**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re**: Ashburnham-Westminster Regional School District v. **BSEA#** 2407487

 Student

**DECISION**

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

On January 29, 2024, Ashburnham-Westminster Regional School District (AWRSD or District), filed a Request for Hearing in the above-referenced matter. Parents/ Student did not file a Response to the Hearing Request. On February 15, 2024, the District requested, and on February 16, 2024 was granted, for good cause, a postponement of the Hearing until May 22, 2024. The District also requested a Pre-hearing conference prior to the Hearing. In late February the District sought to postpone the Hearing dates once again, but via email received on February 27, 2024, Parents/ Student vehemently objected to this. That same day, the Parties were notified via email that the Hearing would proceed on May 22, 2024, consistent with the Order issued on February 16, 2024. A Pre-hearing conference was held on March 7, 2024, and Parents participated in this proceeding. On May 3, 2024, the District requested scheduling of a telephone conference call before the Hearing, but Parents/ Student declined participation and none was held.

On May 20, 2024, Mother informed the BSEA that she was not available for the Hearing on May 22, 2024, noting that the family would be available in mid or late June 2024. Via email exchange on May 22, 2024, the District objected to the postponement, and the Parties were informed that the Hearing would proceed on May 22, 2024, as scheduled.

On May 22, 2024, the Hearing in the instant matter was held remotely via Veritext (as requested by AWRSD), before Hearing Officer Rosa Figueroa. Those present for all or part of the proceedings were:

Alisia St. Florian, Esq. Attorney for AWRSD

Justine Muir Director of Pupil Services, AWRSD

Joanne Bourekas Physical Therapist, AWRSD

Kathleen Brennan Teacher, ACE Program, AWRSD

Jill Childress Speech and Language Pathologist, AWRSD

Jennifer Kublbeck Occupational Therapist, AWRSD

Virginia Tedesco Team Chairperson, AWRSD

Carol Kusintz Stenographer, Veritext

Student and Parents did not appear or in any other way participate in the Hearing. Mother communicated with the undersigned Hearing Officer on the day of the Hearing to inform the BSEA that the family would not be attending.

The official record of the hearing consists of documents submitted by AWRSD marked as exhibits SE-1 to SE-16 and recorded oral testimony. Parents/ Student did not submit exhibits. AWRSD offered an oral closing argument at the conclusion of the Hearing. An electronic copy of the transcript, the recording of the Hearing and the written transcript were forwarded to Parents/ Student.

The record remained open through the close of business on Monday June 10, 2024, to provide Parents an opportunity to submit a written closing argument. Parents/ Student did not submit a closing argument by the deadline established and thus, the record closed on June 10, 2024.

**ISSUE FOR HEARING:**

1. Whether the IEP, placement and transition plan proposed by AWRSD for the period from June 8, 2023 to June 7, 2024, were reasonably calculated to offer Student a free and appropriate public education (FAPE) in the least restrictive environment.

**POSITIONS OF THE PARTIES:**

**AWRSD’s Position:**

AWRSD asserts that the IEP proposed in June of 2023, offering Student placement at the ACE Program, located at Oakmont Regional High School, is appropriate to meet Student’s transition needs and prepare her for independent living, while maintaining and fostering her ties to her community. AWRSD further asserts that since Parents/ Student have not accepted any IEPs since Student was in her senior year in high school, AWRSD has continued to offer Student services consistent with that “stay-put” IEP, including direct OT and PT services. While Student benefits from continuing to receive direct speech and language services, at this juncture, provision of direct OT and PT services is no longer appropriate. These services do not promote, but rather interfere with the ACE Program’s ability to offer services better aligned to Student’s continued development and progress toward her transition goals. AWRSD asserts that the time spent delivering direct OT and PT stay-put related services, prevents Student from spending more time on hands-on community activities.

AWRSD seeks a finding that the IEP and placement offered Student pursuant to the 2023-2024 IEP are reasonably calculated to provide Student a FAPE.

**Student’s Position:**

Parents/ Student did not participate in the Hearing, or submit a response to the Hearing Request. They also did not submit exhibits for Hearing or a written closing argument. Their position in this matter is taken from their rejection of the 5/3/2022 to 5/2/2023 IEP and placement rejection letter noting their belief that: the ACE Program is inappropriate for Student; and that she requires placement at Riverview’s GROW Transition Program in Sandwich, Massachusetts in order to receive a FAPE. In their rejection letter, Parents requested District funding for said placement, but they did not file a counterclaim to the instant case or a separate Request for Hearing seeking such relief.

Most recently, via a May 20, 2024 email to the undersigned Hearing Officer, Mother noted that she had rejected The IEP because it did not offer Student OT or PT services which Student still requires.

**FINDINGS OF FACT:**

1. Student is a twenty-year-old resident of Westminster, Massachusetts, who receives special education services through AWRSD. She carries a diagnosis of Down Syndrome and presents with an intellectual and communication disability with cognitive delays across domains including academic, social, communication, behavior and life skills. Her entitlement to special education and right to receive services through her 22nd birthday are not in dispute.
2. Parents are Student’s guardians and they have educational decision-making authority.

1. Student has been described as cheerful, happy and very social. She loves to sing and dance and has participated in in-district musicals and plays and has competed on the Unified Track team. She describes herself as a hard worker who listens and does as she is told, but who can stand up for herself when she disagrees with others. She is concerned about staying healthy and not being overweight. She is also concerned about her speech intelligibility and whether others can hear her when she speaks. Student wants to get her driver’s permit and learn how to drive. She aspires to live independently in an apartment near her family, get married and start a family. She also wants to make her parents feel proud of her (SE-3). She becomes easily frustrated especially when others do not understand her, and she presents as somewhat immature (Brennan).
2. Student’s receptive and expressive language skills and speech production deficits interfere with her progress across settings. She has difficulty comprehending and retaining orally presented information especially when the information is complex and lengthy. This results in her inability to produce well-organized responses to complex questions as she engages in conversation and relays personal narratives. Her difficulties with speech, including articulation, mispronunciation of multi-syllabic words and increased speech rate, make it difficult for listeners to understand her and impact her ability to successfully participate in conversation and discussions with others (SE-3).
3. Because of Student’s level of intellectual disability, she requires a highly individualized classroom setting where academics are presented at her instructional level, and the curriculum is modified (SE-3). She also requires community experiences and instruction that prepare her for independent living.
4. Student attends the Oakmont Regional High School ACE Program (ACE), a substantially separate program that offers one-to-one and/or small group instruction in the classroom and community settings (SE-3). Activities in this program are geared toward real-life situations and hands-on activities to increase independence in reading, mathematics, communication, social skills, cooking and development of other life-skills. She first joined the ACE Program in July of 2022 (SE-3).
5. As part of the ACE Program Student currently works twice per week as an assistant in Physical Education classes at the District’s elementary school. Additionally, Student supervises children during their free time at a gymnastics center once per week (SE-3).
6. While at the ACE Program, Student has been exposed to sixteen different jobs. These experiences included working in landscaping[[1]](#footnote-1) (which she does not enjoy as she does not like to work outdoors because of the heat and is bothered by the sound and blinking lights of the machinery); working at Seaboard Folding Box in Gardner, Massachusetts twice per week; service, sale and custodial experiences at WooSox Stadium; and, civic related duties (Brennan).
7. Since October 19, 2021, Parents have not accepted any of the IEPs proposed by AWRSD. They either rejected or did not respond to them. The last agreed upon IEP is the IEP resulting from a Team meeting on September 21, 2021, while Student, then 17 years old, was still in high school (SE-12).
8. Prior to Student turning 18 years old and leaving high school, AWRSD conducted several evaluations.[[2]](#footnote-2) These evaluations were part of Student’s 3-year re-evaluation (SE-11; SE-12).
9. In early September 2021, Kelcey Wilson, MS/CAGS of AWRSD, conducted a psychological evaluation to assess Student’s cognitive and academic abilities. The WAIS-IV, WIAT-4 and Vineland-3 were administered. On the WAIS-IV, Student obtained an FSIQ score of 49, placing her cognitive abilities below the 1st percentile range. Her scores in this test fell between the mid to higher range of the extremely low range of abilities. According to Ms. Wilson, Student’s performance in the WAIS-IV was consistent with previous cognitive testing (SE-12). The WIAT-4 results indicated that Student’s academic skills are at emerging pre-academic levels. Student demonstrated extremely low performance in reading, math and writing. While she was able to identify numbers, letters and could spell some words, her academic knowledge was quite limited. The Vineland-3 adaptive rating scales were completed by Mother and Student’s special education teacher. Socialization was seen as a strength by both the parent and the teacher in this inventory. However, whereas Parent viewed Student as having adequate daily living skills and moderately low communication, the teacher saw Student’s performance in these areas to be moderately low and low respectively (SE-12).

1. During the September 21, 2021 Team meeting, the Team discussed Student’s continued eligibility for special education, and the results of the three-year psychological evaluation. Other evaluations forming part of the 3-year reevaluation were conducted later during the 2021-2022 school year consistent with Parents’ preference to have information regarding all other areas of need assessed closer to the spring of 2022 to assist with placement determinations as Student completed high school and prepared to transition into an 18-22 year old adult services program (SE-11; SE-12).
2. Following the Team meeting, the District forwarded Student’s IEP and Transition Form to Parents on September 30, 2021. This IEP, which covered the period from September 21, 2021 to September 20, 2022, offered Student participation in a substantially separate setting at the Excel Program at Oakmont Regional High School (SE-12).
3. The Present Levels of Educational Performance section of the September 21, 2021 IEP identifies social/ emotional, occupational therapy, physical therapy, communication, assistive technology, behavior, and non-academic areas. Goals and objectives in this IEP address pre-vocational, English, mathematics, occupational therapy, physical therapy and two separate speech and language areas : (1) problem solving for social interactions and (2) speech intelligibility and repairing communication breakdowns (SE-12).
4. The Service Delivery Grid offered 15 minutes monthly consultation for speech and language and 30 minutes for assistive technology and twice monthly 15 minute consultations by the special education teacher. It proposed push in academic support in general education classes as well as the following direct services in a substantially-separate setting: 10 x 60 pre-vocational services; 10 x 71 life skills services; 4 x 30 physical therapy services; 4 x 30 (push in or pull out) occupational therapy services; and speech and language services 4 x 40 per 10-day cycle (SE-12). The IEP further offered extended school year services (ESY) of 180 minutes, four days per week from July 11, 2022 to August 4, 2022 (SE-12).
5. Parents’ vision statement in this IEP notes their desire that Student be actively involved in activities during her senior year, graduate with her peers and go on to a college-type setting where she could further her education and work towards achieving her career goals (SE-19).
6. Parents fully accepted the proposed IEP and placement on October 19, 2021. However, they noted their disagreement that the WAIS-IV evaluation results reflected Student’s true abilities and that two of the tests used in the evaluation had never been administered before (SE-12). This September 2021 to September 2022 IEP constitutes Student’s stay-put IEP.
7. An occupational therapy (OT) evaluation was performed by Deborah Arsenault, OTR, AWRSD Functionality Therapy Services, on March 29, 2022 (SE-14). At the time of this evaluation, Student was receiving OT services twice per week for 30 minutes each session. The evaluation consisted of clinical observations, feedback from Student’s OTR and special education teacher, as well as administration of the Beery-Buktenica Developmental Test of Visual-Motor Integration (VMI), components of the Schoodles School Fine Motor Assessment, and the Kohlman Evaluation of Living Skills. Ms. Arsenault noted that Student was cooperative and attentive though she required intermittent redirection during her observation of the OT session. (SE-14).
8. The VMI, a test that measures the degree of coordination between hand movements and visual perception. (SE-14). The VMI was administered to Student in a non-standardized manner to gain additional information regarding her visual motor abilities. Student encountered difficulty with triangle shapes, which according to Ms. Arsenault, is “the last of the rudimentary handwriting precursors” to be developmentally mastered. Student demonstrated some number and letter reversals, but she was able to use her Chrome Book and telephone successfully, produce a legible signature, and write her name and telephone number in appropriate boxes during simulations of completing applications and forms. Ms. Arsenault found Student’s gross and fine motor skills to be functional and some of her self-help skills were well developed. She noted that at times in conversation, Student was difficult to understand (SE-14).
9. Based on the results of the OT evaluation, Ms. Arsenault concluded that Student no longer required OT interventions because she “did not display any functional hindrances that would impede her continued progress in her life skills program” (SE-14). Instead, she recommended OT consultation to assist with more vocationally focused tasks (SE-14).
10. A Speech and language evaluation was conducted on April 5 and 12, 2022 by Jill Childress, MS, CCC-SLP at AWRSD (SE-16). The evaluation consisted of behavioral observations and administration of the Clinical Evaluation of Language Fundamentals, Fifth Edition (CELF-5), the Peabody Picture Vocabulary Test, Fourth Edition (PPVT-4), the Expressive Vocabulary Test, Second Edition (EVT-2) and informal assessments. Student’s scores on the CELF-5 fell within the below average range in all subtests. In the PPVT-5 and the EVT-3 Student’s scores fell in the below average range but demonstrated an increase when compared with her 2019 scores on the same tests (SE-16).
11. Based on the results of the standardized tests, Ms. Childress concluded that Student’s expressive and receptive language skills fell significantly below average, suggesting the presence of a severe language disorder (SE-16). However, she noted significant improvement in Student’s scores since 2019, suggesting that Student continued to make progress with language skills. According to Ms. Childress, Student was able to interact and communicate with others for a variety of purposes including clarifying directions, asking and answering questions, and to gain general information. She was able to convey her ideas and thoughts effectively most of the time despite her continued struggles with speech intelligibility (SE-16).
12. Ms. Childress made numerous recommendations including continuation of speech and language therapy services with a focus on speech sound production and improving expressive and receptive language skills (SE-16).
13. Susan Richard, P.T. MPH/PS, AWRSD Functionality Therapy Services, conducted Student’s physical therapy (PT) evaluation on April 13, 2022, to assess her range of motion, general muscle strength, proximal strength, stability and gross motor skills (e.g., posture, gait ascending and descending stairs, balance, throwing, catching and kicking balls, sitting, standing, hopping/ skipping, etc.) (SE-15).

Ms. Richard found that Student was able to

…ascend/ descend the stairs using a step over step pattern with and without the use of the railing. She is now able to perform a 1 legged stance for 5-10 seconds with finger tip assist as needed. She can maintain opposite limb extension while in an all fours position to the count of 15-18 with good alignment of her head, trunk and limbs. She will complete a 2 footed hop forward and backward for a distance of 6-8 ft. with good foot clearance (SE-15).

While the report does not contain any specific recommendations regarding the need for physical therapy services, the Team would later determine that said services would no longer be needed and instead recommended PT consultation only (Bourekas).

1. A 2022 Transition Report includes a Career Scope Interest Inventory which highlights Student’s strengths, and resulted in a determination that Student’s aptitudes do not match her interests (i.e., artistic, humanitarian, leading/influencing). Areas that match her aptitude, but in which she is not interested at this time, include plants and animals, elemental work: mechanical and industrial, clerical handling, vending, passenger services, and attendant services (SE-3).
2. Student’s Team convened on May 3, 2022, to conduct the annual review, discuss the results of the remaining 3-year evaluations and prepare for Student’s transition into an 18 to 22 year old adult program (SE-8). The resulting IEP and Transition Plan, covering the period from May 3, 2022 to May 2, 2023, addressed Student’s social/ emotional , transition, assistive technology, communication, vocational preparation and non-academic needs. The IEP offered Student participation in a partial inclusion Program at the Oakmont Regional High School’s Excel program through June 6, 2022, the end of Student’s High School experience. Thereafter, Student would receive ESY services and educational services through the end of the IEP period (May of 2023) at an in-district program that focused on community experiences, post school adult living and career awareness[[3]](#footnote-3) (SE-8). The IEP contained goals in pre-vocational skills, English, mathematics, employment, community and speech and language domains. (SE-8).
3. The Service Delivery grid in the May 3, 2022, IEP provided monthly consultation for speech and language (15 minutes), academic/ behavior (15 minutes), assistive technology (30 minutes), physical therapy (20 minutes), and occupational therapy (15 minutes). Daily academic support was offered in the general education setting through June of 2022 (the end of the academic school year). It also offered the following direct services in the separate setting: one hour daily pre-vocational skills, forty minutes four times per week speech and language to address the two separate goals through May of 2023. Extended school year services would be provided four days per week, from July 11 to August 4, 2022 (SE-8).
4. The N1 accompanying the IEP, dated May 16, 2022, noted the Team’s rejection of delivery of direct occupational therapy and physical therapy services consistent with the 2022 evaluation results in those areas (SE-7).
5. On June 16, 2022, Parents/ Student rejected the IEP and placement noting that it would not promote Student’s continued growth (SE-8).
6. Via correspondence on or about August 4, 2022, Parents expanded on their initial rejection of the ACE Program, noting that the May 2022 IEP was confusing, lacked measurable goals and information on PLEP A, lacked Student’s voice, identified but lacked a goal to address Student’s social/emotional deficits, and disagreeing that Student could combat potential bullying and teasing. Parents opined that Student required a more restrictive, out-of-district program such as the Riverview GROW Transition Program (GROW) in Sandwich, Massachusetts, and thus requested that the District fund Student’s placement in said program (SE-6; SE-9; SE-10). According to Parents, GROW was better suited to Student’s needs and then-current performance, viewing her as an adult, GROW would “appropriately challenge her in areas that will facilitate self-advocacy, making mature choices and continuing to foster responsibility in all aspects of her life.” (SE-10).
7. Parents were offered an opportunity to meet to discuss their rejection of and revisions to the rejected IEP, but they declined. (SE-9).
8. In September of 2022, AWRSD revised the May 3, 2022, IEP and forwarded the revised IEP and Transition Plan to Parents on October 3, 2022 (SE-6; SE-8; SE-9). This IEP offered Student services in a substantially separate classroom at the Oakmont Regional High School ACE Program. The revised IEP, covering the period from September 22, 2022 to May 2, 2023, removed pre-vocational, English and Mathematic goals designed to support Student in high school and updated them to reflect her participation in the ACE 18-22 Transition Program. Also, academic/ behavior consult, life-skills, pre-vocational, support services and ESY services were removed from the Service Delivery grid. (SE-6; SE-9).
9. The October 3, 2022, N1 accompanying this revised IEP clarifies that one of the twice weekly speech and language sessions had been accidentally removed from the IEP grid, but that consistent with the May 2022 Team recommendations, speech and language should be provided two forty-minute sessions per 10-day cycle (SE-9).
10. Kathleen Brennan, a certified special education teacher in Massachusetts with 47 years of experience, has been the special education teacher at the ACE Program in AWRSD for the past five years (Brennan). She explained that the ACE Program is a transition program for students requiring services between high school and when they turn 22 years old. The program focuses on functional math and money skills, activities of daily living (e.g., grocery shopping, washing clothes, cooking, etc.), community related skills (e.g., managing public transportation and/ or learning how to drive, staying safe, completing job and housing applications, filling out tax forms, pursuing hobbies, etc.), self-advocacy skills and other skills necessary to foster independence in the community. Sixty percent of the time spent in this program is in the community and the remaining forty percent takes place in the ACE Program classroom. Students in this program engage in civic responsibility experiences, such as raking leaves, mowing the lawn, painting outdoor furniture, shopping for seniors, and twice a week they work at Seaboard Box Company (Brennan). Students sometimes get paid $15.00 per hour when performing civic duty activities.
11. Since there are so few students in the ACE Program (three at present), Ms. Brennan’s class joins students in similar programs with nearby towns (Quabbin and Narraganset) to work on outside activities and increase opportunities for socialization among students with similar profiles. Altogether, there are between 12 and 15 students among the programs who participate in twice per month social events (Brennan).
12. Student’s Team convened on February 16, 2023, to discuss the results of the 2022 Transition Assessment which offered information regarding Student’s employment goals, interests and aptitudes, noting lack of alignment between Student’s areas of interest and her aptitudes (SE-5).
13. The Team convened again on March 1, 2023, to discuss Parents’/ Student’s concerns (SE-5). The N-1 resulting from this meeting notes that AWRSD continued to find the revised IEP dated September 22, 2022 to May 2, 2023 appropriate, noting that Student’s IEP would be revised as needed during the annual review meeting in May of 2023. (This September 2022 IEP was a revision of a previous IEP covering the period from May 3, 2022 to May 2, 2023 which remained unsigned by Parents/ Student.) The N1 notes that the Team considered Parents’ input, and Student’s ACE Program teacher’s input as well as the results of Student’s February 2022 Transition Assessment in reaching its determination (SE-5).
14. On May 10, 2023, Justine Muir, Director of Pupil Personnel Services, wrote to Parents/ Student indicating that she had not yet received a response to the letters she sent in October of 2022, and March and April of 2023, seeking a response to the IEP forwarded to them in May 2022 (SE-4). She indicated that given their lack of response, the IEP would be considered rejected. This letter notes the dispute resolution options available to Parents through the Parent’s Notice of Procedural Safeguards previously sent, and states that Student would continue to receive educational services consistent with the last agreed-upon IEP until Parents/ Student signed the IEP (SE-4).
15. Student’s Team convened on June 8, 2023. The IEP resulting from this Team meeting, covered the period from June 8, 2023 to June 7, 2024, and offered Student participation in a substantially-separate classroom setting and in the community through the ACE Program (SE-3; SE-13). This IEP, which addresses Student’s transition services, notes that the focus of her education is development of “life skills and transition skills that will increase her independence in all areas”, including reading, communication, mathematics, social skills and cooking (SE-3; SE-13). The IEP notes Student’s struggles with receptive and expressive language and speech production, both of which impact her social, academic and vocational progress. Present Levels of Educational Performance address social emotional, communication, assistive technology, non-academics, transition, and vocational preparation domains (SE-3; SE-13).
16. Student’s Vision Statement notes her desire to assist a dance-teacher, attend college, and live independently. She aspires to teach dance or gymnastics to children and would like to continue to take classes in these areas. Student would like to remain in her community (SE-3; SE-13). Parents’ Vision Statement for Student is that she be able to live independently and secure a job she enjoys working 30 hours per week (SE-3).
17. The goals in this IEP address: 1) instruction, including personal finances, social skills, emotional regulation, technology, health and wellness; 2) employment; 3) community (including travel training using public transportation, visiting community businesses, making purchases, visiting apartments, and completing job and housing applications); 4) speech and language (focusing on intelligibility, speech rate, appropriate volume, clarity and strategies such as providing context, gestures or clues when others misunderstand her); 5) speech and language focusing on developing self-advocacy skills and social and functional problem solving skills across settings and contexts (SE-3; SE-13).
18. The Service Delivery Grid in the June 2023 to June 2024 IEP offers Grid A consultation services in occupational therapy (15 minutes per month), physical therapy (20 minutes per month), assistive technology (30 minutes per month), and speech and language consultation (15 minutes per month) (SE-3; SE-13). The C section of the Grid calls for daily 300 minutes per 10-day cycle of community experiences/post school adult living/career awareness; and two, 40 minute speech and language sessions. All services are delivered in the classroom and community settings. Speech and language is offered one-to-one or in a small group setting (SE-3; SE-13). The C Grid also calls for ESY services between July 10 and August 3, 2024, consisting of four180 minute sessions of academic instruction and, one, 40 minute speech and language session (SE-3).
19. Joanne Bourekas, Physical Therapy Assistant in AWRSD since 2010, has delivered Student’s PT services since first grade and has been providing the 2 x 30 minutes per week individual and small group (2 students) PT sessions consistent with the stay-put IEP. She testified that over the years Student’s strength, stamina, pace, knowledge of exercises, independence while performing them and initiative, have increased. She described Student as a good role model. Ms. Bourekas testified that Student belongs to a gym, which she frequents with Parent several times per week, takes dance classes, and has an App on her phone which she uses to perform her morning exercises (Bourekas). Over the years, Student has successfully participated in a school musical and in unified track and basketball.
20. Ms. Bourekas has monitored Student’s performance in school and in the community and testified that Student is well-able to access the school environment and perform her jobs in the community, which involve walking, bending down and squatting. She supported the District’s recommendation to change Student’s PT services to a consultation model only which focused on community and work related activities. She opined that the ACE Program was a great program which appropriately met Student’s needs (Bourekas).
21. Jennifer Kublbeck is the AWRSD occupational therapist who has conducted Student’s OT evaluations and annual reviews, and has supervised “Lauren”, the OT assistant who has delivered direct services to Student since 2002. Ms. Kublbeck testified that Student has been receiving 2 x 30 minute OT sessions consistent with her stay-put IEP. Student’s OT sessions focus on fine motor coordination and sequencing as relates to activities of daily living and work tasks. At the ACE Program, these sessions are delivered back-to back to allow Student’s participation in community and work experiences. She has observed Student on several occasions (including in April of 2024), noting the consistency of Student’s performance as relates to motor coordination and independent task completion. She concluded that Student no longer requires direct OT services. Ms. Kublbeck favored a consult model that focused on community and job-site activities to address Student’s OT needs consistent with the proposed IEP. She testified that the pull-out, back-to-back OT sessions delayed Student’s start-time of community activities (Kublbeck). She opined that the ACE Program was a great placement for Student remarking on how collaborative Ms. Brennan and the other teachers worked (Kublbeck).

1. Jill Childress, licensed speech pathologist, AWRSD, works with students in the ACE Program. She has also worked with Student since 2019, when Student was in High School. She has delivered Student’s twice per week speech and language individual and small group services which focus on communication, following directions, routines, self-advocacy skills, conversation, and problem-solving in social situations.[[4]](#footnote-4) Ms. Childress testified that intelligibility is an issue due, in part, to the structure of Student’s mouth (typical of children with Down Syndrome), and thus, they work together on strategies to help others better understand what Student is saying. Strategies include repetition, providing context, and choosing a different word, in essence using language more effectively (Childress). All of the strategies practiced are geared toward fostering independence across settings.
2. Ms. Childress explained that Student is very social, works hard, perseveres and does not let her communication skills inhibit her social interactions. Student makes herself be heard and “puts herself out there” despite her struggles (Childress).
3. Ms. Childress supported continuation of speech and language services, as reflected in the proposed IEP, noting that Student would require speech and language supports throughout her lifetime because of her intelligibility and social context deficits. She supported the IEPs recommendation for a monthly 15-minute consultation and two, forty-minute, direct speech and language sessions per 10-day cycle[[5]](#footnote-5) to increase Student’s opportunity to participate in community and work-related activities, with time built-in to observe and support Student in the community. According to Ms. Childress, the ACE Program can meet Student’s needs and offers her a FAPE. Importantly, it supports Student in her community which should be a priority (Childress). Ms. Childress testified that if the IEP were accepted, she could coordinate with Ms. Brennan to observe, consult and deliver services to Student in the community (as opposed to a pull-out model only) and practice skills in context (Childress).
4. The June 2023 to June 2024 IEP reflects that a referral had been made to the Department of Developmental Services (DDS) adult services. This agency will be responsible for offering Student services when she turns 22 years old. At present, Student has access to Work Inc. for employment services and will later transition to Mass Rehab when she leaves school. She is also eligible for Pre-Etts, which provides in-service job training through Mass Rehab (SE-3; SE-13).
5. On June 20, 2023, AWRS forwarded Parents/ Student the IEP resulting from Student’s annual review meeting (SE-2). Parents did not respond to the IEP until mid-May of 2024.
6. Ms. Muir wrote to Parents/ Student in June, July and August of 2023 seeking a response to the IEP proposed by the District in June2023, to no avail. On September 21, 2023, Ms. Muir wrote to Parents/ Student informing them that since they had not responded to her earlier communications and the IEP had not been signed, it would be considered rejected (SE-1). The letter references the Notice of Procedural Safeguards as guidance regarding Parents’/ Student’s dispute resolution options and informs them that Student would continue to receive services consistent with the stay-put IEP. Ms. Muir invited Parents to contact her with any questions (SE-1).
7. Virginia Tedesco, Student’s AWRSD Team chairperson, testified that she made multiple attempts to meet with Parents and secure a response to the 2023-2024 IEP following the District’s proposal of such IEP. However, she indicated that only time she met Parents was during the Pre-hearing Conference in this matter, held on April 7, 2024. She received Parents’/ Student ‘s rejection of the 2023-2024 IEP on May 17, 2024, and a couple of days later, a note from Mother noting that because she had responded to the IEP, there was no reason to meet (Tedesco).
8. AWRSD requested the Hearing in the instant matter on January 29, 2024. Between that time and the Hearing Parents participated in a telephone conference call and a Pre-hearing conference. On May 17, 2024, five days before the Hearing, Parents/ Student rejected the June 8, 2023 to June 7, 2024 IEP and placement noting their disagreement as to the appropriateness of the program and placement,[[6]](#footnote-6) and stating their belief that Student continued to require OT and PT services (SE-13).
9. On May 20, 2024, Mother emailed the undersigned Hearing Officer, stating

I signed the IEP, but was told we still have to meet since I rejected it. I believe she needs OT and PT services since she is getting very little of anything else with this program. I can’t meet this week because of an illness that came up with a family member recently that I need to deal with… we meet at the beginning of June for next year.… (Administrative file).

1. At Hearing, Ms. Brennan, Ms. Childress, Ms. Bourkas and Ms. Kublbeck testified that Student had continued to evidence progress in the ACE Program and that the services and placement in the ACE Program proposed in the 2023-2024 IEP continued to be appropriate for Student.
2. Ms. Brennan has been Student’s teacher for the past two years. She noted that Student and her cohort work well together; they are about the same age and at similar functional levels.
3. Student has been described as a “fashionista” and she is able to make on-line purchases. Her ADL and self-care skills are well developed. Her reading skills are at the kindergarten to first grade level, and she presents with poor phonetic and memory skills, which significantly impact her employment opportunities and choices. She does not want others to know that she struggles with reading and is aware that her skill level is lower than others. Student can effectively follow three to four step directions as long as she is shown how to do complete them a couple of times (Brennan).
4. Ms. Brennan testified that this past year, Student had completed her application for low-income housing, noting that at present, there is an 8 year wait for availability. Student has also worked on scheduling her own medical and dental appointments and travelling safely within the community (Brennan). At the Seaboard Box Company (Seaboard), Student works in quality control and is responsible for ensuring that when material comes out of the printer it is not stuck together. If it is, she has to unstick and place the materials in the correct box. If the material cannot be unstuck, Student must place them in the discard box. She uses tools to perform this job. At Seaboard, she has a second job where she has to pick up an approximately four-inch pile of copy sleeves and put them onto another pile. This job requires her to “bend down, pick [the sleeves] up, move them and put them onto another pallet.” She has to do this repeatedly and has to be fast and accurate. Student has a supervisor and is part of a three or four person team with whom she works well. According to Ms. Brennan, Student performs both jobs well and her stamina to perform the jobs has increased from 15 minutes to two hours. Student has 20-minute breaks during which she goes to a small break area where she socializes with some of the other workers, by whom she is well-liked and who are helpful to her. Although Student can perform her duties well, she does not enjoy her work at Seaboard (Brennan).

1. Monday is community day and Friday wellness day at the ACE Program, the latter dedicated to more socially oriented activities (Brennan). On Mondays, students go to the post office, buy food, drop off food at the senior center food pantry, mail packages (wrapping, taping and addressing them), make lists of what they need to do, engage in ACE banking[[7]](#footnote-7), learn how to maintain personal files, plan activities, complete paperwork (e.g., twelve-page long housing applications) and other tasks. According to Ms. Brennan, Student is flourishing in the ACE Program and she is making spectacular progress including displaying more social maturity and accountability (Brennan).
2. Through the ACE Program’s community and work exposure, it has become evident that Student enjoys being with adults but does not like working with children or seniors. She also dislikes outdoor jobs that expose her to noise and heat. Student has expressed an interest in hairdressing, but Student’s ability to successfully pass required tests and acquire the skills required pose unsurmountable difficulties. The same is true of Student passing the driver’s permit test. Student has also expressed an interest in food preparation; however, Parents do not wish her to do cleaning, which is an integral part of cooking in a kitchen. Therefore, experiences in this area have been thwarted (Brennan).
3. Ms. Brennan testified that she recently performed testing to gain better insight into Student’s career profile. Student requires a job with repetitive tasks where she can do things for a sustained period of time before changes are introduced. While she can make changes, she requires a lot of work before she is able to implement them independently. Given Student’s age, she still has two years to continue exploring career and job opportunities within her community (Brennan).[[8]](#footnote-8)
4. Regarding OT and PT services, Ms. Brennan supports changing these services to consult only, noting that Student had demonstrated mastery of the goals and objectives in those areas a while back. She explained that in doing this Student would gain an hour and a half daily in community experiences, allowing her to take part-time jobs (Brennan).

**CONCLUSIONS OF LAW**:

No dispute exists between the Parties regarding Student’s entitlement to receive special education services through her twenty second birthday, consistent with the Individuals with Disabilities Education Act[[9]](#footnote-9) (IDEA) and Massachusetts special education law[[10]](#footnote-10). Student’s diagnose are also not in dispute. Her significant cognitive disability and communication disorder require that she be offered transition services that offer FAPE and promote her independence.

The IDEA and the Massachusetts special education law and accompanying regulations require that school districts offer eligible students a FAPE, through an individualized education program (IEP) tailored to address the student’s unique needs[[11]](#footnote-11) in a manner “reasonably calculated to confer a meaningful educational benefit”[[12]](#footnote-12) to the student.[[13]](#footnote-13) Additionally, the program and services offered to the student must be delivered in the least restrictive environment appropriate to meet the student’s needs[[14]](#footnote-14), and must be “reasonably calculated to enable [the student] to make progress appropriate in light of the child’s circumstances.” *Endrew F. v. Douglas County Sch. Distr.*, 137 S. Ct. 988 (March 22, 2017); *D.B. ex rel. Elizabeth B.,* 675 F.3d at 34.

*Endrew F.* delineates the applicable standard in Massachusetts, noting that eligible students are entitled to a special education program and services specifically designed to develop the Student’s individual educational potential.[[15]](#footnote-15) As such, educational progress is measured in relation to the particular student’s potential.[[16]](#footnote-16)

For eligible students between the ages of 18 through 21, the IDEA mandates that they be prepared for further education, employment, and independent living.  20 USC 1414(d)(1)(A); see also *Mr. I. v. Maine School Administrative District No. 55*, 480 F.3d 1, 12 (1st Cir. 2007).  As such, school districts are required to develop transition plans that detail the transition services to be offered to eligible students,[[17]](#footnote-17) starting with Team discussions when eligible students turn fourteen years old.[[18]](#footnote-18) Transition plans must be developed at the Team meetings, taking into account the student’s needs, his/her/their preferences, interests and strengths.  20 USC 1401(34).  See also, 34CFR 300.43.[[19]](#footnote-19)

As part of transition planning, the IDEA requires that school districts develop “appropriate measurable post-secondary goals based on age-appropriate transition assessments related to training, education, employment, and, where appropriate independent living skills…”.  The Plan must provide “transition services (including courses of study) needed to assist the child in reaching those goals”. 20 USC 1414(d)(1)(A)(i)(VIII)(aa) and (bb); CFR 300.320(b).  Moreover, transition services must be results-oriented, coordinated activities that focus “on improving the academic and functional achievement” of the eligible student so as to facilitate his/her movement to post school activities. 34 CFR 300.43.  Transitional goals and objectives are particular to the specific child and can vary greatly depending on that child’s aptitude, interests, abilities and skills. In this sense, provision of a FAPE for students ages 18 to 21 is directly related to appropriate planning and development of a well-thought plan and services that promote their readiness for employment, education and independent living.

Massachusetts has extended provision of services to students 18 and older though their 22nd birthday. In an effort to guide districts in the development of appropriate and effective transition plans, the Massachusetts Department of Elementary and Secondary Education (DESE) has designed Forms and offered guidance through their technical Assistance Advisory publications. (See *Technical Assistance Advisory SPED 2013-1* and *Technical Assistance Advisory SPED 2014-4*.)[[20]](#footnote-20)

It is within this context that I turn to the case at bar, relying on and incorporating by reference the facts delineated in the Facts section of this Decision, reiterating only the most salient in the analysis that follows.

Pursuant to *Schaffer v. Wea*st, 126 S.Ct. 528 (2005), AWRSD carries the burden of persuasion at this Hearing, and must prove by a preponderance of the evidence, that its proposed transition program and placement in the ACE Program offers Student a FAPE.

I find that AWRSD has met its burden of persuasion. The uncontroverted evidence, considered in the context of applicable legal standards, supports a finding that the proposed 2023-2024 IEP and placement at the District’s ACE Program are reasonably calculated to provide Student a FAPE consistent with federal and state statutory and decisional law. My reasoning follows.

During her senior year in high school, the District conducted a series of evaluations, to wit: psychological (including academic aptitude and cognitive testing), PT, OT, speech and language and transition assessments to gain a better understanding of Student’s then- current functioning levels, needs, interests and aptitudes as she readied herself to transition into an 18-22 adult program (SE-6; SE-7; SE-12; SE-14; SE-15; SE-16). With this information and Parents’, teachers’ and service providers’ input, the District developed an IEP in May of 2022, later revised in September of 2022, recommending that Student attend the District’s ACE Program. Parents rejected this IEP in June of 2022, and via letter of August of 2022 (SE-8; SE-10). Thereafter, Parents declined the District’s invitations to discuss the rejection and they did not respond to subsequent IEPs until they rejected the 2023-2024 IEP in mid-May of 2024. Parents however, allowed Student to participate in the ACE Program, continuing to receive direct OT, PT and speech and language services consistent with her stay-put IEP (SE-12).

The record shows that in developing its proposed IEPs, the District conducted appropriate evaluations and considered the input of those best suited to make recommendations for Student, including Parents and Student herself, contrary to Parents’ allegations that Student’s voice had not been heard. In this regard, AWRSD fulfilled the mandates of the IDEA and Massachusetts law requiring that the District conduct necessary evaluations and meet and plan for Student’s transition. The District has also fulfilled its procedural due process obligations to Student and Parents and has provided Student the OT, PT and speech and language services to which she is entitled pursuant to her stay-put IEPs (Tedesco, Brennan, Bourekas, Childress, Kublbeck).

Review of the IEPs and transition plans developed for Student since May of 2022, take into account Student’s needs, strengths and weaknesses as well as her preferences, while continuing to explore post-secondary employment areas that may align well with her interests. This is particularly important as the transition assessments conducted in 2022 noted that Student’s interests were not aligned with her aptitudes, and thus, job exploration via exposure to and elimination of work opportunities continues, along with administration of career inventories to find a job with which Student is happy (Brennan). This is an integral part of what occurs on a day-to-day basis at the ACE Program.

The ACE Program effectively combines functional academics with activities of daily living and self-care, as well as community experiences designed to promote Student’s independence and help her reach her goal of living in an apartment in her community close to Parents. Through classroom work and instruction, socialization opportunities, community and work-related tasks, Student has been, and continues to be, exposed to experiences that promote independence. Ms. Brennan, Ms. Bourekas and Ms. Childress remarked on Student’s progress over the past two years, including her independence in performing tasks across-settings. Her stamina and focus have increased as evidenced by her ability to perform her job at Seaboard for two hours when in the beginning she only tolerated fifteen minutes. She fulfills her responsibilities accurately and effectively (Brennan). She is better able to navigate the community, is learning to manage her finances, plan for when she lives in an apartment, and travel around her community. She has also made progress in her communication and intelligibility, by implementing strategies to help herself be understood by others when she speaks (Childress).

The record is further persuasive that at present, Student’s OT and PT goals have been mastered and that she no longer requires direct OT and PT services; rather she would benefit from consultation geared toward her functioning at work and in the community (Bourekas, Kublbeck, Brennan). Student is able to fill out applications and sign her name, she can perform her exercises routine with minimal supervision, and can use an App on her phone to do her morning work-out.

Moreover, Ms. Brennan, Ms. Bourekas and Ms. Kublbeck testified that discontinuing the direct OT and PT services would add one-and-a-half hours daily to Student’s time in the community, thereby allowing her to obtain a part-time job. Given their recommendations and the fact that there is no documentary or testimonial evidence to the contrary, I find that the OT and PT consult proposed in Student’s 2023-2024 IEP will better suit Student’s transition goals and plan than continuation of direct services. I further find that the goals and objectives delineated in the 2023-2024 IEP and transition plan are designed to increase Student’s functional abilities as she continues to transition toward adult life beyond her entitlement to special education services. (SE-3; SE-13; Bourekas, Kublbeck, Brennan, Childress).

Student possesses many strengths, including her positive disposition, ability to work productively with others, accepting direction and feedback from teachers and supervisors, and even performing tasks she does not like with a positive attitude as she has demonstrated in her Seaboard and civic duty jobs. She has also demonstrated progress with functional academic skills. Her ADL and self-help skills are well-developed and her progress over the past two years would suggest that she is continuing to make gains that will allow her to achieve her goal of independent living with the support of DDS. More importantly, she is continuing to gain independence in her community, close to her parents, where she wishes to remain long-term (Brennan, Childress, Bourekas, Kublbeck).

Ms. Brennan, Ms. Childress, Ms. Bourekas, Ms. Kublbeck and Ms. Tedesco all offered persuasive, credible testimony. Ms. Brennan’s commitment to her students and the ACE Program is unquestionable, and given the small number of students in her program, she has been able to get to know Student well, and continues to explore opportunities for her to identify viable jobs and experiences that foster independence and a happy future life. Similarly, Ms. Childress’ and Ms. Bourekas’ perspective and knowledge of Student given the number of years they have been working with her, provided valuable insight as to her progress and future needs.

While Parents did not appear at Hearing, I credit their dedication, commitment and exposure of Student to activities that foster her independence, health and sense of community.

In conclusion, the record is persuasive that Student is making effective progress, and benefitting from her participation in the ACE Program. The documentary and testimonial evidence is uncontroverted and persuasive that the IEP developed by AWRSD for the period from June 8, 2023 to June 7, 2024 and accompanying Transition Plan are appropriate to meet Student’s transition needs and prepare her for independent living. AWRSD shall convene Student’s Team and propose an IEP consistent with this Decision with continued services at the ACE Program.

**ORDER:**

1. The IEP developed by AWRSD for the period from June 8, 2023 to June 7, 2024 is appropriate to meet Student’s transition needs. AWRSD shall convene the Team and continue to offer Student services consistent with said IEP at the ACE Program.

By the Hearing Officer,

Rosa I. Figueroa

Rosa I. Figueroa

Dated: July 5, 2024

**July 5, 2024**

# COMMONWEALTH OF MASSACHUSETTS

# DIVISION OF ADMINISTRATIVE LAW APPEALS

# BUREAU OF SPECIAL EDUCATION APPEALS

**ASHBURNHAM-WESTMINSTER REGIONAL SCHOOL DISTRICT**

**BSEA # 2407487**

### BEFORE

**ROSA I. FIGUEROA**

**HEARING OFFICER**

**ALISIA ST. FLORIAN, ESQ., ATTORNEY FOR ASHBURNHAM-WESTMINSTER REGIONAL SCHOOL DISTRICT**

**PARENTS/ STUDENT PRO-SE**

**COMMONWEALTH OF MASSACHUSETTS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**EFFECT OF FINAL BSEA ACTIONS AND RIGHTS OF APPEAL**

**Effect of BSEA Decision, Dismissal with Prejudice and Allowance of Motion for Summary Judgment**

20 U.S.C. s. 1415(i)(1)(B) requires that a decision of the Bureau of Special Education Appeals be final and subject to no further agency review. Similarly, a Ruling Dismissing a Matter with Prejudice and a Ruling Allowing a Motion for Summary Judgment are final agency actions. If a ruling orders Dismissal with Prejudice of some, but not all claims in the hearing request, or if a ruling orders Summary Judgment with respect to some but not all claims, the ruling of Dismissal with Prejudice or Summary Judgment is final with respect to those claims only.

Accordingly~~,~~ the Bureau cannot permit motions to reconsider or to re-open either a Bureau decision or the Rulings set forth above once they have issued. They are final subject only to judicial (court) review.

Except as set forth below, the final decision of the Bureau must be implemented immediately. Pursuant to M.G.L. c. 30A, s. 14(3), appeal of the decision does not operate as a stay. This means that the decision must be implemented immediately even if the other party files an appeal in court, and implementation cannot be delayed while the appeal is being decided. Rather, a party seeking to stay—that is, delay implementation of-- the decision of the Bureau must request and obtain such stay from the court having jurisdiction over the party’s appeal.

Under the provisions of 20 U.S.C. s. 1415(j), “unless the State or local education agency and the parents otherwise agree, the child shall remain in the then-current educational placement,” while a judicial appeal of the Bureau decision is pending, unless the child is seeking initial admission to a public school, in which case “with the consent of the parents, the child shall be placed in the public school program.”

Therefore, where the Bureau has ordered the public school to place the child in a new placement, and the parents or guardian agree with that order, the public school shall immediately implement the placement ordered by the Bureau. *School Committee of Burlington v. Massachusetts Department of Education*, 471 U.S. 359 (1985). Otherwise, a party seeking to change the child’s placement while judicial proceedings are pending must ask the court having jurisdiction over the appeal to grant a preliminary injunction ordering such a change in placement. *Honig v. Doe*, 484 U.S. 305 (1988); *Doe v. Brookline*, 722 F.2d 910 (1st Cir. 1983).

**Compliance**

A party contending that a Bureau of Special Education Appeals decision is not being implemented may file a motion with the Bureau of Special Education Appeals contending that the decision is not being implemented and setting out the areas of non-compliance. The Hearing Officer may convene a hearing at which the scope of the inquiry shall be limited to the facts on the issue of compliance, facts of such a nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Elementary and Secondary Education or other office for appropriate enforcement action. 603 CMR 28.08(6)(b).

**Rights of Appeal**

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

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

**Confidentiality**

In order to preserve the confidentiality of the student involved in these proceedings, when an appeal is taken to superior court or to federal district court, the parties are strongly urged to file the complaint without identifying the true name of the parents or the child, and to move that all exhibits, including the transcript of the hearing before the Bureau of Special Education Appeals, be impounded by the court. See *Webster Grove School District v. Pulitzer Publishing Company*, 898 F.2d 1371 (8th. Cir. 1990). If the appealing party does not seek to impound the documents, the Bureau of Special Education Appeals, through the Attorney General's Office, may move to impound the documents.

**Record of the Hearing**

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

1. Student earned $15.00 per hour at this landscaping job. [↑](#footnote-ref-1)
2. Student’s psychological evaluation was the only one to which Parents consented at the beginning of the 2021-2022 school year as Parents preferred to have information regarding all other areas of need assessed closer to the spring of 2022. [↑](#footnote-ref-2)
3. AWRSD would later propose the ACE Program. [↑](#footnote-ref-3)
4. These services include, e.g., what to do if Student is at a restaurant and does not have her wallet, understanding the difference between teasing and bullying; not just saying “mom will fix it” or “mom will make it better”/ expecting Parents to solve all of her problems (Childress). [↑](#footnote-ref-4)
5. The IEP reflects that speech and language services would be reduced to 1 x 40 minutes during the ESY program (SE-3; SE-13). [↑](#footnote-ref-5)
6. Parents’ IEP and placement rejection noted their opinion that “[t]he district should be ashamed of itself, money trumps services. Students who need the most get the least…. Since this is (sic) only program you have I don’t have choices for her and you won’t discuss anything else. The person running the program is nice but this is not a program. Shameful.” (SE-13). [↑](#footnote-ref-6)
7. Each week students are given $20.00 dollars which they need to manage for purchases during that week (Brennan). [↑](#footnote-ref-7)
8. Ms. Brennan explained that while Parents would like Student to work up to 30 hours per week, as a recipient of SSI, Student is only able to work up to 20 hours per week (Brennan). [↑](#footnote-ref-8)
9. 20 USC 1400 *et seq*. [↑](#footnote-ref-9)
10. MGL c. 71B. [↑](#footnote-ref-10)
11. E.g., 20 USC 1400(d)(1)(A) (purpose of the federal law is to ensure that children with disabilities have FAPE that “emphasizes special education and related services designed to meet their unique needs . . . .”); 20 USC 1401(29) (“special education” defined to mean “specially designed instruction . . . to meet the unique needs of a child with a disability . . .”); *Honig v. DOE*, 484 U.S. 305, 311 (1988) (FAPE must be tailored “to each child's unique needs”). [↑](#footnote-ref-11)
12. See *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) where the court explicitly adopted the meaningful benefit standard. [↑](#footnote-ref-12)
13. *Sebastian M. v. King Philip Regional School Dist*., 685 F.3d 79, 84 (1st Cir. 2012)(“the IEP must be custom-tailored to suit a particular child”); *Mr. I. ex rel L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1, 4-5, 20 (1st Dir. 2007) (stating that FAPE must include “specially designed instruction …[t]o address the unique needs of he child that result from the child’s disability”) (quoting 34 C.F.R. 300.39(b)(3)). See also *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir. 1993) (program must be “reasonably calculated to provide ‘effective results’ and ‘demonstrable improvement’ in the various ‘educational and personal skills identified as special needs’”); *Roland v. Concord School Committee*, 910 F.2d 983 (1st Cir. 1990) (“Congress indubitably desired ‘effective results’ and ‘demonstrable improvement’ for the Act's beneficiaries”); *Burlington v. Department of Education*, 736 F.2d 773, 788 (1st Cir. 1984) (“objective of the federal floor, then, is the achievement of effective results--demonstrable improvement in the educational and personal skills identified as special needs--as a consequence of implementing the proposed IEP”); 603 CMR 28.05(4)(b) (Student’s IEP must be “designed to enable the student to progress effectively in the content areas of the general curriculum”); 603 CMR 28.02(18) (“*Progress effectively in the general education program* shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the child, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district.”). [↑](#footnote-ref-13)
14. 20 USC 1412 (a)(5)(A). [↑](#footnote-ref-14)
15. MGL c. 69, s. 1 (“paramount goal of the commonwealth to provide a public education system of sufficient quality to extend to all children the opportunity to reach their full potential… ”); MGL c. 71B, s. 1 ( defining “special education” as “…educational programs and assignments…. designed to develop the educational potential of children with disabilities….”); 603 CMR 28.01(3) (identifying the purpose of the state special education regulations as “to ensure that eligible Massachusetts students receive special education services designed to develop the student’s individual educational potential…”). See also Mass. Department of Education’s Administrative Advisory SPED 2002-1: [Guidance on the change in special education standard of service] from “maximum possible development” to “free appropriate public education” (“FAPE”), effective January 1, 2002, 7 MSER Quarterly Reports 1 (2001) (appearing at [www.doe.mass.edu/sped](http://www.doe.mass.edu/sped)) (Massachusetts Education Reform Act “underscores the Commonwealth’s commitment to assist all students to reach their full educational potential”). [↑](#footnote-ref-15)
16. *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 199, 202 (court declined to set out a bright-line rule for what satisfies a FAPE, noting that children have different abilities and are therefore capable of different achievements; court adopted an approach that takes into account the potential of the disabled student). See also *Lessard v. Wilton Lyndeborough Cooperative School Dist*., 518 F3d. 18, 29 (1st Cir. 2008), and *D.B. v. Esposito*, 675 F.3d at 36 (“In most cases, an assessment of a child’s potential will be a useful tool for evaluating the adequacy of his or her IEP.”). [↑](#footnote-ref-16)
17. The IDEA defines Transition Services as

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

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

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

Includes instruction, and related services, community experiences, the development of employment and all other post– school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. 20 USC 1401(34). [↑](#footnote-ref-17)
18. In Massachusetts the age for beginning transition planning is 14.  Section 2 of M.G.L. c.71B as amended by Chapter 285 of the Acts of 2008. [↑](#footnote-ref-18)
19. “(a) Transition services means a coordinated set of activities for a child with a disability that—

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

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

Instruction;

A related services;

Community experiences;

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

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

(b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist the child with a disability to benefit from special education.” 34 CFR 300.43. [↑](#footnote-ref-19)
20. See also MGL c.688. [↑](#footnote-ref-20)