August 9, 2023

 **COMMONWEALTH OF MASSACHUSETTS**

***Division of Administrative Law Appeals***

**Bureau of Special Education Appeals**

**DECISION**

**BSEA # 2308727**

**BEFORE**

**MARGUERITE M. MITCHELL**

**HEARING OFFICER**

**FELICIA VASUDEVAN, ATTORNEY FOR SCHOOL**

**PARENT, PRO-SE**

**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: District L[[1]](#footnote-1). & Student BSEA# 2308727**

# DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act (IDEA) (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.

On March 16, 2023, District L (“District”) filed a *Hearing Request*. A *Notice of Hearing* was issued on March 17, 2023, scheduling the initial Hearing for April 5, 2023. Neither party sought to postpone the Hearing[[2]](#footnote-2), however, at their joint request, and for good cause, additional Hearing days were scheduled. The Hearing commenced on April 5, 2023, and continued to April 12, 2023, April 28, 2023, May 9, 2023, May 11, 2023, May 12, 2023, May 25, 2023, and May 26, 2023, via a virtual platform, as jointly requested by the Parties.

The official record of the Hearing consists of documents submitted by the Parent and marked as Exhibits P-1, P-2, P-3a, P-3b, P-4b, P-4c, P-5 to P-9, P-11 to P-17[[3]](#footnote-3); documents submitted by the District and marked as Exhibits S-1 to S-14, S-14a, S-15, S-16[[4]](#footnote-4), and S-17a[[5]](#footnote-5); and over 50 hours of stenographically recorded oral testimony by 17 witnesses resulting in an 8-volume transcript.

Those present for all or part of the proceedings, all of whom agreed to participate virtually, were:

*Mother*

*Sheri Barboza Parent Support Witness/IEP Team Member*

*AR Director of Special Education – District*

*DB Algebra II Math Teacher – District*

*NP ELA Teacher – District*

*LC School Counselor – District*

*MG Special Education Resource Instructor – District*

*PP Auto Tech Teacher – District*

*CF Health Teacher – District*

*JS English Teacher – District*

*Dr. Frank Hernandez Clinical Psychologist*

*LM Math Teacher – District*

*AS Special Education Teacher – English – District*

*LCii Special Education Teacher – District*

*CG Algebra II Teacher – District*

*JF ELA Teacher – District*

*HT Special Education Teacher – District*

*DD School Nurse – District*

*CB School Nurse – District*

*NB Assistant Principal/Dean – District*

*ML Auto Shop Instructor – Grade 12 – District*

*JP School Psychologist – District*

*SB Auto Shop Instructor – Grade 11 – District*

*SBii Director of Co-Op – District*

*Sandra McCluskey BCBA – Crest Collaborative*

*PF Physical Education Teacher – District*

*MS Physics Teacher – District*

*TS Auto Shop Instructor – Grade 10 – District*

*Felicia Vasudevan, Esq. Attorney – District*

*Jane Werner Stenographer*

*Carol Kusinitz Stenographer*

*Marguerite M. Mitchell Hearing Officer*

At the parties’ written request an extension was granted for good cause until July 5, 2023[[6]](#footnote-6), to allow for submission of written closing arguments. The District filed its *Closing Argument* on June 29, 2023. Parent filed her *Closing Argument* on July 5, 2023, and the record closed on that date.

# ISSUES IN DISPUTE:

The issue for hearing in this matter, is:

Whether the District’s proposed Individual Education Programs (IEPs) offered and offer Student a free and appropriate public education between March 16, 2021, and March 16, 2023?

# POSITIONS OF THE PARTIES:

**District’s Position**

The District asserts that the individualized education plans (IEPs) it has offered and offers since November 3, 2021[[7]](#footnote-7), provide Student a free, appropriate, public education (FAPE) and that it has attempted to address Parent’s concerns. To the extent it has not done so, this is due to actions and inactions by Parent. Specifically, Parent’s actions and continued allegations and complaints of illegality, discrimination and other violations have hindered the Team’s progress, but the District has continued to communicate with Parent and seek her input, while educating Student in accordance with the accepted portions of his IEP and the federal and state special education laws. The District seeks confirmation from the BSEA that its IEPs offer and have offered Student a FAPE.

**Parent’s Position**

Parent disputes that the District has offered Student a FAPE in any of the IEPs it has proposed since November 4, 2021. Specifically, the IEPs failed to properly identify Student’s disability, and did not include all of Parent’s requested accommodations, such as providing Student with a 1:1 nurse, as well as a 1:1 academic aide for his classes. Parent also disagrees with the District’s proposal for Student to use an application to track Student’s blood sugar levels. Additionally, she disputes Student’s need for the proposed counseling services. Further, she takes issue with some of the benchmarks in the counseling goal. Finally, Parent argues that the IEP should have had individual accommodations, goals and objectives for each of his classes, as Student presented differently in each class as well as provisions to address bullying, transition planning and behavior.

Parent also asserts that the District has committed substantial procedural violations from March 16, 2021, through March 16, 2023, that have impeded her right to participate in the Team determination process and amounted to a denial of a FAPE for Student. She contends that all the proposed IEPs fail to reflect what was discussed at Team meetings, and that they also all contain information written “outside the Team process” by unspecified “3rd party strangers”, thereby prohibiting Parent from being able to participate in Student’s educational decision-making process. Parent also objected to Team meetings being limited in time, stopped “mid-conversation” and not reconvened within 30 days, which Parent asserts is an IDEA deadline. Additionally, the Team failed to discuss all agenda areas Parent had requested. Further, Parent submits that the District failed to invite everyone she requested to attend the Team meetings, such as all of Student’s classroom teachers or representatives from the Massachusetts Rehabilitation Commission (MassRehab). Parent also objects to being provided with a draft IEP prior to the March 6, 2023, Team meeting and to the District’s practice of sending new IEPs to Parent after each Team meeting rather than proposing amendments.

Parent also contends that the FBA performed in May 2022 was not timely conducted and was not conducted in accordance with her requests. Parent originally requested the FBA as an “additional evaluation” listed on the Evaluation Consent Form she signed in July 2021 for Student’s initial eligibility testing. According to Parent, the District, refused, ignored or otherwise failed to conduct the FBA until approximately nine months later and then failed to address how Student’s blood sugar levels impact his behavior. Parent also argues that the District refused her request for an independent FBA.

# FACTUAL FINDINGS[[8]](#footnote-8):

1. Student is a recent high school graduate of the District. At the time the Hearing Request was filed and throughout the Hearing on the merits, Student was seventeen-years old, and was completing his senior year of high school[[9]](#footnote-9). Student has had Type 1 diabetes since he was two years old, and Parent has been his primary caretaker throughout his life. Student wears a Tandem insulin pump that delivers him insulin. Student’s other medical diagnoses are an allergy to penicillin, asthma and migraines. Student is also diagnosed with ADHD – predominantly inattentive type, depression and anxiety. (S-5; DD, 447-48[[10]](#footnote-10), 675; Parent, 2175, 2219).
2. Dr. Amado Frank Hernandez is a clinical psychologist who was contracted by the District to conduct a psychological evaluation of Student in September 2021. He holds a PhD in clinical psychology with a postdoctoral fellowship in clinical neuropsychology. He has been licensed as a psychologist in Massachusetts for 21 years and has worked on the medical staff at Boston Children’s Hospital for the past 11 years as well as maintaining his own private practice. Dr. Hernandez evaluates persons of all ages, half of whom are adolescents. Approximately ten percent of his practice involves contracts with school districts to evaluate students. Dr. Hernandez attended five Team meetings for Student, including all four Team meetings at issue in this matter. (Hernandez, 92-94).
3. On September 16, 2021, Dr. Hernandez conducted a psychological evaluation of Student and issued a Preliminary Report with two addenda – a diagnostic summary sheet and a partial score summary report. The evaluation focused on five different areas consisting of cognition (utilizing the Stanford-Binet Intelligence Scale – 5th edition); achievement (utilizing the Woodcock-Johnson Achievement Tests – 4th edition); social-emotional functioning (utilizing the Minnesota Multi-Facet Personality Inventor (MMPI) - Adolescent version); personality or executive skills (utilizing the BRIEF – Parent and Teacher editions); and conduct (utilizing the Behavior Assessment Scale for Children-2nd Edition – Parent and Teacher editions (BASC)). Dr. Hernandez administered Projective Drawings, Draw-A-Person, Rey Complex Figure Test (Rey), and the Kinetic Family Drawing Test. Dr. Hernandez also reviewed Parent’s responses to an Extended Developmental History Form and interviewed Student, school staff and Parent. (S-5; Hernandez, 95).
4. Overall, Student’s academic achievement skills were in the average range in all subject areas tested – reading, reading comprehension, mathematics, applied mathematics and spelling. Dr. Hernandez concluded that this meant Student was “accessing the curriculum effectively”. Cognitively, Student performed in the low average to average range with a full scale IQ of 82 consisting of a nonverbal IQ of 77 and a Verbal IQ of 90. Dr. Hernandez acknowledged the nonverbal IQ score was lower than average, but he explained that the score was impacted by weakness in working memory and executive functioning. Specific to working memory, Student had “significant weaknesses” in internal organizing strategies for complex information and “poor clustering strategies”. Socially and emotionally, Student was “significantly struggling with issues of anxiety and depression” according to the MMPI. This was corroborated by the results of the BASC that indicated issues of withdrawal, attention and a poor sense of self. Further Student had a “seeming indifference or aversion to interpersonal involvement”, along with limited social skills, and evidenced “mild to moderate impairment in his ability to think logically and coherently”. Behaviorally, according to both the Parent and Teacher rating scales on the BRIEF (which Dr. Hernandez noted were “quite correlated”), Student had “moderate to severe executive dysfunctions”, particularly with respect to emotional control, shifting (behavioral, attentional and/or cognitive), task initiation, working memory and task-oriented monitoring. (S-5; Hernandez, 95-100).
5. Dr. Hernandez diagnosed Student with ADHD – predominantly inattentive type, depression and anxiety. Specific to the ADHD diagnosis, he noted Student to have an “unmanaged dysexecutive and non-responsive to intervention” disorder. In response to Parent’s questions as to whether or not Student’s diagnosis was ADHD or ADD[[11]](#footnote-11), Dr. Hernandez explained that the statement on Addendum A, referencing ADD, contained a typographical error, as the current version of the Diagnostic and Statistical Manual (DSM) does not acknowledge ADD, but instead recognizes three types of ADHD – inattentive type, hyperactive type and combined type. Although Student’s diagnosis was only the inattentive type, Dr. Hernandez advised that “even though he doesn’t have hyperactivity in terms of nomenclature it’s still considered ADHD”. (S-5; Hernandez, 100, 110-114).
6. Dr. Hernandez made eight separate recommendations addressing school accommodations, school services, and services and supports the family should access outside of school. Dr. Hernandez explained these were “typical recommendations” for ADHD as they consisted of “executive skills remediation”, and they also included recommendations to treat the anxiety disorder. Educational accommodations included preferential seating, organization of materials, use of multiple visual aids, clear expectations and consequences, breaking down tasks into manageable pieces, use of a calculator and use of spell checkers. Educational supports were recommended to provide assistance in organizing Student’s learning, study time and homework assignments, assisting in the development of study skills such as outlining, note-taking, and test-taking, monitoring Student’s work, provision of a “highly structured executive skills intervention remediation program” and counseling supports focused on cognitive behavioral interventions. Dr. Hernandez explained that he felt an inclusion placement was appropriate for Student given his cognitive capabilities; however, in different situations he may require “more of a hands-on, one-on-one approach or effort to assist him”. Dr. Hernandez clarified that this did not mean Student requires an individual person “dedicated to him”, but that the individual support he needs is related to the specific situation. (S-5; Hernandez, 100-02).
7. According to Dr. Hernandez, Student’s needs were sufficiently severe to necessitate counseling. While he was aware Student was reluctant to attend, he advised Parent to provide Student with the option to choose the counselor but did not agree Student should be permitted to opt not to attend. Dr. Hernandez also recommended a male counselor for Student, if possible. Further, consistent with his recommendation for cognitive behavior therapy, Dr. Hernandez supported Student being administered an FBA, and that principles of applied behavioral analysis be utilized to “alleviate, restore or rehabilitate” the executive skills Student needed to develop. (S-5; Hernandez, 103-105, 401).
8. Behaviorally, Dr. Hernandez recommended identifying Student’s nonverbal cues of anxiety. While the ultimate goal is to expect Student to follow the code of conduct, initially that may not be feasible in light of Student’s anxiety and depression. Dr. Hernandez explained that an FBA could assist with understanding whether or not certain behaviors were occurring because of Student’s anxiety disability. Once these behaviors were identified, a behaviorist could assist in developing a behavior plan to reduce the maladaptive behavior or reach a target behavior. “Compensatory interventions”, such as reducing the number of assignments, could be implemented in the interim, but the final goal would be to establish “rehabilitative techniques”. (Hernandez, 126-30, 147-48, 279-80, 318-20),
9. An initial evaluation Team meeting was held on November 3, 2021, and the Team reviewed Dr. Hernandez’s evaluation. Following this review, the Team found Student eligible for an IEP under the primary disability category of emotional (ADHD combined presentation) and a secondary disability category of Health (diabetes and asthma). Parent attended the Team meeting with her Attorneys at the time. Dr. Hernandez also attended the Team meeting and explained his report, conclusions and recommendations. Nurse DD attended the Team meeting, along with Ms. AR, and at least 4 teachers, including a shop teacher. The Team discussed and obtained Parent input on IEP goals, topic areas, and the service delivery grid. At the conclusion of the meeting, Parent advised that she felt the meeting was ending prematurely without covering all areas that needed to be discussed. Following this meeting, the District proposed an IEP dated 11/4/21 to 11/3/22 (November 2021 IEP). (S-4; P-4c; Hernandez, 243; DD, 452; AR, 1324-25; Parent, 2176).
10. Nurse DD is a school nurse for the District. She holds a bachelor's degree in Health and a Bachelor of Science degree in nursing. She holds a license as a registered nurse and is a nationally board-certified school health nurse. She has worked for the District as a school nurse for 16 years, performing all associated duties. She indicated that typically there are approximately ten students with diabetes on her caseload, including Student, whom she supports each year. She sees Student regularly, primarily for blood glucose checks. She also assisted in developing Student’s Health Assessment. (S-6; DD, 445-47).
11. Ms. AR is the Director of Special Education for the District. She has held this position for the past four years, previously working as a special education administrator, special education coordinator and spending seven years as a special education teacher in several districts in Massachusetts. She has a master’s degree in special education and a bachelor's degree in speech and hearing sciences. She holds Massachusetts educator licenses as a Special Education Administrator, Assistant Superintendent and for Moderate Disabilities, grades 5 to 12. (AR, 1323-24).
12. The November 2021 IEP contained 23 educational accommodations and over a page of medical health accommodations. The accommodations provided for both the General Curriculum (PLEP-A) and the Other Educational Needs (PLEP-B) were identical except for the accommodation of “recognizing the symptoms of hyperglycemia and hypoglycemia due to [Student’s] unawareness of his symptoms,” which appeared only in the PLEP-B accommodations. PLEP-A accommodations support all curriculum areas, including “Other: Theory”. PLEP-B accommodations support Student in addressing his social/emotional needs, his communication needs, his behavior, his skill development related to vocational preparation or experience and “Other: Shop”. Both PLEP-A and PLEP-B similarly stated that Student’s Health Disability impacts his ability to consistently access the curriculum. Student also has challenges with maintaining focus, impulsivity, executive functioning pertaining to initiating tasks, sustaining attention, planning and organizing his thoughts and materials and self-monitoring and anxiety. Student was noted to be generally receptive to 1:1 check-ins from teachers and performed best after establishing a rapport with staff members. (S-4).

Ms. AR explained that PLEP-A and PLEP-B were almost identical in each of Student’s IEPs as a way to be extremely thorough and to ensure that any service provider who looked at the IEP did not miss any of the important information and accommodations Student had regarding his varying emotional and medical disabilities. (S-1; S-2; S-3; S-4; AR, 1410-11, 1427-28).

1. The November 2021 IEP proposed goals in the areas of Executive Function Skills and counseling, for each of which, the current performance levels referenced the parent and teacher rating scales as well as Dr. Hernandez’s evaluation. The Executive Function Skills goal called for Student to learn and implement strategies that will assist in initiating tasks, improving self-advocacy skills, tracking due dates, and planning and organizing materials and assignments measured by his performance on four benchmarks. The first benchmark pertained to tracking homework and long-term projects using specified digital tools, including Google classroom, google calendar, and X2 (the Student Information database used by the District). The second pertained to task initiation using strategies including “breaking assignments into small pieces, reading and breaking down directions, beginning the assignment in class, etc.”. The third pertained to selecting and utilizing specific pre-writing strategies for larger writing tasks and assignments including “brainstorming, templates and drafting”. Finally, the fourth addressed using self-advocacy strategies including “email teacher, raise hand, attend extra help session”. This goal was written to be addressed in the B-grid during a co-taught English class 5 x 88 minutes every 10 days (daily during non-shop weeks) with English teachers and resource instructors, and a co-taught Math class of the same frequency and duration, with Math teachers and resource instructors. Additionally, the IEP proposed C-Grid substantially separate services 5 x 44 minutes every 10 days to work on this goal during a study skills class Student would attend daily on non-shop weeks with a special education teacher.

The counseling goal called for Student to utilize anxiety management skills in school, to be measured by a scale that would be mutually created by Student and his counselor. Three benchmarks were attached to this goal. The first pertained to Student identifying the indicators that his anxiety level is increasing and planning for ways to reduce this anxiety. The second addressed Student reaching out to his counselor for support when feeling stressed or anxious in school. The third related to reviewing techniques to reduce anxiety, besides the use of his phone (which was recognized as a comforting strategy Student had already developed). Specific suggested techniques in the third benchmark included “thought stopping, deep breathing, and progressive muscle relaxation.” C-grid services consisting of 1 x 22 minutes every 10 days with an Adjustment Counselor were proposed to work on this goal. Access to counseling staff “as needed” was included in the Additional Information section of the IEP to support Student in navigating social situations so as to avoid and respond to bullying, harassment and teasing.

Finally, consultation services among all Team members were proposed in the A grid for both goals 1 x 15 minutes every 10 days. (S-4).

1. The Additional Information section of the November 2021 IEP referenced Student’s Health Care Plan. Further, it explained that the Team discussed Dr. Hernandez’s class size recommendations and that Dr. Hernandez advised that Student was “appropriately placed with proper support and accommodations”. Finally, it noted that “[c]ompleting an FBA was discussed at the meeting. [Parent] will discuss further with [Student’s] attorney and will let the school know if she wants to move forward with this.” (S-4).
2. All Dr. Hernandez’s recommended accommodations were included in the November 2021 IEP, except providing multiple visual aids. Specifically, the IEP accommodations included reduction of homework and classwork “when needed”, “access to counselor or breaks as needed”, providing Student with “graphic organizers charts and templates” to assist with “organizing his thoughts and ideas”, “seating close to the instructor”, “provide positive encouragement and reinforcement whenever possible”, copies of materials both in the classroom and at home “if applicable”, copies of notes and study guides for tests/quizzes “when available”, “single step directions”, “frequent comprehension checks (have student repeat information)”, “break long tasks or projects into sequential, short, simple steps to organize and master”, “alternative briefer deadlines to allow extra check-ins by an educator”, and “encourage and develop [Student]’s learned strategies to assist him with accessing all areas of the curriculum with continued success”. Several testing accommodations were also proposed, including use of graphic organizers, checklists and supplemental references, and reading aloud, repeating and clarifying directions. (S-4; S-5; P-4c).
3. According to Dr. Hernandez, while Student did require 1:1 support at times, it was not across all settings or classes, and often was tied to Student’s level of anxiety. By way of example, he explained that Student feels more comfortable in his shop classes, so he would expect that the shop teachers would not find Student to be demonstrating anxiety, depression, working memory or ADHD issues. Although this does not mean those conditions do not exist in those classes, Student’s comfort level with a class or demand will determine the severity of the symptoms associated with these diagnoses. Dr. Hernandez recommended that more intensive 1:1 support be provided initially with the goal of fading the support and increasing Student’s executive skills so that he could become more independent. Dr. Hernandez stressed that the IEP should be broad, comprehensive and flexible to allow for differentiated implementation across settings and Student’s needs. While he recognized that it would be ideal to have the IEP specify the services and supports for each classroom, Dr. Hernandez testified that writing an IEP with this level of detail is not practical and would take “several years to write”. (Hernandez, 118-19, 142-46, 152-53, 158-59, 163-64, 166-67, 169, 268, 297-98, 303-05, 380-81, 389-91, 403-04).
4. On December 20, 2021, the District, having received no response from Parent to the November 2021 IEP, forwarded it to the BSEA as a rejected IEP. (P-7).
5. On February 4, 2022 Parent partially accepted and partially rejected the November 2021 IEP[[12]](#footnote-12). Parent raised concerns with portions of the narrative description pertaining to the discussion about bullying[[13]](#footnote-13), the lack of a decision on extended year services, and the reference to ADHD rather than ADD. She also provided additional information she wanted added to the Parent and/or Student Concerns section. Parent noted she rejected and continues to reject extended school year services.

Regarding PLEP-A and PLEP-B, Parent rejected the general reference to Student’s “health disability” rather than describing how separately Student’s “ADD, Diabetes and migraines impact his progress in the curriculum”. She also requested several additional accommodations, and revisions to some of the accommodations.

Further, Parent rejected the failure of the Executive Functioning goal to specify Math and English class pertaining to task initiation and completion of tasks, and she rejected that the benchmarks did not specify they will be completed with the support of teachers and a study skills liaison. However, Parent conditionally accepted the proposed study skills class provided it only occurred 1 x 45 minutes every 10 days. She also conditionally accepted the counseling services conditioned on both the counseling and once every 10 days study skills services occurring during Student’s co-taught Math class.

Finally, Parent rejected the “absence of specified resources in school to help Student create a work portfolio and practice interview skills” in the Transition Services portion of the November 2021 IEP. However, she raised no objection to the statement relating to the plan for completing the FBA other than to ask that “Mrs.” be corrected to “Ms.” in that statement. (S-4; P-4c).

1. At the time Parent submitted her partial rejection of the November 2021 IEP, the District had “streamlined” its communication with her[[14]](#footnote-14), and her District communication point person was Mr. NB, an Assistant Principal for the District. He holds a Massachusetts educator licenses as a Principal/Assistant Principal at the high school level. He received his professional license in this area this past year, and prior to that held an initial license. (NB, 1577-79).
2. In response to the partial rejection, Mr. NB contacted Parent via telephone to attempt to resolve the conditions she placed on acceptance of certain services and to explore possible alternative arrangements. The conditions Parent had imposed would require Student to miss services that had been unconditionally accepted, such as his co-taught Math class, and resulted in less than the proposed total service time. Eventually, in late March 2022, Ms. AR also communicated with Parent via email regarding a different way to schedule the proposed study skills class. On March 23, 2022, Parent agreed to allow the study skills to occur as proposed (5 x 44/10 days) during the Student’s Health class on a trial basis. The trial was implemented starting in April 2022, and thereafter became permanent. (P-14; MG, 1091-92; AR, 1328-29, 1362-64; NB, 1581-82).
3. MG is a special education teacher and was Student’s liaison and study skills class instructor from April 2022 to the end of that school year. He also supported Student during summer school in 2021. Mr. MG has a bachelor’s degree in history and secondary education for grades 8 to 12. He holds a Massachusetts educator license for Moderate Disabilities grades 5 to 12 and history 8 to 12. Mr. MG has worked as a special education resource teacher and student liaison for the District for the past two years, and prior to that he was employed in this position as a long-term substitute. (MG, 1090-91).
4. LCii is a special education teacher and was Student’s liaison and study skills class teacher for the 2022-2023 school year. Ms. LCii has a master’s degree in special education grades 5 to 12. She has worked for the District for seven years, and prior to that was employed at a private, approved, special education school for approximately four years. Ms. LCii holds a Massachusetts educator license for Moderate Disabilities grades 5 to 12. Ms. LCii was also Student’s Math inclusion teacher during the 2022-2023 school year. (LCii, 1184-85).
5. Study skills class provides support to students in completing their assignments and studying for their other classes. Additionally, students are provided with other supports to develop organizational skills and foundational reading, writing and math skills. Student was one of 7 students in Mr. MG’s study skills class, and one of 8 students in Ms. LCii’s class. Both classes also had a paraprofessional assistant. (MG, 1092-93; LCii, 1185-86).
6. Mr. MG worked with Student primarily to catch up on missing assignments in his math class and addressed the Executive Function Skills goal and benchmarks in Student’s IEP (Goal #1). He assisted Student in identifying which assignments were missing using X2, prioritizing the missing assignments, and breaking them down. He worked individually with Student on a few of the problems, modeling how to solve them, and then allowed Student to work independently while checking in periodically.

Ms. LCii also worked with Student to catch up on missing assignments, “chunking” them into smaller parts to complete one at a time before moving on to the next part. She also supported Student to develop organizational skills by having him input his grades weekly from X2 into a Google form they created weekly so he could see what he was missing and make a plan to complete the work. At times she also previewed Math work or vocabulary with him, since she was aware of what the lesson would be later that day, or reviewed drafts of writings he had been assigned in English. Just as Mr. MG did, Ms. LCii explained that she usually began working individually with Student on an assignment to help him get started, often working through the first problem together, and then left him on his own to work on the next few, while checking in, periodically. She used this same approach with Student in Math class.

According to both Mr. MG and Ms. LCii, providing Student initial individual support and modeling, and then offering independent work time while checking back in worked “fairly well”. While Student did not verbally request help, he would look to Ms. LCii when he needed assistance and she would come over to assist him in getting started on something. Ms. LCii found Student “capable” of completing work although he sometimes needed assistance “getting started”. Neither teacher endorsed a continual/ongoing 1:1 assistant for Student[[15]](#footnote-15).

Student was often absent from Mr. MG’s study skills class, and when he was present, he frequently arrived late and then left to use the bathroom for extended periods of time (10 to 15 minutes of the 44-minute period). Although he tended to be more present in study skills with Ms. LCii, he often arrived late to her Math class (which was a longer block), leaving to use the bathroom for 20 to 25 minutes at a time. Thus, Student never reached independence in anything Mr. MG was working with him on in his study skills class during the school year. However, when Mr. MG worked with Student during summer school in the summer of 2021, Student did perform independently after initial 1:1 support and modeling. He was also successful independently, after initial individual support with Ms. LCii, and his Math grade was in the high 70s or low 80s at the time of the hearing. (MG, 1093-99, 1109, 1140-41; LCii, 1186-96).

1. LC is Student’s School Guidance Counselor. She holds an initial Massachusetts educator license in School counseling grades 8 to 12 and has worked in this capacity since 2019. She attended all Team meetings for Student except the November 3, 2021, Team meeting, when she was on a maternity leave. Ms. LC met with Student primarily for post-secondary planning, or to check on his academic progress. She also monitored his grades in X2 and sent Parent directions on how to access his grades through this system[[16]](#footnote-16). Ms. LC is not a School Adjustment Counselor and did not provide any personal, social-emotional counseling support to Student or any direct services called for in Student’s IEP, although he had access to her as a support person if needed, which he has utilized.

Early in the 2022-2023 school year, Ms. LC met with Student to discuss post-secondary planning and his application to community colleges, as he expressed an interest in attending college after graduating. She assisted him with completing applications to Nashua Community College and Manchester Community College. She also used the Naviance program to assist Student in building his resume, searching for post-secondary jobs and applying for colleges. (LC, 2012-2016, 2111-12, 2114-16, 2118-20, 2124).

1. Sandra McCluskey is a Board-Certified Behavior Analyst (BCBA) currently employed by CREST Collaborative, the agency the District contracted to perform Student’s FBA in the spring of 2022[[17]](#footnote-17). She has worked for the CREST Collaborative for 4 years. Prior to that, Ms. McCluskey provided home BCBA services and was also employed as a special educator for the Cambridge Public Schools. She is also a licensed behavior analyst with the Commonwealth of Massachusetts. (McCluskey, 958-59).
2. In May 2022 Ms. McCluskey completed the FBA. Although the FBA Report advises that the FBA was requested in April 2022, Parent had actually requested this as an additional assessment on the Evaluation Consent Form she signed for Student’s initial eligibility evaluation on July 15, 2021. Specifically, Parent stated in that Consent Form,

“I am requesting a Functional Behavioral Assessment because [Student] struggles with behaviors related to anxiety including school avoidance. This summer, his anxiety before attending summer school has been so intense that I am often concerned he won’t be able to leave the house. In school, or when he does his schoolwork at home his disabilities, including his anxiety and ADHD, affect his ability to learn and can at times lead him to act out. [Student] also has Type 1 Diabetes, and he lacks awareness about how high or low blood sugar impacts his ability to self-regulate.”

However, on the same Consent Form, Parent rejected a Home Assessment proposed by the District. Ms. AR explained that the District typically proposes a home FBA to address concerns around attendance issues, such as those indicated in Parent’s consent. At no time did Parent consent to a home evaluation of any sort. (S-7; S-16; P-6; AR, 1407-09, 1418-19; Parent, 2183-86).

1. According to Ms. AR, the District did not intentionally overlook Parent’s request to complete the FBA; rather, this was missed due to a clerical error wherein the additional request quoted above was not entered into the electronic database when the signed Evaluation Consent Form was processed. Ms. AR first became aware of the request for the FBA at the November 3, 2021, Team meeting and offered to have it conducted following that meeting. (AR, 1407-09, 1423-25, 1440-42).
2. On April 11, 2022, in response to the District’s request for clarification, Parent’s attorney advised via email that Parent was looking to assess through the FBA how Student’s “ADD, Anxiety, Migraines and Type I Diabetes and hypoglycemia all interact together. I intended to include hypoglycemia AND hyperglycemia and the concern that [Student] is often unaware of his sugars and how they may be impacting him.” The District’s attorney responded by email on April 12, 2022 to advise that “We can identify for [Ms. McCluskey] your concern, but I am not sure a BCBA is going to be able to answer the health questions you are asking. They do not have the health training to make these conclusions. It is possible that the BCBA will say that he or she is unable to answer the question.” At no time after receiving this email did Parent object to having the FBA completed by Ms. McCluskey. All objections to this FBA[[18]](#footnote-18) were made after it was completed. (S-16).
3. In performing the FBA, Ms. McCluskey reviewed various records she was provided by the District regarding Student, including the November 2021 IEP and 10 incident reports of inappropriate conduct between October 15, 2021 and May 9, 2022[[19]](#footnote-19). Ms. McCluskey also spoke with Mr. MG, who was her District contact person, Parent and the English Team about Student. She had Parent, the English Team and the Math Team complete a Functional Analysis Screening Tool (FAST) and Parent also provided written comments on an FBA Parent/Guardian Interview/Input document. The FAST is a rating scale consisting of yes or no questions that is intended to assist in determining the function of a behavior. Additionally, Ms. McCluskey asked several teachers to collect data on the targeted behaviors using a data form she provided. Finally, Ms. McCluskey personally observed Student on three separate days and times in his English and Math classes, where his target behaviors were reported to be most prevalent, and collected her own data on the target behaviors using the same data form the teachers used. (S-7; P-8; P-9; McCluskey, 959-71, 1005, 1046, 1055).
4. Based on the consent form received from the District, and information shared during a virtual meeting with Mr. MG, Ms. McCluskey identified five target behaviors to address in the FBA – inappropriate language, disruptions, leaving class, cellphone use and tobacco possession. Operational definitions of each of the target behaviors were included in the FBA Report. According to the data collected, Ms. McCluskey’s own personal observations, and information provided during the staff interviews, the most prevalent and concerning of the target behaviors were leaving class and cell phone use. As such, Ms. McCluskey focused her antecedents and consequences data on these target behaviors and developed hypotheses as to the function of both. The leaving class behavior was particularly concerning as it took Student away from his learning time and created a potential safety risk should an emergency arise in the building when Student was out of the classroom unattended. Also, as Mr. MG had advised Ms. McCluskey that Student’s academic performance improved when he established a rapport with the teacher, and that Student did not initiate requests for help, but was receptive to staff outreach, leaving the classroom made this difficult, and impacted the assistance teachers could provide to Student. (S-7; McCluskey, 960, 965-66, 1017).
5. For both cell phone use and leaving class, Ms. McCluskey found that the most common antecedent to the behavior was a direction being given to engage in independent work. Thus, she hypothesized that the function of these behaviors was to escape an activity. Another function of both behaviors was hypothesized to be accessing a sensory need. Ms. McCluskey concluded that developing a rapport with Student and setting clear expectations for him were successful ways to support Student and decrease these behaviors. (S-7; McCluskey, 968-72).
6. Ms. McCluskey made several recommendations that were divided into five areas, consisting of consultation with a medical professional to gain a better understanding of Student’s behaviors in connection with his sugar levels; 8 recommended antecedent strategies; developing Student’s functional communication coping strategies; non-contingent reinforcement staff support[[20]](#footnote-20); and team consultation time to ensure consistency in behavioral approaches across all Student’s classes. Ms. McCluskey testified that the information provided by Parent as well as the data collected assisted her in making her recommendations to address the target behavior, particularly the antecedent strategies she recommended. (S-7; McCluskey, 966-73).
7. On June 6, 2022, the Team reconvened, primarily to review the FBA, change the service provider of the proposed counseling services to the school psychologist and review the remaining areas of rejection to the November 2021 IEP that had not yet been resolved[[21]](#footnote-21). Parent and Student attended along with their two attorneys, as did the District’s attorney, Dr. Hernandez, Ms. McCluskey, Ms. AR, Assistant Principal NB, Ms. LC, Nurse DD, two subject matter teachers Mr. NP (who did not testify) and Ms. TG (who did not testify), two special educators, Mr. MG and Mr. JR (who did not testify), and Mr. JP, the School Psychologist[[22]](#footnote-22). The meeting lasted approximately two hours, however, the Team was unable to complete its discussion of all the agenda items, including all of the rejected areas of the November 2021 IEP. (P-3a).
8. During the June 6, 2022 Team meeting, Ms. McCluskey first reviewed the FBA and her recommendations. Although there was discussion about creating a behavior plan, there was no resolution on what would be in that plan. The Team also discussed Parent’s request for 1:1 support throughout all times of struggle (what she referred to as the “summer school model”) and agreed to add new accommodations regarding teacher check-ins for independent work. The Team also agreed to change the service provider for the proposed counseling services to the School Psychologist and discussed the duration for the proposed counseling services. Additionally, the Team discussed the District’s proposal to monitor Student’s blood sugar levels via use of an application referred to as “the Dex-Com app”, to which Parent objected, as well as Parent’s objections to the FBA and her request to add an accommodation to allow Student to use his cell phone and wear his hood up as a soothing tool[[23]](#footnote-23). All Team members stayed for the entire meeting. At the end of the meeting, per Parent’s request, Parent and the District amicably agreed to reconvene the Team at the start of the following school year. Parent requested all Team members be in attendance again. (P-3a; McCluskey, 973-76; MG, 1100, 1157-58; AR, 1337-38, 1370-71).
9. The discussion relating to the proposed amount of counseling time (22 minutes a week on non-shop weeks), occurred in response to Parent’s request for a shorter session. Mr. JP felt a shorter amount of time would not be sufficient to initiate the counseling process, establish rapport and work on a specific skill, especially as this service would only occur every other week. However, the Team agreed that while the entire 22 minutes of counseling services would be offered in the IEP, Student would only be expected to gradually build up his attendance to the entire session, which would be reflected in the Additional Information portion of the IEP.

On the other hand, the discussion relating to the District’s proposal to Student’s blood sugar levels being followed using “Dex-Com app” did not result in Team agreement. The District proposed utilizing this application as it would enable the school health unit to monitor Student’s blood glucose levels “in real time” continuously throughout the day, without having to physically see him, unless his levels were trending too high or low. Should that be the case, they would then call him to the nurse’s office to address and correct these levels. At the time of the meeting, the practice followed by the District was for Student to go to the nurse’s office to have his blood glucose levels checked by the nurse in person[[24]](#footnote-24). Parent was opposed to using the “Dex-Com app” as she felt Student’s Tandem pump monitor was sufficient, and ultimately this app was not proposed to be used by Student. Nurse DD confirmed that although the data that they would have received from the “Dex-Com app” also exists on Student’s pump, the “Dex-Com app” does not provide insulin while the Tandem pump does. She also agreed that there is information in the Tandem pump monitor that is not contained in the data tracked on the “Dex-Com app”. Nurse CB, who reviewed all of Student’s IEPs but never attended any Team meetings, concurred with Nurse DD’s testimony about this “Dex-Com app” option. (S-3; S-11; P-3a; DD, 453-54, 671, 699-700, 716, 720; JP, 742; AR, 1337-40; CB, 1680-84, 1689-90, 1693-94; Parent, 2198-2200).

1. On June 10, 2022, the District proposed an IEP, dated 6/10/2022 to 11/3/2022 (June 2022 IEP). The June 2022 IEP differed from the November 2021 IEP in that it added a summary of the FBA; added two new accommodations in both PLEP-A and PLEP-B; changed the “type of personnel” for the counseling goal to “School Psychologist”; added a new statement in the Additional Information section to describe how the counseling services would be delivered; deleted the statement that Student would have “access to counseling/support staff as needed” from the Additional Information section; revised the statement in the Additional Information section relating to Dr. Hernandez’s explanation for his class size recommendations occurring in the “previous” meeting; and explained the limited discussion of the FBA and plan to reconvene in the fall. While these changes were all discussed at the June 6, 2022 Team meeting, Mr. MG confirmed that the members of the team were not “all polled and said ‘yes we’re going to agree to add this as an accommodation for [Student]’”. (S-3; MG, 1158, 1162-63).
2. Parent objected to the issuance of a new IEP rather than an Amendment Form to the November 2021 IEP. The District issued a new IEP as multiple changes were made to the prior IEP and to reflect the discussion as to use of the “Dex-Com app” to monitor Student’s blood sugar levels. The later was ultimately not included in the IEP based on Parent’s objection. (AR, 1339-40, 1376-78; Parent, 2221-22).
3. The two new accommodations added to the June 2022 IEP were “frequent check-ins at the start of and during independent work to check for questions and assess student progress” and “provide student with hall pass when leaving the room for counseling or medical needs”. Ms. McCluskey testified that the accommodations in the June 2022 IEP concurred with her recommendations in the FBA. In particular, the frequent check-ins, while already included in other accommodations in the November 2021 IEP, aligned with Ms. McCluskey’s recommendations. However, Ms. McCluskey testified that the FBA recommendations could have been implemented by developing a behavior support plan, too, and that IEP accommodations were not necessary for implementation. (S-3; S-7; McCluskey, 975-76, 1073-76).
4. The June 2022 IEP stated the counseling Services would be provided for “22 minutes [ ] every 10-day cycle; counseling will always be available for the full time on the service delivery grid, but the Team will allow [Student] to gradually increase his counseling time as he feels appropriate.” Mr. JP supported the inclusion of the counseling goal and respective services, as amended, due to the extensive discussion by Dr. Hernandez and Parent about Student’s anxiety and the symptoms relating to his anxiety, and Mr. JP’s belief that if Student’s anxiety was impacting his ability to access the classroom setting, it was necessary to provide him with the tools and strategies so he can be successful. Further, Mr. JP testified that the counseling goal itself was appropriate as it addressed Student’s anxiety, his current strategies used to self-soothe, and identified specific anxiety management tools for Student to develop. (S-3; JP, 740-41, 744, 746-47, 879).
5. Parent did not respond to the June 2022 IEP, and thus as of the start of the 2022-2023 school year, Student was provided with “stay put” services consistent with those portions of the November 2021 IEP that were not rejected. As such, Student did not participate in the proposed counseling services. (S-3).
6. During the 2022-2023 school year, JS, General Educator and AS, Special Educator co-taught Student’s English Class, which was comprised of 25 students, including Student. Ms. JS felt this staffing level was appropriate for Student and they were always able to support his needs. Both teachers advised that while Student did not require 1:1 support in the class, at times, he benefitted from individual assistance for written expression, argument development or sentence structuring, but he was able to finish the work on his own. At most, Ms. JS recalled spending a half hour individually with Student on a writing assignment and Ms. AS recalled spending even less time on the same. Student’s need for this support was topic specific, as when he was working on a topic he was passionate about, such as cars, he required less individualized support. Student benefited from sentence starters, extra time, graphic organizers, outlines for paragraphs, reduced volume of work, sensory breaks, and access to fidget toys. These accommodations were available to all students regardless of whether they qualified for an IEP. Ms. JS testified that although Student’s IEP included redirection as an accommodation, he did not require this in her class. However, she did think Student benefitted from a scribe and oral testing neither of which was included in his IEP[[25]](#footnote-25), but which both teachers offered to him occasionally. Ms. JS thought that the Executive Function Skills goal was appropriate and applied to her class and she also supported Student undergoing an assistive technology evaluation.

As the year progressed, Student’s independence increased, and he became more comfortable with the teachers. He sought support either by raising his hand or going to the teacher desk with his Chromebook uninvited. Student did not spend excessive time out of this classroom and put his cell phone away when asked to do so. Overall, Ms. JS found Student to present as generally happy, and she advised that he sometimes would visit her room on shop weeks. However, Ms. JS noted that, at times, Student was not in a good mood, which impacted his work productivity. She found that leaving student alone but checking in to be sure he knew she cared was the best approach and agreed that Student would benefit from counseling services. Student did not exhibit any behavior struggles in this classroom. Ms. JS considered her approach to be aligned with Student’s IEP accommodation of checking in with a support staff member as needed. (JS, 1469-74, 1476-83, 1497-98, 1512, 1519-20, 1526-27, 1531, 1537-39, 1540-41, 1548; AS, 1994-95, 1998-01, 2018, 2030-31).

1. Mr. PP was Student’s Auto Tech Theory teacher for the 2021-2022 and 2022-2023 school years. He testified that his teaching style was to walk around the room when students were engaged in independent work. He paused longer near Student to remind him of his availability for help. Student never initiated a request for help but, at times, utilized Mr. PP’s assistance. However, Student did not prefer the attention, if Mr. PP lingered near Student, Student would stop working independently and begin to either look around the room or randomly tap the same key on the keyboard until Mr. PP departed. According to Mr. PP, Student was initially hesitant to answer questions or volunteer, but by the end of the second year he became more fluent and quicker with his answers. Although Student frequently left the room during class at the beginning of the year, he rarely did so at the end of the year.

According to Mr. PP, for Student, the connection was more important than the content, and Student was more academically successful when the connection was established. Humor worked best with Student as well as honesty, such as when Mr. PP acknowledged not knowing how to perform a car task he was assigning and proceeded to learn along with his students. Mr. PP advised that Student voluntarily spent time in the Auto Tech Theory classroom when he did not need to be there, especially on shop weeks when it may have been slow in the shop. Overall, Mr. PP considered Student to be knowledgeable of the subject and successful in his class, noting that he received the highest grade on the final exam for his class in the 2022-2023 school year – a 75. (PP, 2051, 2058-59, 2068, 2071, 2075-76, 2080-81, 2087-90).

1. On September 13, 2022, Ms. AR emailed Parent to propose reconvening the Team on September 23, 2022 to “continue to discuss the FBA and rejected items”. She followed up with 2 emails to Parent on September 16, 2022. (AR 1340; S-12).
2. On September 19, 2022, the District issued an invitation for a Team meeting to be held on September 23, 2022, from 12:00 p.m. to 2:00 p.m. Eighteen District staff were invited to the Team meeting, along with Dr. Hernandez, Ms. McCluskey, Parent, Parent’s Attorney and the District’s Attorney. (S-12).
3. That evening, Parent emailed the District and advised, among other things, that the Team meeting invitation for September 23, 2022, was “issued without our explicit consent and we do not authorize this ‘reconvene meeting’ whatsoever. [The District] is to immediately rescind this reconvene meeting invite (or any other applicable (sic)) and never again issue anything without my explicit consent (and I with [Student]). We do not authorize this reconvene meeting or any other at this time.” Parent also wrote,

“at no time whatsoever did we have any discussions with [the District] regarding any ‘Reconvene Meetings’ or ‘Other Meetings’, nor did we even at all agree to meet for anything, and this is beyond deplorable that [the District] is willfully and recklessly acting with depraved indifference to my and [Student’s] rights as well as intentionally violating Consent and Privacy Laws and also IDEA, Section 504 (but not limited to) and issuing any [District] invite (sic) to anything to discuss [Student] without my/our agreement to do so, how dare you continue to underhandedly try to coerce a Reconvene Meeting by pretending we gave consent or by your usual [District] Practices (sic) of unlawful assumed consent.”

Further Parent stated that she “expects this list cut down” with regard to the number of staff from the District invited to the Team meeting. She also requested meeting dates “starting on 11/3/22 for 10AM-2PM and at least 3 different date choices (not on a Monday, Wednesday or Friday and we require also different week dates offered to us and one being the 1st week in December (due to the Thanksgiving holiday just in case).” (S-12).

1. On September 20, 2022, Ms. AR emailed Parent to cancel the September 23, 2022 Team meeting as requested, seeking a meeting prior to the requested November 3, 2022 timeframe as the current IEP was set to expire on November 3, 2022, and explained the IEP Team needed to convene prior to that date. Ms. AR proposed 10/20 or 10/25 at 11:30 a.m. as the meeting date. She asked Parent to propose her own dates and times if neither of these dates worked. She also offered to use the facilitated IEP meeting dispute resolution option offered by the BSEA. (AR 1390; S-12).
2. In response, on September 20, 2022, Parent sent an email to the District objecting to the statement on the cancellation notice for the September 23, 2022 proposed meeting as being “at parent request”. Parent demanded that statement be rescinded and removed from Student’s student record, leaving just the language that the meeting was cancelled (which she also submitted was due to it being “not in compliance and no further explanation was required or necessary”). Parent also objected generally to any attempts to “speak for [Parent and Student]” by the District and demanded she be provided with various documents and records, referencing PRS complaints she had filed. She also voiced her objection to the number of people who were notified of the meeting, advising “(we note that 21 persons invited by [the District] were either staff or agents of [the District] violating our due process and rights to being with on (sic) participation, direction, consent and decision making etc. which is a violation) we expect this list cut down on the [District’s] end or we will do so, thank you![[26]](#footnote-26)” She concluded the email by advising she wanted dates starting after November 3, 2022, for a Team meeting,

“… for 10AM-2PM and at least 3 different date choices (not on a Monday, Wednesday or Friday and we require also different week dates offered to us and one being the 1st week in December (due to the Thanksgiving holiday just in case) (sic). Given the history of [the District’s] purposeful obstructing my parental access and also my and [Student’s] participations (sic), we need more time than [the District’s] inadequate 2 hours bare minimum (where it takes up all the time itself interfering in any way with our ability to speak) and we require the meeting to go to completion in FULL (there will be no more [District] game playing ‘hard stops’ allowed), and we require in advance notice that future November or December [District] IEP Review meeting at that time to be tape recorded and us given a copy via my email (as an accommodation under Title II ADA and also Title VI and VII of CRA 1964 reasonable accommodations and further expect all outstanding Student Education and other records August 25, 2019-present sent to us via my email also). Thank you. (sic) All for your time, your anticipated [District] cooperation and assistance and enjoy your evening!” (S-12).

1. The District issued an invitation for a Team meeting to be held on October 20, 2022, from 11:30 a.m. to 2:00 p.m. This meeting was subsequently cancelled as Parent was not available to meet on that date[[27]](#footnote-27). (S-12; Parent, 2291).
2. On October 12, 2022, Parent emailed Ms. LCii and, among other things, stated that she was available for a Team meeting on December 5, 8, 19, or 20, 2022, provided these dates were not on a “shop week”, as she was not agreeable to Student missing time in shop to participate in a Team meeting. (S-13; Parent, 2293).
3. On October 21, 2022, Ms. AR emailed Parent to confirm the availability of Ms. McClusky and Dr. Hernandez on December 5, 2022. Ms. AR again suggested this be a facilitated IEP meeting and inquired whether Parent would be bringing an attorney to the meeting so that the District could arrange for their attorney to attend as well. Finally, Ms. AR explained “the Team is willing to accommodate your request to have the meeting on 12/5 so long as you understand that [Student’s] existing IEP will be expired by that time and that his such (sic) IEP will remain effective until you consent to the IEP that will be developed at the 12/5 meeting.” (S-13).
4. On November 28, 2022, Ms. AR emailed Parent again to ask whether she would be bringing an attorney to the December 5, 2022 Team meeting and confirmed the District’s attorney would not attend if Parent did not bring an attorney. She also referred to this meeting as a virtual meeting. (S-13).
5. Parent responded by email on December 1, 2022, and, among other things (such as objecting to a time limit of 2 hours, insisting additional meeting dates be scheduled, objecting to any “hard stops” of the meeting from occurring, insisting the meeting and future meetings be tape recorded, and asserting numerous objections related to student record access and FERPA violations) objected to a virtual meeting. Parent insisted the meeting be in person or it should be “considered cancelled”. At no time did Parent answer Ms. AR’s question relative to bringing an attorney[[28]](#footnote-28). Ms. AR replied the following day to confirm the meeting would be held in person. (S-13).
6. The Team convened as scheduled on December 5, 2022[[29]](#footnote-29) both to continue to discuss the topics not reached at the June 6, 2022 Team meeting, and to undertake Student’s annual review. The meeting lasted approximately two and a half hours (from 11:30 a.m. to 2:00 p.m.)[[30]](#footnote-30). (S-3; S-13; LCii, 1237-38; AR, 1343-44).
7. According to Ms. LCii, the Team initially attempted to discuss the rejected portion of the November 2021, IEP whether a behavior plan would be developed from Ms. McCluskey’s FBA, and whether Student would participate in the proposed counseling services. Further, the Team attempted to discuss goals and objectives, and, according to Ms. AR, was able to cover goal topic areas and the service delivery grid. However, these attempted topics were not completed as the “conversation always kind of got convoluted” or “sidetracked or brought on to a different conversation that we couldn’t always come back and talk specifically about certain goals and objectives”. Ms. LCii also noted that the conversation was circular and repetitive with questions being asked and re-asked, thereby impeding the ability to discuss the entire proposed IEP. Despite this, however, Ms. LCii believed Parent was able to provide her input, and the District took this input into consideration when drafting the proposed IEP, including in that IEP those requests with which the District agreed. Ms. JS agreed that the Team was unable to cover all areas on the agenda at this meeting. She felt this was due to Parent having a lot of things she needed to say and “core points she wanted to make”, resulting in a lot of information being discussed and “back and forth” conversations. (LCii, 1191-93, 1226-27, 1229-30, 1239; AR, 1343-44; JS 1529).
8. According to Mr. JP and Ms. AR,[[31]](#footnote-31), a substantial amount of time was spent discussing Student’s current performance and what supports the teachers were providing to Student based on questions asked by Parent. Ms. JS recalled sharing how Student was doing in her class and the accommodations she was providing. She also recalled the Team discussing drafting the new IEP and generally what accommodations worked well for Student. Further Ms. AS recalled discussing Student’s strengths and the accommodations which benefitted Student, specifically noting that he benefitted from building positive relationships with staff. Student had also done good work in his co-taught English class during the 2022-2023 school year. (JP, 808, 841; AR, 1343; JS, 1485, 1516; AS, 1993-94, 2024, 2029).
9. According to Ms. McCluskey, Parent did not agree to develop a behavior support plan for Student. Instead, Parent contended that the target behaviors in the FBA were not problematic to Student and discussed her concern that the FBA failed to address Student’s diabetes. (McCluskey, 976-78).
10. According to Ms. Sherri Barboza, Parent’s support person, who attended the December 5, 2022 Team meeting by phone, the Team was unable to conclude all agenda areas Parent requested, stopping “mid-discussion”, due to the number of her “pressing concerns”. Ms. Barboza felt more time should have been allotted for this meeting. Overall, Ms. Barboza did not feel Team meetings were ever “hostile” but noted that the “IEP process could have and should have gone more smoothly”. (Barboza, 1833, 1842, 1964-65).
11. On December 6, 2022, at 10:40 a.m., Parent sent an email objecting to the December 5, 2022 Team meeting and noting that “[the District] i (sic) OUT of COMPLIANCE of (sic) federal and state regulations and statutes on the following partial list: [thereafter identifying 8 alleged areas of non-compliance] …”. Parent also demanded the Team immediately reconvene to discuss the agenda areas that had not been reached[[32]](#footnote-32). Specifically, the Team was not able to review all areas of rejection from the November 2021 IEP or to develop a behavior plan from the June 2022 FBA. (S-3; S-13).
12. On the evening of December 6, 2022, Ms. AR emailed Parent to advise that although she had intended to record the meeting and informed the attendees of such, technical difficulties had prevented the recording from occurring. Prior to sending the email, she also advised that she had confirmed with the District’s technician the recording had not been made. She offered to “have the technician remain in the room until we are certain the recording is working” in the future. (S-13).
13. Subsequently, Parent sent emails to the District on December 6, 2022, at 9:24 p.m., December 19, 2022, at 2:22 p.m., December 21, 2022 at 10:41 a.m., December 21, 2022, at 5:04 p.m., December 22, 2022 at 12:01 a.m., February 2, 2023 at 11:29 p.m., that ultimately expanded her initial 8 areas of non-compliance by the District at the December 5, 2022 Team meeting into 14 areas (including the failure to record the Team meeting, which Parent claimed was actually a refusal to produce the recording as she contended that it was actually recorded). Parent continued to demand the Team reconvene, alleging the failure to do so was “illegal” “out of compliance” and the like[[33]](#footnote-33). (S-13).
14. On December 19, 2022, the District issued an Evaluation Consent Form for a Transition Assessment and Educational Assessment of Student, per Parent’s emailed requests. To date Parent has not responded to these proposed evaluations. (S-17a; AR, 1343, 1414, 1431-32).
15. On December 21, 2022, Ms. AR emailed Parent with a proposed IEP from Student’s “annual review meeting on 12/5/22” (December 2022 IEP), along with an Age of Majority Form, and a 688 Referral Form for “Mass Rehab”. Ms. AR advised that the 688 Referral Form must be completed entirely for it to be “process[ed]” by Mass Rehab, which the District was prepared to do immediately upon receipt of the signed and completed form from Parent[[34]](#footnote-34). Ms. AR also addressed Parent’s continued requests to reconvene and suggested mediation through the BSEA instead of a Team reconvene. However, Ms. AR asked Parent to provide multiple dates and times of availability if she only wanted to reconvene the Team. Finally, Ms. AR advised that “we would need to cap any meeting at 1.5 hours. Given the meetings that have already occurred, that should be sufficient to address any remaining items.” (S-12; S-13; AR, 1413, 1433-35).
16. The December 2022 IEP was dated 12/5/22 to 12/4/23. In addition to the new dates, it differed from the June 2022 IEP in the Parent and Student Concern statement; a new paragraph addressing Student’s Strengths and Current Performance; a revised statement of Student’s interests; a revised Vision Statement; updates to indicate Student’s score on the Math MCAS; new goals and benchmarks for both goal areas; revisions to the State and District Wide Assessment and the Additional Information sections to reflect that Student has now passed all MCAS requirements; and further revisions to the Additional Information section indicating that the District would develop a behavior plan from the June 2022 FBA for parental review to be implemented upon parental signature; and that there was a planned 688 Referral to be made to Mass Rehab. However, the goal areas remained unchanged, nor were any changes made to either PLEP-A or PLEP-B. (S-2; S-3).
17. Ms. AS testified that the December 2022 IEP reflected the Team’s discussion and incorporated the concerns and input of the Parent and Student, while also proposing what would be appropriate for Student to earn his diploma to graduate. She specifically pointed to the vision statement as evidence of this. (AS, 2036-40).
18. Ms. LCii opined that Student’s Executive Function Skills goal as revised was appropriate as it built on Student’s current ability to monitor his grades by working to develop skills in organization and prioritization, such as by creating checklists of what is important, so he could know what to focus on for each class. In response to questions by Parent[[35]](#footnote-35), Ms. LCii also explained that she did not feel separate executive function goals needed to be written for each class, as these skills were appropriate and helpful in all or most classes, and, while individualized to Student’s specific executive function skill needs, could be addressed by his teachers in all his classes. Mr. MG concurred with Ms. LCii that executive function goals individualized for each class were not necessary. Ms. AS also testified that the benchmarks associated with this goal, which were discussed at the December 5, 2022 Team meeting when they were developed, were individualized for Student and covered all Student’s classes including English. (MG, 1154-55; LCii, 1198, 1202-06; AS, 2001-03, 2016, 2019-20).
19. Mr. JP wrote the revised counseling goal and benchmarks. He testified that he felt these revisions were appropriate because they were based on information from Student’s evaluations, including Dr. Hernandez’s assessment and Ms. McCluskey’s FBA, as well as information provided at the Team meeting by Dr. Hernandez, and Parent. Additionally, the revised goal was based on Student’s prior counseling goal as that had yet to be accepted and had not been implemented. Mr. JP agreed with the Team that Student continued to require counseling services to address his emotional disability. Mr. JP explained that “[t]he goal that I wrote is to address his anxiety and we need to have this goal developed in order to provide his service.”

Further, Mr. JP explained that benchmarks 2 and 4 of this goal reflected the absence of any established counseling relationship. These benchmarks pertained to outreach for support and discussion of anxiety-provoking experiences starting from a baseline of zero and were intended to be implemented over the course of the IEPs one year timeframe. (JP, 820-32, 900-01).

1. Ms. LCii also supported a counseling goal. She noted that Student’s work completion was impacted by his mood. Student often evidenced his mood with nonverbal cues, such as avoiding eye contact or slamming his materials down. She testified that spending time with a counselor in school could assist Student in identifying what was troubling him and also address his work avoidance and extended time out of the Math classroom. (LCii, 1195-97).
2. Parent again objected to the District’s issuance of a new IEP rather than an Amendment Form to the prior issued IEPs. (LCii, 1242; Parent, 2221-22).
3. On the evening of December 21, 2022, Ms. AR sent Parent an email offering another meeting on January 5, 12, or 18 at 12:30 p.m. with a limit of an hour and a half due to “staff commitments”. She again suggested a mediation instead of a Team reconvene. Finally, she explained that she had forwarded Parent a consent form for a Transition Assessment “via docusign”. (S-12).
4. Parent did not respond to the proposed January Team meeting dates, or otherwise communicate with the District in January 2023. Parent testified the District refused to meet in December 2022 or January 2023. This led Parent to try a “new tactic” starting in February 2023 of including a running count of the number of days since the last Team meeting at the outset of each email she sent. (Parent, 2210-11).
5. Parent sent emails (similar in style and presentation to her December 2022 emails) to the District on February 2, 2023 at 11:29 PM, February 14, 2023, at 1:46 p.m., February 15, 2023, at 11:44 a.m., and February 16, 2023, at 11:59 a.m., demanding the Team reconvene. (S-12; S-13).
6. On February 14, 2023, Ms. AR emailed Parent to advise that she has been working to reconvene “such a large Team”. She notes that Parent had not responded to her three offered dates in January. She also again offered a facilitated IEP meeting. Ms. AR advised that while Parent’s February 2, 2023, email referenced her availability in January, this was not actually communicated to Ms. AR in January, or she would have scheduled the meeting. Ms. AR offered to meet on March 1, 15 or 30, 2023 at 12:30 and advised that given the size of the Team, the meeting would be scheduled for an hour and a half, with an additional meeting to be scheduled if that was not sufficient time. Ms. AR noted that after she confirmed Parent’s availability she would obtain Ms. McCluskey’s and Dr. Hernandez’s availability. Finally, she inquired as to Parent’s response to the proposed transition assessment for which a consent form had been sent in December. (S-12; Parent 2295-96).
7. On February 16, 2023, Ms. AR sent Parent a follow-up email acknowledging Parent’s claim to be available any day for a meeting and advising her to hold March 1, 2023, to meet. (S-12).
8. On February 16, 2023 at 6:28 p.m., and February 17, 2023 at 9:34 a.m. Parent emailed the District objecting, in part, to having to “hold” a date two weeks away for a Team meeting and demanding it be scheduled “immediately”. (S-12).
9. On February 21, 2022, Ms. AR emailed Parent to advise that Ms. McCluskey and Dr. Hernandez were not available for a meeting on March 1, 2023 but were available on March 6, 2023. She indicated that a meeting invitation for March 6, 2023 would be sent to Parent and that the District intended to have its attorney present at this meeting. (S-12).
10. On February 27, 2023, a Google Meet link was sent to Parent for a Team Meeting on March 6, 2023, from 12:30 p.m. to 2:00 p.m. to be held in Conference Room 3. The link noted the meeting was being held “to discuss the rejected portions of the IEP”. Teachers receiving the link were asked to complete the Educational Assessment Form, Part B, a blank copy of which was attached. A total of 16 people was listed as attendees including Parent. (S-13).
11. On the evening of February 27, 2023, Parent emailed the District regarding a “Pre-IEP Team Meeting Letter to [the District] for our scheduled 3/6/23 IEP Team”, requesting a total of 4 hours to meet, as the proposed hour and a half was “insufficient”. Parent then provided a proposed agenda including10 agenda items with estimated times for each[[36]](#footnote-36). Parent also requested four additional staff members be invited to the meeting besides additional unnamed people she planned to bring to the meeting, and that all attendees invited “be prepared to stay for the entire meeting”. Further she objected to the District having an attorney present. Finally, she requested the meeting be recorded. (S-12; Parent, 2214).
12. On or about March 5, 2023, the District sent Parent a draft IEP to use as a discussion tool at the Team meeting scheduled for the following day. Ms. LCii explained that the changes made in this draft IEP from the December 2022 IEP were based on the requests and concerns Parent raised in her February 27, 2023 email. (S-1; LCii, 1210-13, 1223; AR,1348; Parent, 2213-14).
13. Prior to the March 6, 2023, Team meeting, six staff members who worked with or taught Student completed an Educational Assessment: Part B Form about Student, including Ms. JS, Ms. LC, Ms. LCii, Student’s Engineering Science Teacher, Automotive Technology Teacher, Probability and Statistics Teachers, and Health Teacher. Parent was provided with these Forms on or before the March 6, 2023 Team meeting. (P-13; JS, 1532).
14. A Team meeting was held for an hour and a half on March 6, 2023. Present at all or the majority of this meeting were Parent, Ms. Barboza, Dr. Hernandez, Ms. McCluskey, Ms. LCii, Ms. AR, Ms. LC, Ms. JS, Nurse DD, Mr. MG[[37]](#footnote-37), Assistant Principal NB, Mr. PP, Mr. JP, Student’s Health Teacher (Ms. CF), Student’s Shop Teacher (Mr. ML), and another staff member who arrived late and was not introduced. Student also attended part of the meeting as Parent asked that he be called down to attend and answer questions about his interest in participating in “co-op”. (S-13, P-3b; LCii,1237-38).
15. During the March 6, 2023, Team meeting, Ms. McCluskey explained that a new FBA was needed as the data from the FBA she had performed was too old to be considered an accurate reflection of Student’s behaviors. Mr. MG recalls the Team discussing post-graduate transition planning, Student’s eligibility to participate in a co-op for the remainder of the year and the accommodations on the IEP. (S-1; P-3b; McCluskey, 987, 1045, MG, 1105).
16. According to Ms. LCii the Team discussed the proposed Executive Functioning Skills goal, and Parent’s request for Student to have a 1:1 assistant. The rest of the Team did not recommend a 1:1 assistant and Assistant Principal NB testified as to his opinion to so not recommend a 1:1 assistant. Ms. LCii also noted that although the Team tried to cover all the areas from Parent’s email[[38]](#footnote-38) agenda, it ran out of time. Ms. Barboza testified that Student’s current performance was discussed at the meeting, but there was not much progress made on Parent’s agenda. (S-1; P-3b; LCii, 1194-95, 1219-20, 1231-32, 1239; NB, 1595-96; Barboza, 1843-44).
17. At the conclusion of the meeting, Parent demanded to reconvene within a week with all Team members present, disregarding Ms. AR’s comment that she needed to confirm the availability of all Team members and obtain teacher coverage. Parent also objected to any IEP being drafted after the conclusion of this meeting, advising specifically that sharing an IEP after this meeting would be “illegal” as it would be “draft[ing] the IEP outside the Team process”. (P-3b).
18. Although 4 goals were proposed in the draft IEP discussed at the March 6, 2023 Team meeting, other than Parent’s general objection that all these goals were not drafted word for word by the Team at the meeting, the only goal discussed at the Team meeting was the executive functioning goal (Goal #1). No consensus was reached as to changes to the drafted wording for Goal #1 during the meeting. (S-1; LCii, 1194-95).
19. On March 13, 2023, Ms. AR emailed Parent with the following attachments: a) Consent for Evaluation Form for a Transition Assessment; Assistive Technology Assessment[[39]](#footnote-39) and an FBA; b) Proposed IEP from the March 6, 2023 Team meeting (March 2023 IEP); c) Proposed Behavior Plan (which she advised would not be implemented without parent signature); d) Age of Majority Form; and e) 688 Referral Form for MassRehab. To date Parent has not responded to any of these documents. (S-13; AR, 1347).
20. After reviewing Dr. Hernandez’s evaluation Mr. JP drafted the Behavior plan, entitled “Behavior Intervention/Support Plan” (BIP), using the information from Ms. McCluskey’s FBA. It was not drafted at a Team meeting, but rather by Mr. JP alone in his office. Based on the FBA, the targeted behaviors identified in the Plan included leaving the classroom and cell phone use. Parent did not accept the BIP, and, as such, it was not implemented. (S-1; S-8; S-13; JP, 752-55, 768, 778-79, 879).
21. The March 2023 IEP was dated 12/5/22 to 12/4/22. This IEP differed from the December 2022 IEP by adding a 5th benchmark to the counseling goal; adding two new goals - #3 entitled “Behavior” and #4 entitled “Transition Support”; and adding three sentences in the Additional Information section proposing a new FBA as the prior one was over 6 months old and explaining that the new benchmark to the counseling goal was added “to address bullying”. However, according to both Parent and Ms. Barboza, revisions from the draft IEP presented at the March 6, 2023, Team meeting were not made to this proposed IEP. Specifically, the Team had agreed to change the medical diabetes diagnosis to say “Type I” diabetes in the “Student Strengths and Key Evaluation Results” section of the IEP, but this revision was not reflected in the March 2023 IEP. (S-1; S-2; Barboza, 1862-63; Parent, 2217).
22. According to Mr. JP, the new benchmark to the counseling goal was added based on Parent’s February 27, 2023, email, requesting revisions to the IEP to address bullying. This additional benchmark was initially included in the draft IEP prepared for the March 6, 2023, Team meeting. Mr. JP confirmed that no changes were made to the counseling goal between the draft IEP and the March 2023 IEP. (S-1; JP, 890-92, 897).
23. The new Behavior goal (Goal #3) in the March 2023 IEP calls for Student to “be able to follow classroom expectations by being present and remaining on task without more than 3 prompts in a single period class and 6 prompts in a double period class”. Two benchmarks were proposed addressing returning to class in 15 minutes after either using the restroom or going to the nurse. Ms. LCii felt the proposed Behavior goal was appropriate as it addressed the work-avoidance behaviors Student had exhibited, thereby enabling him to remain on task and get his work completed in a timelier manner. (S-1; LCii, 1195-96).
24. The new Transition Support goal (Goal #4) in the March 2023 IEP calls for Student to “continue meeting with his guidance counselor and working on post-secondary planning to include work readiness and potential options for further training/education as evidenced by his areas of interest, completion of his resume, filling out applications to apply for part time jobs, practicing interviewing skills and applying to community college.” Four benchmarks were proposed relating to Student participating in certain transition tasks, including discussions about post-secondary plans, options and employment opportunities with his guidance counselor during his study skills class; updating his resume and references at least once per term; completing a career-interest assessment; and having a monthly check in with his “support team” to “finalize post-graduation plans” including practicing interview skills, advocating for himself in the workplace, and researching work and community college opportunities. Ms. LCii drafted this goal based on Parent’s February 27, 2023 email, with the input of Ms. LC. (S-1; LCii, 1233).
25. Although new goal areas (#3 and #4) were added to the March 2023 IEP, no services were proposed to address these goals. The service delivery grid of the March 2023 IEP only identified goals 1 and 2.

Ms. LCii testified that she did not feel any services needed to be identified on the service delivery grid for either of these goals because the Behavior goal was to be addressed in all of Student’s classes, since the behaviors involved occurred in every class, and the Transition goal was to be implemented via a pull-out service by the Guidance Counselor during Student’s study skills class. As the settings that these goals would be addressed with Student were not new or different from what he currently had scheduled, it was not necessary to change the service delivery grid.

Ms. AR, however, acknowledged in her testimony that failing to include service time on the service delivery grid for proposed goals 3 and 4 was a mistake. She agreed the goals should be tied to a service, and time should have been added on the grid to address each of these goals. She submitted that the School Psychologist would have been an appropriate service provider to address the behavior goal. (S-1; LCii, 1247-48, 1251-52; AR, 1417-18, 1421-22).

1. Parent objected to the issuance of a new IEP rather than an Amendment Form to the November 2021 IEP and/or the June 2022 IEP and/or the December 2022 IEP. (Parent, 2221-22).
2. Overall, Nurse DD, who attended all of Student’s Team meetings, opined that the IEPs addressed Student’s medical health diagnoses and the health care accommodations he needed. Nurse CB agreed. For instance, the signs and symptoms of hypoglycemia are in each of the IEPs. Nurse DD did not think any changes to the IEPs were needed from a health perspective, noting that the medical health accommodations remained consistent among the IEPs. Further, Nurse DD did not feel a 1:1 nurse was needed for Student as she had observed him to be independent with his diabetes care[[40]](#footnote-40) and to use his insulin pump correctly[[41]](#footnote-41). In fact, she has never physically touched his pump, as Student always operated it himself and showed her what it is reporting. (S-1; S-2; S-3; S-4; DD, 452-46, 458, 509, 632, 650, 661, 681; CB, 1701).
3. Overall, Dr. Hernandez, who attended all of Student’s Team meetings, opined that the goals and objectives in all four of the IEPs at issue in this matter were realistic and achievable through planned gradual intervention. Further, the accommodations were appropriate and consistent with his evaluation, and at times taken “directly from his report”. Dr. Hernandez recalled the IEP Team discussing the goals and accommodations at each meeting as well. While he was unsure whether the IEPs were drafted at the meeting or shortly thereafter he did not find this to be problematic. He also testified to his belief that the IEPs addressed all Student’s diagnoses, including all social-emotional and medical diagnosis, and took into consideration some of the recommendations in his evaluation. He further noted that bullying, an important concern for the IEP to address given Student’s anxiety diagnosis, was addressed in the IEPs. However, he recognized that the process for investigating and determining the existence of bullying was outside the IEP team’s responsibility. Finally, Dr. Hernandez recalled that over the course of all Team meetings he attended, changes were made to the IEPs to address some of the issues Parent raised in her partial rejection of the November 2021 IEP. (P-4c; Hernandez, 156-57 159-60, 163-64, 204-05, 215, 225-26, 243, 260, 264-65, 268, 282-83, 288, 305-15, 333).
4. Mr. MG and Ms. LCii were primarily responsible for implementing Student’s Executive Function Skills goal. Ms. LCii drafted the changes to Student’s Executive Functioning Skills goal in the December 2022 IEP. Although these changes were not discussed at the December 5, 2022 Team meeting, and were instead drafted after that meeting, they were also included in the draft IEP Parent received on March 5, 2023 and discussed extensively at the March 6, 2023 Team meeting. Further, Mr. MG explained no changes were made to this goal in June 2022 or March 2023, because those IEPs were drafted within the pendency of the one-year timeframe proposed in the November 2021 IEP and December 2022 IEP.

Both Mr. MG and Ms. LCii confirmed that although the Team never actually drafted the wording of the goal or benchmarks at any Team meetings, the wording could have been amended or modified by the Team, especially at the March 6, 2023, Team meeting, as the draft IEP for that meeting contained all the goals ultimately proposed in the March 2023 IEP. According to Ms. LCii, preparing a draft IEP for the March 6, 2023, would provide the Team “something to look at and to address once we were sitting [in the meeting]”. She further explained that by providing a draft IEP at the Team meeting, it could be submitted to Parent for approval, and then at a subsequent meeting, if it was not approved the Team could talk about what Parent liked and what she wanted to have changed. (MG, 1128-38, 1155-57; LCii, 1207-14, 1223-26).

1. Mr. JP drafted all changes to Student’s counseling goal in the December 2022 IEP and the March 2023 IEP. He explained that he wrote these revisions in his office, consistent with his usual practice. The specific wording for the goal was not drafted at a Team meeting, but the goal area and need for it was discussed by the Team. Further, Mr. JP noted that, generally, after he drafted the wording for a goal and associated benchmarks it is provided to parents in a proposed IEP and parents will then have an opportunity to request edits to the specific language, as was done here. Mr. JP did not recall Parent ever raising any concerns with the wording of the counseling goal or benchmarks at any Team meeting or otherwise. Rather, Parent’s discussion and concern around the counseling goal at the Team meetings pertained to the amount of time proposed for the counseling service. (JP, 824-28, 878-79, 889-90, 894-901).
2. Ms. AR explained that the District’s general practice regarding Team meeting discussions about goals is to review the goal “topic areas” with parents in order to obtain their input. Once the meeting is concluded, the special education liaison or the proposed service provider then drafts the wording of the goal and benchmarks based on parental input and team discussion, and this is thereafter sent to parents in the proposed IEP. Should parents disagree with the wording of a goal or benchmark, they can indicate that as part of their acceptance or rejection, wherein another meeting is usually scheduled to “have resolution about that or to fine-tune the goal to get it to be where the parent would like it to be”. In the alternative, at times, the District prepares a draft IEP prior to a meeting to use as a discussion tool in order to allow the Team to “fine-tune” the wording of the goal and benchmarks at the meeting where the draft is provided. This general practice is consistent with Parent’s notes from the November 3, 2021, Team meeting. (P-4c; AR, 1372-73)
3. Ms. AS considers parents to be “crucial” members of the Team, however they are not the only members. The Team consists of a group of people with varied views and input, all of which are necessary and helpful in developing an IEP. Ultimately, though, parents can reject IEPs created by the Team. (AS, 2006-07, 2041-42).
4. According to Ms. Barboza, in her over 20 years of experience attending Team meetings at various school districts, she has experienced multiple ways that Team meetings have been conducted. She explained that in situations where a draft was done ahead of time, notification of that was given clearly. Further, in her experience, goals and objectives are typically written by whomever will be providing the service. These teachers could come to a meeting with recommended goals and objectives, that also may be presented ahead of time in a draft, so that parents and any other member of the Team can provided provide input, ask questions, make changes and work through the proposed goals and objectives. She has found that objectives that are clearly written and understandable to many people are ideal, as they may be implemented by different staff, and parents need to be able to understand them and provide input. Ms. Barboza believes the reason the District pre-drafted an IEP for the March 6, 2023, meeting was to “move the meeting along”. (Barboza, 1830-33, 1862).
5. On March 16, 2023, the District filed the underlying Hearing Request, seeking a determination that all the proposed IEPs to date (the November 2021 IEP, the June 2022 IEP, the December 2022 IEP and the March 2023 IEP) provided and continue to provide Student with a FAPE.

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# LEGAL ANALYSIS:

1. FAPE and Development of an IEP.

The right to a FAPE for all students with a disability is guaranteed by both federal and state law through the IDEA, M.G.L. c. 71B, and their corresponding regulations to Students who are eligible for an IEP[[42]](#footnote-42). IEPs must be developed by Teams consisting of, at a minimum, the parent; the student, if over the age of 14; at least one regular education teacher; at least one special education provider; a district employee who is qualified to supervise the provisions of special education, is knowledgeable about the general education curriculum and can commit district resources; an individual who can interpret the instructional implications of evaluation results; and “[a]t the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate”[[43]](#footnote-43). When transition services are an agenda item, a District must also invite “to the extent appropriate, with consent of the parents … [a]… representative of any participating agency that is likely to be responsible for providing or paying for transition services”[[44]](#footnote-44).

“The ‘primary vehicle’ for delivery of a FAPE is an IEP[[45]](#footnote-45).” An IEP, therefore, must be “custom tailored” and “individually designed” so as to be “reasonably calculated to confer a meaningful educational benefit” to a student[[46]](#footnote-46). IEP Teams are obligated to propose special education and related services to meet the individual needs of eligible students, based on the information known to the Team at the time the IEP is developed[[47]](#footnote-47). To receive a FAPE, a student’s educational program must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances[[48]](#footnote-48).”

An IEP is a "a snapshot, not a retrospective. In striving for 'appropriateness,’ an IEP must take into account what was and was not objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated”[[49]](#footnote-49). Under IDEA, students are entitled to an “appropriate” education and an “adequate” IEP; perfection is not essential. As the First Circuit recognized,

“The IDEA does not promise perfect solutions to the vexing problems posed by the existence of learning disabilities in children and adolescents. The Act sets more modest goals: it emphasizes an appropriate, rather than an ideal, education; it requires an adequate, rather than an optimal, IEP. Appropriateness and adequacy are terms of moderation. It follows that, although an IEP must afford some educational benefit to the handicapped child, the benefit conferred need not reach the highest attainable level or even the level needed to maximize the child's potential”[[50]](#footnote-50).

Provided the proposed educational program in an IEP is “reasonably calculated” to deliver “educational benefits”, “to enable the child to make progress appropriate in light of the child’s circumstances” school districts have met their IDEA obligation with respect to such IEP”[[51]](#footnote-51). The IDEA does not place school systems under a compulsion to afford a disabled child an ideal or an optimal education”[[52]](#footnote-52). This obligation is an obligation to provide an adequate and appropriate education.

1. The Role of Parents in the IEP Process

Parents are crucial and critical members of the IEP Team.

“Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, [example citations omitted], as it did upon the measurement of the resulting IEP against a substantive standard”[[53]](#footnote-53).

The United States Department of Education (DOE) has recognized that parents of a child with a disability are “expected to be equal participants along with school personnel in developing, reviewing and revising the IEP for this child”[[54]](#footnote-54). The role of parents has long been recognized as “active”, with Congress envisioning that parents will “join with other participants in deciding … what services the agency will provide to the child and in what setting”[[55]](#footnote-55). However, while parents have the right to participate fully in the IEP development process, and have their views considered by the Team, this does not mean that parents are able to dictate the contents of an IEP or the services to be provided.

“The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority “vote.” If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency’s proposals or refusals, or both, regarding the child’s educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. . . .”[[56]](#footnote-56).

Consistent with this guidance from DOE, the BSEA and the District Courts of the First Circuit have long recognized that a parent’s right to full parental participation in the team process does not translate into a parental right to dictate the contents of an IEP[[57]](#footnote-57).

Moreover, within the basic framework of an IEP, schools have considerable professional discretion and flexibility in how they fulfill their responsibilities[[58]](#footnote-58).  “We cannot interpret … [the IDEA] to require that all elements of a program provided to a child be included in an IEP”[[59]](#footnote-59). School districts also have discretion over the implementation of the IEP program, provided the “goals and objectives of the IEP can be met, and the student can make effective progress”[[60]](#footnote-60).  This includes determining things such as instructional methodologies, classroom placement and staff assignments[[61]](#footnote-61).

1. Procedural Due Process Claims

IDEA procedural protections are guaranteed to eligible students relating to the identification, evaluation, IEP development, provision of an educational program or placement or provision of a FAPE to a child with a disability. In *Rowley*, the Supreme Court established a two-part analysis for analyzing IEPs challenged at a due process proceeding. Specifically, the “two-fold” inquiry in IDEA due process proceedings consists of,

“First, has the [District] complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?”[[62]](#footnote-62).

Procedural protections serve a dual purpose; they ensure both meaningful parental participation and that each eligible child (or those for whom eligibility is still being determined) receives the protections of the IDEA[[63]](#footnote-63). However, procedural errors only amount to a deprivation of a FAPE if “the procedural inadequacies (I) impeded the child’s right to a free appropriate public education; (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”[[64]](#footnote-64). Thus, procedural violations that are technical or *de minimis,* and as a result do not result in educational harm, are not actionable[[65]](#footnote-65).

Although one of the purposes of the elaborate set of procedural safeguards imposed by Congress on school districts is to ensure parents’ full participation in the IEP process, “the fact that a parent doesn’t agree with the final IEP does not mean that either parent participation or FAPE was denied”[[66]](#footnote-66).

1. Compensatory Education Rights of Graduated Students

Compensatory education is an available remedy for violations of the IDEA that result in a denial of a FAPE to a Student[[67]](#footnote-67). An award of compensatory services while appropriate for “nonfeasance or misfeasance” by a school district, is discretionary, and equitable in nature[[68]](#footnote-68).  Whether compensatory educational services are appropriate will, therefore, be based on a consideration of whether the conduct of both parties was reasonable, as well as the resulting impact of the district’s missteps on the student’s education[[69]](#footnote-69). If it is determined that compensatory services are warranted, a district “must provide compensatory services ‘equal in time and scope’ with what a student would have received while eligible[[70]](#footnote-70)”.

Where a student has been awarded a diploma, the only available remedy for a denial of a FAPE is compensatory services[[71]](#footnote-71). Both federal and state law require that if a student has graduated with a “regular” high school diploma, he or she is no longer eligible for special education services[[72]](#footnote-72). According to the First Circuit, compensatory services are an available remedy for prior FAPE violation regardless of a student’s continued eligibility, “[o]therwise, school districts simply could stop providing required services to older teenagers, relying on the Act's time-consuming review process to protect them from further obligations”[[73]](#footnote-73).

1. Burden of Persuasion.

In a special education due process proceeding, the burden of proof is on the moving party[[74]](#footnote-74). If the evidence is closely balanced, the moving party will not prevail[[75]](#footnote-75). Parties alleging procedural violations also bear the burden of proving the alleged procedural deficit[[76]](#footnote-76). As the First Circuit has reasoned “Congress' special emphasis on the provision of procedural protections springs from the hope that an abundance of process and parental involvement will help ensure the creation of satisfactory IEPs acceptable to all concerned”[[77]](#footnote-77).

Thus, here, while the District has the burden of proving the issue for hearing in this matter – that the IEPs it proposed between March 16, 2021 and March 16, 2023, offered and offer Student a FAPE, Parent has the burden of proving that the alleged procedural violations with regard to the development of those IEPs significantly impeded her opportunity to participate in the Team’s decision-making process, impeded Students right to a FAPE, or deprived Student of educational benefits, and hence, were more than *de minimis*[[78]](#footnote-78).

# DISCUSSION

In making my determinations, I rely on the facts I have found as set forth in the Findings of Facts, above, and incorporate them by reference to avoid restating them except where necessary.

The dispute in this matter relates to whether the four IEPs proposed by the District between 2021 and March 16, 2023 (the November 2021 IEP, the June 2022 IEP, the December 2022 IEP and the March 2023 IEP) provided Student with a FAPE. Student’s eligibility for an IEP is not in dispute in this matter.

At the outset I want to address generally, the way that Parent interacted and communicated with the District, as I find that it encompasses and permeates this entire dispute. It is very clear to me that Parent loves and cares for Student and has dedicated much of her life to supporting his substantial medical and emotional disabilities and needs. It was also clear to me that the District staff was equally dedicated to ensuring Student succeeded, successfully completed his education and graduated, as he did, this past June. However, I find that Parent’s advocacy approach often worked to hinder rather than assist in this matter. Unfortunately, Parent’s tendency was to object and reject rather than collaborate. She often insisted on form at the expense of substance. (For instance, she objected that the specific wording of goals was not drafted at the table during the Team meetings, but then failed to provide edits she wanted made to what was proposed, instead wanting to start “from scratch”; contesting if accommodations proposed in the June 2022 IEP had been agreed to by the Team because every Team member had not been “polled” at the June 6, 2022 Team meeting as to their agreement; and continuing to argue over obtaining an independent FBA even though the District had agreed to fund it, because the agreement to do so was not on “letterhead”.) In addition, Parent would frequently “pivot” in her position. For example, Parent initially objected to too many people having been invited to Team meetings, and then later objected that the Team did not include the more than fifteen staff members she insisted attend the entire duration of scheduled Team meetings. Parent also insisted that Team meetings be scheduled after a certain date on non-shop weeks, and later objected to meetings not being reconvened within 30 days[[79]](#footnote-79).

While I commend both Parties for keeping the Team meetings civil, the testimony and evidence in this matter demonstrates that during Team meetings, despite various approaches taken by the District to complete the agenda, Parent frequently interrupted and dominated the conversations, prohibiting others from speaking until she finished her statement, and directing the conversation flow and topics. Overall, I find Parent’s verbal and written communications to the District to be lengthy, repetitive and replete with allegations of legal violations and accusations of various discriminations, thereby negatively impacting the Team from reaching a consensus.

The above is not to say that a parent’s approach and style excuses a district from meeting its procedural or substantive obligations to an eligible student under the IDEA and the Massachusetts special education laws and regulations.

Thus, after consideration of all of relevant facts, testimony and evidence presented at the Hearing, and analyzing the IEPs at issue in accordance with the *Rowley* two-pronged approach[[80]](#footnote-80), I conclude that, except with regard to the delayed FBA and the missing services for the newly proposed Goals 3 and 4 in the March 2023 IEP, these IEPs were developed in accordance with the procedural requirements of IDEA, or to the extent that they were not, the procedural violations were *de minimis*[[81]](#footnote-81). I also find that, except for the newly proposed Goals 3 and 4 in the March 2023 IEPs, the IEPs were reasonably calculated to provide Student with a FAPE in the least restrictive environment. However, the failure to include services for Goals 3 and 4 in the March 2023, IEP deprived Parent from participating in the development of these goals and services, deprived Student of educational benefits, and caused the March 2023 IEP to not be reasonably calculated to allow Student to make progress in light of his circumstances as to these two goals, only. My reasoning follows:

**1. Alleged Procedural Violations**

Parent raises several procedural challenges to both the Team meetings and development of each of the IEPs at issue in this matter. As to the Team meetings, Parent contends that the District failed to invite all persons she requested as well as MassRehab to the meetings, that the Team did not discuss all agenda areas she requested, that time limits were improperly placed on the Team meetings with the meetings being stopped “mid-conversation” and that the Team meetings were not reconvened within 30 days-. As to the IEPs, Parent objects to the use of a draft IEP at the March 6, 2023, Team meeting and to receiving new IEPs after each meeting rather than amendments. Parent also claims the IEPs do not include everything discussed at Team meetings and that that they were drafted and contain information written “outside the Team process” by unspecified “3rd party strangers”[[82]](#footnote-82). Finally, Parent challenges the failure to timely conduct the FBA.

* 1. **Team Meeting Challenges**

Parent fails to meet her burden of proof on any of her procedural challenges to the Team meeting process. Each of the Team meetings had all of the attendees required by the IDEA as well as additional persons, many of whom, were in attendance at Parent’s request. For instance, Mr. MG attended the December 5, 2022, and March 6, 2023, Team meetings at Parent’s request, although he was not Student’s teacher or liaison during the 2022-2023 school year. Contrary to Parent’s contention, nothing in the IDEA requires a District to invite every person requested by a Parent to attend a Team meeting, only certain roles must be represented[[83]](#footnote-83). Further, the responsibility for ensuring and inviting Team members to a meeting lies with the school district, not parents[[84]](#footnote-84).

The District’s failure to invite MassRehab to any Team meeting was not improper, either. I credit Ms. AR’s explanation that this was due to Parent’s failure to return the fully executed 688 Referral Form, which Parent confirmed. I further disagree with Parent’s argument that her email requesting MassRehab’s attendance should have been deemed sufficient consent to invite them to the meeting, as this email was not the consent needed for the District to pursue the Chapter 688 referral to MassRehab; a necessary prerequisite to inviting MassRehab to a Team meeting. The consent on the Chapter 688 referral form is a consent to release confidential records of the student so that the referral can be made to the appropriate agency[[85]](#footnote-85). Given Parent’s substantial communications and her repetitive allegations of FERPA and other confidentiality provision violations it was essential for the District to obtain Parent’s written consent on the Chapter 688 referral form prior to releasing Student’s information and proceeding with the referral.

For each of the Team meetings, it is undisputed that Parent and Student, when he attended, had considerable opportunity to participate throughout the meeting. The video recordings of the June 6, 2022, and March 6, 2023 Team meetings evidence Parent’s domination of the Team conversation, frequently interrupting Team members when they were presenting, but insisting she finish her lengthy statements without interruption. At times Parent also prohibited agenda items from being discussed by the rest of the Team[[86]](#footnote-86). Thus, while I agree with Parent that the Team never completed the discussion of the entire agenda at any individual meeting, I find Parent’s actions to be the reason for this.

In addition, although the District used time limitations[[87]](#footnote-87), the amount of allotted time varied for each meeting, as the June 6, 2022, Team meeting lasted 2 hours, the December 5, 2022, Team meeting lasted 2.5 hours, and the March 6, 2023, Team meeting lasted 1.5 hours[[88]](#footnote-88). The end result of all the meetings was that the Team continued to agree to reconvene to attempt to keep discussing the agenda, and revisions were made to the IEP and presented to Parent after each meeting[[89]](#footnote-89) along with a *Notice of Proposed School District Action[[90]](#footnote-90)*.

Further, such procedures, to the extent they did not align with the IDEA, if at all, were *de minimis* violations. Contrary to Parent’s contention, parents do not have the ability to dictate the Team agenda, rather it is the school’s responsibility to ensure an IEP is complete. If the Team is unable to reach a consensus, the proper process, as was followed by the District in this case, is for the district to provide parents with a prior written notice of the district’s proposals regarding the student’s educational program and offer parents the ability to seek resolution of any disagreements via all available dispute resolution options[[91]](#footnote-91).

Finally, Parent’s claim that the Team meetings were untimely reconvened, as there was more than 30 days between meetings, also fails. This allegation involves another time that Parent misconstrues the provisions of the IDEA, as well as another example of her misplaced advocacy. The only time the IDEA requires a Team to convene within a 30-day timeframe, is when it is developing an IEP after a finding of eligibility for special education. Otherwise, the IDEA only requires “periodically, but not less than annually” Team meetings “to determine whether the annual goals for the child are being achieved and revises the IEP, as appropriate …”[[92]](#footnote-92). The District complied with the IDEA’s 30-day requirement, here, as both the determination of eligibility and development of the IEP occurred at the November 3, 2021, Team meeting[[93]](#footnote-93).

While the annual review of the November 2021 IEP did not occur until after its expiration, this was due to Mother’s refusal to meet earlier in the 2022-2023 school year, not because of any District delay in attempting to schedule a meeting. The District offered several timely meeting dates in the fall of 2022, even scheduling a meeting on September 23, 2023 (which would have been within the 30 school days Parent sought), but Parent objected, instead insisting on the Team meeting occurring on December 5, 2022. Parent also never responded to Ms. AR’s offers to reconvene the Team on three potential dates in January 2023 (January 5, 12 or 18, 2023, which also would have been within the 30-school day timeframe Parent sought), and in response to Parent’s renewed demands to reconvene made in February 2023, the Team meeting was timely scheduled for March 6, 2023[[94]](#footnote-94).

Thus, under the circumstances in this case, Parent has failed to meet her burden to of proving that any of her alleged improprieties pertaining to the Team meetings constituted actionable procedural violations.

* 1. **IEP Challenges**

Additionally, with one exception, Parent’s procedural violation claims pertaining to the IEPs also fail. Parent contends that providing her with a draft IEP prior to the March 6, 2023, Team meeting was essentially predetermination by the District of the IEP provisions. I disagree. Given the parties’ prior interactions and the difficulty with completing the Team agenda at the previous Team meetings, use of a draft IEP was not only warranted but appropriate for this Team meeting. Nothing in the IDEA prohibits the use of a draft IEP as a discussion tool at a Team meeting and use of this draft IEP did not impede Parent’s’ participation in the Team’s decision-making process[[95]](#footnote-95). The draft IEP incorporated requests from Parent’s February 27, 2023 email, was sent to Parent 2 days prior to the Team meeting and was an effective attempt to ensure that a complete IEP was before the entire Team, including Parent, for discussion[[96]](#footnote-96). Although Parent objected to being provided with the draft during the March 6, 2023, Team meeting, she agreed she had received and reviewed it.

Similarly, the decision to provide complete IEPs rather than amendments after each meeting, is also discretionary with a school district under the IDEA and was justifiable here[[97]](#footnote-97). Moreover, a new IEP was necessary after the December 5, 2022, Team meeting as it was an annual review meeting, and the prior IEP had expired.

Finally, except for the failure to include services for Goals 3 and 4 in the March 2023 IEP, as discussed below, Parent fails to prove that the IEPs were improperly drafted or contain information written “outside the Team process” by unspecified “3rd party strangers” [[98]](#footnote-98) or that their failure to include information discussed by the Team, if any, constituted more than *de minimis* procedural error by the District[[99]](#footnote-99). Mr. MG, Ms. LCii, Mr. JP, and Ms. AR, all credibly explained the process used to draft the wording of the IEPs[[100]](#footnote-100), and I do not find anything about that process to have been contrary to the IDEA’s requirements. Further, while the District failed to revise the March 2023 IEP to add “Type I” before the medical Diabetes diagnosis, I find this was harmless error as it had no impact on Student’s ability to receive a FAPE, given that all staff members who worked with Student were aware of his Diabetes diagnosis, and the IEPs contained over a page of accommodations to support this Diabetes diagnosis in both PLEP A and PLEP B[[101]](#footnote-101).

* 1. **Delayed FBA**

While I agree with Parent that the District’s delay in performing the FBA was more than “*de minimis*”, I ultimately conclude this did not result in a denial of a FAPE to Student, did not significantly impede Parent’s participation in the FAPE decision-making process, or cause Student a deprivation of education benefits[[102]](#footnote-102). The District acknowledges that it did not perform the FBA parent requested in July 2021 until May 2022 and was not aware of the error until the November 3, 2021, Team meeting. The District ultimately pursued the requested FBA starting in March 2022. It first contracted with Arise Consulting Services, Inc. and thereafter, when Arise declined, it contracted with CREST Collaborative to perform the FBA. The FBA was completed in May 2022 and the Team met and reviewed it at the June 6, 2022, Team meeting.

Although in some situations a delay of approximately 10 months to perform an evaluation may evidence and support a denial of a FAPE, I do not find this delay to have had any impact on Student’s receipt of a FAPE in this case given that Parent did not respond to the November 2021 IEP until February 4, 2022, and Parent never accepted, or even responded to any IEP that was proposed subsequent to the FBA. Moreover, Parent never agreed to a behavior support plan for Student, despite the recommendations of both Ms. McCluskey and Dr. Hernandez, and the Team discussion and proposal to develop one at the June 6, 2022, December 5, 2022, and March 6, 2023 Team meetings. Additionally, the proposed Behavior Intervention Plan ultimately developed by the District was never implemented as Parent never agreed to it. As such, there are no special education or related services or supports that Student would have received, but did not, due to the delay in performing the FBA.

Parent argues she refused to agree to a behavior support plan because the FBA failed to address her request to understand how Student’s blood sugar levels and other medical conditions impact his behavior. Parent shared this objection at length whenever a proposed behavior plan was raised at these Team meetings. However, the District was aware of Parent’s request prior to Ms. McCluskey performing the FBA and advised it would share it with Ms. McCluskey, but it was not sure if she would be able to answer Parent’s question. Despite knowing this potential limitation, Parent did not object to Ms. McCluskey proceeding with the FBA. Further, after the FBA was completed, the District agreed to fund an independent FBA at Parent’s request, with a provider of Parent’s choice. Parent did not act on this agreement, however, as it was not presented to her on “letterhead” stationery.

Moreover, contrary to Parent’s contentions, the FBA did not ignore Student’s diabetes. Parent’s concerns around the impact of Student’s blood sugar levels on his behavior were noted in the Parent Interview portion of the FBA report, and the first recommendation was for the Team to consult with a medical professional “regarding his Diabetes and specifically his sugar levels throughout the day and during behaviors to rule out medical needs”.

As such, I conclude that is yet another instance where Parent’s approach and style prohibited services and potential progress for Student. I agree with Ms. McCluskey that a medical professional consultant could have been a very useful support for Student. Further, had Parent agreed to proceed with Ms. McCluskey’s first recommendation, a behavior support plan could have been developed and implemented for Student without the need for a medical professional to perform a new FBA. Student would have benefitted from having such a plan had it been created and accepted.

The only reason Student did not have such a behavior support plan was due to Parent’s refusal to agree to it, based her perseverant insistence that the FBA did not address the correct target behaviors for Student, and that the District’s agreement to fund an independent FBA be memorialized in a certain format. Parent’s unreasonable domination of Team conversations about the proposed behavior plan prevented any other contributions by the rest of the Team. “Such Boulwarism, whether or not well-intentioned, constitutes an unreasonable approach to the collaborative process envisioned by the IDEA”[[103]](#footnote-103).

**2. Substantive Review of the IEPs**

With the exception of the missing services for Goals 3 and 4 of the March 2023 IEP, as discussed below, I find the remainder of the March 2023 IEP, and the entirety of the December 2022 IEP, the June 2022 IEP and the November 2021 IEP were reasonably calculated to provide Student a FAPE in the least restrictive environment. Other than the testimony from Parent and from Ms. Barboza (solely with respect to the failure to include a 1:1 nurse in the IEP), no evidence was presented by Parent as to any alleged substantive issues with the IEP[[104]](#footnote-104).

1. **1:1 Nurse and “Dex-Com app” Objections**

I do not find a 1:1 nurse was necessary for Student to receive a FAPE, and it was proper for the District not to propose the “Dex-Com app” in any of the IEPs. I credit the testimony of both Nurse DD and Nurse CB in this regard, who are licensed professionals with extensive experience in the field of school nursing[[105]](#footnote-105). Moreover, I disagree that a 1:1 nurse was the only way for someone to be constantly checking Student’s sugar levels, or that this was even needed for Student. Given that Student demonstrated independence and autonomy with his diabetes monitoring and use of his Tandem pump, a 1:1 nurse was not only unnecessary but would have been overly restrictive. Neither Nurse ever touched Student’s Tandem pump – he always operated it on his own, and Student’s visits to the nurse’s office were generally regular and without resistance. On the limited occasions Student did not show up when expected at the nurse’s office, the District had a plan to ensure he got there. Further, had he been incapable, lesser restrictive options, such as an assistive technology support, should have been considered first.

I also do not find the “Dex-Com app” was necessary for Student to receive a FAPE. Given Student’s ability to monitor his own sugar levels with the oversight of the school nurses, no other personal or technological nursing supports were needed to address, from a special education perspective, Student’s Type I Diabetes disability. Further, while the Team appropriately discussed the District’s proposal to use the “Dex-Com app”, given Parent’s objection to using it, it was never ultimately included it in any IEP.

1. **1:1 Academic Assistant Objection**

Similarly, I do not find that a 1:1 academic assistant was necessary for Student to receive a FAPE, but rather that the accommodations relating to individual check-ins were the appropriate provisions to include in the IEPs. In this regard I am persuaded by the testimony of Ms. JS, Ms. AS, Mr. MG, Ms. LCii and Mr. PP pertaining to how successful Student was with this approach in his classes, and his resistance to obvious individualized attention. Additionally, the concept of individual check-ins rather than a dedicated 1:1 academic assistant was supported by Dr. Hernandez and consistent with his recommendations as well as those of the FBA. Thus, based on the information before the Team, it appropriately rejected Parent’s request for a 1:1 academic assistant, instead continuing to include the individual check-in accommodation (the majority of which Parent also accepted[[106]](#footnote-106)).

1. **Counseling Goal, Services and Benchmarks Objections**

The District has met its burden to demonstrate that the proposed counseling services and all its benchmarks were appropriate and necessary for Student to receive a FAPE. Both Dr. Hernandez and Mr. JP, the two witnesses with expertise in this area, credibly explained about how important it was for Student to receive counseling support in school to address his diagnosed emotional disabilities. They also both confirmed their agreement with the wording of the counseling benchmarks in the IEPs. As Dr. Hernandez explained, Student’s emotional needs were sufficiently severe to necessitate counseling.

As to the amount of counseling time, it was also appropriate for the District to maintain, in the June 2022 IEP, the 22 minutes of counseling service time in the Service Delivery Grid, but to revise this IEP to add a statement in the Additional Information section that it was to be gradually increased as Student felt appropriate. According to the video recording of the June 6, 2022 Team meeting, these provisions were consistent with the Team discussion and consensus, as well as the persuasive testimony of Mr. JP, and his explanation at this meeting, about the appropriate amount of counseling time.

1. **Remaining Substantive Objections**

Parent’s remaining substantive objections to the IEPs pertain to their alleged failure to properly identify Student’s disability, to provide accommodations, goals and objectives individualized to all his classes, and to address bullying, transition planning and behavior. While I agree that the March 2023 IEP is deficient in not providing any services for Goals 3 and 4, as discussed below, the District has met its burden to prove that in all other ways the IEPs were substantively appropriate to provide Student with a FAPE.

Ms. McCluskey testified that several of the accommodations reflected the recommendations of her FBA. Dr. Hernandez credibly explained that it was a typographical edit to identify “ADD” not “ADHD” as one of Student’s disabilities in Addendum A to his evaluation report, and that the proper “nomenclature” for the diagnosis he provided was ADHD[[107]](#footnote-107). Ms. LCii, Mr. MG and Ms. AS persuasively testified that despite Student’s diverse classroom settings, the accommodations, goals and objectives could have been utilized in all of them, and individually applied within each. Just as Dr. Hernandez properly recognized, drafting an IEP that is specific to each classroom, while “ideal”, is both unrealistic and contrary to the IDEA. It also contravenes the obligation to propose an IEP that is “objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated” [[108]](#footnote-108). Further, all the IEPs contained a Transition Planning Form.

Moreover, I disagree with Parent that the IEPs did not address bullying, as all four IEPs contained a statement in the Additional Information Section addressing Student’s vulnerability to being bullied as well as supports that he would have to facilitate development of social skills (such as access to a counselor, as needed). Further, in response to Parent’s continued claims that the IEPs did not sufficiently address bullying, it was appropriate for the District to add a new benchmark to the counseling goal in the March 2023 IEP to work with his counselor on properly identifying situations as bullying. Parent’s disagreement with these IEP statements and the proposed benchmark does not render them improper. Parents, while crucial and critical members of the IEP team, cannot dictate the contents of an IEP[[109]](#footnote-109).

As such, other than with regard to the March 2023 IEP’s missing services for Goals 3 and 4, discussed below, the District has met its burden of proving that all the IEPs it proposed between March 16, 2021, and March 16, 2022, offered and offer Student a FAPE in the least restrictive environment.

**3. Failure To Include Services for Goals 3 and 4 in the March 2023 IEP.**

The failure to include services for Goals 3 (“Behavior”) and 4 (“Transition Support”) in the March 2023 IEP was not a “clerical error”, as the District contends[[110]](#footnote-110). Although Ms. LCii explained the way that services associated with goals 3 and 4 could have been provided during the classes Student already had scheduled, I do not agree that there was no need to include any reference to these goals on the Service Delivery Grid[[111]](#footnote-111). For this reason, while I found Ms. LCii overall to be a credible witness, I do not credit her testimony on this point, as she appeared to lack an understanding of the IDEA requirement in this regard.

I credit Ms. AR, however, for her candid testimony, particularly her acknowledgment that not including services for these goals was a “mistake” and was something she had “missed”. (AR, 1417). I also agree with Ms. AR that while she may not have been sure which of the existing services these goals would have been “tied to, [they] should have been tied to a service, I agree.” (AR, 1417-18).

Goals 3 and 4 were new goals added in the March 2023 IEP, but the Service Delivery Grid did not look any different than the prior IEPs. Thus, it cannot be said that the District had actually proposed services for these goals but incorrectly attached them to a different goal, or failed to attach them to any goal, as it contends. Rather, the preponderance of the evidence indicates that no services of any sort were proposed for these goals and, according to the video recording of the March 6, 2023 team meeting, no services for these goals were ever even attempted to be discussed, either.

While it is unclear, as Ms. AR conceded, whether any of the existing services would have been appropriate for these goals, it is also unknown if any additional services were necessary[[112]](#footnote-112). Had the Team discussed these goals and associated services, this would have been resolved. Its failure to do so, and its failure to propose any services in the IEP deprived Parent from providing input into the development of this portion of the IEP and resulted in a deprivation of educational benefits to Student with respect to these goals[[113]](#footnote-113). Further, unlike with the delayed FBA, (which was ultimately reviewed by the Team and its recommendations were incorporated into the subsequently proposed IEPs), Parent’s failure to respond to the March 2023 IEP does not excuse the District’s failure to include services for Goals 3 and 4.

Thus, when viewing the March 2023 IEP from the “snapshot” perspective, at the time it was promulgated, as I am required to do, I cannot find that it was reasonably calculated to enable Student, in light of his circumstances, to make progress as to Goals 3 and 4[[114]](#footnote-114). I, therefore, conclude that, as limited to its failure to include services for Goals 3 and 4, the March 2023 IEP did not offer Student a FAPE. I also do not find any actions by Parent to have contributed to this error. As such, although Student has now graduated, compensatory services are warranted covering the time between the issuance of this IEP and Student’s graduation[[115]](#footnote-115).

# ORDER:

1. Except with respect to the failure to include any services for Goals 3 and 4 in the March 2023 IEP, all IEPs proposed by the District between March 16, 2021, and March 16, 2023, offered and offer Student a FAPE.
2. The District shall, prior to September 30, 2023, convene a Team meeting to discuss (a) the Age of Majority decision (as Student is now over 18 years old); and (b) the District’s proposed compensatory services for its failure to include services for Goals 3 and 4 in the March 2023 IEP. No other agenda items will be discussed[[116]](#footnote-116). To facilitate this discussion, two days prior to the Team meeting the District shall send Student, with a copy to Parent, the Age of Majority Form and its draft compensatory services proposal, for discussion purposes.

Respectfully submitted,

By the Hearing Officer,

/s/ Marguerite M. Mitchell

Marguerite M. Mitchell

August 9, 2023

1. District L is a pseudonym for the school district. Due to unique circumstances in this case, a pseudonym for the district is being used to provide an additional layer of protection to promote Student’s confidentiality. [↑](#footnote-ref-1)
2. Some of the procedural history of this matter as well as the Parties’ positions and actions in seeking to start the Hearing on the initial Hearing date has already been set forth in my March 29, 2023, *Post-Conference Call Ruling*, my March 31, 2023, *Ruling on Parent’s Motion to Strike*, and my April 3, 2023, *Pre-Hearing Order*. [↑](#footnote-ref-2)
3. Exhibits marked for identification as P-3c, P-4a, and P-10 were excluded pursuant to the District’s objection for the reasons noted in the record. [↑](#footnote-ref-3)
4. Only the last page of the 3 total pages marked for identification purposes was admitted into evidence for Exhibit S-16. The first 2 pages were excluded pursuant to the Parent’s objection for the reasons noted in the record. [↑](#footnote-ref-4)
5. Exhibits marked for identification as S-4a and S-17 were excluded pursuant to the Parent’s objection for the reasons noted in the record. [↑](#footnote-ref-5)
6. For the reasons set forth in the June 21, 2023, *Ruling on Parent’s Request for Further Postponement to Allow Additional Time to Submit Written Closing Arguments,* the District’s closing arguments were due on or before June 30, 2023 and the Parent’s closing arguments were due on or before July 5, 2023 to ensure both Parties had 3 full weeks with all the transcripts to prepare their closing arguments. [↑](#footnote-ref-6)
7. This was the first IEP offered by the District, although it had sought parental consent to evaluate prior to March 16, 2021. [↑](#footnote-ref-7)
8. I have carefully considered all the evidence and testimony presented in this matter. I make findings of fact, however, only as necessary to resolve the issue(s) presented. Consequently, all evidence and all aspects of each witness’ testimony, although considered, is not included if it was not needed to resolve the issues for the instant hearing. [↑](#footnote-ref-8)
9. Student’s last day of high school was also the final hearing day. (Parent, 2219). [↑](#footnote-ref-9)
10. These numbers are all citations to pages of the Hearing transcripts. [↑](#footnote-ref-10)
11. Dr. Hernandez’s Preliminary Report contained the diagnosis of “ADHD” on pages 10 and 11, but identified the diagnosis as “ADD” in Addendum A, entitled “Diagnostic Summary Sheet” on page 14. [↑](#footnote-ref-11)
12. During testimony, Parent, made a general statement that what was discussed at the November 3, 2021, Team meeting was not written into the November 2021 IEP. Parent’s notes from this Team meeting were admitted into evidence. I do not find anything inconsistent among these notes, the testimony of Dr. Hernandez and the other witnesses who attended this Team meeting, and the November 2021 IEP. Parent’s notes did indicate that “we didn’t do goals/objectives as IEP Team”, however later in the notes, she references the executive function goal as “1” followed by “E 🡪 given the choice – [Student]”, and “counseling” as “2” with the words “ADD, Depress, Anxiety” under this. (P-4c; Parent 2176). [↑](#footnote-ref-12)
13. Mr. NB testified extensively to multiple safety plans that he established for Student during the relevant timeframe to address concerns raised by Parent and Student regarding Student’s interaction with certain staff members and Student’s overall feelings of safety at school. He explained that a safety plan, rather than the IEP, is the appropriate way to address these concerns, and that a safety plan is not part of an IEP or only available to students eligible for IEPs. Additionally, use of a safety plan provides a timelier way for the District to address safety concerns than it could through the IEP Team process. While Mr. NB agreed an IEP should address concerns associated with bullying, he advised that no bullying allegations were ever sustained for Student. (NB, 1565-68, 1597-1600, 1617-20, 1628). [↑](#footnote-ref-13)
14. This communication approach was established in response to daily emails from Parent to multiple staff members. Eventually, in the spring of 2022, the Parties agreed that all communication would be through their attorneys. (S-16; AR, 1238, 1331-3). [↑](#footnote-ref-14)
15. CG, Student’s Special Education Math Teacher for the 2021-2022 school year until February 8, 2022 (a day and a half after the November 2021 IEP was signed) also testified that Student benefitted from individual check-ins but did not require continual individual attention for the entire class period. Further, she advised Student did not struggle in math and had solid foundation in math skills, but his grades generally were impacted by failing to complete work. (CG, 1779-86). [↑](#footnote-ref-15)
16. Mr. NB also provided this information to Parent. (LC, 2112) [↑](#footnote-ref-16)
17. CREST Collaborative was not the first agency that the District had requested to perform the FBA. In March 2022, the District asked Arise Consulting Services, Inc. to do so. Arise communicated with Parent on March 29, 2022, and ultimately declined to perform the FBA and the District then contracted with CREST Collaborative. (S-11, P-15; AR, 1407-09, 1440-42; Parent 2185-86). [↑](#footnote-ref-17)
18. According to Parent, the FBA failed to address health questions as to the impact of Student’s medical conditions, particularly his blood sugar levels, had on his “Type 1 diabetes behavior”, and that she objected to the FBA not being conducted by someone who was capable of “interpret[ing] the evaluation results given [Student’s] Type 1 Diabetes impact and especially during hyperglycemia or hypoglycemia and its impact regarding his executive functioning … as well as when [his] … insulin [was] never administered.” She continually requested an independent FBA be performed in this area, to which the District agreed, but Parent did not identify a new FBA evaluator, or move forward with this request. Parent explained that she was unsure whether the District was truly agreeing to fund the independent FBA, as she only received an email from Ms. AR about this agreement; the agreement was never put on “letterhead” as she had requested. (S-2; P-3a; P-3b; Parent, 2300-05; Parent’s Closing Argument, p. 6-7). [↑](#footnote-ref-18)
19. Parent objected to these incident reports as being “falsified data” contending that one of the dates on an incident report was a day Student was not in school. Ms. McCluskey testified that although she recalls Parent discussing that the FBA was created using “fraudulent data” at Team meetings, she was not aware of what specifically was alleged to be fraudulent. Further, as she only used the incident reports to determine whether there were trends in the behaviors related to time of day or days of the week (which she did not find to exist), the elimination of one of those dates would have only resulted in her changing her report to summarize 9 rather than 10 incidents. Eliminating this one report would not have impacted her conclusions and recommendations substantively. (S-7; McCluskey, 998-1001). [↑](#footnote-ref-19)
20. According to Ms. McCluskey this is a behavioral strategy where attention is provided on a set schedule that is slowly faded, regardless of whether the behavior occurs. Typically, the attention is provided earlier than the usual duration between the behavior, as this can result in the behavior decreasing, because the function for the behavior to occur is already present. Even though attention was not found to be the function of Student’s behaviors, Ms. McCluskey still recommended this strategy based on the feedback she received about the success of frequent check-ins for Student. She also felt use of this strategy would make the Team accountable to provide those check-ins. (McCluskey, 1068-69). [↑](#footnote-ref-20)
21. Although Parent’s conditional acceptance of the study skills class was resolved, Student was not participating in the proposed Counseling services as Parent had yet to provide consent. Parent insisted on dictating the class during which Counseling would be provided and requested that Student have a male counselor. Parent rejected outreach by a female school adjustment counselor to set up sessions with Student. The District did not have a male counselor available until spring, 2022, when it hired a male school psychologist, Mr. JP. Upon Mr. JP’ hire, the District proposed changing the Counseling service provider to the school psychologist and explained this would necessitate a change to the IEP. (S-11; AR, 1329-30). [↑](#footnote-ref-21)
22. JP is the District’s School Psychologist. He holds a master’s degree a Continuing Advanced Graduate Studies degree in school psychology and is currently a doctoral candidate in Counseling and school psychology. Mr. JP has worked as a School Psychologist for approximately nine years and began working for the District in April 2022. Previously, he worked in this same capacity for other public-school districts in both NH and MA. He holds a Massachusetts professional educator license as a School Psychologist and has a national certification in School Psychology from the National Association of School Psychologists. (JP, 736-37). [↑](#footnote-ref-22)
23. There was substantial discussion at the Team meeting as to how to respond to Student’s behavioral infractions. Specifically, the Team focused on Student’s refusal to put his hood down and his use of his cell phone in class without permission. According to Ms. CG, students are not allowed to wear hoods in school or use cell phones in the classroom. Dr. Hernandez explained that although he recommended enforcing the code of conduct, it should not be a punitive response to what may actually be a display of Student’s anxiety or stress and emphasized using positive reinforcements with Student. (P-3a; CG, 1741, 1745, 1762-63). [↑](#footnote-ref-23)
24. At hearing, Parent’s direct examination of Nurse DD, substantially related to whether she followed Student’s schedule for when he would visit her, her documentation of these visits in the Nurse Health logs, and her adherence to Student’s medical orders on file each school year addressing Student’s Type I diabetes and other health diagnoses. The same was true of Parent’s direct examination of Nurse CB, who saw Student every morning for a glucose check. As this testimony does not relate to the issue for hearing in this matter, I decline to make any findings of fact with regard to it. [↑](#footnote-ref-24)
25. Parent had accepted the testing accommodation for tests to be “read aloud”. [↑](#footnote-ref-25)
26. At some point in time Parent shifted her objection to having so many invitees to the Team meeting and instead started to insist that more people be invited. It is unclear from the record when this change occurred. Eventually, Parent listed over 23 people, including herself, to attend the Team meetings. Moreover, Parent’s arguments throughout the Hearing relating to the composition of the Team pertained to the Team always being incomplete, rather than its being too large. (S-13; Parent, 2203, 2215-18). [↑](#footnote-ref-26)
27. It is unclear from the record the date this meeting was scheduled and the date it was cancelled. [↑](#footnote-ref-27)
28. Parent did not bring an attorney to this or any subsequent Team meeting. [↑](#footnote-ref-28)
29. A copy of the invitation to this Team meeting was not included in the record. [↑](#footnote-ref-29)
30. According to Parent, as Team meetings should be individualized and based on student need; the IDEA does not establish a time limitation for how long they should occur. As such, Parent believed it was inappropriate for a time limit to be established for this meeting. As Parent explained “[t]here was, and there cannot be, and it is illegal to have any one-size-fits-all, which meant that if a student needed 30 meetings for the IEP team to get it together and to have created goals and objectives, that’s what should have occurred.” (Parent, 2209). [↑](#footnote-ref-30)
31. Parent testified that she did not consider Ms. AR to be part of the IEP Team, and that the Team decision-making process was done in error. According to Parent,

“Ms. AR is not on the IEP team. She is the Special Ed Director, and her only role is to actually be at this meeting in order to tell whether or not the District can approve services. And if the District tries to claim that they can’t approve the services, it’s required to follow IDEA law, which means that basically any accommodation of service that a child needs, whether it’s one IEP team person saying that, the Parent, or multiple, the District is actually required to have – to be able to provide those services. There is not supposed to be a model team process where it’s basically what the administration wants to provide. It’s supposed to be what the IEP team says. And also, what the Parent says is required.” (Parent, 2205-06). [↑](#footnote-ref-31)
32. Parent’s contention, which she reiterated in her testimony, is that “when a parent requests that a meeting be paused or stopped and that it be continued to reconvene, federal laws are very clear that that has to happen within 30 days. That never happened at all.” (Parent, 2189). [↑](#footnote-ref-32)
33. These were not the only emails Parent sent the District during this timeframe, and Parent’s 8 to 14 areas of objection and demand to reconvene the Team were not the only substantive requests in Parent’s emails (she often made student record requests and alleged FERPA violations and other objections). Generally, Parent’s emails were lengthy, sometimes reaching over 40 single spaced pages. She used a variety of styles in her emails including inserting words and sentences in full uppercase lettering, utilizing both bold and regular type-face, highlighting, underlining, and using various sized font. Sentences lasted multiple lines, and paragraphs were often half a page or more in length. Her presentation style involved cutting and pasting whole paragraphs or sometimes pages of information from prior emails into the new email (in addition to providing copies of the prior emails at the end of the new email), while making changes to a few words or sentences from what was copied from the prior emails. Exhibit S-13 was over 200 double-sided pages in length, consisting primarily of emails from Parent sent to the District between December 6, 2022, and March 24, 2023. [↑](#footnote-ref-33)
34. Parent contacted MassRehab on her own, but never completed and returned the Referral Form. She requested that the District invite MassRehab to future Team meetings, but as the Referral Form was not submitted, MassRehab was never invited nor attended a Team meeting. Parent testified that her email alone, requesting MassRehab’s attendance. should have been deemed sufficient consent to process the referral to MassRehab and to invite them to a Team meeting. (Parent, 2207-08, 2216, 2237). [↑](#footnote-ref-34)
35. Parent testified that since Student presented differently in each of his classes, “all of these classrooms individually should have had goals and objectives specific for them, as well as the particular teachers in these classrooms, from Auto Tech to Auto Shop …”. (Parent, 2207). [↑](#footnote-ref-35)
36. As the agenda was over 2 single-spaced pages in length (although the entire email was much longer), it is not set forth verbatim, herein. However, to summarize, the following items were included 1) 15-20 minutes – Student’s present levels of academic and functional performance, teacher reports and the results of most recent evaluations; 2) 10 minutes – Parent and Student concerns; 3) 10-30 minutes – Relevant/Special Factors including FBAs done in the past 6 months and a “positive behavior support plan”, Student’s communication and organization needs, Student’s need for assistive technology devices and services; “damages to my child being denied FAPE for over 3 years” and “additional necessary areas”; 4) 20-30 minutes – annual goals and benchmarks to address all disability areas of “anxiety, ADD, Depression, migraines, Type I Diabetes, Behavior Support and Tutoring and medical and non medical (sic) staff assistance and also for Anti Bullying, Vocational Education, Transition and integrated employment (co op) (sic) and also Work Placements (sic) assistance all in order for him to access his education at 100%”; 5) 40-50 minutes – “supports, services, accommodations and adjustments” provided to enable Student to progress in the general education curriculum in all areas of the previously noted disabilities. Fifteen specific services were identified including: “Rejected portions of the 2/3/22 signed IEP and 10/24/19 signed 504 Plan”; supplementary aids and services; 1:1 Tutoring; professional development and special skills and knowledge for teachers, service providers and aids; related services in all potential areas; compensatory education for the denial of FAPE “8/25/19-2/27/23 and up to the date of our IEP meeting on 3/6/23”; extended school year services; services to assist with learning communication skills and strategies; organizational assistance and comprehension; assistive technology devices and services; an FBA and “positive behavior support plan”; services to support access to extra-curricular and non-academic activities “even if my child is in a self-contained or out-of-district placement”; 1:1 Nurse assignment for Student; “Safety and Anti Bullying Accommodations”; “Integrated employment (co op) (sic) and also Work Placements (sic) assistance”; 6) 30 minutes – “Transition and Adult Life Planning and Integrated employment (co op) (sic) and also Work Placements (sic) assistance” inclusive of courses of study to take to transition to adult life; transition and adult life services; educational decision making services; and “a plan for me to secure guardianship before he turns 18”; 7) 15 minutes – Placement; 8) 10 minutes – Testing accommodations; 9) 15 minutes – how progress will be measured and how Parent will be informed of this; and 10) 10 minutes – who is responsible for monitoring progress and ensuring IEP services are provided. (S-12). [↑](#footnote-ref-36)
37. Although Mr. MG had no involvement with Student during the 2022-2023 school year, Parent insisted he attend this and the December 5, 2022, Team meetings. (MG, 1104). [↑](#footnote-ref-37)
38. Ms. LCii further noted that Parent’s emails were “very lengthy and confusing and hard to follow” but that she had done her best to understand the areas of concern from this email and had put that into the draft IEP. The February 27, 2023, email is described in detail above and was 5 single spaced pages in length, not including any attachments. (LCii, 1232). [↑](#footnote-ref-38)
39. Ms. AR testified that the proposal for the Assistive Technology Assessment was based on concerns Parent had raised for the first time in her February 27, 2023 email, relating to assistive technology supports for Student. (AR, 1346-47). [↑](#footnote-ref-39)
40. Additionally, Parent introduced as an exhibit an email she sent to the school nurses in September, 2020 that noted, at that time that Student was “mostly independent and his pump is doing it’s thing …”. (P-5). [↑](#footnote-ref-40)
41. Ms. Barboza attended the December 5, 2022 and March 6, 2023 Team meetings. She testified extensively about her belief that a 1:1 nurse was needed for Student, because this would allow someone to be actively checking his sugar levels at all times. She also felt the District’s proposal for Student to use the “Dex-Com app”, was not an appropriate alternative solution as “a nurse cannot be substituted by an app” and according to Parent, the application could “fail”. However, Ms. Barboza also testified during cross-examination that she was not a licensed medical or educational professional and had not observed Student in school or talked with teachers outside of the Team meetings. (Barboza, 1863-64, 1870, 1880-81, 1937). [↑](#footnote-ref-41)
42. 20 USC 1400, *et seq*.; 34 CFR 300.000, *et seq*.; 603 CMR 28.00 *et seq*.; 603 CMR 28.02(11); 603 CMR 28.05(3). [↑](#footnote-ref-42)
43. 20 USC 1414(d)(1)(B); 34 CFR 300.321(a); 603 CMR 28.02(21); see *Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities* 71 Fed. Reg. 46540-01, 46674 (2nd column), 2006 WL 2332118, (August 14, 2006) (“it is important to emphasize that it is the public agency that determines the specific personnel to fill the roles for the public agency's required participants at the IEP Team meeting. A parent does not have a legal right to require other members of the IEP Team to attend an IEP Team meeting. Therefore, if a parent invites other public agency personnel who are not designated by the LEA to be on the IEP Team, they are not required to attend”); *Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations*, 54 IDELR 297, Answer to Question C-3 (June 1, 2010) (“Neither the IDEA nor its implementing regulations require that an IEP Team include more than one regular education teacher”). [↑](#footnote-ref-43)
44. 34 CFR 300.321(b)(3). [↑](#footnote-ref-44)
45. *D.B. ex rel. Elizabeth B. v. Esposito*, 675 F. 3d 26, 34 (1st Cir. 2012) quoting *Lessard v. Wilton Lyndeborough Cooperative School Dist.,* 518 F. 3d 18, 23 (1st Cir. 2008). [↑](#footnote-ref-45)
46. Sebastian M. v. King Philip Reg'l Sch. Dist., 685 F.3d 79, 84 (1st Cir. 2012); *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1086 (1st Cir. 1993); *Esposito*, 675 F.3d at 34. [↑](#footnote-ref-46)
47. *Roland M. v. Concord School Committee*, 910 F.2d 983, 992 (1st Cir. 1990). [↑](#footnote-ref-47)
48. *Endrew F. ex. re. Joseph F. v Douglas County Sch. Dist., RE-1*, 580 US 386, 399-403 (2017); see *Johnson v. Boston Pub. Schs.*, 906 F.3d 182, 194-95 (1st Cir. 2018) (holding that Massachusetts’ “meaningful educational benefit” standard adopted by the 1st Circuit in *Esposito*, comports with this standard in *Endrew F.*). [↑](#footnote-ref-48)
49. *Roland M.*, 910 F.2d at 992. [↑](#footnote-ref-49)
50. *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1086 (1st Cir.1993) citing *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 198 (1982); *Roland M.*, 910 F.2d at 992; see *E.T., a minor, by his parents v. Bureau of Special Educ. Appeals of the Div. of Admin. L. Appeals*, 169 F. Supp. 3d 221, 229 (D. Mass. 2016). [↑](#footnote-ref-50)
51. *C.G. and B.S. v. Five Town Cmty. Sch. Dist.*, 513 F.3d 279, 284 (1st Cir. 2008) quoting *Rowley*, 458 U.S. at 207; see *Endrew F.*, 580 US at 399-403. [↑](#footnote-ref-51)
52. *C.G.*, 513 F.3d at 284; see *Lenn*, 998 F.2d at 1086. [↑](#footnote-ref-52)
53. *Rowley*, 458 U.S. at 205-206 (1982); *Honig v. Doe*, 484 US 305, 311-12 (1987) (procedural safeguards serve the purpose of ‘guarantee[ing] parents both an opportunity for meaningful input into all decisions affecting their child’s education and the right to seek review of any decisions they think inappropriate.’”); see *George and Boston Public Schools*, BSEA #04-2506, 10 MSER 311 (Crane, 2004) (“the role of parents in educational decision-making is “a central purpose” of the IDEA”). [↑](#footnote-ref-53)
54. 64 Fed. Reg. 12406-01, 12473 (1st Column), 1999 WL 128278 (March 12, 1999); See *Douglas W. v. Greenfield Public Schools*, 164 F.Supp.2d 157, 161 (Mass. 2001) (“Parental participation in the development of the IEP is essential to its validity”). [↑](#footnote-ref-54)
55. *Id*., see *Letter to Presto*, 213 IDELR 121 (OSEP, 1988). [↑](#footnote-ref-55)
56. 64 Fed. Reg. at 12473-74 (3rd to 1st Column); see 71 Fed. Reg. at 46661 (1st column) (“The eligibility group should work toward consensus, but under § 300.306, the public agency has the ultimate responsibility to determine whether the child is a child with a disability. Parents and school personnel are encouraged to work together in making the eligibility determination. If the parent disagrees with the public agency's determination, under § 300.503, the public agency must provide the parent with prior written notice and the parent's right to seek resolution of any disagreement through an impartial due process hearing, consistent with the requirements in § 300.503 and section 615(b)(3) of the Act.”); *GD v. Westmoreland School District*, 930 F.2d 942,948 (1st Cir. 1991) (“FAPE may not be the only appropriate choice, or the choice of certain selected experts, or the child’s parents’ first choice, or even the best choice”). [↑](#footnote-ref-56)
57. *T.B. v. Warwick Sch. Dep't*, No. CIV.A. 01-122T, 2003 WL 22069432, at \*14 (D.R.I. 2003), *aff'd sub nom. Lt. T.B. ex rel. N.B. v. Warwick Sch. Comm.*, 361 F.3d 80 (1st Cir. 2004) (“An obligation on the part of school officials to, at least, consider parental views is implicit in the requirement that parents have an opportunity to participate in the process of evaluating and placing their child…. However, the IDEA does not identify any specific matters that must be “discussed” at an IEP meeting.”); In Re: *Student v. Haverhill Public Schools*, BSEA # 20-05314, 26 MSER 176 (Berman, 2020); *In Re: Student v. Nashoba Regional School District & LABBB Collaborative*, BSEA # 18-10420, 25 MSER 70 (Berman, 2019); *In Re: Natick and Framingham Public Schools*, BSEA # 17-07648, 23 MSER 199 (Berman, 2017); *In Re: Student v. Andover & Quincy Public Schools*, BSEA # 16-02494, 23 MSER 127 (Berman, 2017); *In Re: Student v. Norton Public Schools,* BSEA # 16-09348, 23 MSER 40 (Byrne, 2017). [↑](#footnote-ref-57)
58. *M. v* *Falmouth School* *District*, 847 F.3d 19, 28 (1st Cir. 2017); see *In Re: Student v. Nashoba Regional School District & LABBB Collaborative*, BSEA # 18-10420, 25 MSER 70 (Berman, 2019); *In Re: Natick and Framingham Public Schools*, BSEA # 17-07648, 23 MSER 199 (Berman, 2017); *In Re: Student v. Andover & Quincy Public Schools*, BSEA # 16-02494, 23 MSER 127 (Berman, 2017); *In Re: Student v. Norton Public Schools,* BSEA # 16-09348, 23 MSER 40 (Byrne, 2017). [↑](#footnote-ref-58)
59. *M. v* *Falmouth School* *District*, 847 F.3d at 28. [↑](#footnote-ref-59)
60. *M. v* *Falmouth School* *District*, 847 F.3d at 28; *In Re: Dennis-Yarmouth Regional School District*, BSEA # 034447 10 MSER 64 (Putney-Yaceshyn, 2004). [↑](#footnote-ref-60)
61. *Id*. [↑](#footnote-ref-61)
62. *Rowley,* 458 U.S. at 206. [↑](#footnote-ref-62)
63. See *Honig*, 484 US at 311 (“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”); *Rowley*, 102 S.Ct. 3034, 3050 (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”); but see *In Re: Haverhill Pub. Sch. –* BSEA # 2005314, 26 MSER 176 (Berman, 2020) (finding that “… although Parents are Team members, entitled to fully participate in the IEP development process and to have their views considered, they are not entitled to dictate the terms of an IEP”). [↑](#footnote-ref-63)
64. 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); M.G.L. c. 71B §2A; see *Roland M.*, 910 F.2d at 994 holding that “[b]efore 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” (citations omitted). [↑](#footnote-ref-64)
65. *Roland M.* 910 F.2d at 994; see *In Re*: *Newton PS*, BSEA # 1408637, 23 MSER 104 (2015). [↑](#footnote-ref-65)
66. *In Re: Anchorage School District*, 112 LRP 2275 (AK, 2011) citing *B.V. v. Department of Education, State of Hawaii*, 451 F.Supp. 2d 1113, 1132 (D.Ha. 2005) (“although parent disagreed with the decisions, education officials discussed parent’s concerns and considered [] views; the IDEA requires nothing more from a procedural standpoint”); see *School Committee of Town of Burlington v. Dept. of Ed. of Mass*, 471 US 359, 379 (1985). [↑](#footnote-ref-66)
67. *C.G.*, 513 F.3d at 290 (“Compensatory education is a surrogate for the warranted education that a disabled child may have missed during periods when his IEP was so inappropriate that he was effectively denied a FAPE”) (citations omitted). [↑](#footnote-ref-67)
68. *Id.;* see *Diaz-Fonseca v. Comm. of Puerto Rico*, 451 F.3d 13, 31 (1st Cir. 2006) citing*Nieves–Márquez v. Puerto Rico,* 353 F.3d 108, 124 (1st Cir.2003); see *Johnson v. Bos. Pub. Sch.*, 201 F. Supp. 3d 187, 202 (D. Mass. 2016), *aff'd,* 906 F.3d 182 (1st Cir. 2018) (“where a disabled child misses ‘warranted’ education because the IEP ‘was so inappropriate that he was effectively denied a FAPE’, compensatory education may be awarded; compensatory education, however, is ‘not an automatic entitlement but, rather, a discretionary remedy for nonfeasance or misfeasance in connection with a school system’s obligations under the IDEA’”) (citations omitted). [↑](#footnote-ref-68)
69. *Id.*; see *C.G.*, 513 F. 3d at 286, citing *Roland M.*, 910 F.2d at 995; *In Re: Haverhill Pub. Sch.,* BSEA # 2005314, 26 MSER 176 (Berman, 2020) (“Hearing officers may deny compensatory services if parents unreasonably obstruct the IEP process or otherwise interfere with the ability of the school district to fulfill its obligations”). [↑](#footnote-ref-69)
70. *Dracut Sch. Comm. v. Bureau of Special Educ. Appeals of the Massachusetts Dep't of Elementary & Secondary Educ.*, 737 F. Supp. 2d 35, 55 (D. Mass. 2010) quoting *Puffer v. Raynolds,* 761 F.Supp. 838, 853 (D.Mass.1988). [↑](#footnote-ref-70)
71. *Dracut*, 737 F. Supp. 2d at 55 (“Now that Dracut has issued the diploma, the proper remedy is compensatory services”). [↑](#footnote-ref-71)
72. 34 CFR § 300.102(a)(3)(i) (the obligation to provide FAPE does not apply to “[c]hildren with disabilities who have graduated from high school with a regular high school diploma’”); 603 CMR 28.02 (“Eligible student shall mean a person aged three through 21 who has not attained a high school diploma or its equivalent....”). [↑](#footnote-ref-72)
73. *Pihl v. Mass. Dep't of Educ.*, 9 F.3d 184, 189 (1st Cir. 1993); see *Zobrest v. Catalina Foothills School District,* 509 U.S. 1, n. 3, 113 S.Ct. 2462, 2464, n. 3, 125 L.Ed.2d 1 (1993) (implicitly recognizing the continuing viability of an IDEA due process claim for a graduated student); *Stock v. Mass. Hosp. Sch.,* 392 Mass. 205, 210 n. 8, 467 N.E.2d 448, 453 n. 8 (1984) (noting expulsion as a similar potential loophole); *Dracut*, 737 F. Supp. 2d at 54. [↑](#footnote-ref-73)
74. *Schaffer v. Weast*, 126 S.Ct. 528, 534, 537 (2005). [↑](#footnote-ref-74)
75. *Id*. (placing the burden of proof in an administrative hearing on the party seeking relief). [↑](#footnote-ref-75)
76. *Roland M.*, 910 F.2d. at 995 (“Inasmuch as the caselaw makes manifest that the party allegedly aggrieved must carry the burden of proving that the educational agency erred in its substantive judgment, *…* logic suggests that the burden be allocated in the same way when a party's attack is garbed in procedural raiment. The court below correctly imposed the devoir of persuasion on the complainants in respect to the harmfulness of the claimed procedural shortcomings”) (citations omitted). [↑](#footnote-ref-76)
77. *Id.* [↑](#footnote-ref-77)
78. 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); M.G.L. c. 71B §2A; see *Roland M.*, 910 F.2d at 995. [↑](#footnote-ref-78)
79. In fact, in her Closing Argument, Parent requested that I not find credible any District staff, besides Ms. JF, although, other than Ms. AR, she had called all the District staff as her witnesses. She also had insisted many of them attend multiple Team meetings. [↑](#footnote-ref-79)
80. *Rowley,* 458 U.S. at 206. [↑](#footnote-ref-80)
81. In its closing argument the District noted its objection to what it referred to as “the Hearing Officer framing procedural issues as being encompassed within its case”, relying on a footnote in *In Re: Westfield Public Schools*, BSEA # 2200773, 28 MSER 8 (Putney-Yachesyn, 2022) in support of this contention. (District’s Closing Argument, p. 1, ftnt 1). I disagree. The issue for hearing in this matter was taken almost verbatim from the first sentence of the *Hearing Request* filed by the District (revised only to establish the statutory limitation dates). Moreover, in *Westfield* the attorney for the parents requested to add procedural claims that had not been previously discussed by the parties on the second day of a hearing on a parent-filed hearing request. This case, however, involves a District-filed *Hearing Request,* for which the *pro-se* Parent raised as a defense from the outset of the proceedings the issue of procedural violations to justify her position that the challenged IEPs do not provide Student with a FAPE. Further, here, the District was well aware of Parent’s procedural violation challenges, as she frequently reiterated them in her verbal and written communications with the District, raised them in her various PRS Complaints and discussed them extensively in all Conference Calls held prior to the start of the Hearing. Finally, as previously noted, in accordance with *Rowley*, an analysis of whether an IEP provides a student with a FAPE requires examination of both whether the IDEA procedures were complied with in developing the IEP as well as whether or not the IEP is substantively appropriate. [↑](#footnote-ref-81)
82. Parent also objected to the information in each of the Notices of Proposed School District Action (N1s) sent with each IEP, as not reflecting what occurred at the respective Team meeting. In light of the substantial witness testimony by multiple participants attending each of the four Team meetings at issue in this matter, I did not consider any of the N1s substantively as to evidence of what occurred during the Team meetings. Rather, I only reviewed them for purposes of confirming that the requisite notification of proposed district action was provided to Parent after each Team meeting. [↑](#footnote-ref-82)
83. 20 USC 1414(d)(1)(B); 34 CFR 300.321(a); 603 CMR 28.02(21); see 71 Fed. Reg. at 46674. [↑](#footnote-ref-83)
84. *Id.* [↑](#footnote-ref-84)
85. The signature line on the 688 Referral Form follows the following statement: “I hereby authorize the release of all personal information contained in this student’s records, including medical and educational evaluations, to the Bureau of Transitional Planning at EOHHS and to any member agencies for the purpose of eligibility determination and transition planning. I also authorize the release of any other personal information concerning this student that is required during the transitional planning process by any state agency to any other state agency”; see DESE’s *Chapter 688 Referral Parent/Student Brochure*, www.doe.mass.edu/sped/iep/688/referral-brochure.pdf advising that “The parent or guardian must sign the referral before it is submitted”. [↑](#footnote-ref-85)
86. For instance, at approximately 1 hour, 40 minutes into the June 6, 2022 Team meeting, Ms. AR asked the Team “So, did we square aware the pieces of the rejection we were concerned about, and the next question is do we feel like as a result of the FBA that we need a behavior plan?”. Before even completing these questions, Parent was already interrupting saying “no, no, I wanted to address the fidgets if I may, because this was hugely important …”. The Team conversation then shifted to Parent’s concerns with the District’s response to Student’s behaviors that Parent contended to be manifestations of his disability. The Team was never able to discuss the agenda items that Ms. AR had been suggesting before the meeting ended approximately 20 minutes later (at the conclusion of the school day). Further, during the March 6, 2023 Team meeting, Parent refused to discuss the goals and objectives presented in the draft IEP, instead advising “Ok, we’re not using, we’re not using your June and your December [IEP wording], we’re not. We’re gonna do new goals and we’re gonna do all new”. The Team agreed to proceed as Parent requested and began to discuss the goals in order, starting with the executive functioning goal with the assistance of Ms. Barboza. Unfortunately, this discussion was not completed for all of the goals. (P-3a; P-3b). [↑](#footnote-ref-86)
87. *In Re:* *Folsom Cordova Unified School District*, 116 LRP 25300 (CA, 2016) finding that an abruptly ended Team meeting did not amount to a FAPE violation as Parents “vigorously participated in all four IEP team meetings”). [↑](#footnote-ref-87)
88. Between the December and March meetings, the four hours of meeting time Parent requested in her February 27, 2023, email occurred, though. [↑](#footnote-ref-88)
89. Although the June 2022 IEP was improperly sent to Parent’s attorneys rather than directly to Parent, Parent acknowledged during testimony that she ultimately did receive a copy. Parent never responded to this IEP hence I find this violation to be *de minimis* asit did not result in any deprivation of educational benefits to Student, did not significantly impede Parent’s ability to participate in the decision-making process for Student, or impede Student’s right to a FAPE. [↑](#footnote-ref-89)
90. See *Cape Elizabeth School District*, 118 LRP 11453 (ME, 2017) (finding that multiple team meetings lasting an hour or an hour and a half or more, but not completed, did not constitute actionable procedural violations as “[w]ritten notices reflect that the complainant had considerable opportunity to participate in IEP Team meetings”). [↑](#footnote-ref-90)
91. *Anne Arundel County Public Schools,*102 LRP 12331 (MD, 2001) (holding that when a consensus could not be reached, “the team acted consistently with the school system’s ultimate responsibility and offered a proposed IEP and placement. Seeking to do this by a vote would have been an abdication of [the District’s] duties and could have prolonged the process endlessly”). [↑](#footnote-ref-91)
92. 34 CFR 300.324(b)(1). [↑](#footnote-ref-92)
93. 34 CFR 300.323(c)(1) (“… Each public agency must ensure that – (1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services”). Additionally, the only specific time limits in the Massachusetts special education statutes and regulations pertaining to when Team meetings must be held are the requirement to hold a Team meeting within 45 school working days of receipt of parental consent to an initial or reevaluation, and the requirement to convene a Team meeting within 10 school working days of receiving an independent educational evaluation, neither of which, except with regard to the delayed FBA, as discussed further below, were violated in this matter, either. 603 CMR 28.04(5)(f); 603 CMR 28.05(1). [↑](#footnote-ref-93)
94. I also note that the IDEA’s obligations to reconvene did not arise until Parent’s initial partial rejection of the November 2021 IEP was made on February 4, 2022. [↑](#footnote-ref-94)
95. See *Fuhrmann on Behalf of Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1036 (3d Cir. 1993) (parents who were given a draft IEP that was discussed at a Team meeting, and whose suggested changes were considered by the Team, “had an opportunity to participate in the IEP formulation process in a meaningful way.”); *Pewaukee Public Schools*, 102 LRP 25461 (WI, 1994) (finding no violation of the IDEA by providing Parents with a draft IEP). [↑](#footnote-ref-95)
96. Where meaningful communications have occurred between the school and a parent at the Team meeting, and the Team has properly considered alternatives to the District’s proposal, improper pre-determination has not been found even where district staff communicated outside the Team meeting, or where the Team proposal was contrary to a parent’s request. *In Re: Student & Mendon-Upton Regional School District*, BSEA No. 2203125, 28 MSER 40 (Mitchell, 2022); *In Re: Haverhill Public Schools*, BSEA No. 20-06314, 26 MSER 176 (Berman, 2020); see *Hazen v. South Kingstown Sch. Dept.*, 2010 WL 5558912, \*7-\*11 (Dist. R.I., 2010) *adopted by sub nom. Hazen ex rel. R.H. v. South Kingstown School Dept.,* 2011 WL 63499 (Dist. R.I., 2011)(finding no predetermination to the District’s proposal to eliminate a 1:1 aide, despite it having been discussed by school staff prior to the Team meeting, as changes to the proposal were made at the Team meetings to increase service time based on parental and teacher input, and no “unofficial policy” evidence of fading aides existed. [↑](#footnote-ref-96)
97. 20 USC 1414 (d)(3)(F); 34 CFR 300.324(a)(6) (“Changes to the IEP *may* be made either by the entire IEP Team *or* [after the annual IEP meeting for a school year] … by amending the IEP rather than redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.”) (Emphasis added); see 20 USC 1414 (d)(3)(D); 34 CFR 300.324(a)(4). [↑](#footnote-ref-97)
98. Parent relies on her own testimony as well as that of Ms. Barboza that Ms. AR often stated in Team meetings that she needed to “check with her attorney” before agreeing to provide Student with services. However, on cross-examination Ms. Barboza acknowledged that the statement about checking with the attorney for the District could have possibly been referring to whether to issue an amendment or a new IEP. Further, although Ms. Barboza testified that Ms. AR stated “in regards (sic) to multiple things that we talked about” that she needed to check with her attorney during the March 6, 2023 Team meeting, the video recording of this meeting demonstrates that Ms. AR never made any such statement. In fact, Ms. AR agreed to Parent’s request for an independent FBA during the meeting, never mentioning checking first with the District’s attorney. Thus, I do not credit Ms. Barboza’s testimony on this point, and I find the District has met its burden with regard to this allegation. (P-3b; Barboza, 1836, 1904.) [↑](#footnote-ref-98)
99. See *In re: Student with a Disability*, 115 LRP 9331(NY, 2014) (finding no FAPE violation occurred although annual goals were not discussed at a meeting, reasoning that while not discussing them,

“… may have constituted a procedural violation or … contributed to weaknesses in the overall substance of the annual goals the hearing record does not contain sufficient evidence upon which to conclude that such procedural inadequacy impeded the student's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or caused a deprivation of educational benefits.”);

*Salem-Keizer School District 24J,* 109 LRP 54145,(OR, 2002) (finding that despite “substantial and continuing efforts” by the District to reach agreement with a student’s parents, there was no liability for not providing a completed IEP and notice of proposed action, as “the desire to reach consensus with a child's parents, no matter how well-intentioned, cannot be permitted to unreasonably delay completion of a child's IEP and provision of a free appropriate education.”); *Anne Arundel County Public Schools,*102 LRP 12331 (MD, 2001). [↑](#footnote-ref-99)
100. Moreover, the testimony of Ms. Barboza, whom I find to be experienced and credible with regard to how Team meetings proceed, supported the process the District followed in writing the specific wording of the IEP, as well as the use of a draft IEP at Team meetings. (Barboza, 1830-33, 1862). [↑](#footnote-ref-100)
101. Similarly, While Ms. JS also provided Student with a “scribe”, although not in the IEP, the failure to include this accommodation in the IEP did not deny Student a FAPE given his receipt of this support from Ms. Shipluski, as well as the other numerous accommodations involving check-ins for understanding, individualized assistance as needed, and to have tests “read aloud”. [↑](#footnote-ref-101)
102. 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); see *Roland M.*, 910 F.2d at 994. [↑](#footnote-ref-102)
103. *C.G.*, 513 F.3d 279, 286-88 (1st Cir. 2008); see *Roland M.*, 910 F. 2d at 995 (“[t]he law ought not to abet parties who block assembly of the required team and then, dissatisfied with the ensuing IEP, attempt to jettison it because of problems created by their own obstructionism”). Even had the delay resulted in a denial of a FAPE to Student, Parent’s unreasonable conduct towards the Team’s attempts to develop a behavior plan also would justify a denial of compensatory services. See 20 USC §1412(a)(10)(C)(iii)(III) “the cost of reimbursement [for parent’s unilateral private school placement] … may be reduced or denied … upon a judicial finding of unreasonableness with respect to actions taken by the parents”. [↑](#footnote-ref-103)
104. Parent’s substantive objections included the IEPs’ failing to provide a 1:1 nurse, failing to properly identify Student’s disability, failing to provide Student with a 1:1 academic aide in all his classes as Parent requested, improperly proposing use of the “Dex-Com app”, proposing unnecessary counseling services and inappropriate benchmarks in the counseling goal, failing to provide individual accommodations, goals and objectives specific to every class, and failing to address bullying, transition planning and behavior. [↑](#footnote-ref-104)
105. I do not credit Ms. Barboza’s testimony on this point, despite finding her experienced and credible with regard to her testimony on how Team meetings proceed as she acknowledged she does not hold any licensure or experience in this field. [↑](#footnote-ref-105)
106. The only check-in related accommodation Parent did not accept was the new accommodation in the June 2022 IEP of “frequent check-ins at the start of and during independent work to check for questions and assess student progress”. This was properly proposed based on the input of the teachers at the June 6, 2022, Team meeting. Dr. Hernandez and Ms. McCluskey also credibly explained how this accommodation was appropriate for Student at that time. [↑](#footnote-ref-106)
107. Parent’s closing argument also refers to this disability differently, calling it “Attention Deficit/Hyperactivity Disorder – Predominantly Inattentive Type” (p. 2), “ADD” (p. 3) and “AD/HD” (p. 19). [↑](#footnote-ref-107)
108. *C.G.*, 513 F.3d at 284 quoting *Rowley*, 458 U.S. at 207; *Lenn*, 998 F.2d at 1086 citing *Rowley*, 458 U.S. at 198; *Roland M.*, 910 F.2d at 992; see *Endrew F.*, 580 US at 399-403; *E.T.*, 169 F. Supp. 3d at 229; see *Montgomery County Intermediate Unit 23*, 113 LRP 23885 (PA, 2013) (“Under the IDEA, parent participation rights do not extend to approving all implementation methods…. Parents do not have the right to directly supervise staff providing services to [a c]hild”). [↑](#footnote-ref-108)
109. 64 Fed. Reg. at 12473-74 (3rd to 1st Column); see *In Re: Student with a Disability*, 116 LRP 38182 (IA, 2016) (holding that “the IDEA does not grant parents the right to dictate the contents of the IEP or to direct the day-to-day delivery of services under the IEP.”); *Anne Arundel County Public Schools,*102 LRP 12331 (MD, 2001) (wherein the hearing officer concluded that,

“I fear that the mother does not fully comprehend these realities [of a school system’s duty to propose an IEP when Team consensus cannot be reached]. Participation in the IEP process and the quest for consensus does not mean that parents have veto power over any proposals offered or recommended by the educators on the team … [or] that parents can insist on certain provisions being incorporated into the IEP, whether by way of goals, objectives, accommodations or placement”). [↑](#footnote-ref-109)
110. In its closing argument, the District addressed this error in a footnote only, submitting it to have been a “clerical error”. (District’s Closing Argument, p. 17, ftnt 14). [↑](#footnote-ref-110)
111. See *DESE IEP Process Guide, IEP 5, p. 21 (June 2021)* at https://www.doe.mass.edu/sped/iep/proguide.pdf (“Services for each student must be individually considered and recommended and should not depend on known or existing services.”). [↑](#footnote-ref-111)
112. I agree with Parent that the transition services Ms. LC testified she provided Student at the start of the 2022-2023 school year were services she offered to all students on her caseload, not individualized specialized instruction or related services to assist Student in reaching the proposed transition support goal, and thus it was also more than “harmless error” not to include services for these goals. (Parent’s Closing Argument, p. 11). [↑](#footnote-ref-112)
113. *Roland M.* 910 F.2d at 994; see *In Re*: *Newton PS*, BSEA # 1408637, 23 MSER 104 (2015). [↑](#footnote-ref-113)
114. See *Endrew F.*, 580 US at 399-403; Sebastian M., 685 F.3d at 84; *Esposito*, 675 F.3d at 34; *C.G.*, 513 F.3d at 284 quoting *Rowley*, 458 U.S. at 207; *Lenn*, 998 F.2d at 1086; *Roland M.*, 910 F.2d at 992. [↑](#footnote-ref-114)
115. *Dracut*, 737 F. Supp. 2d at 55 (“Now that Dracut has issued the diploma, the proper remedy is compensatory services”); see *C.G.*, 513 F. 3d at 286, citing *Roland M.*, 910 F.2d at 995; *In Re: Haverhill Pub. Sch.,* BSEA # 2005314, 26 MSER 176 (Berman, 2020). [↑](#footnote-ref-115)
116. As Student has now graduated, the District can decline to participate in any other areas of discussion Parent raises. [↑](#footnote-ref-116)