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

In re: Curtis[1] BSEA #1600388

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 c. 71B), the state Administrative Procedure Act (MGL c. 30A), and the regulations promulgated under these statutes.

A hearing was held on May 8, 16, and 17, 2017 before Hearing Officer Amy Reichbach. Those present for all or part of the proceedings were:

Parent	
Sherry Coughlin	Special Education Supervisor, Lexington Public Schools
Barbara Fortier	Out-of-District Coordinator, Lexington Public Schools
Julie Fouhy	Speech/Language Pathologist, Lexington Public Schools
Pamela Girouard	Director of Special Education, Winchester Public Schools
John Harper	Special Education Teacher/Liaison, Lexington Public Schools
Kathleen Hermon	High School Dean, Lexington Public Schools
Kelly Mertens	Evaluation Team Supervisor, Lexington Public Schools
Ellen Sugita	Director of Special Education, Lexington Public Schools
Cynthia Tang	Guidance Counselor, Lexington Public Schools
Colby Brunt, Esq.	Attorney for Lexington Public Schools

The official record of the hearing consists of documents submitted by the Parent and marked as Exhibits P-1 to P-3, P-5 to P-26, P-28 to P-50, P-52 to P-62, and P-64 to P-71;[2] documents submitted by Lexington Public Schools and marked as Exhibits S-1 to S-26, and S-28 to S-37; [3] approximately three days of recorded oral testimony and argument; and a three volume transcript produced by a court reporter. At the request of the parties the case was continued to May 24, 2017 and the record held open for submission of closing arguments. Closing arguments were received and the record closed on that date.

[1] "Curtis" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.
[2] Exhibits P-4, P-27, P-51, and P-63 were struck from the record. Exhibit P-71 was admitted to the extent it was linked through testimony to the issues before the Hearing Officer.
[3] Exhibit S-27 was struck from the record.

INTRODUCTION

The procedural history of this matter is complex. On July 10, 2015, Parent filed a *Hearing Request* against Lexington Public Schools ("Lexington" or "District") raising several claims regarding her then-twenty year-old son Curtis, which she alleged amounted to a denial of a free, appropriate public education (FAPE). Specifically, Parent alleged that when Curtis enrolled in Lexington in the summer of 2014, Lexington failed to follow the Individualized Education Program (IEP) dated May 27, 2014 to May 26, 2015, which had been developed by Curtis' previous school district. She also argued that the District had changed Curtis' placement and implemented an amendment to his IEP without obtaining consent from Curtis or herself; committed multiple procedural errors with respect to Team meetings and attendance; and failed to abide by graduation requirements from Curtis' previous district that should have applied to him after his transfer. She requested that Lexington be required to apply Winchester's graduation requirements to Curtis. She also requested declaratory and other appropriate relief, as well as compensatory services.[4] The hearing was scheduled for August 17, 2015 before Hearing Officer Ann Scannell.

On July 23, 2015, Lexington filed its Response to Parent's *Hearing Request*, in which it requested dismissal of Parent's claims (Motion to Dismiss).[5] The District challenged Parent's standing, as Curtis was over the age of eighteen (18) and was not under an order of guardianship, and contended that the BSEA lacked the authority to order the District to adopt the previous school district's graduation requirements.

On July 24, 2015, Parent submitted a response to Lexington's Motion to Dismiss in which she disputed certain representations made by the District, requested that the hearing proceed as scheduled, and requested compensation from the District for its violations. Around the same time, she provided documentation to the BSEA that Curtis had delegated educational decision-making to her, which she asserted she had provided previously to Lexington. On July 31, 2015, Parent wrote to Hearing Officer Scannell to request a decision on the District's "request to dismiss."

At the request of the District, and with the assent of Parent, the Hearing was postponed; a Pre-Hearing Conference was scheduled for August 19, 2015, and a hearing was scheduled for September 15, 16, and 17, 2015.[6] The Pre-Hearing Conference was postponed, for administrative

[4] In her *Hearing Request*, Parent proposed that Lexington be "found responsible" and required to "make amends to [Curtis]." In her response to the District's *Motion to Dismiss*, Parent requested that the District "compensate [Curtis] for the damage [it has] done in whatever way [it] is legally required to."

[5] On August 17, 2016, Lexington submitted a letter to the BSEA indicating that it was still awaiting a ruling on its Motion to Dismiss, which had been incorporated into its Response to Parent's *Hearing Request* filed July 23, 2015.

[6] On or about August 18, 2015, Parent indicated in writing that she would be waiving the Resolution Meeting; she had previously raised as an issue that such a meeting had not occurred within the prescribed timeline, nor had the District contacted her to schedule one. On December 15, 2016, Parent submitted a letter to Hearing Officer Lindsay Byrne, to whom the matter had been reassigned, asserting that despite her request, the District had not scheduled a Resolution Meeting.

reasons, to September 1, 2015. It was held as scheduled, as was a further Pre-Hearing Conference on September 29, 2015.[7]

On November 6, 2015, Parent contacted the BSEA requesting a hearing at the earliest possible date.

The docket sheet in this case next reflects reassignment of the matter on July 11, 2016 for administrative reasons to Hearing Officer Lindsay Byrne, who on July 14, 2016 issued a 30-day *Order to Show Cause*. On August 15, 2016, Parent submitted a response asserting that Lexington continued to violate certain laws and requesting that a hearing be scheduled as soon as possible. On August 17, 2016, Lexington responded, objecting to the request for an immediate hearing and indicating that its *Motion to Dismiss* was still pending before the BSEA.[8]

A Pre-Hearing Conference was held on September 14, 2016 to address the District's Motion to Dismiss as well as scheduling issues. On September 15, 2016, Hearing Officer Byrne issued a Scheduling Order, pursuant to which a Hearing would take place on January 4 and 5, 2017. Among other things, this Order outlined the issues for hearing; established deadlines for discovery; and required Parent to provide additional details regarding her allegations.[9]

On September 19, 2016, Hearing Officer Byrne issued an Order denying District's Motion to Dismiss based on lack of parental authority and granting District's Motion to Dismiss as to Parent's claims based on interpretation and/or enforcement of District's local graduation criteria. On October 18, 2016, Parent provided the information she was required to provide, and on October 25, 2016, the District filed a status report.

On December 8, 2016, the District filed a Motion to Quash several of the subpoenas requested by Parent. On December 15, 2016, Parent also submitted a response to what appears to be the District's status report[10] and to the District's Motion to Quash.[11] On December 16, 2016,

[7] The Attendance Sheet dated September 29, 2015 indicates that the parties convened for "hearing," but the Order issued by the Hearing Officer on September 8, 2015 indicates that a further pre-hearing conference was scheduled for that date.

[8] The District's response also requested a conference call to discuss possible ripeness issues.

[9] Hearing Officer Byrne outlined the issues for hearing as follows: (1) whether during the 2014-2015 school year, the District properly implemented Student's last accepted IEP, which was developed by his previous school district, and if not, whether the failure to provide a comparable placement and services denied Student a FAPE; (2) whether the District committed procedural errors in planning and conducting Team meetings for Student throughout the 2014-2015 school year; (3) whether the District committed procedural errors in planning and conducting Team meetings for Student throughout the 2015-2016 school year, and if so, whether those errors resulted in a substantive denial of FAPE to Student. The September 15, 2016 ruling also identified the issue of whether Student was entitled to receive a home/hospital program of tutoring during spring 2015. It appears that Curtis did receive tutoring beginning in May or June of 2015; to the extent Parent believes he did not receive all of the hours to which he was entitled, she did not present evidence at hearing to substantiate this claim. As such, I do not address it.

[10] Parent titled this response District's "Motion to Dismiss due to PQA findings." It is difficult to tell, but the "Motion to Dismiss due to PQA findings" appears to be a response to Lexington's October 25, 2016 status report, in which the District stated that it intended to file a motion to dismiss "on this matter." The District was presumably referring to the closure letter issued by the Massachusetts Department of Elementary and Secondary Education on June 12, 2015 in response to Parent's complaint regarding at least some of the same errors alleged in her *Hearing Request*. In her December 15, 2016 response, Parent argued that matters relating to PQA's findings needed to be addressed at hearing, and that further non-compliance had occurred in connection with recent Team meetings.

Hearing Officer Byrne issued a Ruling and Order denying in part and granting in part District's Motion to Quash Subpoenas.

On December 20, 2016, this matter was reassigned for administrative reasons to the undersigned Hearing Officer and the parties were notified that the Hearing would proceed as scheduled on January 4, 2017 and January 5, 2017.

On December 27, 2016, the District requested reconsideration of Hearing Officer Byrne's rulings on its Motion to Quash. Arguments were heard telephonically on December 28, 2016, after which the undersigned Hearing Officer issued an Order allowing in part and denying in part the District's Motion for Reconsideration[12] and re-scheduling the hearing for January 25 and January 26, 2017 due to the BSEA's failure to issue timely subpoenas.

Due to the anticipated inability of a key witness to attend the hearing (which was scheduled to begin on January 25, 2017), raised by the District on January 18, 2017, the undersigned Hearing Officer issued an Order on January 20, 2017 allowing Parent's request to postpone the hearing. After some discussion about availability of the witness, the Hearing was scheduled to begin May 8, 2017.

For the reasons below, I find that although Lexington committed procedural errors with respect to Curtis' schedule, those errors do not amount to a change in placement, and even in combination with the District's confounding errors with respect to attendance at Team meetings, did not amount to a deprivation of a FAPE.

FINDINGS OF FACT

1. Curtis is a twenty-two year-old resident of Lexington. (S-33)

2. Through his twenty-second birthday, Curtis was eligible for special education under an emotional disability. He has been diagnosed with Major Depressive Disorder (MDD), recurrent. (S-12) The Transition Planning Form developed for Curtis by Winchester Public Schools ("Winchester") on May 4, 2011 also noted that he has a significant communication disability, anxiety and learning challenges. (S-1) Curtis shared special education decision-making with his mother at most times relevant to this matter (S-3, S-16; P-7, P-24); he delegated decision-making to her on March 24, 2015. (S-30)

3. Curtis was enrolled in the Winchester Public Schools during the 2013-2014 school year. (S-1; P-5; Mertens)

4. Winchester convened a Team meeting for Curtis on May 27, 2014. At the time, Curtis was unable to access school; he had not showered or left the house in at least a month. Due to his depression, Curtis had been unable to get to school to participate in his scheduled three-year

[11] This document also provides information regarding the relevance of certain witnesses.
[12] This Order denied the Motion to Quash with respect to certain individuals. It also ordered the issuance of subpoenas to some, but not all, of the individuals requested by Parent.

revaluation. As such, the Team relied on evaluations from 2011 and noted that Curtis needs "specially designed instruction but without medical intervention is not able to access this." (S-1)

5. The IEP generated from the May 27, 2014 meeting for the period from May 27, 2014 to June 26, 2015 ("Winchester IEP") provides for a shorter school day and week. The box for "shorter day" is checked under "Schedule Modification," and the narrative reads, "[Curtis] will attend [Winchester High School] for a shorter day and week." The IEP includes the following services:

A Grid:	
Consult (transition teacher)	1 x 30 minutes per cycle (7 days)
C Grid:	
Counseling	1 x 67 minutes per cycle
Academic Support	8 x 67 minutes per cycle
Transition Skills	1 x 67 minutes per cycle

(S-1)

6. An unsigned placement page generated by Winchester and dated May 27, 2014, accompanying this grid of services, calls for a full inclusion placement. (S-1)

7. A placement page signed by Parent and Curtis on June 19, 2014, accompanying the same grid of services, calls for placement in a substantially separate program, indicating that services would be provided outside of the general education classroom more than 60% of the time.[13] (S-1; P-3; Mertens; Girouard; Harper)

8. Curtis moved to Lexington with his family during the summer of 2014 and enrolled in the Lexington Public Schools on or about June 30, 2014.[14] (S-2) Several days earlier, Parent emailed some of Curtis' special education records, including his most recent IEP, to Lexington Student Services. (P-6)

9. Parent received an email from an administrative assistant in the Lexington Student Services Office on June 25, 2014 letting her know that the information she had sent about Curtis had been given to High School Evaluation Team Supervisor (ETS) Kelly Mertens, who would share it with Special Education Supervisor Sherry Coughlin. (P-6) Ms. Mertens contacted Parent on June 27, 2014 to let her know she would set up a meeting, once Curtis had been enrolled and scheduled, to develop a Lexington IEP based on his active IEP provided by Winchester High School. (P-7)

[13]According to an email exchange between Parent and a school official from Winchester Public Schools, the change was made because Curtis was not "currently signed into" any general education classes. The plan at the time was for Curtis to complete credits "either online or with a specific person," rather than in a general education setting. (P-2) This plan was never embodied in an accepted IEP.

[14] Parent initiated the enrollment process on or about June 23, 2014. (S-22)

10. Ms. Mertens understood, as to Curtis' Winchester IEP, that at the end of his time in Winchester "he wasn't going to school, and when he did, he was only scheduled for a very brief portion of the time in a small group class." (Mertens) Curtis' liaison, Lexington High School special education teacher John Harper, noted that Curtis' Winchester IEP did not specify any academic courses; he postulated that pursuant to this IEP, Curtis would likely have received his classes in the mainstream. (Harper)

11. On August 8, 2014, Parent received an email from Ms. Coughlin informing her that Curtis' schedule would be developed upon the guidance counselors' return from summer break. (P-11)

12. At some time between August 25 and August 27, 2017, Guidance Counselor Cynthia Tang created a schedule for Curtis based on Lexington's graduation requirements and information from Winchester as to classes he had completed. (Tang)

13. Curtis began the school year on August 27, 2014 with the following classes: Reading and Writing Beyond the Canon; Astronomy; Advanced Mathematics; Metacognitive Applications; Memoir and Other Writing; Foundations of Art; Latin I; and Homeroom/Advisory. (P-29 – attendance summary through September 10, 2014, P-58, P-59, P-65) Of his seven classes, six were general education. (Tang) This schedule, which does not incorporate the Grid C services provided for Curtis by Lexington, reflected a full inclusion placement. (Mertens; Harper)

14. Asked why Lexington did not put him in a placement similar to the one he had in Winchester, Ms. Mertens responded that she was "under the assumption that we had information that he needed different courses." She testified that she did not create Curtis' schedule herself, and explained that school counselors are generally responsible for scheduling students. She was unable to explain how the counselors obtain IEPs to guide them in this process for students with disabilities. (Mertens)

15. Ms. Tang was similarly unable to explain how the schedule with which Curtis started the school year accounted for his IEP. She did not read his IEP before she created his schedule, nor was she aware that his Winchester IEP included a schedule modification for a shorter day and a shorter week. The way the process works, she testified, is that the guidance department puts in a transfer student's schedule all of the courses he might need, and then the "Special Education Department would filter those pieces in, if needed." In Curtis' case, she stated, she was working with incomplete information when she created the schedule. Although she had received his testing, transcript, and IEP from Winchester, she did not know "how the student is actually presenting at that time," nor did she know yet whether his online English course would be counted for credit. (Tang)

16. On August 28, 2014, Parent sent an email to Ms. Coughlin in which she expressed her concerns about Curtis' schedule. Parent explained that she believed his course load (six courses at Lexington High School in addition to an online English class) was too high in that it would not permit him to have a shorter school day every day. She explained that at Winchester High School the previous year, Curtis was unable to attend the one class he had

on his schedule and ended up working with a home tutor. She believed the schedule developed by Lexington would overwhelm Curtis and objected, specifically, to the inclusion of Latin on his schedule. Parent requested that Ms. Coughlin inform her as to the identities of the members of Curtis' Team, specifically his liaison, therapist, guidance counselor, and transition and special education teacher. (S-4; P-14)

17. At this time, Lexington had not yet determined the membership of Curtis' Team.[15] (Coughlin)

18. On September 16, 2014, a Team meeting was held in Lexington to discuss Curtis' transfer from Winchester to Lexington. (S-3) In attendance at the meeting and on the pre-printed Team Meeting Attendance Sheet ("Attendance Form") provided to Parent prior to the meeting with the Team Meeting Invitation were the following individuals: Parent, Student, general education teacher Rosemary Loomis, ETS Kelly Mertens, Multidisciplinary Support Team (MST)[16] lead clinician Mary Ann Parente, and social worker Meredith Rubin. Several additional individuals signed in, though their names did not appear on the Attendance Form: general education teacher Jim Williams; MST liaison Jim Harper; Dean Kate Hermon; and guidance counselor Cynthia Tang. (S-3; P-18)

19. The Summary of Team Meeting (STM) completed in connection with the September 16, 2014 Team meeting states, among other things, that the purpose of the meeting was to update Curtis' IEP; that Parent and Student were concerned about work; and that the Team Vision Statement was to stay with the Winchester IEP. The document also states that an evaluation will be proposed, to include speech. As to transition, the STM notes that Curtis' transition plan "will stay from WHS IEP with some tweaks;" the Team was not yet ready to create a new transition plan, and instead aimed to ensure that the plan that had been developed by Winchester the previous May could be provided at Lexington High School. (S-3; P-17; Mertens) For goals, the District wrote, "same," "since it was a transfer IEP [and they] didn't have adequate data to update the goals." (Mertens)

20. Following the Team meeting, Parent forwarded to Ms. Mertens her August 28, 2014 email about Curtis' schedule. (S-4) In a separate email, she also expressed concerns that some of the people who attended the September 16, 2014 Team meeting had not been on the Attendance Form (including Curtis' liaison), and that some Lexington employees who were copied on the email invitation she had received to the meeting did not appear on the Attendance Form and she did not know their identities. (P-19)

21. On September 17, 2014 the Team proposed a re-evaluation of Curtis to include academic achievement with a focus on writing, a speech and language assessment, classroom observation, a psychological evaluation (including updated developmental history and emotional functioning), and a teacher-based educational assessment. (S-5)

[15] Special Education Supervisor Sherry Coughlin testified at hearing that when a student transfers to Lexington from another school district, "the first team that sits down at the meeting may not end up being the team that works with the student." (Coughlin)

[16] The Multidisciplinary Support Team (MST) has since been renamed the Therapeutic Learning Program (TPL). Witnesses used both terms to refer to the program in which Curtis had been enrolled. (Mertens; Harper)

22. The Team met again on September 23, 2014 to continue its discussion of Curtis' entry into Lexington Public Schools and his Transfer IEP. This meeting was attended by Parent, Student, Ms. Mertens, Ms. Parente, and Ms. Rubin, all of whom were on the Attendance Form. Ms. Hermon and Mr. Harper, who attended the meeting, were written in. No general education teacher attended the meeting. (S-5; P-21)

23. At this meeting, the Team discussed the transfer of credits from Winchester toward graduation and agreed to remove Latin and Art from Curtis' schedule to decrease his workload and try to keep him on track for graduation by June of 2015. The Team noted that the removal of these classes would "enable [Curtis] to address his current academic requirements more effectively and in line with the accommodations afforded in his transfer IEP."[17] (S-6)

24. The N-1 from the September 23, 2014 meeting states specifically, "The district is accepting the transfer IEP as the most effective step to enable [Curtis] a positive transition to his new high school."(S-6; P-40)

25. Following this meeting, Lexington developed an IEP for Curtis for the period from September 2, 2014 to June 6, 2015 ("Lexington IEP" or "Transfer IEP"). It calls for placement in a full inclusion program[18] and a shorter day, and it includes the following services:

A Grid:	
Consultation (General Education and Special Education)	1 x 15 min/5 days
C Grid:	
Metacognitive	4 x 50 min/5 days
Academic Support	4 x 50 min/5 days
Therapeutic Support	1 x 50 min/5 days
Transition	1 x 50 min/5 days

(S-6; P-22)

At this point the increased percentage of time Curtis spent outside of the general education class may have indicated a change from full inclusion to partial inclusion, though no

[17]Attendance Summaries that Parent has marked as reflecting the time periods ending September 23, 2014 and October 7, 2014 demonstrates that at this time, Curtis was enrolled in Metacognitive Applications; Reading and Writing Beyond the Canon; Advanced Mathematics; Homeroom/Advisory; Memoir and Other Writing; Interpersonal Communication; and Astronomy. An Attendance Summary Parent marked as ending September 29, 2015 (presumably meant to be September 29, 2014) reflects the same courses, minus Interpersonal Communication; Interpersonal Communication reappears on an Attendance Summary labeled by Parent as showing the period through October 14, 2014, and the same classes (including Interpersonal Communication) appear on an Attendance Summary Parent has marked as showing up to December 5, 2014. (P-29)

[18] Although "full inclusion" is checked off on the PL1 (Placement Consent Form) to indicate that services will be provided outside of the general education classroom less than 21% of the time, the PL2 (Special Education Summary Data Form) indicates that the program is "partial inclusion," such that services will be provided outside of the general education classroom 21%-60% of the time. (S-6; Mertens; Harper)

placement form was generated or presented to the family at this time. As such, his placement remained full inclusion. (Mertens)

26. Both Ms. Mertens and Mr. Harper recognized that the full inclusion placement component of the Lexington IEP did not match the substantially separate placement listed on Curtis' last signed IEP from Winchester, and that Lexington did not obtain signed approval or some other form of permission from Parent or Curtis to place Curtis in a full inclusion program. (Mertens; Harper) Ms. Mertens indicated that there may have been some confusion stemming from the existence of two placement pages in the Winchester IEP (the signed one specifying a substantially separate setting and the unsigned one providing for a full inclusion placement), and that she was "more focused on the service grid rather than the check box on the placement page." (Mertens)

27. Nothing on the record suggests that the Lexington IEP was ever signed by Parent and/or Curtis. Handwritten across the section of the IEP meant for Parent Comment in the version submitted by the District is the following: "active per transfer." (S-6) On the version of this IEP submitted by Parent, "ACTIVE per WHS IEP" is handwritten in the Response section in the space for Signature and Role of LEA Representative; the space for Parent Options/Responses is left blank.[19](P-24) On the Lexington IEP, the box for "shorter day" is checked under "Schedule Modification," and the narrative reads: "[Curtis'] day will be shortened to allow [Curtis] to manage the day and also access his classes since he has a modified schedule for credit requirements." (S-6; P-24)

28. On October 1, 2014, Curtis consented to Lexington's proposed evaluation, accepting an academic achievement assessment to focus on writing; a psychological achievement assessment to include emotional functioning; classroom observation; and speech and language. He rejected an updated developmental history. (S-7)

29. Curtis' educational assessments were completed in October and November 2014. One assessment completed October 10, 2014 indicated that his attendance was impacting his learning, as he had nine or more absences in each class at that time. (S-8)

30. By mid-to-late October, Curtis' attendance was declining. (Harper) An N-1 form was developed on October 20, 2014 proposing a home assessment of Curtis to determine what behaviors/emotional dysregulation was preventing him from attending school.[20] (S-9)

31. According to the Current Performance Level section of a Progress Report for his Metacognitive Application goal generated October 31, 2014, Curtis "can attend his regularly scheduled mainstream classes." The report noted that he had started the quarter "working well" but then stopped attending classes and school and as a result, had "made no measurable progress on this goal this quarter." His reports for his Academic Strategies and Interpersonal Communication goals were similar. (S-10)

[19] Ms. Mertens testified that the handwriting was hers. (Mertens)
[20] By November 2014, members of Curtis' Team were concerned about his declining attendance. (S-13; Mertens)

32. Speech and language testing of Curtis occurred during November and a report was generated by Speech/Language Pathologist Julie Fouhy on December 4, 2014. Ms. Fouhy noted, among other things, that Curtis' "weaknesses in the areas of expressive language processing and social/pragmatic communication would have a significantly negative impact on his classroom performance." She recommended that he receive direct support to address these deficits. (S-11)

33. A psychological evaluation of Curtis was performed by Dr. Betsy Speicher on several dates in November 2014. Dr. Speicher noted that Curtis was, at the time, at least two years from the graduation requirements and that "his difficulty producing written output has severely impacted his school attendance and ability to complete English classes." (S-12)

34. The Team met on December 9, 2014[21] to review Curtis' evaluations. In attendance at this meeting, an on the pre-printed Attendance Form, were Ms. Fouhy, Mr. Harper, Parent, Student, Ms. Mertens, Mr. Parente, Ms. Rubin, and Dr. Speicher. Also in attendance, but not on the attendance sheet, was Nancy DeFeudis, who would be covering for Ms. Mertens during her maternity leave.[22] No general education teacher attended the meeting. Although the Team reviewed assessments conducted by Ms. Tang and Ms. Loomis during the meeting, neither of them attended. The Team also reviewed educational assessments completed by English teacher Jennifer Cohen and Science teacher Dan Abromovich. Neither of them attended the meeting. (S-15; P-23; Mertens)

35. As a result of this Team meeting, the District proposed an amendment to Curtis' IEP that would add a Speech and Language goal with a focus on social pragmatics and expressive language. These services were to be delivered by a Speech and Language pathologist, 3 x 50 minutes per week, with nine (9) blocks per month in the form of direct services and three (3) blocks per month in the form of in-class observation and consultation. Curtis accepted this amendment on January 7, 2015. At this point, Curtis' Service Delivery grid contained the following:

A Grid:	
Consult to GED/SPED	1 x 15 min/5 days
Consult to GEN/S&L/SPED	1 x 10 min/5 days
B Grid	
S&L	1 x 25 min/month
C Grid:	
Metacognitive	4 x 50 min/5 days
Academic Support	4 x 50 min/5 days

[21] Some inconsistency exists in the record as to the date of this meeting. The pre-printed Team Meeting Attendance Sheet ("Attendance Form") contains the date December 2, 2014. (S-15) The Team Meeting Summary submitted by the District reflects a meeting date of December 10, 2014 (S-16), but the N-1 reflects a meeting date of December 9, 2014, which matches the testimony of Ms. Mertens as to when it actually occurred. (S-16; Mertens) A document submitted by Parent suggests that this was a rescheduled meeting. (P-25)

[22] See email from Ms. Mertens to Parent, dated March 12, 2015. (P-30)

Therapeutic Support	1 x 50 min/5 days
Transition	1 x 50 min/5 days
S&L	9 x 50 min/month

(S-16; P-23, P-26)

36. In December 2014, subsequent to the December Team meeting, Lexington Behavior Specialist Carmen Susman completed a home assessment of Curtis. In this evaluation, Dr. Susman reported that Curtis has a history of school attendance issues and that he shuts down when overwhelmed. Dr. Susman recommended that the Team discuss alternatives to conventional high school learning, e.g. scheduling and credit options. He also recommended changes to be made at home, such as a more regimented sleeping schedule and an environment more conducive to sleep. (S-18; P-28)

37. Dr. Susman reported that at the time of the home assessment, Curtis was working at a local restaurant, two to three nights a week from 4:00 pm to 9:30 pm and had missed just one day. (S-18, S-19; P-28)

38. An Attendance Summary[23] Parent has labeled as reflecting the period ending February 6, 2015 demonstrates that at the time, Curtis was enrolled in the following courses: Memoir and Other Writing; Speech Language (D3); Advanced Mathematics; Metacognitive Applications; Interpersonal Communication; Interpersonal Communication (B4); Speech Language (B1); Reading and Writing Beyond the Canon; Speech Language (H$3); Astronomy; and Homeroom/Advisory. (P-29) At this point, Curtis had four general education classes on his schedule. (Mertens; Tang; Harper)

39. On February 10, 2015, the Team met to review Dr. Susman's home assessment. In attendance at this meeting, and also on the Attendance Form, were Parent, Curtis, Mr. Harper, Ms. Mertens, Ms. Rubin, Dr. Susman, and general education teacher James Williams. (S-20; P-60) Ms. Parente was marked as "out sick," but Parent was not asked to excuse her attendance. (S-20, S-29; P-60; Mertens) Also in attendance at the meeting, but not on the Attendance Form, were Lexington Out-of-District Coordinator Barbara Fortier,[24] Ms. DeFeudis, Ms. Coughlin, and Diane Tashjian from the Massachusetts Rehabilitation Commission. (S-20; P-60)

40. The Team proposed an increase in counseling and transition services for Curtis, from one time a week to two times a week, and removal of academic and metacognitive support from his schedule. The Team recommended this change to permit Curtis to focus on transition, speech and language, and counseling goals and services, due to his "inability to attend his

[23] Attendance summaries were printed, reviewed, and mailed home weekly for students in the Multidisciplinary Support Team (MST) Program. (P-46)

[24] Ms. Fortier is referred to in the record both as Ms. Bennett-Fortier and Ms. Fortier.

regularly scheduled classes."[25] The N-1 also noted that all regular education classes had been removed from Curtis' schedule.[26] (S-22; P-30, P-60)

41. Ms. Mertens signed a proposed amendment to Curtis' schedule reflecting these changes on February 23, 2015. The amendment remained unsigned by Parent and/or Curtis until it was ultimately rejected by Parent some time between March 5 and March 12, 2015.[27](S-22)

42. On February 12, 2015, Curtis revoked all previous releases he had signed to permit Lexington to speak with outside providers and previous schools. (S-21; P-34) Up until this point, Curtis and his mother had shared information with the District, and Parent had been an active, responsive member of Curtis' Team. (Mertens)

43. An Attendance Summary Parent has labeled as reflecting the period ending February 13, 2015 demonstrates that at this time, Curtis was enrolled in the following courses: Speech Language (D3); Interpersonal Communication (B4); Homeroom/Advisory; Metacognitive Applications; Interpersonal Communication; Speech & Language Support; Psychology of Social Communication (taught by the SLP); Speech Language (H$3); and Speech Language (B1). (P-29; Tang; Harper) At this time Curtis' schedule contained no general education classes, though no amendment to his IEP had been generated to reflect the change. According to Ms. Mertens, this did not constitute a change in placement because it did not alter the services on Curtis' A, B, or C grid.[28] (Mertens)

44. The addition of the speech and language class, Psychology of Social Communication, appears to have occurred following the February 10, 2015 Team meeting, although speech and language therapist Julie Fouhy was not in attendance. (S-20; P-60; Mertens)

45. On February 18, 2015, Parent contacted Ms. Mertens again to express her continuing frustration with Lexington's failure to include all Team meeting attendees on Attendance Forms and her concern that she still did not have a list of the members of Curtis' Team. (P-19)

46. When she rejected the District's proposed amendment arising out of the February 10, 2015 Team meeting, Parent explained in a letter accompanying the rejection that at the Team meeting Curtis had expressed his desire to graduate and therefore she and he were unable to accept a proposal that did not include the academics he needs to graduate. She also contended that neither special education nor general education teachers provided input at the Team meeting, and no one suggested any avenues through which Curtis could complete

[25] Mr. Harper testified that these changes were aimed not at graduation, but at engagement, in an attempt "to be able to engage the student to come back to school and to interact with some providers." (Harper)
[26] It appears that Parent may not have received the Team Meeting Summary Form or draft IEP generated at this meeting in a timely manner (P-35; Mertens), although DESE seems to have concluded otherwise. (S-29)
[27] Parent dated her rejection 3/5/15, but Lexington stamped it received 3/12/15. (S-22)
[28] Ms. Mertens explained that guidance is in charge of general education classes, and special education is in charge of the "grid stuff." Asked whether special education would have had to generate something in order for guidance to add or remove classes from Curtis' schedule, Ms. Mertens responded, ". . . it's just not black and white. I guess it's grey, which is why [Curtis] is up in the air." (Mertens)

his academic requirements at school. Parent specifically instructed the District to follow the last signed IEP. (S-22)

47. At some point between February 16 and 24, 2015 Parent communicated to the District that neither she nor Curtis had signed any IEP or Amendment thereto prepared by Lexington, and that the Winchester IEP was actually the last operative IEP. (S-23; Mertens) In response, Ms. Mertens referenced the amendment that had been signed by Curtis on January 7, 2015, stemming from the December 10, 2014 Team meeting. (S-16; Mertens)

48. On March 25, 2015, the Team met to discuss Parent's rejection of the February 2015 amendment. With the exception of the General Education teacher, whose name had been left blank, all of the individuals who attended were on the Attendance Form. Although Curtis' IEP contained a speech and language goal and speech and language services, Ms. Fouhy did not attend the meeting, nor was she included on the Attendance Form. (S-24)

49. The Team met again on April 9, 2015 for the same purpose.[29] In attendance but not on the Attendance Form were Ms. Tang, Dean Hermon, and Ms. Fouhy. (S-25) Ms. Fouhy was not present at the beginning of the meeting, but joined at Parent's request. (Fouhy; Harper)

50. At some point between the week ending March 20, 2015 and the week ending March 27, 2015, Curtis' courses were changed. For the weeks ending March 13 and March 20, 2015, his Attendance Summaries contained the same classes in which he had been enrolled as of February 13, 2015, which included no general education courses. The Attendance Summary Parent labeled as ending March 27, 2015 shows that Curtis is enrolled in the following classes: Memoir and Other Writing; Astronomy; Speech & Language Support; Psychology of Social; Interpersonal Communication; Speech Language (H$3); Homeroom/Advisory; Speech Language (D3); Metacognitive Applications; Reading and Writing Beyond the Canon; Advanced Mathematics; Speech Language (B1); and Interpersonal Communication (B4). (P-29) This schedule includes four general education courses. Ms. Mertens could not explain this change, as she was out on maternity leave at the time, but she suggested that Ms. Tang and Dean Hermon would be able to do so. (Mertens)

51. On April 16, 2015, Lexington received a Physician's Statement for Temporary Home or Hospital Education signed by Dr. Hesham Hamoda. The document noted that Curtis "has a longstanding history of depression and problems with attention" and stated that he would be out of school until September 1, 2015. (S-26; P-38)

52. Though District officials did not believe Curtis met the requirements for home tutoring as he was working part-time at a job and was not confined to the home or a hospital (Hermon), Lexington provided Curtis with tutoring beginning in May 2015 (Herman) or early June 2015. (S-31), Some of the courses in which he received tutoring were different from those on his schedule, i.e. he was tutored in Calculus but scheduled in Advanced Math (Harper).

[29] It is unclear from the record whether a Team meeting actually occurred on March 25, 2015 or whether the meeting was rescheduled to April 9, 2015. (S-24, S-25; Harper)

53. Dr. Jeff Bostic, M.D., Ed.D. completed an educational consultation with regard to Curtis on June 3, 2015. In it he made several recommendations focusing on getting Curtis engaged and out of the house, as well as engaged with a school program that could provide therapeutic supports. Dr. Bostic also noted that at the time, Curtis was working approximately eighteen (18) hours a week as a busboy at a restaurant. (S-28)

54. At some point during the spring of 2015, Parent filed a complaint against Lexington with the Department of Elementary and Secondary Education (DESE) alleging a number of procedural violations. After conducting an investigation of Parents' allegations, DESE's Problem Resolution Specialist concluded that Lexington had not violated any regulations when the District entered consent for the Transfer IEP then met twice in September to discuss implementation of the consented-to IEP. (S-29)

55. DESE found that Lexington had violated the law, however, in connection with Team meeting attendance. The District had not, for example, sought parental consent to excusal of Team members or included with each IEP Team Meeting Invitation the names of all individuals would be attending that meeting. The District undertook training of its Evaluation Team Supervisors on the requirements of the relevant regulations, including notification of attendees for Team meetings, which DESE accepted as sufficient corrective action. (S-29) This training was led by Director of Special Education Ellen Sugita. (Sugita) It was not attended by Kelly Mertens, Sherry Coughlin, Barbara Fortier, or Nancy DeFeudis. (P-41)

56. Following this training, Ms. Sugita did not personally follow up on any of the Attendance Forms for Curtis' Team meetings because, as she testified, "I trust my staff, that they will do the right thing. . . and follow up on regulations covered at the ETS meetings." (Sugita)

57. As of May 8, 2017, the first day of the hearing in this matter, both Ms. Coughlin and Ms. Mertens believed that the District had to list on Team Meeting Invitations and Attendance Forms only those individuals who provided direct services to the particular student. (Coughlin, Mertens) Ms. Coughlin testified that she believed that informing a parent of the identities of additional individuals the District planned to bring to a Team meeting was a "common courtesy," but not required by law. (Coughlin)

58. DESE also reviewed Attendance Summaries submitted by Parent and concluded that Curtis' academic classes were not removed from his schedule before the IEP Amendment was rejected on March 5, 2015.[30] (S-29)

59. At a Team meeting on June 19, 2015, the Team reviewed Curtis' progress in home/hospital tutoring, his current functioning, and the report submitted by Dr. Bostic. In attendance at this meeting, and on the Attendance Form, were Parent, Mr. Harper, Ms. Mertens, Ms. Parente, and Dr. Bostic. The space for the general education teacher was left blank; Kevin

[30] But see paragraphs 38, 43 and 51, *supra*, which suggest otherwise.

Kelly signed in.[31] Also in attendance at the meeting, but not on the Attendance Form, were Dean Hermon, Ms. Rubin, and Ms. Fouhy. (S-30)

60. Following the Team meeting, an N-1 dated June 22, 2015 proposed continued placement of Curtis in the MST at Lexington High School, with speech and language; academic support, specifically targeting writing skills; and interpersonal communication skills; as well as therapeutic support and post-graduation transition. The IEP, which proposed a shorter school day[32] and a longer school year, included participation in MST's summer program for credit. The Service Delivery grid contained the following:

A Grid:		
Team Planning	Gen/SLP/Sped/SW	1 x 15 min/5 days
B Grid		
Observation	SLP	1 x 25 min/month
C Grid:		
ESY		4 x 300 min/5 days
Metacognitive Strategies		4 x 50 min/5 days
Acad-Eng (sm group)		4 x 50 min/5 days
ELA/Executive Function		1 x 50 min/5 days
Academic Support		4 x 50 min/5 days
Interpersonal Comm		1 x 50 min/5 days
Transition		1 x 50 min/5 days
S&L		9 x 50 min/month

The IEP generated from this meeting appears to have provided for placement in a substantially separate classroom, which placement Parent rejected in writing on July 24, 2015.[33] (S-30, S-31, S-32; P-56; Mertens)

61. On September 30, 2015, subsequent to a Pre-Hearing Conference in the matter on September 1, 2015, Parent consented to a PL1 form proposing placement in a separate private day school. (S-30, S-32; Sugita) She accepted the IEP in full on October 1, 2015, and the signed IEP was received by Lexington on October 6, 2015. (S-30; P-55) Curtis began attending the SEEM Collaborative shortly thereafter.[34]

62. During Curtis' placement at SEEM, Ms. Fortier served as his Team Chair. For his Team meetings, Team Meeting Invitations and Attendance Forms listed only "SEEM Collaborative Representatives," as Ms. Fortier could not be certain in advance who the

[31] Although Kevin Kelly was a general education teacher at Lexington High School, he did not have any involvement with or responsibility for Curtis. (Mertens)
[32] As with both the Winchester IEP and the Transfer IEP, the box for "shorter day" is checked under "Schedule Modification" and is accompanied by a narrative.
[33] The PL2 form generated with this IEP provides for placement in a substantially separate classroom, rather than a private day school. (S-30)
[34] Although SEEM Collaborative is a public day school, the IEP called for a private day school placement. (S-30)

Collaborative would send to a Team meeting. She did not want to list specific names, "because then if [she] put their names, then [Parent] would have to sign them out" if they were unable to attend a Team meeting.[35] Instead, in response to Parent's complaints regarding the accuracy of Attendance Forms, Ms. Fortier offered to list expected attendees by position. (Fortier)

63. Although a change in speech and language services from pull-out direct services to "in-the-moment pragmatics" was recommended during the Team meeting at SEEM that was held November 4, 2015, no speech and language pathologist was in attendance. (Fortier) The Attendance Form listed Lexington Out-of-District Coordinator Barbara Bennett-Fortier; Parent; Student; an unnamed special educator; and unnamed SEEM Collaborative Representatives. (S-33). The SEEM counselor, principal, and teacher who attended were written in. (S-33; Sugita)

64. On or about November 27, 2015, Lexington proposed an IEP dated November 4, 2015 to June 16, 2016, with placement at SEEM Collaborative. The IEP provided for a shorter day and a therapeutic program. It was signed by Ms. Fortier on November 27, 2015. Parent dated her acceptance of the IEP January 28, 2016. It was stamped "received and approved" by Lexington on March 22, 2016. (S-33) The service delivery grid contained the following:

A Grid:	
Speech/Language Consult	1 x 15 min/week
C Grid:	
Academics	1 x 1716 min/week
Social/Emotional/Transition	1 x 42 min/week/prn

(S-33)

65. On or about February 12, 2016, after a period of inconsistent attendance, Curtis stopped attending SEEM Campus Academy High School. (S-35, S-37)

DISCUSSION

A. The Parties' Positions

Parent asserts that Lexington committed a series of procedural violations between June 2014, when Curtis was first enrolled in Lexington High School, and the present, and that these procedural violations amount to a deprivation of a Free Appropriate Public Education (FAPE). Specifically, she alleges that Lexington violated Curtis' right to due process and her right to participate in Team decision-making when it developed – and implemented without her consent – as a "Transfer IEP" an IEP calling for placement in a full inclusion program, where Curtis' last signed IEP from Winchester called for a substantially separate placement. Moreover

[35] Ms. Fortier testified specifically that for a Team meeting for a student in an out-of-district setting, "it's impossible for me to know the names of all the different people," and as such, she would not list the name of individuals expected to attend. (Fortier)

Lexington added and removed courses from Curtis' schedule, thereby changing his placement from full inclusion to partial inclusion to substantially separate and back again, without consent. Parent also contends that Lexington's repeated failure to include all individuals who were invited to attend Curtis' Team meetings on the Attendance Forms, in combination with the District's previous procedural errors, constitute a deprivation of a FAPE.

The District acknowledges that it erred with respect to Team Meeting Invitations and Attendance Forms, but argues that where Parent was involved in Curtis' education this does not constitute a violation of FAPE. Moreover, the District asserts, its Transfer IEP was based on the service grid for Curtis it received from Winchester and, in accordance with Curtis and his mother's wishes, aimed to prepare him to graduate in 2015. To the extent its placement did not match Curtis' Winchester IEP, Lexington contends, the Winchester IEP was confusing and, as it failed to include academic courses in any of the grids, must have anticipated that Curtis would participate in general education academics. Otherwise it would not have moved him forward toward graduation.

B. Parent Bears the Burden of Proof

In order to determine whether Parent is entitled to a decision in her favor, I must consider substantive and procedural legal standards governing special education. As the moving party in this matter, Parent bears the burden of proof.[36] To prevail, she must prove – by a preponderance of the evidence – that the District committed one or more procedural violations and that these procedural inadequacies amounted to a violation of Curtis' right to a FAPE.[37]

C. Procedural Errors May Constitute a Deprivation of a FAPE

The IDEA contains both substantive and procedural protections for children with disabilities. Procedural protections serve a dual purpose; they ensure that each eligible child receives a FAPE, and they provide for meaningful parental participation.[38] They are so important that the IDEA recognizes that even if no substantive irregularities have occurred, procedural errors may amount to a deprivation of a FAPE: "In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies – (I) impeded the child's right to a free appropriate public education;

[36] See *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2008); see also *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 995 (1st Cir. 1990)(party allegedly aggrieved bears burden of persuasion for procedural violations).

[37] See *Roland M.*, 910 F.2d at 994 (Districts are liable for procedural violations if parents prove both that a violation occurred and that the procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits").

[38] See, e.g., *Honig v. Doe*, 484 U.S. 305, 311 (1998) ("Congress repeatedly emphasized throughout the [IDEA] the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness; *Doug C. v. Haw. Dep't of Educ.*, 720 F.3d 1038, 1043 (9th Cir. 2013)("the IDEA's structure relies upon parental participation to ensure the substantive success of the IDEA in providing quality education to disabled students"); *Amanda J. v. Clark County Sch. Dist.* 267 F.3d 877, 891-92 (9th Cir. 2001) ("Procedural compliance is essential to ensuring that every eligible child receives a FAPE, and those procedures which provide for meaningful parent participation are particularly important. . . An IEP which addresses the unique needs of the child cannot be developed if those people who are most familiar with the child's needs are not involved or fully informed.")

(II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or (III) caused a deprivation of educational benefits."[39] In 1990, in *Roland M. v. Concord School Committee*, the First Circuit Court of Appeals articulated this analysis as follows: "Before an IEP is set aside, there must be some rational basis to believe that procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits."[40] As to parental participation, the United States Supreme Court reemphasized recently, in *Endrew F. v. Douglas County School District RE-1*, its earlier declaration that collaboration between parents and educators is a key component of the IDEA.[41]

Parent has alleged the commission of procedural errors in three broad categories: (1) the implementation of Curtis' IEP upon his transfer from Winchester to Lexington; (2) the addition and subtraction of general education and other classes and/or services to Curtis' schedule without consent; and (3) failure to timely and properly notify Parent of Team meeting attendees and obtain her consent where Team members were absent. As such, I examine the law governing each of these areas in turn. To the extent Parent contends that the District's actions and inactions deprived her of her ability to participate fully in the development and implementation of Curtis' IEP, I am guided in my analysis by courts' tendency to focus its analysis on the degree to which school districts offered parents the opportunity to play an important participatory role.[42]

D. Lexington Complied With Procedural Protections Governing Transfers Between Districts

1. *When a student transfers between school districts, the receiving district must provide "comparable" services*

Under the IDEA, when a student moves from one school district to another school district within the same state, the receiving district must "provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in

[39] 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2).
[40] 910 F.2d at 994.
[41] 137 S. Ct. 988, 994 (2017)("These procedures [set forth in 20 U.S.C. § 1414] emphasize collaboration among parents and educators"); see *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982)("Congress placed every bit as much emphasis on compliance with procedures giving parents and guardians a large measure of participation in every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard"); see also *C.G. v. Five Town Cmty. Sch. Dist.*, 513 F. 3d 279, 285 (1st Cir. 2008) ("development of an IEP is meant to be a collaborative project").
[42] See, e.g., *Roland M.*, 910 F.2d at 995 (where parents did not cooperate with attempts to create IEP and there was no "indication of procedural bad faith" on school's part, school district had "fulfilled the essence of its procedural responsibility"); *A.M. v. Monrovia Unified Sch. Dist*., 627 F.3d 773, 780 (9th Cir 2010)(no procedural violation of parental right to participate meaningfully where parents did not participate in Team meeting but district had taken steps to obtain their presence); *Ms. S. ex rel. G v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1132-33 (9th Cir. 2003) (superseded by statute on other grounds)(where parent disagreed with receiving district's temporary placement of her son, upon transfer, pending completion of a "proper evaluation" and alleged that District's "take it or leave it" position did not allow for meaningful parental participation, court found that where school district's attempt to schedule several assessments and other IEP meetings, notifying her in advance, "school district ha[d] repeatedly provided the parent with the opportunity to participate meaningfully in the IEP process" and as such, "ha[d] not violated its obligations under 34 CFR §300.345").

consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law."[43] Massachusetts provides, further, that when an eligible student moves from one Massachusetts school district to another, "the last IEP written by the former school district and accepted by the parent shall be provided in a comparable setting without delay until a new IEP is developed and accepted."[44]

Although neither statute defines "comparable," the United States Department of Education's Office of Special Education and Rehabilitative Services ("OSERS") has interpreted "comparable," to mean "similar" or "equivalent" to the previous services.[45] Courts have found that comparable services were delivered, sufficient to meet districts' obligations pursuant to the transfer provision of the IDEA, where the receiving district implemented an IEP in-district that had previously been delivered in a private school setting;[46] and where the receiving district was unable to replicate the unique educational environment of the old school district but offered a placement "that approximated the last agreed-upon IEP as closely as possible under the circumstances."[47] Moreover the Ninth Circuit Court of Appeals has distinguished between an IEP accepted by parents and one actually implemented by a former district, holding for the purposes of transfer that a state law "modeled after the IDEA" refers to the latter and requires only the provision of "services in accordance with the last implemented IEP," which "effectuates the statute's purpose of minimizing disruption to the student while the parents and the receiving school resolve disagreements about proper placement."[48]

Given the lack of further guidance in the statute and regulations regarding the meaning of "comparable," some courts have looked to case law regarding the "stay put" mandate,[49] in

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[43] 20 USC §1414(d)(2)(C)(i)(I)(applying to intrastate transfers within the same academic year); 34 CFR § 300.323(3) (same). See *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46540, 46682 (Aug.14, 2006)(clarifying with respect to this provision that when child moves to new school district before next school year begins and an IEP was developed or reviewed and revised at or after the end of a school year for implementation during the next school year, new school district could decide to adopt and implement that IEP, unless the new school district determines that an evaluation is needed. Otherwise, the newly designated IEP Team for the child in the new school district could develop, adopt, and implement a new IEP.) See also *J.F. v. Byram Twp. Bd. of Educ.*, 629 Fed. Appx. 235, 238 n.2 (3rd Cir. 2015)(unpublished)(applying statute to transfer that took place between school years, "because the transfer post-dated the creation of the IEP for the new school year," and therefore "[t]he situation . . . resembles a mid-year transfer").

[44] 603 CMR 28.03(c)(1).

[45] See 71 FR 46540, 46681. OSERS declined commenters' suggestion to define "comparable services" in the regulations. See *id*.

[46] See *J.F.*, 629 Fed. Appx. at 236.

[47] *Ms. S.*, 337 F.3d at 1134.

[48] *A.M.*, 627 F.3d at 779. See *Ms. S.*, 337 F.3d at 1134 ("We hold that when a dispute arises under the IDEA involving a transfer student, and there is disagreement between the parent and student's new school district about the most appropriate educational placement, the new district will satisfy the IDEA if it implements the student's last agreed-upon IEP; but if it is not possible for the new district to implement in full the student's last agreed-upon IEP, the new district must adopt a plan that approximates the student's old IEP as closely as possible.")

[49] See *Johnson v. Special Educ. Hearing Office*, 287 F.3d 1176, 1181 (9th Cir. 2002) (District into which student had aged "can meet the requirements of the 'stay put' provision by providing comparable educational placement"). *Cf. John M. v. Bd. of Educ. of Evanston Twp. High Sch. Dist. 202*, 502 F.3d 708, 715-15 (7th Cir. 2007)(applying analytical framework from transfer cases to case involving stay put mandate). But see *J.F.*, 629 Fed. Appx. at 236

deciding whether receiving districts have complied with the IDEA's transfer provision, as both aim to provide "stability in education."[50] In both contexts, stay put and transfer, the determination as to whether a school district has complied with its obligations is individualized and "fact intensive;"[51] it focuses on the student's overall educational experience.[52] As such, not every change with respect to a student's education program constitutes a violation of stay put.[53] Moreover some courts have allowed school districts more latitude in the transfer context, recognizing that "[a]lthough the 'stay put' provision is meant to preserve the status quo, . . . when a student transfers educational jurisdictions, the status quo no longer exists."[54] For example, in a case where it was not possible for the receiving school district to implement the student's last agreed-upon IEP in full, the Ninth Circuit looked more specifically to the IEP's goals and the student's educational placement to assess whether the district provided services that "approximate, as closely as possible, the old IEP."[55]

Although the analysis is not identical, for the reasons above it is instructive to examine case law regarding stay put. Courts have held that a change in placement for this purpose occurs when "a fundamental change in, or elimination of, a basic element of the educational program has occurred,"[56] or when a change in location "results in dilution of the quality of a student's education or a departure from the student's LRE [least restrictive environment]-compliant setting."[57] For example, a transfer from "a special class in a regular school to a special school" in the same district;[58] a move from a mainstream program to a substantially separate program;[59] and

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(noting that transfer between districts results from parents' unilateral move, not a change initiated by the school district, and as such, new district need only provide services comparable to what student received from old district).

[50] See, *e.g., Verhoeven v. Brunswick Sch. Comm*., 207 F.2d 1, 3 (1st Cir. 1999)(in determining "then-current educational placement" in stay put context, courts have considered the essential purpose of this provision, which is to "preserve the status quo pending resolution of" the dispute concerning that child's placement); *Drinker ex rel. Drinker v. Colonial Sch. Dist.*, 78 F.3d 859, 864 (3d Cir. 1996) ("The provision represents Congress' policy choice that all handicapped children, regardless of whether their case is meritorious or not, are to remain in their current educational placement until the dispute with regard to their placement is ultimately resolved.")

[51] *Hale ex rel. Hale v. Poplar Bluff R-I Sch. Dist.*, 280 F.3d 831, 834 (8th Cir. 2002)(whether there has been a change in student's "then-current educational placement" is a "fact-specific" inquiry that turns on the impact of change of placement on student's education).

[52] See *DeLeon v. Susquehanna Cmty Sch Dist*, 747 F.2d 149, 153 (3d Cir. 1984) ("touchstone in interpreting section 1415 has to be whether the decision is likely to affect in some significant way the child's learning experience").

[53] See, e.g., *A.W. ex rel. Wilson v. Fairfax County Sch. Bd.*, 372 F.3d 674, 682 (4th Cir. 2004); *DeLeon*, 747 F.2d at 153, 154; *Lunceford v. District of Columbia Bd. of Educ.,* 745 F.2d 1577, 1582 (D.C. Cir 1984).

[54] *Ms. S.*, 337 F.3d at 1133, 1134 (recognizing that unlike stay-put case, "when a student falls under the responsibility of a different educational agency . . . the new agency need not provide a placement identical to that provided by the old agency," and holding that "when a dispute arises under the IDEA involving a transfer student. . . the new district will satisfy the IDEA if it implements the student's last agreed-upon IEP; but if [that]is not possible . . . the new district must adopt a plan that approximates the student's old IEP as closely as possible"); see *John M.,* 502 F.3d at 714-15 (accepting Ninth Circuit's "approximation" rule where child progresses from one level of education to another); *J.F.*, 629 Fed. Appx. at 236 (noting that transfer between districts results from parents' unilateral move, not a change initiated by the school district, and as such, new district need only provide services comparable to what he received from old district).

[55] *Ms. S.*, 337 F.3d at 1133, 1134.

[56] *Sherri A.D. v. Kirby*, 975 F.2d 193, 206 (5th Cir. 1992).

[57] *A.W.*, 372 F.3d at 682.

[58] See *Concerned Parents & Citizens for Continuing Educ. at Malcolm X (PS 79) v. New York City Bd. of Educ.*, 629 F.2d 751, 754 (2d Cir. 1980) (making this observation).

[59] See *Lunceford*, 745 F.2d at 1582 (making this observation).

a transfer to a more restrictive environment that eliminates interaction with non-special education students during lunch, assemblies, and physical education and includes a highly structured and supervised program,[60] have all been deemed changes in placement.[61] In some circumstances, a scheduling change may constitute a change in placement. For example in *G.B. v. D.C.*, the United States District Court for the District of Columbia held that a proposed placement that involved a "four and a half hour per week reduction in important specialized instruction and behavioral support services," combined with changes to the student's transition periods and lunch setting, constituted a change in placement.[62]

On the other hand, "minor decision[s] alter[ing] the school day" such as modifications to the method of transportation to and from school or replacing one teacher or aide with another do not constitute changes in placement that would violate the stay put provision.[63] Courts have also held that changes in programs or classrooms do not constitute changes in placement where they provide "substantially similar classes."[64] Moreover, in *Cavanagh v. Grasmick*, the United States District Court for the District of Maryland held that even in combination, three minor modifications – the addition of a reading objective to the IEP, a transfer from a functional vocational special education class to a self-contained special education class, and the addition of the option to participate in field trips – did not constitute a change in placement, as student-teacher ratios would be similar, as would the environment and the opportunity to interact with non-disabled peers.[65]

2. *Although Lexington offered Curtis additional general education services beyond those in his Winchester IEP, it also provided comparable special education services*

To determine whether Lexington provided "services comparable to those described in the previously held IEP"[66] in a "comparable setting,"[67] in conformance with federal and state law, I examine Curtis' Winchester IEP and the Transfer IEP generated by Lexington, focusing on whether Lexington delivered services "similar" or "equivalent" to the previous services,[68] and whether his Lexington placement "approximated the last agreed-upon IEP as closely as possible under the circumstances."[69] I also consider the fact that the IEP developed by Winchester for the 2014-2015 school year was never implemented in that district, and I have no information before me as to the last IEP that was both accepted and executed in Curtis' former school district.[70]

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[60] See *Jonathan G. ex rel. Charlie Joe G. v. Caddo Parish Sch. Bd*., 875 F. Supp. 352, 366-67 (W.D. La. 1994).
[61] See *Concerned Parents*, 639 F.2d at 743; *Jonathan G.*, 875 F. Supp. at 366-67; *Lunceford*, 745 F.2d at 1582.
[62] 78 F. Supp. 3d 109, 116 (D.D.C. 2015).
[63] *DeLeon*, 747 F.2d at 153,154.
[64] *Weil v. Bd. of Elem. & Sec. Educ.*, 931 F.2d, 1069, 1072 (5th Cir. 1991). See *Concerned Parents*, 629 F.2d at 756 (transfer of disabled students "in special classes at one school to substantially similar classes at other schools within the same school district" does not constitute a change in placement); *Lunceford*, 745 F.2d at1582 (noting that a move from one mainstream program to another, with the elimination of a theater arts class, would not constitute change in placement).
[65] 75 F. Supp. 2d 446, 468-70 (D. Md. 1999).
[66] 20 USC §1414(d)(2)(C)(i)(I).
[67] See 603 CMR 28.03(c)(1).
[68] 71 Fed. Reg, 46540, 46681.
[69] *Ms. S.*, 337 F.3d at 1134.
[70] See *A.M.*, 627 F.3d at 779.

The IEP generated by Winchester for the 2014-2015 school year provided for a shorter day and a shorter week for Curtis, with programming totaling approximately four hundred seventy eight (478) minutes a week. No academic classes appeared anywhere on the Service Delivery Grid; the A grid provided for a weekly consultation by a transition teacher (approximately 21 minutes), and the C grid provided for counseling, academic support, and transition skills. No academic classes appeared in the C grid, indicating that Curtis was not receiving special education academic classes outside the general education setting. Furthermore no services were listed on the B grid, the implication of which is not that he was not assigned to any general education classes, but rather that he was not assigned support in those classes. The grid was initially accompanied by a placement consent form, which was never signed, that specified a full inclusion placement; when Lexington received the Winchester IEP, it included a signed placement consent form for a substantially separate placement, though no changes had been made to the grid.

The process used by Lexington to create Curtis' schedule was far from ideal in that the person responsible for assigning his classes, Guidance Counselor Cynthia Tang, did not consult his IEP when she did so. Furthermore, there does not appear to have been sufficiently close coordination between the guidance and special education departments to ensure that Curtis' schedule was aligned with his IEP. This deficiency, however, had a limited effect on delivery of his special education services.

The IEP created for Curtis by Lexington upon his transfer from Winchester included a schedule modification for shorter days, but it did not provide for a shorter week. Programming totaled five hundred (500) minutes a week. As with the Winchester IEP, no academic classes appeared anywhere on the Service Delivery Grid; the A grid provided for a weekly consultation between general and special educators (15 minutes), and the C grid provided for metacognitive and academic support, therapeutic support, and transition. No academic classes appeared in the C grid, indicating that Curtis was not receiving special education academic classes outside the general education setting. Furthermore no services were listed on the B grid, the implication of which is not that he was not assigned to any general education classes, but rather that he was not assigned support in those classes. In fact his schedule initially included six general education classes, and his IEP included a placement consent form, which was not signed but instead considered active per his Winchester IEP, specifying a full inclusion placement.[71]

Lexington witnesses, particularly Curtis' ETS Kelly Mertens, and his MST liason John Harper, testified that they were guided by the grid from the Winchester IEP, rather than the placement page, in developing Curtis' Transfer IEP. Moreover they were aware of Curtis' and his mother's desire that he graduate in June 2015, and knew this could not happen if he were assigned no academic classes. They could not assign him substantially separate academic classes without changing his placement by making it more restrictive,[72] and as such, Curtis was placed in general education courses. When he and his mother expressed concern about the number and difficulty of these classes at a Team meeting early in the school year, Curtis' Team removed Latin and Art from his schedule in order to decrease his workload, with the hope of keeping him on track to graduate at the end of the school year.

[71] As explained in Note 18, *supra*, the PL2 form indicated that Curtis' program was partial inclusion.
[72] See *Lunceford*, 745 F.2d at 1582; *Jonathan G.*, 875 F. Supp. at 366-67.

Parent argues that Curtis' Lexington schedule included more general education classes than would be compatible with his Winchester IEP. As the record does not contain a schedule from Winchester and both IEPs are silent on the matter of general education classes, I cannot conclude that the full, or at least partial, inclusion IEP implemented by Lexington constitutes "a fundamental change in, or elimination of, a basic element of the educational program"[73] or "dilution of the quality of [Curtis'] education."[74] Unlike the schedule alterations found by the court to constitute a change in placement in *G.B. v. D.C.*, where the receiving district reduced specialized services and isolated the student further from her general education peers, here Curtis received almost the same number of hours of specialized services per week, and no restrictions were placed on his interactions with general education peers.[75] To conclude that the changes to Curtis' schedule wrought by his Transfer IEP represents a "departure from [his] LRE-compliant setting,"[76] I would have to focus on placement consent forms rather than services, prioritizing form over substance. I decline to do so.

Furthermore, the Service Delivery Grid implemented by Lexington upon Curtis' transfer in the summer of 2014 is substantially similar to the Service Delivery Grid developed by Winchester for the 2014-2015 school year. Parent focused her arguments, and corresponding evidence, on the number and difficulty of Curtis' general education classes at Lexington High School and offered little, if any, evidence regarding the nature and content of his Grid A and/or C services. As such, I find that the program offered by Lexington for the 2014-2015 school year was comparable, pursuant to state and federal law, to that offered by Winchester for the same time period. Parent has failed to meet her burden to establish otherwise.

E. Changes to Curtis' Courses Did Not Constitute A Change in Placement

The legal principles elucidated above concerning modifications to students' programs and services govern the analysis of the impact of Lexington's changes to Curtis' courses. As such, I examine the changes to Curtis' schedule made by Lexington without notice and consent to determine whether they constitute a change in placement triggering due process protections.

Parent has established that the following changes occurred: (1) following the Team meeting held on September 23, 2015, Curtis' Team removed two general education courses from his schedule, without the written consent of Parent or Curtis; (2) following a speech and language evaluation of Curtis and discussion of the evaluation at a Team meeting, direct speech and language services were added to Curtis' IEP by way of an amendment generated in December 2015 and accepted by Curtis in January 2016; (3) during February 2015, several general education classes were removed from Curtis' schedule and in March 2015, several general education classes were added to, Curtis' schedule. The Team recommended the removal of general education courses at a Team meeting on February 10, 2015 and generated an amendment to reflect the recommendation, but the amendment was never signed, and Parent ultimately rejected it in early March 2015.

[73] *Sherri A.D.*, 975 F.2d at 206.
[74] *A.W.*, 372 F.3d at 682.
[75] See 78 F. Supp. 3d at 115-17.
[76] *A.W.*, 372 F.3d at 682.

To the extent procedural irregularities occurred (i.e., the addition and removal of general education courses to and from Curtis' schedule without the consent of the parent or the student), they did not involve Curtis' special education services. The District appears to have committed a procedural error by implementing, at least partially, its February amendment when it removed general education classes from Curtis' schedule without parental (or student) consent. Although it should not have done so, this change did not alter the content or quantity of Curtis' specialized services or instruction. As such, it did not constitute a change in placement.[77]

F. Lexington Committed Procedural Violations With Respect to Team Meeting Attendance

1. Federal and state law govern Team meeting composition and attendance

Attendance at Team meetings is an important element of, and requirement for, developing an IEP. Relevant federal regulations require that the school district or state ensure that the IEP Team includes the following individuals: at least one of the child's regular education teachers (if the child is, or may be, participating in the regular education environment); at least one of the child's special education teachers, or, where appropriate, at least one of the child's special education providers; a qualified and knowledgeable public agency representative; an individual who can interpret the instructional implications of evaluation results, who may be one of the team members listed above; the child's parents; where appropriate, the child with a disability; and, at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child.[78] The party inviting individuals with such knowledge or special expertise determines whether those individuals possess that knowledge or expertise.[79] The State regulation defines "Team" broadly as a "group of persons, meeting participant requirements of federal special education law . . . who, together, discuss evaluation results, determine eligibility, develop or modify an IEP, or determine placement."[80]

As discussed above, parental participation is an important component of the IDEA. As to Team meetings, school districts must provide parents with both notice and the opportunity to participate.[81] Specifically, the notice provided by the school district must "indicate the purpose, time, and location of the meeting and who will be in attendance."[82] Among other things, it must also inform the parent as to regulations that permit the attendance, "[a]t the discretion of the parent or agency, [of] other individuals who have knowledge or special expertise regarding the child."[83]

Regulations implementing the IDEA set forth specific procedures to be followed for excusal of a Team member from a Team meeting. First, if the parent of a child with a disability and the public agency "agree, in writing, that the attendance of the member is not necessary

[77] *Cf.*, e.g., *Sherri A.D.*, 975 F.2d at 206; *A.W.*, 372 F.3d at 682.
[77] *A.W.*, 372 F.3d at 682.
[78] See 34 CFR 300.321(a).
[79] See 34 CFR 300.321(c).
[80] 603 CMR 28.02(21).
[81] See 34 CFR 300.322(a).
[82] *Id.* at 300.322(b)(i).
[83] *Id.* at 300.322(b)(ii).

because the member's area of the curriculum or related services is not being modified or discussed in the meeting," that member is not required to attend.[84] Second, a Team member

> "may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if – (i) The parent, in writing, and the public agency consent to the excusal; and (ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting."[85]

The IDEA does not provide for any other mechanism by which a Team member's absence from a Team meeting may be excused.[86]

2. Lexington repeatedly failed to provide adequate notice as to who would attend, and failed to follow procedures when it excused Team members from, Curtis' Team meetings

Parent contends that Lexington committed procedural errors when it failed to include on Team Meeting Invitations and Attendance Forms the names of all school personnel who would attend Curtis' Team meetings. Furthermore, she asserts that Lexington failed to invite required members to Team meetings, and in at least one instance excused a member, all without her consent. A detailed review of the evidence in this case demonstrates that she is correct and, even after a finding from DESE against it on this issue, Lexington continued to commit the same errors. Although Lexington conducted training on team attendance following the DESE finding, certain key staff members – including those responsible for the errors in this case – were not in attendance.

a. 2014-2015 School Year

i. Notice

The District failed to include, in its notices (comprised of Attendance Forms accompanying Team Meeting Invitations), the names and/or titles of certain individuals who ultimately attended Curtis' Team meetings. For example, the District did not include Dean Kate Hermon on its Attendance Forms accompanying invitations for the meetings she attended on September 16 and 23, 2014, April 9, 2015 or June 19, 2015. The District did not include Guidance Counselor Cynthia Tang on its Attendance Forms accompanying invitations for the meetings she attended on September 16, 2014 and April 9, 2015. The District did not include Nancy DeFeudis on its Attendance Forms accompanying invitations for the meetings she attended on December 9, 2014, or February 10, 2015. The District did not include Speech and Language Pathologist Julie Fouhy in its notices for the meetings she attended on April 9, 2015 and June 19, 2015. The District did not include Curtis' MST liaison John Harper in its notices for the meetings he attended on September 16 and 23, 2014, nor did it name in its notices the general education teachers that

[84] 34 CFR 300.321(e)(1).
[85] *Id*. at 300.321(e)(2).
[86] *Cf.* 34 CFR 300.321(e).

attended meetings on March 25, 2015 and June 19, 2015. Finally, the District did not include, in its notices, the following individuals for at least one of the meetings they attended: Jim Williams (for September 16, 2014); Sherry Coughlin, Barbara Fortier, and Diane Tashjian (for February 10, 2015); and Meredith Rubin (for June 19, 2015). By failing to include the above-listed individuals, who attended Team meetings, on its Team Meeting Invitations and Attendance Forms, the District failed to place Parent on notice as to who would attend. As such, it violated the IDEA's requirement that it provide parent with notice that indicates "who will be in attendance."[87]

ii. Attendance

As outlined above, Lexington was responsible for ensuring that Curtis' Team included at least one of his regular education teachers, as his IEPs indicated that he was, or might be, participating in the regular education environment; at least one of his special education teachers; and other individuals enumerated by federal and state law.[88] For Team meetings where particular evaluations were being discussed, and/or changes to Curtis' services (i.e., quantity or form of delivery of speech and language services, for example) were contemplated, the authors of those evaluations and providers of those services were required to attend, unless they were properly excused.[89]

The District failed to meet its obligations to Curtis in this respect several times during the 2014-2015 school year, particularly with respect to the membership of general education teachers on Curtis' Team and their attendance at Team meetings. For example, no general education teacher attended Curtis' September 23, 2014 Team meeting, though his schedule included multiple general education classes and his Transfer IEP listed a full inclusion placement. No general education teacher attended Curtis' December 9, 2014 Team meeting, at which the Team reviewed assessments completed by some of his general education teachers. The general education teacher who attended the Team meeting on June 19, 2015 was not one of Curtis' teachers. There is no question that Lexington failed to comply with 34 CFR 300.321(a) during the 2014-2015 school year as to attendance at Team meetings by general education teachers. But Lexington's noncompliance did not end there; although Curtis' IEP included a speech and language goal and corresponding services at the time, SLP Ms. Fouhy did not attend Curtis' February 10, 2015 Team meeting.

iii. Excusal for Attendance

Had Lexington obtained Parent's agreement, in writing, that the attendance of a particular Team meeting that the attendance of a specific Team member was not necessary because that member's area of the curriculum or related services was not being modified or discussed, the District would have been in compliance with the IDEA and its implementing regulations.[90] As to

[87] See *id*.
[88] See 34 CFR 300.321(a); 603 CMR 28.02(21).
[89] See 34 CFR 300.321(a)(Team includes "an individual who can interpret the instructional implications of evaluation results"), in combination with *id*. at 300.321(e)(providing for excusal of a Team member from a meeting at which a modification to or discussion of her area of the curriculum or related services, only under certain circumstances).
[90] See 34 CFR 300.321(e)(1).

other Team members whose area of the curriculum or related services were being discussed at a particular meeting, had the District obtained Parent's written agreement and the written input of those members, it would have been in compliance with the IDEA and its implementing regulations.[91] As to each of the instances described in Part F(2)(a)(ii), the District failed to meet its obligations regarding a Team member's absence from a Team meeting. Furthermore, when one Team member (Ms. Parente) was absent from a particular meeting due to illness, and the District, understandably, was unable to obtain her written input in advance of the Team meeting, Lexington failed to obtain Parent's agreement, in writing, to her absence.

b. 2015-2016 School Year

For at least one meeting during the 2015-2016 school year, the District failed to meet its obligations to inform Parent as to who would be in attendance by simply listing "SEEM Collaborative Representatives" on Attendance Forms. This contravenes and circumvents the purpose of the IDEA's notice requirements regarding Team meeting attendance, and Ms. Fortier's rationale for implementing this practice was not mitigating. Furthermore, no speech and language pathologist attended the Team meeting during which the Team recommended a change in speech and language services. There is no evidence in the record from which I could surmise that the District complied with the law as to obtaining Parent's written agreement to Team members' excusals and/or absences.

3. Lexington's refusal to comply with requirements for Team meeting attendance, while confounding, did not prevent parent from participating actively in Curtis' education

As detailed above, confusion existed within Lexington's special education department as to Team meeting notice and attendance requirements during Curtis' tenure as a student in the District. It is noteworthy that the confusion continued to exist, even after Lexington delivered training as part of a corrective action plan it devised upon being found in violation of these same requirements be DESE. Parent was, understandably, frustrated by Lexington's failure to provide her with accurate Attendance Forms in advance of Curtis' Team meetings. She has not, however, demonstrated that the District's noncompliance prevented her from playing an important participatory role in Curtis' education. The sheer number of Team meetings that occurred, in combination with regular email contact between Parent and the District, demonstrates that the opposite was true; Parent was an involved member of Curtis' Team.

G. Taken Together, Lexington's Procedural Errors Do Not Amount to a Denial of FAPE

I have concluded that Lexington's Transfer IEP was comparable to Curtis' Winchester IEP and that the procedural irregularities that occurred in the assignment of (and changes to) general education classes on Curtis' schedule did not constitute a change in placement. As such, the only procedural violations that occurred were those in connection with Team meeting notice and attendance. The evidence before me does not support a finding that these errors impeded Curtis' right to FAPE, or caused a deprivation of education benefits, as no evidence has been presented as to the impact on Curtis of these errors. Parent and Curtis both participated in a

[91] See *id*. at 300.321(e)(2).

number of Team meetings and had access to Curtis' Team outside of the Team meeting process as well. For the same reason, as discussed above, I find that Lexington's procedural errors did not deprive Parent of the opportunity to participate in the decision-making process regarding the provision of FAPE to Curtis.

CONCLUSION

After reviewing the testimony and documents in the record, I conclude that Parent has failed to meet her burden to establish the procedural errors committed by Lexington deprived Curtis of a FAPE.

I am concerned, following my review of all of the evidence, about Lexington Public School personnel's enduring confusion about Team membership, notice as to attendance at Team meetings, and procedures to be followed when Team members are absent from meetings, particularly as DESE found the District to be out of compliance on this issue, the District participated in corrective action, yet the same errors continued to occur with respect to the same student. Even at hearing, special education staff demonstrated their lack of understanding as to the regulations in this regard. I will be referring this matter to the Massachusetts Department of Elementary and Secondary Education, so that it may follow up as it deems appropriate.

ORDER

So ordered.

By the Hearing Officer:

_____
Amy M. Reichbach[92]
Dated: June 30, 2017

[92] The Hearing Officer gratefully acknowledges the diligent assistance of legal intern Alina Voronov in the preparation of this Decision.