

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
BUREAU OF SPECIAL EDUCATION AP**

In Re: Swansea Public Schools

BSEA No. 2207178-C

RULING ON MOTION TO ORDER COMPLIANCE WITH DECISION

On June 14, 2022, after an evidentiary hearing, the BSEA issued a final decision (*Decision*) in the case that is the subject of this ruling. The relevant portions of the *Decision* are reproduced verbatim, below:

Based on my review of the record, I conclude that the School's proposed program is not appropriate for Student at this time, and cannot be changed, adjusted, or modified to make it appropriate.

. . .

...Swansea will be directed to place Student residentially at Landmark unless, within 15 calendar days of this *Decision*, the District creates or locates a language-based program that can address Student's documented needs and is located within one hour's commuting distance from Student's home. Such program must be cohesive and language-based across content area curricula and serve students who have at least average cognitive ability, intact social/emotional skills, but whose academic performance is impaired by language-based learning disabilities affecting reading, writing, and math. The program also must offer daily or near-daily individual or very small group specialized literacy instruction with a reading specialist experienced in using structured, sequential, evidence-based methodologies.

Relevant portions of the *Conclusion and Order* section of the *Decision* states as follows:

1. Swansea Public Schools shall place Student in an appropriate language-based program with similar peers, consistent with the terms of this *Decision, supra*, that is within one hours' commuting distance from her home.

2. In the event that such program is not located or created within 15 calendar days of receipt of this *Decision*, Swansea shall place Student residentially at the Landmark School.

On June 24, 2022, Parent filed a *Motion for Emergency Hearing RE: Noncompliance with Hearing Decision*, pursuant to Rule XIV of the BSEA *Hearing Rules*, alleging that the Swansea Public Schools failed to comply with the above-quoted *Order*. In brief, Parent's *Motion* asserts first, that Swansea has proposed a new, in-district program for Student at Joseph Case High School which does not yet exist, and about which it has provided little information. The District did not file a written opposition or other response, but, at a subsequent hearing on the *Motion*, argued that it had fully complied with the *Decision*.

A hearing on the *Motion* was held remotely¹ on July 5, 2022, at which both parties elicited testimony from Swansea's Director of Student Services, Dr. Julie Garell, who was the sole witness. The record in this case consists of the stenographically recorded testimony of the witness and argument of counsel, as well as Parent's exhibits PC-1 and PC-2, and School's exhibit SC-1.² Those present for all or part of the compliance hearing were the following:

Mother	
Dr. Julie Garell	Director of Student Services, Swansea Public Schools
Kathleen Fisher	Attorney for Parent
Kimberly A. Rozak	Attorney for School
Alexander Loos	Court Reporter
Sara Berman	BSEA Hearing Officer

Issues Presented

The sole issue for this hearing on the *Motion for Compliance* is whether Swansea's proposed in-district language-based program complies with the *Order* contained in the *Decision* dated June 14, 2022.

Positions of Parties

Position of Parent

The District has not complied with the *Order* contained in the *Decision* because it has proposed, but not actually created or located a placement for Student. Instead, the proposed new program will be developed over the summer and will not actually exist until the start of the school year. Parent has received no information about the program other than a written outline from the District and will have no opportunity to observe it until the beginning of the school year. Meanwhile, Student will have lost her slot at

¹ Both parties consented to the hearing being conducted via Zoom.

² The School submitted Exhibit SC-1 on July 7, 2022, at the request of the Hearing Officer.

Landmark and Parent will be without options if she believes that Swansea's program is inappropriate.

Further, Swansea has provided Parent with the same type of generic assurances about the composition of the peer group and the availability of language-based instruction that it put forward during the hearing in this matter and which were found unpersuasive by the Hearing Officer. It would be unreasonable and prejudicial to Parent to require her to rely on similar assurances and representations regarding a program that does not yet exist and which she cannot observe.

Position of School

Swansea has, in fact, created a program that meets the criteria set forth in the Decision. It has not yet *implemented* the program that it created, but the pertinent portion of the *Order* does not require it to do so, nor would such a requirement be a reasonable interpretation of the *Order*, especially given the 15 calendar day timeline. As such, Swansea has fully complied with the *Decision*.

Summary of the Evidence

1. The entire *Decision* in *In Re: Student v. Swansea Public Schools*, BSEA No. 2207178 is adopted and incorporated by reference in this *Ruling*.
2. In a letter to Parent's counsel dated June 23, 2022, nine days after issuance of the *Decision*, counsel for Swansea stated that "[i]n accordance with the BSEA decision...Swansea Public Schools is creating a language-based program at Joseph Case High School that will address [Student's] documented needs. The outline included with this letter highlights the key components of the program being developed with the assistance and expertise of Landmark School's Outreach program. The program at Joseph Case high School will be ready for students at the beginning of the 2022-2023 school year. Please ensure [Student] is enrolled at Joseph Case High School." (PC-1)
3. Enclosed with counsel's letter was a one-page outline stating: "Swansea Public Schools will be developing its own Language Based Classroom at Joseph Case High School to begin in the fall of 2022 followed by a list of "key components" of the program. These components include but are not limited to the following: "Language Based across the curriculum," "Peers with at least average cognitive abilities...intact social/emotional skills/whose academic performance is impaired by language-based learning disabilities affecting reading writing, and/or math," Landmark Outreach Program, 45 minutes/day of individual/very small group reading instruction from Reading Specialist, daily academic support to work on executive functioning skills, consultation to classroom from occupational therapist, speech/language therapist, and school adjustment counselor as well as individual or small group services as needed. (PC-2)

4. Other than the above-referenced letter and outline, Parent has received no communication from Swansea about the proposed program. (Garell)
5. Dr. Julie Garell, Swansea's Director of Student Support Services testified that upon receipt of the *Decision*, she and other District personnel reviewed the options set forth in the *Order* and determined that Swansea would create a language-based program within Joseph Case High School that would meet the criteria set forth in the *Decision*. (Garell)
6. Dr. Garell contacted the Landmark Outreach program for assistance in developing the program. Such assistance will consist of 15 hours over the summer of self-directed instruction in language-based and executive functioning strategies for each teacher assigned to the program. As the school year begins, Landmark Outreach will assign one of its faculty members to provide coaching to staff in the new Swansea program, as well as monthly observation followed by professional development.

The District has made funding available for the services of Landmark Outreach. Swansea and Landmark Outreach have not yet executed a contract because of vacations, but will do so shortly, probably during the week of July 5 or 11, 2022.

7. The new program will be staffed by two content teachers (one for English and History and the other for Science and Math) and a reading specialist, as well as a school adjustment counselor, an occupational therapist, and a speech/language therapist.

The content teachers had been working in the CACE program, which is Joseph Case High School's substantially separate classroom for students with social/emotional disabilities. According to Dr. Garell, these teachers, both of whom hold special education certifications, are available for the new language-based program because there are no incoming freshmen who require a substantially separate classroom for social/emotional reasons.

The English/History teacher has over 20 years of teaching experience, initially at a private day school, and then for 13 years in Swansea. The Science/Math teacher just completed her first year in Swansea, and previously taught in private day and residential schools. Dr. Garell believes this teacher is very skilled at differentiating instruction.

The third teacher is the reading specialist, Ms. Sandra Kozatek, who testified in the hearing in this matter. (Garell)

8. With respect to the peer grouping, Dr. Garell consulted with the school psychologist, Dr. Amber Kaltenstein, who informed her that there exists a group of 5 to 7 incoming ninth-graders who have language-based learning disabilities affecting reading, writing, and/or math but who also have at least average

cognitive abilities and intact social/emotional skills. These students spent eighth grade in various settings including private schools, collaboratives, or the Case Junior High School. When asked whether these students were in language-based classrooms in prior years, Dr. Garell testified that their programs “did not use that title.” (Garell)

9. According to Dr. Garell, the parents of the proposed peers have not been informed that a new language-based program is being developed or that their students are being considered for placement in this program.

Dr. Garell testified that in her view, there is no need to convene Team meetings or change these students’ IEPs to reflect a new setting because their current IEPs already call for a substantially separate classroom. When the school year approaches, she plans to approach the individual families about the new program. Based on her relationships with the families involved, Dr. Garell anticipates that parents of at least 5 of the proposed peers will agree to placement in the new program. (Garell)

10. Redacted IEPs of the 7 proposed peers indicated the following: (SC-1)

The cohort comprises both male and female students. Four of the IEPs are accepted and two are unsigned. Placement pages were not included with the redacted IEPs; however, the service delivery grids indicate that all services are to be delivered in a substantially separate setting.

Student No. 1: Primary disability—health (ADHD). Secondary disability—social emotional. Below grade level in ELA and Math. Reads at 4th – 6th grade level. Goals in ELA, math, social/emotional, class participation. Some social concerns but can relate to peers appropriately. No cognitive scores provided.

Student No. 2: Disabilities—specific learning disability in reading/written language; communication disorder in expressive language. Below grade level in reading and math. Goals in speech/language, ELA, Math, Social/Emotional. Some social concerns. Cognitive scores—Primarily “low average.”

Student No. 3: Disabilities—Intellectual disability, Communication Disorder, Health (ADHD). Below grade level in all academics. Goals in ELA, Math, Social/emotional. Cognitive scores—“Extremely low.”

Student No. 4: Disabilities—Intellectual Disability/”Borderline Intellectual Disability,” Health (ADHD). Goals in social skills, ELA, Math. Reading/writing skills—“low average,” math skills—“below average.” Socially, needs adult support to interact with peers. Cognitive scores—“Extremely Low.”

Student No. 5: Disabilities—Learning disability in math and writing, goals in math, ELA, and social/emotional. Cognitive scores—“Very Low,” except for “Low Average” verbal comprehension and processing speed.

Student No. 6: Disabilities—Learning disability (decoding/encoding). Goals in reading, Writing. No cognitive scores provided.

Student No. 7: Disabilities—ADHD, neurological, learning disability. Goals in ELA (comprehension), Math, Speech/language, social/emotional. Cognitive scores—variable, “Extremely Low” to “Low Average.”

11. The social/emotional goals for those proposed peers whose IEPs contain such goals primarily concern issues such as confidence, self-advocacy, emotional control, peer relations, and problem-solving. None of the proposed peers presents with significant behavioral challenges.
12. If this *Order* directs Swansea to place Student in the proposed new program, Swansea will convene a Team meeting to develop a new IEP reflecting such placement. (Garell)
13. If Student were to attend the new placement, her schedule would consist of 4 class periods per day of core academics (English, Math, Science, and History), one period per day of academic support (to work on executive functioning skills), and 5, 45-minute periods per week of specialized reading instruction from the reading specialist. For the seventh class period, Student could choose an elective that would be provided via an on-line platform. (Garell)

DISCUSSION

Rule XV of the BSEA *Hearing Rules* provides the following avenue for relief for a party who believes that BSEA decision is not being implemented:

A party contending that the Hearing Officer’s decision is not being implemented may file a motion requesting the BSEA to order compliance with the decision.

The motion shall set out the specific areas of alleged non-compliance. The Hearing Officer may convene a hearing on the motion at which the scope of inquiry will be limited to facts bearing 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 and/or refer the matter to the Legal Office of the Commonwealth of Massachusetts Department of Elementary and Secondary Education for enforcement. *Id.*

After reviewing the evidence produced at the hearing in the context of Rule XV, above, I conclude that the peer grouping proposed for Student in the Swansea's new program does not currently satisfy the requirements of the *Order* contained in the *Decision*. My reasoning follows.

The record establishes that Swansea has taken significant steps towards creation and implementation of a substantially separate, language-based program that will open its doors at the beginning of the 2022-2023 school year. It has contacted Landmark Outreach and will execute a contract with them in the coming weeks. Funding has been secured for this purpose. Landmark Outreach will provide training, ongoing support, and professional development to staff in the Swansea program. The District has identified staff for the new program, who have agreed to their new role. These staff members, all of whom are experienced special educators, will participate in summer coursework to study language-based methodologies and executive functioning strategies. This effort by Swansea is laudable, particularly given the short amount of time available for program development. There is no evidence to suggest that the program will not be able to deliver language-based instruction, given the experience level of the teachers coupled with the training and ongoing support from Landmark Outreach.

The only remaining issue is whether the peer grouping complies with the terms of the *Decision*. After reviewing the redacted IEPs contained in Exhibit SC-1, I have determined that it does not. As stated above, the *Decision* directs Swansea to provide Student with a placement that serves "students who have at least average cognitive ability, intact social/emotional skills, but whose academic performance is impaired by language-based learning disabilities affecting reading, writing, and math."

The redacted IEPs indicate that four of the seven peers (Nos.3, 4, 5, 7) have cognitive deficits/intellectual disabilities. Socially, several of the proposed peers appear to need more support than Student. In sum, the profiles of many of the proposed peers vary too much from Student's profile to conform with the requirements of the *Decision*. This mismatch is not mitigated by the location of the program in the public school setting because Student's exposure to non-disabled students would be restricted to extracurricular activities and possibly classes such as physical education.

The program may be appropriate for Student in the future, if, for example, the peer group changes, or if Student's future progress enables her to spend part of her day in supported mainstream classes. At this time, however, the proposed program does not fulfill the requirements of the *Decision* in this matter.

CONCLUSION AND ORDER

Based on the foregoing, I conclude that despite commendable efforts, Swansea has not complied with so much of the *Decision* directing it to "locate or create" a program for Student which "serve[s] students who have at least average cognitive ability, intact social/emotional skills, but whose academic performance is impaired by

language-based learning disabilities...” The Swansea Public Schools is ORDERED, therefore, to fund Student’s residential placement at the Landmark School, including tuition, room and board, transportation, and required fees, for the period covered by the IEP issued in January 2022.

By the Hearing Officer:

/s/ Sara Berman

Dated: July 8, 2022

Sara Berman