# COMMONWEALTH OF MASSACHUSETTS

## Division of Administrative Law Appeals

**Bureau of Special Education Appeals**

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In Re: In Re: Xaylen[[1]](#footnote-1)

& BSEA #2008870

Arlington Public Schools

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**RULING ON SCHOOL MOTION FOR DIRECTED VERDICT**

A due process hearing was held on January 7, 2021. At the close of Parents’ case, Arlington moved for directed verdict.  As there was insufficient time remaining for oral arguments, a motion hearing was held on January 27, 2021 by conference call.

I. LEGAL STANDARD

The Massachusetts Rules of Administrative Procedure, 801 CMR 1.01, along with the Rules of the Bureau of Special Education Appeals and relevant provisions of 603 CMR 28.00 outline the procedural parameters for special education hearings in Massachusetts. 801 CMR 1.01(7)(g)(1) provides:

Upon completion by the Petitioner of the presentation of his evidence, the Respondent may move to dismiss on the ground that upon the evidence, or the law, or both, the Petitioner has not established his case. The Presiding Officer may act upon the dismissal motion when presented, or during a stay or continuance of proceedings, or may wait until the close of all the evidence*.*

Thus, a school district may move for dismissal of a special education claim(s) at the close of presentation of the parents’ evidence or at the conclusion of presentation of all evidence. To succeed, a Motion for a Directed Judgment must establish that the parents have not demonstrated any plausible set of facts which could on their own, or along with reasonable inferences, entitle them to some relief the BSEA is authorized to grant. To defeat a Motion for Directed Judgment in a special education hearing, it is sufficient for the parents to show that the student is eligible/potentially eligible for IDEA protections in a Massachusetts school district, that there is a live factual or legal dispute concerning the services or placement to which the student is entitled, and that the relief requested is within the power of the BSEA to grant. If granted, a Motion for a Directed Judgment results in final disposal of the case; if denied, the case proceeds to further presentation of evidence and/or Decision.

The Parents filed the Request for Hearing in this matter. Thus, they have the burden of persuasion on all the substantive claims they have brought to the BSEA. *Shaffer v. Weast*, 546 U.S. 49, 62 (2005). For purposes of this Ruling, however, the School is the moving party and has the burden to show, persuasively, that the Parents have offered no proof, beyond bare assertions and conclusions, that the proposed IEPs offered Xaylen only inappropriate programs and placements, and that the Parents’ unilateral placement is appropriate. In evaluating the parties’ arguments all facts, and any reasonable inferences therefrom, must be viewed in the light most favorable to the Parents. Accordingly, the School’s Motion for a Directed Verdict may be granted only if there is no way that a reasonable person could find in favor of the Parents’ position.[[2]](#footnote-2)

II. FACTUAL BACKGROUND

These facts are gleaned solely from the Parents’ exhibits and testimony at the Hearing. They have been taken as true only for the purposes of this Motion and may not hold after scrutiny and rebuttal by the School.

1) Xaylen is a 12 year old student who has a specific learning disability in reading, written expression and math, ADHD and anxiety. He has received special education services through the Arlington Public Schools since the second grade.

2) Xaylen struggled in the full inclusion program during the 3rd, 4th and 5th grades at Stratton Elementary School.  At home, he required maximum support from Parents to complete even the most basic homework assignments.  He was anxious, stressed had low self-esteem and needed medication to address depression. He was often “in trouble” and had few positive social experiences or relations.

3) The Parents arranged for periodic, comprehensive, independent evaluations. The most recent, conducted in 2017, recommended placement in a substantially separate learning environment dedicated to students with similar learning needs that would concentrate on developing reading, writing and language skills.

4) After Team meetings held in the spring, 2019, the School offered an IEP for the time period 4/10/19 – 6/19/19 in a full inclusion program at the Stratton Elementary School and a different full inclusion program at the Gibbs Middle School for 9/3/19 – 4/9/20. The Parents rejected the proposed IEP.

5) In August 2019, the Parents notified the School of their intention to place Xaylen in the Carroll School. The Carroll School is an independent school providing a specialized curriculum targeted at students with documented learning differences. The Carrol School does not participate in the Massachusetts Ch, 766 approval process.

6) Xaylen began the 6th grade at the Carroll School in September 2019. He adapted well to the instructional approach at the Carroll School. His mood and behavior at home improved. He is able to complete homework, and now school work, independently and with attention and success.

7) After a Team meeting in the spring, 2020 the School proposed an IEP calling for placement in a partial inclusion program at the Gibbs Middle School during 5/20 – 6/20 and in a different partial inclusion program at the Ottoson Middle School for the period 9/20 – 5/21. The Parents rejected that IEP.

8) The Parents filed a Request for Hearing at the BSEA in April 2020 asserting that Arlington’s IEPs for the 2019-2020 and 2020-2021 school years were and are inappropriate.  The Parents seek reimbursement for expenses related to Student’s unilateral placement since September 3, 2019 as well as an Order for prospective placement, at public expense, at the Carroll School for the 2021 – 2022 school year.

III. ARGUMENTS OF THE PARTIES

Arlington’s Position:  Arlington contends that Student's IEPs for the 2019-2020 and 2020-2021 school years are reasonably calculated to provide Student with a Free Appropriate Public Education (FAPE) in the least restrictive environment (LRE). It argues that Parents have failed to show by a preponderance of the evidence that the IEP dated 4/10/2019-4/9/2020 proposing full inclusion at Stratton Elementary School for 4/10/2019-6/19/2019 and Gibbs Middle School for 9/3/2019-4/9/2020 and the IEP dated 5/18/2020-5/17/2021 proposing partial inclusion at Gibbs Middle School for 5/18/2020-6/19/2020 and Ottoson Middle School for 9/8/20-5/17/2021, respectively, are inappropriate. Furthermore, Arlington asserts that Parents failed to meet their burden in showing that the Carroll School (Carroll) would be an appropriate placement because they submitted no evidence on the proposed program. There is insufficient expert evaluative evidence to support a finding for the Parents. Arlington seeks a directed verdict denying Parents’ request for relief.

Parents’ Position:  The Parents contend that Student had not been making adequate progress at Stratton Elementary School, that he exhibited anxiety and required medication, and that the proposed placements in Arlington’s in-district inclusion programs failed to provide FAPE. Further, Parents contend that their experts, although not testifying at hearing, recommended the Carroll as an appropriate placement. Parents contend that the evidence presented, construed in the light most favorable to the Parents, is sufficient to support a conclusion in favor of the Parents, and that a directed verdict is therefore unwarranted.

IV. FINDINGS AND CONCLUSIONS

After careful consideration of the facts and arguments presented thus far in this matter it is my determination that the Parents have provided sufficient evidence, through testimony and documents, to overcome a Motion for Directed Verdict. While “bare bones”, when viewed in the light most favorable to their position, and making every available, reasonable, positive inference from the facts presented, the Parents have shown: IDEA eligibility, family participation in service planning with the School, evaluations and observations that could reasonably support a view of Xaylen’s needs different that that held by the district, and a reasonable parental response to that information. The Parents have, therefore, presented a *prima facie* case. The School will now have an opportunity to refute it.

V. ORDER

The School’s Motion for a Directed Verdict is DENIED.

By the Hearing Officer

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Lindsay Byrne

Dated: January 29, 2021

1. “Xaylen” is a pseudonym chosen by the Hearing Officer to protect the privacy of the student and family in documents available to the public. [↑](#footnote-ref-1)
2. Dispositive motions are disfavored in this administrative forum, more so when the non-moving party is *pro se*. An important purpose of the IDEA's administrative dispute resolution system is to give lay people, and parents in particular, full access to the range of dispute resolution options, from informal meetings to highly formal, quasi-trial, proceedings. An additional, though less commonly cited purpose, is to have an experienced neutral eye on the highly regulated special education process to ensure that those less familiar with the vocabulary, processes and prevailing law unique to special education disputes, and more familiar with the individual student, have a genuine opportunity to participate, to present their ideas and objections, and to be heard by people uninvolved in the dispute and unaffected by the outcome. To dismiss a matter before an unrepresented party has that opportunity, therefore, requires either compelling facts or indisputable controlling law.

   In Re: *Ipswich Public Schools*, 25 MSER 220 (2019).

   [↑](#footnote-ref-2)