

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

In re: Student v. Springfield Public Schools

BSEA # 2208440

DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC 1400 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the state special education law (MGL c. 71B), the state Administrative Procedure Act (MGL c. 30A), and the regulations promulgated under these statutes.

A public hearing¹ was held on November² 22, and 28, and December 21, and 22, 2022, before Hearing Officer Alina Kantor Nir. Those present for all or part of the proceeding agreed to participate via a remote videoconferencing platform. The following were in attendance and participated for some or all of the proceeding:

Parent	
Kelly LaRoe	Advocate
Alisia St. Florian	Attorney for Springfield Public Schools (Springfield)
Dr. Mary Anne Morris	Chief of Special Education and Related Services, Springfield
Kara Harris	Principal, Harris Elementary School, Springfield
Karen Freedman	Special Education Supervisor, Springfield
Seth Menkel	Evaluation Team Leader, Springfield
Dr. Marisa McCarthy	Special Education Supervisor, Springfield
Michael Calvanese	Principal, Kiley Academy, Kennedy Academy, Duggan Academy, Springfield
Dr. Olga Aponte-Slater	Psychiatrist
Rosemarie Thornton	Spanish Interpreter
Maria Ximena	Spanish Interpreter
Ana Faria	Spanish Interpreter
Jane Werner	Court Reporter
Alex Loos	Court Reporter
Carol Kusnitz	Court Reporter
Alina Kantor Nir	Hearing Officer

The official record of the hearing consists of documents submitted by the Parent and marked as Exhibits P-1, 2, 6-10, 12-13, 15-16, 19, 21-23, 25, 28, 29A to 29 G, and P-31; documents submitted by Springfield Public Schools (Springfield or the District) and marked as Exhibits S-2,

¹ Parent requested that the Hearing be open to the public and, therefore, waived Student's and Parent's confidentiality. Nevertheless, as a courtesy to Student, the undersigned Hearing Officer declines to use Student's name in this Decision.

² The parties convened on November 21, 2022 in the presence of a court stenographer to review their submission of exhibits. The session was open to the public at Parent's request.

3, 4 (pages 1-5 only), 5, 7-10, 12, 14-48, 50-51, and 53-77; approximately 31 hours of oral testimony and argument; and a five-volume³ stenographic transcript. Parent and the District made their oral closing arguments on December 22, 2022, and the record closed on that date.

ISSUES IN DISPUTE:

The issues in this matter are as follows:⁴

1. Whether the District conducted an Individualized Education Program (IEP) meeting without Parent in attendance on April 11, 2022?
 - a. If the answer to (1) is yes, did the District deny Parent meaningful participation in the IEP process?
 - b. If the answer to (1)(a) is yes, what is the appropriate remedy?
2. Whether Springfield ignored the recommendations of the Student Stabilization and Diagnostics Center (SSDC) when drafting the IEP for the period from August 26, 2022 until June 23, 2023?
 - a. If the answer to (2) is yes, did the District deny Parent meaningful participation in the IEP process?
 - b. If the answer to (2)(a) is yes, what is the appropriate remedy?
3. Whether Springfield made a unilateral placement determination during the IEP meetings on June 26, 2022, August 17, 2022, September 29, 2022, October 20, 2022, and/or October 31, 2022?
 - a. If the answer to (3) is yes, did the District deny Parent meaningful participation in the IEP process?
 - b. If the answer to (3)(a) is yes, what is the appropriate remedy?
4. Whether Springfield failed to conduct a Title IX investigation relative to an incident which took place on or about September 2021?
 - a. If the answer to (4) is yes, did the District deny Student a free, appropriate public education (FAPE)?
 - b. If the answer to (4)(a) is yes, what is the appropriate remedy?
5. Whether the IEP proposed for the period from November 9, 2021 until April 12, 2022 and/or the IEP proposed for the period from August 26, 2022 until June 23, 2023 were/are reasonably calculated to offer Student a FAPE in the least restrictive environment (LRE)?

³ The first volume documents the parties' presentation of documentary evidence to be admitted into the record. The remaining volumes record the four hearing days.

⁴ The parties developed the issues in concert with the undersigned Hearing Officer prior to Hearing. They were given multiple opportunities to object to and revise the issues for Hearing, and the issues delineated in this ISSUES IN DISPUTE section, are the final version agreed upon by the parties. Prior to the parties' delivery of closing arguments, Parent made an oral motion requesting to add an issue for hearing relative to the District's alleged failure to provide interpretation and translation services to Parent during the relevant time period. The oral motion was denied on the same grounds as those articulated in my *Ruling on Motion to Include District Denying Parent Right to Having Interpreter, and Translated Documents* which was issued on November 18, 2022, in this matter.

- a. If the answer to (5) is no, what is the appropriate remedy?
6. Whether the District failed to implement Student's IEP dated November 9, 2021 to April 12, 2022 and/or the IEP dated IEP for the period from August 26, 2022 until June 23, 2023?
 - a. If the answer to (6) is yes, did the District deny Student a FAPE?
 - b. If the answer to (6)(a) is yes, what is the appropriate remedy?

FINDINGS OF FACT:

1. Student is currently attending the 6th grade in the Springfield Public Schools. (Parent) He has been eligible for special education and related services since April 13, 2021, pursuant to the Communication and Health disability categories. (S-17, S-36, S-56) Student also has a medical diagnosis of ADHD. (P-27, S-59, S-60, Aponte-Slater)
2. Student's disabilities impact his ability to make effective progress in the general education curriculum due to deficits in expressive and receptive communication skills, social emotional development, self-regulation, social skills, study skills, and executive functioning and planning. Student also struggles with consistent attendance. When in school, Student engages in maladaptive behaviors, including, but not limited to: work avoidance; inappropriate (including sexual and racial) language; threatening assault; defiance; disruption of class; improper technology use; property destruction; leaving class without permission; and physical aggression. (P-6, P-7, P-10, S-3, S-4, S-5, S-14, S-15, S-17, S-19, S-36, S-43, S-45, S-50, S-54, S-56, S-57, S-58, S-59, S-60, S-61, S-62, Harris, Calvanese, Morris)
3. Prior to his eligibility determination, Student was receiving accommodations pursuant to a Section 504 Plan. (P-6, P-7)
4. Student's eligibility finding was made following an initial evaluation which included psychological, academic, speech and language, occupational therapy,⁵ and assistive technology testing, which identified Student's cognitive skills to be in the average range and most of his academic skills in the low average to average range. Nevertheless, Student demonstrated attention deficits as well as significant deficits in phonological awareness and phonological memory. He also exhibited a variety of stuttering behaviors. Teachers reported that Student was work avoidant and distracting to others. He often left the classroom, refused to complete assessments, and engaged in disruptive behavior. Due to his speech and language deficits, speech and language services and classroom accommodations were recommended as were classroom-based assistive technology accommodations. (P-6, P-7, S-57, S-58, S-59, S-60, S-61)
5. The IEP for the period from April 13, 2021 until April 12, 2022 (hereinafter, the April 2021 IEP) proposed a Communication Skills Goal with direct speech and language services (2x30 minutes/5 day cycle) and a full inclusion placement. No specialized transportation was proposed. Parent consented to the placement and accepted the speech and language services.⁶ (S-56) This was the only signed and fully implemented IEP

⁵ Student's occupational therapy assessment did not reveal any deficits, but Student's sensory needs could not be assessed due to the virtual format of the assessment. (S-58)

⁶ Parent partially rejected the IEP, accepting the IEP as written but also requesting that speech and language consultation, assistive technology consultation and parent training be added to the IEP. (S-56)

- during the relevant time period while Student attended Frederick Harris Elementary School (hereinafter, Harris Elementary School). (S-56, Harris, Menkel)
6. Student transferred to Harris Elementary School at the start of the 2021-2022 school year. (Freedman, Harris) Ms. Kara Harris is the principal of Harris Elementary School. She has a bachelor's degree in education, completed a postbaccalaureate program in early childhood education, and has a master's degree in education. Ms. Harris has worked in the District for 20 years, the last 5 in her current role. (Harris) Ms. Harris attended all of Student's IEP meetings during the time period at issue. (Harris)
 7. During Student's first month at Harris Elementary School, Student struggled with self-control, impulsivity, and establishing and maintaining relationships. Student's disruptive behavior, physical aggression, and defiance resulted in multiple disciplinary referrals. Student also struggled with attendance; he was frequently absent, especially following disciplinary referrals, when Parent often dismissed Student from school. (S-4, S-55, S-62, Harris, Morris)
 8. Ms. Harris's relationship with Parent "ebbed and flowed"; Parent became defensive and argumentative when Ms. Harris raised behavioral concerns. (Harris)
 9. Seth Menkel is the Evaluation Team Leader (ETL) at Harris Elementary School. He has worked in the District for 16 years, the last 6 in his current role. Mr. Menkel has a bachelor's degree in sociology, a master's degree in special education, and a Certificate of Advanced Graduate Study (CAGS) in both special education and school administration. While Student attended Harris Elementary School, Mr. Menkel was responsible for scheduling Student's IEP Team meetings and participated therein. (S-2, S-3, S-4, Menkel)
 10. Karen Freedman is an Elementary Special Education Supervisor within the Springfield Public Schools. She is Mr. Menkel's direct supervisor. Ms. Freedman holds a bachelor's degree in human development and 2 master's degrees. She has worked for the District since 2009 and has been in her current position for 3 years. (Freedman) As a supervisor, Ms. Freedman often reviews and "signs off" on IEPs drafted by ETLs. She makes changes to IEP documents when the information, as written, is not "accurate, objective, data driven or parent-friendly." (P-2, Freedman, Menkel)
 11. On September 17, 2021, Student reported to his classroom teacher that a peer was "humping his chair." The teacher moved the peer, but Student began to make a "humping motion" saying, "bro he's going to hump me," and "He's gay, suck my dick." (P-43, P-50) The Assistant Principal for Harris Elementary School recorded Student's statement, and Ms. Harris called Parent⁷ to inform her that she would investigate Student's allegation that the peer had touched him when making the "humping" motion.⁸ (S-55, Harris)
 12. All District staff participate in an annual Title IX training. (Freedman)
 13. Ms. Harris is the Title IX Coordinator for Harris Elementary School. (Harris, Morris) Ms. Harris was not "aware" that she "held the title of Title IX Coordinator" in her building. (Harris, Morris, Parent) As far as she was aware, the only person who held the title of Title IX Coordinator in the District was Kathleen O'Sullivan. (Harris)

⁷ Parent testified that Student had reported the incident to her and she had called Ms. Harris, but the documentary evidence supports Ms. Harris's account. (Parent, Harris, S-55).

⁸ In this Decision, this will be referred to as the "Title IX incident."

14. According to Ms. Harris, as the building Principal, it was her obligation to investigate any matter that could be considered a Title IX complaint. In Student's case, she began an investigation into the allegation immediately. (S-50, Harris) Between September 17, 2021 and September 22, 2021, Ms. Harris and the Assistant Principal interviewed the classroom teacher, the Assistant Principal who responded to the classroom, 3 students who witnessed the incident, and the 2 students involved in the incident.⁹ (S-50, Harris) Ms. Harris put in place immediate supportive measures; she removed the alleged aggressor from the classroom during the investigation. After reviewing the statements from her interviews, Ms. Harris concluded that "some type of motion was made (dancing or DAB¹⁰ motion) on the area of [Student], but that physical contact was NOT made and [the] gesture was not directed at [Student]." (S-43, Harris)
15. Parent testified she requested an IEP meeting in September because she was not getting any information from the school regarding the Title IX incident. (Parent) The documentary evidence does not support that this request was made, nor did Mr. Menkel or Ms. Harris testify that such request was received. (S-55)
16. On September 22, 2021, Ms. Harris met with Parent and her Advocate and relayed her conclusion that the allegation was not substantiated. Ms. Harris offered Student additional "follow-up supports," such as counseling, which Parent refused. (S-43, S-55, Harris)
17. Parent testified that she wanted to file a formal complaint but "did not get [a complaint form]" from Ms. Harris. (P-31, Parent, Harris). Ms. Harris testified that had the Title IX allegation been substantiated, she would have provided Parent with a complaint form and brought the incident to the attention of the District's Title IX Coordinator, Ms. O'Sullivan. (Harris)
18. Parent's Advocate requested that Ms. Harris provide Parent with "Title IX documents." (S-43, Harris) Ms. Harris testified that she was "not sure" what Parent's Advocate was requesting and reached out to Shannon Collins, her direct supervisor, for clarification. She also spoke to Ms. O'Sullivan to make sure she had "done everything correctly"¹¹; she wanted to make sure that she "was not neglecting to do any paperwork on [her] end." (P-1, P-31, Harris)
19. Dr. Mary Ann Morris is the Chief of Special Education and Related Services at the Springfield Public Schools. She oversees 70 schools in the District. She has worked in the District in multiple capacities since 1979. She first became informed of Student in the spring of 2021 as Student was exhibiting behavioral issues. When he transitioned to Harris Elementary School, Dr. Morris communicated with Ms. Harris to "brainstorm on how to support" Student, who was struggling "within weeks of when he started" attending the school. (Morris) Dr. Morris was involved in the Title IX incident solely to the extent that she advised Ms. Harris to contact Ms. O'Sullivan. (Morris)
20. Parent reported that following the Title IX incident, Student began to exhibit school refusal. As he prepared to go to school in the morning, he would become anxious, begin

⁹ Parent testified that no one contacted her or Student for an interview. (Parent) The documentary evidence demonstrates that Student was interviewed. (S-50) Ms. Harris confirmed that she did not seek to interview Parent. (Harris)

¹⁰ DAB is a dancing motion where students "make a motion with their hands, and their chest puffs out a little bit towards the other student who might be in front of them." Ms. Harris testified that, during the September 2021 incident, "no student witnessed any touching." (Harris)

¹¹ Ms. O'Sullivan had no other involvement in the Title IX investigation relative to Student. (Harris)

to pace, and need to use the bathroom. He reported to Parent that he felt disliked at school by his peers and teachers and was “sorry” that he had “failed” Parent. He felt that he was often blamed for events that were not his fault. He would also come home from school sad and emotional. Student felt that he had been inappropriately touched at school, and the school did not protect him or do anything about it. (Parent)

21. On September 29, 2021, the District sent Parent an Evaluation Consent Form proposing a Functional Behavior Assessment (FBA) along with an N1 form, which Parent signed and returned on October 7, 2021. (S-2, S-43, Harris) The District proposed the FBA as the “next [intervention] step” as Student was continuing to struggle in school despite classroom-based interventions. (Harris)
22. On October 8, 2021, Principal Harris emailed Parent confirming that “she did not find that an assault of any kind occurred or any action rising to the level of a Title IX violation.... Both boys were separated during [the] investigation, and out of an abundance of caution, continue to be separated as much as possible in classrooms.” (S-43, S-55, Harris) Ms. Harris testified that this was a “courtesy email” as she had already provided Parent with her findings at the meeting on September 22. (Harris)
23. Following the Title IX incident, Student was involved in other disciplinary incidents, but Parent prohibited the District from questioning Student. Parent testified that she told Student that if he did not “feel secure” or if he felt “threatened,” that is “an emergency,” and he should use his cellphone to call her. (Parent) Parent would dismiss Student before he could be questioned making it difficult for Ms. Harris to fully investigate these disciplinary incidents. (P-1, S-4, S-43, S-55, Harris, Morris) At Dr. Morris’s suggestion, Ms. Harris offered Parent the opportunity to be a silent observer during interviews with Student, but Parent refused. (Morris, Harris) This made Ms. Harris “uncomfortable” as she did not know how to proceed under such circumstances.¹² Ms. Harris testified that she “was blocked at every turn in terms of supporting [Student] in school.” (P-1, S-43, S-55, Harris)
24. During a disciplinary hearing in November 2021, Parent and her Advocate shared their concerns with Ms. Harris that Student’s social needs were not being addressed in school. (P-15)
25. On November 9, 2021, the Team convened¹³ to review the recently completed FBA and occupational therapy (OT) evaluations and to discuss Student’s progress and Parent’s concerns (S-2, P-51, P-62, Menkel, Harris, Freedman)
26. The FBA focused on the target behaviors of disruption and noncompliance. According to the FBA, the function of these behaviors was determined to be primarily to obtain peer and adult attention. (S-51, P-62)

¹² As an example, Ms. Harris testified that on one occasion Student was accused by a peer of making a “humping motion” towards him. (Harris) Parent requested that Student not be questioned. (Harris, Parent) After consulting with her supervisor, Ms. Harris offered Parent the opportunity to sit in on the meeting with Student. (Harris) Parent came to the meeting, prohibited Student from responding to any of the questions, and subsequently dismissed him from school. (Harris, Parent) On another occasion, Ms. Harris sought to question Student after he had allegedly referred to a peer by a sexually inappropriate name, but Parent dismissed Student and kept him out of school for three days. Parent emailed Ms. Harris asking her not to speak to Student. According to Ms. Harris, she felt “uncomfortable” not being able to interview Student as she could not proceed with the investigation of the incident. Ms. Harris contacted her supervisor for “next steps.” (Harris)

¹³ The Team had planned to convene later in December 2021, but, due to Parent’s concerns and in light of the fact that the assessments had been completed, the Team convened instead on November 9, 2021. (P-15, Menkel)

27. The OT evaluation utilized both formal and informal measures. Teachers' ratings on the Sensory Processing Measure reflected significant Dysfunction in Social Participation suggesting that Student experienced pervasive social problems across multiple settings. The evaluation concluded that "there may be some sensory issues affecting [Student's] ability to participate in the classroom setting, and access his materials and environment at this time." OT consultation services were recommended to address any sensory concerns that might arise during the school day. (P-54)
28. At the Team meeting, Student's teachers reported that Student avoided classwork, failed to turn in assignments, was easily distracted, and required multiple prompts to begin and complete work. Student's academic skills were difficult to assess, because he rushed through diagnostic work, too. Teachers also expressed concern regarding Student's social emotional needs and his communication with peers. (S-62, Harris)
29. Student's attendance was also addressed at the Team meeting. The Team believed that Student's absences and frequent dismissals impeded his learning and prevented school staff from working with Student on his behaviors.¹⁴ (S-5, S-51, S-62, Harris) Parent reported that Student missed school because he would feel sick beforehand. (Parent) Parent advised that she believed the increased anxiety was due to the Title IX incident. (Parent)¹⁵
30. Based on the evaluation results, the Team proposed to add a Social Emotional Goal and corresponding counseling service to the IEP, as well as consultation with the occupational therapist. (Menkel) Dr. Morris testified that the Social Emotional Goal and counseling service were proposed also in response to Student's report that he felt disliked at school. (Morris) The Team did not propose to conduct a risk or safety assessment for Student. (Harris, Menkel) The Team also developed a Behavior Intervention Plan (BIP). (Menkel)
31. According to Mr. Menkel, after reviewing the FBA, the BIP, and "the identified target behaviors," Parent "was not opposed to" the Social Emotional Goal and added counseling services. (Menkel) In addition, Parent requested that consultation with the speech and language pathologist be added to the IEP, and the Team agreed to do this. (S-42, Freedman, Harris, Menkel)
32. Parent attended the Team meeting with her Advocate. Towards the end of the meeting, Parent expressed multiple concerns including that "incidents" were not being properly investigated; that a "Title IX Officer" had yet to reach out to her per her request; that the IEP meeting should have been held "earlier"; and that Student did not think that he was liked and did not feel safe at school. (S-42, Freedman, Menkel)¹⁶ Parent also wanted to discuss the specific incident leading to the Title IX investigation and to have her concerns regarding the alleged assault included in the IEP. The Team "redirected [her] to IEP development." The Team did not make a connection between the Title IX investigation and Student's behaviors, as "the Team had data [] dating back to [Student's tenure] prior to Harris [Elementary] School to show that disruptive behaviors and noncompliance, as

¹⁴ Dr. Morris testified that despite sporadic absences, Student was not exhibiting school refusal at that time; rather, he first began exhibiting school refusal in April 2022. (Morris)

¹⁵ Parent also testified that Student "changed" because he was bullied by his teachers. (Parent) It is unclear whether Parent shared this concern with the Team at any time prior to Hearing.

¹⁶ Parent also expressed concern that she did not "have a say" in the school selection for middle school. Ms. Freedman testified that because Student's IEP did not propose placement at a specific program "for any low incidence assignment," Student was assigned to his "boundary middle school." (S-42, Freedman)

targeted in the FBA, had been exhibited by [Student] historically.” (S-61, S-62, Freedman) Ms. Freedman also testified that the specifics of disciplinary events are not discussed at IEP meetings but rather at the “building level”¹⁷; instead, “for any concerning behaviors,” the Team would discuss whether there are “accommodations or services that need to be added or revised in the IEP to address those things,” which, in the November 9, 2021 meeting, the Team did by developing a BIP and adding counseling services as well as a Social Emotional Goal to the IEP. (Freedman)

33. Parent did not feel that the Team listened to her concerns as they “pushed aside” her attempts to discuss the Title IX incident. She wanted the school to understand that she could not send Student to school “where he was being harmed.” Student was missing school because of “his fear.” He was not getting what “he needed” at school and that is the reason he did not want to go to school. (Parent)
34. The November 9, 2021 IEP meeting concluded early due to “meeting norms not being followed.” (S-42, S-46, S-51, Harris, Freedman, Menkel) Such norms included being on time, staying on task, not interrupting, respecting the view of others, paying full attention to the speaker, and avoiding crosstalk. (Menkel) According to District witnesses, Parent’s Advocate and Parent were “off topic”, kept interrupting speakers, “speaking over” people, “not allowing others to share” information, accusing speakers of “lying,” and engaging in other rude behavior. (S-51, Freedman, Harris, Menkel)
35. Ms. Harris testified that it was unclear what Parent and her Advocate “were looking for” at the Team meeting; it appeared they were seeking additional supports for Student, but “that was what [the Team] was trying to do.” (Harris) Mr. Menkel testified that the “escalation” towards the end of the meeting was not related to the services being proposed. (Menkel)
36. The Team did not consider whether a new disability category should be added to Student’s IEP. (Menkel, Harris) Ms. Harris opined this would have been premature as the BIP resulting from the FBA had not yet been implemented. (Harris) According to Mr. Menkel, this was not an annual review or a re-evaluation meeting, and the purpose of the meeting was to review the evaluations and Student’s progress and to address Parent’s concerns. (Menkel)
37. Placement was not discussed at the November 9, 2021 Team meeting. (Menkel)
38. Because the meeting ended early, Mr. Menkel later contacted Parent to inform her that he would be sending her a draft of proposed services and a Notice of Procedural Safeguards, which he subsequently emailed to her. (S-2, S-3, Menkel) In an email sent on the same day, Mr. Menkel also informed Parent that he would “attach a draft [of the social emotional] goal.” The “meat of the goal was developed at the meeting,” and the goal was drafted by the teacher and school adjustment counselor based on the Team’s discussion. Mr. Menkel testified that Parent had input in the Team discussion and could have responded with additional input after she received the draft goal. He did not offer to reconvene the Team for additional discussion. (P-25, S-3, Menkel)
39. The District proposed an IEP dated November 9, 2021 to April 11, 2022 (hereinafter, the November 2021 IEP) with a full inclusion placement. The November 2021 IEP documented Student’s struggles with expressive and receptive language, self-regulation, and adult and peer interactions. Goals in the areas of Social Emotional (targeting peer

¹⁷ Ms. Harris testified that she would not necessarily share information such as the results of a Title IX investigation with the IEP Team. (Harris)

interactions and attention to task) and Communication Skills (targeting articulation, fluency, and communication) and corresponding services were proposed as follows: A Grid: Speech and Language consultation (15 minutes per month)¹⁸, Occupational Therapy consultation (90 minutes per school year); C Grid: Speech and Language services (2x30 minutes/5 day cycle), Counseling services (1x30 minutes/5 day cycle). Regular transportation was proposed. (S-2, S-42, S-46, Freedman, Harris) Mr. Menkel drafted, and Ms. Freedman reviewed, the N1 that accompanied the IEP. (Menkel, Freedman)¹⁹

40. Parent testified that had the meeting not ended early, she would have informed the Team that she did not agree with the proposed Counseling service because Student was already seeing a therapist outside of school. (Parent)
41. Parent did not respond to the November 2021 IEP, and therefore none of the additional proposed services or accommodations other than what Parent had accepted in the April 2021 IEP were ever implemented. (P-42, Harris, Freedman, Menkel, Morris)
42. Parent testified that she did not respond to any subsequent IEPs because they had not been translated into Spanish, and she could not pay for an interpreter “each time.” Although Parent’s Advocate, with whom she has worked since Student was in the fourth grade, does not speak Spanish, she communicates with her in English and with the help of one of her children who speaks English. Parent explained that she can understand in English when “it is not complicated.” At no time relevant to this Hearing did either Parent or her Advocate ask for an interpreter or for translated documents from the District. (Parent) Parent testified it was her decision not to ask for an interpreter for meetings because she felt “ashamed” and “looked down on.” When communicating with the school, Parent advised that she either spoke in English or used Google Translate. (Parent)
43. According to Ms. Harris, Ms. Freedman, Mr. Menkel and Dr. Morris, the November 2021 IEP was appropriate for Student. (Harris, Menkel, Freedman, Morris) Ms. Harris opined that “just because a student struggles in school social-emotionally does not mean they cannot be successful in a full inclusion placement,” and the November 2021 IEP included a Social Emotional Goal and counseling services to support Student’s success in the full inclusion setting. (Harris) Mr. Menkel opined that the November 2021 IEP was appropriate because it reflected the recommendations of the FBA and OT evaluation. (Menkel) Dr. Morris testified that the proposal for additional services in the November 2021 IEP was an appropriate “step” on the continuum of services. (Morris)
44. Student’s BIP was implemented and revised frequently thereafter. (Freedman, Harris)
45. On March 9, 2022, the District proposed a Formal Behavior Observation (FBO) for Student. (S-2, S-44, Freedman, Harris) Ms. Freedman testified that the Team was “looking for formal recommendations from another set of eyes”; Student’s behaviors had continued over the course of the school year, and the school had been revising the BIP with limited success. (S-35, S-45, S-47, Harris, Freedman) Parent did not respond to the proposal. (Harris, Freedman)
46. According to Mr. Menkel, when scheduling Student’s Team meetings, he attempted to “engage” Parent through “multimodal” communication methods; he both called Parent

¹⁸ This had been rejected on the April 2021 IEP but was added at Parent’s request per the November 2021 meeting.; (S-56)

¹⁹ As Mr. Menkel’s supervisor, Ms. Freedman often reviewed the IEPs and N1s he drafted. (Freedman, Menkel)

and emailed her (and her Advocate).²⁰ Since Student's IEP was expiring on April 12, 2022, Mr. Menkel emailed Parent on March 14, 2022, approximately one month prior, to request her availability for an annual review Team meeting. He also inquired whether Parent would be interested in having a BSEA facilitator participate. Mr. Menkel testified that a facilitated team meeting was offered due to the difficulties experienced in the November 9, 2021 Team meeting. (S-3, S-40, S-41, Freedman, Menkel)

47. Parent responded that all communications should be addressed to her Advocate, and, on March 14, 2022, Mr. Menkel emailed both Parent and Parent's Advocate the link for the annual review meeting which was scheduled for April 6, 2022.²¹ On March 15, 2022, Mr. Menkel emailed Parent again regarding the annual review meeting. He informed Parent that Student's IEP was expiring and asked if she would agree to a facilitated IEP meeting. Parent's Advocate responded that they would respond to the District's request during a meeting that was scheduled to take place that day, March 15, 2022. (S-3, S-40, S-41, Freedman, Menkel) On March 17, 2022, Mr. Menkel sent Parent a meeting invitation for an annual review meeting to be held on April 6, 2022. (P-9, S-2, S-3, S-39, Menkel, Freedman) On March 18, 2022, Mr. Menkel again emailed Parent and her Advocate with the meeting link for the April 6, 2022 Team Meeting. He also inquired whether Parent would agree to a facilitated Team meeting and reminded Parent that he had sent her an Evaluation Consent Form the previous week for the FBO. (P-9, S-40, Menkel) Neither Parent nor Parent's Advocate responded to Mr. Menkel. (Menkel)
48. On April 6, 2022, the Team convened, but Parent did not attend. No meeting was held. (S-2, S-3, S-37, P-40, Menkel, Freedman)
49. That day, Mr. Menkel emailed Parent with a new meeting Zoom link for a Team meeting to take place on April 11, 2022 along with another Evaluation Consent Form and N1 seeking permission to proceed with the FBO. (S-2, S-3, S-38, S-40, Menkel, Freedman)
50. Mr. Menkel emailed Parent again on Friday, April 8, 2022 asking whether she was available for the Team meeting scheduled for Monday, April 11, 2022. Parent's Advocate responded that she had not been aware of the date but that she would, "make [herself] available however [she] need[ed] a virtual observation prior to the meeting." Ms. Freedman, who had been copied on the email chain, responded that the requested observation by Advocate could not be arranged prior to Monday. She inquired whether Parent was "requesting to delay the annual review timeline." Parent's Advocate responded in the negative. (P-9, S-2, S-3, S-37, P-40, Freedman, Menkel)
51. Neither Parent nor Advocate conducted any observations of Student's program during the 2021-2022 school year. (Freedman) Ms. Freedman testified that Parent was offered the opportunity to schedule an observation to take place after April 11, 2022. Parent also could have reconvened the Team following the observation. Parent could have requested an IEP meeting "anytime," but she did not. (Freedman)
52. Ms. Freedman, Mr. Menkel, and Ms. Harris testified that it was their understanding that as the IEP was expiring on April 12, 2022, the District was obligated to propose another

²⁰ Mr. Menkel testified that Parent's insistence that communications with her "go through" Advocate limited his ability to engage multimodal communication methods. Email was identified as Parent's and Advocate's preferred method of communication. (Menkel)

²¹ Parent's Advocate responded, "We requested a meeting be scheduled, [and] the district had ten days to do so today is day 6, [sic] we will respond to the district [sic] request during the ... meeting to discuss current concerns reported by student." According to Mr. Menkel, the meeting referenced by Advocate was not an IEP meeting but rather a disciplinary meeting. (S-3, S-40, S-41, Freedman, Menkel)

IEP. (Freedman, Menkel, Harris) According to Mr. Menkel, had Parent responded with a request for a different date and time, she would have been accommodated.²² (S-3, Menkel)

53. On April 11, 2022, the Team held an annual review meeting. Parent did not attend. (S-2, S-3, S-35, Harris, Freedman, Menkel) Ms. Freedman testified that a Team meeting would not have been held on the second attempt without Parent's attendance had Parent asked the Team to reschedule with the "understand[ing] that it's beyond the timeline." (Harris) According to Dr. Morris, the general practice of the District is to hold an annual review Team meeting without a parent in attendance as a "last resort" because the District cannot "operate on an expired IEP." (Morris)
54. At the April 11, 2022 Team meeting, the Team updated Student's current performance levels and goal objectives.²³ (Harris) Following the meeting, Mr. Menkel emailed Parent a copy of the proposed services with a Notice of Procedural Safeguards. (S-2, S-3, S-35, Menkel) An IEP dated April 11, 2022 to April 10, 2023 (hereinafter, the April 2022 IEP) along with an N1 form, were sent to Parent together with another Evaluation Consent Form for the proposed FBO.²⁴ (S-2, S-3) The IEP proposed goals in the areas of Social Emotional (targeting social interactions and work completion) and Communication Skills (targeting fluency and communication) and a full inclusion placement. Services included: A Grid: Speech and Language consultation (1x15 minutes/month), Occupational Therapy consultation (90 minutes/school year); C Grid: Speech and Language services (2x30 minutes/5 day cycle), Counseling services (1x30 minutes/5 day cycle). No special transportation was proposed. (S-36, Harris) Parent did not respond to the IEP, and therefore, none of the additional proposed services or accommodations other than what Parent had accepted in the April 2021 IEP was ever implemented. (Harris, Menkel, Morris)
55. According to Ms. Harris, each time the Team met, new goals and services were added, but because the IEPs were not signed, they could not be implemented. A paraprofessional was not proposed for Student as the previously proposed services had yet to be implemented and evaluated for success. (Harris)
56. Other than the April 11, 2022 IEP Team meeting, Parent and her Advocate attended all Team meetings for Student. (Freedman, Parent)
57. On April 13, 2022, following a series of disciplinary incidents, Student was issued a short term out-of-school suspension. Student did not return to school following the conclusion of his suspension period. (S-4, Harris)
58. On May 3, 2022, Parent notified Ms. Harris via email that Student would be absent until further notice. Student had expressed "fear and concern [] about going back to school," and Parent did not "feel at all safe about sending [him]" to school due to "[h]arassment by staff and classmates"; "[d]iscrimination because of [] color, race, nationality and orientation"; "[p]sychological and emotional damage"; "[d]eprivation of [his] rights as a student [and as] a child with ADHD"; "[m]istreatment by [t]eachers and [c]ounselors";

²² A facilitated Team meeting would also have necessitated a different date and time depending on the BSEA facilitator's availability. (Menkel)

²³ A change in placement was not considered by the Team, because the Team wanted to gather more data. Mr. Menkel testified that an FBO had been proposed in early March. As such, the Team continued to propose a full inclusion placement. (Menkel)

²⁴ The N1 is dated April 25, 2022. (S-35) Ms. Freedman reviewed and edited this IEP. (P-2, Menkel, Freedman)

and “[c]reation of false accusations.”²⁵ She requested that schoolwork be sent home. (S-33, Harris, Parent) Subsequently, Student stopped attending school. Attendance letters were sent home; home visits were conducted, and the District filed a “51A Report” with the Department of Children and Families²⁶. (S-4, S-5)

59. On May 4, 2022, Ms. Harris and Ms. Freedman offered to meet with Parent to discuss her concerns. (S-34, Harris, Freedman) Parent’s Advocate responded that Parent’s concerns would be discussed at the resolution meeting in the instant proceeding.²⁷ (Freedman) In the meantime, a computer, classroom materials, and schoolwork were made available to Student for home use. (S-34, Harris, Freedman)
60. On May 9, 2022, Ms. Harris emailed Parent a link for Parent and her advocate to perform an observation of Student’s then-current in-district program. Parent’s Advocate responded that she would like to do a full day observation the following week instead. Additional dates and times were proposed by the District. (S-29, S-30, S-31, S-32, Harris) No observation ever took place. (Freedman) Ms. Harris testified that observations were frequently requested, scheduled, and cancelled by Parent or Parent’s Advocate. (Harris)
61. In May 2022, Ms. Harris and Ms. Freedman made several attempts to schedule meetings with, and observations for, Parent to “try to alleviate some of [Parent’s] concerns and [to] put things in place [at school] to try to help [Student] be more comfortable coming back to school.” (S-22, S-23, S-24, S-28, S-29, S-30, S-31, S-32, S-34, Freedman, Harris) On May 13, 2022, Parent’s Advocate emailed Ms. Harris requesting a meeting to discuss measures to help Student “feel safe” so he could return to school. (S-28) Parent and her Advocate met with Ms. Freedman and Ms. Harris on May 20, 2022. During this meeting, Parent’s Advocate requested an extended evaluation to take place out-of-district and Ms. Freedman replied that a Team meeting would be necessary to discuss this request. (S-1, S-26, Freedman, Harris)
62. Parent testified that she sought an extended evaluation at Dr. Olga Aponte-Slater’s recommendation. (Parent, Aponte-Slater) Dr. Aponte-Slater has been Student’s psychiatrist for 3 years but has been working as a child psychiatrist for over 25 years. She is licensed in both Massachusetts and Connecticut. She sees Student every month or every other month to adjust his medication as needed.²⁸ Student currently takes medication for ADHD and for anxiety. Dr. Aponte-Slater has not reviewed any of Student’s IEPs or educational records nor has she spoken to any school staff regarding Student or attended any of his IEP meetings. (Aponte-Slater)
63. Dr. Aponte-Slater could not recall whether Parent contacted her regarding the Title IX incident. According to Dr. Aponte-Slater, Student was initially prescribed anxiety medication in the spring of 2022, as Student’s anxiety and “fear of school” had increased. Student reported to Dr. Aponte-Slater that he felt misunderstood at school. Dr. Aponte-Slater also recommended that Parent ask the school to conduct a “comprehensive evaluation.” at this time. Dr. Aponte-Slater testified that it is “not for her to decide where to place Student.” She opined that to manage his anxiety, Student requires medication,

²⁵ Parent’s email to Ms. Harris was in English. Parent testified she had used Google Translate to write it. (Parent)

²⁶ A “51A Report” is the common term for a Report Alleging Child Abuse and Neglect required by M.G.L. c. 119 §51A to be filed whenever child abuse or neglect is suspected.

²⁷ On April 26, 2022, Parent filed the underlying Request for Hearing (amended on September 16, 2022).

²⁸ Student also sees a therapist at the clinic with which Dr. Aponte-Slater is associated, but Dr. Aponte-Slater and the therapist do not discuss Student. (Aponte-Slater)

therapy and a “friendly, smaller setting” where Student would feel “secure, wanted, and understood.” He should be offered counseling in school and should work with teachers trained to work with students who exhibit anxiety. (Aponte-Slater)

64. According to Ms. Freedman, during the course of the “school reentry process at the end of the school year, [the school staff] hop[ed] to involve [Student’s] outside providers ... in the conversations,” but the District “did not have releases of information to speak with those providers ... [or to] include them in [their] conversations, nor did they attend Team meetings to which they were invited.” One of the reentry meetings had been scheduled around an outside provider’s schedule, but the provider did not attend. (Freedman)
65. Parent testified that she refused to provide a release for the school to speak to outside providers because “she did not want to mix outside help with school” and did not want the school to “influence” outside providers. (Parent)
66. On May 23, 2022, Ms. Freedman emailed Dr. Morris regarding an extended evaluation proposal for Student. (P-12) The proposal was in response to concerns shared by Parent s during the May 13, 2022 meeting. (S-25, S-26, Morris) In her email, Ms. Freedman suggested that the extended evaluation take place in the in-District substantially separate program. Ms. Freedman testified that she reached out to Dr. Morris regarding the extended evaluation ahead of the Team meeting in order “to speed things up” as Student was not attending school. (P-12, S-26, S-27, Freedman, Morris) Ms. Freedman proposed the in-District program as it was less restrictive than the location requested by Parent’s Advocate (Valley West). (Freedman, Morris) Ms. Freedman contacted Parent to let her know that the District would agree to the extended evaluation “in the hopes that [Student] [could] return to school as soon as possible,” Parent’s Advocate responded, requesting that she be involved with drafting the extended evaluation proposal, and a Team meeting was therefore scheduled. (P-12, S-26, S-27, Freedman, Morris)
67. On May 24, 2022, Mr. Menkel emailed Parent a Meeting Invitation form for a Team meeting “to develop the extended evaluation with [her] participation and at her request.” The meeting was scheduled for May 26, 2022. Mr. Menkel called Parent and left her a voicemail reminding her of the meeting. Parent did not respond to Mr. Menkel and did not attend the meeting. Mr. Menkel testified that the short notice for the meeting was due to “a sense of urgency” as Student was not attending school. He sent Parent another Meeting Invitation form proposing a meeting on June 1, 2022. Parent requested June 2 instead, and Mr. Menkel sent a new Meeting Invitation form for the requested date. On June 1, 2022, Mr. Menkel called and emailed Parent reminding her of the June 2 meeting. (S-2, S-3, S-25, S-26, Menkel)
68. The Team convened on June 2, 2022 with Parent and her Advocate in attendance. (S-2, S-20) Dr. Morris testified that Parent’s Advocate had requested an extended evaluation at Valley West for Student, the District countered with Springfield’s own Social Emotional Behavioral Support Program (SEBS) located at Kiley Prep, and the Team finally settled on the Student Stabilization and Diagnostics Center (SSDC).²⁹ (Morris) This was not a placement but rather a proposal to have Student attend a summer program to “get another set of eyes on him and to gather more information to see what he needed.” (Morris)

²⁹ Parent referred to SSDC as The Center School in her pleadings. Therefore, initially, Issue #2 referred to SSDC as the “Center School.” However, Issue #2 was revised to reflect accurately the fact that the Student attended SSDC, not The Center School, for the purpose of the extended evaluation.

69. Parent accepted the extended evaluation at SSDC, and a Team meeting was scheduled for August 16, 2022. (S-2, S-3, S-20, Freedman)
70. SSDC is not a separate Chapter 766, DESE approved day program; it is a diagnostic center which is housed in the same building as The Center School, a Chapter 766 private day program, unrelated to the Springfield Public Schools. Both SSDC and The Center School operate under the “umbrella parent company” of Positive Regard, which “houses” additional schools. Attending SSDC for diagnostic purposes does not automatically mean that a student will attend one of Positive Regard’s Chapter 766 approved programs; SSDC makes recommendations, but the Team determines placement. (Morris)
71. At the June 2, 2022 Team meeting, Parent requested a re-engagement meeting. Ms. Harris emailed Parent on June 3, 2022 with two possible meeting dates. Parent’s Advocate responded on June 6, 2022, and a meeting was scheduled for June 10. (S-18, S-23, S-24)
72. On June 10, 2022, Parent and her Advocate attended Student’s re-engagement meeting. (S-3, S-18, S-22, S-23, Freedman, Harris)³⁰ This was not an IEP meeting. (Freedman, Harris) Present were Parent, Parent’s Advocate, Ms. Freedman, Ms. Harris, and the Harris Elementary School adjustment counselor. Parent reported that Student’s “anxiety [was] preventing him from attending full days of school at that time.” She requested that Student only attend certain days in the afternoons for the end-of-school events and not for academic periods, to which Ms. Harris agreed, and which Student proceeded to attend. Check-ins with the school adjustment counselor were also offered. Ms. Freedman and Ms. Harris testified that they wanted to make the experience positive for Student. (S-3, S-18, S-21, S-22, S-23, Freedman, Harris)
73. No home FBA was proposed during the period of Student’s non-attendance. (Menkel)
74. Student began attending SSDC in July 2022. While at SSDC Student underwent a further educational evaluation, and an Educational Evaluation and Clinical Summary report was generated. (S-14, S-15)
75. During his time at SSDC, Student initiated and engaged in peer conflict daily and often picked on younger more disabled students. During peer interactions, Student required 1:1 support or monitoring and was redirected frequently for inappropriate language, instigating peers, and intervening in peers’ interactions. Student did not engage in sexualized behavior. His attendance was “almost perfect.” (P-10, S-2, S-3, S-12, S-14, S-15, Freedman, Menkel)
76. Parent testified that Student “did well” at SSDC and that he liked going to school. Student felt understood and listened to at SSDC, and he liked that staff talked to him and would ask him why he was frustrated. SSDC also recognized Student when he behaved well, which was reinforcing to Student. (Parent)
77. According to Dr. Morris, Student “did not do well” at SSDC, as he demonstrated the same behavior as he had at Harris Elementary School and which he later exhibited at Kiley Academy, as discussed further below. (Morris)
78. A Team meeting took place on August 17, 2022³¹ to discuss the results of the extended evaluation, to answer the extended evaluation questions, and to develop an IEP that

³⁰ During the hearing, Advocate asserted that she may have erred in providing the Hearing Officer and Springfield Counsel with the June 26, 2021 meeting date addressed in Issue #3, *supra*.

³¹ The meeting had been rescheduled from August 16, 2022. (S-2, S-3, Freedman)

would be ready for Student for the start of the new school year. (S-2, S-16, Harris, Menkel, Freedman, McCarthy)

79. In attendance at this Team meeting were a BSEA facilitator, SSDC staff, Parent, Parent's Advocate, Dr. Morris, Mr. Menkel, Ms. Freedman, and Ms. Harris. No Springfield Public School teachers were in attendance as they were on summer break. The Team reviewed the Educational Evaluation and Clinical Summary completed by SSDC and discussed potential classroom supports and programming that Student might require for 6th grade. (S-16, Menkel, Freedman) Dr. Morris testified that the Team listened to, considered, and discussed each of SSDC's recommendations. In fact, Team members "almost went line by line through the evaluation reports." (Morris)
80. Based on SSDC's testing, Student's overall academic skills in reading, writing and mathematics were in the average range. The results of the Kaufman Test of Educational Achievement Third Edition (KTEA-3) demonstrated average skills in Letter and Word Recognition but below average skills in Reading Comprehension. This discrepancy indicated a possible specific learning disability in reading comprehension, and SSDC recommended that "instruction with interactive reading that is reinforced with visual information should be used consistently, across all subject areas." Student's Math Composite score reflected average abilities, but Student's score in Math Computation was in the borderline low average range, and SSDC recommended that this area "be addressed through remediation and practice of automatic Math Facts" as well as consistent review of "the sequential steps required to solve equations." Student's Written Language Composite score was also in the average range, but Student demonstrated some signs of dysgraphia which included poor spatial understanding of letter formation and inability to copy from the board at times. SSDC recommended an occupational therapy assessment, and it was noted that Assistive Technology "could push [Student's] output of ideas in writing." (P-10, S-2, S-3, S-12, S-14, S-15, Freedman, Menkel)
81. Observing that a "smaller learning environment ha[d] been a helpful setting [for] decreasing [Student's] dysregulation and increasing his ability to focus on the task at hand," SSDC recommended a small, structured learning environment with built-in adult supports and a therapeutic approach, additional clinical supports and services, structured social time, an assigned seat and organized classroom materials, a visual schedule, access to calm-down sensory tools or spaces, regular review of consistent rules and expectations, clear and positive communication, incentive opportunities, and daily check-ins. (P-10, S-2, S-3, S-12, S-14, S-15, Harris, Freedman, Menkel)
82. Parent was satisfied with the SSDC extended evaluation and "agreed with the recommendations 100 percent."³² (Parent, Menkel)
83. The Team agreed that Student required a therapeutic program to address executive functioning and social skill deficits. (Harris, Freedman, Menkel) Parent agreed that Student required a "more therapy-tailored program." (Menkel, Harris) Dr. Morris testified that based on SSDC's recommendations, the Team "pivoted" from a partial inclusion program to a substantially separate program. (Morris)
84. Parent and her Advocate requested that an Executive Functioning Goal and a Reading Comprehension Goal be added to the IEP. The Team agreed Student's executive

³² The reports were not translated into Spanish. Parent testified that although she "did not understand them word for word," she understood the "bullet points." She had also communicated consistently with staff from SSDC which helped her understand the information in the reports and at the meeting." (Parent)

functioning skill deficits should be addressed in the IEP, but Dr. Morris suggested that the Team get the input of his previous teachers regarding his deficit in reading comprehension, and the District proposed to reconvene with these teachers present. (S-2, S-12, Freedman, Menkel, Morris) The Team did not want to “base Student’s IEP on one assessment.” (S-14, Freedman)³³

85. According to Parent, Dr. Morris did not want to hear from SSDC; SSDC did not even finish reviewing the educational report when Dr. Morris “shut down the meeting to have her own teachers come.” (Parent)
86. During this meeting, Dr. Morris indicated that SEBS aligned with SSDC’s recommendations. (Freedman, Morris) According to Dr. Morris, SEBS offers “wrap-around supports.” (Morris) Although SEBS was “mentioned” during the August 17, 2022 meeting, “due to time constraints, [the Team] determined that [they] needed to schedule another meeting with [Springfield] teachers there to ... talk more about the areas of concern and to finish developing the IEP and placement.” (S-16, Freedman, Menkel, Morris)³⁴ According to District witnesses, no placement decision was made at this August 2022 meeting. (Menkel, Harris, Freedman, Morris, McCarthy)
87. The Team reconvened on August 26, 2022 to allow Student’s classroom teachers to provide input into the IEP development and placement decision and to provide the Team with a better understanding of Student’s academic skills. (S-2, S-3, S-16, McCarthy, Freedman, Menkel) Mr. Menkel testified that the purpose of the additional meeting was to discuss the academic component, not to write the entire IEP, which had been mostly completed at the August 17 meeting. (Menkel) A BSEA facilitator was present as were Parent, Parent’s Advocate, the clinician and the special education teacher from SSDC, and Student’s 2021-2022 school year classroom teachers³⁵, the Harris Elementary School adjustment counselor, the speech and language pathologist from Harris Elementary School, Mr. Menkel, Ms. Freedman, Ms. Harris and Ms. McCarthy. (S-2, S-12, McCarthy, Freedman, Menkel)
88. Dr. Morris did not attend, and she did not meet with the Team or her staff prior to the August 26 meeting. (Morris)
89. Dr. Marissa McCarthy also attended the meeting on August 26, 2022. (S-2, S-12, McCarthy, Freedman, Menkel) This meeting was Dr. McCarthy’s first involvement with Student. (McCarthy) Dr. McCarthy is the Special Education Supervisor for the Springfield Public Schools. She has been in her current role for 3 years and previously worked in other public school settings. Dr. McCarthy has a bachelor’s degree in psychology, a master’s degree in educational psychology, a CAGS in educational psychology, and a doctorate degree in educational leadership. She also holds multiple licenses from the Department of Elementary and Secondary Education (DESE).
90. At the August 26 Team meeting, the Team discussed academic goals and placement options. (Menkel, Harris, Freedman, McCarthy) SSDC did not recommend goals in the areas of reading. (P-10, S-14, S-15, McCarthy) The Harris Elementary School teachers

³³According to Mr. Menkel, math was not “brought up as an area of concern” at the meeting, nor did Student’s Springfield teachers have any concerns regarding Student’s mathematics skills. The August 2022 IEP included accommodations for math. (S-17, Menkel)

³⁴ On August 19, 2022, an N1 form summarizing the August 17 meeting was mailed and emailed to Parent with a Team meeting invitation form to reconvene the Team on August 26, 2022. (S-2, S-3, S-16) Ms. Freedman reviewed the N1 form prior to it being mailed to Parent. (Menkel, Freedman)

³⁵ Student had changed classrooms during the 2021-2022 school year. (Harris)

provided information on Student's lack of engagement and poor attendance. They referenced Student's performance on i-READY and class assignments, although no specific data was shared with the Team. The Springfield Public Schools' teachers believed that Student's academics could be addressed with accommodations and did not require direct services. (McCarthy, Menkel) Before adding a Reading Comprehension Goal to the IEP, the school-based Team wanted Student to attend school regularly in a structured setting with therapeutic supports. The Team planned to reconvene to reconsider the need for a Reading Comprehension Goal once consistency had been established. (McCarthy) According to Ms. Freedman, the SSDC team reported that impulsivity and self-regulation impacted Student's "ability to access learning," but because "he had been out of school so long [it was difficult to] know[] what deficits were there from a disability and what deficits were there from lack of recent exposure and practice. The teachers from Harris [Elementary] School reported that when he was regulated, and working in small groups with teachers, he was able to access grade-level curriculum." (S-14, Freedman)

91. Based on the results of the Extended Evaluation, the Team concluded that impulsivity and executive functioning were Student's greatest deficits. According to Dr. McCarthy, Ms. Harris, Ms. Freedman, and Mr. Menkel, these were addressed in the IEP for the period from August 26, 2022 to June 22, 2023 (August 2022 IEP) in the present levels of educational performance ("PLEP") sections, and in each of the proposed goals which targeted, in part, self-regulation, organization in the classroom, peer interactions and communication. Although Parent's Advocate requested a separate Executive Functioning Goal, software limitations prevented Mr. Menkel from selecting the title "Executive Functioning Goal" in the drop-down menu.³⁶ School staff testified that the "content and the spirit of the goals was aligned with what was discussed at the meeting." (S-2, S-12, McCarthy, Freedman, Menkel, McCarthy)
92. At the August 26, 2022 Team meeting, all Team members, including Parent and Parent's Advocate, agreed that Student required a substantially separate therapeutic setting. The SEBS program at Kiley Prep was proposed. Parent and Advocate disputed SEBS's appropriateness, and instead requested Student stay at SSDC, indicating that the SEBS program was the District's unilateral proposal. (S-2, S-12, Freedman, Menkel, McCarthy, Parent) The school-based Team found SSDC "too restrictive" as it would not allow for "access to non-disabled peers." (Freedman, Menkel, Parent) Ms. Freedman testified that SSDC staff discussed the importance of Student having access to non-disabled peers; they "believed that with a lot of front-loaded support and skill building around self-regulation [] he would be able to move to a less restrictive setting." (Freedman) In addition, Student's interactions with the more cognitively disabled population at SSDC had been negative, and SSDC did not recommend itself as a placement for Student. (Freedman, Menkel) Nor did SSDC recommend the Center School or any of the other Chapter 766 approved programs within Positive Regard. (Morris) According to Ms. Freedman, a private therapeutic program would have been "an enormous jump on the continuum of services" for Student. (Freedman)

³⁶ Mr. Menkel testified that he had believed that he could "write in" a different title for the goal, but this was not an option. He consulted with Ms. Freedman regarding which title best fit the goal drafted. The components of the goal were added to the Social Goal and the Study Skills Goal. (Menkel)

93. Although Ms. Harris has not served as a principal in a building with a SEBS program, based on her “general knowledge” of the program, she agreed that Student required the “highly structured setting and the therapeutic environment” that SEBS offers to support Student’s social emotional functioning. (Harris)
94. Mr. Menkel testified that the SEBS program “fit” all the components recommended by SSDC “very tightly”.³⁷ (Menkel)
95. According to Parent, SSDC was “willing” to “continue working with Student” and offered for him to stay at SSDC. Parent believes that SSDC is the appropriate placement for Student as this is where he “will learn,” “be safe,” and “be [un]harmed emotionally.” (Parent)
96. Parent also testified that other than Dr. Morris, no other Team members “discussed placement.” According to Parent, SSDC did not recommend that Student return to an in-District program, and the District did not agree to any of the recommendations made by SSDC. (Parent)
97. At the meetings in August, Parent and her Advocate did not dispute any of the services proposed. (S-2, S-12, McCarthy, Freedman, Menkel)
98. The Team determined that Parent should meet with the SEBS team at Kiley Prep. (S-12, McCarthy, Menkel)
99. Both Parent and her Advocate spoke extensively at the August 2022 meetings. (McCarthy, Menkel)
100. On August 29, 2022, the District sent Parent the proposed August 2022 IEP with placement to be in the substantially separate classroom located at SEBS. (S-12) Parent did not feel that she had any input in this decision. (Parent)
101. The August 2022 IEP incorporated the vision of the Team that Student will “increase his executive function skills and self-regulation, and [will] make gains in the social emotional domain.” Student’s difficulties with “expressive and receptive communication skills, social emotional development, self-regulation, social skills, study skills, and executive functioning and planning” were noted in the present levels of educational performance (PLEPS A and B), and accommodations to support Student were proposed. The methodology included a “small, highly structured therapeutic environment which provided comprehensive and proactive behavior management strategies; social/emotional skills instruction and ongoing counseling and support at the point of performance individualized to the needs of the student”; structured, “consistent, and systematic approaches to learning”; clear, “well defined expectations”; and “daily check-ins with the program clinician and weekly social skills with the clinician. Social Emotional, Study Skills, Social Skills, and Communication Skills Goals were proposed. The Social Emotional Goal targeted “the social/behavioral domain”, self-regulation skills, following classroom rules, and academic task completion. The Study Skills Goal targeted “study skills/executive functioning domain” and self-organization for task completion. The Social Skills Goal targeted appropriate peer interactions and conflict resolution. The Communication Skills Goal targeted articulation, fluency, and communication. The following services were proposed: A Grid: Speech and Language consultation (1x15 minutes /month), Occupational Therapy consultation (90

³⁷ Mr. Menkel has not “direct[ly] worked” in the SEBS program but testified that he is “aware of the methodology and accommodations that are often associated with the program,” specifically “social counseling,” “social emotional and behavioral supports,” and “support around sensory issues.” (Menkel)

minutes/month); C Grid: Social/Emotional services (5x200 minutes/5 day cycle), Study Skills services (300 minutes/5 day cycle), Social Skills services (300 minutes/5 day cycle), Speech and Language services (240 minutes/month), Counseling services (5x15 minutes/5 day cycle), and additional Counseling services (2x30 minutes/5 day cycle). Special transportation was proposed. (S-17) Parent did not respond to this August 2022 IEP.³⁸ (Freedman, McCarthy)

102. Dr. Morris testified that had the District been “allowed” to implement its prior recommendations during the 2021-2022 school year, Student may not have required as restrictive a setting as SEBS. (Morris)
103. Dr. McCarthy, Ms. Freedman, Ms. Harris, Mr. Menkel, and Dr. Morris testified that the August 2022 IEP was appropriate for Student and incorporated the recommendations of SSDC. (McCarthy, Freedman, Harris, Morris) Although she had not worked with Student, Dr. McCarthy testified that based on the reports shared by SSDC, SEBS would offer Student an appropriate therapeutic setting with the requisite supports and necessary methodology. (McCarthy)
104. SEBS is an in-District program for students who exhibit severe and pervasive emotional and behavioral disabilities which affect overall psychological and academic functioning over a long period of time. Some students access SEBS as a partial inclusion program, but for others it provides a substantially separate classroom. SEBS offers a small, highly structured therapeutic environment which provides comprehensive and proactive behavior management strategies, social/emotional skills instruction and ongoing counseling and support. Structured, consistent and systematic approaches to learning are utilized along with clear, well-defined expectations. Several accommodations are offered, including but not limited to teaching students self-monitoring skills, use of behavior contracts, time-out space, consistency in daily routine, use of visuals, token economies, and sensory tools for de-escalation. The SEBS team includes a teacher, 2 paraprofessionals, a licensed clinician, and the support of a behavior specialist. (P-28, S-10, McCarthy, Morris) Staff are trained in therapeutic supports and interventions and “understand” that the behaviors exhibited by the students are “part of their disabilities” and, as such, the response to these behaviors must be “different.” (Morris) Each class supports up to 12 students. All SEBS students meet in the morning in a group. Although most students have their own behavior intervention plans, they also collectively work as a “SEBS unit on regular benchmarks that they are working on as a team.” There are incentive and point-based systems. Students learn replacement behaviors, coping skills, self-control strategies and other social skills and access the curriculum at their level. SEBS offers an integrated, individualized flexible and fluid model with “on the spot” supports regarding making choices as well as supports if they make the “wrong choice.” (P-28, P-29A to P-29G, S-10, S-66 to S-77, McCarthy, Morris)
105. According to peer IEPs, students who attend SEBS have a limited range of disabilities but share deficits in social emotional and communication skills. Peer IEPs reflect a cohort of students who struggle with impulsivity, emotional control, self-monitoring, planning and organization, attention to task, work completion, interpersonal skills, social problem solving, managing frustration, and self-regulation. Most of the peer IEPs include an Emotional Impairment disability category. (P-29A to P-29G, S-66 to S-77, McCarthy, Morris)

³⁸ As of the date of the Hearing, Parent had not responded to the IEP. (McCarthy)

106. Because Parent did not respond to the August 26, 2022 IEP, it was not implemented. (McCarthy) Parent did not accept or reject any specific services, including specialized transportation. (McCarthy)
107. Student did not attend school at the start of the 2022-2023 school year (S-5, S-64, McCarthy, Calvanese). In September and October 2022, staff from Kiley Academy³⁹ reached out to Parent regarding Student's non-attendance and invited Parent to meet the SEBS Team. (P-21, S-3, S-4, S-5, S-64, McCarthy, Calvanese)
108. Mr. Michael Calvanese is the principal of Kiley Academy, Duggan Academy, and Kennedy Academy within the Springfield Public Schools. He has a master's degree in education and holds several DESE licenses. He has as a principal in the District since 2012 . (Calvanese)
109. On September 9, 2022, Dr. McCarthy and Mr. Calvanese conducted a tour with Parent and Student of Kiley Academy and SEBS at Kiley Prep. Although Parent was informed that she was "allowed as much time as she needed" for the tour, it lasted approximately one hour, as Parent indicated she had a "time limit." During the tour, Parent observed the full inclusion classroom and one of the SEBS classrooms. (McCarthy, Calvanese) Parent did not want "to spend much time" in the SEBS classroom because she "did not like what she saw." The classroom was located in what Parent "associated with a basement." A long hallway led to the classroom, and it was very hot. In the classroom, she observed only one teacher with 9 to 10 students, and it was difficult to ascertain who the teacher was as the class was unruly. At one point, "everyone was running" because "a student had run away." (Parent) Mr. Calvanese testified that "it was not the greatest day [to observe the program, because] it was Friday afternoon," and they did not "see a lot of academics." (Calvanese)
110. Parent testified that she wanted a program for Student where he would feel "secure," and she "did not get that feeling from SEBS." (Parent)
111. Parent testified that she had asked about transportation to Kiley Academy and was told that eligibility for transportation would depend on Student's home address; however, SEBS students who attend Kiley Prep receive transportation. (Parent)
112. Following the tour, Student attended Kiley Academy's full inclusion program pursuant to his stay-put IEP. Student struggled in the full inclusion setting. He exhibited maladaptive behaviors similar to previously exhibited behaviors at Harris Elementary School, such as hitting, standing on desks, and using inappropriate and sexualized language. He stopped attending again following a disciplinary incident on or about September 22, 2022. (McCarthy, Calvanese)
113. On September 26, 2022, Parent's Advocate requested another extended evaluation for Student. (S-9, S-63) On September 29, 2022, the District proposed an extended evaluation to take place at SEBS to evaluate Student's progress and response to therapeutic support and to explore Student's sexualized behaviors, peer interactions and defiance. (S-7, S-8, S-9) There was no meeting associated with this proposal. (S-63, Freedman)
114. On or about October 3, 2022, the District proposed that the extended evaluation could take place at SEBS at Kennedy Academy; Mr. Calvanese thought Parent would agree to the extended evaluation if it was not located at Kiley Prep. (S-7, Calvanese)

³⁹ The SEBS program proposed for Student is located at Kiley Prep, not Kiley Academy. Because Student's IEP for the SEBS program was unsigned, Student was assigned to Kiley Academy, his boundary school. (Calvanese)

Hence, the District proposed an extended evaluation at two possible locations to provide Parent with options.⁴⁰ (S-63, Morris)

115. Parent did not respond to accept or reject either Extended Evaluation proposal. (S-7)
116. On October 20, 2022, a Team meeting was held. In attendance at this meeting were Parent, her Advocate, Dr. Morris, Dr. McCarthy and the Evaluation Team Leader for Kiley Academy. (Calvanese) According to an N1 form issued on October 21, 2022, on October 20, the District held the “[T]eam meeting ... with the purpose of strategizing [Student’s re-engagement in the school setting.” (S-7, Calvanese) Mr. Calvanese testified that the purpose of the meeting was also to review progress. At that time, Student had not attended school for 22 days following a one-day suspension. (S-7, McCarthy, Calvanese)
117. At the October 20, 2022 Team meeting, Parent and her Advocate requested a paraprofessional for Student and placement at Valley West School.⁴¹ (S-7, McCarthy, Calvanese) Parent testified that she sought a 1:1 paraprofessional for Student because Student was not making academic progress. In addition, one of his teachers had called Parent and indicated that Student needed someone to work with him because she had neither the time nor the tools. (Parent) According to the N1 form, both the 1:1 paraprofessional and the placement at Valley West School “were considered and rejected by the Team because the [D]istrict [had] proposed placement within the SEBS therapeutic program [which would] provide [Student] with specialized paraprofessional support to assist him throughout the day and social emotional programming in the least restrictive environment.” (S-7)
118. Dr. McCarthy opined that a 1:1 paraprofessional would not have been a useful intervention in the less-structured, full inclusion classroom, because, as indicated by the SSDC extended evaluation, Student did best in a highly structured setting with in-the-moment support by staff trained in offering therapeutic supports. Although Dr. McCarthy and Mr. Calvanese considered a scheduling change for Student to allow him a classroom with additional paraprofessional support, the peer cohort was not a good match for Student. (McCarthy) Mr. Calvanese testified that, based on Student’s presentation at school, he agreed Student required additional supports. However, Mr. Calvanese also noted that one of Student’s full inclusion classes included three staff members, and he “still struggled.” (Calvanese)
119. At the meeting, Dr. McCarthy and Mr. Calvanese also proposed check-ins, modified scheduling, some paraprofessional support, and a safe place for breaks to help with re-engagement to support Student’s return to school. These options were rejected by Parent. (S-7, McCarthy) Parent also did not accept the proposed extended evaluation at either SEBS at Kennedy Academy or at SEBS at Kiley Prep. (S-7, McCarthy, Morris)

⁴⁰ The questions posed by the Extended Evaluation Form are as follows: 1. Does Student engage in sexualized behavior in the SEBS Program? 2. How does Student engage with his peers in the SEBS Program? 3. How does Student respond to adult directions and requests in the SEBS Program? 4. What services and supports does Student need to make meaningful progress in the SEBS program? (S-7, S-8)

⁴¹ According to Dr. Morris, Valley West School is a private therapeutic school. She testified that Parent requested placement at Valley West School but also requested full inclusion programming with 1:1 paraprofessional support, and “there was a lot of flip flopping.” (Morris)

120. Student returned to school on or about October 31, 2022, but following a disciplinary incident stopped attending school again on November 2, 2022. He has not attended school since then. (McCarthy, Calvanese)

LEGAL STANDARDS:

1. Free Appropriate Public Education in the Least Restrictive Environment

The Individuals with Disabilities Education Act (IDEA) was enacted “to ensure that all children with disabilities have available to them a free appropriate public education” (FAPE).⁴² To provide a student with a FAPE, a school district must follow identification, evaluation, program design, and implementation practices that ensure that each student with a disability receives an Individualized Education Program (IEP) that is: custom tailored to the student’s unique learning needs; “reasonably calculated to confer a meaningful educational benefit”; and ensures access to and participation in the general education setting and curriculum as appropriate for that student so as “to enable the student to progress effectively in the content areas of the general curriculum.”⁴³ Under state and federal special education law, a school district has an obligation to provide the services that comprise FAPE in the “least restrictive environment” (LRE).⁴⁴ This means that to the maximum extent appropriate, a student must be educated with other students who do not have disabilities, and that “removal . . . from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services, cannot be achieved satisfactorily.”⁴⁵ “The goal, then, is to find the least restrictive educational environment that will accommodate the [student’s] legitimate needs.”⁴⁶

The IEP must be individually tailored for the student for whom it is created.⁴⁷ When developing the IEP, the Team must consider parental concerns; the student’s strengths, disabilities, recent evaluations and present level of achievement; the academic, developmental and functional needs of the student; and the child’s potential for growth.⁴⁸ Evaluating an IEP requires viewing it as a “a snapshot, not a retrospective. In striving for ‘appropriateness,’ an IEP must take into account what was . . . objectively reasonable . . . at the time the IEP was promulgated.”⁴⁹

⁴² Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 (d)(1)(A).

⁴³ See 20 USC §1401(9), (26), (29); 603 CMR 28.05(4)(b); *C.D. by & through M.D. v. Natick Pub. Sch. Dist.*, 924 F.3d 621, 624–25 (1st Cir. 2019); *Sebastian M. v. King Philip Reg’l Sch. Dist.*, 685 F.3d 84, 84 (1st Cir. 2012); *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 29 (1st Cir. 2008); *C.G. ex rel. A.S. v. Five Town Comty. Sch. Dist.*, 513 F. 3d 279, 284 (1st Cir. 2008); *In Re: Chicopee Public Schools*, BSEA # 1307346 (Byrne, 2013).

⁴⁴ 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).

⁴⁵ 20 U.S.C. 1412(a)(5)(A); *C.D. v. Natick Pub. Sch. Dist.*, 924 F. 3d at 631 (internal citations omitted).

⁴⁶ *C.G. ex rel. A.S.*, 513 F.3d at 285.

⁴⁷ *Andrew F. v. Douglas Cty. Reg’l Sch. Dist.*, 137 S. Ct. 988, 1001 (2017).

⁴⁸ 34 CFR §300.324(a)(i-v); *Andrew F.*, 137 S. Ct. at 999; *D.B. ex rel. Elizabeth B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012).

⁴⁹ *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990).

At the same time, FAPE does not require a school district to provide special education and related services that will maximize a student's educational potential.⁵⁰ The educational services 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."⁵¹ Although parental participation in the planning, developing, delivery, and monitoring of special education services is central in IDEA, MGL c. 71B, and corresponding regulations,⁵² school districts are obligated to propose what they believe to be FAPE in the LRE, "whether or not the parents are in agreement."⁵³ In *Endrew F.*, the Supreme Court explained that appropriate progress will look different depending on the student.⁵⁴ An individual analysis of a student's progress in his/her areas of need is key.⁵⁵

2. Procedural Violations and a Denial of a FAPE

As indicated *supra*, the IDEA provides student and parents both procedural and substantive rights.⁵⁶ Hence, "a court's inquiry ... is twofold. First, has the State complied with the procedures set forth in the Act? Second, is the [IEP] developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?"⁵⁷ The Supreme Court has emphasized the importance Congress attached to the IDEA's procedural safeguards:

"[T]he congressional emphasis upon full participation of concerned parties - throughout the development of the IEP, as well as the requirements that state and local plans be submitted to the Secretary for approval, demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP."⁵⁸

However, a finding of procedural violations does not necessarily entitle appellants to relief; only if a procedural violation has resulted in substantive harm, and thus constitutes a denial of a FAPE, may relief be granted.⁵⁹ A hearing officer may find that a child did not receive a FAPE if

⁵⁰ *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197, n.21 (1982) ("Whatever Congress meant by an "appropriate" education, it is clear that it did not mean a potential-maximizing education").

⁵¹ *G.D. Westmoreland Sch. Dist.*, 930 F.2d 942, 948-949 (1st Cir. 1991).

⁵² *Rowley*, 458 U.S. at 208 ("Congress sought to protect individual children by providing for parental involvement ... in the formulation of the child's individual educational program").

⁵³ *In Re: Natick Public Schools*, BSEA #11-3131 (Crane, 2011).

⁵⁴ *Endrew F.*, 137 S. Ct. at 992; see 603 CMR 28.02(17).

⁵⁵ *Endrew F.*, 137 S. Ct. at 1001 ("The nature of the IEP process, from the initial consultation through state administrative proceedings, ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child's IEP should pursue"); see *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 809 (8th Cir. 2011) (explaining that the court would not compare the student to her nondisabled peers since the key question was whether the student made gains in her areas of need).

⁵⁶ See *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 853-54 (6th Cir. 2004) ("First, the court must determine whether the school system has complied with the procedures set forth in the IDEA. Second, the court must assess whether the IEP developed through those procedures was reasonably calculated to enable the child to receive educational benefits....If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more. Parties challenging an IEP have the burden of proving by a preponderance of the evidence that the IEP devised by the school district is inappropriate").

⁵⁷ *Rowley*, 458 U.S. at 206-07.

⁵⁸ *Rowley*, 458 U.S. at 206 q.

⁵⁹ *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 854 (6th Cir. 2004).

the procedural inadequacies impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision-making process regarding the provisions of a FAPE to the parent's child; or caused a deprivation of educational benefits.⁶⁰ The IDEA provides parents of a student with a disability the opportunity “to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education.”⁶¹ Participation in the decision-making process must be meaningful, not “mere form.”⁶² School officials must have an open mind and be willing to listen and consider the parents' input, and meaningful participation cannot be assumed just because the parents were present and allowed to speak.⁶³

3. Burden of Proof

In a due process proceeding, the burden of proof is on the party seeking to change the status quo.⁶⁴ Here, Parent bears this burden. With this legal authority in mind, I turn to the issues before me.

DISCUSSION:

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

It is undisputed that Student is a student with a disability who is entitled to special education services under state and federal law. The fundamental issues in dispute are listed under ISSUES IN DISPUTE, *supra*. Upon consideration of the documentary evidence and testimony, as well as the thoughtful arguments of Counsel and Parent and her Advocate, I find that Parent has failed to meet her burden of proof as to all of her claims. My reasoning follows.

I address at the outset Parent's overarching argument at hearing that she was denied meaningful participation because no interpreter was provided at any meeting, no documents were translated into Spanish, and the District communicated with Parent, at all times, in English.⁶⁵ As I

⁶⁰ 34 CFR 300.513 (a)(2).

⁶¹ 20 U.S.C. § 1415(b)(1).

⁶² See *Doe ex rel. Doe v. Attleboro Pub. Sch.*, 960 F. Supp. 2d 286, 296 (D. Mass. 2013); see also *Deal*, 392 F.3d at 858.

⁶³ *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d at 858 (“Where there was no way that anything the Deals said, or any data the Deals produced, could have changed the School System's determination of appropriate services, their participation was no more than after the fact involvement”). Cf. *Doe ex rel. Doe v. Attleboro Pub. Sch.*, 960 F. Supp. 2d at 296–97 (“There is nothing to suggest that the IEP team did not consider [parents'] input, only that it ultimately disagreed with the Does' position given its own educational expertise and experience with their son and his performance in kindergarten. The team was only required to consider the parents' position, not to adopt it”); *Colonial Sch. Dist. v. G.K. by & through A.K.*, 763 F. App'x 192, 199 (3d Cir. 2019) (“Parents' dissatisfaction with the IEP was not a denial of meaningful participation under IDEA”).

⁶⁴ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

⁶⁵ Because parents must have an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, a school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents whose native language is not English. See 20 U.S.C. § 1415(b)(1) and 34 CFR 300.322(e).

indicated, *supra*, (footnote 4), the issue of whether Springfield violated the IDEA when it did not provide Parent with interpretation or translation services is not before me; such a finding requires its own evidentiary hearing. Nevertheless, here, I do not find that Parent was denied meaningful parental participation in any of the Team meetings that occurred during the relevant timeframe. At each Team meeting, Parent was represented by her Advocate, and both Parent and Advocate had an opportunity to, and in fact did, share their concerns and perspectives.⁶⁶ In addition, based on Parent's testimony, at some unspecified time, she became aware that she could ask for an interpreter but decided not to do so.⁶⁷

I now turn to the six specific issues before me.

1. The April 11, 2022 Team Meeting.

Parent has not met her burden to prove that Springfield denied Parent meaningful participation in the IEP process by holding the annual review meeting on April 11, 2022 without her. Pursuant to the IDEA, a school district must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate; as such, schools must notify parents of the meeting early enough to ensure that they will have an opportunity to attend and schedule the meeting at a mutually agreed on time and place.⁶⁸ However, a district may conduct an IEP team meeting without a parent in attendance when it "is unable to convince the parents that they should attend."⁶⁹ When proceeding without parents in attendance, a school district must keep a record of its attempts to arrange a mutually agreed upon time and place, such as detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received; and detailed records of visits made to the parents' home or place of employment and the results of those visits.⁷⁰

Here, since Student's IEP was expiring on April 12, 2022, Mr. Menkel emailed Parent on March 14, 2022, approximately one month prior, to request her availability for an annual review Team meeting; Parent responded that all communications should be addressed to her Advocate, and, on March 14, 2022, Mr. Menkel emailed both Parent and Parent's Advocate the link for the annual

⁶⁶ See *Hazen v. S. Kingstown Sch. Dep't*, No. CA 09-313 ML, 2010 U.S. Dist. LEXIS 139231, *25 (D.R.I. Nov. 22, 2010) (where parent engaged in the discussions of an IEP meeting, the court is unlikely to find that there was not meaningful parental participation); see also *Doe ex rel. Doe v. Attleboro Pub. Sch.*, 960 F. Supp. 2d 286, 296–97 (D. Mass. 2013) (“There is nothing to suggest that the IEP team did not consider this input, only that it ultimately disagreed with the Does' position given its own educational expertise and experience with their son”).

⁶⁷ See *Scituate Sch. Comm. v. Robert B.*, 620 F. Supp. 1224, 1228-29 (D.R.I. 1985), *aff'd* 795 F.2d 77 (1st Cir. 1986) (holding that technical violations did not invalidate a proposed IEP because the violations did not rise to a level that deprived the parents of meaningful participation in development of the IEP where Parent was represented by an attorney at Team meetings and was aware of her right to offer input at Team meetings and to appeal the Team's decisions); see also *Hazen*, 2010 U.S. Dist. LEXIS 139231, *21 (“it cannot be said that Plaintiffs' opportunity to participate in the ... IEP meetings and decision-making process was ‘significantly impeded’ or that their participation was rendered ‘not meaningful’” where Parent attended the meetings with her attorney).

⁶⁸ See 34 CFR 300.322(a).

⁶⁹ 34 CFR 300.322(d). See *In Re: Norton Public Schools*, BSEA No. 1609348 (Byrne 2017) (“when it was clear that Parents would not attend an annual review meeting, Norton acted properly and in accordance with its obligations in convening the meeting in Parents' absence”).

⁷⁰ See 34 CFR 300.322 (c) and (d).

review meeting which was scheduled for April 6, 2022. On March 15, 2022, Mr. Menkel emailed Parent again regarding the annual review meeting. On March 17, 2022, Mr. Menkel sent Parent a meeting invitation for an annual review meeting to be held on April 6, 2022. On March 18, 2022, Mr. Menkel again emailed Parent and her Advocate with the meeting link for the April 6, 2022 Team Meeting. Neither Parent nor Parent's Advocate responded to Mr. Menkel.

On April 6, 2022, the Team convened, but Parent did not attend. No meeting was held, and that day, Mr. Menkel emailed Parent with a new meeting Zoom link for a Team meeting to take place on April 11, 2022. Mr. Menkel emailed Parent again on Friday, April 8, 2022 asking whether she was available for the Team meeting scheduled for Monday, April 11, 2022. Parent's Advocate responded that she had not been aware of the date but that she would, "make [herself] available however [she] need[ed] a virtual observation prior to the meeting." Ms. Freedman, who had been copied on the email chain, responded that the requested observation by Advocate could not be arranged prior to Monday. She inquired whether Parent was "requesting to delay the annual review timeline." Parent's Advocate responded in the negative; the IEP was expiring on April 12, 2022, and the District was obligated to propose another IEP. On April 11, 2022, the Team held an annual review meeting. Parent did not attend.

The Team meeting was rescheduled once, to a date chosen to comply with federal guidelines.⁷¹ Both Ms. Freedman and Mr. Menkel credibly testified that had Parent provided her availability to the Team, they would have accommodated her request. I have no reason to doubt their testimony; Mr. Menkel's relentless efforts to schedule the Team meeting (and to remind Parent thereof) are particularly commendable; he also continuously offered Parent a facilitated Team meeting. Ms. Freedman too offered Parent the option of extending the IEP timeline to elicit her attendance, but Parent's Advocate declined on behalf of Parent, without offering any alternative date Parent would be available, leaving the Team with few options but to hold the meeting on the rescheduled date.

In *Doug C. v. Hawaii Dep't of Educ.*,⁷² the Ninth Circuit held that the district erred in proceeding without the parent in attendance despite the imminent expiration of the then-current IEP. There, the parent was recovering from an illness and requested to postpone the meeting by a couple of days, but the school refused as the postponement request would have resulted in a date past the expiration of the old IEP, and the date proposed by the parent was inconvenient to the other Team members. The Team proceeded with the scheduled IEP meeting and proposed to change the student's placement. The Ninth Circuit found that the school district had violated the IDEA.⁷³

While the Court acknowledged that the school's inability to comply with two distinct procedural requirements (i.e., ensuring parental participation and proposing a new IEP before the expiration

⁷¹ The IDEA obligates school districts to "initiate and conduct meetings to review each child's IEP periodically and, if appropriate, revise its provisions. At a minimum, a meeting must be held for this purpose at least once a year." 34 CFR 300.324 (b)(1)(i). Cf. *J.G. v. Briarcliff Manor Union Free Sch. Dist.*, 682 F. Supp. 2d 387, 396 (S.D.N.Y. 2010) (where Parents asked to postpone the Team meeting until after Labor Day so their tutor could attend and declined to participate by phone or to reconvene with the tutor at a later date, the court held it was not unreasonable for the district to proceed with the meeting in the parents' absence since the district was required to have an IEP in place by the start of the school year).

⁷² 720 F.3d 1038 (9th Cir. 2013).

⁷³ *Doug C. v. Hawaii Dep't of Educ.*, 720 F.3d 1038, 1044 (9th Cir. 2013).

of the old IEP) created a "difficult situation," it explained that the school should have considered both courses of action and determined which one was less likely to result in a denial of FAPE.⁷⁴ The Court's decision was heavily influenced by the fact that the parent in *Doug C.* "did not affirmatively refuse" to participate in the IEP process; in contrast, the parent "vigorously objected to the [school's] holding an IEP meeting without him"⁷⁵ but, because of his illness could not firmly commit to either of the two dates offered to him by the school. Hence, the IEP Team coordinator acted unreasonably when refusing to accommodate the parent, especially in light of his testimony at hearing that he did "not wish to disrupt the other IEP's members' schedules without a firm commitment" from the parent.⁷⁶ The Court reasoned that "the attendance of ... parent[] must take priority over other members' attendance."⁷⁷ Moreover, even though the postponement would have resulted in the expiration of the old IEP, there was no reason that the school could not have continued to provide services to the student despite his "overdue" annual review.⁷⁸

Nevertheless, the Court observed that there "may, of course, be circumstances in which accommodating a parent's schedule would do more harm to the student's interest than proceeding without the parent's presence at the IEP meeting."⁷⁹ As an example of circumstances which may necessitate a meeting without parents in attendance, the Ninth Circuit suggested a situation where parents cancel a scheduled annual review and are unwilling to convene for a lengthy period of time, but the student, whose IEP is already long overdue, is new to the school and does not have an IEP in place.⁸⁰

The instant matter is materially distinguishable from *Doug C.* Here, the District conducted an IEP meeting without Parent in attendance on April 11, 2022 on the precipice of an expiring IEP, only after multiple, multimodal attempts to engage Parent, and only after she failed to appear at a second scheduled meeting.⁸¹ I found Mr. Menkel's testimony regarding his fastidious efforts to elicit Parent's participation in the Team process to be credible, convincing, and amply supported by the documentary evidence. Mr. Menkel's consistent efforts spanned over a month and included multiple calls, emails, and formal meeting invitations. Although Parent argues that no effort was made to conduct a home visit to "convince" her to participate, no such requirement exists in either state or federal law; 34 CFR 300.322(d) only requires documentation of such efforts, if made.

⁷⁴ *Id.* at 1046.

⁷⁵ *Id.* at 1044.

⁷⁶ *Id.*

⁷⁷ *See id.*

⁷⁸ *Id.* at 1046.

⁷⁹ *Id.* at 1046–47.

⁸⁰ *Id.*

⁸¹ Parent also unpersuasively argued that the notice regarding the April 11, 2022 meeting was inappropriately short. The IDEA imposes no specific timelines in connection with the IEP meeting notice requirement, but districts must notify parents of the IEP meeting early enough in advance of the meeting to ensure that they will have an opportunity to attend. See 34 CFR 300.322(a)(1). Here, in preparation for the April 6 meeting date, Mr. Menkel provided Parent almost a month notice, but as the April 11 date was an attempt to reschedule before the expiration of the IEP, this shorter time frame was reasonable. See *Letter to Constantian*, 17 LRP 871 (OSEP 1990) (despite having "considered using a ten-day advance notice rule as a guide as to whether notice was given in a timely manner," OSEP did not "adopt[] a ten-day rule as a monitoring policy, and do not have any current plans to incorporate this standard into our monitoring process" and instead opted for a "reasonableness" standard).

In addition, in the instant case, Parent had not signed the November 2021 IEP which proposed goals and services to address the behavioral difficulties observed by Harris Elementary School. The only service being implemented was speech and language, which, the November 2021 Team agreed, was insufficient to address his needs, and Student's struggles were escalating. In light of these facts, it was not unreasonable to convene, develop the IEP, and allow Parent to reject portions of the IEP with which she disagreed.⁸²

Parent's argument that the Team meeting should have been postponed to allow for the observation she requested to take place is equally unpersuasive. Parents have a right to observe their child's program in order to participate fully and effectively in determining the appropriate educational program for the student⁸³; nevertheless, M.G.L. c. 71B, section 3 does not obligate the District to arrange such an observations prior to a Team meeting; instead, districts are obligated to provide "timely access" to the program for purposes of observation.⁸⁴ Nor does the IDEA make such an observation a prerequisite to a finding of meaningful participation.⁸⁵ Moreover, the testimony was convincing that Springfield could have accommodated the observation before a Team meeting had Parent been willing to extend the IEP timeline, but Parent's Advocate informed the District that she did not agree to extend the IEP timeline, when it was proposed by Ms. Freedman. Parent also had the option to observe the program after the Team meeting and reconvene the Team if she had any questions or concerns. As no observation of Student's program actually took place, it is unclear why Parent could not participate in the Team meeting without one.

Moreover, at all times relevant to this Team meeting, Parent was aware of her right to reject the proposed IEP once it was issued and to request a Team meeting at any time to provide her input into the IEP's development.⁸⁶ Not only was she represented by an Advocate at all relevant times,

⁸² See *A.L. v. Jackson Cnty. Sch. Bd.*, 635 F. App'x 774, 781 (11th Cir. 2015) (finding that "the facts of *Doug C.* are materially distinguishable from those of the instant case. For one thing, the IEP meeting that took place in *Doug C.* was completed in order to meet the IDEA's requirement that an IEP be completed annually. Unlike here, nothing in *Doug C.* suggests that the student was struggling in school or that other circumstances warranted the immediate development of an IEP Here, though, it was [Parent] who caused all of the delays and rescheduling. Moreover, the Board refused to reschedule again out of concern for [the student] not because rescheduling was inconvenient for team members"); see also *A.M. ex rel. Marshall v. Monrovia Unified Sch. Dist.*, 627 F.3d 773, 780 (9th Cir. 2010)(finding that the district took steps to ensure parent's participation when it scheduled an IEP meeting for a date agreeable to parent; parent cancelled three days before the meeting; the school offered to reschedule, but parent "would only agree to a meeting in mid-March or April, which was too far beyond the thirty-day limit" and refused to participate by telephone).

⁸³ See M.G.L. c. 71B, section 3.

⁸⁴ See *id.*

⁸⁵ Cf. *Daniels v. Northshore Sch. Dist.*, No. 21-35808, 2022 WL 3083313, at *1 (9th Cir. Aug. 3, 2022) (finding that where a District held a meeting without parents' attendance after parents indicated that they would not attend unless they were given physical copies of all test protocols and reports, parents were not denied meaningful participation as they "failed to explain how a lack of physical copies prevented them from meaningfully participating in the development of C.D.'s educational program").

⁸⁶ See 603 CMR 28.05(7)(a) ("No later than 30 days after receipt of the proposed IEP and proposed placement, the parents shall: 1. Accept or reject the IEP in whole or in part; request a meeting to discuss the rejected portions of the IEP or the overall adequacy of the IEP; or if mutually agreed upon, accept an amended proposal; and 2. accept or reject the proposed placement").

but the District had emailed Parent a copy of the Notice of Procedural Safeguards after the November 9, 2021 Team meeting, and again emailed her a copy with the proposed services generated from the April 11, 2022 Team meeting prior to sending Parent the proposed IEP.⁸⁷ As Student was struggling in school, and Student's last proposed IEP, the November 2021 IEP, remained unsigned and hence unimplemented, I find that, under the circumstances, it was reasonable for the District to hold the April 11, 2022 meeting without Parent, and that doing so did not deny Parent meaningful participation in the IEP process.⁸⁸

2. Springfield's Response to the SSDC Recommendations.

With respect to Issue #2, the evidence does not support Parent's claim that the District ignored SSDC's recommendations. When developing an IEP, a Team is required to "review existing evaluation data on the child, including (i) evaluations and information provided by the parents of the child; (ii) current classroom-based, local, or State assessments, and classroom-based observations; and (iii) observations by teachers and related service providers."⁸⁹ 603 CMR 28.05(3) states, in part, that "the Team shall develop an IEP using the evaluation data to guide development of goals and objectives for the student." Massachusetts regulations further state that each

"person conducting an assessment shall summarize in writing the procedures employed, the results, and the diagnostic impression, and shall define in detail and in educationally relevant and common terms, the student's needs, offering explicit means of meeting them. The assessor may recommend appropriate types of placements, but shall not recommend specific classrooms or schools."⁹⁰

Parent argues that the District proposed the SEBS program despite the fact that SSDC did not recommend it for Student. However, in accordance with 603 CMR §28.04(2)(c), SSDC did not make a recommendation for a specific classroom or school but rather recommended a program consisting of a small, structured learning environment with built in adult supports, a therapeutic approach, consistent rules and expectations, clear and positive communication, incentive opportunities, morning check-ins in addition to daily check-ins with a preferred staff member, clinical supports and services, supported social time, and opportunities to practice social skills in a structured setting. Accordingly, and in conformance with SSDC's recommendations, the methodology in Student's August 2022 IEP proposes a "small, highly structured therapeutic environment which provided comprehensive and proactive behavior management strategies,

⁸⁷ See 34 CFR 300.504 (a) (the procedural safeguards notice must be provided once every year as well as under specific circumstances which are not at issue in this case); see also *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 945 (W.D. Tex. 2008) ("Regardless of whether parents later examine the text of these [procedural] safeguards to acquire actual knowledge, that simple act [of delivering the Notice of Procedural Safeguards to parents] suffices to impute upon them constructive knowledge of their various rights under the IDEA"); *In re: Student v. Melrose Public Schools* (Ruling on Melrose Public Schools' Motion for Summary Judgment), BSEA # 22-05685 (Kantor Nir, 2022) (finding that Parents had notice of their stay-put rights when they received the Notice of procedural Safeguards at the IEP Team Meeting).

⁸⁸ See *A.L. v. Jackson Cnty. Sch. Bd.*, 635 F. App'x 774, 780 (11th Cir. 2015) (where parent kept rescheduling an IEP meeting but the student's specific educational goals stagnated because of parent's "seemingly endless requests for continuances of the meetings scheduled by school personnel," the school did not violate the IDEA when it proceeded with the IEP meeting in her absence).

⁸⁹ 20 U.S.C. § 1414(c)(1)(A).

⁹⁰ 603 CMR §28.04(2)(c); 20 USC §1414(b)(4); 34 CFR §300.306(c)(1).

social/emotional skills instruction and ongoing counseling and support at the point of performance individualized to the needs of the student” with structured “consistent, and systematic approaches to learning” and clear “well defined expectations” as well as “daily check ins with the program clinician and weekly social skills with the clinician.”

Moreover, I find the description of the SEBS program to also satisfy SSDC’s recommendations. SEBS offers a small, highly structured therapeutic environment which provides comprehensive and proactive behavior management strategies, social/emotional skills instruction and ongoing counseling and support. The SEBS team includes a teacher, 2 paraprofessionals, a licensed clinician, and the support of a behavior specialist. Each class supports up to 12 students. Dr. McCarthy testified that the program offers an integrated, individualized flexible and fluid model with “on the spot supports regarding choices.” A review of peer IEPs buttresses the testimony of Dr. McCarthy’s and Dr. Morris’s that students with needs similar to Student currently attend the program; despite having a range of diagnosis, these students present with social emotional and executive functioning difficulties like Student. Moreover, Parent presented no credible evidence that Student would not have appropriate peers in the SEBS program.

Parent’s only evidence to support her argument that SSDC did not concur with SEBS as a placement for Student was her own testimony that SSDC supported Student staying at SSDC. However, I find Parent’s testimony on this point unconvincing. Rather, I credit Dr. Morris’s testimony that Student could not remain at SSDC because it is a diagnostic center, not a program, and find this persuasive to conclude that SSDC was not a placement, contrary to Parent’s contention. Nor did any Team member testify that any of the other programs run by SSDC’s parent company was proposed as a potential placement for Student.

Parent also argues that SSDC recommended an executive functioning goal and corresponding services to address Student’s ADHD be added to the IEP, but that the Team did not add such a goal. The evidence clearly demonstrates, however, that although a separate goal labeled “executive functioning” was not created in the IEP, the Team did in fact include this goal area and accommodations and services to support this need in the IEP. PLEPs A and B noted difficulties with “expressive and receptive communication skills, social emotional development, self-regulation, social skills, study skills, and *executive functioning and planning*” (emphasis added) and provided accommodations to support Student in all these areas. Goals in the areas of Social Emotional, Study Skills, Social Skills, and Communication Skills were proposed. The Social Emotional Goal targeted “the social/behavioral domain”, self-regulation skills, following classroom rules, and academic task completion. The Study Skills Goal targeted “study skills/*executive functioning domain*” (emphasis added) and self-organization for task completion. In addition to accommodations to address executive functioning issues, Grid C *Study Skills services (300 minutes/5 day cycle)* (emphasis added) were also proposed in relation to executive functioning.⁹¹ Parent offered no evidence to show that any additional goal language or objectives

⁹¹ At hearing, Parent questioned the curriculum that would be utilized to address the Study Skills Goal and the Social Emotional Goal. However, an IEP does not need to include the curriculum or methodology. See *Letter to Hall*, 21 IDELR 58 (OSERS 1994). Moreover, Parent did not present any evidence to demonstrate that the curriculum used by Springfield is inappropriate or that Student requires a specific curriculum in order to make effective progress.

should have been included in the August 2022 IEP relative to Student's executive function needs.

Parent further argues that SSDC recommended a reading comprehension goal, but the Team ignored the recommendation. The results of the KTEA-3 demonstrated average skills in Letter and Word Recognition but below average skills in Reading Comprehension. This discrepancy indicated a possible specific learning disability in reading comprehension. Contrary to Parent's argument, however, the SSDC report only recommended "instruction with interactive reading that is reinforced with visual information [to] be used consistently, across all subject areas." No specific goal was recommended by SSDC nor by Student's Springfield teachers specific to reading comprehension.⁹² Nor did Parent present any evidence that such instruction would not be offered to Student in the SEBS substantially separate classroom. Therefore, I do not find that Springfield ignored the recommendations of SSDC relative to Student's reading comprehension needs when drafting the August 2022 IEP.⁹³

3. Unilateral Placement Decisions⁹⁴.

With respect to Issue #3, the evidence does not support Parent's claims.

I first address Parent's placement predetermination allegation with respect to June 26, September 29 and October 31, 2022. No witnesses testified to any meeting, much less a Team meeting, taking place on June 26, 2022⁹⁵ or October 31, 2022. Similarly, no witnesses testified to a meeting taking place on September 29, 2022; rather, on said date, the District proposed an extended evaluation to take place at SEBS in response to Parent's Advocate's request for an Extended Evaluation during a conference call with the undersigned Hearing Officer. No meeting occurred in connection with this proposal.⁹⁶ Nor can a proposal for an extended evaluation be considered a placement proposal; 603 CMR 28.05(2)(b)(5) states that the "extended evaluation shall not be considered a placement."⁹⁷

⁹² The IDEA mandates that districts use "a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information" A school may not use "any single measure or assessment" as a basis for determining the appropriate educational program for a student. 20 USC §1414(b)(2)(A) and (B); 34 CFR § 300.304(b). Therefore, it was not unreasonable for Springfield to include Springfield's teachers in the IEP development on August 26, 2022. See 20 U.S.C. § 1414(c)(1)(A)(ii) and (iii).

⁹³ Nevertheless, the Team should reconvene after Student has been in school for a period of time to re-evaluate his need for additional supports and services in reading comprehension. As SSDC also recommended a full occupational therapy evaluation, the District should arrange to have Student evaluated in that area as well.

⁹⁴ I interpret Parent's Advocate's use of the phrase "unilateral placement" to mean "predetermination" of placement. The term "unilateral placement" does not appear in IDEA. However, it is used in special education parlance in relation to 20 U.S.C. 1412(a)(10)(C) and 34 CFR 300.148, but not as to predetermination.

⁹⁵ A re-engagement meeting took place on June 10, 2022, but this was not a Team meeting. Nor was a placement decision made at this meeting. (Harris, Freedman)

⁹⁶ See 34 CFR 300.501 (b)(3) (an IEP meeting "does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting").

⁹⁷ Similarly, the October 2022 proposal for the extended evaluation to take place at SEBS at Kennedy (rather than at Kiley) was not a predetermined placement decision. (S-7, S-8) 603 CMR 28.05(2)(b) allows for extended evaluations under very specific circumstances. It states, in part, that if "the Team finds the evaluation information insufficient to develop an IEP, the Team, with parental consent, may agree to an extended evaluation period." The

A Team meeting did, however, take place on August 17, 2022 with Parent and her Advocate in attendance. It was facilitated by the BSEA. Parent points to the fact that SEBS was proposed prior to the Team's completion of IEP development in support of her argument that SEBS was improperly predetermined prior to the Team meeting. The IDEA requires that Parents be "members of any group that makes decisions on the educational placement of their child."⁹⁸ Massachusetts regulations further state that any placement determination must be made by the IEP Team.⁹⁹ The IEP Team's placement decision includes a determination of the "specific program setting in which the services will be provided" including the proposed location of the educational program.¹⁰⁰ IEP services must be determined by the Team prior to the Team's determination of placement.¹⁰¹

"[P]redetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives."¹⁰² However,

“predetermination is not synonymous with preparation. Federal law prohibits a completed IEP from being presented at the IEP Team meeting or being otherwise forced on the parents, but states that school evaluators may prepare reports and come with pre-formed opinions regarding the best course of action for the child as long as they are willing to listen to the parents and parents have the opportunity to make objections and suggestions.”¹⁰³

Although parents must have an opportunity to "participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child,"¹⁰⁴ this requirement places limitations on, but does not prohibit, the school district from discussing the student and how his or her needs may be met

Department of Elementary and Secondary Education's *Administrative Advisory SPED 2019-2 - Extended Evaluations* further clarifies "that an extended evaluation is not a 'diagnostic placement' used to determine whether a particular school, setting or program is an appropriate placement for the student."

⁹⁸ 20 USC 1414(e).

⁹⁹ 603 CMR 28.05(6); 603 CMR 28.06(2); 603 CMR 28.06(2)(d).

¹⁰⁰ 603 CMR 28.05(6) ("Team shall determine the appropriate placement to deliver the services on the student's IEP"); 603 CMR 28.06(2) ("Team shall determine if the student shall be served in an in-district placement or an out-of-district placement and shall determine the specific placement according to the following requirements:"); 603 CMR 28.06(2)(d) ("In-district placement. The placement decision made by the Team shall indicate the specific program setting in which services will be provided.")

¹⁰¹ 603 CMR 28.05(6) ("At the Team meeting, after the IEP has been fully developed, the Team shall determine the appropriate placement to deliver the services on the student's IEP"); see also *Deal*, 392 F.3d at 859 ("The school district is required, however, to base its placement decision on the child's IEP, 34 C.F.R. § 300.552, rather than on the mere fact of a pre-existing investment... A placement decision may only be considered to have been based on the child's IEP when the child's individual characteristics, including demonstrated response to particular types of educational programs, are taken into account").

¹⁰² *H.B. ex rel P.B. v. Las Virgenes Unified School Dist.*, 239 Fed.Appx. 342, 344-346, 2007 WL 1989594, 2 (C.A.9 (9th Cir. 2007)); see *Deal*, 392 F.3d at 857.

¹⁰³ *Nack ex rel. Nack v. Orange City Sch. Dist.*, 454 F.3d 604, 610 (6th Cir. 2006) (internal quotations and citations omitted).

¹⁰⁴ 20 U.S.C. § 1415(b)(1).

without the parent present. Instead, the "purpose of this provision is to prevent school officials from making decisions without considering the parents' views."¹⁰⁵

Parent presented no evidence that the Springfield-based Team did not come to the meeting with an “open mind.”¹⁰⁶ Parent and her Advocate were members of the IEP Team and of the Team that was responsible for deciding Student’s placement, and Parent offered no credible evidence that she was not fully included in the development of the IEP at this meeting.¹⁰⁷ District witnesses who attended the August 17, 2022 meeting testified that the Team reviewed the findings of the extended evaluation and discussed Student’s areas of need as well as the supports and services he would require to make progress, and Parent and her Advocate were part of said discussion. Further, testimony shows that Parent agreed that Student required therapeutic supports and services as well as a therapeutic placement.

The District’s

“coming to an IEP meeting with a proposal in mind and then declining to change that proposal after considering the parents' input [does] not amount to predetermination. Pre-meeting consideration only amounts to predetermination if the district refuses to consider the input, objections, and suggestions of the parents

¹⁰⁵ *T.B. v. Warwick Sch. Dept.*, No. 01-122T, 2003 WL 22069432, at *10 (D.R.I. June 6, 2003) *aff'd sub nom. Lt. T.B. ex rel. N.B. v. Warwick Sch. Comm.*, 361 F.3d 80 (1st Cir. 2004).

¹⁰⁶ See *G.A. v. Williamson Cnty. Bd. of Educ.*, 594 F. Supp. 3d 979, 989–90 (M.D. Tenn. 2022) (finding that school officials came to the IEP meeting with “open minds” and were “willing to listen” to parent’s preferences even though they came to the IEP meeting with “prefilled forms listing BMS as G.A.’s educational setting” because “that pre-formed opinion did not in any way obstruct W.A.’s participation in the planning process”); *J.E. and C.E. v. Chappaqua Central School District*, 68 IDELR 48 (S.D.N.Y. 2016), *aff'd*, 70 IDELR 31 (2d Cir. 2008, unpublished) (“The mere fact that the IEP may not have incorporated every request from the parents does not render the parents 'passive observers' or evidence any predetermination”); *In Re: Harvard Public Schools*, BSEA# 2108881 (Kantor Nir, 2021) (no pretermination when Parents participated in both meetings and had an opportunity to provide input to the Team); *T.S. v. Board of Education of the Town of Ridgefield*, 10 F.3d 87, 90 (2nd Cir. 1993) (rejecting parent's claim that the team meeting was "orchestrated" to reach a predetermined result and that school district employees on the team "censored" the discussion, the court concluded that parent was not denied the opportunity to be an "equal collaborator" during the team meeting). *Cf. P.F. v. Bd. of Educ. of the Bedford Cent. Sch. Dist.*, No. 15-CV-507 (KBF), 2016 WL 1181712, at *7 (S.D.N.Y. Mar. 25, 2016) (parents “were denied meaningful participation precisely because their presentation of extensive evidence as to numerous problems [with the proposed program] was ignored. Therefore, the District's predetermination of LEAP II as the appropriate placement for J.F. constitutes a procedural violation of the IDEA's guarantee of a FAPE”).

¹⁰⁷ Where a parent has actively and meaningfully participated in the development of an IEP, courts have rejected predetermination claims. See, e.g., *Deal*, 392 F.3d at 857–58; *N.L. ex rel. Mrs. C. v. Knox Cnty. Sch.*, 315 F.3d 688, 694 (6th Cir. 2003) (“when a parent fully participates in the IEP Team meeting and is an active participant in the final determination of the child's eligibility, there is no substantive harm caused when school-appointed experts and school officials confer ex parte so as to coordinate the drafting of an assessment report”); *Fuhrmann ex rel. Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1036 (3d Cir.1993) (finding parents had opportunity to participate in IEP formulation in meaningful way); *E.H. v. New York City Dep't of Educ.*, 164 F. Supp. 3d 539, 551 (S.D.N.Y. 2016) (“The CSE may consider and reject the Parent's point of view, but it may not deprive the Parent of meaningful participation by refusing to consider the Parent's concerns”); *Hanson ex rel. Hanson v. Smith*, 212 F.Supp.2d 474, 486 (D.Md.2002) (noting credible evidence that school board came to IEP meetings with open mind, and that several options were discussed and considered before final recommendation was made); *Doyle v. Arlington County Sch. Bd.*, 806 F.Supp. 1253, 1262 (E.D.Va.1992) (holding that school system had merely proposed a placement before IEP was completed and had not “fully made up its mind before the parents ever [got] involved,” thereby denying the parents “the opportunity for meaningful input”), *aff'd*, 39 F.3d 1176 (4th Cir.1994).

such that they are denied the opportunity to meaningfully participate in the IEP development process.”¹⁰⁸

Mere parental disagreement with a school district's IEP and placement recommendation does not amount to a denial of meaningful participation nor to predetermination.¹⁰⁹ Although an IEP Team is obligated to consider any program identified by Parent, the Team is under no obligation to raise, on its own initiative, nor to agree to place Student in a program that the Team does not believe is appropriate¹¹⁰; rather, here, Springfield was obligated to propose what the District believed to be FAPE in the LRE, “whether or not [Parent was] in agreement.”¹¹¹

Moreover, the evidence shows that although the SEBS program was discussed as an option for Student on August 17, no placement decision was actually made on that date. Rather, the Team continued to develop the IEP on August 26, at which time a placement was actually proposed. Although Parent disagreed with the Team’s placement decision, as explained above, the IDEA does not require school districts to propose only placements with which parents agree. Parent wanted Student to remain at SSDC but offered no substantive reasons for rejecting the SEBS program.¹¹² Yet SSDC was not a viable option for placement; it was too restrictive, did not offer Student an appropriate peer group¹¹³, and operated only as a diagnostic center. Further, SSDC did not recommend placement for Student in any of the other programs run by its parent company. As Parent disagreed with the placement proposal at the Team meeting, and agreement could not be reached, it was the District’s responsibility to propose an IEP and placement.¹¹⁴ Therefore, I find that Springfield did not predetermine placement during the IEP meeting on August 17, 2022. Furthermore, I do not find that Parent was denied meaningful participation at said meeting.

¹⁰⁸ *C.D.*, 2017 WL 3122654, at *18.

¹⁰⁹ See, for example, *B.K. v. New York City Dep't of Educ.*, 12 F. Supp. 3d 343, 359 (E.D.N.Y. 2014).

¹¹⁰ See *H.B. ex rel P.B. v. Las Virgenes Unified School Dist.*, 239 Fed.Appx. 342, 344-346 (9th Cir. 2007) (predetermination requires a finding that school district would not have considered a placement if the placement had been raised at the meeting); *Haverhill Public Schools*, BSEA # 2005314 (Berman, 2020) (“Haverhill was under no obligation to consider or propose the entire universe of possible placements for Student if HPS Team members believed that a particular placement--here, Moody preschool--could meet Student's needs”); *In Re: Natick Public Schools*, BSEA # 11-3131 (Crane, 2011).

¹¹¹ *In Re: Natick Public Schools*, BSEA #11-3131(Crane, 2011).

¹¹² Had Parent offered evidence or specific objections with the proposed placement, Springfield would have had a responsibility to consider and respond to her concerns. See *P.F. v. Bd. of Educ. of the Bedford Cent. Sch. Dist.*, 2016 WL 1181712, at *7 (Parents “were denied meaningful participation precisely because their presentation of extensive evidence as to numerous problems ... was ignored. Therefore, the District's predetermination of LEAP II as the appropriate placement for J.F. constitutes a procedural violation of the IDEA's guarantee of a FAPE”). At hearing, Parent testified that following her tour of the SEBS at Kiley, Parent did not “get the feeling” that Student would “feel secure” there, but she offered no objective evidence to support her “feeling.” She observed “unruliness” in the class but no context thereto. It is also unclear whether she shared this concern at any meeting with the District prior to hearing.

¹¹³ Student had substantial conflicts with the more cognitively disabled students at SSDC. (S-15, Menkel, Morris)

¹¹⁴ See 603 CMR 28.05(3)(c) (where “the Team members are unable to agree on the IEP, the Team chairperson shall state the elements of the IEP proposed by the school district”); 34 CFR 300.503(a); see also *Letter to Richards*, 55 IDELR 107 (OSEP 2010) (because the district that is “finally accountable for the contents of the program,” if the team cannot reach a consensus, the district must determine appropriate services and provide parents with prior written notice of the offer and of the parents' right to seek resolution of any disagreements by initiating an impartial due process hearing).

Finally, with regard to the meeting on October 20, 2022, I disagree with the District's assertion that it was not a Team meeting. Although the District argues it was a reengagement meeting, the evidence suggests otherwise. Even the District's own N1 refers to it as a Team meeting.¹¹⁵ In addition, Mr. Calvanese testified that this was a progress review as well as a reengagement meeting. Therefore, I now turn to the question of whether a predetermined placement decision was made by the District at this Team meeting.

According to the N1 for the October 20, 2022 meeting, Parent's Advocate requested placement for Student at Valley West School, but the option was rejected by the Team. The evidence shows that although Parent disagreed with the conclusion, she had an opportunity to participate in the meeting with her Advocate, share her concerns, and provide input.¹¹⁶ As explained *supra*, failure to agree with a Parent's requested placement does not render the District's proposal a predetermined placement decision¹¹⁷; rather, the Team believed its proposal for the SEBS program, a lesser restrictive placement option yet untried by Student, was appropriate and maintained its proposal for SEBS. Therefore, I find that Springfield did not make a predetermined placement decision during the Team meeting that occurred on October 20, 2022.

4. Title IX Incident.

With respect to Issue #4, the evidence does not support Parent's assertion that the actions or inactions by the District in response to Student's September 2021 Title IX complaint impacted Student's ability to receive a FAPE.¹¹⁸ According to Parent, Ms. Harris was unaware of her role as a Title IX Coordinator and failed to properly conduct a Title IX investigation. Parent contends Student's behaviors increased and intensified as a direct result of this failure; he struggled with attendance; and, he was denied a FAPE. Yet the evidence does not support Parent's assertions.

¹¹⁵ It is unclear which members of Student's Team were invited to the meeting, nor does the record reflect that any members were excused by Parent. See 34 CFR 300.321(a) (defining the Team) and 34 CFR 300.321(e) (specifying that the parent and the district may agree in writing to excuse the presence of a district team member if the team does not intend to modify or discuss that individual's services or area of curriculum). However, even if, *arguendo*, the Team was improperly constituted, Parent offered no evidence to show that this procedural violation resulted in educational harm to Student or denied Parent meaningful parental participation. See *Deal*, 392 F.3d at 854.

¹¹⁶ See, for example, *Cobb County School District*, 109 LRP 72062 (SEA GA 2009) ("Predetermination may violate IDEA and constitute a denial of FAPE when it deprives parents' of meaningful participation in the IEP process which causes a substantial harm However, the rule against predetermination does not prohibit a school district from attending an IEP meeting with a proposed placement Nor is a school district prohibited from ultimately disagreeing with and refusing to implement the parents' requests, so long as it allows the parents to participate and considers their input. A difference in opinion regarding the resolution does not create predetermination") (internal citations omitted).

¹¹⁷ See, for example, *B.K. v. New York City Dep't of Educ.*, 12 F. Supp. 3d 343, 359 (E.D.N.Y. 2014) (indicating that "once the CSE determined that a 6:1:1 placement was appropriate for [the student], it was under no obligation to consider more restrictive programs"); *In re: Student with a Disability*, 115 LRP 20871 (SEA NY 2015) (finding no predetermination where placements and services "were discussed and rejected" as they did not meet the student's "cognitive, educational and social-emotional needs").

¹¹⁸ Title IX provides, in part, that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). When a school district receives a formal complaint of sexual harassment, it must follow an appropriate grievance process to investigate the alleged harassment. See 34 CFR 106.45 (a).

Although a “formal complaint” was not filed pursuant to 34 CFR 106.30(a)¹¹⁹ and Ms. Harris testified that she was not aware of her Title IX Coordinator position for Harris Elementary School, I credit Ms. Harris’s testimony as to the steps she took in response to being made aware of the September 2021 Title IX incident. Ms. Harris spoke with both students involved, as well as witness students and staff, provided Student with supportive measures both during and after the investigation and kept Parent apprised of the results. Upon concluding that the incident did not rise to the level of Title IX harassment, Ms. Harris communicated this determination to Parent, meeting with both Parent and her Advocate face-to-face to explain her findings, and, thereafter, emailed Parent to document her conclusion and to offer Student additional support measures going forward despite this conclusion.¹²⁰

Even assuming *arguendo*, that these actions by Ms. Harris did not comport with the Title IX procedural requirements, (which I do not have jurisdiction to decide, and which is not the issue related to the Title IX incident in this matter), Parent presented no evidence that there was educational harm to Student as a result. Ms. Harris’s testimony that Student’s struggles existed consistently from the start of the school year was supported by the documentary evidence and the testimony of other District witnesses; Student struggled with behaviors prior to Ms. Harris’s response to the Title IX complaint, and exhibited similar behaviors during his time at SSDC and at Kiley. Nor did Parent demonstrate a correlation between Student’s episodic non-attendance during the 2021-2022 school year and the September 2021 incident. Ms. Harris’s testimony that Parent often chose to dismiss Student or keep him at home following disciplinary referrals is supported by the documentary evidence, and existed even before the Title IX incident occurred. While Student’s absences increased after the Title IX incident took place, this was due to Parent’s disagreement with Ms. Harris questioning Student without her permission as part of Ms. Harris’s actions in response to the Title IX incident, not due to the Title IX incident itself. Although Parent asserts that Student felt unsafe at school following the Title IX incident, she declined the support measures offered by Ms. Harris. Moreover, even if Student’s behavioral challenges escalated as a result of the Title IX incident, the District offered to address such struggles through the November 2021 IEP, to which Parent did not respond. Finally, Student’s attendance issues followed a similar pattern at Kiley the following school year, where, following disciplinary incidents, Student stopped attending school for periods of time. Therefore, I find that the District’s actions in response to the Title IX incident did not result in a denial of a FAPE to Student.

5. The November 2021 and August 2022 IEPs.

With respect to Issue #5, the evidence does not support Parent’s claims of FAPE denial. With regard to the November 2021 IEP, Parent argues that the Team should have considered adding an

¹¹⁹ 34 C.F.R. § 106.45 describes a detailed grievance process for formal complaints of sexual harassment, including notice requirements.

¹²⁰ Because Ms. Harris dismissed the allegation as not rising to the level of Title IX, no hearing was scheduled in the matter nor was a report issued. See 34 C.F.R. § 106.45(b)(3)(i); 34 C.F.R. § 106.45(b)(5) I have no authority to undermine the conclusion reached by Ms. Harris that the allegation did not rise to the level of Title IX, as the BSEA does not have jurisdiction over allegations of violations of Title IX, except to the extent that the allegations involve an impact to a student’s ability to receive a FAPE. *Cf. Poteet Indep. Sch. Dist.*, 29 IDELR 423 (SEA TX 1998) (the grant of jurisdiction to an IDEA hearing officer does not include appeal of matters properly raised and decided under the school district’s regular education student code of conduct).

Emotional Impairment¹²¹ disability category. Disability categories are reviewed by the Team at initial eligibility and re-eligibility Team meetings;¹²² however, the IEP Team meeting on November 9, 2021 was neither. Nor did the FBA or OT evaluations reviewed at this Team meeting suggest that Student's disability categories were no longer applicable or that a different category needed to be added to this IEP.

Even, assuming *arguendo*, that the District erred in not adding an Emotional Impairment disability category to Student's IEP at that time, Parent must still establish that the proposed IEP denied Student a FAPE on the basis of his unique needs, regardless of the disability label given to those needs.¹²³ It is well established that the IDEA makes no specific provision for a student to be classified under a particular disability, but rather requires that the student's educational program be designed to suit the student's demonstrated needs.¹²⁴ Here, at the time the November 2021 IEP was proposed, Student had been struggling in school since the start of the school year. Both the FBA and OT evaluation also suggested a high level of dysregulation and maladaptive behaviors which interfered with Student's access to education. Hence, the November 2021 IEP proposed a Social Emotional Goal targeting peer interactions and attention to task and corresponding counseling service, and a BIP was developed to address Student's interfering behaviors. Occupational therapy consultation was also added to help Student with sensory regulation. Thus, even if this IEP had changed Student's disability category to include Emotional Impairment, as Parent submits it should have, there is no evidence to indicate that any of the supports and services offered in the November 2021 IEP proposed by the District would have

¹²¹ See 603 CMR 28.02 ("As defined under federal law at 34 CFR §300.8(c)(4), the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The determination of disability shall not be made solely because the student's behavior violates the school's discipline code, because the student is involved with a state court or social service agency, or because the student is socially maladjusted, unless the Team determines that the student has a serious emotional disturbance").

¹²² See 603 CMR 28.05(2)(a)(1)(a); see also 34 C.F.R. § 300.306.

¹²³ See *Pohorecki v. Anthony Wayne Local Sch. Dist.*, 637 F.Supp.2d 547, 557 (N.D. OH 2009) (classification of disability is not critical to determining the provision of a free appropriate public education; rather, the determination rests on whether the goals and objectives are appropriate for the student because the "very purpose of categorizing disabled students is to try to meet their educational needs; it is not an end to itself"); see also *In re: Student and Hamilton-Wenham Regional Sch. Dist.*, BSEA # 21-04633 (Kantor Nir, 2021) (finding that "Student's IEPs, incorporating the recommendations from Dearborn, address[ed] the documented behaviors and skill deficits that interfere[d] with Student's ability to learn, rendering his disability categories irrelevant").

¹²⁴ See 20 U.S.C. § 1412(a)(3)(B) ("Nothing in this chapter requires that children be classified by their disability so long as each child who has a disability listed in section 1401 of this title and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this subchapter"); *Fort Osage R-1 Sch. Dist. v. Sims ex rel. B.S.*, 641 F.3d 996, 1004 (8th Cir. 2011) ("Given the IDEA's strong emphasis on identifying a disabled child's specific needs and addressing them, ... the particular disability diagnosis affixed to a child in an IEP will, in many cases, be substantively immaterial because the IEP will be tailored to the child's specific needs. ... [T]he party challenging the IEP must show that the failure to include a proper disability diagnosis 'compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits"); *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 814 (8th Cir. 2011) ("A school district is not required to identify a student's issues by name or official diagnosis so long as the IEP properly identifies and addresses the student's disability").

been different.¹²⁵ Nor did Parent offer any evidence to demonstrate the need for different or additional supports and services, to support his emotional impairment needs or otherwise, necessary to be included in this IEP for Student to make effective progress.¹²⁶

In addition, Parent offered no credible evidence that the proposed full inclusion setting was inappropriate for Student at that time.¹²⁷ When the Team convened on November 9, 2021, Student had only been eligible for special education and related services since April of the previous school year. Ms. Harris convincingly testified that a more restrictive setting was not considered by the Team in November because additional supports and services, which the Team believed would be appropriate, had yet to be tried in the full inclusion setting. As aptly stated by Ms. Harris, this was the “next step” on the continuum.¹²⁸ Therefore, I find that the November 2021 IEP was tailored to address Student’s unique needs, was reasonably calculated to allow him to make effective progress and offered him a FAPE in the LRE.¹²⁹

¹²⁵ Similarly, at Hearing, Parent argued that the District did not provide any services to accommodate Student’s ADHD but presented no expert testimony or evidence that Student required any specific service or accommodation not proposed therein.

¹²⁶ See *Torda ex rel. Torda v. Fairfax Cty. Sch. Bd.*, No. 1:11CV193 GBL/TRJ, 2012 WL 2370631, at *17 (E.D. Va. June 21, 2012), *aff’d*, 517 F. App’x 162 (4th Cir. 2013) (ruling that a district’s failure to list a second disability in the student’s IEP did not amount to an IDEA violation because the IEP addressed all of the student’s needs, regardless of his classification); *Heather S. v. State of Wisconsin*, 125 F.3d 1045, 1055 (7th Cir.1997) (“[t]he IDEA charges the school with developing an appropriate education, not with coming up with a proper label”); *D.B. v. Houston Indep. Sch. Dist.*, No. Civ. A. H-06-354, 2007 WL 2947443, at *10 (S.D.Tex. Sept. 29, 2007) (“IDEA does not require that children be classified by their disability so long as each eligible child is regarded as a child with a disability under the Act.”); *In Re: Scott M.*, 95-59, 24 IDELR 1229 (N.H. 1996) (“the more important question remains whether the District has developed an appropriate IEP which addressed the manifestations of his conditions ... be they caused by autism alone ... or due to the multiplicity of his impairment”). But see *In the Matter of Minneto v. M.L.K., by & through his Parents S.K.*, No. CV 20-1036 (DWF/KMM), 2021 WL 780723, at *9 (D. Minn. Mar. 1, 2021) (where “accurate disability diagnoses would alert a district to the need of additional services, they are too important to leave out if known”). Prior to the final reiteration of the issues by the parties, Parent had argued that the November 2021 IEP was inappropriate, in part, because it failed to provide Student with specialized transportation. The parties had agreed to incorporate the transportation issue into Issue #5. At Hearing however, Parent offered no evidence to support the need for specialized transportation, and I do not find that its exclusion denied Student a FAPE as there were no recommendations in support of such need at the time that the November 2021 IEP was proposed. See 603 CMR 28.05(5)(a) (“If the student does not require transportation as a result of his or her disability, then transportation shall be provided in the same manner as it would be provided for a student without disabilities”).

¹²⁷ See, e.g., *Roland M.*, 910 F.2d at 992 (school districts are not to be “judged exclusively in hindsight. An IEP is 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”); *Lessard*, 518 F.3d at 29; *Town of Burlington v. Dep’t of Educ.*, 736 F.2d 773, 788 (1st Cir. 1984), *aff’d* 471 U.S. 359 (1985) (“ultimate question for a court under the Act is whether a proposed IEP is adequate and appropriate for a particular child at a given point in time”); *Pavelko v. D.C.*, 288 F. Supp. 3d 301, 307 (D.D.C. 2018) (as “it had not yet been established that H.P. needed those services ... the IEP’s failure to include them does not render the IEP inadequate”); *S.S. ex rel. Shank v. Howard Road Acad.*, 585 F.Supp.2d 56, 66 (D.D.C. 2008) (“the IDEA does not countenance ‘Monday Morning Quarterbacking’ in evaluating the appropriateness of a child’s placement”) (internal citations omitted).

¹²⁸ See *C.G.*, 513 F.3d at 285; see also 20 USC §1412(a)(5)(A); 34 CFR 300.114(a)(2)(i); MGL c 71 B, §§ 2, 3; 603 CMR 28.06(2)(c).

¹²⁹ *Andrew F.*, 137 S. Ct. at 1001.

At Hearing, Parent also argued that she was denied meaningful participation at the November 9, 2021 meeting. However, her argument is unpersuasive. Parent had an opportunity to participate in the development of the IEP at the November 9, 2022 meeting, which she attended with her Advocate. At Parent's request, the District added speech and language consultation on the A Grid. Parent was offered the opportunity and did, in fact, share her concerns. Parent's assertion that the Team ignored her concerns regarding the Title IX investigation is also unsubstantiated. The IEP Team is obligated "each time the IEP Team convenes, [to] consider whether the student has been involved in any bullying incident, and [to] use that information to inform its discussion of the student's needs. Additionally, the district should convene the IEP Team if the parent or any staff member believes that the student is at risk of being bullied or is exhibiting bullying behavior and such risk or behavior is directly tied to the student's disability."¹³⁰ Nevertheless, the IEP Team's discussion should "focus[] comprehensively on the student's educational needs and on the student's overall involvement in the school, including participation in the general curriculum and in extracurricular and other nonacademic activities" rather than on the incident itself.¹³¹

Here, although the Team refused to review the Title IX incident or Ms. Harris's finding relative thereto, this was not a denial of meaningful participation; specifically, Parent wanted the IEP to reference the incident which gave rise to the Title IX investigation and asked that the IEP reflect the fact that Student's behavioral difficulties resulted from the alleged Title IX incident. However, the Team had before it information to indicate that Student's behavioral challenges had started prior to the Title IX incident, and were historically consistent, thus the Team's decision not to draw a connection between the Title IX incident and the behaviors was appropriate. The FBA also drew no correlation between Student's behaviors and the incident. Moreover, the District added a Social Emotional Goal and counselling services to improve Student's interaction and communication with others. Springfield was not obligated to review the investigation or its findings at the Team meeting.

At Hearing, Parent also argued that the Social Emotional Goal was drafted after the meeting and that Parent did not participate in its drafting. Parent's argument is unpersuasive. Parent was present for the entirety of the meeting with her Advocate and shared her concerns with the Team. There was no evidence offered to suggest that she did not have an opportunity to provide input into the development of the Social Emotional Goal even if she did not physically draft it with the teacher and school adjustment counselor. Moreover, no evidence was presented to suggest that the final goal failed to embody the essence of the goal discussed at the meeting.¹³²

¹³⁰ *Technical Assistance Advisory SPED 2011-2: Bullying Prevention and Intervention* which may be found at https://www.doe.mass.edu/sped/advisories/11_2ta.html#1.

¹³¹ See *id.*

¹³² See, e.g., *J.W. ex rel. K.K.W. v. Governing Bd. of E. Whittier City Sch. Dist.*, 473 F. App'x 531, 533 (9th Cir. 2012) (finding that "the District's modification of [the goal following the meeting] arose directly out of the IEP meeting" did not "significantly deprive [J.W.'s] [p]arents of meaningful participation in the IEP process....", and "another IEP meeting was not required"); *J.G. v. Briarcliff Manor Union Free Sch. Dist.*, 682 F. Supp. 2d 387, 394 (S.D.N.Y. 2010) (where Parents argued that the goals were drafted after the Team meeting, the court found no violation where "the Parents had an opportunity to and did fully engage in the discussion ... regarding ... what the IEP goals and objectives should be" and where they were offered the opportunity to respond to the goals); *E.G. v. City Sch. Dist. of New Rochelle*, 606 F.Supp.2d 384, 388–89 (S.D.N.Y.2009) (there is no legal authority requiring parental presence during the actual drafting of the written IEP document).

I now turn to the August 2022 IEP. When this IEP was developed, Student had just completed the extended evaluation at SSDC. As already discussed, *supra*, Parent participated in the development of the IEP. In addition, the IEP incorporated the recommendations of the SSDC evaluative team. As such, this IEP too was tailored to meet Student's specific and unique educational needs.¹³³ By the time that this IEP was proposed, Student had been struggling in school for an extended period of time despite frequent changes to his BIP at Harris Elementary School. The results of the extended evaluation indicated a more restrictive setting was necessary in order to allow Student to make effective progress.¹³⁴ The credible evidence also shows that the SEBS program could implement the recommendations of SSDC.¹³⁵ In addition, a review of the peer cohort's IEPs from SEBS demonstrate that students attending SEBS have cognitive abilities similar to Student's, and a range of disabilities; they also struggle with deficits similar to those of Student, such as impulsivity, task avoidance, dysregulation, disorganization, and peer and adult conflict. Parent offered no evidence other than her own opinion that SEBS or the peer cohort Student would have in that program was inappropriate, and the facts indicate that she agreed with the need for a therapeutic program in general for Student at the Team meeting. The reasons for Parent's opinion as to SEBS inappropriateness were vague and consisted of Parent not getting a "feeling" that Student would be "secure" there.

Moreover, this IEP comports with the recommendations of Parent's own expert, Dr. Aponte-Slater. Although Dr. Aponte-Slater never attended a Team meeting or presented her recommendations to the Team for consideration, at hearing Dr. Aponte-Slater testified that Student requires a smaller setting with teachers trained in understanding anxiety. She also recommended counseling services in the school setting. The August 2022 IEP incorporates these recommendations.

Based on the overwhelming evidence, I find that both the November 2021 IEP and the August 2022 IEP were individually tailored to meet the Student's unique special education needs.

6. Implementation of IEPs.

With respect to Issue #6, the District is correct that because Parent did not respond to either the November 2021 IEP or the August 2022 IEP, Springfield was precluded from implementing any portions of these IEPs.¹³⁶ Therefore, Parent's claim is without merit.

CONCLUSION:

After reviewing the testimony and documents in the record, I conclude that Springfield did not deny Parent meaningful participation by conducting an IEP meeting without Parent in attendance

¹³³ *Andrew F.*, 137 S. Ct. at 1001.

¹³⁴ See *C.D.*, 924 F.3d at 631.

¹³⁵ See *In Re: Sutton Public Schools*, BSEA # 09-7983 (Crane, 2010) ("even though Cotting may be an excellent school with a number of qualities that may be appropriate and useful to Student's education in general, Cotting cannot be an appropriate placement for Student because it is not willing or able to implement the IEP that Sutton proposed for Student").

¹³⁶ See 603 CMR 28.05(7)(b) ("Upon parental response to the proposed IEP and proposed placement, the school district shall implement all accepted elements of the IEP without delay").

on April 11, 2022; that Springfield did not ignore the recommendations of SSDC when drafting the IEP for the period from August 26, 2022 until June 23, 2023; that there were no Team meetings on June 26, 2022, September 29, 2022 and October 31, 2022, and that Springfield did not predetermine any placement decisions during the Team meetings that did occur on August 17, 2022 and October 20, 2022; and that Springfield's actions in response to the Title IX incident did not result in a denial of a FAPE to Student. I also find that the IEPs proposed for the period from November 9, 2021 until April 12, 2022 and for the period from August 26, 2022 until June 23, 2023 were and are reasonably calculated to offer Student a FAPE in the LRE, and that Springfield did not fail to implement these IEPs, and in fact could not implement these IEPs, as Parent has yet to accept any portions of said IEPs.¹³⁷

ORDER:

Parent's claims in this matter are DENIED.

So Ordered by the Hearing Officer,

/s/ Alina Kantor Nir

Alina Kantor Nir, Hearing Officer

Dated: January 17, 2023

¹³⁷ Parent requested Student be placed at Valley West School during the Team meeting on October 20, 2022. However, having determined that Student has not been denied a FAPE, it is not necessary for me to review the appropriateness of any program sought by Parent.

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 in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts, for review. 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.