**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re**: Student v. **BSEA#** 2403492

Boston Public Schools

**DECISION**

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC 1400 *et seq*., (hereafter IDEA), 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 October 5, 2023, Parent filed a Request for Hearing in the above-referenced matter. Boston Public Schools (Boston or District) filed a counterclaim on June 3, 2024. Following several requests for postponement of the Hearing granted for good cause, and issuance of a ruling denying Parent’s Motion for Summary Judgment (issued on June 3, 2024), the Parties agreed to Hearing dates of August 7 and 8, 2024. On July 29, 2024, Parent amended the Hearing request only as to the relief sought.

The Hearing was held remotely on August 7 and 8, 2024, before Hearing Officer Rosa Figueroa. Those present for all or part of the proceedings were:

Parent

Student

Carol Silva Parent/ Student’s advocate

Marianne M. Peters, Esq. Attorney for Boston

Julia Pandolfi Assistant Director of Special Education, Boston

Colleen Fitzgerald-Luzzo Community Connections Facilitator, STRIVE, Boston

Lori Stallings Coordinator of Special Education, Boston

Frank Vicente Boston

Tabitha Monahan Transition Specialist, NESCA

Carol Kusintz Stenographer, Veritext Court Reporting

The official record of the hearing consists of documents submitted by Parent and marked as exhibits PE-1 to PE-96, exhibits submitted by Boston and marked as exhibits SE-1 to SE-22 and recorded oral testimony.

Via email, on August 8, 2024, the Hearing Officer granted the Parties’ request for postponement of the Hearing to submit written closing arguments. Thereafter, Boston sought an extension of the deadline to submit its closing argument, to which Parent assented and the request was Granted for both parties. The record closed on September 11, 2024, when written closing arguments were received from both parties.

**ISSUES FOR HEARING:**

1. Whether Boston denied Student a free and appropriate public education (FAPE) when it failed to conduct a three-year re-evaluation in December of 2021; in failing to consider the results of its own transition Assessment in November of 2022; and in failing to consider Student’s independent transition assessment in April of 2023?
2. Whether Boston failed to offer Student stay-put services consistent with his IEP for the period from January 20, 2022 to January 20, 2023?
3. Whether Boston’s proposed IEPs and Placements for the period from January 20, 2022 to January 20, 2023 and April 24, 2023 to June 23, 2023, which contemplated Student’s graduation in June of 2023, offered Student a FAPE?
4. Whether Student is entitled to compensatory services and public funding for the SOAR Program at the Northshore Education Consortium and attendant transportation, owing to procedural due process violations by Boston during the 2023-2024 school year?

**POSITIONS OF THE PARTIES:**

**Parent’s/ Student’s Position:**

Parent/ Student assert that Boston denied Student a FAPE when it failed to conduct a three-year re-evaluation in December of 2021, when it failed to consider the results of its own transition Assessment in November of 2022 and did not consider Student’s independent Transition Assessment in April of 2023. Parent/ Student further assert that Boston has not provided any objective data demonstrating Student’s progress in accordance with his IEP goals, despite repeated requests.

According to Parent/Student, Boston failed to offer Student stay-put services consistent with his IEP for the period from January 20, 2022 to January 20 2023.

Parent/ Student further allege that Boston violated Student’s stay-put rights in failing to offer continued services during the 2023-2024 school year after Parent rejected Student’s graduation and diploma, requested mediation, filed a letter of concern with the Department of Elementary and Secondary Education DESE, Problem Resolution System (PRS) and later requested a Hearing before the BSEA.

According to Parent/Student, the aforementioned procedural violations are substantial and resulted in a denial of FAPE. Parent seeks redress for Boston’s failure to provide Student with a program in contravention of the stay-put requirement of the IDEA. Parent asserts that these procedural due process violations entitle Student to compensatory educational services. Parent/Student seek funding for Student to attend the North Shore Educational Consortium SOAR program at Salem State University.

**Boston’s Position:**

Boston states that Student had completed the MCAS and course requirements for graduation in June of 2021. However, due to his disabilities and the need for additional transition services, the Team recommended one more year to focus on pre-employment, job counseling, work training and other aspects related to transition. Student remained in Boston during the 2021-2022 school year while also enrolled to take a math course at Roxbury Community College. When the Team convened during the winter of 2022, the Team recommended graduation at the end of the 2022-2023 school year, but Parent once again requested an additional year to work on self-advocacy, executive functioning, transportation, and transition, proposing that he graduate in June of 2023. Parent rejected the 2023 graduation proposal and requested a more restrictive placement for Student. Student’s Team agreed to conduct a comprehensive transition evaluation and following a mediation in September of 2022, agreed that Student would participate in a dual-enrollment program for a specific set of services until the Parties reached a different agreement. The Team convened two additional times that school year to discuss the results of a District transition evaluation and an independent transition assessment, and recommended graduation at the end of the 2022-2023 school year. Parent again rejected graduation in favor of placement in a more restrictive setting for Student.

Parent later filed a complaint with the DESE’s PRS alleging denials of FAPE, but PRS found no such violations, denying Parent’s claims for compensation.

Following PRS’ finding, Parent filed the instant Hearing Request with the BSEA in October 2023. Boston denies any violations and seeks that the BSEA deny Parent’s claims for compensatory education. Boston further seeks a finding that its IEP for the 2022-2023 school year were appropriate and affirm Student’s graduation and award of the diploma on September 1, 2023.

**FINDINGS OF FACT:**

1. Student is a twenty-one-year-old resident of Boston, Massachusetts, who has received special education services through Boston since he was three years old under the disability category of Autism (Parent). Parent has been Student’s guardian since he turned 18 years old (Parent).

1. Student carries a diagnosis of Pervasive Developmental Disorder- Not Otherwise Specific (PDD), Autism and Attention Deficit Hyperactivity Disorder (ADHD), which significantly impacts his social interactions and his verbal and nonverbal communication (PE-41). His cognitive abilities fall in the average range and his academic skills are well-developed, especially in math (SE-2A; SE-11; SE-12D). In seventh and ninth grades, Student tested into exam schools in Boston (PE-81). According to Parent, Student struggles with executive functions, pragmatics and is not prepared for independent living (Parent).
2. Student has been described as a kind, caring, humorous, bright and capable young man who values his family, education, friends and hard work. He enjoys spending time exploring the city and playing online video games, reading, going to the park and listening to music. Student can make his own food and follows a chart for hygiene, but he needs reminders every so often (PE-81; PE-85; PE-86; SE-11; Parent, Monahan, Fitzgerald-Luzzo).
3. In 2018, when Student was in tenth grade, he participated in a comprehensive three-year reevaluation during which psychological, speech and language, assistive technology, occupational therapy and ABA evaluations were conducted (PE-88; SE-12A; SE-12B; SE-12C; SE-12D; SE-12E; Stallings). The occupational therapy evaluation performed by Susan Du Buske, noted that Student “presented with adequate underlying skills, he demonstrated good attention and concentration with no sensory disruptions negatively impacting his performance… [though] he showed some signs of sensory seeking behavior…shifting sitting position and stretching his upper extremities” associated with fatigue and when engaging in non-preferred tasks. The occupational therapist recommended that these issues be addressed though ABA supports, his one-to-one aide, use of a word processing device and sensory accommodations such as regular movement breaks (SE-12-A).
4. In the spring of 2019 Student participated in the Transition Pathway Services grant program, in which he worked on job readiness skills with a vocational rehabilitation counselor facilitated by the Massachusetts Rehabilitation Commission (MRC) (SE-3A).
5. During the summer of 2019, Student participated in Boston’s Madison Park School’s vocational exploration program which focused on career exploration of five vocational areas and worked on soft skill development (SE-3A).

1. In December of 2019 Boston submitted Student’s 688 referral for post-secondary services. Student’s expected high school graduation date at the time was July 30, 2021 (SE-3A).
2. During the summer of 2020, Student participated in a vocational exploration summer program at Madison Park which was offered remotely owing to the COVID related emergency (SE-3A).
3. Student’s Team convened on February 24, 2021 (PE-71; PE-72; PE-73; PE-74; SE-19). To foster more independence, the Team recommended that Student’s one-to-one support be phased out by the end of the semester (PE-74; PE-76; PE-77; Stallings). The February 2021 Team recommended that Student remain enrolled in Boston in a dual enrollment program to continue working on transition and vocational skills for one additional year (PE-71; PE-72; PE-73; PE-74). Student’s expected high school graduation was postponed to June of 2022 (SE- 2D). As such, Student did not participate in the graduation exercises in 2021 (PE-78). Parent accepted this IEP, as developed, including Student’s Vision Statement, on October 18, 2021. (SE-2D).

1. Colleen Fitzgerald-Luzzo, MSEd (SE-16-B), Boston’s Community Connection Coordinator for STRIVE for the past twenty years, testified that in May of 2021, Student was assigned a Department of Developmental Services (DDS) caseworker for assistance and services when he graduated from high school. Parent also met with Ms. Fitzgerald-Luzzo in May of 2021 to further discuss options for transition programing for the fall of 2021 (Fitzgerald-Luzzo).

1. By June of 2021, Student satisfactorily completed the required coursework and had passed the MCAS exams necessary to receive a high school diploma (PE-89; PE-92; SE-6; SE-7).
2. During the 2021-2022 school year, Student participated in various transition services opportunities, including job-training at Wentworth Institute of Technology (Wentworth), PreETS job counseling, job training through Jewish Vocational Services (JVS), a paid internship with Boston’s Document Imaging Service Center (DISC program), and a dual enrollment class at Roxbury Community College in the Spring of 2022 (SE-3A; SE-3B; SE-3C). While some of these experiences proved to be productive and helpful to Student, he struggled in others, as described below.
3. The Pre-ETS program in which Student participated during the spring of 2021 focused on job exploration and counseling, work readiness training, self-advocacy, post-secondary education and work-based learning (SE-3A; SE-3B).
4. In November of 2021, Ms. Fitzgerald-Luzzo emailed Parent that Student could not access DDS Adult Services funding while he was enrolled in high school, noting that Parent and Student could decide whether to stay in Boston until June of 2022, or graduate in December of 2021 (PE-83). In a subsequent email, parent requested that Boston fund Student’s participation in 3LPlace in Somerville, to which he had been accepted, and noted that the KEE program he was supposed to attend had been cancelled and the Wentworth internship (through STRIVE) would not start until late November 2021 (PE-84).
5. Student participated in the Wentworth job program during the fall of 2021. This program offers a supported employment experience that requires a high level of skill, as students are expected to independently and without direct supervision perform recycling and other duties on the Wentworth college campus (Fitzgerald-Luzzo). Student did not like this program and struggled at Wentworth, experiencing difficulties with peers, punctuality, and following directions. Eventually he was terminated from the program for not remaining on task and wandering the campus despite increased supervision (PE-44; PE-45; SE-11; PE-85; Parent; Fitzgerald-Luzzo). As a result, Boston recommended that he work in its Digital Imaging Service Center (DISC) Program which offered a more structured internship (Fitzgerald-Luzzo).
6. Boston’s DISC program is a supported worksite that offers Boston students between the ages of 18 and 22 relevant work experiences through a paid internship. Students attending this program must be able to travel to and from the worksite independently. DISC handles document management services for several Boston departments requiring handling of sensitive information. Interns are trained in operating *Kodak* scanners and *Kodak* *Capture* software, document shredding, cataloguing and prepping documents. Interns work on quality control and are held to industry and professional standards. Student displayed a strong preference for shredding (SE-3C; Fitzgerald-Luzzo).
7. In December of 2021, Student took the Accuplacer exam, which rendered him eligible to enroll in college math and remedial college English courses. Through dual enrollment, Student took a pre-calculus course at Roxbury Community College (RCC) in the spring of 2022 (SE-3A; Fitzgerald-Luzzo).
8. Student’s Team, including Boston staff, Student, Parent, a representative from DDS and a representative from STRIVE convened on January 20, 2022 for the annual review (PE-46; PE-47; PE-48; PE-49; SE-21). The Key Evaluation Result Summary notes that Student’s one-to-one paraprofessional had been phased out at the end of the previous school year (SE-2B). The N1 resulting from the meeting notes that the focus of Student’s program during that school year had been on “increased independence skills, community-based vocational skills and access to navigating community college.” (PE-47; PE-48; SE-21). The IEP promulgated as a result of this Team meeting offered Student full-inclusion participation in the Boston Community Leadership Academy for the period from January 20, 2022 to June 24, 2022 (PE-48; SE-2C). The IEP contained goals in self-advocacy, self-regulation skills, executive functioning skills and transition (PE-48). Student’s transition goals per this IEP included receiving a high school diploma, attending college, working at Target, and working with computers, developing video games and animation (PE-50). The Team discussed Student’s success in having passed the MCAS and completing the coursework necessary to meet high school graduation requirements in addition to having met his IEP goals through the additional experiences over the previous months. The Team determined that Student was ready to graduate in June of 2022 (Parent).
9. Parent rejected Student’s June 2022 proposed graduation date and diploma (SE-2C).
10. In January of 2022 Student started attending a pre-calculus course at Roxbury Community College (RCC) independently, one day per week, attended school at Boston Community Leadership Academy (BCLA) two days per week and participated in the DISC program internship two days per week (PE-55; PE-58; PE-59; PE-60; Fitzgerald-Luzzo). In late February of 2022, the BCLA inclusion specialist recommended that Student receive math tutoring (PE-60). Student received accommodations and assistance at the RCC disability support office, where he also worked on his self-advocacy goal and executive functioning skills (PE-56; PE-57; PE-61; Fitzgerald-Luzzo). While Student attended classes regularly, he did not access tutoring frequently (PE-61).
11. At his DISC internship Student worked on his IEP goals with the site supervisor and through peer interactions (Fitzgerald-Luzzo). In the school setting, Student participated in the Strategies for Success class where he worked with the teacher as well as in the general education setting on skill development (Fitzgerald-Luzzo). Student also participated in MRC’s pre-employment transition program where he was assigned a mentor; he worked remotely with the PYD program on pre-vocational experiences and training; and he was enrolled in the access to theatre program as he aspired to be a voice actor (PE-48).
12. Ms. Fitzgerald-Luzzo maintained communication with Student’s site supervisor, Donna Hannon, at DISC. Based on these communications, Ms. Fitzgerald-Luzzo opined that Student progressed effectively during his time in the DISC Program in the areas of time management, professionalism, job accuracy, self-regulation, work stamina and appropriate peer and general social interactions (Fitzgerald-Luzzo).
13. Between January and June of 2022, Student attended his dual enrollment and DISC Program internship successfully, and made progress toward achieving some goals (communication skills). Progress in some goal areas (self-regulation skills, transition skills) could not be measured owing to his being at a different location from the individual collecting information, and in other areas (executive functioning skills, transition skills) due to Student’s absences (PE-51; PE-52; PE-53; PE-54).
14. Student’s Team reconvened on May 5, 2022. His graduation and transition related skills and needs were discussed. The Team reviewed DESE’s Graduation and Transition Services Advisory and agreed to conduct a comprehensive transition assessment to better understand Student’s strengths and weaknesses, as well as to inform future transition planning (SE-2B; SE-22). At Parent’s request, the Team agreed to provide Student one additional year of transition services, through June of 2023, so that Student could continue working on transition related skills, self-advocacy, self-regulation and executive functioning. Student’s Transition Planning Form was updated to better reflect his vision at the time involving “working at Target, become a video game developer, animation and working with computers…to receive his high school diploma and explore work and post-secondary college programming” (SE-2B).
15. Following the May 5, 2022 Team meeting, Boston proffered an IEP, covering the period from January 20, 2022 to January 20, 2023, proposing placement at the Boston Community Leadership Academy (BCLA) (PE-44; SE-2B; SE-22). The IEP was forwarded to Parent on May 24, 2022. The Transition Planning Form in this IEP, listed Student’s graduation date as January 20, 2023 (not June 2023) (SE-2B; PE-43; PE-44). At Parent’s request, Boston issued an N1 on May 11, 2022, proposing to conduct a transition assessment[[1]](#footnote-1) and sought consent from Parent before conducting the evaluation (SE-20; PE-42). (Boston’s internal email communication in August of 2022 notes staff inquiries regarding Student’s re-evaluation status to which Lori Stallings, Coordinator of Special Education in Boston (SE-16C), responds that a transition assessment was being pursued.) (PE-62).
16. Parent partially rejected Student’s IEP on June 24, 2022, specifically, the date for termination of services (graduation on January 2023), noting that Student required “participation in a comprehensive transition program to build his significant life skills deficits” (PE-44). Boston disagreed with Parent’s position that Student required a comprehensive transition program on the basis that Student had demonstrated significant progress since the spring of 2022, he was accessing community-based transition services and navigating his community independently, and was successfully attending college level courses (i.e., passed a pre-calculus course at RCC) (Fitzgerald-Luzzo).
17. In the spring of 2022, Student participated in a six-week customer services program (through JVS) that focused on attendance, responsibility, time management, professionalism, work communication, understanding and accepting feedback, career counseling/ job placement, and customer services (SE-3A).
18. Between June of 2022 and March 30, 2023, Hanna Bernbaun of JVS provided Student job coaching, for tasks including job search, completing applications and interviewing. Their interactions ended on March 30, 2023, when Student informed her that he had gotten a job at Life Alive Café (PE-12). Student missed five of his 17 meetings with Ms. Bernbaum (PE-23).
19. During the summer of 2022, Student interned full-time in Boston’s DISC program (SE-3A).
20. Internal email communications among Boston staff on September 8, 2022, note Boston’s intention to continue to have Student participate in dual enrollment; attend BCLA; and continue to partake in the DISC internship (PE-63; SE-3A). Student enrolled at BCLA and continued to participate in transition services for the remainder of that academic year (SE-3A).
21. Parent wrote to Boston on September 11, 2022, describing her understanding, expectations, and requests for Student’s 2022-2023 school year, and acknowledging the support and commitment offered by Boston’s BCLA staff (PE-64).[[2]](#footnote-2)
22. At Parent’s request, the Parties participated in a BSEA mediation on September 8, 2022, and they reached an agreement (PE-39; SE-10). The Mediation Agreement, dated September 13, 2022, provided in pertinent part that,

Provided Student is in attendance at his school program District will use best efforts to complete a transition assessment by October 7, 2022.

Pending the meeting to discuss the results of the evaluation, Student will participate in the following services:

* + - * + Student will attend dual-enrollment classes a BHCC on Mondays and Wednesdays.
        + Student will start the DISC program on or about September 13, 2022, and attend on Tuesdays and Thursdays up to 5 hours per day.
        + Student will attend BCLA on Fridays and participate in a health and hygiene class, an executive functioning class, homework support, and work on social interaction skills and workplace behavior skills.

By September 12, 2022, at 5:00 p.m., Parent will notify the BSEA hearing officer, in writing that she is withdrawing her hearing request without prejudice…. (PE-39; SE-10).

1. According to Julia Pandolfi, MA., Assistant Director of Special Education in Boston (SE-16A), the District understood that the services in the mediated agreement would be delivered until the Parties reached a different agreement (Pandolfi). Although Boston fulfilled its responsibilities under the agreement, Parent did not withdraw the Hearing Request.[[3]](#footnote-3)

1. As a result of the Mediation, Boston created Student’s Friday Binder to address executive functioning skills when he attended BCLA on Fridays (PE-95; Fitzgerald-Luzzo).
2. Ms. Fitzgerald-Luzzo conducted a comprehensive Transition Assessment during the summer of 2022 (PE-85; SE-11; SE-16-B). Ms. Fitzgerald-Luzzo has known and worked with Student since 2019 (Fitzgerald-Luzzo).
3. As part of Ms. Fitzgerald-Luzzo’s transition assessment, she met with Student on several occasions, observed him at DISC, BCLA and at Bunker Hill, and conducted a record review. Ms. Fitzgerald-Luzzo also administered the *Transition Planning Inventory-Second Edition*; the *O\*Net Interest Profiler*; the *CASEY’s Life Skills Assessment*; the *Learning Style Inventory*; the *Landmark College Guide to Assessing College Readiness*; the *Self-Advocacy Questionnaire*; the *Five Bold Steps*; the *Leisure Interest Checklist*; and she had Parent, the teacher and Student’s supervisor complete the *PRI-3 Rating Forms* (PE-85; SE-11).
4. Ms. Fitzgerald-Luzzo’s assessments reveal Student’s greatest weaknesses to be in the areas of housing (i.e., managing an apartment) and calculating expenses as part of money management. While she found Student capable of doing it, he would require a routine, guidance, and monitoring over time. Student would also require assistance with organization while in college, something he could receive through disability support centers. Ms. Fitzgerald-Luzzo noted that Student demonstrated great strength advocating for himself, and he was highly motivated to work hard and do well in college as well as at work (PE-85; SE-11).
5. Ms. Fitzgerald-Luzzo recommended that Student continue to work with a career coach, begin researching post-secondary programs, financial aid, work on independence skills such as making his own appointments, budgeting money, helping more with household chores and finances, exploring community-based clubs and teams, and continuing to advocate for himself. She also recommended that after graduation Student receive job coaching through DDS and for continuing post-secondary education planning and training (PE-85; SE-11; Fitzgerald-Luzzo).
6. On November 2, 2022, Boston convened Student’s Team and updated Student’s Transition Planning Form (TPF) following a discussion of Ms. Fitzgerald-Luzzo’s Transition Planning Assessment (PE-41). In alignment with Student’s desire to work and attend college part-time, the TPF reflects his participation in dual enrollment. Student would take college remedial courses (focusing on ELA, an area of weakness for him) which are a pre-requisite for his preferred college major; partake in internships in the community to address social communication needs and increase work readiness and stamina; participate in career exploration; and work part-time at Boston’s DISC program. The TPF noted that Student had completed an unpaid retail-based internship which was necessary for him to obtain employment at JVS (PE-41).
7. The Team recommended that Student continue working on prevocational skills while participating at DISC, including appropriate dress, hygiene, increasing work stamina and work pace, maintaining attention to detail and social interactions (*Id.*). The TPF reflects the services to be provided, including job coaching, support by the college’s disability support office, career and college planning, and financial literacy education (at BCLA) (PE-41). The Team discussed the need for Student to take on more chores in the home in preparation for independent living and to explore clubs and teams in the community in which he may be interested, and use of the MBTA to access the community independently.

1. Disagreeing with the findings of Boston’s transition assessment and the Team’s determinations, Parent requested that Boston fund an independent transition evaluation, to which Boston acquiesced. On or about November 4, 2022, Parent requested the consent form and list of independent evaluation providers (SE-5; PE-68).
2. Pursuant to the Mediation Agreement and the November 2, 2022 TPF, Student participated in an internship at DISC on Tuesdays and Thursdays during which he focused on IEP goals involving executive functioning and time management skills and work readiness related skills, including work stamina (SE-3A; Fitzgerald-Luzzo).
3. Through the dual enrollment program, Student took English cluster courses in reading and writing at Bunker Hill Community College (Bunker Hill). Student received As and Bs in all four classes. His professor in the English cluster courses noted that “the work was complete and organized” although he had some issues turning in some of his work. He further stated that Student “grasp[ed] the information from readings and discussions including abstract concepts many his age miss[ed]” (PE-11). Student also took a pre-calculus course at Roxbury Community College for which he received an A (PE-41).[[4]](#footnote-4) According to Parent, Student never received the support he needed through dual enrollment (Parent).
4. At Bunker Hill Student received accommodations and assistance from Parent and a sibling (Parent). Student testified that Ms. Fitzgerald-Luzzo accompanied him to the college’s disability support office to be registered so that he could receive assistance if needed. Student attended classes independently and he remained in the classroom for the three-hour long courses, leaving the classroom minimally for a break (Student; Fitzgerald-Luzzo). Ms. Fitzgerald-Luzzo testified that she met Student at Bunker Hill several times (as she had previously done when he attended RCC), to help him learn to navigate the campus, and she arranged a meeting at the disability support center (and registered him) so that he could access tutoring when needed, but he never went (Fitzgerald-Luzzo).
5. On Fridays, Student was scheduled to attend BCLA to receive executive functioning support and work on personal hygiene. Student also attended a physical education class at his high school (SE-3B). Student stopped attending BCLA in the fall of 2022, and Boston arranged for him to participate in a career immersion program through PYD. Additionally beginning in May of 2023, he participated in a retail training program through Jewish Vocational Services (JVS), in which he was responsible to work on inventory, customer services, stocking shelves and other retail related skills (SE-3A; SE-3B). JVS also provided Student one-on-one job coaching to help him find a job in the community (Fitzgerald-Luzzo).
6. Student’s independent transition evaluation was conducted by Tabitha Monahan, MA, CAGS, CRC, certified rehabilitation counselor and transition specialist, NESCA, on December 5 and 29, 2022 (PE-86; PE-87; Monahan). Ms. Monahan interviewed Parent and Student, and she administered several instruments[[5]](#footnote-5). She testified that prior to conducting her evaluation she did not review Boston’s transition assessment, resulting in some overlapping assessments. She also did not observe Student in a community setting, an internship or work setting, or in any of his school or college settings. Ms. Monahan also did not attend any of Student’s Team meetings. Her only contact with Student following the evaluation was a 15-minute Zoom call shortly before the BSEA Hearing during which she noted no regression in Student’s presentation (Monahan).
7. Ms. Monahan noted that as the evaluation progressed, Student took an unorganized approach, and he displayed self-stimulation behaviors, increasingly required breaks or walking around the room. Student did not ask for clarification and rapport between them was limited (PE-86).
8. Ms. Monahan found Student to present many strengths including his ability to: independently get anywhere he needs in order to access the community, using the MBTA; his ability to perform common household tasks with parental support; basic cooking skills and independent use of some kitchen appliances like an air fryer; and making everyday purchases and managing money. She further noted Student’s progress toward reaching his college goal, remarking on his Accuplacer math results, his completion of high school requirements to be awarded a diploma, and his success in college courses (SE-8). Student’s functional communication abilities are another area of strength. Ms. Monahan found the results of Student’s interest inventory to demonstrate commonalities among his interests in artistic and conventional career themes and his TPF goal of working in animation, working with computers and becoming a game developer (PE-86). According to Ms. Monahan, Student has partial understanding of his disabilities and how they impact his every-day life (PE-86; Monahan).
9. Ms. Monahan recommended specific supports and services, including: close monitoring of goals and objectives to assist with generalization across settings; continued support of social skills in the workplace; referral for explicit sexual safety and hygiene instruction (if it cannot be done by school personnel); instruction regarding his legal rights and making disclosure choices involving his disabilities; and assistance setting goals and breaking them down into steps for achievement (PE-86). She supported Student’s continued participation in a work-based learning experience through Boston and opined that Student would require continued adult services to successfully attend college, live independently, and to obtain and maintain a job. (PE-86; Monahan). In addition to the DDS services for which Student had already been approved, Ms. Monahan recommended that Student be connected with his local Independent Living Center (ILC), and Boston Center for Independent Living, to assist transition-aged youths and to provide life-long resources. To build community-based skills through programs of interest to Student, she recommended exploration through bostoncil. org (PE-86; Monahan).[[6]](#footnote-6)
10. Ms. Monahan testified that in order for Student to improve his self-advocacy skills, he needed a better understanding of his disabilities (Monahan). Her evaluation neither recommended Student’s participation in a more restrictive setting nor a specific placement (PE-86). She however opined that SOAR could be an appropriate program for Student (Monahan).
11. Starting in January of 2023, Boston attempted to convene Student’s Team on several occasions, but Parent cancelled the meeting numerous times because she was awaiting the results of Student’s independent transition evaluation and at least once because of the DDS’ representative’s availability (SE-5; PE-14; Parent).
12. Student was not participating consistently in his Career Immersion program with Sayvion Jones by March of 2023 despite attempts to change the location of the meetings to a site closer to Student (PE-15).
13. Student’s Team convened on April 4, 2023, to review the independent evaluation and to conduct Student’s annual review. Ms. Monahan, the independent evaluator was not in attendance (Monahan). The April 2023 Team reviewed the NESCA evaluation results and recommendations. Ms. Fitzgerald-Luzzo testified that, the Team opined that the independent evaluation’s recommendations were consistent with the skills Boston had focused on during the previous two years[[7]](#footnote-7) and consistent with Ms. Fitzgerald-Luzzo’s assessment and recommendations (Fitzgerald-Luzzo).
14. The Team also found that Student had met the majority of his IEP goals and objectives, with the exception of self-advocacy, on which he continued to work. Ms. Fitzgerald-Luzzo opined that Student would always require support for self-advocacy (Fitzgerald-Luzzo). The school-based members of the Team expected that Student would meet his final goal by the end of the IEP period, and thus, recommended that he graduate in June of 2023 (Stallings).
15. Also present at the April 2023 Team meeting were service providers from PYD, JVS and Meagan Gray, a DDS representative (PE-5). Ms. Gray proposed three different adult services that could support Student in college and help him get a job and work on his long-term goals. A college navigator could help connect Student to on and off-campus resources; help him receive appropriate accommodations in the college setting; continue to work on self-advocacy skills; teach him self-direction skills; and assist with time management and planning skills. DDS also proposed that Student participate in a pre-vocational program through which he could receive job coaching and work readiness training. Lastly, Student could be paired with a Life Coach through DDS adult services, to help him achieve greater independence and work on setting goals (Fitzgerald-Luzzo).
16. During the meeting Parent requested that Boston fund a private transition program for Student (Parent). Ms. Fitzgerald-Luzzo noted that Student had already mastered most of the skills that would be worked on in those placements. She opined that removing Student from his community would be a disservice to Student and the progress he amassed in the previous two years. She noted that he was accessing public transportation independently; maintained community-based employment; and was taking and college courses. Ms. Fitzgerald-Luzzo opined that Student’s IEP for the period from January 20, 2022, to January 20, 2023 was appropriate and reasonably calculated to offer Student a FAPE, noting that the available data suggested that Student had progressed in all goal areas, meeting his goals in self-regulation, transition, executive functioning, and self-advocacy (Fitzgerald-Luzzo), By the spring of 2023, Student was not on board with the idea of staying in school one more year (Fitzgerald-Luzzo).
17. At Hearing, Ms. Fitzgerald-Luzzo testified that Student had demonstrated self-advocacy skills in a college setting, noting that for the final months of his IEP the Team recommended that he continue to work on accessing a college disability support center which was one of the benchmarks of his self-advocacy skills goal. Regarding self-regulation, Student demonstrated the ability to maintain appropriate boundaries with adults and peers (Fitzgerald-Luzzo). He travelled independently between home and schools and the workplace, and he navigated his college campuses independently. He was able to participate in his community-based internship communicating effectively with his supervisor (e.g., if he was going to be absent or late), and he completed and turned in his assignments in college, demonstrating progress with executive functioning skills (PE-3; PE-6; Fitzgerald-Luzzo). At his internship, Student was able to initiate and engage in assigned tasks independently and complete them on time, and he increased his work stamina and demonstrated appropriate work communication skills (PE-3; PE-6; Fitzgerald-Luzzo).
18. Upon considering Student’s areas of need and progress, April 2023 Team proffered a transition IEP through the end of the school year (April 24, 2023 to June 23, 2023) which proposed to graduate Student at the end of that IEP period (PE-4; PE-5). The Vision Statement in this IEP states that Student

…would like to graduate from high school and pursue a career working for Microsoft, Sony and Google. He would like to go to college and study game development and animation. He reports that he would like to continue to live at home with his mom while he attends college, but would like to eventually have his own place in the North End (PE-5).

1. On or about May 5, 2023, Parent rejected the proposed IEP and requested that Boston fund Student’s placement in the SOAR program at Salem State College, which is part of the North Shore Education Consortium. Boston does not partner with SOAR, a more restrictive program than Student’s then current program (PE-6; PE-16; Parent; Fitzgerald-Luzzo). Parent also requested a BSEA mediation and on May 8, 2023, she was connected with the mediator covering Boston (PE-17). Parent testified that she never heard back. Boston declined Parent’s request for mediation as Parent was requesting something they could not offer, but they did not communicate their position to Parent (PE-16; PE-17; PE-20; Parent; Pandolfi).

1. On May 9, 2023, James Deveney of Bunker Hill, informed Parent that Student had passed both of his courses with a B and recommended that in the future Student stay away from three-hour long courses as “super long courses” were hard for him to handle (PE-18).
2. On May 11, 2023, Parent renewed her rejection of Student’s graduation, and award of the diploma, and again requested a referral to the SOAR program (PE-19; PE-20). She also rejected programming at BCLA (PE-19; PE-22). By then, Parent was aware that Student was eligible for DDS services once he graduated from high school, that he was fully funded, and that Parent/ Student would have to complete the application by July 1, 2023 (Parent; Pandolfi). Parent/ Student did not accept Student’s diploma, and they did not apply for DDS services in 2023 (Parent; Pandolfi).
3. Student’s Progress Reports for Periods 2, 3 and 4, reflect that he had met all of the goals in his IEP (PE-8; PE-9; PE-10; SE-13.1A; SE-13B.1; SE-13.1C). He was able to greet and interact appropriately with peers and adults in the workplace; could attend classes and turn in his assignments independently; attended his internship independently and on time; could communicate if he was going to be late or absent; could initiate and follow through with familiar assignments independently through completion and without needing to be re-directed; and increased his work stamina. Specifically, the Self-Advocacy goal progress report noted that Student

…[was] able to …independently identify the accommodations he requires to be successful within a college setting. He has demonstrated the ability to independently communicate these accommodations to the disability support office. Although [Student] did not utilize the services offered by the student support office this semester, he was registered with them and able to access support if needed. He was able to pass both of his classes in the spring semester without the use of the student support office (PE-8).

1. Ms. Pandolfi testified that she was aware that the DISC program in which Student participated ended as of …, noting that Boston would have “figured-out programming for him for May and June” (Pandolfi). A June 6, 2023 communication between Becca Cronin of PYD and Ms. Fitzgerald-Luzzo noted that by June 2, 2023, Student did not have a job and that he had missed five of his 17 sessions with Ms. Bernbaum, his coach at JVS (PE-23).

1. On May 18, 2023, Parent filed a statement of concern (complaint) with the Massachusetts Department of Elementary and Secondary Education (DESE) Problem Resolution System (PRS) (PE-1). The complaint alleged that Student would have difficulties securing a job “due to poor skills in the areas of organization, hygiene, perspective taking, executive functioning, on-task behavior and task completion” noting non-compliance with 34 CFR §300.320(b), 321(b), and 322(b)(2); 603 CMR 28.05(4)(c); 20 USC §1401(9); and 34 CFR 300.101. DESE considered internal documents including Administrative Advisories SPED 2018-2 addressing transition services, graduation and high school diploma and the US Department of Education’s Questions and Answers on US Supreme Court Case Decision on Endrew F. v. Douglas County School District Re-1 (PE-1). According to Parent, Student had not received adequate transition services and therefore he was not ready to graduate (PE-1; SE-14A).[[8]](#footnote-8)
2. In the summer of 2023, Student did not attend Boston’s extended school year program. The Progress Report for Period 5 (August 2, 2023) noted that Student had been working four days per week, seven hours per day at Digital Ready at Roxbury Community College (PE-7; PE-26).
3. On August 16, 2023, Student received the transportation notification from Boston informing him that the 2023-2024 school year would begin on September 7, 2023, and that he would receive his MBTA card upon arrival in school (PE-25). On August 24, 2023, Parent emailed Lori Stallings inquiring about Student’s dual enrollment classes for the fall semester (PE-25; PE-26).
4. Boston granted Student’s diploma on September 1, 2023, but did not issue it to Student.
5. On September 7, 2023, the beginning of the 2023-2024 school year, Student went to his previous program in Boston but was turned away as Boston no longer considered him a student and he was thus no longer eligible for dual enrollment (PE-28; PE-37; Parent). Internal communications among Boston’s staff between September 7 and October 18, 2023, shows confusion as to Student’s status in Boston and whether his diploma could be issued (PE-27; PE-29; PE-31; PE-32; PE-35; SE-17). According to Ms. Stallings, since Boston had fulfilled its portion of the 2022 mediated agreement and Student had met all graduation requirements Boston could issue his diploma (PE-27; PE-29). Parent continued disputing that she had agreed to Student’s graduation and award of a diploma, stressing that she had not signed any document to that effect (PE-30). Moreover, Student had not received a diploma, and Parent was still waiting to hear from the mediator. She further delineated numerous inconsistencies regarding Student’s status in Boston (PE-30; PE-33; SE-17).
6. During the late summer or early fall of 2023, Parent paid $1,500.00 for Student to attend courses at Bunker Hill, and she communicated with his teacher regarding his accommodations (PE-33; PE-34). A March 22, 2024, transcript reflects that during the 2023-2024 school year Student took a Microeconomics class in which he received a B-, and an Improvisation course in which he earned an A without receiving any support from Boston, the disability support center or DDS (SE-6; SE-18; Fitzgerald-Luzzo). Parent testified that both she and Student’s sibling had provided him assistance (Parent).
7. On September 15, 2023, PRS issued a Letter of Closure which noted that Student was eligible to receive his high school diploma in June of 2021; had received transition services; a 688 application had been submitted; Student had been referred to Massachusetts Rehabilitation Transition Pathway (MRC); Student was participating in MRC’s transition program; transition services were being provided consistent with a September 13, 2022 BSEA Mediation Agreement (which did not contain a specific date for termination of services); Student was participating in a dual-enrollment program targeting academic and work experiences closely aligned to his transition goals; the TPF described opportunities for job coaching, participation in community activities and noted that a caseworker from the Department of Developmental Services (DDS) would be assigned; that Student was approved for DDS services; and, the TPF and the transition assessments discussed at the IEP meeting of April 24, 2023 incorporate the findings and recommendations (PE-1; PE-2; SE-14A; SE-14A; SE-14B). As such, DESE found that Boston had fully complied with the IDEA as the IEP contained appropriate measurable postsecondary goals based upon his age and appropriate transition assessments and services necessary for Student to achieve the goals (*Id*.).

1. DESE further found that Boston had provided Student with an IEP and educational program reasonably calculated to provide him a FAPE. Moreover, considering Student’s progress, and the fact that by June of 2021 he had passed the MCAS and met the local competency graduation requirements for award of a regular diploma, DESE found that Student had partially met his self-advocacy goal (PE-1; PE-2; SE-14A; SE-14A; SE-14B). Regarding Parent’s allegations of procedural violations, DESE noted that:

Although 15 months elapsed between the student’s annual reviews, the IEP team monitored the student’s progress. The Department finds, in light of the student’s progress during that period, that the additional three months to hold the annual review did not result in a denial of FAPE to the student… no violation of education law, regulation or policy occurred with regard to the specific concern(s) raised by the complainant (PE-1; SE-14A).

1. On or about October 6, 2023, Parent/ Student requested a Hearing before the BSEA, alleging that Student was entitled to receive educational services until his 22nd birthday because he was an IDEA eligible student diagnosed with autism. Parent stated that following a Team meeting in the spring of 2023, she had rejected Student’s IEP and diploma. As such, student had a right to continued educational services under stay-put. Parent noted that when Student went to his previous program in Boston on September 7, 2023 (the first day of classes for the 2023-2024 school year), he was turned away. Parent was advised that Student had graduated, although neither she nor Student received his diploma over the summer. Parent further noted that Student’s IEP contained an expected graduation date of June 2023, but she asserted that she never signed any documents in 2022 agreeing that Student would graduate in June of 2023. The Hearing Request did not state the desired relief (Parent/ Student Hearing Request, Administrative File).[[9]](#footnote-9)

1. On November 1, 2023, Charles Israel, Senior Program Director of Dispute Resolution and Mediations in Boston, wrote to Parent offering to meet for a resolution session (PE-36).[[10]](#footnote-10) On November 8, 2023, Boston requested a postponement of the Hearing noting that counsel for Boston was unavailable on the initial Hearing date and the Parties’ intention to participate in mediation (in lieu of a resolution session) (PE-1). Boston requested that the matter proceed to Hearing on February 27 and 28, 2024, and the request was granted for good cause via Order issued on November 8, 2023 (PE-1; Administrative File).
2. The Parties did not proceed to mediation but met for a resolution session on or about December 14, 2023. On December 15, 2023, Parent emailed the BSEA stating that the meeting with Boston had not resolved the case (Administrative File).
3. Student testified that he attended classes at RCC and at Bunker Hill, and took the train to get to the campuses. He stated that he keeps his daily schedule in an electronic calendar. He also testified that during 2021, 2022 and 2023 he worked on self-advocacy and on maintaining appropriate social boundaries/ distancing. He further testified that he had worked at DISC, which he enjoyed, and that he had applied for jobs, including at *Target*, but had not yet heard back (Student). According to Parent, Student is not ready to transition into independent adult living (Parent).
4. On May 17, 2024, Boston convened a meeting attended by DDS representatives, who described adult services and how the services are designed based on the individual’s specific needs. Student did not attend this meeting, during which the DDS representative explained that once Student accepted his diploma and graduated, DDS had funding available to him for provision of DDS Adult Services. These funds had been available to Student since 2022 (Pandolfi). DDS offered to provide Student with life coaching and college navigation as possible options (SE-4; Pandolfi). According to Ms. Pandolfi, Parent kept interrupting the DDS representatives making it very difficult for them to speak and Boston ended the meeting early (Pandolfi).
5. Notes from the May 17, 2024 meeting indicate that Boston offered Student stay-put services through August of 2024, in Student’s previous Boston’s transition program. Boston also offered extended school year programming (from July 8 to August 16, 2024) at the DISC program. It is further noted that Student “did MAICEI and that was half the stay-put” (SE-4). Lastly, the notes indicate that a representative from MRC had reached out in November of 2023 as Student’s case with MRC was still open (SE-4).
6. Ms. Stallings testified that Student participated in dual enrollment during the 2023-2024 school year. Student took classes at Bunker Hill which he passed (Fitzgerald-Luzzo). Boston is holding Student’s diploma in a locked area at BCLA (Pandolfi).
7. To date, Parent/ Student have not accepted Student’s diploma and have not accessed DDS Adult Services (Parent). Parent was uncertain as to whether Student would require DDS Adult Services at all after he had participated in a year-long, out-of-district comprehensive program (Parent).

**CONCLUSIONS**:

The Parties agree that Student is a 21 year-old IDEA[[11]](#footnote-11) and Massachusetts special education law[[12]](#footnote-12) eligible student who has completed all local high school graduation requirements, including passing the MCAS. Student’s diagnoses and the areas they impact are also not in dispute. The instant dispute centers on whether Student was offered a FAPE during the 2022-2023 school year and met graduation requirements entitling him to award of a diploma, or whether the District’s alleged procedural due process violations caused educational harm to the Student depriving him of a FAPE and entitling him to compensatory education services.

The IDEA and the Massachusetts special education law and accompanying regulations require that school districts offer eligible students a FAPE, through an individualized education program (IEP) tailored to address the student’s unique needs[[13]](#footnote-13) in a manner “reasonably calculated to confer a meaningful educational benefit”[[14]](#footnote-14) to the student.[[15]](#footnote-15) Additionally, the program and services offered to the student must be delivered in the least restrictive environment appropriate to meet the student’s needs[[16]](#footnote-16), and must be “reasonably calculated to enable [the student] to make progress appropriate in light of the child’s circumstances.” *Endrew F. v. Douglas County Sch. Distr.*, 137 S. Ct. 988 (March 22, 2017); *D.B. ex rel. Elizabeth B.,* 675 F.3d at 34.

*Endrew F.* delineates the applicable standard in Massachusetts, noting that eligible students are entitled to a special education program and services specifically designed to develop the Student’s individual educational potential.[[17]](#footnote-17) As such, educational progress is measured in relation to the particular student’s potential.[[18]](#footnote-18)

The IDEA mandates that eligible students between the ages of 18 through 21, be prepared for further education, employment, and independent living.  20 USC 1414(d)(1)(A); see also *Mr. I. v. Maine School Administrative District No. 55*, 480 F.3d 1, 12 (1st Cir. 2007).  In Massachusetts, starting when an IDEA eligible student turns fourteen years old, school districts are required to develop transition plans that detail the transition services,[[19]](#footnote-19) to be offered to the student.[[20]](#footnote-20)  The transition plan developed by the Team, must consider the student’s needs, preferences, interests, and strengths.  20 USC 1401(34).  See also, 34CFR 300.43.[[21]](#footnote-21)

As part of transition planning, the IDEA requires that school districts develop “appropriate measurable post-secondary goals based on age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills…”.

To assist the student in reaching his goals, the plan must provide transition services that include the courses of study the student may need. 20 USC 1414(d)(1)(A)(i)(VIII)(aa) and (bb); CFR 300.320(b).  As such, transition services must be results-oriented, coordinated activities that focus “on improving the academic and functional achievement” of the eligible student so as to facilitate his/her movement to post school activities. 34 CFR 300.43.  Transition goals and objectives must be individualized to the specific student and may vary greatly depending on that student’s aptitude, interests, abilities and skills. Therefore, provision of a FAPE for students ages 18 to 21 is directly related to appropriate planning and development of a well-thought-out plan and services that promote their readiness for employment, education and independent living. Massachusetts has extended the requirement to provision of special education services to students 18 and older though their 22nd birthday.

In an effort to guide districts in the development of appropriate and effective transition plans, MA DESE has designed forms and offered guidance through its technical Assistance Advisory publications. (See *Technical Assistance Advisory SPED 2013-1*, *Technical Assistance Advisory SPED 2014-4*, and *Technical Assistance Advisory SPED 2018-2, the latter providing the most salient guidance for analysis in the instant matter*).[[22]](#footnote-22)

Lastly, when disputes between parents with decision-making authority and school districts arise in the context of a student’s eligibility for high school graduation and award of a diploma, while a parent may not unilaterally “refuse a diploma for which all requirements have been met”, a parent may reject a student’s IEP on the basis of a denial of FAPE.[[23]](#footnote-23) Once the parent accesses resolution of the claim through formal or informal IDEA dispute resolution options,[[24]](#footnote-24) the student will be entitled to the IDEA procedural protections including “stay-put,”[[25]](#footnote-25) consistent with 603 CMR 28,08(7).

Federal and Massachusetts special education laws 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, or a hearing officer orders a change. 20 USC § 1415(e)(3); 20 USC § 1415(j); 34 CFR 300.514; 34 CFR 300.518(a); G.L. c. 71B §3; 603 CMR 28.08(7).[[26]](#footnote-26) This right is commonly known as stay-put, and is deeply rooted in special education law. Stay-put is designed to maintain the stability of a student’s last agreed upon educational placement during the pendency of the parties’ IDEA related litigation process. Stay-put operates as an “automatic preliminary injunction” that precludes unilateral changes in the student’s placement until the litigation process has concluded. *Verhoven v. Brunswick School Committee*, 207 F.3d 1, 10 (1st Cir. 1999). In this sense, graduation from high school (which terminates special education eligibility) is considered a change in placement entitling a student to stay-put rights when the parent raises FAPE denial allegations, as explained earlier. See, *Stock v. Mass. Hospital School*, 467 N.E. 2d 448 (1985); See also In Re: *Marlborough Public Schools & Dearborn Academy, Ruling on a Motion to Enforce “Stay Put*, BSEA #09-2610, 15 MSER 110 (Berman, 2009). Consistent with the Massachusetts DESE *Technical Assistance Advisory SPED 2018-2*,stay-put is triggered by filing a due process complaint and requesting a hearing, or proceeding to mediation. Stay-put rights are also triggered when an IEP proposing to change a student’s placement is rejected. 603 CMR 28.08(7).

A student’s placement is typically predicated upon the accepted IEP, the document which dictates the school district’s responsibility toward a student, and transition plans attached to the IEP. In determining the program and placement to which a student is entitled during the pendency of a proceeding, one must look at the last agreed upon IEP. A stay-put determination requires careful examination of the particular facts and circumstances surrounding the program and placement to which the student is entitled during the litigation process and the impact that an educational change may have on the student. See *Hale v. Poplar Bluff R-1 School District*, 280 F.3d 831 (8th Circ. 2002).

In situations where school districts breach a student’s right to stay-put services, the student may be entitled to compensatory services. When school districts fail to provide appropriate services for a determinate period of time, compensatory services may be awarded. *See* 20 USC 1415(i)(2)(C)(iii) (granting courts the discretion to grant relief as appropriate); *see Ferren C. v. Sch. Dist. of* *Philadelphia*, 54 IDELR 274 (3d Cir. 2010) (holding that compensatory education is a viable option for the courts to award at their discretion); *see also Letter to Kohn*, 17 IDELR 522 (OSERS 1991) (acknowledging compensatory services as a remedy under the IDEA). The determination of whether any interruption in services merits an award of compensatory education services falls within the purview of the hearing officer who is then responsible to craft a specific compensatory education plan based upon the specific facts of the case. *Henry v. District of Columbia*, 55 IDELR 187 (D.D.C. 2010).

It is within this legal context that I consider the case at bar. In rendering my determination, I rely on and incorporate by reference the facts delineated in the Facts section of this Decision, noting only the most salient ones in the analysis below.

Pursuant to *Schaffer v. Wea*st, 126 S.Ct. 528 (2005), Parent, in the instant matter, has the burden of persuasion, as to the issues raised by her, and Boston as to the issues it raised. As such, each party must prove its respective allegations by a preponderance of the evidence.

I find that the evidence, when considered in the context of the applicable legal standards, supports a finding that Parent/Student have met their evidentiary burden with respect to the issue of stay-put, but have not met their burden with respect to compensatory services, as they neither demonstrated that Boston had denied Student a FAPE, nor that Student suffered educational harm as a result of the procedural violations. I further find that Boston met its burden of persuasion in demonstrating that the 2022-2023 IEP and Transition Plan offered Student a FAPE, consistent with federal and state statutory and decisional law.  My reasoning follows.

I begin my discussion by analyzing whether the IEP and Transition Plan offered by Boston provided Student with a FAPE.

1. **FAPE and the 2023-2024 IEP and Transition Plan**:

Following Parent’s filing of her Hearing Request, Boston filed a counterclaim seeking a determination that the IEP and Transition Plan it offered Student during the 2022-2023 was reasonably calculated to provide Student a FAPE.

The record shows that by completing all required coursework and passing the MCAS, Student had met local graduation requirements by June of 2021 (PE-3). Clearly, Student’s solid cognitive abilities and hard work have helped him progress toward his goal of graduating from high school so that he may proceed to college. However, because of deficits associated with his Autism and ADHD diagnoses, his Team convened in 2021, 2022 and April 2023, and recommended extending Student’s graduation date to provide him with additional transition services to better prepare him for independent living. Throughout that period of time, Parent voiced her concerns that Student’s plan needed to address self-advocacy, hygiene, work/ employment readiness, finance management and household management, in order for him to have a successful transition into adult life (Parent).

During the period between January of 2021 and April of 2023, Boston convened numerous Team meetings to address newly acquired information regarding Student’s progress and interests. In 2022 and 2023 the Team discussed the information stemming from two transition assessments. Boston also made timely 688 referrals to the Massachusetts Rehabilitation Transition Pathway and sought the participation of a DDS caseworker (Student’s post-graduate adult living designated agency) during Team meetings. Student was found eligible to receive DDS services in 2022 and funds had been allocated for him to receive such services when he graduated from high school.

The transition IEPs developed by Boston for the 2021-2022 and 2022-2023 school years focused on Student’s areas of weakness (SE-2A; SE-2B; SE-2C; SE-2D). Boston coordinated and offered Student participation in multiple activities involving career exploration, college campus navigation, job readiness, job coaching, task completion, appropriate workplace communication, work stamina, development of soft skills, behavior management, self-advocacy, hygiene, and finances (PE-3; PE-6; SE-3A; Fitzgerald-Luzzo). Student’s IEPs, Transition Plans, and Vision Statement were updated based on Student’s progress and performance throughout those years (Stallings; Fitzgerald-Luzzo).

With respect to the IEPs impacting the 2022-2023 school year, the record shows that in the fall of 2022, Boston conducted a Transition Assessment that informed the Team of Student’s strengths and weaknesses and the areas to focus on prior to graduation. In this regard, the Team reviewed Student’s IEP focusing on goals, services, and the Transition Planning Form, proposing transition services necessary for Student to achieve his post-secondary goals consistent with 34 CFR §300.320(b)(2). The IEP and Transition Plan offered Student a dual enrollment program through which he would attend Boston’s BCLA; take two classes per semester at Bunker Hill; and participate in a range of transition services including experiences at the DISC program, and JVS (SE-2A; SE-2B). When the Team reconvened in November of 2022 and April of 2023, it extended Student’s graduation date to June 2023 (Stallings; Fitzgerald-Luzzo). Student’s IEPs also included extended school year services.

The results of the independent transition evaluation conducted by Ms. Monahan of NESCA were discussed at the April 2023 meeting.[[27]](#footnote-27) The District’s and Ms. Monahan’s evaluations (which contained some overlapping assessments) made similar recommendations targeting the same areas. The recommendations included targeting hygiene; increasing work stamina; increasing work pace; maintaining attention to detail continuing to work with a career coach; researching post-secondary programs; taking on responsibility for budgeting personal money; making his own appointments; self-advocating; connecting with the disability support office at the college campus he attended; and after graduation, working with a DDS job coach for support. These areas were targeted and proposed to be addressed through the goals and services in Student’s IEPs and Transition Plans promulgated during the 2022-2023 school year. Ms. Monahan’s evaluation raised one additional question regarding Student’s sensory needs. Neither evaluation recommended that Student attend a more restrictive setting (PE-85; PE-86).

The transition evaluations considered during the Team meetings in November of 2022 and April of 2023, resulted in the proposal of IEPs that were aligned with the recommendations of the evaluators and with Student’s vision statement that he wanted to graduate from high school, attend college, and have a career in animation/ IT.

After Parent partially rejected the IEP covering the period from January 2022 to January 2023 (PE-44), the Parties proceeded to mediation in September of 2022, reaching an agreement which addressed the programming in which Student would participate until the Team could reconvene to discuss the result of the transition evaluation requested by Parent. Per the Mediation Agreement, Student would attend Bunker Hill two days per week; intern in Boston’s DISC program two days per week; and attend BCLA one day per week to work on hygiene and health goals (SE-10). It was Boston’s understanding that the services delineated in the mediation agreement would be provided until the Parties reached a different agreement. The agreed upon services were aligned with the services reflected in Student’s IEP and Transition Plan. Boston delivered the services per the mediated agreement through the end of the 2022-2023 school year when Boston expected that Student would graduate from high school.

By June of 2023, Student had met the transition goals delineated in his IEP (PE-8; PE-9; PE-10). He was better able to self-regulate; was stimming less frequently; was able to complete work-tasks independently and on time; had increased work stamina; was more responsible in notifying his employer when he would be out or late; and traveled independently from his home to all school and work sites (PE-6; Fitzgerald-Luzzo). Through the dual enrollment program, Student had successfully attended college courses at Roxbury Community College and at Bunker Hill, where, with accommodations and family assistance, but without accessing the disability support center at Bunker Hill, he passed all of his courses with As and Bs.

The record is convincing that as of June 2023, in addition to having passed all of his MCAS assessments and high school graduation courses two years prior, Student was ready to transition into adult living, including pursuing his goal of attending college.[[28]](#footnote-28) None of this would have been achievable had the program, placements, internships, and opportunities offered by Boston not been appropriate.

The credible testimony of Ms. Stallings, Ms. Fitzgerald-Luzzo, Ms. Pandolfi and Ms. Monahan are convincing that the IEP and Transition Plans developed by Boston offered Student a FAPE consistent with *Endrew F. v. Douglas County Sch. Distr.*, 137 S. Ct. 988 (March 22, 2017), and federal and state law. In this regard, Boston met its burden of persuasion pursuant to *Schaffer v. Wea*st, 126 S.Ct. 528 (2005). Moreover, the services delivered to Student consistent with the Parties’ September 2022 Mediation Agreement, which were in essence the services being recommended in the IEP and Transition Plan for that school year, were reasonably calculated to offer Student a FAPE.

I next turn to Parent’s allegations of procedural violations.

1. **Procedural Due Process Violations & Compensatory Services**:

Parent asserts that Boston made numerous substantive procedural due process errors which resulted in a deprivation of FAPE to Student. According to Parent, these violations included: failing to conduct evaluations of Student in December of 2021 before proposing graduation (a change in placement) in June of 2021; failing to consider the results of its own transition assessment in 2022; failing to consider Student’s transition assessment in 2023; and failing to offer Student stay-put services after Parent rejected his IEP and requested mediation. Parent asserts that these cumulative, substantive violations entitle Student to compensatory education services in the form of an additional year at SOAR.

Boston denies the allegations and argues that even if procedural violations were found to have occurred, it is not responsible to provide Student an additional year of services since the IEPs and services relevant to this Decision offered Student a FAPE, and Student should have graduated in June of 2023.

1. Failure to Conduct a Timely Re-evaluation:

Parent is correct that Boston was responsible for conducting Student’s re-evaluation in December of 2021 and the District did not conduct any evaluation until the late summer of 2022 when it performed Student’s transition assessment. Boston, however, did not graduate Student prior to obtaining this assessment. Moreover, by the time Boston ultimately decided to graduate Student, Student had received two years of transition services (beyond June 2021 when he had met state and local graduation requirements), designed to address his self-advocacy, employment and work skills. By June 2023 , he was able to navigate his community independently, access and pass college level courses, and had worked on financial and other skills necessary for independent living. His hygiene had improved and notably, Student stopped attending his BCLA program. Student was well on his way to achieving his post-secondary goal of getting a college education having completed several college level courses, so that he could later get a job in IT.

Given that Student had completed the high-school requirements by June of 2021, evaluations such as educational and psychological assessments, typical to a re-evaluation process in other circumstances, would have offered little insight into his transition needs and readiness. In fact, the IDEA requires that a student’s post-secondary goals be “based on age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills.” 20 USC 1414(d)(1)(A)(i)(VIII)(aa) and (bb).

By the time Boston *actually* attempted to graduate Student in 2023, it had offered him robust experiences and instruction to address his areas of deficits, taking into account Student’s vision, and it had conducted an in-district transition assessment, and funded an independent transition assessment.

While Parent is correct that Boston should have conducted Student’s transition assessments in December of 2021 as opposed to the late summer of 2022, this technical violation did not deprive Student of a FAPE as he continued to receive appropriate services uniquely designed to help him transition into adult life.

1. Consideration of the 2022 and 2023 Transition Assessments:

Parent argued that Boston failed to consider the results of its own evaluator’s transition assessment as well as that of the independent evaluator. This allegation is not supported by the record. Under federal and state law, the Team must review and consider the recommendations contained in the evaluation presented to the Team. 603 CMR 28.04.

Regarding independent evaluations, 603CMR 24.04.5(f) requires that the Team convene within 10 school days from the time the independent evaluation is received and “consider the independent education evaluation and whether a new or amended IEP is appropriate”. Boston convened the Team in early November of 2022 to discuss the results of its own evaluation and again, convened the Team in April of 2023 to consider the independent evaluation, determining that Student’s IEP did not require amending (Fitzgerald-Luzzo).

Nothing in the regulations requires a Team to implement all the recommendations in an independent evaluation, especially those with which it disagrees, or which are already part of a student’s IEP and or transition plan. Student’s Team was required to consider the transition evaluations, and that it did. I therefore, find that Boston did not violate Student’s procedural due process rights regarding considering evaluations.

c. Stay-put Rights and Compensatory Education:

Consistent with the IDEA, when an eligible student graduates with a regular high school diploma, this ends the student’s eligibility for special education and related services. However, it is a well-established principle that graduation constitutes a change in placement for IDEA eligible students. As a result, this change of placement is subject to procedural protections and written notice. 34 CFR §300.102(a)(3)(iii) and (iv). The proposed graduation date must be reflected in the IEP to satisfy the prior notice requirement of the regulations. 34 CFR §300.102(a)(3)(iii). In the instant matter, the IEPs covering the periods from January 20, 2022 to January 20, 2023 and the IEP for the period from April 24, 2023 to June 23, 2023 listed Student’s graduation as January of 2023 and later June of the same year respectively. The record further shows that in May of 2022 Student’s Team discussed DESE’s *Administrative Advisory SPED 2018-2, Secondary Transition Services and Graduation with a High School Diploma*.

Parent rejected Student’s IEP in May of 2023, after receiving the IEP proposing to graduate Student in June of 2023, alleging that Boston had failed to offer Student a FAPE. Parent also requested that Boston fund the SOAR program for Student (PE-6; PE-16; PE-17; PE-19; PE-20; Parent). Parent requested a BSEA mediation on or about May 8, 2023 (PE-17), however never heard back from the mediator and was unaware that Boston did not intend to participate in a mediation (from their standpoint, they could not offer Parent what she was seeking) (Pandolfi).

On May 18, 2023, Parent filed a complaint with PRS. PRS issued a determination on September 15, 2023, following the start of the 2023-2024 school year. On October 6, 2023, Parent requested the instant Hearing. Several of the aforementioned events triggered Student’s right to stay-put pursuant to 603 CMR 28.08, yet when Student went to Boston on the first day of school for the 2023-2024 school year he was turned away (Parent).

Given that Parent was challenging Student’s graduation on the basis of a denial of FAPE, Boston was obligated to offer Student dual enrollment services consistent with Student’s prior IEP and Transition Plan. DESE’s *Administrative Advisory SPED 2018-2, Secondary Transition Services and Graduation with a High School Diploma*, which Boston has indicated it reviewed during the Team meeting in May of 2022,specifically delineates the District’s responsibilities regarding stay-put when a student is about to graduate.

This procedural violation is substantial and cannot be ignored. If it has not already done so, Boston shall refund Parent for her out of pocket expenses associated with Student’s courses at Bunker Hill during the 2023-2024 school year and transportation.

d. Compensatory Education:

Given my earlier finding that Boston’s 2022-2023 school year IEPs offered Student a FAPE, Parent cannot demonstrate that Student suffered a significant loss of educational opportunity thereby depriving him of a FAPE. By June of 2023 Student had met all but one discrete objective in his IEP, and the record does not support a finding that an additional year in Boston, the program to which he was entitled under stay-put, would have made a difference. Student did not suffer educational harm despite not having received his stay-put services in 2023-2024. As such, Parent has not met her burden of persuasion regarding Student’s entitlement to compensatory educational services at SOAR for one additional year. Student is not entitled to public funding for the SOAR program. To the contrary, he is eligible to graduate, receive his diploma and move onto DDS adult services.

Lastly, I note that Student wishes to obtain his high school diploma and continue on to college (Fitzgerald-Luzzo). His efforts and accomplishments are noteworthy, and are a tribute to his hard work, the support of his family and the educational and employment opportunities offered by Boston. Student’s challenges resulting from his diagnoses of Autism and ADHD are not going to disappear and he will require support throughout his lifetime; support he can receive though the DDS adult-services for which he has been found eligible (Monahan; Fitzgerald-Luzzo).

**ORDER:**

1. The IEPs and transition services offered by Boston during the 2021-2022 and 2022-2023 school years offered Student a FAPE and as such, Student is not entitled to an additional year of compensatory services in the SOAR program.
2. Boston shall conduct internal training regarding procedural due process rights under the IDEA relative to timing for evaluations and stay-put in the graduation context.
3. Boston shall reimburse Parent for her out of pocket expenses associated with Student’s courses at Bunker Hill during the 2023-2024 school year and transportation.

By the Hearing Officer,

Rosa I. Figueroa

Rosa I. Figueroa

Dated: October 5, 2024

**October 5, 2024**

# COMMONWEALTH OF MASSACHUSETTS

# DIVISION OF ADMINISTRATIVE LAW APPEALS

# BUREAU OF SPECIAL EDUCATION APPEALS

**BOSTON PUBLIC SCHOOLS**

**BSEA # 2403492**

### BEFORE

**ROSA I. FIGUEROA**

**HEARING OFFICER**

**CAROL SILVA, ADOCATE FOR PARENT/ STUDENT**

**MARIANNE M. PETERS, ESQ., ATTORNEY FOR**

**BOSTON PUBLIC SCHOOLS**

**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 for review in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts. 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. In the section addressing the proposed action, Boston erroneously refers to the evaluation as an “extended evaluation”, but the document later clarifies that it is proposing a transitional assessment (SE-20). [↑](#footnote-ref-1)
2. See also PE-65, PE-65, PE-69 involving Boston’s efforts to engage and assist Student. [↑](#footnote-ref-2)
3. Although Boston could have proceeded to court to enforce the mediation agreement, it instead continued to deliver the services to which it had agreed through the end of the 2022-2023 school year. [↑](#footnote-ref-3)
4. In April 2023, Student’s Bunker Hill English professor noted that Student appeared to be unfocused and his need to self-regulate increased. He observed that Student’s behavior was frequently associated with arriving late to class (PE-11). [↑](#footnote-ref-4)
5. Ms. Monahan administered the: *Transition Behavior Scale- Third Edition* (TBS-3-RV); *Transition Planning Inventory- Third Edition* (TPI-3; Student, Home and School Forms); *Adaptive Behavior Assessment System- Third Edition* (ABAS-3; Parent and Teacher Forms); *Informal Assessments for Transition Planning* (2nd Edition, selected subtests 23, 28, 30, 41, and 42); *Achenbach Child Behavior Checklist* (CBCL); *Achenbach Teacher’s Report Form* (TRF); *Informal Assessment of Financial Literacy*; *Personal Data Form Informal Assessment*; *Behavioral Rating Inventory of Executive Function- 2nd Edition* (BRIEF-2; Parent, Teacher and Self-report Forms); *Arc’s Self Determination Scale*; *Landmark College’s A Guide to Assessing College Readiness*; *O\*NET Interest Profiler* (IT); and the *Harrington O’Shea Career Decision Making System Revised* (CDM-R) (PE-86). [↑](#footnote-ref-5)
6. Ms. Monahan also recommended an occupational therapy evaluation with a focus on sensory needs and sensory diet (PE-86). [↑](#footnote-ref-6)
7. She noted that the NESCA evaluation flagged skills that Student was working on or had already mastered. [↑](#footnote-ref-7)
8. Julia Pandolfi, Assistant Director of Special Education in Boston (SE-16A), assumed that Parent had filed with PRS seeking resolution of the rejected IEP (Pandolfi). [↑](#footnote-ref-8)
9. When the Hearing Request was first filed there was some confusion as to whether Parent would be represented by an attorney, but several weeks later Parent clarified that she would proceed pro-se and she did so until her advocate filed an appearance on January 17, 2024. [↑](#footnote-ref-9)
10. PE-36, the emails scheduling the resolution session show confusion by Parent regarding whether the meeting to attempt to resolve matters informally (a resolution meeting). In the email exchange Parent refers to the resolution meeting as a “resolution mediation”. Ms. Pandolfi added to the confusion when she referred to the resolution meting as “an informal mediation” to find out “what the ask was” (Pandolfi). [↑](#footnote-ref-10)
11. 20 USC 1400 *et seq*. [↑](#footnote-ref-11)
12. MGL c. 71B. [↑](#footnote-ref-12)
13. E.g., 20 USC 1400(d)(1)(A) (purpose of the federal law is to ensure that children with disabilities have FAPE that “emphasizes special education and related services designed to meet their unique needs . . . .”); 20 USC 1401(29) (“special education” defined to mean “specially designed instruction . . . to meet the unique needs of a child with a disability . . .”); *Honig v. DOE*, 484 U.S. 305, 311 (1988) (FAPE must be tailored “to each child's unique needs”). [↑](#footnote-ref-13)
14. See *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) where the court explicitly adopted the meaningful benefit standard. [↑](#footnote-ref-14)
15. *Sebastian M. v. King Philip Regional School Dist*., 685 F.3d 79, 84 (1st Cir. 2012)(“the IEP must be custom-tailored to suit a particular child”); *Mr. I. ex rel L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1, 4-5, 20 (1st Dir. 2007) (stating that FAPE must include “specially designed instruction …[t]o address the unique needs of he child that result from the child’s disability”) (quoting 34 C.F.R. 300.39(b)(3)). See also *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir. 1993) (program must be “reasonably calculated to provide ‘effective results’ and ‘demonstrable improvement’ in the various ‘educational and personal skills identified as special needs’”); *Roland v. Concord School Committee*, 910 F.2d 983 (1st Cir. 1990) (“Congress indubitably desired ‘effective results’ and ‘demonstrable improvement’ for the Act's beneficiaries”); *Burlington v. Department of Education*, 736 F.2d 773, 788 (1st Cir. 1984) (“objective of the federal floor, then, is the achievement of effective results--demonstrable improvement in the educational and personal skills identified as special needs--as a consequence of implementing the proposed IEP”); 603 CMR 28.05(4)(b) (Student’s IEP must be “designed to enable the student to progress effectively in the content areas of the general curriculum”); 603 CMR 28.02(18) (“*Progress effectively in the general education program* shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the child, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district.”). [↑](#footnote-ref-15)
16. 20 USC 1412 (a)(5)(A). [↑](#footnote-ref-16)
17. MGL c. 69, s. 1 (“paramount goal of the commonwealth to provide a public education system of sufficient quality to extend to all children the opportunity to reach their full potential… ”); MGL c. 71B, s. 1 ( defining “special education” as “…educational programs and assignments…. designed to develop the educational potential of children with disabilities….”); 603 CMR 28.01(3) (identifying the purpose of the state special education regulations as “to ensure that eligible Massachusetts students receive special education services designed to develop the student’s individual educational potential…”). See also Mass. Department of Education’s Administrative Advisory SPED 2002-1: [Guidance on the change in special education standard of service] from “maximum possible development” to “free appropriate public education” (“FAPE”), effective January 1, 2002, 7 MSER Quarterly Reports 1 (2001) (appearing at [www.doe.mass.edu/sped](http://www.doe.mass.edu/sped)) (Massachusetts Education Reform Act “underscores the Commonwealth’s commitment to assist all students to reach their full educational potential”). [↑](#footnote-ref-17)
18. *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 199, 202 (court declined to set out a bright-line rule for what satisfies a FAPE, noting that children have different abilities and are therefore capable of different achievements; court adopted an approach that takes into account the potential of the disabled student). See also *Lessard v. Wilton Lyndeborough Cooperative School Dist*., 518 F3d. 18, 29 (1st Cir. 2008), and *D.B. v. Esposito*, 675 F.3d at 36 (“In most cases, an assessment of a child’s potential will be a useful tool for evaluating the adequacy of his or her IEP.”). [↑](#footnote-ref-18)
19. The IDEA defines Transition Services as

    …a coordinated set of activities for a child with a disability that—

    is designed to be within a results– oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post– school activities, including post– secondary education, vocational educational, integrated employment (including supported employment), continuing and adult education, adult services, independent living, for community participation;

    is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and

    Includes instruction, and related services, community experiences, the development of employment and all other post– school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. 20 USC 1401(34). [↑](#footnote-ref-19)
20. In Massachusetts the age for beginning transition planning is 14.  Section 2 of M.G.L. c.71B as amended by Chapter 285 of the Acts of 2008. [↑](#footnote-ref-20)
21. “(a) Transition services means a coordinated set of activities for a child with a disability that—

    Is designed to be within a results– oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

    Is based on the individual child’s needs, taking into account the chimes strengths, preferences, and interests; and includes—

    Instruction;

    A related services;

    Community experiences;

    The development of employment and all other post school adults living objectives; and

    If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

    (b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist the child with a disability to benefit from special education.” 34 CFR 300.43. [↑](#footnote-ref-21)
22. See also MGL c.688. [↑](#footnote-ref-22)
23. “A parent or student with decision-making authority may not unilaterally ‘refuse’ a diploma for which all requirements have been met. They may, however reject the final IEP on the basis that the student did not receive FAPE.”. *Technical Assistance Advisory SPED 2018-2.* [↑](#footnote-ref-23)
24. The parent or student with decision-making authority “…and district have opportunities to resolve the disagreement through mediation or formal dispute resolution procedures under the IDEA. This includes filing a due process complaint and requesting a hearing with the Bureau of Special Education Appeals (BSEA)”. *Technical Assistance Advisory SPED 2018-2.*  [↑](#footnote-ref-24)
25. *Technical Assistance Advisory SPED 2018-2* further informs us that“During the pendency of such dispute, school districts must follow stay-put procedures by retaining the student in the current program and placement unless the school district and the parent or student with decision-making authority agree otherwise. Situations such as these should be rare, however, if the district, student, and family have communicated effectively about the IEP, transition services, and the anticipated graduation date”. *Technical Assistance Advisory SPED 2018-2.* [↑](#footnote-ref-25)
26. Exceptions to stay-put which relate to violations to the code of conduct are not relevant in this case. [↑](#footnote-ref-26)
27. Ms. Monahan testified that she had not reviewed Boston’s transition assessment; had not observed Student in a community setting, an internship or work setting, or at Bunker Hill or BCLA. Ms. Fitzgerald-Luzzo, the evaluator conducting Boston’s assessment, conducted observations in all of the preceding as part of her assessment (PE-85). Ms. Monahan further testified that her only contact with Student after she conducted her evaluation in December of 2022, had been a 15-minute Zoom call prior to Hearing, during which she did not observe Student to have regressed (Monahan). [↑](#footnote-ref-27)
28. Moreover, the record shows that Student attended two additional courses at Bunker Hill during the 2023-2024 school year both of which he passed with A and B, despite receiving no other services from Boston or assistance through the college’s disability center. [↑](#footnote-ref-28)