May 23, 2025

 **COMMONWEALTH OF MASSACHUSETTS**

***Division of Administrative Law Appeals***

**Bureau of Special Education Appeals**

**DECISION**

**BSEA # 2504241**

**BEFORE**

**MARGUERITE M. MITCHELL**

**HEARING OFFICER**

**KIMBERLY ROCHE, ATTORNEY FOR SCHOOL**

**PARENTS, *PRO SE***

**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: District M[[1]](#footnote-1) & Student BSEA # 2504241**

# **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.

A hearing on District M’s (“District”) February 7, 2025, *Amended* *Hearing Request* was held on February 28, 2025, March 3, 6 and 24, 2025, and April 7, 2025. For good cause, at the joint request of the Parties, the record remained open for oral closing arguments presented on April 29, 2025, whereupon the record closed. With the consent of both Parties and agreement of all participants, the hearing was held in a virtual format, via Zoom. The official record of the Hearing consists of documents submitted by the Parents and marked as Exhibits P-A through and inclusive of P-Q; documents submitted by the District and marked as Exhibits S-1 through and inclusive of S-5, and S-7 through and inclusive of S-52[[2]](#footnote-2); a document submitted jointly marked as Exhibit J-1; approximately 23 hours of stenographically recorded oral testimony by nine witnesses; and oral closing arguments, resulting in a 6-volume transcript.

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

Mother

Father

Kimberly Roche, Esquire Attorney for District

CF Director of Pupil Services – District

DK Principal – District High School

DB Secondary Special Education Coordinator – District

KL, MSN, RN, NCSN School Nurse – District High School

ZM Special Education Liaison – District High School

SP Occupational Therapist – District

KS Special Education Teacher – District Middle School

DB School Psychologist – District

CTH Family Friend/Advocate

Becky Baron Stenographer – Advanced Court Reporting

# **ISSUE IN DISPUTE:**

Consistent with the February 11, 2025 *Ruling* in this matter, as further revised at the request of the District on February 13, 2025, the issues for hearing are as follows:

1. Whether the services in Student’s “stay put” IEP that lack supporting medical documentation, formal evaluations and/or are in conflict with state law can and should stop being provided;
2. Whether Parents are required to produce Student for her three-year reevaluation testing that Parents have already consented to; and
	1. If the answer is no, and Student does not participate in the testing, does this cause Student’s “stay put” IEP to be null and void;
3. Whether the proposed December 9, 2024 IEP is reasonably calculated to provide Student with a free, appropriate public education (FAPE) in the least restrictive environment?

# **POSITIONS OF THE PARTIES:**

**District’s Position**

The District asserts that Student is currently being educated pursuant to several partially rejected Individualized Education Programs (IEPs) dated 9/24/2020 to 9/23/2021 and 6/8/23 to 6/8/24, that are not aligned with Student’s current needs and may be hindering her ability to receive a free appropriate public education (FAPE). According to the District, many of the provisions in these prior IEPs are more appropriately located in a Health Care Plan (HCP), as that document is more fluid and able to reflect Student’s medical needs as they arise; this, as opposed to an IEP, the primary focus of which is on learning and academic progress. For Student, the HCP, rather than the IEP, would be the appropriate document, to address her various needs associated with her multiple medical conditions. The District has attempted to obtain updated medical and evaluative information about Student but Parents have failed, refused, or otherwise inhibited the District from obtaining this necessary information. The District also believes Parents are keeping Student from being evaluated as a way to keep the District from reducing services and supports to Student that are no longer warranted or justified. The District seeks to have the “stay put” provisions in the prior IEPs invalidated to the extent they are in conflict with state law, not supported by updated medical records provided to the District or the formal evaluations that have been conducted, are unable to be verified through pending evaluations, due to Parents not producing Student for testing to which Parents have already consented, or do not otherwise provide Student with a FAPE.

In addition, in December of 2024, the District proposed an IEP based on information that was available to it at that time (Proposed IEP). The District contends the Proposed IEP is reasonably calculated to ensure Student receives a FAPE. The District submits that the Proposed IEP, along with an updated December 2024 HCP incorporating an Infection Prevention Protocol (IPP), Student’s current Emergency Action Plan (EAP) and Student’s Seizure Action Plan (SAP), will appropriately meet Student’s current known special education and medical needs. As it receives additional medical information, the District intends to update and revise the HCP, as appropriate.

**Parents’ Position**

Parents contend that the District filed this *Hearing Request* to circumvent its legal obligations to implement with fidelity the “stay put” services in Students IEPs that are necessary to provide her with a FAPE. They dispute that the District does not have sufficient medical documentation to support all accommodations that were previously included in Student’s IEPs. Student suffers from increasingly complex and unique combinations of chronic medical illnesses that make her unable to attend school frequently. However, rather than recognize and support Student’s needs, the District has become increasingly less accommodating. Parents believe the District is looking to remove previously agreed to accommodations, services and supports from Student’s IEP, so as to avoid the legal protections of the IDEA. They also dispute that the District moved all Student’s medically necessary accommodations into her HCP.

Parents claim that the only beneficiary of this Hearing is the District and that none of the District’s proposals benefit Student. However, despite disagreeing with the District over the years, Parents remain committed to putting in their best efforts and to working in good faith to develop an IEP and all other necessary health plans for Student to receive a FAPE. To that end, Parents have consistently provided consent for the District to evaluate Student in accordance with previous Team agreements for extended evaluations, so as not to overwhelm Student. They also consented to recent evaluation requests, but they believe Student should stabilize medically before the evaluations occur, so as to get valid results.

Parents further contend that the IEP developed in June of 2023 was developed after several Team meetings that produced thoughtful accommodations reflecting and supporting Student’s chronic health conditions, in accordance with DESE recommendations about supports for students with chronic health needs. However, the District is now seeking, without any evaluative or other justifiable reasons, to eliminate many of these services and supports. Parents disagree that the Proposed IEP provides Student with a FAPE as it removes substantial necessary health-based accommodations, fails to include current parental input or concerns, contains identical goals as the prior IEP despite Student missing a substantial number of school days since that time, and reduces Student’s educational services. At a minimum, for Student to receive a FAPE, she requires all of her “stay put” services, as outlined in Parents’ 25-page partial rejection letter of the IEP developed in June of 2023, services and supports necessary to address Student’s recent epilepsy diagnosis, all services and supports recommended in the 56 pages of medical documents Parents submitted into the record, an IEP with accurate and current parental input and concerns, and a 1:1 registered nurse (RN), trained by Parents.

# **FACTUAL FINDINGS[[3]](#footnote-3):**

1. Student is a “highly intelligent, kind, caring and resilient” 15-year-old 9th grader, described as a “great kid with lots of wonderful abilities and capabilities”, and the “kindest most loving, gentle person” with strong drive and willpower. She qualifies for special education and related services for health and neurological disabilities. She loves playing softball and has a long-standing career goal of being a doctor. (P-B58-B59, B61; KS, V2-27, 85; Mother, V4-79; Father, V5-111, 128, 139).
2. Student has struggled with various health conditions her entire life. She is currently diagnosed with cyclical vomiting syndrome (CVS), selective antibody deficiency with normal immunoglobulins, orthostatic intolerance, ophthalmoplegic migraines, gastroesophageal reflux disease, migraines, asthma, allergies, multiple intolerances and hypersensitivities, multi-septate gallbladder, convergency insufficiency, history of superior mesenteric artery syndrome, history of gastrointestinal bleeds from CVS, and, as of September 4, 2024, epilepsy with generalized tonic clonic seizures. Also, on November 25, 2019, Student had brain surgery to address a large cerebral cavernous malformation, and a new brain lesion was located in the right globus pallidus in December 2022. Then, in July of 2024, Student’s first tonic clonic seizure occurred lasting five minutes and postictal for thirty minutes thereafter. (P-J24, J25, J31, J34; Mother, V4-66-67, 76-78, 84-85).
3. Student was initially found eligible for special education in 2019, when she was in 4th grade, after she was evaluated at the request of Parents and her neurologist, due to discussions at that time about discontinuing her 504 Plan. Although initially found ineligible, after Parents submitted updated medical letters, she was found eligible under a disability category of neurological and health impairment[[4]](#footnote-4). Parents initially rejected the first proposed IEP but ultimately fully accepted it on November 21, 2019. No other IEP since that time has been fully accepted. (P-J12, J17-J18; CF, V3-40; Mother, V4-71-76).
4. Student currently has four special education or disability related medical plans consisting of an IEP, an SAP, an EAP and an individualized HCP. Only Student’s SAP is fully accepted by Parents. Parents have not signed and dispute the most recently proposed IEP, EAP and HCP as set forth *infra*. (S-5; S-29; P-I19-I40; P-J34-J36; P-K3-K7, K22-K35).
5. Because Student’s allergies are so severe, she also needs an IPP, that was developed based upon the recommendations of Student’s immunologist to mitigate an allergic reaction to a contaminant. The IPP consists of using specific named cleaners (with specific scents) that Student is not allergic to, to clean any spaces with which Student comes into contact. Despite the medical letters originally recommending Parents provide the cleaners the District has always purchased these cleaning products and they have been located in each of Student’s classrooms and the bathrooms she uses. Additionally, Student’s 1:1 paraprofessional carries these products (i.e., spray and wipes) and approved soaps in a backpack throughout the day to pre-sanitize any surfaces Student may be touching, and ensure she frequently washes her hands. A specific process of wiping involving two different cloths and then drying the surface is specified in the IPP and followed by staff. While the IPP itself is not disputed, and several staff testified as to how to implement it, disputes surrounding the IPP have involved the District’s use of other cleaning products, (casually referred to by the Parties as “Hillyard” products), rather than the approved products only, to clean the rest of the school buildings. During middle school, Parents learned that this use of Hillyard products resulted in an allergic reaction by another student. (P-A12; KS, V2-28; DK, V2-193-200; CF, V3-58-60; Mother, V4-176-79).
6. Student has not attended school this school year. While all absences have been excused consistent with current “stay put” IEP accommodations[[5]](#footnote-5), there were days, especially in the fall of 2024 when Student was able to attend school but Parents did not send her due to their position that the District did not have all necessary IEP accommodations in place. Medical notes excusing absences have only been provided for September 4-11, September 17-24 and the week of January 10, 2025. Additionally, on January 23, 2025, Student’s pediatrician completed a “Physician’s Affirmation of Need for Temporary Home or Hospital Education for Medically Necessary Reasons” (Home Hospital Education Form) advising that Student was confined to both the home or hospital as of January 1, 2025, through April 3, 2025[[6]](#footnote-6). (S-19; S-20; S-31; S-47, DK, V2-152-59; Mother, V4-145-48, 173).
7. During the 2023-2024 School Year, when Student was in 8th grade, she was absent 75 days, 12 of which were excused; tardy 62 days, 1 of which was excused; and dismissed 12 days, 7 of which were excused. Additionally, during the 2022-2023 School Year, Student was absent 64 days, 9 of which were excused; tardy 66 days, 1 of which was excused; and dismissed 2 days, 1 of which was excused. Some absences were due to Student’s 1:1 paraprofessional being absent without a trained substitute available or if the nurse left the building and another nurse was asked to come cover the building. (S-48; S-49; KS, V2-80-82; CF, V3-178).
8. KS has been a special education teacher for the District for 32 years, most recently teaching all grades at the District M Middle School (MS). She was Student’s special education teacher when Student was in 6th, 7th and the first half of 8th grade. Ms. KS holds Student in very high regard, as clearly conveyed in her testimony. On March 22, 2023, Parents consented to Ms. KS performing an academic assessment of Student. This evaluation was part of Student’s 3-year reevaluation. Ms. KS recalled that the Team agreed to delay and spread out all the testing due to Student’s medical complexities. Parents did not consent to the other proposed evaluations including a psychological evaluation. (S-7; S-50; P-B50; KS, V2-17-19, 44-45; CF, V3-42; Mother, V4-155-57).
9. On March 24, 2023, Ms. KS administered the WIAT-4 to Student and prepared an Educational Evaluation Report thereafter. Student performed in the primarily average range in all areas, with above-average phonemic proficiency, below average numerical operations, slightly below average overall math fluency and math fluency-addition and below average oral discourse comprehension. No direct services were recommended but several possible accommodations were suggested, including extended time to answer; targeted testing; assistance to organize and complete long term assignments; assistance with missing assignments given Student’s extended absences; support to develop self-advocacy skills; a calendar or assignment book; cues, story starters or sentence stems; a missing work folder for absences; modified due dates for assignments; a trusted adult; models and exemplars; and brain breaks. Ms. KS noted that given the high number of absences Student had had at that point, it was “amazing” she was able to stay at grade level, as evidence by her test results. She attributed this to Student having “really strong abilities and she has a strong spirit. She wants to get things done. She definitely, socially, you know, had a lot of friends, and wanted to be able to be with them, do all that good stuff”. (S-7; KS, V2-19, 22-23, 46-47).
10. CTH is a former teacher of intense special education who has also been employed for 5 years as the Director of Special Education and a “quasi Superintendent” for a Charter School and for several years as an Educational Team Leader. After leaving public education she became an educational advocate for families and a trainer working with the Federation for Children with Special Needs. She was first introduced to Parents through a local advocacy program and provided them with pro bono educational support prior to 2021 and then, after moving to Virginia, reconnected with Parents and participated in Student’s 2023 Team meetings. (CTH, V4-21-23).
11. On March 22, 2023, the Team convened to review Ms. KS’s evaluation and develop Student’s IEP. Parents attended with Ms. CTH. Parents did not let the Team discuss the evaluation, however, as they rejected the results of the WIAT, and advised the Team they had already reviewed it on their own. As Ms. KS’s evaluation could not be reviewed, the Team could not use the information therein contained to develop the IEP[[7]](#footnote-7). Ms. KS understood that Parents’ objection to the evaluation was based in part upon a disagreement as to the “reason for referral” statement in the evaluation that indicated the evaluation was being completed to determine Student’s academic needs and if there were any interventions or accommodations to assist her in her learning. Parents felt it was a given that Student had academic needs. (KS, V2-20-21).
12. The Team met several more times through the school year to complete the IEP. The Team met on March 22, 2023, April 14, 2023 and June 8, 2023. A “subteam” also met on June 9, 2023. According to Ms. KS, the Team meetings were atypical. In addition to being long (two were at least three hours), she had “never … tried to write an IEP like that”. At one point she recalled the Team projected portions of the proposed language onto the wall to wordsmith it. Ms. KS explained that the District’s Special Education Director at that time had advised the Team he wanted an IEP completed prior to the end of that school year, was concerned it was taking too long, and asked to have Mother assist in writing it, which she did at home, sending it to the Team before its meetings, thereby causing a “whole lot of copy and paste”. Ms. CTH agreed that the Director of Special Education had requested the Parent to provide an IEP that Parent felt would be most appropriate for Student. Unlike Ms. KS’s usual experience where IEPs are written based upon data that is before the Team, the IEP proposed after these meetings was not data-driven, as no current data was available for the Team to use for several reasons. Specifically, in addition to Parents’ refusal to allow the Team to review Ms. KS’s evaluation, Student had yet to have a complete 3-year reevaluation performed and was missing other critical data for the Team to use, such as information from a psychological assessment. Further, Student’s “stay put” IEP at that time was an IEP dated 9/24/2020 to 9/23/2021 from 4th Grade (4th Grade IEP) wherein all the goals and objectives had been met for some time; as such, progress reports did not reflect current performance. Additionally, no updated medical documentation was before the Team, rather all medical information was from 2018, 2019 or 2020. (P-B54-B92; KS, V2-24-26, 64, 73, 75-77; CTH, V4-28).
13. Ms. KS was responsible for taking the Team meeting notes. She explained that while these notes reflected information Parents and Ms. CTH wanted included as well as the Team discussion, they did not necessarily reflect Team agreements. Ms. KS essentially just “wrote down what [Mother] said” and Mother had “a lot of very specific things that [she] wanted done”. Ultimately, a completed proposed IEP, much of which Ms. KS believed to be written by Parents, was issued on June 12, 2023, dated June 8, 2023 to June 8, 2024 (23-24 IEP). (P-B1-B7, B49-B53; KS, V2-24-26, 64, 71-76).
14. In addition to 7 pages devoted to PLEPs A and B, of the IEP, the 23-24 IEP contained goals in the area of Executive Functioning, ELA, Reading, Mathematics and Social. Its Service Delivery Grid provided for A-Grid consultation by the Nurse of at least 60 minutes per year for training (“more training if needed”), 20 minutes per week for Parent consultation by the 1:1 Paraprofessional, and 30 minutes per month of parent consultation by the special educator; B-Grid services consisting of Executive Functioning support 3 times per week for 40 minutes to work on the executive functioning goal and 15 minutes per day to work on all goals but the social goal, by a special education teacher, a 1:1 health paraprofessional all day long to work on every goal but the social goal, ELA support twice a week for 40 minutes and math support daily for 40 minutes both by a special education teacher; and C-Grid social emotional services[[8]](#footnote-8) by an Adjustment Counselor for 30 minutes per week to “focus on self advocacy as needed according to [Student]”. (P-B1-B7, B57-B92).
15. A primary dispute during the Team meetings in the spring of 2023 involved whether all Student’s health information and accommodations were included in the IEP. Parents wanted all the health information and health-related accommodations in the IEP in case staff only read one document, although Ms. KS did not agree this was an issue in the District, as the requirement for all staff to review IEPs and other medical plans for all students with allergies and other medical conditions is “non-optional”. Additionally, the District’s student information database (X2) contains separate icons to alert staff for students with various plans such as IEPs, medical plans or restraining orders[[9]](#footnote-9). Notwithstanding, Ms. CTH recalled the Team agreeing that Student’s health and medical status impacted her ability to make progress. (KS, V2-27-30, 128-32, 134, 136-37; CTH, V4-26).
16. It is Ms. KS’s opinion that medical information and some of the health accommodations, such as an IPP, do not necessarily need to be in an IEP, but instead could be part of a HCP. While it was included in the IEP at Parents’ request, in her view, it is sufficient for an IEP to simply reference that there is an IPP and direct the reader to review it. Similarly, she does not think that an accommodation for air conditioning is needed unless there is a doctor’s note specifically recommending it. Further, Ms. KS explained that it is particularly tricky to implement tutoring for Student to address material she missed for medical absences, because adding tutoring time to an already long school day may be overwhelming for Student when she is healthy, and may not be advisable at all if her medical needs limit the amount of time she spends on school or prohibit her from accessing her academics[[10]](#footnote-10). Additionally, tutoring may not be necessary given Student’s grade-level performance and primarily average academic testing scores (with scores three points or less below average in a few areas), despite her numerous illnesses and medical conditions. Ms. KS noted that slightly below average scores are only one piece of information and could be reflective of a relative weakness or Student’s substantial absences, rather than a disability. Ms. KS indicated she would defer to a specific doctor’s recommendation and communication about the need for tutoring. (KS, V2-86-88, 90-94, 106, 128-32).
17. Given Student’s below average oral discourse communication score on the WIAT, the Team proposed, and on June 16, 2023, Parents consented to Student receiving a speech and language evaluation in the fall of 2023. Student’s overall language scores, pragmatic language skills, non-verbal skills, expressive language, and receptive language scores on this evaluation fell in the average range, so direct services were not recommended. However, due to Student’s word-retrieval concerns, the evaluator recommended using the strategy of circumlocution with Student. (S-8).
18. On October 6, 2023, the Team reconvened to review the results of the speech and language evaluation. Based upon the evaluator’s recommendations, the Team discussed Student utilizing a word-bank and circumlocution strategies when she exhibits moments of word retrieval challenges[[11]](#footnote-11). (S-8; P-B124-B130; KS, V2-47).
19. According to Ms. KS, although the Team discussed and agreed to provide supports with respect to Student’s word retrieval difficulties, there was no agreement that these supports would be included as accommodations in Student’s IEP. Rather, Ms. KS considered them “general education” supports for Student as they were not specific to any of Student’s special education disabilities. Ms. KS explained that due to the lack of a recommendation for direct speech and language services no communication goal was created as Student did not have a communication disorder. Ms. KS also did not feel she needed to wait for acceptance of these supports and accommodations via an IEP signature in order to implement them and, consistent with this, developed and provided Student’s general education teachers with the agreed-upon word banks.

Parents and Ms. CTH, however, believed the Team had agreed, or at least reached a consensus, to incorporate these supports in Student’s IEP. Consistent with this belief, Parents communicated several times with the District during the fall of 2023, about their objection to not having them included in Student’s IEP. In Ms. CTH’s opinion, including these supports in an IEP was necessary, as she does not consider them to be part of general classroom instruction, and understood that including them in an IEP means they cannot be implemented without parental consent. (P-C6, C13; KS, V2-53-62, 123-25; CTH, V4-29, 37, 39, 45-48).

1. The Team meeting minutes Ms. KS drafted during the October 6, 2023 Team meeting indicates that for “next steps” Mother will work on preparing her written response to the 23-24 IEP and updating the HCP, because Student wanted to stay after school to play softball in the spring (and had been cleared to do so by her neurosurgeon), an RN needed to be present to support her, and Mother indicated she would “send accommodations to use”. Thereafter, on October 18, 2023, Mother emailed specific language for what she indicated were two “agreed upon speech and language accommodations for [Student]” and noted that the evaluator had reviewed the “new accommodations” with Student so she understands they “are in place to help her”. (P-B129-132).
2. CF is the current Director of Pupil Services for the District. She holds several educational licenses including as a Special Education Teacher, Severe Special Needs, and as a Special Education Director. She has worked as a special education teacher, special education coordinator, and for the past 7 years as the director of special education for three different school districts. She returned to work for the District as its special education director in July 2023. (CF, V3-38).
3. On October 24, 2023, Parents provided a partial rejection of the 23-24 IEP and attached a 25-page typed letter of explanation. Mother explained that despite feeling the Team meetings to develop this IEP had resulted in agreements about what would be included in the IEP, the actual 23-24 IEP that was proposed did not reflect what was discussed and agreed to. Eighteen pages of the partial rejection letter, thus, noted Parents’ rejections of entire statements, or specific words and phrases throughout the IEP. For instance, for the proposed accommodation of “frequent breaks cued by the teacher during assessments”, the phrase “cued by the teacher” was rejected, but “frequent breaks during assessments” was accepted. As another example, for the proposed accommodation of “a healthcare professional staff will be in the classroom to monitor and assist [Student] with all transitions during her school day”, the phrase “with all transitions during her school day” was rejected, while the rest of the accommodation was accepted.

Additionally, Parents rejected the IEP for not including the following information that they had specifically requested to be included via an email they claim they sent to the District on June 13, 2024: the IPP; a reading comprehension goal; prior noted additional accommodations; accurate and updated MCAS scores; untimed testing, assessments, classwork, etc.; that Student is at risk of being bullied, but not that Student was a risk to bully others; and parental input. Parents further disputed the failure to identify what portions of the information they requested via this June 13, 2024, email “were put into the I.E.P. and what portions were rejected and why” through an N2 or in the IEP itself. Further, the letter contained four pages of what was identified as “important accommodations to be added” that Mother testified to be the provisions of the 4th Grade IEP that she felt constituted “stay put” based upon her partial rejection of the 23-24 IEP. Finally, the letter concluded with one page of “imperative information” listing eight items of concern that were not related to the wording of the 23-24 IEP itself. Parents also requested a meeting to review the rejected portions of the IEP. (P-B93-B123; Mother, V4-97).

1. Ms. KS explained that she construes rejection of certain words and phrases from a proposed accommodation as a total rejection of the accommodation, since it changes the meaning of the accommodation. Director CF agreed and advised that this also created confusion around what was accepted and rejected. She also explained that the District does not “piecemeal” parts of goals and objectives that are accepted. Rather, it follows a process where proposed goal and objective information is discussed by the Team at a meeting, proposed in an IEP for a Parent to review, and then implemented only upon acceptance of the whole proposal. Thus, if a proposed accommodation, goal or objective is partially rejected (i.e., certain words are rejected, while others are not), the District treats this as a rejection of the entire proposed accommodation, goal or objective, and does not implement the proposed services or accommodations, absent further clarification and agreement. (P-B93-B123; P-D31; P-L; KS, V2-111-18; CF, V3-54, 99-100, 109-10, 112-13, 170-73; Mother, V4-184-85).
2. After several attempts to schedule a meeting to review the rejected portions of the 23-24 IEP in December 2023, January and early February 2024, the Team ultimately met on February 16, 2024. A second meeting was held on March 27, 2024, and a third meeting on April 11, 2024, without resolution[[12]](#footnote-12), so the Team agreed to pursue mediation. Mediations were held on June 18, 2024, July 22, 2024, and August 21, 2024. (P-C4-C13; P-D33-35; P-E1-E37).
3. In preparation for the second mediation, the District prepared a ten-page typewritten response to Parents’ partial rejection letter, indicating what it agreed or disagreed to change, or maintain as proposed. In preparation for the third mediation, the District prepared a document identifying the services and accommodations Student was currently receiving based upon the non-rejected provisions of the 23-24 IEP (or those on which resolution had been reached), and the “stay put” provisions of the 4th Grade IEP (“Proposed Stay Put IEP”). Parents disagreed that what was included in the Proposed Stay Put IEP accurately reflected Student’s stay put services and declined to review it during the mediation. At the Hearing, Parents submitted a copy of the 23-24 IEP that visibly redacted those words and phrases rejected by Parents and a nine-page typed document dated September 2024 containing the portions of the 4th Grade IEP to which Parents had “invoked stay put rights”[[13]](#footnote-13). (S-4; P-E1-E37; P-L; P-M; CF, V3-48-55).
4. DK is the Principal of District M’s High School (HS). He is responsible for the daily operations of the HS, supervising teachers, overseeing curriculum, building operations and supporting students. (DK, V2-151).
5. The HS was built in 1957 and underwent a renovation and “retrofit” in 2019 that involved installing a new roof and upgrading all windows. While the windows now have better glass, they “slide out” rather than go up or down, and thus cannot easily accommodate air conditioning units. Thus, as part of this renovation, the District identified specific windows that needed to be able to accommodate air conditioning units, including the media center, business classrooms with computers, the family center, the main office suite, and spaces where summer school would be held. These locations have different window structures allowing for appropriate outside ventilation capability for an air conditioner. Although the renovation improved the thermal climate in the building, it is still hot enough in classrooms throughout the year that teachers vent open the windows even in winter, and it is humid on hot days in the fall and spring requiring teachers to use box fans, that are not very effective. Every classroom at the HS is also equipped with an air filtration unit, and the filters are regularly changed per a maintenance schedule. (S-42; S-46; DK, V2-161-63, 184-86, 189-93, V3-28).
6. On August 23, 2025, Principal DK emailed Mother to advise that he had scheduled a meeting the following Monday from 2:00 to 3:00 p.m. with approximately seventeen staff members including Student’s 1:1 paraprofessional and back up paraprofessional (both of whom were specifically named). Principal DK indicated the attendees included most of the staff who would interact with Student during the course of the day. He also confirmed that he had air purifiers in each classroom and that the extra approved cleaning supplies and soap from the MS will be provided to the 1:1 paraprofessional. (P-F2; Mother, V4-146-47).
7. KL has been the School Nurse at the HS for the last twenty-five years and has been employed as a School Nurse with three different districts over her career. She holds state licensure as a School Nurse. Throughout her career, she has supported students with seizure disorders and severe allergies, albeit none with Student’s specific constellation of medical conditions. (KL, V1-82-83).
8. ZM has been Student’s Special Education Liaison since August 2024. This is Mr. ZM’s second year teaching as a special educator with the District. He holds a Provisional license[[14]](#footnote-14) as a Teacher of Moderate Disabilities, grades 5-12, from the Department of Elementary and Secondary Education (DESE). (P-7; ZM, V1-34-35, 46-47).
9. On August 26, 2024, prior to the start of the 2024-2025 school year, Nurse KL and Mother provided a joint training on Student’s health accommodations for approximately twenty HS staff, including Principal DK, Director CF, Mr. ZM, and the MS School Nurse. During this training, both Nurse KL and Mother reviewed Student’s medical complexities, the partially accepted 23-24 IEP and Student’s needs as she transitioned from middle school to high school. The training lasted approximately an hour. Parents shared that Student had recently been diagnosed with epilepsy, but as no medical information about that diagnosis had yet been provided, nothing else relating to Student’s epilepsy was reviewed. (S-35; P-F1-F2; ZM, V1-37; KL, V1-95; CF, V3-68-69, 89-90).
10. After this training, Parents met with Principal DK. During this conversation Parents learned that the HS did not have any air conditioning units in Student’s classrooms, despite the 23-24 IEP including an accommodation for this to be in place. Principal DK explained he was not aware of this accommodation until Parents informed him thereof at that meeting despite having met with Parents since as early as the winter of the prior school year to prepare to receive Student in 9th grade. Principal DK was aware of Student’s IPP and approved cleaning products, and he recalled obtaining sufficient supplies of these products from the MS so that Student could start the school year. Principal DK also confirmed that as of the hearing, sufficient amounts of these products still exist in a secured location, in all classrooms Student would attend if she were in school this year, and in the two designated bathrooms Student would use, with extra amounts available for Student’s 1:1 paraprofessional to use. Additionally, over the December 2024 holiday break, when the school underwent its typical “deep clean”, they used a new product to clean the building floors purchased specifically to accommodate Student’s allergy needs so as to better support her, though such a deep clean had not ever been done before nor was it required by the IEP. (S-34; P-F2; DK, V2-163-67, 183; CF, V3-59-60; Mother, V4-99).
11. On August 29, 2024, Principal DK emailed Parents with the name and description of desktop “portable air conditioners fans, evaporative air coolers” that would be purchased for all five of Student’s classrooms. (P-F3; DK, V3-31-33).
12. On August 30, 2024, the District proposed what it termed to be an “Independent Educational Evaluation[[15]](#footnote-15)” for Student consisting of a Psychological Assessment, an Academic Assessment, an Occupational Therapy Assessment, a Speech and Language Assessment, an Educational Assessment, an Observation, and a Health Assessment. The evaluation information was sought to “better inform the Team regarding [Student’s] specific needs” based upon the “resolution meetings held in efforts to resolve a partially rejected IEP”. (S-9, S-11; CF, V3-42-43).
13. The August 30, 2024 evaluation proposal incorrectly indicates that the last complete evaluation of Student occurred in the spring of 2019 and does not account for Ms. KS’s academic evaluation or the speech and language evaluation Student underwent in 2023. Parents did not respond to this proposal, and a follow up notice was sent on October 7, 2024. Parents also failed to respond to the follow up notice. (S-7, S-8, S-9, S-11; KS, V2-17-18; CF, V3-40, 43).
14. On September 2, 2024, Parents emailed the District to note their objection to the desktop portable air conditioners that Principal DK was purchasing. They reiterated that Student’s IEP had required air conditioners in each of her classrooms since last year and such were installed in her middle school classrooms. Parents questioned why these air conditioners were not moved to the HS. They reminded the District that if Student attends school and her needs are not accommodated, her life is endangered as her medical issues quickly become life threatening when triggered. They requested “homebound instruction, including delivery of accepted IEP services until the district takes corrective action and provides a learning environment that is safe for her, as required by her IEP”. (P-F4).
15. On September 3, 2024, Director CF emailed Parents to advise that the District had purchased the units Principal DK had communicated about. According to Principal DK, the units are filled with distilled water and are plugged into the wall. They issue a cool mist to cool the surrounding air. Principal DK does not know how effective they are at cooling the air, as other than undertaking a trial in his office, the units have not yet been used as Student has not attended school. (S-43; S-45; DK, V2-161, 179-80, 186-87, 189-90).
16. On September 17, 2024 Student’s pediatrician prepared a letter in support of her recent epilepsy diagnosis and attached an SAP of the same date that Mother had signed and accepted. According to the letter, the doctor advises that he encourages children with epilepsy to maintain “as normal of a life as possible, including participation in school and after-school programs and activities”. However, as seizures could occur without warning, appropriate seizure safety protocols had to be followed. Decisions about participation in gym, sports and activities were left to Parents’ discretion. Although no recommendation for an air conditioner was made, the following seven specific recommendations were made “to ensure [Student] is afforded the ability to participate in school and after-school programs and activities to the greatest extent possible”,
17. Immediate access to all necessary items for all of Student’s medical conditions at all times including medications, and the presence of a licensed RN to immediately administer medications and provide immediate medical attention in an emergency;
18. Continuation of a 1:1 health paraprofessional;
19. Immediate access to a RN nurse for immediate treatment in an emergency to administer medications including life-saving rescue medications;
20. Student’s EpiPen and inhaler must be readily available for allergies;
21. If a seizure occurs, Student must have immediate access to rescue medications and immediate treatment from a licensed RN;
22. Tutoring for absences due to medical conditions;
23. Student should not climb higher than own height, be unsupervised while swimming, or in tubs, baths, or hot tubs, be alone in room with doors that lock and should use appropriate protective gear with supports as indicated. (S-26; P-J32-J33).
24. The SAP provides Student’s current and historical medical diagnoses and history, and current medications, as well as a summary and description of her seizure and postictal experiences. Seizure triggers are noted to include illness, fever, missed medication doses, hormonal fluctuations and menstrual cycle, sleep deprivation, stress, “hot/humid environments” dehydration, extreme temperature fluctuations, infection and certain light conditions, specifically flashing lights. It provides specific instructions about what to do in the event of a seizure emergency broken out by instructions for “before a seizure emergency occurs”, “during a seizure emergency”, “rescue medication” and “after the seizure emergency has ended”. Per the SAP, 911 is to be called immediately and then all emergency contacts for all seizures. (S-29; P-J34-J36).
25. On September 18, 2024, Principal DK sent Parents a letter confirming that the District “implemented Air Conditioning units” in all of Student’s classrooms, referring to the desktop portable units. Principal DK also noted that as Student had been absent at that time for fourteen days without medical documentation, in violation of the school attendance laws (MGL c. 76 §1), the school would need to pursue legal options, such as filing a Child Requiring Assistance (CRA) Petition if this continued past September 20, 2024. At that time Principal DK understood that Student’s absences were primarily due to Parents not sending Student to school because there were no air conditioning units in Student’s classrooms, this based upon emails he had seen from Parents to District staff around this time. In response, on September 19, 2024, Parents provided doctors’ notes to excuse Student from school for ten of these days. As a result, the District did not pursue a CRA petition. (S-31; S-44; P-F11, F14-F15, F19; DK, V2-160, 171-72, 207-11; CF, V3-69-70).
26. Parents disputed that the portable desktop air conditioning units purchased by the District met the requirements of Student’s IEP. They also disputed that they were actually air conditioning units. They communicated their disagreements with several district staff both by email and at meetings held during September and October 2025. Although they were asked to provide medical documentation to support both the need for air conditioning generally, and their requests for certain unit specifications, no such documentation has ever been provided in any of the subsequent medical letters Parents submitted this school year. Parents maintain that the requirement to provide air conditioners was already in the IEP, so medical documentation was not needed, that neither the IDEA nor Section 504 requires medical documentation for air conditioners, and that both the HS Nurse and her medical providers felt the District’s portable units were not appropriate. In addition to the dispute regarding the air conditioning units, on October 3, 2024, Parents also advised that Student’s IEP requires that she have air purifiers in each of her classrooms and asked for specific information about what the District uses. Principal DK shared this information via email the following day. (S-42; S-43; P-F3-F11, F-19; DK, V2-172; CF, V3-169-70; Mother, V4-148-50; V5-51).
27. Parents have air conditioning and air purifiers in their home. They heat their home with a wood stove that they find keeps the air less humid. Father, however, smokes cigarettes, but never inside the home. (Mother, V4-150-51, V5-35-36).
28. On September 24, 2024, Parents filed a state complaint with PRS pertaining to the District’s failure to implement Student’s “stay put” provisions in her IEPs. DESE sent an amended *Request for Local Report* to the District on October 1, 2024 specifying the accommodations that according to Parents were not being implemented. These accommodations include the failure to: provide air conditioners air purifiers and the approved cleaning products; provide copies of Student’s health plans “updated by her parents and the school nurse” to all staff; provide training by the “School R.N. and parent”; provide a tutor after three absences to address IEP goals; communicate with Parents about compiling work during absences; excuse Student’s absences without the need for a doctor’s note; not penalize Student for absences necessary to address health issues; and provide a “licensed registered nurse with training regarding [Student’s] diagnoses” at all after school sponsored activities, field trips and any “agreed to tutoring sessions”. (P-G1-G5; Mother, V4-100).
29. As Student remained out of school on September 30, 2024 and again on October 4, 2024, Principal DK emailed Mother to inform her he set up tutoring with a special education teacher to begin “immediately” in the Guidance Conference Room on Tuesdays through Thursdays from 2:15 to 4:15. However, he explained the District had not yet secured a registered nurse to be available during this time, although he had posted for one as the IEP required a nurse to be made available “when possible”[[16]](#footnote-16). Principal DK explained that the Guidance Counselor conference room was within the air-conditioned main office suite, had been cleaned with the specific approved products, and had a supply of these cleaning products, as required by Student’s IPP. He also explained that this room could be used to evaluate Student, once Parents consented to her proposed evaluations. Parents did not access this tutoring due to the lack of an on-site nurse. (S-37; S-43; DK, V2-168-70, 175, 203).
30. In October 2024 it was Principal DK’s understanding that Student’s absences were due both to medical issues related to seizures[[17]](#footnote-17), and to Parents’ ongoing disagreements about the air conditioning units. Principal DK did not see how the failure to have a finalized HCP prevented Student from attending. Given his experiences with other students with medical complexities, he thinks that ongoing communication and family involvement are necessary to fully support such medical needs, as has occurred with Parents, despite Student’s absences. He felt the school was aware of and had a “depth of understanding” about Student’s medical needs, the action steps needed, and how to “operate with [Student] in our school” even though a final HCP was not completed or agreed to. (DK, V2-172, 214-16).
31. In addition to after school tutoring, the District also offered to tutor Student virtually, via three options, including with District staff remotely during the school day, with District staff remotely after school, or using the District’s virtual educational platform, Edgenuity. Parents did not agree to any of the virtual tutoring options as they believed that extensive screen time triggered seizures for Student. Mother testified that Student had a tonic-clonic seizure in October after engaging in a “Duolingo” program online. Parents limit Student’s screen use at home, use a television that has “non-flickering” filters and Student is not allowed to FaceTime with the camera on (although she sometimes texts using voice-to-text with her friends and will frequently FaceTime with the camera off). Student also cannot read electronic books (although she can read paper books), as reading on virtual devices is more straining on her eye muscles than other types of screen activities, such as viewing a television show. To allow Student to engage with virtual information that she is restricted from viewing, Parents will at times screencast from the restricted screen onto the television, as she can view their television without issue or limits. Mother agreed she would consider having a tutor pre-record instruction that she could screencast onto the television for Student to view, as an alternative tutoring arrangement. However, she still opposed using Edgenuity, as she objects to the lack of live teachers with that program. (S-23; S-40; DK, V2-173-74; CF, V3-73-78; Mother, V4-194-95, V5-74-80, 84-85, 97-99).
32. On October 4, 2025, the District filed the underlying *Hearing Request*. (S-11).
33. On October 9, 2024, the District sent Parents a Meeting Invitation for a Team meeting to be held on November 6, 2024 for the purpose of “continuation of rejected IEP review”. Subsequently, on October 30, 2024, a new Meeting Invitation was sent to Parents changing the purpose of the November 6, 2024 Team meeting to an “IEP Annual Review”. Although the Team had not reached a resolution on the outstanding rejected portions of the 23-24IEP, the District changed the purpose of the meeting as the 23-24 IEP had expired on June 8, 2024. (P-I1-I6; ZM, V1-45).
34. On October 21, 2024, the District issued a proposal to perform a re-evaluation of Student in the same areas as its August 30, 2024 proposal for an “Independent Educational Evaluation”, except for speech and language. Parents again failed to respond to this proposal or to a follow-up notification sent on November 19, 2024. (S-10; S-11).
35. Also on October 21, 2024, Nurse KL sent Parents a copy of an EAP she had prepared for Student at the HS (HS EAP). The HS EAP, consistent with the prior EAP (MS EAP) was primarily made up of a three-column chart entitled “If you see this”, “Do this” and “Who needs to know”. Information in this chart was further separated under specific diagnosis headings. While reordered from the MS EAP, all of the diagnoses in the MS EAP were included in the HS EAP. The HS EAP also added information pertaining to Student’s diagnosis of “Epilepsy with Generalized Tonic/Clonic Seizure”. Additionally, the HS EAP added a section relating to a “Lock Down Procedure”, added “Implement Food Allergy & Anaphylaxis Emergency Care Plan (FARE Form)” to the “Do This” column for the “Allergy/Asthma Signs and Symptoms” diagnosis section and added “Local EMS” to the “Who Needs to Know” column for the “Signs of Urgent Need for Medical Attention” section. However, the MS EAP’s five numbered protocols for staff to follow when emergency personnel needed to be called were deleted from the HS EAP, and no signature lines were included (the MS EAP had a signature and date line for the Nurse, Parents and a School Administrator[[18]](#footnote-18)). (P-K2-K11).
36. On October 23, 2024, Parents responded to Nurse KL by email providing their concerns with the HS EAP. Specifically, Parents objected to having pages from the MS EAP removed, the consent page removed, and “protocol and procedure pages” removed. They also did not understand why an EMS is listed on the chart to call 911, and they questioned why “if it is safe to do so” was included in the Lock Down Procedure. They questioned where the SAP was stored and how those working with Student would know what to do in the event of a seizure or know that an R.N. was responsible for administering Student’s life-saving medication. Further they questioned instruction to follow the FARE Form since the nurse is solely responsible for doing this, so Parents wondered how staff working with Student would know that. Additionally, they were confused as to why there was not a nurse listed for afterschool, tutoring, school sponsored activities, events, sports, etc., questioned why some diagnoses were listed as being a “history of” and not all of them were included; and expressed concern about a lock down procedure that could result in Student not having immediate access to all her rescue medications. Parents requested that the five numbered procedures that had been deleted from the MS SAP be reinstated, and the lock down procedure be removed. Parents also provided Nurse KL with a copy of the MS EAP for assistance with their requested revisions. (P-K1).
37. Nurse KL met Student briefly only once. However she has met with Parents several times, has participated in Student’s Team meetings, has reviewed all Student’s health records contained in her school health file and prepared the draft HS EAP and several drafts of an HCP for Student during the 2024-2025 school year. In preparing the HCP, Nurse KL reviewed Student’s prior HCP from the MS Nurse, as well as her elementary school HCP. She relied upon medical records from Student’s file, including her SAP and the 2024 medical letters from Student’s immunologist, discussed *infra*. She also met with Parents and a nurse from the Department of Public Health (DPH) MASSTART program, in October and November of 2024. Nurse KL initially used a Google document to draft the HCP that was shared with Mother and the MASSTART Nurse. The three of them communicated about revisions to the HCP via the comment feature during the fall of 2024. (S-24; S-25; S-28; S-29; S-51; P-F24-F26; P-N; KL, V1-85-87).
38. On October 31, 2024, the MASSTART Nurse emailed Nurse KL to confirm she had added comments to the Google document but had not seen any of the updates that had been discussed at their last meeting. Nurse KL replied on November 4, 2024 that she was hoping to work on it that week but had “not check[ed] your recommendations yet”. (P-K13).
39. On November 6, 2024, the Team convened for an Annual Review and to develop a new IEP for Student. The meeting was facilitated by a BSEA Team Facilitator. The meeting lasted for approximately one hour, but the Team did not conclude its discussions and a second meeting was scheduled for December 9, 2024. (P-I19-I20; ZM, V1-50, 52).
40. On November 22, 2024, Parents consented to the evaluations proposed by the District on October 21, 2024, but they noted that they were accepting “the independent evaluations at the expense of the District as was proposed and discussed on October 21, 2024”. (P-I7-I11).
41. On November 26, 2024, Parents “reconfigured” their response to the proposed evaluations and conditionally consented to the evaluations proposed by the District on October 21, 2024. Parents noted they did not consent to any testing on screens or virtually, that their consent for the Health Assessment was limited solely to the nurse conducting a record review of health information already provided to the District, but not for the nurse to speak with any of Student’s medical providers, and asked to speak with each evaluator prior to any evaluations or assessments being administered. A copy of this consent was provided to all District evaluators. (S-12, P-I12-I18; CF, V3-133).
42. On November 27, 2024 Nurse KL emailed Mother and the MASSTART Nurse to ask if they had had time to work on the HCP and EAP. She advised that she had shared a draft that morning and had time to work on both of them today. Parent replied the night of December 2, 2024 to advise she had spoken with the MASSTART Nurse and both of them were “really not comfortable with writing health plans for [Nurse KL]”. She also asked for a timeline to receive the proposed health plans that included all updates and information already discussed and questioned how quickly training on those plans could be completed. (P-F31-F32).
43. SP is an Occupational Therapist for the District. She provides OT services for three schools, including the HS. She began working for the District in August 2024 but has worked in a school setting as an OT since the fall of 2023. She has also worked in medical hospital settings in the summers evaluating children with medically complex needs and has experience evaluating students with complex medical histories in school. In accordance with Parents’ consent for evaluation, Ms. SP first reached out to Parents by telephone and email on December 4, 2024, and spoke with Mother on December 12, 2024. Ms. SP and Mother discussed Student’s diagnoses and medical needs and triggers, Parents’ current OT-related concerns about Student and their reason for seeking an Occupational Therapy evaluation. Mother seemed excited about the information that could be learned from this evaluation, particularly relating to Student’s sensory processing needs. However, despite this initial conversation, Ms. SP has yet to be able to complete her evaluation of Student due to Parents’ refusal to schedule a testing date. (S-15; SP, VI-56-61, 66, 71-72, 78-79).
44. To date, Ms. SP has interviewed Mother and completed a record review, including review of Student’s last Occupational Therapy evaluation conducted in 2019, her medical action plans, and her prior IEPs. She has not provided Parents with any of the parent-response elements of the assessment, as the in-person portion of the evaluation has yet to be scheduled due to Parents’ lack of consent, and parental responses need to be based on the six-month timeframe prior to the evaluation. (SP, VI-57-60, 76, 79; S-15).
45. The Team reconvened as scheduled on December 9, 2024, to complete its Annual Review of Student’s IEP. This meeting was also facilitated by a BSEA Team Facilitator and lasted approximately an hour. Parents were in attendance with legal counsel and the MASSTART Nurse. At the conclusion of the meeting, the Team proposed an IEP dated 12/9/2024 to 12/8/2025 (Proposed IEP), containing goals in the areas of Executive Functioning, Literacy (that appears to combine the prior goals of ELA and Reading), Mathematics and Self-Advocacy (renamed from the prior Social goal). The goal areas and objectives of the Proposed IEP did not change from the 23-24 IEP (and also appear to substantially track the portions of the goals and objectives Parents accepted in the 23-24 IEP), however changes were made to the Service Delivery Grid. The proposed Service Delivery Grid calls for Student to have consultation in the A-Grid, by a special education teacher 30 minutes per month, and by a school nurse for one hour per year; services in the B-Grid consisting of written language and math support, each for 40 minutes three times a week by special education staff, and executive functioning support by special education staff 15 minutes per day; and services in the C-Grid consisting of counseling support from a school adjustment counselor 30 minutes per week. Most significantly, the Proposed IEP eliminates all services of a 1:1 health paraprofessional, however, as discussed *infra* it provides for the personnel support in the HCP. It also eliminates 40 minutes three times a week of executive functioning support from a special education teacher (although the 15 minutes of daily executive functioning support was retained) and reduces the math services from daily to three times per week. Literacy services, however, were increased from twice a week to three times per week. The Proposed IEP also contains far fewer accommodations than were proposed in the 23-24 IEP, as many of these accommodations were incorporated into Student’s HCP. (S-5; P-B1-B7, B57-B92; P-I19-I41; P-L; ZM, V1-50-52; Mother, V5-38-40).
46. In developing the Proposed IEP the Team took into consideration Student’s 2023 Educational Evaluation, Student’s educational history contained in her file (as none of the teachers at the Team meeting had ever worked with Student due to her absences and Parents’ declination of any of the tutoring services up to that point), Student’s 8th grade progress reports, District Team members input and parental input. Given the lack of current knowledge of Student by any Team members, the Proposed IEP includes historical but not necessarily current performance information. (P-I19; ZM, VI- 38, 42-43, 49, 51; CF, V3-66-67, 151-52, 175).
47. To date, Parents have not responded to the Proposed IEP, due to the underlying Hearing. Father testified that overall, Parents do not agree with the Proposed IEP as it fails to include current parental concerns; contains goals identical to the 23-24 IEP, despite Student missing substantial school days since that time; reduces Student’s educational services and, substantially removes accommodations; and fails to include accommodations recommended in the medical documentation that Parents provided prior to and during this school year before the Team meetings[[19]](#footnote-19). Mother similarly objects to the removal of many accommodations and to the lack of parental input. She also feels the Proposed IEP does not contain anything about Student’s risk for being bullied, her prior bullying investigations or safety plans, transportation supports, transition services, how Student’s disabilities impact her life, or how Student can access the curriculum or make effective progress. In addition to objecting to removing the 1:1 health paraprofessional, Mother objects to the following specific accommodations being removed from the 23-24 IEP,
	1. Air conditioning and air purifiers in Student’s classrooms, as heat and humidity trigger Student’s CVS, seizures, asthma and migraines;
	2. The IPP, as the need to disinfect spaces properly is essential to avoid Student getting sick which in turn will trigger medical events, thereby further reducing learning time;
	3. Frequent handwashing with the approved soap, as this is a critical mitigating measure to keep Student from getting sick;
	4. Tutoring supports, as this will assist Student to transition back into school after she is out for medical reasons thereby reducing her anxiety which is also a trigger for Student’s medical conditions;
	5. Excusing absences without the need for a doctor’s note, as requiring Student to bring in a doctor’s note punishes her for medically-related absences, and if she has to go to a doctor’s office every time she is out for medical reasons Student is unnecessarily exposed to further germs. Mother also noted that the medical documents that the School has received confirm the chronic nature of Student’s medical diagnosis;
	6. Ensuring Student is in classes with at least one of her close friends, as this decreases Student’s anxiety and reduces potential bullying;
	7. The ability for Parents to agree to change the approved cleaning products, as this supports the District by allowing Parents to expand products if it turns out there are additional ones Student can tolerate;
	8. 10 hours a week of compensatory tutoring that had already been committed to as this had yet to be provided; and
	9. Notifying Parents if there are any illnesses in school that could be dangerous to Student, such as any illness involving a fever as a symptom as, per Student’s SAP, fevers move Student to the “yellow zone” for seizure risk and trigger her CVS. (S-5; CF, V3-63; Mother, V4- 96-96, 105-11, 116, V5-38; Father, V5-103-05, 140-43).
48. The most recent draft of the HCP was prepared in December 2024 (12/24 HCP). Nurse KL made a substantial format change to this draft as she felt the new format was easier for staff to use, in that information was now presented in landscape format with three columns (similar to the EAP). The first column is for symptoms, the second column is for triggers/interventions, and the third column is for ways to measure progress and outcomes. Parents have not yet responded to the 12/24 HCP. However, Nurse KL trained Student’s special education teacher and 1:1 paraprofessional (whose services were still proposed in the 12/24 HCP) on the 12/24 HCP for half an hour on January 3, 2025, as the District anticipated Student may be starting to attend school at that time. Ultimately, Student did not attend school in January 2025 due to medical complications associated with her seizure disorder. Parents were not present for this training, but Nurse KL asked that they be notified. While Nurse KL recognizes that the 12/24 HCP is incomplete, she believed it met Student’s medical needs when it was drafted based on the health records she had when she prepared it, despite having requested Parents provide further medical documentation, which was not so provided. She also thought it was important for these two staff to be trained, particularly on Student’s seizure activity, as that information was not part of the extensive staff training in August. Nurse KL explained that although Parents have the right not to sign health plans, she has to “train staff to meet the medical needs of our students, so I have to do the best with what I have”. (S-36; P-K22-K35; KL, V1-107-08, 118-19, 140-41, 146-47, 158-59).
49. The 12/24 HCP proposes that Nurse KL have a routine check-in with Student so that she could “learn her baseline” and get to know Student’s typical presentations, such as her vitals, consisting of blood pressure and temperature, her coloring and her normal speech patterns, since she had yet to meet Student. Although a 1:1 paraprofessional would be with Student throughout the day (who does not need any specific training or licensure, other than the overall training on the medical plans that all staff who work with Student requires), nurses need to make some judgments when giving medications. To better assess Student when she is in need of medical attention, Nurse KL believes it will be helpful to know her typical presentations. Parents disagreed with inclusion of this support as they did not want to single Student out. (KL, V1-94-97, 202-03, 221).
50. The 12/24 HCP does not attach the EAP or SAP or reference them, but according to Nurse KL much of the EAP and SAP was repeated “word for word” in the 12/24 HCP, and she had already given the SAP to staff. Nurse KL believes it is easier for staff to refer to one document than three separate documents, especially when a medical emergency arises. Further, the 12/24 HCP includes a provision for a school nurse to be on site at all times, and to have a nurse call 911 if needed. Nurse KL said that she is also aware of the SAP and would make her nursing decisions based upon it. However, she wanted the medical plans the staff reviewed to be worded more broadly so that they contacted the nurse more frequently to make the necessary medical-based decisions. (KL, V1-133-34, 137-38, 193-94).
51. Student’s neurologist’s January 21, 2025 letter recommended to “integrate[]” the SAP into Student’s IEP. The letter also indicates Student’s health needs “should not preclude her from participating in the least restrictive school setting”. (P-J55-J56).
52. The 12/24 HCP contains accommodations from the 23-24 IEP that were removed from the Proposed IEP including Student’s 1:1 health paraprofessional, who Nurse KL described as a “watchdog who is working to … look for possible exposures” and who is responsible to advocate for Student’s medical needs if Student is not comfortable sharing them or is otherwise medically unable to do so. The 12/24 HCP also allows Student to leave areas where there are aerosols, and to access the School Nurse at any time so the nurse can give her rescue medications in case of an allergic reaction. (KL, V1-94-95, 221).
53. Director CF does not believe an HCP should be wholly incorporated into an IEP, particularly when it addresses a student’s ongoing medical needs that can ebb and flow. IEPs are generally written for a year, and while they can be amended during that time, this process is less fluid and can only occur via reconvening the Team. Maintaining an HCP separately allows it to “be adjusted as the student’s medical needs change” such that when updated medical documentation is received, it can be amended “in the moment and pretty, pretty quickly”. She does, however, support including a reference to any separate medical plans within the IEP itself and agrees that some accommodations in medical plans are also appropriately included in IEPs. Nurse KL, however, was unsure if it was safe to remove medical accommodations from Student’s IEP, and agreed it was not safe for Student’s entire IPP to be removed from the IEP. (KL, V1-162-65, 174-84; CF, V3-64-65, 81-82, 134-36).
54. According to Director CF, if parents disagree with the contents of health care plans or other medical plans that are not IEPs, the parties will communicate and obtain additional medical input or documentation to support the need for medical support or any area of confusion. She understands medical plans to be based solely on medical recommendations and/or documentation, and that they are developed by the school nurse using this information and documentation. (CF, V3-138-39).
55. To the extent the 12/24 HCP does not include information from prior HCPs or “stay put” accommodations that were also not included in the Proposed IEP, Nurse KL advised this was due to such provisions being part of standard medical practices for all students and were addressed in other non-medical ways by the District[[20]](#footnote-20) or due to not having updated clear medical information to support their inclusion. Specifically, most of the medical documents in Student’s record as of December 2024 were from 2017, 2018 and 2019. Although the diagnoses in these documents may still be current, without updated medical letters, Nurse KL could not understand the extent these medical conditions currently impact Student, or if the symptoms noted as generally being associated with each diagnosis still apply to Student. Nurse KL also explained that, consistent with the older medical letters, some of Student’s medical conditions could have been in remission, and Student’s recent epilepsy diagnosis may have impacted her other medical needs. Nurse KL intended to add to the 12/24 HCP when she received updated medical information specific to Student’s “traits” for her medical diagnoses, or as she got to know Student better.

After drafting the 12/24 HCP, Student’s gastroenterologist and epilepsy care providers provided updated medical letters dated January 25, 2025 and January 21, 2025 (both received on February 10, 2025), respectively. Nurse KL updated Student’s Health Evaluation by summarizing these letters, but, as discussed *infra*, she had not yet updated the 12/24 HCP with their information at the time she testified, approximately a month later. Nurse KL could not provide a reason for not yet having made such revisions, and advised that it was her intention to work further on the 12/24 HCP “when she can”, particularly as Student was currently being educated pursuant to a Home Hospital Educational Form, also discussed *infra*, and was not expected to return to school until April 3, 2025.

Further, on cross examination, Nurse KL agreed that while other information from medical documents provided to the District in September 2024 could have been added to the 12/24 HCP, it was not included as it did not relate to Student’s current school experiences. (S-20; S-26; P-J1-J49; P-O; KL V1-117-18, 121-23, 135-36, 151, 161, 168-74, 186, 189-91, 201-05, 208-09, 212, 218-20, 230-33; Mother, V4-117-18).

1. The 12/24 HCP differed in several substantive respects from the prior draft HCP circulated on the Google document, as well as in its format, including,
	1. The section entitled “Baseline Health Status” was revised to reflect Student’s most recent physical information rather than her historical brain surgery, last CVS episode, and last seizure date.
	2. The section entitled “Goals and Objectives” was reworded, and the sentence “There is a significant continued need to maintain her peer support group consisting of peers she has direct and positive connections with”, was deleted.
	3. Sections entitled “Activity”, “Equipment” and “Personnel” were added.
	4. A section entitled “Neurological” was added to the Chart. This appears to be an attempt to rewrite the SAP.
	5. A section entitled “Migraines/Other Neuro” was revised from its previous name of “Neurological (Intracranial Mass Lesion with Surgical Removal)” in the chart. Within the list of symptoms under that section, the symptom “migraine” was also revised to be “nausea” and the symptoms of “epistaxis (nosebleed), stomach pain and loss of consciousness” were excluded.
	6. A section entitled “Infection” was added in the chart. This appears to have been added based on a decision to move Student’s IPP from the Proposed IEP into the 12/24 HCP. The intervention information in this section was also included under “Allergy/Asthma”.
	7. A section entitled “Signs of Difficulty Coping/Anxiety” was added in the chart. This appears to have been added based on a decision to move anxiety concerns from the Proposed IEP into the 12/24 HCP.
	8. Finally, some but not all of the accommodations in the “Intervention” columns appear to have transferred from the prior draft HCP’s section entitled “Interventions/Considerations/Accommodations” or from the accommodations removed from the 23-24 IEP. (S-51; P-K22-K35; P-N).
2. Parents do not agree with the 12/24 HCP for several reason. Specifically, it does not include information from prior HCPs, such as details of Student’s medical history that predated the past year, her history of hand tremors that are now precursors to her epileptic seizures or reminders for her to wear her blue light glasses when looking at screens[[21]](#footnote-21). The 12/24 HCP also unnecessarily includes the names of Student’s medical doctors, incorrect information about Student’s current medications, fails to mention that medication administration cannot be delegated, does not indicate the potential medication side effects that need to be communicated to Parents or that Parents are to be informed whenever any medication is administered to Student. Parents also believe the 12/24 HCP fails to include any provisions about how to mitigate a flare up of Student’s medical conditions, such as implementing her IPP, and fails to include all information from Student’s SAP such as the need to look for a loss of consciousness when Student has a medical episode. Parents want the SAP copied verbatim into Student’s HCP. Additionally, Parents are concerned that the 12/24 HCP’s provision for Student to be able to go to alternative spaces to avoid allergen triggers will discourage staff from mitigating triggers overall and instead result in Student being improperly removed from the general education environment. Parents are also very concerned with the 12/24 HCP’s new format as they find it difficult to follow, and they want to go back to the format of Student’s middle school HCPs. Mother explained how important an accurate HCP that reflects signs and symptoms of Student’s medical conditions is, so that communication with Parents about these circumstances can be properly made so as to abort or mitigate the onset of the medical condition[[22]](#footnote-22). Further, Parents need to know what medications Student receives in school in order to administer medication properly at home. Mother was also very concerned that staff were trained on the 12/24 HCP even though Parents had not consented to it and had substantial objections to it. (Mother, V4-121-28, 132-40, V5-25-35; Father, V5-115-16,135).
3. For several years, Parents have not provided consent for the District to speak with Student’s medical doctors[[23]](#footnote-23). Thus, except to confirm clarification of medication orders[[24]](#footnote-24), and the meetings with the MASSTART Nurse to develop the HCP, no one from the District has communicated with any of Student’s doctors this year. Nurse KL feels it would be helpful to obtain clarification directly from the doctors about information in their written recommendations. Although Parents claim they had provided consent in the past, at some point they felt that communication about the medical information was improper and withdrew that consent. Mother testified that Parents are willing to obtain any medical information, “anytime [the District has] asked” provided it is “reasonable”. Parents are also considering having some medical providers come to future school meetings with them, but have not yet set this up due to the pending Hearing. (KL, V1-93, 203, 214; Mother V4, 80, 144, 169-70 V5-22-23, 60-63).
4. The medical documents in Student’s file that Nurse KL reviewed to prepare the 12/24 HCP include letters from 2017, 2018 and 2019 by Student’s neurologist, gastroenterologist, immunologist and cardiologist containing various accommodation recommendations. A 2018 letter from Student’s immunologist recommending what he referred to as a “preventative infection protocol” was used by the Team to develop Student’s IPP. The immunologist explained that the protocol was intended to mitigate triggers for Student’s medical conditions that, at that time, included hot or humid environments, leg pain, viral illnesses, colds, infections and fevers. These letters also included the following accommodation recommendations: unrestricted access to medications, water, salty snacks, the bathroom, and the nurse’s office; avoiding long lines; no overexertion especially in hot humid environments; modifying workloads when absent for medical reasons; extended time for missed assignments; and tutoring support when absent for medical conditions. Additionally, the doctors’ recommended “reasonable efforts” be made to prevent risk of allergic reactions/infections through disinfecting her workspace, ensuring hand hygiene, and notifying Parents when there is a suspected virus in the school. These letters also stressed the importance of communication between parents and school, recommended establishing a point person to be the primary communicator and recommended developing a scheduled time for check-ins. Except during medical episodes, physical activity was not restricted. Doctors noted that Student would have times where she would be symptom-free or in “remission” for several months but then could have unpredictable flare-ups. Student’s cardiologist also stressed that accommodations and supports should be provided with the “need to minimize academic developmental and social disruption”. (P-J1–J22).
5. According to Nurse KL, there are no medical recommendations for Student to be provided with an air conditioner, an air purifier, or for staff to wear gloves when working with Student, and similarly, no mention of temperature parameters when Student needs cooling support or a need to limit or prohibit screen time use by the Student. In her experience, students with a medical need for an air conditioner will typically have a medical note that specifically states air conditioning is required and gives temperature parameters when cooling support is needed so that the staff is aware of when to provide this accommodation. Further, she is familiar with other accommodations that could be recommended to address cooling support such as access to fans, drinking cool water, or access to shade. However, except for access to water, none of these options was specified in the medical documents. While the medical letters listed heat and humidity as triggers for Student’s conditions, they did not include the information Nurse KL felt she needed to support what Parents were requesting to be included in the medical plans, specifically – “what can [the District] do at school to help [Student] with that”. (KL, V1-86-92, 130-33, 159-61, 189-91, 203).
6. According to Mother, the medical documents support providing Student with an air conditioner. Two medical letters submitted in 2017 recommended no overexertion by Student on hot/humid days, and a 2019 letter from Student’s cardiologist indicates that due to her orthostatic intolerance, on hot days Student may have more symptoms and thus must have access to water, salty snacks and be able to use the bathroom without restriction. (Mother, V4- 149, V5-64-66).
7. None of the medical letters specifically recommends that Student be given an air conditioner. The closest any medical document has come to recommending air conditioning is the September 17, 2024, SAP that advises that a “seizure trigger” includes “hot/humid environments” and “dehydration”. However, as noted, *supra*, the accompanying detailed 2-page letter by Student’s pediatrician does not mention temperature parameters/controls, cooling or the need for an air conditioner in any of its seven recommendations. (S-26; S-29; P-J1-J56; CF, V3-143-45).
8. According to Mother, the medical documents also support prohibiting virtual instruction, particularly the letters that reference Student’s diagnosis of photophobia, convergency insufficiency and increased intracranial pressure with papilledema. However, other than the June 13, 2024, medical excusal letter that limited screen time use for 3-4 days due to a mild concussion, no other medical documents contain any recommendations for screen time limits or virtual instruction restrictions. As with air conditioning, the closest medical document to address screen concerns at all is the September 17, 2024, SAP’s reference that a “seizure trigger” is “certain photic (light) conditions (i.e. flashing lights, etc.)”. However, screen time or virtual instruction restrictions are not included in the pediatrician’s seven specific recommendations[[25]](#footnote-25). (S-26; S-29; P-J1-J56; Mother, V4-195-97, V5-71-74).
9. Other than medical notes for Student’s absences and return to school following her brain surgery, and mild concussion on June 13, 2024, in gym class, Parents did not submit any other medical letters with accommodation recommendations to the District until the beginning of the 2024 school year. Additionally, before January 2025, Parents had only provided two other Home Hospital Education Forms. One was in 2018 with no timeframes noted[[26]](#footnote-26), and the other was for the two months after her brain surgery, although the form itself was not completed until a week before it was set to end. (P-J1-J56; Mother, V4-93, 179-80).
10. On January 2, 2025, the MASSTART Nurse emailed Parents to advise that after speaking with her legal department and supervisor from DPH “the consensus is that MASSTART is no longer an appropriate support and that working with an advocate/lawyer is the best approach”. She confirmed that at that point, Parents had provided the school with “documentation from [Student’s] medical providers for all requested accommodations …”. (P-K36).
11. As of January 2, 2025, the District had received the following medical documents during the 2024-2025 school year:
	1. six separate medication orders from Student’s pediatrician for an EpiPen, Benadryl, Zofran, Tylenol, Ibuprofen, and Albuterol Inhaler;
	2. A Food Allergy Research and Education (FARE) Form indicating that Student’s approved products were Method Brand (designated scent) and soap, and Lysol Brand (designated scent) wipes.
	3. A September 4, 2024, note from Student’s pediatrician advising Student has been diagnosed with Epilepsy with Generalized Tonic-Clonic Seizures;
	4. An undated letter received on September 6, 2024, from Student’s Immunologist supporting that Student be given designated resources, electronics, and supplies to avoid cross-contamination, and that consistent with the IPP, these be disinfected, and Student be given an opportunity for frequent hand-washing;
	5. Medical notes excusing Student from school due to seizures from her pediatrician for September 4-11, 2024, and September 17-20, 2024;
	6. The September 17, 2024, letter from Student’s pediatrician, discussed *supra*;
	7. The September 17, 2024, SAP discussed *supra*;
	8. An October 17, 2024, medication order for a Ventolin HFA Inhaler, and an EpiPen from Student’s immunologist; and
	9. An October 17, 2024, medication Order for a specified cleaning spray (with designated scent), wipes (with designated scent), and soap from Student’s immunologist. (S-24; S-25; S-26; S-27; S-28; S-29; S-30; S-31; S-32; P-J28-J49[[27]](#footnote-27)).
12. On January 15, 2025, Student’s neurologist in the epilepsy division at Boston Children’s Hospital submitted a letter advising that Student was admitted for monitoring and a treatment evaluation on January 10, 2025, and should be excused from school for the rest of the week. Return to school information and health and academic accommodation recommendations were being finalized, and the doctor noted, “defer to parents/caregivers and [Student] regarding specific accommodations to enable [Student] to safely access her curriculum”. (S-19; P-H1-H4; P-H11; P-J50).
13. The follow up January 21, 2025, letter from the Longwood Epilepsy Program of Boston Children’s Hospital advised that Student’s epilepsy treatment was ongoing and her anti-seizure medications were being adjusted. It recommended that Student be provided with an IEP to support her complex medical needs and noted that she is at an increased risk for cognitive, learning and social-emotional difficulties. Further the impacts of epilepsy and possible medication side effects could cause challenges for Student accessing the curriculum. She also could have sleep disruption issues, and thus, a modified school day was recommended. All “seizure-related absences” should be excused, and Student should be provided with an opportunity to make up any missed work. For her safety, Student needed access to “school nursing personnel” who can intervene during a seizure and administer her rescue medications. The doctor also recommended following Student’s SAP when there is a seizure and integrating her SAP into her IEP. He supported training school personnel and parents on seizure safety. Further, he recommended that “collaboration and input of [Student’s] multiple specialists and her family will be crucial to understanding her academic support needs”. Finally, he recommended that Student receive tutoring and be educated in the least restrictive environment. (S-22; P-J55-J56).
14. On January 23, 2025, Parents provided a Home Hospital Education Form advising that it was medically necessary for Student to remain in the home or hospital setting retroactive from January 1, 2025 through April 3, 2025. Student also needed a reduced workload to be gradually increased over time “per parental reports of [Student’s] tolerance”, and required a partial day of tutoring instruction between 10 am – 2 pm only, “with gradual increase per [Student’s] tolerance” up to a full day[[28]](#footnote-28). Despite not indicating any restrictions regarding virtual tutoring, and the District’s offer to provide it, Parents ultimately agreed to Mr. ZM tutoring Student by phone during his prep periods on the days he was able to within the time constraints of the Form. Mr. ZM is currently scheduled to tutor Student three times a week for 70 minutes per session. Student also currently receives 30 minutes of school adjustment counselor support weekly. (S-20; S-40; S-41; P-H7; P-J51-J52; ZM, V1-35-37; CF, V3-70-71, 75-78; Mother, V4, 192-94).
15. On January 27, 2025, Student’s gastroenterologist provided a letter updating his prior two letters submitted in 2019. Much of the letter was similar to the 2019 letters, but it now included Student’s diagnosis and medical history to reflect her brain surgeries and epilepsy diagnosis, recommended an IEP not a 504 Plan, eliminated the recommendation to use a bathroom or nurse “card” if she had to leave class in an emergency, added allergic reactions and stress as primary triggers for her symptoms, eliminated a reference to Parents providing the approved soap she needs to use, added a recommendation to monitor Student at school if she is experiencing a vomiting episode, and that Student’s Parents and medical team, rather than the school nurse, use discretion about dismissing her from school. Finally, it added a new recommendation that reads – “we defer to parents/caregivers and [Student] for specific accommodations that would enable [Student] to access her curriculum”. (S-21; P-J53-J54).
16. In accordance with Parents’ consent for evaluation, Mr. ZM contacted them seven times between January and February 2025 by phone and email to schedule a time to evaluate Student, but Parents did not respond. On February 14, 2025, Mr. ZM sent another email to Mother to offer to test Student in the home and to wear gloves and a mask for the test. He still received no response. Ultimately, Mr. ZM completed an Educational Assessment A, noting Student’s medical issues prohibit her from attending school. He has yet to complete the academic assessment as, to date, Parents have declined to make Student available, despite their consent to the assessment. (S-14; S-17; ZM, V1-35, 41).
17. Ms. SP repeatedly attempted to schedule the Occupational Therapy evaluation between December 2024 and the start of the Hearing. Initially, she expected that the evaluation would occur at the HS, in an appropriately sanitized room. (Ms. SP intended to secure and clean a secondary space, using Student’s approved products, rather than her office for the evaluation.) She also intended to contact the nurse for training, Principal DK to learn where to find the necessary cleaning products and the Director of Facilities to confirm any other facility needs that were required for Student prior to performing the evaluation. Parents ultimately informed Ms. SP that they felt it best to identify a time for the evaluation once Student returned to school in-person, and since “lawyers were involved” to negotiate this return to school, they declined to continue discussing a date for the evaluation with Ms. SP. (SP, VI-60, 63-66; S-15).
18. Ms. SP spoke with Nurse KL about Student’s medical needs at length on December 13, 2024, and she reviewed all the medical documents Nurse KL had, intended to meet with Nurse KL again prior to conducting the evaluation, and she had put her name on a list to be trained but had not yet completed the training. While she acknowledged the provision in the 23-24 IEP that required Parents and the nurse to train all staff working with Student, she had not yet received that training, but explained that she intended to get trained prior to evaluating Student. She was, however, waiting until the evaluation date was scheduled before undergoing the training so that the training would be “fresh and recent”. Based on her experience assessing students with complex medical histories, Ms. SP was not concerned about evaluating Student, once she was fully trained. Ms. SP explained that OTs work and evaluate in a variety of settings, including hospital emergency rooms, where students with a seizure disorder may present. (SP, VI-62-64, 68-70, 78-79, S-15).
19. Although Ms. SP was not aware of Student’s health decline in January 2025, after learning that Student was to be educated pursuant to the Home Hospital Education Form, she reached out to Parents on February 14, 2025 to offer to evaluate Student at home. She also offered to wear personal protective equipment (PPE) consisting of gloves and a mask, at the suggestion of Director CF. Ms. SP explained that she frequently wears PPE to test students and would have done so if it appeared warranted based on the training she intended to take. Ms. SP expected that site preparation in the home would be covered by Parents but she had made a mental note not to wear perfume and to wear her hair up. (SP, VI-61, 67, 74-75, 78; S-15).
20. Two District school Psychologists also contacted Parents twice by phone in January 2025 to schedule Student’s psychological evaluation. Additionally, via email dated February 14, 2025, Parents were offered to have this evaluation completed in the home given Student’s inability to attend school at that time due to her medical needs. The evaluator offered to wear PPE for the testing, advised that he anticipated the evaluation would take approximately an hour and a half to complete and would only require a quiet space. The evaluator also offered to evaluate Student during the February school vacation break and advised that Parents were welcome to observe the evaluation. (S-16; CF, V3-43-44).
21. Nurse KL interviewed Mother and reviewed Student’s health records for the Health Assessment. She was not permitted to meet with Student, despite offering to do so, nor was she permitted to speak with any of Student’s medical providers. She prepared a January 21, 2025, Health Assessment Report and made requests and recommendations. As to requests, Nurse KL sought updated information from Student’s gastroenterologist, and epileptologist, on medications, seizure management and medical needs at school, as well as an update on Student’s hearing ability, need for corrective lenses, eye exercises, or vision supports at school, information on birth history and developmental milestones, any changes to medications since November 2024, and information about Student’s ability or plans to be taught to self-administer her inhaler and EpiPen, reading labels for allergens, or other self-care activities. Her recommendations involved supporting Student to develop self-advocacy skills. On February 14, 2025, Nurse KL prepared an Addendum to her Health Assessment Report reflecting the January 2025 information provided from Student’s gastroenterologist, epileptologists and the Home Hospital Education Form. Nurse KL indicated that all this information met the “request” for updates she sought from Student’s medical providers. (S-13; P-O; KL, V1-86, 126-28; Mother, V4-117-18).
22. Parents have not made Student available for any evaluations despite their November 26, 2024, consent to same, Therefore at this time, only the partial Health Assessment and the Educational Assessments Parts A and B have been completed. (S-13; S-14; S-15; S-16; S-17; ZM, VI-35; SP VI-61, CF, V3-45).
23. According to Director CF, given Student’s various medical complexities, and Parents reports of Student’s experiencing issues with cognitive functioning, processing and visual integration, it is important for an updated psychological evaluation to take place so that this information can be provided to the Team to understand how Student’s medical diagnoses are impacting her ability to access the curriculum and make effective progress in school. None of the medical letters from Student’s treating physicians provide this information, and it can only truly be determined via a psychological evaluation. Updated evaluative information will also provide an understanding of Student’s current performance levels and skill deficits that the Team can utilize to propose special education services and supports. (CF, V3-44-45, 67).
24. According to Ms. CTH, a psychological assessment at this time would not be useful, or yield valid results, given Student’s current medical instability due to her ongoing seizure activity and medication trials. She recommends the District wait to conduct it, even if it is past the 3-year reevaluation period. Ms. CTH suggests that the Team convene with Parents and discuss the appropriateness of conducting the evaluations and document the discussion. Further, she believes the District possesses adequate medical information to understand the Student’s neurological profile, even though the epilepsy diagnosis was made after the most recent psychological evaluation. Parents agreed with her recommendation. They also declined having evaluations occur both now and again before three years, as was offered, and refuse to have any testing done in their home. On cross-examination, Mother acknowledged that an evaluation and data were necessary prerequisites to removing provisions from an IEP. Parents do not believe, however, that Student must receive psychological evaluation before returning to school. (CTH, V4-33-36, 48-49; Mother, V4-111-12, 152-54, V5-16-19, 39, 71; Father, V5-123).
25. On February 7, 2025, the District scheduled a meeting to review the completed evaluations and any updated medical documents. Indicating that the date had not been collaboratively scheduled, Parents declined to attend. They offered to meet when all consented to evaluations were completed, after Student’s homebound confinement ends. This scheduling challenge was not atypical for Parents. Historically there have been difficulties scheduling meetings with Parents, despite the numerous meetings held. (P-H5-H6, H12-H16; CF, V3-45-46).
26. On February 7, 2025, the District filed its *Amended Hearing Request*. Parents filed their response on February 18, 2025. (S-1; S-2).
27. The Proposed IEP contains the same Parent Concern statement as in the 23-24 IEP. It does not include information from the 23-24 IEP Student Strengths and Key Evaluation Results Summary not rejected by Parents pertaining to Student’s extensive medical background, or the language “please carefully and thoroughly read/review [Student’s HCP] and attached packet for in depth information.” However, it does include the following statement, “refer to the [HCP] and [EAP]”. The Proposed IEP lists Student’s various diagnoses, spanning 2019 through 2024, the date on which each diagnosis was provided, and the name of the doctor who made the diagnosis. (S-5; P-B57-B92; P-I19-I41; CF, V3-147-50).
28. Father was concerned that Student’s doctors’ names are included in the IEP. (Father, V5-128-29).
29. Neither the Proposed IEP nor the HCP includes a provision for excusing Student’s absences without the need to submit medical documentation. Director CF explained that this was purposefully excluded because it was vague and unclear about when Student was actually medically unable to attend school. She believes Student should follow the attendance policies and practices of the District, explaining that these policies provide opportunities to meet with families after a certain number of unexcused absences so as to engage and communicate about what is causing the absences and to formulate plans to get students to attend school. If the absences are medically related, the District can work with parents to get the supporting documentation of the medical conditions. Without documentation, the District cannot confirm that absences are truly for medical reasons. Father, however, does not believe anything would prohibit modifications being made to the attendance policy for Student, and wants the attendance accommodation to be added to the IEP. (S-5; P-I19-I41; CF, V3-78-79, 177-78; Father, V5-127).
30. While neither the Proposed IEP nor the HCP includes a provision for Student to receive tutoring when she is absent for more than 3 days, Director CF indicated that there was no medical documentation supporting such need. Further, according to Director CF, it is unusual for an IEP to contain tutoring supports[[29]](#footnote-29). While she acknowledged that tutoring is an appropriate support for students, including special education students, in certain circumstances, it is not typically an IEP service. Rather, it is offered outside the IEP process, in response to receipt of a Home Hospital Education Form (such as occurred with Student), a disciplinary consequence, an injury or illness requiring a student to be out of school on a short-term basis, and other temporary circumstances. Thus, including it in a document like an IEP that is “static” and pertains to services for students while they are in school, does not seem appropriate. Parents believe this accommodation should be provided, even without a medical recommendation, based upon a “Question and Answer” document on DESE’s website pertaining to providing services in accordance with Home Hospital Education Forms for students with chronic illnesses. When questioned, Director CF confirmed she had not recently reviewed this DESE document. (S-5: P-I19-I41; P-K22-35; CF, V3-124-27, 189-91; Mother, V4-172).
31. The provision for Student to receive a 1:1 healthcare paraprofessional was moved from the Proposed IEP to the 12/24 HCP. Director CF explained that while the District and Team fully believe Student requires a 1:1 paraprofessional to support her academic, social-emotional and health needs, Parents insisted that this paraprofessional not provide any support to Student in academic or social areas, but rather only to support her health needs. This was confirmed by Father. Based on this, the Team decided that provision of the 1:1 paraprofessional should be a part of the HCP, and not the IEP. Nurse KL, however, included a comment on the HCP draft Google document indicating that she believed a 1:1 registered nurse may be appropriate for Student[[30]](#footnote-30). While further medical information may make this unnecessary, at that time, Nurse KL believed this to be an appropriate recommendation. According to Nurse KL, she made this suggestion due to Student’s numerous diagnoses and the medical symptoms they encompassed, as well as the difficulty that non-medically trained staff may have in interpreting the symptoms and distinguishing them from the diagnosis, such as identifying the difference between a migraine and a seizure. This recommendation was not related to administering Student’s rescue medication prescriptions.

Parents disagree that the 1:1 paraprofessional should be removed from the IEP and included only in the HCP, as they consider the 1:1 paraprofessional to be a related service and are concerned that if it is not in Student’s IEP, Student could lose her procedural protections and due process rights under the IDEA to the continuation of this support. They also support the provision of a 1:1 registered nurse given Student’s medical needs. (S-5: S-51; P-I19-I41; P-K24; CF, V3-124-27, 191-92; Mother, V4-83, 98, 118-19, 174-76, V5-95; Father, V5-110; KL, V5-158-60).

1. The Proposed IEP replaced the accommodations in the 23-24 IEP that Student is “not responsible for classwork she misses when she is out, other than when the assignment is utilized to help teach her mastery of a concept and/or a subject” and that Student is “not to be tested or assessed on any content missed while absent until she has been given ample time to receive the missing instruction to the level the other students have received”, with the following classroom modifications:

“Content: Curriculum modified for essential components, key facts, or concepts of grade level standards for the following curriculum areas- Math, English, History, Science.

Instruction: Develop a plan for completion of missing classwork that will include a list of all missing assignments, a prioritized schedule for completing them, clear deadlines for each task, and communication with the teacher regarding any concerns or accommodations needed such as access to necessary materials like notes or handouts.

Student Output: Allow [Student] to use sentence starters to guide her writing; Reduced work samples: Focus on quality vs quantity.”

Director CF explained that the wording of the 23-24 IEP’s accommodations made it difficult for teachers to determine if Student was making progress, because Student was not held responsible for any missed learning. Requiring make-up work is critical to identifying mastery and knowledge of content; it does not penalize the absence, but rather it allows teachers to assess learning and adjust their instruction accordingly. Father also expressed concerns with what “modified work” really meant and if completing one assignment was sufficient to confirm Student’s understanding of the content or to be used as her term grade. He is also concerned that Student’s make-up work will not be done independently, but rather through the support of a staff member. Mother, although also being concerned that under the current accommodation language Student was not graded on much work each year given her extensive absences, felt the proposed provisions were confusing and contradictory. (S-5; P-B49-B92; P-I34; CF, V3-164-68; Mother, V4-97-98; Father, V5-126, 128).

1. The Proposed IEP also includes several provisions related to the disputed speech and language evaluation recommended supports. Specifically, it indicates that despite Student’s expressive vocabulary skills being within average range, “at times [Student] experiences memory or word retrieval difficulties. [Student] requires accommodations to address this concern.” It also includes accommodations to use the strategy of circumlocution and provides for Student to receive word banks. (S-5, P-I30, I33; Mother, V4-106).
2. With regard to Parents participating in staff trainings, both Nurse KL and Director CF agree it is important to have Parents present as it builds trust, but they believe the nurse should run the trainings and Parents should provide the background information. Further, if Parents choose not to attend and Student is in school, it is in Student’s “best interest” to still proceed with the training. School trainings should not mandate parental inclusion as such a requirement could prohibit necessary trainings from occurring. Nurse KL does not interpret the medical documents to require Parents to be present for every training, but Parents disagree and believe Student should not attend school until they participate in trainings held with all staff working with Student. However, they do not think finding a mutually agreeable time will be an issue as Parents will make themselves available for trainings. (KL, V1-215-18; CF, V3-83-84; Mother, V4-158-67).
3. The Proposed IEP does not include the 23-24 IEP’s accommodation that in the absence of Student’s “1:1 health support aide” “other staff will receive training to cover [Student’s] health needs when her assigned health aid is not available”. (This was one of the condition’s Parents word-smithed their rejection for – specifically Parents rejected the word “support” in 1:1 health support aid” and the words “other support” and “available” from the remaining sentence). This accommodation was not included verbatim in the 12/24 HCP either. (P-B67; P-L).
4. Although Nurse KL and the MASSTART Nurse discussed how to address Student’s medical needs in cases of a lockdown, fire drill or other times when staff were unable to access the school nurse, and the HS EAP contains a “Lock Down Procedure” section, a specific procedure is not developed. Director CF indicated that these situations could be supported via a delegation authorization that Parents had specifically excluded in their consents for medication administrations. Student’s EAP indicates that during a lock down, the school process is to be followed and “if safe to do so”, Student’s 1:1 paraprofessional and her “supplies” are to remain with Student, the School Nurse will meet Student at the evacuation site, and Student’s emergency medical information will be in possession of “School Administration and Incident Command”. Although no staff have been trained for such situations, Principal DK explained that they would follow the HCP and call 911 if the nurse was ever unavailable and there was a medical emergency. (S12; S-33; P-F17, F19; P-K3; KL, V1-222-29, 236-37; DK, V3-14-15; CF, V3-61-62, 169).
5. Parents are “fearful” about what will happen if Student requires medical intervention in emergencies. While the 1:1 paraprofessional has access to some of Student’s medications, Parents have only permitted the School Nurse to administer Student’s medications and explicitly crossed out the ability for any medication administration to be delectated to other personnel. Thus, currently, only Nurse KL can provide these medications, and she confirmed there is no guarantee Student would receive these medications if she could not be accessed to provide them. Nurse KL advised that she was still researching the ability for the administration of Student’s rescue medications to be delegated to another non-registered nurse licensed staff. If that were possible she would need to create a Medication Administration Plan (MAP), but to date, no MAP has been created. Nurse KL agreed that such a plan should be in place prior to Student attending school in person. (S12; S-33; P-F17, F19; KL, V1-222-29, 236-37; DK, V3-14-15; CF, V3-61-62, 169; Mother, V4-119).
6. The District’s Medication Delegation Coordinator, an essential staff member for any medication delegation to take place, retired at the end of November, and the District has been unable to hire a new person despite having posted for it. Thus, currently, regardless of parental delegation consent, all nurses are administering all medication until that staffing issue is resolved. (CF, V3-179-80).
7. Both Mother and Father testified about their significant concerns about the students' health and safety, which have driven all their interactions with the district. Student’s medical complexities are unique, complex and life-threatening. They can arise without warning, and are an intertwined “chain-reaction”. It is extremely important that the medically recommended precautions, such as the IPP, are followed to reduce the risk of a serious medical incident. Based upon past experiences[[31]](#footnote-31), Student is hesitant and anxious about advocating for her medical needs especially to adults. At other times, her medical conditions make it impossible for her to express her needs, such as when she is having a seizure. Mother explained in great detail all the life-threatening risks to Student’s safety and well-being. She is “terrified of it being like a perfect storm and all those things being triggered at once, and what that’s going to do to her”. Father explained his belief that clear, easy to follow plans are needed to ensure that the health and safety supports Student requires are properly implemented when she is in school. Parents believe that the District’s plans, inclusive of the IEP, HCP and EAP, are vague, confusing, and hard to follow. They object to the use of “if possible” in IEP provisions. Parents are also concerned with the District’s removal of health accommodations from Student’s IEP, its failure to follow through with existing IEP requirements such as having air conditioning units in the building or cleaning the building with non-approved cleaning products, and with the District’s belief that it can delegate medication administration despite Parents’ explicit lack of consent for this. Finally, Parents want to ensure accountability for the District, so Student can be confident attending school and they are concerned that a reliable point-person has not been identified to communicate with Parents at the HS. (Mother, V4-86-92, 131-32, Father, V5-106-08, 113-17, 120-22, 124, 129-30).
8. In Director CF’s opinion, Student’s prior IEPs hinders her ability to access a FAPE. Specifically, several accommodations allow Student to miss school without justification or documentation, thereby keeping Student from accessing needed educational interventions. Although this IEP provides for Student to receive tutoring when absent, the District has offered this but the offers have been declined. Student’s absences and Parents’ declining virtual tutoring offers are based upon Parents’ reliance on language in the prior IEPs, however medical documentation to support these provisions (air conditioners and reduced screen time) does not exist. Additionally, the provision that Parents must attend every training, not just be invited to them, also hinders Student’s receipt of a FAPE, as it can cause necessary trainings to be delayed. (CF, V3-63; 180-81, 193-94).
9. Parents are not interested in Student attending a school other than the HS. Student has a substantial supportive friend group, and attending a different school would not support her social emotional needs and is contrary to Student’s wishes. Additionally, the HS is next door to the fire department and is less than a mile from the nearest hospital, and Parents are mindful about where the nearest fire department, ambulance and hospital are in relation to any school building that Student attends. (Father, V5-138-40; Mother, V5-146-48).
10. While Parents testified extensively as to their mistrust of the District, they also testified to positive individual interactions and identified several specific personnel in the District with whom they have had good relationships. For instance, prior to the start of the school year, they appreciated the ongoing communication with Principal DK and the large, dedicated training that the District conducted. They also recognize the care Ms. KS, the speech and language pathologist who performed Student’s 2023 evaluation, prior school nurses and several other prior or current teachers and staff members, whom Mother identified by name, have shown to their daughter. (Father, V5-105; Mother, V5-148-52).

# **LEGAL ANALYSIS:**

1. Free Appropriate Public Education

The right to a free appropriate public education (FAPE) for all students with a disability is guaranteed by both federal and state law[[32]](#footnote-32). A FAPE is “special education and related services [consisting of] both ‘instruction’ tailored to meet a child’s ‘unique needs’ and sufficient ‘support services’ to permit the child to benefit from that instruction[[33]](#footnote-33).” The services that comprise a FAPE must be provided in the "least restrictive environment[[34]](#footnote-34)” or LRE. To constitute 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[[35]](#footnote-35).” The examination of effective progress shall be made in the context of the educational potential of the student[[36]](#footnote-36).

Provided the proposed IEP is “custom tailored” and “individually designed” to deliver “educational benefits”, that are “reasonably calculated to confer a meaningful educational benefit” to a student to “to enable the child to make progress appropriate in light of the child’s circumstances”, a school district has met its IDEA obligations[[37]](#footnote-37). “… [A]n IEP is designed as a package. It must target ‘*all* of a child’s special needs’, whether they be academic, physical, emotional or social”[[38]](#footnote-38). Evaluating an IEP requires viewing it as “… 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”[[39]](#footnote-39).

An IEP must provide students with an education that is “markedly more demanding” than providing for “‘merely more than *de minimis’* progress from year to year”[[40]](#footnote-40). At the same time, school districts are not compelled to afford a child with a disability an ideal or optimal education[[41]](#footnote-41). Under IDEA, students are entitled to an “appropriate” education and “adequate” IEP[[42]](#footnote-42). Educational supports and services in an IEP need 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[[43]](#footnote-43)”. They must, however, ensure a student can show “‘demonstrable improvement’ in the various ‘educational and personal skills identified as special needs’” and provide for a student to make “effective” progress[[44]](#footnote-44).

1. Reevaluations and Consequences for Parental Refusal to Allow the Same

Under both the IDEA and the Massachusetts special education law, school districts are required to fully evaluate every child suspected of having a disability to determine eligibility for special education services[[45]](#footnote-45). Thereafter, “every three years, or sooner, if necessary, the school district shall, with parental consent, conduct a full three-year reevaluation consistent with the requirements of federal law”[[46]](#footnote-46). Under IDEA, reevaluation is warranted not only “at least once every three years unless the parent and the local educational agency agree otherwise” but also whenever “the local educational agency determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation” or if a student’s parents or teacher request one[[47]](#footnote-47). (Emphasis added).

If parents fail to consent to such reevaluations, and a district believes this failure or refusal of consent will “result in a denial of a free appropriate public education to the student”, the district must use due process procedures to pursue consent override for such reevaluation[[48]](#footnote-48). Thus, while districts, in the first instance, are required to seek consent prior to conducting a three-year reevaluation of a student, in the absence of such consent, a district can ask for the intervention of the BSEA if it believes that a reevaluation is necessary in order for the district “to perform its IDEA-mandated duty” of developing an appropriately tailored IEP[[49]](#footnote-49).

In addition to re-confirming eligibility for special education services, three-year reevaluations provide a Team with current information it can use to “determine present levels of performance, create goals and objectives, design a program and make a placement”[[50]](#footnote-50). Parents who seek to have their child continue to receive special education under the IDEA must, therefore, allow the District to complete these reevaluations[[51]](#footnote-51). The IDEA guarantees that Parents who disagree with the school’s reevaluation, however, have the right to seek an independent evaluation, at public expense if certain criteria are met, and to require the Team to review and consider such independent evaluation for purposes of developing or amending the IEP[[52]](#footnote-52).

The BSEA has consistently held that, with respect to the rights of Parents and districts regarding reevaluations,

“… [a district] has the authority to choose what evaluations it needs as part of its three-year reevaluation in order to develop an appropriate IEP even if the evaluations do not comport with Parents’ view (or Parents’ experts’ view or [another witness’s] view) of what evaluations should occur or what information is needed in order to write appropriate IEPs. In other words, just as Parents cannot control [a district’s] choice of proposed services and placement so long as they are reasonably calculated to provide FAPE, Parents cannot control the evaluations that [a district] reasonably identifies as necessary to determine its proposed services and placement.

At the same time, [a district’s] authority is not unlimited. [A district’s] evaluations cannot be extended to areas outside of its responsibility to conduct a three-year reevaluation and provide FAPE for [a s]tudent. For example, [a district] could not obtain an order from the BSEA for an occupational therapy assessment for [a s]tudent if no occupational therapy services have been proposed or provided, and if there were nothing to indicate that this is a suspected area of disability or need for purposes of providing FAPE to [the s]tudent”[[53]](#footnote-53).

1. Burden of Persuasion

In a special education due process proceeding, the burden of proof is on the moving party[[54]](#footnote-54). If the evidence is closely balanced, the moving party will not prevail[[55]](#footnote-55). Here, the District bears the burden of proof on all issues.

# **DISCUSSION**[[56]](#footnote-56)**:**

Student’s eligibility for special education based on neurological and health impairments is not contested. Nor do the parties dispute the appropriateness of her full inclusion placement, her unique medical needs, their mutual desire to support her in school, or the overall opinion of Student as a strong, resilient, kindhearted and good young lady who faces significant health challenges. However, the parties disagree on essentially all other components of Student’s special education programming. The record clearly reflects years of difficulty by the parties in reaching a consensus over the appropriate educational accommodations and medical supports for Student to address her disabilities and medical needs[[57]](#footnote-57). They have followed, at best, a highly irregular procedure that at times appears to have been in direct conflict with IDEA’s procedural requirements[[58]](#footnote-58). Additionally, due to disputes over accommodations proposed in an unconventional effort to develop an acceptable IEP, Student has not attended any day of school this year, even though approximately 3 months of absences were for reasons other than her own personal illness or medical appointments.

Although there was extensive testimony and evidence presented about other issues[[59]](#footnote-59), the issues to be addressed in this hearing involve whether the Proposed IEP and other medical plans provide Student with a FAPE, what the District’s ongoing obligation is to provide Student with her “stay put” services, whether Student should be reevaluated at this time, and the ramifications if Parents do not make her available for this testing. As stated above, the burden of proof on all of these issues lies with the District.

Upon consideration of the documentary and testimonial evidence presented, the applicable law, and the parties’ arguments, I conclude that the Proposed IEP, upon modification, consistent with the terms set forth, *infra*, is reasonably calculated to provide Student with a FAPE. I also find that with some modifications the HCP and EAP can be made appropriate. As such, Student is no longer entitled to any “stay put” services. Finally, I conclude that sufficient evidence supports Student being reevaluated at this time, and failure by Parents to make her available for testing may potentially limit the District’s obligation to provide her with special education and related services beyond what is ordered in this *Decision*. My reasoning follows.

A. ISSUES REGARDING THE IEP, HCP AND IPP:

At the outset I recognize the evident love Parents have for their daughter, and the deep care and concern for her well-being that has guided their decision-making and advocacy. Although I sympathize with Parents’ caution and anxiety about sending Student to school, here, form has been prioritized over substance at the expense of Student’s education. I find no evidence to suggest that Parents’ worries about Student experiencing a “perfect storm” of medical events is at greater risk in the school setting, with the supports already in place for her at the HS, than in any other facet of her life, including at home. While I fully acknowledge that Student’s health issues pose a serious risk to her well-being, and that she requires medical and educational services, supports, accommodations and modifications consistent with her doctors’ advice, according to her physicians, these medical conditions should not preclude her from leading as normal a life as possible. This includes participating in school and school-related activities.

Student needs to return to school when she is medically able to do so. Parents state they want this to happen only once clear, easy to follow plans and documents for Student are developed, but this is not a feasible or possible goal. Student’s health needs are complicated and unique, and it follows that her medical plans will also be detailed and complex[[60]](#footnote-60). IEPs, by their nature, are updated at least annually and are not static. Neither are any of the other medical plans that Student has (SAP, HCP and EAP). Nor does the record indicate that clarification on the wording in each of the plans will resolve the parties’ disputes. As Father eloquently testified, the parties have been,

“stuck to this revolving door of IEP meeting, reconvene, end of school year, start of school year, have a meeting, have an IEP meeting, have a follow-up meeting. It – it’s just nonstop. It doesn’t end and at some point, it just has – it has to end. There has to be- there has to be some document that everybody’s in agreement on that can be followed, that we have confidence [in] as parents. Number one, my daughter has confidence in, that’s going to get her into that building.” (Father, V5, 120; *see* Mother, V4, 141 “[Student] has lost another year of her life that she is not going to get back arguing over things that we all should be coming together to work collaboratively to support her because she did not ask for this life”).

For Student to receive a FAPE, it is essential that the parties begin to implement and work with the IEP and other medical plans (SAP, EAP and HCP) that result from this hearing process. These plans are subject to change in the future based on updated medical information. With this in mind, I examine each disputed plan in turn[[61]](#footnote-61).

1. The Proposed IEP

In general, an IEP must be viewed as a snapshot, not a retrospective, and examined based upon what was before the Team at the time it was written[[62]](#footnote-62). However, if circumstances warrant, it may be amended during its tenure, as long as in so doing, proper procedures are followed. An IEP is a description of a dish, not a recipe. I consider the Proposed IEP from this perspective.

Parents challenge the Proposed IEP to the extent that it does not include their current concerns, contains identical goals and objectives as prior IEPs, eliminates important background summary information about Student, reduces services, substantially reduces accommodations, and does not include recommendations contained in their medical documents. Parents are additionally concerned that the Proposed IEP does not properly address their bullying concerns, transportation services, transition services, the impact of Student’s disabilities on her life, or how Student can access the curriculum or make effective progress.

I consider each argument in turn, and conclude that in order to ensure that Student receives FAPE, several modifications, as delineated, infra, must be made to the IEP[[63]](#footnote-63).

Parents are correct that the Proposed IEP contains identical parental concerns as the prior IEPs. While Parents may still have those concerns, they also have additional and different concerns that were not included in the Proposed IEP. Although Parents, their legal counsel and the MASSTART Nurse fully participated in the Facilitated Team meetings to develop the Proposed IEP, Parents updated and current concerns were never added. Parents must be provided with an opportunity to revise to the statement of parental concerns by deleting portions that no longer apply and adding an additional paragraph[[64]](#footnote-64) summarizing any new concerns that are not already included.

The Proposed IEP also contains essentially the same goals and objectives as prior IEPs. These goals and objectives also correspond to what Parents accepted from the prior IEPs. However, unlike the issue with duplicative Parent concerns, given that Student has not been attending school this school year, and, that she has yet to be made available for any testing, I do not find any issue with the goals and objectives of the Proposed IEP. The Team did not have any information before it to indicate that new or different goals or objectives are now needed for Student. Thus, maintaining the prior goals and objectives is wholly appropriate[[65]](#footnote-65).

Further, I agree with Parents that some of the background summary information about Student that existed in prior IEPs is not included in the Proposed IEP and should be. I refer here, specifically to certain statements involving Student’s medical background, and the “snowballing” effect of her potentially life-threatening medical conditions (that can be found in the first two paragraphs of the 23-24 IEP’s section for “Student Strengths and Key Evaluation Results Summary” as well as the second and fourth paragraphs written in response to the question “How does the disability(ies) affect progress in the curriculum area(s)” for PLEP-A and PLEP-B). This background information offers staff a foundation for better understanding Student's medical needs and disabilities, and for identifying more effective ways to support her. Awareness of this information is important for all staff working with Student, particularly now that she will be starting school in a new building where she is not known to most of the staff. Thus, the above-noted information should be summarized and added to the Proposed IEP’s section relating to “Present Levels of Academic Achievement and Functional Performance: Additional Areas” (PLAAFP:AA). Further, the sentence “Refer to Individual Health Care Plan (IHCP) and Emergency Action Plan (EAP)” should be revised to also reference Student’s SAP and note that all staff working with Student must be aware of, trained on, and follow all these plans[[66]](#footnote-66).

Additionally, the Service Delivery Grid in the Proposed IEP from that of the 23-24 IEP differs. It eliminates 3x 40 minutes/week of executive functioning services, reduces math services from 5 X 40 minutes/week to 3 X 40 minutes/week, and moves the daily direct services of Student’s 1:1 paraprofessional to her HCP but eliminates the 20 minutes/week Parent consultation. However, it also increases literacy services from 2 x 40 minutes/week to 3 x 40 minutes/week. No evidence was presented explaining why the District chose to eliminate, decrease or increase any of the academic services. Although Student’s substantial absences could justify the slight increase in literacy services, no new evaluative information has been obtained to support the reduction in executive functioning or math supports. While Student’s last Academic evaluation occurred less than 3 years ago, that evaluation, administered by Ms. KS, was used to prepare the 23-24 IEP that proposed the executive functioning, math and literacy/ELA services that have now been changed. In this regard, I find the District has not met its burden to show why the executive functioning and math service.es were reduced, and therefore, they must be included.

As for the decision to move the 1:1 health paraprofessional’s services into the HCP, the District explained this was done because Parents insisted this person be used solely for health purposes and not for educational purposes. Parents agreed they feel this way, but they nevertheless object to removing the 1:1 paraprofessional from Student’s IEP. A health-based 1:1 support is indisputably essential for Student, is recommended by Student’s doctors, and is not expected to change[[67]](#footnote-67). Further, to avoid future unnecessary Student absences, a substitute 1:1 must be trained and continually available support should the identified 1:1 support be absent.

Additionally, although Parents requested the 1:1 be a RN, and Nurse KL even suggested it in her comments on the draft HCP[[68]](#footnote-68), the record does not support a finding that such licensure is necessary for Student to receive a FAPE. The recommendation by Student’s pediatrician in the September 17, 2024 letter accompanying Student’s SAP specifically said “I support the continued provision of (sic) 1:1 health paraprofessional”. Since the very purpose of this letter was to provide recommended supports to Student in school in light of her medical conditions, particularly her recent epilepsy diagnosis, had RN licensure for Student’s 1:1 been necessary, it presumably would have been recommended in that document[[69]](#footnote-69).

As both parties agree that the 1:1 paraprofessional is provided for health reasons only, not for educational supports, the 1:1 paraprofessional’s responsibilities can be so clarified in Student’s IEP. In addition to observing and assisting Student with her health, and ensuring that her IPP is implemented, the 1:1 must carry and have immediate access to all supplies and authorized medications (such as an inhaler or EpiPen, if so allowed) needed for treatment of Student’s chronic conditions. The 1:1 health paraprofessional will also be responsible for contacting Parents whenever Student has a health office visit or if there is a concerning virus in the building[[70]](#footnote-70).

The record clearly demonstrated Student’s need for immediate access to all her medications whenever she is experiencing a medical episode. However, a back-up plan for emergency situations, or for when access to the School Nurse is compromised, does not exist, other than the overall protocol that the school will call 911 to address this need. To some extent, this is due to Parents refusal to consent to allowing the nurse to delegate administration of Student’s medications to a designated staff person. Nurse KL acknowledged, however, that she is still researching whether she can so delegate administration, and there remains an existing and ongoing staff vacancy for a Medication Delegation Coordinator. Therefore, at this point in time, all medication in the District can only be administered by school nurses[[71]](#footnote-71). While the plan and protocol to call 911 in an emergency is appropriate, and legally sufficient for FAPE purposes, the outstanding questions about medication delegation need to be resolved. Thus, the District shall immediately, upon issuance of this *Decision*, obtain a legal opinion as to the nurse’s authority to delegate administration of all of Student’s medications, as well as what medications can be carried by Student’s 1:1 paraprofessional so that this can be clarified and medication delegation can appropriately occur upon the hiring of a Medication Delegation Coordinator. Thereafter, once the legal medication delegation authority is clarified and a Medication Delegation Coordinator is hired (which I urge to be done forthwith), Parents consent to such delegation would enhance the options to support Student in an emergency, beyond accessing only Nurse KL or emergency personnel.

Removal of the 1:1 health support paraprofessional from the Proposed IEP also eliminated the 20 minutes/week Parent consultation services associated with this 1:1 paraprofessional, and no such consultation is now part of the 12/24 HCP. Health-related consultation services in the A-Grid are essential for Student to receive a FAPE and consistent with the medical recommendations. The HS Nurse’s participation in such consultations is also appropriate given her critical role in Student’s case. Therefore, 20 minutes weekly dedicated parent consultation time with Student’s 1:1 health paraprofessional and/or the HS Nurse shall be included in the IEP. This will ensure that essential ongoing communication occurs between the parties, thereby fostering trust and collaboration. (This consultation should be used to discuss any questions or concerns that have arisen relating to Student, her medical conditions, her attendance at school, and the implementation of her IEP and other medical plans.)

Additionally, the 1:1 paraprofessional must have weekly direct consultation with the HS Nurse, for purposes of providing input into and reviewing any revisions that may be needed to Student’s HCP and her EAP. This weekly consultation will help address issues such as Nurse KL’s inability to update medical plans and information for several weeks after receipt of the same[[72]](#footnote-72).

I next address Parents’ refusal to consent to the District communicating with Student’s medical providers. Notwithstanding Parents’ right to do so, I find that to receive a FAPE, regular consultation between the District and Student’s medical providers is necessary. Although Parents testified that consent to speak with Student’s doctors was unnecessary, as they will obtain any medical information the District asks for, they never provided any such doctor’s letter when the District requested it in September 2024. Had Parents not withheld consent to direct consultation between the District and Student’s medical providers, the dispute over the air conditioners could have been easily and efficiently resolved. Although the medical documents indicate that hot, humid conditions may be a trigger for several of Student’s medical conditions, none of the documents specifically recommends any type of cooling accommodations or temperature parameters. It is unclear whether an installed air conditioning unit specifically, or an accommodation such as the desktop portable air conditioner, is medically necessary. Parents relied on their “stay put” rights to insist that air conditioners meeting their chosen specifications were required and used the absence of these specific devices as justification for not sending Student to school for many weeks despite her being otherwise healthy enough to attend.

I am mindful of Parents’ concerns over prior communication overreach with Student’s medical doctors when consent was given to the District in the past. As such, A-Grid consultation by the HS Nurse and the 1:1 health paraprofessional with a mutually agreed upon medical provider(s) should occur at regularly scheduled intervals (monthly, perhaps) unless exigent circumstances arise which require more frequent contact. Additionally, I highly encourage Parents to have an appropriate medical provider attend Student’s Team meetings to provide input into future IEPs. Interestingly, Father acknowledged that using a designated medical provider to communicate with the District was a good idea. The regularly scheduled consultations will provide time to discuss updates to Student’s medical status, clarify medical questions[[73]](#footnote-73), and confirm changes that may be needed to her HCP, EAP, or SAP. Although Parents ultimately retain the right to reject this consultation[[74]](#footnote-74), Parents’ consent will serve to enhance Student’s safety and ultimately her ability to access FAPE in the least restrictive environment.

Parents’ final challenge to the Proposed IEP involves its’ elimination of a substantial number of accommodations and its failure to include accommodations recommended in doctors’ letters. I begin by noting that I place no weight on the curiously, almost identical, January 2025 recommendations of Student’s neurologist and gastroenterologist to “defer to parents/caregivers” about the “specific accommodations that would enable [Student] to access the curriculum” given their general nature, the lack of testimony from either medical provider and Parents’ refusal to allow the District to seek clarification thereto, as noted above.

The District acknowledges that many accommodations from prior IEPs are not included in the Proposed IEP as those that remain appropriate but are solely medically based have been moved into the HCP or the EAP. Some accommodations were also eliminated as they were not supported by any medical documentation, are not needed to provide Student with a FAPE, or impede Student from receiving a FAPE. The specific accommodations that are primarily at issue involve Student’s IPP; requiring air conditioners or air purifiers in each of Student’s classes; excusing Student for medical reasons without providing a doctor’s note; providing Student with a tutor after three absences; having Parents attend all staff trainings on Student’s plans; assigning Student to classes with at least one familiar peer; and notifying Parents anytime there is a virus in the building, if there is a substitute nurse, or if Student’s 1:1 paraprofessional is not in school.

First, references to Student’s IPP must be included in Student’s IEP[[75]](#footnote-75). Student’s IPP has been in place for many years, and Parents have consistently provided medical letters and FARE forms from Student’s immunologist supporting it to date and confirming the approved cleaning products. Staff are all well-versed in its provisions as confirmed by the testimony of Ms. KS, Principal DK, Mr. ZM, and Ms. SP. Implementation of the IPP is the primary responsibility of Student’s 1:1 paraprofessional, but all staff must be aware of and follow it. Although a medically-based accommodation, reference to the IPP must be included in Student’s IEP, not just in her medical plans, to ensure it is subject to all the rights and privileges of the IDEA.

The District does not necessarily dispute Student’s need for a cooling support accommodation (as evidenced by its efforts to secure desktop portable air conditioners), but the parties cannot agree on the specific accommodation that should be included in the IEP, and, as discussed above, no medical letter provides any recommendation. Every classroom at the HS has an air purifier and the District has purchased and will provide Student with desktop portable air conditioners. Without any medical recommendation to the contrary, I conclude that to receive a FAPE, Student’s IEP does not require the accommodation that her classrooms have air conditioners or air purifiers. Generally, when parties reach impasses, the input of a third-party expert can be instrumental in moving them towards resolution. Unfortunately, Parents prohibited this from occurring with respect to the air conditioner stalemate, and the unfortunate result was that Parents refused to allows Student to attend school when she was otherwise healthy and able to learn, thus impeding Student’s ability to receive a FAPE.

I also find that the IEP need not include an accommodation excusing Student for all medically related absences without provision of a medical note. Parents mistakenly rely on statements pertaining to students with chronic medical conditions contained in the DESE *Question and Answer Guide* related to the implementation of the Home or Hospital Educational services regulations to support their contention that this accommodation is appropriate[[76]](#footnote-76). Massachusetts regulations relating to Home or Hospital Educational services are clear that such services must be provided “*upon receipt of a physician’s written order* verifying that any student enrolled in a public school … must remain in at home or in the hospital on a day or overnight basis, or any combination of both, for medical reasons ….”[[77]](#footnote-77) (emphasis added). However, nothing in this *Guide* provides for students with chronic illnesses to be excused from school without a medical note. The *Guide* advises that the IEP of a student with chronic medical illnesses “*may* be tailored to address expected periods of time when the student is unable to attend school …” (emphasis added), but this is not a mandatory requirement. Moreover, Student’s medical conditions are not such that her absences cannot truly be “expected”. Student’s epilepsy is evolving, and the medical letters confirm that many of her other conditions can go into remission for months or more at a time[[78]](#footnote-78). Additionally, the parties’ historical interpretation and implementation of this accommodation have had the unintended consequence of facilitating Student’s absences from school this entire year. Thus, I agree with the District that this accommodation must be eliminated as not only is it unnecessary for Student to receive a FAPE, but it has also impeded her from receiving one. Going forward, Student’s absences shall only be excused pursuant to the District’s general attendance policy.

Further, to receive a FAPE, Student does not currently need an accommodation for tutoring after three absences. Tutoring can be an appropriate IEP accommodation, particularly for students with a seizure disorder or other chronic medical conditions[[79]](#footnote-79). However, Student is currently medically unable to access any additional educational supports beyond the school day or school year. The January 23, 2025, Home Hospital Education Form indicates that Student requires a partial day of learning instruction restricted to the hours of 10 am to 2 pm “with gradual increase per [Student’s] tolerance” up to a full day. Mother acknowledged that although Student may be in a position to start accessing more learning time sooner, she was not ready to do so right now. Further, it is unclear if Student would actually need tutoring supports when she is medically able to return to school. As Ms. KS credibly testified, Student’s need for and ability to access tutoring is variable and not able to be predicted. Student possesses strong academic abilities that have enabled her to maintain grade level performance or close thereto despite years of extensive medically related absences, likely due to her “amazing” resiliency, intelligence, hard-work, and determination.

However, consistent with Student’s epileptologist’s January 21, 2025 letter, the recent impacts of Student’s epilepsy, medication side effects and the co-morbidity of this condition with Student’s other conditions may cause challenges with Student accessing the curriculum. This, in turn, could warrant the need for future supplemental educational services. Thus, guidance from Student’s medical providers as to Student’s ability to access additional educational supports beyond the school day or the school year, or the need to limit educational services, will be important for the Team to receive on an updated basis, and to review annually[[80]](#footnote-80).

As for trainings, I agree with the parties that it is necessary that all staff working with Student be trained on her medical needs, and that such training is required for Student to receive a FAPE. Thus, the IEP must include a training accommodation. With regard to the role Parents should play in these trainings, both parties recognized the benefit of their involvement, and including Parents in trainings is consistent Student’s epileptologists’ January 21, 2025, recommendation that “to facilitate seizure safety in school [I] support the provision of training with school personnel and [Student’s] parents” [[81]](#footnote-81). However, disputes over the wording of the “stay put” training accommodation as it relates to Parent involvement has been another impediment to Student’s access to her education and attendance this school year. Not only do the parties dispute whether trainings could be held without Parents present, Parents refused to acknowledge trainings that occurred without them. Thus, appropriate training accommodations must provide that all staff working with Student will be trained on Student’s current HCP, EAP, SAP and IPP by an RN at the start of the school year, and whenever changes are made to each of these Plans, and must sign a training log[[82]](#footnote-82) upon completion of a training. Parents will be invited to, but not required to participate in all trainings. At their request any scheduled training will be rescheduled to a mutually available time within one school day of the proposed training. Parents’ failure to participate in any such trainings shall not nullify the training.

I have already addressed the last disputed accommodation (i.e., what Parents need to be notified about) as part of my discussion regarding the 1:1 health paraprofessional, above, and do not repeat it here[[83]](#footnote-83).

Finally, the following four accommodations remain educationally necessary and appropriate for Student and should be included in her IEP even if they are also in the HCP and/or the EAP: 1) Student will be given an extra set of textbooks and materials to keep at home; 2) Student will be given a separate work space and supplies and materials designated for her use only; 3) Student will have access to her designated bathrooms, water and snacks at any time; and 4) The 1:1 paraprofessional will notify appropriate staff when medications are administered that may affect Student’s performance in school.

2. The HCP

Parents’ objections to the 12/24 HCP involve its new format, its failure to include information from prior draft HCPs, its failure to explain how to mitigate a flare up of Student’s medical conditions, and its failure to include Student’s SAP verbatim. Parents also dispute the accuracy of information about Student’s current medications, and object to the failure to mention the prohibition of medication administration delegation, that Parents be told about any medication side effects, or the requirement that Parents be informed whenever Student is administered medication. Parents are also concerned that providing for Student to go to an alternative space to avoid allergen triggers could lead to her being improperly removed from the school environment.

In general, parents cannot dictate the format of HCPs. While Parents may not like the new format, Nurse KL provided sufficient justification for the format change. Changes to document format do not require parental consent. Further, with certain exceptions noted below, I do not find that any of the provisions Parents identified need to be included in the 12/24 HCP, nor do I support Parents’ remaining objections to the 12/24 HCP[[84]](#footnote-84). Some of the provisions Parents seek are either already in another medical Plan or are in the IEP, while others are not supported by the medical documents in evidence.

Nurse KL acknowledged she needs to update the 12/24 HCP to incorporate the January 2025 doctor’s letters. If not already done, the 12/24 HCP must be updated within 10 school days of receipt of this *Decision*. Going forward*,* if other specific provisions beyond those required by this *Decision* are sought to be added or deleted from the HCP, and Parents continue to withhold consent for the District to speak with any of Student’s doctors, then changes to the HCP shall only be made upon receipt of a medical letter specifically indicating the revisions and/or making edits directly to it.

As to the modifications needed to the 12/24 HCP, the Equipment section should be deleted in its entirety (as it is not accurate in that it does not include the SAP or Student’s rescue medications). Additionally, the “Migraines/Other Neuro” portion of the chart from the prior draft HCPs remain accurate and appropriate for Student and should be included[[85]](#footnote-85).

Further, Student’s HCP must include the intervention of “avoid overheating”. As explained above, an accommodation to provide an air conditioner is not needed for Student’s IEP, however support exists in the medical documents since 2017 that heat and humidity are triggers for Student’s medical conditions and the documents specifically recommend that Student avoid over-exertion on hot or humid days.

Finally, based upon my conclusions in this *Decision* with regard to the SAP being a stand-alone document, and the need for the IPP to be in the IEP, the “Infection” portion of the chart should be deleted as it is already included in the “Allergy/Asthma” portion of the chart, and the information in the “Neurological” portion of the chart should be deleted and replaced with a statement noting Student’s diagnosis of Epilepsy with Generalized Tonic Clonic Seizures, that she has an SAP, and that all staff working with Student must be aware of, trained on, and follow the SAP.

3. The EAP

Parents’ objections to the HS EAP consist of its failure to include signature lines; its failure to include the five numbered procedures from the MS EAP pertaining to the process to follow if there is a need to call emergency care services; concerns with “if it is safe to do so” in the Lock Down Procedures section and with this section generally; the requirement for EMS personnel to call 911; the failure to include the SAP; the inclusion of instructions to follow Student’s FARE form; the lack of a nurse on the after-school staff list; and issues with the listed diagnoses.

I agree with Parents that the EAP should provide signature lines, but it shall clearly reflect that signatures signify receipt of the document, only, not consent to its terms. The EAP should also include the MS EAP’s five numbered procedures. Parents remaining objections are not supported.

The Lockdown Procedure should not be removed and is a necessary procedure for the EAP. It is also wholly appropriate for the Lockdown Procedure to indicate “if safe to do so”. as this Procedure applies to situations when the school is in lockdown and thus it may not be otherwise advisable, appropriate, or safe to follow the indicated procedures for reasons beyond Student’s medical status. However, to address any emergency issues that may arise to Student during a lockdown, the Procedure should be revised to include provision to call 911 in any medical emergency.

It is also inappropriate to cut and paste the SAP into the EAP. The SAP (and the FARE form) are stand-alone documents so the HS EAP need only reference them. Further, Parents misread the HS EAP as it does not require the EMS to call 911, and I find all of the diagnoses from the MS EAP are included, although reordered, with Student’s new epilepsy diagnosis now added. Additionally, the diagnoses in the MS EAP were actually noted to be a “history of” or “hx”. Nor did the MS EAP list a nurse with the afterschool activities staff. While one must be provided, as noted earlier, it is improper to list a nurse in the HS EAP given the context of the afterschool staff notation.

Finally, the EAP pertains exclusively to the staff plan and actions to be taken in an emergency situation caused by Student’s medical conditions. Therefore, its terms are medically driven. Thus, as with the HCP if Parents continue to withhold consent for the District to speak with any of Student’s doctors, then changes to this document shall only be made upon receipt of a medical letter that specifically indicates the needed revisions and/or makes edits directly on the HS EAP.

B. THE “STAY PUT” ISSUE:

Given my conclusion that the Proposed IEP, upon modification, provides Student with a FAPE, Student’s “stay put” rights have ceased[[86]](#footnote-86).

C. THE ISSUES WITH REEVALUATIONS:

The evaluations at issue consist of a Psychological Assessment, an Academic Assessment[[87]](#footnote-87), an Occupational Therapy Assessment, an Educational Assessment an Observation of Student, and a Health Assessment. Although Parents consented to the proposed three-year reevaluation and met with some of the evaluators for interview purposes, they have chosen to not make Student available to complete any testing at school, and, as is their right, they refuse to have Student evaluated in their home or receive any other services there, under any circumstances, despite the District’s extensive outreach and offers to do so.

Parents initially indicated their refusal was due to the pending matter and discussions that were then occurring “between attorneys”. However, at Hearing, Parents and Ms. CTH explained that they currently wished to delay testing until Student was stable enough to complete it, and they are concerned that testing Student now may not yield valid results given her medical instability. No doctor’s recommendation exists in the record to support Parents current position, though. Rather, the medical letters support the need for current and updated evaluation information as Student’s performance may change over time in light of her medical conditions, particularly as her epilepsy treatment evolves[[88]](#footnote-88).

Further, Parents declined proposals to break the testing into smaller sessions that Student could better tolerate, or to evaluate her both now and again within three years, should her medical stability change. Parents’ actions, despite their good intentions, has hindered the District from obtaining the legally necessary information it needs to meet its IDEA obligations. Without current evaluative information Student’s existing educational needs cannot be determined and therefore cannot be properly supported in the IEP. Student clearly has different academic and medical needs than she had when last evaluated, particularly given her new epilepsy diagnosis.

I find, therefore, that despite Parents verbal statements to the contrary, they are not cooperating with but instead are frustrating and impeding the District’s attempts to complete Student’s three-year reevaluation. There is substantial support in the record that current information to be learned from all the disputed evaluations is necessary to “determine present levels of performance, create goals and objectives and design a program” that will provide Student with a FAPE[[89]](#footnote-89). Interestingly, on the one hand Parents criticize the Proposed IEP’s replication of the goals and objectives in the 23-24 IEP, yet such replication must be viewed in the context of Student’s substantial absences. Parents also object to the IEP’s lack of information about present levels of educational performance, that no one at the Team meetings had knowledge of her current needs or experience working with her this year, or that the IEP did not include transition services, information as to how Student’s disabilities impact her life or how Student can access the curriculum or make effective progress. Yet it is owing to Parents’ failure to allow the District to obtain necessary updated evaluative information that these concerns cannot be addressed.

In light of the above, Parents must produce Student for all of the pending evaluations. Given the District’s offer to test Student in the guidance conference room or at her home, Parents may choose their preferred location[[90]](#footnote-90). Also, although “[t]he selection of the evaluation method, technique, setting, timing, sequence, process, instruments, etc. is committed to the discretion of the individual evaluator[[91]](#footnote-91)”, given the circumstances of the instant matter, Student shall not be required to participate in more than one area of testing a day (i.e., the psychological evaluation cannot be on the same day as the occupational therapy evaluation). Finally, the evaluators are encouraged to break up their testing to align with Student’s stamina and tolerance.

Unless and until Student completes these reevaluations, the District is not obligated to provide Student with special education and related services beyond what is otherwise ordered in this *Decision*[[92]](#footnote-92). The District must, however, if it has not already done so, convene a Team to review all evaluative information it has from its record reviews and parental interviews, and, pursuant to the same, amend the IEP, if appropriate.

# **ORDER:**

* + 1. The Proposed IEP, as modified by this *Decision*, provides Student with a FAPE.
	1. The following modifications render it appropriate and are hereby ordered:
		1. Parents may revise the Parent Concern section consistent with this decision;
		2. The PLAAFP:AA section shall be revised consistent with this decision;
		3. Student shall be provided with a 1:1 health paraprofessional throughout the day and at any school sponsored activities during and after her school day. The 1:1 paraprofessional’s duties shall be summarized in the IEP consistent with this decision;
		4. The A-Grid Services shall be revised to include parent consultation with the 1:1 paraprofessional and/or the HS Nurse of 20 minutes/week, consultation between the 1:1 paraprofessional with the HS Nurse, weekly, and consultation by both the 1:1 paraprofessional and the HS Nurse with Student’s doctors, at regular intervals, but at least monthly unless exigent circumstances arise;
		5. The B-Grid Services shall be revised to include the support of the 1:1 paraprofessional, 3 x 40 minutes per week of executive functioning services and 5 x 40 minutes per week of math services; and
		6. The following additional accommodations shall be added:
			+ 1. A description of Student’s IPP and the specific related accommodations associated with it;
				2. Staff trainings with Parents invited, consistent with this decision; and
				3. The 4 specified additional modifications noted previously.
	2. The District shall immediately obtain a legal opinion with regard to its ability to delegate administration of any of Student’s medications to another staff member and the ability of Student’s 1:1 paraprofessional to carry any of Student’s medications at all times.
	3. The 12/24 HCP shall be revised consistent with this decision.
	4. The HS EAP shall be revised consistent with this decision.
	5. The District shall provide Parents with an amended version of the Proposed IEP, the EAP and the HCP within 10 school days of receipt of this *Decision*.
		1. Student’s right to “stay put” accommodations, modifications and services contained in prior IEPs is terminated.
		2. Student shall be reevaluated, consistent with this decision.

Respectfully submitted,

By the Hearing Officer,

/s/ Marguerite M. Mitchell

Marguerite M. Mitchell

May 23, 2025

**COMMONWEALTH OF MASSACHUSETTS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**EFFECT OF FINAL BSEA ACTIONS AND RIGHTS OF APPEAL**

**Effect of BSEA Decision, Dismissal with Prejudice and Allowance of Motion for Summary Judgment**

20 U.S.C. s. 1415(i)(1)(B) requires that a decision of the Bureau of Special Education Appeals be final and subject to no further agency review. Similarly, a Ruling Dismissing a Matter with Prejudice and a Ruling Allowing a Motion for Summary Judgment are final agency actions. If a ruling orders Dismissal with Prejudice of some, but not all claims in the hearing request, or if a ruling orders Summary Judgment with respect to some but not all claims, the ruling of Dismissal with Prejudice or Summary Judgment is final with respect to those claims only.

Accordingly~~,~~ the Bureau cannot permit motions to reconsider or to re-open either a Bureau decision or the Rulings set forth above once they have issued. They are final subject only to judicial (court) review.

Except as set forth below, the final decision of the Bureau must be implemented immediately. Pursuant to M.G.L. c. 30A, s. 14(3), appeal of the decision does not operate as a stay. This means that the decision must be implemented immediately even if the other party files an appeal in court, and implementation cannot be delayed while the appeal is being decided. Rather, a party seeking to stay—that is, delay implementation of-- the decision of the Bureau must request and obtain such stay from the court having jurisdiction over the party’s appeal.

Under the provisions of 20 U.S.C. s. 1415(j), “unless the State or local education agency and the parents otherwise agree, the child shall remain in the then-current educational placement,” while a judicial appeal of the Bureau decision is pending, unless the child is seeking initial admission to a public school, in which case “with the consent of the parents, the child shall be placed in the public school program.”

Therefore, where the Bureau has ordered the public school to place the child in a new placement, and the parents or guardian agree with that order, the public school shall immediately implement the placement ordered by the Bureau. *School Committee of Burlington v. Massachusetts Department of Education*, 471 U.S. 359 (1985). Otherwise, a party seeking to change the child’s placement while judicial proceedings are pending must ask the court having jurisdiction over the appeal to grant a preliminary injunction ordering such a change in placement. *Honig v. Doe*, 484 U.S. 305 (1988); *Doe v. Brookline*, 722 F.2d 910 (1st Cir. 1983).

**Compliance**

A party contending that a Bureau of Special Education Appeals decision is not being implemented may file a motion with the Bureau of Special Education Appeals contending that the decision is not being implemented and setting out the areas of non-compliance. The Hearing Officer may convene a hearing at which the scope of the inquiry shall be limited to the facts on the issue of compliance, facts of such a nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Elementary and Secondary Education or other office for appropriate enforcement action. 603 CMR 28.08(6)(b).

**Rights of Appeal**

Any party aggrieved by a final agency action by the Bureau of Special Education Appeals may file a complaint for review in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts. 20 U.S.C. s. 1415(i)(2).

An appeal of a Bureau decision to state superior court or to federal district court must be filed within ninety (90) days from the date of the decision. 20 U.S.C. s. 1415(i)(2)(B).

**Confidentiality**

In order to preserve the confidentiality of the student involved in these proceedings, when an appeal is taken to superior court or to federal district court, the parties are strongly urged to file the complaint without identifying the true name of the parents or the child, and to move that all exhibits, including the transcript of the hearing before the Bureau of Special Education Appeals, be impounded by the court. See *Webster Grove School District v. Pulitzer Publishing Company*, 898 F.2d 1371 (8th. Cir. 1990). If the appealing party does not seek to impound the documents, the Bureau of Special Education Appeals, through the Attorney General's Office, may move to impound the documents.

**Record of the Hearing**

The Bureau of Special Education Appeals will provide an electronic verbatim record of the hearing to any party, free of charge, upon receipt of a written request. Pursuant to federal law, upon receipt of a written request from any party, the Bureau of Special Education Appeals will arrange for and provide a certified written transcription of the entire proceedings by a certified court reporter, free of charge.

1. District M 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. The District withdrew proposed Exhibit S-6. S-52 was admitted for impeachment purposes only and will not be considered evidence of District purchases of cleaning products in the years noted on the exhibit. [↑](#footnote-ref-2)
3. 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 in said findings, if it was not needed to resolve said issues. [↑](#footnote-ref-3)
4. According to Mother, this letter was also submitted as the District was selectively (“picking and choosing”) following recommendations contained in doctor’s letters at that time, so Student’s gastroenterologist reworded a previous letter for clarification by removing a recommendation that Student follow usual classroom procedures for leaving the room in non-emergencies, as that recommendation was confusing in light of the gastroenterologist’s recommendation in emergencies. (P-J10-J11, J17-J18; Mother, V5-61-62). [↑](#footnote-ref-4)
5. The specific accommodation states “[Student] is not to be penalized for absences, tardiness, or early dismissals required for medical appointments, illness, visits to the RN’s officer or for time necessary to address health issues due to the nature of the student’s medical conditions. All absences, tardiness, and early dismissals are automatically excused without the need of a doctor’s note”. (P-B68; King, V2-156). [↑](#footnote-ref-5)
6. Mother confirmed that this confinement has been extended, and a subsequent Home Hospital Education Form providing for Student’s absences beyond April 3, 2025, was submitted. (Mother, V5-69-70). [↑](#footnote-ref-6)
7. Although the “Summary of Proposed IEP” from the June 8-9 Team meeting notes include Student’s scores from the WIAT-4 Test, Ms. Steve testified that she had pre-filled this information in prior to the Team meeting, as she was not able to include this level of detail in the midst of participating in the Team. She maintained that her evaluation was never discussed at a Team meeting as Parents prohibited this from occurring. Mother testified that these Team meeting notes demonstrate that the Team reviewed this evaluation. (P-B49-B53; Steve, V2-72; Mother, V5-40-41, 59). [↑](#footnote-ref-7)
8. Parents pointed out that the District’s version of the 23-24 IEP identifies Goal #5 as the goal focus for the C Grid service, while Parents’ version notes this goal focus to be Goal #4. The C-Grid service involves social emotional support from an adjustment counselor. Goal #5 is the “social” goal while Goal #4 is the “mathematics” goal. Parents included their rejection of this service being tied to a mathematics goal in their October 2023 partial rejection letter, discussed *infra*. The District could not explain this discrepancy, no other changes appear to exist between the two versions and both versions note the “Type of Service” in the C Grid is “social emotional”. Notwithstanding, I rely on Parents version, as that is what they received in June 2023. (P-B115; CF, V3-92-95). [↑](#footnote-ref-8)
9. While the plans themselves are not contained in the database, Ms. Steve explained that the alert informs staff to get a copy from the appropriate department. Additionally, the MS School Nurse had staff sign off that they had reviewed the HCP annually, given its complexity and importance. (Steve, V2-134, 136). [↑](#footnote-ref-9)
10. Despite testifying extensively on direct examination that the District never provided tutoring to Student and criticizing the limited amount of tutoring she currently receives, on cross examination, Mother acknowledged that Student’s current health conditions prohibit her from accessing more than the 70 minutes of tutoring and School Adjustment Counselor support three times per week that she is receiving, as discussed *infra*. She also testified that Student’s stamina is improving, and soon she may be able to tolerate more within the restricted learning time (but not virtual tutoring). (Mother, V4-192-95, V5-68-69, 81-84). [↑](#footnote-ref-10)
11. Ms. Steve also recommended that if there were continuing concerns about Student’s word retrieval or an underlying memory issue, that the next appropriate step would be for Student to undergo a psychological evaluation. (Steve, V2-62-63). [↑](#footnote-ref-11)
12. By this time the Team had only reviewed eight pages of Parents’ partial rejection letter. Both Mother and Ms. CTH believed the process the District followed, while not necessarily improper, added to the inefficiency. They contended the District should have only focused on those areas of the partial rejection it disagreed with rather than reviewing it page by page (CTH, V4-30-31, 40; Mother, V4 – 187-90). [↑](#footnote-ref-12)
13. It is unclear from the record if P-L or P-M were ever given to the District. (Steve, V2-118; CF, V3-53). [↑](#footnote-ref-13)
14. Parents question whether this license means Mr. ZM is “highly qualified”. Director CF’s understanding is that Mr. ZM is licensed by the state and eligible for employment under that license. While not relevant to the issues for hearing in this matter, under the IDEA a student does not have a private right of action to challenge the failure to be taught by highly qualified staff. The only dispute resolution option for staff qualification concerns lies with the state complaint process (i.e., DESE’s Problem Resolution System (PRS) for Massachusetts). See 20 US 1412(a)(14)(E). (CF, V3, 118-21; Mother, V4-101, 105). [↑](#footnote-ref-14)
15. Although the N1 for this request uses this term repeatedly, it does not explain what was going to make the proposed evaluations “independent”. [↑](#footnote-ref-15)
16. This was one of the provisions Parents had partially rejected, specifically rejecting “when possible” – the fact that Principal King relied on the proposed language in this email, despite rejection of some of its words reinforces the confusion that Parents’ partial rejections created. (King, V2-217-18). [↑](#footnote-ref-16)
17. During cross examination, Mother confirmed during October, Student nevertheless went trick-or-treating for Halloween with other families. (Mother, V5-36-38). [↑](#footnote-ref-17)
18. Although signature lines were included in the MS EAP submitted, it was not actually signed. (P-K12). [↑](#footnote-ref-18)
19. According to Father, the Proposed IEP fails to include all but the first two recommendations from the September 17, 2024, pediatrician’s letter. (Father, V5-104-05, 136-37). [↑](#footnote-ref-19)
20. For instance, no accommodations excusing Student’s absences were included because absences are addressed by the attendance policies and practices of the HS. If a student is absent for medical reasons, this is excused with a doctor’s note. (P-B68; KL, V1-172-73). [↑](#footnote-ref-20)
21. I find no mention of “blue light glasses” in either the 4th Grade IEP or the 23-24 IEP despite Parents’ contentions otherwise. (P-I142-I171; P-M; Mother, V4-134). [↑](#footnote-ref-21)
22. Mother did not mention the EAP in her testimony other than to note the 12/24 HCP appears to try to “mesh” the EAP and HCP. The EAP does provide signs and symptoms for specified diagnoses as noted *supra*. [↑](#footnote-ref-22)
23. Mother provided a limited release in or around 2019 for the School Adjustment Counselor to speak with a Children’s Hospital psychologist about Student’s anxiety, to assist in developing the objectives related to anxiety and self-advocacy in Student’s IEP. (Mother, V4-136, 171-72). [↑](#footnote-ref-23)
24. Nurse KL and Director CF explained that even without a signed release, Nurse KL can reach out to the prescribing doctor to confirm the District is “carrying [ ] out [the medication orders] the way the doctor wants”. Consistent with this, Nurse KL contacted Student’s allergist once to clarify that the allergy list he previously provided in writing had not changed. (KL, V1-93, 213-14; CF, V3-133-34). [↑](#footnote-ref-24)
25. Student’s January 23, 2025, Home Hospital Education Form also fails to indicate any prohibition or limits for screens, despite noting other restrictions, as discussed *infra*. (S-20; S-22; P-J51-J52; KL, V1-90-92). [↑](#footnote-ref-25)
26. It is unclear from the record when this was received by the District and if the District accepted it as valid with this missing information. However, no tutoring was ever provided to Student. (Mother, V4-93). [↑](#footnote-ref-26)
27. This citation includes duplicates of the 8/24/24 FARE form, the 9/17/24 pediatrician letter, the 9/17/24 SAP, and the undated immunology letter. Although this citation includes both versions of these letters, citations to the individual medical documents in this *Decision* are only to one of the versions, not both. [↑](#footnote-ref-27)
28. A subsequent Home Hospital Education Form was provided to the District, but was not submitted into the record, and it is unclear if these restrictions continue verbatim at this time. (Mother, V5-69-70). [↑](#footnote-ref-28)
29. In fact, she believes Student was the only student in the District with this special education support. [↑](#footnote-ref-29)
30. Nurse KL’s specific comment was “There are so many symptoms for the para to observe for I feel like it requires a nurse instead of a para to make this assessment. I feel like we are trying to train a par to do nursing assessment which is a nursing function. Perhaps a one on one nurse contracted through an agency is a better option than training the staff to do assessment. Should I list physical duties of the para and just make it clear that the para can call nurse in at any time if student is symptomatic in any way?” (S-51). [↑](#footnote-ref-30)
31. The only evidence in the record about negative past experiences with adults at school involves Student’s concussion in June of 2024 while at school. At that time, the MS school nurse trained on Student’s needs was out of the building. A nurse unfamiliar with Student was covering. This nurse did not immediately contact Parents, and they ultimately learned about the concussion from Student who called them on her cell phone. According to Mother, Student was hit in the head at her surgical location and was terrified, in pain, and about to throw up when she called. Mother claims she had to let the covering nurse know about Student’s health plan. Additionally, the concussion occurred in a gym class taught by a teacher who was not trained on Student’s needs and allowed Student to participate in disc golf. Parents feel this experience not only justifies the need for a back-up staffing plan but also the need for staff who work with Student to be trained by Parents. (Mother, V4-128-31, 181-84). [↑](#footnote-ref-31)
32. 20 USC 1400, *et seq*.; M.G.L. c. 71B; 34 CFR 300.000, *et seq*.; 603 CMR 28.00 *et seq*; see 20 U.S.C. §1400 (d)(1)(A) (The first purpose of the IDEA is "to ensure that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living"). [↑](#footnote-ref-32)
33. 20 USC 1401(9), (26), (29); C.D. v. Natick Public School District, et al., 924 F.3d 621, 624 (1st Cir. 2019), quoting Fry v. Napoleon Community Schools, 580 US 154, 158 (2017). [↑](#footnote-ref-33)
34. 20 U.S.C § 1412(a)(5)(A); 34 CFR 300.114(a)(2)(i); M.G.L. c. 71 B, §§ 2, 3; 603 CMR 28.06(2)(c). [↑](#footnote-ref-34)
35. *Endrew F. ex. re. Joseph F. v Douglas County Sch. Dist., RE-1*, 580 US 386, 399-400, 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 *[D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012)], comports with this standard in *Endrew F.*). [↑](#footnote-ref-35)
36. See *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.,* 518 F.3d 18, 29 (1st Cir. 2008). [↑](#footnote-ref-36)
37. Sebastian M. v. King Philip Reg'l Sch. Dist., 685 F.3d 79, 84 (1st Cir. 2012); *Esposito*, 675 F.3d at 34; *C.G.* and *B.S. v. Five Town Cmty. Sch. Dist.*, 513 F.3d 279, 284 (1st Cir. 2008) quoting *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 207 (1982); see *Endrew F.* 580 US at 399-403; *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1086 (1st Cir. 1993). [↑](#footnote-ref-37)
38. *Lenn,* 998 F. 2d at 1089-90, quoting *Burlington v. Dept. of Ed.,* 736 F.2d 773, 788 (1st Cir. 1984) *aff’d* 471 US 359 (1985); see *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990) (“… purely academic progress … is not the only indicia of educational benefit implicated either by the Act or by state law”). [↑](#footnote-ref-38)
39. *Roland M.*, 910 F. 2d at 992. [↑](#footnote-ref-39)
40. *Endrew F.* 580 US at 402-403. [↑](#footnote-ref-40)
41. *Five Town*, 513 F.3d at 284; see *Lenn*, 998 F.2d at 1086. [↑](#footnote-ref-41)
42. *Lenn*, 998 F.2d at 1086 citing *Rowley*, 458 U.S. at 198; *Roland M.*, 910 F.2d at 992 (“the IDEA does not promise perfect solutions to the vexing problems posed by the existence of learning disabilities …. 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”); 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-42)
43. *G.D. v. Westmoreland Sch. Dist.*, 930 F.2d 942, 948 (1st Cir., 1991). [↑](#footnote-ref-43)
44. *Lenn,* 998 F. 2d at 1089-90; see *Sebastian M.,* 685 F. 3d 79, 84 (“… an IEP need not be designed to furnish a disabled child with the maximum educational benefit possible”). [↑](#footnote-ref-44)
45. 20 USC 1414(a)(1); 34 CFR 300.301; 603 CMR 28.04(1) and (2). [↑](#footnote-ref-45)
46. 603 CMR 28.04(3); see 20 USC 1414(a)(2)(B)(ii); 34 CFR 300.300(c); 34 CFR 300.303. [↑](#footnote-ref-46)
47. 20 USC 1414(a)(2); 34 CFR 300.303. [↑](#footnote-ref-47)
48. 603 CMR 28.07(1)(b); see 34 CFR 300.300(c)(1)(ii); 603 CMR 28.08. [↑](#footnote-ref-48)
49. *Shelby S. ex rel. Kathleen T. v. Conroe Indep. Sch. Dist.*, 454 F.3d 450, 454 (5th Cir. 2006); see *In Re: ABC Pub. Schs.*, BSEA No. 13-03743, 19 MSER 91 (Crane, 2013). [↑](#footnote-ref-49)
50. *In Re: Falmouth Sch. Dep’t.*, 102 LRP 4426 (Me. SEA, 2000); see *Dubois v. CT State Bd. of Educ.*, 727 F.2d 44, 48 (2d Cir. 1984) (holding under the prior version of the IDEA that “[b]efore a school system becomes liable under the Act for special placement of a student, it is entitled to up-to-date evaluative data.”). [↑](#footnote-ref-50)
51. See *Shelby S*., 454 F.3d at 454 citing generally *Gregory K. v. Longview Sch.* Dist., 811 F.2d 1307, 1315 (9th Cir.1987) (“If the parents want Gregory to receive special education under the [IDEA], they are obliged to permit [reassessment] testing. If the parents wish to maintain Gregory in his current private tutoring program, however, the District cannot require a reassessment.”) (internal citations omitted); *Andress v. Cleveland Indep. Sch. Dist.*, 64 F.3d 176, 178-79 (5th Cir. 1995) (“If a student's parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student and they cannot force the school to rely solely on an independent evaluation …. A parent who desires for her child to receive special education must allow the school district to reevaluate the child using its own personnel; there is no exception to this rule.”); *In Re: ABC Pub. Schs.*, 19 MSER 91 (“the courts have left little doubt that in the instant dispute, ABC Public Schools must be allowed to conduct its own evaluations unless Parents choose to forfeit their right to receive all special education services for Student”) (internal citations omitted); *In Re: Boston Pub. Schs.*, BSEA No. 99-4652, 5 MSER 144 (Byrne, 1999) (“[t]he selection of the evaluation method, technique, setting, timing, sequence, process, instruments, etc. is committed to the discretion of the individual evaluator”). [↑](#footnote-ref-51)
52. 20 USC 1415(b)(1); 34 CFR 300.502; 603 CMR 28.04(5). [↑](#footnote-ref-52)
53. *In Re: ABC Pub. Schs.*,19 MSER 91. [↑](#footnote-ref-53)
54. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-57, 62 (2005). [↑](#footnote-ref-54)
55. *Id*. (placing the burden of proof in an administrative hearing on the party seeking relief). [↑](#footnote-ref-55)
56. 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. [↑](#footnote-ref-56)
57. Despite ongoing disagreement, the Team met frequently and the parties used multiple alternative dispute resolution options, including resolution at the local level, several mediations, filing a state complaint, two facilitated IEP Team Meetings to develop the Proposed IEP, and this underlying hearing request. I also credit the parties’ continued courtesy and decorum towards each other. It is evident that every participant at the Hearing cares for Student and for her overall educational success and personal well-being. [↑](#footnote-ref-57)
58. These irregularities, which appeared to come from an ongoing, albeit misguided, desire to seek resolution, also failed to resolve the disputes. For example, despite the District’s questionable decision to allow Parents to word-smith and draft the 23-24 IEP, Parents nevertheless submitted a 25-page partial rejection. [↑](#footnote-ref-58)
59. For instance, the disagreement about including the language supports recommended by the 2023 Speech and Language evaluation in the 23-24 IEP is not an issue to be decided in this hearing since the Proposed IEP includes both the provision of word banks and use of the circumlocution strategy as an accommodation. [↑](#footnote-ref-59)
60. All Student’s plans (i.e., IEP, SAP, EAP and HCP) are stand-alone separate documents that contain similar but distinct information. Parents insist that information from each Plan be included “verbatim” in the other Plans. I disagree that verbatim cutting and pasting is needed. It is sufficient for staff to know about and be trained on all four Plans, and that each Plan reference to the others as needed and appropriate. [↑](#footnote-ref-60)
61. Parents fully consented to the SAP (created by Student’s pediatrician). Thus, I do not address it here. [↑](#footnote-ref-61)
62. *Roland M.*, 910 F. 2d at 992. [↑](#footnote-ref-62)
63. See *In Re: Georgetown Pub. Schs.*, BSEA No. 11-0291, 16 MSER 341 (Crane, 2010) (concluding that an “…IEP proposing [an in-district] program, while not appropriate as written, can be made appropriate by amendment …” for a student with a rare genetic disorder, global development delay, PDD, autism spectrum deficits, and a seizure disorder, whom Parents had removed from school for safety concerns); *In Re: Boston Pub. Schs. and Peter*, BSEA No. 03-5108, 9, MSER 346 (Oliver, 2003) (concluding that the IEP proposed for a student with global developmental delay, seizure disorder and other disabilities “ is essentially appropriate to provide Peter with FAPE. However, I find that several modifications/amplifications are necessary to ensure that Peter receives FAPE”). [↑](#footnote-ref-63)
64. I am purposefully limiting this to a paragraph given the prior extensive written replies provided by Parents. [↑](#footnote-ref-64)
65. For the same reasons, as further explained below, I do not find any issue with the Proposed IEPs failure to properly address all bullying concerns, transportation services, transition services, how Student’s disabilities impact her life or how Student can access the curriculum or make effective progress. [↑](#footnote-ref-65)
66. I also agree with Parents that including doctors’ names in PLAAFP:AA is not necessary for Student to receive a FAPE. Since Parents object to their inclusion, there is no reason they should not be removed. [↑](#footnote-ref-66)
67. Consistent with Section 504, this 1:1 support must also support Student at all school-sponsored activities such as field-trips, and after-school extra-curricular activities. See 34 CFR 104.4(b)(1)(i)-(v). [↑](#footnote-ref-67)
68. However, in subsequent testimony, Nurse KL clarified this recommendation was not for medication delegation purposes and that it could change if further medical information was provided. [↑](#footnote-ref-68)
69. Notwithstanding this, nothing prohibits the District from hiring a 1:1 who has nursing licensure, such as a registered nurse (1:1 RN). Doing so may very well ameliorate many of the issues and concerns that Parents have raised, reduce future issues or concerns that could arise, and ensure complete implementation of Student’s IEP. A 1:1 RN could also serve to streamline the otherwise multiple, dense and complex accommodations that exist in Student’s four plans. Further, a 1:1 RN could assist Nurse KL and the HS with ensuring that medical information is being properly communicated to Parents and others, as needed; that medical plans are being timely updated, under Nurse KL’s supervision, as new information is received from Student’s doctors, and that staff who work with Student are appropriately informed and trained on her various medical plans. [↑](#footnote-ref-69)
70. However, Parents do not need to be contacted whenever Student’s 1:1 paraprofessional is absent, provided the trained substitute 1:1 is available. Parents need only be called if both 1:1s are absent. They also do not need to be contacted when a substitute school nurse is in the building, provided the substitute is a licensed RN, as a substitute licensed RN will comport with the medical recommendations that a licensed RN be on the premises. [↑](#footnote-ref-70)
71. These circumstances further reinforce the option for the District to consider hiring a 1:1 RN for Student, as such a licensed 1:1 would eliminate any issues and disputes over medication delegation and provide additional options to support Student in an emergency. [↑](#footnote-ref-71)
72. I recognize the daily demands that are placed on the HS Nurse, however it is concerning that the HCP has yet to be updated to reflect the medical documentation requested by the District as it was received in the end of January 2025. [↑](#footnote-ref-72)
73. For instance, had Parents consented to the District communicating with Student’s doctors, clarification as to Nurse KL’s questions related to the recommendation to notify Parents whenever there is an illness in the building could have easily been obtained and added to the HCP, thereby eliminating Parents’ concerns that it was not included. [↑](#footnote-ref-73)
74. The District is, therefore, only responsible to implement this service if Parents consent to it. [↑](#footnote-ref-74)
75. Both a description of the IPP and the following accommodations must be included: 1) workspaces and other areas Student comes into contact with, including eating surfaces, will be sanitized by staff prior to Student’s immediate use; 2) designated safe and approved soap for Student’s exclusive use will be provided; 3) frequent hand-washing; and 4) designated, cleaners and disinfectants (as per Student’s doctors) will be provided for Student’s use in areas of the building she frequents. [↑](#footnote-ref-75)
76. *Question and Answer Guide on the Implementation of Educational Services in the Home or Hospital*, revised June 2021 found at https://www.doe.mass.edu/prs/ta/hhep-qa.html. [↑](#footnote-ref-76)
77. 603 CMR 28.03(3)(c) (emphasis added). [↑](#footnote-ref-77)
78. Although several of Student’s doctors’ letters, including the January 21, 2025, letter of her epileptologist, recommend that her medical absences be excused, Principal King explained that medical absences are excused when supporting medical information is provided. The doctors’ letters do not indicate that absences should be excused without a doctor’s note. Such a recommendation would also be inappropriate and in conflict with both special education and school attendance regulations. [↑](#footnote-ref-78)
79. See *In Re: Walpole Pub. Schs.*, BSEA No. 10-5058, 16 MSER 277 (Oliver, 2010) (concluding that Walpole’s proposed IEP for a student with epilepsy and other disabilities, provided appropriate placement and also properly proposed 3 weeks of summer tutoring beyond the ESY program to prevent substantial regression of skills); *Question and Answer Guide on the Implementation of Educational Services in the Home or Hospital*, revised June 2021 found at https://www.doe.mass.edu/prs/ta/hhep-qa.html (for students with IEPs who have chronic medical conditions, “If the student will be out of school for medical reasons for an extended period of time, it is appropriate to include on the IEP educational tutoring as a related service that the student needs in order to access the general curriculum while s/he is in the home or hospital setting”). [↑](#footnote-ref-79)
80. When specific instances of tutoring support associated with any prolonged medical illness is necessary, and is supported by either a Home Hospital Education Form or other medical letter, the District must coordinate for the recommended tutoring outside the IEP process, too. [↑](#footnote-ref-80)
81. Another provision in that letter advises that “… collaboration and input of her multiple specialists and her family will be crucial to understanding her academic support needs”. This further supports my conclusion regarding A-Grid consultation with Student’s medical providers, discussed above. [↑](#footnote-ref-81)
82. The training log should be attached to each of these Plans. [↑](#footnote-ref-82)
83. While not specific to special education students, and thus not needed in an IEP, the District may also want to consider, outside of any provision in a Plan, using reasonable efforts to assign Student to classes with a familiar peer.  Based upon the extensive testimony from both District and Parent witnesses as to the importance that Student’s peer group plays in her overall social, emotional and physical well-being, prioritizing this as part of Student’s class scheduling could serve to reduce Student’s and Parents’ anxieties when Student is in school.  I note, however, that the high school offers many more electives and course options than middle school or elementary school, so this may mean that Student might have to choose between a desired course that none of her friends are in, or a less desired class with a familiar peer. In such cases, I encourage the parties to communicate about the options. [↑](#footnote-ref-83)
84. Parents’ concerns over potential repercussions of removing Student to an alternate space to avoid allergen triggers, are purely speculative and cannot be known at this time as Student has yet to attend school this year. However, should Student end up being removed frequently, and medical recommendations to revise the HCP are not otherwise provided, the HS Nurse should consider revising this provision. [↑](#footnote-ref-84)
85. Specifically, the symptom “nausea” should be noted as “migraine” and the symptom of “epistaxis (nosebleed), stomach pain and loss of consciousness” must be added. [↑](#footnote-ref-85)
86. Given my determination, *supra*, that the Proposed IEP provides Student with a FAPE with certain modifications, the District’s requests that the prior IEPs be deemed “null and void” if Parents are not required to make Student available to participate in her consented-to evaluations is moot. Moreover, as noted above, declaring prior IEPs null and void is not generally the consequence for parental refusal to allow a district to complete reevaluations of a student. [↑](#footnote-ref-86)
87. Although an academic evaluation was performed in the spring of 2023, Student’s intervening epilepsy diagnosis supports reevaluation in this area as well. [↑](#footnote-ref-87)
88. According to Student’s epileptologist’s January 21, 2025 letter, “Children and adolescents with epilepsy are placed at increased risk for experiencing cognitive, learning and social-emotional difficulties. The impacts of epilepsy and possible medication side effects may contribute to these difficulties and challenges with accessing the curriculum”. [↑](#footnote-ref-88)
89. *In Re: Falmouth*, 102 LRP 4426; see *Dubois*, 727 F.2d at 48. [↑](#footnote-ref-89)
90. Additionally, any such testing shall occur during the learning time hours of Student’s current Home Hospital Education Form, if any. [↑](#footnote-ref-90)
91. *In Re: Boston Pub. Schs.*, 5 MSER 144. [↑](#footnote-ref-91)
92. See *Shelby S*., 454 F.3d at 454 citing generally *Gregory K.*, 811 F.2d at 1315; *Andress*, 64 F.3d 178-79; *In Re: ABC Pub. Schs.*, 19 MSER 91. [↑](#footnote-ref-92)