COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

SPECIAL EDUCATION APPEALS

**Belmont Public Schools v. Student BSEA # 2402979**

**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**

Belmont Public Schools (hereinafter, Belmont) requested a hearing in the above-noted matter on September 20, 2023, which was scheduled for October 10, 2023. Parent’s request to postpone the October 10 hearing was allowed for good cause over Belmont’s objection because Parent had retained counsel who was out of country during the week of October 2 and required time to prepare for hearing and submit exhibits. The hearing was scheduled for October 24, 2023, a day both Parties were available. During an October 23, 2023 conference call the Parties’ joint request to postpone the October 2023 Hearing until November 3, 2023 was allowed for good cause. Parent’s counsel withdrew on October 24, 2023 and a conference call took place on October 25, 2023. The Hearing was held on November 3, 2023. Parent did not participate in the Hearing[[1]](#footnote-1). The Hearing proceeded on November 3, 2023. Belmont made its closing argument orally, at the conclusion of the Hearing. On November 6, 2023, Parent sent an email to the Hearing Officer stating her position and the record closed.

Those present for all or part of the hearing were:

Heidi Paisner-Roffman Principal, Wellington School

Sarah Ramos Inclusion/Behavior Specialist, Belmont Public Schools

Kendra Nnyanzi Teacher, Belmont Public Schools

Christine Smith Assistant Director, Office of Students with Special Needs, Boston Public Schools

Thomas Delmar Attorney, Belmont Public Schools

Colby Brunt Attorney, Belmont Public Schools

Carol Kusinitz Court Reporter

Catherine Putney-Yaceshyn Hearing Officer

The official record of this hearing consists of: Parent’s exhibits marked P-A through P-D[[2]](#footnote-2); Belmont Public Schools’ exhibits marked S-1 through S-27; and approximately 2.5 hours of recorded oral testimony.

# ISSUES

1. Whether the IEP proposed by Belmont Public Schools for the period March 16, 2023 - March 15, 2024 was reasonably calculated to provide Student with a free appropriate public education in the least restrictive setting at the time it was proposed?
2. Whether Student’s current placement in Belmont denies her a free appropriate public education in the least restrictive environment?

POSITION OF BELMONT

Belmont is not able to provide Student with a free an appropriate public education in the least restrictive environment. It has hired a registered behavior technician to provide Student with one on one classroom assistance. Student’s teacher is experienced and has made many modifications to her classroom to accommodate Student’s needs and keep all students and staff safe. The BCBA has created eight different behavior plans. The staff have shown that they truly care about Student and have tried everything they can to meet Student’s needs. Despite their efforts, Student is not making any progress toward her IEP goals. Student is showing regression and is not able to access instruction. Student is a bright, curious, and capable girl, but in the last two weeks she has accessed virtually no instruction. Student’s remaining at Belmont creates a safety risk for her, the staff, and other students. Staff have been injured and are at continued risk for further injury. Parent has stopped engaging with the school and Student is languishing in an inappropriate placement and has shown regression. Student requires placement in a small-group program with intense therapeutic supports throughout the day and Belmont cannot provide that.

POSITION OF PARENT[[3]](#footnote-3)

Parent agrees that Student has struggled with dysregulation and fatigue at school. She believes that Belmont has targeted Student and treated her differently than other students since last year. In Parent’s opinion, Student has been bullied and called names in addition to being ignored by peers and teachers. Belmont did not make her comfortable with her transition to Kindergarten which has continued into the current school year. Although Student has an IEP, Mother believes that Belmont has not provided her with the services to which she is entitled, including therapeutic services. Parent’s basis for this assertion is that she has been told by Belmont staff that when Student is awake, she is very smart and can do the work. Mother believes that if Student had support from the school therapist while she was dysregulated, she would be able to regulate herself and return to learning. She is concerned that Student told her that during an episode of dysregulation the school psychologist walked away from her at a time when she required services.

**SUMMARY OF THE EVIDENCE**

1. The student (hereinafter, “Student”) is a 6-year-old first grade student residing in Boston and attending the Belmont Public Schools (hereinafter, “Belmont”) through the METCO program[[4]](#footnote-4). She was found eligible for special education following an initial evaluation and Team meeting on March 16, 2023. The Team determined that Student presented as a child with an emotional disability due to her decreased emotional and behavioral regulation. It determined that she was not accessing the general curriculum or developing socially at school due to her disability. (S-7)

1. Student entered Kindergarten in Belmont in September 2022. (S-1) She attended the Jumpstart Program at Belmont prior to entering Kindergarten. Her October 2022 Kindergarten screening noted weaknesses in the areas of emotional management and fine motor skills. She then began to receive RTI support in occupational therapy and participated in a weekly Kindergarten social group with the school counselor. She also received support from the school’s inclusion specialist and registered behavior technicians in the classroom. From the period from September 2022 through February 13, 2023, Student was absent twenty times and tardy seven times. (S-1) While in Kindergarten she was dysregulated for a significant portion of each school day. She also spent significant periods of time sleeping during school. Her Mother (hereinafter, “Mother”) informed staff that Student did not get enough sleep at home and stayed up late at night, sometimes using a “screen.” During Kindergarten her behaviors included yelling, throwing objects, property destruction, running around, screaming, and slamming doors. (Paisner-Roffman) Ms. Paisner-Roffman, the school principal, and a mandatory reporter, filed a Report of Child Alleged to be Suffering from Abuse or Neglect with the Department of Children and Families (hereinafter, “DCF”) on January 26, 2023, after Student reported witnessing a domestic violence incident. The report described the incident and noted that Student was sleeping for approximately 40% of each school day and could not be easily roused by staff. (Paisner-Roffman, S-20) Ms. Paisner-Roffman filed another report with DCF on March 10, 2023. This report stated that Student had reported being repeatedly struck in the face by a family member and again stated that Student was sleeping for long periods of time at school. (Paisner-Roffman, S-21)
2. Belmont conducted an initial evaluation for special education eligibility upon Mother’s referral in February and March 2023. The psychological evaluation[[5]](#footnote-5), conducted by Joann Frankhouser, Psy.D., noted that Student becomes easily frustrated when she does not know how to do something, resulting in her becoming angry and having tantrums. School staff expressed concern regarding Student’s behavior/social emotional functioning, self-regulation, and attention/distractibility. Dr. Frankhouser observed that Student struggles with regulation regarding her emotional experiences and to sustain attention and effort across settings. She found that her dysregulation had a notable impact on her behavior and learning and noted that Student struggles to handle frustration and has difficulty modulating her reactions and coping with her feelings. She suggested that developing more adaptive coping skills be a focus of intervention to enable Student to direct more of her energy to her learning efforts than dealing with emotional distress. (S-2)
3. Alexandra Boudette, M.S.,CCC-SLP, conducted a speech language evaluation on February 27 and March 6, 2023[[6]](#footnote-6). During the first session the evaluator saw Student for ten minutes and completed ¾ of a subtest. Student was somewhat agitated, moving around in her chair. She did not return the evaluator’s greeting and she walked around the room swinging her arms. The second session was more successful, with Student working for 30 minutes. Student was a little more relaxed and responded more to the evaluator. She showed signs of overstimulation toward the end of the session, laying her head on the table, taking off her shoes and putting her foot close to the evaluator’s face. The limited standardized test scores the evaluator was able to obtain suggested average ability to comprehend oral language and average skills on three expressive language subtests. Teachers reported that, when regulated, Student was able to sustain a conversation with adults, exchange greetings, and demonstrate eye gaze. Ms. Boudette concluded that based on her very limited testing, Student appeared to present with average ability to use and understand language. She noted, however, that her results should be viewed critically due to Student’s behaviors during the abbreviated testing. (S-3)
4. Jennifer Sims, OTR/L, conducted an occupational therapy evaluation on March 7, 2023. Ms. Sims concluded that functionally, Student demonstrated adequate motor control when coloring and writing. She was able to place letters correctly within clearly defined writing lines with appropriate sizing of letters. She demonstrated decreased motor control when cutting out shapes. She recommended a number of accommodations for Student. (S-4)
5. Elizabeth Brueckner, M.Ed, completed an educational evaluation on February 7 and March 8, 2023, utilizing the Wechsler Individual Achievement Test (WIAT-4). Student scored in the below average range in the areas of phonemic proficiency, word reading, and reading comprehension. Her scores indicate that she is at the beginning stages of learning reading skills. While she has made some progress in her ability to identify letters and some sounds, due to factors that impact her ability to access the curriculum, she is performing below grade level benchmarks in reading. In mathematics, in the areas of numerical operations and math problem solving, Student scored in the average range in numerical operations and math problem solving, but mathematics composite score fell in the below average range. In the area of written expression, Student scored in the average range in alphabet writing fluency, and in the below average range in spelling as well as the written expression composite score. She scored in the below average range in sentence repetition. Student scored in the average range in listening comprehension and receptive vocabulary and in the below average range in oral discourse comprehension. She scored in the average range in expressive vocabulary, oral word fluency, oral expression, and on the oral language composite. Ms. Brueckner concluded that Student had relative strengths in mathematics and oral language and relative weaknesses in early reading skills. She recommended that all of Student’s instruction be in a small group or 1:1 setting; that she receive repeated exposure to grade level concepts; that she be seated near adults in classroom settings; and that a visual schedule and timer be provided for transitions. (S-5)
6. A Functional Behavioral Assessment was completed by Meghan Sutton, M.S., BCBA, LABA; Kevin Russo, M.A., BCBA, LABA; and Michelle Heffron, B.A, on March 6 and 7, 2023. The behaviors targeted for the assessment were property destruction, refusal, and yelling. Mr. Russo noted that Student sometimes exhibits interfering behavior when she wants something or when she wants to avoid something. He opined that she needs to learn adaptive replacement behavior skills and to generalize those skills across settings, people, and behaviors. He recommended the use of ABA strategies to target the systemic reduction of Student’s interfering behavior at school. He further suggested use of a system of ongoing data collection on target behaviors, along with ongoing review of the system to determine the effectiveness of the interventions. (S-6, P-D)
7. Student’s Kindergarten teacher, Mina Vahedi, wrote a “teacher report/observation” assessing Student’s skills in various areas. She noted that Student was able to express herself clearly when she was emotionally regulated. She could use language to ask for help and communicate and could have reciprocal conversations with teachers and peers. When she was dysregulated, she did not respond to teacher instructions and would often yell. Staff tried not to verbally engage Student when she was dysregulated because it made her more upset.

Student was noted to be in the emerging stages of her phonemic awareness skills. It had been difficult to get a sense of what she knew due to absences and being out of the classroom and challenges focusing and attending to instruction. Student’s assessment scores made her eligible to receive reading support services from a reading specialist, but she had been unable to access the services because she was unwilling to participate. She had shown potential in math. She benefitted from the use of visuals and required adult support during math tasks. Student had had some successful peer socialization skills, but it had been difficult for her to form meaningful connections with classmates because of her emotional dysregulation. She had participated in a small social skills playgroup, but had not had consistent attendance. She struggled socially when things did not go her way or when she perceived a peer had done something on purpose to upset her. She could respond by yelling at a classmate when she was frustrated by him/her. Her frustration could lead to dysregulation and when dysregulated Student might throw classroom materials, rip items, kick or hit staff, and push or knock over furniture. Those actions sometimes deterred other students from wanting to engage with Student during more regulated times of her day. There, however, had been some positive peer interactions despite the challenges. (S-9)

Although Student understood how the classroom ran, it had been challenging for her to grasp the routines and expectations. She was only able to focus and follow the group plan for a very short time. Staff tried strategies such as visual schedule, a first/then board and frequent positive reinforcement to increase Student’s success in the classroom. She often struggled because she was not used to taking turns, waiting to be called on, and actively listening. When things did not go as she would have liked, she could become upset and dysregulated, causing her to leave the learning space and miss out on instruction. Student frequently fell asleep at school for 2-3 hours at a time. It was often challenging to wake her up. She missed the majority of Kindergarten instruction due to absences, dysregulation, and being asleep. She became more flexible in following teacher instructions, but still had a very hard time accepting “no”, transitioning between preferred and non-preferred activities, and following the group plan. She could become easily distracted, particularly on the rug. She often made noises to herself and called out to ask for something unrelated to the lesson. She was able to stay focused or engaged for only 5-10 minutes. Student’s gross motor skills appeared to be age-appropriate. She improved her fine motor skills during the course of the year. She was seen by the OT once per week to address her fine motor skills and was able to access most of her sessions when in school. (S-9)

1. The Team[[7]](#footnote-7) convened on March 16, 2023. It reviewed Student’s assessment reports, discussed her progress and her inability to remain regulated in order to participate in the general education classroom setting. Her dysregulation was described as presenting as tiredness, irritability, or aggression toward others. The Team determined that Student presents with an emotional disability due to her decreased emotional and behavioral regulation. The Team agreed that Student was not accessing the general curriculum or developing socially at school due to her disability. It proposed an IEP that includes accommodations that target Student’s regulation challenges, as well as goals and services to improve her emotional and behavioral regulation.

Said IEP, proposed for the period from March 16, 2023 through March 15, 2024 includes a number of accommodations including: small group or 1:1 for all instruction; highly structured environment; clear and consistent expectations; preferential seating (close to teacher/adult in all settings); frequent breaks; access to a safe separate space to deescalate away from peers with minimal stimulation; behavior support program, individualized as needed with clear expectations and frequent feedback and reinforcement; multimodal presentation of information; teach in meaningful contexts; provide wait time for responding to questions; limit verbal communication when dysregulated; visual aides; break tasks down into smaller/manageable pieces. The IEP requires “social emotional and behavioral support integrated throughout her school day through direct skill building and reinforced through a highly structured academic setting with highly trained staff who have experience working with students with emotional regulation challenges.” The IEP has goals in the areas of Self-Regulation and School Behavior.

The service delivery grid included Grid A consultation with the BCBA 1 x 30 minutes per 5 days; consultation with a psychologist 2 x 15 minutes per month; and Grid C services included academic/social/behavioral support with a special education/general staff 5 x 300 minutes per 5 day cycle and social emotional services with a psychologist 2 x 30 minutes per 5 day cycle. The nonparticipation justification states that Student requires special education programming throughout her day in the form of a highly structured, substantially separate program, with highly trained staff, experienced in working with students with emotional regulation challenges. The additional information section states that the Team recommends that Student have access to a team of educators who is experienced working with students with significant emotional needs. It states she requires a team skilled in recognizing her emotional needs in the moment and effective strategies for intervening before she becomes overly dysregulated. She requires a flexible schedule so that instruction can be targeted to times she is most regulated and able to learn effectively. (WS-8)

The Team recommended that Student receive her services in a substantially separate setting with a staff trained to support students with emotional challenges, determined that Belmont does not have a placement capable of providing this level of support Student’s proposed IEP includes placement in a substantially separate therapeutic classroom.. Belmont does not have such a placement. (Ramos, Nnyanzi) She would need a cohort of peers with similar needs to practice social skills and to avoid being isolated, and Belmont does not have such appropriate cohort of peers. (Paisner-Roffman)

The Team therefore recommended that Boston Public Schools be the placement due to their “extensive program options for student’s [sic] with disabilities.” Further, based on the advice of Boston Public Schools, the Team recommended that Student register with Boston Public Schools to determine appropriate programming options in the school district. Following the meeting, Boston Public Schools advised the Belmont Team to have Student’s family bring a copy of the IEP to a Welcome Center and register Student for Boston Public Schools. Boston would then transfer the IEP to their district and locate an available program that met Student’s needs. (S-7)

1. The IEP was signed by Belmont on March 29, 2023. Mother signed the IEP on May 4, 2023 checking the box indicating, “I reject the following portions of the IEP with the understanding that any portion(s) that I do not reject will be considered accepted and implemented immediately and writing “placement’ in the lines below the box. Mother signed the placement page, which called for a substantially separate classroom, and checked the box refusing the placement. (S-9)
2. Kendra Nnyanzi is Student’s current first grade teacher. She has taught first grade in Belmont for 19 years and taught second grade elsewhere for six years. She has a Master’s degree in curriculum and instruction and a Bachelor’s degree in elementary education and is certified in elementary 1-6. She is familiar with Student’s IEP and Behavior Plan and provides Student with several classroom accommodations. Prior to the start of the current school year, Ms. Nnyanzi met with a group of educators who had worked with Student last year and would be working with her this year to discuss Student’s prior classroom behaviors and ways to support her. Ms. Nnyanzi put curtains over her classroom library, and bookcases where she stored teaching materials to decrease visual stimuli and obscure items that Student might grab or throw if she became dysregulated. She minimized items from the caddies on the classroom tables for the same reason. She added a doorstop to the classroom door to prevent potential injuries because it was reported that Student frequently slammed doors the previous year. She rearranged some furniture to eliminate potential hiding places. (Nnyanzi)

There are twenty-two students, including Student, in Ms. Nnyanzi’s current class. In addition to Ms. Nnyanzi, there is a paraprofessional and a registered behavior technician (RBT) in her classroom all day. The RBT, Jillian Russo, is responsible for implementing Student’s behavior plan and works 1:1 with Student throughout the day. Ms. Nnyanzi provides a great deal of structure in her classroom and ensures that Student is always seated near an adult. She provides frequent breaks. Student is able to ask for a break as needed and is also able to request food when she is hungry. She provides Student with manipulatives as appropriate, although recently Student has thrown the manipulatives provided to her. Student has access to the Free Space Room as needed. The Free Space Room is next door to Ms. Nnyanzi’s classroom. It is used to help Student regulate, de-escalate, and get her body back into the “green zone” or regulation. It is where she goes to calm down when she has been aggressive in the classroom. When Student appears to have calmed down in the Free Space Room, Ms. Ramos and/or Ms. Russo may try a small work demand in that space to determine if she is ready to return to the classroom. (Nnyanzi) At the beginning of the year there were some teaching materials, toys, activities and games in the Free Space room. It also had shelving on the walls. Everything had to be removed from the room because Student used the materials unsafely. The room currently has only two rugs in it. The staff brings in cushions or pillows if Student says she needs to sleep or is tired. (Ramos) Sometimes when Student gets off the bus or when she comes in tardy she appears tired in the classroom. When this happens, staff bring her to the Free Space room and she falls asleep, often for up to three hours. (Nnyanzi)

1. At the beginning of the current school year, Student was engaged, able to sit at her table and join the classroom morning meeting. She was arriving on time on the school bus and did not appear as tired as she had the previous year. As the year progressed, and the academic demands increased, Student became more dysregulated and would refused comply with demands. She was initially able to access academics for approximately fifty percent of the day. Over the past several weeks there has been a significant and sharp increase in her level of dysregulation. She is dysregulated for approximately 90% of the school day. Student is not able to participate socially in the learning community. Some days she would be tardy and would then sleep in the Free Space Room, sometimes for hours at a time and she was difficult to rouse. She had trouble re-engaging after absences. Student does not currently have a friend in the classroom, as her level of dysregulation interferes with her ability to form connections with her peers. (Nnyanzi)
2. According to Ms. Nnyanzi, Student is not making much, if any, progress on her IEP goals due to her level of dysregulation. Ms. Nnyanzi cried when asked to describe Student. She described Student as the most caring and empathetic first grader who wanted very much to have a close friend. She stated that her disability is preventing her from showing that side of her personality. Ms. Nnyanzi stated that it breaks her heart that Student is not able to show her wonderful qualities such as her creativity, affection, and empathy. She further explained that Student is extremely bright, but her skills are masked because her emotional disability prevents her from accessing them.
3. Student underwent an early literacy screening and was identified as being eligible for reading support from a reading specialist. The services began October 2 and Student was scheduled to receive reading services 5 x thirty minutes per week. She has missed most of the sessions because she was absent/tardy, asleep, or dysregulated. Student has also been unable to participate in small group reading and math instruction with Ms. Nnyanzi due to her level of dysregulation. Ms. Nnyanzi estimated that Student is accessing less than ten percent of the curriculum. Shet has been consistently receiving services from the school psychologist when at school, awake, and regulated. (Nnyanzi)
4. Sarah Ramos is the inclusion and behavior specialist at Student’s school. She has a bachelor’s degree in early childhood special education and a Master’s degree in special education and applied behavior analysis. She is a Board Certified Behavior Analyst and is licensed in moderate disabilities for Kindergarten through eighth grade. She has worked with Student most school days since September 2022. Ms. Ramos is part of Student’s crisis team, which includes Dr. Paisner-Roffman, Molly Carone (Assistant Principal), Jason Zomick (school psychologist), and Jillian Russo (registered behavior analyst (RBT)). When Ms. Ramos responds to a call for Student’s Crisis Team she generally checks in with Ms. Russo and takes her cue from her. Ms. Russo lets her know what intervention to use and what preceded the call for the Crisis Team. Ms. Ramos assesses the physical safety for Student and others in the classroom and she and Ms. Russo work together to regulate Student with the ultimate goal of getting her back to the classroom to access curriculum. It is very rare that the staff is able to re-regulate Student in the classroom before they have to bring her to a safer location. They often use the “Free Space room”. (Ramos)

Ms. Ramos has drafted eight different behavior plans for Student since September 2022. Ms. Russo is primarily responsible for implementing the behavior plan. The plans have not been effective. Student is almost constantly at a level of dysregulation that prevents her from accessing any of the positive reinforcement that she receives. Her current Behavior Plan allows her to earn tokens for expected behavior such as completing work, using nice words, or asking for something nicely. Once she earns ten tokens she is allowed to take a break with a preferred item. So far this year, Student has earned her break ten or twelve times. The expectation is that she would earn the reward several times per day. Ms. Ramos explained that it has been very difficult to create an effective Behavior Plan for Student because her triggers are unknown and unpredictable. Further, things that have not previously triggered Student’s behaviors can suddenly become triggers. Ms. Ramos explained that recess had always been an incentive for Student. However, the day before the hearing when Ms. Russo told Student it was time for recess, she began screaming and kicking and ran out of the room. (Ramos)

1. Ms. Ramos described Student’s presentation when she is dysregulated as often starting with screaming. The behavior escalates very quickly. She tips chairs, throws materials, tries to move tables, and slams doors. She makes threatening statements, and aggresses, including kicking, punching, pinching, scratching, and throwing items at staff. Student recently took off her shoes and threw them at staff, spitting at staff and bit Ms. Ramos, causing bruising, the day prior to the hearing. Student’s dysregulation has gotten progressively worse as this school year has gone on. There has been a “very large” increase in aggression especially targeted aggression. Student is almost constantly dysregulated. There is very rarely a time that she is regulated enough to be in the classroom accessing the curriculum. When she aggresses toward staff it is very purposeful. She recently became dysregulated while transitioning to physical education class and carrying a heavy metal water bottle. Ms. Ramos removed the water bottle from Student and as she left the room, Student followed her and punched her five or six times in the back. (Ramos)
2. Ms. Ramos explained that staff is required to fill out a Behavior Incident Reporting Form whenever a student engages in dangerous or unsafe behavior, displays behavior that requires other students or Student to be removed from the environment., or engages in aggression toward staff or students. During the period from April 28, 2023 through September 22, 2023, there were ten such reports filed. Behaviors reported included: kicking staff in the shin; screaming; bolting/elopement; defiance; refusal; throwing books, climbing on bookcase; tipping chairs in classroom; slamming door; throwing materials; ripping items off the wall; screeching; dumping materials; property destruction (items ripped); repeatedly punching staff with closed fist; grabbing staff member’s wrist and bending back her fingers; hitting staff with a pool noodle; ripping items off the wall; throwing a bin of fidgets; screaming and kicking staff; ; and throwing items at staff. Other students had to be removed from the classroom due to Student’s behaviors on at least one of those dates. (S-14)
3. Heidi Paisner-Roffman is the principal at Student’s elementary school. She met Student before she entered Kindergarten last year. Dr. Paisner-Roffman described Student as being sweet and affectionate; incredibly smart and inquisitive; and a very capable learner when able to access learning. She noted that Student is deeply impacted by dysregulation throughout most of every day. Dr. Paisner-Roffman is often called as part of the Crisis Team to assist Student. Recently, she has been called multiple times each day. She described Student as being dysregulated most of the time recently. She further noted that although Student was often dysregulated during Kindergarten, the severity of the dysregulation has increased this year, including more targeted and intentional aggression directed at staff. (Paisner-Roffman)

Student’s dysregulation has led to her being suspended three times since September 2023. On or around September 13, 2023, following a period of dysregulation, Student intentionally hit Ms. Ramos and Ms. Russo with a closed fist and thew objects at them. She then grabbed Ms. Ramos’ hand and pulled her fingers back, causing injury. Dr. Paisner-Roffman noted that Student had destroyed school property and endangered other students by slamming a door and throwing objects. Student was suspended for one day. (Paisner-Roffman, S-17) Student was suspended a second time due to events on or about September 22, 2023. Student repeatedly punched and kicked staff members during three separate incidents. She endangered other students by kicking and throwing objects in the classroom and destroyed school property. Dr. Paisner-Roffman described how Student kicked and punched staff members and intentionally ripped things off the walls in the Free Space room, destroying whatever was in the room at the time. After a hearing, in which a long-term suspension was considered, Dr. Paisner-Roffman suspended Student for two days. (S-18, Paisner-Roffman) On October 23, 2023, Student was suspended for a third time. Dr. Paisner-Roffman described how in addition to kicking and punching staff, which Student had done before, she grabbed Ms. Ramos’ arm and scratched it, leaving a small red welt. She then went to the window and tore the screen off and attempted to break the window. Student was suspended for two days following that incident. (S-27, Paisner-Roffman)

This witness corroborated that there has been an uptick in Student’s behavior during the weeks prior to the Hearing. The severity and level of targeted behavior and the level of injury to staff has increased. The incidents of kicking and hitting have been more intense and Student recently tried to hit and kick staff in the face. The level of threats that Student has made has increased as well. She has recently said things like, “I’m going to make you bleed.” She has also made statements like, “You hate me, you don’t want me here.” Student seems to be angrier with staff and appears to be working through some feelings. She has recently hurt staff members and then immediately tried to hug them. The day prior to the Hearing she was able to access approximately twenty minutes of her school day. The rest of the day she was either dysregulated or in the Free Space room refusing to reengage. (Paisner-Roffman)

1. Dr. Paisner-Roffman is concerned about the safety of Student and staff due to Student’s intense dysregulation. The day prior to the hearing Student was running down the stairs and tripped. Although she was not injured, Dr. Paisner-Roffman is concerned that the behavior could lead to Student being injured. Belmont does not have sufficient staff to support Stent’s program and ensure the safety of the school community. (Paisner-Roffman)
2. During the 2022-2023 school year Student recorded 16 excused absences and 22 unexcused absences. She was dismissed on 4 days, including one “nurse dismissal.” She was tardy on 29 occasions; one time was excused. (P-A, S-13)
3. Christine Smith is an assistant director in the Boston Public Schools Office of Students with Special Needs. She works with schools and families and students in out-of-district settings, including students placed with the Metco program. Ms. Smith stated that she attended a Team meeting in Belmont for Student, but did not recall the date. She testified that Boston has proposed two programs to Parent as potential placements for Student. Parent did not visit either of the two proposed programs. Ms. Smith observed Student in Belmont on November 2, 2023. Student was in the Free Space room with Ms. Russo. She was arguing with and hitting staff. Staff were using gentle words and trying to convince Student to put her shoes on and go to recess. Student was not able to comply for approximately fifteen minutes and then she told staff to put her shoes on her and they did. Student went to get her coat in the hallway and threw herself on the floor. Staff were physically protective of Student to prevent her from getting hurt and were also defending themselves from her as she flailed her body. She would not comply with the staff’s instructions. Based on her observation, Ms. Smith was concerned about Student’s placement in Belmont. She noted that Student is not currently receiving any academic instruction. She was concerned that Student has not been able to access her reading or math groups. She is also concerned about whether the programs Boston has proposed for Student would be able to meet her needs given that Student had developed such a significant pattern of dysregulation that she may require a 45-day placement in a more restrictive placement such as the Compass School. Ms. Smith has tried to contact Mother to offer her a placement like Compass, but has been unsuccessful in reaching her by phone or email. (Smith)

**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, she is entitled to a free appropriate public education (FAPE). Neither her status nor her 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, Belmont is the party seeking relief, and as such has the burden of persuading the Hearing Officer of its position.

In the context of the foregoing legal framework, I turn to the issues before me. After finding Student eligible for special education in March 2023, Belmont proposed an IEP to address the significant dysregulation that she had been experiencing in school. The IEP appropriately focused on two goal areas, self-regulation and school behavior, as those were the areas of difficulty identified by Student’s initial evaluation and reports of prior direct service providers. At the time the IEP was proposed the Team agreed that Student was not accessing the general curriculum or developing socially due to her emotional disability

One of the challenges in working with Student, according to Ms. Ramos and Ms. Nnyanzi, has been the difficulty in identifying antecedents to her behavior. Despite having drafted eight Behavior Plans since the start of the 2022 school year, staff was still unable to identify situations which caused Student to be dysregulated. This circumstance supports Belmont’s position that Student requires a substantially separate therapeutic placement which includes “a team skilled at recognizing [Student’s] emotional challenges in the moment, and effective strategies for intervening before she becomes too dysregulated.” (S-8, pg. 16) The evidence shows that once Student becomes dysregulated, she misses critical amounts of the curriculum. Thus, she requires services in a setting that can identify her antecedents, address her dysregulation before it interferes with her access to instruction, and provide a flexible schedule to accommodate for times when she is dysregulated.

Based on the foregoing, I find the Team’s proposal to place Student in a substantially separate therapeutic program to have been reasonably calculated to provide Student with a free appropriate public education in the least restrictive setting when proposed in March 2023.

The evidence strongly supports Belmont’s position that Student’s current placement in Belmont does not afford her a free appropriate public education in the least restrictive environment. The uncontroverted testimony of Dr. Paisner-Roffman, Ms. Ramos, and Ms. Nnyanzi demonstrates that Student is not able to access the curriculum in her current placement. Sadly, she is usually not even able to remain in her classroom for most of the day. In addition to missing out on classroom instruction with her peers, she has not been able to receive services from the reading specialist due to absenteeism/tardiness, dysregulation and sleep. She was not able to receive the benefit of Ms. Nnyanzi’s small group math and reading instruction for the same reasons. In the weeks leading up to the Hearing, Student was accessing no more than ten percent of the curriculum. Student was so dysregulated that she was not even able to receive 1:1 instruction from Ms. Russo in the Free Space room where she has been spending the majority of her days. (Ramos, Nnyanzi) Such isolation in the Free Space room for protracted periods of time is clearly an overly restrictive and inappropriate environment for this bright, inquisitive, caring empathetic child who wishes to form friendships with her peers.

Although the testimony showed that Ms. Nnyanzi is an experienced, dedicated and compassionate teacher, who had many thoughtful ideas for accommodations to assist Student, she is not trained as a special educator and does not have experience working with students with the level of behavioral dysregulation Student has exhibited. Further her classroom has twenty-two students, which prevents Ms. Nnyanzi from providing Student with the level of individual attention that she requires at this time. The evidence does not support Mother’s position that Belmont has not provided Student with services. It shows that Belmont hired a registered behavior technician to be Student’s one-to-one support person so as to provide maximum behavioral support to her. Ms. Russo (the RBT) and Ms. Nnyanzi consulted daily about how to meet Student’s needs. The evidence also demonstrates that Belmont revised Student’s Behavior Plan eight times in a continuous effort to help Student maintain appropriate, regulated behavior. Further, the record reflects that Student did receive services from the psychologist as called for by her IEP when she was present, awake, and regulated.

Because Parent rejected Belmont’s proposed placement, and Belmont does not have a substantially separate therapeutic program in which Student can participate, Student has not received the proposed services that would provide her with a free appropriate public education. Consequently, Student has continued to struggle with dysregulated behaviors throughout the current school year. The evidence reveals that Student’s level of dysregulation increased over the course of this school year and increased sharply over the past few weeks. Continuing Student’s current placement not only does a tremendous disservice to her, but puts her safety and that of staff and peers at risk.

Although Boston has proposed placements for Student, as testified to by Ms. Smith, it is unclear how and when Boston assumed responsibility for Student, and neither party has made that an issue. Because Boston is not a party to this matter, I am not able to Order Boston to create or locate a program for Student as requested by Belmont in its closing argument.

**ORDER**

1. Based upon the foregoing, I find that the IEP proposed by Belmont Public Schools for the period from March 16, 2023 - March 15, 2024 was reasonably calculated to provide Student with a free appropriate public education in the least restrictive setting at the time it was proposed.
2. I find that Student’s current placement in Belmont denies her a free appropriate public education in the least restrictive environment.



Dated: November 17, 2023

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. Despite having notice of the hearing provided by the BSEA and her prior counsel and having participated in a conference call with the Hearing Officer on October 25, 2023, Parent did not log on to the Zoom Hearing on November 3, 2023. The Hearing Officer called Parent who stated she had forgotten about the Hearing and would not be participating. Parent stated that the Hearing could go on without her. The Hearing Officer told her she could submit an email explaining her position, but it would not be considered as evidence, since she was not testifying. [↑](#footnote-ref-1)
2. Parent’s then-attorney submitted exhibits on her behalf prior to withdrawing from the case. [↑](#footnote-ref-2)
3. As Parent did not participate in the Hearing or provide testimony, her position is gleaned from the November 6, 2023 email that she was permitted to submit. [↑](#footnote-ref-3)
4. METCO is a state-funded grant program, founded in 1966, which is “intended to expand educational opportunities, increase diversity, and reduce racial isolation by permitting students in certain cities [9](https://www.specialedlaw.com/database/19-05403-2/?highlight=Metco" \l "sdfootnote9sym) to attend public schools in other communities that have agreed to participate.” Source: website of Department of Elementary and Secondary Education, doe.mass.edu/metco. [↑](#footnote-ref-4)
5. Dr. Frankhouser administered the Wechsler Preschool and Primary Scale of Intelligence, 4th Ed. (WPPSI0IV), the Behavior Assessment System for Children, 3rd Edition (lBASC 3) Parent and Teacher Rating Scales, and play observation. (S-2) [↑](#footnote-ref-5)
6. Ms. Boudette administered the Clinical Evaluation of Language Fundamentals-5 Form 1 (CELF 5) Core subtest as well as a record review. [↑](#footnote-ref-6)
7. In attendance were; Sarah Ramos (inclusion specialist), Joann Frankhouser (school psychologist), Jason Zomick (school psychologist), Sheila Walsh (guidance counselor); Alex Boudette (SLP), Jen Sims (OT), Rosa Inniss (Metco Coordinator), Mina Vahedi (classroom teacher), Meghan Sutton (behavior consultant), Heidi Paisner (Principal), Molly Carone (Assistant Principal), Jeff Forti (Team Chair) Student’s grandmother, and Student’s mother. [↑](#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)