**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re**: North Attleboro Public Schools v. **BSEA#** 2400326

 Student

**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.

On July 13, 2023, the BSEA received North Attleboro Public Schools (North Attleboro or District) Hearing Request in the instant matter. The case was administratively reassigned to this Hearing Officer on August 18, 2023.[[1]](#footnote-1) On July 25, 2023, Parent requested and was granted a public hearing. However, when Parent failed to attend the Hearing and sign the necessary releases required by the BSEA as a pre-condition to holding public hearings, the Hearing was closed to the public.[[2]](#footnote-2)

On July 27, 2023, North Attleboro Public Schools withdrew all of the claims in its initial Hearing Request except for one issue (placement). The Hearing was held in person on August 3, 2023, at the Offices of DALA/BSEA, 14 Summer St. Malden, Massachusetts, before Hearing Officer Rosa Figueroa. Those present for all or part of the proceedings were:

Katie Meinelt, Esq. Attorney for North Attleboro Public Schools

Margaret Camire Director of Pupil Services, North Attleboro Public Schools

Arlene R. Boyer Stenographer, Veritext

The official record of the Hearing consists of documents submitted by Parent marked as exhibits PE-1 to PE-10[[3]](#footnote-3), and documents submitted by North Attleboro marked as exhibits SE-1 through SE-18[[4]](#footnote-4), recorded oral testimony, and written closing arguments. The Parties requested two postponements for submission of written closing argument; the District requested one on August 4, 2023, and Parent requested one August 25, 2023. These requests were granted via separate Orders. The record closed on September 5, 2020, upon receipt of the Parties’ written closing arguments.

**ISSUES FOR HEARING:**

1. Whether the most recently proposed IEP issued by North Attleboro Public Schools, placing Student in an private or public out-of-district placement provides Student with a free and appropriate public education (FAPE)?

**POSITIONS OF THE PARTIES:**

**North Attleboro Public Schools’ Position:**

The District seeks an Order that its’ most recent offer to place Student in a private or public out of district placement offers Student a FAPE, consistent with the IEP proposed by North Attleboro on June 14, 2023 (SE-1), covering the period from April 26, 2023 to April 25, 2024. Specifically, North Attleboro proposes placements such as Willow Hill, Learning Prep School (LPS), South Shore Educational Collaborative or a similar, Massachusetts Department of Elementary and Secondary Education approved school.

The District asserts that it has attempted to work with Parent in an effort to resolve their dispute regarding Student’s placement and significant school absenteeism. In June of 2023, North Attleboro offered the precise placement mentioned in a Request for Hearing Parent had filed with the BSEA in March, 2023, among other options. (Parent’s March 2023 hearing request included the issue of placement and specifically mentioned LPS.) According to North Attleboro, after expending an enormous amount of time, energy, and resources all of its efforts were and continue to be frustrated by Parent’s actions and her continuous shifting of positions. Thus, North Attleboro contends it has been left with no other option but to seek a determination from the BSEA regarding the appropriateness of its proposed out-of-district placement.

The District asserts that Parent had acted in bad faith and has made frivolous claims in this and her previous case of March 2023.

**Parent’s Position:**

Parent generally disputes the District’s contentions and asserts that there is a difference of opinion regarding Student’s stay-put IEP for which she seeks clarification. According to Parent, Student’s stay-put IEP is the one covering the period from December 14, 2021, to December 13, 2022, noting that North Attleboro has been out of compliance with this IEP throughout the 2022-2023 school year.

Parent asserts that Student is not making effective progress in North Attleboro and agrees that he requires an out of district placement. She, however, disagrees that a “predetermined placement” will address Student’s current needs, noting that Cathy Mason, an educator whom she privately retained, never recommended Learning Prep specifically.

Parent denies any willful or frivolous wrongdoing on her part.

**FINDINGS OF FACT:**

1. Student is a fifteen-years old resident of North Attleboro, Massachusetts who is repeating ninth grade (SE-1; Camire). Student has been diagnosed with Dyslexia and Attention Deficit Hyperactivity Disorder. He struggles with impulsivity, understanding the consequences of his actions, tolerating change, anxiety and is easily distracted and forgetful. He also struggles with academics especially reading, math and writing, as well as with organizational and executive functioning skills. He demonstrates language processing and formulation weaknesses. He has frequent somatic complaints and is easily embarrassed by his learning challenges (PE-2). Student’s entitlement to special education services is not in dispute, as he has been found eligible to receive special education services under the social/emotional and communication needs categories (SE-1; SE-2; SE-3; Camire).

1. Student has been described as a friendly and kind individual who makes connections with peers and adults easily and who strives to do his best (PE-2; PE-3; Camire).

1. By report, Student did well in elementary school despite his deficits, but his struggles increased and accentuated in middle school and high school (PE-2). He has a history of not meeting MCAS expectation or meeting them partially (*Id*.).
2. A neuropsychological evaluation performed by Dr. Christine Sadowski on March 8, 2021, diagnosed Student with Dyslexia, noted language-based and executive functioning weaknesses, and also a pattern consistent with a Social Anxiety Disorder (PE-3; SE-7).
3. Susan Cooper, M.S., CCC/SLP, conducted a speech and language evaluation on October 21, 2021, for North Andover (SE-10). Student’s performance in this evaluation demonstrated strength and weaknesses in receptive and expressive language skills. According to Ms. Cooper, tasks involving auditory working memory were challenging for Student, noting that he performed better on tasks involving visual working memory. He presented word retrieval difficulties and possessed below average vocabulary. Ms. Cooper recommended further discussion with Student’s teachers before determining what appropriate supports and services should be implemented (SE-10).

1. On October 29, 2021 Cathy Mason, M.Ed., of Tufts Children’s Hospital, performed an independent educational evaluation of Student (PE-2). According to Ms. Mason, Parent was concerned about Student’s “issues with anxiety, low self-confidence, problems with attention and organization, difficulties with changes and school attendance” amidst language-learning deficits and ADHD (PE-2).
2. On November 18, 2021, Ms. Mason conducted a classroom observation of Student at Parent’s request after which she made numerous recommendations to address Student’s reading, math and writing challenges in the classroom, including explicit instruction in content areas, and organizational and study skills (SE-2).
3. Ms. Mason conducted another classroom observation of Student in the Alternative Learning Center I & II/ Access program on March 3, 2022 (PE-3).[[5]](#footnote-5) At the time of this evaluation, Student was at risk of failing ELA, science and math.
4. Parent’s exhibits contained a one page, IEP parental Response Section of an Individualized Program Amendment for the IEP dated December 14, 2021, through December 13, 2022. Parent rejected this IEP Amendment on August 22, 2022 (PE-1).
5. Student’s Team convened on September 26, 2022, Student’s ninth grade year, to discuss the rejected portions of Student’s IEP for the 2022-2023 school year (SE-3). The Team agreed that Student was overwhelmed by the workload and that he required additional support. The Team proposed that Student receive small group/individualized instruction in ELA, math, phonetics-based reading, receptive/ expressive communication and counseling through a partial inclusion program. Student would also receive direct services while in the general education setting during science and history. The Team further proposed that Student receive an additional academic support session in lieu of Spanish, but Parent rejected this offer. The Team agreed to reconvene after Parent provided consent for Student’s three-year re-evaluation and the evaluations were completed. The September 26, 2022, IEP contained goals and objectives in written expression, mathematics, executive functioning, counseling, reading comprehension, phonetic-based reading, and receptive-expressive language. It also offered counseling, reading and speech and language consultation in addition to direct support during history and science.
6. Parent responded to the September 26, 2022, IEP via letter dated November 22, 2022, in which she notes Student’s ongoing emotional deterioration. She specifically requested that Student’s

…academics be provided in small language-based classrooms with peers who have similar profile and are at his level. He has vocalized stating he does not understand what is being taught and emotionally that is devastating for him. Accordingly, I reject the placement and IEP as developed as insufficient and inappropriate. In the meantime, until we resolve our dispute, I authorize the school to implement the proposed IEP (9/26/2022 to 9/25/2023) as follows:

Specifically in terms of the service grid on the proposed IEP:

Reject history and science in inclusion setting and assert stay-put to keep those subjects in the C Grid as small group direct services.

I reject counseling as he has a private counselor whom he trusts and is comfortable with.

I accept C Grid services of Academic Support, ELA, Mathematics, Phonetic-Based Reading, and Speech and Language.

I ask that Goal 5 re. executive functioning be addressed in all of his subjects, not just Academic Support. He needs cueing and support to stay on task, but I urge the teachers to be circumspect so he doesn’t feel singled out (SE-3)

1. North Attleboro began implementing this IEP in accordance with Parent’s partial rejection upon receiving it from Parent (SE-3).[[6]](#footnote-6) North Attleboro considers this IEP to be the stay-put IEP (Camire).
2. The District conducted Student’s 3-year re-evaluation during the Spring of 2023, with assessments initiated during January, February and April of 2023, inclusive of extended evaluation/ observations. The re-evaluation included reading, academic, psychological and occupational therapy evaluations and observations as well as a classroom behavior assessment (SE-4; SE-5; SE-6; SE-7; SE-8; Camire).
3. The Psychological evaluation was performed by Phillip Allessi, LEP, LMHC, NCSP. Cognitive testing found that Student was performing in the low average range for verbal comprehension, visual spatial and working memory abilities and very low fluid reasoning and processing speed abilities. In school, Student was reported to present with behavioral, emotional and cognitive regulation deficits with significant deficits in “shifting, initiation, working memory, planning, task-monitoring and organization abilities” (SE-7). Moreover, Student’s social-emotional assessments indicated significant difficulties with classroom attention, study skills, adaptability, attentional and functional communication abilities, and notes that at home Student struggles with anxiety (SE-7).
4. Kimberly Borland, M.A., BCBA, LABA, behavioral analyst, conducted the Classroom Behavior Observation and Data Analysis of Student, noting that Student

…engages in high rates of school avoidance behaviors (school absences, tardies, skipping classes) and, when he is in class, he frequently engages in distracted behaviors such as talking to students seated near him and scrolling on his cell phone that distract from his learning as well as his classmates’ learning (SE-5).

1. The District’s evaluators recommended numerous accommodations and services in the areas of reading, writing, mathematics, executive functioning, expressive and receptive language skills, and recommended counseling services. No specific occupational therapy services were recommended (SE-4; SE-5; SE-6; SE-7; SE-8; Camire).
2. Parent filed a Hearing Request on March 17, 2023, seeking an out-of-district placement, such as Learning Prep School, for Student. The Parties voluntarily participated in a Settlement Conference, on or about May 3, 2023, but the matter did not resolve.[[7]](#footnote-7) Parent ultimately withdrew her Hearing Request. (Administrative Notice of BSEA #2308812; Camire).
3. Student’s Team convened on or about April 26, 2023, to discuss the results of the evaluations conducted by North Attleboro. While Parent conceded to having read the reports prior to the meeting and having no questions, she expressed her concerns via email later that evening (PE-7).
4. Student’s Team developed an IEP covering the period from April 26, 2023 to April 25, 2024, offering Student placement in a substantially separate classroom. The Service Delivery grid recommends that all academic and related services be provided outside the general education setting and also offers behavioral, reading, speech and language and counseling consultations (SE-1). The Transition Planning Form and the IEP were forwarded to Parent in early May of 2023 (SE-1; SE-2).
5. Student stopped attending school on May 4, 2023 and did not return for the remainder of the school year (SE-11; Camire).
6. During the 2022-2023 school year Student had a total of 63 absences: 50 unexcused and 13 excused absences. He was also tardy without an excuse 25 times and was dismissed 8 times (5 excused and 3 unexcused) (SE-11).
7. Student’s absenteeism has been chronic despite the District’s efforts to engage him in his education (SE-11; SE-12; SE-13; Camire). Even though Student did not qualify for Temporary Home or Hospital Education for Medically Necessary Reasons, when Parent requested it on or about May 19, 2023, North Attleboro provided Student tutoring through the summer of 2023 to engage Student in his academics and potentially complete ninth grade (SE-12; SE-13; Camire).
8. Student only participated in a couple of the offered tutoring sessions which by report were cut short by Parent. According to Ms. Camire, the tutoring company cancelled the contract because Parent’s constant questions, challenges and interference made them feel uncomfortable (Camire).
9. On May 16, 2023, Parent partially rejected the April 2023 to April 2024 IEP noting,

I expect the IEP to be implemented, but as written is insufficient to meet Student’s needs (SE-1).

The same date, Parent rejected the proposed placement calling for Student’s participation in a substantially separate classroom in North Attleboro (SE-2). Additionally, on May 16, 2023, Parent requested/ consented to an audiology assessment (SE-2).

1. On May 19, 2023, Parent rescinded her consent to the proposed IEP which owing to the fact that Student was not attending school, North Attleboro had never implemented (Camire).
2. In June of 2023, the District attempted to convene a Team meeting in the hopes of discussing placement and resolving the lingering dispute with Parent (Camire). Despite several attempts, Parent, refused to participate unless she had representation which according to her would take weeks (SE-15).[[8]](#footnote-8)
3. A partial email trail dated June 8, 2023, notes the District’s desire to move forward and make changes to Student’s IEP to address the placement issue. Since Parent was not agreeing to meet with the District, the District proposed to send a new copy of the IEP and placement to resolve the dispute while recognizing that the proposed changes were being made outside the Team process (PE-5). Parent responded that she was not opposed to meeting but wished to convene after she found an advocate and did not mention how long it would take her to do so. Parent further noted that she had not acted on the IEP by either accepting or rejecting it (PE-5). Later that day (after work hours), Parent noted that she did not consent to a revision of the IEP outside the Team process and asked that the IEP remain as it was until she had a new representative and the Team an opportunity to meet. The District noted the importance of meeting before the end of the school year and asked Parent for her availability, to which Parent responded that she could not hire anyone in less than two weeks, and noted that the previous time it took her over three months (PE-6).

1. On June 9, 2023, Parent requested an independent evaluation of Student, inclusive of an educational evaluation by Cathy Mason, a speech and language evaluation, a psychological evaluation, neuropsychological evaluation, cognitive evaluation, projective testing and a classroom observation by a speech pathologist/ educational specialist (SE-4).
2. When Parent did not make herself available to meet with North Attleboro, the District issued an IEP on June 14, 2023, offering Student placement at a separate private day school that is, one calling for all IEP services to be provided “outside the general education classroom and in a public or private separate school that only serves students with disabilities” (SE-1). No specific location was identified (SE-1). The record does not contain Parent’s response to this IEP.
3. Student’s progress reports for the 2022-2023 school year note that Student made little to no progress toward achieving his goals and objectives in all areas “in great part due to excessive absences” (SE-17).

1. Ms. Margaret Camire, Director of Student Services at North Attleboro was familiar with Student and with his educational needs. She had also been in frequent communication with Parent and had met with her in person on several occasions. Ms. Camire also provided ongoing, consultation to Student’s Team chairperson and staff regarding Parent’s numerous concerns and disputes (Camire).
2. Sometime between May 30 and June 8, 2023, Parent consented to, and the District forwarded, non-binding referral packets to Willow Hill School, LP and South Shore Collaborative. In her June 8, 2023, communication, Parent requested to be copied on all communications with the aforementioned schools (SE-15; SE-16; Camire). Willow Hill School and LP are Massachusetts Department of Elementary and Secondary Education (DESE) approved private special education schools. South Shore Collaborative is a public special education school. (Camire). The referral packets sent by North Attleboro included North Attleboro’s IEP (purportedly the April 2023 IEP), the speech and language evaluation, occupational therapy evaluation, the Tufts independent Educational Evaluation and the Tufts Neuropsychological Evaluation. After reviewing the information forwarded by Ms. Camire, all three placements found Student to be “completely appropriate based on their cohort, their level of services, and how they describe their programs” (Camire; SE-16).
3. Ms. Camire testified that Student required small group setting with similar peers who presented with language-based deficits, social anxiety and executive functioning challenges. According to her, Student’s IEP could be implemented in a small therapeutic setting with consistent strategies throughout the school day, across all settings. Ms. Camire testified that based on her knowledge of the three placements proposed (acquired over the years through visiting the placements, talking to other special educators and through experience with other students placed there), these schools offered the type of therapeutic milieu, language-based learning intervention supports, appropriate strategies and accommodations to address attentional and executive functioning deficits.
4. Ms. Camire testified that she has previously partnered with these prospective placements to discuss ways in which to supplement services for students when they are not part of the programs. Given the opportunity, she could have engaged in those discussions with the out-of-district placements, but Parent’s actions impeded those efforts (Camire).
5. Ms. Camire opined that the April 2023 to April 2024 IEP recommending out-of-district placement accurately reflects Student’s strengths and weaknesses and was reasonably calculated to offer Student a FAPE (SE-1; Camire).
6. Over the past several years the Team has increased goals and services in Student’s IEP and increased the amount of time Student spent outside the general education setting, including offering participation in a substantially separate setting (for which Parent has advocated) (Camire). Ms. Camire testified that based on school and independent evaluations, a review of Student’s current performance levels, limited attendance and poor engagement in class, the Team moved toward recommending more restrictive settings, culminating with the proposed out-of-district placement (Camire).
7. On June 30, 2023, Ms. Camire, forwarded additional information on Student to Tom Rimer, Director of Admissions at the Willow Hill School (Willow Hill) (PE-8). On July 11, 2023, Ms. Camire forwarded Student’s stay-put IEP, after which Willow Hill requested to meet with Student (Camire). Following further conversations between Parent and Mr. Rimer on July 12, 2023, Willow Hill decided that

After further review of this referral and a more complete understanding of [Student’s] needs, it is clear that we would not be able to fully offer the support that he requires (PE-8).

The record lacks details as to the content of the conversation between Parent and Mr. Rimer.

1. An email exchange between Parent, Ms. Camire and Ann Rowland, Careers High School Coordinator (CHS) for South Shore Collaborative dated July 6, 2023, note that the program’s initial opinion that it had the academic supports and environment that could benefit Student. Parent requested an additional description of the program and schedule information, and the same was provided on July 6, 2023.
2. Sometime between July 7 and July 11, 2023, Parent and Student visited CHS. On July 11, 2023, Parent wrote to Ms. Rowland seeking confirmation that CHS offered “a ‘Full Inclusion’ language-based program”. Parent also sought confirmation that CHS did not offer an extended school year program and did not offer after-school sports”. Ms. Rowland responded the same date that CHS was not a full inclusion language-based program, that it offered a six-week extended school year program but did not offer after-school sports (PE-10). The record lacks a final response from this CHS.

1. On July 18, 2023, Korina Martin, LP’s Director of Admissions, wrote to Parent noting that after careful consideration the program would not be suitable for Student (PE-9).
2. Throughout the referral process, Parent kept changing her consent regarding what information to share with the prospective placements and who the District could speak with, at times consenting to sharing of information, withdrawing her consent and then consenting again. This created a great deal of confusion, especially as the potential placements were looking to move forward with the intake process. The placements were seeking additional information on Student but the District lacked consent to share it. Meanwhile, Parent was communicating with these schools directly and requesting and sharing information in a manner that was in conflict with the District’s efforts. According to Ms. Camire, this impeded the process and raised a red flag for the potential placements (PE-15; SE-16; Camire).
3. On or about July 19, 2023, North Attleboro offered Student participation in its 2023 extended school year program, but as in the previous summers, Student did not participate in the program (SE-9; SE-14; SE-15; Camire).

**CONCLUSIONS OF LAW**:

Pursuant to federal and state special education laws and regulations[[9]](#footnote-9), and consistent with *Endrew F. v. Douglas County School District*, 137 S.Ct. 988 (2017) school districts are required to offer eligible students an individualized education program and placement reasonably calculated to provide the eligible student a free and appropriate public education (FAPE) that enables the student to derive meaningful educational benefit[[10]](#footnote-10) in light of the student’s circumstances.[[11]](#footnote-11) See *D.B. Esposito*, 675 F.3d 26,38 (1st Cir. 2012). Said special education and services must also be offered in the least restrictive environment appropriate to meet the student’s needs.[[12]](#footnote-12)

In the instant matter, pursuant to 603 CMR 28.07(1)(b), North Attleboro seeks a determination that its proposal for an out-of-district public or private special education school placement will provide Student with a FAPE.[[13]](#footnote-13)

Upon consideration of the evidence, the applicable legal standards and the arguments offered by the Parties, I find that North Attleboro has met its burden of persuasion to show that Student requires an out-of-district private or public[[14]](#footnote-14) special education placement in order to appropriately address his academic, language-based, health and emotional disabilities and to receive a FAPE.[[15]](#footnote-15) In rendering my decision, I rely on the facts recited in the Facts section of this decision and incorporate them by reference to avoid restating them except where necessary.

The evidence shows that in order to make effective progress, Student requires a small language-based program with a cohort of students with similar profiles, in which interventions are consistently implemented across settings throughout the school day (Camire). Indeed, Parent notes in her closing argument, that Student requires an out-of-district placement and a different approach to learning. Her closing argument further asserts that Student is not making effective progress in North Attleboro.[[16]](#footnote-16) Furthermore, only two months before the instant matter was filed, Parent was herself seeking an out-of-district placement for Student.

 As reflected in the record, Parent’s statements regarding the placement she seeks, to wit: a “full inclusion, out-of-district private language-based program” are confusing, internally inconsistent, and contradictory.

603 CMR 28.01(14) defines out-of-district program as a

…special education program located in a building or facility outside of the general education environment that provides educational services primarily to students with disabilities and shall include all programs approved under 603 CMR 28.09. Such program may be operated by a private organization or individual, a public school district, or a collaborative.

There is no such thing as a “full inclusion, out-of-district private language-based program”, it is one or the other. By definition, a full inclusion special education program can only be offered in a public-school setting. A program that is out of district cannot be full inclusion. Out-of-district, language-based programs offer special education in a more restrictive setting than inclusion programs provided in a public-school setting, as the former generally removes a student to a smaller setting in which *all* participants present with similar deficits.

A partial inclusion program may be offered in a public-school setting, by allowing a student to participate in general education to the extent possible and receive pull out special education services in his/her areas of weakness. Likewise, separate language-based programing may be offered in a public school, but this kind of programming usually requires participation in a substantially-separate setting, while allowing the student to partake in some limited inclusion.

Again, Parent cannot have it both ways; Student is either placed in a full or partial inclusion program in North Attleboro Public Schools, a separate program in a public-school setting, or he is placed in an out-of-district private or public special education day program outside North Attleboro. Here, Parent has the option of accepting one of these options, or she may withdraw Student from North Attleboro and pursue an alternative placement on her own at her own expense.

Next, I address Parent’s concerns regarding the stay-put IEP. Here I note that most of Parent’s efforts in this matter were directed at identification of the stay-put IEP rather than the placement issue. I further note that Parent was advised on several occasions that the central issue in the instant matter was placement.

Federal and Massachusetts special education laws and the applicable regulations provide that students are entitled to remain in their then-current educational program and placement during the pendency of any dispute unless the parents and the school district agree otherwise. 20 USC § 1415(j); 34 CFR 300.518(a); G.L. c. 71B §3; 603 CMR 28.08(7).[[17]](#footnote-17)

Stay-put rights are intended to maintain a student’s educational placement during the pendency of an IDEA appeal, so as to avoid unnecessary disruptions to the student’s life. As such, “current educational placement” is equivalent to “the operative placement actually functioning at the time the dispute first arises.” *L.Y. ex rel. J.Y. v. Bayonne Bd. of Educ.*, 384 Fed. Appx. 58, 61, 20110 WL 2340176, \*2 (3rd Cir. 2010) (quoting *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618, 625-26 (6th Cir) (1990).

A student’s placement is typically predicated upon the accepted IEP, the document which dictates the school district’s responsibility toward a resident student. In determining the program and placement to which a student is entitled during the pendency of a proceeding the applicable laws and regulations require that one looks to the last agreed upon IEP. This requires close examination of the documents, circumstances and particular facts surrounding the program and placement to which the student is entitled during the pendency of the dispute between the parties. See *Hale v. Poplar Bluff R-1 School District*, 280 F.3d 831 (8th Circ. 2002) (requiring that the fact finder look at the specific facts of the case to examine the impact that educational changes may have on the student).

Guidance for determining educational placement for purposes of stay-put can be found in Court decisions which have interpreted stay-put to mean the specific services that the student is currently receiving under the IEP. *See K.D. v. Dep’t of Educ., State of Hawaii*, 58 IDELR 2 (9th Circ. 2009) (noting that a district can make changes to a program so long as the student’s educational program is not significantly impacted).

In the instant matter, the evidence shows that following a Team meeting on September 26, 2022, North Attleboro proposed an IEP covering the period from September 26, 2022, to September 25, 2023. Parent accepted a portion of this IEP on November 22, 2022 (SE-3).[[18]](#footnote-18) Parent’s IEP response letter stated in pertinent part that while she rejected the IEP and placement as “insufficient and inappropriate” until the dispute was resolved, she “authorize[d] the school to implement the proposed IEP”, with the additional caveats regarding the Service Delivery Grid, to wit: 1) that history and science continue to be taught in the substantially separate classroom; 2) that no counseling services be provided; 3) that Goal 5, addressing executive functioning, be implemented in all subjects; and 4) that C Grid services for Academic Support, ELA, Mathematics, Phonetic-Based Reading, and Speech and Language were accepted (SE-3). Once Parent authorized implementation of the proposed IEP, together with the additional requirement that she was invoking stay-put for provision of substantially separate instruction for science and history, acceptance of C Grid services for Academic Support, ELA, Mathematics, Phonetic-Based Reading, and Speech and Language and rejection of counseling services, this became Student’s stay-put services and dictated North Attleboro’s responsibilities toward him during the pendency of the dispute. Parent’s argument to the contrary is unpersuasive.

Lastly, there are two issues that warrant comment. Student’s absenteeism and Parent’s conduct and failure to appear at the Hearing,

First, I find Student’s absenteeism to be extremely concerning. The longer Student stays out of school, the greater the challenges he will have to overcome when he ultimately returns. Sadly, the evidence shows that during the 2022-2023 school year his absenteeism was caused by Parent’s decision to allow Student to be absent from school for over 60 days. Student is in high school and his entitlement to special education and related services will cease in a few years. By then, he will need to have mastered the skills that will enable him to effectively manage his deficits so as to succeed in life. Every day that he is deprived of participation in an educational program sets him back. It is imperative that Student attend school and receive his stay-put services until an out-of-district placement is secured for him.

Thus, until such time as an appropriate out-of-district placement is identified, Student shall continue to participate in his educational program in North Attleboro consistent with his stay-put IEP services.

I now turn to Parent’s conduct. Despite this Hearing Officer’s encouragement and attempts to engage so as to have Parent and Student participate in the Pre-hearing Conference and the Hearing, Parent ultimately decided not to attend. She thus deprived herself of the opportunity to fully argue and address her concerns for Student in the due process forum. Moreover, Parent’s indecisiveness, lack of clarity and argumentative style throughout this process has made it difficult for the Parties to engage in collaborative discussions, and has caused the process to be unnecessarily delayed. Even while stating that she supports an out-of-district placement for Student, Parent continues to question every detail of statements made by the District about these placements and the placement process, despite said statements being clear and unambiguous. Every question answered is met with another question, in an endless back and forth that yields no resolution. Parent appears to argue for the sake of arguing, even when the District acquiesces to her requests. Her investment in arguing appears to have made her lose sight of what actually benefits Student. It is clear that she needs assistance in order to move forward. As such, in the hopes of improving communication going forward, I strongly encourage the Parties to participate in facilitated IEP meetings.

**ORDER:**

1. North Attleboro’s IEP and proposed placement, amended to reflect a public or private out-of-district special education school, is appropriate and necessary in order to provide Student with a FAPE. The District shall immediately proceed with identification of available, appropriate out-of-district placements and referral of Student to same.
2. Parent is ordered to forthwith consent to the release of referral packets to potential public and private special education placements in order that Student may be provided a FAPE.

By the Hearing Officer,

Rosa I. Figueroa

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Rosa I. Figueroa

Dated: September 8, 2023

**September 8, 2023**

# COMMONWEALTH OF MASSACHUSETTS

# DIVISION OF ADMINISTRATIVE LAW APPEALS

# BUREAU OF SPECIAL EDUCATION APPEALS

**NORTH ATTLEBORO PUBLIC SCHOOLS**

**BSEA # 2400326**

### BEFORE

**ROSA I. FIGUEROA**

**HEARING OFFICER**

**PARENTS PRO-SE**

**KATIE MEINELT, ESQ., ATTORNEY FOR**

**NORTH ATTLEBORO PUBLIC SCHOOLS**

1. I note that between July 24 and September 5, 2023, Parent filed numerous motions and requests, even after the Parties were informed that no additional motions, requests or email communications would be entertained. I further note that Parent missed some of the deadlines established by the Hearing Officer to file her submission such as filing a revised requests for subpoenas and other submissions as reflected in the administrative record. [↑](#footnote-ref-1)
2. Only one member of the public intended to be in attendance but was excluded when Parent did not appear. [↑](#footnote-ref-2)
3. The District objected to introduction of Parent’s exhibits 5, 6, 7 ,8 and 10 on the basis that the documents submitted did not represent the entire email trail. The documents were admitted in evidence over the District’s objection with the clarification that do not provide a complete and accurate representation of the totality of the exchange thus impacting the weight given to the documents. [↑](#footnote-ref-3)
4. At the request for the District, the matter was further postponed through August 7, 2023, for submission of this exhibit. [↑](#footnote-ref-4)
5. This exhibit from Parent did not include the entire report, but rather the first 7 pages. Specifically, the summary/implications portion of the report as well as the signature page were missing. [↑](#footnote-ref-5)
6. According to Parent, the stay-put IEP is the one covering the period from December 2019 to December 2020, per PE-1, which exhibit does not contain the entire IEP, but rather the signature page only. [↑](#footnote-ref-6)
7. At the time of the Settlement Conference both Parties were represented by counsel, but Parent’s counsel withdrew her representation shortly thereafter. According to North Attleboro, Parent has been represented by three attorneys and an advocate in the past year and a half. [↑](#footnote-ref-7)
8. In late July and in August of 2023, Parent made the same statement when seeking a postponement of the Hearing and as one of the reasons for her to ultimately decide not to attend the Hearing. [↑](#footnote-ref-8)
9. 20 USC §1401 et seq.; M.G.L. c.71B; 34 CFR 300 et seq.; 603 CMR 28.00 et seq. [↑](#footnote-ref-9)
10. 34 CFR 300.300(3)(ii). [↑](#footnote-ref-10)
11. The determination of whether a student is deriving meaningful educational benefit from his program and placement must be determined in the context of the student’s particular circumstances and potential to learn. *Endrew F. v. Douglas County School District*, 137 S.Ct. 988, 580 U.S. (2017). [↑](#footnote-ref-11)
12. 34 CFR 300.114(a)(2)(i) and (ii). [↑](#footnote-ref-12)
13. 603 CMR 28.07(1)(b) states that,

If, subsequent to initial evaluation and initial placement and after following the procedures required by 603 CMR 28.00, the school district is unable to obtain parental consent to a reevaluation or to placement in a special education program subsequent to the initial placement, or the parent revokes consent to such reevaluation or placement, the school district shall consider with the parent whether such action will result in the denial of a free appropriate public education to the student. If after consideration, the school district determines that the parent’s failure or refusal to consent will result in a denial of a free appropriate public education to the student, it shall seek resolution of the dispute through the procedures provided in 603 CMR 28.08. Participation by the parent in such consideration shall be voluntary and the failure or refusal of the parent to participate shall not preclude the school district from taking appropriate action pursuant to 603 CMR 28.08 to resolve the dispute…. [↑](#footnote-ref-13)
14. North Attleboro is persuasive that Student may receive a FAPE in a public or private, special education day school that can support his educational needs, SE-1, the IEP calling for out-of-district placement, identifies only “private” not public or private day schools, and does not clarify that both options are being explored. The IEP shall be amended to correctly portray the options explored by the District until a specific public or private, special education school, appropriate to meet Student’s needs is identified. [↑](#footnote-ref-14)
15. See *Shaffer v. Weast*, 546 U.S. 49 (2005). To the extent that Parent did not participate in the Hearing and did not present any testimonial evidence, her arguments did not carry the same weight as the School’s case. [↑](#footnote-ref-15)
16. Such lack of progress was, to a great extent, owing to absenteeism (SE-17). [↑](#footnote-ref-16)
17. Exceptions to stay-put which relate to violations to the code of conduct are not applicable in this matter. [↑](#footnote-ref-17)
18. At the time of Parent’s response to this IEP, she was represented by counsel. [↑](#footnote-ref-18)