COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

BUREAU OF SPECIAL EDUCATION APPEALS

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DECISION

STUDENT v. WACHUSETTREGIONAL SCHOOL DISTRICT

BSEA # 2405325

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BEFORE

HEARING OFFICER

ALINA KANTOR NIR

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PARENTS, PRO SE

CRAIG KOWALSKI, ATTORNEY FOR SCHOOL

**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In re: Student v. Wachusett Regional School District BSEA # 2405325**

**DECISION**

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

A hearing was held on April 8 and 9, and May 6, 2025, before Hearing Officer Alina Kantor Nir. Those present for all or part of the proceeding agreed to participate via a remote videoconferencing platform. The parents were pro se. Wachusett Regional School District (Wachusett, WRSD, or the District) was represented by counsel. The following were in attendance and participated in some or all of the proceedings:

Mother

Father

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

Shelly Rice, M.Ed. Teacher, First Grade Teacher

Frank Robbins, Ph.D. Clinical Psychologist

Brianna McGovern Occupational Therapist, WRSD

Craig Kowalski Attorney for WRSD

Dana Walton, M.S. Ed., Ed.S., BCBA, LABA Special Education Coordinator, WRSD

Joan DeAngelis, MSW, LICSW, CAGS Director of Special Education & Student

Services, WRSD

Jaclyn Brideau, MS. Ed. Special Education Teacher, WRSD

Michael McSweeney, BCBA, LABA Board-Certified Behavior Analyst (BCBA),

WRSD

Sara Kruger Occupational Therapist, WRSD

Melissa Lupo Court Reporter

The official record of the hearing consists of documents submitted by the Parent and marked as Exhibits C-01; IEP-01 through IEP-04; P-01; I-01; I-02; E-01 through E-05; LGL-02; LGL-03; and EMAIL-01; EMAIL-02; documents submitted by Wachusett and marked as Exhibits S-1 through S-21; and a three-volume stenographic transcript. Parents and the District made their oral closing arguments on May 6, 2025, but Parents requested an extension until June 2, 2025, to allow them to submit written closing argument as well. The request was granted for good cause. Parents submitted same on June 2, 2025, and the record closed on that date.

**ISSUES IN DISPUTE:**

The issues in this matter are as follows:

1. Whether Parents were denied meaningful participation in the Individualized Education Program (IEP) process?
2. Whether the District failed to implement any accepted IEPs?
3. Whether the IEPs developed and offered by the District for the 2021-2022[[2]](#footnote-2), 2022-2023, 2023-2024, and 2024-2025 school years were reasonably calculated to offer Student a FAPE in the LRE?
4. If the answer is ‘no’ to any of the above, then what is the appropriate remedy? [[3]](#footnote-3)

**FINDINGS OF FACT[[4]](#footnote-4):**

1. Student is a 13-year-old resident of Rutland, Massachusetts. She attends the 7th grade at the PACE program within the Chocksett Middle School (CMS) in Sterling, Massachusetts. (Brideau, Kruger, McSweeney, E-01) WRSD is the local education agency (LEA) responsible for Student’s education. (E-01)
2. PACE is a substantially separate classroom utilizing applied behavioral analysis (ABA) based methodology to support students diagnosed with autism spectrum disorder (ASD) who are eligible for special education and related services. The classroom is supported by a special education teacher, paraprofessionals, a board-certified behavior analyst (BCBA), and other service providers, such as an occupational therapist (OT), a speech and language pathologist (SLP), and a physical therapist (PT). Each of the five current students has 1:1 support, and the special education teacher is in addition to the staff to student ratio. Students work on functional academics and behavior goals throughout the day. (Robbins, Brideau, E-04, S-15)
3. Student is eligible for special education and related services under the disability category of Autism. She demonstrates cognitive, communication, and behavioral delays that adversely affect her across all settings. She has a secondary Communication Disorder associated with Autism Spectrum Disorder and is a limited verbal communicator who uses a speech-generating device (AAC), vocalizations, and actions to communicate. Additionally, she presents with delays in visual motor and visual perceptual skills, which impact her ability to perform school-related tasks and activities of daily living (ADLs). (Brideau, McSweeney, Cardaci, Kruger, IEP-01 to IEP-04, E-01 to E-05, S-12, S-19)
4. Although Student is generally happy, she presents with challenging behaviors, including noncompliance, crying, and aggression. (Grandfather, McSweeney, Brideau, Mother, Father, I-01, S-10, S-19)
5. Jaclynn Brideau is a licensed special education teacher at the PACE program, and holds a Master’s degree in severe special education. She has worked in the District since 2013 and has served as Student’s special education teacher and case manager since third grade. In this role, she has contributed to the development of Student’s IEPs and oversaw their implementation. (Brideau) Ms. Brideau frequently communicates with Parents via email and meets with them four times per year during Parent Clinics to address concerns, discuss highlights from Student’s program, and provide updates. (Brideau, Mother)
6. In October and November 2020, the Student underwent a three-year re-evaluation, which included a Speech and Language Evaluation conducted by Paula Cardaci, CCC-SLP. Ms. Cardaci has been a certified speech-language pathologist since 1999 and has served in that role within the District for 19 years. She provided speech-language services to Student from kindergarten through fourth grade. (Cardaci, E-05) On a standardized assessment of one-word receptive vocabulary, Student scored in the well below average range. Her expressive language was limited to basic requests, protests, and single-word utterances, and she could not complete a standardized expressive language assessment. Ms. Cardaci recommended continued focus on access and functional communication skills, along with specific accommodations and modifications. (Cardaci, E-05)
7. Although Father wanted the District to utilize a print-based strategy rather than PECS for Student (Father), Given Student’s challenges with reading, handwriting, and typing, Ms. Cardaci did not support the use of a print-based communication system as a primary communication method. Ms. Cardaci recommended a combination of low- and high-tech AAC devices. (Cardaci)
8. Brianna McGovern, a District-wide occupational therapist, conducted Student’s 2020 Occupational Therapy Assessment using the *Essential for Living* (EFL) curriculum. The assessment revealed that Student had scattered or limited proficiency in several essential skills, including waiting, accepting removals, transitioning, sharing, turn-taking, task completion, accepting “no,” following safety directions, and completing daily living tasks. Student also exhibited challenging behaviors, primarily noncompliance, flopping, crying, and aggression, which were most frequent and disruptive during the school day, particularly when access was denied or unfamiliar or non-preferred demands were presented. Ms. McGovern noted weaknesses in visual-motor tasks involving scissors and writing utensils. On the fine motor section of the Assessment of Basic Language and Learning Skills – Revised (ABLLS-R), Student completed 15 out of 28 skills, an improvement over completing five items in her 2017 evaluation. (E-03, S-8) Ms. McGovern testified that she recommended a multi-sensory approach to support the development of Student’s pre-writing skills. She emphasized the need to build foundational skills before progressing to formal writing instruction and suggested targeted activities to support this development. (McGovern, E-03, S-8)
9. The Team, including Parents, met on November 24, 2020, to review Student’s three-year re-evaluation and to develop her IEP. The Team confirmed Student’s continued eligibility for special education services under the disability category of Autism. (S-8) Following this meeting, the District proposed an IEP for the period November 24, 2020 to November 23, 2021 (the 2020-2021 IEP). Goals and services in Communication, Mathematics, Functional Academics, School Behavior, and Fine Motor Skills were proposed.[[5]](#footnote-5) On January 6, 2021, Parents accepted in full the 2020-2021 IEP and the proposed placement in the substantially separate applied behavioral analysis (ABA) classroom at Houghton School in Sterling, Massachusetts. (S-8)
10. On November 16, 2021 (Student’s 4th grade year), the Team, including Parents, met to review her progress and update the 2020–2021 IEP. Note that Student’s Progress Reports on the goals and objectives of the 2020-2021 IEP reflected Student’s mastery or partial proficiency thereon. (S-9, S-17) The Team recommended continued placement in the district-wide ABA program, maintaining substantially the same supports as in the prior IEP. Parents expressed hopes that Student would begin to access more areas of the school, improve transitions, respond more consistently to questions, and engage in functional play. The Team’s vision was to further develop Student’s language comprehension and application across environments, increase her independence at school, maintain social engagement with peers and adults, improve tolerance for new settings and unfamiliar people, and sustain low rates of challenging behaviors. (IEP-04, S-6, S-7)
11. On December 2, 2021, the District proposed an IEP for the period November 16, 2021 to November 15, 2022 (the 2021-2022 IEP). Goals and services were proposed in the areas of Communication, Academic Instruction/Support, Behavior/Social/Academic Instruction/Support/Program, and Fine Motor Skills. Specifically, the following services were offered: A Grid: OT Consultation (1 x 15 minutes/week, an increase from the prior IEP), Parent Clinic (1 hour quarterly with Special Education Teacher), Supervisory Services (1 hour/month with Special Education Teacher), Behavioral Intervention/Instruction (1 hour/month with BCBA), Assistive Technology (1 x 30 minutes/week with SLP/SLPA), SLP (1x 10 minutes/week); B Grid: Non-Academic Support (5 x 60 minutes/week during lunch/recess with ABA/PA in a small group, a reduction from the prior IEP); C Grid: OT (2 x 30 minutes/week); ABA Instruction/Support/Program (5x5.5 hours/day with 1:1 ABA/PA); ABA Instruction/Support/Program (5 x 5 hours/day with Special Education Teacher, a slight decrease from the prior IEP); and SLP (3 x 30 minutes/week). A substantially separate classroom was proposed at Houghton Elementary School. ESY- ABA Instruction/Support/Program (4 x 60 minutes/week with ABA/PA in small group); ESY programming entailing ABA Instruction/Support/Program (4 x 5.5 hours/day with Special Education, a slight decrease from the prior IEP); ABA Instruction/Support/Program (4 x 5.5 hours/day with 1:1 ABA/PA, a slight increase from the prior IEP); ESY- SLP (5 x 30 minutes/week, an increase from the prior IEP). (IEP-04, S-6, S-7)
12. At Parents' request, the Team reconvened on January 20, 2022, to address their questions and concerns[[6]](#footnote-6) primarily regarding increasing Student's time in inclusion. (IEP-04, S-6, S-7) Ms. Brideau testified that she had numerous discussions with Parents about their desire for Student’s inclusion in the general education classroom. While Student’s time in inclusion has increased over the years, she requires academic instruction in a 1:1 setting in a substantially separate classroom, as Student is not at grade or age level cognitively, academically, or socially. (Brideau)

At the meeting, Parents requested a change in Student's Behavior Intervention Plan (BIP). This request was honored, and WRSD updated the BIP accordingly (IEP-04, S-6, S-7, S-10). (IEP-04, S-6, S-7)

The Team also discussed the use of the AAC device. Parents stated that they did not use the AAC device at home. Mother testified that as Student became more verbal, she no longer needed the AAC device at home and was not always using the iPad effectively. (Brideau, Mother, IEP-04, S-6, S-7). According to Mother, she was not informed that it was important for Student to have access to her AAC device at all times. (Mother)

Ms. Brideau testified that Student’s AAC device is a dedicated iPad used consistently at school and typically sent home, unless requested otherwise by Parents. Over time, Student has become more verbal and is viewed as a total communicator, with staff honoring all her communication methods. (Brideau)

1. Parents did not return the proposed 2021-2022 IEP until May 3, 2022, when they fully rejected it, as well as the substantially separate classroom placement. (S-6, S-7) The District continued to report on Student’s old goals and objectives, noting this in Student’s progress reports for the remainder of the school year. (Brideau, S-9, S-17) However, on March 7, 2022, Ms. Brideau contacted Mother to request permission to begin working on new goals and objectives while awaiting a response from Father. Mother authorized moving forward, with plans to discuss the IEP at a later meeting. (EMAIL-02)
2. According to Mother, the District focused on non-academics, like toileting, and Student’s time would have been better spent learning to write, etc. Parents were not concerned about Student “holding it” all day, and neither were medical professionals. (Mother)
3. Sara Kruger is a District-wide occupational therapist (OT), licensed since March 2003. She worked at the New England Center for Children (NECC) for 17 years before joining the District in August 2022. Ms. Kruger has been working with Student since then, both in a 1:1 setting and during an OT group. (Kruger)
4. In the fall of 2022, Student’s fifth grade year, she had a “seamless transition” to the substantially separate district-wide PACE ABA classroom at CMS. (E-01, S-12) Ms. Brideau continued as Student’s teacher, having transitioned with Student. (Brideau) The middle school PACE classroom consisted of five students, supported by a special education teacher and five ABA Program Assistants. Student received one-to-one support throughout the day. (Robbins, Brideau, E-04, S-15)
5. The Team, including Parents, convened on November 15, 2022, to develop an annual IEP for Student for the period from 11/15/2022 to 11/14/2023 (the 2022-2023 IEP).[[7]](#footnote-7) Parents requested collaboration between SLP and OT for improving writing and speaking skills. (IEP-03, S-5) Parents provided their vision statement for the IEP to the Team, which emphasized persistence, adaptability, and innovation in pursuing both short- and long-term goals for , with a strong focus on clear, well-formulated plans and high expectations. They stressed the importance of independent thinking, learning from failure, and aiming for Student’s eventual exit from special education. Success was framed as requiring determination, quick decision-making, and consistent action. Parents’ short-term goals for Student included “memorizing the vision statement, maintaining healthy habits (such as drinking water and eating well),”[[8]](#footnote-8) improving communication, writing down thoughts, achieving independence in personal hygiene, reducing aggression, adopting a “backwards” learning method, introducing advanced concepts before simpler ones, and reducing iPad dependency. Each goal was to be supported by a clear, actionable plan implemented immediately. (S-4)

In Father’s opinion, it “was a reasonable goal” that Student would no longer be in a special education program, because Student’s goals had to be ambitious. Father wanted his vision statement to be an impetus for “scratching the IEP and starting it from scratch.” He felt that to accept the Team’s goals would mean “accepting mediocracy. (Father)[[9]](#footnote-9) The Team’s vision for Student was to promote greater independence, reduce her need for 1:1 support and instructions, enhance her functional, leisure, and self-care skills, decrease episodes of noncompliance, and decrease the latency in her response to instructions. (IEP-03, S-5) Ms. Kruger and Ms. Brideau testified that during one or more Team meetings, the Team discussed the vision statement as a collaborative process in which all members, including Parents, contribute. Parents’ vision statement was not rejected but was instead incorporated into the Team's final vision statement. (Kruger, Brideau)

1. The Team proposed an ABA-based program with discrete trial instruction, shaping, fading, task analysis, modeling, and reinforcement. Goals were proposed in the areas of Communication (Word Structure, Commenting, WH-Questions ), Academic Instruction/Support (Subtraction, Safety Skills, Schedule Skills, Measurement, Reading, Routine Events), Behavior/Social/Academic Instruction/Support/Program (Leisure Sampling, Social Behavior, Requesting, Daily Living Skills, Tolerating, Accepting No), Fine Motor Skills (Hand Strength and In-Hand Manipulation, Tracing, and Completing Visual Perceptual Activities). Services remained mostly the same as those proposed in the prior IEP, except that Grid A Assistive Technology Consultation (1 x 30 minutes/week with SLP/SLPA) was removed from the Service Delivery Grid, and ESY- ABA Instruction/Support/Program (4 x 5.37hours/day with Special Education) was slightly decreased from the prior IEP. (IEP-03, S-5)
2. On December 9, 2022, Parents rejected the 2022-2023 IEP in full. Parents wanted their vision statement in the IEP. (Father, IEP-03, S-5) They also wanted to “[a]dd Eating Goals.” (IEP-03, S-5) The parents testified that the school district did not clearly inform them of their right to partially reject the IEP. The mother said she felt pressured to sign and needed more time to consider the proposal and seek advice. The father added that the district failed to explain that they could reject parts of the IEP and that no new goals would be implemented without their signature. (Mother, Father)
3. Student’s progress reports reflect that Student had mastered her goals and objectives, that they were reporting on the objectives from the prior IEP, and that the Team was waiting for the return of a signed IEP. (Brideau, Kruger, S-9, S-17) Ms. Brideau testified that she repeatedly explained this to Parents during Parent Clinics. (Brideau) Ms. Cardaci, Ms. Kruger, and Ms. Brideau testified that without a signed IEP, they could not proceed with new goals and objectives. (Cardaci, Kruger, Brideau)
4. The District provided Prior Written Notices with each IEP proposal, which included the Notice of Procedural Safeguards. (S-1, S-6, S-7, S-8, S-19)
5. Father testified that the District did not explain the "stay-put" provision and, while he believes he received the safeguards notice, he was not certain. (Father)
6. On December 20, 2022, the IEP Team met to review the rejected 2022–2023 IEP. The Parents requested 30 minutes of occupational therapy per week during the summer, but the Team denied the request. The Parents stated they would submit a written request for an educational evaluation of the student. (S-4)[[10]](#footnote-10)
7. Joan DeAngelis is the District’s Director of Special Education & Student Services. She has served in this role at WRSD since 2022. According to Ms. DeAngelis, she participated in only one of Student’s Team meetings. Ms. DeAngelis testified that the Team relies on the service provider’s professional judgment to determine service frequency, and the principal is responsible for ensuring delivery based on the provider’s schedule. (DeAngelis)
8. At the December 2022 meeting, Parents raised concerns about their child's nutritional support and requested integrated speech and OT services, including writing-speech activities. The Team agreed to reconvene after receiving medical evaluations and recommendations regarding feeding, and, in the meantime, the school would continue to collect data on food presentation. (S-4)
9. In response to Parents’ request, the 2022–2023 IEP included, in part, the following accommodations: verbal repetition during writing tasks, visual writing supports, combined writing and speech prompts, ongoing integration of SLP and OT when appropriate, and allowing the student to observe the teacher writing if she couldn't write herself. (S-5) Ms. Cardaci and Ms. Kruger both testified that integrating OT and SLP services is beneficial, especially for students with autism, and that such integration occurs through ongoing collaboration, even outside of direct sessions. However, Father disagreed, stating he did not believe these services were ever provided in an integrated manner for the student, noting the absence of related goals in the IEP. [[11]](#footnote-11) (Cardaci, Kruger, Father)
10. On January 3, 2023, the District proposed a re-evaluation of Student in the areas of Speech and Language, Occupational Therapy, Education, Adaptive Functioning, ABA , Health, and a Psychological Assessment. On January 5, 2023, Parents consented to the re-evaluation in full but did not include any parent input on the Evaluation Consent Form. (E-01, S-12, S-20)
11. Ms. DeAngelis testified that soliciting parental input for an evaluation is “situational” and depends on the nature and reason for the evaluation. Parents’ input is often captured at team meetings. Parents may also request a team meeting at any time to discuss their concerns. (DeAngelis)
12. Although Ms. Cardaci was no longer Student’s SLP at the time, she conducted the SLP portion of the evaluation due to the departure of Student’s assigned SLP. The Functional Communication Profile-Revised (FCP-R) indicated that Student required support to understand and respond to basic “wh” questions (e.g., who, what, where), and was unable to demonstrate comprehension or expression of more complex question types (e.g., when, why, how). Her yes/no responses were inconsistent. Student completed both the Peabody Picture Vocabulary Test-Fifth Edition (PPVT-5) and Expressive Vocabulary Test-Third Edition (EVT-3), scoring well below age-level expectations. [[12]](#footnote-12) The Clinical Evaluation of Language Fundamentals, both Fifth Edition and Preschool Edition were attempted, the former unsuccessfully. (E-01, S-12) Although Ms. Cardaci did not indicate whether the tests required parents’ input, she indicated that she did not solicit parental input and that this did not affect the accuracy of the assessment, which accurately reflected Student’s profile and needs, because Student “presents as she presents.” (Cardaci) Ms. Cardaci testified that Student had made steady, individualized progress over three years, showing improvements in attention, comprehension, and expressive language, including the use of three-word phrases and an AAC device. By 2023, Student could complete assessments that were not possible in 2020. Although her progress is slower than that of her typical peers due to her cognitive, communication, and behavioral delays. However, Student is learning to generalize knowledge. Ms. Cardaci saw no need for major changes to the AAC programming, noting it was effectively used and updated as needed, with consistent access being crucial. She recommended continued focus on functional speech and language within daily routines, with objectives targeting word structure, commenting, and “wh” question responses. (E-01, S-12) (Cardaci)
13. Ms. Kruger conducted the OT portion of the assessment and did not solicit direct parental input, explaining that she had attended meetings with Parents, was familiar with their concerns, particularly regarding handwriting, and had consulted with the classroom teacher. Ms. Kruger did not indicate whether the assessment tools used in the OT assessment called for parental input, but she testified that her practice of gathering parent input when conducting an evaluation varies based on her familiarity with the student and family. Here Ms. Kruger had knowledge of the student via consultation with her teacher and attendance at meetings with her parents. In Ms. Kruger’s expert opinion, the absence of additional parent input did not compromise the validity of her evaluation.

Ms. Kruger administered the ABLLS-R[[13]](#footnote-13) to Student, who independently completed 23 of the 28 tasks on the Fine Motor Checklist. Compared to Student’s 2020 results, she gained eight new skills, including making marks with a crayon, snipping with scissors, turning book pages, tracing lines with a finger, using a pincer grasp, and roughly copying shapes and patterns. Ms. Kruger testified that these skills were important for school tasks. However, Student continued to struggle with tasks such as cutting out, pasting, and copying shapes. Ms. Kruger did not administer the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition (BOT-2) due to its reliance on language and scripted directions, which would not provide an accurate assessment of Student’s skills. Instead, she administered the Beery-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition (VMI). Student's visual-motor integration skills were found to be in the very low range. Student lacked a specific hand dominance, switched hands during fine motor tasks, and did not cross the midline with either hand. Her pencil grasp varied, and she struggled to produce legible letters. (Kruger, E-01, S-12) Based on the evaluation, it was recommended that to improve functional independence, Student be provided with structured worksheets with additional visual prompts and be encouraged to use her dominant hand. (E-01, S-12)

1. Ms. Brideau conducted the Essentials for Living (EFL) assessment, the results of which indicated that Student's programming should target functional skills such as accepting “no” after previously honored requests; tolerating close proximity, touch, or prompts from unfamiliar individuals; increasing tolerance for different liquids and unfamiliar environments; answering routine questions; performing basic subtraction; measuring ingredients using numbers in recipes; and writing or typing her name and address. (Brideau, E-01, S-12) Ms. Brideau reported that during the 2022–2023 school year, Student made progress with eating, initially refusing to eat or enter the cafeteria, but eventually sitting with peers at lunch. However, there was minimal progress in toileting. (E-01, S-12)
2. Michael McSweeney, the District’s Board-Certified Behavior Analyst (BCBA), has worked in the District for eight years, having previously worked at NECC for twelve years. Mr. McSweeney sees Student and consults with the classroom teacher weekly. He also reviews incident reports and data, provides strategies to staff, adjusts Student’s BIP, and participates in parent clinics to address concerns and review data. Mr. McSweeney completed the behavioral portion of the Multidisciplinary Evaluation, which included descriptive data, graphs, an interview with Ms. Brideau using the Functional Assessment Interview (FAI) form, and an analysis of behavioral trends. He did not conduct a functional behavior assessment (FBA), which, according to Mr. McSweeney, is typically conducted when there is an increase in challenging behavior, and the Team needs to understand its cause, which was not the case with Student. (McSweeney) A four-week daily data collection showed a slight increasing trend in Student’s noncompliance, a decrease in aggression, low but variable behavioral episodes, and a slight increase in crying episodes. (E-01, S-12)
3. The Multi-Disciplinary Evaluation of Student proposed several accommodations, including presentation of writing words (working up to sentences) on paper with pointing to words for Student to repeat when appropriate, presentation of SLP and OT together when appropriate, allowing Student to watch her teacher write if unable to do so herself, and consistent access to both low- and high-tech Augmentative and Alternative Communication (AAC). (Brideau, Kruger, E-01, S-12)
4. On February 14, 2023, the District re-issued the 2022-2023 IEP, incorporating some changes requested by Parents. Parents did not sign the revised 2022-2023 IEP. (S-4)
5. In April and May 2023, Student participated in a Cognitive Evaluation with Debra Culberson, NCSP, LMHC. Despite repeated efforts and simplified prompts, and although the Test of Nonverbal Intelligence-Fourth Edition (TONI-4) and Comprehensive Test of Nonverbal Intelligence-Second Edition (CTONI-2) are nonverbal cognitive tests using simple verbal directions with gestures, Student was unable to respond correctly to any items on these assessments. Similarly, on the Kaufman Assessment Battery for Children - Second Edition Normative Update (KABC-JI), Student failed to answer even the initial items correctly under both standardized and modified conditions, preventing score calculation. A parent questionnaire to assess adaptive skills was part of the Vineland-3 assessment, and the form was sent to Parents, but it was not returned. However, a standardized teacher assessment by Ms. Brideau showed that Student's adaptive skills were mostly below the 3-year developmental level. (E-02, S-13) Parents testified that they did not receive any parent form to complete. (Mother, Father)
6. Ms. Brideau testified that standardized assessments do not fully capture Student’s capabilities, as they do not allow for the flexibility and individualized support that staff provide in everyday interactions with Student. (Brideau)
7. Shelly Rice, a first-grade teacher and family friend, shared insights on Student's writing abilities. While she does not write IEPs, she implements them in her classroom. Based on Ms. Rice’s observation of Student’s handwriting over time, she recommended using structured “patterns” to guide how Student begins and forms letters. Ms. Rice noted that Student was frustrated with repetitive name writing. (Rice, LG-02)
8. Ms. Kruger testified that she uses a faded support approach to develop Student’s handwriting. She also utilizes structured lines, boxes, dots, and Wikki Stix, but does not view them as functional long-term supports. Student’s writing varies depending on the setting and level of support. (Kruger, C-01)
9. On May 19, 2023, a partial Team meeting took place with Parents in attendance to review the Cognitive Evaluation results. (S-3) On May 24, 2023, the full Team convened, with Parents present, to review the remaining three-year re-evaluation results. (Brideau, S-2) At the meeting, Parents continued to reject the omission of ESY OT services in the IEP. (S-2)
10. Dana Walton, the District’s Special Education Coordinator, testified that she has held this position since 2013 and chaired Student’s Team meetings until the 2024-2025 school year. She explained that when Parents requested ESY OT services, she asked the Team, and particularly Ms. Kruger, for recommendations. Based on progress reports and the re-evaluation results, the school-based Team concluded that ESY OT services were not necessary to maintain Student’s skills. (Walton, S-2)
11. Ms. Brideau testified that while the typing goal was initially suggested by Father, she and Ms. Kruger had already planned to recommend it. Father stated he did not realize this goal would replace handwriting instruction, which he believed was still important. Ms. Kruger explained that typing was more functional for Student, reducing frustration and enabling independent error correction. She emphasized that typing enhanced Student's communication and overall progress. (Father, Kruger, P-01)
12. According to Parents, it was “mindboggling” that Student had “plateaued,” and yet the District denied her additional OT services. Although the Team listened to their concerns, Parents’ suggestions were not implemented, making them feel that their concerns were dismissed. (Mother, Father)
13. On June 7, 2023, the District proposed an updated 2022-2023 IEP, which added a Typing objective under the Academic Instruction/Support Goal and a Behavior Maintenance objective under the Behavior/Social/Academic Instruction/Support/Program Goal. Parents did not sign this IEP. (S-2)
14. Parents felt that Student regressed during the 2022-2023 school year. They attributed this to the District’s failure to implement new IEP goals while waiting for their signature on the IEP.[[14]](#footnote-14) (Mother, Father, Grandfather)
15. On November 7, 2023, the District updated Student’s Behavior Intervention Plan (BIP) to reflect her progress with eating at school, incorporating strategies like using a tray with separated food and a soda fading program to encourage water intake. The updated BIP also included supports for trying new foods and using the bathroom. It targeted skills such as requesting breaks ("stop" or "one minute"), tolerating new environments and routines, following group instructions, and communicating needs without resorting to challenging behaviors like noncompliance, aggression, crying, or behavioral episodes. (S-10)
16. On November 29, 2023, the Team met to develop an annual IEP for Student and address the rejected, unsigned IEP proposed on June 7, 2023. (IEP-02, S-1) Parents’ vision for Student was to “become more independent” and to use “her voice to tell us how she feels.” At the meeting, they verbally requested independent evaluations in all areas and indicated their intent to follow up in writing with said request.[[15]](#footnote-15) (IEP-02, S-1) Parents continued to reject the omission of OT ESY services from the IEP . According to Father, the District had no data to support their contention that Student would not regress during the summer without OT services. (Father)
17. Parents requested an out-of-District placement, which the District did not believe Student required. (IEP-02, S-1)
18. Subsequently, the District proposed an IEP for the period November 29, 2023 to November 28, 2024 (the 2023-2024 IEP) with goals and services in the areas of Communication (Word Structure, Commenting, WH-Questions), Academic Instruction/Support (Safety Skills, Schedule Skills, Measurement, Reading, Routine Events, Typing), Behavioral/Social/Academic Instruction and Support (Leisure Sampling, Social Behavior, Behavior Maintenance, Requesting, Daily Living Skills, Tolerating, Accepting No), and Fine Motor/Visual Motor (Hand Strength and In-Hand Manipulation, Tracing, Match and Paste, Maze/Dot to Dot). On PLEP B, Student’s accommodations included that Student would “continue to learn speech and OT together when appropriate.” Services and placement were consistent with the prior IEP except that A Grid Behavioral Intervention/Instruction Consultation with the BCBA increased by 30 minutes per month. Parents did not sign the 2023-2024 IEP. (Brideau, IEP-02, S-1)
19. Student’s progress reports during the 2023-2024 school year continued to note that due to an unsigned IEP, the Team was reporting on the same objectives, i.e., those that had last been accepted by Parents. (S-9, S-17)
20. Frank. Robbins, Ph.D., is a clinical psychologist with over 40 years of experience working with individuals with autism. He contracts primarily with school districts and some parents to review programming and make recommendations. Dr. Robbins has conducted over 500 school observations and testified at the BSEA about five times. (Robbins)

On December 13, 2024, the District and Parent convened for a resolution meeting relative to a due process complaint filed by Parents on December 5, 2023. Because Parents wanted to get a “fresh set of eyes” on the Student’s program, the District proposed, and Parents agreed to have the program, services, and implementation thereof evaluated by an independent expert in autism and ABA. As part of the agreement, Parents agreed to allow the District to proceed with the proposed IEP goals. (S-14, S-21) Parents signed the Evaluation Consent Form for an “Educational Evaluation of ABA Program” on January 11, 2025. They did not include any parent input on the form. (S-21)

Parents testified that it was their understanding that Dr. Robbins would conduct an individual evaluation of Student, based on Parents’ concerns, and then propose recommendations for her programming. (Mother, Father)

1. On January 30, 2024, Dr. Robbins completed a "Consultation/Independent Program/Case Evaluation" for Student. Specifically, the District sought recommendations for Student’s programming. Dr. Robbins’s evaluation included a four-and-a-half-hour observation of Student’s sixth-grade program at the CMS; discussions with members of her school-based team; and a review of Student’s assessments, BIP, 2022-2023 IEP, and behavior graphs. Dr. Robbins described Student’s program as an exceptional, state-of-the-art ABA program that was “highly appropriate” for Student. The program was data-driven, with a strong student-to-staff ratio and emphasized consistency, reinforcement, and generalization of skills. It included a well-equipped life skills classroom and incorporated visual supports, choice-making, and varied tasks. Acknowledging her progress and noting that, given her cognitive profile, slower progress compared to peers was expected, Dr. Robbins noted significant progress in key areas such as entering the building and eating at school, and observed that Student appeared happy and had strong relationships with staff. (Robbins, E-04, S-15)

According to Dr. Robbins, he typically makes 5 to 20 specific recommendations when conducting a program review. Here, he only suggested more community outings to "prepare" Student for the programming that she would receive in high school.[[16]](#footnote-16) (Robbins, E-04, S-15) Father testified he was “shocked” that Dr. Robbins only had one recommendation. (Father)

Dr. Robbins testified that he did not interview Parents as part of his program review because he was evaluating her school program, not the home or the community. He also did not interview Student’s OT or SLP. He did not believe that this compromised his report in any way. (Robbins)

1. The Team met on March 7, 2024, to review the independent program evaluation conducted by Dr. Robbins. While he supported the Team’s recommendations for the proposed IEP, he testified that he agreed with Parents that it could be worthwhile at times to “shake things up a little bit” for Student. Dr. Robbins testified that Parents attended the meeting, appeared pleased with the evaluation, and raised no concerns. (Robbins, S-16). Parents later testified that their input was never solicited for any District evaluation, including Dr. Robbins’s. Mother explained she did not voice concerns during the meeting because she was distracted by her children, while Father said he withheld concerns due to the upcoming BSEA due process hearing. (Mother, Father)
2. At the March 2024 meeting, Ms. Kruger recommended shifting OT services to consult model, because Student had made progress in OT and overall independence. In her OT group, Student was less dependent on her 1:1 support, followed models independently, and could start zippers, do buttons and snaps, and had improved her typing skills. The consult model, which Ms. Kruger used while working at NECC, includes weekly observations and collaboration with service providers and would better support Student’s needs throughout the day in various settings. (Kruger, P-01)
3. On April 30, 2024, Parents partially rejected the 2023-2024 IEP, agreeing to proceed with the specified goals but maintaining their right to revoke consent if the changes did not support Student’s progress. (LG-03)
4. Student’s June 2024 Progress Report reflects some progress across all goals and objectives. It also reflects that Student utilized her AAC device and verbal output to demonstrate said progress. (P-01)
5. The Team met on November 21, 2024, to review Student’s progress and to draft an updated IEP. According to staff, Student made “great progress with her independence.” She was attending lunch and recess with her inclusion peers; [[17]](#footnote-17) transitioning to and from locations within the school; eating regularly at school; and consistently entering the bathroom and sitting on the toilet. (Brideau, McSweeney, E-01, S-12)[[18]](#footnote-18) The Team proposed to reduce Student’s 1:1 support by 40 minutes/day due to her increased independence. (S-19)
6. On December 10, 2024, the District proposed an IEP for the period November 21, 2024 to November 20, 2025 (the 2024-2025 IEP). Goals were proposed in the areas of Communication (Word Forms, Verb Tenses, Describing), Functional Instruction/Support/Program (Safety Skills, Schedule Skills, Measurement, Reading, Routine Events, Typing), and Behavior, Social and Academic Instruction/Support/Program (Leisure Sampling, Social Behavior, Behavior Maintenance, Requesting, Daily Living Skills, Tolerating). Services and placement were consistent with the prior IEP except that A Grid Occupational Therapy Consultation Service was increased (1 x 30 minutes/week), A Grid Speech and Language Consultation Service was increased (1 x 60 minutes/week), B Grid Inclusion Support during homeroom was added (5 x 10 minutes/week with 1:1 ABA/PA), C Grid Direct OT Services were eliminated, C Grid Direct Services in ABA Instruction/Support/Program with 1:1 ABA/PA was decreased (to 5 x 288 minutes/week), and C Grid Direct Services in ABA Instruction/Support/Program with Special Education Teacher were increased (5 x 308 minutes/week). (S-19)

Mother initially accepted the 2024–2025 IEP and placement in full on December 13, 2024. (S-19) However, Parents testified that this acceptance was due to a misunderstanding. In January 2025, Mother emailed the Team to formally reject the IEP and placement in full. (Mother, Father, E-01) Ms. Brideau testified that the 2024-2025 IEP was implemented in full during the period of acceptance. It was also implemented after the rejection as it was Ms. Brideau’s understanding that this was Student’s “stay-put IEP.” (Brideau)

According to Father, he would not have agreed to reduce OT services to a consult-only model and was unaware the consults would be monthly instead of weekly until the hearing. He found the goals unambitious and claimed they were generated using the District’s “PowerSchool” program, making them generic and not tailored to Student’s individual needs. (Father)

1. Father testified that he was "shocked" by staff emphasizing the importance of the student having constant access to her AAC device, pointing out that her 2024–2025 IEP does not mention the need for the device at home or in non-school settings. (Father, S-19)
2. Ms. DeAngelis testified that in the PACE program, each service provider is responsible for drafting the Current Performance Levels and goals within their area of expertise, aiming to address skill gaps that would enhance Student’s educational experience. Providers also contribute to the statement on how Student’s disabilities impact her learning. The Team Chair then completes the Parents’ Concerns and Vision Statement sections, as well as the Prior Written Notice (N1). (DeAngelis)
3. Parents testified that Student's challenging behaviors have increased, including frequent early pickup requests—four times in one week in March 2025. Mother believes that Student has learned that escalating behavior results in going home. Grandfather observed increased aggression, regression in verbal communication, and more isolation. Parents are concerned that school staff are not managing behaviors effectively, noting that Student responds better at home, and that Father *"*raise[s] [his] voice [to] firmly let her know that, you know, these behaviors are not right... she stops.". (Mother, Father, Grandfather, I-01, I-02)
4. Mr. McSweeney testified that while Student experienced a few behavioral incidents in late March 2025, overall aggression has remained low since the 2023–2024 school year. The incidents were linked to transitions from meals but improved after staff adjusted strategies. He reported that the PACE program has been highly effective, with Student meeting most objectives and showing significant progress in areas such as noise tolerance, eating varied foods, taking medication, and navigating the school environment. (McSweeney, I-01, I-02)
5. Ms. Brideau testified that Student’s recent behavioral incidents are not concerning, as they usually have clear triggers or stem from medical issues. While incidents may increase after breaks or due to developmental changes, overall behavior is infrequent and manageable, with only serious cases formally reported. Ms. Brideau highlighted her daily collaboration with Mr. McSweeney and her behavioral expertise. She noted Student’s significant progress since elementary school in academics, functional skills, and social development, with Student now reading, counting, following schedules, and working independently. She also emphasized improved tolerance for new environments and group activities, stating that Student’s progress is consistent with her cognitive abilities and that the District’s program is “absolutely appropriate” for her. (Brideau, I-01, I-02)
6. Parents testified that while Student has made progress in some areas, she has struggled with others, despite years of effort. They further testified that some of Student’s progress was due to their own interventions. Parents believe she needs a program specifically tailored to students on the autism spectrum, with a strong focus on practical daily living skills. Finding her current goals basic and unambitious, they testified that Student thrives when challenged and becomes noncompliant with repetitive tasks. (Mother, Father, C-01)
7. According to Father, he has not seen many changes in Student’s goals over the years. For example, Student initially worked on tracing her name with 50% accuracy. The goal was later revised to 80% accuracy. Father found this approach illogical, testifying that it would have made more sense if Student had been asked to trace 100 different words, achieving 50% accuracy by successfully tracing 50 of them, rather than increasing the percentage on the same, single word. (Father)
8. The Team considers the 2024-2025 IEP the last accepted and implemented IEP and is therefore currently implementing it. (Brideau, DeAngelis)

**LEGAL STANDARDS:**

1. Free Appropriate Public Education in the Least Restrictive Environment

The Individuals with Disabilities Education Act (IDEA) was enacted "to ensure that all children with disabilities have available to them a free appropriate public education" (FAPE).[[19]](#footnote-19) To provide a student with a FAPE, a school district must follow identification, evaluation, program design, and implementation practices that ensure that each student with a disability receives an Individualized Education Program (IEP) that is: custom tailored to the student's unique learning needs; "reasonably calculated to confer a meaningful educational benefit"; and ensures access to and participation in the general education setting and curriculum as appropriate for that student so as "to enable the student to progress effectively in the content areas of the general curriculum.”[[20]](#footnote-20)  FAPE is delivered through an educational program, including secondary transition services, that offers the student the chance to meet challenging objectives and, in light of the student's circumstances, is appropriately ambitious and reasonably calculated to enable a student to make progress.[[21]](#footnote-21) A student’s IEP must be individually tailored.[[22]](#footnote-22)  When developing the IEP, the Team must consider parental concerns; the student's strengths, disabilities, recent evaluations and present level of achievement; the academic, developmental and functional needs of the child; and the child’s potential for growth.[[23]](#footnote-23) Evaluating an IEP requires viewing it as a "a snapshot, not a retrospective. In striving for 'appropriateness,’ an IEP must take into account what was . . . objectively reasonable . . . at the time the IEP was promulgated.”[[24]](#footnote-24)

FAPE does not require a school district to provide special education and related services that will maximize a student’s educational potential.[[25]](#footnote-25) In *Endrew F. v. Douglas County Regional School District*, the Supreme Court explained that appropriate progress will look different depending on the student.[[26]](#footnote-26) An individual analysis of a student’s progress in his/her areas of need is key.[[27]](#footnote-27) The educational services provided to a student, therefore, need not be, "the only appropriate choice, or the choice of certain selected experts, or the child's parents' first choice, or even the best choice."[[28]](#footnote-28)

Under state and federal special education law, a school district has an obligation to provide the services that comprise FAPE in the "least restrictive environment."[[29]](#footnote-29) This means that to the maximum extent appropriate, a student must be educated with other students who do not have disabilities, and that "removal . . . from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services, cannot be achieved satisfactorily."[[30]](#footnote-30) "The goal, then, is to find the least restrictive educational environment that will accommodate the child's legitimate needs."[[31]](#footnote-31) In addition, the IDEA recognizes the need to educate some children in more restrictive settings, such as “in the home, in hospitals and institutions, and in other settings.”[[32]](#footnote-32)

1. Procedural Violations and Meaningful Participation

FAPE also requires compliance with the procedural protections embedded in IDEA, and procedural  errors may amount to a deprivation of a FAPE  if “the procedural inadequacies – (I) impeded the child’s right to a free appropriate public education; (II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or (III) caused a deprivation of educational benefits.”[[33]](#footnote-33) These procedural benefits serve a dual purpose; they provide for meaningful parental participation and they ensure each eligible child receives a FAPE.[[34]](#footnote-34) Although parental participation in the planning, developing, delivery, and monitoring of special education services is central in IDEA, MGL c. 71B, and corresponding regulations,[[35]](#footnote-35) school districts are obligated to propose what they believe to be FAPE in the LRE, “whether or not the parents are in agreement.”[[36]](#footnote-36)

1. Implementation Failures

It is well settled that "[t]o provide a free and appropriate public education to a student with disabilities, the school district must not only develop the IEP, but it also must implement the IEP in accordance with its requirements."[[37]](#footnote-37) Where an IEP has been accepted in full and has expired, the analysis focuses on implementation.[[38]](#footnote-38) The generally adopted standard requires "more than a de minimis failure" to prevail on an implementation claim under the IDEA.[[39]](#footnote-39) Specifically,

“a court reviewing failure-to-implement claims under the IDEA must ascertain whether the aspects of the IEP that were not followed were ‘substantial or significant,’ or, in other words, whether the deviations from the IEP's stated requirements were ‘material.’ A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. This standard does not require that the child suffer demonstrable educational harm in order to prevail; rather, courts applying the materiality standard have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld.”[[40]](#footnote-40)

Courts have found FAPE violations where (1) the “failure” to implement was “complete”; (2) the variance from the special education and related services specified in the IEP deprived the student of a FAPE; and (3) the provision of special education and related services failed to enable the student to make “progress” toward the achievement of the goals stated in the IEP.[[41]](#footnote-41)

1. Burden of Proof

In a due process proceeding, the burden of proof is on the party seeking to change the status quo.[[42]](#footnote-42)

With this legal authority in mind, I turn to the issues before me.

**DISCUSSION[[43]](#footnote-43):**

It is undisputed that Student is a student with a disability who is entitled to special education services under state and federal law. The fundamental issues in dispute are listed under ISSUES IN DISPUTE, *supra*.[[44]](#footnote-44) Upon consideration of the documentary evidence and testimony as well as the thoughtful arguments of Counsel and Parents, I make the following findings:

Parents argue that Father should be granted deference as an expert witness, asserting that his advocacy, rooted in personal experience, data, and educational research, is equivalent to expert testimony.[[45]](#footnote-45) They highlight his detailed tracking of Student’s writing progress, analysis of district data, and evidence-based strategy proposals. While Parents provide valuable insights based on their experience, personal data collection, and educational research, their contributions do not equate to expert testimony. Nor have Parents relied on their observations of Student in the school setting[[46]](#footnote-46) or on the recommendations of outside evaluators to support their position. Certainly, their perception of Student’s needs is credible and essential, but it is not informed by the formal education, training, and professional experience that define expert qualifications in special education and behavioral fields. Therefore, although I acknowledge and respect Parents’ dedication and efforts, their testimony does not outweigh the detailed analysis and specialized expertise offered by the District’s expert witnesses, specifically, Ms. Brideau, Mr. McSweeney, Ms. Kruger, and Ms. Cardaci.[[47]](#footnote-47)

I next address with specificity each issue before me in this matter:

* 1. **Parents Were Not Denied Meaningful Participation In The IEP Process.**

Parents allege that WRSD violated 34 C.F.R. § 300.305(a)(1)(i) by failing to incorporate required parental input in both Dr. Robbins’s evaluation and the 2023 re-evaluations. They contend that this omission rendered the evaluations invalid and denied Parents meaningful participation in the IEP process.

At the outset, I note that all standard Evaluation Consent Forms in Massachusetts offer parents the opportunity to include their input. Indeed, the form explicitly states, “We strongly encourage you to share your knowledge of your child with us. If you choose, please provide a written statement (use back of form) or call the indicated contact person”.[[48]](#footnote-48) The Evaluation Consent Forms executed by Parents for the three-year re-evaluation and Dr. Robbins’s program review offered Parents such an opportunity. While Parents signed both consent forms, they provided no input regarding their concerns. This omission is striking in light of their position at hearing.

Further, the Multi-Disciplinary Report was prepared by staff who, having worked with Student for several years, possess both intimate knowledge of Student through daily interactions and awareness of Parents' concerns, which were considered through quarterly Parent Clinics, frequent Team meetings at which Parents were in attendance, and email communications. In addition, the Team members who participated in the Multi-Disciplinary evaluation testified at hearing and were subjected to extensive questioning by Parents at the Team meeting? During the testing process, Parents did not specify which findings were inappropriate or inconsistent with their own position, and none of the findings or recommendations contained in the evacuations was challenged by any expert witnesses.

While Ms. Culberson did not testify at hearing, her findings regarding Student’s cognitive profile were corroborated by the 2020 re-evaluation and by the testimony of staff who work with Student on a daily basis. Dr. Robbins also testified and underwent extensive cross-examination.[[49]](#footnote-49) Furthermore, both Ms. Culberson and Dr. Robbins observed Student in her educational setting and consulted with Ms. Brideau as part of their assessments. Ms. Brideau, in particular, proved to be a highly credible and persuasive witness. Her testimony demonstrated a deep and nuanced understanding of the Student, which she had clearly developed through years of close observation and consistent professional interaction. Throughout her statements, she conveyed not only a detailed knowledge of the Student’s academic and behavioral patterns but also a strong familiarity with the Student’s strengths, challenges, and needs. Her long-term involvement and firsthand experience lent substantial weight to her insights, making her perspective both trustworthy and invaluable in assessing the Student’s educational situation. Dr. Robbins and Ms. Culberson also conducted thorough reviews of Student’s educational records as part of their respective evaluations. These records reflected Parents’ longstanding and consistent concerns, providing historical context and valuable insight to help inform and support the evaluators’ conclusions.[[50]](#footnote-50) As such, I find that the absence of direct parental input into the evaluation does not undermine the validity of the District’s evaluations.

Nevertheless, it is inarguable that Parents’ input is crucial to the IEP Team process. While Parents are correct in noting that an IEP Team is required to "review existing evaluation data on the child, including (i) evaluations and information provided by the parents of the child; (ii) current classroom-based, local, or State assessments, and classroom-based observations; and (iii) observations by teachers and related service providers,"[[51]](#footnote-51) the IDEA is silent as to the specific form that parental input must take during the evaluation process. The IDEA does not specify the exact form that parental input must take during the evaluation process. In this case, Parents did not demonstrate that Ms. Culberson failed to solicit their input; to the contrary, her contemporaneous evaluation report indicates that she did, in fact, seek input from Parents. While Ms. Cardaci and Ms. Kruger testified that they did not independently solicit parental input during the 2023 re-evaluation, both maintained that this omission had no impact on their findings or recommendations. Ms. Kruger further testified that, based on her regular participation in Team meetings and her ongoing communication with Parents, she was aware that their primary concern related to Student’s handwriting. Additionally, as indicated above, Parents did not identify which of their specific concerns, if any, were omitted or inadequately addressed in the 2023 re-evaluation, or **how their input would have impacted the findings or recommendations of the multidisciplinary team, Dr. Robbins, or Ms. Culberson.**

Parents also argue that Dr. Robbins did not conduct any of his own assessments and that his “evaluation was based entirely on district-provided materials, classroom observations, and staff interviews.” However, Dr. Robbins testified that the purpose of his assessment was to conduct a program review, and this is corroborated by the N1 submitted into evidence. Dr. Robbins was not asked to conduct any testing of Student nor to look at Student’s functioning in the home or in the community. As such, he did not feel that soliciting input from Parents was necessary. **Given the clearly defined scope of his assignment and the consistency between his testimony and the documentary evidence, I find Dr. Robbins’s explanation to be persuasive.**

Finally, if Parents disagreed with any portion of the 2023 re-evaluation, they had the right and opportunity to request an independent educational evaluation.[[52]](#footnote-52) Parents neither assert that they were not informed of such right[[53]](#footnote-53), nor that they were not provided the opportunity to make such requests.[[54]](#footnote-54)

Nor can I find that Parents were denied meaningful participation in the IEP process. Throughout the time period at issue, Parents had an opportunity to participate in Student’s educational planning and programming.[[55]](#footnote-55) They participated in all Team meetings, including those in which Ms. Culberson’s Report, Dr. Robbins’s Report, and the 2023 Multi-Disciplinary Report were reviewed and discussed, and they had ample occasion to ask clarifying questions and present their concerns. Although the IEP Team did not consistently align with the Parents’ perspectives,[[56]](#footnote-56) the Team did consistently consider their views before making decisions. [[57]](#footnote-57) There are multiple instances in the record that reflect the IEP Team’s meaningful consideration of Parents’ input, and Student’s IEPs were frequently revised to include Parents’ recommendations. For example, in January 2022, Parents asked that Student’s BIP be amended, and such request was honored. Father’s recommendation to offer Student print-based communication strategies was also incorporated into the IEPs at issue, as was Parents’ request that the IEP include language to reflect “collaboration between SLP and OT to improve writing and speaking skills.” Specifically, the 2022-2023 IEP (and all subsequent IEPs) included the following accommodations: “visual supports for writing tasks (three lined paper with starting dots, tracing lines for letters), present writing word(s) (and working up to sentences) on a piece of paper and pointing to words so she can repeat them when appropriate, continue to learn speech and OT together when appropriate, allow Student to watch teacher write if she is not able to write herself.” When Father proposed adding a typing[[58]](#footnote-58) objective, the Team incorporated the recommendation into the 2022-2023 IEP. The District’s decision not to include additional OT services or ESY OT services, include Parents’ vision statement verbatim in the IEP, and/or incorporate all parental recommendations, does not, in itself, indicate that Parents were denied meaningful participation in the process. The “IDEA does not require a district to comply with every parent request, but to seriously consider the parents' concerns, and when there is no agreement, provide the parent with the opportunity to challenge the IEP at a due process hearing.”[[59]](#footnote-59)

Therefore, I find that Parents have not met their burden to show that they were denied meaningful participation in the IEP process.

* 1. **The District Did Not Fail To Implement Any Accepted IEPs.**

Parents argue that the District failed to implement services that had been agreed upon despite verbal parental consent. They assert that the District "unnecessarily delay[ed] services for administrative reasons."

Parents are correct that accepted IEPs must be implemented[[60]](#footnote-60) and that administrative convenience is not relevant with respect to the provision of a FAPE to an eligible student.[[61]](#footnote-61) 34 CFR 300.323(c)(2) states that as soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP. Courts have found FAPE violations where (1) the "failure" to implement was "complete"; (2) the variance from the special education and related services specified in the IEP deprived the student of a FAPE; and (3) the provision of special education and related services failed to enable the student to make "progress" toward the achievement of the goals stated in the IEP.[[62]](#footnote-62)

Parents argue that Student did not have access to her AAC device in violation of her IEPs. Specifically, they assert that the device was “not programmed or integrated as noted in quarterly progress report”[[63]](#footnote-63) and that “no goals or staff training plans [were] included in [the] IEP[s] despite recommendation[s] in [the] AT evaluation.” [[64]](#footnote-64) Parents are correct that the 2023 Multi-Disciplinary Evaluation Report proposed consistent access to low-high-tech Augmentative and Alternative Communication (AAC). Ms. Brideau testified that Student had access to her device, which was updated as necessary. However, she also testified that over time, Student relied less on her AAC device and more on verbal communication. Nevertheless, the AAC device continued to be available to Student at school, and Student used it to demonstrate her skills. The Progress Reports corroborate this, documenting Student’s use of the device across all goals and objectives. Dr. Robbins also observed that Student had access to an AAC device, although she did not rely on it during his observation. As such, the record does not support Parents’ claim in this regard.

Parents did not provide any credible evidence that the District did not implement the 2020-2021 IEP which was accepted in full, the goals and objectives to which Mother consented via email in response to Ms. Brideau’s March 7, 2022, email, the goals of the 2023-2024 IEP which Parents accepted when they partially rejected the IEP on April 30, 2024, and/or the 2024-2025 IEP which Mother accepted in full on December 13, 2024.[[65]](#footnote-65)

Parents contend that the District unlawfully delayed implementation of the IEP while waiting for their signature thereon. I note at the outset that although Parents claim that they verbally consented to the implementation of goals and objectives, they refer to no specific Team meeting or date when such verbal consent was granted. Nor does any of the exhibits submitted into the record (including N1s) document such verbal permission, save for one email.

Moreover, even had Parents granted verbal permission, Parents’ argument would be without merit. IDEA requires consent to be in writing.[[66]](#footnote-66) In Massachusetts, “written consent” is required not only when a district seeks to evaluate, re-evaluate, or provide special education services to a student for the first time but also for “subsequent” placements in special education. [[67]](#footnote-67) Parental acceptance of an IEP is necessary prior to its implementation.[[68]](#footnote-68) State regulations allow parents the option of accepting the IEP in whole or in part.[[69]](#footnote-69) Both the old and new IEP forms require a parent’s signature.[[70]](#footnote-70) Here, Parents were repeatedly reminded that their signature was needed for IEP implementation.[[71]](#footnote-71) Therefore, I cannot find that the District’s delay in implementing the IEPs pending written acceptance thereof was, as Parents assert, a delay for administrative convenience.

In the alternative, Parents argue that in waiting for signed IEPs prior to implementation, the District acted as if Parents had revoked consent for special education, when, in fact, they never did. 34 CFR 300.300 (b)(4) addresses revocation of consent for continued special education and related services, stating that, upon such revocation, a school district may not continue to provide special education and related services to the child but must provide prior written notice before ceasing services. Once the district has properly discontinued the provision of special education and related services, the child becomes a general education student.[[72]](#footnote-72) Here, the record clearly demonstrates that the District did not treat Parents’ failure to sign the IEPs at issue as a revocation of consent for special education services. At all times, the District continued to implement Student’s stay-put IEPs, issued progress reports aligned with stay-put goals and objectives, delivered stay-put special education services, and convened Team meetings as required by the IDEA and state law. At no point did the District treat Student as a general education student.

At the hearing, Parents argued that Student suffered the loss of educational benefits due to the District’s delay in implementing the IEPs pending Parents’ signature and that the district had an obligation to file a due process hearing to ensure that Student was not denied a FAPE. Pursuant to 34 CFR § 300.507(a), a school district may, with limited exception, [[73]](#footnote-73) file a due process complaint on any of the matters relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child. Moreover, pursuant to 603 CMR 28.07(1)(b), if, subsequent to initial evaluation and initial placement and after following the procedures required by 603 CMR 28.00, the school district is unable to obtain parental consent to a re-evaluation or to placement in a special education program, or the parent revokes consent to such re-evaluation or placement, the school district shall consider with the parent whether such action will result in the denial of a free appropriate public education to the student. If, after consideration, the school district determines that the parent's failure or refusal to consent will result in a denial of a FAPE to the student, it shall seek resolution of the dispute through the procedures provided in 603 CMR 28.08.[[74]](#footnote-74) However, because Massachusetts law limits the availability of consent override to re-evaluation and placements, and neither federal nor state special education law confers authority on a hearing officer to provide "consent override for implementation of IEPs or provision of services,"[[75]](#footnote-75) Parents’ argument is without merit.

Therefore, I find that Parents did not meet their burden relative to their implementation claims.

* 1. **The IEPs Developed And Offered By The District For The 2021-2022[[76]](#footnote-76), 2022-2023, And 2023-2024 School Years Were Reasonably Calculated To Offer Student A FAPE In The LRE. The IEP Developed And Implemented By The District For the 2024-2025 School Year As Student’s Stay-Put IEP, If Modified Consistent With This Decision, Will Provide Student A FAPE.**

Rather than addressing the failures of each IEP at issue, Parents raise overarching claims as to why the 2021-2022, 2022-2023, 2023-2024, and 2024-2025 IEPs were not reasonably calculated to offer Student a FAPE in the LRE. Specifically, Parents argue that their “vision statement—outlining goals for meaningful communication, inclusion, and individualized support—was not properly incorporated into the IEP. This omission further deprived [Student] of an IEP tailored to her unique needs.” Parents are correct that the IDEA envisions “a collaborative process that involves the child's parents and educators.”[[77]](#footnote-77)Nevertheless, Parents cannot “unilaterally dictate the content of their child's IEP.”[[78]](#footnote-78)

Here, I do not find Parents’ argument that the Team dismissed their vision to be availing. Instead, I find that the District incorporated (and paraphrased) the relevant portions of Parents’ vision in developing an individualized program for Student. For example, Parents’ Vision Statement for Student sought “progress” and high expectations. Their “long-term vision and goal [for Student] [was] to no longer be in the special education program,” and their short term vision include[d] “[m]aintaining a healthy diet. Regularly communicating my needs and wants. Writing down thoughts. Achieving self-sufficiency in personal hygiene. … Reducing Aggression.” In November 2021, Parents indicated that they hoped Student could begin to access “more of the school,” “be more willing to transition,” “become more consistent in answering questions,” and “engage in more functional play.” In January 2022, Parents wanted to increase Student’s time “in inclusion.” In November 2022, they added that they wished for Student to begin reading sentences and paragraphs as well as work on increasing her speed to complete tasks. In November 2024, Parents reported that their vision for Student was to “become more independent” and to use “her voice to tell us how she feels.”

The Team’s vision throughout the years was not dissimilar. In 2021, the Team’s Vision included wanting Student to continue to increase her ability to understand language and apply it across all environments and to “continue to make progress with her independence at school as well as continue to maintain social engagement with peers and adults.” The Team also wanted Student “to continue to tolerate new locations, and unfamiliar people within those environments” and “to maintain low rates of behaviors.” Subsequently, the 2022-2023 IEP included a Team vision to see Student become more independent, reduce her need for one-on-one support and instructions, increase her functional, leisure, and self-care skills, decrease her episodes of noncompliance, and decrease her latency in responding to instructions. In 2024, the Team’s vision included that Student continue to make progress in her typing, independence, communication and social interaction skills. The Team also wanted Student to “continue to strengthen her pre-vocational skills and begin to learn of [her] interests and preferences when it comes to daily living and pre-vocational routines.” As such, the Team’s vision incorporated (though rephrased) Parents’ vision for Student.

Parents also assert that Student’s IEP goals were repetitive and not ambitious. Parents are correct that “with respect to a child who is not fully integrated in the regular classroom and not able to achieve on grade level …, [her] IEP need not aim for grade-level advancement.

But [her] educational program must be appropriately ambitious in light of [her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.”[[79]](#footnote-79) Here, however, Parents provided no evidence that the goals and objectives proposed by the District did not address Student’s areas of deficits, were not based on individualized assessments and current performance levels, or were not ambitious in light of her circumstances. District staff testified that Student has complex challenges. A variety of assessments confirm these challenges. Staff did not propose, as Parents suggest, generic goals. Rather, the evidence demonstrates that service providers relied on data reflecting Student’s current performance levels and detailed assessments in identifying Student’s areas of skill deficits and need.[[80]](#footnote-80) Goals were realistic, not unambitious.[[81]](#footnote-81)

Nor were the goals not measurable; although Father testified that he would have worded objectives differently and utilized different performance criteria, there was no evidence that the District’s versions were inappropriate.[[82]](#footnote-82) The goals were set and measured, and the IEP included a description of how progress was to be assessed.

In addition, Parents argue that the District failed to address Student’s bathroom, “sensory and nutritional needs, which interfered with the student’s ability to access learning.” Specifically,

“While the district made efforts to acknowledge [Student’s] food refusal, WRSD does not have an appropriate program equipped to address her complex sensory-based feeding needs. No structured feeding protocol, interdisciplinary plan, or consistent sensory supports were implemented to support nutrition and mealtime regulation, despite recommendations in the OT evaluation. This failure to implement targeted, evidence-based interventions contributed to [Student’s] ongoing access barriers, frustration, and regression, as documented by parent observations and communications over several school years.”[[83]](#footnote-83)

Citing to the IDEA, the Supreme Court in *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1,* 580 U.S. 386, 399 (2017) defined a FAPE to include both “special education” and “related services.” “[R]elated services are the support services required to assist a child ... to benefit from that instruction.”[[84]](#footnote-84) With respect to Parents’ request on May 24, 2023 for “a nutritionist and urologist,” I note that medical services that are "covered related services" are limited to "services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and other services."[[85]](#footnote-85) Thus, medical services are required under the IDEA to the extent that they are necessary for diagnostic purposes. The services of licensed physicians for other purposes, specifically for treatment, are not related services under the IDEA.[[86]](#footnote-86) As it is unclear what services Parents were looking for from a urologist, it is difficult to determine whether the services they sought were in fact related services. Nevertheless, the Team had agreed to reconvene once medical professionals evaluated Student and made recommendations regarding both dietary and toileting issues, but the record does not reflect that any information regarding such medical follow-up was provided by Parents to the District.

Nevertheless, it is undisputed that Student has sensory, toileting, and feeding skill deficits that impact her ability to access the curriculum, and such needs were identified in Student’s 2023 three-year re-evaluation. The record provides ample evidence that sensory, toileting, and feeding skill deficits were continuously addressed by the District and that Student made progress in all areas over the time period at issue. Student’s IEPs also included many accommodations to address her sensory needs, and Student’s BIP specifically addressed feeding, toileting, and self-regulation and behavior management skills. Moreover, Student made significant progress in her ability to eat at and to go to the bathroom at school. Other than their own perspective that Student’s progress should have been greater in these areas, Parents offered no evidence that the progress Student made was not commensurate with her abilities.[[87]](#footnote-87)

Similarly, despite a recent increase, which was analyzed and targeted by Mr. McSweeney and Ms. Brideau, Student’s rates of misbehaviors decreased overall. In their Closing Argument, Parents contend that they have greater expertise in behavior management than school staff as they “[c]an predict and de-escalate [Student’s] behaviors.” Nevertheless, the school and home environments are distinct and different, thereby lending themselves to different behavioral management strategies and interventions.[[88]](#footnote-88) Moreover, Parents are not behavior specialists[[89]](#footnote-89), and they did not present any evidence from any behavioral or educational expert who has observed Student to support their claim that Student’s behavior plan is inappropriate or that Student’s behavioral progress is not commensurate with her unique profile and circumstances.[[90]](#footnote-90)

Parents also argue that the District’s IEPs failed to provide Student with necessary OT services for writing and that the services that were offered lacked “structured writing instruction” which resulted “in regression, frustration, and loss of communication progress.” They contend that the District also “reduced” Student’s OT services “despite clear evidence of continued need.” Student’s fine motor and visual motor skills were assessed and found deficient (i.e., Student’s grasp patterns on her pencil varied; she struggled to complete mazes, color within the borders, and produce legible letters). Recommendations included targeting writing and typing. Student’s IEPs have consistently included a goal in the area of Fine Motor/Visual Motor to target handwriting (i.e., hand strength, in-hand manipulation, tracing letters, completing match/sort and paste activity, and completing maze and dot-to-dot worksheets). That Student continued to struggle in this area does not, in turn, mean that the skill deficit was not properly addressed.[[91]](#footnote-91) Nor did the District’s standardized testing evidence any regression in skills, and Parents offered no other evidence of “loss of previously mastered skills.” In fact, the District’s testing demonstrated progress.[[92]](#footnote-92) Although the 2023 Multi-Disciplinary Report recommended targeting handwriting, the handwriting objective was omitted in the 2023-2024 IEP. Nevertheless, Ms. Kruger persuasively testified that due to the Student’s visual-motor skill deficits, her handwriting had “plateaued,” and it was necessary and more functional to identify a different form of written expression for Student, i.e., typing.[[93]](#footnote-93)

In addition, Parents argue that Student’s OT services were insufficient and that the elimination of direct OT services in the 2024-2025 IEP was inappropriate. The District’s evaluations clearly demonstrate a continued need for fine motor and visual-motor supports. In their Closing Argument, Parents argued that if Student “was making progress — even slow progress on a tool designed for younger learners — then that progress justified continued or intensified services, not a step back [ i.e., consult services as opposed to direct instruction].” [[94]](#footnote-94) Although Parents did not provide any support for their contention that 1 x 30 minutes per month of consultation is insufficient to meet Student’s goals, I do not find that Ms. Kruger offered persuasive testimony to support the 1 X 30 minutes per month consultation recommendation. It further appears that the reduction in OT services from weekly consultation (1x15 minutes) and weekly direct services (2 x 30 minutes) in her 2023-2024 IEP to only 1 x30 minutes per month of consultation in the 2024-2025 IEP to be drastic. As such, I find it appropriate that an independent educational evaluation in the area of OT be conducted at public expense for the purpose of determining the mode, length and intensity of Student’s OT services and to assess the compensatory services to which Student is entitled, if any.[[95]](#footnote-95) I note, however, that any compensatory services award will be limited only to the period prior to Parents’ rejection of the IEP.[[96]](#footnote-96)

Parents further argue that “[d]espite multiple requests, WRSD failed to implement interdisciplinary therapy where OT and SLP providers worked together in the same session.” Specifically, in December 2022, Parents requested that Student “continue to learn speech and OT together … [w]ith methods such as writing sentences on a piece of paper and pointing to words so [Student could] repeat them. If she [was unable to] write for herself, she [could] watch as the teacher [wrote] it and then try to repeat it.” I note that the Additional Information portions of the IEPs at issue included the provision of these services in an integrated model “as appropriate.” Ms. Brideau testified that the decision on when to provide integrated services was left to the service providers, and she personally observed such integration occurring during Student’s day.[[97]](#footnote-97) Parents did not provide credible evidence—beyond their own belief—that services were not appropriately integrated, that more integration was needed, or that the IEP lacked relevant goals, even if no specific goals referenced such integrated work.[[98]](#footnote-98) As such, I cannot find that Parents met their burden on this claim. However, in their Closing Argument, Parents assert that with only 30 minutes per month of OT consultation, it is “IMPOSSIBLE to deliver meaningful integration.” As I have already found it appropriate to have an independent educational evaluation in the area of OT to determine the nature, length, and intensity of the compensatory services needed to make Student whole, this concern will be addressed by the independent assessment.

Parents are correct that Student’s re-evaluation confirmed the need for Student to have access to her AAC device at all times. This recommendation was affirmed by Ms. Cardaci’s and Ms. Brideau’s testimony. The 2024-2025 IEP indicates that Student requires an assistive technology device, but does not indicate that she needs the device at home or in other non-school settings to receive a FAPE. This omission must be corrected.

Nevertheless, here, I do not find that the omission of the home or other non-school setting language in the accommodation necessitates compensatory education. [[99]](#footnote-99) First, there is no evidence that Parents would have accepted the 2024-2025 IEP had it included the accommodation of providing the AAC device in the home.[[100]](#footnote-100) Moreover, the weight of the evidence at the due process hearing established that although the accommodation was omitted from the 2024-2025 IEP, the AAC device was at all times available to Student at school and would have been provided for Student in her home had Parents requested it, as it was only initially kept at school at Parents’ request, as they did not find the device useful in the home.

Last, Parents argue that Student was “completely removed from academic inclusion opportunities violating IDEA[’s] requirement to integrate students as much as possible.” Parents point to Student’s service delivery grid, which reflects inclusion during lunch and recess, but not during “core academic classes.” As articulated by the First Circuit,

cases have “weighed” [Congress’s] preference for mainstreaming in concert with the FAPE mandate. The two requirements operate in tandem to create a continuum of possible educational environments, each offering a different mix of benefits (and costs) for a student's academic, as well as social and emotional, progress.For schools, complying with the two mandates means evaluating potential placements' marginal benefits and costs and choosing a placement that strikes an appropriate balance between the restrictiveness of the placement and educational progress.[[101]](#footnote-101)

The IEPs at issue in this matter state that due to Student's significant developmental and functional deficits, and to make progress, she requires intensive, individualized instruction throughout the school day from staff trained in autism and applied behavior analysis. She also needs a distraction-free work area, frequent learning opportunities, and motivational items to learn and retain skills. While Parents accurately state that the 2021-2022 IEP B Grid omitted the 5 x 15 minutes/week with 1:1 ABA/PA of Academic Instruction Support proposed in the prior IEP, the 2024-2025 IEP increases such service by ten minutes daily. Parents offered no evidence that the amount of time Student spends in inclusion or that her attendance in specialized academic classes is not appropriate to meet Student's needs. Nor do they offer any evidence that the District failed to consider whether additional “supplementary aids and services” could have allowed Student additional time in general education.[[102]](#footnote-102) In contrast, Ms. Brideau testified convincingly that although Student has many strengths, her cognitive and academic abilities are such that she cannot benefit from academic inclusion. Similarly, Dr. Robbins testified that Student’s program is “highly” appropriate to meet her needs. There are no recommendations from any evaluator that Student’s inclusion time be more than what it has been or is currently proposed by the District. Because Parents have failed to demonstrate that “the benefits to be gained from mainstreaming [were] weighed against the educational improvements that could be attained in a more restrictive (that is, non-mainstream) environment” and were not found to be sufficient to warrant a more restrictive setting,[[103]](#footnote-103) Parents have failed to meet their burden on this claim.

I find that the 2021-2022, 2022-2023, and 2023-2024 IEPs were reasonably calculated to offer Student a FAPE in the LRE. Student’s 2024-2025 IEP as proposed and implemented requires modification as discussed above, and can be made appropriate with the addition of an amended accommodation for the AAC device and the implementation of an independent OT evaluator’s recommendation for OT service delivery.

**ORDER:**

After fully considering the record and the arguments of the parties, IT IS ORDERED:

1. Parents have not met their burden on their substantive FAPE claims relative to the 2021-2022, 2022-2023, and 2023-2024 school years.
2. The 2024-2025 IEP, as modified by this Decision, provides Student with a FAPE. The following modifications render it appropriate and are hereby ordered:
   * 1. The 2024-2025 IEP shall state that Student requires an assistive technology device at school, at home, and in other non-school settings to receive a FAPE; and

* + 1. The 2024-2025 IEP shall incorporate the recommendations of an independent OT evaluator, asfollows*:*

1. Within thirty (30) calendar days from the date of this Decision, the District shall arrange for and fund an independent evaluation in the area of occupational therapy 1) to determine the mode, frequency and duration of Student’s OT services, and 2) to assess compensatory services to which Student may be entitled, if any.
2. The District shall collaborate with Parents to select an independent evaluator. Parents shall make Student available for the evaluation.
3. If the parties are unable to reach an agreement regarding an evaluator within thirty (30) calendar days from the date of this Decision, the independent evaluator with the earliest availability shall be selected.
4. The evaluation shall take place prior to the first day of the 2025-2026 school year.
5. Compensatory services, if any, identified by the independent OT evaluator as owed to Student must be provided to her during the 2025-2026 school year.
6. Parents have not met their burden relative to their meaningful participation and implementation claims with respect to the 2021-2022, 2022-2023, 2023-2024 and 2024-2025 school years.

So Ordered by the Hearing Officer,

*/s/ Alina Kantor Nir*

Alina Kantor Nir, Hearing Officer

Dated: June 9, 2025

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 nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Elementary and Secondary Education or other office for appropriate enforcement action. 603 CMR 28.08(6)(b).

# Rights of Appeal

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

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

# Confidentiality

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

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

Record of the Hearing

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

1. Grandfather is not the biological grandfather of Student but is referred to as such in this Decision. [↑](#footnote-ref-1)
2. This is limited to the period beginning on December 5, 2021. [↑](#footnote-ref-2)
3. As relief, Parents seek 299 hours of compensatory education, independent educational evaluations (IEEs) in the areas of Student’s writing, communication, and sensory needs, an out-of-district placement at the New England Center for Children (NECC), and “a corrective action plan.” [↑](#footnote-ref-3)
4. I have carefully considered all the evidence and testimony presented in this matter. I make findings of fact, however, only as necessary to resolve the issue(s) presented. Consequently, all evidence and all aspects of each witness’ testimony, although considered, is not included if it was not necessary to resolve said issues. [↑](#footnote-ref-4)
5. Services proposed included: A Grid: Occupational Therapy Services (1 x 10 minutes/week), Parent Clinic (1 hour quarterly with Special Education Teacher), Supervisory Services (1 hour/month with Special Education Teacher), Behavioral Intervention/Instruction (1 hour/month with BCBA), Assistive Technology (1 x 30 minutes/week with SLP/SLPA), Speech and Language Services (1 x 10 minutes/week); B Grid: Academic Instruction Support (5 x 15 minutes/week with 1:1 ABA/PA) and Non-Academic Support (5 x 60 minutes/day during lunch/recess with ABA/PA in a small group); C Grid: ESY- ABA Instruction/Support/Program (4 x 60 minutes/week with ABA/PA in small group); ESY - ABA Instruction/Support/Program (4 x 5.75 hours/day with Special Education); ESY - ABA Instruction/Support/Program (4 x 5 hours/day with 1:1 ABA/PA); ESY- Speech and Language Therapy (2 x 30 minutes/week); Occupational Therapy Services (2 x 30 minutes/week); ABA Instruction/Support/Program (5 x 5.5 hours/day with 1:1 ABA/PA); ABA Instruction/Support/Program (5 x 4.75 hours/day with Special Education Teacher); and Speech and Language Therapy (3 x 30 minutes/week). (S-8) [↑](#footnote-ref-5)
6. At the meeting, the school-based Team also reported progress with Student’s ability to enter and sit in the bathroom. (S-6, S-7) Student has a Health Care Plan due to chronic constipation and a history of avoiding bathroom use at school, leading to occasional abdominal pain. The plan includes a toileting schedule managed by the school nurse. (S-11) [↑](#footnote-ref-6)
7. The Team had met for a rejection meeting on September 14, 2022. Part of the Team also met on October 28th and decided to wait for Student’s upcoming Annual Review (scheduled for November) to reconvene the full Team and draft an updated IEP. (S-9) [↑](#footnote-ref-7)
8. This is taken verbatim from Parents’ Vision Statement. [↑](#footnote-ref-8)
9. Father testified that he put a lot of work and thought into the vision statement. He was disappointed that the Team “photocopied it sideways and stapled it to the IEP.” (Father) [↑](#footnote-ref-9)
10. It is unclear from the record if Parents did in fact follow up in writing with this request. [↑](#footnote-ref-10)
11. At the Hearing, Ms. Brideau was questioned about Student’s schedule and how her related services are implemented. She testified that the schedule is developed by the Team at the beginning of the school year but can be adjusted as needs or services change. While Ms. Brideau is responsible for ensuring the implementation of Student’s related services, she does not attend every service delivery session. The SLP and OT determine when it is appropriate for them to collaborate. However, she observes their collaboration throughout the day across various skills on which Student is working. (Brideau) [↑](#footnote-ref-11)
12. Notably, during her 2020 speech and language evaluation, Student was only able to complete the PPVT-5, on which she scored in the well below expected range, consistent with her performance in 2023. (Cardaci, E-05) [↑](#footnote-ref-12)
13. According to Father, this assessment was not an age-appropriate measure of Student’s progress. (Father) [↑](#footnote-ref-13)
14. Student’s 2022-2023 progress reports reiterated that the District was working on old goals and objectives, as Parents had not returned a signed IEP. (S-9, S-17) [↑](#footnote-ref-14)
15. No such request was submitted into the record. [↑](#footnote-ref-15)
16. According to Ms. Brideau, the middle school program does not include community outings, focusing instead solely on working on pre-requisite skills. (Brideau) [↑](#footnote-ref-16)
17. During Dr. Robbins’s observation, Student refused to enter the cafeteria. Ms. Brideau explained this was due to a recent loud birthday party that had unsettled her. (Robbins, Brideau) [↑](#footnote-ref-17)
18. 19 Student’s November 2024 Progress Report also reflects Student’s progress on IEP goals and objectives. (P-01, S-18) [↑](#footnote-ref-18)
19. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 (d)(1)(A). [↑](#footnote-ref-19)
20. See 20 USC §1401 (9), (26), (29); 603 CMR § 28.05(4)(b); C.D. by and through M.D. v. Natick Public School District, 924 F.3d 621, 629 (1st Cir. 2019);Sebastian M. v. King Philip Reg'l Sch. Dist., 685 F.3d 84, 84 (1st Cir. 2012); *Lessard v. Wilton Lyndeborough Cooperative Sch. Dist.,* 518 F. 3d 18 (1st Cir. 2008); *C.G. ex rel. A.S. v. Five Town Comty. Sch. Dist.,* 513 F. 3d 279 (1st Cir. 2008); *In Re: Chicopee Public Schools,* BSEA #1307346 (Byrne, 2013). [↑](#footnote-ref-20)
21. Lessard, 518 F.3d at 29. [↑](#footnote-ref-21)
22. *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1,* 580 U.S. 386, 402 (2017). [↑](#footnote-ref-22)
23. 34 CFR §300.324(a)(i-v); *Endrew F.,* 580 U.S. at 391 (“These procedures emphasize collaboration among parents and educators and require careful consideration of the child's individual circumstances”); *D.B. ex rel. Elizabeth B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) (“An IEP must be ‘individually designed’ to suit a particular child”); *N. Reading Sch. Comm. v. Bureau of Special Educ. Appeals of Mass. Dep't of Educ.*, 480 F. Supp. 2d 479, 489 (D. Mass. 2007) (“The First Circuit has characterized the federal floor, which defines the minimum that must be offered to all handicapped children, as providing a meaningful, beneficial educational opportunity, and that court has stated that a handicapped child's educational program must be reasonably calculated to provide effective results and demonstrable improvement in the various educational and personal skills identified as special needs” (internal citations and quotations omitted)). [↑](#footnote-ref-23)
24. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990). [↑](#footnote-ref-24)
25. *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197, n.21 (1982) (“Whatever Congress meant by an “appropriate” education, it is clear that it did not mean a potential-maximizing education”); see *N. Reading Sch. Comm.*, 480 F. Supp. 2d at 488 (“The focus of inquiry under 20 U.S.C. § 1415(e)(i) must recognize the IDEA's modest goal of an appropriate, rather than an ideal, education”). [↑](#footnote-ref-25)
26. *Endrew F.*, 580 U.S. at 400-401; see also 603 CMR 28.02(17). [↑](#footnote-ref-26)
27. *Endrew F.,* 580 U.S. at 388 (“The nature of the IEP process, from the initial consultation through state administrative proceedings, ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child's IEP should pursue”); see *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 809 (8th Cir. 2011) (explaining that the court would not compare the student to her nondisabled peers since the key question was whether the student made gains in her areas of need). [↑](#footnote-ref-27)
28. *G.D. Westmoreland Sch. Dist.*, 930 F.2d 942, 948-949 (1st Cir. 1991). [↑](#footnote-ref-28)
29. 20 U.S.C § 1412(a)(5)(A); 34 CFR 300.114(a)(2)(i); M.G.L. c. 71 B, §§ 2, 3; 603 CMR 28.06(2)(c). [↑](#footnote-ref-29)
30. 20 U.S.C. 1412(a)(5)(A); *C.D. v. Natick Pub. Sch. Dist.*, 924 F. 3d at 631 (internal citations omitted). [↑](#footnote-ref-30)
31. C.G., 513 F.3d at 285. [↑](#footnote-ref-31)
32. 20 U.S.C. § § 1401(29)(A). [↑](#footnote-ref-32)
33. 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); see *Roland M.*, 910 F.2d at 994. [↑](#footnote-ref-33)
34. See *Honig v. Doe*, 484 U.S. 305, 312 (1998) (“Congress repeatedly emphasized throughout the [IDEA] the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness); see *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-206 (1982) (“Congress placed every bit as much emphasis on compliance with procedures giving parents and guardians a large measure of participation in every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard”). [↑](#footnote-ref-34)
35. *Rowley*, 458 U.S. at 208(“Congress sought to protect individual children by providing for parental involvement … in the formulation of the child's individual educational program”).  [↑](#footnote-ref-35)
36. *In Re: Natick Public Schools*, BSEA # 113131 (Crane, 2011). [↑](#footnote-ref-36)
37. See Colón-Vazquez v. Dep't of Educ., 46 F. Supp. 3d 132, 144 (D. P.R. 2014). [↑](#footnote-ref-37)
38. See id., 46 F. Supp. 3d at 143-44. [↑](#footnote-ref-38)
39. Id., 46 F. Supp. 3d at 143. [↑](#footnote-ref-39)
40. Id. at 143-44 (citing and quoting Van Duyn v. Baker Sch. Dist., 502 F.3d 811, 822 (9th Cir. 2007) and Garmany v. District of Columbia, 935 F. Supp. 2d 177, 181 (D. D.C. 2013); see Van Duyn, 502 F.3d at 815 ("We hold that when a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP"). [↑](#footnote-ref-40)
41. See *Ross v. Framingham Sch. Comm*., 44 F. Supp. 2d 104, 119 (D. Mass. 1999), *aff'd*, 229 F.3d 1133 (1st Cir. 2000). [↑](#footnote-ref-41)
42. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). [↑](#footnote-ref-42)
43. In making my determinations, I rely on the facts I have found as set forth in the FINDINGS OF FACTS, above, and incorporate them by reference to avoid restating them except where necessary. [↑](#footnote-ref-43)
44. Although Parents also raise a statute of limitations claim, should be extended beyond two years (LG-02, “Final Points and References”), their request to extend the statute beyond two years was already denied in *In Re: Wachusett Regional School District (Ruling Clarifying Issues For Hearing)*, BSEA # 2405325 (Kantor Nir, January 29, 2025) and is not addressed here. [↑](#footnote-ref-44)
45. Parents cited *Lessard v. Wilton Lyndeborough Cooperative School District* 518 F.3d 18 (1st Cir. 2008) to argue that their insights, particularly Father’s, should be given significant weight, emphasizing that the First Circuit recognizes the unique and valuable perspective parents bring to educational planning. They noted that BSEA decisions have similarly given weight to parent observations. However, I disagree with Parents’ interpretation of *Lessard*. *Lessard* does not support elevating parent input to the level of expert testimony. Instead, it underscores that while parental advocacy is commendable, it must be balanced with the rights and responsibilities of school districts. *Lessard* cautions against parents demanding more than what the IDEA requires, as doing so may disrupt the collaborative special education process and place undue burden on districts. See *id*. at 29. [↑](#footnote-ref-45)
46. Parents cite to *In Re: Natick Public Schools and Jolene*, BSEA #1400521 (Byrne, 2014) to support their position that Father should be granted “expert” status. However, although in *Jolene* the Hearing Officer gave significant weight to the parent’s testimony, that case is distinguishable from the present matter. In *Jolene*, the parent had observed the student’s program prior to the hearing and advocated for services aligned with expert recommendations. In contrast, here, Parents did not observe Student’s program until after the hearing began and did not present expert testimony to support any of their claims. Nor did their testimony raise any concerns relative to the observation conducted. [↑](#footnote-ref-46)
47. This does not mean that parents are precluded from challenging the expertise of school staff.The IDEA specifically gives students and parents the right to be advised by experts and to have those experts testify at their due process hearing. See 20 U.S.C. § 1415(h)(1)-(2); see also Murphy v. Arlington Cent. School Dist. Bd. of Ed. 402 F.3d 332, 338 (2d Cir.2005) (“[e]xpert testimony is often critical in IDEA cases, which are fact-intensive inquiries about the child's disability and the effectiveness of the measures that school boards have offered to secure a free appropriate public education. The IDEA's procedural safeguards ensure that children and parents can realize whatever benefits are due”). [↑](#footnote-ref-47)
48. See <https://www.doe.mass.edu/sped/ImproveIEP/evaluation-consent/> [↑](#footnote-ref-48)
49. Parents point to three BSEA Decisions, arguing that “Dr. Robbins' consistent alignment with the retaining party raises concerns,” and that “[t]his pattern warrants close scrutiny and reduced weight for his evaluation in the current matter.” Given that Dr. Robbins has been retained by both parents and school districts in various matters, he cannot reasonably be characterized as partial to either side in special education litigation. [↑](#footnote-ref-49)
50. In their Closing Argument, Parents argue that as Parents’ input was also not solicited for the 2020 re-evaluation, neither school staff nor Dr. Robbins, in conducting their 2023 testing, had any information regarding Parents’ concerns. This argument is unpersuasive. Parents presume that no educational records other than prior evaluations were reviewed by the 2023 evaluators. Notably, the District’s Prior Written Notices and IEPs which are part of Student’s educational record include Parents’ concerns. [↑](#footnote-ref-50)
51. 20 U.S.C. § 1414(c)(1)(A); 34 C.F.R. § 300.305(a)(1)(i)-(iii) [↑](#footnote-ref-51)
52. See 34 C.F.R. § 300.502(b)(1); see also 603 CMR 28.05(4) (“Upon receipt of evaluation results, if a parent disagrees with an initial evaluation or reevaluation completed by the school district, then the parent may request an independent education evaluation”). [↑](#footnote-ref-52)
53. In their Closing Argument, Parents indicated that “1. Parents requested [an] Independent Educational Evaluation for proper assessment; 2. [The] District filed [a] due process [hearing request] to defend their inadequate evaluation; 3. District withdrew when parents filed counter-hearing (avoiding scrutiny); 4. Agreement made for what parents understood to be true IEE with parental input; 5. District arranged program/case evaluation instead (not independent, no parental input); 6. District used this flawed evaluation to inform IEP development and defend current placement; 7. Result: IEPs based on fundamentally misrepresented evaluation process that excluded required parental input.” While Parents may have misunderstood the purpose of Dr. Robbins’s evaluation, Parents signed the Evaluation Consent Form for an “Educational Evaluation of ABA Program.” [↑](#footnote-ref-53)
54. To the contrary, the record shows that Parents were aware of their right to seek independent evaluations at public expense. Such right is also explained in *Parent’s Notice of Procedural Safeguards* (updated 11/2023) which may be found at https://www.doe.mass.edu › sped › prb › pnps and which, according to the record, was provided to Parents. Moreover, at the December 20, 2022, Team meeting, Parents indicated their intention to request an OT “outside evaluation.” Similarly, at the November 29, 2023 Team meeting, they verbally requested independent evaluations, indicating that they would follow up in writing, however it does not appear that they did so [↑](#footnote-ref-54)
55. 20 U.S.C. § 1415(b)(1). [↑](#footnote-ref-55)
56. See *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 657 (8th Cir. 1999) (“the IDEA does not require school districts simply to accede to parents' demands without considering any suitable alternatives”). [↑](#footnote-ref-56)
57. See T*.B. v. Warwick Sch. Dep't,* No. CIV.A. 01-122T, 2003 WL 22069432, at \*10 (D.R.I. June 6, 2003), *aff'd sub nom. Lt. T.B. ex rel. N.B. v. Warwick Sch. Comm.,* 361 F.3d 80 (1st Cir. 2004) (the purpose of Section 1415(b)(1) requiring a school district to afford “an opportunity for the parents of the child with a disability to ... participate in meetings with respect to the identification, evaluation, and placement of the child” is “to prevent school officials from making decisions without considering the parents' views”). [↑](#footnote-ref-57)
58. In their Closing Argument, Parents argue that the District “cannot credibly claim both that the parent suggested typing and that it was already in the IEP. These positions are mutually exclusive. This contradiction supports a broader pattern: the District misattributes parental input while evading accountability for the educational consequences that followed.” Ms. Brideau testified that she and Ms. Kruger had also intended to propose a typing objective. I take Ms. Brideau’s testimony to mean that the typing objective was in the draft IEP. [↑](#footnote-ref-58)
59. *K.S. ex rel. P.S. v. Fremont Unified Sch. Dist.,* 545 F. Supp. 2d 995, 1008 (N.D. Cal. 2008); see *K.B. ex rel. v. Racine Unified Sch. Dist.,* No. 19-CV-28-JPS, 2019 WL 6219485, at \*3 (E.D. Wis. Nov. 21, 2019) (“To the extent McFarland complains that the District did not indulge every one of her requests in the IEP development process, the IDEA does not require such deference to parents”). [↑](#footnote-ref-59)
60. See 34 CFR 300.323(c); see also 603 CMR 28.05(7)(b). [↑](#footnote-ref-60)
61. See *In Re: Medford Public Schools*, BSEA # 99-3777 (Byrne, 2000) (standing for the proposition that District decisions “cannot be based solely on administrative convenience rather than on a thoughtful appraisal of the Student's unique needs and strengths as is required under both State and Federal law”); *In Re: Lanesborough Public Schools And Mt. Greylock Regional School District*, BSEA # 99-3846 (schools’ decisions must be made for “educational reasons,” not administrative convenience) (Byrne, 1999); see also *Letter to Trigg*, 50 IDELR 48 (OSEP 2007) (decisions cannot be based solely on factors such as the availability of services or administrative convenience). [↑](#footnote-ref-61)
62. See Ross v. Framingham Sch. Comm., 44 F. Supp. 2d 104, 119 (D. Mass. 1999), *aff'd*, 229 F.3d 1133 (1st Cir. 2000) and Doe ex rel. Doe v. Hampden-Wilbraham Reg'l Sch. Dist., 715 F. Supp. 2d 185, 198 (D. Mass. 2010). [↑](#footnote-ref-62)
63. Parents cite Exhibit P-01 in support of this claim; however, it is unclear how this exhibit substantiates their position. [↑](#footnote-ref-63)
64. It is unclear to which AT, or Assistive Technology, evaluation Parents refer. As there is no AT evaluation in the record, I cannot assess Parents’ claim relative to its recommendations. [↑](#footnote-ref-64)
65. The 2024-2025 IEP is Student’s stay-put IEP as it is the last accepted and last implemented IEP.See 20 U.S.C. §1415(j); 34 CFR §300.514; see also *In re: Student v. North Middlesex Regional School District and Dr. Franklin Perkins School*, BSEA # 2400589 (Kantor Nir, 2023) (“At its most basic interpretation, stay-put is the last educational placement a student attended prior to a placement dispute, the placement delineated in ‘last implemented IEP’, regardless of whether the placement is no longer appropriate”). Father argued that only Mother accepted the IEP, and the District was aware of Father’s intense involvement in Student’s IEP. Nevertheless, a school district may rely on one parent’s consent. See *Sheils v. Pennsbury Sch. Dist.,* No. CIV.A. 14-2736, 2015 WL 337234, at \*6 (E.D. Pa. Jan. 26, 2015) (concluding “that one parent's consent to changes in the student's placement suffices to form a valid agreement”); see also *In Re: Concord And Natick Public Schools (Corrected Ruling On Mother's Request For "Stay Put" Order)*, BSEA # 1800182 (Berman, 2017) (“There is no question that as a general rule, the most recently-accepted IEP, whether it is signed by one or both parents, must be implemented by a school district”). [↑](#footnote-ref-65)
66. See 34 CFR 300.9(b); see also 603 CMR 28.07(a) (“school district shall obtain *written parental consent* before conducting an initial evaluation or making an initial placement of a student in a special education program under 603 CMR 28.00. Written parental consent shall be obtained before conducting a reevaluation and before placing a student in a special education placement subsequent to the initial placement in special education”) (emphasis added). [↑](#footnote-ref-66)
67. See 603 CMR 28.07(a). [↑](#footnote-ref-67)
68. See 603 CMR 28.05(7)(a) and (b); see also *In Re: Boston Public Schools (Amended Ruling On Boston Public Schools' Motion To Dismiss)*, BSEA # 11-4676 (Crane, 2011) (observing that “[t]he term 'accept' is utilized on Massachusetts IEP forms, is generally used in BSEA decisions in reference to a parent's response to an IEP, and is used by the Massachusetts special education regulations with respect to a parent's response to an IEP…. However, in a number of places, the Massachusetts regulations use the term ‘consent’ interchangeably with the term ‘accept’ with respect to a parent's response to an IEP”). [↑](#footnote-ref-68)
69. See 603 CMR 28.05(7)(a)(1). In contrast, the IDEA requires parents to consent to a student’s entire IEP. See 73 Fed. Reg. 73,011 (2008) (parents may not cherry pick among portions of the student's educational program and consent to only certain provisions). Parents contend that their rights (i.e., partial rejections, stay-put) were not properly explained to them by the District. Regarding Parents’ right to reject portions of the IEP, the record indisputably shows that District staff consistently informed Parents during meetings, through email communications, and progress reports, that Parents’ full rejection of the IEPs hindered the District’s ability to proceed with new goals and objectives for Student. Parents’ right to reject portions of the IEP is further clarified in the *Parent’s Notice of Procedural Safeguards* and on the signature page of the IEP itself. See *Parent’s Notice of Procedural Safeguards* (updated 11/2023) which may be found at https://www.doe.mass.edu › sped › prb › pnps (“You can accept or reject the whole proposal or part of it. The IEP or any part that you accept must begin as soon as you accept it”). Parents’ stay put rights were similarly explained in the *Parent’s Notice of Procedural Safeguards*. Although Parents testified that they were uncertain whether they received the *Parent’s Notice of Procedural Safeguards*, the record shows that said Notices were provided to Parents with Student’s IEP proposals. See *Shawsheen Valley Reg'l Vocational Tech. Sch. Dist. Sch. Comm. v. Commonwealth of Massachusetts Bureau of Special Educ. Appeals*, 367 F. Supp. 2d 44, 52 (D. Mass. 2005) (“Although the Parents Rights Brochure does not detail all of the nuances of state and federal special education law, it is sufficient to put Parents on notice of their rights. It states, among other things, that recipients have the right 1) to accept or reject a proposed IEP in whole or in part, 2) to request a due process mediation conducted by the BSEA whenever there is a dispute over a proposed placement or IEP and 3) to have the child remain in his then-current educational placement during the time a hearing request is pending”). [↑](#footnote-ref-69)
70. See new IEP form at <https://www.doe.mass.edu/sped/ImproveIEP/iep-form/> (stating, “It is important to tell the district your decision as soon as possible. Please indicate your response by checking the appropriate box below and returning a signed copy to the district”). Although the IDEA does not require a district to obtain a parent's signature on an IEP (71 Fed. Reg. 46,682 (2006) ("There is nothing in the Act that requires IEP members to sign the IEP, and we believe it would be overly burdensome to impose such a requirement")), the IDEA’s *Notice of Interpretation*, Appendix C to 34 CFR Part 300, Question 29 (1999) instructs that districts may want to obtain a parent's signature, in part, to indicate the parents' approval of the programming contained, or not contained, in the document. [↑](#footnote-ref-70)
71. *Sytsema ex rel. Sytsema v. Acad. Sch. Dist. No. 20,* 538 F.3d 1306, 1315–16 (10th Cir. 2008) (the requirement for a signed IEP serves the same fundamental purpose as the requirement for a written IEP offer, namely, to “create[] a clear record that will do much to eliminate troublesome factual disputes many years later”). [↑](#footnote-ref-71)
72. See 73 Fed. Reg. 73,011 (2008) and 73 Fed. Reg. 73,013 (2008); see also 603 CMR 28.07(1)(a)(4). [↑](#footnote-ref-72)
73. See 603 CMR 28.08(3)(c) (“A school district may not request a hearing on a parent's failure or refusal to consent to initial evaluation or initial placement of a student in a special education program, or on a parent's decision to revoke consent to the continued provision of all special education and related services to his or her child under 603 CMR 28.07(1)(a)(4)”). [↑](#footnote-ref-73)
74. The regulation further states that “[p]articipation by the parent in such consideration shall be voluntary and the failure or refusal of the parent to participate shall not preclude the school district from taking appropriate action pursuant to 603 CMR 28.08 to resolve the dispute. This provision shall not apply if the parent has revoked consent to all special education and related services as provided in 603 CMR 28.07(1)(a)(4).” 603 CMR 28.07(1)(b). [↑](#footnote-ref-74)
75. *In Re: Pembroke Public Schools*, BSEA # 1911125 (Reichbach, 2019) ("Given that the District's basis for seeking consent override falls outside the circumstances for which substitute consent is applicable, consistent with 34 C.F.R. 300.300, and 603 CMR 28.07(1)(b), Pembroke cannot plausibly raise a right to the relief it seeks in this regard from the BSEA" since "the BSEA does not have the authority to provide substitute consent for implementation of an IEP"). [↑](#footnote-ref-75)
76. This is limited to the period beginning on December 5, 2021. [↑](#footnote-ref-76)
77. *D.B. ex rel. Elizabeth B. v. Esposito*, 675 F.3d 26, 35 (1st Cir. 2012) [↑](#footnote-ref-77)
78. *Lessard,* 518 F.3d at 30. [↑](#footnote-ref-78)
79. *Endrew F.*, 580 U.S. at 402 [↑](#footnote-ref-79)
80. See 34 CFR 300.320 (a)(2) (“A statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; meet each of the child's other educational needs that result from the child's disability”). [↑](#footnote-ref-80)
81. See *Killoran v. Westhampton Beach UFSD*, No. 21-2647, 2023 WL 4503151, at \*3 (2d Cir. July 13, 2023) (where A.K. was “an alternately assessed student who has significant learning disabilities,” the court found that A.K.’s IEP was appropriately ambitious because “the IDEA requires the district to develop an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances, but does not demand adherence with specific educational standards or curricula”) (internal quotations and citations omitted). [↑](#footnote-ref-81)
82. See *Capistrano Unified Sch. Dist. v. S.W*., 21 F.4th 1125, 1134 (9th Cir. 2021) (“there is no specific form of measurement required by statute or caselaw”). [↑](#footnote-ref-82)
83. Specifically, on December 20, 2022, Parents stated that Student was “not getting sufficient help with her nutritional diet.” On May 24, 2023, Parents again requested that the IEP address Student’s nutrition and “urological” needs. I note the inconsistency between Mother’s testimony that she did not want the District to prioritize nonacademic areas such as toileting and the documentary evidence suggesting otherwise. [↑](#footnote-ref-83)
84. *Endrew F.,* 580 U.S. at 399 (internal citations and quotations omitted). [↑](#footnote-ref-84)
85. 34 CFR 300.34(c)(5). [↑](#footnote-ref-85)
86. See *Cedar Rapids Cmty. Sch. Dist. v. Garret F. ex rel. Charlene F.,* 526 U.S. 66, 79, 119 S. Ct. 992, 1000, 143 L. Ed. 2d 154 (1999) (“This case is about whether meaningful access to the public schools will be assured, not the level of education that a school must finance once access is attained.” [↑](#footnote-ref-86)
87. See Polk v. Cent. Susquehanna Intermed. Unit 16, 853 F.2d 171, 185 (3d Cir.1988) (“After all, levels of progress must be judged with respect to the potential of the particular child”); *Lessard,* 518 F.3d at 29 (“So here: while the reported progress is modest by most standards, it is reasonable in the context of Stephanie's manifold disabilities and low IQ”). I note the inconsistency between the documentary record, which indicates that Parents requested toileting intervention, and Mother’s testimony that she did not believe it was necessary for the District to address Student’s refusal to use the bathroom, asserting that the time would have been better spent on academic instruction. [↑](#footnote-ref-87)
88. For instance, Father testified that he raises his voice when Student misbehaves, and “she stops.” However, it would not necessarily be appropriate for a teacher or paraprofessional to raise her voice at Student as a behavior management strategy. [↑](#footnote-ref-88)
89. See, e.g., *Belchertown Public Schools*, BSEA # 2112052 (Putney-Yaceshyn, 2022) (“The only testimony that Student had not been making effective progress in Belchertown was Father's. And, while Parents indisputably know Student better than anyone else, their expertise is as Student's parents and not as educators. Father does not have an educational or clinical background”); *In Re: Sutton Public Schools and Neville*, BSEA # 07-7534 (On Remand to the BSEA) (Crane, 2012) (“There is no doubt that Mother has been dedicated to Student's well-being; she is a devoted parent who likely knows her son better than anyone else; and she has likely spent countless hours talking to Student's service providers for the purpose of arranging their services. Mother is more than capable of providing important and relevant information regarding what she has observed as a layperson. Yet, it is not disputed that neither by training nor experience is Mother an educational expert with respect to how her son's educational needs may be appropriately met or with respect to whether a particular service or program utilized by Parents was educationally appropriate for their son”); *In Re: Public School District and Carlia*, BSEA # 08-7930 (Crane, 2009) (“Although Parent's views are extremely important for purposes of IEP Team consideration and decision-making, Parent is not an expert and her views cannot substitute for an expert opinion”). [↑](#footnote-ref-89)
90. See *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 29 (1st Cir. 2008) (“levels of progress must be judged with respect to the potential of the particular child”). [↑](#footnote-ref-90)
91. See *H.W. by & through Jennie W v. Comal Indep. Sch. Dist.,* 32 F.4th 454, 468 (5th Cir. 2022) (“Relying on Rowley, we concluded that the educational benefit inquiry cannot be defined exclusively or even primarily in terms of correcting the child's disability. Rather, the inquiry should properly focus on a holistic, overall academic record perspective instead of a narrow, disability remediation perspective”) (internal quotations and citations omitted). [↑](#footnote-ref-91)
92. The results of Student’s ABLLS-R showed 8 new skills gained from 2020 to 2023. Parents argued that this “was presented by the District as evidence of meaningful progress. Yet instead of building on that progress with increased support or updated goals, [Ms. Kruger] recommended reducing OT services — from direct instruction to consultation only.” However, Parents offered no evidence this progress was insufficient or not commensurate with Student’s abilities. [↑](#footnote-ref-92)
93. I place little weight on Ms. Rice’s testimony in this regard. Not only is she not a special educator, she has limited expertise and experience working with students with profiles similar to Student’s, and she has not observed Student in her school setting nor spoken to her school-based providers. I also note that I did not find Father’s use of popsicle sticks to assist Student in “staying within the lines” while writing to be persuasive evidence that the District failed to implement appropriate handwriting strategies. While I commend Parents for their creative efforts to support Student’s handwriting development, this technique—like the use of Wikki Stix—is just one of many tools intended for temporary use. As Ms. Kruger testified, such strategies are not intended to be long-term or functionally sustainable supports. [↑](#footnote-ref-93)
94. In their Closing Argument, Parents contend that “[d]espite testimony that tactile scaffolds like Wikki Stix had been used at some point, [it was not] identified [] as a documented strategy in [Student’s] IEP, nor was it tied to any written goal, accommodation, or data collection. However, the IDEA requires an IEP to include “a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs” (20 U.S.C. § 1401(19) (D)), and "there is nothing in the [IDEA] that requires an IEP to include specific instructional methodologies" (71 Fed. Reg. 46,665 (2006)), strategies or lesson plans. [↑](#footnote-ref-94)
95. See 603 CMR 28.08(5)(c) (stating that the Special Education Appeals hearing officer shall have the power and the duty “to order additional evaluations by the school district or independent education evaluations at public expense when necessary in order to determine the appropriate special education for the student”). [↑](#footnote-ref-95)
96. See *Doe v. E. Lyme Bd. of Educ.,* 790 F.3d 440, 457 (2d Cir. 2015) (“[T]he ultimate award [of compensatory education] must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place”). [↑](#footnote-ref-96)
97. In their Closing Argument, Parents argue that in 2021-2022, they recommended “speech-OT integration,” and at that time, the District responded, "We don't think she needs that." There is nothing in the record to indicate that this was the District’s response at that time, especially as all IEPs following December 2022 included this integration both in the accommodations and additional information sections. [↑](#footnote-ref-97)
98. See *Newport-Mesa Unified Sch. Dist. v. D.A.*, No. 820CV01857SPGJEM, 2023 WL 2977500, at \*9 (C.D. Cal. Apr. 3, 2023), *aff'd,* No. 23-55351, 2024 WL 1367170 (9th Cir. Apr. 1, 2024) (“an IEP is not required to contain every goal from which a student might benefit”) (internal citations and quotations omitted). [↑](#footnote-ref-98)
99. See *C.G. v. Five Town Cmty. Sch. Dist*., 513 F.3d 279, 290 (1st Cir. 2008) (compensatory education is an equitable remedy fashioned to fit an individual student's needs); *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 720 (3d Cir. 2010) (“In each case, a court will evaluate the specific type of relief that is appropriate to ensure that a student is fully compensated for a school district's past violations of his or her rights under the IDEA and develop an appropriate equitable award”); *Reid v. District of Columbia*, 401 F.3d 526, 525 (D.C. Civ. 2005) (compensatory services aim to make the student whole). [↑](#footnote-ref-99)
100. Cf. *MM ex rel. DM v. Sch. Dist. of Greenville Cnty.,* 303 F.3d 523, 535 (4th Cir. 2002) (find no loss of educational opportunity because “there [was] no evidence that MM's parents would have accepted any FAPE offered by the District that did not include reimbursement for the Lovaas program”). [↑](#footnote-ref-100)
101. *C.D. by & through M.D. v. Natick Pub. Sch. Dist.,* 924 F.3d 621, 631 (1st Cir. 2019). [↑](#footnote-ref-101)
102. See 20 U.S.C. § 1412(a)(5)(A). [↑](#footnote-ref-102)
103. See *Falmouth Sch. Dep't v. Doe on behalf of Doe*, 44 F.4th 23, 40 (1st Cir. 2022). It is also worth noting the inconsistency in Parents’ position: while they advocate for increased inclusion opportunities for Student, they simultaneously seek placement in a private day program such as NECC, which is significantly more restrictive than Student’s current educational setting. Moreover, no evaluator has recommended a more restrictive setting for Student. [↑](#footnote-ref-103)