COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

BUREAU OF SPECIAL EDUCATION APPEALS

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DECISION

IN RE: PITTSFIELD PUBLIC SCHOOLS v. STUDENT

BSEA # 2412965

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BEFORE

HEARING OFFICER

ALINA KANTOR NIR

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PARENTS, PRO SE

ALISIA ST. FLORIAN, ATTORNEY FOR PITTSFIELD PUBLIC SCHOOLS

**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Pittsfield Public Schools v. Student BSEA # 2412965**

**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 in the above-noted matter was held via a virtual platform on August 30 and September 3, 2024 before Hearing Officer Alina Kantor Nir. Parents were *pro se*. Pittsfield Public Schools (Pittsfield or the District) was represented by legal counsel. Those present for all or part of the proceedings, all of whom agreed to participate virtually, were:

Mother

Grandmother

Denise Sullivan Educational Advocate

Dr. Fadi Halabi Child and Adolescent Psychiatrist

Alisia St. Florian Attorney for Pittsfield

Jennifer Stokes Assistant Superintendent for School Transformation and

Accountability, Pittsfield

Lynn Taylor Principal, Allendale Elementary School

Kathleen Darling Instruction and Accountability Coordinator, Pittsfield

Katrina Weider Special Education Pre-K Teacher, Allendale Elementary School

Melissa Lupo Court Reporter

Becky Baron Court Reporter

The official record of the hearing consists of documents submitted by Pittsfield and marked as Exhibits S-1 to S-37; documents submitted by Parents and marked as Exhibits P-1 to P-19 and P-21 to P-22; and a two-volume transcript produced by a court reporter. The parties made their closing arguments orally on September 5, 2024 and the record closed on that day.

**PROCEDURAL HISTORY:**

On May 15, 2024, the Pittsfield Public Schools filed a due process complaint alleging that Student was not making meaningful, effective progress in an inclusion placement and that he requires a more restrictive, therapeutic setting. The matter was postponed once on June 4, 2024 for good cause at the joint request of the parties. The parties also participated in two Pre-Hearing Conferences on June 26 and July 24, 2024, respectively

**ISSUE IN DISPUTE:**

The issue to be decided is whether Student requires a therapeutic placement at the Crosby Educational Academy (Crosby) in order to receive with a free and appropriate public education (FAPE) in the least restrictive environment (LRE)?

**FACTUAL FINDINGS:**

1. Student is a rising kindergarten student who currently attends Allendale Elementary School (Allendale) in Pittsfield, Massachusetts. Student likes Legos, Playdoh, arts and crafts, and being a classroom helper. (S-12) Student is “very intelligent, can be very sweet and endearing.” (Weider) He can also be kind and compassionate. (Darling)
2. Prior to beginning Pre-K at Allendale, Student attended Head Start and Bear Care. During his tenure at Head Start, he experienced a traumatic experience which was investigated by the Department of Children and Families (DCF). As a result, he began exhibiting maladaptive behaviors. Student struggled in childcare settings and was asked to leave these programs due to aggressive behavior. (Parent, S-19, S-21)
3. According to Parent[[1]](#footnote-1), she reached out to the District’s special education department to give them a “heads up” about Student’s prior struggles before he started school, because she knew he would need help. She was told by someone in the Special Education Office to let the District observe him in school and decide how to proceed. (Parent)
4. Katie Darling is the Instruction and Accountability Coordinator for Pre-K in Pittsfield, Massachusetts. She has served in this role for two years. As part of her duties, she chairs IEP meetings for Pre-K students and ensures that they have access to all their services and accommodations. (Darling) Ms. Darling testified that although her records reflect that Parent had reached out to her in the summer of 2023, she never connected with Parent prior to the start of the 2023-2024 school year. (Darling)
5. Student was excited to begin school. (Parent)
6. Lynn Taylor is the principal of Allendale Elementary School[[2]](#footnote-2). She has served in this role for 5 years. Two hundred and fifty four students attended Allendale during the 2023-2024 school year. (Taylor) Ms. Taylor first became acquainted with Student when he began attending pre-K class in the fall of 2023. During 2023-2024, there was one Pre-K integrated classroom for four year old children at Allendale. It included 13 students, five of whom had Individualized Education Programs (IEPs). It was staffed by one teacher and three paraprofessionals. (Taylor, Weider)
7. Katrina Weider was Student’s Pre-K teacher during the 2023-2024 school year. She has a bachelor’s degree in early childhood education and is close to receiving her master’s degree. She has worked at Allendale for four years, first as a paraprofessional in the Pre-K classroom, as a student teacher, and then as the classroom teacher. (Weider) According to Ms. Weider, her class follows a typical Pre-K schedule. The staff greet the children outside and bring them into the classroom, where they put their things in the cubbies, engage in “free play,” wash their hands, have breakfast, “do circle time”, have a movement break, and proceed to have large group and small group English Language Arts. The children then transition to “specialists” which include music, science, art and PE. They then have recess, lunch, rest time, and finally work on IEP objectives, phonemic awareness and math. Dismissal is at 3:25. (Weider).
8. Student did not have an IEP when he entered Allendale. For the first two weeks of school, Student’s behaviors were “typical” for his age. In mid-September, Student began exhibiting concerning behaviors, including swearing, hitting and throwing especially in response to being told “no” or to having to participate in nonpreferred academic activities. Some behaviors were without antecedent or clear triggers. Student’s behaviors increased in frequency such that he was often removed from the classroom for unsafe behaviors. During one instance of dysregulation, Student stomped on the head of a sleeping peer. This resulted in the peer having a concussion. (Taylor, Wieder, Darling, S-19, S-30, S-35, S-36, S-37)
9. Ms. Darling first became acquainted with Student following the “stomping” incident. Ms. Darling testified that at this time, the Team referred Student to a Building Assistance Meeting in which Parent participated. (Darling) Subsequently, on September 28, 2023, due to concerns regarding safety in a school setting, Student’s low frustration tolerance and task avoidance, and difficulties with self-regulation and forming and maintaining peer relationships Student was referred for, and Parent consented to, a special education evaluation. (Taylor, Weider, Parent, S-11, S-15, S-16)
10. As part of the Psychoeducational Evaluation, Ms. Darling administered Student the Learning Accomplishment Profile-Diagnostic (LAP-D) to on which he scored in the average cognitive range. (Darling, S-22, P-5, P-6) Ms. Darling also observed Student, noting that he tested the limits and expectations of the classroom and needed to have flexibility to move around in his space. . (Darling, S-17, P-4)
11. On the WJ-IV Tests of Early Cognitive and Academic Development - 4th Edition (ECAD-IV), Student’s General Intellectual Ability was in the Low Average range. However, due to his behaviors during testing, it was recommended that these results be interpreted with caution. Student presented with average skills within the areas of comprehension-knowledge, fluid reasoning, visual spatial thinking, and working memory. Additionally, he presented with low average abilities in the areas of fluid reasoning, auditory processing, and processing speed. On the Behavior Assessment System for Children - 3rd Edition (BASC-3), Student was rated in the clinically significant range for aggression. Both Parent and teacher endorsed a significant level of aggressive behaviors across home and school settings. Per teacher report, Student also displayed high levels of hyperactive behaviors in the classroom.. More specifically, he struggled to keep his hands/feet to himself, left his seat often, disrupted others, displayed poor self-control, was overly active, and struggled with waiting his turn. He was easily upset and pessimistic. At home, Parent noted symptoms of anxiety. (S-23, P-3)
12. Student was also screened for occupational therapy following behavioral outbursts in class, which included unsafe behavior and work refusal. [[3]](#footnote-3)Student presented with functional fine motor, visual motor, and perceptual skills. Although Student had some difficulty maintaining focus on task without extra movement or verbal encouragement from staff, these particular behaviors were not deemed to be sensory-based. (Darling, S-24, P-2)
13. In early October 2023, a Safety Plan was developed for Student to allow him to remain safe in his classroom and “to keep his hands, feet and objects to himself so that students, staff and himself are not physically harmed.” Monitoring measures, interventions, and a response plan were put in place. The plan included adult support for Student at all times and minimal academic expectations as “being safe and remaining in the classroom [was] the goal.” (Taylor, Weider, S-28) An additional paraprofessional was hired for Student, making the staff-to-student ratio five to thirteen. (Taylor, Weider) However, the four paraprofessionals in Ms. Weider’s class rotated throughout the day to work with Student to prevent “exhaustion.” (Darling, Weider) The rotation added flexibility, as Student preferred different adults on different days. (Darling) All paraprofessional staff were well-known to Student. (Weider)
14. Several interventions and accommodations were attempted by Allendale to support Student, including but not limited to: provision of School Adjustment Counselor (SAC) services focusing on emotional regulation strategies, non-contingent breaks, visual choice board of reinforcers, distraction techniques when escalating, 1:1 attention from a teacher or paraprofessional, first/then approach, pairing with peer, classroom helper jobs, token board, intentional ignoring, and home consequences. Most of these were unsuccessful or only somewhat successful for a short time. Despite the implementation of these interventions, Student’s aggressive behavior continued to occur multiple times per day resulting in his removal for several hours from the classroom. (Taylor, Weider, S-19, S-21, S-23, S-30, S-36, P-3)
15. According to Ms. Taylor, she often spent at least two hours per day personally intervening with Student, which affected her ability to meet her other responsibilities in the building. (Taylor)
16. Ms. Weider and Ms. Taylor testified that Student’s presentation did not improve when the 1:1 aide was added. Parent wanted Student to have the same 1:1 aide throughout his day, and staff attempted to accommodate her wish but found that this made no difference to Student’s presentation. Most times, Student required 2:1 support for safety. (Taylor, Weider)
17. All Pre-K teachers and special education staff are restraint trained. (Stokes)
18. Although all Pre-K and kindergarten staff at Allendale are trained in trauma informed practices, Allendale does not have a therapeutic program. (Taylor)
19. On October 3, 2023, the District proposed, and Parent consented to, a Functional Behavior Assessment (FBA) of Student. (S-14, S-18, S-21) At that time, Student was engaging in multiple aggressive behaviors per day. (S-19, S-21) Data and teacher observations demonstrated that the function of Student’s behavior was social reinforcement (i.e., to gain attention and escape non-preferred tasks). (Taylor, S-19, S-21, S-23, S-30, S-36, P-3) Following the completion of the FBA, a Behavior Intervention Plan (BIP) was developed and implemented to facilitate safety within the classroom, utilization of learned coping strategies to express h frustration, and following the classroom routine and responding appropriately to adult directions and redirection. (Taylor, Weider, S-26, S-27, S-37)
20. Student’s behaviors did not improve following the implementation of his IEP and BIP. Student began eloping from school, and his behaviors necessitated the use of restraints. According to Ms. Taylor, even when “given space,” Student would “come after” staff. Many staff were injured necessitating nurse visits. Ms. Taylor’s face and hands would often get scratched to the point of bleeding, and on a couple of occasions Student too was scratched in the process of restraint. (Taylor, S-19, S-30, S-35, S-36, S-37) Ms. Taylor testified that several parents of other students in the classroom reached out to her with concerns about Student’s behaviors. (Taylor)
21. Parent testified that as the year progressed, she was getting calls from school regularly regarding Student, and she was “on the verge of losing her job.” When coming to pick up Student, she witnessed him being restrained or cowering while being surrounded by staff. On one occasion, Student’s face was scratched, and on another occasion, he lost a tooth. On such days, he would fall asleep immediately on the ride home. (Parent)
22. In November 2023, Parent met with Dr. Fadi Halabi, a Board-Certified Child and Adolescent Psychiatrist, to discuss Student’s behaviors at school. While Student exhibited some difficult behaviors at home, these were not as severe and were rarely physical. (Parent, Halabi, S-23, S-25, P-3) Dr. Halabi also spoke to Ms. Weider regarding Student’s challenges. Dr. Halabi continued to meet with Student on a monthly basis and to observe him in the office setting. There, he observed Student to be impulsive and hyperactive. Dr. Halabi diagnosed Student with Attention Deficit Hyperactivity Disorder (ADHD) and unspecified trauma and stressor related disorder. Impulsivity and inattention are symptoms associated with both diagnoses. (Halabi)
23. On November 30, 2023, the Team convened for an initial Team meeting. Student was found eligible for special education and related services pursuant to the Development Delay disability category, due to deficits in social emotional functioning. Specifically, the Team concluded that Student’s impulsivity and explosive behaviors when asked to perform non-preferred or tasks he perceived to be challenging, affected his ability to progress through preschool standards. (S-2, S-11)
24. Student’s IEP dated 11/30/2023 to 11/29/2024 (November 2023 IEP) included a single goal focus of Social Emotional/Behavioral Skills. The IEP proposed the following services: B Grid: Social Emotional Support by SAC (2x15 minutes/ week) and 1:1 paraprofessional support daily (378 minutes); C Grid: SAC (1x30 minutes/week ). According to Ms. Darling, the intention of the Team was to fade the 1:1 support as Student developed more skills. (Darling) The Team proposed placement at the integrated preschool. (S-2) Ms. Darling testified that Crosby was not considered at this time as the Team believed that the interventions proposed by the IEP would be sufficiently helpful for Student and he would be successful. (Darling)
25. Ms. Weider testified that throughout October and November, Student still had some “positive days.” He was responding to consistent redirection and instructions, “first, then” options, limited choices, and consistent language between home and school. (Weider)
26. In January 2024, Student began a regimen of guanfacine under the direction of Dr. Halabi. Its side effects include irritability, sleepiness, and lowered blood pressure. As Student is so young, Dr. Halabi began Student on the gentlest medication. Dr. Halabi testified that it is typical to try different medications before finding the right one. (Halabi)
27. Student’s behaviors continued to deteriorate through the winter. He had a very difficult time transitioning back after school break and began refusing to get off the bus in the morning. It would sometimes take over an hour to get him into the building, and Parent often had to be called to assist school staff. (Taylor, Weider) Student was especially frustrated during academic tasks. Staff attempted to change the presentation of material and instruction and use motivators to minimize his “fear of doing these tasks.” Transition to “specialists” was especially “hard”. If Student did not nap at school, he struggled in the afternoon, and Ms. Weider often had to “call for an assist.” After a while, staff did not have Student transition to specialists. (Weider)
28. Student’s paternal Grandmother observed Student being restrained at school. She felt that Student looked scared, and the experiences were traumatic both to Student and to her. (Grandmother)
29. On February 1, 2024, following a reconvene on January 25, 2023 due to safety concerns, the Team proposed to amend Student’s IEP to include a car seat for bus transportation. (S-9) As Student struggled with his driver and monitor, the District provided him with a new driver and monitor. (Weider, Grandmother, P-7)
30. By March 2024, Student was missing significant time from learning due to school refusal and dysregulation. Even when Student finally transitioned off the bus with Parent’s support, he eloped as soon as Parent left and often did not make it back into the classroom. Student’s peers were afraid of him. They would “cower in the corner” or need to be evacuated during Student’s dysregulation. Some had been victims of his aggression. (Weider)
31. On March 14, 2024, the Team convened to review Student’s progress. Following a review of Student’s FBA, recent data, and input from his teacher, Principal and SAC, the Team proposed placement for Student at a therapeutic separate Public Day School for kindergarten located at Crosby Elementary School in Pittsfield, Massachusetts. (S-5, S-8) Parent rejected the proposal on April 17, 2024. (S-5, S-8)
32. Jeniffer Stokes is Pittsfield’s Assistant Superintendent for Transformation and Accountability. She previously served as the District’s Director of Special Education. In her previous role, she often consulted with Student’s Team regarding his challenges. Ms. Stokes testified that she agreed with the proposed change in placement for Student as it would provide him with 1:1 teaching, therapeutic supports, and significant movement opportunities. At Crosby, the SAC runs daily social skills groups and works with teachers to ensure therapeutic interventions are in place throughout the day. Students also have inclusion opportunities with paraprofessional support. Although Ms. Stokes conceded that many parents fear that their children will learn additional maladaptive behaviors in settings such as Crosby, she testified that such settings are very reinforcing and calming for children, allowing them to “engage in the curriculum.” (Stokes)
33. Ms. Stokes testified that Crosby Educational Academy was approved as a public day program by the Department of Elementary and Secondary Education (DESE) four years ago. As a day program, Crosby has its own director, dean of students, and school adjustment counselor. The classrooms are co-taught by a general educator and a special educator and are supported by paraprofessionals. The program is therapeutic. Crosby is designed to provide a small, safe, and supportive environment for students with significant behavioral and/or social-emotional needs who have had difficulty accessing the general education curriculum in a traditional elementary school setting. It provides individualized and small-group instruction for academics delivered by licensed teachers. In addition, the school offers social skills instruction and related services (OT, PT, Speech), when applicable. With high staff-to-student ratios (1:4), Crosby is able to address needs individually and personally. Students referred to Crosby have significant social/emotional needs and exhibit challenging, often unskillful behaviors in a typical school setting. All students have identified disabilities and receive special education services through an IEP. Students come to Crosby with a history of chronic behavior problems, which, for some, have resulted in disciplinary action, often including multiple suspensions. (Stokes, S-32)
34. There is currently a total of 27 students in the Pre-K to 5 Crosby program, although the capacity of the program is 60 students. There are four classrooms. Student would attend the Pre-K to 2 classroom where there are currently four students. He would have access to a general education bus to Crosby. (Stokes)
35. According to Ms. Stokes, what makes Crosby therapeutic is its small size and the training of its staff. Although Allendale teachers are trained in trauma response, all Crosby staff are trained to respond to students with a higher level of need. (Stokes)
36. While in years past there was significant staff turnover at Crosby, the majority of 2023-2024 Crosby staff remains for the present academic year. (Stokes)
37. Ms. Darling testified that by March 2024, Student’s behaviors (which included triggering the fire alarm, leaving the building, and engaging in unsafe behaviors necessitating that the District contact Mobile Crisis) were more than what the Allendale staff could handle. Of all the Pre-K students on her caseload, Student was her “number 1 concern.” (Darling)
38. Ms. Taylor supported the District’s proposal to change Student’s placement to Crosby because Allendale and “general education” do not “have what he needs”. According to Ms. Taylor, Allendale “maximized [its] ability to support” Student. School staff “did everything they could possibly do and more. They exhausted every possibility to support him and keep everyone safe.” (Taylor)
39. Based on “the data, Student’s behaviors and his lack of access to education,” Ms. Weider also supported the District’s proposal of placement at Crosby. She testified that the ability of Crosby to provide “in the moment” work on social skills while deescalating Student would be helpful to him. She testified that Student requires a more therapeutic setting and more therapeutic resources. He needs to catch up on missed instruction and be taught social skills. Ms. Weider testified that with “all the resources” she utilized at Allendale, she could not “get [Student] to be successful,” and he “actually became less successful.” At Allendale, “they did as much as they could and went as far as they could.” (Weider)
40. On March 20, 2024, Student was seen by his pediatrician, who noted that “[a]ggresive behavior continue[d] to be [a] significant concern for the family.” He advised that the family “continue to work with his psychiatrist and school to develop accommodations and coping strategies.” The pediatrician noted “that [Student] [would] likely need placement at a behavioral school in the fall for kindergarten.” (S-33)
41. In April 2024, several manifestation determination reviews (MDR) were held in connection with disciplinary actions for Student’s behaviors. (S-4, S-6, S-7, P-6 to P-14) Denise Sullivan served as Student’s Educational Advocate and attended these MDRs, which, she testified, “felt like [they were being held] weekly.” Ms. Sullivan has been trained by the Federation for Children with Special Needs and the William and Mary College Special Education Law Program. Ms. Sullivan has worked as an Educational Advocate for 25 years. (Sullivan) According to Ms. Sullivan, her job is not to advocate for what parents want, but rather to educate them about what is appropriate for their child. In the instant case, Ms. Sullivan became concerned when she spoke to Ms. Taylor about Student. Ms. Taylor had reported significant concerns about Student’s behaviors and indicated that Student’s “eyes showed intent” and that he “knew right from wrong.” (Sullivan) Specifically, according to the District, Student’s actions were not reactionary and impulsive; rather, he had “intent with his aggression and defiance”. (Sullivan, S-6)
42. Ms. Sullivan testified that she was concerned that Student’s rotating 1:1 paraprofessionals were not properly trained and were not providing Student with consistent support in de-escalation techniques, “first, then” strategies, and ABA-based support (which, according to Ms. Sullivan, would have been helpful to Student regardless of his not having an autism diagnosis). She believed that Allendale staff should have been trained to provide Student with these strategies “with fidelity.” (Sullivan)
43. In Ms. Sullivan’s opinion, Student does not require a therapeutic program, and, if he did, Crosby would not be appropriate. She testified that Student’s medication is an “ongoing progression.” He needs to have access to consistent accommodations and supports at Allendale before removal to a different setting is considered. With rotating 1:1 support, Student cannot build consistency and develop relationships. Ms. Sullivan also testified that, to her knowledge, the Board-Certified Behavior Analyst (BCBA) was not updating Student’s BIP on a regular basis. (Sullivan)
44. Ms. Weider testified that the BIP was constantly reviewed and modified. She and her paraprofessionals collected behavior data and “time out of the classroom” data. They reviewed the data every Friday and implemented changes based on the trends. The BCBA supported the classroom weekly. (Weider) According to the District’s BCBA, Aimee Erskine[[4]](#footnote-4), Student “require[d] eyes on at all times with constant monitoring of what he was doing.” Student engaged “in non-compliant and oppositional behaviors to gain the attention of adults. He would purposefully disregard or do the exact opposite of what was asked of him. He [was] continually looking to engage adults in power struggles.” (S-30)
45. According to Ms. Weider, by April and May 2024, Student was not accessing school at all. As academic tasks were a trigger, staff did not put any academic demands on him; maintaining safety was their sole concern. Staff aimed to maintain Student in the classroom so that he would receive some instruction by listening. (Weider)
46. On May 20 2024, Student stopped attending school following an especially difficult attempt to get him into school. (Parent, Weider) According to Parent, Student had been begging her daily not to attend school. Student’s therapist, whom he was seeing weekly via Zoom, suggested to Parent that Student not return as school seemed to be retraumatizing him. (Parent)
47. Throughout the 2023-2024 school year, Student engaged in repeated unsafe behaviors both in school and on the bus, including elopement from school grounds, physical and verbal aggression towards others, self-injurious behavior, school refusal, task refusal, and property destruction. In total, he had 35 major incidents and 85 minor incidents. His behaviors necessitated the help of the Pittsfield Police Department and Mobile Crisis on several occasions. (S-19, S-30, S-35, S-36, S-37) Student was subject to 7 emergency removals. (S-20, S-34) As the year progressed, Student’s behaviors “[were] happening more frequently with increasing intensity. In addition to the safety concerns that his physical behavior present[ed] to himself, peers and adults, his language and interactions with others [were] of significant concern. He [swore] continually with increasing profanity … not only disrupting the learning environment in the pre-K classroom, but … [also] using more and more school resources to keep him, peers and staff safe.” (S-36)
48. According to Student’s Pre-Kindergarten Report Card for 2023-2024, Student was making progressing toward some state standards. (P-1)
49. In June 2024, Student began a new course of medication to help with impulsivity, hyperactivity, and general emotional and behavioral control. (Halabi, Parent) Dr. Halabi testified that he had tried different formulations and dosages of guanfacine, but the medication was not working. (Halabi) Dr. Halabi subsequently prescribed Ritalin and then Concerta. (Halabi) According to Parent, Student has been more focused, less impulsive, less hyperactive, and much more tolerant of frustration since starting the medication. He has had multiple sleepovers with no issues. In August, he attended a day care without any behavioral issues. (Parent, P-16, P-17, P-22)
50. In July 2024, Dr. Halabi observed Student in his office to be less impulsive and inattentive. According to Dr. Halabi, this is a typical and expected response to this medication. When children are better able to manage hyperactivity, inattention and impulse control, they have better behavioral control. He testified that, although behavior management requires both symptom control and emotional regulation, medication has “the biggest impact “on symptom control. (Halabi, P-16, P-17)
51. Dr. Halabi believes it would be beneficial for Student to have some therapeutic interventions at school. Although he advocated that Student begin the 2024-2025 school year in a traditional school setting and that the school assess how he performs on the new medication regimen, at Hearing, he acknowledged that Student may present differently in an office setting than in a school environment where there are academic demands. Dr. Halabi testified that he works in “coordination” with school, but he does not feel that he can make educational recommendations because he has not observed Student in his school setting. (Halabi)
52. According to Student’s Clinical Therapist[[5]](#footnote-5), Student presents with symptoms consistent with Separation Anxiety Disorder, including excessive distress when anticipating separation from his mother and persistent reluctance to attend school. He also presents with symptoms consistent with Post-Traumatic Stress Disorder (PTSD) due to his early exposure to unpredictable caregivers outside of the home. He shows the following PTSD symptoms: 1) repeatedly acting as if the traumatic experience was happening again specifically when surrounded by caregivers who do not bond with him, 2) prolonged and intense psychological distress at the exposure of external cues that symbolize or resemble the trauma at the daycare setting, 3) systematic attempts to avoid going to places that remind of his trauma or generate similar feelings, 4) systematic attempts to avoid interpersonal relationships that may resemble his trauma including being fearful to bond with caregivers that struggle to connect with him, 5) irritability and angry outburst with little or no provocation expressed as verbal or physical aggression, hypervigilance, and 6) problems with concentration. Student responds to trauma-informed cognitive behavioral therapy, positive parenting strategies, and play therapy strategies. Like most children with PTSD, he responds well to predictability, consistency, structured environments, and highly attuned providers. He does not respond well to having too many choices, being asked to make decisions when feeling overwhelmed, and being approached when he is verbally requesting space to calm down. (S-31, P-15)
53. Ms. Stokes testified that although Parent advocated to place Student at Stearns Elementary School in Pittsfield for the 2024-2025 academic year, said elementary school does not have an appropriate program for Student. While Stearns has a co-taught classroom model, the classroom is a general education classroom where students with disabilities are often placed. These large general education classrooms do not have any therapeutic components. (Stokes)
54. Ms. Sullivan has not observed Student in his current program at Allendale. She believes that currently, Student is not the same Student whom staff at Allendale “saw last May”. (Sullivan)
55. According to Grandmother, none of the Allendale school staff wanted to work with Student. (Grandmother)
56. Grandmother does not believe Crosby is appropriate for Student. As a school bus driver, she overhears “radio calls” relating to behaviors on the general education bus responsible for transporting students to Crosby. There are reports of aggression towards monitors and peers. (Grandmother)
57. Parent observed Crosby and did not find it appropriate. She observed students running around and fighting. Parent was especially disturbed by the “safety room”, which she described as resembling a jail cell, with unpadded walls and a “tiny window”. There were carvings on the wall which worried Parent as they looked as if they had been drawn with a sharp instrument. As Student is a “little sponge,” Parent worries about the types of behaviors he would observe at Crosby. (Parent)
58. Parent believes that Student requires consistent therapeutic services but not a therapeutic placement. According to Parent, Student requires a consistent paraprofessional throughout his school day and trusted adults with whom he can bond. He also requires weekly therapy. In addition, Parent believes a home-school communication log is important to Student’s success. (Parent)

**LEGAL STANDARDS AND DISCUSSION:**

1. Legal Standards
2. *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).[[6]](#footnote-6) 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 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.”[[7]](#footnote-7)

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."[[8]](#footnote-8) 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."[[9]](#footnote-9)

An IEP must be individually tailored for the student for whom it is created.[[10]](#footnote-10)  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.[[11]](#footnote-11) Evaluating an IEP requires viewing it as "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.”[[12]](#footnote-12) At the same time, a FAPE does not require a school district to provide special education and related services that will maximize a student’s educational potential.[[13]](#footnote-13) In *Endrew F. v. Douglas County Regional School District*, the Supreme Court explained that appropriate progress will look different depending on the student.[[14]](#footnote-14)

1. *Burden of Persuasion*

In a due process proceeding, the burden of persuasion is on the moving party.[[15]](#footnote-15) Hence, here, as the moving party, the District must prove its case by a preponderance of the evidence.

1. Application of Legal Standards:

It is undisputed that Student is a student with a disability who is entitled to special education services under state and federal law. The issue in dispute here is whether Student requires a therapeutic placement at the Crosby Educational Academy in order to receive a FAPE in the LRE. Based upon approximately two days of oral testimony, the exhibits introduced into evidence, the thoughtful arguments of the parties, and a review of the applicable law, I conclude that it is premature to order placement for Student at Crosby. Instead, I conclude that an extended evaluation for Student at Crosby is appropriate. My reasoning follows.

I note at the outset that in rendering this Decision I rely heavily on the testimony of Ms. Taylor and Ms. Weider, who provided many details as to their extensive personal experiences with Student. Their descriptions of Student’s struggles and the numerous interventions attempted to support him were corroborated by the documentary record. I further note that Dr. Halabi was a credible and persuasive witness. He acknowledged the limitations of his position as Student’s psychiatrist, noting that he has not observed Student in school. I give great weight to his testimony regarding the potential impact of Student’s medication on Student’s presentation in a school setting.

While Ms. Sullivan was credible in her recollections, I found her testimony less persuasive as she did not observe Student in his educational setting, and her testimony as to the deficits of the Allendale program and the limited experience and training of the paraprofessionals who supported Student was grounded in her own assumptions rather than in fact. Parent and Grandparent provided heartfelt testimony. Their love and concern for Student are undeniable. However, they lack educational expertise, and, in rendering their opinions, they relied in part on perceptions and conclusory assertions rather than personal knowledge. As such, where there are contradictions in testimony, I resolve them in favor of Ms. Taylor and Ms. Weider

Here, the District contends that interventions have been exhausted at Allendale and that Student requires a therapeutic placement in order to access his education and to make effective progress. In contrast, Parent argues that with Student’s changed medication, Student no longer presents with the behavior challenges he exhibited during the previous school year. Student may require therapeutic supports, but he does not require a therapeutic placement. Moreover, Crosby is inappropriate for Student; at Crosby, he would be exposed to more extreme behaviors and to no positive role models.

First, it is indisputable that Student did not make effective progress while placed in the general education classroom at Allendale during the 2023-2024 school year. Despite having strong cognitive abilities, Student spent the majority of the school year in a dysregulated state that prevented him from accessing the classroom and staff instruction. Student’s behaviors were frequent, intense, and unsafe. That Student was able to make any progress towards state standards on his report card is a testament to his cognitive strengths and the efforts of his teachers.

Pittsfield meets its obligation to provide Student with a FAPE if the program it offers him is reasonably calculated to deliver educational benefits[[16]](#footnote-16) in the least restrictive educational environment that can accommodate his needs.[[17]](#footnote-17) Ample evidence exists that the District attempted to accommodate Student with necessary supplemental aids and services to make Allendale’s general education Pre-K classroom placement successful before considering a more restrictive placement option.[[18]](#footnote-18) Specifically, the District conducted an FBA; provided Student with 1:1 support (and, at times, 2:1 support); implemented, reviewed, and amended a BIP; and offered strategies to increase self-advocacy through language rather than externalized maladaptive behaviors. The record demonstrates that in the general education setting Student exhibited persistent aggressive and disruptive behaviors and elopement, all of which failed to improve despite positive peer role models, accommodations, and direct instruction in self-regulation skills with a SAC.

There is no evidence to support Ms. Sullivan’s assertion that Student’s services and interventions were not implemented with consistency or fidelity. Student was offered trusted adults and consistent therapeutic supports. None proved successful, and Student spent the majority of his days outside of the classroom, his behaviors escalating rather than abating. Parent cannot point to any additional accommodations and supports which Allendale could or should have put in place to allow Student to remain in the general education setting. Nor can she point to any supports and interventions which were in any way inadequate or insufficient.[[19]](#footnote-19) While Parent understandably desires her young child to remain in a general education classroom, the LRE mandate does not override the FAPE requirement of the IDEA.[[20]](#footnote-20) Parent’s preference is an appropriate consideration, but it is not the predominant factor in the placement decision,[[21]](#footnote-21) especially where it is clear that Student has not benefitted from his general education setting.[[22]](#footnote-22)

As a result, it was reasonable for Student’s IEP Team to recommend additional supportive services which could only be provided in a more restrictive setting. The preponderance of the credible evidence, especially that of Ms. Weider and Ms. Taylor, suggests that Student’s educational needs can only be accommodated in a highly structured therapeutic setting. Such setting would include a small student-to-teacher ratio, highly trained staff who can provide constant feedback, and one in which therapeutic interventions are incorporated throughout the day, especially during times of de-escalation. These additional therapeutic components are not available at Allendale and cannot be implemented there.

Crosby, on the other hand, can provide the components which, according to Student’s Team, he requires to make effective progress in the development of his emotional, social, and behavioral skills.[[23]](#footnote-23) Crosby’s highly trained staff, which includes a dedicated school adjustment counselor, dean of students, director, regular education teacher, special education teacher, and several paraprofessionals, together with the small number of students in the pre-K to 2 classroom, would benefit Student by creating a calm, flexible environment in which he can attend to his academics while learning to self-regulate. [[24]](#footnote-24) Parent offered no evidence that the proposed IEP with placement at Crosby is not reasonably calculated to provide Student with educational benefit.

Nevertheless, the change in Student’s presentation following the introduction of his new medication in June 2024 is not only heartening, but also has the potential to be outcome determinative. Pivotal in my analysis is Dr. Halabi’s testimony that once the right medication is identified, it can have the “biggest impact” on impulse control, and this impact, in turn, should improve Student’s behavioral control. In light of this evidence, I cannot at this time categorically find that Pittsfield has met its burden to demonstrate that Student’s needs cannot be met in a less restrictive setting. Because of Student’s young age and the fact that as of the date of hearing he had not yet had an opportunity to attend school on his new medication, I find it appropriate to order a comprehensive extended evaluation for Student. Said evaluation shall be for the purpose of assessing his social, emotional, and behavioral presentation in a school setting, and shall take place at Crosby. It is essential that the Team consult with Student’s psychiatrist during the extended evaluation period. At the conclusion of the 8-week extended evaluation period, the Team should reconvene to assess their findings and recommendations, to develop an IEP, and to determine placement in accordance with 603 CMR 28.05(2)(b).[[25]](#footnote-25)

**ORDER:**

Pittsfield Public Schools is hereby ordered to conduct an 8-week extended evaluation of Student at Crosby Educational Academy in order to assess Student’s social, emotional, and behavioral presentation and shall thereafter propose an IEP and placement.

So Ordered,

By the Hearing Officer,

/s/ Alina Kantor Nir

Alina Kantor Nir

September 10, 2024

COMMONWEALTH OF MASSACHUSETTS

BUREAU OF SPECIAL EDUCATION APPEALS

EFFECT OF BUREAU DECISION AND RIGHTS OF APPEAL

# Effect of the Decision

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. Accordingly, the Bureau cannot permit motions to reconsider or to re-open a Bureau decision once it is issued. Bureau decisions are final decisions subject only to judicial 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. Rather, a party seeking to stay the decision of the Bureau must 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 Parent otherwise agree, the child shall remain in the then-current educational placement,” during the pendency of any judicial appeal of the Bureau decision, unless the child is seeking initial admission to a public school, in which case “with the consent of the Parent, 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 Parent 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 during the pendency of judicial proceedings must seek a preliminary injunction ordering such a change in placement from the court having jurisdiction over the appeal. 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 decision of 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 of the Bureau decision. 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 Parent 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. All references to Parent are to Student’s mother. [↑](#footnote-ref-1)
2. Ms. Taylor has a master’s degree in middle school mathematics and holds several licenses from the Department of Elementary and Secondary Education (DESE). (Taylor) [↑](#footnote-ref-2)
3. Behavioral concerns included: increased activity level, destruction of property when doesn't get own way, tantrum behavior, assaulting classmates, and throwing objects. [↑](#footnote-ref-3)
4. Ms. Erskine did not testify at Hearing. [↑](#footnote-ref-4)
5. Elia Araci Ferreira Legua, LCSW, is Student’s Clinical Therapist. She did not testify at Hearing. [↑](#footnote-ref-5)
6. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 (d)(1)(A). [↑](#footnote-ref-6)
7. See 20 USC §1401 (9), (26), (29); 603 CMR 28.05(4)(b); C.D. v. Natick Pub. Sch. Dist., 924 F.3d 621, 624 (1st Cir. 2019); Sebastian M. v. King Philip Reg'l Sch. Dist., 685 F.3d 84, 84 (1st Cir. 2012); *C.G. v. Five Town Comty. Sch. Dist.,* 513 F. 3d 279, 285 (1st Cir. 2008); *In Re: Chicopee Public Schools,* BSEA #1307346 (Byrne, 2013). [↑](#footnote-ref-7)
8. 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-8)
9. *C.D.*, 924 F. 3d at 631 (internal citations omitted); see 20 U.S.C. 1412(a)(5)(A). [↑](#footnote-ref-9)
10. See *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 388 (2017). [↑](#footnote-ref-10)
11. See 34 CFR §300.324(a)(i-v); *Endrew F.,* 580 U.S. at 388; *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012); *N. Reading Sch. Comm. v. Bureau of Special Educ. Appeals*, 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-11)
12. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990). [↑](#footnote-ref-12)
13. *Bd. of Educ. 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-13)
14. See *Endrew F.,* 580 U.S. at 400; see 603 CMR 28.02(17). [↑](#footnote-ref-14)
15. See *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). [↑](#footnote-ref-15)
16. See *N. Reading Sch. Comm*., 480 F. Supp. 2d at 489 (D. Mass. 2007) (an IEP must be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade,” and must provide for “educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child ‘to benefit’ from the instruction”) (internal citations omitted).  [↑](#footnote-ref-16)
17. See *Doe v. Belchertown Pub. Sch.,* 347 F. Supp. 3d 90, 99 (D. Mass. 2018) (internal citations and quotations omitted). [↑](#footnote-ref-17)
18. See *Letter to Cohen*, 25 IDELR 516 (OSEP 1996) (the law requires that "first consideration" be given to placement in a regular classroom with any necessary supplemental aids and services to make that placement successful before considering more restrictive placement options); see also *R.S. v. Lower Merion Sch. Dist.*, 660 F. Supp. 3d 284, 312 (E.D. Pa. 2023) (“The inquiry starts with an examination of the District's efforts to accommodate J.S. in a regular classroom”). Cf. *Oberti v. Bd. of Educ. of Borough of Clementon Sch. Dist.*, 995 F.2d 1204, 1216 (3d Cir. 1993) (“If the school has given no serious consideration to including the child in a regular class with such supplementary aids and services and to modifying the regular curriculum to accommodate the child, then it has most likely violated the Act's mainstreaming directive. The Act does not permit states to make mere token gestures to accommodate handicapped students; its requirement for modifying and supplementing regular education is broad”). [↑](#footnote-ref-18)
19. See *A.S. v. Norwalk Bd. of Educ.*, 183 F. Supp. 2d 534, 541 (D. Conn. 2002) (“it is simply not enough to state that a more restrictive environment was appropriate because A. was not thriving in the regular education classroom. Rather, *Rowley* itself requires an examination of the adequacy of the services being provided in the mainstream setting”). [↑](#footnote-ref-19)
20. *See Murray v. Montrose County Sch. Dist.,* 51 F.3d 921, 925–26 (10th Cir.1995) (“The IDEA requires *both* that the child be provided a FAPE *and* that such a FAPE be provided in an LRE to the maximum extent appropriate”); see also *A.S.,* 183 F. Supp. 2d at 540 (“*Rowley* demarcates an outer limit to the IDEA's LRE preference”). [↑](#footnote-ref-20)
21. See *Letter to Burton*, 17 IDELR 1182 (OSERS 1991); see also *Joanna S. v. S. Kingstown Pub. Sch. Dist.,* No. CV 15-267M, 2017 WL 9324761, at \*26 (D.R.I. Jan. 11, 2017), *report and recommendation adopted,* No. CV 15-267 S, 2017 WL 1034528 (D.R.I. Mar. 17, 2017) (a “placement is not proper ... because its chief benefits are the kinds of educational and environmental advantages and amenities that might be preferred by parents of any child, disabled or not”); *Gwinnett County School District*, OSAH-DOE-SE-1415045-67-Howells, 64 IDELR 122 (SEA GA, 2013) (although parent wished that his son would receive services other than in the therapeutic program located in a hospital, the hearing officer concluded that that the student's eloping and aggressive behaviors, such as grabbing, hitting, pushing, and kicking, were consistently increasing in severity and frequency, and the day program would properly address these escalating behaviors by providing the student with additional supportive services that were unavailable at other placement options).  [↑](#footnote-ref-21)
22. See *C.D*., 924 F. 3d at 63 (citing *Roland M.*, 910 F2d at 992-993) (instructing teams to assess the 'marginal benefits' and costs of a placement and choosing a placement that strikes an appropriate balance between the restrictiveness of the placement and educational progress); see also *Falmouth Sch. Dep't v. Doe*, 44 F.4th 23, 40 (1st Cir. 2022) (“in determining whether the IEPs that Falmouth proposed during this time were reasonably calculated to ensure that John would receive a FAPE, ‘the benefits to be gained from mainstreaming must be weighed against the educational improvements that could be attained in a more restrictive (that is, non-mainstream) environment’”) (internal citations omitted); *Daniel R.R. v. State Bd. of Educ*., 874 F.2d 1036, 1048-1049 (5th Cir. 1989) ("mainstreaming would be pointless if we forced instructors to modify the regular education curriculum to the extent that the handicapped child is not required to learn any of the skills normally taught in regular education. The child would be receiving special education instruction in the regular education classroom; the only advantage to such an arrangement would be that the child is sitting next to a nonhandicapped student”).

    Parent argued that the District did not exhaust their interventions. In support of this claim, Parent pointed to errors in the exhibits offered by the District. For instance, the BCBA’s observation included a date on which Student was absent. According to the District, the observation dated March 20, 2024 lines up with the Log Entry for March 19.  Therefore, this is an error in the date, as the incident the BCBA observed occurred on the 19th, not the 20th. I note that such clerical errors do not mitigate the District’s efforts to support Student. [↑](#footnote-ref-22)
23. See *R.S.,* 660 F. Supp. 3d at 308–09 (“The evidence support[ed] the hearing officer's finding that the District did not have the resources to implement … therapeutic recommendations” as J.S.’s “needs exceed[ed] what [could] be provided to him in regular education with supplementary aids and services” and “[i]n order to appropriately meet his needs, [J.S.] requires a highly structured educational environment with a high staff-to student-ratio and intensive emotional, behavioral, social, and therapeutic supports that are embedded throughout his school day. These supports [were] not able to be appropriately provided in his home school”). [↑](#footnote-ref-23)
24. Parent’s argument that the only difference between the Allendale general education class and Crosby is the student: teacher ratio is therefore unpersuasive. [↑](#footnote-ref-24)
25. Pursuant to 603 CMR 28.05(2)(b)(5), Crosby shall not be considered Student’s placement during the extended evaluation time period. [↑](#footnote-ref-25)