**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In re:** Pembroke Public Schools v. **BSEA #** 2201226 &

 Student **BSEA #** 2209311

**RULING ON PARENT’S MOTION TO AMEND THE HEARING REQUEST; PEMBROKE PUBLIC SCHOOLS’ MOTION TO DISMISS**

**AND MOTION FOR SUMMARY JUDGMENT; AND PARENT’S MOTION FOR PROTECTIVE ORDER PROHIBITING DISTRICT FROM ENGAGING IN CONDUCT THAT VIOLATES THE IDEA AND STATE EVALUATION PROCEURES AND MOTION TO POSTPONE HEARING UNTIL 3-YEAR REEVALUATIONS ARE COMPLETED, AND THE DETERMINATION OF ELIGIBILTY MEETING IS SCHEDULED AND HELD, AND THE DEVELOPMENT OF AN IEP IS CONDUCTED AND PARENT IS PROVIDED THE DISTRICT’S PROPOSED IEP AND THE PARENT’S DECISION ON THE IEP IS PROVIDED TO THE DISTRICT**

On August 30, 2022, Parent in the above-referenced matter filed a *Motion to Amend the Hearing Request*. .

On September 22, 2022, Pembroke Public Schools (Pembroke, or District) filed an *Opposition to Parent’s Motion to Amend*, *Motion to Dismiss Parent’s Amended Hearing Request* *and Motion for Summary Judgment*.[[1]](#footnote-1)

On October 12, 2022, Parent filed a *Response, Objection and Motions to Dismiss Pembroke’s Opposition to Parent’s Motion to Amend Hearing Request, Motion to Dismiss Parent’s Amended Hearing Request and Motion for Summary Judgement*.[[2]](#footnote-2)

On November 1, 2022, Parent filed a *Motion for Protective Order Prohibiting the District from Engaging in Conduct that Violates the IDEA and State Evaluation Procedures And Motion To Postpone Hearing Until 3-year Reevaluations are Completed, and the Determination of Eligibility Meeting is Scheduled and Held, And the Development of an IEP is Conducted And the Parent is Provided The District’s Proposed IEP and The Parent’s Decision on the IEP is Provided to the District*.

Because I have determined that testimony or oral argument would not advance my understanding of the issues involved, the *Rulings* on these *Motions* are based on the parties’ written submissions, pursuant to Rule VI.D. of the *Hearing Rules for Special Education Appeals*. For the reasons set forth below, Parent’s *Motion to Amend the Hearing Request* is ALLOWED in PART, the District’s *Motion to Dismiss* is ALLOWED in PART, and Pembroke’s *Motion for Summary Judgment* is ALLOWED.

A determination on *Parent’s Motion for Protective Order Prohibiting the District from Engaging in Conduct that Violates the IDEA and State Evaluation Procedures*, and Parent’s *Motion To Postpone the Hearing* are DENIED.

1. **BACKGROUND[[3]](#footnote-3)**
2. **PROCEDURAL HISTORY:**

On August 30, 2022, Parent filed a *Motion to Amend* her April 11, 2022, initial *Hearing Request*. Parent sought to amend the then current matter before the BSEA “to include the latest information regarding the [Student’s] transition to the Massasoit Community College Inclusive Concurrent Enrollment Initiative”[[4]](#footnote-4) (MAICEI). Parent alleged that, at the time of filing, the District had failed to fulfill its agreement to fund Student’s placement at MAICEI and to provide Student with needed transition services from Pembroke to MAICEI. In support of her assertion, Parent claimed that Student’s current Individualized Education Program (IEP) does not include a “placement” at the MAICEI program at Massasoit Community College (MCC). Parent further asserted that, rather than funding Student’s placement at MAICEI, the District had requested that Student fund the program. According to Parent, the District cannot ask Student to make financial decisions without Parent present because Parent is the Student’s court-appointed legal guardian for educational and financial decisions. Parent claimed that she has not been consulted for decisions regarding Student’s educational plans and financial requirements, and that MCC has continued to communicate with Student without Parent’s involvement.

Parent requested Orders that the District fund the MAICEI program and list it as a placement on Student’s IEP; that Parent be included in monthly meetings with MAICEI staff; that the District provide Student an Educational Coach; that Student be provided on-campus internships; that Student be provided the opportunity to participate in MCC campus life with peer mentoring; and that Student’s IEP include courses at MCC that align with Student’s transitional goals and that increase Student’s social skills and opportunities, employment opportunities for working with animals, Student’s self-determination and self-advocacy skills, and Student’s personal independence.

On September 22, 2022, the District filed an *Opposition to Parent’s Motion to Amend Hearing Request, Motion to Dismiss Amended Hearing Request, and Motion for Summary Judgment*. As grounds for dismissal, the District asserted that Parent’s *Motion to Amend* makes allegations and seeks relief identical to that in Parent’s initial *Hearing Request*. The District further requested a ruling granting summary judgment in its favor, finding that “the Student is participating in the MAICEI program, that the District is funding the program for the Student, and that the District is not obligated to amend Student’s IEP offering MAICEI as a placement.”[[5]](#footnote-5) As grounds therefor, the District maintained that there is no genuine dispute as to Student’s participation in MAICEI, as there is no evidence that Student is not enrolled in the MAICEI program at MCC; that there is no evidence that the District is not funding Student’s enrollment in MAICEI; and that MAICEI is not a special education placement that warrants inclusion in Student’s IEP, but is instead a “state-funded program, creating college and public school district partnerships to support eligible public high school students with intellectual disabilities, ages 18-22, by including them in a college or university community.”[[6]](#footnote-6)

On October 12, 2022, Parent filed a *Response, Objection, and Motions to Dismiss the Pembroke Schools’ Opposition to Parent’s Motion to Amend Hearing Request, Motion to Dismiss Parent’s Amended Hearing Request and Motion for Summary Judgment*. Parent asserted that her *Motion to Amend* was warranted because events warranting new allegations occurred after April 11, 2022, when the initial *Hearing Request* was filed, and none of the issues listed in Parent’s *Motion to Amend* existed at the time Parent filed her original *Hearing Request*.

1. **FACTUAL BACKGROUND:**

The following facts are not in dispute and are taken as true for the purposes of this *Ruling* only. These facts may be subject to revision in subsequent proceedings.

1. Student is a twenty-year-old student whose current IEP, covering the period from January 2022 to January 2023, offers her placement at Pembroke High School Transition Program (PTP) in Pembroke, MA.
2. Parent is Student’s court-appointed legal guardian for educational and financial decision-making purposes.
3. Student is eligible for special education services from Pembroke, and her eligibility is not in dispute. Student’s most recent proposed IEP was developed in January of 2022. While Pembroke’s Transition Program remains Student’s educational placement, Student’s last proposed IEP also refers to her potential participation in the MAICEI program at MCC.
4. MCC is a state funded college.
5. In early April 2022, Student completed an application seeking participation in the MAICEI program. This application was signed by Student, Parent, and Pembroke’s Director of Special Education, Jessica DeLorenzo.
6. The MAICEI program is a partnership between colleges and high schools, designed for students with intellectual and developmental disabilities, funded via Massachusetts legislative grants, and monitored by the Department of Higher Education.[[7]](#footnote-7) The term “Concurrent Enrollment” means that participating students are still eligible for special education services, even though they have finished four years of high school.[[8]](#footnote-8) As such, they are concurrently enrolled in college while remaining eligible for special education services in their local school district.[[9]](#footnote-9)
7. On April 21, 2022, Parent wrote to Maria Husted, Pembroke’s Transition Coordinator, noting that she had not received information from MCC and requesting information about her own participation, as Student’s legal guardian, in any meeting between MCC and Student. Ms. Husted responded on April 22, 2022, that she had contacted Jana Amoroso, Coordinator of the MAICEI program at MCC, regarding Parent’s desire to participate in Student’s interview. Ms. Husted informed Parent that Ms. Amoroso told her,

…that it is common practice for interviews with students applying to the MAICEI Program at Massasoit for Jana to meet just with the student and a school representative so that she can gauge the student’s independence and develop a relationship with the student. If the Student is accepted to the MAICEI Program, Jana will be having a Person Centered Plan meeting with the student in which the student can invite anyone they would like, such as their parents.

I would like to emphasize that I am only a facilitator and that this is MAICEI’s process. If you have any questions or concerns, I would suggest that you speak directly with Jana Amoroso.

1. On April 27, 2022, Student was accepted to the MAICEI program at MCC for the 2022-2023 academic year.
2. On April 28, 2022, Parent emailed Jana Amoroso, acknowledging receipt of Student’s acceptance. Parent noted that she was Student’s legal guardian and requested a Zoom meeting with her.
3. On May 31, 2022, Student completed and signed a registration form confirming that she would audit “Painting 1,” that she would have a MAICEI Education Coach, and that MCC tuition was to be funded by the MAICEI grant (through the District).
4. Student’s participation in the MAICEI at MCC is to be fully funded by the District. The District further agreed to support Student’s participation by providing an Education Coach and roundtrip transportation to MCC.
5. Throughout July and August 2022, Student received several emails from MCC requesting payment for her fall 2022 tuition. The document states that Student would receive 3 credits for her participation in Painting I. Parent learned of these emails when Student brought them to her attention in the summer of 2022.
6. On July 17, 2022, Parent emailed Ms. DeLorenzo and Maria Husted inquiring why Student had received emails requesting payment from MCC, why Student was attending art class and where a class for job training was. Parent again emailed the District on August 3, 2022.
7. On August 3, 2022, Ms. Husted responded to Parent’s email, apologizing for Student’s receipt of the erroneously sent tuition request emails and informing Parent that Ms. Husted would contact MAICEI and MCC to confirm the payment arrangements through the District.
8. On September 6, 2022, Student received an email from MCC representative, Jana Amoroso, confirming the start of classes on September 7, 2022.
9. **DISCUSSION**
10. **LEGAL STANDARDS:**

Massachusetts BSEA Hearing Officers are bound by the IDEA, M.G.L. c.71B, the regulations promulgated under those statutes and Section 504 of the Rehabilitation Acts of 1973. The procedures applicable to BSEA proceedings are contained in the *BSEA* *Hearing Rules for Special Education Appeals* (*Hearing* *Rules*) and the Standard Rules of Adjudicatory Practice and Procedure, 801 Code Mass Regs 1.01. It is pursuant to these statutes, rules and regulations that Hearing Officers must enter determinations regarding motions. Where silent, BSEA Hearing Officers may seek guidance from the Federal and state rules of civil procedure, as is the case regarding motions to dismiss and for summary judgment.

1. *Motion to Dismiss:*

Pursuant to *Hearing Rule* XVII (A) and (B)and 801 CMR 1.01(7)(g)(3), a Hearing Officer may allow a motion to dismiss for “lack of jurisdiction to decide the matter, for failure of the [party requesting the hearing] to state a claim upon which relief can be granted or because of the pendency of a prior, related action in any tribunal that should first be decided.”[[10]](#footnote-10) The rules governing the BSEA’s authority to allow a motion to dismiss are analogous to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As such, Hearing Officers have generally used the same standards as the courts in deciding motions to dismiss for failure to state a claim. To survive a motion to dismiss, there must exist “factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief.”[[11]](#footnote-11) In evaluating a motion to dismiss, the Hearing Officer must take as true “the allegations of the complaint, as well as such inferences as may be drawn therefrom in the plaintiff's favor.”[[12]](#footnote-12) These “[f]actual allegations must be enough to raise a right to relief above the speculative level.”[[13]](#footnote-13)

1. *Motion for Summary Judgment:*

Pursuant to 801 CMR 1.01(7)(h), a rule of administrative practice modeled after Rule 56 of both the Massachusetts and Federal Rules of Civil Procedure,[[14]](#footnote-14) Summary Decision may be granted when there is “no genuine issue of fact relating to all or part of a claim or defense and [the moving party] is entitled to prevail as a matter of law.” “By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.”[[15]](#footnote-15) This means that “only disputes over facts that might affect the outcome of the [case] under the governing law would prevent summary judgment.”[[16]](#footnote-16) Moreover, in determining whether a genuine issue of material fact exists, the fact-finder must view the entire record “in the light most flattering” to the party opposing summary judgment and “indulg[e] all reasonable inferences in that party’s favor.”[[17]](#footnote-17)

In response to a *Motion for Summary Decision*, the adverse party “must set forth specific facts showing that there is a genuine issue for trial.”[[18]](#footnote-18) To survive this *Motion* and proceed to hearing, the adverse party must show that there is “sufficient evidence” in his/ her favor that the fact finder could decide for him.[[19]](#footnote-19) “If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.”[[20]](#footnote-20)

1. **ANALYSIS:**

The instant ruling addresses *Parent’s Motion to Amend the Hearing Request*, *Pembroke’s Opposition and Pembroke’s Motion to Dismiss and for Summary Judgment*; Parent’s *Motion for Protective Order Prohibiting the District from Engaging in Conduct that Violates the IDEA and State Evaluation Procedures And Motion To Postpone Hearing Until 3-year Reevaluations are Completed, and the Determination of Eligibility Meeting is Scheduled and Held, And the Development of an IEP is Conducted And the Parent is Provided The District’s Proposed IEP and The Parent’s Decision on the IEP is Provided to the District.* I begin with Parent’s *Motion to Amend*.

Parent’s *Motion to Amend* seeks to include information regarding the [Student’s] transition to MAICEI, raises procedural due process allegations regarding parental participation as against Pembroke and MCC, seeks to have the BSEA exercise jurisdiction over MCC, asserts that Pembroke failed to fulfill its agreement to fund Student’s placement at MCC/ MAICEI and contends that the information alleged was not available to Parent at the time her initial Hearing Request was filed.

Regarding procedural violations, Parent argues that Student’s current IEP does not include a “placement” at MCC’s MAICEI program, that the District failed to fund Student’s program at MCC and instead attempted to hold Student (who is under Parent’s guardianship) contractually responsible to fund the MCC placement. Parent further takes issue with the fact that MCC has continued to communicate directly with Student regarding Student’s educational plans without Parent’s involvement. Parent’s Amended Hearing Request seeks an order that the District fund the MAICEI program; that it list it as a placement on Student’s IEP; that it include Parent in monthly meetings with MAICEI staff; that the District provide Student an Educational Coach; that Student be provided on-campus internships; that Student be provided the opportunity to participate in MCC campus life with peer mentoring; and that Student’s transition preferences, goals and needs be aligned with the opportunities offered her at MCC. Parent seeks increased opportunities for Student to work on social skills and to have opportunities for socialization, to be provided employment opportunities for working with animals, to work on Student’s self-determination and self-advocacy skills, and to promote Student’s personal independence.

Pembroke’s *Opposition, Motion to Dismiss* and *Motion for Summary Judgment* argues that Parent’s allegations and the relief sought are identical to those raised in Parent’s initial *Hearing Request*, and thus, seeks to have the duplicative and redundant claims dismissed. Pembroke also notes that challenges to the adequacy of Student’s transition plan and appropriateness of recent IEPs (including the IEP for the period from January 2022 to January 2023) are the subjects of Pembroke’s *Hearing Request* involving the same parties, which actions have been consolidated and will be heard at a Hearing scheduled to begin on November 30, 2022, rendering the issues redundant. To the extent that some of the factual allegations raised by Parent are amenable to summary judgment, Pembroke seeks an order to this effect.

On October 12, 2022, Parent filed a *Response, Objection, and Motions to Dismiss the Pembroke Schools’ Opposition to Parent’s Motion to Amend Hearing Request, Motion to Dismiss Parent’s Amended Hearing Request and Motion for Summary Judgment*. Parent argued that her *Motion to Amend* was warranted because new allegations occurring post April 11, 2022, when the initial *Hearing Request* was filed, existed and these were not part of Parent’s initial *Hearing Request*.

To the extent that any of the issues raised by Parent in her *Amended Hearing* *Request* are identical to those raised in her initial *Hearing Request* (and/or, already limited /disposed of via the rulings addressing Pembroke’s and Parent’s previous motions to dismiss), they may not be entertained. However, applying the legal standards applicable to motions to dismiss, I find that to the extent that Parent’s *Amended Hearing Request* seeks to *add* procedural or substantive violations by Pembroke occurring post April 11, 2022, an order granting Parent’s *Motion to Amend the Hearing Request* is warranted, in part.

Next, I turn to Parent’s allegations regarding MCC’s denial of FAPE. Parent asserts that the BSEA has jurisdiction over MCC and therefore, may hear her claim regarding violation of Parent’s procedural due process rights. Parent reasons that since the BSEA has jurisdiction to resolve disputes involving special education issues, and, in Massachusetts this authority may extend to certain state agencies, public and private (special education) schools, or charter schools, this jurisdiction also extends to MCC because Student is attending a program there.. Parent raises procedural due process violations by MCC (a non-party) asserting that MCC’s failure to include Parent (who is Student’s legal guardian) in meetings initiated by MCC, impeded Parent’s right to meaningful participation in a decision impacting Student’s education, resulting in a denial of FAPE. Parent alleges that Student elected to participate in an art course in MCC through its MAICEI program during a meeting in which Parent was not present. Had Parent been present, she would have had Student select a course that focused on Student’s vocational interest with animals and/ or help her develop more vocational and/ or independent living skills.. Parent noted that she had previously expressed an interest in participating in any meeting involving Student’s course selection.

Pembroke defended Student’s art course selection, noting that it was voluntary “and does not implicate the District’s substantive or procedural obligations under special education,” and further disputed the BSEA’s jurisdiction extending to MCC, disagreeing with Parent that MCC, a state funded college, fell within the IDEA regulatory definition of “public agency”.

MCC is not a party to this action, and it is doubtful that they would meet the criteria for joinder, as nothing in M.G.L. c71B or its accompanying regulations grant the BSEA jurisdiction over a community college. As s non-party, the BSEA may not enter any orders with respect to MCC. Moreover, Pembroke is persuasive that the responsibility to carry out the procedural and substantive special education mandates under the IDEA and M.G.L. c71B lies with the District, as MCC is a college, not a school, state agency, LEA, SEA, ESA, or non-profit public charter school, contemplated by the federal and state statutes and regulations. In the instant matter, procedural and substantive allegations implicating provision of FAPE lie with the District, including disputes involving drafting and amendments to IEPs, convening of meetings and parental participation. Parent is not persuasive that a FAPE determination in the instant case must implicate MCC, or that the BSEA can exercise its jurisdictional authority over MCC.

Pursuant to the legal guidance set forth *supra*, Pembroke’s *Motion to Dismiss* is **ALLOWED in PART**. To the extent that Parent’s claims and the relief sought are redundant or seek to have the BSEA exercise its jurisdictional authority over MCC/ MAICEI, those claims are dismissed. Parent’s *Motion to Amend the Hearing Request* is also **ALLOWED in PART**, consistent with the analysis above. Parent may proceed with her claims regarding allegations of procedural and substantive violations arising post April 11, 2022, involving failure to convene the Team in a timely fashion, parental participation, amendments to the IEP (to reflect Pembroke’s commitments/ support of the MAICEI program) and challenges to Student’s Transition Plan to reflect Student’s transition goals and its interface with MAICEI.

 Next, I consider the District’s *Motion for Summary Judgment*. Pembroke seeks summary judgment as to the following facts: 1) that Student is participating in the MAICEI program; 2) that Pembroke has agreed to and is funding the program for Student; and 3) that the District is not obligated to amend Student’s IEP to reflect that Student’s placement is MAICEI. As grounds therefor, the District argues that no genuine dispute exists regarding Student’s participation in MAICEI, that there is no evidence that Student is not enrolled in the MAICEI program at MCC; that there is no evidence that the District is not funding Student’s enrollment in MAICEI; and that MAICEI is not a special education placement that warrants inclusion in Student’s IEP. Rather, the MAICEI program is a “state-funded program, creating college and public school district partnerships to support eligible public high school students with intellectual disabilities, ages 18-22, by including them in a college or university community.”[[21]](#footnote-21)

There is no genuine dispute that Student is participating in the MAICEI program, that Pembroke has agreed to and is funding the program for Student, and therefore, Pembroke is entitled to summary judgment in its favor as a matter of law. Regarding the District’s allegation that it is not obligated to amend Student’s IEP to reflect that Student’s placement is MAICEI, I find that MCC/MAICEI is not a placement, thus warranting summary judgment in Pembroke’s favor in this respect.

 In accordance with the legal standards applicable to summary judgment, Pembroke’s *Motion to for Summary Judgement* is therefore, **ALLOWED**.

Lastly, I turn to Parent’s November 1, 2022, *Motion for Protective Order seeking to Prohibit the District from Engaging in Conduct that Violates the IDEA and State Evaluation Procedures, and Parent’s Motion To Postpone the Hearing Until the 3-year Reevaluations are Completed, the Determination of Eligibility Meeting is Scheduled and Held, and the Development of an IEP is Conducted and the Parent is Provided The District’s Proposed IEP and the Parent’s Decision on the IEP is Provided to the District*.

According to Parent, at the time she filed the above-entitled *Motion*, the 3-year re-evaluation (and specifically administration of the AFLS which is at the core of Parent’s *Motion*) was underway, but had not yet been completed. Parent’s *Motion* is not only premature as she has not demonstrated that the District has committed a violation, but a protective order is an inappropriate vehicle to address a disagreement regarding evaluation instruments. Any disagreement regarding the results of a 3-year evaluation may be addressed at a Hearing on the merits after the evaluation is completed. A *Ruling* on Parent’s potential claims with respect to evaluation instruments or procedures is the type of controversy that should be considered in a hearing on the merits. Assuming that following completion of the 3-year re-evaluation a dispute remains between the Parties, and Parent properly raises this issue in a timely fashion, the issue may then be decided by the hearing officer. *Parent’s Motion for Protective Order seeking to Prohibit the District from Engaging in Conduct that Violates the IDEA and State Evaluation Procedure,* is **DENIED***.*

Finally, *Parent’s Motion To Postpone the Hearing Until the 3-year Reevaluations are Completed, the Determination of Eligibility Meeting is Scheduled and Held, and the Development of an IEP is Conducted and the Parent is Provided The District’s Proposed IEP and the Parent’s Decision on the IEP is Provided to the District* is **DENIED** as not complying with Rule III.A.1 of the *Hearing Rules for Special Education Appeals*. Said Rule requires the parties to provide good cause for the postponement *and* proposed alternate dates for Hearing. Parent’s postponement request does not state the proposed new dates for Hearing and as such, must be **DENIED**.

**ORDERS**:

1. *Motion to Amend the Hearing Request* is **ALLOWED in PART.** Parent may proceed with her claims regarding allegations of procedural and substantive violations arising post April 11, 2022, involving failure to convene the Team in a timely fashion, parental participation, amendments to the IEP (to reflect Pembroke’s commitments/ support of the MAICEI program) and challenges to Student’s Transition Plan to reflect Student’s transition goals and its interface with MAICEI.
2. Pembroke’s *Motion to Dismiss* is **ALLOWED in PART.** To the extent that Parent’s claims and the relief sought are redundant or seek to have the BSEA exercise its jurisdictional authority over MCC/ MAICEI, those claims are dismissed.
3. Pembroke’s *Motion for Summary Judgement* is **ALLOWED.**
4. *Parent’s Motion for Protective Order seeking to Prohibit the District from Engaging in Conduct that Violates the IDEA and State Evaluation Procedures,* is **DENIED***.*
5. Parent’s *Motion To Postpone the Hearing* is **DENIED**.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

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Rosa I. Figueroa

Dated: November 23, 2022

I would like to express my gratitude to Sofia Zocca, BSEA legal intern, for her contributions to this Ruling.

1. Pembroke requested and was granted an extension of time to respond to *Parent’s Motion to Amend*. [↑](#footnote-ref-1)
2. Parent also was granted an extension of time to respond to Pembroke’s *Motions*. [↑](#footnote-ref-2)
3. Except where noted, the information in this section is drawn from the parties’ pleadings and is subject to revision in further proceedings. [↑](#footnote-ref-3)
4. Parent’s *Motion to Amend*, BSEA # 2202226 and # 2209311, August 30, 2022, at 1. [↑](#footnote-ref-4)
5. Pembroke Public Schools’ *Opposition to Parent’s Motion to Amend Hearing Request, Motion to Dismiss Amended Hearing Request, and Motion for Summary Judgment*, BSEA # 2202226 and # 2209311, September 22, 2022, at 5. [↑](#footnote-ref-5)
6. *Id.* at 4. [↑](#footnote-ref-6)
7. *Massachusetts Inclusive Concurrent Enrollment Initiative (MAICEI) at Massasoit Community College*, Massasoit Community College website, last accessed October 31, 2022. [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. 801 CMR 1.01(7)(g)(3). [↑](#footnote-ref-10)
11. *Iannocchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). [↑](#footnote-ref-11)
12. *Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. 404, 407 (1995). [↑](#footnote-ref-12)
13. *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted). [↑](#footnote-ref-13)
14. Federal Rule of Civil Procedure (FRCP) 56 authorizes the entry of summary judgment whenever it appears that “there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” [↑](#footnote-ref-14)
15. *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 247-48 (1986). [↑](#footnote-ref-15)
16. *Id*. at 248. [↑](#footnote-ref-16)
17. ##  See Maldonado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 581 (1st Cir. 1994); see Galloway v. United States, 319 U.S. 372, 395 (1943).

 [↑](#footnote-ref-17)
18. *Anderson*, 477 U.S. at 250. [↑](#footnote-ref-18)
19. *Id*. at 249. [↑](#footnote-ref-19)
20. *Id*. at 249-50. [↑](#footnote-ref-20)
21. Pembroke further asserts that Student’s placement is Pembroke’s Transition Program and that MCC’s MAICEI program was referenced in the Vision section of the Transition Planning Form attached to the January 2022 IEP. Pembroke concedes that at the time said IEP was issued Student had not yet been accepted to MCC. [↑](#footnote-ref-21)