COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

SPECIAL EDUCATION APPEALS

**Student v. Westfield Public Schools & BSEA # 2200773**

**the Massachusetts Department of Mental Health**

**DECISION**

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC § 1400 *et seq*.), Section 504 of the Rehabilitation Act of 1973 (29 USC § 794), the state special education law (MGL ch. 71B), the state Administrative Procedure Act (MGL ch. 30A), and the regulations promulgated under these statutes.

**PROCEDURAL HISTORY**

Parents requested a hearing on July 27, 2021. The BSEA issued a Notice of Hearing scheduling the Hearing on August 31, 2021. On August 3, 2021 Westfield Public Schools (Westfield) filed an assented to request to postpone the Hearing and schedule a Pre-Hearing Conference. On August 18, 2021, the postponement request was allowed. The Pre-Hearing Conference was scheduled for and held on September 2, 2021 and the Hearing was re-scheduled to proceed on November 2, 3, and 4, 2021 Westfield filed an assented to Motion to Join the Department of Mental Health on September 2, 2021. The Department of Mental Health filed an Opposition to the Motion to Join on September 16, 2021. On September 20, 2021, the Motion to Join was ALLOWED. On October 8, 2021, the Parties filed a joint request to postpone the Hearing until November 16, 19, 22, and 23, 2021 to allow the Parties to engage in discovery. On October 22, 2021, the BSEA issued a Notice of Re-Assignment of the case from Hearing Officer Alina Kantor Nir to Hearing Officer Catherine Putney-Yaceshyn. The hearing was held on November 16, 19, and 22, 2021. The Parties requested a postponement of the date of the closing of the record to December 20, 2021, to allow for the submission of closing arguments. All Parties submitted their closing arguments on December 20, 2021 and the record closed on said date.

Those present for all or part of the hearing were:

Mother

Father

Jeffrey Pickar Parents’ Neuropsychologist

Alison Greene Advocate for Parents

Debra Ecker Special Education Director, Westfield Public Schools

Thomas Longo Psychologist, Westfield Public Schools

Sean Barry Director, DMH Child, Youth, and Family Services Division, Western, Massachusetts Area

Joel Aponte DMH Child, Youth, and Family Services Division Case Management Supervisor

Emily Martino Residential clinician, Cutchins Programs for Children and Families (hereafter Cutchins)

Elizabeth Blumgarten Educational Administrator, NEARI

Alden Grover Teacher, Neari

Matthew Engel Attorney, Parents

Alisia St. Florian Attorney, Westfield Public Schools

Jeffrey Morgan Attorney, Department of Mental Health

Josh Krell Attorney, Neari

Debra Quinn Attorney, Cutchins

Jane Werner Court Reporter

Catherine Putney-Yaceshyn Hearing Officer

The official record of this hearing consists of: Parents’ exhibits marked P-1 through P-11; Westfield Public Schools’ exhibits marked S-1 throughS-37; Department of Mental Health’s Exhibits marked DMH 1-3 and approximately 12 hours of recorded oral testimony.

# ISSUES[[1]](#footnote-1)

1. Would a private special education day school, such as Neari, provide the student with a free appropriate public education in the least restrictive environment.
2. If not, whether placement in a special education residential school would provide Student with a free appropriate public education in the least restrictive environment.

**SUMMARY OF THE EVIDENCE**

1. The student (hereinafter, “Student”) is nearly 15-years-old and resides in a therapeutic group home that is part of Cutchins and has been placed by the Westfield Public Schools (hereinafter, Westfield) at the New England Adolescent Research Institute (Neari). He has been diagnosed with a language-based learning disorder, (Reading Disorder, Disorder of Written expression), Mathematics Disorder, ADHD, Reactive Attachment Disorder, Post Traumatic Stress Disorder, Generalized Anxiety Disorder (with features of OCD), and Disruptive Mood Dysregulation Disorder. (S-1)
2. Parents have accepted all of Student’s IEPs, with the exception of the IEP proposed on or around March 2021, covering the period from March 31, 2021 to March 30, 2022, which they have neither accepted nor rejected. (Mother)
3. Mother described Student as an extremely fun loving child who likes to make people laugh and to find ways to connect with them. He loves animals, music, theater, and a puppet program on which he is working at Cutchins. He has an extremely high baseline anxiety and relies on adults to keep him emotionally regulated. She noted that he is not able to verbally process difficult situations and lacks adaptive skills. Student was adopted from Guatemala in September 2007 when he was seven and a half months old. As a very young child Student did not cry much, accept soothing from Mother, or develop normal play skills. He began receiving Early Intervention services in January 2008 and received them until preschool. He was found eligible for special education services when he turned three and attended the Fort Meadow Preschool. He attended kindergarten at the Juniper Park Elementary School where he spent half the day in a general education classroom and half the day in a resource room. He then attended Munger Hill Elementary School where he was in a substantially separate LLD classroom and remained there until fourth grade. Because he was making few gains academically or emotionally, Student began attending Neari mid-way through his fourth grade year. Throughout this time period Student engaged in acting out behaviors at home. His at-home behaviors escalated after he began attending Neari. He engaged in destructive behaviors such as kicking furniture over and breaking items in the house. He would verbally express hatred and anger toward his Parents. By this time, Student had begun receiving Continuum services from DMH. Among the services provided by DMH was a crisis team which Parents had begun utilizing in 2016. (Mother)
4. By 2019 Student was engaging in dangerous behaviors at home such as throwing large objects, like end tables, at his younger brothers. He would throw objects at his Mother and hit her countless times. When the crisis team responded to his home, Student would become “stoic and blank” and would not respond to questions about what lead to his behavior. Student was dysregulated at home all of the time. In March 2019 Student was hospitalized following an incident at home. He had returned from a scout camping trip which had been a positive experience. As soon as he arrived home he became irate and demanding. When he began to escalate, Parents called the crisis team to do an assessment. As usual, Student became unresponsive and non-communicative when the crisis staff arrived. When the crisis worker who was assessing Student went outside to call her supervisor, Student resumed his prior unsafe behaviors including jumping on the counters and threatening to hurt himself. Mother went outside to speak to the crisis staff who recommended bringing Student to the emergency room. Student stayed in the emergency room at Noble Hospital for around five days before a placement was found at the Brattleboro Retreat. He stayed there for about two and a half weeks. In April 2019 Student moved into a placement at Cutchins, a DMH therapeutic group care facility located approximately ten minutes away from Neari and thirty-five minutes away from Student’s home. (Mother, Barry)
5. Sean Barry is the Director of Child Youth and Family Services for the Department of Mental Health.[[2]](#footnote-2) He explained that the reason that somebody is placed in therapeutic group care is because there are concerns for safety and he/she cannot receive treatment that’s appropriate for him/her within their home due to the safety concern. Cutchins is staffed with clinical staff and its primary focus is Dialectical Behavior Therapy (DBT). They also have a heavy occupational therapy component. The Cutchins campus has three six-bed houses, one for adolescent males, one for adolescent females, and the latency program. (Barry)
6. Student continued to attend school at Neari after he began living at Cutchins. (Mother) Neari is a trauma-based program with a focus on relationships. There are about 30 students, including Student, in the AP program, for older students. There are two or three students in each class. Students at Neari have social emotional and behavioral issues. They may have other needs, such as significant cognitive needs as well. The program goes through the twelfth grade and some students stay beyond the twelfth grade if they have not gotten a diploma and are not yet 22 years old. All teachers are special education certified or on a waiver. There is a behavior interventionist in every classroom and some in the hall. If a teacher is teaching and a behavior arises, the interventionist handles it. (Blumgarten)
7. Mother reported that even when Student was living at home, he did not have behavioral outbursts at Neari. She explained that Student loves Neari and has always felt comfortable and at home there. Further she noted that Student is meeting the requirements of his physical aggression goal at Cutchins. However, she is concerned that there has not been a decrease in his level of anxiety or a reduction in his hypervigilance.
8. Jeffrey Pickar, Ph.D., neuropsychologist, is a clinical psychologist licensed by the state of Massachusetts.. He was co-director of an outpatient clinic at McLean Hospital that performed neuropsychological and psychological testing from 1988-1994, and has been in private practice since then, providing testing services and psychotherapy, primarily for children and adolescents. He evaluated Student over the course of three days in November 2020 and wrote a report of his findings[[3]](#footnote-3). (P-2, Pickar) Parents were referred to him by Kathryn Piscitelle Psy.D., who had conducted three previous neuropsychological evaluations of Student. (Pickar) Dr. Pickar reviewed Student’s school records dating back to preschool, including Dr. Piscitelle’s prior evaluations. He interviewed Parents, Student, Neari staff, Leah Levine (Student’s private therapist), Student’s psychiatrist, Student’s then-clinician at Cutchins, and Student’s/Parents’ advocate. (Pickar)

Dr. Pickar concluded that Student “shows higher-level cognitive functioning in the borderline to low average range, consistent with past testing.” He noted significant unevenness across different cognitive domains. He reported Student shows “relatively even verbal conceptual and visual spatial/perceptual reasoning functioning in the low average range, fluid reasoning in the borderline range, and significant executive function and memory difficulties in the intellectual deficient range.” He noted that Student’s adaptive functioning in terms of self-care and self-direction at home and at Cutchins was severely delayed, at the developmental age of a five to seven-year old, though he performs somewhat better in the school setting. He noted that while Student does not qualify as having an intellectual disability, his adaptive skills are “in that range.” He assessed Student’s academic skills range to be from a first to fourth grade level, with higher reading and language arts skills than math skills. (Pickar, P-2)

In assessing Student’s emotional functioning, Dr. Pickar noted that Student is a kind, thoughtful boy who is “organized around securing primary relationships with adults and who struggles with significant anxiety and worries about the stability and safety of relationships borne of early trauma and attachment difficulties …” He found that Student has limited capacity to reflect on his internal experience, which he did not attribute to significant mood difficulties. He questioned whether Student struggled with autistic spectrum difficulties and recommended that Student be administered the ADOS-2. (Pickar, P-2)

Dr. Pickar recommended, “given the continued prominence of [Student]’s attachment difficulties and anxiety and his history of volatility, aggressiveness and suicidality as more vulnerable feelings emerge, as well as his lower cognitive functioning, and his lower academic and adaptive skills, that [Student] be placed in an integrated school and residential program geared toward lower functioning adolescents with an emphasis on functional living, academic and vocational skills and that would also allow for increasing contact and [sic] between [Student] and his family with support/therapy for all of them.” He further recommended that Student’s time with his family, that had been severely restricted due to the Covid pandemic, be increased with careful planning for success. (P-2)

Dr. Pickar explained that he had concerns about the plateauing of Student’s intellectual capacities and academic skills, and noted his low independent living skills. On the emotional side of the testing, he was concerned that Student still appeared quite anxious and hypervigilant in both school and his residence. He noted that he was much less emotionally reactive than he had been in the past. He explained that the Neari staff he spoke to were concerned about Student moving into their high school program, for students aged 13 to 18. Cutchins staff expressed a similar concern about Student moving to their adolescent program because he seemed developmentally younger than the other residents and was in need a lot of reminders about completing activities of daily living (such as changing his clothes and brushing his teeth). He conceded that neither Cutchins nor Neari staff told him they believed Student’s placement was not appropriate and could not meet his needs. (Pickar)

Dr. Pickar suggested that one of Student’s goals should be to physically take care of himself, including bathing, washing, brushing teeth, changing clothes, shopping, doing dishes, and cooking food. He stated that Student’s goals should be coordinated between the place where he lives and the place where he goes to school, as the same goals should be addressed across his whole day. He opined that because Student has difficulty with memory and abstract thinking, he is not likely to carry over ideas from place to place. He stated that Student needs a strong behavioral program in place across settings, with rewards and consequences for behaviors, but that the program would not have to use ABA methodologies. He conceded that he had not asked the staff at NEARI or Cutchins about the level of coordination between their two programs and had not visited either setting. (Pickar, P-2)

Dr. Pickar stopped short of testifying that a program with a separate school and residential portion would not be appropriate for Student. He conceded that such a program could potentially be appropriate for Student. When asked if his opinion that Student requires an integrated residential program would change if he learned that Student’s transitions to Neari’s and Cutchins’ adolescent programs had gone well for Student, he stated that he would want to hear about Student’s progress from the staff. He further stated he would want to know whether Neari could create a functional skills curriculum for Student, and how his independent living skills and socialization would be managed at Cutchins. Finally, Dr. Pickar opined that opportunities for home visits and work with Student and his family would be crucial for Student. (Pickar)

1. Mr. Longo is a school psychologist in the Westfield Public Schools. He has a bachelor’s degree and a certificate of advanced graduate studies in psychology and has had advanced ABA training. He is a Massachusetts certified school psychologist and licensed behavioral analyst. He has provided in-home services to children on the autism spectrum, is a senior lead consultant contractor for a Massachusetts Department of Developmental Services/ Department of Elementary and Secondary Education program, and has his own ABA agency in Longmeadow. He has evaluated Student twice, on February 8, 2021, when he administered a psycho- educational evaluation as part of Student’s three-year evaluation[[4]](#footnote-4) (S-11) and on April 26, 2021, when he administered the ADOS[[5]](#footnote-5). He noted that the results he obtained during the February 8, 2021 testing was extremely similar to Dr. Pickar’s results. He observed that both evaluations showed low average verbal abilities; a strengthening of processing speed, and weaknesses in fluid reasoning and working memory. Mr. Longo had observed Student to be quite anxious and hypervigilant throughout the testing and noted concerns about the way his emotional state, related to his anxiety and history of trauma, might impact him academically. He also cited concerns about Student’s short-term memory.
2. The Team convened on March 31, 2021 to review the results of Student’s three-year evaluation, including Dr. Pickar’s evaluation. (Mother) It was the first half of two meetings in which the Team reviewed evaluations. Mother did not recall any of the Team members disputing Dr. Pickar’s recommendation for an integrated residential placement. Debra Ecker, who was the Interim Special Education Director for Westfield Public Schools during the 2020-2021 school year and is now the Special Education Director, attended the meeting. There was no real discussion of placement proposals at that meeting. (Ecker)
3. Mr. Longo presented the results of the ADOS when the Team reconvened on April 28, 2021. He noted that Student displayed pretty good eye contact during testing and that his social reciprocity skills were pretty good. He noted some weaknesses in perspective taking and making social inferences, but that Student displayed some pretty good insight into emotions. Mr. Longo concluded that Student did not meet the criteria for autism spectrum disability based on the ADOS and the autism rating scales, although some scores were in the mildly elevated range. .. He testified that Student had previously been evaluated approximately seven times and was not found to have an autism disability as a result of any of the prior evaluations. (Longo)

At this April Team meeting Dr. Pickar recommended a residential program and believed that there was consensus about what Student needed. He recalled some discussion about sending a packet to Dr. Franklin Perkins and looking into other programs. (Pickar) Mr. Longo did not hear anybody from Westfield state that Student required a residential placement. He recalled that Mother and the advocate raised concerns about whether Neari was the best fit for Student. They were concerned about Student transitioning to the adolescent program and being more delayed adaptively, cognitively, and academically than his peers. There was no consensus as to what program would be best for Student. Mr. Longo recalls the team brainstorming around placements. He did not hear anybody from Neari say that their program was no longer appropriate for Student. (Longo, Pickar) Mr. Longo did not believe that ABA would be an appropriate methodology to use with Student because it is typically used for students with intellectual disabilities as well as severe autism. He noted that Student’s difficulties appear to be more in the nature of social/ emotional and behavioral, relating to anxiety and trauma. Mr. Longo suggested that a behavioral approach might be an effective part of Student’s program and concluded that he definitely required a therapeutic approach, like that used by Neari. (Longo)

Ms. Blumgarten is the educational administrator at Neari. She holds a bachelor’s degree in elementary education, a master’s degree in special education and a C.A.G.S. in educational administration and is licensed as a special education administrator. She reported at the meeting that Student was doing well and making progress socially, emotionally, and behaviorally, but if he required ABA or discrete trials, Neari did not use those methodologies. Because Dr. Pickar’s report raised the possibility that Student may require more explicit instruction in adaptive skills and possibly some ABA services, the Team discussed potentially looking for a new placement for Student. While Parents and their advocate suggested a new placement, Neari did not. Ms. Ecker wanted to see what other programs might exist that would better meet Student’s cognitive profile and possibly provide ABA. She did not recommend specific programs at that meeting, but recalls Ms. Greene (who is that?) mentioning Franklin Perkins. Ms. Ecker was focusing on day placements, because she became aware that DMH provides Student’s residence at Cutchins. (Ecker)

1. Neari never told Ms. Ecker, either in a Team meeting or outside of a Team meeting, that they could no longer meet Student’s needs or that they were no longer an appropriate school for Student. (Ecker)
2. On April 29, 2021, Westfield issued an N1 which noted that a re-evaluation meeting had been continued and held on April 28, 2021. Student was found eligible for special education and the Team discussed that Student may be better served in a different setting from his current placement. The district would be exploring other educational placements and would follow up with parents in the next two weeks. (S-2)
3. Mother met with Ms. Greene and Ms. Ecker on May 12, 2021. Ms. Ecker provided information about three day school placements, including May Institute, River Street School, and Center School. They agreed the placements were not appropriate for Student. There was some discussion about whether Franklin Perkins would be an appropriate placement.. Ms. Ecker explained that as a new special education director, she was trying to be open to parents’ suggestions and willing to explore whether there were other programs that might better meet Student’s needs. She did not, however, propose a residential placement. (Mother, Ecker)
4. On June 4, 2021, there was a meeting between Mother, Ms. Greene, Ms. Ecker, Mr. Aponte, Child, Youth, and Family Services Division Case Management Supervisor for the Massachusetts Department of Mental Health, and Student’s case manager, Maria Rodriguez. Ms. Ecker asked Mr. Aponte whether DMH would consider cost sharing a placement at Franklin Perkins if Westfield were to place him there. Mr. Aponte responded that was not an option, but offered to confirm that with his supervisor. (Mother)
5. On June 9, 2021, Westfield issued an N1. It stated that the district proposed sending a referral to the May Institute because the Team had determined that Neari no longer met Student’s needs. Westfield rejected Parents’ request to send a referral packet to the Doctor Franklin Perkins School because the school is located in Lancaster, Massachusetts, more than a one-hour commute from Westfield. The N1 noted, “The district continues to recommend a private day school placement for [Student].” Westfield further noted that there was no evidence, report or recommendation that Student required a residential placement in order to receive a free appropriate public education.
6. Ms. Ecker explained that once she realized that Student did not require an ABA approach, she determined that Neari would continue to be appropriate to meet Student’s needs. (Ecker)
7. There was another meeting on June 23, 2021 between Ms. Ecker, Attorney St. Florian, Mother, and Ms. Greene. (Mother) During this meeting Westfield informed Mother that it did not agree that Student required an integrated residential placement. Mother stated that she thought they should reconvene the Team to memorialize that determination. Mother was concerned that the decision to leave Student at his Neari and Cutchins program came outside of the Team process. (Mother)
8. Emily Martino, LCSW, is a residential clinician at Cutchins. She has a master’s degree in social work and is a licensed, certified social worker. (She has worked at Cutchins since 2016 when she was a residential counselor). In her role as residential clinician, Ms. Martino assesses the needs of clients and provides treatment planning and interventions. She collaborates with team members including school staff, outside providers, families, and other supports. She provides individual, group, and family therapy and collaborates with residential staff to implement plans for the clients the staff works with to support their overall treatment goals.

Ms. Martino first met Student in 2019, but did not work with him regularly until January 2021. She worked with him during his transition from Harland House, where he previously lived, to King House, the adolescent house. The staff had a lengthy transition process to help Student become used to the changes. Ms. Martino noted that when Student transitioned to the adolescent program at Neari, the school utilized a transition classroom which worked well for him. Given that Student struggles with transition, Cutchins devised an extended transition period for Student, e.g., he visited King House before moving there; Ms. Martino had joint individual and family sessions with Student and his previous clinician for several months before working with Student without his previous clinician present. She began seeing Student individually in March and by May she was solely responsible for Student’s case and his prior clinician was no longer involved. Student handled the transition to King House well overall. He adjusted especially well to the transition of meeting with Ms. Martino. He had some difficulty transitioning to living with the adolescent boys due to the different expectations that staff have of the adolescents as compared to the younger group. He had difficulty with being responsible for managing his time more independently, and he also struggled with expectations that he complete more tasks on his own initially. He has improved since the initial transition and has been able to adapt to routines and adjust to expectations. He relies on the consistency of his routines and is able to follow the schedule at King House. There are currently five young men between the ages of thirteen and eighteen living at King House. Some have stronger cognitive abilities than Student and some have similar abilities. (Martino)

On a typical day, Student wakes up on his own and showers in the morning before school. He needs some reminders about that, but not every day. He is pretty good about his hygiene routines, Although he occasionally needs reminders to wear clean clothes, because he will grab whatever is available. He has no difficulty getting to school on time. He takes a van to Neari and returns to King House between 2:30 and 2:45. He usually enters the house and checks to see who is there. He is very aware of what is going on around him and needs to have a sense of what to expect and to know who is in the house and what is going on with his peers and the staff. He goes to the central kitchen at around 3:30 to help with prep work, preparing dinner and delivering food to the other houses on campus. He also helps with cleaning tasks such as taking out the trash. He goes to dinner with the rest of his peers at 5:00 and after dinner he typically helps in the kitchen with clean up before returning to King House. A few days a week there are other activities planned such as a DBT group and occupational therapy activities. He meets with Ms. Martino once per week and has family therapy once per week. He also meets with an outside therapist once per week. After dinner there is an activity planned in the house most evenings or an activity in the community. Student also interacts with a peer playing video games or watching television. He has earned the privilege of having a technology plan, which allows him limited time on his personal Chromebook. He goes to bed at 9:00. (Martino)

Student regularly engages in safe behaviors and is not disruptive. He manages his schedule well with a few reminders. He has difficulty if there is an unexpected change to his schedule.. He presents as very anxious when presented with unstructured time and has difficulty knowing what to do. His day is mostly structured, and his planned activities take up most of the day. During the time that Ms. Martino has worked with Student his affect, mood, emotions and anxiety have remained at about the same level. There have been differences in the way that his anxiety presents and the way he expresses it. Student has told her that he does not want to be at Cutchins anymore. Although he enjoys some aspects of the program and likes the people and his interactions with them, he has repeatedly said that he hopes to have more freedom and that being in a program limits his freedom. He does not talk much about his visits home. If Ms. Martino asks him about a visit he will usually say it was good or fine, but does not elaborate. . (Martino)

Ms. Martino is involved in writing Student’s treatment plan. The plan identifies goals and specifies interventions to achieve the goals. The plan can be edited every quarter. Student’s plan has remained fairly consistent. (Martino) The goals of the treatment plan for the period from August 10, 2021 to November 9, 2021 are: 1) (Distress Tolerance): Increase ability to manage anxiety; 2) (Emotion Regulation) Increase ability to utilize learned skills across settings;(3) (Distress Tolerance/Emotion Regulation) Increase ability to self-soothe; (4) Individual/Medical) Develop ability to complete activities of daily living (ADL’s) and independent/life skills; (5) (Interpersonal Effectiveness)Develop positive social relationships;(6)(Family) Increase ability to tolerate interactions with family’ (7) (Family) Increase ability to manage emotions safely in the home environment; (8) (Family) Recover from burnout; (9) (Individual) Increase the frequency he is able to initiate and independently engage in preferred activities and daily living skills. The plan states that Student will be considered ready for discharge from Cutchins when he meets the following criteria:

Increased ability to generalize emotion regulation skills across settings

Increased ability to manage anxiety

Increased ability to self-soothe

Increased ability to tolerate family interaction

Ability to avoid physically aggressive behavior

Decreased verbal aggression with family. (S-34)

Ms. Martino attends Student’s monthly meetings. From what she has heard at the meetings, she understands that Student does well in school, enjoys going, and demonstrates pretty good behavior there. He has some academic difficulties, but the Neari staff has a good understanding of how to support Student academically. Cutchins and Neari communicate by email or phone if they need to connect about students between meetings. She characterized the communication between Cutchins and Neari as good. They do not communicate daily, and Ms. Martino is therefore not aware of the details of what goes on daily in school.

Ms. Martino testified that Cutchins shares Parents’ opinion that it is not meeting the totality of Student’s needs. She indicated that while Cutchins is meeting his mental health needs,[[6]](#footnote-6) however he has other needs in areas in which they do not specialize, such as cognitive functioning, adaptive skills[[7]](#footnote-7), and executive functioning, as referenced Dr. Pickar’s report.. She noted that Cutchins has the ability to help clients learn those things, but that is not the specific focus of their program. She acknowledged that Student practices adaptive skills when he showers and gets ready for school; helps in the kitchen; and participates in community outings, and that expectations around those skills are enforced by the residential staff. However, she said, the skills are not addressed in a clinical way (Martino)

1. Occupational Therapy Session Notes from Cutchins spanning the period from September 22, 2020 through October 27, 2021 highlight skills Student worked on and his response to therapy. Student engaged in art expression in which the occupational therapist, Hollie Marron, noted reduction in Student’s visual hypervigilance and increased attention to task. Student benefitted from therapeutic horticulture while demonstrating reduced hypervigilance and pride in his work. He practiced activities of daily living, social skills and worked on practicing distress tolerance. During various sessions, Student was able to express enjoyment, interest, and satisfaction. At the end of a session with Charles Cooley, OTR, , he reported that he felt calm. He worked on activities involving woodworking and team building. He played games with his peers and practiced leisure skills. During a session on April 14, 2021, Student requested and received sensory interventions and reported feeling better. He participated in group recreational activities such as swimming and worked extensively on a project involving putting on a puppet show, in which he had opportunities to act as a mentor for younger children. On September 30, 2021, Student had a break from his kitchen job and initiated using the time for gardening. (S-35)
2. Joel Aponte is a Child, Youth, and Family Services Division Case Management Supervisor for the Massachusetts Department of Mental Health. He has been involved in most meeting involving Student since early 2020. He attends monthly treatment meetings that generally include the Cutchins team, the family, the DMH case manager and staff from Neari. At the most recent meeting he was informed that Student is doing fairly well in school and in his residence. Since mid-summer or early fall, Student has been visiting home one weekend day per week for 4 to six hours. Parents pick him up and drive him back to Cutchins, a thirty-five minute drive each way. He noted there have been ups and downs to the visits, but Student was doing okay for the most part. Mr. Aponte indicated that Student recently was trying to engage more with his siblings and be more “brotherly.” Student has not engaged in any physical outbursts or verbal aggression during his visits home. (Mother) If Student was not doing well at Cutchins, Mr. Aponte would be informed. He would either get an email or a phone call. Cutchins has not raised any concerns about Student to him since he has been residing there. DMH’s ultimate goal is to reunite Student with his family. They would like to increase his visits over time and have him stay at home overnight. He views the fact that Student has been going home on a weekly basis as an indication of progress, which DMH would like to continue and increase. DMH does not have any specific date or plans for Student to return home,, but they are constantly working toward reunification. Mr. Aponte stated that the fact that Cutchins and Neari are close to where Student’s family lives is an important factor in the ability to work toward reunification. He noted the importance of the family being nearby if something happens and stated it provides Student with a sense that “my family is here.” He is concerned that if Student were to move further away from his family it would impact Student in that feelings of abandonment may arise. If at some point in the future Student were to meet his discharge goals, DMH would assess his then-current needs. They would have input from his clinical team and staff working directly with Student, and work on a transition plan. They would support Student and his family during any transition. (Aponte) Mr. Barry, the Director of DMH Child, Youth, and Family Services Division, Western Massachusetts Area, stated that DMH would continue to support Student at Cutchins until a less restrictive option made sense for him. One less restrictive option would be for Student to return home. Another would be foster care, however foster care is not contemplated for Student. (Barry)
3. Elizabeth Blumgarten, educational administrator at Neari, oversees the curriculum and the students and works with districts. Ms. Blumgarten first met Student last September, when he moved from the program for younger students, the JP, to the AP program. Student was initially placed in a self-contained program in the middle school. The students did not change teachers, but stayed in the same classroom. He is no longer in the self-contained classroom. He is in the regular middle school where he stays with the same group of students, but the teachers change. She noted that Student has matured greatly.. She sees him as social and wanting to have friends and be a part of things. She described him as delightful and always wanting to please. Ms. Blumgarten noted that he is one of the stronger students in the middle school academically. She has spoken to Student’s math teacher who reported that he understands math and knows multiplication and addition facts. Although she has heard reports from the JP staff and from Dr. Pickar that Student can read, but does not comprehend what he reads, she observed him in a recent health class, and he was able to identify the concepts of an article that he read. Ms. Blumgarten observed that Student has blossomed socially. She has seen him laughing and joking with peers and appearing cheerful. Having worked at both Cutchins and Neari, she is aware that Cutchins would contact Neari to inform staff if a student had had a difficult time in the residence. (Blumgarten)
4. Alden Grover has two provisional licenses in moderate disabilities: kindergarten through eighth grade and fifth through twelfth grade. He has worked as a paraprofessional in a therapeutic elementary school and as a mentor to high school students. He was Student’s English language arts teacher for three weeks during the summer of 2021 and since October 12, 2021. There are between 3 and 4 students in his classes and there is an interventionist present in each class. Student works hard in his class. Mr. Grover has had conversations with Student’s other teachers who noted that Student used to rush through his work. He noted that Student has really slowed down and can now pace himself. He accesses fidgets, knows where his classroom materials are, and can monitor his belongings. He can use a graphic organizer to formulate a final draft. He uses a self-editing checklist to correct his writing. He benefits from and enjoys reading aloud. He appreciates the routine in class and likes to joke around. Mr. Grover does not have any significant concerns about Student academically, socially, or emotionally, and has not heard other staff voice any. He will be issuing progress reports soon and expects to report that Student is working on an argumentative essay and can build an argument. Mr. Grover has seen Student make progress. He characterized him as a conscientious student who accesses supports well. (Grover)
5. Student’s progress reports from Neari for the period from March 22, 2021 through June 21, 2021 indicate that he “showed steady improvement in our daily grammar activities, and was observed to apply those skills built when editing his five-paragraph essay.” His math teacher noted that Student’s need for direct staff support had dropped significantly, and Student was able to self-correct work accurately. Progress notes further indicated that he was able to successfully write a five-paragraph essay with significant staff support. His reading comprehension was noted to be slowly improving. and an increased level of independence across academic settings was cited. He met some of his occupational therapy benchmarks. Student did not make significant progress in identifying his own emotions and accessing self-regulation tools, however increased his ability to name emotionally producing situations. (P-4, S-15)
6. Student’s IEP progress reports dated August 27, 2021 indicate that he maintained progress and skill development toward benchmarks under his writing and reading goal for the summer quarter. In math he was noted to have participated well and demonstrated pride in his progress. In the area of academic support, he maintained progress and increased his ability to be independent while doing academic work, but required significant encouragement that he is able to do certain tasks independently. In the social emotional realm his ability to identify an emotion had increased, but he continued to struggle with demonstrating an understanding of an appropriate response to the emotions he is having. He met some of his occupational therapy benchmarks. (S-14)
7. Cutchins’ quarterly progress review notes for the period between February 10, 2021 and May 9, 2021, reflect areas where Student made progress and skills on which he continues to work. Student had settled into the structure and expectations of King House, the adolescent house at Cutchins. He had increased contact with his family, but still struggled to use skills independently at home. He transitioned from working with Harland House clinician Jacqui Channing to King House clinician, Emily Martino. He was engaged in individual therapy and showed a willingness to share his feelings and let the clinician get to knew him. He transitioned back to fully in-person learning from a hybrid schedule necessitated by the Covid-19 pandemic. There was a significant decrease in instances in which Student misrepresented or embellished reality. He continued to struggle with talking about his feelings and utilizing emotion regulation skills in a variety of settings, and continued to appear hypervigilant. (P-6)
8. Student’s quarterly progress report from Cutchins for the period from May 10, 2021 to August 9, 2021 notes that Student continued to struggle with symptoms of anxiety and appearing hypervigilant, especially during unstructured times. He identified that engaging with others as a positive distraction was an effective skill for managing emotional distress. He has become more willing to share his internal experiences during individual therapy when the topic is unprompted. Student’s clinician is continuing to identify opportunities for Student to use his emotion regulation skills in the residence, at school, and at home. He increased his family contact and continues to practice skills he has learned at home. He made progress learning independent skills needed to complete daily chores such as reminders. With prompts from staff Student regularly completes all ADL tasks. Misrepresentations and embellishments were no longer a significant concern. Family therapy went very well, and Student enjoyed interacting with his parents. Student remained engaged in conversations with them and often brought up topics on his own, requiring less support from his clinician to facilitate conversations. Student demonstrated an increased ability to communicate his emotions and participate in verbal processing in family sessions. Student was able to successfully manage his emotions at home, although he struggled to utilize his distress tolerance skills at home. Student identified that engaging with others as a positive distraction is an effective skill for managing distress. He continued to struggle with verbally processing his feelings, but has been more open to sharing his internal experiences when the topic is unprompted. (P-5)
9. Mother testified that she hopes Student will receive his high school diploma and find a career that he is interested in and capable of having. She wants him to attain his dream of being independent and living on his own, and to have genuine relationships and be able to rely on his family. She does not want him to live with the amount of anxiety and hypervigilance that he currently experiences. Mother is concerned that there is no guarantee that he will remain at Cutchins for any length of time as nobody from DMH has assured her that there is no current plan to discharge Student from Cutchins. It is her understanding that Student will not be discharged from Cutchins until he is considered to have met all of his treatment goals. (Mother)

**FINDINGS AND CONCLUSION:**

Student is an individual with a disability, falling within the purview of the Individuals with Disabilities Education Act (IDEA)[[8]](#footnote-8) and the state special education statute.[[9]](#footnote-9) As such, he is entitled to a free appropriate public education (FAPE). Neither his status nor his entitlement is in dispute.

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education, employment and independent living.”[[10]](#footnote-10) FAPE must be provided in the least restrictive environment. Least restrictive environment means that, “to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”[[11]](#footnote-11)

Student’s right to a FAPE is assured through the development and implementation of an individualized education program (“IEP”).[[12]](#footnote-12) An IEP must be custom-tailored to address a student’s “unique” educational needs in a way reasonably calculated to enable him to receive educational benefits.[[13]](#footnote-13) For an IEP to provide a FAPE, it must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”[[14]](#footnote-14) A student is not entitled to the maximum educational benefit possible.[[15]](#footnote-15) Similarly, the educational services need not be, “the only appropriate choice, or the choice of certain selected experts, or the child’s parents’ first choice, or even the best choice.”[[16]](#footnote-16) The IDEA further requires that special education and related services be designed to result in progress that is “effective.”[[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)

Massachusetts special education regulations provide that specially designed instruction and related services described within the IEP must be sufficient to “enable the student to progress effectively in the content areas of the general curriculum.”[[19]](#footnote-19) Massachusetts also requires that the special education services be designed to develop a student’s educational potential.[[20]](#footnote-20)

The IDEA requires that “to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. See 20 USC 1412(a)(5); 20 USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c)

The burden of persuasion in an administrative hearing challenging an IEP is placed upon the party seeking relief. *Schaffer v. Weast, 546 U.S. 49,* 126 S. Ct. 528, 534, 537 (2005) In this case, Parents are the party seeking relief, and as such have the burden of persuading the Hearing Officer of their position.

With the foregoing legal framework in mind, I turn to the issues before me.

1. Would a private special education school, such as Neari, provide Student with a free appropriate public education in the least restrictive environment.

Student has been attending Neari since 2017, the middle of his fourth grade. He has demonstrated the ability to maintain safe behaviors in that setting even, when he was living at home and unable to maintain safe behaviors in the home setting. Mother confirmed that Student loves Neari and has always felt comfortable and at home there. Parents’ position that Student requires an integrated residential school to receive a free appropriate public education in the least restrictive environment is based almost entirely on the recommendations of Dr. Pickar. Dr. Pickar evaluated Student at a time when he was preparing to transition from the JP program, where he had been since he began attending Neari, to the AP program, where the older students are educated. When Dr. Pickar spoke to Neari staff, there was a concern about how the transition would impact Student. Parents were also concerned about how Student would react to the change. However, by the time of the Hearing, Student had made a successful transition from the JP program to a substantially separate AP program, and then to a more general AP program where students rotated among various subject matter teachers. When asked whether his opinion that Student required an integrated residential placement would change if he learned that Student had made a successful transition to the Neari adolescent program (and the Cutchins adolescent program), Dr. Pickar candidly responded that he would want to hear about Student’s progress from the staff before determining whether his opinion that Student required an integrated residential program would change. Dr. Pickar’s opinion is further limited because he has never observed Student in any setting other than his office during testing. He did not observe Student at Neari or at Cutchins, and thus could not see firsthand how he functioned in either setting.

The testimony of Ms. Blumgarten and Mr. Grover was that Student was making both social emotional and academic progress at Neari. They discussed Student’s increased ability to work carefully through his lessons instead of rushing. They noted his increased ability to comprehend what he reads and to write a five-paragraph essay with support. Mr. Grover described Student’s increased ability to access supports such as graphic organizers and a self-editing checklist. Ms. Blumgarten noted Student’s increased maturity since he has been at the AP program. Neither witness testified to any concerns about Student’s academic or social emotional presentation at Neari.

Dr. Pickar’s recommendation was also based in part on his conclusion that Student struggled significantly with activities of daily living (ADLs). However, the testimony of Ms. Martino, his current therapist at Cutchins, disproved that opinion. Ms. Martino testified that Student was able to wake up and shower on his own before school each morning. Despite still requiring some reminders, Ms. Martino stated that Student is relatively good about hygiene. He did not have difficulty getting to school on time. He was able to complete cooking and cleaning tasks at his campus cooking job and able to go to dinner with his peers. There was no testimony from staff who currently work with Student that he was not able to manage and progress in his ADLs at Cutchins. Further, although Ms. Martino testified that Cutchins is not meeting all of Student’s needs as identified in Dr. Pickar’s report, Student’s Cutchins’ Treatment Plan does in fact identify several of those areas of need as goals for Student. Ms. Martino defined adaptive skill as skills that would help Student navigate the world such as problem solving and navigating social relationships. Student’s current Treatment Plan specifically targets ADLs (goal #4) and developing social relationships (goal #5).

Multiple witnesses testified about the importance of Student being in close proximity to his family, given his attachment disability and need to engage in family therapy and continue working toward reunification. Mr. Aponte testified that he would be concerned that if Student were to move further from his family it would cause feelings of abandonment to arise. Dr. Pickar also recognized the importance of Student spending time with his family after it had been restricted due to Covid-19, and recommended that Student’s time with family be increased with planning. Cutchins is located approximately thirty-five minutes from Student’s home. I take administrative notice that Dr. Franklin Perkins School, the residential school that Parents and advocate suggested as a possible placement for Student, is located approximately one and a half hours from Student’s home. The difference in travel time could have a significant impact on Student’s ability to visit his home as frequently as he currently does and on his sense of family proximity.

Although Ms. Martino testified that Cutchins does not focus on activities of daily living or adaptive skills, but rather on Student’s mental health needs, as noted above, his treatment plan includes a goal focusing on ADLs. Further, the occupational therapy progress notes demonstrate that the occupational therapy services he is receiving at Cutchins address overlapping needs in many ways. (See ¶ 20 above.) The notes demonstrate that Student is benefitting from partaking in art therapy, which increased his attention to tasks and reduced his hypervigilance. He practiced social and leisure skills by participating in community outings and playing games with peers. He worked on writing and performing puppet shows and acted as a peer mentor. He learned how to perform kitchen tasks and initiated preferred tasks during free time. (S-35)

Dr. Pickar testified that it was necessary for Student’s school program to be in constant contact with his residential program in order to enable Student to carry over goals between the two settings. The evidence shows that Neari and Cutchins communicate primarily during their monthly provider meetings and by telephone and email as needed. While they do not engage in daily communication, they communicate any necessary information from one entity to the other as needed. And, despite the absence of daily communication between the two programs, Student has been able to carry over certain skills across settings, most notably, to maintain safe behaviors between Neari and Cutchins and between Cutchins and home. There is no credible evidence that Student is not making progress at both Neari and Cutchins even without daily communication and common staff.

It must be noted that Mother presented as incredibly dedicated to securing services and programming to effectively address Student’s needs. She is knowledgeable about his needs and is a very strong advocate for him. Her love and dedication were very apparent throughout her testimony. It is understandable that Mother would be concerned about what would happen if DMH were to determine that Student had met his treatment goals and was no longer able to remain at Cutchins. However, the overwhelming evidence demonstrates that DMH would convene his treatment team, of which Parents are a part, to determine what the next steps would be for Student before any such change occurred. Additionally, his educational Team would be required to convene to determine Student’s then current-needs if any such change was contemplated.

**ORDER**

Based upon the foregoing, I find that Student’s placement at Neari provides him with a free appropriate public education in the least restrictive environment.

I find that Parents have not met their burden of showing that Student requires placement in a private special education residential school to receive a free appropriate public education.

I find no basis to order DMH to provide any services in addition to the services that they are currently providing to Student. However, in light of Ms. Martino’s concern that the Cutchins program may not be addressing all areas of Student’s need, the Treatment Team should specifically review this at their next meeting.

Finally, as noted above, I have not made any findings pertaining to alleged procedural irregularities in the Team process since procedural issues were not raised. However, the record (including Ms. Ecker’s own testimony) demonstrates that training, specifically pertaining to the IDEA’s Team and placement process, is warranted. Westfield shall provide Ms. Ecker and other relevant staff with training in IDEA procedures pertaining to the Team and placement process.



Dated: January 28, 2021

COMMONWEALTH OF MASSACHUSETTS

BUREAU OF SPECIAL EDUCATION APPEALS

EFFECT OF FINAL BSEA ACTIONS AND RIGHTS OF APPEAL

# Effect of BSEA Decision, Dismissal with Prejudice and Allowance of Motion for Summary Judgment

20 U.S.C. s. 1415(i)(1)(B) requires that a decision of the Bureau of Special Education Appeals be final and subject to no further agency review. Similarly, a Ruling Dismissing a Matter with Prejudice and a Ruling Allowing a Motion for Summary Judgment are final agency actions. If a ruling orders Dismissal with Prejudice of some, but not all claims in the hearing request, or if a ruling orders Summary Judgment with respect to some but not all claims, the ruling of Dismissal with Prejudice or Summary Judgment is final with respect to those claims only.

Accordingly~~,~~ the Bureau cannot permit motions to reconsider or to re-open either a Bureau decision or the Rulings set forth above once they have issued. They are final subject only to judicial (court) review.

Except as set forth below, the final decision of the Bureau must be implemented immediately. Pursuant to M.G.L. c. 30A, s. 14(3), appeal of the decision does not operate as a stay. This means that the decision must be implemented immediately even if the other party files an appeal in court, and implementation cannot be delayed while the appeal is being decided. Rather, a party seeking to stay—that is, delay implementation of-- the decision of the Bureau must request and obtain such stay from the court having jurisdiction over the party’s appeal.

Under the provisions of 20 U.S.C. s. 1415(j), “unless the State or local education agency and the parents otherwise agree, the child shall remain in the then-current educational placement,” while a judicial appeal of the Bureau decision is pending, unless the child is seeking initial admission to a public school, in which case “with the consent of the parents, the child shall be placed in the public school program.”

Therefore, where the Bureau has ordered the public school to place the child in a new placement, and the parents or guardian agree with that order, the public school shall immediately implement the placement ordered by the Bureau. *School Committee of Burlington v. Massachusetts Department of Education*, 471 U.S. 359 (1985). Otherwise, a party seeking to change the child’s placement while judicial proceedings are pending must ask the court having jurisdiction over the appeal to grant a preliminary injunction ordering such a change in placement. *Honig v. Doe*, 484 U.S. 305 (1988); *Doe v. Brookline*, 722 F.2d 910 (1st Cir. 1983).

# Compliance

A party contending that a Bureau of Special Education Appeals decision is not being implemented may file a motion with the Bureau of Special Education Appeals contending that the decision is not being implemented and setting out the areas of non-compliance. The Hearing Officer may convene a hearing at which the scope of the inquiry shall be limited to the facts on the issue of compliance, facts of such a nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Elementary and Secondary Education or other office for appropriate enforcement action. 603 CMR 28.08(6)(b).

# Rights of Appeal

Any party aggrieved by a final agency action by the Bureau of Special Education Appeals may file a complaint in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts, for review. 20 U.S.C. s. 1415(i)(2).

An appeal of a Bureau decision to state superior court or to federal district court must be filed within ninety (90) days from the date of the decision. 20 U.S.C. s. 1415(i)(2)(B).

# Confidentiality

In order to preserve the confidentiality of the student involved in these proceedings, when an appeal is taken to superior court or to federal district court, the parties are strongly urged to file the complaint without identifying the true name of the parents or the child, and to move that all exhibits, including the transcript of the hearing before the Bureau of Special Education Appeals, be impounded by the court. See *Webster Grove\_School District v. Pulitzer Publishing*

*Company*, 898 F.2d 1371 (8th. Cir. 1990). If the appealing party does not seek to impound the documents, the Bureau of Special Education Appeals, through the Attorney General's Office, may move to impound the documents.

Record of the Hearing

The Bureau of Special Education Appeals will provide an electronic verbatim record of the hearing to any party, free of charge, upon receipt of a written request. Pursuant to federal law, upon receipt of a written request from any party, the Bureau of Special Education Appeals will arrange for and provide a certified written transcription of the entire proceedings by a certified court reporter, free of charge.

1. On the second day of the Hearing, Parents’ counsel sought to address issues of alleged procedural violations regarding the Team process. The Hearing Officer did not permit Parents to raise the issues because they were not identified in the Hearing Request or read into the record at the commencement of the Hearing. [↑](#footnote-ref-1)
2. Mr. Barry has a master’s degree in public administration and has worked for DMH for twelve years. (Barry) [↑](#footnote-ref-2)
3. Dr. Pickar administered the following tests over approximately three 2-hour testing sessions: Wechsler Intelligence Scale for Children-V (WISC-V); Woodcock Johnson Psychoeducational Battery-IV (Tests of Cognitive Ability(selected subtests), and Tests of Achievement); Developmental Test of Visual Motor Integration (VMI); Wide Range Assessment of Memory and Learning (WRAML); Rey Osterieth Complex Figure; Delis-Kaplan Tests of Executive Function System (DKEFS) (Trailmaking Test and Color Word Interference Test; Test of Written Language III (Story Subtest); Test of Visual Attention (TOVA); Comprehensive Test of Phonological Processing-2 (CTopp-2); Gray Oral Reading Test-5 (GORT-5); Rorschach; Thematic Apperception Test; Kinetic Family Drawing; Sentence Completion; House-Tree-Person; Revised Child Manifest Anxiety Scale-II (RCMAS-II); Children’s Depression Inventory-II (CDI-II); Asperger Syndrome Diagnostic Scale (ASDS); Adaptive Behavior Assessment System Third Addition (Parent and Teacher Forms) (P-2, Pickar) [↑](#footnote-ref-3)
4. Mr. Longo administered the Wechsler Intelligence Scale for Children -V (WISC-V); the Wechsler Individual Achievement Test III (WIAT-III); The Behavior Assessment System for Adolescents – PRF; The Behavior Assessment System for Adolescents 3 TRP; and the Behavior Assessment System for Adolescents- SRP. He also conducted a record review and behavioral observation. (S-11) [↑](#footnote-ref-4)
5. The Autism Diagnostic Observation Schedule II (ADOS-II) Mr. Longo also utilized the Autism Spectrum Rating Scales (ASRS)-Teacher Form, The Social Responsiveness Scale 2 (SRS-2) Parent Form, and the Autism Diagnostic Rating Scales (ASRS)-Parent Form. (S-36) Mr. Longo has administered the ADOS approximately 15 times per year for the past eight or nine years. (Longo) [↑](#footnote-ref-5)
6. Ms. Martino testified that Student’s anxiety is a big focus of her clinical work with him, and that she is helping him to learn self-regulation methods such as self-soothing. While he is able to practice those skills with her, he has not been able to demonstrate the ability to use those skills independently when he is experiencing emotional distress and anxiety, instead relying heavily on adult support to manage his anxiety. She opined that Student will likely be working on anxiety issues for his entire life. [↑](#footnote-ref-6)
7. Ms. Martino defined adaptive skills as skills that would help Student navigate the world; manage problem solving; navigating social relationships. (Martino) [↑](#footnote-ref-7)
8. 20 USC 1400 *et seq*. [↑](#footnote-ref-8)
9. MGL c. 71B. [↑](#footnote-ref-9)
10. 20 USC 1400(d)(1)(A). See also 20 USC 1412(a)(1)(A); *Mr. I ex. Rel. L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1 (1st Cir. 2007) [↑](#footnote-ref-10)
11. 20 USC 1412(a)(5). See also 20 USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c) [↑](#footnote-ref-11)
12. 20 USC 1414(d)(1)(A)(i)(l)-(lll); *Honig v. Doe*, 484 U.S. 305 (1988); *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982) [↑](#footnote-ref-12)
13. *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir.1993) [↑](#footnote-ref-13)
14. *Endrew F. v. Douglas County. Sch. Dist.*, 580 U.S. \_\_ (2017) [↑](#footnote-ref-14)
15. *Rowley*, 458 U.S. at 197 [↑](#footnote-ref-15)
16. *G.D. Westmoreland Sch. Dist.*, 930 F.2d 942 (1st Cir. 1991) [↑](#footnote-ref-16)
17. 20 USC 1400(d)(4); *North Reading School Committee v. Bureau of Special Education Appeals*, 480 F. Supp.2d 479 (D. Mass. 2007)(the educational program must be reasonably calculated to provide effective results and demonstrable improvement in the various educational and personal skills identified as "special needs”) [↑](#footnote-ref-17)
18. *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F.3d 18 (1st Cir. 2008) [↑](#footnote-ref-18)
19. 603 CMR 28.05(4)(b) [↑](#footnote-ref-19)
20. MGL c.71B; 603 CMR 28.01(3) [↑](#footnote-ref-20)