COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

BUREAU OF SPECIAL EDUCATION APPEALS

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 CORRECTED DECISION

STUDENT v. GREENACRE PUBLIC SCHOOLS

BSEA # 2512981

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BEFORE

HEARING OFFICER

ALINA KANTOR NIR

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COLLINS FAY MARTIN, ATTORNEY FOR PARENTS

TOM DELMAR, ATTORNEY FOR SCHOOL

**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In re: Student v. Greenacre Public Schools[[1]](#footnote-1) BSEA # 2512981**

**CORRECTED 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 on June 12, 2025, before Hearing Officer Alina Kantor Nir. Those present for all or part of the proceeding agreed to participate via a remote videoconferencing platform. Parents and Greenacre Public Schools (Greenacre or the District) were represented by counsel. The following were in attendance and participated in some or all of the proceedings:

Mother

Father

Adam Tiro, Special Education Advocate

Collins Fay Martin, Attorney for Parents

Tom Delmar, Attorney for Greenacre

Greenacre Executive Director for Student Services (Director)

Greenacre Special Education Department Head (Department Head)

Greenacre Special Education Teacher (Teacher)

Becky Barron, Court Reporter

The official record of the hearing consists of documents submitted by the Parents and marked as Exhibits P-1 through P-11[[2]](#footnote-2), and RP-1[[3]](#footnote-3); documents submitted by Greenacre and marked as Exhibits S-1 through S-9 and S-11; and a one-volume stenographic transcript. Parents and the District made their oral closing arguments on June 12, 2025, and the record closed on that date.

**RELEVANT PROCEDURAL HISTORY:**

On May 15, 2025, Parents filed a *Request for an Accelerated Hearing* to address a placement dispute for Student. Accelerated status was granted on May 16, 2025, and a *Notice of Accelerated Hearing* was also issued on that date scheduling this matter for Hearing on June 16, 2025, with Hearing Officer Marguerite Mitchell. Hearing Officer Mitchell advanced the Hearing date to June 12, 2025 via *Ruling On Request To Advance Hearing, To Hold The Hearing Remotely, To Extend Deadline To Submit Exhibits And Witness Lists And On Discovery Objections* (Mitchell, June 9, 2025). On June 9, 2025, the matter was reassigned for administrative reasons to Hearing Officer Alina Kantor Nir.

Following a conference call on June 11, 2025, the issue below was identified as the sole issue for Hearing by Parents’ Counsel via email dated June 11, 2025, and confirmed on the record on June 12, 2025.

**ISSUE IN DISPUTE:**

The issue in this matter is whether Student has been denied a free appropriate public education (FAPE) during the 2024-2025 academic year due to the District’s failure to appropriately implement the Individualized Education Program (IEP).

Parents’ requested remedy is an “out-of-district placement on a prospective and/or compensatory basis.”

**FINDINGS OF FACT[[4]](#footnote-4):**

1. Student is a 12-year-old sixth grade student and resident of Greenacre, Massachusetts. (Mother) Student is eligible for special education and related services pursuant to the Autism Disability category. His disability impacts Student’s ability to communicate, follow verbal commands, interact socially, acquire basic skills, maintain self-regulation, understand others, and express knowledge, needs, and wants within the classroom. Overall, Student has below average nonverbal intelligence. His achievement scores are in the very low range. Student’s adaptive skills in the home are in the low range. Student struggles with significant expressive, receptive, and pragmatic language delays.[[5]](#footnote-5) (Teacher, P-5, S-5a) At school, Student is described as happy and hard working. (Teacher)
2. Until February 24, 2025, Student attended the Communication Enhancement Program (CEP) at [] Middle School, a substantially separate classroom designed for students with significant language, sensory, and social communication deficits. (Teacher, Department Head, P-5, S-2, S-5a) The special education teacher for the CEP classroom (Teacher) holds a Bachelor's degree in Moderate Special Needs and is licensed in the same area. (Teacher, P-10) She graduated in June 2024 and is currently pursuing a Master’s degree in Severe Special Needs. Prior to her role as the CEP teacher at [] Middle School, she was an ESY lead teacher in a substantially separate classroom and completed a semester of student teaching in a similar setting. She testified that she has been absent for approximately 8 days during the 2024–2025 school year. During her absences, the classroom is led by the ABA ESPs. (Teacher)
3. Director is the Executive Director of Student Services in the District. She has served in this role since 2022. Director has a Doctorate degree in school psychology and is licensed as a school psychologist. Director testified that the licensure required for Teacher’s position is either moderate or severe special needs, although severe would be preferred. (Director)
4. Department Head is the Special Education Department Head at [] Middle School. She has held this position for two years, having previously worked in the District as a school psychologist. In her role as Special Education Department Head, she attends and chairs IEP Team meetings and frequently observes the CEP classroom. (Department Head)
5. The CEP classroom is intensive and behaviorally based. It provides a blend of Applied Behavior Analysis (ABA) discrete trials and natural environment or incidental teaching, as well as small group and 1:1 academic instruction. (Teacher, Department Head, P-5, S-2, S-5a) The ABA methodology utilized in the classroom consists of visuals (for emotions, coping strategies, schedules), explicit instruction, scaffolding, first-then boards, individualized instruction and interventions, data collection, and warnings before transitions. (Teacher, Department Head) Teacher testified that ABA methodology is followed in the classroom “with fidelity.” (Teacher)
6. The CEP classroom comprises eight students, including Student, and includes 6th, 7th, and 8th graders, all with autism spectrum diagnoses and significant communication deficits. (Mother, Teacher) Some students have higher cognitive abilities and/or are more verbal than others. The classroom follows a set schedule and curriculum tailored to each student's grade level, while also accommodating individualized programs to meet each student’s unique needs. Support is provided by a special education teacher and four paraprofessionals (“ABA ESPs”) trained and certified in ABA methodology, two of whom serve as 1:1 aides. (Director, Teacher, Department Head) A Board-Certified Behavior Analyst (BCBA) consults with the classroom team, works directly with students, and is present in the classroom multiple times a day. Other service providers, such as a speech and language pathologist, occupational therapist, and physical therapist, also frequently come into the classroom to provide additional support. (Teacher, Department Head)
7. In May 2024, while attending the CEP classroom at [] Primary School, Student participated in a three-year re-evaluation. The Speech and Language Evaluation (RESCA-E, PPVT-5, GFTA-3) revealed significant delays in receptive, expressive, and pragmatic language skills, along with several articulation errors, though these were less impactful given Student’s limited verbal output. Attention difficulties influenced testing performance, and observation suggested stronger skills than were demonstrated in the formal assessments. Continued speech and language therapy was recommended. The ABLLS-R assessment showed delays in communication, social skills, play and leisure, and language comprehension, though relative strengths were noted in cooperation, visual performance, classroom routines, academics, math, and self-help skills. A Functional Behavior Assessment identified ritualistic and protest behaviors, typically used to escape demands or gain access to preferred items. These behaviors occurred infrequently and did not interfere with learning; functional communication training was recommended. Finally, the psychoeducational evaluation (TONI-4, WJ ACH-IV, Vineland-3) showed Below Average nonverbal intelligence, Very Low academic achievement, and Low adaptive functioning as reported by Parents. Overall, the evaluations highlighted significant needs in language, academics, and adaptive functioning, with some behavioral concerns and identifiable areas of strength. (P-3, S-1, S-2, S-3, S-4)
8. Following Team meetings on June 13 and 18, 2024, the District proposed an IEP for the period from June 13, 2024 to June 12, 2025 (June 2024 IEP), with placement at the substantially separate program at [] Middle School for sixth grade. The June 2024 IEP offered Student several accommodations including but not limited to frequent motor breaks, visual supports, models, prompts, visual cues, low distraction environment to complete seated work, token economy, sensory diet as needed, behavior support as needed, opportunities for repetition, and warnings for transitions and changes to the schedule. It included use of the ABA methodology, systematic and explicit instruction, antecedent management, positive reinforcement, social stories, small group, multi sensory, and total communication, and provided for receptive and expressive language and social skills instruction. To support goals in the areas of Communication, ELA, Behavior/Self-Regulation, Mathematics, Social Skills, Activities of Daily Living, and Community, Student was offered the following Services: Grid A: ABA Consultation (1 x 10 minutes/6 days, BCBA); Grid B: Generalization of Skills (6 x 75 minutes/6 days, ABA ESP); Grid C: ABA Methodology/Generalization (5 x 280 minutes/6 days, Special Education Teacher), Communication (1 x 15 minutes/6 days, SLP/SLPA) and Communication (2 x30 minutes/6 days, SLP/SLPA). The IEP provided for Extended School Year (ESY) services with “Summer Program Staff,” stating that related services are “embedded in the ESY programming.” Student’s IEP called for specialized transportation “due to reduced safety and communication,” and the use of a buckle buddy. Parents accepted this IEP on July 1, 2024. (P-4, S-5a, S-5b)
9. Student attended ESY in 2024 at the [] Primary School. A licensed special educator was not hired for the 2024 ESY session. (Mother)
10. In September 2024, Student transitioned from [] Primary School to [] Middle School for sixth grade. (P-4, S-5a)
11. According to Teacher, Student is a “good fit” for the CEP classroom, and his profile and presentation are consistent with his peers. He has made progress in the classroom and presents with “great energy” and a happy affect. (Teacher)
12. Student’s BSP targets the following behaviors: aggression, loud vocals, tantrums, ritualistic behavior, functional communication, and coping strategies. Redirection and interruptions of maladaptive behaviors are indicated interventions. (RP-1) Mother testified that she has neither reviewed nor signed the BSP. (Mother) Teacher believes the BSP, which is followed by all staff in the CEP classroom, tracks Student’s IEP. [[6]](#footnote-6) (Teacher)
13. The District’s Special Education Procedure Manual, Updated February 14, 2025, states that “**Before** the school uses a time-out room as a behavioral support strategy for a student with disabilities, the IEP Team, including the student’s parents/guardians, should carefully consider the advantages and disadvantages of such a behavioral support strategy and any alternatives that may be effective.” (P-5) Director testified that all staff are trained on time-out procedures at the start of the school year. (Director)
14. On January 9, 2025, Mother informed Teacher that Student had “an ulcer” or “a white circle” on his lip that she “was keeping an eye on.” (Mother, Teacher) Teacher believed Student’s lip was bothering him that day. (Teacher)
15. Teacher testified that while transitioning in the hallway, Student began to vocalize loudly, which is “one of his cues” for upcoming dysregulation. Student is “very good” at reviewing visuals to calm down. Student was “not made to go,” but rather went willingly, into the sensory-motor classroom across from his classroom and reviewed coping strategies with staff. His peers were on a break at that time. (Teacher, P-5) However, according to Teacher’s email to Mother that day,

“[Student] was on a break, and then we moved to a work session. I think maybe he didn't get to finish the game he was playing, so the shift upset him. We always have a timer so they know how long their break is. He lunged at the staff and grabbed their wrists. The space is just an open area where they, in all honesty, have the space to be noisy if needed. We have lots of visuals in there like ‘When I feel angry I can ...’ so [Student] read through that multiple times using the strategies on the sheet. He was in there with two support staff who walked him through the strategies and reminded him to have a ‘calm body’. He was in there for about 5 minutes. He was tasked to have a ‘calm body’ for 3 minutes, and then he rejoined his class for math.” (P-5)The email then clarified further as follows:

“This afternoon, at around 2:00, [Student] became upset and aggressive toward staff. After about 15 minutes he was able to use his words and coping strategies to calm himself back down. He was brought to a separate space to feel his emotions. There, he hit himself in the mouth, and his lip had a bump. The lip seemed to be alright, but just so you know. He also said he was hungry during that time, so I think it was a mix of transitioning from a break to work and being hungry. Once he was calm, he had some pretzels. He got on the van in a good mood!” (P-5)

1. Parents received no incident report for this incident, save for the email from Teacher. (Mother) Mother responded to Teacher’s email, stating that she found the incident “upsetting” and noted that Student’s “lip on bottom right [was] already swollen as he ha[d] a mouth ulcer.” (Mother, P-5)
2. According to the [] Middle School Principal, “there are no incident reports or time-out logs [for the CEP classroom] including [for Student].” (P-5)
3. Director testified that there are no “time out rooms” at [] Middle School, nor was the sensory room used as such on January 9. Rather, it was a learning environment where Student worked on his goals around coping strategies. (Director) According to Teacher, staff do not use time-out procedures in the CEP classroom. Typically, all behaviors are addressed in the classroom. (Teacher) The sensory room is not padded. It has a door, bean bags, and a yoga ball. Students often work on their goals in the sensory room, as staff did on January 9 with Student. This was “the only” time this room was utilized for Student. (Teacher)
4. The District stipulated that Teacher is not aware of the distinction between a time out room and “not a time out room.”
5. Mother testified that she did not (and does not) agree to a behavior intervention that includes having Student go into a “space.” She was surprised Student was not seen by the school nurse for his lip. (Mother)
6. On February 24, 2025, Student arrived at school on a special education van.[[7]](#footnote-7) (P-11) While waiting in the van to be escorted to class, Student began to vocalize loudly. (P-1, P-2) Student B is a large, tall child, much bigger in stature than Student. (Tiro, P-11) Student B was sitting directly in front of Student on the van and became dysregulated due to Student’s vocalizations. (P-1, P-2) Two witnesses reported that Student B turned and swung his arm up behind him and hit Student in the face with his phone, knocking out Student’s two front teeth. Another witness reported that Student B threw his phone at Student. (P-1, P-2) The monitor provided pressure to the wound and collected Student’s teeth. Student was bleeding and in pain when brought into the nurse’s office. (P-2, P-11)
7. The Assistant Principal contacted Father who picked Student up from school. (Director, Mother) Later that day, Principal and Department Head spoke with Mother. Director emailed Parents to set up a call with them for later in the week. She did not hear back from Parents, but Principal set up an in-person meeting for them for the following Monday. (Director) Approximately three days following the incident, Director and the Assistant Superintendent contacted Parents via phone to check on Student and the family as he remained out of school. On the following Monday, March 10, 2025, Student was still out of school, and Parents met with the Assistant Principal, Director, and Department Head. (Mother, Director, Department Head) They were informed that Student B remained in the CEP classroom and would not be placed in an interim alternative educational setting. (Director, Mother) Director informed Parents that the District was addressing Student B “separately.” (Director) Director testified that the purpose of the meeting was to identify ways to reengage Student with school and ensure that he felt “comfortable” in the process, but the meeting concluded without a “solution.” Parents asked that all “options” be put into an email. (Director)
8. Mother testified that, at the March 10 meeting, Director told Parents that Student B had a “pattern” of similar behaviors and could be “dangerous for others in his path.” (Mother) Director denied making these comments. She acknowledged that there are students in the classroom who demonstrate physical aggression, as that is part of their profile, but she was not aware of any student with a pattern of dangerous behaviors towards others, nor of any student in the classroom who was not responsive to intervention. Nor was any student supported on a 2:1 staff-to-student ratio basis in the CEP classroom, as Mother claimed. (Director)
9. Director testified that although Student B reacts to loud vocalizations, the classroom setting is different from a van. In the classroom, there is space, staff, and antecedent strategies to prevent a situation like the one that occurred on the van. In addition, the protections offered in her March 13 email (discussed below) would mitigate any risk to Student even further. Director believes the Student’s cohort is appropriate, as all students have similar profiles and goals and require similar interventions and supports. It is not unusual for students with autism to exhibit aggressive or maladaptive behaviors, and this alone does not make the cohort inappropriate, as there are strategies in place to address and manage such behaviors. However, she also testified that Student B may have a “different level of need” and the District is addressing this with the family. (Director)
10. Department Head testified that Student’s cohort is appropriate because, although each student has individual needs, they all have the same “core” diagnosis with a similar level of severity in terms of autism and communication deficits. (Department Head)
11. To date, Student has not attended school since Father picked him up on February 24, 2025. (Teacher) Parents declined to return Student to school following the incident as Student B continued to be a “in the building.” (Mother, Director, Department Head) Parents were concerned for Student’s personal safety. (P-7, Mother) Student and Student’s family have suffered greatly from the incident. Student required dental surgery and will continue to require dental work for years to come.[[8]](#footnote-8) According to Father, Student is disfigured for life.” Mother also testified that Student has anxiety as a result of the incident, and he has flinched when being handed something. Mother has been unable to work as she is caring for Student full time. (Mother, Father) Father testified that he found it “shocking” that Student B was not removed from the building following the injury to Student. He felt that “the system let [Student] down.” (Father)
12. On March 13, 2025, Director contacted Parents to discuss options for returning Student to school. She suggested a return to [] Middle School with a safety plan, schedule changes and a van route change so as to separate Student from Student B. A transportation plan with familiar staff, such as Teacher, was proposed when Student was ready to ride the van. Added staff with proximity to Student to monitor for safety concerns, and a transition plan to assess Student’s comfort level were offered. Home services, home tutoring, home ABA services (combined with access to extracurricular activities at [] Middle School with adherence to safety plan) were also proposed. Additionally, the [] Primary School CEP was offered as a short-term placement for the remainder of the school year. An AAC consultation was further proposed to determine ways for Student to communicate when or if he was feeling uncomfortable, and a school adjustment counselor (SAC) would be identified to support Student. Director invited Parents to reach back out to her and let her know if they were leaning towards any of the options, which were not longer-term solutions, so they could “determine additional details.” (Director, Department Head, P-6, S-6) Director testified that she “left it open for Parents’ input.” In the meantime, building staff were working on a schedule to ensure that Student and Student B would not cross paths during the school day. (Director)
13. Mother testified that she had no input into creating this list of options, and Parents did not feel any of these options was appropriate for Student. (Mother) Director testified that the options offered were not “unilaterally developed” but were “very much a collaborative effort.” (Director)
14. Director and Department Head testified that these options were meant to be “short term” “not permanent fixes… to get [Student] into consistency and routine.” None of the proposed options was a proposal to amend the IEP. (Director, Department Head) Neither Director nor Department Head anticipated that Student would remain out of school for so many months. (Director, Department Head)
15. In response to Director’s email, Parents responded, asking that the District send out referral packets to out-of-district programs for Student. Parents suggested May Institute, NECC, Boston Higashi, and Cardinal Cushing. (Mother, P-6, S-7) Director noted that such a determination must be made by the Team and proposed a reconvened meeting. (Director, P-6)
16. Adam Tiro is a Special Education Advocate who was contacted by Mother to conduct an observation of Student’s program. Mr. Tiro has a Master’s degree in special education and holds a moderate special needs license through the Department of Elementary and Secondary Education (DESE). He taught special education for 17 years in a variety of settings. Mr. Tiro has not worked with nonverbal students, however he has worked with nonverbal adults. He was also a high school Team Chair in Greenacre for one year but was not reappointed. Mr. Tiro has never met or evaluated Student and has not reviewed his records with the exception of Student’s IEP, which he reviewed only the day before the Hearing. (Tiro)
17. On March 24, 2025, Mr. Tiro observed the CEP classroom for 2–3 hours with the Department Head present; however, Student was not in attendance (as Mr. Tiro has never met him as noted above). During his visit, he observed six students, with two moving in and out of the classroom. He described the students as having “extreme needs across the board,” with at least two requiring constant 1:1 support.[[9]](#footnote-9) He believed the classroom teacher should hold a severe special needs license, not one in moderate special needs, citing a distinct skill set needed for teaching life skills, toileting, behavior, and transitions. He testified that it is unsafe for teachers without this licensure to lead such a classroom and thus concluded that the environment was not safe for Student. Although Mr. Tiro could not speak to the components of Student’s IEP that were allegedly not being implemented, he asserted that the program overall was unsafe for Student. He did not know whether Student’s IEP called for 1:1 support, but he testified that all the students in the classroom had significant communication delays and extensive behavior issues and engaged in frequent physical disruptions such as banging the desks or making grunting noises. (Tiro)
18. Mr. Tiro testified that academic blocks in the class were 10 minutes in duration and students struggled to transition out of break time and back to their work. Some students had longer breaks than others. Students appeared overly reliant on devices that they could not operate independently. He observed visual schedules in the classroom but felt that they were “not strongly enforced.” He did not feel that ABA was delivered with fidelity, and there was no BCBA in the classroom. (Tiro)
19. Teacher testified that Mr. Tiro observed a math and a science lesson that day. For the science lesson, Teacher trialed using mysteryscience.com, which included watching a video and performing some reading comprehension. The math activity utilized coins and the online IXL Math Program. Teacher confirmed that students in her classroom struggle with transitions, and hence warnings, timers and visuals are utilized. At times, it is hard for students to transition back from break, and, as their communication skills are limited, they express their frustrations and resistance in a variety of ways. (Teacher)
20. Department Head accompanied Mr. Tiro for the observation. She testified that she observed ABA methodology in the classroom through the use of individual schedules, first-then boards, behavior charts, timers, visual schedules, staff check-ins and warnings for transitions. (Department Head)
21. According to Mr. Tiro, it appeared the staff were trying to keep Student B out of the classroom during his observation. At some point, Student B walked “rapidly” into the classroom with 2 staff members behind him, went directly to Mr. Tiro, and “slapped” him repeatedly on the head. (Tiro) Department Head and Teacher testified that Student B “loves bald heads” (which Mr. Tiro has), and Student B “tapped” (not “slapped”) Mr. Tiro’s head. Mr. Tiro smiled and did not sustain any injury from the interaction. Student was easily redirected by staff. (Teacher, Department Head) Mr. Tiro testified that he could defend himself against Student B, but Student would be unable to do so. (Tiro)
22. Teacher testified that Student B’s schedule was not altered for the observation. During Mr. Tiro’s time in the class, he observed the 6th grade students. Student B is a 7th grader, and his schedule aligns with his 7th grade peers. (Teacher)
23. According to Teacher, Student B has aggressed against staff before but never against other students in the classroom. He is not a bully and, other than the incident on February 24, has never injured another student. Although Student and Student B regularly have “three blocks” together in the CEP classroom, they are not (and would not be) in the same grouping within the classroom because of their different grades. Lunch periods are also grade-specific, and CEP students do not participate in recess. (Teacher)
24. Teacher testified that Student has never been injured in her classroom. He is very comfortable, safe and happy. The classroom is set up to ensure students’ safety. It is a large, highly staffed classroom with multiple partitions and dividers which allow students to be separated, as needed. Staff “are involved at all times” to “keep space” between students and to watch for their “cues” and “antecedents.” Moreover, the staff consult with the BCBA daily on how to keep students safe. (Teacher)
25. Department Head testified that Student would be safe in the classroom, as it was highly staffed with personnel trained in ABA methodology and Safety Care. Although all the students had the same diagnosis and were prone to dysregulation, staff were familiar with the students and monitored their antecedents so they could intervene and separate students if needed. (Department Head)
26. Mother does not believe the cohort in the CEP classroom is appropriate for Student. The basis for her opinion is not only Student’s injury in the van but also the teacher's licensure. Mother testified that she expressed concern regarding the age of the peers and the severity of any behaviors in the middle school classroom before Student’s transition there. Mr. Tiro’s observation only confirmed her concerns. (Mother)
27. On March 27, 2025, Parents submitted a Physician’s Affirmation of Need for Temporary Home or Hospital Education for Medically Necessary Reasons signed by Student’s pediatric neurologist, Dr. Margaret Bauman, indicating that Student needed to remain at home “until a new school” was identified, as Student needed a “physically safe environment” and as Student’s “attacker” remained in the classroom. (P-7)
28. No licensed special education teacher has been hired for the upcoming 2025 ESY session. (Mother, Director, Department Head) Rather than hiring someone unfamiliar with the children, the staff who currently work with them and are familiar with them will work in the ESY classroom and will be led by an ABA paraprofessional. A licensed special educator would be “ideal,” but the District prioritizes having familiar staff for the Autism Spectrum population, as they would be “most effective and appropriate.” (Director, Department Head) Director testified that no notice has been sent to Parents regarding the absence of a licensed special education teacher because Student’s IEP would not be out of compliance as the service delivery grid states that the ESY program is run by “summer staff.” (Director) Mother testified that it was her understanding that a special education teacher would staff the ESY classroom as had been the case in the past. (Mother)
29. Student B will attend the 2025 ESY session. (Director, Mother)
30. Parents have not consented to any of the options offered by the District in the March 13 email. Student has not received any educational services or tutoring since February 24, 2025. (Director)

**LEGAL STANDARDS:**

1. 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).[[10]](#footnote-10) 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 Individualized Education Program (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.”[[11]](#footnote-11) FAPE is delivered through an educational program, including secondary transition services, that offers the student the chance to meet challenging objectives and, in light of the student's circumstances, is appropriately ambitious and reasonably calculated to enable a student to make progress.[[12]](#footnote-12) A student’s IEP must be individually tailored.[[13]](#footnote-13) 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.[[14]](#footnote-14) 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.”[[15]](#footnote-15)

FAPE does not require a school district to provide special education and related services that will maximize a student’s educational potential.[[16]](#footnote-16) In *Endrew F. v. Douglas County Regional School District*, the Supreme Court explained that appropriate progress will look different depending on the student.[[17]](#footnote-17) An individual analysis of a student’s progress in his/her areas of need is key.[[18]](#footnote-18) 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."[[19]](#footnote-19)

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."[[20]](#footnote-20) 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."[[21]](#footnote-21) "The goal, then, is to find the least restrictive educational environment that will accommodate the child's legitimate needs."[[22]](#footnote-22)

1. Implementation Failures

“[H]earing officers are precluded from revisiting or re-opening accepted IEPs that have expired where parents participated in the development of the IEP. The purpose of this rule is plain; deciding upon which goals and methods to include in any student's IEP is not an exact science, and allowing parents to second-guess IEP decisions after it has expired would only undermine the process of providing students with the educational services they need.”[[23]](#footnote-23) Nevertheless, "[t]o provide a free and appropriate public education to a student with disabilities, the school district must not only develop the IEP, but it also must implement the IEP in accordance with its requirements."[[24]](#footnote-24) Where an IEP has been accepted in full and has expired, the analysis focuses on implementation.[[25]](#footnote-25) The generally adopted standard requires "more than a de minimis failure" to prevail on an implementation claim under the IDEA.[[26]](#footnote-26) Specifically,

“a court reviewing failure-to-implement claims under the IDEA must ascertain whether the aspects of the IEP that were not followed were ‘substantial or significant,’ or, in other words, whether the deviations from the IEP's stated requirements were ‘material.’ A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. This standard does not require that the child suffer demonstrable educational harm in order to prevail; rather, courts applying the materiality standard have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld.”[[27]](#footnote-27)

Courts have found FAPE violations where (1) the “failure” to implement was “complete”; (2) the variance from the special education and related services specified in the IEP deprived the student of a FAPE; and (3) the provision of special education and related services failed to enable the student to make “progress” toward the achievement of the goals stated in the IEP.[[28]](#footnote-28)

1. Burden of Proof

In a due process proceeding, the burden of proof is on the party seeking to change the status quo.[[29]](#footnote-29) Here, Parents bear this burden.

 With this legal authority in mind, I turn to the issue before me.

**DISCUSSION[[30]](#footnote-30):**

First and foremost, I profoundly empathize with Parents and Student for their ordeal. It is indisputable that Student sustained a significant injury, and this incident has affected both Student and his family. The findings in this Decision are in no way meant to undermine or diminish the trauma of what occurred or its ongoing impact.

It is further undisputed 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 listed under ISSUES IN DISPUTE, *supra*. Upon consideration of the documentary evidence and testimony as well as the thoughtful arguments of Counsel, I make the following findings:

Parents argue that the District failed to implement the June 2024 IEP, which Parents had fully accepted and which is now expired.

There was no evidence offered at Hearing that Student’s Grid A, Grid B, and/or Grid C services were not implemented in accordance with the frequency and duration and by the type of personnel identified in the IEP. Instead, Parents’ argument with regard to the District’s failure to “appropriately implement” the IEP focuses on the grounds of inappropriate teacher licensure, failure to utilize ABA methodology “with fidelity,” an inappropriate peer cohort, and the use of exclusionary time-out. They also argue that during ESY, there is no licensed special education teacher in the classroom.

I address Parents’ claims individually:

1. Inappropriate Teacher Licensure

According to Parents, the special education teacher for the CEP classroom should have a license in severe disabilities, not, as Teacher currently does, a moderate disabilities license. In support of their position, Parents offered the testimony of Mr. Tiro, who conducted a 2-3 hour observation of Student’s classroom, in Student’s absence, and opined that, based on his own experience as a special education teacher with moderate special needs licensure and the “extreme” needs of the students observed, the severe special needs license is necessary for “appropriate implementation” of Student’s IEP.[[31]](#footnote-31)

Student’s IEP is silent as to the necessary licensure of the classroom teacher, and Student’s C Grid service of ABA Methodology/Generalization (5 x 280 minutes/6 days) indicates a Special Education Teacher as the assigned personnel. 34 CFR 300.156 (c)(1) requires that a special education teacher who teaches elementary school, middle school, or secondary school has either obtained full state certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator) or passed the state special education teacher licensing examination, and holds a license to teach in the state as a special education teacher; has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and holds at least a bachelor's degree. Teacher herein satisfies these requirements. Although Director testified that a severe special needs licensure is preferred for the position, it is not a requirement.

Mr. Tiro’s testimony, based on his brief classroom observation, fails to show that Teacher was either unable to or failed to fulfill her responsibilities in the CEP classroom, that she was unable to meet Student’s — or the cohort’s — needs, or that she could not provide Student with the special education services called for in his IEP with her current licensure. Even if the needs of the cohort are “extreme,” no evidence has been presented to demonstrate that the instruction provided by Teacher has been inappropriate or ineffective, nor have there have been injuries or safety issues in the classroom.[[32]](#footnote-32) As such, Parents failed to meet their burden that Teacher’s licensure has resulted in an implementation failure.

Parents also allege an implementation failure during Teacher’s absences, when ABA ESPs are responsible for the classroom. I note that Teacher has not had any long-term absences; she testified that she missed only eight total days to date during the current school year. As there was no evidence offered that Student’s C Grid service of ABA Methodology/Generalization was provided by the ABA ESPs during Teacher’s eight days of absence (and notably, Parents have made no claim to the contrary), I find that Parents have not met their burden to show an implementation failure based upon Teacher’s licensure.

1. Failure to Provide Special Education Teacher During 2025 ESY Session

Parents alleged a prospective failure to implement the IEP due to the absence of a special education teacher for the 2025 ESY session. The District argues that it complied with the IEP, as the type of personnel for ESY is listed as Summer Program Staff.

Pursuant to 34 CFR 300.106 (b) "ESY services" means special education and related services that are provided to a child with a disability; beyond the normal school year of the public agency; in accordance with the child's IEP; at no cost to the parents of the child; and meet the standards of the state educational agency. According to DESE,

ESY programs may include special education and/or related services and must be specified on the IEP. Since ESY services are proposed in order to avoid substantial regression, the portion of the child's IEP for ESY services may differ somewhat from the portion of the IEP that governs the provision of services for the regular school year. Such differences may be separately described on an additional IEP service delivery grid that specifically outlines the proposed extended school year services and their duration and frequency.[[33]](#footnote-33)

There is no legal basis on which I may conclude that ESY teachers are exempt from the IDEA's requirements regarding teacher qualifications.[[34]](#footnote-34) Regardless of whether services are provided during the school year or over the summer, the teachers and paraprofessionals providing those services must satisfy the qualifications set forth in the Part B regulations.[[35]](#footnote-35)  Moreover, the credible evidence suggests that Parents were not aware that the term “Summer Program Staff” in Student’s IEP was meant to provide the District with flexibility in staffing his ESY classroom — allowing it to be led by someone other than a licensed special education teacher. In other words, Parents were under the reasonable expectation that a licensed special education teacher would be present during ESY services and did not realize that this wording permitted the District to employ a different staffing configuration. It is undisputed that no such special education licensed teacher has been hired to date to support Student’s 2025 ESY program. While there has been no implementation failure to date with regard to ESY programming, the District is directed to provide a licensed special education teacher during Student’s 2025 ESY session.[[36]](#footnote-36)

1. Failure To Utilize ABA Methodology “With Fidelity”

The only evidence offered in support of Parents’ claim that the CEP classroom does not implement ABA methodology “with fidelity” is Mr. Tiro’s testimony relative to his observation. However, Mr. Tiro offered only conclusory testimony to support this claim. He offered no specific examples of staff failing to implement ABA methodology. In contrast, Teacher and Department Head testified to specific implementation examples, such as the use of warnings before transitions, explicit instruction, discrete trials, first-then boards, timers, and visuals. Therefore, Parents have not met their burden on this claim.[[37]](#footnote-37)

1. Use of Exclusionary Time-Out

Parents argue that on January 9, 2025, the District utilized an exclusionary time-out for Student despite the explicit absence of such intervention in Student’s IEP and/or BSP.[[38]](#footnote-38) 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.”[[39]](#footnote-39)

Director testified that there are no designated time-out rooms in [] Middle School. Similarly, Teacher explained that this was not an exclusionary time-out because Student was not physically removed from his peers or the learning environment; instead, Student was on a break in the hallway when he voluntarily entered the sensory room. Nevertheless, the District stipulated that Teacher was not aware of the legal definition of a time-out room.

I find the District’s contention—that this incident was not an exclusionary time-out—unpersuasive. Student entered the space due to dysregulation and was separated from his classroom and peers. The fact that Student entered voluntarily, or that he may have used the room to work on coping strategies, or that the District does not label it a “time-out room” does not change its fundamental nature. First, the regulation makes clear that a student may enter the time-out space either voluntarily or when directed by staff. Additionally, the regulation defines time-out as a strategy used to help the student calm down, meaning activities focused on self-regulation fall within its intended purpose. In short, as William Shakespeare wrote, “a rose by any other name would smell as sweet”[[40]](#footnote-40)—in this context, regardless of nomenclature, a dysregulated Student was removed from his instructional setting and placed in a separate space, thereby making it a time-out.

Nevertheless, I found Teacher’s testimony that this was an isolated incident to be credible. As such, I do not find this isolated incident to be a material departure from Student’s IEP or sufficient on its own to constitute a failure to implement it. Nevertheless, District staff should review both DESE’s regulations and the District’s policies and procedures regarding time-out to help guide future practice.

1. Safety Concerns and Inappropriate Peer Cohort

Parents argue that Student’s placement is inappropriate due to an inappropriate cohort. Mother testified that she was concerned about the intensity of peer behaviors when Student transitioned into the middle school. Mother also testified that she was unaware that the CEP classroom encompassed three grade levels. In addition, Parents believe that Student cannot be safe while Student B remains in the building.

In support of their position, Parents relied on Mr. Tiro’s observation. Specifically, Mr. Tiro testified that the peer cohort was inappropriate as the needs of the cohort were “varied” and “extreme.” Mr. Tiro also testified that Student B was a large student, and Student would be unable to defend himself against Student B, had Student B approached Student in the same manner he approached Mr. Tiro during the observation.

I note at the outset that there was no evidence presented to show that the student-to-staff ratio in the classroom was inappropriate. Pursuant to 603 CMR 28.05(6)(d), eligible students in substantially separate classrooms should be grouped at a ratio of no more than eight students to one certified special educator, or 12 students to a certified special educator and an aide. Here, the classroom was staffed by one special education teacher and four paraprofessionals to support a total of eight students. Furthermore, Parents did not present any evidence that the instructional grouping in the CEP classroom exceeded the “48-month age range” limitation outlined in 603 CMR 28.05(6)(f) and (g). In contrast, both Teacher and Director testified that the youngest and oldest students in the CEP classroom were less than 48 months apart in age.[[41]](#footnote-41)

I also note that there was no credible evidence presented by Parents to show that the cohort’s needs were so varied or severe that the placement was inappropriate for Student. Mr. Tiro’s observation described a classroom serving students with autism spectrum disorders and communication delays. However, Mr. Tiro did not have specific information about the profiles and needs of the students he observed. Furthermore, Student was not present in the classroom for comparison, and Mr. Tiro testified that he had never met Student and did not review Student’s IEP until immediately before the hearing. As a result, it is unclear how Mr. Tiro was able to draw conclusions about Student’s functioning in relation to his peers, including in relation to Student B.

Parents’ argument that while Student B remains in [] Middle School, the District cannot implement Student’s IEP in a way that ensures his safety during school hours and during transportation is also unpersuasive.[[42]](#footnote-42) Under 34 CFR 300.116(d), when districts make placement decisions, they are required to give consideration to any potential harmful effect on a student. Although at least one court (though not binding on the BSEA) has held that a placement that subjects a student to continued bullying or harassment cannot provide him with a FAPE in the LRE,[[43]](#footnote-43) such is not the case here.

Even if Student B’s reaction was in response to Student’s vocalizations, the injury was unintentional, and the serious result was due in large part to the close quarters in the van. Importantly, this was a single incident that occurred in the van, and Student B has never acted aggressively toward Student or any other student in the CEP classroom, despite the fact that students in the CEP classroom, as described by Mr. Tiro, frequently make a great deal of noise and exhibit noisy physical disturbances.

That students in the CEP classroom also become dysregulated and, at times, exhibit physical aggression was not disputed; Teacher and Director acknowledged this, and Student’s own IEP and Behavior Support Plan reflect that he, too, struggles with maladaptive behaviors. Nevertheless, Teacher credibly explained that the classroom is designed to safely accommodate these behaviors — it is large and divided by partitions, with numerous adults present to help keep students adequately spaced and to respond quickly if agitation occurs. Furthermore, classroom staff are trained to observe and respond to antecedents to help de-escalate situations and avoid injuries. Moreover, in response to this incident, the District offered additional safeguards, including a separate van for Student and additional staffing in the classroom to help monitor proximity and Student’s well-being. While I appreciate Parents’ profound concern following this incident, I do not find that the cohort, even with Student B, is inappropriate.

As such, I find that Parents have not met their burden on their claim that the IEP was not properly implemented due to an inappropriate peer cohort.

**CONCLUSION**:

After considering the relevant legal standards, the evidentiary record, and the thoughtful arguments of counsel, I find that Parents have not met their burden of proving that the District failed to appropriately implement Student’s IEP during the 2024–2025 school year. Specifically, I do not find that implementation was compromised by inappropriate teacher licensure, a failure to use ABA methodology with fidelity, an inappropriate peer cohort, or a single use of time-out. Although Parents are correct that a licensed special education teacher must be part of the ESY classroom, Student’s 2025 ESY session has not yet started. However, the District must ensure that a licensed special educator is hired for the [] Middle School CEP ESY program, to avoid a future implementation issue. Further, as Student received one time out without prior Team consultation, contrary to the District’s own procedures relating to time outs, further training in this area is warranted.

Regarding missed services during Student’s time of nonattendance, I cannot find that the District has an obligation to provide compensatory services for said period. Compensatory education is an equitable remedy.[[44]](#footnote-44) Here, Parents did not meet their burden to demonstrate a material implementation failure during the 2024-2025 school year, and, therefore, Student is ineligible for compensatory education on that basis.[[45]](#footnote-45)

Nevertheless, the District should immediately assess whether the incident has affected Student’s needs. Because Student missed a significant portion of the second semester of the 2024–2025 school year, updated evaluations are needed to determine Student’s current academic, behavioral, and emotional status, and to identify whether any additional supports or services are required and if the IEP should be amended.

**ORDER:**

After fully considering the record and the arguments of the parties, IT IS ORDERED:

1. Parents have not met their burden to demonstrate a material failure to implement the June 2024 IEP during the 2024-2025 school year, and no compensatory education is warranted.
2. The District should ensure that a licensed special educator is designated for the 2025 [] Middle School CEP ESY program. Failure to do so will be deemed a material implementation failure of the stay-put June 2024 IEP.
3. Because Parents have demonstrated that the District used a single time-out without first consulting the IEP Team to determine its appropriateness, the District shall arrange and provide additional staff training on the regulations governing time-out and its own policies and procedures related to their use. This training must be in addition to the training already provided by the District at the start of the school year.
4. The District should immediately evaluate whether the February 24, 2025 incident and subsequent time away from school have affected Student’s needs. The District should convene a Team meeting prior to the 2025–2026 school year to determine whether any additional supports and/or services are required and to amend the IEP accordingly. If additional evaluative information is found to be needed, the District shall forthwith propose to conduct the necessary evaluation.

So Ordered by the Hearing Officer,

*/s/ Alina Kantor Nir*

Alina Kantor Nir, Hearing Officer

Dated: June 18, 2025

COMMONWEALTH OF MASSACHUSETTS

BUREAU OF SPECIAL EDUCATION APPEALS

EFFECT OF FINAL BSEA ACTIONS AND RIGHTS OF APPEAL

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

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

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

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

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

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

# Compliance

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

# Rights of Appeal

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

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

# Confidentiality

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

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

Record of the Hearing

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

1. Due to the small size of the school district and the nature of Student’s injury on February 24, 2025, a pseudonym has been used for the District and its staff to help keep Student’s identity confidential. [↑](#footnote-ref-1)
2. This exhibit consists of 11 surveillance videos. [↑](#footnote-ref-2)
3. Student’s Behavior Support Plan (BSP) was offered by Parents as a rebuttal exhibit. It was entered into the record and marked as RP-1. [↑](#footnote-ref-3)
4. I have carefully considered all the evidence and testimony presented in this matter. I make findings of fact only as necessary to resolve the issue presented. Consequently, all evidence and all aspects of each witness’s testimony, although considered, is not included if it was not necessary to resolve said issue. [↑](#footnote-ref-4)
5. Although Mother described Student as “nonverbal” (Mother), Student’s current classroom teacher testified that he “speaks in fragments.” (Teacher) [↑](#footnote-ref-5)
6. Student’s Behavior/Self Regulation Goal notes the following verbatim: “6/2024: [Student] continues to require prompting to demonstrate functional communication, however he has made gains in demonstrating academic readiness skills. He continues to have difficulty when his rituals are denied, and has been observed to exhibit episodes of tantrum behaviors (i.e.[,] bolt attempts to complete ritual, crying/yelling). The following is based on data collected from 9/18/23 to 9/27/23: Ritualistic behaviors - Average of 5 instances per day [;] Inappropriate Protest: 1.2 [;] Attending - Average of 66.7% independent. This can also depend on the activity. Functional Communication: 30% independent.” (P-4, S-5a) Teacher testified that the BSP does not target elopement as this has not been an issue for Student. (Teacher) [↑](#footnote-ref-6)
7. I note that Student’s IEP does not include a provision for sole ridership, a limited student number, or the need for a monitor. The only requirement is “special transportation vehicle” with a “buckle buddy,” and there is no evidence that Student was not provided with same, including on the day of February 24 incident. [↑](#footnote-ref-7)
8. Even before this incident, Student struggled significantly with dentist appointments. (Mother) [↑](#footnote-ref-8)
9. Teacher testified that two paraprofessionals whom Mr. Tiro referenced were not 1:1 aids. (Teacher) [↑](#footnote-ref-9)
10. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 (d)(1)(A). [↑](#footnote-ref-10)
11. See 20 USC §1401 (9), (26), (29); 603 CMR § 28.05(4)(b); C.D. by and through M.D. v. Natick Public School District, 924 F.3d 621, 629 (1st Cir. 2019);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. ex rel. A.S. v. Five Town Comty. Sch. Dist.,* 513 F. 3d 279 (1st Cir. 2008); *In Re: Chicopee Public Schools,* BSEA #1307346 (Byrne, 2013). [↑](#footnote-ref-11)
12. Lessard, 518 F.3d at 29. [↑](#footnote-ref-12)
13. *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1,* 580 U.S. 386, 402 (2017). [↑](#footnote-ref-13)
14. 34 CFR 300.324(a)(i-v); *Endrew F.,* 580 U.S. at 391 (“These procedures emphasize collaboration among parents and educators and require careful consideration of the child's individual circumstances”); *D.B. ex rel. Elizabeth B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) (“An IEP must be ‘individually designed’ to suit a particular child”); *N. Reading Sch. Comm. v. Bureau of Special Educ. Appeals of Mass. Dep't of Educ.*, 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-14)
15. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990). [↑](#footnote-ref-15)
16. *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. 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-16)
17. *Endrew F.*, 580 U.S. at 400-401; see also 603 CMR 28.02(17). [↑](#footnote-ref-17)
18. *Endrew F.,* 580 U.S. at 388 (“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. ex rel. 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-18)
19. *G.D. v. Westmoreland Sch. Dist.*, 930 F.2d 942, 948-949 (1st Cir. 1991). [↑](#footnote-ref-19)
20. 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-20)
21. 20 U.S.C. §1412(a)(5)(A); *C.D.* , 924 F. 3d at 631 (internal citations omitted). [↑](#footnote-ref-21)
22. C.G., 513 F.3d at 285. [↑](#footnote-ref-22)
23. *Doe ex rel. Doe v. Hampden-Wilbraham Reg'l Sch. Dist.,* 715 F. Supp. 2d 185, 194–95 (D. Mass. 2010). [↑](#footnote-ref-23)
24. See Colón-Vazquez v. Dep't of Educ., 46 F. Supp. 3d 132, 144 (D. P.R. 2014). [↑](#footnote-ref-24)
25. See id. at 143-44. [↑](#footnote-ref-25)
26. Id. at 143. [↑](#footnote-ref-26)
27. Id. at 143-44 (citing and quoting Van Duyn v. Baker Sch. Dist., 502 F.3d 811, 822 (9th Cir. 2007) and Garmany v. District of Columbia, 935 F. Supp. 2d 177, 181 (D. D.C. 2013); see Van Duyn, 502 F.3d at 815 [↑](#footnote-ref-27)
28. See *Ross v. Framingham Sch. Comm*., 44 F. Supp. 2d 104, 119 (D. Mass. 1999), *aff'd*, 229 F.3d 1133 (1st Cir. 2000). [↑](#footnote-ref-28)
29. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). [↑](#footnote-ref-29)
30. In making my determinations, I rely on the facts I have found as set forth in the FINDINGS OF FACTS, above, and incorporate them by reference to avoid restating them except where necessary. [↑](#footnote-ref-30)
31. Pursuant to 603 CMR 7.04 (4)(h), a Teacher of Students with Moderate Disabilities for PreK–8 must complete a supervised practicum consisting of 300 hours in an inclusive general education setting or 75 hours in an inclusive general education setting and 225 hours in a separate or substantially separate setting for students with moderate disabilities; for 5–12, she must complete 300 hours in an inclusive general education classroom or 150 hours in an inclusive general education classroom and 150 hours in a separate or substantially separate setting for students with moderate disabilities. Pursuant to 603 CMR 7.04 (4)(i), a Teacher of Students with Severe Disabilities must complete a supervised practicum consisting of at least 75 hours in an inclusive general education classroom at any level, and at least 150 hours in a setting with students with severe disabilities; the remaining 75 hours may be in either setting. [↑](#footnote-ref-31)
32. Teacher was questioned by Parents’ counsel regarding her qualifications. Although Teacher does not have an autism endorsement, in Massachusetts, a special education teacher is not required to have such endorsement to work with students on the autism spectrum; the endorsement is voluntary, and although school officials may require the endorsement or other qualifications for educators, in addition to basic licensure, here, the District, as its discretion, did not deem the endorsement as a necessary requirement for employment in the CEP classroom. See *Autism Endorsement for Educator Licensure* which may be found at <https://www.doe.mass.edu/licensure/endorsements/autism-ed-licensure.html?utm_source=chatgpt.co>. I also note that there were no allegations that the ABA ESPs in the classroom were inappropriately educated, trained or supervised. Moreover, Massachusetts has no established state standards for paraprofessionals, except for those working in Title I schools. See *Every Student Succeeds Act (ESSA) Title I Paraprofessionals Hiring Requirements*, which may be found at <https://www.doe.mass.edu/edeffectiveness/paraprofessional.html>. [↑](#footnote-ref-32)
33. *Question and Answer Guide on Special Education Extended School Year Programs,* which may be found at

<https://www.doe.mass.edu/prs/ta/esyp-qa.html>. [↑](#footnote-ref-33)
34. See 20 USC 1412 (a)(14)(C). [↑](#footnote-ref-34)
35. See *Letter to Copenhaver*, 50 IDELR 16 (OSEP 2007) (“No distinction is made between the personnel qualifications for special education and related services provided pursuant to a child's IEP as part of the regular school program and those provided pursuant to an IEP as ESY services”). [↑](#footnote-ref-35)
36. The June 2024 IEP expired on June 12, 2025, and as of the hearing date, the District had yet to propose a new IEP. Therefore, the June 2024 IEP remains Student’s stay-put IEP, the implementation of which requires that Student’s ESY classroom be staffed by a licensed special education teacher. I make no findings relative to the 2024 ESY session as it is outside the relevant time frame of this Hearing. [↑](#footnote-ref-36)
37. In their Closing Argument, Parents raised a concern that the lesson observed by Mr. Tiro was inappropriate. Specifically, Mr. Tiro testified that during the lesson, there was a reliance on computers, and the students required significant support during it. Teacher testified that she was trialing a new website for the lesson. Based on the available record, I find that Parents did not demonstrate that the lesson was inappropriate. Nor would a single inappropriate lesson meet the “materiality” standard necessary for me to find an implementation failure. See Colón-Vazquez, 46 F. Supp. 3d at 144. [↑](#footnote-ref-37)
38. Parents also alleged that they had not signed or approved the BSP. There is no legal requirement in federal or state special education laws for parental consent to a BSP, especially where, as here, Parents consented to the use thereof by accepting in full the June 2024 IEP, which included an accommodation for a “behavior support plan as needed.” Nevertheless, District staff should strongly consider involving parents when a BSP is developed and implemented. [↑](#footnote-ref-38)
39. 603 CMR 46.02. 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>. The regulations regarding the use of time-out and seclusion in schools are in the process of being amended. These proposed changes aim to clarify definitions, establish requirements for time-out rooms, and outline emergency circumstances for seclusion. The public comment period for these amendments ended on May 2, 2025, and the Board of Elementary and Secondary Education is expected to vote on the proposed changes on June 24, 2025. See *Education Laws and Regulations Notice of Public Comment for 603 CMR 46.00* which may be found at <https://www.doe.mass.edu/news/news.aspx?id=27612>. The District’s Manual requires IEP Teams in the District to discuss the use of time-out rooms prior to their utilization. (P-5) [↑](#footnote-ref-39)
40. Shakespeare, William. *Romeo and Juliet*. Act 2, Scene 2. [↑](#footnote-ref-40)
41. Director also stated that, if Student were to return to the CEP [Primary School] classroom, these requirements would be maintained, although this option was meant only as a short-term measure to help Student transition back into a structured school setting. [↑](#footnote-ref-41)
42. Parents suggested that Student B should have been removed to an interim alternative educational setting pursuant to 34 CFR 300.530(g) which, in relevant part, allows school personnel to remove a student to an interim alternative educational setting for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability if the child “has inflicted serious bodily injury upon another person” while at school, on school premises, or at a school function under the jurisdiction of the local educational agency. This was not identified as an issue for hearing, nor is it clear that I would have jurisdiction to address the same as that would involve a determination with regard to a student other than Student, and I am limited to deciding the issues of the individual student that is the subject of the underlying hearing request. As such, I make no findings relative to this claim. [↑](#footnote-ref-42)
43. See *Shore Reg'l High Sch. Bd. of Educ. v. P.S. ex rel. P.S.,* 381 F.3d 194, 200–01 (3d Cir. 2004) (where the “collective testimony was that Shore would not have been able to remedy the problem [of bullying] because, among other things, the same bullies would be present at Shore...; the bullies would have had a ripe opportunity to harass P.S. on the bus; and, in short, no matter what program Shore implemented, P.S. would not have been adequately protected,” the hearing officer was correct that the placement was inappropriate as it would not “have been able to deal with the harassment problem successfully”). [↑](#footnote-ref-43)
44. See *C.G.,* 513 at 290 (compensatory education is an equitable remedy fashioned to fit an individual student's needs). [↑](#footnote-ref-44)
45. As Parents identified the sole issue for hearing to be whether the District failed to implement the IEP, I make no findings relative to and do not consider for the purpose of balancing the equities whether the District was obligated to provide Student with educational services during his absence based on the March 27, 2025, Physician’s Affirmation of Need for Temporary Home or Hospital Education for Medically Necessary Reasons. Nor do I make findings as to whether the District had any other obligations following the February 24, 2025 incident. [↑](#footnote-ref-45)