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INTRODUCTION

The BSEA remained active this quarter, although not quite as active as it had been in the preceding one. The hearing officers issued four decisions, *Belmont*, *Dracut*, *Franklin and the Department of Developmental Services*, and *Old Colony Regional Vocational Technical High School*, and nineteen rulings. The *Belmont* and *Dracut* decisions, both of which address parents' challenges to their district's language-based services and programming, are discussed within and, given their differing results, illustrate the pitfalls of litigation for parents and school districts. The rulings continued to address routine matters of procedure, with a number of joinder-related matters. One ruling, *Marblehead*, is a helpful case for parents challenging a student's graduation, serving as a reminder that the principle of stay-put applies where they have rejected a student's IEP, proposed graduation date, and termination of services.

DISTRICT TAKEN TO TASK DUE TO ITS FAILURES TO PROVIDE STUDENT WITH APPROPRIATE LANGUAGE-BASED PROGRAMMING

Dracut Public Schools and Desmond, BSEA No. 2508407, 31 MSER 291 (Reichbach, July 1, 2025) considered the appropriateness of a seventh-grade student's full inclusion program at his local middle school. By all accounts, the student at the center of the dispute, Desmond, was diligent, enjoyed participating in class, and earned good grades. Nevertheless, he had significant learning disabilities in reading (dyslexia) and writing, as well as Attention-Deficit/Hyperactivity Disorder ("ADHD"). Contending that the IEPs proposed by Dracut did not provide Desmond with a free appropriate public education ("FAPE") during seventh grade, the parents filed a hearing request seeking compensatory education and Desmond's prospective placement at the Landmark School ("Landmark"), an approved, private special education school, for eighth grade.

Hearing officers often grapple with similar fact patterns: a student with dyslexia struggles to read and learn; they receive some constellation of push-in and pull-out/small group supports over any number of school years; the parents contend that the student is not making educational progress; the school district disagrees; and litigation ensues. These cases nearly always rise and fall on the strength of the parties' expert witnesses, and because parents typically bear the burden of proof, there is particularly careful consideration of the credibility and opinions of their experts. Here, the hearing officer easily credited the findings and recommendations of the student's neuropsychologist, who conducted two evaluations and a program observation, and private reading tutor, who

was properly certified and trained. The majority of the hearing officer's analysis, however, detailed the many good reasons why she discredited the testimony of the school district's witnesses—points from which we hope administrators, educators, and other staff can learn. They are, among others:

- A student's solid grades, consistent class participation, and good performance on benchmark assessments such as Fountas and Pinnell and iReady are not necessarily indicative of a student's receipt of a FAPE;
- A student's ability to decipher meaning from text does not obviate the need for them to be able to adequately decode words;
- Reading instruction should be delivered with fidelity and by an instructor who is adequately trained in the program that they are administering;
- An evaluator should not decline to provide recommendations in their report because they will not be the one delivering services or in order to give their colleagues flexibility to design a student's program;
- IEP Team members should not lack understanding of or willingly ignore special education procedures; and
- IEP members should have a foundational understanding of the student's disabilities and their impact on the student's learning.

We applaud the hearing officer's comprehensive assessment of the records and testimony before her and agree with her ultimate holding that Desmond required a fully integrated, cohesive language-based program across all content areas in order to make progress. The hearing officer's acknowledgement that it takes years for a district to create and implement a robust language-based program, together with her assessment that the evidence did not appear to support that Dracut had qualified staff to teach a language-based program, all but ensures (although does not absolutely guarantee) that Desmond will be placed at Landmark moving forward—a decisive win for the parents.

PARENTS LOSE THEIR CLAIM FOR REIMBURSEMENT FOR THE CARROLL SCHOOL PLACEMENT

Belmont Public Schools and Evan, BSEA No. 2511078, 31 MSER 350 (Reichbach, August 19, 2025) involved the parents seeking reimbursement for the unilateral placement at the Carroll School for their son's second grade year (2024-2025). Belmont proposed an initial full-inclusion IEP dated February 27, 2023 to February 26, 2024 (2023-2024 IEP) with one goal in reading and eight related benchmarks. It contained Grid-C instruction in reading with a special education teacher/reading specialist (4 x

30 minutes/5-day cycle) and Grid-A Consultation from that provider to staff (1 x 15 minutes/10 days). The 2023-2024 IEP also contained a number of accommodations. The parents accepted in full this IEP.

Evan's first progress report in June 2023 indicated that he was making progress. Evan's first grade general education teacher was trained in Orton-Gillingham ("OG"), and the parents were impressed with her. Belmont's next IEP dated February 12, 2024 to February 11, 2025 (provisional 2024-2025 IEP) continued the services and accommodations from the 2023-2024 IEP within a full inclusion placement. Parents responded by email on February 12, 2024, expressing questions and concerns. They requested edits to the Parent Concerns to include, among other things, the use of OG "whenever possible and especially when he's working with the Special Education teacher," and to Methodology/Delivery of Instruction, to include "[d]ata-driven, evidence-based methodologies such as Orton-Gillingham/Wilson which are proven best practices." Parents also requested summer services and a monthly consult between them and school personnel; that Evan be grouped with students of commensurate ability/need and receive services out of the classroom to minimize disruption and distraction; and that they be provided the qualifications and certifications of the special education teacher who would work with Evan. The Team reconvened to address parents' concerns about the IEP and amended it to include ESY reading services but declined Parents' request to specify that Evan's reading support would use the OG approach. Parents accepted this revised 2024-2025 IEP.

On April 25, 2024, Dr. Nicole Kassissieh conducted a neuropsychological evaluation of Evan. Dr. Kassissieh diagnosed Evan with Orthographic Processing Dyslexia, a SLD with impairment in Reading, and a SLD in Written Expression. She also diagnosed him with Executive Functioning Deficits. Dr. Kassissieh acknowledged that Evan had made progress in many areas, including reading comprehension, and the scores on the CTOPP-2 test had increased in all areas. The Team reconvened on June 3, 2024 to review Dr. Kassissieh's evaluation and subsequently proposed an IEP Amendment to the revised 2024-2025 IEP, which added accommodations based on Dr. Kassissieh's report; increased Grid-C reading instruction with a special education teacher/reading specialist to 5 x 30 minutes per 5-day cycle; and updated the Additional Information section to include access to mental health staff as needed. The Amended 2024-2025 IEP increased ESY with special education/general education staff from 1 x 75 minutes per 5-day cycle to 4 x 75 minutes per 5-day cycle. Dr. Kassissieh emailed the parents the day after the Team meeting, stating "I think that the team is invested and will be setting up [Evan] for a good year next year if you chose (*sic*) to stay at this school." She also wrote that the increase in reading instruction from four 30-minute sessions per week to five "is positive, though there are so many

services that are being condensed into that time, I would recommend keeping up with the service delivery and having check-ins."

The parents unilaterally placed Evan at Carroll for the 2024-2025 school year. They were unsuccessful in obtaining reimbursement for several reasons. First, it is extremely difficult to make the case for the necessity of a substantially separate language based program for a second grader. The gap for a rising second grader is typically, as present here, rarely wide enough to require such a segregated placement. Second, there was evidence from multiple sources, including the parents' own expert, that Evan was making progress in Belmont's inclusion programming. Third, Belmont did not stand pat on its IEPs, but rather increased services in response to the parents' concerns and the private evaluation. Fourth, much of the case rested on the failure of Belmont to provide OG reading services to Evan by a certified provider. However, beginning in December 2023, following completion of the instructor Ms. Carson's OG training, the core of Evan's specialized reading instruction was OG. Evan's first-grade general education literacy instruction was also infused with OG concepts, though it included a variety of other programs as well. Fifth, there was not critical expert support for the parents' position. Notably, Dr. Kassissieh did not assert that Evan was failing to make progress commensurate with his potential, nor had she recommended a placement other than full inclusion. She also did not specify that Evan required OG.

At the hearing, Dr. Kassissieh again would not endorse the need for a substantially separate language-based program for Evan to make progress, nor did she indicate at any time that the progress he had made since Belmont's initial testing in January 2023 was not effective or commensurate with his abilities. While Evan was responding well to OG tutoring, several witnesses described this as the "gold standard" for reading instruction for students with dyslexia. As has been well established, districts are obligated to provide appropriate and adequate services, and not the "gold standard." Dr. Kassissieh and Ms. Gibson both expressed concern that delivery of OG instruction in a small group, as opposed to one-to-one, generally would not permit sufficient tailoring to individual student needs. Yet according to Ms. Colman, a Carroll administrator, OG tutorials at Carroll may be comprised of one teacher and up to four students. Parents also expressed concern about Ms. Carson's lack of OG certification. However, Evan's tutorial at Carroll was led by a graduate intern who had obtained neither her OG certification nor her teaching certification at the time she taught him. In addition, his science teacher lacked teaching certification.

The hearing officer stated she did not doubt the Evan had been well served at Carroll. However, given her finding that Belmont's program was adequate, she did not need opine about the appropriateness of the Carroll placement, and denied the parents' claim for reimbursement. ■

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DISTRICT'S LASER FOCUS ON STUDENT PAYS OFF

In *Re: Franklin Public Schools & the Department of Developmental Services (DDS), Decision*, BSEANo. 2500429, 31 MSER 310 (Mitchell June 30, 2025)—BSEA decides case in school district's favor based on its “herculean” efforts to provide interim in-home services, and to secure a new out-of-district placement, following high-needs student's termination from prior Chapter 766 school

In a case brought by the parent of a nineteen (19) year-old student with a vision impairment and intellectual disability, previously placed at the Perkins School for the Blind but whose Perkins placement was terminated, the BSEA nonetheless found in Franklin's favor based on the district's efforts to secure interim services and to offer a new/appropriate residential placement. *See also In Re: Westborough Pub. Schs. and Ric, Decision*, BSEA No. 18-09434, 24 MSER 196 (Oliver, 2018) (finding no compensatory services owed after new school placement secured, given parent's rejection of new placement proposal: “but for Mother's actions Ric would currently be enrolled ... receiving FAPE[.]”).

Because of Franklin's “herculean” efforts to secure interim services and offer a new placement following the Perkins termination, the BSEA found that there was no failure on Franklin's part to implement the student's IEP, and that because Franklin worked so diligently to secure interim in-home services and to facilitate a new and appropriate residential placement, even though parent rejected the new placement offer at the Evergreen Center, there was no denial of FAPE nor any obligation to provide compensatory educational services on Franklin's part.

As to DDS, however, while the Hearing Officer did not order compensatory services,¹ the Hearing Officer did order additional DDS oversight to properly implement the student's third-party Family Support Navigation services. *See* 31 MSER at 333 (“Additional DDS oversight must be provided to support implementation of the DDS services available to Student, particularly the joint DESE/DDS program services[.]”).

The *Decision* offers a strong example of best practices for school districts when a residential or other out-of-district placement is ter-

minated by a Chapter 766-approved school. Here, as the Hearing Officer stated, the threshold issue was limited to “whether the educational placements and interim services offered to Student over the course of a 15-month period (between January 2024, when his placement at Perkins terminated, through April 2025, when the Parties agreed on Student's placement at BICO [a temporary placement]) constitute FAPE.” 31 MSER at 329.

In deciding the case in Franklin's favor, the Hearing Officer emphasized that parent failed to meet the burden of persuasion, in large part, because she failed to show that “Evergreen [where new placement was offered] would not have provided Student with a FAPE.” 31 MSER at 329. In other words, because after the Perkins termination, Franklin worked promptly to secure *another* appropriate approved residential placement, even though Parent rejected the Evergreen proposal, parent's argument that Franklin failed to provide FAPE fell short. Additionally, the Hearing Officer found that “the interim services the District provided over the fifteen-month period in dispute ... more than compensated Student for any services he was eligible to receive during this time.” 31 MSER at 329.

The Hearing Officer further rejected parent's arguments relating to procedural IDEA violations based on the similarities between the student's Perkins IEP and the proposed Evergreen IEP. Even though Franklin “acknowledged the only revisions ... made from the Perkins 2024 IEP were to the service delivery grid...[.] ... no other changes were warranted because, according to both [Evergreen and Franklin], Evergreen intended to support all the goals, objectives and accommodations in the Perkins 2024 IEP.” *Id.* In other words, when a student's out-of-district placement is terminated by a Chapter 766 school, it is not necessarily the case that the new proposed placement must be able to precisely implement the IEP service delivery grid that was in place at the former placement, so long as the new placement can provide FAPE overall. In other words, there may not only be one model or service delivery mode that provides FAPE. Even though “under Evergreen's consultative model, licensed SLPs and OTs oversee, train, and monitor the provision of their respective services,” instead of those services being provided *directly by licensed* SLPs/OTs, the Hearing Officer nonetheless credited testimony from Franklin and

1. Generally, the BSEA cannot order DDS to provide compensatory *educational* services under 20 U.S.C. § 1415(i)(2)(C)(iii), 34 C.F.R. § 300.151(b)(1), or 603 CMR 28.08(5)(c), or to contribute funding for a residential placement. *See, e.g., Arlington Public Schools and Wanda, Ruling on District's Motion to Join the Massachusetts Department of Developmental Services*, BSEA No. 1700442, 22

MSER 221 (Reichbach Oct. 28, 2016) (allowing Arlington's motion to join DDS but stating that should Hearing Officer ultimately decide that student “requires residential placement for *non*-educational reasons, it would *not* be within my authority to order that DDS fund this placement because such an order would contravene DDS regulations.”). (emphasis added)

Evergreen that the consultative model, even though different from the model at Perkins, would have provided the student with FAPE.

Finally, regarding compensatory services, even though the Hearing Officer found “that Mother had good cause to decline Perkins’s conditional interim offers[,]” which included a temporary offer of day placement (at Perkins) until a new residential placement could be secured, the Hearing Officer still found that Franklin had no obligation to provide compensatory services because of the significant interim services it facilitated. Grounding the analysis in a “calculation of compensatory services . . . based upon the Stay Put IEP and the approximately 5-month period between . . . January 24, 2024, and July 1, 2024[,]” the Hearing Officer found that the in-home services Franklin secured “closely approximate[d] most of the Stay Put IEP services, given the multitude of interim home services provided to Student[.]” 31 MSER at 331. The Hearing Officer further reasoned that “all providers were continually dis-

cussing and consulting with Parent as to Student’s needs, services, and supports[.]” Franklin ensured that “all of Student’s A-Grid consultation services were in fact provided[,]” and that “[a]s to his C-Grid services, the invoices submitted by the District and the testimony of the relevant witnesses demonstrate that Student was provided with sufficient services to meet the direct service hours he was entitled to in the designated C-Grid areas for this approximately 5-month/20 school week period.” *Id.*

School district administrators and special education/IEP team leaders would do well to follow Franklin’s example whenever the placement of a student placed out-of-district is terminated by a Chapter 766-approved school. Franklin’s open communication with parent, state agencies, interim service providers, and potential new placements, served Franklin well in this case and serve as best practices for other districts to emulate should they find themselves in similar circumstances. ■