**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Peabody Public Schools BSEA #: 2415336**

**Ruling on Peabody Public Schools’ Motion for Summary Judgment**

This matter comes before the Hearing Officer on the August 27, 2024 filing by Peabody Public Schools (Peabody or the District) of its Motion for Summary Judgment and Memorandum of Law in Support Thereof (*Motion*), and corresponding appendix[[1]](#footnote-1). In said *Motion* Peabody asserts that Student is no longer eligible for special education and that the District has offered the Student a free appropriate public education (“FAPE”) for the 2022-2023 and 2023-2024 school years. The District further argues that there is no genuine issue of material fact either as to Student’s having graduated after meeting all local and state graduation requirements, including the Competency Determination, or the District having offered FAPE for the 2022-2023 and 2023-2024 school years. Therefore, based on the undisputed facts and as a matter of law, the Student is no longer eligible for special education and the Student is not owed any compensatory services.

On August 29, 2024[[2]](#footnote-2), Parent filed his *Objection to Summary Judgment[[3]](#footnote-3)* (*Objection*) asserting that there is “a genuine dispute of material fact as to whether [Student] received the ‘appropriate transitional services’ before the District proceeded to graduate the Student.” Parent requested that the Bureau of Special Education Appeals (BSEA) deny the District's *Motion* “and order the District to provide continued FAPE as required by the IDEA, including appropriate transitional services. In the alternative, [Student] is entitled to compensatory services.”

On August 30, 2024, Parent amended his Objection, asserting that “[t]here is a genuine dispute of material fact as to whether [Student] received the ‘appropriate transitional services’ before the District proceeded to graduate the Student.” Specifically, while Parent acknowledges receiving his Notice of Procedural Safeguards, Parent did

not understand that IEP could “include Social Emotional accommodations with a goal

for social emotional goals and objectives.” In addition, Parent asserts that Student “did not reach his transitional goals as there [was] a lack of any evaluation or measure of what he could achieve given the correct social emotional supports and transition coaching and or classes.” Furthermore, Student did not make sufficient progress on his Social Skills Goal as he was unable to “accomplish[] this goal without adult prompting or redirection.”

On September 9, 2024, Peabody filed *Reply to the Parent’s Objection to the District’s Motion for Summary Judgment (Peabody’s Reply)*, asserting that the parent failed to satisfy his burden to show, with specific facts, that there is a genuine issue of fact regarding either the provision of FAPE or Student’s having met local and state graduation requirements.

Neither party has requested a hearing on the *Motion*. Because neither testimony nor oral argument would advance the Hearing Officer's understanding of the issues involved, this Ruling is issued without a hearing, pursuant to Bureau of Special Education Appeals Hearing Rule VII(D).

For the reasons set forth below, the District’s Motion is ALLOWED, in part, and DENIED, in part.

**I. ISSUES:**

The issue here presented is whether summary judgment may be granted in favor of the District because there is no genuine issue of material fact such that Student has been properly graduated from high school thereby terminating his eligibility for special education and related services pursuant to the Individuals with Disabilities Education Act (IDEA) and Massachusetts special education law.

**II. FACTUAL BACKGROUND:**

The following facts are not in dispute and are derived from the Hearing Request, the District’s response thereto, the District’s *Motion*, Parent’s *Objection to Summary Judgment*, *Peabody’s Reply*, and all exhibits attached to said pleadings.

1. Student is an 18-year-old resident of Peabody, Massachusetts. He attended Peabody Veterans Memorial High School from September 2020 until June 2024. (S-1) During this time, Student was eligible for special education and related services pursuant to the disability Categories of autism (primary) and Health and Hearing Impairment (secondary). He has difficulty staying focused and on task. (S-4) He also struggles with expressive and receptive communication skills, adjustment to transitions and unexpected situations, social reciprocity, emotional regulation, self-determination, and self-advocacy. (S-7)
2. On or about April 2022, the District proposed an IEP dated March 29, 2022 to November 18, 2022, which included goals in the areas of Organizational Skills, Written Language, and Social Skills and called for placement in a substantially separate classroom at Peabody Veterans Memorial High School. The IEP proposed: A Grid (consultation ) services with a counselor (1x15min/30days) and with a Teacher of the Deaf (TOD) (1x10min/5days); pull-out (C-Grid) specialized instruction with a special education teacher in all core content areas (5x45min/5days each for ELA, math, science, and history); direct speech and language services with a speech language pathologist (1x45min/5days); direct counseling services with a counselor (2x30min/5days); and direct learning center services with a special education teacher (2x45min/5days). Furthermore, the District proposed that Student be supported by a 1:1 paraprofessional throughout the entire school day. Parent accepted the IEP and placement in full on September 6, 2022. (P-4, S-3, S-4)
3. Student was re-evaluated in the spring and fall of 2022. (S-5) As part of the evaluation, Student’s geometry teacher completed Educational Assessments A and B, noting that Student was “an average student.” (S-15) The Psychological Evaluation[[4]](#footnote-4) revealed that although Student “present[ed] as being much younger than his chronological age,” he had average cognitive abilities. Both on a cognitive/intellectual level and on a socio-emotional level, Student demonstrated a notably reduced ability to interact socially with others. Emotionally, he was being impacted significantly by feelings and thoughts associated with depression and anxiety. The evaluator concluded that

“some of these characteristics [were] related to [Student’s] autism diagnosis. However, some of the internalized emotional related characteristics [were] more related and associated with a mood disorder. Behaviorally, [Student] also struggle[d] with the self-regulation difficulties most likely associated with his attention deficit hyperactivity disorder. He showed a reduced and restricted ability to interact socially with this examiner. However, it should be noted that [Student came] across as being likable and kind; and he show[ed] a desire to want to make friendships with others.”[[5]](#footnote-5)

It was recommended that Student continue to work on social skills and to access school-based counseling. (P-1, S-16) The School Adjustment Counselor’s (SAC) Observation noted struggles with independent work, off-task behavior and work completion issues. (S-17) According to the Speech Language Pathology Evaluation[[6]](#footnote-6), Student demonstrated average to below average receptive and expressive language skills. He struggled with inferences, implied information, and abstract comprehension which “affect[ed] his relationships with peers.” (S-18) On the Academic Evaluation[[7]](#footnote-7) Student demonstrated Average Broad Reading skills, Low Broad Mathematics skills, and Very Low Broad Written Language skills. Student’s Broad Achievement score fell within the Low Average range. (S-19)

1. The Team reconvened on October 18, 2022 and developed an IEP dated October 18, 2022 to October 17, 2023, with placement in the District’s substantially separate classroom at Peabody High School (2022-2023 IEP). (S-5, S-6) The IEP included goals in Organization Skills, Communication Skills, Social Skills, and Writing. The District proposed consultation (A-Grid) with a counselor (1x15min/30days) and with a TOD (1x10min/5days). Additionally proposed were pull-out (C-Grid) specialized instruction with a special education teacher (5x45min/5days each for ELA, math, and history); direct speech and language services with a speech language pathologist (1x30min/5days); direct counseling services with a counselor (2x30min/5days); direct learning center services with a special education teacher (2x45min/5days and 3x15min/5days); and direct academics/behavioral services with a special education assistant (5x330min/5days). . Furthermore, the District proposed that the Student be supported by a 1:1 paraprofessional throughout the entire school day. The IEP indicated an anticipated graduation date of June 30, 2024. (S-6)
2. A Transition Planning Form (TPF), which also noted an anticipated graduation date of June 30, 2024, was completed on October 18, 2022. It documented Student’s vision to graduate high school and pursue a career in graphic design for video games, an action plan that included specialized instruction in social pragmatics and learning strategies, and noted that extracurricular activities at the high school, community service opportunities, and increased responsibility at home would help Student reach his post-secondary vision. In addition, the TPF noted that community experiences and post-school adult living should be addressed through specialized instruction. (P-2, S-7)
3. On January 1, 2023, Parent accepted the IEP and consented to the proposed substantially separate placement. (S-6)
4. For the 2022-2023 school year, Student received all passing marks for his courses. (S-1, S-8)
5. Student participated in the 10th Grade MCAS and scored 461 in ELA and 480 In Math. (S-20) An Educational proficiency Plan (EPP) was developed for Student in September 2023[[8]](#footnote-8) for Math and ELA. (S-13) He passed and met the competency determination for Science and Technology/Engineering (STE). (S-20) According to Parent, Student “passed MCAS.” (S-21)
6. On October 12, 2023, the Team convened to develop an IEP for the period October 12, 2023 to October 11, 2024 (2023-2024 IEP).[[9]](#footnote-9) At that time, Parent reported being “very happy with [Student’s] progress …. He [wanted] the supports [to] remain in place in order to ensure that [Student] graduate[d] on time … with his class. He [wanted] to find out more information about what services [might] be available to [Student] after graduation.” The IEP included goals in the areas of Organizational Skills (recording and completing assignment independently); Communication (answering critical thinking questions, comprehending figurative language, answering pragmatic questions about social situations); Social Skills (recognizing role in peer interaction and how behavior impacts a conversation, listening and responding appropriately and staying on topic, practicing reciprocal conversations, implementing learned productive social skills when engaged in conversation); Writing (responding to a prompt of a grade level text using standard English conventions and proper MLA formatting); and the following services: A-Grid: counselor (1x15min/30days) and TOD (1x10min/5days); B-Grid: academics/behavioral support from a 1:1 special education assistant (5x330min/5days); C-Grid: specialized instruction with a special education teacher (5x45min/5days each for ELA, math, and history); direct speech and language services with a speech language pathologist (1x30min/5days); direct counseling services with a counselor (1x30min/5days); and direct learning center services with a special education teacher (3x45min/5days and 2x15min/5days). The IEP proposed placement in a substantially separate classroom. The anticipated graduation date was noted as June 30, 2024. (S-10, S-11)
7. A TPF was completed on October 12, 2023. It noted that Student’s vision continued to be to graduate high school and pursue a career in graphic design for video games. Student’s disability-related needs were identified as attention to task, expressive language, expressive writing, and social pragmatics. To help Student toward meeting his vision, specialized instruction, counseling and speech services were proposed to assist with communication, transitions, social skills, emotional regulation, executive functioning, and self-advocacy. (P-3, S-11)
8. In November 2023, Student’s Progress Report demonstrated that he was making progress on most goals and was open to support in others. The January and March 2024 Progress Reports reflect that Student continued to make progress on all his goals. (P-5, S-8)
9. On March 20, 2024, Parent rejected portions of the IEP, specifically “the graduation and 688 transition plan.” He noted that he wanted “to discuss placement/training options.” (S-10, S-11)
10. The Team convened on May 17, 2024 to discuss the rejected portions of the IEP. The District insisted that Student had met the requirements for a standard diploma in Peabody “and therefore must graduate and exit special education.” Parent and Parent’s advocate sought to defer the graduation date to provide an opportunity for him to access a school-based transition program that would provide additional skill building in non-academic areas such as social, vocational, and communication skills. This option was rejected by Peabody, as Student was able to make meaningful progress in the general curriculum as evidenced by the fact that he had met all the requirements for graduation. (S-12)
11. Brooke Randall is the Principal of Peabody Veterans Memorial High School and has been since the 2023-2024 school year. She certified that as of June of 2024 Student met the local requirements for graduation. In addition, as part of Student's EPP, Student was required to complete, and in fact successfully completed, full-year ELA and Math courses during his Grade 11 and 12 years. These ELA and Math courses moved Student toward meeting grade level expectations on the Grade 10 curriculum framework standards and the Grade 11 and 12 standards in ELA, Algebra II, or Model Mathematics III. The final exams administered in the courses listed on the Student's EPP (ELA 9, 10, 11 and 12, and Algebra II and Coordinated Math) were used to determine whether he was making progress toward meeting expectations or had met expectations on the Grade 10 standards. It was determined that Student did make such progress and satisfied the state competency determination. (S-1, S-2, S-13)
12. According to Parent, Student’s IEP dated October 12, 2023 to October 11, 2024 was “inadequate” because despite concerns regarding Student’s social-emotional struggles highlighted in the District’s 2022 Psychological Evaluation, there was “no goal [or] objectives to help [Student] learn coping skills, manage emotions, regulation strategies.” In addition,

“There [were] no transitional goals to allow [Student] to access his vision presented in his Educational Plan. There [was] no mention of how to achieve his vision or how to lessen his need for an aide or how to increase his independence from his aide…. [T]here are no goals as to how he will become more independent to get the training to learn how to be a graphic designer or coder for video games.” (S-21)

1. On June 21, 2024, Parent filed a Hearing Request with the BSEA asserting that Student should not be graduated as he had not been offered a FAPE.

**III. LEGAL STANDARDS:**

1. *Jurisdiction of the Bureau of Special Education Appeals (BSEA)*

20 U.S.C. § 1415(b)(6) grants the Bureau of Special Education Appeals (BSEA) jurisdiction over timely complaints filed by a parent/guardian or a school district "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child."[[10]](#footnote-10) In Massachusetts, a parent or a school district, "may request mediation and/or a hearing at any time on any matter[[11]](#footnote-11) concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law, or procedural protections of state and federal law for students with disabilities."[[12]](#footnote-12) Nevertheless, it is well established that matters that come before the BSEA must involve a live or current dispute between the Parties.[[13]](#footnote-13) In addition, the BSEA "can only grant relief that is authorized by these statutes and regulations, which generally encompasses orders for changed or additional services, specific placements, additional evaluations, reimbursement for services obtained privately by parents or compensatory services."[[14]](#footnote-14)

1. *Summary Judgment*

Pursuant to 801 CMR 1.01(7)(h), summary decision may be granted when there is "no genuine issue of fact relating to all or part of a claim or defense and [the moving party] is entitled to prevail as a matter of law."[[15]](#footnote-15) In determining whether to grant summary judgment, BSEA hearing officers are guided by Rule 56 of the Federal and Massachusetts Rules of Civil Procedure, which provides that summary judgment may be granted only if the "pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law."[[16]](#footnote-16) A genuine dispute as to a material fact exists if a fact that "carries with it the potential to affect the outcome of the suit" is contested such that "a reasonable [fact-finder] could resolve the point in the favor of the non-moving party."[[17]](#footnote-17) The moving party bears the burden of proof, and all evidence and inferences must be viewed in the light most favorable to the party opposing summary judgment.[[18]](#footnote-18)

In response to a motion for summary judgment, the opposing party "must set forth specific facts showing that there is a genuine issue for trial."[[19]](#footnote-19) To survive this motion and proceed to hearing, the adverse party must show that there is "sufficient evidence" in its favor that the fact finder could decide for it.[[20]](#footnote-20) In other words, the evidence presented by the non-moving party "must have substance in the sense that it [demonstrates] differing versions of the truth which a factfinder must resolve at an ensuing trial."[[21]](#footnote-21) The non-moving party's evidence will not suffice if it is comprised merely of "conclusory allegations, improbable inferences, and unsupported speculation."[[22]](#footnote-22)

As such, to analyze whether the party moving for summary judgment has met its initial burden such that the burden shifts to the opposing party, I must view all the evidence it has submitted in the light most favorable to the opposing party and determine that there is no genuine issue of material fact related to the claims before me. Only if the moving party is successful in this first step does the burden then shift to the opposing party. I first turn to the legal standards regarding graduation and termination of special education eligibility.

1. *Substantive Legal Standard Regarding Graduation and Special Education Eligibility.*
2. Massachusetts Graduation Requirements

Under Massachusetts law, a student (whether disabled or not) must meet two criteria in order to graduate from high school: (1) the student must pass the Massachusetts Comprehensive Assessment System (MCAS) test, and (2) the student must meet local requirements for graduation.[[23]](#footnote-23)

1. IDEA and Graduation Requirements
2. *Graduation Requirements*

Typically, "award of academic credits, credit restoration and promotion" are "general education issues over which the BSEA has declined to take jurisdiction."[[24]](#footnote-24) The IDEA does not impose diploma requirements; "[g]raduation determinations are a regular education decision, [but] the BSEA retains jurisdiction over allegations involving a denial of FAPE regarding rejection of the final IEP."[[25]](#footnote-25) Pursuant to the IDEA, a student who has attained a high school diploma is no longer eligible for special education services, including transition services.[[26]](#footnote-26)

The only requirement imposed by IDEA relative to graduation is that a school district may not properly graduate a student with a disability if he was not provided with a FAPE as required by the IDEA (e.g., a student did not receive appropriate transitional services, or his IEP was not reasonably calculated to provide him educational benefit).[[27]](#footnote-27) As articulated by the Court in *Doe v. Marlborough Public Sc*hools, "nothing in the Massachusetts laws indicates that an eligible student **must** be graduated. Rather, eligibility requirements are set as prerequisites."[[28]](#footnote-28) Nevertheless, a parent or student with decision-making authority may not unilaterally "refuse" a diploma for which all requirements have been met. They may, however, reject the final IEP on the basis that the student did not receive FAPE. [[29]](#footnote-29) Moreover, once a diploma is issued, eligibility for special education may not be "continued," and the only "proper remedy" for a denial of a FAPE is compensatory services.[[30]](#footnote-30)

1. *FAPE Under IDEA*

In *Board of Education v. Rowley*, the Supreme Court set out a two-part test for determining whether there has been compliance with IDEA: (1) "has the State complied with the procedures set forth in [IDEA]" and (2) was the individualized educational program "reasonably calculated to enable the child to receive educational benefits."[[31]](#footnote-31) As to the substantive component of a FAPE, it is delivered through an educational program, including secondary transition services, that offers the student the chance to meet challenging objectives and, in light of the student's circumstances, is appropriately ambitious and reasonably calculated to enable a student to make progress.[[32]](#footnote-32) Educational "levels of progress must be judged with respect to the potential of the particular child."[[33]](#footnote-33)

**IV. APPLICATION OF LEGAL STANDARDS:**

For Peabody to prevail on its *Motion*, it must demonstrate that no disputed issue of material facts exist such that Student met his competency determination and local graduation requirements and was provided a FAPE. If Parent can demonstrate in response to the District’s initial showing that there is "sufficient evidence" such that Student failed to meet his competency determination or local graduation requirements and/or was not provided a FAPE, then Peabody’s *Motion* must be denied.

The material facts in this case are whether 1) Student met all competency determination; 2) Student met local graduation requirements; and 3) Student was provided with a FAPE.[[34]](#footnote-34)

After a review of the pleadings, the exhibits, and the thoughtful arguments of the parties, I find that summary judgment must be allowed for Peabody. My reasoning follows.

1. There is No Disputed Issue Of Material Fact As to Whether Student Met Competency Determination.

For Peabody to prevail on its Motion, it must establish that there is no dispute that Student met his competency determination. Here, the evidence establishes that Student’s scores necessitated the completion of EPPs.[[35]](#footnote-35) Here, Peabody has indisputably established that the appropriate EPPs were developed and completed. Parent offers no evidence to the contrary. As Peabody has met its initial burden, and Parent has not raised a genuine issue of fact concerning Student’s competency determination, summary judgement for Peabody is appropriate on this material issue.

1. There Is No Disputed Issue Of Material Fact As to Whether Student Has Satisfied Local Graduation Requirements.

There is no dispute that Student did in fact meet graduation requirements by earning a sufficient number of academic credits in required courses. Peabody offers Student’s transcript as proof of Student’s having satisfied local credit requirements. Parents offer no evidence to the contrary. Therefore, Peabody has met its initial burden, and there is no disputed issue of material fact that Student has satisfied local graduation requirements. As such, summary judgment is appropriate for Peabody on this material issue.

1. There Is No Disputed Issue Of Material Fact That Peabody Offered Student A FAPE During The Period from March 29, 2022 to October 17, 2023.

The United States District Court for the District of Massachusetts held in *Doe v. Marlborough Public Schools* that a school district may not properly graduate a student with disabilities if the student was not provided with FAPE as required by IDEA (e.g., a student did not receive appropriate transitional services, or his IEP was not reasonably calculated to provide him educational benefit).[[36]](#footnote-36) Nevertheless, even if I view all evidence and inferences in the light most favorable to the Parent, I cannot find that a genuine issue of material fact exists as to whether Peabody offered Student a FAPE during the period from March 29, 2022 to October 17, 2023.

First, the statute of limitations limits my ability to examine any claims prior to June 21, 2022.[[37]](#footnote-37) In addition, prior to March 20, 2024, Parent accepted in full Student’s IEPs. As such, even if there were no transition goals in Student’s IEPs and/or they failed to address Student’s social-emotional needs or independence skills, such IEPs were accepted in full during the term of their pendency, and their substantive components may not be challenged absent a showing of lack of implementation, a claim not made in the instant matter.[[38]](#footnote-38) Therfore, there is no disputed issue of material fact that Peabody offered Student a FAPE during the period from March 29, 2022 to October 17, 2023. [[39]](#footnote-39)

1. There Is A Disputed Issue Of Material Fact As to Whether Student was Offered a FAPE from March to June 2024.

It is undisputed that Student’s 2023-2024 IEP and the TPF completed in October 2023 targeted many of Student’s unique disability-related needs (i.e., executive functioning, social skills, communication, reading, and math) with specialized instruction, direct speech and language services, and direct learning center services to support Student in these areas, and that Student made progress on many of his goals and objectives.

Parent argues that the District failed to assess Student in the area of “transition” and that Student’s IEP failed to respond to his social-emotional needs and to address his independence, as it included “no goal [or] objectives to help [Student] learn coping skills, manage emotions, regulation strategies.” Parent points to the District’s own 2022 Psychological evaluation indicating that “[e]motionally, [Student] was being impacted significantly by feelings and thoughts associated with depression and anxiety” and that Student “also struggle[d] with [] self-regulation difficulties”. Parent cites some unmet objectives and suggests that progress on others might have been greater had these needs been addressed. While lack of progress alone does not necessarily result in a denial of FAPE[[40]](#footnote-40), these asserted facts together have raised a genuine issue of material fact as to whether Peabody offered Student a FAPE from October 17, 2023 until Student’s graduation in June 2024. Therefore, Peabody is not entitled to summary judgment on this material issue.

**V. ORDER:**

Peabody’s *Motion for Summary Judgment* is ALLOWED, in part, and DENIED, in part.

The hearing scheduled in this matter will proceed on the following issues only:

1. Whether the 2023-2024 IEP was reasonably calculated to offer Student a FAPE from October 17, 2023 through June 2024; and
2. If the answer to (1) is "yes," what is the appropriate remedy?[[41]](#footnote-41)

So Ordered,

s/ Alina Kantor Nir  
Alina Kantor Nir

Date: September 12, 2024

**COMMONWEALTH OF MASSACHUSETTS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

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

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

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

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

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

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

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

Compliance

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

Rights of Appeal

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

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

Confidentiality

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

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

Record of the Hearing

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

1. The District offered exhibits S-1 through S-21 in support of its Motion. [↑](#footnote-ref-1)
2. Parent submitted his *Objection to Summary Judgment* at 10:37PM on August 28, 2024, and, as such, it is deemed to have been filed on the next business day, August 29, 2024. [↑](#footnote-ref-2)
3. Parent offered no exhibits in support of his *Objection to Summary Judgment*. [↑](#footnote-ref-3)
4. The following tests were completed as part of the evaluation: Weschler Intelligence Scale for Children - 5th Edition, Behavior Assessment System for Children - Third Edition (Self-Report - Adolescent) and Parent version Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2). (P-1, S-16) [↑](#footnote-ref-4)
5. It was noted that “[i]nput from [Student’s] father [would] be also important in understanding [Student’s] current socio-emotional needs. A BASC-3 parental form was sent to his father, but was not given back to this evaluator at the time this report was written.” (S-16) [↑](#footnote-ref-5)
6. The Clinical Evaluation of Language Fundamentals-5 (CELF-5) was completed as part of this assessment. (S-18) [↑](#footnote-ref-6)
7. The Woodcock Johnson Test of Achievement-IV (2014) Form A was completed as part of this assessment. (S-19) [↑](#footnote-ref-7)
8. Per the Department of Elementary and Secondary Education’s (DESE) Massachusetts Graduation Requirements and Related Guidance, Student’s scores in ELA and Math necessitated the completion of an EPP for competency determination (CD). (S-14) [↑](#footnote-ref-8)
9. On October 12, 2023, Student delegated decision-making authority to the Parent. (S-9) [↑](#footnote-ref-9)
10. See 34 C.F.R. §300.507(a)(1). [↑](#footnote-ref-10)
11. Limited exceptions exist that are not here applicable. [↑](#footnote-ref-11)
12. 603 CMR 28.08(3)(a). [↑](#footnote-ref-12)
13. See *In Re: Student v. Bay Path Reg'l Vocational Tech. High Sch.*, BSEA # 1805746 (Figueroa, 2018). [↑](#footnote-ref-13)
14. *In Re: Georgetown Pub. Sch*., BSEA #1405352 (Berman, 2014). [↑](#footnote-ref-14)
15. 801 CMR 1.01(7)(h). [↑](#footnote-ref-15)
16. *Id*. [↑](#footnote-ref-16)
17. *French v. Merrill*, 15 F.4th 116, 123 (1st Cir. 2021); see *Maldanado-Denis v. Castillo-Rodriguez,* 23 F.3d 576, 581 (1st Cir. 1994). [↑](#footnote-ref-17)
18. See *Anderson v. Liberty Lobby, Inc*. 477 U.S. 242, 252 (1986). [↑](#footnote-ref-18)
19. *Id*. at 250. [↑](#footnote-ref-19)
20. *Id*. at 249. [↑](#footnote-ref-20)
21. *Mack v. Great Atl. & Pac. Tea Co.,* 871 F.2d 179, 181 (1st Cir. 1989).  [↑](#footnote-ref-21)
22. *Medina-Munoz v. R.J. Reynolds Tobacco Co.,* 896 F.2d 5, 8 (1st Cir. 1990). [↑](#footnote-ref-22)
23. See M.G.L. c. 69, §1D (i); *Doe v. Marlborough Pub. Sch.,* No. CIV. A. 09-11118-WGY, 2010 WL 2682433, at \*5 (D. Mass. June 30, 2010); *Administrative Advisory SPED 2018-2*: *Secondary Transition Services and Graduation with a High School Diploma* (March 26, 2018),which may be found athttps://www.doe.mass.edu/sped/advisories/2018-2.html. [↑](#footnote-ref-23)
24. *In Re: Bay Path Reg'l Vocational Tech'l High Sch*., BSEA #1805746 (Figueroa, 2018). [↑](#footnote-ref-24)
25. *In Re: Blue Hills Reg'l Tech'l High Sch.,* BSEA # 2008213 (Figueroa 2016); see *Morales v. Newport-Mesa Unified Sch. Dist.,* 768 F. App'x 717, 719 (9th Cir. 2019) (“Morales cannot challenge Newport-Mesa's waiver of graduation requirements as a denial of a FAPE under the IDEA”). [↑](#footnote-ref-25)
26. 34 CFR 300.122(a)(3)(i); see M.G.L. c. 71B, § 1 (defining a "school age child" as one without a high school diploma);  see also *Doe v. Marlborough Pub. Sch.*, No. CIV. A. 09-11118-WGY, 2010 WL 2682433, at \*5 (D. Mass. June 30, 2010). [↑](#footnote-ref-26)
27. *Marlborough Pub. Sch.*, 2010 WL 2682433, at \*5; see *Kevin T. v. Elmhurst Comm. Sch. Dist. No. 205,* 2002 WL 433061, at \*14 (N.D.Ill. Mar. 20, 2002) (citing *Chuhran v. Walled Lake Consol. Sch.,* 839 F.Supp. 465, 474 (E.D.Mich. 1993), *aff'd,* 51 F.3d 271 (6th Cir. 1995). [↑](#footnote-ref-27)
28. See *Marlborough Pub. Sch.*, 2010 WL 2682433, at \*6 (citing to several cases) (emphasis added); see *Geraldine M. v. Ashland Pub. Sch.*, 501 IDELR 265 (SEA MA, 1979) (finding that although the school district's graduation criteria were legitimate and Geraldine had met them successfully, her particular situation involving a very recent diagnosis of hearing loss for which she never received special education services necessitated continuation of special education services). [↑](#footnote-ref-28)
29. See *Administrative Advisory SPED 2018-2: Secondary Transition Services and Graduation with a High School Diploma.* [↑](#footnote-ref-29)
30. *Dracut Sch. Comm. v. Bureau of Special Educ. Appeals of the Massachusetts Dep't of Elementary & Secondary Educ*., 737 F. Supp. 2d 35, 55 (D. Mass. 2010) ("issuance of the diploma was improper because C.A. was denied a FAPE. If the Hearing Officer had wanted to continue eligibility, he should have continued the "stay put" order, issued pursuant to 20 U.S.C. §1415(j), which would have prohibited Dracut from giving C.A. his diploma. Now that Dracut has issued the diploma, the proper remedy is compensatory services"); see *In Re: Wareham Pub. Sch*., BSEA #2202891 (Berman, 2021) ("because Student has met all local graduation requirements, and has not been deprived of FAPE, Wareham may graduate him, thereby terminating his special education eligibility, unless he is entitled to compensatory services"). [↑](#footnote-ref-30)
31. 458 U.S. at 206-207. [↑](#footnote-ref-31)
32. *Endrew F. v. Douglas County School District Re-1,* 137 S.Ct. 988, 992 (2017); see *Administrative Advisory SPED 2018-2*: *Secondary Transition Services and Graduation with a High School Diploma*. [↑](#footnote-ref-32)
33. *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.,* 518 F.3d 18, 29 (1st Cir. 2008); see *Marlborough Pub. Sch.*, 2010 WL 2682433, at \*8. [↑](#footnote-ref-33)
34. See Mass. Gen. Laws c. 69, § 1D (i); *Doe v. Marlborough Pub. Sch.,* No. CIV. A. 09-11118-WGY, 2010 WL 2682433, at \*5 (D. Mass. June 30, 2010); *Administrative Advisory SPED 2018-2*: *Secondary Transition Services and Graduation with a High School Diploma.* [↑](#footnote-ref-34)
35. Pursuant to 603 CMR 30.03(3) and DESE’s *Massachusetts Graduation Requirements and Related Guidance*, https://www.doe.mass.edu/mcas/graduation.html, for the class of 2023 students receiving scores lower than 472 in ELA and 486 in Math, must complete an EPP. See *Questions and Answers about the EPP, Last updated 8/27/2021*, which may be found at https://www.doe.mass.edu/assessment/epp/qa.html; *Massachusetts Graduation Requirements and Related Guidance*, https://www.doe.mass.edu/mcas/graduation.html [↑](#footnote-ref-35)
36. *Marlborough Pub. Sch*., 2010 WL 2682433, at \*6 (emphasis omitted). [↑](#footnote-ref-36)
37. See 34 CFR 300.507(a)(2) (under the IDEA, a due process complaint is timely if filed within two years of the date that the parent or district knew or should have known about the action forming the basis for the complaint). Certain exceptions apply but are irrelevant in the instant matter). [↑](#footnote-ref-37)
38. See, e.g., In Re: Blue Hills Regional Technical High School, BSEA # 2008213 (Figueroa, 2020) (it is well accepted that "once a fully accepted and implemented IEP has expired, hearing officers are precluded from re-visiting those IEPs so long as the parent had an opportunity to participate in the development of the IEP in question and received the notice of parental rights regarding IEP acceptance/rejection and dispute resolution options"); In Re: Student and Middleboro Public Schools (Ruling on Motion for Summary Judgment), BSEA #1908178 (Berman, 2019) (compensatory relief is not available for the periods corresponding to fully accepted, implemented, and expired IEPs); In Re: Sudbury Public Schools, BSEA # 05-4726 and # 05-4827 (Crane, 2005) ("the general and well-settled rule is that acceptance of an IEP precludes the Hearing Officer from considering its appropriateness"). [↑](#footnote-ref-38)
39. Nor does Parent allege any procedural violations or implementation failures during this time. Specifically, Parent states that while he did not understand that an IEP could “include Social Emotional accommodations with a goal for social emotional goals and objectives,” he is not disputing that the District provided him with the Notice of Procedural Safeguards. [↑](#footnote-ref-39)
40. See *In re: Bedford Public Schools*, BSEA No. 2211208 (Kantor Nir, 2022), citing Lessard, 518 F.3d at 29. [↑](#footnote-ref-40)
41. Once a diploma is issued, eligibility for special education may not be "continued," and the only "proper remedy" for a denial of a FAPE is compensatory services*. Dracut Sch. Comm. v. Bureau of Special Educ. Appeals of the Massachusetts Dep't of Elementary & Secondary Educ*., 737 F. Supp. 2d 35, 55 (D. Mass. 2010) ("issuance of the diploma was improper because C.A. was denied a FAPE. If the Hearing Officer had wanted to continue eligibility, he should have continued the "stay put" order, issued pursuant to 20 U.S.C. § 1415(j), which would have prohibited Dracut from giving C.A. his diploma. Now that Dracut has issued the diploma, the proper remedy is compensatory services"); see *In Re: Wareham Pub. Sch*., BSEA # 2202891 (Berman, 2021) ("because Student has met all local graduation requirements, and has not been deprived of FAPE, Wareham may graduate him, thereby terminating his special education eligibility, unless he is entitled to compensatory services"). [↑](#footnote-ref-41)