**COMMONWEALTH OF MASSACHUSETTS**

**Division of Administrative Law Appeals**

**Bureau of Special Education Appeals**

**In Re: Dighton-Rehoboth Regional School District BSEA #12-9815**

**DECISION**

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), Section 504 of the Rehabilitation Act of 1073 (29 U.S.C. 794), the state special education law, the state Administrative Procedure Act (M.G.L. c. 30A) and the regulations promulgated under these statutes.

A Hearing was held on September 6, 2012, September 12, 2012, October 2, 2012, October 26, 2012, November 29, 2012, June 12, 2013 and June 13, 2013 in Boston, MA before Ann F. Scannell, Hearing Officer. Those present for all or part of the Hearing were:

Evan’s[[1]](#footnote-1) Parents

Kyle Riley Special Education Director, D-R RSD[[2]](#footnote-2)

John Greenlees Teacher of Special Needs, D-R RSD

Rachel Lawrence Former Special Education Director. D-R RSD

Jacquelyn Tremblett Guidance Counselor, D-R RSD

Gary Vasconcellos Automotive Technology Instructor, D-R RSD

Gail Van Buren Assistant Superintendent, D-R RSD

Deborah Sarrey Director of Guidance, D-R RSD

William Wade School Psychologist, D-R RSD

Rebecca Bennett Coordinator of National Assessments, DESE

Nyal Fuentes Educational Specialist, DESE

Barbara Schwartz[[3]](#footnote-3) Psychologist

Karen Braunwald Clinical Director, Westwood Lodge Hospital

Barbara Reffkin Intensive Care Coordinator, Community Counseling

Tanya Snyder Therapist

Erin Ryan Hospital Teacher, Education, Inc.

Kathleen Egger Chief Operating Officer, Education, Inc.

Byron Garcia Psychiatrist, Westwood Lodge Hospital

Laura Sousa Intern, Mental Health Legal Advisors Committee

Phillip Kassel Director, Mental Health Legal Advisors Committee

Adam Blechman Attorney, Mental Health Legal Advisors Committee

Richard Ready Attorney, Byron Garcia

Michael Long Attorney, D-R RSD

Kelly Gonzalez Attorney, D-R RSD

Lauren Roy Attorney, Parents

Jennifer Honig Attorney, Parents

Carol Kusinitz Court Reporter

Jane Williamson Court Reporter

Anne Bohan Court Reporter

The official record of the Hearing consists of documents jointly submitted by the parents and Dighton-Rehoboth Regional School District (“D-R RSD”) and marked as J-1 through J-93(H); and approximately seven days of oral testimony. Written closing arguments were received on August 9, 2013 and the record closed on that date.

**INTRODUCTION**

Evan is a 21 year old young man who is attending the Stetson School[[4]](#footnote-4) following an eighteen month stay at Westwood Lodge Hospital. Evan was initially admitted to Westwood Lodge Hospital in February of 2011, during his senior year at Dighton-Rehoboth Regional High School (D-R). He was discharged several weeks later and returned to school. Evan was rehospitalized at Westwood Lodge in April of 2011 and remained there until he was discharged to the Stetson School in early November 2012.

Evan has been a student in the D-R RSD since 2007. He has been serviced by Individualized Education Plans (“IEP”) for his social, emotional, and academic deficits.

On June 20, 2012, the parents filed a Hearing Request with the Bureau of Special Education Appeals (“BSEA”).[[5]](#footnote-5) The parents allege that D-R improperly graduated Evan, failed to meet his IEP goals and developed an inappropriate transition plan and services, therefore, D-R should fund a residential placement for Evan. On July 2, 2012, D-R filed a response to the Hearing Request denying that it improperly graduated Evan. D-R asserts they provided Evan with a FAPE and an appropriate transition plan and transition services.

A conference call was held with the parties on July 9, 2012. The parties agreed to postpone the initial Hearing date of July 25, 2012 and proceed to Hearing on September 6 and 12, 2012.

D-R filed a Motion to Join the Department of Mental Health (“DMH”) on July 2, 2012. DMH filed an opposition on August 1, 2012. After hearing oral arguments, the Motion to Join DMH was denied.

The Hearing went forward on September 6 and 12, 2012. Additional dates for Hearing were scheduled for October 2 and 26, 2012 and the Hearing continued on those dates. On October 9, 2012, D-R filed a Motion to Depose Dr. Skea, a DMH psychiatrist.[[6]](#footnote-6) D-R and DMH subsequently agreed to conduct Dr. Skea’s deposition on November 9, 2012 and the Hearing continued on November 29, 2012.

The Hearing was subsequently delayed to allow D-R to file a second Motion to Join DMH as a result of information obtained during Dr. Skea’s deposition and testimony at Hearing. The lengthy motion was filed on January 5, 2013 and DMH filed an opposition to the motion on February 4, 2013. Oral arguments were heard on February 14, 2013 and the Motion to Join DMH was denied on April 3, 2013. The continuation of the Hearing was again delayed while D-R filed an appeal of the denial of D-R’s motion with the court. A conference call was held on May 8, 2013 and additional Hearing dates were set. The Hearing continued on June 12, 2013 and finished the following day.

**ISSUES**

The issues to be decided in this matter are:

1. Whether D-R properly graduated Evan in June of 2011:

2. Whether the April 25, 2011 to April 24, 2012 IEP was reasonably calculated to provide a FAPE to Evan in the least restrictive environment;

3. Whether the transition plan and services developed as part of the 2011 to 2012 IEP was reasonably calculated to provide a FAPE to Evan; and

4. Whether Evan is entitled to compensatory services.

**FACTS**

Evan is a 21 year old young man who currently attends the Stetson School in Barre, Massachusetts. He was transferred from Westwood Lodge Hospital to the Stetson School on or about November 14, 2012.[[7]](#footnote-7) (Testimony of Evan’s parents)

Evan was initially placed as a foster child in his parents’ home and was subsequently adopted by his parents in early 2000 at age 7. Evan has received various diagnoses over the years including Reactive Attachment Disorder, Disruptive Behavior Disorder, Obsessive Compulsive Disorder, Post Traumatic Stress Disorder, Aspergers Syndrome, a personality disorder, paraphilia and pedophilia. Evan has also been diagnosed with Borderline Intellectual Functioning with a full scale intellectual quotient (“FSIQ”) of 77. (Exhibits J-4, 6-C, 10-J, 20, 30, 37, 46A and 82 and testimony of Braunwald, Schwartz, Garcia and Snyder)

Evan exhibited behavioral, social and emotional issues in early childhood. He required his first psychiatric hospitalization at Boston Childrens’ Hospital in April of 2004 and then transferred to the Franciscan Children’s Hospital. Evan had threatened to shoot a girl at school and had exhibited aggressive behavior at school. The hospital staff noted that Evan lacked empathy and understanding of appropriate social interactions. When he was discharged approximately 6 weeks later, the hospital staff recommended therapeutic residential services because Evan needed a high level of structure and would not be safe in the community. (Exhibits J-2, 3, 4 and 5-A and testimony of Evan’s parents)

An initial TEAM meeting was held on October 18, 2004 at D-R. An IEP was developed with social/emotional goals, including increasing independence and appropriate peer relations, as well as academic goals and individual therapy to address Evan’s anxious and avoidant behavior in the classroom. Evan was placed residentially at Longview Farms through a cost-share arrangement with the Department of Social Services (“DSS”). Evan remained at Longview Farms as a residential student until April of 2006 when he transitioned home and completed the remainder of the school year at Longview Farms as a day student. Evan made progress during his time at Longview Farms and it was determined that he no longer needed such a restrictive setting. (Exhibits 6-C and 6-F and testimony of Evan’s parents)

Prior to Evan’s return home at the end of the 2005-2006 academic year, his parents requested an evaluation. Evan was evaluated by Maureen Carnes, Ph.D in January of 2006. Evan reported to Dr. Carnes that he had been sexually abused by a peer and that he had inappropriately touched five children when he was 9 or 10 years old. Dr. Carnes opined that Evan was at moderate risk to act out sexually, possessed limited empathy and did not understand why sexually offensive behavior was wrong. She recommended individual therapy for sexual issues, social skills and learning empathy. Dr. Carnes’ report was sent to DSS and Longview Farms. D-R staff allege that they did not receive a copy of this report until July or September of 2011. Evan’s father testified that the Carnes’ report was discussed at the next TEAM meeting in November 2006. (Exhibits J-10-J and testimony of Wade and Evan’s father)

In the fall of 2006, Evan began attending Reads Academy, a collaborative day school. An IEP was developed with dates of November 20, 2006 to November 20, 2007. Evan’s vision statement reflected his desire to be an auto mechanic and attend a mainstream high school. In addition to academic, speech/language and occupational therapy goals, the IEP contained social/emotional goals, including appropriate social interaction with peers. (Exhibit J-11-A)

In June 2007, at the end of 8th grade, D-R developed a new IEP. Evan was to transition from Reads Academy to D-R Regional High School in September 2007. This IEP contained goals in academic subjects, speech/language, study/organization and counseling. Evan would receive 15 minutes of counseling a week to address his social deficits and disruptive behaviors. The IEP was accepted by the parents on June 29, 2007. Evan’s mother noted on the signed copy of the IEP that she provided to the school, that she was concerned about Evan’s risk to inappropriately touch younger children, particularly because there was a day care at the high school. D-R staff alleged they never saw this notation because the IEP was accepted and therefore filed away. D-R’s policy was to circulate IEP information, including a student’s goals and accommodations, through their computer system. (Exhibit J-11-C and testimony of Wade)

In January of 2008, D-R conducted a three year reevaluation of Evan. The educational achievement evaluation revealed borderline scores in math. The educational assessment form completed by John Greenlees, special needs teacher and Evan’s liaison, stated that Evan struggles daily with appropriate interaction with peers. Ms. Hunt, Evan’s ELA and math teacher reported that Evan was immature for his age, does things for attention, says things to other students to anger them and subsequently gets picked on by other students. (Exhibits J-11-E, 11-H and 11-J and testimony of Greenlees)

The psychological evaluation revealed that Evan told inappropriate stories at times during the evaluation. His FSIQ was 87 and his BASC scores were clinically significant for withdrawal and at risk for adaptive skills (new situations, social skills, ability to communicate wants, study skills and the ability to lead others). (Exhibit J-12)

A transition planning form (“TPF”) was completed on April 1, 2008. Evan’s post-secondary goal stated that he wanted to reside at home while attending college or a technical school. The skills that required IEP goals included study/organizational skills and counseling. The Action Plan was for Evan to a pursue high school career and college selections with the guidance counselor, pursue a part-time job at McDonalds, take automotive tech, money management and adult issue courses. (Exhibit J-12B)

The IEP from April 9, 2008 to April 8, 2009, noted Evan’s deficits in processing speed, math and social and adaptive skills. His counseling goal included working on accepting feedback, naming appropriate and inappropriate behavior and ignoring classroom conflict. He also had study skills, English and computer math goals. This IEP and TPF were accepted by the parents.[[8]](#footnote-8) (Exhibits J-12-B and 13)

On August 28, 2008, Evan’s parents signed a reciprocal release form to allow D-R to exchange records and information with South Bay Mental Health Center, where Evan was receiving his outpatient treatment. It is not known whether D-R obtained any of these treatment records. (Exhibit J-14-A)

On November 14, 2008, Evan’s sophomore year, Evan was suspended from school for three days and denied computer access for 30 days because he accessed improper websites on the school’s computer. All of the 26 sites Evan accessed were pornography sites, including gay sex, boyfu\*\*sboys.com, boytemper.com and gayboydome.com. D-R staff did not investigate these sites and was unaware whether any of them featured pornographic images of young children. The principal testified that this incident did not raise any red flags because other students had accessed pornography using school computers. (Exhibit J-65 and testimony of Van Buren, Evan’s parents and Greenlees)

A TEAM meeting was subsequently held in April of 2009. Evan’s post-secondary vision was to work in the auto industry. Specifically, he wanted to reside at home while he attended technical school and transitioned to an adult living situation. The TEAM noted that Evan needed to improve his interpersonal and transitional skills to prepare for independent living. The resulting IEP, from April 1, 209 to April 1, 2010 and the TPF were accepted by Evan’s parents.[[9]](#footnote-9) It was noted that a Chapter 688 referral would be made to DMH. This referral was subsequently made in October 2009 (Exhibits J-18, 18A and 21C)

On May 13, 2009, Evan underwent a psychological evaluation with John Stahl, Ph.D. Dr. Stahl diagnosed Evan with Reactive Attachment Disorder, paraphilia, low to borderline intellectual functioning and a personality disorder. Dr. Stahl recommended a sexual interest evaluation, psychotherapy and group care. (Exhibit J-20)

On October 8, 2009, D-R sent a letter to Evan’s parents explaining that Evan would need an Educational Proficiency Plan (“EPP”) in English and math due to his low MCAS scores. An EPP was established and after complying with the plan, Evan was deemed proficient in English and math for MCAS purposes. (Exhibit J-21-E and testimony of Sarrey and Tremblett)[[10]](#footnote-10)

On March 17, 2010, a TEAM meeting was held and a new IEP was developed. The vision statement noted that Evan strived to be an independent person. The IEP contained a math goal but no social/emotional or study goals. The TPF reflected Evan’s desire to attend University Technical Institute or New England Technical Institute. This IEP with effective dates of March 17, 2010 to March 16, 2011 was accepted by Evan’s parents. (Exhibit J-27 and testimony of Evan’s parents)

At the parents’ request a meeting was held on May 11, 2010 with Evan’s Intensive Care Coordinator, Barbara Reffkin, Evan’s mother and Evan’s D-R liaison/counselor John Greenlees. At this meeting, Evan’s mother informed Mr. Greenlees of Evan’s problematic sexual behavior and interests at home. She expressed specific concern that the shop in the high school where Evan spent the majority of his day was near the day care center housed in the high school. No formal action was taken by D-R as a result of this meeting. (Exhibit J-29 and testimony of Reffkin, Evan’s mother and Greenlees)

At the beginning of Evan’s senior year, he began treatment with an outside provider, Tanya Snyder, LMHC, to address his behavioral issues. She diagnosed Evan with Pervasive Development Disorder (“PDD”), Attention Deficit Disorder (“ADD”), with a rule out for OCD and a personality disorder. Ms. Snyder recommended ongoing therapy to work on Evan’s inability to self regulate his behavior and emotions. Two months later, after Evan had again accessed pornographic web sites at home, Ms. Snyder opined that Evan posed a heightened risk to others and referred him to the emergency room. Evan had been caught by his parents downloading pornography involving young boys onto his Play Station device. (Exhibits J-36, 37 and 40 and testimony of Evan’s mother and Snyder)

After an evaluation in the emergency room, Evan was admitted to the Westwood Lodge Hospital. On January 28, 2011, Evan’s father advised Mr. Greenlees that Evan had been hospitalized. Evan’s mother signed a consent form on February 10, 2011 to allow D-R to obtain all of Evan’s records from Westwood Lodge. At about the same time, D-R began to provide Evan with tutoring services at the hospital through a contracted provider, Education, Inc. Evan was discharged from Westwood Lodge on February 4, 2011 and returned to school. The discharge report from Westwood Lodge noted admitting diagnoses of “depression” and “flooded with sexual fantasies.” Evan was discharged with diagnoses of Mood Disorder Not Otherwise Specified, PTSD and paraphelia. Barbara Reffkin faxed a copy of the discharge summary to Mr. Greenlees at D-R on March 1, 2011. No action was taken by D-R at that time. (Exhibits J-42A, 44A and 46-A and testimony of Reffkin and Evan’s father)

Prior to Evan’s admission to Westwood Lodge Hospital, Evan had been disciplined at school for continuing to use foul language toward other students in his automotive classes. Evan’s automotive career technical instructor, Mr. Vasconcellos, reported this behavior on January 10, 2011. He also noted that this behavior had not decreased over time. Evan received a detention and was required to report to Mr. Greenlees during period 7 on Mondays, Wednesdays and Fridays. Mr. Greenlees testified that during these check-in times with Evan, they primarily discussed Evan’s academic needs but also processed the foul language incident. (Exhibit J-65 and testimony of Vasconcellos and Greenlees)[[11]](#footnote-11)

On March 8, 2011, D-R sent a notice of three year reevaluation to Evan’s parents. The consent to evaluate was signed by Evan’s parents. As part of the reevaluation, Mr. Greenlees reported that Evan struggled with peer interactions, lacked friends and was alone and quiet for most of the day. Mr. Vasconcellos reported that Evan exhibited inappropriate peer interactions, initiated problems with his peers and was antagonistic toward other students. Mr. Greenlees assessed Evan’s academic skills utilizing the WAIT test. The results revealed that Evan’s reading comprehension had fallen to below average but his math scores had improved. (Exhibits J-47, 48 and 49 and testimony of Greenlees and Vasconcellos)

The psychological evaluation included information from Dr. Stahl’s report including Evan’s diagnosis of paraphelia. Evan’s FSIQ was 77, a borderline score. Information gleaned from administration of the BASC revealed that Evan was at risk for hyperactivity, aggression and conduct problems. The evaluator noted that at times Evan exhibits difficulty with self control, acting out and defying rules. Evan also had at risk scores for withdrawal, suggested that Evan isolated himself and may have difficulty understanding how to join in on group projects or activities. His scores were also at risk for adaptability and social skills. (Exhibit J-50)

Evan was readmitted to Westwood Lodge Hospital in early April 2011 after engaging in beastiality acts with the family’s dog. While at Westwood Lodge, staff reported that Evan had poor boundaries, touching, poking and leaning in on staff inappropriately, engaging in child like behavior and constantly interrupting staff. Evan also had difficulty performing activities of daily living that were not part of his daily schedule and needed constant prompting. Evan was subsequently moved from the adolescent unit to the adult unit because he was found watching the young children on the children’s unit and having difficulties with young children in the cafeteria and outdoor recreation area. Evan reported to staff that he was experiencing inappropriate thoughts and urges when around younger children. (Exhibit 65 and testimony of Garcia, Braunwald, and Evan’s parents)

D-R provided tutoring services through Education, Inc. while Evan remained at Westwood Lodge until November of 2012 when he was transferred to the Stetson School. (Exhibit J-65 and 78 and testimony of Sarrey, Tremblett, Van Buren and Evan’s parents)

An IEP was developed with effective dates of April 25, 2011 to April 24, 2012. The IEP contained a reading comprehension goal and a counseling goal with counseling services once a week for 15 minutes. The objectives for the counseling goal included identifying and discussing situations that may contribute to anxiety, identifying appropriate ways of dealing with stressful situations, seeking help when problems arise, responding appropriately to peer pressure and accepting feedback. Due to his social/emotional deficits, Evan would have access to the school adjustment counselor during stressful times and receive positive reinforcement. (Exhibits J-52A and 53)

The TPF noted that Evan had completed a health class which allowed for his self-care needs and daily living skills. It further noted that Evan wanted to continue his schooling for automotive technology and that he was pursuing DMH for services related to post-secondary living situations. DMH had received Evan’s application for services on January 19, 2011. On February 11, 2011, DMH informed Evan that he was not eligible for DMH services because he did not have a qualifying diagnosis. On February 15, 2011, Evan’s parents appealed DMH’s denial. The denial was subsequently upheld on March 3, 2011. Evan’s parents appealed to the DMH commissioner on April 4, 2011. After a hearing, the denial was confirmed on August 5, 2011. (Exhibits J-41, 52A, 53 and 68 and testimony of Evan’s parents)

On April 25, 2011, D-R informed Evan’s parents that special education services would be terminated because Evan had met graduation and MCAS requirements. Evan received his diploma and his certificate of program completion in automotive technology in June. Evan’s parents rejected Evan’s diploma at a meeting on June 6, 2011. (Exhibit J-54 and testimony of Evan’s parents)

A meeting was held at the parents’ request on June 6, 2011 at D-R to discuss involvement of social services agencies. D-R agreed to conduct an evaluation of Evan’s daily living skills and social skills. Evan’s parents signed consent for this evaluation on July 26, 2011. D-R rejected the proposal to have Dr. Kafka conduct a sex risk evaluation and Evan’s parents declined to accept Evan’s diploma. (Exhibits J-58, 59 and 63 and testimony of Evan’s parents, Sarrey, Van Buren, Wade, Lawrence and Greenlees)

At the parents’ request, D-R Special Education Director, Rachel Lawrence, sent the parents a letter providing a summary of Evan’s educational status. This letter outlined D-R’s position that Evan had graduated and was no longer eligible for special education services. Since the parents rejected Evan’s diploma, however, the “stay-put” would be a full inclusion program at D-R High School. The parents also requested that D-R provide Evan with a program for older students. Ms. Lawrence indicated that Evan would have to be evaluated to determine if these services were needed and proposed such an evaluation. (Exhibit J-64 and testimony of Evan’s parents and Lawrence)

On June 27, 2011, Westwood Lodge sent a clinical summary to Ms. Lawrence. The summary indicated that Evan had poor social skills and judgment. The following day, Ms. Lawrence received Dr. Carnes’ and Dr. Stahl’s reports from Ms. Reffkin. (Exhibits J-65 and 66 and testimony of Reffkin and Lawrence)

On October 7, 2011, D-R’s school psychologist, William Wade conducted a Transitions Skills evaluation of Evan while he was still inpatient at Westwood Lodge. Mr. Wade administered the Independent Living Skills Assessment (“ILS”) and the Street Survival Skills Questionnaire (“SSSQ”). Mr. Wade also interviewed Evan. On the ILS, Evan obtained scores indicating moderate functioning in memory/orientation, managing money, managing home and transportation and health and safety. Evan’s level of functioning was low on social adjustment. On the SSSQ, all of Evan’s scores fell in the average range. Overall, it was Mr. Wade’s opinion that Evan had developed the skills necessary for transition to the next stage of his life. Mr. Wade, however, noted that Evan’s social adjustment remained a concern. An IEP reevaluation meeting was scheduled for October 25, 2011. According to Mr. Wade’s testimony, the purpose of this meeting was only to discuss Mr. Wade’s evaluation, not to discuss the rejected IEP or rejected TPF. (Exhibit J-75 and 79 and testimony of Wade)

On January 12, 2012, Evan was evaluated by Craig Latham, Ph.D. Dr. Latham diagnosed Evan with Aspergers, pedophilia, paraphilia, Reactive Attachment Disorder and a Personality Disorder Not Otherwise Specified. Dr. Latham’s report was discussed at a meeting on April 30, 2012 requested by the parents. D-R took no action following this meeting. (Exhibit J-82 and 86 and testimony of Wade)

**DISCUSSION**

The parties agree that Evan is a student with disabilities and that he is entitled to a free, appropriate public education (“FAPE”) as defined by federal and state law. The parties dispute Evan’s continued eligibility for special education services. D-R argues that Evan’s eligibility terminated upon receiving a diploma. The parents counter that Evan continues to be eligible for special education services because he was improperly graduated.

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.”[[12]](#footnote-12) The Supreme Court has noted that in enacting the IDEA, Congress endeavored to enable disabled students to “achieve a reasonable degree of self-sufficiency” and “become productive citizens, contributing to society instead of being forced to remain burdens.”[[13]](#footnote-13)

The Massachusetts special education statute, M.G.L. c. 71B, defines FAPE as special education and related services that conform to the IDEA and its regulations and also “meet the education standards established by statute or...by regulations promulgated by the Board of Education.”[[14]](#footnote-14) Relevant case law defines FAPE as educational services that enable the eligible child to derive educational benefit, and make meaningful progress in the areas identified as special needs, in light of the student’s potential.[[15]](#footnote-15)

A student’s IEP must be custom tailored to address his or her “unique” needs.[[16]](#footnote-16) A student is not entitled to the maximum educational benefit possible.[[17]](#footnote-17) Further, a student’s level of progress must be judged with respect to the educational potential of the child.[[18]](#footnote-18)

Additionally, to determine whether a particular IEP provides a FAPE, one must view the IEP in light of the information that was available to the TEAM at the time the IEP was developed. An IEP is a snapshot, therefore 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.[[19]](#footnote-19) The critical inquiry is whether a proposed IEP is adequate and appropriate for a particular child at a given point in time.[[20]](#footnote-20)

The IDEA further requires that local school districts provide so-called “transition services” and “transition planning” to “improve the academic and functional achievement of the [student] to facilitate [his or her] movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.[[21]](#footnote-21)

A related Massachusetts regulation requires a school district to make services available to older special education students that “include continuing education; developing skills to access community services; developing independent living skills; developing skills for self-management of medical needs; and developing skills necessary for seeking, obtaining, and maintaining jobs...”[[22]](#footnote-22)

In *Lessard*, the First Circuit considered transition services, concluding that FAPE principles apply in the determination of their appropriateness.[[23]](#footnote-23) The Court found that transition services must be considered “in the aggregate and in light of the child’s overall needs.”[[24]](#footnote-24)

Regarding graduation pursuant to state law, a special education student may qualify for a regular high school diploma if he or she meets the coursework requirements of his or her local school district and passes the MCAS examination. According to at least some judicial and BSEA decisions, however, a district may not graduate a special education student unless that student has also made progress on or completed IEP goals and objectives and, where appropriate, has received adequate transition services.[[25]](#footnote-25) Furthermore, the federal District Court of Massachusetts has held that a school district may not properly graduate a student with disabilities if that student was not provided with a FAPE as required by IDEA.[[26]](#footnote-26)

The parents, as the party seeking relief in this matter, have the burden of persuasion on all the issues.[[27]](#footnote-27)

The parents allege that D-R improperly graduated Evan because he did not satisfy the local requirements for graduation; namely passing the MCAS examination and completing his coursework. The parents filed a complaint with the Department of Elementary and Secondary Education (“DESE”) alleging that the MCAS examination was not properly administered to Evan. After an investigation, DESE found that D-R did not commit any MCAS violations. Whereas Evan initially did not pass the Math and English Language Arts MCAS examination, D-R responded in accordance with state regulations. These regulations allow a school district to develop an Educational Proficiency Plan (“EPP”) that addresses the student’s strengths and weaknesses, requires completion of junior and senior year English and math courses and that the student pass a local examination. Upon doing so, the student would be identified as proficient in English and math, thus fulfilling the MCAS requirements.[[28]](#footnote-28) In the present matter, the credible evidence revealed that an EPP plan was established and Evan subsequently fulfilled the requirements of the plan, thereby identifying Evan as proficient in English and math.

The parents further allege that Evan could not have completed his coursework because he was hospitalized for much of the last half of his senior year. I find D-R’s testimony on this issue to be credible and persuasive. D-R staff testified that Evan had completed most of his coursework in order to graduate prior to entering Westwood Lodge. D-R further testified that they provided Evan with tutoring while he was hospitalized and followed procedure by providing the tutor with information on Evan’s courses and coursework and by accepting the tutor’s evaluation of Evan’s work, thereby, fulfilling the local coursework requirement to graduate.

Although I find that Evan completed his coursework requirements and the MCAS requirements, I nonetheless find that the April 25, 2011 to April 24, 2012 IEP, including the Transition Planning Form, was not reasonably calculated to provide Evan with a FAPE in the least restrictive environment. Additionally, I was persuaded by the evidence that Evan did not receive appropriate transition services. As more fully explained below, since the IEP was not reasonably calculated to provide Evan with a FAPE and Evan did not receive appropriate transition services, Evan did not qualify for a high school diploma. Consequently, D-R should not have terminated Evan’s eligibility for special education services and his diploma should be revoked.

Evan was initially placed on an IEP in the fall of 2004, when he was in the 6th grade. A representative from D-R attended the initial IEP meeting. At that time Evan was placed residentially at Longview Farms. He remained there until June of 2006, and was placed as a day student at Reeds Academy in the fall of 8th grade. A representative from D-R also attended the IEP TEAM meetings in the fall of 2005 and 2006. The IEPs generated as a result of these TEAM meetings revealed that Evan argued with peers, exhibited boundary issues with staff, engaged in avoidant behavior in the classroom and demonstrated inappropriate behavior with his peers.

D-R began developing IEPs for Evan in June of 2007 with the knowledge that Evan would be entering D-R high school that September. When Evan’s mother signed her acceptance of the IEP on June 29, 2007, she added a note below her signature which stated her concern about Evan touching younger children. According to D-R testimony, the IEP was filed without anyone being aware of the mother’s written statement of concern.

When Evan entered D-R High School as a freshman, he continued to exhibit the previously identified behavioral problems. Mr. Greenlees testified that he was aware that Evan had been diagnosed with disruptive behavior disorder, post-traumatic stress disorder and obsessive compulsive disorder when Evan arrived at D-R. Prior to the start of Evan’s sophomore year, Mr. Greenlees was advised of Evan’s inappropriate behavior with younger children at church. He testified that Evan’s mother informed him of these issues. Mr. Greenlees did not tell anyone at D-R about these concerns.

During Evan’s three year reevaluation in January of 2008 (middle of freshman year), Mr. Greenlees noted that Evan struggled daily with peer interactions. Evan’s English Language Arts and math teacher, described Evan as being immature for his age, exhibiting behaviors to gain attention and saying things to peers to anger them. The psychology intern who evaluated Evan reported that Evan told inappropriate stories to her and Evan’s BASC results were clinically significant for withdrawal and at risk for adaptive skills, including social skills, novel situations and study skills.

On August 28, 2008, the beginning of Evan’s sophomore year, Evan’s father signed an authorization for D-R to receive Evan’s records from South Bay Mental Health Center. D-R did not obtain these records.

On November 14, 2008, Evan was caught accessing pornographic sites on a school computer. Although he received a 3 day suspension and his access to computers was restricted for 30 days,[[29]](#footnote-29) D-R staff testified that this incident did not raise a red flag for them. Ms. Van Buren, the principal testified that she took a cursory look at the list of sites and noted it was “gay” pornograhy, even though the URL for some of the sites referenced sex between young boys. When asked whether she checked these sites, Ms. Van Buren testified that the fire wall at school prevented her from doing so. She also reiterated that other students had accessed pornographic sites in the past. Mr. Greenlees, when notified of this incident, testified that he did talk to the teachers about keeping an eye on Evan around computers but did not talk to them about Evan’s inappropriate behavior.

In April 2009, Evan’s sophomore year, his Transition Planning Form reiterated his desire to attend auto technical school and transition to an independent adult living situation. The TPF noted Evan’s continued need to improve his interpersonal and transition skills to prepare for independent living. Nevertheless, in the fall of 2009, to allow more time for Evan’s auto classes, his direct services related to his social/emotional goal were removed from his IEP. Mr. Greenlees testified that he provided only brief (i.e., five minute) daily “check-ins” with Evan and stated, “mostly my job was to make sure his inclusion classes were going well.”

Despite Evan’s consistently expressed desire to become independent, his 2010 and 2011 IEPs failed to adequately include social or emotional goals. The evidence was clear that Evan was struggling with peer relationships and had no friends. Ms. Van Buren testified that Evan was usually alone when she saw him at school. Though he socialized to some extent with adults, Ms. Van Buren never saw him engaging socially with his peers. Mr. Greenlees testified that Evan antagonized his peers and was unable to form friendships throughout high school. Mr. Vasconcellos reported that Evan used foul language in the shop and had difficulty working with peers either in a group or with one other. As a student in the vocational program, it was extremely important to address Evan’s social/emotional needs in order for him to transition from high school to work as an automotive technician. The ability to interact appropriately with co-workers, customers and reside in the community is paramount to Evan’s success working and living in the community. The IEP developed for Evan did not address any of these social or emotional needs.

Even more concerning was D-R’s inaction and poor communication in response to reports about Evan’s inappropriate sexual interest in young children. Mr. Greenlees testified that in a May 2010 meeting with Evan’s Intensive Care Coordinator, Ms. Refkin, and Evan’s mother, Evan’s mother informed them of Evan’s sexual interest in younger children and her concern about Evan’s access to the day care center housed at the high school. Mr. Greenlees testified that he knew about Evan’s sexual interest in young children even prior to the 2010 meeting. Mr. Greenless did not believe there was a risk though he acknowledged Evan was not supervised when he received bathroom passes. Mr. Greenlees did not share this information or request a TEAM meeting to discuss these concerns. Evan’s sexually inappropriate behaviors were not considered in any of Evan’s subsequent IEPs or TPFs. When asked about how Evan’s sexual interests were being addressed at school, Mr. Greenlees testified, “we were just giving him an education and [his sexual interests were] not too much of an issue in relation to safety of anyone in the building.”

All of the foregoing information regarding Evan’s social skill deficits and inappropriate sexual thoughts and behaviors, was either known or should have been known by D-R prior to the TEAM meeting and development of the 2011-2012 IEP. It is certainly clear from the testimony of D-R staff and Evan’s parents that Evan’s mother directly informed all D-R TEAM members about Evan’s sexually inappropriate behavior at the TEAM meeting on April 25, 2011. Yet Evan’s inappropriate sexual behavior and social skills deficits were not properly considered when D-R drafted the IEP.

D-R staff testified that they did not have an opportunity to review outside evaluations prior to the April 2011 meeting because they did not receive these evaluations until July 2011. I found D-R’s testimony in this regard not credible. Specifically, D-R testified that the 2009 Dr. Stahl report was not shared with them prior to July. Evan’s father, however, testified that he gave D-R the report during Evan’s junior year (2009-2010). Additionally, the D-R psychology intern, who conducted a psychological assessment on April 11, 2011 as part of Evan’s three year reevaluation, quoted from Dr. Stahl’s report in her written report. At the very least, D-R had the results of Dr. Stahl’s evaluation, Evan’s parents’ oral report about Evan’s sexual issues, Evan’s mother’s reported concern about the day care center during the 2010 meeting with Mr. Greenlees, and Evan’s Westwood Lodge discharge record from his first inpatient admission citing their concerns about his sexual behavior issues. D-R may also have had additional reports from outside evaluators.

D-R was obligated to address these social/emotional and sexually inappropriate behaviors in his IEP. Evan’s IEP should have called for him to develop socially acceptable conversation and physical contact, learn about maintaining friendships and socially acceptable behavior and understand appropriate social interaction. The April 2011 to 2012 IEP failed in this regard. Evan’s only social/emotional goal was “to manage situations on a daily basis with 85% accuracy, independent of adjustment counselor support and with adjustment counselor support as measured by anecdotal records, self-evaluation and observation.” In order to complete this goal, Evan had to “identify and discuss situations that may lead to anxiety, identify appropriate ways of dealing with stressful solutions, seek help when situations arise, respond appropriately to peer pressure and accept feedback appropriately.” I find that this this goal was neither adequate nor tailored to Evan’s unique needs. I heard no evidence throughout the Hearing that Evan had anxiety issues, difficulty dealing with stressful situations or vulnerability to peer pressure. It is almost as though Evan’s IEP and social/emotional goals were written for a different student and not for Evan, a student with serious emotional and behavioral issues.

The evidence presented at hearing portrayed Evan as a student who antagonized his peers, used foul language, made loud noises to gain attention, had no friends, had difficulty working with one or a group of his peers and had issues with handling his lunch money and performing math calculations in his auto tech classes. Evan also engaged in inappropriate sexual behavior. Evan’s 2011-2012 IEP simply does not address his specific constellation of problems which include his sexual behavior problems.

Ms. Tremblett, Evan’s high school guidance counselor, attended the April 25, 2011 TEAM meeting. When asked whether there was any concern expressed at the TEAM meeting about whether Evan’s sexually inappropriate behavior would interfere with his goal of independent community living, Ms. Tremblett testified, “I think we sort of put it on the back burner because we were trying to address the immediate needs of getting him to graduate from high school and figuring out how we were going to do that.”

Despite the availability of this information, none of this information was incorporated into the 2011-2102 IEP or the TPF. As Ms. Van Buren’s June 2011 letter to Evan’s parents indicated, D-R took the position that Evan’s sexually inappropriate behavior was not an educational issue but rather an unrelated mental health problem. Throughout the Hearing in this matter, the D-R testimony emphasized the academic work that Evan needed to complete in order to graduate. D-R contends that the specific services and treatment necessary to address Evan’s pedophilia and paraphilia fall outside the scope of special education services and argue that Evan’s sexually inappropriate behaviors occurred outside of the school setting.

Evan’s sexual behavior issues cannot simply be separated from his social/emotional issues and excluded from consideration. In considering a case in which the student presented with a profile similar to Evans, the Court, in *Mohawk Trail Regional School District v. Shaun D.*, 29 IDELR 885, U.S. District Court of Massachusetts (1999), held that the student’s sexual behavior issues were “inextricably intertwined” with his social/emotional issues. Evan was enrolled in the automotive career tech path, and as such, developing the ability to cooperatively work with others, adhere to societal norms regarding personal space, behave appropriately with peers, staff and the public was critical to his ability to successfully transition to the community and work. Without these social and emotional skills, Evan would not be able to function in the community, either at work or socially. By enrolling in the auto tech path at D-R, Evan’s “educational” progress must include not only his ability to read and use math calculations, but also to appropriately interact with the public and work cooperatively with fellow workers, staff and management. This requires social and emotional skills which Evan has not adequately developed. A component of Evan’s social and emotional deficits is his sexually inappropriate behavior. These behaviors are likely to have a detrimental effect on Evan’s ability to live and work in the community. As Dr. Schwartz so credibly testified, social skills training is an important component of treatment for someone with sexually inappropriate behavior.

Unlike the student who transitions to college, Evan’s transition to the workplace and community necessitates the development of appropriate social and emotional skills. D-R failed to appropriately provide these services to prepare Evan for employment and independent living, as required by the IDEA.

The federal District Court of Massachusetts addressed the issue of sexual behavior and found that even though the student’s behavior was better in school than other settings, the school was still responsible for remediating the sexually inappropriate behavior which threatened the student’s ability to be successful in the community.[[30]](#footnote-30) Evan finds himself in the same situation. The evidence from numerous evaluators, including Dr. Stahl, the Westwood Lodge Hospital staff and Dr. Scwartz was persuasive that Evan’s sexually inappropriate behavior must be addressed in order for Evan to live and work in the community. Dr. Schwartz who has 30 years of experience working with adolescents and adults who engage in sexually inappropriate behavior, credibly testified that part of a treatment plan for addressing Evan’s behaviors would include social skills training to develop his understanding of appropriate relationships with peers and appropriate sexual behavior.

Massachusetts special education law, in keeping with federal law, entitles a student with an emotional disability to special education services if the student exhibits, “...an inability to build or maintain satisfactory interpersonal relationships with peers and teachers, inappropriate types of behavior or feelings under normal circumstances...over a long period of time and to a marked degree that adversely affects educational performance.”[[31]](#footnote-31) A student with these deficits, must be provided appropriate services in order to facilitate transition from school to post-school activities, including living independently and seeking, obtaining and maintaining a job. It becomes more critical for a student with Evan’s profile who chooses to follow an auto tech career path in high school. Federal and state special education law define transition services and require that a student’s deficits be addressed so that a student can function after high school.

In this present matter, the evidence is persuasive that Evan’s disability has persisted over time and adversely affects his educational performance. The record reflects Evan’s extremely limited ability to understand, build and maintain interpersonal relationships. His sexually inappropriate behaviors reflect an inability to react and respond within established norms. Evan’s long list of diagnoses, including but not limited to OCD, RAD, borderline intellectual functioning, PTSD, PDD NOS, personality disorder, pedophilia and paraphilia reflect disabling emotional conditions which are explicitly covered by Massachusetts regulations. Evan is unable to progress effectively in regular education because of these conditions and requires special education services in order to develop his individual educational potential. Evan was entitled to receive special education and related services that would address his unique needs and “prepare [him] for further education, employment, and independent living.”[[32]](#footnote-32)

D-R failed to address Evan’s unique needs in developing the 2011 to 2012 IEP. I find that the parents have met their burden to show that this IEP was not reasonably calculated to provide Evan with a FAPE in the least restrictive environment.

More importantly, the IEP failed to include a transition plan that was reasonably calculated to provide a FAPE to Evan. The transition plan formulated in April 2011, failed to consider Evan’s unique needs, including social/emotional deficits that would prevent him from potentially attending a technical school and living independently. D-R did not consider any information regarding his inappropriate sexual behaviors even though significant and compelling information was available to them at the time D-R developed the transition plan as well as the IEP.

D-R conducted a transition skills assessment in October of 2011 and based on Mr. Wade’s assessment, found that Evan was not entitled to additional transition services. Mr. Wade concluded that Evan had the necessary skills to transition to the next stage of life. Although Mr. Wade received a copy of Evan’s discharge note from the initial Westwood Lodge admission which diagnosed Evan with pedophilia, Mr. Wade did not consider this information in choosing the instruments to evaluate Evan’s transition skills or factor this information into his evaluation in any way. I find Mr Wade’s evaluation to be lacking and his conclusion that Evan had the skills necessary to transition to the next stage of his life unsupported by the evidence.

I am persuaded by the evidence that Evan is entitled to transition services which address Evan’s social and emotional deficits, including his sexually inappropriate behavior, in order to facilitate Evan’s movement from school to post school activities, namely working as an auto tech and living independently. The parents have met their burden in this regard.

As to the issue of compensatory services, I find that Evan is entitled to receive compensatory services because the April 2011 to April 2012 IEP was not reasonably calculated to provide a FAPE to Evan. Compensatory education is an equitable remedy that attempts to account for the educational deficit caused by a deprivation of educational services that a student should have received in the first place.[[33]](#footnote-33) It seeks to “place disabled children in the same position they would have occupied but for the school district’s violation of IDEA.”[[34]](#footnote-34) Therefore, I order that Evan’s diploma be revoked and his eligibility for services be extended through age 22.

Evan has been attending the Stetson School since November of 2012. The Stetson School services students with sexual behavior issues and other social/emotional issues. I heard testimony from the staff at Westwood Lodge, where Evan was an inpatient from April 2011 to November of 2012, and from Dr. Schwartz, who interviewed Evan and reviewed records in this matter. Their testimony was undisputed that Evan needs a residential placement due to his social/emotional deficits including his sexually inappropriate behavior. Evan desires to work as an auto tech and live independently in the community. The evidence at Hearing was persuasive that Evan is unable to do so without remediation of these issues. The record (particularly the testimony of Dr. Schwartz and the staff at Westwood Lodge) warrants a finding that Evan requires residential placement to receive the appropriate transition services and to make educational progress towards his goals of working as auto tech and living independently in the community.

**ORDER**

Having found that D-R improperly graduated Evan, that the April 2011 to April 2012 IEP was not reasonably calculated to provide a FAPE to Evan, that D-R did not provide appropriate transition services and that Evan remains eligible for special education services, I make the following orders:

1. D-R shall revoke Evan’s high school diploma; and,

2. D-R shall provide Evan with transition services to address his social/emotional and sexually inappropriate behaviors in order to prepare him to work as an auto tech and live independently by immediately funding Evan’s placement at the Stetson School through May 22, 2014, Evan’s 22nd birthday.

So Ordered by the Hearing Officer,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Ann F. Scannell

Dated: August 30, 2013

1. Evan is a pseudonym used for confidentiality and classification purposes in publicly available documents. [↑](#footnote-ref-1)
2. Dighton-Rehoboth Regional School District [↑](#footnote-ref-2)
3. Dr. Scwartz’s, Mr. Wade’s, Ms. Fuentes’ and Ms. Bennett’s testimony was provided via telephone. [↑](#footnote-ref-3)
4. The Stetson School is a Chapter 766 approved Massachusetts special education school. [↑](#footnote-ref-4)
5. Evan delegated decision making authority to his parents. [↑](#footnote-ref-5)
6. Dr. Skea was involved in the parents appeal of denial of DMH services to Evan. [↑](#footnote-ref-6)
7. Evan is being funded at the Stetson School by Mass. Behavioral Health Plan who also funded Evan’s two Westwood Lodge Hospital stays in 2011. [↑](#footnote-ref-7)
8. The parents accepted all IEPs until the April 2011 to April 2012 IEP which is the subject of this matter. [↑](#footnote-ref-8)
9. The direct service in Grid C of the IEP to support the social/emotional goal was removed in September of 2009 because of time constraints due to Evan’s enrollment in the career tech automotive program. This amendment was accepted by Evan’s parents. [↑](#footnote-ref-9)
10. In November of 2011, Evan’s parents filed a complaint alleging impropriety in the administration of the MCAS to Evan. D-R investigated the complaint and found no impropriety. DESE was satisfied with D-R’s investigation. (Exhibit J-80 and testimony of Tremblett, Sarrey and Lawrence) [↑](#footnote-ref-10)
11. At the end of March 2011, Evan was disciplined for “booking” (knocking books out of the hands) a student in the hall and making inappropriate remarks to this student over time. Evan received a detention for this inappropriate behavior. [↑](#footnote-ref-11)
12. 20 U.S.C. 1400(d)(1)(A) [↑](#footnote-ref-12)
13. *Bd. of Educ. of the Hendrick Hudson Sch. Dist. v. Rowley,* 458 U.S. 176 (1982) [↑](#footnote-ref-13)
14. M.G.L. c. 71B, section 1, See also *Sebastian M. v. King Philip Regional School Dist.*, 685 F.3d 79, 84 (1st Cir.2012) and *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) which hold that “meaningful progress” is the standard. [↑](#footnote-ref-14)
15. See generally, *Hendrick Hudson Bd. of Education v. Rowley,* 458 U.S. 176 (1992); *Burlington v. Mass. Dept. of Education,* 736 F.2d 773 (1st Cir. 1984); *Lenn v. Portland School Committee,* 998 F.2d 1083 (1st Cir. 1993 [↑](#footnote-ref-15)
16. *Lessard v. Wilton-Lyndeborough Cooperative Schoof Dist.*, 518 F.3d 18 (1st Cir. 2008) [↑](#footnote-ref-16)
17. *Hendrick Hudson Bd. of Eduaction v. Rowley, supra* [↑](#footnote-ref-17)
18. *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F.3d 18 (1st Cir. 2008) [↑](#footnote-ref-18)
19. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983 (1st Cir. 1990) [↑](#footnote-ref-19)
20. *Lenn v. Portland Sch. Comm., supra* [↑](#footnote-ref-20)
21. See 20 U.S.C. section 1401(34), which provides the following definition of transition services:

    The term “transition services means a coordinated set of activities for a child with a disability that --

    1. is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation:
    2. is based on the individual’s needs, taking into account the child’s strengths, preferences, and interests: and,
    3. includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

    [↑](#footnote-ref-21)
22. 603 CMR 28.06(4) [↑](#footnote-ref-22)
23. *Lessard* at 28-30 [↑](#footnote-ref-23)
24. *Id* at 30; [↑](#footnote-ref-24)
25. See *Kevin T. v. Elmhurst Community School District No. 205,* 36 IDELR 153 (N.D. Ill. 2002); *In Re Quabbin Regional School District,* BSEA No. 05-3115 (Crane, 2005); *In Re Carver Public Schools,* BSEA No. 00-2574 (2001); *In Re Dracut Public Schools,* BSEA No. 08-5330 (Crane, 2009) [↑](#footnote-ref-25)
26. See also *Doe v. Marlborough Public Schools*, 2010 WL 2682433, at \*6 (D. Mass. 2010) (“courts have taken the position that notwithstanding a student’s satisfaction of local graduation requirements, a school district may not properly graduate a student with disabilities if the student was not provided with FAPE as required by IDEA (e.g. a student did not receive appropriate transitional services or his IEP was not reasonably calculated to provide him educational benefit)”; *Dracut School Committee v. Bureau of Special Educ. Appeals for the Massachusets Dept. of Elementary and Secondary Educ.*, 2010 WL 3504012, at \*15 (D. Mass. 2010) (“issuance of a diploma was improper because C.A. was denied a FAPE” which in this case was appropriate transition services). [↑](#footnote-ref-26)
27. *Schaffer v. Weast*, 546 U.S. 49 (2005) [↑](#footnote-ref-27)
28. DESE testified that the development and administration of an EPP plan is completed at the local level and DESE has no oversight other than to mark the student as proficient in the data system once notified by the local school district. DESE does provide guidance in the form of advisories and examples via the DESE website. [↑](#footnote-ref-28)
29. Evan’s father asked the school to continue the restriction for the remainder of the school year. [↑](#footnote-ref-29)
30. *David D. v. Dartmouth Sch. Comm.*, 775 F.2d 411 (1st Cir. 1985);See also *Mohawk Trail Regional School District* *v. Shaun D.*, 29 IDELR 885, U.S. District Court (1999) [↑](#footnote-ref-30)
31. 603 CMR 28.02(7)(f); 34 CFR section 300.8(c)(4) [↑](#footnote-ref-31)
32. 20 U.S.C. 1400(d)(1)(A) [↑](#footnote-ref-32)
33. *R.P. ex rel.C.P. v. Prescott Unified Sch. Dist.*, 631 F.3rd 1117 (9th Cir. 2011) [↑](#footnote-ref-33)
34. *Id* [↑](#footnote-ref-34)