**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re**: **Student v. Harvard Public Schools BSEA# 2108881**

**RULING**

On June 21, 2021, the Hearing Officer issued an Order in the above-referenced matter identifying the sole issue for Hearing and asking the Parties to respond if the issue was not accurately stated. The Order indicated the issue as follows: whether Student is entitled to continued special education eligibility and transition services with continued placement at Riverview’s GROW transition program for ESY 2021 and school year 2021-2022 in order to receive a FAPE.

On June 22, 2021, the District responded clarifying the issues as follows:

1. Whether Student is entitled to continued special education eligibility from or through Harvard Public Schools for ESY 2021 and school year 2021-2022?
2. If so, does Student require a residential placement during summer 2021 and/or the 2021-2022 school year to receive a FAPE?

On the same day, Parents/Guardians responded, amending the District’s proposed issues as follows:

1. Whether Student is entitled to continued special education eligibility **and/or transition services** from or through Harvard Public Schools for ESY 2021 and school year 2021-2022?
2. If so, does Student require **placement at MGH’s Aspire Virtual Summer Program for ESY 2021 and/ or a residential placement at Riverview School’s GROW transition program** during summer 2021 and/or the 2021-2022 school year to receive a FAPE?

On June 23, 2021, the District responded disagreeing with the inclusion of the additional language in Issue #1. As grounds thereof, the District asserted that said language “incorrectly suggests that there is a separate and distinct entitlement to transition services” under the IDEA and/or MGL c. 71B “even where a student is not, or is no longer, eligible for special education services.” The District also “strenuously” objected to any reference to the MGH Aspire Program as it was not referenced in the Hearing Request. The District argued that “this new, specific claim for relief a mere ten (10) days prior to an Accelerated Hearing, and only three (3) days prior to the submission of Exhibits and Witness Lists in this matter has prevented the District from conducting any discovery or investigation relative to the MGH Aspire program, and, consequently would materially and substantially impact the District's right to due process and ability to defend itself against the parents claims in this matter.” The District noted that Parents/Guardians may file an Amended Request for Hearing which will result in a revision of the timelines in this matter.

Also on June 23, Parents responded to the District’s objections. Parents/Guardians argued that in *Dracut Public Schools*, BSEA # 08-5330, Hearing Officer William Crane found that the district did not propose or provide transition services reasonably calculated to facilitate the student’s successful transition to postsecondary education employment and independent living. However, Hearing Officer Crane ordered “extended special education eligibility” after graduation. Parents/Guardians explained, “In order to address all possible outcomes the parents included the additional language.” However, Parents/Guardians would agree with Harvard to utilize the Hearing Officer’s original language of “special education eligibility and transition services” in the Order dated June 21, 2021.

At the same time, Parents filed an Amended Accelerated Hearing Request to incorporate the reimbursement for student’s unilateral placement at MGH’s Aspire Virtual ESY program. Parents argued that “there is no prejudice to the District since it failed to propose any ESY programming for 2021, necessitating unilateral placement” by the Parents. Parents added that “an order was sought in the original hearing request for an appropriate ESY 2021 program and placement, ESY is very limited in scope, such that the District could cross examine the witnesses regarding the Aspire ESY 2021.” Parents also indicated that if the Hearing Officer believes that the timeline for this hearing must be revised based on the Amended Hearing Request, Parents would agree to waive seeking reimbursement for their costs associated with Student’s placement at Aspire for ESY 2021 and proceed solely on the issue of the Student’s continued special education eligibility and transition services for the 2021-2022 school year in Riverview’s GROW transition program.

**RELEVANT LEGAL STANDARDS:**

1. *Amending a Hearing Request*

*BSEA Hearing Rule 1G* states that the moving party may amend the hearing request under two circumstances:

1. In response to a Hearing Officer’s determination that a hearing request is insufficient, as described in E, above, the moving party may file an amended hearing request within fourteen (14) calendar days of the date of the Hearing Officer’s determination.

2. If the other party consents in writing, or the Hearing Officer grants permission. (The Hearing Officer may not grant such permission later than five (5) calendar days before the start of the hearing.)

Whenever a hearing request is amended, the entire process starts over for the purpose of timelines, as if the amended hearing request were a new request. However, to the extent the amendment merely clarifies issues raised in the initial hearing request, the date of the initial hearing request shall be controlling for statute of limitations purposes. For issues not included in the original hearing request, the date of the amended hearing request shall be controlling for statute of limitations purposes.

1. *Transition Services*

The Individuals with Disabilities Education Act (IDEA) was enacted "to ensure that all children with disabilities have available to them a free appropriate public education" (FAPE).[[1]](#footnote-1) To provide a student with a FAPE, a school district must follow identification, evaluation, program design, and implementation practices that ensure that each student with a disability receives an Individualized Education Program (IEP) that is: custom tailored to the student's unique learning needs; "reasonably calculated to confer a meaningful educational benefit"; and ensures access to and participation in the regular education setting and curriculum as appropriate for that student so as "to enable the student to progress effectively in the content areas of the general curriculum.”[[2]](#footnote-2)  The IEP must be individually tailored for the student for whom it is created.[[3]](#footnote-3)

The IDEA requires transition services, which are developed through transition planning by the IEP Team. [[4]](#footnote-4) Beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter, the IEP Team must include the following within each IEP:

(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

(bb) the transition services (including courses of study) needed to assist the child in reaching those goals ….[[5]](#footnote-5)

In Massachusetts, students begin transition services at age 14.[[6]](#footnote-6) “Transition services are part of, and not separate from, a school district’s responsibility to provide FAPE.”[[7]](#footnote-7) Whether a student’s transition planning and services are appropriate must therefore be considered within the context of the purposes of FAPE, as well as within the court decisions interpreting the FAPE standard.[[8]](#footnote-8) Transition services must be considered “in the aggregate and in light of the child’s overall needs.”[[9]](#footnote-9)

**APPLICATION OF LEGAL STANDARDS:**

1. *Parents/Guardians May Not Amend the Hearing Request Without Revising the Timeline for the Accelerated Hearing.*

In the instant matter, with respect to ESY 2021, Parents’/Guardians’ original Hearing Request seeks, in part, an “order requiring Harvard to fund [Student’s] placement at Riverview for ESY 2021.” The Hearing in the matter is scheduled to begin on July 2, 2021, only eight (8) calendar days from the date of Parents’/Guardians’ filing of the Amended Hearing Request. The District is correct that it has not had an opportunity to engage in any discovery relative to the MGH Aspire program. Therefore, Parents’/Guardians’ request to proceed based on the Amended Hearing Request with the current timeline is denied. As such, Parents may waive seeking reimbursement for their costs associated with Student’s placement at Aspire for ESY 2021 and proceed with the current timeline solely on the issue of Student’s continued special education eligibility and transition services for the 2021-2022 school year in Riverview’s GROW transition program.

1. *Parents May Not Modify Issue #1 to Include the Language “****And/Or Transition Services.”***

In the instant matter, Parents rely on *Dracut Public Schools*, BSEA # 08-5330 in arguing that Student may be found eligible for “continued special education eligibility **and/or transition services** from or through Harvard Public Schools for ESY 2021 and school year 2021-2022.” Parents/Guardians indicate that they included the additional language in Issue #1 “[i]n order to address all possible outcomes.” The District, however, argues that the language is inappropriate since there is no separate and distinct entitlement to transition services under the IDEA and/or MGL c. 71B if a student is not, or is no longer, eligible for special education services.

In this matter, Parents’/Guardians’ reliance on *Dracut* is misplaced. My reasoning follows.

In *Dracut*, Hearing Officer Crane noted that transition services are “part of, and not separate from, a school district’s responsibility to provide FAPE.”[[10]](#footnote-10) In *Dracut*, Hearing Officer Crane extended student’s statutory eligibility for two years after graduation for the purpose of receiving compensatory services during that time.[[11]](#footnote-11) Compensatory education is appropriate for a student deprived of services to which he was entitled under the IDEA, regardless of his eligibility for current or future services under the statute.[[12]](#footnote-12) In contrast, transition services are “special education or related services, with no explicit limit placed on the amount or duration of transition services to be provided so long as the student remains eligible for special education and is in need of those services.”[[13]](#footnote-13)

Apart from compensatory services, Student may not be found eligible for transition services without also being found eligible for special education. Here, Parents/Guardians are not seeking compensatory services. Instead, they argue that due to his unique special needs, Student is not prepared to make the transition into the post-school environment, and they seek an additional school year of FAPE. They request that Student remain eligible for special education services with placement at Riverview’s GROW program where Student “has and will continue to” receive “FAPE for his transition needs.” In the present matter, Student’s FAPE, or IEP, may very well be solely comprised of transition goals and services, but, without a claim for compensatory education, Student may not be found eligible for transition services distinctly and separately from being found eligible for special education. Therefore, inclusion of the additional language proposed by Parents for Issue #1 is denied.

**ORDER:**

Accordingly, the above-referenced matter will proceed as follows:

1. A practice Zoom session will take place on June 30, 2021 at 10:00AM.  The names and email addresses of witnesses/participants must be emailed to Alexander Loos at [aloos@doriswong.com](mailto:aloos@doriswong.com).
2. The Hearing will take place via Zoom on July 2, 2021. It will begin at 10:00AM.[[14]](#footnote-14)
3. The sole issues for Hearing are:
   1. Whether Student is entitled to continued special education eligibility from or through Harvard Public Schools for school year 2021-2022?
   2. If so, does Student require a residential placement during the 2021-2022 school year to receive a FAPE?
4. Exhibits and witness lists are due by the close of business on June 25, 2021, and should be sent to the Hearing Officer at 49 Camelot Drive, Shrewsbury, MA 01545 and to Alex Loos at 65 Cottage Street, #1, Melrose, MA 02176.

Should the parties reach a settlement agreement prior to the Hearing, the moving party shall submit a withdrawal of the Hearing. Failure to appear at the Hearing may result in dismissal of the matter with or without prejudice.

So Ordered by the Hearing Officer,

/s/ Alina Kantor Nir

Alina Kantor Nir

Dated: June 23, 2021

1. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 (d)(1)(A). [↑](#footnote-ref-1)
2. *See* 20 USC§1401 (9), (26), (29); 603 CMR 28.05(4)(b); Sebastian M. v. King Philip Reg'l Sch. Dist., 685 F.3d 84, 84 (1st Cir. 2012); C.D. v. Natick Public School District, et al., No. 18-1794, at 4 (1st Cir. 2019) (quoting Fry v. Napoleon Community Schools, 137 S. Ct. 743, 748-749 (2017));*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 Re: Chicopee Public Schools,* BSEA #1307346, 19 MSER 224 (Byrne, 2013). [↑](#footnote-ref-2)
3. *Endrew F. v. Douglas Cty. Reg'l Sch. Dist.*, 137 S. Ct. 988, 1001 (2017). [↑](#footnote-ref-3)
4. 20 USC §1401(34); 34 CFR §300.43. [↑](#footnote-ref-4)
5. 20 USC §1414 (d)(1)(A)(i)(VIII). See also 34 CFR §300.320(b). [↑](#footnote-ref-5)
6. Section 2 of chapter 71B of the Massachusetts General Laws was amended by Chapter 285 of the Acts of 2008 to require that beginning at age 14, or sooner if determined appropriate by the IEP Team, school age children with disabilities are entitled to transition services and measurable postsecondary goals, as provided under the IDEA. [↑](#footnote-ref-6)
7. *Dracut Public Schools*, BSEA # 08-5330, (Crane, 2009). [↑](#footnote-ref-7)
8. *Lessard v. Wilton Lyndeborough Cooperative School Dist*., 518 F.3d 18, 28-30 (1 st Cir. 2008) (applying FAPE standards to determine whether transition services were appropriate). [↑](#footnote-ref-8)
9. *Id*. at 30. [↑](#footnote-ref-9)
10. *Dracut Public Schools*, BSEA # 08-5330, (Crane, 2009). [↑](#footnote-ref-10)
11. I note that, subsequently, the District Court found that Hearing Officer Crane improperly extended Student’s eligibility. Specifically, the Court held,

    Here the issuance of the diploma was improper because C.A. was denied a FAPE. If the Hearing Officer had wanted to continue eligibility, he should have continued the “stay put” order, issued pursuant to 20 U.S.C. § 1415(j), which would have prohibited Dracut from giving C.A. his diploma. Now that Dracut has issued the diploma, the proper remedy is compensatory services.

    *Dracut Sch. Comm. v. Bureau of Special Educ. Appeals of the Massachusetts Dep't of Elementary & Secondary Educ.,* 737 F. Supp. 2d 35, 55 (D. Mass. 2010) [↑](#footnote-ref-11)
12. See *Dracut Sch. Comm. v. Bureau of Special Educ. Appeals of the Massachusetts Dep't of Elementary & Secondary Educ.,* 737 F. Supp. 2d 35, 54 (D. Mass. 2010). [↑](#footnote-ref-12)
13. *Quabbin Regional School District*, BSEA # 05-3115 and 05-4356, (Crane, 2005); see also

    *Yankton School District,* 21 IDELR 772 (South Dakota SEA 1994) ("transitional services such as are requested by TS's parents can stand alone as a special education program"). [↑](#footnote-ref-13)
14. The BSEA is currently not holding in-person Hearings due to the COVID-10 pandemic. If the situation remains the same by the Hearing dates, the Hearing will proceed virtually as scheduled unless either party files a motion to postpone and it is granted for good cause. Additional details regarding the virtual proceeding will be disseminated to the Parties as the Hearing Dates approach. [↑](#footnote-ref-14)