

THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

Bureau of Special Education Appeals

DECISION

In Re: Chicopee Public Schools

BSEA #1307346

&

Douglas¹

This Decision is issued pursuant to M.G.L.c. 71B and 30A, 20 U.S.C. §1400 *et seq.*, 29 U.S.C. § 794 and the regulations promulgated under those statutes. The School requested a due process hearing on April 18, 2013. During a conference call held on April 30, 2013 the Parties agreed to postpone the Hearing originally scheduled for May 7, 2013. The Hearing was rescheduled to June 11, 12 and 13, 2013. Shortly before the hearing was to have begun and after exhibits were due, the Parents orally informed the BSEA that they would not participate in any way in the Hearing. The School requested that the BSEA issue a Decision solely on the written submissions received by the BSEA in advance of the Hearing. The Parents did not object. On June 11, 2013 the BSEA granted the School's Motion for a Decision on written submissions pursuant to BSEA Rule XII. The BSEA then closed the evidentiary record and set July 1, 2013 as the due date for written closing arguments. The School timely submitted a closing argument. Due to the Parents' *pro se* status and the Independence Day holiday, the Hearing Officer held the record open for an additional week to receive the Parents' closing argument. None was received and the record was closed on July 8, 2013.

ISSUE

Whether the March 2013 - March 2014 Individualized Education Program developed by Chicopee is reasonably calculated to provide Douglas with a free appropriate public education?

¹ "Douglas" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

SUMMARY OF THE EVIDENCE

As the Parents submitted no documents, the evidence offered by the School is uncontested:

1. Douglas is a ten year old who has completed the 5th grade. He is eligible for special education services by reason of clinical diagnoses of emotional disabilities, attention deficit hyperactivity disorder and autism spectrum disorder along with demonstrated failure to make effective progress in school commensurate with his potential. (S-12)
2. Douglas has considerable intellectual potential. He regularly attains scores in the superior range on standardized measures of cognitive functioning and demonstrates academic achievement consistent with that potential. (S-11; S-12; S-13) His disabilities make it extremely difficult for Douglas to learn and maintain social communication skills in all settings and to regulate his emotional and behavioral responses to people, transitions, and instruction in the classroom setting. The proposed IEP summarized the observations and reports of his fifth grade service providers:

[Douglas] is a gifted and cognitively bright young man with the capability to do grade level or even advanced level work. Emotionally, he is often unable to participate in the regular education classroom to complete work or access the curriculum. [Douglas] will withdraw or refuse to do work or follow routines. He frustrates easily and loses his self-control. He is argumentative with others and disrespectful to adults who offer support. His actions during these times of loss of self-control have created social difficulties with his peer group. Additionally, his preference is to work and play alone. He has pronounced challenges engaging with his peers in a manner that promotes friendships.

His mother summarizes [Douglas]'s challenges as related to poor social skills, poor coping skills, defiance, disrespect, emotionally destructive verbal behavior toward others, inability to recognize, read, or respect other people's feelings and emotions, inability to compromise, boredom in school with level of academic challenge. [Douglas] is in his first year at [B1] School; he was advanced one grade during third grade at [B2] School in the hopes that the curriculum would be more engaging for him. At the current time, [Douglas] participates only intermittently in his grade level curriculum. His current fifth grade teacher, reported that he has advanced reading and reading comprehension skills. His oral expression, math abilities, and writing skills are average for a fifth grader. [Douglas] is described as difficult, impulsive and argumentative. He is withdrawn in class unless there is an activity he prefers; he does not pay attention to instructions or directions given by the teacher and has difficulty sustaining his attention in class which results in his inability to complete his work. He will avoid work that requires sustained mental effort and often disconnects from lessons by reading a book or putting his head down on his desk. He often loses assignments and has difficulty organizing his work. He will not adhere to rules in the classroom or in school; he often interrupts and intrudes upon others, makes disparaging remarks to peers, calling them stupid. [Douglas]'s work refusals and problem behaviors have seriously influenced his school performance and affected his social relationships. He is uncooperative and often rude to staff and has

refused to participate in social skills groups or other types of remedial support. (S-1; see also S-3; S-4; S-5; S-6; S-7; S-8; S-9; S-10; S-24)

3. During the 2011-2012 school year Douglas received the special education supports of speech-language and counseling services within the general education classroom. The teachers reported minimal engagement and progress with these services. Douglas' in-school behavior worsened over the course of the year. At a Team meeting held on May 3, 2012, Chicopee developed an IEP for the 2012-2013 school year which placed Douglas in an "inclusion" classroom in a different school for the fifth grade. The Team also accepted the Parent's proposal that Douglas receive home-tutoring for the remainder of the 2011-2012 school year. (S-23)

4. In September 2012 Douglas began attending the inclusion class. In addition to the fifth grade teacher, there was a special education paraprofessional assigned to work with Douglas, daily consultation and intervention with an autism specialist, a social language pragmatics group, consultation with a speech/language pathologist, regular guidance services and significant classroom accommodations. The school also conducted a "pre-functional behavior assessment" and developed an in-house Behavior Intervention Plan. The reports from all the service providers indicated that Douglas refused to engage in classroom or individualized academic work; could not form positive relationships with peers or productive relationships with adults; regularly disrupted classroom and school activities; and was not making progress toward any IEP goal or in any school-related area. (S-24; S-3; S-4; S-5; S-6; S-7; S-8)

5. The Team reconvened on November 30, 2012 and proposed conducting an extended evaluation in a substantially separate classroom designed for students with emotional difficulties located in a different Chicopee public school. The Team developed questions centering on identifying appropriate and effective strategies for increasing Douglas's engagement in and compliance with school, as well as improving his basic social communication and pragmatics skills. The Parent requested that the extended evaluation take place at a private day school. Chicopee declined. The Parent accepted the substance of the proposed evaluation on February 13, 2013 but rejected the public school evaluation placement. As a result Douglas remained in the fifth grade inclusion class.

6. Kimberly Root-Wilson conducted a Psychoeducational Evaluation and a Functional Behavioral Assessment in January 2013. Her findings were consistent with previous reports that Douglas has superior intellectual potential and severe social-emotional disabilities. She recommended a "structured learning environment" for Douglas, where clear rules and consistent consequences for his non-compliant and disruptive behaviors, as well as direct social skills instruction, were embedded throughout the day. (S-13; S-19)

7. Kathleen Salomone conducted a Neuropsychological Evaluation over the course of three days in February 2013. She found that in addition to autism spectrum disorder Douglas met the criteria for Executive Dysfunction and, due to his noncompliant behaviors and negative emotional reactivity, for Oppositional Defiant Disorder. According to Dr. Salomone these challenges affect Douglas' day-to-day functioning by making it difficult for him to:

handle transitions and shifting cognitive sets; master the energy to persist on tasks that he perceives as challenging, effortful, or tedious; maintain focus on goal directed problem solving; consider the likely outcomes or consequences of actions and consider a range of solutions to problems; manage emotional responses to frustration so as to think rationally. In addition [Douglas] demonstrates chronic irritability and/or anxiety that significantly impedes capacity for problem solving, inflexible, inaccurate interpretation or cognitive distortions of the intent or actions of others, difficulty attending to and or accurately interpreting social cues; poor perception of social nuances, difficulty starting a conversation, entering groups, connecting with people and lacking basic social skills. When the demands of the situation exceed [Douglas]' capacity to respond adaptively, he shuts down, or he will dysregulate and lose his self-control. He can be suddenly explosive. He has little insight into his difficulties and this lack of awareness has created further social distancing and resentment. [Douglas] presents with a combination of a low threshold for frustration, temper outbursts, and anger and resentment toward others. He can be irritable and reactive; and he can be anxious.²

Dr. Salomone recommended that Douglas be educated in a setting which has clear rules and consistent enforcement of expectations, which consistently implements a positive behavior management plan and collects data to improve the plan, which provides direct instruction in pragmatic communication and social perspective taking skills and which designs, instructs, and reinforces executive skill development throughout the day. (S-12; S-15)

8. The Team reconvened on March 31, 2013 to consider the results of the extended evaluation, including reports from Dr. Salomone and Dr. Root-Wilson, a speech/language assessment conducted by Ms. Hurley, and the observations of his fifth grade teachers and service providers. The Team agreed that Douglas was not making effective progress in his then current fifth grade inclusion class even with the targeted behavioral and communication supports and instruction in place. The Team proposed that Douglas attend a specialized, substantially separate educational program that could implement the recommendations of the evaluators. The Parent requested placement at the Valley West Day School, a private special education school. Chicopee developed an IEP calling for Douglas to receive services in a separate district-wide program designed for similarly aged students with social-emotional difficulties which is housed in a different elementary school. The Parents did not formally respond to the proposed 2013-2014 IEP. (S-1)

9. Other than staff resumes and licensure sheets, there is no information in this record concerning the substantially separate program proposed by Chicopee for Douglas. (S-16- S23)

10. There is no information in this record about the Valley West Day School, the placement requested by the Parents.

² The indented language is largely drawn from Dr. Salomone's report. Due to stylistic and other changes made to protect the Student's privacy the passage is not, however, a direct quote. (S-12)

FINDINGS AND CONCLUSIONS

There is no dispute that Douglas is a resident student with special learning needs as defined by 20 U.S.C. §1400 *et seq.* and M.G.L. c.71 B and is thus entitled to receive a free appropriate public education through the Chicopee Public Schools. The only question to resolve is whether Chicopee has offered Douglas an Individualized Education Program that is tailored to his unique learning needs and designed to foster meaningful educational progress in the least restrictive setting? As the only evidence available has been presented by the School, I view the record particularly critically to provide the necessary counterweight in the absence of parental participation in the process. After careful consideration I find that an independent, neutral assessment of the available evidence reasonably supports the conclusion that Chicopee has offered Douglas an IEP that, if implemented, will provide a free appropriate public education to him during the 2013-2014 school year.

The IDEA, 20 U.S.C. §1400 *et seq.* and the Massachusetts law on which it was modeled, M.G.L. c. 71B, require public school districts to provide their resident students with disabilities a “free, appropriate public education”. In practice and law that means that a school must follow identification, evaluation, program design, and implementation practices that ensure that each student with a disability receives an Individualized Education Program that is: custom tailored to the student’s unique learning needs; provides a meaningful educational benefit; and ensures access to and participation in the regular education setting and curriculum as appropriate for that student. *Sebastian M. v. King Philip Regional School Dist.*, 685 F.3d 79, 84 (1st Cir. 2012); *Lessard v. Wilton Lyndeborough Cooperative School Dist.*, 518 F. 3d 18 (1st Cir. 2008); *C.G. ex rel A.S. v. Five Town Community School Dist.*, 513 F. 3d 279 (1st Cir. 2008).

In this matter the evidence amply supports the conclusion that Chicopee properly identified and evaluated Douglas. There have been no fewer than five evaluations in two years, along with daily notes of observations over the course of 3 months. All the evaluations reach the same recommendation for Douglas: his current learning needs require a substantially separate, highly structured, behaviorally oriented special education program. There are no contrary recommendations in the record.

Chicopee responded to these recommendations by convening a Team in a timely manner and developing an IEP that incorporates the setting, services, strategies, accommodations and instructional modifications outlined in the most recent evaluations.

In particular I note that the proposed 2013-2014 IEP for Douglas summarizes the most recent evaluation results. It explains that emotional, health, and autism disabilities adversely affect performance chiefly in the areas of verbal and non-verbal communication and social interactions resulting in an inability to build or maintain satisfactory interpersonal relationships with peers, difficulties with transitions, and poor mood/behavioral regulation.

Consistent with the recommendations of Dr. Salomone and Dr. Root-Wilson, the IEP provides for placement in a highly structured classroom environment with a low student-to-teacher ratio, a comprehensive behavioral management system, and a social pragmatics

curriculum. The Accommodations section lists strategies such as the use of de-escalation techniques and availability of a “recovery” space as well as extra time and neutral, explicit language instructions that address both Douglas’ emotional needs and his executive functioning weaknesses.

Since the 2013-2014 IEP as proposed contains the services and setting consistently recommended by both school-based and outside evaluations as necessary and appropriate for Douglas, I conclude that the IEP is reasonably likely to provide a meaningful educational benefit to him.

Finally, the proposed IEP calls for Douglas to be placed in a classroom within a regular district elementary school. This placement allows Douglas access to regular education settings and students and offers the potential for participation in the mainstream when appropriate for him. The evidence demonstrates that over the course of the last three years Douglas has not made effective progress in acquisition of age appropriate social-emotional-behavioral skills despite gradually increasing special education supports in the mainstream setting. I therefore find that the more restrictive, self-contained setting is warranted at this time. Douglas should be intensively monitored to assess whether this level of intervention is producing the desired result: meaningful progress, or whether the Team should reconvene to consider other options.

After careful consideration of the evidence presented, the arguments of counsel for Chicopee, and the available, likely arguments that could have been presented by the Parents, I find that the 2013-2014 IEP developed by Chicopee for Douglas is tailored to address his identified learning needs, meets the recommendations of the evaluators, and offers the opportunity for meaningful educational progress in the least restrictive setting consistent with that goal.

ORDER

The 2013-2014 IEP proposed by Chicopee is reasonably calculated to ensure that Douglas receives a free appropriate public education.

Lindsay Byrne, Hearing Officer

Dated: July 25, 2013

