10COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

BUREAU OF SPECIAL EDUCATION APPEALS

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DECISION

IN RE: SWANSEA PUBLIC SCHOOLS V. STUDENT

BSEA # 2500115

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BEFORE

HEARING OFFICER

ALINA KANTOR NIR

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PARENTS, PRO SE

MARY ELLEN SOWYRDA, ATTORNEY FOR SWANSEA PUBLIC SCHOOLS

**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Swansea Public Schools v. Student BSEA # 2500115**

**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 1, 2024 before Hearing Officer Alina Kantor Nir. Parents, who were *pro se*, did not attend the Hearing.[[1]](#footnote-1) Swansea Public Schools (Swansea or the District) was represented by counsel. Those present for all or part of the proceedings, all of whom agreed to participate virtually, were:

Hayley Galib Fourth Grade Teacher, Elizabeth S. Brown Elementary School (Brown Elementary School), Swansea

Wendy Williams Principal, Brown Elementary School, Swansea

Sean Scanlon Director of Student Services, Swansea

Mary Ellen Sowyrda Attorney for Swansea

Sara Pompeo Observer, Legal Intern, Bureau of Special Education Appeals (BSEA)

Carolyn Blakeslee Court Reporter

The official record of the hearing consists of documents submitted by Swansea and marked as Exhibits S-1, S-1A to S-1C, and S-2 to S-10, and a single volume transcript produced by a court reporter. [[2]](#footnote-2) Counsel for Swansea made her closing argument orally, and the record closed on August 1, 2024.

**ISSUE IN DISPUTE:**

The issue to be decided is whether Student requires placement in the in-district Social Emotional Program in order to receive a free appropriate public education (FAPE) in the least restrictive environment (LRE)?

**FACTUAL FINDINGS:**

1. Student is a rising fifth grade student, currently residing in Swansea, Massachusetts. (Scanlon, Williams, S-1A) During the 2022-2023 and 2023-2024 school years, Student attended Brown Elementary School in Swansea. (Scanlon, Williams, S-1A)
2. Wendy Williams is the current Principal of Brown Elementary School. She has served in that role for eight years. Ms. Williams became acquainted with Student when he began attending Brown Elementary School in the fall of the 2022-2023 school year as a third grade student. She testified that “almost immediately” Student began to exhibit disruptive behaviors. For instance, in September 2022, Student brought two double edged knives to school. He continued to demonstrate maladaptive behaviors throughout the school year, making sexually inappropriate comments, threatening violence, eloping, and aggressing against staff and students. (Williams, S-1A)
3. As Student’s behaviors escalated and intensified, in April 2023, the District implemented a Section 504 Plan, which included several accommodations including, but not limited to, frequent supervised breaks, check ins with the School Adjustment Counselor (SAC), positive behavior incentive charts, flexible seating, and a quiet workspace. Also in April 2023, paraprofessional support was added to Student’s general education classroom. (Scanlon, Williams, S-1A)
4. At some undisclosed time during the 2022-2023 school year, Student was referred for special education testing. [[3]](#footnote-3) (Scanlon)
5. Following an incident of attempted elopement from school grounds in May 2023, additional supports were put in place for Student at Brown Elementary School. These included, in part, allowing Student to begin his day with the School Adjustment Counselor (SAC), paraprofessional support for “the entirety of his school day”, and a quiet setting to reset or complete work. (Williams, S-1A)
6. Student’s behaviors continued to escalate as the 2022-2023 school year neared its conclusion. For instance, on May 30, 2023, Student brought an electronic device and 7 nail-gun cartridges to school. On June 7, 2023, he eloped from Field Day into the woods outside of school and physically aggressed against the paraprofessional and teacher who attempted to stop him. Following this incident, a second paraprofessional was assigned to Brown Elementary School to work with Student. (Williams, S-1A)
7. Sean Scanlon is the Director of Student Service for Swansea. Prior to serving in his current role, Mr. Scanlon served as the Principal of Joseph G. Luther Elementary School (Luther Elementary School) for 9 years. As part of his job at Luther, he oversaw the District’s elementary Social Emotional Program which was housed there.[[4]](#footnote-4) Mr. Scanlon is familiar with Student, having participated in all his Team meetings, discussed him with Brown Elementary School staff and Student’s Parents, and observed him in his current setting. (Scanlon)
8. Mr. Scanlon testified that, on or about June 2023, the Team recommended that Student attend South Coast Educational Collaborative (SSEC) to allow for a comprehensive evaluation. (Scanlon) Although Parents initially agreed to have Student undergo the assessment, they later declined, agreeing only to the psychological portion of the evaluation. (Scanlon, S-7)
9. In July 2023, a Psychological Evaluation of Student was conducted by SSEC. Student’s cognitive skills were determined to be in the average range, but they reflected a scatter with weaker non-verbal reasoning skills. His academic skills were also variable, with mostly average decoding, reading, and math skills, but below average writing skills, likely due to weak executive functioning skills. Parents’ and teacher’s ratings of Student’s behavior reflected significant clinical need. Although teacher ratings suggested that Student was judged as someone who tends to target others, Parents’ ratings reflected that it was Student who was bullied. It was recommended, in part, that Student’s classroom have a mental health clinician or school adjustment counselor assigned to it to work with the teacher in the development of therapeutic interventions to support Student, who should also have scheduled time with the clinician to work on self-regulation techniques. (S-7)
10. The Team convened on August 21, 2023 to determine eligibility. Mr. Scanlon testified that the Team convened in the summer because it was extremely important to everyone that Student begin the new school year with more supports in place. (Scanlon) Student was found eligible for special education under the Health (Anxiety and Attention Deficit Hyperactivity Disorder (ADHD)) Disability Category. (S-1B, S-1C, S-9)
11. The Team proposed an IEP for the period August 30, 2023-August 29, 2024,- with full inclusion placement at Brown Elementary School and goals in the areas of Social/Emotional and ELA-Writing. Accommodations included frequent breaks and check-ins, and services included: Grid A: Social Emotional Consult (1x15minutes/week); Grid C: Social/Emotional (1x30minutes/week) and ELA-Writing (5x60minutes/week). Parents accepted the IEP and placement in full on September 15, 2023. (S-4)
12. Student continued to demonstrate maladaptive and disruptive behaviors at the start of the 2023-2024 school year. (Williams, S-1A)
13. A Functional Behavioral Assessment (FBA) was conducted in September 2023, and the Team convened on September 26, 2023 to review any recommendations. The FBA concluded that Student’s behaviors were maintained both by escape from demand and access to his own agenda. Specifically, Student was able to complete most academic tasks and to exhibit appropriate social skills but was unable to navigate the social milieu while completing academic work, adhering to classroom expectations, and following classroom routines. (Scanlon, S-1A, S-5) At that meeting, the District broached the subject of a change in placement, but Parents declined to discuss it. (Scanlon) As a result of the Team meeting, the District proposed, and Parents accepted, an Amendment to the IEP which included additional accommodations. (Scanlon, S-3) Furthermore, in October 2023, a Behavior Intervention Plan was developed to increase appropriate social interactions in the classroom and reduce work refusal, out-of-seat behaviors, and inappropriate vocalizations. (Scanlon, S-1A, S-7)
14. Hayley Galib was Student’s 4th grade teacher during the 2023-2024 school year. (Galib) She testified that Student continued to exhibit unsafe and disruptive behaviors throughout the fall of 2023 despite added supports. His behaviors increased in intensity, and he frequently aggressed against peers. Student frequently resisted directions, fixated on objects, and disrupted other students’ learning by making noises and using profanity. He also missed significant time on learning and instruction due to his dysregulation and was often behind on his work. (Galib)
15. In December 2023, a 1:1 paraeducator was assigned to Student “full time.” (Galib, Scanlon, Williams, S-1A, S-1B, S-1C, S-5, S-9)
16. On December 19, 2023, the Team convened for a progress meeting. The Team again amended the IEP and proposed a partial inclusion placement at Brown Elementary School. Although the goal areas remained the same, accommodations were amended, and services were added as following: Grid A: Social Emotional Consult (1x15minutes/week) and Behavior Consult (2x15minutes/month); Grid B: Social/Emotional (5x30min/week); Grid C: Social/Emotional (2x30minutes/week), Academic Support (5x30minutes/week), and ELA-Writing (5x60minutes/week). Parents accepted the IEP and placement in full on January 8, 2024. (Scanlon, S-2)
17. Even with the additional supports and services, Student’s behaviors continued to increase in severity in the spring of 2024, including aggression towards peers and staff. (Williams, Galib, S-1A) Ms. Williams and Ms. Galib testified that these behaviors “took a toll” not only on Student but also on his peers. (Williams, S-1A)
18. On May 10, 2024, the Team convened to review Student’s progress. Student’s annual review occurred early because of “growing concerns” about Student’s behaviors. (Scanlon) The District proposed an IEP for the period May 10, 2024-May 9, 2025 with partial inclusion placement at Brown Elementary School for the remainder of the 2023-2024 school year and a substantially separate classroom placement at Luther Elementary School for the 2024-2025 school year. The Team proposed goals in the areas of Social/Emotional, ELA- Writing, Executive Functioning, and Behavior. Additional accommodations were included, and the following services were proposed: Grid A: Social Emotional Consult (1x15minutes/week) and Behavior Consult (2x15minutes/week); Grid C: Social/Emotional (2x30minutes/week), Academic Support (5x30minutes/week), ELA-Writing (5x30minutes/week), Behavior (5x210minutes/week, 8/28/24-5/9/25), and Behavior (5x30minutes/week, 5/10/2024-6/13/2024). (Scanlon, S-1C)
19. The Social Emotional Program is

“a substantially separate setting that can provide additional flexibility for students by not following a traditional school day schedule. It is housed at Joseph G. Luther Elementary School, [offering] a collaborative and nurturing classroom which provides accommodations, modifications, and specially designed instruction to meet the unique needs of students. It offers opportunities for inclusion dependent on student readiness. It offers both academic and social-behavioral support. It is designed to meet the academic needs of students as well as goal areas in the areas of self-regulation, self-awareness, social skills/social awareness, self-advocacy, behavior management, executive functioning, coping skills, responsible decision making, social problem-solving, peer relationships or interpersonal skills, and academic engagement.” (S-1B)

The program is supported by a special education teacher, 2 paraprofessionals, a behavior analyst, and a SAC. (Scanlon, S-1B) The special education teacher assigned to the classroom has worked in the Social Emotional Program previously. (Scanlon) In addition to Student, in the fall of 2024 the Social Emotional Program would include two students, whose profiles are similar to that of Student.[[5]](#footnote-5) Mr. Scanlon anticipates more students in the classroom as the year progresses, but he testified that the staff to student ratio will remain high to support the students’ needs. (Scanlon)

1. Mr. Scanlon, Ms. Williams, and Ms. Galib testified that the Social Emotional Program would meet Student’s needs, and that his needs cannot be met at Brown Elementary School. (Scanlon, Williams, Brown)
2. Mr. Scanlon testified that his impression at the May 2024 Team meeting was that Parents were amenable to the change in placement. Parents even followed up with some questions about the program, but they ultimately informed him via email that they refused to consent to the substantially separate placement or to the new IEP. (Scanlon)
3. According to Mr. Scanlon, the flexibility of the Social Emotional Program would help Student minimize missed instruction time. As Student is academically capable, he should be making more progress. He is not making such progress due to his interfering social-emotional and behavioral difficulties. At the Social Emotional Program, Student would “systematically learn” the skills needed to access inclusion opportunities successfully. Mr. Scanlon also testified that attending the Social Emotional Program at Luther would give Student a fresh start with peers who have not witnessed his disruptive and troubling behaviors. He opined that Student probably “does not feel too good about his struggles”, and his behavior “puts him on display with his peers”, making it difficult for him to develop healthy peer relationships. (Scanlon)
4. According to Ms. Galib, Student demonstrated academic and behavioral success during his C-Grid pull out sessions. In fact, he displayed no disruptive behaviors during such times and remained on task. (Galib, Scanlon, Williams) Student’s progress reports similarly show that Student was making progress on goals addressed during pull-out but no progress on goals addressed in the general education setting. (S-10) Ms. Galib testified that in the general education setting, Student missed significant instruction time due to his disruptive behaviors. She opined that the flexibility and small group nature of the Social Emotional Program would be instrumental to Student’s success. (Scanlon, Galib)
5. Ms. Williams opined that Student has already “shown” that he can succeed in a small setting but that he does not have the skills to be successful in the general education setting. She testified that her “heart breaks” that Student is not receiving the supports and services he requires, and she is “extremely concerned” that without the right skills he will be unable to grow into a successful adult. (Williams)
6. Mr. Scanlon testified that Parents had requested that Student attend an in-district program in a different school district. In an attempt to work with the family, he had reached out to four nearby school districts which subsequently indicated that they are unable to accept Student. (Scanlon)
7. According to Mr. Scanlon, he did not make the decision to file a due process complaint lightly, but he had no other option as he believed that it would be irresponsible of him to have Student “continue on the same path.” (Scanlon)

**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 SupremeCourt 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)21 Hence, 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 placement in the in-district Social Emotional Program in order to receive a FAPE in the LRE.

I note at the outset that Parents were not present at Hearing and offered no testimonial or documentary evidence to contradict the testimony of Swansea’s witnesses. Moreover, I found Swansea’s witnesses to be credible, caring and knowledgeable. I place great weight on the testimony of Mr. Scanlon who has been an active participant in the development of Student’s special education programming. I also credit his extensive knowledge of the Social Emotional Program. I also found Ms. Galib and Ms. Williams to be credible and convincing witnesses. They demonstrated significant personal knowledge of, and caring for, Student and his struggles at Brown Elementary School.

Based upon approximately 3 hours of oral testimony, the exhibits introduced into evidence, and a review of the applicable law, I conclude that Swansea has satisfied its evidentiary burden. My reasoning follows.

It is undisputed that Student has been struggling at Swansea Public Schools since the beginning of the 2022 academic year. It is also undisputed that the frequency, intensity, and severity of his behaviors has consistently increased. Furthermore, there is no dispute that at all times Swansea has attempted to respond to Student’s struggles, both formally and informally. For instance, at the end of the 2022-2023 school year, Swansea offered Student accommodations through a 504 Plan, while Student was referred for special education testing. An IEP was developed in preparation for the 2023-2024 school year with supports and services to address Student’s social-emotional and behavioral difficulties. An FBA was conducted in the fall of 2023, and the IEP was revised in October to add support. The IEP was revised again in December. Once more, supports and services were augmented. Even in the context of the assignment of a 1:1 aide, his behaviors continued to escalate.

In fact, the only time that Student was able to demonstrate success was during his C-Grid pull out sessions. These were small group services provided in a quiet environment. Ms. Williams and Ms. Galib testified convincingly that Student’s success in the small group setting and significant lack of success in the larger general education setting reflect his need for the former, that is, the higher level of support. Mr. Scanlon and Ms. Galib testified persuasively that especially as Student’s academic and cognitive skills are largely average, his progress should be greater, but he is impeded by significant time lost due to disruptive behaviors and dysregulation.[[16]](#footnote-16) Moreover, even had Student been making greater academic progress, his lack of progress in the social, emotional and behavioral realms is significant, concerning, and cannot be minimized.[[17]](#footnote-17) Here, the evidence shows that Student lacks the executive functioning, social, emotional, and self-regulation skills necessary to make effective progress in the general education setting at this time.

Based on the data and information available to Swansea in May 2024, the Team reasonably proposed a more restrictive, therapeutic placement in the District’s Social Emotional Program.[[18]](#footnote-18) Mr. Scanlon’s testimony regarding how the program would meet Student’s unique needs and how it would address his skill deficits was convincing, as it was based both on his extensive previous work supervising the Social Emotional Program at Luther Elementary School and his knowledge of Student. Based on their extensive personal knowledge of Student, all Swansea witnesses agreed that the small setting, the therapeutic supports, the high staff-to-student ratio and the flexibility of the program were key to Student’s success. No evidence to the contrary was offered.

The decision to move a student to a more restrictive setting cannot be made lightly.[[19]](#footnote-19) In fact, pursuant to 603 CMR 28.06(2)(c), a “school district shall ensure that, to the maximum extent appropriate, students with disabilities are educated with students who do not have disabilities, and that special classes, separate schooling, or other removal of students with special needs from the general education program occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.” Although a FAPE entails educating a child in the LRE, the opportunity to be educated with non-disabled students does not cure a program that otherwise is inappropriate.[[20]](#footnote-20) A school district can only meet its obligation to provide a disabled student with a FAPE as long as the program that it offers to a disabled student is “reasonably calculated to deliver educational benefits. School districts must also ensure they provide disabled students with FAPE in the LRE, which means a school district should place a student in the least restrictive educational environment that will accommodate the child's legitimate needs.”[[21]](#footnote-21)

In the instant matter, Student is simply not making progress commensurate with his abilities in the current setting, and his needs are not being met.[[22]](#footnote-22) In addition, his behaviors are disrupting the education of his peers.[[23]](#footnote-23) Swansea has demonstrated through a preponderance of the evidence that its proposal for a more restrictive setting for Student comes after significant interventions, supports, and services have been attempted at his current placement. These attempts have failed. Therfore, Swansea has met its evidentiary burden to show that Student requires placement in the in-district Social Emotional Program in order to receive a free appropriate public education in the least restrictive environment.

**ORDER:**

Swansea has met its burden to show that Student requires placement in the in-district Social Emotional Program in order to receive a free appropriate public education in the least restrictive environment.

So Ordered,

By the Hearing Officer,

/s/ Alina Kantor Nir

Alina Kantor Nir

August 5, 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. The instant matter was filed by the Swansea Public Schools. The Hearing was scheduled to begin at 8:00AM on August 1, 2024. At 7:30AM, Parents emailed the Hearing Officer stating that they would not be in attendance as they were intending to move to Vermont before the new school year. The Hearing Officer cautioned Parents as to the implications of their decision not to attend the Hearing, and Parents indicated their understanding. The Hearing proceeded in their absence. [↑](#footnote-ref-1)
2. Parents did not submit any exhibits in preparation for Hearing. [↑](#footnote-ref-2)
3. For instance, in May 2023, Student participated in a Speech and Language Evaluation as part of the initial referral for special education. Student’s language skills were assessed to be average. (S-8) [↑](#footnote-ref-3)
4. Mr. Scanlon testified that he oversaw the program for 7 years before the program closed a few years ago as there were no student referrals to fill the classroom. However, the Social Emotional Program is scheduled to reopen in the fall of 2024. (Scanlon) [↑](#footnote-ref-4)
5. Although not the same age as Student, these students are both within 48 months of Student’s age as permitted by 603 CMR 28.06(6)(g). (Scanlon) [↑](#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. *Endrew F. v. Douglas Cty. Reg'l Sch. Dist.*, 137 S. Ct. 988, 1001 (2017). [↑](#footnote-ref-10)
11. 34 CFR §300.324(a)(i-v); *Endrew F.,* 137 S. Ct. at 999; *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. *Endrew F.*, 137 S. Ct. at 992; see 603 CMR 28.02(17). [↑](#footnote-ref-14)
15. 21 See *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). [↑](#footnote-ref-15)
16. See *D.B. v. Esposito*, 675 F.3d 26, 36 (1st Cir. 2012) (“levels of progress must be judged with respect to the potential of the particular child”).  [↑](#footnote-ref-16)
17. See *Roland M.,* 910 F.2d at 993 (“To determine a particular child's place on this continuum, the desirability of mainstreaming must be weighed in concert with the Act's mandate for educational improvement.  Assaying an appropriate educational plan, therefore, requires a balancing of the marginal benefits to be gained or lost on both sides of the maximum benefit/least restrictive fulcrum. Neither side is automatically entitled to extra ballast. For these reasons, then, comparative academic progress, in and of itself, is not necessarily a valid proxy for, or determinative of, the degree to which an IEP was reasonably calculated to achieve the mandated level of educational benefit”). [↑](#footnote-ref-17)
18. See *Doe v. Richmond Consol. Sch. Dist.*, No. CV 15-30027-MGM, 2016 WL 3064056, at \*3 (D. Mass. May 31, 2016) (“[T]he IEP must take into account what was, and was not, objectively reasonable” when the IEP was prepared…”) (citing to *C.G. ,* 513 F.3d at 286) (internal quotations omitted). [↑](#footnote-ref-18)
19. See 34 CFR 300.114 (a) (instructing that children with disabilities be educated in regular classrooms with nondisabled peers to the maximum extent appropriate); 34 CFR 300.116 (c) (unless the IEP requires some other arrangement, the child must be educated in the school that he would attend if he did not have a disability). [↑](#footnote-ref-19)
20. See *C.D.*, 924 F.3d at 631 (“Our cases have weighed this preference for mainstreaming in concert with the FAPE mandate. The two requirements operate in tandem to create a continuum of possible educational environments, each offering a different mix of benefits (and costs) for a student's academic, as well as social and emotional, progress. For schools, complying with the two mandates means evaluating potential placements' marginal benefits and costs and choosing a placement that strikes an appropriate balance between the restrictiveness of the placement and educational progress”) (internal citation omitted). [↑](#footnote-ref-20)
21. *Doe v. Belchertown Pub. Sch.,* 347 F. Supp. 3d 90, 99 (D. Mass. 2018) (internal citations and quotations omitted). [↑](#footnote-ref-21)
22. See *Endrew F.,* 137 S. Ct. at 999. [↑](#footnote-ref-22)
23. See *Pachl v. Seagren*, 453 F.3d 1064, 1068 (8th Cir. 2006) (“removing a child from the mainstream setting is permissible when the handicapped child would not benefit from mainstreaming, when any marginal benefits received from mainstreaming are far outweighed by the benefits gained from services which could not feasibly be provided in the non-segregated setting, and when the handicapped child is a disruptive force in the non-segregated setting”) (internal quotations omitted). [↑](#footnote-ref-23)