

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

**In Re: Student v. Bedford Public Schools**

**BSEA# 2211208**

**RULING ON BEDFORD PUBLIC SCHOOLS' MOTION FOR SUMMARY  
JUDGMENT,  
PARENTS' REQUEST TO AMEND HEARING REQUEST,  
AND  
PARENTS' COUNTER-MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Hearing Officer on the *Motion for Summary Judgment* (Motion) filed by the Bedford Public Schools (Bedford or the District) on July 25, 2022; *Parents' Request to Amend the Hearing Request* (Request to Amend) filed on August 5, 2022; and *Parents' Opposition to Bedford Public Schools' Motion for Summary Decision and Parents' Counter-Motion For Summary Judgment* (Opposition) filed on August 9, 2022.

Neither party has requested a hearing on its motions.<sup>1</sup> Because neither testimony nor oral argument would advance the Hearing Officer's understanding of the issues involved, this Ruling is issued without a hearing, pursuant to *Bureau of Special Education Appeals Hearing Rule VII(D)*.

For the reasons set forth below, *Parents' Request to Amend the Hearing Request* is ALLOWED. *Parents' Counter-Motion For Summary Judgment* is DENIED. The District's *Motion for Summary Judgment* is hereby ALLOWED, in part, and DENIED, in part.

**I. ISSUES:**

The issues here presented are:

1. Whether Parents should be allowed to amend their request for hearing; if the answer is "yes", whether a recalculation of the timelines is appropriate;
2. Whether the District is entitled to summary judgment as a matter of law, such that Student is no longer eligible for special education and related services and thereby is not entitled to continued residential placement at Riverview after August 29, 2022; and
3. Whether Parents are entitled to summary judgment as a matter of law, such that the partially accepted IEP dated from 5/23/22 until 5/22/23 obligates the District to provide special education services to Student for the entire duration of said IEP.

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<sup>1</sup> Initially, Parents requested a hearing on the District's Motion, and the parties were offered an opportunity to argue their respective positions on August 11, 2022. On August 8, 2022, Parents informed the Hearing Officer that they were no longer requesting a motion session.

## II. FACTUAL BACKGROUND:<sup>2</sup>

The following facts are not in dispute and are derived from the Hearing Request, Bedford's response thereto (Response), the District's *Motion for Summary Judgment* with supporting *Memorandum* and exhibits (S-1 to S-13), as well as Parents' *Opposition to Bedford Public Schools' Motion for Summary Decision and Parents' Counter-Motion For Summary Judgment*, and supporting *Memorandum*<sup>3</sup>.

1. Parents filed an initial Hearing request on May 27, 2022 asserting that Student requires continued special education eligibility until age 22. The requested an order for residential placement at Riverview School. (Hearing Request)
2. Student is 19 years old<sup>4</sup> and is eligible for special education and related services pursuant to the disability categories of intellectual impairment and emotional impairment. Student's cognitive abilities range from average to extremely low (full scale intelligent quotient (IQ) between 60 and 66). Student's disabilities impact her "across all areas of her education and her life." (Hearing Request; Response; S-8; S-10)
3. Student's anticipated graduation date is August 29, 2022. (S-9) She has not yet received her high school diploma.<sup>5</sup>
4. Student is currently attending Riverview School (Riverview) pursuant to a Settlement Agreement (the Settlement Agreement) executed between Parents and the Bedford Public Schools on March 1, 2019 in order to resolve "*disputes regarding Student's educational programming and placement.*"<sup>6</sup> (S-2) Prior to attending Riverview, Student attended Bedford High School as a full inclusion Student pursuant to an IEP. (Hearing Request; Response; Motion; Opposition; S-2) At Riverview, Student attends the GROW program, a residential, post-graduate program that focuses on generalizing independent living skills. (Hearing Request)
5. In part, the Settlement Agreement includes the following relevant covenants:

*Paragraph 1: Tuition Costs, IEPs and Team Meetings. For the sole purpose of resolving the dispute between the Parties, [a payment and placement agreement was established between the parties that resulted in placing Student at] Riverview School Residential Program (PLACEMENT) pro-rated from the date of enrollment through the end of the 2018-2019 school year, as well as the 2019-2020, 2020-2021, and 2021-2022 school years, and the Summers of 2019, 2020, 2021, and 2022....*

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<sup>2</sup> The information in this section is drawn from the parties' pleadings and is subject to revision in further proceedings.

<sup>3</sup> Parents' Opposition referred to the District's exhibits and did not provide any additional exhibits, save for the IEP for the period from 5/23/2022 until 5/22/2023, which is also a school exhibit (S-12).

<sup>4</sup> Parents are Student's legal guardians. (Hearing Request; S-10) Because the request for hearing refers to Student's guardians as "Parents," I do the same here.

<sup>5</sup> See **Application of Law** section *infra*.

<sup>6</sup> The parties had an opportunity to consult with counsel prior to executing the Agreement. (S-2, Paragraph 9).

*BEDFORD agrees to administratively develop an IEP and placement page specifying a residential placement at Riverview from the date of enrollment through the Summer of 2019; BEDFORD also agrees to administratively develop an IEP, and placement pages for the 2019-2020 school year (including Summer 2020), 2020-2021 school year (including Summer 2021), and 2021-2022 school year (including Summer 2022). PARENTS waive all other requirements to BEDFORD proposing any IEPs or convening any Team meetings, with the exception of paragraph 5 of this AGREEMENT for the duration of the AGREEMENT.*

*Paragraph 4: Additional Costs/Services. Except for the [agreed payments] by BEDFORD as provided in paragraph 1 of this AGREEMENT, PARENTS will be responsible for any and all costs and services associated with STUDENT's education at PLACEMENT from the date of initial enrollment through the end of the 2018-2019 school year, as well as the 2019-2020, 2020-2021, and 2021-2022 school years, including, but not limited to, any costs associated with attendance at private or public schools, transportation, extended day and/or year services, MCAS tutoring, test preparation courses, transition planning or service, consultation, related services, and assistive technology. So long as student attends PLACEMENT pursuant to this AGREEMENT, PARENTS specifically waive any rights they may have to seek additional costs or services from BEDFORD during the named school years and will hold BEDFORD harmless and indemnify BEDFORD against any liability, judgment, legal fees or other costs or expenses arising out of claims by PLACEMENT or any third party for payment of tuition costs in excess of the amounts agreed to be paid by BEDFORD hereunder, except as provided by in Paragraph 5(a) infra.*

*Paragraph 5: Possible Future Placements/Evaluations. BEDFORD will not conduct any further evaluations of STUDENT and will not convene any IEP meetings for the remainder of the time [that] the STUDENT remains eligible for special education services. PARENTS hereby consent to this by signing this AGREEMENT. Furthermore, the PARTIES agree to the following:*

- (a) If, for any reason, STUDENT does not remain enrolled in, and in attendance at, PLACEMENT through April 30, 2022 or if PARENTS or STUDENT informs BEDFORD in writing that they believe the PLACEMENT cannot continue to meet STUDENT's needs and STUDENT and PARENTS remain residents of BEDFORD, BEDFORD shall be responsible for providing STUDENT and PARENTS with all rights afforded to students with special education needs who reside in BEDFORD....*
- (b) In the event that BEDFORD deems a re-evaluation necessary pursuant to paragraph 5(a) in order to propose an IEP, PARENTS consent to BEDFORD conducting such evaluations. Any such re-evaluation shall be preceded by proper notice to*

*PARENTS, specifying the types of evaluations BEDFORD proposes to conduct.*

- (c) *If, there is an IEP Team meeting pursuant to paragraph 5(a) and there is a dispute regarding STUDENT's educational programming, the placement pending appeals/ "stay put" placement shall be the placement proposed by BEDFORD. The PARTIES agree to work together to resolve any outstanding issues via the BSEA.*

*Paragraph 6: No Admission. This AGREEMENT is for the purpose of settling the dispute between the Parties only. BEDFORD specifically does not admit that STUDENT requires a residential placement. This AGREEMENT does not constitute an admission by either party on any of the issues that may have been in dispute between the parties.*

*Paragraph 7: General Release. This AGREEMENT shall constitute full settlement and release of all claims that exist or may exist between the Parties relating to the STUDENT's regular education, special education, and related services since she became a resident of BEDFORD through the date this AGREEMENT is fully executed. (S-2)*

6. The fully accepted administratively issued IEP for the period from 1/31/2019 until 12/17/2020 reflects residential placement at Riverview and an anticipated graduation date of June 2022. (S-3) The fully accepted administratively issued IEP for the period from 4/23/2021 until 4/22/2022 reflects residential placement at Riverview and an anticipated graduation date of August 29, 2022. (S-4) Both IEPs contain goals in the areas of Reading, Written Language, Mathematics, Social Studies, Transition, and Social. (S-3; S-4)
7. Student's IEPs were implemented fully by Riverview. (S-8)
8. In the Spring of 2021, Student scored 486 (partially meeting expectations) on the English Language Arts (ELA) MCAS. (S-5)
9. Student did not have the opportunity to take the Math or Science MCAS due the COVID-19 school closure. (S-8)
10. In response to the COVID-19 school closure, the Department of Elementary and Secondary Education (DESE) established modified competency determination requirements which were applied to all Massachusetts students, including Student, using a competency determination (CD) tool provided by DESE. (S-6; S-8)
11. Based on information provided by Riverview, the District entered Student's Riverview coursework information into the competency determination tool provided by DESE. (S-8)
12. In February 2022, Student, who had already met the CD requirement in ELA, was granted modified CD status in Mathematics and Science and Technology/Engineering (STE). (S-6; S-8)
13. Student has "done well" at Riverview. (Hearing Request; S-8) Her progress reports demonstrate that she has continuously made educational progress on her IEP goals and objectives. (S-11)

14. On April 29, 2022, the Team convened, with Parents, a Department of Developmental Services (DDS) representative, and Riverview staff present, and reviewed a privately obtained transition assessment performed by NESCA in March 2022. (S-8; S-10) NESCA's report concluded, in part,

“[Student’s] cognitive profile and her deficits in functional academics, adaptive functioning, job readiness, and community safety impede her ability to succeed in [a] less restrictive environment and competitive employment. As such, [Student] will require special education programming until her 22nd birthday. Given [Student’s] significant safety concerns and complex trauma history, [Student] continues to require special education programming in a structured, well-supervised, risk-free environment. Future programming will require an environment that needs to include social skills, perspective-taking, social pragmatic instruction, frequent opportunities to practice skills in multiple environments, and staff support to process positive and negative interactions both in the moment and after the fact. Additionally, [Student’s] programming requires explicit instruction in career readiness and exploration, work-based learning in the community, and she will need to utilize gained skills in natural settings in order to generalize the skills.” (S-10)
15. Riverview staff reported that Student has done well academically “although she’s not at grade level.” Similarly, Parents asserted that Riverview’s classes “did not meet grade level expectations.” (S-8)
16. At Riverview, Student “participated in some transition services” and “has had the opportunity to explore different types of jobs [but] has not had any [direct job-related] experiences. [Student] continues to work on self care, hygiene and social planning[, but she] has done well academically and socially.” (S-8) A “major factor in the progress she has made at Riverview” is the “trusting relationship” she established with her Riverview counselor and psychiatrist. (Hearing Request; S-8)
17. Student continues to have significant mental health needs. She accessed clinical support at Riverview on a daily basis. School breaks were difficult for Student, and she became dysregulated. (Hearing Request; S-8)
18. Student is DDS eligible.<sup>7</sup> (S-1; S-8; S-10) DDS has declined to fund Riverview or to provide Student with sufficient staffing for a day program while awaiting a residential placement. (Hearing Request)
19. During the April 29, 2022 Team meeting, the Team discussed Parents’ concerns that Student was not ready to graduate. Specifically, Parents asserted that Student would be unable to have successful employment and would be at high risk for sexual exploitation. Parents indicated that they would be exercising Student’s “right to stay put at Riverview for the next school year.” (S-8)
20. Riverview staff indicated that Student has made progress but “isn’t ready” to graduate. (S-8; S-11)
21. The N1 issued by the District on April 29, 2022 rejects the option for Student to remain at Riverview for the 2022-2023 school year. According to Bedford, Student received a FAPE at Riverview and had made progress on her IEP goals and objectives. She had also participated in a vocational program through Cape Cod

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<sup>7</sup> A Chapter 688 Referral Form was executed by the District in February 2019. (S-1)

- Community College since 2021. The Team agreed that Student would require supports and services into adulthood. (S-8)
22. On May 9, 2022, Student was invited to participate in the June 2, 2022 graduation ceremonies but declined. (S-13)
  23. The Team reconvened on May 23, 2022. Parents requested that Student's PLEP A and B be changed to indicate the need for residential placement. The District rejected this option, indicating that there is "no evidence that [Student] requires 24-hour intervention and programming in order to maintain the acquired academic, language, social or behavioral skills or to learn new ones." Instead, the Team noted in the IEP that Student "requires support across all settings where skills can be taught, practiced and applied." (S-9)
  24. At the meeting, DDS shared that although Student has been prioritized for a residential placement, "that does not mean something will be ready by August." However, it is possible a day placement would be available. Although funding is available to provide additional DDS staff to support Student, there is a "national staffing crisis." (S-9)
  25. Following the meeting, the District proposed an IEP for the period May 23, 2022 to May 22, 2023, with goals in the areas of English, Mathematics, Vocational, Travel Training, Social, and Daily Living Skills (May 2022-2023 IEP). The IEP was signed by Bedford's Director of Special Education, on 5/24/22. The Notice issued with the proposed IEP for the May 2022-2023 IEP notes that Student's graduation date in the prior IEP was incorrect, and that because Student had met her graduation requirements, her anticipated graduation date would be August 29, 2022. (S-9)
  26. On June 21, 2022, Parents "accept[ed] the provision of services, and the Transition Plan, through 5/22/23, but [rejected] any services that [were] inconsistent with [Student's] continued placement at the Riverview School. [They] also reject[ed] the anticipated graduation date of August of 2022, as [Student] is not ready to graduate [, and] any removal from her IEP that states that she needs a residential placement; [Student] needs continued residential placement at Riverview." The proposed IEP did not include a placement page. (S-12)<sup>8</sup>
  27. On May 27, 2022, Parents filed a Hearing Request with the BSEA. (Hearing Request) A hearing is scheduled to begin on August 30, 2022.
  28. On August 5, 2022, Parents requested that their Hearing Request be amended to include the May 2022-2023 IEP. Parents allege that although they accepted portions of the IEP, it is insufficient to meet Student's needs: "Aspects of the IEP and placement that the Parents may dispute at hearing include, but may not be limited to, the IEP's proposed teaching model, proposed services, proposed accommodations and modifications, proposed placement, proposed classroom environments, proposed dates of services, proposed goals and benchmarks, proposed peer groupings and descriptions of [Student's] skills and alleged progress." In addition, Parents assert that the District's failure to propose a specific placement is a denial of a FAPE. Parents sought a recalculation of the timelines and August 30 and 31, 2022 hearing dates. (Request to Amend; Hearing Request)

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<sup>8</sup> In their Opposition, Parents assert that the District "has not provided evidence of what the local graduation requirements (or Riverview's graduation requirements) in fact are." (Opposition)

29. On August 10, 2022, the District filed *Bedford Public Schools' Opposition to Parents' Amended Hearing Request and Opposition to Parents' Cross-Motion for Summary Judgement* (Bedford Opposition), requesting that the Hearing Officer allow *Parents' Amended Hearing Request* but grant Bedford's request to maintain the Parties' current hearing dates of August 30 and 31, 2022, as a matter of equity. (Bedford's Opposition)
30. On August 10, 2022, in response to Bedford's Opposition, Parents filed *Parents' Reply to BPS'[s] Opposition to Parents' Motion to Amend and for Summary Judgment*<sup>9</sup> (Parents' Reply) asserting that Student had not graduated from Riverview "because she did not meet the minimum requirements for graduation, and that instead she received a 'Certificate of Achievement.'" (Parents' Reply; P-1; P-2; P-3)
31. According to Riverview School, Student "did not receive a diploma upon completion of her 12<sup>th</sup> grade year. [Student] received a Certificate of Achievement which indicates that she has not met the requirements for a Diploma or high school graduation. [Student] did not pass MCAS and did not take classes that would be considered comparable to general education high school classes." (Parents' Reply; P-1; P-2; P-3)
32. In 9<sup>th</sup> and 10<sup>th</sup> grades, Student passed the following classes at Bedford High School: Homeroom, ELA 1/Writing, Individualized Reading II, United States History I, STEM Applications Math, STEM Applications Science, Early Childhood Education, Ceramics, the Bridge Program, Health Education I, Written Expression, American History 1B, Problem Solving, Literature, Biology I, and 2 Electives. (S-7)
33. In 11<sup>th</sup> and 12<sup>th</sup> grades, Student passed the following classes at Riverview: 2 classes each of American History II, Literature and Beyond, and Electives, Biology II, Foundations of Writing, Problem Solving and Beyond, Algebra/Geometry, Project Forward, Project Forward First Year Seminar, and Written Expression and Beyond. (S-18)
34. Student's last day of ESY at Riverview was August 13, 2022. (S-14)
35. On August 15, 2022, the Bedford High School Registrar certified that Student had earned a total of 125.50 credits. Said transcript reflected Student's coursework from both Bedford High School and Riverview. Specifically, Student had earned 38 credits in 2018-2019, 30 credits in each 2019-2020 and 2020-2021, and 27.50 credits in 2021-2022. (S-7; S-18)
36. On August 16, 2022, the District submitted a *Reply to Parents' Reply to BPS'[s] Opposition to Parents' Motion to Amend and for Summary Judgment*.<sup>10</sup> (District's Reply).
37. Riverview's Student/Family Handbook<sup>11</sup> states as follows:  
"GRADUATION REQUIREMENTS/ POLICY STATEMENT: Each student is assigned specific goals and objectives that are established throughout a student's placement at Riverview School. These goals and credit requirements

<sup>9</sup> Parent's Reply was accompanied by three exhibits, which I have labeled P-1 through P-3.

<sup>10</sup> The District included 4 exhibits along with the District's Reply, which I have labeled S-14 through S-18.

<sup>11</sup> The Student/Family Handbook was revised on August 12, 2022. (S-17) Neither party has asserted that Student was governed by different graduation requirements than those delineated in S-17. I have also reviewed the 2021-2022 Student/Family Handbook which was offered by the District as a supplemental exhibit (S-18); the graduation requirements delineated therein are identical graduation to those in S-17. I, therefore, rely on S-17 for Riverview's graduation requirements.

are reviewed by the Director of Education and the Director of Special Services on a regular basis. For students to graduate from Riverview School, they must accumulate a total of 21 credits. Upon completion of the required course of studies, students will receive a high school diploma from Riverview School. The particular number of credits required for various subject areas is as follows:

Language Arts/Reading (2 hours/day)	4 yrs	5-8 * credits
Mathematics	4 yrs	4 credits
History/Social Science <i>(includes Senior Seminar, US History, Community Service)</i>	4 yrs	4 credits
Science	3 yrs	3 credits
Electives (Including PE)	4 yrs	4-6 credits
<b>Total Credits</b>		<b>21 credits</b>

\*All students while at Riverview must earn 2 credits (2 hours/day) per year in Language Arts/Reading. This range noted above allows for students who may enter Riverview in their high school years.

Summary:

All students must:

- Earn 21 credits. Fulfill requirements of subject areas as stated above.
- Complete United States History.
- Complete six semesters of Physical Education.” (S-17)

### III. POSITIONS OF THE PARTIES:

#### The District:

The District argues that Student has met local graduation requirements and the competency determination requirements established by DESE. In addition, the parties have “agreed that Riverview residential is (and has been) an appropriate program and placement for Student from enrollment in March 2019 to graduation in August 2022 so that no live controversy exists between the parties during the potential compensatory relief time period.” Furthermore, pursuant to a Settlement Agreement, Parents agreed to be responsible for and waive any right to seek additional educational services from the District beyond agreed-upon tuition for Student during her Riverview enrollment to the end of the Settlement Agreement (August 29, 2022). They are therefore barred from seeking additional educational services in the form of compensatory relief.

In response to Parents’ Opposition and Parents’ Reply, the District does not object to Parents’ Request to Amend but objects to a recalculation of the timelines on the grounds of undue prejudice.

#### Parents:

Parents seek to amend their request for hearing, as counsel has only recently learned that the District had proposed a new IEP for the period from 5/23/22 until 5/22/2023. They also seek a recalculation of the timelines for hearing since the Request to Amend includes new issues for hearing, specifically the appropriateness of the May 2022-2023 IEP.



In addition, Parents argue that they are entitled to summary judgment as a matter of law, as there is no genuine issue of material fact that:

- “1) The District proposed an IEP for Student that provides services and goals to her from 5/23/22 through 5/22/23;
- 2) Parents accepted this IEP in part; and
- 3) Parents accepted this IEP in part before Student received a high school diploma.”

Therefore, according to Parents, the partially accepted IEP for the period from 5/23/22 until 5/22/23 obligates the District to provide special education services to Student for the entire duration of said IEP. In addition, the District has proposed an IEP offering services until 5/23/23, which Parents have partially accepted. Because Student has not yet graduated and there is a valid, partially accepted IEP for the period from 5/23/22 until 5/22/23, the BSEA has jurisdiction over this matter. In addition, had the District intended “to cut off [Student’s] services upon her graduation on 8/29/22, [the District] could have written an IEP with an ending date of 8/29/22, and then written a new IEP if [Student] didn’t in fact graduate.... [Student] should be able to rely upon her parents’ acceptance of a valid IEP proposing services to her through 5/22/23.” Moreover, the Settlement Agreement does not preclude Parents from their claims as it ends on 8/29/22; Parents have waived no rights for funding of services to be delivered after 8/29/22, and [they] are not seeking funding for anything prior to 8/29/22.”

#### **IV. DISCUSSION: AMENDMENT OF THE HEARING REQUEST:**

##### **1. Legal Standards:**

The IDEA requires the party initiating a due process hearing to file a complaint and provide notice of this complaint to the other party and the state educational agency.<sup>12</sup> In part, the complaint must include a description of issue(s), including facts relating to such issue(s) and a proposed resolution to the dispute, to the extent known and available to the party at the time. This provides the opposing party with notice as to the issues for hearing.

BSEA Hearing Rule I(G) allows the moving party to amend the Hearing Request under two circumstances:

- “1. In response to a Hearing Officer’s determination that a hearing request is insufficient, as described in E, above, the moving party may file an amended hearing request within fourteen (14) calendar days of the date of the Hearing Officer’s determination.
2. If the other party consents in writing, or the Hearing Officer grants permission. (The Hearing Officer may not grant such permission later than five (5) calendar days before the start of the hearing.)”

801 CMR 1.01(6)(f) further instructs that the “Presiding Officer may allow the amendment of any pleading previously filed by a Party upon conditions just to all Parties, and may order any Party to file an Answer or other pleading, or to reply to any pleading.” Because neither BSEA

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<sup>12</sup> See 34 CFR 300.508(b).

Hearing Rule I(G) nor 801 CMR 1.01 defines “conditions just to all Parties,” I turn to the Federal Rules of Civil Procedure for guidance.

Rule 15 of the Federal Rules of Civil Procedure provides that “a party may amend its pleading [with] the court’s leave” and that “[t]he court should freely give leave when justice so requires.”<sup>13</sup> Thus, “the court has the discretion to grant or deny a request for leave to file an amended pleading, and leave to amend must generally be granted unless equitable considerations render it otherwise unjust.”<sup>14</sup> Amendments “may be denied on the basis of undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment.”<sup>15</sup> In determining whether to grant a motion to amend, the Court must examine the totality of the circumstances and “exercise its informed discretion in constructing a balance of pertinent considerations.”<sup>16</sup>

BSEA Hearing Rule I(G) further states that whenever a Hearing Request is amended, new timelines for the entire process are thereafter calculated, as if the amended hearing request were a new request. The Rule also indicates that to the extent the amendment merely clarifies issues raised in the initial hearing request, the date of the initial hearing request shall be controlling for statute of limitations purposes. For issues not included in the original hearing request, however, the date of the amended hearing request shall be controlling for statute of limitations purposes.<sup>17</sup>

## 2. Application of Law:

Here, Parents filed their Request for Hearing on May 27, 2022. The District filed its Motion on July 25, 2022. Said Motion included, as an exhibit, the IEP for the period from 5/23/2022 until 5/22/2023. Parents did not file their Request to Amend until August 5, 2022, although they were in possession of the May 2022-May 2023 IEP since prior to June 21, 2022, when they partially accepted the IEP, and they seek a corresponding recalculation of timelines. Parents now seek to amend their *Hearing Request* to include claims related to this IEP. However, Parents did not file this request to amend the *Hearing Request*, including a request to recalculate timelines, until three and a half weeks prior to the start of the scheduled hearing, not at any time during the two preceding months.

Nevertheless, as the District makes no objection to the amendment, and in consideration of the equities involved, Parent’s request to amend is ALLOWED, and I consider Parent’s *Hearing Request* as amended in issuing the remainder of this Ruling. In addition, in considering the “totality of the circumstances” and “balance[ing the] pertinent considerations,”<sup>18</sup> I find that because the recalculated timelines would only postpone the hearing date by a couple of months,

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<sup>13</sup> Fed. R. Civ. P. 15(a)(2).

<sup>14</sup> *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962)

<sup>15</sup> *The Hilsinger Co. v. Kleen Concepts, LLC*, 164 F. Supp. 3d 195, 198 (D. Mass. 2016) (internal quotations and citations omitted).

<sup>16</sup> *Palmer v. Champion Mortg.*, 465 F.3d 24, 30–31 (1st Cir.2006).

<sup>17</sup> BSEA Hearing Rule I(G).

<sup>18</sup> *Palmer v. Champion Mortg.*, 465 F.3d 24, 30–31 (1st Cir. 2006).

the burden to the District would be minimal. Therefore, I also ALLOW Parents' request for a recalculation of the timelines.

## V. DISCUSSION: SUMMARY JUDGMENT:

### 1. Legal Standards:

#### A. *Jurisdiction of the Bureau of Special Education Appeals (BSEA)*

20 U.S.C. § 1415(b)(6) grants the Bureau of Special Education Appeals (BSEA) jurisdiction over timely complaints filed by a parent/guardian or a school district “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.”<sup>19</sup> In Massachusetts, a parent or a school district, “may request mediation and/or a hearing at any time on any matter<sup>20</sup> concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law, or procedural protections of state and federal law for students with disabilities.”<sup>21</sup> Nevertheless, it is well established that matters that come before the BSEA must involve a live or current dispute between the Parties.<sup>22</sup> In addition, the BSEA “can only grant relief that is authorized by these statutes and regulations, which generally encompasses orders for changed or additional services, specific placements, additional evaluations, reimbursement for services obtained privately by parents or compensatory services.”<sup>23</sup>

#### B. *Summary Judgment*

Pursuant to 801 CMR 1.01(7)(h), summary decision may be granted when there is “no genuine issue of fact relating to all or part of a claim or defense and [the moving party] is entitled to prevail as a matter of law.”<sup>24</sup> In determining whether to grant summary judgment, BSEA hearing officers are guided by Rule 56 of the Federal and Massachusetts Rules of Civil Procedure, which provides that summary judgment may be granted only if the “pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law.”<sup>25</sup> A genuine dispute as to a material fact exists if a fact that “carries with it the potential to affect the outcome of the suit” is disputed such that “a reasonable jury could resolve the point in the favor of the non-moving party.”<sup>26</sup> The moving party bears the burden of proof, and all evidence and inferences must be viewed in the light most favorable to the party opposing summary judgment.<sup>27</sup>

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<sup>19</sup> See 34 C.F.R. §300.507(a)(1).

<sup>20</sup> Limited exceptions exist that are not here applicable.

<sup>21</sup> 603 CMR 28.08(3)(a).

<sup>22</sup> See, e.g., *In Re : Student v. Bay Path Reg'l Vocational Tech. High Sch.*, BSEA # 18-05746 (Figuroa, 2018).

<sup>23</sup> *In Re: Georgetown Pub. Sch.*, BSEA #1405352 (Berman, 2014).

<sup>24</sup> 801 CMR 1.01(7)(h).

<sup>25</sup> *Id.*

<sup>26</sup> *French v. Merrill*, 15 F.4th 116, 123 (1st Cir. 2021); see also *Maldonado-Denis v. Castillo-Rodriguez*, 23 F.3d 576, 581 (1st Cir. 1994).

In response to a motion for summary judgment, the opposing party “must set forth specific facts showing that there is a genuine issue for trial.”<sup>28</sup> To survive this motion and proceed to hearing, the adverse party must show that there is “sufficient evidence” in her favor that the fact finder could decide for her.<sup>29</sup> In other words, the evidence presented by the non-moving party “must have substance in the sense that it [demonstrates] differing versions of the truth which a factfinder must resolve at an ensuing trial.”<sup>30</sup> The non-moving party’s evidence will not suffice if it is comprised merely of “conclusory allegations, improbable inferences, and unsupported speculation.”<sup>31</sup>

As such, to analyze whether the party moving for summary judgment has met its initial burden such that the burden shifts to the opposing party, I must view all the evidence it has submitted in the light most favorable to the opposing party and determine that there is no genuine issue of material fact related to the claims before me. Only if the moving party is successful in this first step does the burden then shift to the opposing party.

In the instant matter, therefore, to decide as to Bedford’s *Motion for Summary Judgment*, I must first determine whether disputed issues of material fact exist or whether, as a matter of law, Parents’ request for continued special education eligibility and residential placement of Student at Riverview beyond her anticipated graduation date of August 29, 2022 must be denied as a matter of law. As to *Parents’ Counter-Motion for Summary Judgment*, I must first decide whether there is any genuine issue of material fact surrounding the partially accepted May 2022-May 2023 IEP and, if not, whether as a matter of law, this partially accepted IEP obligates the District to provide special education services to Student for its duration.

Hence, I first turn to the legal standards regarding graduation and termination of special education eligibility.

a. *Substantive Legal Standard Regarding Graduation and Special Education Eligibility.*

i. Establishing Graduation Requirements

States are not prohibited from establishing general diploma and graduation requirements that apply to all students in a non-discriminatory manner.<sup>32</sup> However, if a diploma is conditioned upon the passing of a competency test, the test results must reflect the Student’s actual achievement rather than her disability. Hence, accommodations and modifications must be made, as appropriate.<sup>33</sup>

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<sup>27</sup> *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 252 (1986); see also *In Re: Westwood Pub. Sch.*, BSEA No. 10-1162 (Figueroa, 2010); *In Re: Mike v. Boston Pub. Sch.*, BSEA No. 10-2417 (Oliver, 2010); *Zelda v. Bridgewater-Raynham Pub. Sch. and Bristol County Agricultural Sch.*, BSEA No. 06-0256 (Byrne, 2006).

<sup>28</sup> *Anderson*, 477 U.S. at 250.

<sup>29</sup> *Anderson*, 477 U.S. at 249.

<sup>30</sup> *Mack v. Great Atl. & Pac. Tea Co.*, 871 F.2d 179, 181 (1st Cir. 1989).

<sup>31</sup> *Medina-Munoz v. R.J. Reynolds Tobacco Co.*, 896 F.2d 5, 8 (1st Cir. 1990).

<sup>32</sup> See *Letter to FL. Dep’t of Educ.*, 102 LRP 37673 (OCR 2001).

<sup>33</sup> See *id.* See also 34 CFR 300.160(b)(2) (requiring the state to develop guidelines for the provision of appropriate accommodations and instructing IEP teams to select accommodations so as not to invalidate the score).

## ii. Massachusetts Graduation Requirements

Under Massachusetts law, a student (whether disabled or not) must meet two criteria in order to graduate from high school: (1) the student must pass the Massachusetts Comprehensive Assessment System (MCAS) test, and (2) the student must meet local requirements for graduation.<sup>34</sup> The Department of Elementary and Secondary Education (DESE) approved special education schools are, therefore, responsible for ensuring “that there are written procedures outlining how such schools will ensure that enrolled students also participate in state assessment programs in accordance with the assessment participation information provided on the student's IEP. Such procedures shall include how the approved school will provide for accommodations or alternate assessments when required.”<sup>35</sup>

Both a score appeal process and a performance appeal process exist relative to MCAS but may only be initiated by the superintendent of the school district in which the student is enrolled.<sup>36</sup> According to the Department of Elementary and Secondary Education’s (DESE) *MA Graduation Requirements and Related Guidance*, “For a student with a disability, the superintendent must file an appeal on behalf of an eligible student with a disability if the parent (or the student who is age 18 or older) requests it. The superintendent may initiate on his or her own an appeal for an eligible student with a disability with the consent of the parent (or the student who is age 18 or older).”<sup>37</sup>

In response to the suspension of in-person instruction and the cancellation of the spring 2020 MCAS assessments due to the COVID-19 emergency,<sup>38</sup> the Massachusetts Board of Elementary and Secondary Education (BESE) voted to temporarily modify the competency determination (CD) requirement<sup>39</sup> for high school students. Specifically, for students in the classes of 2021 and 2022, the CD was awarded in each subject as follows:

“For English language arts and mathematics – upon district certification that the student earned full credit for a relevant course aligned to the appropriate curriculum framework in that subject matter, and has demonstrated competency in that subject.

For science and technology/engineering – upon demonstration that the student earned credit for a course in the relevant subject matter and demonstrated

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<sup>34</sup> Mass. Gen. Laws c. 69, § 1D (i); *Doe v. Marlborough Pub. Sch.*, No. CIV. A. 09-11118-WGY, 2010 WL 2682433, at \*5 (D. Mass. June 30, 2010); *Administrative Advisory SPED 2018-2: Secondary Transition Services and Graduation with a High School Diploma*.

<sup>35</sup> 603 CMR 28.09(9)(d).

<sup>36</sup> See 603 CMR 30.04(2)(a) and 603 CMR 30.05(2)(a). There is no indication in the regulations that a parent or student may initiate the appeal process.

<sup>37</sup> *MA Graduation Requirements and Related Guidance* (last updated August 2, 2022), which may be found at <https://www.doe.mass.edu/mcas/graduation.html>.

<sup>38</sup> See *Fact Sheet: Impact of COVID-19 on Assessments and Accountability under the Elementary and Secondary Education Act (3/2020)*, which may be found at <https://oese.ed.gov/files/2020/03/COVID-19-OESE-FINAL-3.12.20.pdf>.

<sup>39</sup> 603 CMR 30.00 establishes standards relating to the Competency Determination required by M.G.L. c. 69, § 1D.

competency in one of the four tested disciplines (biology, chemistry, introductory physics, technology/engineering) during their high school career.”<sup>40</sup>

The modified CD process applies to “[a]ll eligible students who are educated in out-of-district settings are included in the tool. . . . Districts are responsible for submitting information for their out-of-district students and should communicate with their students’ outplacement settings to determine whether each eligible student has fulfilled the modified CD coursework requirements, in addition to following the guidelines stated in the previous question.”<sup>41</sup> In addition, because “[c]ertain students with IEPs [were] eligible for the modified CD if they [met] the [modified] eligibility criteria,” Districts were instructed to “contact parents to let them know that they have applied for the modified CD and to offer a Team meeting to discuss further. . . . IEP page 8 of the MA IEP forms (“Additional Information” and “Response” sections) or an N1 reflecting the student’s graduation date and the parent’s agreement [was to] be submitted through the ‘Competency Determination’ tool during an open collection window.”<sup>42</sup>

Massachusetts “authorizes one regular high school diploma for all publicly funded students, including students with IEPs.”<sup>43</sup> An out-of-district program may only issue a

“‘diploma’ and indicate ‘high school graduation’ **if** the student has met the state MCAS competency determination standard.

- a. In these circumstances, either the sending school district or the out-of-district program, or both jointly, may award a high school diploma to the student.
- b. If the high school diploma is awarded by the out-of-district program, then the diploma shall indicate that the student has met state standards for high school graduation, and that the diploma is awarded "by the [Name of out-of-district School or Program,] according to the standards of the Commonwealth of Massachusetts."
- c. A student who earns the high school diploma from the out-of-district placement is also entitled, upon request, to receive a diploma from the sending school district indicating that the student met state and local graduation standards under the auspices of the school district.”<sup>44</sup>

According to DESE, the “standards for award of the high school diploma include requirements set by the district and state standards including . . . the competency determination standard. However, by choosing to send a student to an out-of-district program, the public school district is

<sup>40</sup> *Modified Competency Determination FAQ*, May 2022, which may be found at <https://www.doe.mass.edu/mcas/modified-cd->.

<sup>41</sup> *Id.* (emphasis added)

<sup>42</sup> *Id.*

<sup>43</sup> *Administrative Advisory SPED 2018-2: Secondary Transition Services and Graduation with a High School Diploma*, which may be found at <https://www.doe.mass.edu/sped/advisories/2018-2.html>.

<sup>44</sup> *Administrative Advisory SPED 2002-4 — Revised: Special Education Students in Out-of-District Placements — Participation in MCAS Testing and High School Graduation Standards* which may be found at [https://www.doe.mass.edu/sped/advisories/02\\_4.html](https://www.doe.mass.edu/sped/advisories/02_4.html).

accepting the out-of-district program as sufficient to meet local requirements that are necessary for graduation in addition to the competency determination.”<sup>45</sup> For programs approved by DESE in accordance with 603 CMR 28.09, “the sending public school district shall assume that the approved special education school has aligned the school curriculum with the state curriculum frameworks consistent with 603 CMR 28.09(9)(b).”<sup>46</sup>

### iii. IDEA and Graduation Requirements

Typically, “award of academic credits, credit restoration and promotion” are “general education issues over which the BSEA has declined to take jurisdiction.”<sup>47</sup> Similarly, IDEA does not impose diploma requirements; “[g]raduation determinations are a regular education decision, [but] the BSEA retains jurisdiction over allegations involving a denial of FAPE regarding rejection of the final IEP.”<sup>48</sup> Pursuant to the IDEA, a student who has attained a high school diploma is no longer eligible for special education services, including transition services.<sup>49</sup>

The only requirement imposed by IDEA relative to graduation is that a school district may not properly graduate a student with a disability if he was not provided with a FAPE as required by the IDEA (e.g., a student did not receive appropriate transitional services, or his IEP was not reasonably calculated to provide him educational benefit).<sup>50</sup> As articulated in *Doe v. Marlborough Public Schools*, “nothing in the Massachusetts laws indicates that an eligible student **must** be graduated. Rather, eligibility requirements are set as prerequisites.”<sup>51</sup> Nevertheless, a parent or student with decision-making authority may not unilaterally “refuse” a diploma for which all requirements have been met. They may, however, reject the final IEP on the basis that the student did not receive FAPE.”<sup>52</sup> Moreover, once a diploma is issued,

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *In Re: Bay Path Reg'l Vocational Tech'l High Sch.*, BSEA #1805746 (Figueroa, 2018).

<sup>48</sup> *In Re: Blue Hills Reg'l Tech'l High Sch.*, BSEA # 2008213 (Figueroa 2016) (referencing *Administrative Advisory # 2018-2* which states that a “parent or student with decision-making authority may not unilaterally ‘refuse’ a diploma for which all requirements have been met. They may, however, reject the final IEP on the basis that the student did not receive FAPE. If this occurs, the student and district have opportunities to resolve the disagreement through mediation or formal dispute resolution procedures under the IDEA. This includes filing a due process complaint and requesting a hearing with the BSEA”); see *Morales v. Newport-Mesa Unified Sch. Dist.*, 768 F. App'x 717, 720 (9th Cir. 2019).

<sup>49</sup> 34 CFR 300.122(a)(3)(i); see M.G.L. c. 71B, § 1 (defining a “school age child” as one without a high school diploma); *Doe v. Marlborough Pub. Sch.*, No. CIV. A. 09-11118-WGY, 2010 WL 2682433, at \*5 (D. Mass. June 30, 2010); *Letter to Richards*, 17 LRP 1303 (1990).

<sup>50</sup> *Marlborough Pub. Sch.*, 2010 WL 2682433, at \*5 (D. Mass. June 30, 2010); *Kevin T. v. Elmhurst Comm. Sch. Dist. No. 205*, 2002 WL 433061, at \*14 (N.D.Ill. Mar. 20, 2002) (citing *Chuhuran v. Walled Lake Consol. Sch.*, 839 F.Supp. 465, 474 (E.D.Mich.1993), *aff'd*, 51 F.3d 271 (6th Cir. 1995)); *In Re: Caleb & Nauset Public Schools*, BSEA #15-05976 / 15-07508 (Byrne, 2016); *Quabbin Regional School District*, BSEA # 05-3115 and 05-4356 (Crane, 2005).

<sup>51</sup> *Marlborough Pub. Sch.*, 2010 WL 2682433, at \*6 (citing to several cases) (emphasis added); see *Geraldine M. v. Ashland Pub. Sch.*, 501 IDELR 265 (SEA MA, 1979) (finding that although the school district’s graduation criteria were legitimate and Geraldine had met them successfully, her particular situation involving a very recent diagnosis of hearing loss for which she never received special education services necessitated continuation of special education services).

<sup>52</sup> *Administrative Advisory SPED 2018-2: Secondary Transition Services and Graduation with a High School Diploma.*

eligibility for special education may not be “continued,” and the only “proper remedy” for a denial of a FAPE is compensatory services.<sup>53</sup>

In *Board of Education v. Rowley*, the Supreme Court set out a two-part test for determining whether there has been compliance with IDEA: (1) “has the State complied with the procedures set forth in [IDEA]” and (2) was the individualized educational program “reasonably calculated to enable the child to receive educational benefits.”<sup>54</sup> In addressing claims of procedural violations, 20 USC §1415(f)(3)(E)(ii) permits the Hearing Officer to find that they rose to the level of deprivation of a FAPE only when the alleged procedural violation impeded the child’s right to a free appropriate public education; significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or caused a deprivation of educational benefits.<sup>55</sup>

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.<sup>56</sup> Educational “levels of progress must be judged with respect to the potential of the particular child.”<sup>57</sup> Although absence of progress toward the IEP goals *per se* does not make an IEP inadequate,<sup>58</sup> “[a]ctual educational progress can (and sometimes will) demonstrate that an IEP provides FAPE.”<sup>59</sup> “It does not work vice versa, however. As the First Circuit observed[,] ‘to impose the inverse of this rule—that a lack of progress necessarily betokens an IEP's inadequacy—would contradict the fundamental concept that [a]n IEP is a snapshot, not a retrospective.’”<sup>60</sup> “[T]he inquiry is not whether the student was fully prepared for independent living or whether he continued to have significant problems in some areas. All these arguments tend to look at the **result**, where the correct standard is to look at whether the school, by virtue of a reasonably calculated IEP, made educational benefit available to the Student.”<sup>61</sup> To determine

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<sup>53</sup> *Dracut Sch. Comm. v. Bureau of Special Educ. Appeals of the Massachusetts Dep't of Elementary & Secondary Educ.*, 737 F. Supp. 2d 35, 55 (D. Mass. 2010) (“issuance of the diploma was improper because C.A. was denied a FAPE. If the Hearing Officer had wanted to continue eligibility, he should have continued the “stay put” order, issued pursuant to 20 U.S.C. § 1415(j), which would have prohibited Dracut from giving C.A. his diploma. Now that Dracut has issued the diploma, the proper remedy is compensatory services”); see *In Re: Wareham Pub. Sch.*, BSEA # 2202891 (Berman, 2021) (“because Student has met all local graduation requirements, and has not been deprived of FAPE, Wareham may graduate him, thereby terminating his special education eligibility, unless he is entitled to compensatory services”).

<sup>54</sup> 458 U.S. at 206-207.

<sup>55</sup> See *Geraldo and Springfield Pub. Sch.*, BSEA #06-4908 and 06-5863 (Byrne, 2007) (where the district unenrolled a student, the Hearing Officer found the “extent of procedural noncompliance in this matter [to be] startling”). On the other hand, procedural violations that are technical or *de minimis* are not compensable. See *In Re: Student v. Winchester Pub. Sch.*, BSEA # 18-04106 (Berman, 2018).

<sup>56</sup> *Andrew F. v. Douglas County School District Re-1*, 137 S.Ct. 988, 992 (2017); see *Administrative Advisory SPED 2018-2: Secondary Transition Services and Graduation with a High School Diploma*.

<sup>57</sup> *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 29 (1st Cir. 2008); see *Marlborough Pub. Sch.*, 2010 WL 2682433, at \*8.

<sup>58</sup> *Lessard*, 518 F.3d at 29.

<sup>59</sup> *Id.* at 18.

<sup>60</sup> *Marlborough Pub. Sch.*, 2010 WL 2682433, at \*8 (internal quotations omitted).

<sup>61</sup> See *Marlborough Pub. Sch.*, 2010 WL 2682433, at \*9 (finding that the hearing officer “did not use the right approach” as the Decision “incorrectly tend[ed] to look at the Student's IEP as if it were a retrospective, not a



whether a FAPE is provided does not require the court to decide whether all transition goals were met.<sup>62</sup>

## 2. Application of Law:

I first address Parents' *Counter-Motion*. I note at the outset that the plain language of the Settlement Agreement does not explicitly preclude Parents from seeking services for Student for the period following its termination. Specifically, Parents waived all claims that existed or may have existed between the parties only through the date that the Settlement Agreement was executed, and the term of the Settlement Agreement concluded at the end of the 2021-2022 school year (including summer 2022). (S-2) In addition, the BSEA clearly has jurisdiction over this matter, which involves the possible termination of special education eligibility for a student who has not yet received her diploma but may imminently do so.<sup>63</sup> Hence, despite the District's argument, the controversy between the parties is very much currently "live,"<sup>64</sup> as it was when the Request for Hearing was filed. (Request for Hearing; Opposition; S-12)

Parents argue, in part, that this matter is distinguishable from *In Re: Harvard Pub. Sch.*, BSEA # 2108881, because "in Harvard, the school district proposed an IEP that ended at the conclusion of the student's senior year, on or about the date of graduation. In the instant case, [the District] has proposed an IEP that starts on 5/23/22 and provides services through 5/22/23...[, and] the Parents accepted this IEP in part on 6/21/22." (Opposition, internal citations omitted) According to Parents, this obligates the District to provide special education services to Student beyond August 29, 2022, the anticipated graduation date delineated in said IEP. (Opposition; S-12)

However, Parents' argument that Student is entitled to rely on the District's proposal for an IEP term extending beyond the graduation date of August 29, 2022 is unpersuasive, because it views the May 2022-2023 IEP in a vacuum. Parents are correct that, as required by law, Student's May 2022-2023 IEP includes "a statement of the specific educational services to be provided to such child and the projected date for initiation and anticipated duration of such service,"<sup>65</sup> and that such "anticipated duration" is through May 22, 2023. Parents also assert correctly that any accepted portions of a proposed IEP must be implemented immediately.<sup>66</sup>

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snapshot"); *K.C. ex rel. Her Parents v. Nazareth Area Sch. Dist.*, 806 F. Supp. 2d 806, 825 (E.D. Pa. 2011); *In Re: Wareham Pub. Sch.*, BSEA # 2202891 (Berman, 2021) ("the IDEA does not require schools to remediate all of a student's disability-related challenges before graduating him"); *In Re: Harvard Pub. Sch.*, BSEA # 2108881 (Kantor Nir, 2021) (finding that school districts are not obligated to continue services for the duration that a child's needs persist); *Carver Pub. Sch.*, BSEA # 00-2574 (Beron, 2001) ("failure to meet goals and objectives are not grounds for invalidating a diploma"); *In re: Child with Disability*, 88-18, 401 IDELR 220 (VA SEA, 1988) ("it is firmly established that while a school district is responsible for formulating and pursuing IEP goals and objectives, it is not bound to fulfill them. Similarly, a school district is not required to provide all possible services.... [P]rovision of a FAPE does not require "the furnishing of every special service necessary to maximize each handicapped child's potential"); *Bd. of Ed.*, 10-0043, 55 IDELR 113 (CT SEA, 2010) ("the transition plan does not need to be the best as long as it provides the student with the educational benefit to allow her to proceed to post-secondary employment, education or community involvement").

<sup>62</sup> *Nazareth Area Sch. Dist.*, 806 F. Supp. 2d at 826

<sup>63</sup> See 603 CMR 28.08(3)(a).

<sup>64</sup> See *In Re: Student v. Bay Path Regional Vocational Technical High School*, BSEA # 18-05746 (Figueroa, 2018).

<sup>65</sup> See 34 CFR 300.320 (a)(7).

<sup>66</sup> See 34 CFR 300.323(c); 603 CMR 28.05(7)(b).

Nevertheless, an IEP should reflect the decisions of the Team as to special educational needs and appropriate programming,<sup>67</sup> because the “IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding [the child’s special education].”<sup>68</sup> Here, the exhibits make clear that the parties disagreed about graduation. (S-8; S-9; S-13) There was no “meeting of the minds”<sup>69</sup> regarding provision of special education services beyond August 2022 at either the April or May 2022 IEP Team meetings. (S-8; S-9) Nor do Parents argue that there was such a “meeting of the minds”; instead, they argue that Student should be able to rely on Parents’ partial acceptance of an IEP, the end date of which is May 22, 2023.

Such reliance would, however, be misplaced. Parents’ argument that Student’s IEP specifies that she would meet her goals by May 23, 2023 (e.g., “By May 2023, given fiction and nonfiction text, [Student] will analyze and respond in writing...”) is unpersuasive. (Opposition; S-12) Although the May 2022-2023 IEP was proposed for a 12-month period, it also indicated, both in the IEP itself and on the Transition Planning Form, that Student would graduate on August 29. (S-12) Moreover, in the spring of 2022, Parents were active participants in Student’s IEP meetings where Student’s graduation was discussed. In addition, because graduation from high school with a regular diploma constitutes a change in placement triggering the procedural safeguards of the IDEA, Parents were provided with prior written notice on 4/29/2022 and again on 5/23/2022 informing them of the District’s intention to graduate Student, thereby terminating her entitlement to the services in the IEP.<sup>70</sup> (S-8; S-9; S-16) For these reasons Parents failed to meet their initial burden to demonstrate that there is no genuine issue of material fact entitling them to judgment as a matter of law.<sup>71</sup> They are not entitled to summary decision in their favor.

I now turn to the District’s *Motion*. The key issue in the *Motion* is whether Student remains eligible for special education and related services and continued residential placement at Riverview. Initially, Parents’ Hearing Request sought “recission” of Student’s diploma, although, at that time, Student had not been issued a diploma and her anticipated graduation date was August 29, 2022. (Hearing Request) In response, the District argued that a Hearing Officer has no authority to order such a remedy. Parents also indicated that they would not accept a diploma. (S-13) Subsequently, on August 15, 2022, the District issued a Prior Written Notice

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<sup>67</sup> See, e.g., *Pollack v. Reg'l Sch. Unit 75*, No. 2:13-CV-109-NT, 2015 WL 1947315, at \*15 (D. Me. Apr. 29, 2015) (team agreements should be reflected in the IEP document); *Jill W. v. Hawaii, Dep't of Educ.*, No. CIV. 12-00061 SOM, 2012 WL 4472282, at \*7 (D. Haw. Sept. 25, 2012) (finding that parent did not meet her burden to show that the IEP failed to accurately reflect what the IEP team had decided with respect to services); *In Re: Nathan F.*, BSEA # 96-1706 (Byrne, 1996) (finding that there was no “meeting of the minds” on modified speech-language services for Student as a result of the Team meeting, and therefore the district had no obligation to provide services other than those set out in the last accepted IEP); *J. Sterling Morton High Sch. Dist. 201*, 104 LRP 18292 (SEA IL, 2013) (“The record shows [ ] and his parents had advance knowledge of his anticipated graduation date” as it was stated in the IEP). See also *IEP Process Guide*, June 2001, which can be found at <https://www.doe.mass.edu/sped/iep/proguide.pdf> (“The IEP should reflect the decisions made at the Team meeting...”).

<sup>68</sup> *Pollack*, 2015 WL 1947315, at \*14.

<sup>69</sup> *In Re: Nathan F.*, BSEA # 96-1706.

<sup>70</sup> 34 CFR 300.102 (a)(3)(iii). See *Letter to Richards*, 17 IDELR 288 (OSERS 1990).

<sup>71</sup> See *Anderson*, 477 U.S. at 252.

informing Parents that Bedford has issued a diploma effective August 15, 2022 and that the diploma and Student's final transcript were available for pick up. (S-14; S-15)

I find the District's attempt to award Student her diploma two weeks prior to her anticipated graduation date of August 29, 2022 to be troublesome. DESE's *Administrative Advisory SPED 2018-2: Secondary Transition Services and Graduation with a High School Diploma*, states as follows:

“In the final year of high school, if the student has earned the CD, is on track to complete all local graduation requirements, and the school has provided the student's IEP services, including secondary transition services that meet the requirements of FAPE, the district should plan to issue a regular high school diploma **consistent with the projected graduation date included in the current IEP. This projected date may be the same as the student's age peers, or it may be a later date consistent with the student's IEP.**”<sup>72</sup>

At the time of the filing of the Hearing Request and the instant Motion, Student had not yet been issued a high school diploma, and her anticipated graduation date in the May 2022-2023 IEP was noted as August 29, 2022.<sup>73</sup> (S-9) Parents indicated that they would not accept Student's diploma at that time. (S-13) Even if Student's last day of ESY at Riverview was August 13, the District could not issue a diploma to Student prior to August 29 in accordance with the projected graduation date in her IEP. Therefore, Student has not yet received a high school diploma.

I next turn to the question of whether Student has satisfied MCAS and has met local graduation requirements.<sup>74</sup> I note that neither courts, hearing officers, or IEP Teams set the academic standards for regular high school diplomas.<sup>75</sup> The “establishment of proficiency standards for a high school diploma is a state function which is not addressed by the IDEA or federal regulations.”<sup>76</sup> As such, state law and policy, as well as school district policies determine diploma and graduation requirements.<sup>77</sup>

There is no genuine issue of material fact that Student has satisfied her MCAS requirement for graduation. Parents argue that Student received a Certificate of Achievement because, in part, she did “not pass MCAS.” (Parents' Reply; P-1; P-2; P-3; S-8) However, due to the COVID-19 pandemic, no student similarly situated participated in MCAS; moreover, DESE<sup>78</sup> modified the

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<sup>72</sup> Emphasis added.

<sup>73</sup> I note, in addition, that Counsel requested that I issue this Ruling prior to August 29, 2022, because it was Student's anticipated graduation date.

<sup>74</sup> Mass. Gen. Laws c. 69, § 1D (i); *Doe v. Marlborough Pub. Sch.*, No. CIV. A. 09-11118-WGY, 2010 WL 2682433, at \*5 (D. Mass. June 30, 2010); *Administrative Advisory SPED 2018-2: Secondary Transition Services and Graduation with a High School Diploma*.

<sup>75</sup> See *Stock v. Mass. Hosp. Sch.*, 392 Mass. 205, 210 (1984); see also *Carver Pub. Sch.*, BSEA # 00-2574 (Beron, 2001).

<sup>76</sup> *Carver Pub. Sch.*, BSEA # 00-2574 (Beron, 2001).

<sup>77</sup> See *Letter to Anonymous*, 22 IDELR 456 (OSEP 1994); see also *Rene ex rel. Rene v. Reed*, 726 N.E.2d 808, 820 (Ind. Ct. App. 2000) (finding that “the administrative agency does not have the authority to declare a state statute unconstitutional or to give a student with disabilities permission to receive a diploma without passing” state requirements for graduation).

<sup>78</sup> See *Bd. of Educ. of Northport-E. Northport Union Free Sch. Dist. v. Ambach*, 90 A.D.2d 227, 236, 458 N.Y.S.2d 680, 686 (1982), *aff'd*, 60 N.Y.2d 758, 457 N.E.2d 775 (1983) (“those entities which are constitutionally and statutorily delegated the authority to conduct and manage our State educational affairs can regulate ... the integrity

CD standards for all students scheduled to graduate in 2022, including students in out-of-district placements, by allowing school districts to certify that the student had earned full credit for relevant courses aligned to the appropriate curriculum framework in that subject matter, and had demonstrated competency in that subject.<sup>79</sup> DESE provided a competency determination tool for school districts to utilize, and, in this case, Bedford utilized the same when seeking the CD modification waiver for Student.<sup>80</sup> Based on the information provided by Riverview, Student was found to have met the CD standard established by DESE. (S-6) As such, even viewing the facts regarding Student's attainment of the CD in the light most favorable to Parents, I conclude Student has satisfied the state MCAS requirement for graduation.<sup>81</sup>

Similarly, there is no genuine issue of material fact that Student has satisfied her local graduation requirements. (Request for Hearing; Opposition; S-7; S-8; Parent's Reply; P-1; P-2; P-3) Student has satisfied her "goal requirements" and earned sufficient credits for graduation and has passed all the requisite coursework pursuant to Riverview's graduation policy.<sup>82</sup> (S-7; S-11; S-16; S-17) Whether Student has taken classes "comparable" to regular high school classes is not relevant or material.<sup>83</sup> (P-3) Instead, because Riverview is an out-of-district program, it may only issue a "'diploma' and indicate 'high school graduation' if [Student] has met the state MCAS competency determination standard."<sup>84</sup> Because Student has earned sufficient credits for graduation pursuant to Riverview's graduation policy, and she has met the CD standard for ELA, Mathematics and Science, Riverview's refusal to issue Student a diploma is inconsistent with its own records and policy. (S-5; S-6; S-7; S-17; S-18) As such, even viewing the facts regarding whether Student has met local graduation requirements in the light most favorable to Parents, I

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of a high school diploma").

<sup>79</sup> *Modified Competency Determination FAQ*, May 2022.

<sup>80</sup> DESE's *Modified Competency Determination FAQ* instructs school districts to contact parents to let them know that they have applied for the modified CD and to offer a Team meeting to discuss the matter in more detail. However, the *Modified Competency Determination FAQ* is silent as to the steps that need to be taken by a school district (or a parent) where parents do not agree to the modified CD. Nor does the process for obtaining modified CD include the option to appeal DESE's decision.

<sup>81</sup> In its Motion, the District argues that "Parents seek an order that Bedford provide [Student] with extended eligibility for special education services after she is properly graduated. [However, as] a Hearing Officer lacks authority to order extended eligibility beyond graduation, Bedford requests the Hearing Officer enter judgment as a matter of law in Bedford's favor." (Motion) In their Opposition, Parents argue that Student has yet to receive her high school diploma, and that therefore this matter is distinguishable from *In Re: Harvard Pub. Sch.*, BSEA # 2108881. (Opposition; S-12) Parents' argument is persuasive only to the extent that, because Student has not yet received her diploma, I would not be barred from finding that Student continues to be eligible for special education services. See *Dracut Sch. Comm.*, 737 F. Supp. 2d at 55.

<sup>82</sup> I note that Riverview also requires completion of six semesters of Physical Education for graduation. It is unclear from Student's transcript whether she has completed this requirement, but as neither party disputes that she has, I do not find it necessary to address this.

<sup>83</sup> A genuine dispute as to a material fact exists if a fact that "carries with it the potential to affect the outcome of the suit" is disputed such that "a reasonable jury could resolve the point in the favor of the non-moving party." *French*, 15 F.4th at 123.

<sup>84</sup> *Administrative Advisory SPED 2002-4 — Revised*. Parents initially asserted in their Opposition that the District has not produced evidence that Student has met graduation requirements, but they offered no evidence to the contrary. (Opposition) Parents subsequently offered exhibits P-1 to P-3 to demonstrate that, according to Riverview, Student has not met Riverview's graduation requirements. The District then submitted S-17, Riverview School's Student/Family Handbook.

conclude Student has satisfied the local requirements for graduation, and I find that the District is entitled to summary judgment on this issue.

I next examine whether there is any genuine issue of fact as to whether Student received a FAPE.<sup>85</sup> I note at the outset that I am precluded from examining the District's provision of FAPE to Student for any time prior to March 2019<sup>86</sup> by Paragraph 7 of the Settlement Agreement, which releases all claims that exist or may exist between the Parties relating to Student's regular education, special education, and related services from the time she became a resident of the District through the date that the Settlement Agreement was fully executed. (S-2)

There is no genuine issue of material fact that Student was provided with a FAPE during the remainder of 2019-2020, the 2020-2021 and the majority of the 2021-2022 school years.<sup>87</sup> To the contrary, Riverview was Parents' program of choice for Student, and Parents now seek its continuation for 2022-2023.<sup>88</sup> In addition, the evidence before me shows that Student has made progress at Riverview; Parents offered no evidence otherwise nor argued that Student should have made greater progress than she did or that her progress was not commensurate with her abilities.<sup>89</sup> (S-11) Nor do Parents assert that Student's transition services were improperly implemented. (Hearing Request; S-2) Parents rely on NESCA's observation that because "[Student's] cognitive profile and her deficits in functional academics, adaptive functioning, job readiness, and community safety impede her ability to succeed in less restrictive environment

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<sup>85</sup> See *Marlborough Pub. Sch.*, 2010 WL 2682433, at \*6. I also note that "to determine whether a school district properly graduated an eligible student, a hearing officer must examine first, whether the district complied with the procedural requirements of the IDEA by providing appropriate prior notice of the impending graduation." Because in the instant matter Parents have asserted no procedural violations regarding notice, I need not undertake this analysis. See *In Re: Wareham Pub. Sch.*, BSEA #2202891 (Berman, 2021) (indicating that "this notice requirement is satisfied by documenting Student's anticipated graduation date in his IEP") (internal citations omitted).

<sup>86</sup> Even absent the Settlement Agreement, the 2 year statute of limitations would preclude relief for such claim. 20 USC § 1415(f)(3)(C).

<sup>87</sup> I also note that a plethora of BSEA decisions and rulings have established that once a fully accepted and implemented IEP has expired, hearing officers are precluded from re-visiting it, as long as the parent had an opportunity to participate in the development of the IEP in question and received the notice of parental rights regarding IEP acceptance/rejection and dispute resolution options. See, e.g., *In Re: Lincoln Pub. Sch.*, BSEA # 2007623 (Berman, 2021); *In Re: Blue Hills Reg'l Tech'l High Sch.*, BSEA # 2008213 (Figuroa, 2016); *Nelson and Taunton Pub. Sch.*, BSEA # 10-8142 (Byrne, 2011). Here, the District administratively issued IEPs for the term of the Settlement Agreement in accordance with the Settlement Agreement; Parents fully accepted each IEP as appropriate. Parents cannot now assert that those fully accepted, expired IEPs were not appropriate.

<sup>88</sup> As in *In Re: Harvard Pub. Sch.*, even if I view all evidence and inferences in the light most favorable to the Parents, I am disinclined to find insufficient progress where Parents are seeking continuation of the same program they allege did not result in sufficient progress. See *In Re: Norwood Public Schools*, BSEA # 11-5444 (Crane, 2011) ("One may reasonably expect, and it is not disputed, that whatever progress was made in the 2010-2011 school year would likely continue in the next school year if Norwood were to implement its currently-proposed IEP. Therefore, to a large extent, the appropriateness of this IEP will be determined on the basis of whether Student has been achieving sufficient progress during the 2010-2011 school year").

<sup>89</sup> *Lessard*, 518 F.3d at 29; *Marlborough Pub. Sch.*, 2010 WL 2682433, at \*8. Although an IEP is not a guarantee of a specific educational or functional result for a student with a disability, the IDEA does provide for revisiting the IEP if the progress the IEP Team expects is not occurring. See *Administrative Advisory SPED 2018-2: Secondary Transition Services and Graduation with a High School Diploma*. Here, no evidence was presented that the IEP Team reconvened to discuss Student's progress (or lack thereof). Both the April 2022 and the May 2022 IEP meetings (together) were convened as "annual" IEP meetings. (S-8; S-9) Although Riverview staff discussed Student's ongoing needs, no assertion was made that Student had not made effective progress. (S-8; S-9; S-11)

and competitive employment, [she] will require special education programming until her 22nd birthday.” (S-10) They assert that Student is “not ready” to graduate because she continues to have significant needs and to require a substantial level of support. (Hearing Request; S-8; S-9; S-10) However, the mere fact that Parents are dissatisfied with Student’s current skill level does not establish a failure to provide a FAPE.<sup>90</sup> (Hearing Request; S-8; S-9) Rather than guaranteeing a specific result, the “results-oriented process” called for by IDEA’s definition of transition services<sup>91</sup> requires goals, objectives, and data collection to show that meaningful educational progress was made in line with the student's particular needs and interests, and that the district's plan accomplished its aims, namely to help prepare the student for her postsecondary experience.<sup>92</sup> Student need not be provided services and interventions until her potential is maximized,<sup>93</sup> and the District is not obligated to provide Student with special education services until she meets all goals or achieves a level of independence with which Parents are comfortable or while her needs persist.<sup>94</sup>

On June 21, 2022, Parents partially rejected the May 2022-2023 IEP alleging that it was not reasonably calculated to offer Student a FAPE. (S-12; Request to Amend) However, Student continued to attend Riverview per her stay-put IEP through August 13, 2022 (the last day of ESY). Per my discussion *supra*, the Riverview (stay-put) IEP provided Student with a FAPE. Therefore, a genuine issue of fact exists relative to whether the May 2022-2023 IEP would provide Student a FAPE from August 14, 2022 until August 29, 2022, her anticipated date of graduation. Thus, I find that the District is not entitled to summary judgment on this limited issue.<sup>95</sup>

## VI. CONCLUSION

My determination in this matter is based upon careful consideration of the *Hearing Request* as amended, the District’s *Motion for Summary Judgment*, memorandum of law, and supporting documents, as well as the *Parents’ Opposition to Bedford Public Schools’ Motion for Summary*

<sup>90</sup> See, e.g., *Littleton Public Schools*, BSEA # 83-0691 (Sherwood, 1984) (fact that Student did not achieve the reading skill Parent desired did not render him ineligible for graduation).

<sup>91</sup> See 20 U.S.C. § 1401(34) (transition services must be “designed to be within a results-oriented process, that is focused on improving the academic and functional achievement” of students with disabilities). See also 24 C.F.R. § 300.43.

<sup>92</sup> According to the federal Department of Education, the term "results-oriented process" should be given its "plain meaning." 71 Fed. Reg. 46,579 (2006); see *High v. Exeter Twp. Sch. Dist.*, No. CIV.A.09-2202, 2010 WL 363832, at \*6 (E.D. Pa. Feb. 1, 2010) (“The IDEA is meant to create opportunities for disabled children, not to guarantee a specific result”); *Caribou School Department*, 01.135, F, 35 IDELR 118 (SEA ME 2001) (“It is true that the IDEA does not require school departments to guarantee a specific outcome [but] they are required to identify and provide those services that would prepare the student to have a realistic chance at achieving their goal or to provide sufficient guidance to assist the student in modifying his/her goal”).

<sup>93</sup> See *In Re: Student v. Winchester Public Schools*, BSEA # 18-04106 (Berman, 2018) (services and interventions need not be perfect nor need they be designed to maximize Student’s potential, but in ensuring that services are “results-oriented,” districts should seek to encourage student independence, support generalization of skills, and promote the principle of least restrictive environment).

<sup>94</sup> See *Tindell v. Evansville-Vanderburgh Sch. Corp.*, 805 F. Supp. 2d 630, 654 (S.D. Ind. 2011) (“the parties always contemplated that Chris would require continued assistance in some areas of independent living following graduation”). In the instant case, Student has been found eligible for DDS and has been assigned a caseworker. (P-10)

<sup>95</sup> See *Anderson*, 477 U.S. at 252.

*Decision and Parents' Counter-Motion For Summary Judgment*, memorandum of law, and supporting documents, and the relevant law as it applies to the unique facts of this matter, I conclude that Parents did not meet their initial burden to demonstrate that they are entitled to judgment as a matter of law that their partial acceptance of the May 2022-2023 IEP obligates the District to provide special education services to Student for its duration. They are thus not entitled to summary decision in their favor.

On the other hand, the District has met its initial burden to establish that there is no genuine issue of material fact with respect to Student's having met state and local graduation requirements, thus entitling Bedford to judgment as a matter of law on this issue. Furthermore, the District has met its burden to establish that no genuine issue of fact exists relative to whether Student received a FAPE until August 14, 2022. Nevertheless, Bedford has failed to meet its initial burden to establish that there is no genuine issue of material fact as to whether the District offered Student a FAPE for the period beginning on August 14, 2022 and ending on August 29, 2022. Therefore, the District is not entitled to summary decision in its favor on this issue.

## **VII. ORDER**

*Parents' Request to Amend the Hearing Request* is ALLOWED. *Parents' Counter-Motion For Summary Judgment* is hereby DENIED. The *Bedford Public Schools' Motion for Summary Judgment* is hereby ALLOWED, in part, and DENIED, in part.

Because the timelines for hearing have been recalculated, the Hearing currently scheduled for August 30, 2022 will be rescheduled, and the parties will participate in a conference call on August 23, 2022 at 10:00AM to identify dates for hearing.<sup>96</sup> The hearing will proceed on the following issues:

1. Whether the May 2022-2023 IEP was reasonably calculated to offer Student a FAPE from August 14, 2022 through August 29, 2022;
2. Whether Student was denied a FAPE by the District's failure to propose a specific placement for Student in the May 2022-2023 IEP for the period between August 14, 2022 through August 29, 2022; and
3. If the answer to (1) or (2) is "yes," what is the appropriate remedy?

So Ordered by the Hearing Officer:

/s/ Alina Kantor Nir  
Alina Kantor Nir

Dated: August 19, 2022

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<sup>96</sup> As a result of the recalculation of the timelines, the initial hearing date is September 9, 2022. However, the undersigned hearing Officer is scheduled in another hearing on said date. During the conference call, the parties will identify additional dates in September for hearing. Because Student will be remaining at Riverview during the pendency of this appeal, I will be disinclined to grant any additional postponement requests unless made by the District.





.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 (1<sup>st</sup> 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.