**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

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 **DECISION**

**LINCOLN PUBLIC SCHOOLS**

**BSEA # 2504237**

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**BEFORE**

**HEARING OFFICER**

**ALINA KANTOR NIR**

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**STACEY DEDIAN, ATTORNEY FOR THE SCHOOL**

**PARENT, PRO SE**

**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Lincoln Public Schools BSEA # 2504237**

**DECISION**

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

A hearing was held via a virtual platform on March 7, 2025 before Hearing Officer Alina Kantor Nir, on a Hearing Request filed by the Lincoln Public Schools (Lincoln or the District) on October 11, 2024. Parent was *pro se*. Lincoln was represented by counsel. Those present for the entirety or part of the proceedings, all of whom agreed to participate virtually, were:

Mother

Grandmother

Lisa Berard, Ph.D. Administrator of Student Services, Lincoln

Allie Sears, M.S. M.Ed. Student Services Coordinator, Lincoln

Stacey Dedian Attorney for Lincoln

Melissa Lupo Court Reporter

The official record of the hearing consists of documents submitted by Lincoln[[1]](#footnote-2) and marked as Exhibits S-1 to S-24; approximately half a day of oral testimony and argument; and a one-volume transcript produced by a court reporter. Pursuant to a joint extension request which was allowed by the Hearing Officer for good cause, the record remained open until March 28, 2025 for submission of written closing arguments, and the record closed on that date.[[2]](#footnote-3)

**ISSUE:**

Whether the Individualized Education Programs (IEPs), dated September 14, 2023 through September 13, 2024, and September 17, 2024 through September 16, 2025 were/are reasonably calculated to provide Student with a free and appropriate public education (FAPE) in the least restrictive environment (LRE).

**FACTUAL FINDINGS:**

1. Student is an eight-year-old who resides in Lincoln, Massachusetts, with Parent and his grandmother (hereinafter, Grandmother). He is very close to both. (Mother, Grandmother)
2. Student is friendly, energetic, funny, and curious. He is eligible for special education and related services pursuant to the disability category Developmental Delay. Student has difficulties with sensory processing, fine motor and visual motor skills, attention and task completion, which impact his classroom participation, independence, and social interactions with peers. Student’s difficulty with self-regulation affects his ability to follow classroom routines. He also struggles to maintain appropriate interpersonal boundaries. (Sears, Mother, Grandmother, S-1, S-3, S-13)
3. Since May 8, 2024, Student has not attended any educational program. (Berard, Mother, S-2)
4. Kindergarten at the Lincoln School in the Lincoln Public Schools was Student’s first experience in school. (Berard, Mother) Because of COVID-19, Student did not attend any pre-school before September 2022. (Berard, Mother, S-2)
5. Dr. Lisa Berard is the Administrator of Student Services at Lincoln Public Schools. She testified that when Student entered Kindergarten, he struggled to understand classroom expectations and follow routines. (Berard, S-3) Student’s Kindergarten teacher also expressed concerns about his writing, memory, impulsivity, distractibility, verbal communication, and independent task completion. In September 2022, following his kindergarten screening at school, Student was referred for, and Parent consented to, an initial evaluation for special education.. As part of Student’s initial evaluation, the District completed Educational Assessment A and B, an Occupational Therapy Evaluation, a Speech and Language Evaluation, a Psychological Evaluation, an Observation and a Health Evaluation. (Berard, S-1, S-2)
6. The results of the Psychological Evaluation[[3]](#footnote-4) demonstrated average verbal and nonverbal reasoning and spatial abilities. During the observation portion of the evaluation, Student engaged appropriately with peers, responded well to teacher redirection, and displayed a joy for learning. However, his teacher reported difficulty with body regulation, attention, and emotional outbursts, and both the classroom teacher and Parent endorsed concerns for odd, atypical behaviors. The evaluator recommended frequent breaks; opportunities to engage in instruction actively; flexible seating; short, clear, firm directions; modeling expectations; frequent positive feedback to reinforce expectations; visual/picture checklist; predictable routines; frequent prompts; and guided support to stay on task. (S-3)
7. Results of the Speech and Language Evaluation[[4]](#footnote-5) reflected average expressive and receptive language skills. Student demonstrated strengths in his listening comprehension, use of grammatical structures, ability to identify relationships between words, ability to describe a picture using a target word, and ability to repeat sentences verbatim. He demonstrated vulnerability in following verbal directions, which could impact his following classroom routines, completing multi-step projects, and responding appropriately to in-the-moment teacher directions. Student also demonstrated below average social communication skills. The following accommodations were recommended: visual schedules, structured/predictable routines, extra wait time, and first/then language, clear behavioral expectations for various activities, structured opportunities for social interactions with peers, and modeling expected social language and behavior. (S-4)
8. The results of the Occupational Therapy (OT) Evaluation[[5]](#footnote-6) reflected Student’s difficulty modulating many types of sensory information. Student demonstrated moderate challenges with processing sensory information, which impacted his classroom participation, independence, and social interactions with peers. Student’s scores further reflected difficulties with fine motor, visual motor, and visual perception skills, impacting his classroom performance and independence. The evaluator recommended several accommodations and direct OT services for Student. (S-5)
9. At the conclusion of the initial evaluation, the Team continued to have questions regarding Student’s disability category. (Berard) On November 21, 2022, the District proposed, and Parent consented to, an Extended Evaluation to take place in the full inclusion setting to gather more information regarding Student’s academic skills and to determine if he met the criteria for Autism Spectrum Disorder (ASD). Specifically, the District proposed conducting a more extensive psychological evaluation and educational monitoring with special education intervention. (Berard, S-6, S-7)
10. During this time, Student continued to engage in challenging behaviors including spitting, biting, exposing himself, locking himself in the bathroom, eloping, destroying property, aggressing towards peers and staff, and using inappropriate language. (Berard, S-21)
11. The Team convened on January 30, 2023 to review the Extended Evaluation[[6]](#footnote-7) results and revise the IEP. (S-8) Findings suggested that while Student was motivated to build social relationships with peers, he struggled to focus on social cues and engage in appropriate peer interactions. Student demonstrated “a variability in his brain style. While many behaviors were consistent with an autism spectrum brain style[, Student] also displayed many behaviors inconsistent with this brain style.” (Berard, S-7) Student wanted to build meaningful relationships, was extremely curious about his environment, but was also very energetic making it hard for him to focus. This, in combination with sensory sensitivities and significant difficulty with impulse control, impacted his ability to regulate his body and emotions. He had difficulty shifting attention and engaging with others on topics that were not high interest. Student was easily distracted and struggled to control his impulses throughout the day. These challenges also impacted his ability to manage frustration and sensory demands. (S-7)
12. The results of the Extended Evaluation did not rule in or out a diagnosis of ASD. (Berard, S-7) Recommendations included: a structured organized classroom with clear expectations; frequent structured, short breaks; opportunities to engage in small group or individual instruction; frequent prompting, cueing and check-ins; flexible seating; short, clear, firm directions; frequent positive feedback to reinforce expectations; a visual/picture checklist; transition warnings and predictable routines; frequent prompts, and guided support to stay on task. (S-7)
13. At the Team meeting to review the results of this Extended Evaluation, Student’s teacher reported that, despite having the academic skills needed to complete his assignments, Student had difficulty consistently demonstrating his skills in both small groups and in the general education classroom. He struggled with self-control and to navigate social situations. He benefited from adult supervision when engaging with peers. (S-8)
14. The Team found Student eligible pursuant to the Disability Category of Developmental Delay and proposed an IEP for the period January 30, 2023 to November 6, 2023 (January 2023 IEP). This IEP provided, in part, for direct, explicit instruction in foundational academic skills, appropriate behaviors, pragmatic language skills, and self-regulation and motor skills. Extensive accommodations were proposed including, but not limited to adult proximity as needed to facilitate on task behavior/engagement, reciprocal communication, and to maintain safety; noise reduction headphones during louder whole class activities; access to a quiet area for calming breaks; individualized and small group instruction for preview, review, and following the group plan; sensory breaks and tools to help maintain self-regulation; a Positive Behavioral Support Plan; weekly communication between home and school; structured/predictable routines paired with a visual schedule; and structured opportunities for social interactions with peers. (S-8)
15. The Team proposed goals in the areas of Sensory Processing/Fine Motor/Visual Motor Skills, Classroom Participation, and Speech and Language with corresponding services as follows: A Grid: School Consult (Occupational Therapist, 1x15 minutes/month; Special Education Teacher, 1x10 minutes/month; General Education Teacher, 1x10 minutes/month; Speech/Language Pathologist, 1x10 minutes/month); B Grid: Occupational Therapy, Occupational Therapist, 1x30 minutes/5-day cycle; Classroom Participation/Behavior, Special Education Teacher/Tutor, 5x30 minutes/5-day cycle; Speech Therapy, Speech/Language Pathologist, 1x15 minutes/5-day cycle); C Grid: Occupational Therapy, Occupational Therapist, 2x30 minutes/5-day cycle; Speech Therapy, Speech/Language Pathologist, 1x30 minutes/5-day cycle). The IEP Team also proposed a full inclusion placement at Lincoln School. (Berard, S-8, S-9) However, the Team discussed Student’s potential need for an out-of-district placement. (S-9)
16. After this Team meeting, Student continued to engage in challenging behaviors which included verbal and physical aggressions, property destruction, and elopement. (Berard, S-21) He required significant support from the safety care team throughout his day, and he refused to engage in all academic activities. He was not accessing his education. (Berard) A Behavior Support Plan was developed and implemented to address Student’s maladaptive behaviors. (S-24)
17. As Student continued to struggle in the full inclusion setting, on February 6, 2023, the District proposed another Extended Evaluation at a separate public day school to gather information on Student’s learning style and the supports he required to be safe in school and access the curriculum. (Berard, S-9)
18. On May 9, 2023, Parent fully accepted the January 2023 IEP and placement. She also consented to an Extended Evaluation for the period May 10, 2023 to September 19, 2023 to take place at the CASE Collaborative Therapeutic Intervention Program (CASE or CASE Collaborative) located in Acton, Massachusetts. CASE classrooms provide a highly structured, organized environment that focuses on individual students’ academic and behavioral needs. (S-8, S-10, S-12)
19. According to Student’s June 2023 Progress Report from CASE, with significant staff support, Student was making progress on his goals and objectives. (S-11)
20. Allie Sears is the Student Services Coordinator for Lincoln School. She has served in that role since July 2023. Ms. Sears observed Student at CASE, during which observation he worked along peers and participated in a “morning meeting” while being supported by a special education teacher and a paraprofessional. (Sears)
21. The results of the CASE Extended Evaluation reflected that Student’s academic skills were below grade level. Student benefited from having academic instruction provided to him in a contrived, play-based modality with clear expectations at his functional level and frequent feedback on performance throughout. Student required significant adult support and individual supervision across all environments for safety and to be able to access the curriculum and demonstrate skills. Specifically, he required one-to-one supervision and support because he often sought out staff attention when it was not available by resorting to maladaptive behaviors (i.e., inappropriate language, property destruction, bolting). Student also needed consistent support with social interactions to navigate and access the school environment safely. Notably, Student required a "designated space in his environment, such as a break room, where he [could] be brought to deescalate when he [began] to engage in no[n]-redirectable, unsafe behavior. This space provide[d] a safe environment for [Student] to regulate himself without causing physical harm to himself or others." (Berard, Sears, S-12)
22. On September 14, 2023, the Team reconvened to discuss the results of the CASE Extended Evaluation and to develop an IEP for September 15, 2023 to September 13, 2024 (September 2023 IEP). During this meeting, the CASE team reviewed their findings and their recommendations. (Berard, Sears, S-13, S-14) The IEP was updated based on the recommendations of the Extended Evaluation. It provided for direct, explicit instruction using play-based strategies in foundational academic skills, school-appropriate behaviors, pragmatic language, and self-regulation. The current performance levels and objectives were updated for Student’s goals, and a new Social goal was proposed. The Team proposed a Board-Certified Behavior Analyst (BCBA) consult, counseling, speech/language therapy, occupational therapy, and additional individual staff support across the school day due to unsafe behavior, and impulsivity. Specifically, the following services were indicated:A Grid: School Consult (Occupational Therapist, 1x15 minutes/month; Special Education Teacher, 1x10 minutes/month; General Education Teacher, 1x10 minutes/month; Speech/Language Pathologist, 1x15 minutes/month; BCBA, 1x60 minutes/month); C Grid: Occupational Therapy, Occupational Therapist, 2x30 minutes/5-day cycle; Speech Therapy, Speech/Language Pathologist, 1x30 minutes/5-day cycle); Academic/Social/Behavior, Special Education Teacher/Special Education Tutor, 5x300 minutes per week; Counseling Services, Mental Health Staff, 1x30 minutes/5-day cycle). (S-13, S-14)
23. The Team determined that Student required placement at a separate public day school and proposed the CASE Collaborative. (Sears, S-13, S-14)
24. On October 16, 2023, Parent rejected the IEP in part. Specifically, she rejected “having the BCBA in the classroom” and the absence of transportation as a related service. (S-13) Parent accepted the separate public day program but rejected placement at CASE. (Mother, S-13) According to Parent, Student was in the “safe room” at least twice per day while at CASE. In addition, despite the close proximity of Parent’s house to CASE, the commute was “over an hour,” and, as a result, Student regressed with his bathroom skills. (Mother) Parent wanted to explore other placement options. (S-13)
25. According to Dr. Berard, CASE had filed a 51A with the Department for Children and Families (DCF) during Student’s tenure which strained the relationship between Parent and CASE. The DCF case is still open. (Berard)
26. Following the conclusion of Student’s Extended Evaluation, Student returned to Lincoln . With Parent’s agreement, he began to attend the Foundations program.[[7]](#footnote-8) (Berard)
27. Foundations is a small therapeutic program located within Lincoln School. In September 2023, there were three staff and three students (not including Student) in the classroom. It was not proposed for Student because it did not satisfy the criteria recommended by the Extended Evaluation. Specifically, the Foundations program is one large classroom without any calming spaces. (Berard, Sears)
28. To support Student, the District hired an additional paraprofessional to serve as Student’s 1:1 support. (Berard, Sears) Further, while at Foundations, Student had a Behavior Support Plan that targeted “following directions” and “having a safe body.” Student had a point system for every part of his day with bonus points for work completion. Student continued to struggle with safety and work compliance and was unable to spend time in the classroom with his peers. (Sears)
29. Student could not access the curriculum while attending Foundations, and staff struggled to keep him safe. He exhibited significant mood dysregulation and externalizing behaviors. Student was aggressive to peers and staff, refused to do any academic work, disrobed, and used sexualized language. On one occasion, he tried to urinate on staff at recess. Due to his behaviors, Student spent the majority of his time working 1:1 in a small office space. This was not intended to be a long-term placement as Student was kept separated from his peers and the classroom. (Berard)
30. Ms. Sears, who observed Student frequently while he attended Foundations, Opined that the functions of Student’s behaviors were task avoidance, escape, and access to preferred materials. (Sears) It was difficult to get a baseline of Student’s academic abilities because he refused all academic tasks. Although he seemed to “take in information,” his understanding of the material could not be assessed. Handwriting, in particular, was “a trigger” for Student. (Sears)
31. The District continued to propose to send referral packets to out-of-District programs as Student was not making effective progress at Foundations. However, Parent did not consent to having any referrals sent out as she wanted Student to remain at Foundations. Student was making some social progress, and Parent was hopeful. (Berard)
32. On December 11, 2023, Parent and the District executed a Mediation Agreement (December 2023 Agreement)[[8]](#footnote-9) in which Parent consented to the District ‘s sending referral packets for a day placement to the following schools: Community Therapeutic Day School, Italian Home, LABBB Collaborative (LABBB), and Pathways. In the meantime, the parties agreed to a plan to increase Student’s engagement in academic work. Student’s day was divided into 20-minute segments, separated by five minutes for transition and five minutes for a break. He worked in a 1:1 setting. If Student was successful with this model for a week, his time in the Foundations classroom and recess would increase. Success was measured by Student having no significant behaviors and engaging in work. The District also agreed to conduct additional testing. (Berard, S-16) No additional testing was ever conducted as Parent did not sign the consent to evaluate form. (Berard)
33. No placement was identified for Student during January, February, and March 2024. Student continued to struggle at Foundations presenting safety concerns, especially aggression towards peers. Many students in the therapeutic Foundations program have a trauma history, and exposure to Student’s unsafe behaviors was “triggering” for them. (Berard)
34. On April 3, 2024, the parties executed another Mediation Agreement (April 2024 Agreement). Parent gave her consent for the District to send referral packets for a day placement to the following schools: Community Therapeutic Day School (Lexington), Perkins (Lancaster), JRI Littleton (Littleton), Valley Collaborative (Billerica), CASE Collaborative, and LABBB (locations of these last two programs to be determined).[[9]](#footnote-10) The parties agreed to return to mediation in May 2024. (Berard, S-17)
35. Student’s behaviors continued to escalate, and he was suspended from school on multiple occasions in April 2024. (Berard, S-20)
36. Parent was called frequently to pick up Student due to his unsafe behaviors, and she eventually lost her job as a result. (Berard, Mother)
37. Parent decided not to return Student to school, and he stopped attending on May 8, 2024. (Berard, S-20)
38. On May 22, 2024, the parties executed yet another Mediation Agreement (May 2024 Agreement). At that time, Parent agreed that Student required an out-of-district day placement as he was no longer attending school. Parent agreed that, if accepted, Student would attend Perkins or LABBB, and she signed a consent for placement at a separate public day school with a location to-be-determined. The District also agreed to fund an independent neuropsychological evaluation at state rates. (Berard, S-18, S-19) No testing occurred as Parent could not locate a provider. (Berard)
39. Student’s June 2024 Progress Report could not be completed due to Student’s absence from school. (S-20)
40. Student was accepted to the LABBB Collaborative on June 24, 2024, with a starting date of July 8, 2024. (Berard) This was the only program that accepted Student at that time. (Berard)
41. Parent toured LABBB but refused the placement. (Berard, Mother) She was concerned about the use of calming spaces at the program and “did not trust the teacher” she met during her tour. While touring, she observed a student “screaming” in the safe room for the entire duration of her tour. It was very upsetting to Parent. She testified that she “knows it would impact her son.” (Mother)
42. Ms. Sears testified that calming spaces look different in different programs. They are typically small spaces with “padding” and bean bags. If the space has a “door,” its use is monitored by staff, and it is regulated by state law. (Sears)
43. According to Ms. Sears, Student would benefit from the availability of a calming space because his dysregulation is reinforced by adult attention. In a calming space, Student could deescalate “faster” and “get back to academic structure.” (Sears)
44. On September 17, 2024, the Team convened for an annual review to develop an IEP for the period September 17, 2024 to September 16, 2025 (September 2024 IEP). The September 2024 IEP included goals in the areas of Sensory processing/Visual Motor, School Behavior, Pragmatic Language, Self-Regulation, Mathematics, and Written Language. The Team proposed adding direct instruction in mathematics and written language, and the following services were indicated:A Grid: School Consult (Occupational Therapist, 1x15 minutes/month; Special Education Teacher, 1x10 minutes/month; General Education Teacher, 1x10 minutes/month; Speech/Language Pathologist, 1x15 minutes/month; BCBA, 1x60 minutes/month); C Grid: Occupational Therapy, Occupational Therapist, 2x30 minutes/5-day cycle; Speech Therapy, Speech/Language Pathologist, 1x30 minutes/5-day cycle); Academic/Social/Behavior, Special Education Teacher/Special Education Tutor, 5x300 minutes per week; Counseling Services, Mental Health Staff, 5x20 minutes/5-day cycle). The Team proposed placement at a separate public day program with a location yet to-be-determined (TBD).[[10]](#footnote-11) Parent accepted the IEP and placement on November 26, 2024. (S-22, S-23)
45. Although Student has not attended the program, the District has been funding Student’s placement at LABBB Collaborative with 1:1 support in order to hold his place so he may begin to attend it effective immediately. (Berard)
46. Student has subsequently also been accepted at the Devereaux School. (Berard, Sears) As Parent does not have her own transportation, the District has offered, in addition to providing Student with door-to-door transportation, to provide transportation for Parent if the need arose for her to pick him up. (Berard)
47. Parent is concerned about the commute time to Devereaux which is over an hour. In addition, while touring the program, she observed a student being “tackled and pinned to the ground.” Parent does not believe that such a placement would be safe for Student. (Parent)
48. Parent has also visited ACCEPT Collaborative (ACCEPT) and the Walker School. According to Parent, ACCEPT is a small program, and Student would not have access to “specials like art and music.” In addition, she is concerned about the use of calming spaces at ACCEPT. Parent found the Walker School to be “terrifying.” During her visit, she observed students fighting, “lying on the floor”, and acting dysregulated. She does not believe that it is appropriate for Student. (Parent)
49. In total, Lincoln sent out 29 referral packets to 18 different programs for placement for Student. Barriers to Student’s acceptance include Student’s “acute” “level of functioning,” inappropriate peer cohorts, insufficient support, and location. (Sears)
50. Because Student has not been attending school, Lincoln has been providing Student with tutoring. (Berard) Ms. Sears testified that she has had limited contact with Student’s tutor. Based on available information, the tutor has been working on Student’s social and behavioral goals only and does not feel that academic demands can be introduced to Student at this time. (Sears) According to Dr. Berard, Student receives marginal benefits from the tutoring and is not progressing on his IEP goals. (Berard)
51. Grandmother often attends tutoring sessions with Student. Although academics have yet to be incorporated into his sessions, she believes he is doing well. (Grandmother)
52. Because Student has not attended school for a long time, Lincoln has offered to do another extended evaluation at a separate public or private day program. (Berard)
53. Parent testified that an extended evaluation is needed, but she will not consent to an evaluation at any of the programs to which Student has, to date, been accepted (i.e., LABBB or Devereaux). (Parent)
54. According to Ms. Sears, Student would benefit from another evaluation as he has been out of school for a long time, and it is “difficult to plan for him” without updated information about his current functioning. As Student’s three-year reevaluation is due in November 2025, the District would be willing to conduct the evaluation earlier. Ms. Sears recommended that the following areas be assessed: occupational therapy, speech and language therapy, psychological, cognitive, social/emotional, academic, and a functional behavior assessment (FBA) in a school setting. (Sears)
55. Dr. Berard is concerned that Student has been out of school since May 2024 and has not accessed a free appropriate public education. According to Dr, Berard, Student’s disability significantly impacts his ability to access education, and he requires a separate small educational setting, with a separate space where Student can self-regulate and a high staff-to-student ratio to support him in moments of dysregulation. (Berard)
56. According to Parent, Student is currently trying a stimulant medication. (Mother) The medication has allowed Student to be calmer and more focused. (Mother, Grandmother) Parent is not sure if the medication is “enough” to allow Student to attend a “regular school.” (Mother)
57. Grandmother believes that Student may have dyslexia as Parent carries that diagnosis as well. (Grandmother)
58. Parent wants Student to be “safe and happy.” She testified that she “knows [Student] better than anyone.” Parent “knows other students who have gone to these schools, and they were changed for the worse.” Parent cannot do that to her son. (Mother)
59. Although Grandmother has not toured the proposed programs with Parent, she does not believe that Student would be successful in any of them. Grandmother does not want “to break who he is,” and “these programs would change who he is.” She believes he needs to be in a regular school setting with more supports. (Grandmother)

**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).[[11]](#footnote-12) 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 an educational setting appropriate for that student so as "to enable the student to progress effectively in the content areas of the general curriculum.”[[12]](#footnote-13) 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."[[13]](#footnote-14) 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."[[14]](#footnote-15) "The goal, then, is to find the least restrictive educational environment that will accommodate the child's legitimate needs."[[15]](#footnote-16)

An IEP must be individually tailored for the student for whom it is created.[[16]](#footnote-17) 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.[[17]](#footnote-18) Evaluating an IEP requires viewing it as a "a snapshot, not a retrospective. In striving for 'appropriateness,’ an IEP must take into account what was . . . objectively reasonable . . . at the time the IEP was promulgated.”[[18]](#footnote-19)

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.[[19]](#footnote-20) In *Endrew F.,* the SupremeCourt explained that appropriate progress will look different depending on the student.[[20]](#footnote-21) An individual analysis of a student’s progress in his/her areas of need is key.[[21]](#footnote-22) The educational services provided to a student, therefore, need not be, "the only appropriate choice, or the choice of certain selected experts, or the child's parents' first choice, or even the best choice."[[22]](#footnote-23) Although parental participation in the planning, development, delivery, and monitoring of special education services is central in IDEA, MGL c. 71B, and corresponding regulations,[[23]](#footnote-24) school districts are obligated to propose what they believe to be FAPE in the LRE, “whether or not the parents are in agreement.”[[24]](#footnote-25)

1. Burden of Persuasion

In a due process proceeding, the burden of proof is on the moving party.[[25]](#footnote-26) If the evidence is closely balanced, the moving party will not prevail.[[26]](#footnote-27) Here, Lincoln bears this burden.

1. ***Application of Legal Standards:***

It is not disputed that Student is a student with a disability who is entitled to special education services under state and federal law. The fundamental issue in dispute is set out above.

Based upon one day of testimony, extensive exhibits introduced into evidence, thoughtful arguments of the parties, and a review of the applicable law, I conclude that the District has met its burden and that the September 2023 IEP and the September 2024 IEP were reasonably calculated to provides Student with a FAPE in the LRE. My reasoning follows.

I first examine the September 2023 IEP. This IEP was proposed following Student’s Extended Evaluation at the CASE Collaborative, and it updated and revised the January 2023 IEP developed following Student’s first Extended Evaluation at Lincoln. The September 2023 IEP added supports and services, including, but not limited to, small group instruction across all academic areas with direct, explicit instruction in foundational academic skills using play-based strategies. Four goals were proposed in the areas of Sensory Processing/Fine Motor/Visual Motor Skills, Classroom Participation, Speech and Language, and Social. Due to unsafe behavior and impulsivity, the Team also proposed a BCBA consult; direct counseling, speech/language therapy, occupational therapy; and additional individual staff support across the school day. The September 2023 IEP also proposed a more restrictive setting at the CASE Collaborative. [[27]](#footnote-28)

Based on the information available to the Team when the September 2023 IEP was proposed, it was appropriate for the Team to offer a more restrictive setting. Dr. Berard and Ms. Sears testified that they supported the Team’s placement recommendation since Student needed a setting with 1:1 support and a calming space in order to make progress and to be safe. I found their testimony credible and persuasive as the Extended Evaluation Report corroborated Student’s challenges and the responsive recommendations of the CASE evaluators. The IEP Team considered information from Lincoln School, which evidenced significant behavioral challenges and dysregulation impacting not only Student’s ability to access his academics but also the social milieu of the classroom. There was no evidence that CASE could not implement the September 2023 IEP. Nor could the full inclusion setting or the Foundations program be modified so as to render either appropriate.[[28]](#footnote-29) According to the results of the Extended Evaluation, Student required a high staff-to-student ratio, even with 1:1 support, and Dr. Berard indicated that this could not be provided in the general education setting. Even with a 1:1 paraprofessional, which the District provided to Student, the 3:1 ratio at Foundations was insufficient to support him. Nor did the general education setting or the Foundations program have a calming space, which the CASE Team indicated was necessary for Student to access his education.

Parent presented no evidence to suggest that the recommendations of the CASE Collaborative Team, including the use of a calming space, were inappropriate or that Student required any supports or services not recommended by the Team. There is abundant evidence in the record that Student’s behaviors were significant, unsafe, and interfered with his ability to access his education. When a child's learning is impeded by behavioral issues, the IDEA requires that the IEP team “consider the use of positive behavioral interventions and supports, and other strategies, including positive behavioral interventions.”[[29]](#footnote-30) A failure to address behavioral issues appropriately can amount to a denial of a FAPE for a student.[[30]](#footnote-31) Here, CASE recommended the use of a calming space as a behavioral intervention.

I recognize Parent’s concern regarding the use of calming spaces at the CASE Collaborative (and in some of the out-of-District programs to which Student was later referred), but I note that as the Eighth Circuit eloquently stated, an IDEA due process hearing relating to the needs of an individual student “… is not a referendum on the appropriateness of [time out] and restraint generally[;] State law authorizes the use of restraint [and time-out] under certain circumstances….”[[31]](#footnote-32) Massachusetts state regulations allow for the use of time-out as

“a behavioral support strategy developed pursuant to 603 CMR 46.04(1) in which a student temporarily separates from the learning activity or the classroom, either by choice or by direction from staff, for the purpose of calming. During time-out, a student must be continuously observed by a staff member. Staff shall be with the student or immediately available to the student at all times. The space used for time-out must be clean, safe, sanitary, and appropriate for the purpose of calming. Time-out shall cease as soon as the student has calmed.”[[32]](#footnote-33)

Although Parent argues that calming spaces, or time-out spaces, are inappropriate for her son, she presented no supportive evidence that Student did not, in fact, require such a behavior support strategy .[[33]](#footnote-34) Parent is correct that she “knows her son best,” but Parent is not a behavior specialist, has not observed Student’s behaviors in any school setting, and did not present any evidence from any behavioral or educational expert who has observed Student in such a setting.[[34]](#footnote-35) Nor did Parent present any evidence that CASE misused its calming rooms, or that CASE did not carefully consider the advantages and disadvantages of such a behavioral support strategy for Student and any alternatives that may be effective for him. To the contrary, CASE’s Extended Evaluation specifically found that a calming space was a useful behavioral support strategy for Student.[[35]](#footnote-36) Further, Ms. Sears observed Student at CASE and agreed that it was an appropriate placement for Student and that he benefitted from the use of calming spaces. Ms. Sears also testified that the CASE team was present at the IEP meetings and contributed to the IEP's development, including adding a calming space as an accommodation.

Parent also argued that CASE was inappropriate due to Student’s commute length. It is unclear why Student’s thirteen-mile commute lasted for longer than an hour. A transportation route to CASE could (and should) have been adapted to reduce Student’s time commuting to and from school.[[36]](#footnote-37)

As such, I find that the District has met its burden to demonstrate that the September 2023 IEP, proposing a separate day program and placement at CASE, was reasonably calculated to provide Student with a FAPE in the LRE (provided that the most efficient transportation route to CASE was identified), based on the information then available to the Team regarding Student’s needs, skill level, and then-current progress.[[37]](#footnote-38)

I next examine the September 2024 IEP. When this IEP was proposed, Student was no longer attending any educational program, having stopped attending school on May 8, 2024. Prior to Student’s removal from school by Parent, Student attended the Foundations program where he struggled significantly. He could not access the curriculum and was confined to learning in a 1:1 setting, where he also struggled and was unable to access any academic work.

On November 26, 2024, Parent fully accepted this IEP, inclusive of its expanded goal areas, extensive services, and out-of-District placement. She never rejected this IEP during its duration. The only dispute, therefore, revolves around the specific placement - that is, whether this IEP should be implemented at either LABBB or Devereaux, the only programs to which Student has been accepted to date, [[38]](#footnote-39) or in a lesser restrictive setting.[[39]](#footnote-40)

Despite the numerous referrals to out-of-district programs, the only programs currently available to Student are LABBB Collaborative and Devereux School.[[40]](#footnote-41) I take judicial notice of the fact that both LABB and Devereaux are Chapter 766-approved special education programs. Dr. Berard and Ms. Sears testified that these programs were sent referral packets inclusive of information regarding Student’s learning profile and disability-related needs and found Student to be appropriate for their respective programs. No other evidence as to the appropriateness of these programs was provided by the District.

Although Parent did not present any documentary evidence that the fully accepted September 2024 IEP could not be implemented at either LABBB or Devereaux, she did testify about her concerns with these placements, which were consistent with her prior concerns regarding CASE Collaborative. As to Devereaux, Parent believes that the commute is too long, and she is concerned about Devereaux’s use of “tackling,” or physical restraint[[41]](#footnote-42), which she witnessed during her tour. As to the LABBB Collaborative, Parent does not think it is appropriate as it uses calming spaces, and she did not trust the classroom teacher.[[42]](#footnote-43) I address each of her concerns regarding Devereaux and LABBB below.

Parent is concerned that the commute to Devereaux is over one hour long. Massachusetts law states that districts shall not permit any eligible student to be transported in a manner that requires the student to remain in the vehicle for more than one hour each way except with the approval of the IEP Team.[[43]](#footnote-44) However, distance alone will not make a placement inappropriate.[[44]](#footnote-45) Specifically, a Hearing Officer must examine whether there is “credible evidence that Student would not receive a free appropriate public education in the least restrictive environment due to the distance of his home” to the proposed placement.[[45]](#footnote-46) If no program can be located within the state-regulated travel time, the Team should convene to decide whether the commuting distance is reasonable in light of the child’s needs and/or whether his IEP should include additional transportation accommodations because, without them, he would not be able to access his education.[[46]](#footnote-47)

Here, the commute from Lincoln, Massachusetts, where Student resides, to Devereaux exceeds the one-hour limit set by state regulations by several minutes.[[47]](#footnote-48) However, I cannot find that this factor alone renders Devereaux inappropriate for Student, especially since Student has been out of school since May 2024, and the District has sent 28 referral packets to 18 programs, only two of which have accepted Student.

Parent’s alarm at witnessing the use of physical restraint on other students at Devereaux cannot be minimized. Moreover, there are circumstances where the use of restraint results in a denial of a FAPE.[[48]](#footnote-49) In addition, any future use of physical restraint would be limited by the law[[49]](#footnote-50) to situations in which Student’s behavior “poses a threat of assault, or imminent, serious, physical harm to self or others and [he] is not responsive to verbal directives or other lawful and less intrusive behavior interventions, or such interventions [are] deemed to be inappropriate under the circumstances”[[50]](#footnote-51); it is “an emergency procedure of last resort,”[[51]](#footnote-52) and it may not be used “[a]s a standard response for any individual student.”[[52]](#footnote-53) As such, Parent’s observation alone is unpersuasive to constitute sufficient evidence of Deveraux’s inappropriateness as a placement for Student.

Similarly, and for the reasons articulated *supra* in my discussion of the CASE Collaborative, I do not find that the use of calming rooms at LABBB renders the program inappropriate.

Therefore, I find that the September 2024 IEP is appropriate and that Lincoln has met its burden relative to Devereux and/or LABBB as appropriate placements for Student.

Parent is strongly urged to take advantage of the current openings at these two programs and allow Student’s IEP to be implemented in either setting.

**ORDER:**

The IEPs developed by Lincoln during the relevant time periods were reasonably calculated to provide Student a free, appropriate public education in the least restrictive setting. Moreover, I find that Case Collaborative, LABBB Collaborative and/or Devereux School were or are appropriate placements.

In addition, since Student has been absent from school for the majority of the 2024-2025 school year, and all parties agree that the information from an updated evaluation is appropriate and necessary in order to provide Student with a FAPE, I order that once placed, Student should undergo a thorough evaluation in the following areas: occupational therapy, speech and language therapy, psychological, cognitive, social/emotional, academic, and an FBA in the school setting. As part of the evaluation, the Team should assess whether “the age of the student, the individual needs of the student, the social and emotional impact on the student of being temporarily separated from peers, [or] any history of trauma [] may render use of a time-out room inadvisable or counter-productive for the student, and any alternative behavioral support strategies that have been or may be effective in helping the student calm.”[[53]](#footnote-54)

So Ordered,

By the Hearing Officer,

/s/ Alina Kantor Nir

Alina Kantor Nir, Hearing Officer

March 31, 2025

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 parents 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 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 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 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. Parent did not submit any documents. [↑](#footnote-ref-2)
2. Lincoln submitted its Closing Argument on March 17, 2025. Parent did not submit a Closing Argument despite reminders by the Hearing Officer to do so. [↑](#footnote-ref-3)
3. The Psychological Evaluation consisted of the following: Differential Ability Scales, Second Edition (DAS-2)

Behavioral Assessment Scale for Children, Third Edition (BASC-3), Classroom Observation, and Record Review. (S-3) [↑](#footnote-ref-4)
4. The Speech and Language Evaluation consisted of the following: Peabody Picture Vocabulary Test, Fifth Edition, Expressive Vocabulary Test, Third Edition, Clinical Evaluation of Language Fundamentals, Fifth Edition, and Record Review. (S-4) [↑](#footnote-ref-5)
5. The Occupational Therapy Evaluation consisted of the following: The Beery-Buktenica Developmental Test of Visual Motor Integration (VMI), Beery VMI Developmental Test of Visual Perception, Bruininks-Oseretsky Test of Motor Proficiency- Second Edition (BOT2), Handwriting Without Tears Screener of Handwriting Proficiency, Sensory Profile School Companion 2 (Dunn, 2014), and Sensory Profile 2 Caregiver Questionnaire (Dunn, 2014). (S-5) [↑](#footnote-ref-6)
6. The following procedures were utilized: Monteiro Interview Guidelines for Diagnosing the Autism Spectrum, Second Edition (MIGDA-2), Social Responsiveness Scale Second Edition (SRS-2), and Record Review. (S-7) [↑](#footnote-ref-7)
7. The District never proposed a new placement page for Foundations nor did Parent ever consent to the placement in writing, although she was in support of it. (Berard) When questioned about it, Dr. Berard testified that, based on the services proposed in the September 2023 IEP, Foundations was the only in-District placement that Student could attend. (Berard) [↑](#footnote-ref-8)
8. 8 Also per the Mediation Agreement, the parties agreed to Student’s eligibility for Extended School Year (ESY) programming. [↑](#footnote-ref-9)
9. The District continued to send out referrals to programs already explored in hopes that such places now had appropriate cohorts or space for Student. (Sears) [↑](#footnote-ref-10)
10. Although separate public day was checked off on the IEP, it appears the parties were in agreement to explore private day programs as well. [↑](#footnote-ref-11)
11. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 (d)(1)(A). [↑](#footnote-ref-12)
12. See 20 USC §1401 (9), (26), (29); 603 CMR 28.05(4)(b); C.D. v. Natick Pub. Sch. Dist., No. 18-1794, at 4 (1st Cir. 2019) (quoting Fry v. Napoleon Community Schools, 137 S. Ct. 743, 748-749 (2017));Sebastian M. v. King Philip Reg'l Sch. Dist., 685 F.3d 84, 84 (1st Cir. 2012); *Lessard v. Wilton Lyndeborough Cooperative Sch. Dist.,* 518 F. 3d 18 (1st Cir. 2008); *C.G. v. Five Town Comty. Sch. Dist.,* 513 F. 3d 279 (1st Cir. 2008); *In Re: Chicopee Public Schools,* BSEA #1307346 (Byrne, 2013). [↑](#footnote-ref-13)
13. 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-14)
14. 20 U.S.C. 1412(a)(5)(A); *C.D.*, 924 F. 3d at 631 (internal citations omitted). [↑](#footnote-ref-15)
15. C.G., 513 F.3d at 285. [↑](#footnote-ref-16)
16. *Endrew F. v. Douglas Cty. Reg'l Sch. Dist.*, 137 S. Ct. 988, 1001 (2017). [↑](#footnote-ref-17)
17. 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-18)
18. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990). [↑](#footnote-ref-19)
19. *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-20)
20. *Endrew F.*, 137 S. Ct. at 992; see 603 CMR 28.02 (17). [↑](#footnote-ref-21)
21. *Endrew F.,* 137 S. Ct. at 1001 (“The nature of the IEP process, from the initial consultation through state administrative proceedings, ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child's IEP should pursue”); see *K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 809 (8th Cir. 2011) (explaining that the court would not compare the student to her nondisabled peers since the key question was whether the student made gains in her areas of need). [↑](#footnote-ref-22)
22. *G.D. Westmoreland Sch. Dist.*, 930 F.2d 942, 948-949 (1st Cir. 1991). [↑](#footnote-ref-23)
23. *Rowley*, 458 U.S. at 208(“Congress sought to protect individual children by providing for parental involvement … in the formulation of the child's individual educational program”).  [↑](#footnote-ref-24)
24. *In Re: Natick Public Schools*, BSEA #11-3131 (Crane, 2011). [↑](#footnote-ref-25)
25. *Schaffer v. Weast*, 546 U.S. 49, 62 (2008). [↑](#footnote-ref-26)
26. *Id*. (places the burden of proof in an administrative hearing on the party seeking relief). [↑](#footnote-ref-27)
27. See 603 CMR 28.05(6) (the "Team shall determine the appropriate placement to deliver the services on the student's IEP"). [↑](#footnote-ref-28)
28. See 20 U.S.C. § 1412(a)(5)(A); see also *Knox Cnty., Tennessee v. M.Q.,* 62 F.4th 978, 994 (6th Cir. 2023), *reh'g denied sub nom. Knox Cnty., TN v. M.Q.*, No. 21-5556, 2023 WL 3063506 (6th Cir. Apr. 12, 2023) (reiterating prior holdings that “a school district cannot prevail in an LRE case merely on the grounds that it believes mainstreaming is impossible, impractical, or counterproductive because the situation became challenging”) (internal citations and quotations omitted). Here, the District made significant efforts to educate and include Student at Lincoln , even developing a detailed incremental plan to increase Student’s time in the Foundations classroom and recess. Parent does not argue to the contrary. [↑](#footnote-ref-29)
29. 20 U.S.C. § 1414(d)(3)(B)(i). [↑](#footnote-ref-30)
30. See *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1030 (8th Cir. 2003) (finding that the School District failed to provide Robert any educational benefit by not developing and implementing an appropriate behavior management plan as required by his IEPs). [↑](#footnote-ref-31)
31. *Parrish v. Bentonville Sch. Dist.,* No. 5:15-CV-05083, 2017 WL 1086198, at \*31 (W.D. Ark. Mar. 22, 2017), *aff'd*, 896 F.3d 889 (8th Cir. 2018). [↑](#footnote-ref-32)
32. 603 CMR 46.02. Time-out is distinguished from seclusion, which is prohibited by 603 CMR 46.03(1)(a). 603 CMR 46.02 defines seclusion as “the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Seclusion does not include a time-out as defined in 603 CMR 46.02.” Like Parent, the Department of Elementary and Secondary Education (DESE) has expressed concern that “[o]veruse and inappropriate use of time-out rooms can have serious negative impacts on students’ academic progress and social and emotional wellbeing.” On September 21, 2021, DESE issued a guidance entitled *Reducing or Eliminating the Use of Time-Out Rooms During the 2021-2022 School Year* wherein DESE“**strongly recommend[ed]** that public schools, educational collaboratives, and approved private special education schools that use time-out rooms as a behavior support strategy actively consider and implement alternative approaches to reduce or eliminate the use of such rooms….” *Reducing or Eliminating the Use of Time-Out Rooms During the 2021-2022 School Year*, which can be found at <https://www.doe.mass.edu/news/news.aspx?id=26863>. In Lincoln’s Closing Arguments, the District noted that Student “is a child who needs a quiet space in order to become more regulated and the goal is for any student to learn how to regulate themselves, and what works to calm them down, so that the use of a quiet space is used less and less frequently and eventually not at all.” [↑](#footnote-ref-33)
33. See *M.M. v. Dist. 0001 Lancaster Cnty. Sch.,* 702 F.3d 479, 488–89 (8th Cir. 2012) (“While [Parents] wanted the District to stop using the calming room as urged by KKI, IDEA does not mandate that parental preferences guide educational decisions”); *N.F. v. Charino Reg'l Sch. Dist.,* No. CA 11-177-ML, 2012 WL 723124, at \*11 (D.R.I. Mar. 1, 2012) (where “the Parent did not agree with the methods used by RYSE staff, e.g. for time-outs, and produced her own modified behavior plan, which she wanted included in the 11/05/10 IEP,” the court agreed with the Hearing Officer that the “IDEA does not ensure that a FAPE will consist of the precise plan that the parent desires”) (internal citations omitted); *Mr. C v. Maine Sch. Admin. Dist. No. 6*, No. CIV. 06-198-P-H, 2007 WL 4206166, at \*25 (D. Me. Nov. 28, 2007), *report and recommendation adopted sub nom. Mr. C. v. Maine Sch. Admin. Dist. No. 6*, 538 F. Supp. 2d 298 (D. Me. 2008) (where “the Parents' quarrel [was] with the necessity and the wisdom of the approach taken by the [] behavioral plan,” the court found that “[i]t is precisely in regard to disagreements over such sensitive and difficult methodological matters that courts are directed to refrain from substituting their preferred approach and defer to the decisions of educators and specialized hearing officers”). [↑](#footnote-ref-34)
34. See *In Re: Public School District and Carlia*, BSEA # 08-7930 (Crane, 2009) (“Although Parent's views are extremely important for purposes of IEP Team consideration and decision-making, Parent is not an expert and her views cannot substitute for an expert opinion”); *In Re: Sutton Public Schools and Neville*, BSEA # 07-7534 (On Remand to the BSEA) (Crane, 2012) (“There is no doubt that Mother has been dedicated to Student's well-being; she is a devoted parent who likely knows her son better than anyone else; and she has likely spent countless hours talking to Student's service providers for the purpose of arranging their services. Mother is more than capable of providing important and relevant information regarding what she has observed as a layperson. Yet, it is not disputed that neither by training nor experience is Mother an educational expert with respect to how her son's educational needs may be appropriately met or with respect to whether a particular service or program utilized by Parents was educationally appropriate for their son”).  [↑](#footnote-ref-35)
35. See *In Re: Quincy Public Schools*, BSEA # 08-5707 (Crane, 2008) (although Parent argued that her son did “not respond well to being isolated, and Parent [did] not believe it appropriate or necessary that a program for her son include a separate time-out space,” the Hearing Officer determined that “a time-out area separate from the classroom [was] an essential ingredient of an appropriate placement for Student []. BSEA # 1708273 (Putney-Yaceshyn, 2018 ) (“Mother did not provide any evidence to show that Blackacre's use of the calm room was out of compliance with [DESE’s] advisory or unsafe to Student. Although Mother sought to demonstrate that the calm room at Blackacre was not appropriately calming, she did not provide any reliable support for that position. The only evidence she submitted …[was] her opinion and Father's opinion (which was not persuasive on this point due to their lack of expertise in providing behavioral interventions)…”). [↑](#footnote-ref-36)
36. See 603 CMR 28.06(8)(a) (“The district shall not permit any eligible student to be transported in a manner that requires the student to remain in the vehicle for more than one hour each way except with the approval of the Team. The Team shall document such determination on the IEP”). [↑](#footnote-ref-37)
37. See *Falmouth Sch. Dep't v. Doe on behalf of Doe*, 44 F.4th 23, 29 (1st Cir. 2022) (“The IEP team, in designing an IEP to ensure that the child receives a FAPE, must choos[e] a placement in which the child will receive educational instruction that strikes an appropriate balance between the restrictiveness of the placement and educational progress’”) (internal citations and quotations omitted). [↑](#footnote-ref-38)
38. Although CASE had initially accepted Student, there is no longer a spot available there since Parent rejected the placement. [↑](#footnote-ref-39)
39. I note that only Grandmother is of the belief that Student’s disability-related needs can be addressed in a general education setting. However, I afford little weight to her testimony in this area for several reasons. First, she has not observed Student in the full inclusion setting or at the Foundations program. Nor did Grandmother tour LABBB and Devereux, the two programs to which Student has been accepted. Although Grandmother presented heartfelt testimony that Student’s current presentation has improved, her observations are limited to the home and tutoring settings, which are distinct and different from a school environment. See *In Re: Quincy Public Schools*, BSEA # 08-5707 (Crane, 2008) (where although Parent “pointed to evidence demonstrating that within non-educational environments, Student's behavior [did] not require the availability of a time-out area,” this evidence was not found persuasive, as “[t]hese non-educational environments are sufficiently different than the classroom context so as to provide little, if any, useful guidance in resolving the underlying dispute”). Although Grandmother testified that Student’s presentation has recently improved due to stimulant medication, Parent testified that she was not sure that Student’s medication was “enough” to allow him to attend a general education setting. In addition, there was no evidence presented to suggest that the purpose of the stimulant medication was to reduce those behaviors that necessitate the use of a calming space. See *In Re: Quincy Public Schools*, BSEA # 08-5707 (Crane, 2008) (where although “Parent pointed out that relatively recently, Student began taking medication for ADHD [and took] the position that the medication [might] significantly reduce Student's behavioral difficulties,” the prescriber’s testimony was found more reliable and indicated that the “medication [might] have a secondary effect on Student's behavior, but the likelihood of this occurring [could not] be predicted”). [↑](#footnote-ref-40)
40. See *In Re: Timothy D.,* BSEA # 96-0243 (Figueroa, 1996) (factoring in that Forman “was the only program located within one and a half hours from Springfield to which Timothy was accepted” when ordering Springfield to fund it “for the remainder of this school year”). [↑](#footnote-ref-41)
41. I am construing the actions Parent witnessed at Devereaux as physical restraint. [↑](#footnote-ref-42)
42. Parent testified that she did not find LABBB appropriate, in part, because she “could not trust” the classroom teacher. However, Parent provided no evidence as to the teacher’s specific qualifications and/or expertise. Provided that a teacher is qualified for her role, a school has discretion regarding assigning teachers to classrooms. See *In Re: Boston Public Schools*, BSEA # 1407862 (Crane, 2014) (“Parent's concerns regarding these staff provide no basis for a finding that they are unable to implement the portions of the IEP for which they have responsibility, and I therefore have no basis for requiring that Boston substitute staff”); see also *Slama ex rel. Slama v. Indep. Sch. Dist. No. 2580,* 259 F. Supp. 2d 880, 884 (D. Minn. 2003) (“School districts have the sole discretion to assign staff”); compare *J.M. v. Los Angeles Unified Sch. Dist.*, No. CV 06-5330 GAF AJWX, 2007 WL 7682214, at \*6 (C.D. Cal. July 17, 2007) (“the FAPE denial was due in significant part to the District's retention of and reliance on an incompetent provider”). [↑](#footnote-ref-43)
43. See 603 CMR 28.06(8)(a). [↑](#footnote-ref-44)
44. See *Todd D. by Robert D. v. Andrews,* 933 F.2d 1576, 1581–82 (11th Cir. 1991) (“the obligation on the agency is to consider proximity as one factor, rather than necessarily to place the child close to home”); *M.M. ex rel. Moore v. Unified Sch. Dist. No. 368*, No. 07-2291-JTM, 2008 WL 4950987, at \*11 (D. Kan. Nov. 18, 2008) (holding that “[l]engthy bus rides are a burdensome fact of life” and the fact that a student had a 90-minute bus ride each way to his out-of-district placement did not make the placement overly restrictive); *S.A. ex rel. M.A.K. v. New York City Dep't of Educ.,* No. 12-CV-435 RMM MDG, 2014 WL 1311761, at \*16 (E.D.N.Y. Mar. 30, 2014) (“Regarding the morning commute, the IHO found that although a ninety-minute trip is very long for a child with interfering behaviors, there was no evidence that the trip adversely affected the student's performance or behavior…. [A]lthough the commute's length was “of concern,” it did not provide a basis for finding the student's placement inappropriate...”); *Flour Bluff Indep. Sch. Dist. v. Katherine M. by Lesa T.,* 91 F.3d 689, 695 (5th Cir. 1996) (“Distance remains a consideration in determining the least restrictive environment. The regulations say that it is. The child may have to travel farther, however, to obtain better services. And in this case, distance is not controlling”). [↑](#footnote-ref-45)
45. See *In Re: Tewksbury Public Schools*, BSEA # 1402344 (Putney-Yaceshyn, 2015) (finding “no credible evidence that Student would not receive a free appropriate public education in the least restrictive environment due to the distance of his home from Rutland”); *In Re: Brookline Public Schools*, BSEA # 12-4227 (Figueroa, 2012) (“At present, KCC is the appropriate program closest to Parent/ Student's home, and even when it moves to Walpole in the fall of 2012, it will still be within reasonable distance from Brookline. Parent's allegations regarding the level of Student's car sickness is not totally persuasive as the evidence shows that with special arrangements such as sitting in the front seat of a van, or riding in a larger bus or in a train, Student has demonstrated absolutely no discomfort even when travelling great distances such as from Brookline to Vermont where her summer camp was located. The evidence is persuasive that KCC is an appropriate placement, capable of providing Student FAPE consistent with the proposed IEP”); *Los Angeles Unified School District*, 2009060473, 53 IDELR 138 (SEA CA, 2009) (where Parent asserted that Student needed to be placed closer to home because of his seizures and her distance from Student but Student did not have any unique needs that required a shorter bus ride, school personnel had not been informed of, and never observed, Student having a seizure, and Parent did not present any medical testimony that substantiated her position that a longer bus ride would trigger Student's seizure, the Administrative Law Judge concluded that in resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program, and a school district is not required to place a student in a program preferred by a parent). [↑](#footnote-ref-46)
46. See *J.T. v. D.C.,* 496 F. Supp. 3d 190, 207 (D.D.C. 2020), *aff'd,* No. 20-7105, 2022 WL 126707 (D.C. Cir. Jan. 11, 2022) (although parent raised concerns regarding the student’s difficulties with long commutes, “distance traveled to school was not discussed at the IEP meeting, nor included or referenced in the IEP. Rather, the IEP allow[ed] for ‘special education transportation on a DOT vehicle,’ without requirements related to the school's distance from plaintiff's home.  Since the IEP [did] not require that V.T.’s placement be within a certain distance of his home, DCPS ha[d] not denied him a FAPE”); Cf. *McComish v. Underwood Pub. Sch.*, No. CIV. 1:06CV65, 2008 WL 660113, at \*16 (D.N.D. Mar. 6, 2008) (although the SDSB placement “include[d] several less than ideal factors, … [b]ecause SDSB [was] the only available placement which could provide Christina with a free appropriate public education, it also constitute[d] the least restrictive environment for appropriate education”). [↑](#footnote-ref-47)
47. The District was responsive to Parent’s concerns regarding her inability to drive to Devereaux by offering to fund and provide her with transportation there as needed. [↑](#footnote-ref-48)
48. See, e.g., *Beckwith v. D.C.,* 208 F. Supp. 3d 34, 38 (D.D.C. 2016) (finding that “L.B. was denied a FAPE when defendant failed to comply with its restraint requirements”); *B.H. v. W. Clermont Bd. of Educ.,* 788 F. Supp. 2d 682, 699 (S.D. Ohio 2011) (finding “that Defendant failed to meet B's behavioral needs where it neglected to implement appropriate positive behavioral interventions, set increasingly low behavioral expectations, and employed physical restraint, even where shown to be ineffective”); *Intermediate School District #287*, 10-054C, 110 LRP 68625 (SEA MN, 2010) (finding a denial of a FAPE when the district violated state regulations which specifically limited when and how staff members could subject the student to a particular hold or place him in the school's calming room). [↑](#footnote-ref-49)
49. In Massachusetts, the use of physical restraint is regulated by 603 CMR 46.00 et seq. [↑](#footnote-ref-50)
50. 603 CMR 46.03(1)(c). [↑](#footnote-ref-51)
51. *Id*. [↑](#footnote-ref-52)
52. 603 CMR 46.03(2)(d). [↑](#footnote-ref-53)
53. *Reducing or Eliminating the Use of Time-Out Rooms During the 2021-2022 School Year*, which can be found at https://www.doe.mass.edu/news/news.aspx?id=26863 [↑](#footnote-ref-54)