upon North Reading's making significant accommodations in the classroom. By comparison, the Landmark classes are considerably smaller than those at North Reading, and the education is skills-based, with students carefully grouped according to skill level. As discussed above, this is intentional by Landmark precisely so that Student's skills will be sufficient to access what is taught without the need for accommodation. Testimony of Pulkkinen. These distinctions obviated the need for implementing at Landmark all of the extensive accommodations provided at North Reading.

The evidence presented by North Reading regarding lack of observed integration was rebutted by the testimony of Ms. Gray, the testimony of Landmark staff, the progress notes of Landmark staff, and the fact that Landmark implements a teaching model that is, by its nature, designed to integrate remedial skill development throughout the curriculum for each student. Testimony of Gray, Pulkkinen; exhibits P-18 (Oct 13, 2006 reports regarding science, math, social studies), P-49 (page 6). See also the portions of Ms. Gray's observation report, quoted above in this part of the Decision, addressing this issue directly.

Counseling services. North Reading took the position that Landmark's services are not appropriate because they do not include necessary counseling for Student. I disagree for

several reasons. First, I earlier concluded that such services are not necessary in order for Student to receive FAPE.

Second, counseling services are available from Landmark. Landmark makes available individual counseling services through three staff counselors. Also, counselors go into the oral expression class once every two weeks to work on issues with all students in the class. Testimony of Pulkkinen.

Third, if necessary, this service could be provided outside of the Landmark program, and, in any event, would not be cause to deny reimbursement under the First Circuit standards explained above.

Least restrictive learning environment. Finally, North Reading argues that Landmark is not the least restrictive learning environment appropriate for Student. North Reading is correct that the IDEA requires that a free, appropriate education be available to all eligible special needs students. Within this general mandate, the IDEA provides a specific mainstreaming directive, requiring, as a general rule, that a student be educated with other students who are not disabled.³²

However, the statutory language itself includes the qualifying phrase “to the maximum extent appropriate,”³³ and the Supreme Court has made clear the appropriateness of privately placing students in a substantially-separate placement when their educational needs cannot be met in a more integrated setting.³⁴ There is no doubt that Student should be educated within the public schools’ less restrictive educational model were it possible for her to receive appropriate special education and related services within such a placement. For the reasons explained earlier in this Decision, however, I have concluded that it is not possible to do so.

For this reason, I find that the substantially-separate educational model at Landmark is the least restrictive placement that is appropriate for Student.

In conclusion, I find the 6th grade placement at Landmark to be appropriate to meet Student’s special education and related needs, with the result that reimbursement should occur for the 6th grade school year.

³² 20 USC 1412(a)(5)(A). See also 34 CFR 300.114(a)(2)(i) requiring that services be provided in the least restrictive environment to the maximum extent appropriate. Massachusetts includes a similar directive at MGL c. 71B, ss. 2, 3, and 603 CMR 28.06(2)(c).

³³ See, e.g., *Pachl v. Seagren*, 2006 WL 1933393 (8th Cir. 2006) (“we have emphasized that the statutory language significantly qualifies the mainstreaming requirement by stating that it should be implemented to the maximum extent *appropriate*”) (internal quotations omitted; emphasis in original); *Hartmann v. Loudoun County Bd. of Educ.*, 118 F.3d 996 (4th Cir. 1997) (“IDEA encourages mainstreaming, but only to the extent that it does not prevent a child from receiving educational benefit”).

³⁴ *Burlington v. Mass. Department of Education*, 471 US 359, 369 (1985) (“Act contemplates that such education will be provided where possible in regular public schools, with the child participating as much as possible in the same activities as nonhandicapped children, but the Act also provides for placement in private schools at public expense where this is not possible.”).

I. Appropriateness of North Reading's Proposed Summer Services

Having considered North Reading's IEP and reimbursement for the 6th grade *academic year*, I now turn to a consideration of the special education services proposed by North Reading for the *summer of 2006*. Parents had unilaterally placed Student at Landmark for the summer of 2006 and through the instant dispute, they are seeking reimbursement of expenses.

The state special education regulations utilize a regression standard to determine whether a summer program may be appropriate:

An extended year program may be identified if the student has demonstrated or is likely to demonstrate substantial regression in his or her learning skills and/or substantial difficulty in relearning such skills if an extended program is not provided.³⁵

The federal special education regulations employ a FAPE standard:

(a) *General*. (1) Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section. (2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.³⁶

Federal courts have interpreted the federal regulatory standard typically either to be a regression standard to be met,³⁷ or to mean that summer services are appropriate when the benefits accrued to a disabled student during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months, with the parameter of requisite summer services defined by what is necessary to avoid this outcome.³⁸

Through its proposed IEP (June 2006 to June 2007), North Reading offered the following services for the summer of 2006: 180 minutes per day of special education services for three days per week for six weeks as follows. During each day, there would be 1½ hours of reading tutorial by a certified reading teacher and 1½ hours of math support and review by a math special education teacher. See part IIIB of this Decision.

The appropriateness of an IEP for the school year and the appropriateness of an IEP for the summer are judged by different standards. See part IVB of this Decision. Parents presented evidence in support of their claims regarding the alleged failure of North Reading's IEPs to

³⁵ 603 CMR 28.05(4)(d)1.

³⁶ 34 CFR 300.106.

³⁷ E.g., *Cordrey v. Euckert*, 917 F.2d 1460, 1474 (6th Cir. 1990). Although the federal FAPE standard may, arguably, be broader than the Massachusetts regression standard, the commentary to the 2006 federal regulations appears to take the position that states may properly use regression as their criteria for eligibility for extended year services. Federal Register, vol. 71, no. 156, August 14, 2006, page 46582, 3rd column.

³⁸ *Kenton County School District, v. Hunt*, 384 F.3d 269, (6th Cir. 2004); *MM by DM and EM v. School Dist. of Grenville County*, 37 IDELR 183 (4th Cir. 2002); *Johnson v. Indep. Sch. Dist. No. 4*, 921 F.2d 1022, 1028 (10th Cir. 1990); *Alamo Heights Indep. Sch. Dist. v. State Bd. of Educ.*, 790 F.2d 1153, 1158 (5th Cir. 1986).

provide FAPE during the school year. However, Parents did not present evidence that the summer services offered by North Reading would violate the above-referenced state and federal standards regarding summer services. Similarly, Parents did not present evidence as to what minimum summer services would be necessary in order to meet this standard. And, even if I were to conclude that the North Reading summer services were inappropriate, Parents provided no substantial evidence regarding the appropriateness of the Landmark summer services.

For these reasons, I find that with respect to the summer of 2006, Parents have not met their burden of persuasion regarding the inappropriateness of North Reading's proposed IEP and the appropriateness of Landmark summer services.

Accordingly, I find in favor of North Reading on the issue of reimbursement for services for the summer of 2006.

ORDER

With respect to the 6th grade academic year, North Reading's proposed IEP from June 6, 2006 to June 6, 2007 was not reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. The Landmark School was an appropriate placement for Student for 6th grade. Accordingly, North Reading shall reimburse Parents for their out-of-pocket expenses relative to Student's placement at Landmark School for the 2006-2007 academic year.

With respect to the summer of 2006, North Reading's proposed IEP was appropriate. Accordingly, North Reading is not required to reimburse Parents for their expenses relative to Student's placement at Landmark School for the summer of 2006.

By the Hearing Officer,

William Crane
Dated: July 6, 2007

**COMMONWEALTH OF MASSACHUSETTS
BUREAU OF SPECIAL EDUCATION APPEALS**

THE BUREAU'S DECISION, INCLUDING RIGHTS OF APPEAL

Effect of the Decision

20 U.S.C. s. 1415(i)(1)(B) requires that a decision of the Bureau of Special Education Appeals be final and subject to no further agency review. Accordingly, the Bureau cannot permit motions to reconsider or to re-open a Bureau decision once it is issued. Bureau decisions are final decisions subject only to judicial review.

Except as set forth below, the final decision of the Bureau must be implemented immediately. Pursuant to M.G.L. c. 30A, s. 14(3), appeal of the decision does not operate as a stay. Rather, a party seeking to stay the decision of the Bureau must obtain such stay from the court having jurisdiction over the party's appeal.

Under the provisions of 20 U.S.C. s. 1415(j), "unless the State or local education agency and the parents otherwise agree, the child shall remain in the then-current educational placement," during the pendency of any judicial appeal of the Bureau decision, unless the child is seeking initial admission to a public school, in which case "with the consent of the parents, the child shall be placed in the public school program". Therefore, where the Bureau has ordered the public school to place the child in a new placement, and the parents or guardian agree with that order, the public school shall immediately implement the placement ordered by the Bureau. *School Committee of Burlington, v. Massachusetts Department of Education*, 471 U.S. 359 (1985). Otherwise, a party seeking to change the child's placement during the pendency of judicial proceedings must seek a preliminary injunction ordering such a change in placement from the court having jurisdiction over the appeal. *Honig v. Doe*, 484 U.S. 305 (1988); *Doe v. Brookline*, 722 F.2d 910 (1st Cir. 1983).

Compliance

A party contending that a Bureau of Special Education Appeals decision is not being implemented may file a motion with the Bureau of Special Education Appeals contending that the decision is not being implemented and setting out the areas of non-compliance. The Hearing Officer may convene a hearing at which the scope of the inquiry shall be limited to the facts on the issue of compliance, facts of such a nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Education or other office for appropriate enforcement action. 603 CMR 28.08(6)(b).

Rights of Appeal

Any party aggrieved by a decision of the Bureau of Special Education Appeals may file a complaint in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts, for review of the Bureau decision. 20 U.S.C. s. 1415(i)(2).

An appeal of a Bureau decision to state superior court or to federal district court must be filed within ninety (90) days from the date of the decision. 20 U.S.C. s. 1415(i)(2)(B).

Confidentiality

In order to preserve the confidentiality of the student involved in these proceedings, when an appeal is taken to superior court or to federal district court, the parties are strongly urged to file the complaint without identifying the true name of the parents or the child, and to move that all exhibits, including the transcript of the hearing before the Bureau of Special Education Appeals, be impounded by the court. See *Webster Grove School District v. Pulitzer Publishing Company*, 898 F.2d 1371 (8th Cir. 1990). If the appealing party does not seek to impound the documents, the Bureau of Special Education Appeals, through the Attorney General's Office, may move to impound the documents.

Record of the Hearing

The Bureau of Special Education Appeals will provide an electronic verbatim record of the hearing to any party, free of charge, upon receipt of a written request. Pursuant to federal law, upon receipt of a written request from any party, the Bureau of Special Education Appeals will arrange for and provide a certified written transcription of the entire proceedings by a certified court reporter, free of charge.