**COMMONWEATLTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**Student v. Bridgewater-Raynham BSEA # 2513332**

**Regional School District**

**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 ch. 71B), the state Administrative Procedure Act (MGL ch. 30A), and the regulations promulgated under these statutes.

**RELEVANT PROCEDURAL HISTORY**

Parents requested a Hearing on May 21, 2025, and the Hearing was scheduled for June 25, 2025. On June 9, 2025 Bridgewater-Raynham Regional School District (hereafter, B-R, Bridgewater-Raynham, or the District) filed a request to postpone the Hearing, which was allowed on June 9, 2025. The Hearing was scheduled for August 4, 5, and 6, 2025. The Hearing proceeded remotely via Zoom (by agreement of the parties) on August 4 and 5, 2025. The District’s request for postponement until August 12, 2025 in order to submit written closing arguments was allowed on August 5, 2025. The District submitted its closing argument on August 12, 2025. Parents submitted their closing argument on August 13, 2025[[1]](#footnote-1). There was no objection to the late submission of Parents’ closing argument and the record closed on August 13, 2025.

Those present for all or part of the hearing were:

Mother

Kristin Flannery Parents’ consultant

Dr. Jeffrey Drayer Private neuropsychologist

Deborah Rucker Special education teacher, Bridgewater-Raynham

Colleen Farrow Special education supervisor, Bridgewater-Raynham

Susan Kaszanek School psychologist, Bridgewater-Raynham

Collins Fay-Martin Attorney, Parents

Ellen Crowley Attorney, Bridgewater-Raynham

Roberta Ebhert Court reporter

Catherine Putney-Yaceshyn Hearing Officer

The official record of this hearing consists of: Parents’ exhibits marked P-01 through P-07 and P-09-P-12[[2]](#footnote-2); Bridgewater-Raynham’s exhibits marked S-1 through S-23; and approximately 11 hours of recorded oral testimony.

ISSUES

1. Whether B-R denied Student a free appropriate public education since December 20, 2023 and denied Parents meaningful participation by failing to allow the Team to develop an IEP.
2. Whether B-R was required to convene a 504 Team meeting after December 20, 2023.
3. Whether Parents’ unilateral placement of Student at Landmark School was appropriate.
4. Whether Parents/Students are entitled to reimbursement/prospective placement at the Landmark School.

**SUMMARY OF THE EVIDENCE**

1. The student (hereafter, “Student”) is sixteen years old and resides within the Bridgewater-Raynham Regional School District. Her last accepted IEP was for the period from December 21, 2022 through December 20, 2023. It identified Student’s primary disability category as specific learning disability: basic reading skills (with a diagnosis of Dyslexia) and written language, and a secondary disability in the category of Health (ADHD). (P-1) The IEP contained goals in the areas of written language, comprehension, decoding/fluency, and executive functioning. The A grid included a consultation with special education and general education teachers 1 x 15 minutes per month. The B grid provided for written language with the special education teacher/assistant/teacher 3 x 30 minutes per week and Reading with the special education teacher/assistant teacher/teacher 2 x 30 minutes per week. The C grid contained academic support with the special education teacher/assistant 2 x 40 minutes per week and reading with the special education teacher 3 x 45 minutes per week. Student’s placement was in a full inclusion program. (P-1) The IEP was accepted in full as part of a mediated agreement dated May 12, 2023 (S-23) Classroom Observation Checklist was filled out by Olivia Kaszanek/Kristen Myles (Student’s ninth grade special education and ELA teachers) on or around December 14, 2023. Not all sections of the form were completed. Section 2 indicates that Student dislikes and avoids reading or reads reluctantly. The aforementioned teachers noted that reading is a nonpreferred activity for Student and she tends to rush through to complete her work. In the area of written language, it was noted that Student spells poorly and inconsistently; has difficulty proofreading and self-correcting work; and fails to develop ideas in writing so written work is incomplete and too brief. The teachers indicated that Student rushes to finish and is encouraged to slow down and take her time editing. In the area of attention, the teachers wrote that Student struggles to self-monitor her work and to get started independently. Further, motivation impacts her performance. (P:4:03-1-4)
2. An Educational Assessment: Part A and B was completed on or around January 11, 2024. It reflects that Student is making progress in the general curriculum and has earned all A’s and B’s in her high school level courses. Student’s ELA teacher noted she has made great progress in effort and quality of work. Her math teacher did not have any concerns regarding Student and wrote that she is doing well, puts forth effort, and is not afraid to ask for help. Her science teacher indicated that she puts forth effort and works well with peers; keeps up with the pace of the class; and understands the content. She had an average of 88% in his class. He noted that some assessment scores could be higher, but he believed that was a reflection on study/preparation habits. (He also noted that she sometimes shouted out answers immediately before thinking about it). Her accelerated history teacher stated Student was very successful in accelerated history. She was not afraid to participate and her content knowledge was proficient, but independently she could struggle with making complex connections across content. Student’s history teacher also noted that Student needed to work on her writing skills, and that her study methods or efforts vary at times. She noted that It appears that she tries to recognize terms rather than fully learning and memorizing a definition or explanation. (P-4:04-1-3)
3. Doug Alves, M.Ed., a special education teacher in B-R, evaluated Student as part of her three-year special education evaluation and wrote a report of his findings, dated January 6, 2024[[3]](#footnote-3). At some point after the evaluation, Mother reviewed the testing protocols and raised the concern that Mr. Alves had not obtained a basal on the Woodcock-Johnson spelling and passage comprehension sub-tests. Mr. Alves met with Student on January 30, 2024 to establish a basal on the above sub-tests. Her scores remained the same. (Kaszanek)

Mr. Alves recalculated the Paragraph Construction portion of the TORC. Student’s raw score was a 41 which translated to a standard score of 12, in the average range. He corrected his report which previously recorded Student’s standard score as a 13, in the above average range[[4]](#footnote-4). (S-18[[5]](#footnote-5), Kaszanek) Ms. Kaszanek was not concerned about the validity of the testing based upon the errors which Mr. Alves made and subsequently corrected. She noted that Student’s scores remained the same on the spelling and passage comprehension and remained in the solidly average range on the paragraph construction sub-test. (Kaszanek)

Mr. Alves reported that Student’s scores on the Woodcock Johnson were in the broad average range in the areas of writing, spelling, editing, letter-word identification, word attack, word reading fluency, sentence reading fluency, reading recall, orthographic fluency, decoding fluency, and passage comprehension. He noted that her Woodcock Johnson score on the oral reading fluency sub-test was an 82, an area of relative weakness. However, her oral reading fluency subtest on the WIAT was in the average range (93). She also scored in the average range in the areas of essay composition (96), sentence composition (89), spelling (92), reading comprehension (100), pseudoword decoding (99), phonemic proficiency (96), and oral reading fluency (93) on the WIAT. Her scores on the Test of Reading Comprehension were in the average to above-average range with an overall reading comprehension index score of 102. Student’s performance on the Test of Written Language (TWL-4) was within the average to superior range, with an overall composite score of 121. (S-18)

1. Susan Kaszanek, M.Ed., CAGS, is a Massachusetts licensed school psychologist who has worked for B-R for thirty years. She conducts assessments, interprets results, reviews outside evaluations, and chairs Team meetings. She is qualified to interpret standardized testing results. On December 7 and December 13, 2023 Ms. Kaszanek completed an Executive Functioning/Attention Assessment of Student as part of her three-year evaluation. Her evaluation consisted of a student interview, record review, and administration of the Behavior Rating Inventory of Executive Functioning-2 (BRIEF-2) and the Conners Rating Scale 4th Edition to Parent, Student, and Student’s teachers. (She noted that Student takes daily medication to manage symptoms of ADHD and uses an agenda book to track her assignments.) Student reported that her favorite class was accelerated history. Her first term grades were as follows: Academic ELA 9: 89; Accelerated Algebra I: 86; Accelerated Modern World History: 87; Academic Biology: 80; Academic Spanish I: 89; Academic Drawing/Painting: 90; Learning Center: 100. Ms. Kaszanek noted that Student completed the fifty-five questions on the BRIEF in less than five minutes.[[6]](#footnote-6) She was asked if she would like to review her responses, but reported that she was satisfied with them. (Kaszenek)

Four of Student’s teachers completed the rating scales[[7]](#footnote-7). Mrs. Myles[[8]](#footnote-8) noted that Student often struggles to complete her work. “She is motivated by good grades and getting work completed, so often will rush through assigned tasks just for this end goal. She often does not check her work before submitting it.” She indicated that when faced with a non-preferred activity it is much harder for her to focus and show appropriate effort. Ms. Mallard, Student’s history teacher, noted that Student never checks work for basic mistakes. Mr. Baldeck[[9]](#footnote-9) stated Student would benefit from taking her time to process what is being asked instead of attempting to answer as quickly as possible. Student’s ELA, math, and science teachers reported Student’s global executive functioning skills to be in the average range. Her history teacher reported overall scores in the potentially clinically elevated range. These scores show an improvement in Student’s overall executive functioning skills within the classroom setting when compared to her previous scores, with teachers reporting that she has improved her ability to organize materials; regulate her emotions; and her ability to plan and organize. Parent’s report and Student’s self-assessment reflected significantly greater concerns than was reported by Student’s teachers. Mother noted concerns in organization, sequencing, and time management. Similarly, the results of the Conners indicated much greater concerns by Mother than Student’s teachers. The scores support Student’s diagnosis of ADHD. Ms. Kaszanek recommended several accommodations such as preferential seating, graphic organizers, providing reminders of due dates for upcoming assessments and projects. (S-17)

1. Student’s January 2024 progress reports indicate that she was making progress in multiple areas. She was writing sentences with increasing complexity and using age-appropriate vocabulary. She showed the ability to organize her writing and excelled on her CCA exam[[10]](#footnote-10). She successfully used a graphic organizer with increasing independence. She made good progress toward her comprehension goal. She independently read two informational texts and was able to complete the graphic organizer thoughtfully and appropriately. She was making effective progress in her executive functioning goal and was noted to have attained her first two benchmarks. The reports noted that she needed reminders to slow down in her assignments. (S-19, P:5:02)
2. Student’s April 5, 2024 progress reports indicate she made progress in her written language and comprehension goals. She was successful at answering both literal and inferential comprehension questions. She was reported to be making effective progress in her fluency goal as she pronounced 9 out of 10 real words with 100% accuracy and independence and pronounced 10/10 nonsense words when given a word list. (S-20, P:5:03)
3. Student’s June 14, 2024 progress reports note that she made great progress in her ninth grade ELA class, meeting all of her ELA benchmarks. Student’s executive functioning skills progressed in her inclusion ELA class. Ms. Rogers, one of Student’s special education teachers, reported that her study habits need further work. She was noted to be aware of systems to remind herself, but not always using them. (S-21, P:5:04)
4. Two Team meetings were held to review Student’s three-year reevaluation results and progress, on January 31, 2024 and March 11, 2024. The meetings resulted in a finding of no eligibility. The resulting N1 indicated that Student has a history of specific learning disability in reading and writing as well as a health impairment, ADHD. It noted the Team’s conclusion that Student no longer requires specially designed instruction to access the curriculum, but did require accommodations. Therefore, the District did not propose a new IEP. The notice stated that in making the ineligibility determination, the Team had considered input from Parent, Student, a teacher, and a guidance counselor as well as work samples, educational history, classroom observation, Student’s progress, and grades. The N1 reflects that Mother did not agree with the finding and had exercised Student’s “stay put” rights. It further noted that the 504 coordinator would schedule a 504 eligibility meeting. (S-14) Mother acknowledged that at the Team meetings she was accompanied by an advocate and tutor who was able to provide input and had the opportunity to ask questions. (Mother)
5. Dr. Jeffrey Drayer has evaluated Student at Parents’ request each year since 2021, Student’s seventh grade. (P-2:01-1) His initial assessment was a neuropsychological evaluation, completed on October 13, 2021. His subsequent evaluations (done on November 9, 2022, April 30, 2024, and January 8, 2025) were labeled educational reevaluations. (P-2:01-1, P-2:02-1, P:2.07-7. P-2:08-1)

In Dr. Drayer’s educational reevaluation dated April 30, 2024, he administered the comprehensive Test of Phonological Processing – 2nd Edution (CTOPP-2); the Gray Oral Reading Test – 5th Edition (Gort-5) Form A; the Nelson-Denny Reading Test Form I; the Test of Written Language Test – 4th Edition (TOWL-4) Form B, and the Kaufman Tests of Educational Achievement – 3rd Edition (KTEA-3) Form A. On the CTOPP, Student scored in the average range in phonological awareness and in subtests: Elision: 10; Blending words: 11, and phonemic Isolation: 9. Her Rapid Naming subtest scores in digit naming and letter naming 4 and 1 respectively, in the extremely low range. On the TOWRE, Student scored in the low average range for sight word reading efficiency (84) and in the borderline range for phonemic decoding efficiency (74) resulting in a total word reading efficiency score of (78). On the KTEA-3 Student scored in the average range on all subtests, with scores ranging from 85-109. On the GORT-5, Dr. Drayer reported that Student’s reading rate was in the average range, and her reading fluency and reading accuracy measured in the low average range. And He noted that her comprehension score was in the borderline range. The resulting Oral Reading Index Score was a 76. Dr. Drayer also administered the Nelson-Denny Reading Test, which required her to read several passages and answer multiple choice questions. This was a timed test with a twenty-minute time limit Student’s reading rate was in the average range (90) and her comprehension was in the borderline range (76) Dr. Drayer noted Student’s comprehension challenges when presented with a timed assessment. On the TOWL-4 Student scored in the average range in both contextual conventions and story composition. (P-2:07-1)

Based on testing results, Dr. Drayer noted steady progress with phonological awareness and writing, continued weaknesses in rapid naming, phonemic decoding, sight word reading (which was in the low average range (84), reading fluency and accuracy (which were in the low average range) and reading comprehension. Dr. Drayer continued to recommend Student receive special education services due to her learning disability, current academic skills in literacy and reading, and her ADHD diagnosis, which impacts her executive functioning skills. He further continued to recommend a goal in the area of encoding and decoding, based on his prior dyslexia diagnosis. He further recommended that Student receive services from a reading specialist or special education teacher certified in an evidence-based reading program, for at least three days per week as a pull-out service. Dr. Drayer stated Student would benefit from being taught active reading techniques to improve her attention and comprehension. He further recommended Student receive daily pull-out services in executive functioning, a foreign language waiver, and a number of accommodations. Finaly, he recommended that Student participate in an intensive reading program during school break and/or summer to improve her reading skills and comprehension prior to entering college. (P-2:07-1)

1. The Team convened on June 13, 2024 to review Dr. Drayer’s reevaluation. The Team agreed that Student has a learning disability. The school-based Team members did not, however, believe Student required specially designed instruction to access the curriculum. Mother invoked stay-put for Student’s then-current IEP. (S-13)
2. Ms. Kaszanek, a participant in Student’s Team meetings was of the opinion that Student is not eligible for special education noting that the decision was made based on many different factors, including effective progress in her classes based on her teachers’ reports, and not just standard scores. Ms. Kaszanek did not agree with Mother’s opinion that Student’s reading level was far below grade level. She testified that the Team did not disregard Dr. Drayer’s report, they discussed it and considered it. She continued that Dr. Drayer’s report did not line up with school-based testing and contained sections that had been cut and pasted from his previous reports. Some Team members were concerned that Dr. Drayer had not sought teacher input for his report and conclusions. Ms. Kaszanek acknowledged teachers reporting that Student rushed through her work and had some missing assignments. The Team believed that those issues could be addressed through accommodations and did not require specialized instruction. Ms. Kaszanek was aware of Mother’s concern that Student was not able to independently write and had weak writing skills. However, her ELA teacher, Ms. Myles, a member of the Team, reported that she was impressed by Student’s very solid writing skills. She did not note any concerns with Student’s writing. (Kaszanek)
3. The district sent an N1 on June 17, 2024 affirming its prior finding that Student is no longer eligible for special education services. It stated that the Team had determined that although Student had some weaknesses in accuracy and rapid naming and a history of a specific learning disability, she would continue to make effective progress within the general education classes without the need for specially designed instruction. It noted that Student would require accommodations. The form states that Dr. Drayer’s testing was reviewed and compared to the district’s testing. Classroom performance was reviewed as was parental input and Student’s progress. Finally, the notice indicated that a 504 meeting would be scheduled by the 504 team. (P-4:09-2) The Specific Learning Disability Team Determination of Eligibility form notes that student has a specific learning disability in the areas of rapid naming/accuracy. The form also states that there is no lack of achievement and no lack of progress. (P:04-9-4, 6, 7)
4. On October 10, 2024, Mother emailed Melanie Hart, the former Director of Student Support at B-R. Her email read, “I am writing to let you know that as my daughter [Student] has been denied an appropriate IEP in the least restrictive environment, and has not been receiving appropriate special education reading services, I intend to unilaterally place her in a remediation private program and I intent [sic] to hold you/the school district financially responsible for the same.” (P-9:01-1)
5. On October 18, 2024 Ms. Hart responded to the email by acknowledging receipt of Mother’s email stating, “While it is certainly your prerogative to place your child in any educational placement of your choosing, our district continues to offer [Student] the educational programming we believe she needs to enable her to continue to be a successful student in our school district.” (P-9:01-1)
6. Dr. Drayer conducted another evaluation of Student on January 8, 2025, including an observation He administered the Gray Oral Reading Test – 5th Edition (GORT-5) Form B; the Kaufman Test of Educational Achievement – 3rd Edition (KTEA-3) Form A, Nelson Denny Reading Test (Form J), Test of Word Reading Efficiency – 2nd Edition (TOWRE-2) Form B, and Test of Written Language Test – 4th Edition (TOWL-4) Form B. With respect to the observation, he reported that he only observed Student while she was receiving her reading intervention (Read 180). (P-2:08-2) He did not speak to any of Student’s general education teachers or observe any of her other classes. (Drayer) He indicated that her reading teacher informed him that Student’s decoding skills were not deficient, but that they would be reviewing word blends that are hard for her. Insofar as her test results are concerned, on the KTEA Student scored in the average range in all areas assessed. (Letter and word recognition: 86; nonsense word decoding: 85; spelling: 85, silent reading fluency: 116). On the TOWRE she scored in the average range in all areas assessed: sight word reading efficiency (89); phonemic decoding efficiency (87); Total word reading efficiency score (88). On the Gort-5 Dr. Drayer reported that Student’s reading rate, reading fluency, and reading accuracy measured in the low average range, consistent with previous testing. Her reading comprehension score was in the average range. On the Nelson-Denny Reading Test, Student’s reading rate measured in the low average range (80) and in reading comprehension was in the extremely low rate (66). Student’s scores on the TOWL-4 were in the average range in both contextual conventions (12) and story composition (8).

Based upon these results and his opinion formed over several evaluations, Dr. Drayer determined that Student is not making effective progress in the areas of decoding, reading fluency, and reading comprehension[[11]](#footnote-11). He noted the short amount of time she has left in her education and recommended that Student be placed in a “specialized day school for students with similar learning profiles (Dyslexia).” He explained that she requires language-based programming and small-group settings for instruction where she can receive a high level of individual attention and further that her ELA and reading instruction had to be provided by teachers certified in an evidence-based remedial program like Wilson or Orton-Gillingham. Dr. Dryer stated that the instruction had to presented at a slow and repetitive pace using multi-sensory materials because she has “significant challenges with processing information quickly[[12]](#footnote-12) and producing an efficient amount of output. He recommended ongoing participation in specialized literacy instruction and extended year programming to prevent academic skill regression. He stated that Student would be “well served” at Landmark. (Drayer)

1. Student’s January 2025 (Student’s tenth grade) progress reports indicate that she is reading at or around a ninth grade level depending on the text. With the use of supports such as Read Aloud and graphic organizers, she is able to access tenth grade text at her instructional level and had a successful term. She did not require assistance with executive functioning in the learning center. (P-5:06)
2. A Team meeting was held to review Dr. Drayer’s latest report on February 26, 2025. (P-4:10-2) Although Student had previously been found ineligible, the goal of the meeting was to discuss the most recent testing and determine if there was anything that might enable the Team to review eligibility again. Colleen Farrow[[13]](#footnote-13), a special education administrator for B-R High School and the Bridgewater Middle School, had just started working for the district in February and attended the meeting. The Team reviewed Dr. Drayer’s testing scores and his recommendations. They discussed Student’s progress in the general education and reviewed IEP progress notes and her grades. From that information, the Team determined that Student continued to make effective progress. After reviewing Dr. Drayer’s report Ms. Farrow reserved the right to request additional testing on B-R’s behalf. Mother did not want to sign consent because she thought it was giving B-R “another bite at the apple.” Ms. Farrow thought that the additional testing would allow them to review eligibility again with more current data. (Farrow)
3. Ms. Farrow testified that she agrees with the Team’s determination that Student was not eligible for special education. She noted that the current data shows that she is making effective progress within an inclusion environment and is thus making progress in the least restrictive environment. She acknowledged that some of Student’s progress reports did not specifically report on her benchmarks and objectives, but that did not change her opinion regarding eligibility. In her professional opinion, because Student is able to use the knowledge and the skills that she has to access the general education curriculum and get passing grades in either college-level high school classes and/or accelerated classes, that she is making effective progress. She further testified that Student is learning the curriculum in her organic environment along with her typically developing peers and understands the curriculum, as evidenced by her grades. (Farrow)
4. On February 28, 2025, B-R proposed an evaluation and a facilitated IEP meeting to resolve a stay-put IEP. Mother rejected using a facilitator. (S-7) The district proposed evaluations in the areas of academic functioning, to include reading; completion of Educational Assessment Forms A and B; and a classroom observation. (S-7) On March 3, 2025, the District sent Parents an Evaluation Consent Form. (S-8) Mother did not consent to the evaluations. (Mother)
5. Student’s grades for the 2024-2025 school year (her tenth grade) were as follows: Chemistry (accelerated level) first quarter: A, second quarter: B, third quarter: C+, fourth quarter: A; Spanish first quarter: A-, second quarter B+, third quarter B, fourth quarter A; Geometry first quarter A-, second quarter A, third quarter A, fourth quarter C+; English language arts: first quarter B+, second quarter C+, third quarter B+, fourth quarter B-, U.S. History (accelerated level) quarter 1 B-, quarter 2 C+, quarter 3 B-, quarter 4 C+ (S-6)
6. Mother testified extensively as to her opinion that Student’s reading level was far below grade level. She pointed to several reports generated by B-R entitled “Growth Report for [Student]”; Reading Inventory; Read180; and iReady, as evidence. (P-3:01-1 – 3:014-14) She did not provide any context for the reports or explain what they measured or how they were administered. She did not testify that she has any qualifications that would enable her to interpret reading assessment scores. She pointed to Student’s lexile score and the grade level equivalents listed on the Growth Reports and stated that the reported grade levels were inaccurate because they were based on a “basic” level and should have been based on a “proficient” level. She then pointed to P-10:03, a chart that she said supported her contention. She reviewed a number of Student’s work samples and pointed out work that she did not think was at grade level. She also pointed out spelling errors. She testified that there were numerous days that Student did not receive her Read 180 services due to insufficient staffing levels according to a log kept by Ms. Ruckers. She did not think it is appropriate for Student to be using graphic organizers in tenth grade. She explained that she thinks Student struggles to edit her own work. Mother objected to Student receiving a scaled score on an essay in ELA but did not indicate whether only Student’s score was scaled or whether the entire class received scaled scores. In other’s opinion, Student’s stay put IEP should have been updated as it does not provide Student with a FAPE. She does not believe that Student is receiving accommodations. She went on to testify that there was no 504 Team meeting to determine whether Student required a 504 plan. (Mother)
7. On or around May 5, 2025, Student was accepted to Landmark School. (P:09:02-1) Mother described Landmark as a “dyslexia school” where they use a multi-sensory approach. She stated they provide a lot of 1:1 services; there are small class sizes; and they use multiple ways of learning. After touring Landmark, Student said she did not feel stupid there and she feels stupid everywhere else. Mother provided Landmark with a deposit to secure her placement[[14]](#footnote-14). (Mother)
8. Deborah Rucker is licensed as both a special education teacher and a math teacher. She has been teaching for thirty-three years and has been at B-R for twenty-seven. She was Student’s Learning Center teacher during the 2024-2025 school year. She provided the pull-out services from Student’s “stay-put” IEP in Academic Support and Reading. Ms. Rucker testified that she utilized the Read 180 program (a research-based program for students with reading weaknesses) for Student’s reading services. The reading services were provided in a 1:1 format outside of the Learning Center. During the first 20 minutes of each session Student worked on a computer-generated segment of Read 180 that included spelling, reading comprehension, fluency, decoding, and using suffixes and prefixes and was differentiated and changed according to how Student performed. Ms. Rucker had to continually slow Student down, as she did not like doing the Read 180 lessons and tried to race through them. For this reason, she does not think Student’s results are valid every day. She was reluctant to do the work and does not enjoy reading. She always complied, but did not always use full effort. The next segment of the program is the Real Book section. There were different workshops broken down by topic and Ms. Rucker helped Student choose one that interested her. They worked on skills such as vocabulary, written expression, and analytical reading and Student read aloud and to herself and answered questions. They did not work on the phonics portion of Read 180 because Student tested out of that portion early in the year. Ms. Rucker did not think that Student’s work on Read 180 was enhancing her progress in her ELA class. She was already able to do tenth grade work and it did not make her a stronger student. (Rucker)
9. Ms. Rucker testified that at times there was insufficient staff in the Learning Center to allow for her to pull Student out for reading. Instead, she would work with her on executive functioning skills and would review her grades in each class, look for missing assignments and discuss them if there were any.[[15]](#footnote-15) Ms. Rucker encouraged Student to bring upcoming projects to the Learning Center. Student always knew what her assignments were and the only area in which she struggled was in the writing portion of her accelerated history class. Ms. Rucker stated that Student loved accelerated history, despite having to work harder than other students as the class reading curriculum was well above a tenth grade level. She explained that Student has an app on her phone that allows for things to be read for her, and she always took good notes about class discussions. Student sometimes required additional time to make connections in the curriculum. She did not require specially designed instruction to keep up with the pace of the class and had an accommodation that allowed for extra time on assignments. (Rucker)

Ms. Rucker observed Student to have good decoding skills and noted she does not sound out words and her reading is not “choppy.” She has not observed ADHD interfering with her ability to work on Read 180. She is never fidgety or unfocused. Ms. Rucker placed Student’s reading level at ninth grade (when she was in tenth grade), based on the HMH given to her at the beginning, middle, and end of the year. (Rucker)

Ms. Rucker never attended a Team meeting for Student. Based upon her thirty-three years of teaching and her observations of Student, and Student’s ability to make effective progress in her inclusion classes she does not believe that she requires an IEP or a specialized day program. She believes Student can receive direct and explicit instruction in reading and writing in her ELA class at grade level. She is able to complete grade-level work. She testified, however, that this does necessarily mean that she will produce average work on every assignment. Student is involved in the school and plays both school and club sports and still is able to perform in her inclusion classes. She described Student as a solid student who is thriving and happy. (Rucker)

1. Student’s June 2025 progress reports reflect her current reading performance at a tenth grade level. Her reading rate increased from 105 to 113 since the prior term. She did not demonstrate any weakness in executive functioning in the learning center and was deemed to have met her goal. (P-5:08)

**FINDINGS AND CONCLUSION:**

 Legal Standard: Eligibility for Special Education.

The right to a FAPE for all students with a disability is guaranteed by both federal and state law through the IDEA, M.G.L. c. 71B, and their corresponding regulations[[16]](#footnote-16). If a student is found eligible to receive special education, the Team must then develop an IEP setting forth the special education and related services that meet the special education needs of the student[[17]](#footnote-17). The IDEA defines a “child with a disability” as a student having specifically identified disabilities “who, *by reason thereof, needs* special education and related services”. 20 USC 1401(3)(A) and (B)[[18]](#footnote-18) (emphasis added). “Special education” is defined as “specially designed instruction[[19]](#footnote-19), at no cost to the parents, to meet the unique needs of a child with a disability, … [inclusive of] speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards”[[20]](#footnote-20).

Similarly, Massachusetts defines a “school age child with a disability” as a child “… who, because of [specifically identified disabilities] … is unable to progress effectively in regular education and requires special education services, including … only a related service … [if they] are required to ensure access of the child with a disability to the general education curriculum[[21]](#footnote-21). The regulations define “eligible student” as “… a person aged three through 21 … who has been determined by a Team *to have a disability(ies), and as a consequence* is unable to progress effectively in the general education program without specially designed instruction or is unable to access the general curriculum without a related service”. 603 CMR 28.02(9) (emphasis added). To “[P]rogress effectively in the general education program*”*, means to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the student, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district.[[22]](#footnote-22)

School districts are required to offer IDEA eligible students a FAPE (free appropriate public education), through individualized education programs (IEPs) tailored to meet their unique needs[[23]](#footnote-23) in a manner “reasonably calculated to confer a meaningful educational benefit”[[24]](#footnote-24) to the eligible student.[[25]](#footnote-25)  Moreover, the program and services offered must be delivered in the least restrictive environment appropriate to meet the individual student’s needs[[26]](#footnote-26), and must be  “reasonably calculated to enable [the student] to make progress appropriate in light of the child’s circumstances.” *Endrew F. v. Douglas County Sch. Distr.*, 137 S. Ct. 988 (March 22, 2017); *D.B. ex rel. Elizabeth B.,*675 F.3d at 34.

*The burden of persuasion* in an administrative hearing is placed upon the party seeking relief. *Schaffer v. Weast, 546 U*.S. 49, *126 S. Ct. 528, 534, 537 (2005)* In this case, Parents are seeking relief, and as such have the burden of persuading the Hearing Officer of their position by a preponderance of the evidence.

It is in the context of the foregoing legal framework that I now turn to the issues before me in the instant matter.

1. Whether B-R denied Student a free appropriate public education since December 20, 2023 and denied Parents meaningful participation by failing to allow the Team to develop an IEP.

It appears from the record that the last accepted IEP for the period from December 21, 2022 through December 20, 2023 expired on December 20, 2023. The record shows that Parent signed a consent for evaluation on October 27, 2023 and that the Team did not convene to review Student’s three-year evaluation until January 31, 2024 (and again on March 11, 2024). There was neither testimony nor documentary evidence in the record to explain this gap. There is also no allegation that Student did not continue to receive her IEP services after the expiration of the IEP[[27]](#footnote-27). Although Parent is correct that both completion of the evaluations and convening of the Team meeting did not occur within the regulatory timeframe, she did not allege any educational harm to the Student or denial of FAPE as a result. There is no allegation that Student did not receive the services set out in the expired IEP between the date the IEP expired (December 20,2023) and the January 31, and March 11, 2024 Team meetings at which Student was deemed ineligible for special education services. In fact, Mother invoked “stay put” after the Team meetings and Student continued to receive “stay put” services for the balance of the 2023-2024 school year and the entirety of the 2024-2025 school year.

The Team convened, albeit late, on January 31 and March 11 and Parents participated fully. Mother acknowledged that she participated in both meetings and was accompanied by both an advocate and a tutor, who was able to provide feedback regarding Student. She was able to ask questions about the district’s evaluations. Thus, based on the record before me I find that Parents have not met their burden of showing that they were denied the opportunity to meaningfully participate in the Team process resulting in a denial of FAPE.

Parents contend that B-R “failed to allow the Team to develop an IEP,” however they did not provide evidence to substantiate this claim. When the Team convened on January 31, March 11, and June 13, 2024, it did not “fail to develop an IEP”. It determined that Student was no longer eligible for an IEP and thus provided parents with an N1 to that effect. Parents invoked “stay put” and the District complied with its stay-put obligation. There was no obligation for B-R to propose a revised IEP given that Student’s status at that time was that of an ineligible student. I therefore find that Parents did not meet their evidentiary burden with respect this claim.

Parents have also not met their burden of demonstrating that Student was denied FAPE as a result of an erroneous eligibility determination. The Team convened three times during the 2023-2024 school year and once during the 2024-2025 school year to consider eligibility. It reviewed multiple sources of information, including B-R’s testing, Dr. Drayer’s testing, Parents’ concerns, teachers’ reports, an Educational Assessment Part A and Part B, and progress reports. There was no dispute that Student met the first prong necessary to find a student eligible in that she has a disability. There was however a difference of opinion as to the second prong, that is, whether Student was making effective progress within the general curriculum despite her disability. The district-based members of the Team agreed that Student was making effective progress. Mother and Dr. Drayer disagreed. Mother pointed to her belief that Student was reading several levels below her grade level, this based upon her own interpretation of the district generated reports from Read 180 and i-Ready and her opinion that Mr. Alves’ test results were invalid. Although Mother is clearly a strong advocate for Student and knows Student better than any witness in this matter, she is not an educator. She does not have any expertise in interpreting test scores or determining what grade levels pertain to lexile scores. I therefore do not credit Parent’s testimony herein. None of the witnesses, including Dr. Drayer, who has expertise in the interpretation of standardized testing testified that Mr. Alves’ results were invalid. Likewise, I did not rely on Mother’s opinions regarding the quality or grade level of the work samples contained in the record.

I also did not rely on Dr. Drayer’s testimony that Student was not making effective progress. His standard for evaluating Student’s progress was attainment of certain standard scores on assessments, rather than her progress in accessing the curriculum. He never observed Student in her inclusion classes or spoke to her teachers about her classroom performance. He did not know what grades she was achieving or the levels of her classes. His personal basis of knowledge of Student was limited to having assessed her in a testing environment four times since 2021 and observing one session of her completing a Read180 lesson.Dr. Drayer recommended that Student’s instruction contain multi-sensory material due to her poor working memory, yet none of his last three reports contains any scores in working memory.[[28]](#footnote-28) He recommended that Student’s instruction be at a slow repetitive pace without consulting with any of her general education teachers to find out whether the pace of the general education classes was appropriate for her. He recommended that Student receive close individual support in reading, writing, and math even though neither the scores on his testing nor her classroom performance in math suggest that she requires more attention in that area. He did not and was unable to testify as to whether Student *was “*mak[ing] documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the student, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district.”[[29]](#footnote-29)

The preponderance of the evidence, comprising Student’s Educational Assessment Part A and B, teacher reports provided at Team meetings, Student’s grades in college preparation and accelerated classes, progress reports and standardized testing, and witness testimony demonstrates that Student was making documented growth in acquiring knowledge of grade level curriculum within the general education classroom. Although Student was continuing to receive special education services via the “stay put” IEP, there was no credible evidence presented that Student required specially designed instruction to access the curriculum. In fact, Ms. Rucker testified that Student did not require the Read180 services to access the curriculum in her inclusion ELA class.

Having concluded that Parents were not denied meaningful participation in the IEP process and that B-R’s determination that Student was not eligible for special education was appropriate, I find no basis to determine that Student was denied a FAPE from the period December 20, 2023 through the date of the Hearing.

1. Whether B-R was required to convene a 504 Team meeting after its December 20, 2023 determination of ineligibility.

When B-R determined that Student was no longer eligible for an IEP, Parents invoked “stay-put” with respect to Student’s then-current IEP. B-R continued to implement the IEP which included accommodations. Although some of the N1s issued by B-R stated that it would convene a 504 Team to determine whether Student required accommodations, Parents have provided nothing to demonstrate y that B-R’s failure to convene a 504 Team to determine whether Student required 504 accommodations, while she was receiving the same via the stay put IEP, caused educational harm to Student.

I find that given that Parents had invoked “stay put” and Student was continuing to receive special education services and accommodations, there was no mandate for B-R to convene a 504 Team at that time.

1. Whether Parents’ unilateral placement of Student at Landmark School was appropriate.

Having found that B-R’s finding that Student was not eligible for special education was appropriate, I need not reach the question of whether a unilateral placement at Landmark School was/is appropriate.

1. Whether Parents/Students are entitled to reimbursement/prospective placement at the Landmark School.

Having found that B-R’s finding that Student was not eligible for special education was appropriate, I find that Parents are not entitled to reimbursement from the District/prospective placement by the District at the Landmark School.

**ORDER**

1. Student has not been a denied a FAPE nor have Parents been denied meaningful participation in the IEP process by B-R since December 2023. Further, B-R’s determination that Student is not eligible for special education was appropriate.
2. Although B-R was not required to convene a 504 Team while Student was receiving stay-put services pursuant to her last IEP, the 504 Team should be convened at this point to determine whether she requires accommodations as a result of her disability.
3. Parents are not entitled to reimbursement for their unilateral placement of Student at Landmark nor is Student entitled to prospective placement.



Dated: September 22, 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 a nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Elementary and Secondary Education or other office for appropriate enforcement action. 603 CMR 28.08(6)(b).

**Rights of Appeal**

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

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

**Confidentiality**

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

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

Record of the Hearing

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

1. Parents’ counsel emailed her closing argument to the Hearing Officer on August 13, 2025 and stated that she had inadvertently sent it to the wrong hearing officer the previous day. [↑](#footnote-ref-1)
2. P-1 includes 1.1; P-2 includes 02.01-02.08; P-3 includes 03.01-03.15; P-4 includes 04.01-04.11; P- 5 includes 05.01-05.08; P-6 includes 06.01-06.21; P-7 includes 07.01 – 07.09; P-9 includes 09.01-09.05; P-10 includes 10.01 – 10.07. [↑](#footnote-ref-2)
3. Mr. Alves reviewed school records and reported the following WISC-V scores as previously obtained by B-R in February 2021: Verbal Comprehension Index: 106; Visual Spatial Index: 94; Fluid reasoning Index: 97; Working memory: 100; Processing speed: 114, and Full scale IQ: 100. He also administered the following assessments: selected subtests of the Wechsler Individual Achievement Test – Fourth Edition (WIAT-IV); selected subtests of the Woodcock Johnson Achievement Test – Third Edition (WJ-IV Ach). Test of Written Language (TOWL-4), and Test of Reading Comprehension (TORC-4). (P-2:04-1,S-18) [↑](#footnote-ref-3)
4. During the Hearing Parents identified another scoring error in Dr. Alves’ testing. They requested the admission of a portion of the protocol for the Letter-Word Identification sub-test of the Woodcock-Johson (P-12). Ms. Kaszanek acknowledged that there was an error in the scoring of the sub-test. (Kaszanek) There was no testimony regarding what if any impact the error had on the reported score. [↑](#footnote-ref-4)
5. This exhibit is Mr. Alves’ revised report dated January 30, 2024 which contains the corrections made to his report. [↑](#footnote-ref-5)
6. Student responded  “sometimes” to the question “I forget my name.” Ms. Kaszanek attributed that response to the speed with which Student completed the scales. Student later confirmed that she had hit the wrong button when responding to the question. (Kaszanek) [↑](#footnote-ref-6)
7. Student’s ELA, math, science, and history teachers completed the scales. (S-17) [↑](#footnote-ref-7)
8. Ms. Myles was Student’s ELA teacher. (S-15) [↑](#footnote-ref-8)
9. Mr. Baldeck was Student’s science teacher. (S-15) [↑](#footnote-ref-9)
10. The CCA exam was a mid-term exam. (Rucker) [↑](#footnote-ref-10)
11. I note that Student’s comprehension score on the GORT was reported as an 8, in the average range. (P-2:08-1) [↑](#footnote-ref-11)
12. Her processing speed was scored in the high average range (114) on the WISC-V in his October 2021 neuropsychological evaluation. (P-2:01-1) [↑](#footnote-ref-12)
13. Ms. Farrow is a licensed administrator of special education who is also licensed in moderate disabilities and as a principal for elementary and middle school. (Farrow) [↑](#footnote-ref-13)
14. The record does not indicate whether or when Student began attending Landmark, as the Hearing was held prior to the beginning of the 2025-2026 school year. [↑](#footnote-ref-14)
15. At some point Student was missing a number of Spanish assignments. She told Ms. Rucker that she did not need help with completing them and that her grade was fine even with the missing assignments. In Ms. Rucker’s opinion, the missing assignments were not due to Student’s executive functioning weakness, but were an example of a teenager prioritizing assignments and realizing that she could do well in Spanish class without completing all of the assignments. (Rucker) [↑](#footnote-ref-15)
16. 20 USC 1400, *et seq*.; M.G.L. c. 71B; 34 CFR 300.000, *et seq*.; 603 CMR 28.00 *et seq*. [↑](#footnote-ref-16)
17. 603 CMR 28.02(11); 603 CMR 28.05(3). [↑](#footnote-ref-17)
18. The identified disabilities in the IDEA include “other health impairments” and for students ages 3 through 9, “developmental delays defined by the state”. [↑](#footnote-ref-18)
19. “Specially designed instruction”, is defined as “adapting, as appropriate to the needs of an *eligible* child under this part, the content, methodology, or delivery of instruction— (i) To address the unique needs of the child *that result from the child’s disability; and* (ii) To ensure access of the child to the general curriculum ….” 34 CFR 300.39(a)(3) (emphasis added). [↑](#footnote-ref-19)
20. 20 USC 1401(29); 34 CFR 300.39(a). Massachusetts defines “special education” as “specially designed instruction to meet the unique needs of the eligible student or related services necessary to access the general curriculum and shall include the programs and services set forth in state and federal special education law.” 603 CMR 28.02(20). [↑](#footnote-ref-20)
21. M.G.L. c. 71B §1. Relevant to this proceeding, the disabilities recognized in the Massachusetts laws and regulations include developmental delay for children ages 3 through 9 (provided supra), and “other health impairment”, including health impairments “due to … [ADD] or [ADHD] …”. 603 CMR 28.02(7)(b) and (i). [↑](#footnote-ref-21)
22. 603 CMR 28.02(17). [↑](#footnote-ref-22)
23. 20 USC 1400(d)(1)(A) (purpose of the federal law is to ensure that children with disabilities have FAPE that “emphasizes special education and related services designed to meet their unique needs . . . .”); 20 USC 1401(29) (“special education” defined to mean “specially designed instruction . . . to meet the unique needs of a child with a disability . . .”); *Honig v. DOE*, 484 U.S. 305, 311 (1988) (FAPE must be tailored “to each child’s unique needs”). [↑](#footnote-ref-23)
24. See *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012). [↑](#footnote-ref-24)
25. *Sebastian M. v. King Philip Regional School Dist*., 685 F.3d 79, 84 (1st Cir. 2012)(“the IEP must be custom-tailored to suit a particular child”); *Mr. I. ex rel L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1, 4-5, 20 (1st Dir. 2007) (stating that FAPE must include “specially designed instruction …[t]o address the unique needs of the child that result from the child’s disability”) (quoting 34 C.F.R. 300.39(b)(3)).  See also *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir. 1993) (program must be “reasonably calculated to provide ‘effective results’ and ‘demonstrable improvement’ in the various ‘educational and personal skills identified as special needs’”); *Roland v. Concord School Committee*, 910 F.2d  983 (1st Cir. 1990) (“Congress indubitably desired ‘effective results’ and ‘demonstrable improvement’ for the Act’s beneficiaries”); *Burlington v. Department of Education*, 736 F.2d 773, 788 (1st Cir. 1984) (“objective of the federal floor, then, is the achievement of effective results–demonstrable improvement in the educational and personal skills identified as special needs–as a consequence of implementing the proposed IEP”); 603 CMR 28.05(4)(b) (Student’s IEP must be “designed to enable the student to progress effectively in the content areas of the general curriculum”); 603 CMR 28.02(18) (“*Progress effectively in the general education program*shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the child, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district.”) [↑](#footnote-ref-25)
26. 20 USC 1412 (a)(5)(A) [↑](#footnote-ref-26)
27. Mother pointed to P-11 to show a number of days during the 2024-2024 school year on which Student did not receive learning center services for reasons including staff absence, Student’s absence, half days, mid-term and final exams, MCAS, and school schedule changes. She did not present any evidence that Student was denied FAPE as a result or that she suffered any educational harm. (Mother, P-11) [↑](#footnote-ref-27)
28. His October 2021 report contains a WISC-V score in working memory of 100. [↑](#footnote-ref-28)
29. 603 CMR 28.02(17). [↑](#footnote-ref-29)