

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

In Re: Student v. Harvard Public School

BSEA# 2108881

RULING ON HARVARD PUBLIC SCHOOLS' MOTION FOR SUMMARY JUDGMENT

This matter comes before the Hearing Officer on the *Motion for Summary Judgment* (Motion) filed by the Harvard Public Schools (Harvard or the District) on June 23, 2021. In it, the District asserts that summary judgment is appropriate because there is no genuine issue of fact in regard to the Parents'/Guardians' claim that Student remains eligible for special education services beyond the 2020 - 2021 school year, and/or that the District has failed to offer Student a free appropriate public education for the 2021-2022 school year and that the District is therefore entitled to prevail as a matter of law. Specifically, the District asserts that there are no material facts in dispute regarding Student's meeting the District's credit requirements for graduation; satisfying the state competency determination; or being denied a free appropriate public education during the 2020-2021 school year. In addition, the District asserts that Student's alleged ongoing transition needs do not constitute a material fact necessitating a hearing.

On June 24, 2021, Parents/Guardians submitted their *Opposition to Harvard Public Schools' Motion for Summary Decision* (Opposition). Parents/Guardians argue that there are three broad issues in dispute: 1) whether Student must accept his diploma as of the end of the 2020/2021 school year; 2) whether Student remains eligible for special education and transition services for the 2021/2022 school year; and 3) whether Riverview's GROW program remains the appropriate residential program to meet Student's individualized special education and transition needs for the 2021-2022 school year. Parents/Guardians also assert that there are eight material facts in dispute:

1. Whether Harvard, through Student's Team, appropriately considered and determined whether he remains eligible for special education and appropriate transition services for the 2021/2022 school year;
2. Whether Harvard committed procedural violations by improperly, administratively determining his graduation and continued special education eligibility and appropriate transition services outside of the Team process;
3. Whether Harvard failed to propose¹ a FAPE for the 2021-2022 school year, including special education and transition services designed to meet his individual needs and prepare him for further education, employment, and independent living skills;

¹ In their *Opposition*, Parents/Guardians indicate that in dispute is whether Harvard "provided" Student with a FAPE for the 2021-2022 school year. However, during a conference call on June 29, 2021, Parents/Guardians clarified that in dispute is whether Harvard failed to "propose" a FAPE for Student for the 2021-2022 school year.

4. Whether Harvard appropriately evaluated Student's ongoing transition needs for the 2021-2022 school year;
5. Whether Student's Team fully and appropriately considered the findings and recommendations of Dr. Anna Hebert's March 2021 private neuropsychological evaluation;
6. Whether Harvard fully and appropriately considered the recommendations of Student's Riverview Team members regarding his ongoing special education and transition needs for the 2021-2022 school year;
7. Whether Student's Team appropriately considered the prior recommendations of Dr. Milot's 2017 and Dr. Hebert's 2020 private neuropsychological evaluations pertaining to Student's current and ongoing special education needs;
8. Whether Student made sufficient progress in only one year of transition programming in Riverview's GROW program to receive FAPE in meeting the constellation of his ongoing transition needs.

Neither party has requested a hearing on the *Motion*. 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, the District's *Motion* is hereby GRANTED.

I. ISSUE:

On June 23, 2021, the Hearing Officer issued a Ruling identifying the sole issues for Hearing as follows:

- a. Whether Student is entitled to continued special education eligibility from or through Harvard Public Schools for school year 2021-2022?
- b. If so, does Student require a residential placement during the 2021-2022 school year to receive a FAPE?

Therefore, at issue here is:

1. Whether disputed issues of material fact exist or whether, as a matter of law, Student is no longer eligible for special education beyond the 2020-2021 school year.

II. FACTUAL BACKGROUND:²

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

The following facts are not in dispute, and are derived from the hearing request, Harvard's response thereto, the *Motion for Summary Judgment* with supporting *Memorandum* and exhibits, as well as Parents'/Guardians' *Opposition* to Harvard's *Motion*, and supporting *Memorandum* and exhibits. These facts are considered in the light most favorable to Parents/Guardians as the non-moving party.

1. Student is a 19-year-old resident of Harvard, Massachusetts. Parents are Student's guardians. Student is diagnosed with Autism and an Intellectual Disability (primary) and ADHD (secondary). He attended Learning Prep School for sixth through twelfth grades. (Request for Hearing; S-B; P-1; P-8)
2. Student has met local academic credit requirements for graduation. (Request for Hearing; S-B³).
3. Pursuant to the COVID-related MCAS exemption,⁴ Student was granted a waiver for MCAS. (Request for Hearing) The District had applied for the exemption without Parents' consent. (Request for Hearing)
4. In July 2020, the parties reached an agreement for Student to attend Riverview School's GROW program as a transition student for the 2020-2021 school year. Said agreement was memorialized in the Settlement Agreement and Release (Agreement) which was executed on July 28, 2020. (Request for Hearing; S-A)⁵
5. Pursuant to Paragraph 4 of the Agreement, the Parents/Guardians agreed

that the District's funding of the Student's residential school placement at Riverview in accordance with Paragraph 1 of this Agreement [sic] shall be for the provision of all regular education, special education, extended year services, transition services, and all related services for the Student and that the District shall not be liable for, or required to incur, any additional costs for the provision of regular education, special education, home-based services, related services, extended year services, transition services, evaluations, or other services, fees or activities for the Student during the time period covered by this Agreement except as provided under Paragraphs 10 and/or 11 of this Agreement. (S-A)

³ Under Additional Information, the IEP for the period 9/12/2020-6/19/2021 notes that as of June 2020, Student had completed all the necessary requirements for a high school diploma from the Harvard Public Schools. (S-B)

⁴ On April 29, 2021, the Department of Elementary and Secondary Education modified the requirements of the competency determination for high school graduation in order to address disruptions caused by the outbreak of COVID-19 or the state of emergency. Under this change, seniors who had not passed one or more of the high school MCAS tests were able to earn the competency determination through successful completion of a relevant high school course. See <https://www.doe.mass.edu/mcas/graduation.html>. In the instant case Parents rejected the waiver. (P-1) However, the Department of Elementary and Secondary Education does not offer a remedy for Parents who dispute the granting of such exemption.(P-9)

⁵ Because the parties' Settlement Agreement relates to rights and responsibilities that fall within the purview of the BSEA (which are defined within the IDEA as the "the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child" (20 USC 1415(b)(6)(A)), I have authority and responsibility to consider the agreement and determine whether and to what extent the agreement alters the rights and responsibilities of the parties with respect to Student's special education services and related procedural protections. See *Longmeadow Public School District*, BSEA # 07-2866 (Crane, 2008) (listing supporting caselaw).

6. Pursuant to Paragraph 11 of the Agreement,

On or before March 31, 2021, the District agrees that it shall reconvene the Student's IEP Team to review the Student's status and eligibility for graduation from high school in June 2021.

- a. If the Team determines that the Student will not have met the criteria for graduation from high school and the issuance of a diploma by the conclusion of the 2020-2021 school year, the Team will develop a new IEP and identify a placement for the period of June 2021 to June 2022. In the event of any dispute regarding the placement proposed under such circumstances, the Student's stay put placement shall be the placement proposed by the Team at the March 31, 2021 Team meeting, The Guardian(s) shall not be foreclosed from unilaterally placing the Student for the 2021-2022 school year and pursuing their due process rights to seek funding of that unilateral placement.
- b. If the Team determines at the March 31, 2021 meeting the Student will have met criteria for graduation from [high school] by the conclusion of the 2020-2021 school year, the Team will not develop a new IEP for the period of June 2021 to June 2022 and the Student's stay put placement will be as a graduated student no longer eligible for special education services. Under such circumstances, the Guardian(s) shall not be foreclosed from unilaterally placing the student for the 2021-2022 school year and pursuing their due process rights to seek continued special education services and funding of that unilateral placement.
(S-A)

7. Pursuant to Paragraph 13 of the Agreement, the parties agreed that the

Agreement and the IEP and Placement Consent Forms (PL1) providing for the Student's placement at Riverview for the 2020-2021 school year to be administratively developed by the District in accordance with Paragraph 1 do not constitute an admission by either party that Riverview constitutes the least restrictive, appropriate placement capable of assuring the provision of a free appropriate public education to Student. Further, the Parents and Guardians stipulate that the District represented nothing to them in relation to the merits of said placement and that they relied solely on their own and their consultants'/experts' evaluation of the placement to determine its appropriateness. (S-A)

8. Pursuant to Paragraph 14 of the Agreement, Parents released Harvard from all claims "relating to educational placements or services provided through, or proposed by, the

- District for the Student from January 1, 2018 to the date of the execution of [the Agreement.” (S-A)
9. Student attended the Riverview School GROW program as a residential student pursuant to a fully accepted IEP for the period 9/12/2020 to 6/19/2021, with goals in the areas of Written Language, Reading Comprehension, Mathematics, Social/Emotional, Life Skills, and Transition. Student’s anticipated graduation date on that IEP was June 19, 2021. (S-B).
 10. Student made progress on all his goals and objectives during the 2020-2021 school year. (S-C; S-D; S-E; P-11) According to Parents/Guardians, the program was “comprehensive and appropriate” to meet Student’s needs. (S-F) Student was “thriving” at Riverview. (S-F)
 11. The Team convened on March 18, 2021. (P-1; P-9)
 12. At the meeting, Parents/ Guardians “attempted to discuss” their belief, shared by Riverview, that in order to receive a FAPE, Student had “ongoing needs” for transition services for the 2021-2022 school year. Parents were told that that the “Team did not need to discuss any of [Student’s] needs past June 2020⁶ since he would be graduated and his services would end.” (P-1; P-11; Request for Hearing)
 13. According to Harvard, “any subsequent services would be best provided in the community in which [Student] will be living and by the adult services agency.” Student has been assigned a case worker from the Department of Developmental Services. (P-9)
 14. As a result of the meeting, Harvard proposed an Amendment to the IEP with updated goals focusing on transition needs. The anticipated graduation date remained 6/19/2021. An N1 was issued as well. On April 1, 2021, Parents rejected the Amendment. (Request for Hearing; P-9)
 15. The Team convened again on May 24, 2021, to review Dr. Anna Hebert’s independent neuropsychological evaluation report of March 30, 2021. (P-1; P-10)
 16. In her report, Dr. Hebert noted that she was “overall pleased with the progress” that Student had made. However, she found that Student “continues to require special education services as a student with Autism and an Intellectual Disability (primary) and ADHD (secondary). He “continues to require a structured and organized transition program that can comprehensively and intensively address his functional academic, social language and behavior, vocational, and adaptive functional skills needed for increased independence.” Student’s “needs are life-long with his deficits ... impairing his ability to live and/or work independently and placing [Student] at high-risk for harm in unsupported environments. As such, [Student] will require support from the Department of Developmental Services following his 22nd birthday.” (P-8)
 17. Parents and Riverview endorsed Dr. Hebert’s recommendation for ongoing special education eligibility and transition services. At the May 2021 meeting, the Department of Developmental Services’ (DDS) case worker discussed adult services that would be available to Student. (P-10)
 18. Following the Team meeting, Harvard issued an N1. It is Harvard’s position that Student has graduated, is ineligible for continued special education services because he has met local graduation requirements, has satisfied the MCAS competency

⁶ This appears to be an error and should be 2021.

standard, has made effective progress and has received a FAPE during the 2020-2021 school year. (P-1; P-10; P-11)

III. LEGAL STANDARD

A. *Legal Standard for Motion for 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.”⁷ As with motions to dismiss, 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 provide 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.”⁸

The party seeking summary judgment must first demonstrate, with the support of its documents (pleadings, affidavits, and other evidence), that there is no genuine issue of fact relating to the claim or defense. 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.⁹

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.”¹⁰ An issue is genuine if it “may reasonably be resolved in favor of either party.”¹¹ 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.¹² 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.”¹³ The non-moving party’s evidence will not suffice if it is comprised merely of “conclusory allegations, improbable inferences, and unsupported speculation.”¹⁴

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.

⁷ 801 CMR 1.01(7)(h).

⁸ *Id.*

⁹ *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 252 (1986); see also *In Re Westwood Public Schools*, BSEA No. 10-1162 (Figueroa, 2010); *In Re: Mike v. Boston Public Schools*, BSEA No. 10-2417 (Oliver, 2010); *Zelda v. Bridgewater-Raynham Public Schools and Bristol County Agricultural Schools*, BSEA No. 06-0256 (Byrne, 2006).

¹⁰ *Anderson v. Liberty Lobby, Inc.* 477 U.S. at 250.

¹¹ *Maldonado-Denis v. Castillo-Rodriguez*, 23 F.3d 576, 581 (1st Cir. 1994).

¹² *Anderson*, 477 U.S. at 249.

¹³ *Mack v. Great Atl. & Pac. Tea Co.*, 871 F.2d 179, 181 (1st Cir. 1989).

¹⁴ *Medina-Munoz v. R.J. Reynolds Tobacco Co.*, 896 F.2d 5, 8 (1st Cir. 1990).

In the instant matter I must decide whether disputed issues of material fact exist or whether, as a matter of law, Student is no longer eligible for special education beyond the 2020-2021 school year. Hence, I first turn to the legal standards regarding graduation and termination of special education eligibility.

B. Substantive Legal Standard Regarding Graduation and Special Education Eligibility.

A student who has attained a high school diploma is no longer eligible for special education services, including transition services.¹⁵ Under Massachusetts law, a student (whether disabled or not) must meet two conditions 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.¹⁶ The Individuals with Disabilities Education Act (IDEA) imposes an additional requirement for a student with a disability to graduate, notwithstanding the student's satisfaction of local graduation requirements; that is, a school district may not properly graduate a student with a disability if he was not provided with FAPE as required by IDEA (e.g., a student did not receive appropriate transitional services, or his IEP was not reasonably calculated to provide him educational benefit).¹⁷ As articulated in *Doe v. Marlborough Pub. Sch.*, “nothing in the Massachusetts laws indicates that an eligible student **must** be graduated. Rather, eligibility requirements are set as prerequisites.”¹⁸

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.”¹⁹ In addressing claims of procedural violations, 20 USC §1415(f)(3)(E)(ii) permits the Hearing Officer to find that the procedural inadequacy 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

¹⁵ 34 CFR 300.122(a)(3)(i); see also Mass. Gen. Laws 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).

¹⁶ 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*, which may be found at <https://www.doe.mass.edu/sped/advisories/2018-2.html>.

¹⁷ *Marlborough Pub. Sch.*, 2010 WL 2682433, at *5; *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).

¹⁸ *Marlborough Pub. Sch.*, 2010 WL 2682433, at *6 (citing to several cases) (emphasis added).

¹⁹ *Board of Educ. v. Rowley*, 458 U.S. 176, 206-207, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982).

free appropriate public education to the parents' child; or caused a deprivation of educational benefits.²⁰

FAPE is delivered through an educational program 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.²¹ The FAPE requirement applies to secondary transition services.²² Educational “levels of progress must be judged with respect to the potential of the particular child.”²³ Absence of progress toward the IEP goals *per se* does not make an IEP inadequate.²⁴ “Actual educational progress can (and sometimes will) demonstrate that an IEP provides FAPE.”²⁵ “It does not work vice versa, however. As the First Circuit observed in *Lessard*, ‘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.’”²⁶ In addition, as articulated in *Doe v. Marlborough*, “the 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.”²⁷ To determine whether a FAPE is provided does not require the court to examine whether all transition goals were met.²⁸

When a student with a disability is expected to receive a high school diploma, the IEP team should convene at an appropriate time before graduation to ensure that the graduation requirements have been met and IEP goals and objectives have been achieved.²⁹ Because

²⁰ See *Geraldo and Springfield Public Schools*, 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 Public Schools*, BSEA # 18-04106 (Berman, 2018).

²¹ *Andrew F. v. Douglas County School District Re-1*, 137 S.Ct. 988, 992 (2017).

²² *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>.

²³ *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 29 (1st Cir.2008); *Marlborough Pub. Sch.*, 2010 WL 2682433, at *8.

²⁴ *Lessard*, 518 F.3d at 29.

²⁵ *Id.* at 18.

²⁶ *Marlborough Pub. Sch.*, 2010 WL 2682433, at *8 (internal quotations omitted).

²⁷ See *Marlborough Pub. Sch.*, 2010 WL 2682433, at *9 (D. Mass. June 30, 2010) (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 snapshot”); *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. The Supreme Court has stated that provision of a FAPE does not require “the furnishing of every special service necessary to maximize each handicapped child's potential.” *K.C. ex rel. Her Parents v. Nazareth Area Sch. Dist.*, 806 F. Supp. 2d 806, 825 (E.D. Pa. 2011).; see *Milford Board of education*, 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.”)

²⁸ *Nazareth Area Sch. Dist.*, 806 F. Supp. 2d at 826

²⁹ See *Stock v. Massachusetts Hosp. Sch.*, 467 N.E.2d 448 (Mass. 1984), *cert. denied*, 474 U.S. 844 (1985) (district's decision to graduate a student with multiple disabilities without an IEP meeting or notice to the student's parents was improper); *In Re: Caleb & Nauset Public Schools*, BSEA #15-05976 / 15-07508 (Byrne, 2016); *Wauwatosa School District*, 16-067, 69 IDELR 173, (SEA WI, 2016); *Letter to Richards*, 17 LRP 1303 (1990).

graduation is a change in placement under the IDEA, districts must provide the student and parents with adequate prior written notice of graduation and the rights available upon termination of education.³⁰ According to 34 CFR 300.305(e)(2), an evaluation is not required before the termination of a child's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under state law.

IV. APPLICATION OF LEGAL STANDARDS

In the instant matter, in order for me to grant summary judgment in favor of the District, there must first and foremost exist “no genuine issue of fact relating to all or part of a claim or defense.”³¹ The District, as the moving party, bears the burden of proof, and all evidence and inferences must be viewed in the light most favorable to the Parents/Guardians.³² According to the legal standard described above, for Harvard to prevail, the District must establish that there is no dispute that Student satisfied local graduation requirements and that Harvard provided Student with FAPE as required by IDEA.³³ The District has met its burden.

First, there is no dispute that Student did in fact meet graduation requirements by earning a sufficient number of academic credits in required courses. (Request for Hearing; S-B) Similarly, there is no dispute that Student has satisfied his MCAS requirement for graduation due to a state-wide directive from the Department of Elementary and Secondary Education. (Request for Hearing; P-1). As such, even though Parents were not in support of said waiver, I am unable to find that Parents’ rejection thereof has any legal significance.³⁴

I next examine whether there is any genuine issue of fact as to whether, during the 2020-2021 school year, Student received FAPE.³⁵ Here, even if I view all evidence and inferences in the light most favorable to the Parents/Guardians, I cannot find that a genuine issue of material fact exists as to whether Harvard offered Student FAPE during 2020-2021.³⁶ Parents/Guardians neither assert that Student did not receive appropriate transitional services nor that Student’s IEP

³⁰ 34 CFR 300.102(a)(3)(ii); 34 CFR 300.503; *In Re: Caleb & Nauset Public Schools*, BSEA #15-05976 / 15-07508 (Byrne, 2016) (because graduation terminates special education eligibility, prior written notice is required); *Letter to Richards*, 17 LRP 1303 (1990). However, IDEA does not require a district to hold an exit meeting to determine whether a student's graduation is appropriate. *See, e.g., Douglas County Sch. Dist.*, 70 IDELR 83 (SEA CO 2017) (parent failed to establish that district violated the IDEA by not conducting an "exit meeting" with her and her daughter).

³¹ 801 CMR 1.01(7)(h).

³² *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 252 (1986).

³³ *Marlborough Pub. Sch.*, 2010 WL 2682433, at *6.

³⁴ This matter is distinguishable from *Doe v. Marlborough Public Schools*. In *Marlborough*, at issue was whether Student received improper accommodations when he took the MCAS examination, and, if so, whether these accommodations enabled Student to pass when he would not have done so without the inappropriate accommodations. This issue required an evidentiary hearing, which included the testimony of the student, the proctor, and other school staff who oversaw the exam. In the instant matter, Parents/Guardians may have not consented to the waiver, but, nevertheless, it was part of a state mandate, and therefore I am unable to find that genuine issue of material fact exists with respect to this issue.

³⁵ Pursuant to Paragraph 14 of the Settlement Agreement, Parents are precluded from asserting that the District failed to provide Student a FAPE prior to the execution of the Settlement Agreement. (S-A)

³⁶ *Andrew F.*, 137 S.Ct. at 992.

was not reasonably calculated to provide him with educational benefit.³⁷ Parents/Guardians do not assert that Student’s transition services were not properly implemented³⁸ nor that his goals and objectives were not properly ambitious. To the contrary, Parents/Guardians endorsed the program at Riverview as appropriate for Student’s needs, and it was their program of choice for the 2020-2021 school year. (S-A; S-F) In addition, Parents now seek its continuation for 2021-2022. (Request for Hearing)

In their *Opposition*, Parents/Guardians assert that there is a genuine issue of fact as to whether Student “made sufficient progress in only one year of transition programming in Riverview’s GROW program to receive FAPE in meeting the constellation of his ongoing transition needs.” (See *Opposition*, Statement of Material Facts in Dispute #8) However, even if I view all evidence and inferences in the light most favorable to the Parents/Guardians, I cannot find that such an issue exists. An IEP must be “designed to enable the student to progress effectively.”³⁹ However, because an IEP is a snapshot, not a retrospective, insufficient progress does not by itself suggest an inadequate IEP.⁴⁰ One barometer for measuring “insufficient progress”, applied by the BSEA, is progress not commensurate with a student’s abilities.⁴¹ In the present matter, Parents/Guardians have not suggested that Student should have made greater progress than he did or that his progress was not commensurate with his abilities.⁴² Nor do Parents/Guardians suggest what services, in addition to those he has already been provided, Student requires. Moreover, Riverview has opined that Student had made “effective progress”⁴³ during 2020-2021. (P-11) Student’s Progress Reports demonstrate progress in all goals and objectives. (P-11; S-C; S-D; S-E) Parents’ own expert, Dr. Hebert, also found that Student had made progress during

³⁷ In fact, Parents cannot now so assert. In the Settlement Agreement, Parents agreed that Harvard’s agreement to Student’s placement at Riverview was not an admission that said placement would provide Student with a FAPE. (S-A)

³⁸ This is distinguishable from *In Re: Dracut Public Schools*, BSEA # 08-5330 where Hearing Officer Crane ordered extended eligibility in order for the student to receive compensatory services for inappropriate transition services. In the instant matter, there is no allegation that Student’s transition services were inappropriate, and there is no request for compensatory services.

³⁹ 603 CMR 28.05(4)(b).

⁴⁰ *Lessard*, 518 F.3d at 29.

⁴¹ See, for example, *Southwick Tolland Regional School District*, BSEA # 06-6583 (Crane, 2006); *In Re: Student v. Newton Public Schools*, BSEA # 14-08637 (Figueroa, 2015).

⁴² *Lessard*, 518 F.3d at 29; *Marlborough Pub. Sch.*, 2010 WL 2682433, at *8; *In Re: Dracut Public Schools*, BSEA # 08-5330 (Crane, 2008) (“Also, as with other parts of FAPE, the transition services requirement does not imply a substantive standard or a particular measure of progress but rather specifies the perspective that participants in the process should strive to attain but does not establish a standard for evaluating the fruits of that process. At the same time, Congress has noted the importance of providing effective transition services under the IDEA”) (internal citations omitted). 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*, which may be found at <https://www.doe.mass.edu/sped/advisories/2018-2.html>.

⁴³ The IDEA further requires that special education and related services be designed to result in progress that is “effective.” See 20 USC 1400(d)(4) (purposes of this title are . . . to assess, and ensure the effectiveness of , efforts to educate children with disabilities” (emphasis added); *North Reading School Committee v. Bureau of Special Education Appeals*, 480 F.Supp.2d 479, 489 (D.Mass. 2007) (educational program “must be reasonably calculated to provide effective results and demonstrable improvement in the various educational and personal skills identified as special needs”).

2020-2021, and Parents believed that Student had “thrived” at Riverview. (P-8; S-F) There is no dispute that Student received meaningful educational benefit from his program at Riverview.⁴⁴

Instead, Parents’/Guardians’ assertion in the Opposition that Student did not make “sufficient progress” is rooted in Student’s “ongoing needs.” (P-1; P-8; Request for Hearing) 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.⁴⁵ However, rather than guaranteeing a specific result, “results-oriented process” has been interpreted to mean that the IDEA requires that there should be goals and 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 his postsecondary experience.⁴⁶ Student need not be provided services and interventions until his potential is maximized.⁴⁷ Hence, Harvard is not obligated to provide Student with special education services until he meets all his transition goals; nor must Harvard continue eligibility for the duration that Student’s needs persist. Instead, Harvard’s FAPE obligation to Student lasts only until Student graduates.⁴⁸ Harvard need not educate Student until he reaches a level of

⁴⁴ Again, even if I view all evidence and inferences in the light most favorable to the Parents/Guardians, I am constrained to find insufficient progress where Parents are seeking continuation of the same program which 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”).

⁴⁵ See 20 U.S.C. § 1401(34). See also 24 C.F.R. § 300.43.

⁴⁶ According to the Education Department, the term "results-oriented process" should be given its "plain meaning." 71 Fed. Reg. 46,579 (2006); *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”).

⁴⁷ 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).

⁴⁸ See *Marlborough Pub. Sch.*, 2010 WL 2682433, at *9 (finding that the hearing officer did not use the correct approach when she held that “the degree of the Student's continued unmet deficits” as well as his “continuing need for a significant amount of specialized instruction and support” tipped the balance in favor of a determination that he should not have graduated and was entitled to continued eligibility for special education services to address his areas of weakness); *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 950–51 (9th Cir. 2010) (“Congress did not indicate in its definition of ‘transition services,’ or elsewhere, that a disabled student could not receive a free appropriate public education absent the attainment of transition goals”); *In re: Quentin*, BSEA #19-07460 (Reichbach, 2019) (“I have before me no expert reports or testimony suggesting that Quentin’s progress was not meaningful, or that he should have made more or different progress and could have done so with more or different services. In fact, Parents argue not that Quentin was poorly served by Mystic Valley, but that he would benefit from more time. They may well be correct, particularly in light of the growth Quentin has experienced in his social and independent living skills over time. This does not, however, suggest that MVRCS failed to provide him with adequate transition services”); *In re: Child with Disability*, 88-18, 401 IDELR 220 (VA SEA, 1988); *Avon Board of Education*, 19-0156, 74 IDELR 181 (CT SEA, 2018) (IDEA does not make “the absence of need for service the benchmark for discontinuing services”).

independence that Parents/Guardians find appropriate, especially when Student presents with “life-long needs” and will continue to require life-long supports from DDS.⁴⁹ (P-8)

Parents/Guardians also assert that there are additional material facts in dispute as to procedural violations.⁵⁰ (See *Opposition*, Statement of Material Facts in Dispute #1, 2, 4, 5, 6, and 7). Specifically, they claim that there is a genuine issue of material fact as to whether Harvard appropriately evaluated Student’s ongoing transition needs for the 2021-2022 school year. (See *Opposition*, Statement of Material Facts in Dispute #4) Under the IDEA, reevaluation is required at least every three years, when conditions warrant reevaluation or when a parent or teacher requests reevaluation.⁵¹ For a student who has not reached the age limit or graduated, the school district must assess him before it can determine he no longer has a qualifying disability.⁵² In contrast, a school district does not have to assess a student who will lose special education eligibility only as a result of exceeding the age limitations or because of graduating with a regular high school diploma.⁵³ Therefore, even if I view all evidence and inferences in the light most favorable to the Parents/Guardian, I cannot find in their favor since an evaluation was not required before the termination of Student’s eligibility due to graduation from secondary school with a regular diploma.⁵⁴

Parents/Guardians further assert that a genuine issue of material fact exists as to whether Harvard committed procedural violations by “improperly, administratively determining his graduation and continued special education eligibility and appropriate transition services outside of the Team process.” (See *Opposition*, Statement of Material Facts in Dispute #2) Again, even if I view all evidence and inferences in the light most favorable to the Parents/Guardian, I cannot find in their favor. In the present matter, the Team convened twice to ensure that Student’s graduation requirements had been met, and IEP goals and objectives had been achieved.⁵⁵ (P-9; P-10) Parents participated in both meetings and had an opportunity to provide input to the

⁴⁹ Student has been found eligible for DDS and has been assigned a caseworker. (P-10) 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”).

⁵⁰ *Id.* (citing *Rowley*, 458 U.S. at 206–07).

⁵¹ See 34 CFR 300.303.

⁵² See 34 CFR 300.305(e)(1).

⁵³ See 34 CFR 300.305(e)(2).

⁵⁴ Although the Team was not precluded from proposing an evaluation, I also take notice of Paragraph 4 of the Agreement which lists the District’s provision of services for the term of the Agreement and limits any additional costs, including evaluations. (S-A)

⁵⁵ See *Massachusetts Hosp. Sch.*, 467 N.E.2d 448 (the state supreme court invalidated the district's decision to graduate a student with multiple disabilities when the decision was made without an IEP meeting or notice to the student's parents); *In Re: Caleb & Nauset Public Schools*, BSEA #15-05976/15-07508 (Byrne, 2016) (A district's failure to convene an IEP meeting for 16 months, even after the student was placed in a residential school, and its failure to consider the results of several evaluations when it developed his transition goals invalidated the graduation date it selected); *Amherst Pelham Regional School District*, BSEA # 12-1264 (Crane, 2012) (“School officials must come to an IEP meeting with “an open mind” but may have given thought to the services and placement to be offered or prepared a document (such as a draft IEP) that reflects those thoughts”); *Wauwatosa School District*, 16-067, 69 IDELR 173, (SEA WI, 2016); *Letter to Richards*, 17 LRP 1303 (1990); *Upper Dublin School District*, 1585 (SEA PA, 2005).

Team.⁵⁶ Harvard also provided Parents/Guardians with adequate prior written notice of graduation.⁵⁷ (P-9; P-10)

Parents moreover assert that a genuine issue of material fact exists as to whether the Team appropriately considered and determined whether Student remains eligible for special education and appropriate transition services for the 2021/2022 school year; whether the Team fully and appropriately considered the findings and recommendations of Dr. Herbert's March 2021 private neuropsychological evaluation; whether Harvard fully and appropriately considered the recommendations of Student's Riverview Team members regarding his ongoing special education and transition needs for the 2021-2022 school year; and whether Harvard, through Student's Team, appropriately considered the prior recommendations of Dr. Milot's 2017 and Dr. Hebert's 2020 private evaluations pertaining to Student's current and ongoing special education needs. (See *Opposition*, Statement of Material Facts in Dispute #1, 5, 6, 7) The Parents'/Guardians' procedural argument in this regard is misplaced. The findings and recommendations of Drs. Hebert and Milot, as well as the recommendations of Riverview staff were in fact considered at two Team meetings. Thus, no procedural violation took place in this regard. The Parents, rather, seem to be questioning how much deference the Team may have or have not given to the findings and recommendations of these evaluators and service providers regarding Student's ongoing transition needs. However, there is no requirement that a Team accept all or even some of the recommendations offered by outside providers.⁵⁸ The IDEA only obligates the Team to "consider" an IEE.⁵⁹ Similarly, Massachusetts regulations require only that

⁵⁶ *C.D. by & through M.D. v. Natick Pub. Sch. Dist.*, No. CV 15-13617-FDS, 2017 WL 3122654, at *18 (D. Mass. July 21, 2017), *aff'd*, 924 F.3d 621 (1st Cir. 2019), and *aff'd*, 924 F.3d 621 (1st Cir. 2019) ("Coming to an IEP meeting with a proposal in mind and then declining to change that proposal after considering the parents' input does not amount to predetermination. Pre-meeting consideration only amounts to predetermination if the district refuses to consider the input, objections, and suggestions of the parents such that they are denied the opportunity to meaningfully participate in the IEP development process"); *T.S. v. Board of Education of the Town of Ridgefield*, 10 F.3d 87, 90 (2nd Cir. 1993) (rejecting parent's claim that the team meeting was "orchestrated" to reach a predetermined result and that school district employees on the team "censored" the discussion, the court concluded that parent was not denied the opportunity to be an "equal collaborator" during the team meeting).

⁵⁷ 34 CFR 300.102(a)(3)(ii); 34 CFR 300.503; *In Re: Caleb & Nauset Public Schools*, BSEA #15-05976 / 15-07508 (Byrne, 2016) (because graduation terminates special education eligibility, prior written notice is required); *Letter to Richards*, 17 LRP 1303 (1990). However, there is no IDEA procedural requirement that a district hold an exit meeting to determine whether a student's graduation is appropriate. *See, e.g., Douglas County Sch. Dist.*, 70 IDELR 83 (SEA CO 2017) (the parent failed to establish that the district violated the IDEA by not conducting an "exit meeting" with her and her daughter).

⁵⁸ *See Mr. P v. W. Hartford Bd. of Educ.*, 885 F.3d 735, 753–54 (2d Cir. 2018) (where the Special Education Supervisor reviewed and commented on the independent educational evaluation at the meeting, the IEE was adequately "considered" in accordance with the IDEA); *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 806 (8th Cir. 2011) ("the IDEA requires only that an IEP team 'consider,' not 'incorporate,' such evaluations when developing an IEP").

⁵⁹ 34 CFR 300.502(c)(1); *G.D. v. Westmoreland Sch. Dist.*, 930 F.2d 942, 947 (1st Cir. 1991) (federal law requires only that an independent educational evaluation "must be considered", not that there be substantive discussion); *G.J. v. Muscogee Cnty. Sch. Dist.*, 668 F.3d 1258, 1266 (11th Cir. 2012); *D.S. ex rel. M.S. v. Trumbull Bd. of Educ.*, 357 F. Supp. 3d 166, 171 (D. Conn. 2019).

the IEP Team reconvene and consider the evaluation and whether a new or amended IEP is appropriate.⁶⁰

Parents/Guardians also argue that a genuine issue of fact exists as to whether Harvard failed to propose Student a FAPE for 2021-2022. (See *Opposition*, Statement of Material Facts in Dispute #3) Even if I view all evidence and inferences in the light most favorable to the Parents/Guardian, I cannot find that a genuine issue of material fact exists because in the context of a student whose eligibility for special education may terminate as a result of graduation, the issue is not whether Harvard proposed Student FAPE for the future but rather whether it offered him FAPE in the past. In the instant case, pursuant to the Settlement Agreement, Parents/Guardians released Harvard from any claims which could have been raised prior to the execution of the Agreement.⁶¹ (S-A) Moreover, as discussed above, no genuine issue of fact exists as to whether Student received a FAPE during the term of the Settlement Agreement. As held in *Doe v. Marlborough Public Schools*, a school district “may not properly graduate a student with disabilities if the student **was** not provided with FAPE as required by IDEA (e.g., a student **did not** receive appropriate transitional services, or his IEP **was not** reasonably calculated to provide him educational benefit).⁶²

V. CONCLUSION

I note that in this Ruling I am constrained by the law, the terms of the Settlement Agreement, and the unique circumstances which resulted in Student’s meeting his graduation requirements. The confluence of all these factors has led me to the necessary legal conclusion that, in consideration of the District’s *Motion for Summary Judgment*, memorandum of law, and supporting documents, as well as the Parents’/Guardians’ *Opposition*, memorandum of law, and supporting documents, the District has met its burden to establish that there is no genuine issue of material fact relating to Parents’/Guardians’ claims and that it is entitled to judgment as a matter of law.

VI. ORDER

Harvard Public Schools’ *Motion for Summary Judgment* is hereby GRANTED.

So Ordered by the Hearing Officer:

/s/ Alina Kantor Nir

Alina Kantor Nir

⁶⁰ See 603 CMR 28.04(5)(f); *In re: Quinelle v Nashoba Regional School District*, BSEA # 20-09112 (Reichbach, 2021); *Neville v. Sutton Public Schools*, BSEA # 07-7534 (Crane, 2008) (rejecting Parents’ position that the term “consider” requires that the IEP Team not only listen to the presentation of its neuropsychologist at the Team meeting, but also that the Team itself follow up this presentation with a substantive discussion of the findings and recommendations).

⁶¹ See *Peabody Public Schools*, BSEA # 09-6506 (Crane, 2009) (a Hearing Officer “may (or must) consider the agreement and determine whether and to what extent the agreement alters the rights and responsibilities of the parties with respect to a student’s special education services and related procedural protections”) (citing relevant caselaw).

⁶² *Marlborough Pub. Sch.*, 2010 WL 2682433, at *6 (D. Mass. June 30, 2010) (emphasis added).

Dated: June 30 , 2021