

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

**Quincy Public Schools**

**BSEA # 2005974**

**DECISION**

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

**PROCEDURAL HISTORY**

Quincy Public Schools (hereinafter, Quincy) requested an expedited hearing on January 3, 2020 which was scheduled for January 21, 2020. The hearing was held on the scheduled date, both Parties made oral closing arguments, and the record closed.

Those present for all or part of the hearing were:

Mother

Father

Erin Perkins

Director of Special Education, Quincy Public Schools

Kevin Mulvey

Deputy Superintendent, Quincy Public Schools

Corrine Hickey

Special Education Teacher, Quincy Public Schools

Donna Cunningham

Team Administrator, Quincy Public Schools

Nancy McLaughlin

Guidance Counselor, Quincy Public Schools

Margaret MacNeil

Principal, Parker School, Quincy Public Schools

Alisia St. Florian

Attorney, Quincy Public Schools

Alexander Loos

Court Reporter

Catherine Putney-Yaceshyn

Hearing Officer

The official record of this hearing consists of Quincy Public Schools' exhibits marked S-1 through S-27; Parents' exhibits marked P-1 through P-11 and approximately two and a half hours of recorded oral testimony.

**ISSUE**

Whether maintaining Student's current placement is substantially likely to result in injury to Student or others.

## **SUMMARY OF THE EVIDENCE**

1. The student (hereinafter, “Student”) is a nearly 9-year-old third grade student within the Quincy Public Schools. His last accepted IEP was for the period from November 13, 2017 through November 12, 2018, Student’s first grade. He was deemed eligible for special education under the health category with a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD). He was also diagnosed with Oppositional Defiant Disorder and unspecified depressive disorder in a Children’s Hospital report dated August 17, 2017. (S-26) Student was attending the Quest program at the South Shore Educational Collaborative at that time. His IEP had one goal, social/emotional functioning. The IEP noted that when Student is “in a calm space, [he] is able to attend to and participate in both preferred and non-preferred activities.” It noted, however, that when Student is frustrated or dysregulated he could become argumentative, disruptive, and engage in impulsive behavior. The A Grid of the IEP contained a consultation with the school counselor 1 x 15 minutes per week and a consult with the occupational therapist or assistant 1 x 10 minutes per week. The C Grid contained academic and behavioral support 1630 minutes per week; 1:1 counseling 1 x 30 minutes per week; social skills group 2 x 30 minutes per week; and extended school year services for 1440 minutes per week. Parents accepted the IEP and placement on December 4, 2017. (S-21)
2. The Team met on or around November 5, 2018 for Student’s annual review meeting. Student continued to be placed in the Quest program at that time. The IEP contained one goal in the area of social/emotional functioning. The Grids remained substantially similar to the prior year’s grid, with the addition of extended school year social skills with a counselor for 1 x 30 minutes per week. Parents neither accepted nor rejected the IEP. (S-19, P-8)
3. On or around April 22, 2019, Student transitioned from the Quest Program at South Shore Collaborative to the STARS program at the Parker Elementary School within the Quincy Public Schools. (S-19) Ms. Perkins explained that the Team had discussed the possibility of Student transitioning to the STARS program during their prior Team meeting and Student made the transition in the spring because the Parents’ relationship with the Quest program staff had deteriorated. (Perkins)
4. The STARS program is a social emotional program for students in Kindergarten through fifth grade at the Parker Elementary School. There are three STARS classes and full time counselors are assigned to the program. The student to staff ratio is no more than twelve students in a class, a teacher, and one to three paraprofessionals in each room. The program uses a token reward system in which students have behavior plans and earn rewards. Between April and June 2019 Student did well in the STARS program. The Team discussed reviewing Student’s progress to determine whether he could participate in the inclusion setting during the following school year. (Perkins)
5. Student began having behavioral difficulties when he returned to school in the fall of the 2019-2020 school year, his third grade. (Perkins) Corrine Hickey was Student’s teacher

during both the 2018-2019 and 2019-2020 school years. (Hickey) On October 7, 2019, Student was “periodically upset and non-compliant throughout the day...” During recess he took another student’s ball and threw it over a fence and it rolled under a car. He told a staff person that he had lost a bead from his necklace. She helped him look for it until it was time to return to class. After initially returning to class calmly, he became agitated while eating lunch in the classroom. He banged an easel, banged chairs into the easel and tipped the easel and chairs over. He threw markers and erasers. He then left the classroom and ran to the restroom. In the restroom he climbed on stalls, stood on sinks, flushed toilets, and climbed onto the shelf in the bathroom by the window, which is approximately seven feet off the ground. (McLaughlin, P-1, S-4) He opened the tilt-in window, stomped on it, and attempted to remove the screen. The incident lasted for approximately forty-five minutes. During this time staff remained in the restroom and tried to calm Student and a staff person went outside near the bathroom window. Parents were called to dismiss Student when his behavior was deemed unsafe. Both parents arrived and Student was carried out on his father’s shoulders. Parents were concerned about the source of Student’s agitation and, in response, Mother asked why nobody had gone to find Student’s bead. (P-1, S-4)

6. On October 25, 2019, Quincy documented another behavioral incident. Student was having difficulty with a writing activity, but Ms. Hickey, his classroom teacher, was able to calm him. Student transitioned to another activity in the hall with a classroom aide and two other students. Ms. Hickey heard loud yelling and laughing and went out to the hallway and reminded Student what behavior was expected in order for him to earn his points. Student then walked to a door that led outside to a parking lot. Ms. Hickey reminded him what the consequence would be if he did not comply with instructions. Student became agitated and was throwing chairs and pencils. Ms. Hickey went inside the classroom to call for assistance. Student ran out the back parking lot door and climbed a fence. He climbed over the fence into the dumpster area, removed a pole from the fence door and began hitting it against the dumpster. He then climbed on top of the dumpster. A neighbor saw Student on the dumpster and stated that she was calling the police. Parents were notified, the school resource officer responded and the police responded to the neighbor’s 9-1-1 call. Father arrived and Student climbed down from the dumpster. Father dismissed Student and asked for permission for Student to play on the playground, which was granted. (S-7, P-2)

Father and Student returned to the school building asked the guidance counselor for a drink of water and for permission to dismiss another student (who had been playing with Student on the playground) to have a play date with Student. The guidance counselor refused the request to dismiss another Student and Father became agitated and said he would not be able to get Student to the car safely due to his disappointment in not being able to have a play date with his friend. Student then refused to leave the guidance office and Father became further agitated and yelled at the staff. Student threw pens, pencils, and water around the office. The school resource officer escorted Student and Father to the car. (S-7, P-2)

7. Margaret MacNeil sent Parents a letter dated October 28, 2019, informing them that Student engaged in unsafe, disruptive, and destructive behavior on October 25, 2019. The letter stated that it was a very serious matter which warranted suspension from school. It noted there would be a suspension hearing on October 28, 2019 and because of Student’s status

as a special education student the Team would review how to best support Student at his upcoming annual review meeting. (S-15)

8. Another significant behavioral incident occurred on October 30, 2019. Ms. Hickey was at an IEP meeting and Student refused to participate in a social studies activity. Student was told he would not be permitted to engage in the next activity with his class until he completed the social studies. Student went to the rug area and rolled around. He then began throwing markers with a peer. The frequency and intensity of his throwing markers increased and the guidance counselor, Ms. McLaughlin, was called to the classroom along with Ms. MacNeil, the principal. They attempted to redirect Student and encourage alternate behavior. Student and his peer did not stop throwing markers, so Ms. MacNeil removed the bin of markers. Student went to a bookshelf and obtained two additional bins of pencils and crayons, while yelling, "They can't stop us." He continued to throw materials at other students' legs and feet and encouraging other students to join him. The other students were removed from the room. Ms. Hickey was called back from her meeting and Team Administrator/School Psychologist, Donna Cunningham was called to the building to assist with the incident. Student and his peer continued throwing items around the room. Student became more disruptive and aggressive. He threw objects at staff, threw and tipped furniture, and kicked over book cases. He forcibly pushed over Ms. Hickey's computer and broke the monitor while laughing and stating that the teacher could not print out point sheets now. Student took white-out from Ms. Hickey's desk and poured it over the wall, Ms. Hickey's desk and purse, and the rug. He threw objects at staff while stating, "I made you flinch that time." Student removed the classroom i-pads from Ms. Hickey's desk. Ms. Hickey removed two of the i-pads from Student, he sat on one, and he played with another. Student tipped over or kicked most of the furniture in the room (other than his own desk and chair) including book cases, tables, and chairs. While Student was kicking furniture a table leg was broken off and Student used it to bang on desks and the floor. He climbed on furniture and ripped the posters off the wall. He threw most of the classroom books and learning materials. He dumped out a trash barrel containing food waste from lunch. Ms. MacNeil contacted Mother and called an ambulance due to Student's unsafe behavior. The school resource officer also arrived at the classroom. Student climbed onto a shelf in the classroom and sat on a ledge and opened the window. He said he was going outside, so staff went outside by the window. Student was eventually able to de-escalate with Mother and the resource officer and he walked to the ambulance. (S-7, P-3) Photos taken of the classroom after the incident show a completely disheveled classroom. The photos depict most of the furniture tipped over, materials, strewn about the floor, and empty book shelves. (S-25)
9. Ms. MacNeil sent Parents a letter dated October 30, 2019, informing them that Student had engaged in destructive and disruptive behavior that posed a substantial disruption to the education of students at the Parker Elementary School on the same date. She informed Parents that there would be a suspension hearing on November 1, 2019 and that she had determined that Student should be suspended through an emergency removal from school for eight days or fewer. She noted that because of Student's status as a special education student, there would be an Emergency Team Meeting immediately following the suspension hearing. (S-14)

10. The Team convened for an emergency Team meeting on November 4, 2019. Team members were concerned about a recent escalation of Student's disruptive classroom behavior. The Team considered whether Student's current placement remained appropriate for him. It discussed his recent episodes of elopement from school, destruction of property, and serious disruption of the school learning environment. Student's recent behavior included "episodes of tearing books, ripping items off of the wall, flipping and breaking tables, breaking a computer monitor, and throwing items at staff members." Additionally, Student had recently "climbed on top of windows and has been unable to comply with requests to ensure his safety." The Team determined that an outside placement would offer Student increased social, emotional and behavioral support and proposed placement in a private day school setting. Mother verbally rejected the proposal as being too restrictive. She requested that a 1:1 paraprofessional be assigned to support Student in the STARS classroom. She further requested a functional behavior assessment. The Team reviewed Student's current and prior formal and informal assessments, behavioral data, and observations. (S-16)

The Team proposed an IEP for the period from November 4, 2019 through November 3, 2020. The Parental concern section included: 1:1 aide, functional behavioral assessment; list of coping strategies for Student to use; not taking away opportunities for physical activity; counseling; "restrain if danger of hurting himself or others"; and Parents' desire to be involved in setting Student's personal goal. The IEP had one goal in the social/behavioral area. The A grid contained an occupational therapy consult to address sensory issues. (S-17, S-16) The IEP proposed all services in a substantially separate classroom setting with a 1:1 paraprofessional. The proposed placement was a private day placement. Parents neither formally accepted nor rejected the IEP or placement page. (S-17)

11. As Mother requested during the November 4 Team meeting, Quincy proposed conducting a functional behavioral assessment inclusive of a home assessment. (S-12) Parents did not provide consent for the assessment. (Perkins)
12. Mother sent Ms. MacNeil an email dated November 4, 2019 and requested that Ms. MacNeil reconsider the length of Student's suspension. Mother acknowledged Student's fault in the situation, but Parents took issue with the way staff handled the situation and alleged that staff allowed it to get far out of control and should have stopped it much sooner. Thus, Mother proposed that Student's suspension be shortened to four days from eight as that would "split[s] the blame in half, in our opinion as it should be, with [Student] serving his 4 days of suspension and the school owning its missteps and taking 4 days off the suspension." (S-10)
13. Ms. MacNeil sent Parents a letter dated November 5, 2019 informing them that Student would be suspended for eight days due to his involvement in destruction of property and serious disruption to the school learning environment on October 30, 2019. She acknowledged Mother's request that she reduce the length of Student's suspension, but declined to do so because of the "significance of the events" of October 30, 2019.

14. On November 15, 2019, Student had had a great morning and had earned all of his points. At recess Student became frustrated when he unable to play basketball because the court was crowded with other children. Student returned from recess upset and remained in the hallway bouncing a ball. His 1:1 paraprofessional went to lunch and a classroom paraprofessional, Ms. Bonnie stayed with Student. He remained in the hallway dribbling the ball and would not enter the classroom. He went to the gym without permission and played basketball for twenty minutes. Ms. Bonnie followed him. When returning from the gym to his classroom Student picked up door stops, threw them toward Ms. Bonnie, in the trash, and in the toilet. He returned to the classroom and threw a trophy and pencils. Ms. Hickey directed him to pick up what he had thrown and he complied. He transitioned to a math activity and participated without incident. Ms. MacNeil called Mother regarding Student's difficult time returning from recess. Student's aunt dismissed him at approximately 1:40 p.m. (S-7)
15. The Team reconvened on November 22, 2019 to address Parents' concerns with the previously proposed IEP. (S-11) The Team reviewed the behavioral guidelines developed by Taryn Miller, BCBA, on November 12, 2019 and updated on November 20, 2019. (S-18) Mother requested that Student receive 1:1 services with the school psychologist and the Team added said service to the service delivery grid 1 x 30 minutes per week. The Team agreed that Student's 1:1 paraprofessional would receive on-going training and support for the implementation of the behavior intervention plan from the BCBA. Additionally the team discussed the school psychologist, guidance counselor, and classroom teacher working together to support Student in the classroom. (S-11)
16. On December 16, 2019, Student became agitated in music class. He was making disrespectful comments to other students. He transitioned back to his class, but began throwing rolled up paper balls at the teacher while she was teaching; throwing pencils; and threw his library book. He was prompted to take a break and moved to the break space in the hallway. He proceeded to kick the classroom door repeatedly and yell other student's names. He threw a chair at Ms. McLaughlin. He continued to disrupt the classroom from outside the door. He was able to walk to the bus and get on at dismissal, but he threw a folder from the door. Ms. Hickey left a message for Mother regarding Student's behavior. (S-7)
17. On December 17, 2019, Student became agitated and was unable to settle into the morning routine. He made loud growling noises. He refused to complete tasks. He began kicking books off of a shelf and throwing objects around the room. The other students were evacuated from the classroom. Student tipped chairs and threw items such as clipboards, pencils, and cartons of milk. Staff sought to de-escalate Student. Student drew on a computer monitor and picked up the classroom telephone and was dialing numbers. Mother arrived to dismiss Student at 9:00 a.m. and Student was able to de-escalate and leave school calmly. (S-9)
18. On December 18, 2019, Student had another significant behavioral incident. The class was engaged in a computer activity and a paraprofessional asked Student to go to the assigned website. His teacher told him to put his apple away. Student ran into the hallway. He threw

a pair of scissors at the wall. Student's 1:1 aide remained with him and Ms. Hickey spoke with him and then returned to the classroom. Student then ran toward the gym and his 1:1 followed him. The bolting protocol was initiated. This required staff to immediately report to exterior doors to prevent Student from leaving the building. Student was running up and down the stairs and throughout the school. Student entered the teacher's bathroom and staff members stood in the doorway to prevent him from locking himself in the bathroom. Student began spraying staff in their faces with air freshener. He then sprayed their feet and stated that their feet were now slippery and they could not hold the door. He threw soap at staff and attempted to turn on the water from the pipe saying he was going to flood the bathroom. He climbed the door frame. He then ran from the bathroom and resumed running around the building. He ran into an empty classroom, pushed over a computer, and threw a bin of glue sticks. He then ran from the classroom and threw items in the hallway including student backpacks and water bottles. He entered the custodial closet, took out a large wooden pole and began banging classroom doors and the water fountain. He began flicking the breakers, causing the lights to go on and off. He then pulled the fire alarm which caused the building to be evacuated. Student remained in the building with staff and he threw music stands and used them to bang on classroom doors. Ms. MacNeil left voice messages for Mother and then called his aunt to come pick up Student. Student was dismissed to his mother and aunt. (S-7)

19. On or around December 18, 2019, Quincy sent Parents a meeting invitation for a December 20, 2019 meeting to review the December 18, 2019 incident, conduct a manifestation determination and discuss possible suspension. (S-8) The meeting was rescheduled until 1/2/20 per Parents' request<sup>1</sup>. (S-2)
20. The Team convened on January 2, 2020, to conduct a manifestation review and determined that Student's behavior on December 18, 2019, was a manifestation of his disability. The Team proposed an out-of-district placement, given the extreme severity and dangerousness of Student's behavior which results in Student being unable to access his education in his current setting. The Team proposed modifications to Student's current placement while an out of district placement is sought. It proposed hiring a tutor in addition to his 1:1 paraprofessional and providing Student with small group instruction with no more than three other students throughout the day. It proposed increasing Student's gym time to once per day as gym is a preferred activity for him. It also offered to provide tutoring should Parents decide not to send him back to his placement while and out-of-district placement was sought. Mother expressed concern regarding the amount of time it took Quincy to contact her during the behavioral event. She further was concerned about the staff's decision not to restrain Student at the time of the incident. (S-2) Mother initially assented to Quincy sending referral packets to Gifford, Community Therapeutic Day School, and Reads Collaborative. She rejected sending packets to Manville and Walker because they used "settling rooms" (also known as time-out rooms) as part of their program. Mother refused to sign a release, but granted permission to Quincy to verbally contact placements. She later rescinded her consent and Quincy sent redacted packets. Gifford reported it could not meet Student's needs and Community Therapeutic Day School did not have any openings. (Perkins) A

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<sup>1</sup> I take administrative notice that Quincy Public Schools was on winter vacation from December 21, 2019 through and including January 1, 2020.

representative of Manville School sent Donna Cunningham an email dated January 20, 2020, stating that he reviewed the materials Quincy sent regarding Student and noted several characteristics within Student's profile that matched the current students at Manville or students who had been successful at Manville in the past. (S-27)

After the Team meeting, Mother rejected the proposed modified schedule and rescinded her permission to send redacted packets to potential outside placements. She further rejected consideration of any out of district placements with settling rooms. Mother gave permission for the district to call potential out of district placements without sharing any personally identifying information about her son. She also agreed to participate in a mediation. (S-2)

21. Ms. MacNeil sent Parents a letter dated January 3, 2020 stating that the Team determined that Student's behavior on December 18, 2019 was a manifestation of his disability and Student was not being suspended from school. (S-4)
22. On January 13, 2020 Student had another significant behavioral incident. Upon returning from recess he sat at a desk and refused to enter the classroom. When prompted to come in he stated that he wanted a break. Staff reminded him he had just come from recess, but could take a calming break in the classroom. Eventually he got up and entered the classroom. Ms. Hickey tried to follow him, but he held the door shut, preventing her from entering her classroom. Ms. Hickey entered the room from a different door and Student ran around the classroom and jumped onto Ms. Hickey's desk. He jumped down and began pushing things from under Ms. Hickey's desk at students' feet. He began throwing markers and staff removed the other students from the room. Student continued throwing things toward staff. He took water bottles from other students' desks and threw one toward the computers and attempted to pour water on the computers. Ms. MacNeil left Mother a message and called Student's aunt regarding his behavior. Student lay calmly under Ms. Hickey's desk while they awaited his mother's arrival. When Mother arrived to pick up Student he was doing movement exercises with Ms. McLaughlin. Student and Mother assisted staff with cleaning up the classroom and he was dismissed to Mother. (S-1)
23. Ms. Hickey has a Master's degree in special education and is dual certified in elementary and special education. She has experience working in a day placement for students with social emotional needs. She has been Student's teacher since he transitioned to the STARS program last year. He is one of seven students in her class, all of whom are on IEPs and have behavioral or social emotional goals. She has 4 aides in the classroom. One aide is Student's 1:1 and one aide is dedicated to taking over classroom instruction if Ms. Hickey has to leave the classroom to address Student's behavior. Student engages in disruptive behaviors every day in Ms. Hickey's classroom, which sometimes include bolting. His behavior often starts with Student making a roaring sound, trying to distract other students, and throwing items near people. His behavior used to be triggered by non-preferred activities, but recently all activities have triggered him. The staff has resorted to allowing him to just draw or color and not requiring him to complete work due to the severity and frequency of his behaviors. After Student essentially dismantled her classroom she has had to remove book shelves from her classroom and has to keep all of her curricular materials locked in a closet and in her desk to prevent them from being destroyed. She has had to

evacuate the other students from her classroom on at least five occasions this year due to Student's behavior. Other teachers have been required to leave their own classrooms in order to stand by doors to prevent Student from leaving the building. (Hickey)

24. During this school year Quincy has provided Student with a 1:1 aide, with whom Student was familiar and who has a background in guidance. It has increased the staffing level in his classroom. It has provided BCBA consultation to Student's classroom and revised Student's behavior plan. Student has received support from the school psychologist and has received social skills services. Quincy witnesses testified that their program has done all that it can for Student and is not equipped to support Student's level of need. (Hickey, MacNeil, McLaughlin, Cunningham) Quincy personnel believe that Student requires a more therapeutic program than it can provide. They testified that he would benefit from a program that had a settling room because Student requires space where he can de-escalate with the assistance of staff. The Parker Elementary does not have such a space. (Hickey, Perkins)

### **FINDINGS AND CONCLUSION:**

Student is an individual with a disability, falling within the purview of the Individuals with Disabilities Education Act (IDEA)<sup>2</sup> and the state special education statute.<sup>3</sup> As such, he is entitled to a free appropriate public education (FAPE). Neither his status nor his entitlement is in dispute.

The IDEA was enacted "to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education, employment and independent living."<sup>4</sup> FAPE must be provided in the least restrictive environment. Least restrictive environment means that, "to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."<sup>5</sup>

The burden of persuasion in an administrative hearing challenging an IEP is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 534, 537 (2005) In this case, Quincy is the party seeking relief, and as such has the burden of persuading the hearing officer of its position.

In the instant matter Quincy seeks an Order from the Bureau of Special Education Appeals affirming its determination that maintaining Student's current placement is substantially likely to result in injury to Student or others. For the foregoing reasons, I find that Quincy has met its

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<sup>2</sup> 20 USC 1400 *et seq.*

<sup>3</sup> MGL c. 71B.

<sup>4</sup> 20 USC 1400(d)(1)(A). See also 20 USC 1412(a)(1)(A); *Mr. I ex. Rel. L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1 (1st Cir. 2007)

<sup>5</sup> 20 USC 1412(a)(5). See also 20 USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c)

burden of showing that maintaining Student's current placement is likely to result in injury to Student or others.

The evidence is persuasive that the STARS program cannot adequately meet Student's needs and that his behavior cannot be safely managed within the STARS program. Quincy's witnesses credibly testified that they have used all of their available resources and have not been successful in managing Student's behavior. Student has been placed in a classroom specifically designed to meet the needs of students with social and emotional needs. His teacher is a Master's level certified special education teacher who has experience working with students with social and emotional needs. Quincy has provided consultation with a BCBA and Student's behavioral plan has been reviewed and amended. Student has been provided with a 1:1 aide who is familiar with Student and has a background in guidance. An additional staff person has been assigned to Student's classroom to allow his teacher to assist him during times of behavioral dysregulation. He has received additional support during times of crisis from Donna Cunningham, the school psychologist, who has been called to Parker to assist during some of Student's significant incidents. Even with all of the above supports in place, Student has continued to struggle. He is not currently benefitting from his educational program as staff has stopped making academic demands on him in order to prevent his behaviors from escalating. Of greater concern, Student has engaged in risky behavior that very likely could result in injury to himself or others. He has bolted from his classroom on numerous occasions and has sought to leave the building, successfully on at least one occasion. Staff members have noted that he is fast and athletic and there is a likelihood that they would not be able to stop him if he were to leave the building. When he is dysregulated Student is not mindful of his safety or that of others, as demonstrated by his past behaviors. He has thrown items at staff, including furniture. He has sprayed air freshener into the faces of staff. He has climbed on to seven foot window ledges and a dumpster. Any of these incidents could have resulted in injury to himself, staff, or peers.

Student's behaviors did not decrease as a result of Quincy's adding staff to his classroom, consulting with the BCBA, and revising his behavior plan. His teacher and other staff members have stated that there is nothing further that the program can do to meet Student's behavioral needs.

Quincy asks that, pursuant to 20 U.S.C. § 1415(k)(3)(B)(ii)(II), the Hearing Officer order a change of placement for Student. The statute authorizes a Hearing Officer to order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others. Quincy has met its burden of showing that maintaining Student's current placement is substantially likely to result in injury to Student or others. Quincy may, therefore place Student in an appropriate interim alternative educational setting, specifically a therapeutic day school.

Although Parents chose not to testify at the Hearing, and did not submit any evidence regarding additional measures that could be put in place to maintain Student safely in his current placement, their position is gleaned from their exhibits, from Quincy's exhibits, and from their opening and closing arguments. Parents believe that Quincy could have and should have prevented some of Student's behavioral incidents by restraining him. However, their position is

neither in keeping with best education practice, nor with state regulations pertaining to use of physical restraint in public schools.

603 CMR 46.00 governs the use of physical restraint on students in publicly funded elementary and secondary education programs, including all Massachusetts public school districts. Specifically, 603 CMR 46.01(1)(c) states that physical restraint...shall be considered an emergency procedure of last resort and shall be prohibited in public education programs except when a student's behavior poses a threat of assault, or imminent, serious, physical harm to self or others and the student is not responsive to verbal directives or other lawful and less intrusive behavior interventions, or such interventions are deemed to be inappropriate under the circumstances. Additionally, 603 CMR 46.03(2) directs, in relevant part, that physical restraint shall not be used: (a) As a means of discipline or punishment; ... (c) As a response to property destruction, disruption of school order, a student's refusal to comply with a public education program rule or staff directive, or verbal threats when those actions do not constitute a threat of assault, or imminent, serious, physical harm; or (d) As a standard response for any individual student. No written individual behavior plan or individualized education program (IEP) may include use of physical restraint as a standard response to any behavior. Physical restraint is an emergency procedure of last resort. Thus, it would be inappropriate and contrary to state regulations for Quincy to rely on physical restraint as a means of de-escalating Student's behavior.

Although Quincy has met its burden of showing that maintaining Student's placement in the STARS program is substantially likely to result in injury to Student or others, and has shown that Student requires a therapeutic setting, it did not present evidence that Student has been accepted into any program. (Although Manville indicated that Student's profile appeared similar to its students' it did not indicate that it was accepting Student.) Therefore, I am unable to order placement in a specific program. Quincy is authorized to place Student in a therapeutic setting once it has identified an appropriate placement that has accepted him.

The Parties are urged to work together to locate an appropriate placement. Parents are strongly encouraged to visit proposed programs and ask staff questions about the use and benefits or calming rooms for students with profiles similar to Student. Student is young, bright, and athletic. It is important that he learn to understand, manage, and control his behaviors so that he will be able to utilize his talents in his future education.

## **ORDER**

Based upon the foregoing, I find that Quincy has met its burden of showing that maintaining Student in his current placement is substantially likely to result in injury to Student or others. Quincy is authorized to place Student in a therapeutic day school for a period of 45-school days.

By the Hearing Officer,

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Catherine M. Putney-Yaceshyn

Dated: January 31, 2020