

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FUSION LEARNING, INC,)	
Plaintiff,)	
)	
VS.)	C.A. NO. 1:21-cv-11059-PBS
)	
ANDOVER SCHOOL COMMITTEE,)	
TOWN OF ANDOVER D/B/A ANDOVER)	
SCHOOL DEPARTMENT D/B/A ANDOVER)	
PUBLIC SCHOOLS,)	
)	
Defendants.)	

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE A
SECOND AMENDED COMPLAINT

Factual Overview

Given the Court's familiarity with this matter, the defendants will be brief. In essence, plaintiff Fusion Learning, Inc. ("Fusion") claims that the Andover School Committee violated its right to academic freedom by denying its application to operate a private school in Andover. On June 29, 2022, this Court issued a Memorandum and Order on the Defendants' Motion to Dismiss in which the Court dismissed Fusion's due process claims and its claim for declaratory relief. Moreover, the Court dismissed all of the claims against the individual School Officials on the grounds of qualified immunity. The Court denied the defendants' Motion to Dismiss as it relates to Fusion's allegation that the defendants' denial of a license to operate a private school violates its right to academic freedom. Subsequently, Fusion Academy moved to and this Court allowed its Motion to file a First Amended Complaint for purposes of adding an equal protection claim. Fusion now seeks to amend its First Amended Complaint to add a claim under the Americans With Disabilities Act and to reinstate its previously dismissed procedural due process

claim. As explained more fully below, Fusion's Motion for Leave to File A Second Amended Complaint should be denied.

Argument

Point One. Fusion's Premise is Erroneous and No ADA Claim Exists.

Fusion erroneously argues that Andover denied Fusion's application for approval due to a concern that it would incur additional costs for students attending Fusion and therefore discriminated against the corporation. Fusion's argument is based on a flawed and mistaken understanding of Andover's obligations, including funding obligations, to private school students who are eligible for special education attending private schools located in Andover. See Proposed Second Amended Complaint at ¶¶ 32 – 36, 105-108. All of the claims identified in the Proposed Second Amended Complaint regarding children with disabilities pertain to certain rights that may be afforded to individual students and their parents under the federal and state special education statutes: the Individuals with Disabilities Education Act (IDEA) at 20 U.S.C. §§1400 et seq. and M.G.L. c. 71B. Proposed Second Amended Complaint, ¶¶ 32 – 36. Only a parent or a public agency may initiate legal action under the IDEA. 20 U.S.C. §1415(b)(6); 34 C.F.R. §300.507; see also 603 C.M.R. §28.08(3)(a). Neither federal or state special education law provide a corporation with a private right of action.¹

The substantive and procedural rights afforded to students under federal and state special education law exist regardless of whether such students attend a public or private school. 20 U.S.C. §§1412(a)(1)(A); 1412(a)(3), 1412(a)(4); M.G.L. c. 71B, §1. Unlike the IDEA, in Massachusetts, students who are eligible for special education have a continuing entitlement to a

¹ Solely for purposes of argument, even if Fusion had a legitimate claim under the IDEA, it would be required to exhaust administrative remedies prior to proceeding to court. See 20 U.S.C. §§1415(i)(2), 1415(l); 300 C.F.R. §300.516.

free appropriate public education (FAPE) regardless of whether they attend a public or private school. M.G.L. c. 71B, §§1, 5; 603 C.M.R §§28.03(e), 28.10(1)-(2). However, Fusion ignores the significant fact that for private school students, it is the school district where the eligible student resides, not the district where the private school is located, that has the obligation provide these students with FAPE. *Id.* Students attending private schools outside of their resident districts are not entitled to receive FAPE from the district where the private school is located. *Id.*

(i) Students Residing in Andover Attending Private Schools Located in Andover.

Andover has an ongoing obligation to offer FAPE to eligible private school students. 20 U.S.C. §§1412(a)(1)(A); 1412(a)(3) 1412(a)(4); M.G.L. c. 71B, §§1, 5; 603 C.M.R §§ 28.03(e), 28.10(1)-(2). This obligation is neither enlarged nor obviated by the presence or absence of any particular private school in Andover. M.G.L. c. 71B, §5. As such, there is not necessarily any additional cost associated with provision of FAPE to students residing in Andover and attending private schools whether in Andover or another community. Any assertion otherwise is purely speculative. Andover must continue to track and offer FAPE to these students regardless of where these students attend school. *Id.* In fact, as a practical matter, the cost of providing private school students residing in Andover with special education services is often less than what it might otherwise be due to the fact that these students and their parents often do not avail themselves of all of services to which they might be entitled for a variety of reasons.² Fusion's premise that there are any unaccounted for or intolerable costs for this category of private school students is simply incorrect.

² Examples include the logistics and practicality of scheduling services with the public school in light of a student's private school schedule, and parents who simply do not want their children to receive any services from or through the public schools.

(ii) Students Residing in Other Communities Attending Private Schools in Andover.

Fusion's argument as to Andover's obligations to eligible students residing outside of Andover, but attending private schools located in Andover, largely rests on the erroneous presumption that Andover would be required to use its "proportionate share" funding for students eligible for special education attending Fusion in Andover. See Proposed Second Amended Complaint at ¶¶ 105-108. Fusion's assumption is simply incorrect. Students attending private schools may receive special education evaluations and services from the district where the private school is located pursuant to a "proportionate share" funding formula. See 20 U.S.C. §1412(a)(10). However, the disbursement of proportionate share funds rests solely within the discretion of the school district where the private school is located. *Id.* at §1412(a)(10)(A)(vii). There is simply no obligation to spend one penny of proportionate share funding on the provision of special education services to eligible non-resident students attending a particular private school located in Andover.³ *Id.* Moreover, in the event of a dispute with respect to proportionate share funding determinations, neither parents nor students have any private right of action and litigation is impermissible. 34 C.F.R. §300.140. Should a parent dispute a district's decision as to the expenditure of proportionate share funds, the parent may file a complaint with the state educational agency. *Id.* Because Andover has the sole discretion with respect to the expenditure of proportionate share funding, and because Andover has no obligation to expend any proportionate share funds for eligible students attending a particular private school located in Andover, Fusion's premise its application was denied because funds would be "siphoned" away from the district and made available to eligible Fusion students is simply false.

³ As previously stated, the resident school district., not the district where the private school is located, remains responsible for the provision of FAPE to this category of students. 603 C.M.R. §28.03(e).

Fusion acknowledges that in order for the Americans with Disabilities Act (ADA) to be applicable, Fusion must be an “organization seeking to aid those with a disability.” See Plaintiff’s Memorandum in Support of Motion for Leave to File a Second Amended Complaint, p. 3. However, correspondence from Fusion’s counsel to the former chair of Andover’s School Committee dated December 29, 2020, Fusion admits that it is “not seeking to target parents of special needs students.” Fusion further admits students with disabilities is not its target student population. See Proposed Second Amended Complaint, ¶¶104-105. Therefore, by its own admission, unlike the drug rehabilitation facilities cases cited in its Memorandum, Fusion is not an organization seeking to aid or otherwise provide services to students with disabilities. Because Fusion is not, by its own admission, designed for purposes of aiding students with disabilities, and because Fusion’s discrimination claim is based on erroneous and speculative assumptions regarding Andover’s obligations to special education students attending private schools, there is no basis for its purported ADA claims. Accordingly, the Court should deny this portion of Fusion’s Motion for Leave to File a Second Amended Complaint.

Point Two. Fusion Received All The Process It Is Due.

Taken as a whole, Fusion's procedural due process claim is belied by the following Q & A from its own Answers to the Defendants' First Set of Interrogatories, as follows:

Interrogatory Number 1: Please state with specificity any and all communications you or anyone acting on your behalf had with any former or current elected or appointed official, representative or employee of the Town of Andover or the Andover School Committee which relate to or support your efforts to open a private school in the Town of Andover [sic].

Answer to Interrogatory 1.

Numerous such communications occurred from 2018 through 2021, likely numbering into the thousands, including in-person meetings, telephone calls, emails, text messages and Zoom conferences. Many, if not most of these communications, are contained in the documents and ESI defendants have already produced to Fusion in this litigation and in the documents which Fusion has/will produce to Defendants. From these documents, one can reasonably ascertain the requested information including the person(s) with whom Fusion had the communication, where and when the communication took place, whether there are any recorded notes of the communication, and the substance of the communication. To the best of Fusion's knowledge at this time, the persons with whom it had such communications include the Andover School Committee members during the 2018-2021 period, Sheldon Berman, Sandra Trach, Dee Delorenzo, Alison Phelan, Rita Casper, Sarah Stetson, Glen Ota, Tom Carbone, Annie Gilbert, the principal(s) and assistant principal(s) of the high school during the relevant time periods, the town manager(s) and assistant town manager(s) during the relevant time period, possibly some department heads and Catherine Lyons. Fusion did not record any communications. Any notes taken in respect of such communications will or have already been produced. In addition, please refer to the answer to Interrogatory 7.

It simply defies credulity for Fusion Learning to argue that its procedural due process rights were denied where, in addition to the formal Andover School Committee ("ASC") meetings discussed below, Fusion had communications with Andover School officials "likely numbering into the thousands." Still, for purposes of verisimilitude, the ASC will address Fusion's concerns with respect to its first and second applications to open a private school.

The defendants start with Fusion's first application to operate a private school, which was reviewed by the Andover School Committee in the Spring, 2019. On March 18, 2019, Asst. Supt. Sandra Trach gave a presentation to the ASC with respect to her detailed review of

Fusion's application. See Exhibit A annexed hereto. A few days later, Fusion made its own presentation in full to the ASC. Second Amended Complaint, ¶ 65. Fusion presented its application to the ASC on March 21, 2019.⁴ The March 21st Minutes make pellucid that Fusion was given ample opportunity to make its case to the Andover School Committee. The ASC pauses briefly to address what Fusion alleges are multiple violations of the Open Meeting Law and various other claims. In relevant part, Mass. Gen. Laws ch. 30A, § 20 a/k/a Open Meeting Law, provides that, "[e]xcept as provided in section 21, all meetings of a public body shall be open to the public." Mass. Gen. Laws ch. 30A, §20(a). That is it. Contrary to Fusion's allegations, meetings of public bodies are not iterative and never-ending. Like anyone else who comes before the ASC, Fusion submitted its first application and supporting materials to the ASC; Fusion then presented its overall educational approach and programs to the ASC; and, thereafter, it was left to the ASC to engage in "deliberations" as defined in the Open Meetings Law. *Id.*, § 18.^{5, 6} This process fits comfortably within Supreme Court precedent. *See Heffron*

⁴ The Andover School Committee Minutes (March 21, 2019) are annexed hereto as **Exhibit B**. As these ASC meetings are referenced in the Second Amended Complaint, the Court can consider them without converting Fusion's Motion for Leave to file a Second Amended Complaint to a motion for summary judgment. See, e.g., *Watterson v. Page*, 987 F.2d 1, 3 (1st Cir. 1993). Indeed, these ASC Minutes are the very items (which were not before the Court at the time), that the Court alluded to in its Memorandum And Order On Motion To Dismiss, p. 13.

⁵ By way of example only, Fusion claims that the ASC violated the Open Meetings Law when Supt. Berman sent and three members of the ASC allegedly discussed "two media articles of doubtful quality that painted Fusion Academy in a negative light." Proposed Second Amended Complaint, ¶ 68; however, provided no conclusions were reached, the sharing of information among public officials does not constitute a "deliberation" as defined in the Open Meeting Law. On the contrary, it is specifically allowed. Mass. Gen. Laws ch. 30A, § 18.

⁶ While Fusion Learning is not challenging the three minute time limit accorded everyone during the public speak portion of the ASC meetings, these time limitations are constitutionally sound. See, e.g., *Shero v. City of Grove*, 510 F. 3d 1196, 1203 (10th Cir. 2007)(finding that three-minute time limit to speak at public comment portion of city council meeting did not constitute a prior restraint in violation of the First Amendment).

v. Int'l Soc'y. for Krishna Consciousness, 452 U.S. 640, 647 (1981)(“The First Amendment does not guarantee [persons] the right to communicate [their] views at all times and places and in any manner that may be desired.”). Fusion alleges that the ASC Chair, Shannon Scully, did not provide Fusion with a copy of Supt. Berman’s “memo” in which he (Berman) stated that he supports the recommendation of Asst. Supt. Trach not to approve Fusion’s first application: nor was Supt. Berman required to do so. On April 8, 2019, Trach emailed Fusion Academy that the ASC would vote on its application at the April 11, 2019 meeting. Several Fusion officials including its Vice President, New School Operations, Mike Vander, speak at length at the April 11th meeting.⁷ At the conclusion thereof, the ASC voted (5-0) not to approve Fusion’s application to open a private school in Town.

Turning briefly to Fusion’s second application reviewed by the ASC, Fusion alleges that at the time of the ASC’s denial on April 11, 2019 *and during subsequent conversations*, members of the ASC told Fusion Academy that “if it addressed Asst. Supt. Trach’s criticisms of the first application . . . there would not be any reason to disapprove a second application.” Proposed Second Amended Complaint, ¶ 118. On May 14, 2020, Fusion Academy resubmitted its application to open a private school. On March 16, 2021, the ASC publicly posted for its March 18th meeting that Fusion Academy’s application was listed a discussion item. Like anyone else with a matter before the ASC, Fusion was allowed to address the ASC during the public segment portion of the ASC meeting on March 18, 2021. At the ASC meeting, Asst. Sut. Trach provided a verbal report on her review of Fusion’s second application. Fusion Learning complains that the ASC Chair refused to permit Fusion representatives to respond to the comments of other ASC members and the “testimony” of Asst. Supt.

⁷ The Minutes of the ASC meeting (April 11, 2019) are annexed hereto as **Exhibit C**.

Trach. Id., ¶ 133. As explained above, the level of participation that Fusion Learning seems to think it was entitled to is well beyond what is required under the Open Meetings Law, ch. 30A, §20(a). In any event, the ASC’s vote on Fusion Learning’s second application was put over until March 25, 2021. Again, like anyone else, Fusion Learning was “restricted” to addressing the 2021 Recommendation of Asst. Supt. Trach to the public comment portion of the meeting. Id., ¶ 142. This portends no due process violation. *See, e.g., Minnesota State Bd. for Cmty. Coll. v. Knight*, 465 U.S. 271, 284 (1984)(citing *Bi-Metallic Investment Co. v. State Board of Equalization*, 239 U.S. 441, 445 (1915)(Holmes, J.)(rejecting right under the Due Process Clause of large group of taxpayers to challenge city-wide tax assessment). Fusion concedes that, although on short notice, the ASC received its responsive letter to Asst. Supt. Trach’s 2021 Recommendation prior to the start of the March 25th meeting. Fusion again faults the ASC Chair for not reading Fusion’s responsive letter during the meeting and not posting it for public view: she is not required to do either. In any event, following a lengthy discussion among members of the ASC, the ASC voted (4-1) not to approve Fusion’s second application. See Exhibit D annexed hereto. In sum, Fusion Learning maintains that, “[t]he conduct of the hearing deprived Fusion Academy of its right to be heard.” Id., 145. The ASC Minutes and Fusion’s own Answers to Interrogatories demonstrate just the opposite. Fusion Learning’s efforts to revive its procedural due process claim fall short and, accordingly, the Court should deny this portion of its Motion for Leave to File a Second Amended Complaint.⁸

⁸ It is worth noting that Fusion Learning has a right to file an OML complaint with the MA. Office of the Attorney General. See Mass. Gen. Laws ch. 30A, § 23. Among other things, the OAG can nullify in whole or in part action taken by the ASC. Id., § 23(c)(3). The defendants do not know if Fusion Learning has availed itself of this statutory remedy, but will endeavor to find out during discovery. In any event, this provides Fusion with a post-deprivation remedy sufficient to cure any procedural due process claim.

CONCLUSION

Wherefore, the defendants respectfully submit that plaintiff's Motion for Leave to file a Second Amended Complaint should be denied together with such additional relief as the Court deems just and proper.

Respectfully submitted,

The Defendants,

TOWN OF ANDOVER,
ANDOVER SCHOOL COMMITTEE
By their Attorneys,

PIERCE DAVIS & PERRITANO LLP

/s/ Adam Simms

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Dated : January 11, 2023

CERTIFICATE OF SERVICE

I hereby certify that the foregoing, filed through the Electronic Case Filing System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that a paper copy shall be served upon those indicated as non-registered participants on January 11, 2023.

/s/ Adam Simms

Adam Simms, Esq.



**Andover School Committee
Minutes of Thursday, March 18, 2021
Virtual Meeting**

Participants from the School Committee: Chair Shannon Scully, Vice-Chair, Susan McCready, Tracey Spruce, Paul Murphy, and Lauren Conoscenti.

Others participating: Interim Superintendent Dr. Claudia Bach, Assistant Superintendent Sandra Trach, Assistant Superintendent Sara Stetson, Chief Operations Officer Stephen Nembirkow, Director of Innovation Stephen Chinosi

I. Regular Meeting

Call to Order/Moment of Silence

Chairperson Scully called to order the meeting at 7:00 P.M. broadcast by Andover TV and on Comcast Channel 99, Verizon Channel 43 or streamed: www.andovertv.org. *Public Participation via email: scremote@andoverma.us or through live video comment with advanced WebEx registration.*

The meeting began with a Moment of Silence.

The Chair reported that an item has been added to the agenda under Education regarding vaccines for educators and staff.

A. Recognitions/Communications

Dr. Bach recognized the students in Kindergarten and Gr.1 who are the first group of students to return to in-person learning; thank you to all of the faculty for making this possible. Claudia is awed by the enormous amount of work that went into re-imagining learning over the past year.

B. Public Input

C. Response to Public Input

D. Education

1. Learning Models (Hybrid/Remote/In-Person)

In response to Commissioner Riley's mandate that all elementary and middle school students must return to school (Grs K-5 April 5th, Middle School April 28th), the APS Administrators presented an overview of the plans for return to in-school learning and timelines. Each presenter provided details on different areas: Transportation, Food Services, Music, Physical Education/Athletics, Health/Covid, Student Services, etc.

Sandy Trach, Assistant Superintendent for Teaching & Learning talked about DESE's distancing requirements, the importance of the online registration survey for students in grades 6-8, and logistics planning which is complicated and extensive. Their aim is to minimize teacher changes as well as team changes, but in some cases, these may be required. The hybrid/remote switch will end on March 22nd, parents should reach out to principals if they have questions.

AHS will remain remote at this time. The Administration is supporting principals to ensure they have proper staffing in classrooms and in remote academy. Thank you to Lenore Price (Andover Coalition for Education) for coordinating and spearheading the much-needed volunteers for the elementary and middle schools.

Sara Stetson, Assistant Superintendent for Student Services talked about the changes to the master schedule which required the schools to operate on Wednesdays necessitating multiple changes to students' special needs services schedules. The update also included information on provisions for mental health, social & emotional learning and health and safety protocols in nursing.

APS Principals from each level presented information specific to their grade levels, including distances for classroom seating and lunch, devices, integrated arts, arrivals/dismissals, classroom placement, and adjusting staffing based on enrollment for in-person and remote academy and logistics.

Steve Nembirkow talked about space which is an issue, especially when we need 6' for eating spaces and 3' for classrooms. In order to meet DESE requirements, tents will be purchased to use for lunches across the district, individual desks with individual seats for students, and at least 250 desks specifically for AHS. Plexiglass will be installed to provide collaborative learning spaces and safety measures. These are large and costly purchases being supported by the ESSER funds.

Hannah Tolla, Data & Financial Analyst, reported on the results of the registration and planning surveys. About 90% of responses received indicated that parents would like their children to return to in-person learning; the biggest shifts were at the elementary level from remote to in-person. AHS is remaining steady with remote and has the lowest response rate, 61% of MS families responses were to return to in-school learning. The registration and planning links will stay open until Sunday. Hannah will also contact Home School families.

a. General updates including Health and Safety

Director of Nursing, Rita Casper, reported that some in-school COVID testing has been provided for staff in the elementary levels this past week; there were no positive tests. The testing will be available to the High School staff beginning next week. Additionally, they have collaborated with the Greater Lawrence Family Health Center to sign staff members up for the COVID vaccine.

Food Services Director, Gail Koutroubas reported that meals will continue to be served at no charge until September 30th. Students in K-8 need to pre-order their lunch. Please go to <https://onlineordering.ling.com/> to preorder.

b. Transportation for 8th Graders

Steve Nembirkow, Transportation Director, Cindy Button and Sandy Trach, presented a proposal for extending transportation ridership to Grade 8 students in the district. Email blasts will be sent out to parents informing them of the process. Parents should let schools

know if students are going to after-school locations. Seats on busses will be assigned, DESE has lifted all restrictions.

Susan McCready moved that the Andover School Committee vote to approve extending bus ridership to Grade 8 students without a fee as proposed. The motion was seconded by Paul Murphy. Roll call: P. Murphy-Y, S. McCready-Y, L. Conoscenti-Y, T. Spruce-Y, S. Scully-Y. Motion passes 5-0

2. Field Trip: Revised WMS Students to Galapagos February 2022

The School Committee approved this trip on February 4, 2021 for 20-30 students. The Faculty Sponsor and WMS Principal are requesting that the number of students be changed to 36 students due to increased interest.

Susan McCready moved that the Andover School Committee vote to approve the revised extracurricular trip for West Middle Students to Ecuador on February 18-25, 2022 as presented and in accordance with the provisions set forth in the Andover School Committee Policy entitled "APS School-Sponsored Trip and Student Travel Policy". The motion was seconded by Lauren Conoscenti. Roll call: S. McCready-Y, L. Conoscenti-Y, P. Murphy-Y, T. Spruce-Y, S. Scully-Y. Motion passes 5-0.

E. New Business

1. Shed & Electric within Playstead (Janet Nicosia/Carlos Jaquez)

The DPW proposes to replace the existing storage shed with a new smaller vinyl shed in the same location behind the Doherty Middle School. Carlos Jaquez, Deputy Director of DPW presented this request to the School Committee.

Lauren Conoscenti moved that the Andover School Committee vote to approve the proposed plan for replacement of a shed with electrical service on the Doherty Middle School Fields as presented. Motion seconded by Paul Murphy. Roll call: L. Conoscenti-Y, S. McCready-Y, P. Murphy-Y, T. Spruce-Y, S. Scully-Y. Motion passes 5-0.

2. Fusion Academy Private School Application

Asst. Superintendent, Sandra Trach, presented a verbal update and report on the Fusion Academy Private School Application. A written summary will be forthcoming.

The Dept. of Education and MGL for private school applications states that private school instruction must be equal to public, and private school students making the same progress as public school students. Currently, Fusion is operating as a tutoring center, and if approved they will open as a private school for students in grades 6-12. Sandy visited the Fusion Academy site on October 6, 2020 and met with the Head of Schools. At that time, Fusion did not have a nursing clinic on site, but they have submitted some drafts for medication and nursing procedures.

Curriculum as related to student learning time: The question is, if the curriculum is equivalent to the local school system (APS) in terms of the content areas we know. Fusion

plans to implement a blended learning model with remote learning. A single course at Fusion consists of 23 hours of live instruction, per course per semester, with 23 hours of self-study and 4 hours of Focus Fridays. In comparison, Andover High School offers over 50 hours of live instruction per course. There are questions as a result of that difference in how students will be learning. Lessons are written by the Fusion Education System but we were not given access to that information. Fusion does not offer advanced placement classes. They make a number of statements in regard to earning high school credits; however, there are questions with regard to acceleration to finish a course in a shorter amount of time than an AHS student does and raises the question of equivalency or non-equivalency. They require 24 credits for graduation, however, the length of courses may vary in response to the individual pacing needs. Time on Learning is vastly different at Fusion than at AHS and raises the question of equivalency. Access to the digital platforms were not provided.

School staff criteria. Fusion teachers have a Bachelor's Degree with a teacher retention rate of 83% annually with a 16% attrition annually. The majority of APS teachers have a master's degree, are licensed, and Andover has a 98.9% teacher retention rate. This raises questions as to thoroughness and efficiency. Their evaluation system is formative in nature, Andover uses DESE's requirements which is rigorous.

Fusion has an organizational chart and job descriptions; however, a staff directory was not submitted with the application.

Student Services: Fusion develops a formal education plan for students and includes summary of assessments and modification information. Fusion turns to outside agencies for professionals to support students in a wrap-around model.

Code of Conduct: Vastly different than APS and would be a source of discussion around thoroughness and efficiency.

Student Learning Time: Fusion's School calendar is unique to students operating year-round with 23 hours of direct instruction and 23-hours of asynchronous instruction per semester. There were approximately 9 hours of core in-person instruction per week. DESE requires 25 hours per week of live in-person instruction. This raises questions about the compatibility to AHS instruction.

Time on learning. There is low to little direct instruction for learning in a multiple course curriculum. Study models will not make up for the lack of in-person time and is not aligned to the MA DESE Directive for Time on Learning. This low to little amount of learning time represents a difference to what is provided in Andover Public Schools.

If a family had an IEP for their child, this is a school that would not be implementing the IEP like a public school does, and are not required to implement the IEP, because Fusion is not seeking to be a Special Education School.

In summary, the School Committee is required to review to its satisfaction that the proposed private school instruction is equivalent to the public school. Commissioner Riley has directed a specific amount of in-person learning time as it relates to APS and to grades 6-12. DESE: live and in-person (i.e. with a teacher) Elementary K-8 requires 50 hours over a two-week period. Grades 9-12 calls for 55 hours of in person learning per 2 weeks or 27.5 hours per week.

The SC had several questions and will continue the discussion to the next SC Meeting. Susan McCready reported on a number of emails received and will forward them to the Committee and to the Administration.

F. Continuing Business - Hold

1. FY22 APS Budget

The presentation will be moved to the next meeting.

G. Consent Agenda

1. Grants/Donations to District; Minutes from SC Meetings

Grants/donations to report this meeting. None

School Committee Minutes of: February 4, 2021 and February 25, 2021.

Susan McCready moved that the Andover School Committee vote to approve the Consent Agenda as presented. Motion seconded by Paul Murphy. Roll call: P. Murphy-Y, L. Conoscenti-Y, T. Spruce-Y, S. McCready-Y, S. Scully-Y. Motion passes 5-0.

II. Adjournment

At 10:02 P.M. Lauren Conoscenti moved to adjourn the School Committee Meeting of Thursday, March 18, 2021. The motion was seconded by Paul Murphy. Roll call: L. Conoscenti-Y, T. Spruce-Y, P. Murphy-Y, S. McCready-Y, S. Scully-Y. Motion passes 5-0.

Respectfully submitted,

Dee DeLorenzo
Recording Secretary

B

**Andover School Committee
Minutes of March 21, 2019**

Members in Attendance: Chair, Shannon Scully, Vice-Chair, Paul Murphy, Joel Blumstein, Tracey Spruce, and Susan McCready.

Others in Attendance: Superintendent Berman, Assistant Superintendent Paul Szymanski, Assistant Superintendent for Student Services Dr. Sara Stetson, and Assistant Superintendent for Teaching and Learning Sandy Trach, and AHS Liaison Ben Roldan.

I. Call to Order

The Chair called the meeting to order at 7:00 P.M. in the School Committee Meeting Room located in the School Administration Building.

A. Moment of Silence/Salute to Flag

The meeting began with a Moment of Silence followed by the Pledge of Allegiance.

B. Recognitions & Communications

Dr. Berman recognized the following students who are recipients of Scholastic Art and Writing Awards:

- ~~Audrey Gallacher, AHS senior, received two national gold medals and a silver medal in the *Drawing and Illustration* category, and whose drawings will be shown in Carnegie Hall in June.~~
- Drake Zhang, AHS junior, received a gold medal in the *Painting* category.
- Jessica Xu, West Middle School, received a silver medal for the *Drawing & Illustration* category.

In addition, Dr. Berman also recognized:

- AHS Robotics Team (Team Thunder) who have been invited to compete in the Tech World Challenge Championship this April in Detroit.
- Robotics Team Coach, Minda Reidy on receiving the Compass Award, which is only given at the State Championship level, as a recognition of outstanding guidance and support to a team and a gracious professional.
- Dr. Berman enjoyed spending time at West Middle and Shawsheen School with Donna Ruseckas, Program Coordinator for Health and PE.
- South Elementary's School Play '*Honk*' which was absolutely delightful.
- Sanborn School's Heritage Night: Sanborn School altered the presentation of past Annual Heritage Nights. Instead of the previous displays in the cafeteria, each country had its own classroom, participants received a passport, and chose their location/country to visit. Students were engaged in activities in each room and there were additional presentations in the gym, it was a fantastic evening.
- Acknowledged Sara Stetson, Tracy Crowley, and Joanne Najarian who have launched the UDL Course for Andover teachers and everyone has been completely engaged.

Sandy Trach spoke at the Bancroft PTO meeting on the potential change to School Start Time and thanked Shannon Scully for joining her; it was a great discussion and they received good feedback from parents in attendance. The search for a Fine Arts Coordinator is in the final stages and the West Middle and West Elementary Principal Searches will soon begin. Sandy had the pleasure of attending an AVID cohort with students, parents, teachers at AHS, and commented on the Cultural Proficiency Training on how to build identity-safe classrooms.

Tuesday, March 26th is the Annual Town Election and it is important that everyone get out and vote.

Susan McCready thanked Donna Ruseckas on the health faculty work with mental health issues and depression being done at the middle school level and encouraged parents to attend these very informative discussions. Tracey Spruce and Susan were the School Committee reps at the Informal Meeting on 3/11. The forum was well attended.

Paul Murphy attended a student run candidate's forum at AHS and hopes it becomes a yearly tradition.

Tracey Spruce reported on the Informal Forum held on March 11th at Memorial Hall Library. The forum was well attended with many topics raised: A parent expressed concern about the inconsistency in technology use from classroom to classroom. The Committee may want to invite Joanne Najarian, Director of Digital Learning, to a meeting to discuss appropriate use of electronic devices, and meet with members of the IT Department for ideas on how to monitor student use. Students and parents are required to sign off on the 'responsible use' policy. The use of cellphones and the use of cellphone sleeves at AHS are also a concern. The School Committee may want to consider having a policy to limit/ban cellphone use during instructional time. In addition, there were questions on upcoming additional time to the end of the school day and information communicated out to parents and the community. The conversation also included tuition free full-day kindergarten, status of the process on updating the facilities, and the lack of clarity in the anti-bullying policy on procedures.

This weekend the N.E. Show Choir Competition is being held at AHS with Show Choirs coming from around the country and Canada.

Shannon Scully thanked the IT Department for the new microphones installed in the School Committee Room. Tuesday, March 26th is All Bands Night at AHS starting at 7 PM.

Update related to budget: both the Finance Committee and the Board of Selectmen have unanimously voted in favor of the school budget put forth by the School Committee of \$85,854,808 plus an additional \$75,000 towards full-day kindergarten. Town Meeting begins on Monday, April 29th at the Collins Center.

C. Public Input - None

D. Response to Public Input –N/A**E. Education:****1. Field Trip: DMS to Barcelona, Spain, April 16-24, 2020**

Joel Blumstein moved that the Andover School Committee vote to approve the proposed extracurricular trip for Doherty Middle School students to Madrid, Barcelona Spain on April 16-24, 2020 as presented and in accordance with the provisions set forth in the Andover School Committee Policy entitled “APS School-sponsored Trip and Student Travel Policy”. The motion was seconded by Susan McCready and voted 5-0 to approve.

2. Field Trip: AHS Robotics Club to Detroit, MI, April 23-28, 2019

Paul Murphy moved that the Andover School Committee vote to approve the proposed extracurricular trip for the Andover High School Students Robotics Team to Detroit, Michigan on April 23-28, 2019 as presented and in accordance with the provisions set forth in the Andover School Committee Policy entitled “APS School-sponsored Trip and Student Travel Policy”. The motion was seconded by Susan McCready and voted 5-0 to approve.

3. Presentation from SEL Sprint

Dr. Berman recognized Pam Lathrop, Principal, High Plain Elementary Principal, and Becky Franks, Principal of WMS, for taking a leadership role in the Social and Emotional Sprint. and Cultural Proficiency.

Members of the SEL Sprint Team provided a presentation on the professional development training at the Summer Institute at William and James College who offer a very rigorous program. The role of the SEL Team is to create a more sustainable and cohesive program to the schools so that all students are learning consistently. William James is the first college in the country to offer this program. The team talked about implementing Open Circle, Responsive Classroom, and SEL in the classrooms at the elementary level.

Program Implementation

The Elementary Program includes the Responsive Classroom Model with morning meetings and the three Middle School’s Program includes Where Everyone Belongs (WEB), which provides an opportunity for 8th grade students to become mentors to incoming Grade 6 students. The High School is restructuring the H1 Block to better support advisory programs and focus on social emotional learning. There is significant work being conducted to support culture proficiency and awareness across the District.

C-3 – Cultural Climate Committee –District Advisory Group is working on ways to extend cultural deficiency and supporting teachers in a triad capacity. Facing History professional development was brought into the schools and they are hoping to continue this work going forward. Panorama Survey was implemented to chart the progress in fostering a positive school climate. Schools are using the results to help shape the environment. All Grade levels in K-5 participated in One Community, One Nation (OCON) training this year, bringing awareness to curriculum writing and work that teachers will be doing. Andover should be extremely proud of the work teachers have been doing.

F. Continuing Business

1. Fusion Academy Presentation

Sandy Trach provided an update on the application from Fusion Academy to the Andover School Committee requesting approval to open an Academy in Andover located at Dundee Park. Andover is projected to be Fusion's 53rd campus nationwide.

Fusion representatives provided an overview of who they are, what they offer, and their plans for Andover. The biggest population of their students fall into the social-emotional category, and that educating the heart and the mind and prepares students for future success. Fusion is not a Special Education School. Their unique model fosters academic success and personal well-being. Belief is to seek what is going on with a student and to understand.

Fusion states that their curriculum and instruction are aligned to the MA State Standards plus they include Life Skills and a Wellness Program. Fusion offers more than 250 unique courses w to students at college prep and honors levels. All classes taught one-to-one and tailored to the students learning needs and interests. Fusion provided information on the structure and time spent on each course, including instruction and homework cafes.

Sara Stetson asked about their approach to students with anxiety. Reply: Fusion is not a therapeutic environment but instead they partner with professionals working with their students, but do not handle that themselves.

What happens if a student has an IEP plan? Reply: Fusion is not bound by the IEP Plan, and depends upon what is required.

What is the relationship with Fusion Academy and other School Districts? Reply: they have a good relationship with other Districts.

Fusion was asked by Sandy Trach to provide information on post-secondary data (graduation rate, persistence in college), the success rate of Fusion students who transition back to public school, a case studies.

Hours of Operation: Very individualized based on student needs but most are based on a normal school schedule. Fusion provides safety and security trainings and discipline policy is case-by-case specific. Teachers are required to have a Bachelor's Degree, but a Master's Degree preferred.

Next step: Have a formal recommendation from the School Administration and put it on an agenda for future decision.

2. AHS Statement of Interest to MSBA

The District needs to submit an SOI for AHS by April 12th to the Massachusetts School Building Authority in order to meet the deadline and be considered for the next steps. The School Committee is required to vote on the Statement of Interest.

Resolved: Having convened in an open meeting on **March 21, 2019**, prior to the SOI submission closing date, the Andover School Committee of Andover, Massachusetts, in accordance with its charter, by-laws, and ordinances, has voted 5-0 on a motion by Susan McCready and seconded by Joel Blumstein, _ to authorize the Superintendent to submit to the Massachusetts School Building Authority the Statement of Interest Form dated **April 11, 2019** for the Andover High School located at 80 Shawsheen Road which describes and explains the following deficiencies and the priority category(s) for which an application may be submitted to the Massachusetts School Building Authority in the future, herein, described as: Priority 2: Existing conditions that constitute severe overcrowding; Priority 4: Conditions expected to result in increased enrollment; Priority 5: Issues surrounding school facility systems that require repair or replacement; Priority 7: Programs not currently available due to facility constraints.

Priority 2: Existing conditions that constitute severe overcrowding

Andover High School has 1796 students and is well over the functional capacity of the building. In its report, MGT assessed the building capacity as 1517. However, an analysis by HMFH Architects finds that the core classrooms have space to accommodate only 1400 students, based on current MSBA standards. With the current enrollment, room utilization exceeds 95%, and 75% of the staff move from classroom to classroom to provide instruction. Twenty-five non-classroom spaces have been converted to classroom use. Teacher workrooms have been converted to small classrooms, teachers are planning lessons in storage closets, and there is almost no space for students or teachers to work in small groups or for staff to meet with parents. Eighty percent of classrooms are smaller than current MSBA standards. The cafeteria, hallways, and common areas were all designed for a lower student enrollment, thereby adding to the overcrowding. There is very limited and inadequate space for current instructional strategies or project-based learning or such programs as career technical programs, engineering, and robotics.

Priority 4: Conditions expected to result in increased enrollment

New/planned housing developments coupled with in-migration will lead to higher enrollment over the next two decades. The MGT study released in April 2017 projects enrollment exceeding 1900 within the decade. The October 2017 Cropper Demographic Study indicates that AHS enrollment will exceed 1800 students in 14 of the next 20 years and could exceed 1900 in some of those years. This added enrollment will create even greater pressure on already overcrowded classrooms and facilities.

Priority 5: Issues surrounding school facility systems that require repair or replacement

Many of the building systems are outdated and in need of replacement. The boilers are 24 years old and will need to be replaced. Nearly all of the windows need replacement, with some stemming from original construction. The electrical distribution system is inadequate and requires upgrading. The academic areas lack thermal comfort, which impacts teaching and learning. Because of the building's uninsulated masonry walls, the outdated and drafty window systems, and the concrete structure that connects directly to the outside with no thermal break, there is no way to control interior temperatures effectively using through-wall unit ventilators. The vents introduce direct outside air with limited temperature control, exacerbating uncomfortable room temperatures and negatively impacting learning conditions. The cooling equipment uses refrigerant that has a regulatory phase-out in 2020. The main academic building lacks an automatic fire suppression system. The building site has significant issues with traffic congestion, circulation, and parking. Numerous building features are not compliant with ADA accessibility recommendations.

Priority 7: Programs not currently available due to facility constraints

AHS is limited by space constraints from offering important educational programs outside of the basic core curriculum. As a result, AHS provides primarily introductory level courses in the arts, engineering, robotics, and computer programming—despite student demand for advanced coursework. The size of most classrooms limits active engagement and collaborative activities, as well as project-based learning. There is also no space for credit recovery classes to keep students on target to meet their graduation requirements, or for on-site mental health counseling or drug and alcohol counseling. The lack of space limits programming for students with special needs. There is no space to serve students with emotional disabilities. Overcrowded classrooms make it difficult to include special education students in classes co-taught by regular and special education teachers. Space and classroom size limitations compromise all teachers' ability to provide differentiated and engaging instruction, thereby diminishing the quality and depth of student learning. The increase in enrollment over the next decade will significantly exacerbate these problems.

and hereby further specifically acknowledges that by submitting this Statement of Interest Form, the Massachusetts School Building Authority in no way guarantees the acceptance or the approval of an application, the awarding of a grant or any other funding commitment from the Massachusetts School Building Authority, or commits the City/Town/Regional School District to filing an application for funding with the Massachusetts School Building Authority.

CERTIFICATIONS

The undersigned hereby certifies that, to the best of his/her knowledge, information and belief, the statements and information contained in this statement of Interest and attached hereto are true and accurate and that this Statement of Interest has been prepared under the direction of the District School Committee and the undersigned is duly authorized to submit this Statement of Interest to the Massachusetts School Building Authority. The undersigned also hereby acknowledges and agrees to provide the Massachusetts School Building Authority, upon request by the Authority, any additional information relating to this Statement of Interest that may be required by the Authority

Chief Executive Officer*:**School Committee Chair:****Superintendent of Schools:**

Andrew P. Flanagan

Shannon Scully

Sheldon Berman, Ed.D.

Date:

Date:

Date:

*Local Chief Executive Officer: In a city or town with a manager form of government, the manager of the municipality; in other cities, the mayor; and in other towns, the board of selectmen unless, in a city or town, some other municipal office is designated to the chief executive office under the provisions of a local charter. Please note, in districts where the Superintendent is also the Local Chief Executive Officer, it is required for the same person to sign the Statement of Interest Certifications twice.

3. Grants Administrator Position

Dr. Berman provided background into the request for approval of an increase in the time of the Grant Administrator Position to full time (1.0 FTE). The role was formerly held by a 0.75 FTE employee who spent 0.5 FTE of time on grants and another 0.25 FTE of time on data analysis. Additionally, the job description has been updated and is now more of a managerial focus and a position providing greater capacity and return on investment, and to pursue efficiencies. Andover has a whole range of grants from local, to state, to federal, and prospects from other entities to fund some of our initiatives through grant funding that will increase opportunities for our teachers. This position is already benefits eligible. The Committee discussed the appropriateness of working with private organizations for funding, and current Policy KCD – Public Gifts to School System was read by Tracey Spruce. Joel said if a grant request involves advertising (i.e. signs) it will fall under our advertising policy.

Susan McCready moved that the Andover School Committee vote to approve the proposed Grant Administrator Position as presented. The motion was seconded by Joel Blumstein and voted 5-0 to approve.

4. Financials

Paul Syzmanski reported there has been a favorable shift in the accounts showing a favorable balance at this point in time. Dr. Berman said a good deal of the balance is credited to Special Education due to spending less on out-of-district placements than anticipated. In addition, the 280 Evaluation & Therapy Services Account has been lower, and our rate on costs of transportation has been lowered.

G. Consent Agenda

1. Warrants: In Order
2. Minutes: Minutes of February 7, 2019
3. Grants/Donations to District

On a motion by Susan and seconded by Paul Murphy, the School Committee voted 5-0 to approve the Consent Agenda as presented. Request: please post the grants prior to the meeting if possible.

H. Adjournment

On a motion by Joel Blumstein and seconded by Paul Murphy, the School Committee voted 5-0 to adjourn the Regular Meeting of March 21, 2019 at 9:28 P.M.

Respectfully submitted,

Dee DeLorenzo
Recording Secretary

Documents: Fusion Academy PowerPoint
Statement of Interest (SOI) for AHS
FY-19 Year-to-Date Budget Report

C

**School Committee Meeting
Minutes of April 11, 2019**

Members in Attendance: Chair, Shannon Scully, Vice-Chair, Paul Murphy, Joel Blumstein, Susan McCready, and Tracey Spruce.

Others in Attendance: Superintendent Berman, Assistant Superintendent Paul Szymanski, Assistant Superintendent for Student Services Dr. Sara Stetson, and Assistant Superintendent for Teaching and Learning Sandy Trach, and AHS Liaison Ben Roldan.

I. Call to Order

The Chair called the meeting to order at 7 P.M. in the School Committee Meeting Room located in the School Administration Building.

A. Moment of Silence/Salute to Flag

The meeting began with a Moment of Silence followed by the Pledge of Allegiance.

B. Recognitions & Communications

Shelley wants to congratulate Paul Szymanski for submitting the AHS Statement of Interest this week-ahead of schedule; the Committee joined him in stating this. Also, the Superintendent announced the House budget under which Andover would get \$1,072,000 more in Chapter 70 aid than in FY19, which is higher than we anticipated. That is \$214,000 more than the original Governor's budget.

Joel Blumstein reported on the Credit for Life Fair at AHS in which he and Susan McCready participated. Asst. Principal Scott Darlington, David Floreen and Brad Heim did a great job.

Susan McCready reported on a meeting with Pam Lathrop, Linda Croteau and Austin Simko regarding election procedures and safety measures. There are also traffic and dismissal issues which the Town Clerk will speak to Andover Police Department about in order to work out a better situation at election time.

Paul Murphy hosted a SC informal forum on April 6th with Joel. Topics brought up were questions about athletic practices and notices – timeliness on when schedule information is announced; someone asked about the Superintendent's contract coming up in 2020 and asking about process; Michelle from Fusion asked about decision timelines; there also was a question on state standards and report cards at AHS and the middle schools; general question and information about Special Education and how prevalent that population is in Andover; question about why the entire amount of Chapter 70 wasn't given to the schools; question about extracurricular fees; question about flex time in general and use of time.

Tracey Spruce congratulated the AHS Show Choir who had their final competition on Saturday and both the Mix and All Women's group received gold.

Ben Roldan reported on the Tufts Inquiry Project – how international cities deal with the migrant crisis, explained the process – it's like a model UN. This was a good project.

Shannon Scully reported that the AHS jazz band Levels 1-4 performed Wednesday night at AHS and had a wonderful performance.

There was no public input and response to public input. Instead, Fusion Academy was given the opportunity to speak after Ms. Trach's recommendation to the SC on their application.

E. Continuing Business

1. Fusion Academy Application

Shannon went over the timeline which started in May 2018 with the receipt of the letter stating that Fusion would be applying for approval to operate a non-public school in Andover. From July 2018 to March 2019, Sandy Trach conducted an analysis of the Fusion's application. On March 5th, Ms. Trach provided a memo of her findings to the SC regarding the program and application. On March 7th at the SC, Ms. Trach reported her findings at the School Committee meeting. On March 21st, Fusion attended and presented at the SC meeting. Then SC members individually toured the Fusion campus. On April 10th, Ms. Trach issued a memo with her recommendation to the SC and Fusion regarding their application.

Sandy Trach started by giving a brief background on the application timeline. Ms. Trach noted the Standards for Approval of Private Schools outlined in the Advisory of Approval of MA Private Schools pursuant to MGL c76 S1 by J Nellhaus, Acting Commissioner of Education. Sandy stated that several documents requested haven't been submitted including their anti-discrimination policy; staff, student and parent handbooks that communicate school policies; and data regarding teacher turnover rates, prep time and subject matter expertise. There are differences in direct instruction time in terms of hours/per week compared to AHS and Andover middle schools, with instruction time in Andover increasing next year. Also, Fusion will be unable to address students with social, emotional and behavioral needs as it doesn't demonstrate the capacity to provide students with these services. Fusion also won't have a nurse on the premises so it is not equipped to administer medication. It is her recommendation to decline the application for a non-private school for Fusion.

Dr. Berman agreed with Asst. Super's recommendation. He noted that he turned over the materials to Ms. Trach, as the Curriculum Director, when she first arrived in the district in July. Sandy has done a thorough job with the material. He states that the Massachusetts Department of Elementary and Secondary Education standard is a high standard. We have to make clear that this is a thorough and efficient process. This district can't endorse the program as a private school if it hasn't met these standards.

Mike Vandeer is with the Fusion Academy Group – he's from Grand Rapids MI. He stated they have not articulated their program well enough to the Committee. The system has 4000 students and 1200 teachers throughout the country. He apologizes for not submitting the missing materials. They have a robust science lab in Newton. They will align curriculum with Andover and also align with the local accreditation agencies. The third issue is equivalency. They do have traditional students that don't have an IEP, 97% are private pay. Fusion has been accredited by NEASC. Focus on mastery, key component "homework café", this is a core part of program; they develop skills needed in college. Program includes 100 sessions. Their desire is to be partner in the community. Their commitment is to gain SC approval and eager to grow.

Brian Spellman, Director of Admissions. He feels partially responsible for tonight. He has heard overwhelming favorable comments saying that this is what we need in our community. He thanks the Committee for their time.

Bill Blair, Asst Director of Admissions and has also taught. Bill has been with Fusion for 6 years. He told a story about a student from a NY Fusion Academy where he taught US History. He had used Music studio as a different approach to instruction as he also has a music background. This student graduated and was accepted to the Berkeley School of Music.

Michelle Smith – Head of School at Newton Campus. Her background is in Independent School education and has worked in public schools in Massachusetts. She understands both private and public schools. She pointed out there are some instances where students feel they don't fit in at a public school. Those are the reasons why Fusion works for some of these students. Michelle is thrilled to be part of their Fusion program. She felt that she could make an impact on students who don't feel safe or welcomed but love to learn. They now have 40 students on the Newton campus. She spoke of several students on the Newton Campus who are successfully thriving.

Michelle Glynn – Head of School for Fusion. She summarized everything that they heard tonight. She has worked in hospitals, public and private schools. She feels that this is something that families need; it is a flexible 12-month program that can work with some of the students' backgrounds. Michelle moved to Andover. She feels the academic environment is pretty special and knows Fusion could be successful here.

Tracey Spruce stated that it's the SC's job by law to evaluate whether a private school program is equivalent in thoroughness and efficiency. She appreciates how much work has been put in by both sides. She has studied the material and believes in what Sandy states. She can see how this can be a good fit for some kids. But she can't get past the significant instructional time difference.

Susan McCready wants to thank everyone. She takes her role on SC very seriously for all the children. Susan also shares the same concern in instruction times and also concern about teachers and retention. Knowing how teacher retention rates are an important piece of the puzzle and also important to Fusion. She read a lot about their students who have unique circumstances, which is not the norm. But it is a place for students who require some support which she likes to understand better. She can't connect the dots between the support for the students and the academic piece.

Joel Blumstein appreciates that a one-to-one role could work for some students. However, no one has talked about the absence of a nurse which does trouble him. And 911 isn't always the answer especially during the course of a school day. He agrees with Tracey that it's our legal obligation to show equivalence, including in the total number of instructional hours. There seems to be a major gap – doesn't see how course materials can be covered in Fusion's amount of instructional time.

Paul Murphy stated that in 3 years of being on the Committee, this is the most conflicted he has felt even though he has taught in a private school for 30 years. He felt excited when he was walking around Fusion initially. Seeing kids turn corners from not feeling great about school to

feeling great is powerful. He hasn't taught in the public system. But as he sits here, he has great respect and value in what our administrators say about Fusion especially in Sandy Trach who has spent hours of research for this application. He understands his role here relative to the public system.

Shannon Scully said that they don't have the luxury of arguing whether the MGL makes sense. She also said that she's not going to argue whether it makes sense for the SC to make this judgment but they have to do so. But they do have to look at the thoroughness and efficiency of the program. Sandy's memo is pretty strong and speaks for itself. She appreciates the due diligence and the thorough analysis. All the memos are consistent, have a good understanding of the program and what's been proposed and believe that Fusion doesn't meet the criteria of thorough and efficient.

On a motion by Joel Blumstein and seconded by Susan McCready, the School Committee voted to decline the Fusion Academy Application for private school approval per the Recommendation of the Superintendent of Schools and Assistant Superintendent for Teaching and Learning. The motion passed unanimously on a 5-0 vote.

F. Consent Agenda

1. Warrants

2. Minutes

3. Grants/Donations to District:

On a motion by Susan and seconded by Joel the School Committee voted 5-0 to approve the Consent Agenda as presented.

H. Adjournment

On a motion by Joel Blumstein and seconded by Tracey Spruce, the School Committee voted 5-0 to adjourn the Regular Meeting of April 11, 2019 at 7:57 P.M.

Respectfully submitted,

Alison Phelan
Recording Secretary

D

**Andover School Committee
Minutes of Thursday, March 25, 2021
Virtual Meeting**

Participants from the School Committee: Chair Shannon Scully, Vice-Chair, Susan McCready, Tracey Spruce, Paul Murphy, and Lauren Conoscenti.

Others participating: Interim Superintendent Dr. Claudia Bach, Assistant Superintendent Sandra Trach, Assistant Superintendent Sara Stetson, Chief Operations Officer Stephen Nembirkow, Director of Innovation Stephen Chinosi, AHS Student Liaison Jeffrey Connors

I. Regular Meeting

Call to Order/Moment of Silence

Chairperson Scully called to order the meeting at 6:00 PM and the Committee immediately voted to meet in Executive Session. The Regular School Committee Meeting will be broadcast by Andover TV and on Comcast Channel 99, Verizon Channel 43 or streamed: www.andovertv.org. *Public Participation via email: scremote@andoverma.us or live video with advanced registration as described on the posted agenda.*

II. Executive Session:

Susan McCready moved to meet in Executive Session pursuant to G.L. chapter 30A, section 21(a), purpose (3) to discuss strategy with respect to bargaining with union personnel, namely the Andover Education Association (AEA) Unit A and Andover Assistants Organization because an open session may have a detrimental effect on the bargaining position of the Committee. The Committee will reconvene in regular session at approximately 7:00 PM. The motion was seconded by Paul Murphy. Roll call: P. Murphy-Y, T. Spruce-Y, L. Conoscenti-Y, S. McCready-Y, S. Scully-Y. Motion passes 5-0.

III. Regular Meeting resumed at 7:00 P.M.

Shannon Scully reconvened the School Committee to order at 7:05 PM. The meeting began with a Moment of Silence.

Shannon congratulated Susan and Tracey on their successful election to another 3-years as members of the Andover School Committee.

A. Reorganization – Elect Chairperson and Vice Chairperson for 2021-2022

Tracey Spruce moved that Susan McCready be elected as Chairperson of the Andover School Committee for 2021-2022 effective at the conclusion of the 2021 Town Meeting.

Motion seconded by Lauren Conoscenti. Susan McCready accepted the nomination.

Roll call: P. Murphy-Y, T. Spruce-Y, L. Conoscenti-Y, S. McCready-Y, S. Scully-Y. Motion passes 5-0.

Susan McCready asked for a motion to elect a new Vice Chairperson of the Andover School Committee. Shannon Scully moved to elect Lauren Conoscenti as Vice Chair of the Andover School Committee for 2021-2022 effective at the conclusion of the 2021 Town Meeting. Motion seconded by Paul Murphy. Lauren Conoscenti accepted the nomination.

Roll call: S. Scully-Y, P. Murphy-Y, T. Spruce-Y, L. Conoscenti-Y, S. McCready-Y. Motion passes 5-0.

B. Recognition & Communications

Ann McNamee, DMS teacher and the elected Chairperson of the Superintendent Preliminary Screening Committee, announced that the Screening Committee has recommended two finalist candidates for consideration for the Superintendent position. Each of the candidates rose to the top of the process. The candidates are: Dr. Magda Parvey and Dr. Stephen Zadravec.

Dr. Magda Parvey, is currently Chief Academic Officer of Middletown Public Schools in Middletown, CT. Prior to that, she served as the Interim Superintendent of City School District of New Rochelle, NY, and Chief Academic Officer. She also served as Asst. Superintendent for Instructional Services in North Carolina's Chapel-Hill City School District. Dr. Parvey is a life-long educator with a career spanning 25 years.

Dr. Zadravec is the Superintendent of the Portsmouth New Hampshire Public Schools. Prior to that, Dr. Zadravec was an Asst. Superintendent in School Administrative Unit 39, a Middle School Math Teacher and Curriculum Coordinator at Amherst Middle School in Amherst, New Hampshire. As a live-long educator with a career spanning over 30 years, he has served in additional leadership positions and as an interim principal.

Ann thanked everyone who participated in the process and helped to identify the candidates who endorse a student first philosophy, a forward-thinking lens, and model of high standards and guide for a vision of education in Andover. She thanked her fellow members of the Committee who work closely with the Superintendent giving them time to work together. In the coming weeks, the candidates will come together in a virtual meeting to meet the community. More information will be forthcoming from our HR Department. An on-line feedback form will be made available to all. The Preliminary Screening Committee was aided by Ray & Associates.

Dr. Bach congratulated Susan McCready and Tracey Spruce on being re-elected to the School Committee and to Susan for becoming the next Chair and Lauren as Vice-Chair. Claudia also recognized Paula Colby-Clements for her incredible commitment to the West Elementary/Shawsheen School Building Project. The March 17th MSBA meeting went very well due to our exceptional Building Committee and Architecture firm. We also have the 'Yes to WESP Group' who have been very active in supporting the program.

Nursing Director, Rita Casper reported that there has been a slight uptick in the positive COVID tests. Dr. Bach encouraged everyone to continue to follow the COVID protocols.

Jeffrey Connors, AHS Student Government, thanked the School Committee for sending a letter to DESE, supporting the students' views, on waiving MCAS testing for this year.

Susan McCready provided an update the West Elementary/Shawsheen School Building Project. The building committee, at it's last meeting reviewed the Construction Manager at Risk process, which is a requirement for public jobs over \$10M. The RFP has gone out and submissions will be reviewed on May 3rd. MSBA has determined that we are in good stead to be recommended for the project. Susan recognized Facilities Director Janet Nicosia for the

incentives earned for maintenance and scoring a 1.9 out of a 2.0. The MSBA Board and members of the West Elementary/Shawsheen School Building Project will meet on April 14 for a review of the progress. The project will be voted on at Town Meeting on Saturday, June 5th and if it passes, there will be a ballot box vote on June 15, 2021.

Susan also extended her thanks to our Chair, Shannon Scully who has done a tremendous job in managing many items on the Superintendent search.

Tracey Spruce reported on the recent SC Informal Forum that she and Susan held on Saturday morning, 3/20 with five people in attendance. There were good conversations on a number of different topics including the return of students to elementary school on April 5th and middle school on April 28th.

A. Public Input

Mike Van Dinther and Michelle Houlihan from Fusion Academy spoke about the application they submitted to be approved as a private school in Andover. It seems to them, that the School Committee will be denying their application and they are obviously disappointed.

Susan McCready reported on the emails received in School Committee remote.

C. Response to Public Input

Claudia Bach reported on the meetings with the AHS principal and assistant principals about the topic of opening AHS to in-person learning, which is our biggest challenge. The space constraints at AHS became obvious when the school's population reached 1,700 students several years ago, when you add in the constraints of 3' distancing and 6' distancing for eating time, it makes it even more challenging

D. Education

1. Field Trips:

a. New FT Submission: DMS to Panama

Steve Chinosi provided information on the Enrichment Trip from DMS. There will be a full refund through August 29th and after that a voucher system will be in place.

Susan McCready moved that the Andover School Committee vote to approve the proposed extracurricular trip for Doherty Middle School students to Panama on February 19-26, 2022 as presented and in accordance with the provisions set forth in the Andover School Committee Policy entitled "APS School-Sponsored Trip and Student Travel Policy". The motion was seconded by Paul Murphy. Roll call: L. Conoscenti-Y, P. Murphy-Y, T. Spruce-Y, S. McCready-Y, S. Scully-Y. Motion passes 5-0.

E. New Business

1. Town Meeting Warrant Recommendations

Steve Nembirkow provided information on Town Meeting Warrant Articles for the School Committee's consideration.

Fiscal Year 2022 Capital Projects Fund: **ARTICLE P5.** To see if the Town will vote to raise by taxation and appropriate the sum of money for the purpose of funding the Fiscal Year 2022 appropriation for the Capital Projects Fund, or take any other action related thereto.

Susan McCready moved that the School Committee vote to recommend approval of the Town Meeting WA-P5 Capital Projects Fund for FY-2022. Motion seconded by Lauren Conoscenti. Roll call: S. McCready, L. Conoscenti-Y, T. Spruce-Y, P. Murphy-Y, S. Scully-Y. Motion passes 5-0.

2. NRT - Trombly Updated Transportation Contract

Steve Nembirkow reported that they have negotiated a reduced rate with Trombly Bros on transportation for the days there is no school. As we move into a full-five-day schedule, the contract will revert to 100% as negotiated by Peter McNulty who represented the Merrimack Valley Schools in a collaborative effort. The collaborative group retains the right to view the books of Trombly Bros. to determine if they received any Federal Funding due to the pandemic. Trombly Bros. is prepared to resume full service should all students return.

Tracey Spruce moved that the Andover School Committee vote to approve a Memorandum of Agreement between Andover Public Schools, NRT Bus, Inc. and Trombly Motor Coach Services, Inc. for services performed in accordance with the MOA as presented. Motion seconded by Lauren Conoscenti. Roll call: P. Murphy-Y, T. Spruce-Y, Conoscenti-Y, S. McCready-Y, S. Scully-Y. Motion passes 5-0.

3. Memoranda of Agreement (MOA) with the Andover Education Association

Lauren Conoscenti moved that the Andover School Committee vote to approve the MOA of Agreement with the OP/PT's and Donna Martin that provides paid professional development opportunity for those who participated in the August 31, 2021 work stoppage. Paul Murphy seconded the motion. Roll call: S. McCready-Y, L. Conoscenti-Y, T. Spruce-Y, P. Murphy-Y, S. Scully-Y. Motion passes: 5-0.

Tracey Spruce moved to authorize the Chair to sign the Memorandum of Agreement. Motion seconded by Susan McCready. Roll call: L. Conoscenti-Y, S. McCready-Y, T. Spruce-Y, P. Murphy-Y, S. Scully-Y. Motion passes 5-0.

Additional Services MOA: Allows members of AEA to step in to take-on work assignments for other teachers who are on leave.

Lauren Conoscenti moved that the Andover School Committee vote to approve the Additional Services Memorandum of Agreement with AEA Unit A as presented and to authorize the School Committee Chair to sign the Agreement on behalf of the School Committee. The motion was seconded by Tracey Spruce-Y. Roll call: L. Conoscenti-Y, S. McCready-Y, T. Spruce-Y, P. Murphy-Y, S. Scully-Y. Motion passes 5-0.

F. Continuing Business

1. Fusion Academy Private School Application

Sandy Trach reported on the application from Fusion Academy at the prior School Committee Meeting, copies of which were distributed to the APS District Leadership Team and School Committee to read and review. Sandy studied the application very carefully and engaged in several telephone meetings with Mike Van Dither and Michelle Houlihan. Sandy also made a site visit and requests for missing material. The Andover School Committee is required to factor in School Committee Policy LBC and *The Standards for Approval of Private Schools as outlined in the Advisory on Approval of MA Private Schools pursuant to MGL c.76* (review and approve the documents provided by applicants applying for a private school and that it equals the MGL Chapter 76, Section 1.).

Additionally, in light of MA DESE Commissioner's directive on in-person instruction and student learning time, Fusion Academy's application falls short. Commissioner Riley has made clear that asynchronous learning does not count as student learning time outside of pandemic circumstances. As such, Riley has directed schools to shift away from asynchronous, self-study digital instruction and return to in-person direct instruction as soon as possible. While Andover Public Schools is bound to these DESE regulations and private schools are not, the School Committee is required to determine if Fusion's programming equals the thoroughness and efficiency as APS, in terms of educational programming and student learning time.

- Elementary (K-8) 850 total hours/school year, 50 hours/per 2 weeks, 25 hours/per week live in-person for 2020-2021. In non-pandemic school years, the K-8 learning time is 900 hours/school year.
- Secondary (9-12) 935 total hours/school year, 55 hours/per 2 weeks, 27.5 hours/per week live and in-person for 2020/2021. In non-pandemic school years, secondary (9-12) learning time is 990 hours/school year.

Given this mandate, Fusion's approximately 9 hours/week of in-person instruction (according to their sample schedule), 23 hours per course/per semester, and 46 hours of in-person instruction/school year for grades 6-8 and 9-12 proposed school is far below the MA DESE standard and in turn, that of Andover Public Schools. Additionally, the asynchronous self-study digital learning module time does not meet the student learning time requirement for in-person instruction. Given the "thoroughness and efficiency" standard, the determination is clear that Fusion's application does not meet this requirement.

For this reason, along with the concerns outlined under 3) *Curriculum* which are also related to student learning time, Sandy Trach's recommendation is that the Andover School Committee deny the Fusion Academy-Andover application for approval as a private school under Policy LBC and standards for private school approval under MGL c. 76 section 1.

On behalf of the Committee, Shannon Scully thanked Sandy and her team for their time and due diligence to investigate the program and the thorough report.

School Committee Comments: The members of the School Committee provided individual comments on the request from Fusion Academy to approve their application to be a private school in Andover prior to voting.

Paul Murphy appreciates the enormous time spent reviewing the application. One-to-one instruction is so different compared to classroom teaching, a higher-level conversation on what is good for some kids, not all kids, has crept into his mind a lot this year due to the pandemic. This is a learning center who has done some work and filled a need during the pandemic. He struggles with equivalency, thoroughness and efficiency; asynchronous learning has jumped forward because it had too. Remote is not the same as asynchronous learning; a talented teacher can do a ton with the tools that are out there. At Fusion Academy, asynchronous learning is conducted within the building. Paul is not ready to deny this application.

Susan McCready thanked Michelle Houlihan who has become very engaged in the community and with the kids. If this were an approval for a resource center, she would not have any difficulty giving her approval. She understands there are different models and kids learn differently. If the School Committee is to approve Fusion Academy, it is saying to the community that it is consistent with what is happening at APS and that the learning would be similar. It was made clear during the first application that Time-on-Learning was a real concern; direct instruction and time with teachers is important. Many people who are staying with remote learning has more to do with parental concerns around safety. As educators, it was surprising that Fusion Academy presented the Time on Learning hours they did in the second application.

Lauren Conoscenti is troubled that the State requires us to make this determination. People have found a place at Fusion Academy for their children who are thriving from the experience. Fusion, in its capacity to tutor and enhance children's' experience is of value, but asking to be approved as a private school is another matter. She is struck by the asynchronous piece, hearing from families throughout the year that asynchronous wasn't working for their children.

Tracey Spruce agrees that the State puts us in a difficult position to make this determination. She is concerned about the in-person instructional time, as she was before. We have heard significant feedback about asynchronous learning. Families who have been very happy with remote academy is because of the consistency time, which is an important factor to consider. She appreciates the value families have found in the Learning Center Model, she hasn't heard much about what Fusion Academy would be like for them as a full-time student in a private school. Tracey is still thinking through her decision, it does feel like comparing apples and oranges. For her, it will come down to student progress. She is concerned about some of the content of the report on acceleration and compression.

Shannon Scully appreciates, understands and values that some environments need to have flexibility for students. But she is not getting a sense that there is any consistency with the student model. There has to be some elements of a subject that are consistent for everybody. How does AHS respond to a request from a student to return to AHS from Fusion Academy if the content wasn't similar? Inconsistent content from student to student is a concern. Staff is hired based on need and she is not sure if that, coupled with the lack of requirements for teaching that class, is reassuring. The grading being adjusted to the elements of the reports is also inconsistent. Seemingly competing messages that Fusion Academy doesn't want to,

nor has the capacity to, offer special education classes but it seems that they are targeting special education families and students. Misconception on the process. Time on Learning is an issue. Should be some standard benchmarks and goals to allow students to earn credits.

Susan McCready moved that the Andover School Committee vote to disapprove the Fusion Academy Application dated May 2020 to operate as a school in Andover Massachusetts. Motion seconded by Tracey Spruce. Roll call: S. McCready-Y, T. Spruce-Y, P. Murphy-N, L. Conoscenti-Y, S. Scully-Y. Motion passes 4-1.

2. FY22 School Budget

Chief Operations Officer Steve Nembirkow provided a review of the FY2022 School Department Budget.

The FY-2022 Budget meets the Town Manager's Recommendation of \$92,593,452.

Personnel: \$75,239,845 General Expense: \$17,353,607 Total Budget: \$92,593,452.

Areas of Cost Savings

Athletics \$50,000; Transportation \$10,000, Custodial Overtime \$15,000 and Substitute/Turnover savings of \$50,000.

Student Initiatives

Improving student performance in math and addressing the learning gap in math.

Implementing a new MS Schedule to provide additional time for academics and SEL.

Expanding supports for students with emotional and behavioral needs.

Improving operational effectiveness in HR and Finance Operations.

Areas of Focus for FY-22

Maintaining current staffing level.

Finding opportunities to expand direct instruction time.

Restore prior services and expand equity.

Adequate building-based support.

Priority one additions include the cost of adding the following for a total of \$198,072.

1.0 FTE Generalist \$60,000

.4 FTE AHS Guidance \$29,241

1.0 FTE Elem Math Coach 101,631

Other potential add-ons 9.5 Potential FTE's for a cost of \$673,675.

1.5 FTE MS Math Interventionists

3.0 FTE MS Guidance

3.0 FTE Music Teachers

1.0 FTE Nurse Team Leader

1.0 FTE Nurse at West Elementary

9.5 potential FTE's

Superintendent's recommendations

1.0 FTE HR Generalist

0.4 FTE AHS Guidance

1.0 FTE Elementary Math Coach

3.0 FTE Music Teachers

1.0 FTE Nurse at West Elementary

Band, Orchestra, and Chorus schedules affect school schedules which are built around when the music courses can be offered. With the additional staffing, they would decouple the levels in terms of how courses are scheduled providing more flexibility during the middle school day as well as at other levels. In addition, not all students are able to access music lessons before or after the school day. The additional staffing would provide equity and access for all students and AHS could offer more sections for students.

Rita Casper has concerns with the current limited stretched nurse staffing; it is important that we meet the standard of two nurses at West Elementary due to enrollment size.

We have the ability to absorb these costs into the recommended budget using circuit breaker reserve funding and some of the shared savings (receiving \$125,000 additional circuit breaker funds that we must spend) and would leave the Circuit Breaker account well above the range set for the future of that account.

The School Committee was appreciative of the information provided, and discussed the recommendations presented.

Susan McCready moved that the Andover School Committee vote to approve the Budget Recommended for FY-22 as presented. The motion was seconded by Paul Murphy.

Roll call: T. Spruce-Y, L. Conoscenti-Y, P. Murphy-Y, S. McCready-Y, S. Scully-Y.

Motion passes 5-0.

E. Consent Agenda

a. Grants/Donations to District: Grants total of \$24,299.00

b. SC Meeting Minutes - none

Susan McCready moved to approve the Consent Agenda as presented. Motion seconded by Tracey Spruce. Roll call: P. Murphy-Y, S. McCready-Y, L. Conoscenti-Y, T. Spruce-Y, S. Scully-Y. Motion passes 5-0.

G. Adjournment

At 9:56 PM Paul Murphy moved to adjourn the School Committee Meeting of Thursday, March 25, 2021. Motion seconded by Susan McCready. Roll call: P. Murphy-Y, S. McCready-Y, L. Conoscenti-Y, T. Spruce-Y, S. Scully-Y. Motion passes 5-0.

Respectfully submitted,

Dee DeLorenzo
Recording Secretary